

THE DOMINICAN REPUBLIC
ACTING THROUGH THE MINISTRY OF FINANCE

ARRANGED BY
BANCO SANTANDER S.A.

WITH

BANCO SANTANDER S.A.
ACTING AS AGENT

SANTO DOMINGO METRO
€42,012,926.41 FACILITY AGREEMENT

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THIS AGREEMENT is dated 8 April 2016 and made between:

- (1) **THE DOMINICAN REPUBLIC** (the "**Borrower**");
- (2) **BANCO SANTANDER S.A.** as mandated lead arranger (the "**Arranger**");
- (3) **BANCO SANTANDER S.A.** as lender (the "**Original Lender**"); and
- (4) **BANCO SANTANDER S.A.** as agent of the other Finance Parties (the "**Agent**").

RECITALS:

- (A) On 29 January 2015 a consortium known as EURODOM2 formed by Siemens AG, Siemens S.A., Siemens S.R.L., Thales Communications & Security, S.A.S., Sofratesa, Inc., Compagnie Internationale de Maintenance, S.A. and TSO, S.A.S entered into a contract in relation to the extension of line two of the metro of Santo Domingo, Dominican Republic.
- (B) The Finance Parties intend to finance in part the goods and services to be provided by the consortium described at recital (A) by making a credit facility available to the Borrower in accordance with the terms and conditions of this Agreement.
- (C) In connection with this Agreement and the other Finance Documents the Borrower is acting through the Ministry of Finance (*Ministerio de Hacienda*). In connection with the Commercial Contract and the Project the Borrower is acting through the Transport Reform Office (*Oficina para el Reordenamiento del Transporte*). References in the Finance Documents to the Borrower shall be construed accordingly.

IT IS AGREED as follows:

SECTION 1 INTERPRETATION

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement:

"Advance Payment" means payment by the Borrower directly to the relevant Exporters in an aggregate amount of at least €7,483,744.24, as payment (or advance payment) for the goods and services provided or to be provided by or on behalf of the Exporters under the Commercial Contract which will not be financed under the Facility.

"Affiliate" means, in relation to any person, a Subsidiary of that person or a Holding Company of that person or any other Subsidiary of that Holding Company.

"Assignment Agreement" means an agreement substantially in the form set out in Schedule 5 (*Form of Assignment Agreement*) or any other form agreed between the relevant assignor and assignee.

"Authorisation" means an authorisation, consent, approval, resolution, licence, exemption, filing, notarisation or registration.

"Availability Period" means the period from and including the date of this Agreement to and including the date which is one Month prior to the First Repayment Date.

"Available Commitment" means, in relation to a Tranche, a Lender's Commitment under that Tranche minus:

- (a) the amount of its participation in any outstanding Loans under that Tranche; and
- (b) in relation to any proposed Utilisation, the amount of its participation in any Loans that are due to be made under that Tranche on or before the proposed Utilisation Date.

"Available Tranche" means, in relation to a Tranche, the aggregate for the time being of each Lender's Available Commitment in respect of that Tranche.

"Borrower's Country" means The Dominican Republic.

"Break Costs" means the amount (if any) by which:

- (a) the interest (excluding the French ECA Tranche Margin if applicable) which a Lender should have received for the period from the date of receipt of all or any part of its participation in a Loan or Unpaid Sum to the last day of the current Interest Period in respect of that Loan or Unpaid Sum, had the principal amount or Unpaid Sum received been paid on the last day of that Interest Period;

exceeds:

- (b) the amount which that Lender would be able to obtain by placing an amount equal to the principal amount or Unpaid Sum received by it on deposit with a leading bank in the Relevant Interbank Market for a period starting on the Business Day of receipt or recovery and ending on the last day of the current Interest Period,

plus any cost, fee, charge, penalty, commission and interest incurred by a Finance Party, or payable to any person (including the ICO), as a result of a prepayment of a Loan in relation to the Spanish ECA Tranche Fixed Rate or French ECA Tranche Fixed Rate or termination of the ICO Interest Make-up Agreement.

"Business Day" means a day (other than a Saturday or Sunday) on which banks are open for general business in Madrid (Spain) and Santo Domingo (Dominican Republic) and, in relation to any date for payment or purchase of euro, which is a TARGET Day.

"Code" means the US Internal Revenue Code of 1986.

"Commercial Contract" means the contract dated 29 January 2015 between the Exporters and the Borrower (acting through its *Oficina Para El Reordenamiento Del Transporte*) in relation to the Project.

"Commitment" means a Spanish ECA Tranche Commitment or a French ECA Tranche Commitment.

"Confidential Information" means all information relating to the Borrower, the Project, the Finance Documents or the Facility of which a Finance Party becomes aware in its capacity as, or for the purpose of becoming, a Finance Party or which is received by a Finance Party in relation to, or for the purpose of becoming a Finance Party under, the Finance Documents or the Facility from either:

- (a) the Borrower, an Exporter or any of their advisers; or
- (b) another Finance Party, if the information was obtained by that Finance Party directly or indirectly from the Borrower or any of its advisers,

in whatever form, and includes information given orally and any document, electronic file or any other way of representing or recording information which contains or is derived or copied from such information but excludes information that:

- (i) is or becomes public information other than as a direct or indirect result of any breach by that Finance Party or its Affiliate of Clause 35 (*Confidentiality*); or
- (ii) is identified in writing at the time of delivery as non-confidential by the Borrower, an Exporter or any of their advisers; or
- (iii) is known by that Finance Party before the date the information is disclosed to it in accordance with paragraphs (a) or (b) above or is lawfully obtained by that Finance Party after that date, from a source

which is, as far as that Finance Party is aware, unconnected with the Borrower and which, in either case, as far as that Finance Party is aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality; and

- (iv) any Reference Bank Quotation.

"Confidentiality Undertaking" means, with respect to a Finance Party, a confidentiality undertaking in a form agreed between the Borrower (acting reasonably) and that Finance Party.

"Consortium" means the consortium referred to in Recital (A) (being the consortium formed of the Exporters for the purposes of the Commercial Contract).

"Default" means an Event of Default or any event or circumstance specified in Clause 22 (*Events of Default*) which would (with the expiry of a grace period, the giving of notice, the making of any determination under the Finance Documents or any combination of any of the foregoing) be an Event of Default.

"Defaulting Lender" means any Lender which has failed to make its participation in a Loan available (or has notified the Agent or the Borrower (which has notified the Agent) that it will not make its participation in a Loan available) by the Utilisation Date of that Loan in accordance with Clause 5.4 (*Lenders' Participation*) unless:

- (a) its failure to pay is caused by
 - (i) an administrative or technical error, or
 - (ii) a Disruption Event, andpayment is made within 3 (three) Business Days of its due date, or
- (b) the Lender is disputing in good faith whether it is contractually obliged to make the payment in question.

"Disruption Event" means either or both of:

- (a) a material disruption to those payment or communications systems or to those financial markets which are, in each case, required to operate in order for payments to be made in connection with the Facility (or otherwise in order for the transactions contemplated by the Finance Documents to be carried out) which disruption is not caused by, and is beyond the control of, any of the Parties; or
- (b) the occurrence of any other event which results in a disruption (of a technical or systems-related nature) to the treasury or payments operations of a Party preventing that, or any other Party:
 - (i) from performing its payment obligations under the Finance Documents; or

- (ii) from communicating with other Parties in accordance with the terms of the Finance Documents,

and which (in either such case) is not caused by, and is beyond the control of, the Party whose operations are disrupted.

"ECA" means:

- (a) in relation to the Spanish ECA Tranche, Spanish ECA; and
- (b) in relation to the French ECA Tranche, French ECA.

"ECA Insurance Policy" means the Spanish ECA Insurance Policy or the French ECA Insurance Policy.

"ECA Insurance Premium" means the Spanish ECA Insurance Premium or the French ECA Insurance Premium.

"Effective Date" means the date on which the Agent notifies the Borrower that all initial conditions under Clause 4.1 (*Initial conditions precedent*) are satisfied.

"Eligible French and Foreign Goods and Services" means the portion of goods and/or services of French origin or of non-French origin, which have been approved by the French ECA as financeable under this Agreement, to be provided by a French ECA Exporter to the Borrower with an aggregate value not exceeding €13,265,795.01.

"Eligible French ECA Local Costs" means an amount not exceeding €4,682,008.99, comprised of the portion of the cost of the goods and/or services to be provided by the French ECA Exporters which cannot be repatriated to France and which are included in the amount payable by the Borrower, payment for which is eligible for financing under this Agreement, within the limits and under the conditions determined by the French ECA, as evidenced by:

- (a) the French ECA Insurance Policy;
- (b) in relation to Thales Communications & Security S.A.S., the *promesse de garantie* issued by the French ECA dated 31 July 2015, as extended on 4 January 2016 (which is valid until 29 March 2016, unless extended or renewed); and
- (c) in relation to the Compagnie Internationale de Maintenance, S.A. and TSO, S.A.S., the *promesse de garantie* issued by the French ECA dated 31 July 2015, as extended on 4 January 2016 (which is valid until 29 March 2016, unless extended or renewed).

"Eligible Goods and Services" means goods and services provided or to be provided by or on behalf of an Exporter pursuant to the Commercial Contract, which are eligible for financing under an ECA Insurance Policy (within the limits and subject to the conditions provided therein), being:

- (a) in relation to the French ECA Insurance Policy, the Eligible French and Foreign Goods and Services and the Eligible French ECA Local Costs; and

- (b) in relation to the Spanish ECA Insurance Policy, the goods and services eligible for financing under the Spanish ECA Insurance Policy and the ICO Interest Make-up Agreement.

"Environment" means living organisms including the ecological systems of which they form part and the following media:

- (a) air (including air within natural or man-made structures, whether above or below ground);
- (b) water (including territorial, coastal and inland waters, water under or within land and water in drains and sewers); and
- (c) land (including land under water).

"Environmental Claim" means any litigation, arbitration or administrative or other proceedings relating to the Project of or before any court, arbitral body or regulatory or other competent authority relating to Environmental Law or Environmental Standards.

"Environmental Incident" means any condition, circumstance or situation relating to the Project resulting in loss of human life or significant damage to Environment, health or safety. Significant damage for these purposes means an incident which is likely to involve irreversible or long term impact and/or harm to the Environment, health or safety (including to rare or endangered species or their supporting habitats) and including, without limitation, explosions, spills or accidents which result in death, serious or multiple injury or major pollution.

"Environmental Law" means all laws and regulations of any relevant jurisdiction applicable to the Project concerning or applicable with regard to:

- (a) the pollution or protection of, or compensation of damage or harm to, the Environment;
- (b) occupational or public health and safety;
- (c) emissions, discharges or releases into, or the presence in, the Environment or of the use, treatment, storage, disposal, transportation or handling of Hazardous Substances (including without limitation taxation or any obligation to purchase credits or allowances or to provide financial security with regard to any such activities); or
- (d) Social Standards.

"Environmental Licence" means any Authorisation, notification, assessment, certificate, allowance or credit required at any time under Environmental Law in connection with the Project.

"Environmental Report" means any environmental report required in relation to clauses 10.7.12 (*Calendario de entrega de informes a la Secretaría*) or 10.7.13 (*Matriz resumen del PMAA*) of the PMMA.

"Environmental Standards" means Environmental Law, Environmental Licences, the eight IFC Performance Standards (2012), the relevant IFC Environmental Health and Safety Guidelines (2007) and the Equator Principles, in each case to the extent applicable to the Project.

"Equator Principles" means the principles described in "The Equator Principles – A financial industry benchmark for determining, assessing and managing social and environmental risk in project financing" to be found at <http://www.equator-principles.com>, as updated from time to time.

"EURIBOR" means, in relation to any Loan and an Interest Period of that Loan:

- (a) the applicable Screen Rate as of the Specified Time for euro and for a period equal in length to that Interest Period; or
- (b) as otherwise determined pursuant to Clause 11.1 (*Unavailability of Screen Rate*),

and if, in either case, that rate is less than zero, EURIBOR shall be deemed to be zero.

"Event of Default" means any event or circumstance specified as such in Clause 22 (*Events of Default*).

"Exporter" means a Spanish ECA Exporter or a French ECA Exporter.

"Exporter Certification" means:

- (a) in relation to a Utilisation for a purpose specified in paragraphs (a)(ii) or (b)(ii) of Clause 3.1 (*Purpose*) (being a Utilisation to be made directly to an Exporter), a certificate from an Exporter in respect of whose goods or services the Utilisation is being made in the form set out in Part I (*Exporter Certification to be used with Utilisation Request from the Exporter*) of Schedule 3; and
- (b) in relation to a Utilisation for a purpose specified in paragraphs (a)(iii) or (b)(iii) of Clause 3.1 (*Purpose*) (being a Utilisation to be made directly to a Borrower), a certificate from an Exporter in respect of whose goods or services the payment has been made by the Borrower in the form set out in Part II (*Exporter Certification to be used with Utilisation Request from the Borrower*) of Schedule 3.

"**Exporter Limit**" means, in relation to a Utilisation for a purpose specified in paragraphs (a)(ii) or (b)(ii) of Clause 3.1 (*Purpose*) (being a Utilisation to be made directly to an Exporter), an amount which, when aggregated with the amounts of all other Utilisations which have been made, or are due to be made before the proposed Utilisation Date, available to that Exporter or other Exporters listed in the same row of the table below, would not cause the limit set out in the right hand column of the table below opposite that Exporter's name (being a limit on the maximum aggregate amount of Utilisations which may be made in relation to payments due from or paid by the Borrower under the Commercial Contract to that Exporter and other Exporters listed in the same row of the table below), to be exceeded:

Exporter(s)	Maximum aggregate amount of Utilisations
<i>Spanish ECA Exporters</i>	
Siemens AG, Siemens S.A., Siemens S.R.L.	€19,664,213.40
<i>French ECA Exporters</i>	
Thales Communications & Security S.A.S.	€8,299,195.32
Compagnie Internationale de Maintenance, S.A. and TSO, S.A.S.	€7,267,060.98
Sofratesa, Inc.	€2,381,547.70

"**External Indebtedness**" means any Financial Indebtedness which is denominated, payable or optionally payable in a currency other than Dominican pesos or by reference to a currency other than Dominican pesos, regardless of whether that Financial Indebtedness is incurred within or outside the Borrower's Country.

"**Facility**" means the term loan facility made available under this Agreement described in Clause 2.1 (*The Facility*), comprising the Spanish ECA Tranche and the French ECA Tranche.

"**Facility Office**" means the office or offices notified by a Lender to the Agent in writing on or before the date it becomes a Lender (or, following that date, by not less than 5 (five) Business Days' written notice) as the office or offices through which it will perform its obligations under this Agreement.

"**FATCA**" means:

- (a) sections 1471 to 1474 of the Code or any associated regulations;
- (b) any treaty, law or regulation of any other jurisdiction, or relating to an intergovernmental agreement between the United States of America (the "US") and any other jurisdiction, which (in either case) facilitates the implementation of any law or regulation referred to in paragraph (a) above; and
- (c) any agreement pursuant to the implementation of any treaty, law or regulation referred to in paragraphs (a) or (b) above with the US Internal Revenue Service, the US government or any governmental or taxation authority in any other jurisdiction.

"FATCA Application Date" means:

- (a) in relation to a "withholdable payment" described in section 1473(1)(A)(i) of the Code (which relates to payments of interest and certain other payments from sources within the US), 1 July 2014;
- (b) in relation to a "withholdable payment" described in section 1473(1)(A)(ii) of the Code (which relates to "gross proceeds" from the disposition of property of a type that can produce interest from sources within the US), 1 January 2019; or
- (c) in relation to a "passthru payment" described in section 1471(d)(7) of the Code not falling within paragraphs (a) or (b) above, 1 January 2019,

or, in each case, such other date from which such payment may become subject to a deduction or withholding required by FATCA after the date of this Agreement.

"FATCA Deduction" means a deduction or withholding from a payment under a Finance Document required by FATCA.

"FATCA Exempt Party" means a Party that is entitled to receive payments free from any FATCA Deduction.

"Finance Document" means this Agreement, the ICO Interest Make-up Agreement, any Utilisation Request, any French ECA Tranche Fixed Rate Notice and any other document designated as such by the Agent and the Borrower.

"Finance Party" means the Agent, the Arranger or a Lender.

"Financial Indebtedness" means any indebtedness for or in respect of:

- (a) moneys borrowed;
- (b) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
- (c) any amount raised under any other transaction of a type not referred to in any other paragraph of this definition having the commercial effect of a borrowing;
- (d) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution; and
- (e) the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in paragraphs (a) to (d) above.

"First Repayment Date" means the date falling six Months after the Starting Point of Credit.

"French ECA" means *Compagnie française d'assurance pour le commerce extérieur*, a French *société anonyme* located at 12 Cours Michelet, La Défense 10, 92800 Puteaux, registered under RCS Nanterre 552 069 791, or any successor in the

activities of issuing guarantees and insurance policies for the account of the French state and under its control pursuant to Article R 442-1 of the French Insurance Code or any assignees or transferees of such activities.

"French ECA Exporter" means Thales Communications & Security S.A.S., Compagnie Internationale de Maintenance, S.A., TSO, S.A.S. or Sofratesa, Inc.

"French ECA Insurance Policy" means the insurance policies issued (or to be issued) by French ECA in favour of and in form and substance satisfactory to the Lenders, whereby French ECA agrees to insure (in respect of commercial and political risks), on the terms and conditions thereof, the Borrower's obligations under this Agreement in respect of 95% of principal, interest and default interest payable under or in connection with the French ECA Tranche.

"French ECA Insurance Premium" means the premium payable to French ECA under the French ECA Insurance Policy, being an amount of €1,640,429.29.

"French ECA Tranche" means the tranche of the Facility described in paragraph (b) of Clause 2.1 (*The Facility*).

"French ECA Tranche Commitment" means:

- (a) in relation to the Original Lender, €19,588,233.29; and
- (b) in relation to any other Lender, the amount of any French ECA Tranche Commitment transferred to it under this Agreement,

to the extent not cancelled, reduced or transferred by it under this Agreement.

"French ECA Tranche Fixed Rate" means the fixed rate of interest agreed between the Borrower and all Lenders with a French ECA Tranche Commitment and confirmed in a French ECA Tranche Fixed Rate Notice further to a request for such a rate from the Borrower to such Lenders (through the Agent) delivered on or before the date falling 15 Business Days (or such later date as such Lenders may agree) before the first day of the first Interest Period to which such interest rate would apply and such first Interest Period must start after the Starting Point of Credit.

"French ECA Tranche Fixed Rate Notice" means a notice substantially in the form set out in Schedule 8 (*Form of ECA Tranche Fixed Rate Notice*).

"French ECA Tranche Interest Rate" means the aggregate of:

- (a) the French ECA Tranche Fixed Rate if any, or otherwise the applicable EURIBOR; and
- (b) the French ECA Tranche Margin.

"French ECA Tranche Loan" means a loan made or to be made under the French ECA Tranche or the principal amount outstanding for the time being of that loan.

"French ECA Tranche Margin" means 0.95 per cent. per annum.

"Governmental Authority" means any local, regional, state, federal or central government, governmental agency, department, ministry, commission, board, bureau or any other administrative or judicial or quasi-judicial authority, regulatory authority or instrumentality thereof.

"Hazardous Substance" means any waste, pollutant, emission, contaminant or other substance (including any liquid, solid, gas, ion, living organism or noise) that may be harmful to human health or other life or the Environment or a nuisance to any person or that may make the use or ownership of any affected land or property more costly.

"Holding Company" means, in relation to a person, any other person in respect of which it is a Subsidiary.

"ICO" means the *Instituto de Crédito Oficial*.

"ICO Interest Make-up Agreement" means the reciprocal interest adjustment contract (*contrato de ajuste recíproco de intereses (CARI)*) entered into (or to be entered into) between ICO and the Agent (on behalf of the Lenders) in relation to the Spanish ECA Tranche Fixed Rate, in form and substance satisfactory to the Lenders.

"Illicit Origin" means any origin which is illicit or fraudulent, including without limitation, drug trafficking, corruption, organised criminal activities, terrorism, money laundering or fraud.

"Ineligible Amount Payment" means payment by the Borrower directly to the relevant Exporters in an aggregate amount of at least €4,795,866.64, as payment (or advance payment) for the goods and services provided or to be provided by or on behalf of the Exporters under the Commercial Contract which will not be financed under the Facility.

"Interest Period" means, in relation to a Loan, each period determined in accordance with Clause 10 (*Interest Periods*) and, in relation to an Unpaid Sum, each period determined in accordance with Clause 9.4 (*Default interest*).

"Interpolated Screen Rate" means, in relation to any Loan, the rate (rounded to the same number of decimal places as the two relevant Screen Rates) which results from interpolating on a linear basis between:

- (a) the applicable Screen Rate for the longest period (for which that Screen Rate is available) which is less than the Interest Period of that Loan; and
- (b) the applicable Screen Rate for the shortest period (for which that Screen Rate is available) which exceeds the Interest Period of that Loan,

each as of the Specified Time on the Quotation Day for the currency of that Loan.

"Lender" means:

- (a) the Original Lender; and
- (b) any bank, financial institution, trust, fund or other entity which has become a Party in accordance with Clause 23 (*Changes to the Lenders and ECAs*),

which in each case has not ceased to be a Party in accordance with the terms of this Agreement.

"**Loan**" means a Spanish ECA Tranche Loan or a French ECA Tranche Loan.

"**Loan Registration Date**" means the date on which this Agreement is registered in the Public Credit Office (*Dirección General de Crédito Público*).

"**Majority Lenders**" means a Lender or Lenders whose Commitments aggregate more than 66⅔ per cent. of the Total Commitments (or, if the Total Commitments have been reduced to zero, aggregated more than 66⅔ per cent. of the Total Commitments immediately prior to the reduction).

"**Material Adverse Effect**" means a material adverse effect on or material adverse change in:

- (a) the condition (financial, economic, political or otherwise) of the Borrower;
- (b) the ability of the Borrower to perform and comply with its obligations under any Finance Document;
- (c) the ability of the Borrower (acting through its *Oficina Para El Reordenamiento Del Transporte*) to perform and comply with its obligations under the Commercial Contract; or
- (d) the validity, legality or enforceability of any Finance Document or ECA Insurance Policy or the Commercial Contract.

"**Month**" means a period starting on one day in a calendar month and ending on the numerically corresponding day in the next calendar month, except that:

- (a) if the numerically corresponding day is not a Business Day, that period shall end on the next Business Day in that calendar month in which that period is to end if there is one, or if there is not, on the immediately preceding Business Day; and
- (b) if there is no numerically corresponding day in the calendar month in which that period is to end, that period shall end on the last Business Day in that calendar month.

The above rules will only apply to the last Month of any period.

"**New Lender**" has the meaning given to that term in Clause 23 (*Changes to the Lenders and ECAs*).

"**Participating Member State**" means any member state of the European Union that has the euro as its lawful currency in accordance with legislation of the European Union relating to Economic and Monetary Union.

"**Party**" means a party to this Agreement.

"Permitted Security" means:

- (a) any Security arising by operation of law including, without limitation, carriers', warehousemen's, landlord's and mechanics' Security, in each case, incurred in the ordinary course of business or operations and not as a result of a default;
- (b) any Security securing the performance of statutory obligations, insurance, surety or appeal bonds, workers compensation obligations or other obligations of a like nature incurred in the ordinary course of its business or operations (including Security securing letters of credit issued to assure payment of such obligations);
- (c) bankers' liens and any netting or set-off arrangement or Security entered into by the Borrower in connection with the Project in the ordinary course of its banking arrangements for the purpose of netting debit and credit balances;
- (d) any Security arising under any retention of title, hire purchase or conditional sale arrangement or arrangements having similar effect in respect of goods supplied to the Borrower in connection with the Project in the ordinary course of trading and on the supplier's standard or usual terms;
- (e) any Security over goods and documents or title to goods arising in the ordinary course of letter of credit transactions in connection with the Project;
- (f) any Security granted to the relevant Tax authority and arising in respect of Taxes which are not yet due or are being contested in good faith and in respect of which adequate reserves are being maintained;
- (g) any Security over payments into court or under any injunction or court order in respect of litigation being contested in good faith;
- (h) deposits to secure the performance of bids, trade contracts (other than for borrowed money), leases, statutory obligations, surety and appeal bonds, performance bonds and other similar obligations in connection with the Project;
- (i) survey exceptions, easements or reservations of, or rights of others for, licenses, rights-of-way, sewers, electric lines, telegraph and telephone lines and other similar purposes, or zoning or other restrictions as to the use of real property incurred in connection with the Project that do not in any case materially detract from the value of the property subject thereto or materially interfere with the ordinary conduct of the business of the Borrower; and
- (j) any Security given to a public utility or any governmental authority when required by such utility or governmental authority in connection with the operations of that person in the ordinary course of its business or operations.

"PMMA" means the *Programa de Manejo y Adecuación Ambiental*.

"Prohibited Payments" means:

- (a) any offer, gift, payment, promise to pay or authorisation of the payment of any money, unfair advantage or anything of value, pecuniary or otherwise, (an **"Advantage"**), directly or indirectly, made to, or provided for the use or benefit of, any official, officer, director, agent or key employee of, or other person with management responsibilities in, of any Governmental Authority (an **"Official"**) (including any Advantage to or for any person if the Borrower knows, or has reasonable grounds for believing, that such person would provide such Advantage, or the benefit thereof, to or for any such Official), which (i) is for the purpose of influencing any act or decision or omission of any Official in order to obtain, retain or direct business to, or to secure any improper benefit or advantage for, the Borrower or any other person; or (ii) does not remunerate an actual, legal and legitimate service, including any Advantage which is or might constitute bribery within the meaning of the OECD Convention Against Bribery of Foreign Public Officials in International Business Transactions signed 17 December 1997 (effective 15 February 1999); and
- (b) any commission in any way related to a contract which is not mentioned in such contract or which does not at least result from an independent and valid agreement referring to such contract, any commission which does not remunerate an actual and legitimate service provided, any commission paid in any jurisdiction designated as a tax haven from time to time by the Organisation for Economic Co-operation and Development, any commission paid to a beneficiary which is not clearly identified or to a company which could be considered as a sham legal entity or which is set up to disguise the ultimate beneficiary.

"Project" means the extension of line two of the metro of Santo Domingo, Dominican Republic.

"Quarterly Progress Report" means a progress report setting out:

- (a) progress in that quarter towards completion of the obligations of the Consortium under the Commercial Contract;
- (b) the payments received in that quarter by the Consortium under this Agreement or otherwise in connection with the Project and their relation to stages of completion of the obligations of the Consortium under the Commercial Contract;
- (c) an updated timeline of key milestones in relation to the outstanding obligations of the Consortium under the Commercial Contract; and
- (d) any facts or circumstances which are reasonably likely to cause delays in completion of the outstanding obligations of the Consortium under the Commercial Contract.

"Quotation Day" means, in relation to any period for which an interest rate is to be determined, two TARGET Days before the first day of that period, unless market

practice differs in the Relevant Market, in which case the Quotation Day will be determined by the Agent in accordance with market practice in the Relevant Market (and if quotations for that currency and period would normally be given by leading banks in the Relevant Market on more than one day, the Quotation Day will be the last of those days).

"Reference Bank Quotation" means any quotation supplied to the Agent by a Reference Bank.

"Reference Bank Rate" means the arithmetic mean of the rates (rounded upwards to four decimal places) as supplied to the Agent at its request by the Reference Banks:

- (a) (other than where paragraph (b) below applies) as the rate at which the relevant Reference Bank believes one prime bank is quoting to another prime bank for interbank term deposits in euro within the Participating Member States for the relevant period; or
- (b) if different, as the rate (if any and applied to the relevant Reference Bank and the relevant period) which contributors to the applicable Screen Rate are asked to submit to the relevant administrator.

"Reference Banks" means the principal office in Madrid of Banco Santander, S.A., principal offices in London of HSBC Bank Plc and Credit Agricole Corporate and Investment Bank or such other entities as may be appointed by the Agent in consultation with the Borrower.

"Related Fund" in relation to a fund (the "**first fund**"), means a fund which is managed or advised by the same investment manager or investment adviser as the first fund or, if it is managed by a different investment manager or investment adviser, a fund whose investment manager or investment adviser is an Affiliate of the investment manager or investment adviser of the first fund.

"Relevant Market" means the European interbank market.

"Repayment Date" means, in relation to each Tranche, the First Repayment Date, each date falling every six Months after the First Repayment Date (but prior to and excluding the Termination Date) and the Termination Date.

"Repayment Instalment" means each instalment for repayment of the Loans specified in Clause 6 (*Repayment of Loans*).

"Repeating Representations" means:

- (a) on the Loan Registration Date, each of the representations set out in Clause 19 (*Representations*); and
- (b) on any other date, each of the representations set out in Clauses 19.1 (*Status*) to 19.6 (*Governing law and enforcement*), 19.10 (*No default*) to 19.12 (*Pari passu ranking*), 19.14 (*Material adverse change*) to 19.19 (*Environmental laws and licences*) and 19.21 (*Compliance with laws*) to 19.23 (*Commercial Contract*) (other than paragraph (f) of Clause 19.23 (*Commercial Contract*)).

"Representative" means any delegate, agent, manager, administrator, nominee, attorney, trustee or custodian.

"Sanctioned Person" means any person who is a designated target of Sanctions or is otherwise a subject of Sanctions (including, without limitation, as a result of being (a) owned or controlled directly or indirectly by any person which is a designated target of Sanctions, or (b) organised under the laws of, or a citizen or resident of, any country that is subject to general or country wide Sanctions).

"Sanctions" means any economic or financial sanctions, trade embargoes or similar measures enacted, administered or enforced by any of the following (or by any governmental institution and agency of any of the following):

- (a) the United Nations;
- (b) the United States of America; or
- (c) the European Union or any other member state where an Original Lender is located.

"Screen Rate" means the euro interbank offered rate administered by the European Money Markets Institute (or any other person which takes over the administration of that rate) for the relevant period displayed (before any correction, recalculation or republication by the administrator) on page EURIBOR01 of the Thomson Reuters screen (or any replacement Thomson Reuters page which displays that rate), or on the appropriate page of such other information service which publishes that rate from time to time in place of Thomson Reuters. If such page or service ceases to be available, the Agent may specify another page or service displaying the relevant rate after consultation with the Borrower.

"Security" means a mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect.

"Social Standards" means:

- (a) labour standards and employment conditions as regulated by applicable law;
- (b) the impact on persons of resettlement or land acquisition;
- (c) the impact on indigenous peoples and other vulnerable groups;
- (d) the impact on objects of cultural heritage including archaeological artefacts and sites;
- (e) the impact on forestation and protected land; or
- (f) public consultation and disclosure, including grievances from members of the public notified to the Borrower.

"Spanish ECA" means *Compañía Española de Seguro de Crédito a la Exportación, S.A.* or its successor as export credit agency of Spain.

"Spanish ECA Exporter" means Siemens AG, Siemens S.A. or Siemens S.R.L.

"Spanish ECA Insurance Policy" means the insurance policy issued (or to be issued) by Spanish ECA in favour of and in form and substance satisfactory to the Lenders, whereby Spanish ECA agrees to insure (in respect of commercial and political risks), on the terms and conditions thereof, the Borrower's obligations under this Agreement in respect of 99% of principal, interest and default interest payable under or in connection with the Spanish ECA Tranche.

"Spanish ECA Insurance Premium" means the premium payable to Spanish ECA under the Spanish ECA Insurance Policy, being an amount of €2,760,479.72.

"Spanish ECA Tranche" means the tranche of the Facility described in paragraph (a) of Clause 2.1 (*The Facility*).

"Spanish ECA Tranche Commitment" means:

- (a) in relation to the Original Lender, €22,424,693.12; and
- (b) in relation to any other Lender, the amount of any Spanish ECA Tranche Commitment transferred to it under this Agreement,

to the extent not cancelled, reduced or transferred by it under this Agreement.

"Spanish ECA Tranche Fixed Rate" means 1.47 per cent. per annum.

"Spanish ECA Tranche Loan" means a loan made or to be made under the Spanish ECA Tranche or the principal amount outstanding for the time being of that loan.

"Specified Time" means a time determined in accordance with Schedule 6 (*Timetables*).

"Starting Point of Credit" means the earlier of:

- (a) the date of the provisional acceptance certificate under the Commercial Contract;
- (b) the date falling 12 Months after the Effective Date.

"TARGET2" means the Trans-European Automated Real-time Gross Settlement Express Transfer payment system which utilises a single shared platform and which was launched on 19 November 2007.

"TARGET Day" means any day on which TARGET2 is open for the settlement of payments in euro.

"Tax" means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same).

"Termination Date" means:

- (a) in relation to the Spanish ECA Tranche, the date falling 168 Months after the Starting Point of Credit; and
- (b) in relation to the French ECA Tranche, the date falling 120 Months after the Starting Point of Credit.

"Third Party Act" has the meaning given to it in Clause 1.4 (*Third party rights*).

"Total Spanish ECA Tranche Commitments" means the aggregate of the Spanish ECA Tranche Commitments, being €22,424,693.12 at the date of this Agreement.

"Total French ECA Tranche Commitments" means the aggregate of the French ECA Tranche Commitments, being €19,588,233.29 at the date of this Agreement.

"Total Commitments" means the aggregate of the Total Spanish ECA Tranche Commitments and the Total French ECA Tranche Commitments, being €42,012,926.41 at the date of this Agreement.

"Tranche" means the Spanish ECA Tranche or the French ECA Tranche.

"Transfer Certificate" means a certificate substantially in the form set out in Schedule 4 (*Form of Transfer Certificate*) or any other form agreed between the Agent and the Borrower.

"Transfer Date" means, in relation to an assignment or a transfer, the later of:

- (a) the proposed Transfer Date specified in the relevant Assignment Agreement or Transfer Certificate; and
- (b) the date on which the Agent executes the relevant Assignment Agreement or Transfer Certificate.

"Unpaid Sum" means any sum due and payable but unpaid by the Borrower under the Finance Documents.

"US" means the United States of America.

"Utilisation" means a utilisation of the Facility.

"Utilisation Date" means the date of a Utilisation, being the date on which the relevant Loan is to be made.

"Utilisation Request" means a notice substantially in the form set out in Schedule 2 (*Utilisation Request*).

"VAT" means:

- (a) any tax imposed in compliance with the Council Directive of 28 November 2006 on the common system of value added tax (EC Directive 2006/112); and

- (b) any other tax of a similar nature, whether imposed in a member state of the European Union in substitution for, or levied in addition to, such tax referred to in paragraph (a) above or imposed elsewhere.

1.2 Construction

- (a) Unless a contrary indication appears, any reference in this Agreement to:
 - (i) the "**Agent**", the "**Arranger**", the "**Borrower**", any "**ECA**", any "**Exporter**", any "**Finance Party**", "**ICO**", any "**Lender**", or any "**Party**" shall be construed so as to include its successors in title, permitted assignees and permitted transferees to, or of, its rights and/or obligations under the Finance Documents, any ECA Insurance Policy, the ICO Interest Make-up Agreement or (as applicable) the Commercial Contract;
 - (ii) "**assets**" includes present and future properties, revenues and rights of every description;
 - (iii) a "**Finance Document**" or any other agreement or instrument is a reference to that Finance Document or other agreement or instrument as amended, novated, supplemented, extended, restated (however fundamentally and whether or not more onerously) or replaced and includes any change in the purpose of, any extension of or any increase in any facility or the addition of any new facility under that Finance Document or other agreement or instrument;
 - (iv) a "**group of Lenders**" includes all the Lenders;
 - (v) "**indebtedness**" includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
 - (vi) a "**person**" includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium, partnership or other entity (whether or not having separate legal personality);
 - (vii) a "**regulation**" includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation;
 - (viii) a provision of law is a reference to that provision as amended or re-enacted; and
 - (ix) a time of day is a reference to Madrid time.
- (b) The determination of the extent to which a rate is "for a period equal in length" to an Interest Period shall disregard any inconsistency arising from the

last day of that Interest Period being determined pursuant to the terms of this Agreement.

- (c) Section, Clause and Schedule headings are for ease of reference only.
- (d) Unless a contrary indication appears, a term used in any other Finance Document or in any notice given under or in connection with any Finance Document has the same meaning in that Finance Document or notice as in this Agreement.
- (e) A Default (other than an Event of Default) is "continuing" if it has not been remedied or waived and an Event of Default is "continuing" if it has not been waived.
- (f) Unless a contrary indication appears, any provision included in any Finance Document with respect to a "Sanction" shall apply for the benefit of the Finance Parties incorporated in Germany only to the extent that such provision would not result in any violation of, conflict with or liability under:
 - (i) EU Regulation (EC) 2271/96; or
 - (ii) section 7 of foreign trade rules (AWV) (*Außenwirtschaftsverordnung*) (in connection with section 4, paragraph 1 no. 3 of foreign trade law (AWG) (*Außenwirtschaftsgesetz*)); or
 - (iii) any similar anti-boycott statute.

1.3 Currency symbols and definitions

"€", "EUR" and "euro" denote the single currency of the Participating Member States and "\$" and "dollars" denote the lawful currency of the United States of America.

1.4 Third party rights

- (a) Except for the ECAs or as otherwise provided in a Finance Document, a person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 (the "**Third Party Act**") to enforce or to enjoy the benefit of any term of this Agreement.
- (b) Notwithstanding any provision of any Finance Document, the consent of any person (other than the ECAs in accordance with paragraph (b) of Clause 34.3 (*Other Exceptions*)) who is not a party to a Finance Document is not required to rescind, vary or terminate any Finance Document at any time.

**SECTION 2
THE FACILITY**

2. THE FACILITY

2.1 The Facility

Subject to the terms of this Agreement, the Lenders make available to the Borrower a term loan facility in an aggregate amount equal to the Total Commitments, comprising:

- (a) a term loan tranche in an aggregate amount equal to the Total Spanish ECA Tranche Commitments; and
- (b) a term loan tranche in an aggregate amount equal to the Total French ECA Tranche Commitments.

2.2 Finance Parties' rights and obligations

- (a) The obligations of each Finance Party under the Finance Documents are several. Failure by a Finance Party to perform its obligations under the Finance Documents does not affect the obligations of any other Party under the Finance Documents. No Finance Party is responsible for the obligations of any other Finance Party under the Finance Documents.
- (b) The rights of each Finance Party under or in connection with the Finance Documents are separate and independent rights and any debt arising under the Finance Documents to a Finance Party from the Borrower is a separate and independent debt in respect of which a Finance Party shall be entitled to enforce its rights in accordance with paragraph (c) below. The rights of each Finance Party include any debt owing to that Finance Party under the Finance Documents and, for the avoidance of doubt, any part of a Loan or any other amount owed by the Borrower which relates to a Finance Party's participation in a Tranche or its role under a Finance Document (including any such amount payable to the Agent on its behalf) is a debt owing to that Finance Party by the Borrower.
- (c) A Finance Party may, except as specifically provided in the Finance Documents, separately enforce its rights under the Finance Documents.

2.3 ECA / ICO override

- (a) Notwithstanding anything to the contrary in this Agreement, nothing in this Agreement shall oblige any Finance Party to act (or not act) in a manner that is inconsistent with any requirement of an ECA under or in connection with an ECA Insurance Policy or ICO under or in connection with the ICO Interest Make-up Agreement and, in particular:
 - (i) the Agent shall be authorised to take all such actions as it may deem necessary to ensure that all requirements of the ECAs under or in connection with an ECA Insurance Policy and/or ICO under or in

connection with the ICO Interest Make-up Agreement are complied with;

- (ii) the Agent shall not be obliged to do anything if, in its opinion, to do so could result in a breach of any requirements of an ECA under or in connection with an ECA Insurance Policy, or ICO under or in connection with the ICO Interest Make-up Agreement, or affect the validity of an ECA Insurance Policy and/or the ICO Interest Make-up Agreement; and
 - (iii) to the extent there are any such inconsistencies, this Agreement will be amended to ensure compliance with the terms of the ECA Insurance Policies and the ICO Interest Make-up Agreement.
- (b) The Borrower expressly acknowledges that any amendment, pursuant paragraph (a)(iii), to ensure compliance with the ECA Insurance Policies or the ICO Interest Make-Up Agreement shall not be construed as an amendment to the original conditions of this Agreement for the purposes of the approval indicated under paragraph 1(b) of Part I of Schedule 1 (*Conditions precedent*).
 - (c) Subject only to the prior written consent of the Borrower, which must not be unreasonably withheld or delayed, the Agent may effect, on behalf of any Party and (for the avoidance of doubt) without being required to obtain the consent of any other Party, any amendment required by paragraph (a)(iii), and any such amendment shall be binding on all the Parties. The Agent shall notify the Borrower and the Lenders promptly of any such amendment.
 - (d) Nothing in this Clause 2.3 shall limit the obligations of the Borrower.

2.4 Borrower's obligations

- (a) The obligations of the Borrower under this Agreement shall constitute absolute, unconditional and irrevocable financial obligations to the Lenders. Such obligations are independent and separate obligations regardless of whether the Borrower and/or any member of the Consortium has performed its obligations under the Commercial Contract including, without limitation, the performance, non-performance, frustration or invalidity of, or the destruction, non-completion, or non-functioning of any of the goods and services to be supplied under, the Commercial Contract or the liquidation or bankruptcy of any member of the Consortium or any other person.
- (b) Without prejudice to the generality of paragraph (a) above, the Borrower acknowledges that its liability to pay in full any sum payable by it under this Agreement and the Finance Documents on the due date for payment thereof:
 - (i) is separate from the performance by any member of the Consortium or any other person of their obligations under the Commercial Contract and any other agreement relating thereto; and

- (ii) shall not be affected in any way by reason of any claim, dispute or defence which the Borrower may have or may consider that it has against any member of the Consortium or any other person.
- (c) The Borrower agrees and acknowledges that each ECA Insurance Policy is a separate arrangement between the relevant ECA and the Finance Parties and the Borrower shall not have any right or recourse against the Finance Parties in respect of or arising by reason of any payment made an ECA to any Finance Party pursuant to the relevant ECA Insurance Policy.

3. PURPOSE

3.1 Purpose

The Borrower shall apply all amounts borrowed by it under the Facility exclusively towards:

- (a) in the case of the Spanish ECA Tranche:
 - (i) the financing of the payment of the Spanish ECA Insurance Premium to Spanish ECA, to be made in the form of a direct disbursement from the Lenders (via the Agent) to Spanish ECA, upon receipt by the Agent of the relevant invoice(s) issued by Spanish ECA and satisfaction of the other conditions under this Agreement;
 - (ii) the financing of payments due and payable from the Borrower to the Spanish ECA Exporters under the Commercial Contract for Eligible Goods and Services, to be made in the form of direct disbursements from the Lenders (via the Agent) to the relevant Spanish ECA Exporters, upon presentation, for each Utilisation, of a duly completed Utilisation Request, Exporter Certification and the relevant documents required thereunder; and
 - (iii) the reimbursement of amounts already paid by the Borrower (acting through its *Oficina Para El Reordenamiento Del Transporte* or otherwise) to the Spanish ECA Exporters under the Commercial Contract for Eligible Goods and Services; and
- (b) in the case of the French ECA Tranche:
 - (i) the financing of the payment of the French ECA Insurance Premium to French ECA, to be made in the form of a direct disbursement from the Lenders (via the Agent) to French ECA, upon receipt by the Agent of the relevant invoice(s) issued by French ECA and satisfaction of the other conditions under this Agreement;
 - (ii) the financing of payments due and payable from the Borrower to the French ECA Exporters under the Commercial Contract for Eligible Goods and Services, to be made in the form of direct disbursements from the Lenders (via the Agent) to the relevant French ECA Exporters, upon presentation, for each Utilisation, of a duly completed Utilisation

Request, Exporter Certification and the relevant documents required thereunder; and

- (iii) the reimbursement of amounts already paid by the Borrower (acting through its *Oficina Para El Reordenamiento Del Transporte* or otherwise) to the French ECA Exporters under the Commercial Contract for Eligible Goods and Services.

3.2 Monitoring

Without affecting, prejudicing or diminishing the obligations of the Borrower under this Agreement and the other Finance Documents and without prejudice to the obligations (if any) of the Finance Parties towards the ECAs under the ECA Insurance Policies, no Finance Party is bound to monitor or verify the application of any amount borrowed pursuant to this Agreement.

4. CONDITIONS OF UTILISATION

4.1 Initial conditions precedent

- (a) The Borrower or an Exporter may not deliver a Utilisation Request unless the Agent has received all of the documents and other evidence listed in Part I of Schedule 1 (*Conditions precedent*) in form and substance satisfactory to the Agent (acting upon instructions of all the Lenders). The Agent shall notify the Borrower and the Lenders promptly upon being so satisfied.
- (b) The Agent shall not be liable for any damages, costs or losses whatsoever as a result of giving the notification described in paragraph (a) above.

4.2 Further conditions precedent

The Lenders will only be obliged to comply with Clause 5.4 (*Lenders' participation*) if on the date of the Utilisation Request and on the proposed Utilisation Date:

- (a) no Default is continuing or would result from the proposed Loan;
- (b) the Repeating Representations to be made by the Borrower are true;
- (c) in the case of a Utilisation for the purpose specified in paragraph (b)(iii) of Clause 3.1 (*Purpose*), the French ECA has approved the proposed Loan; and
- (d) the Agent has received all of the documents and other evidence listed in Part II of Schedule 1 (*Conditions precedent*) in form and substance satisfactory to the Agent. The Agent shall notify the Borrower and the Lenders promptly upon being so satisfied.

4.3 Examination and reliance on documents

- (a) The Agent shall rely and act upon any Utilisation Request, Exporter Certification and/or any document delivered with a Utilisation Request or Exporter Certification and any other documentation or information provided under Clause 4 (*Conditions of Utilisation*), which appears on its face to have

been duly completed and in compliance with the Finance Documents and any relevant ECA Insurance Policy. For the purpose of this Clause, the expression "appear on its face" has the meaning ascribed to it under Articles 14 (Standard examination of documents) and 34 (Disclaimer on effectiveness of documents) of the "Uniform Customs and Practice for Documentary Credits" (currently publication number 600 of the International Chamber of Commerce, latest edition).

- (b) The Agent and the Lenders shall not be responsible for any delay in making available any Utilisation resulting from any requirement for the delivery of information or documents required by the Agent in accordance with the provisions of this Agreement to confirm the relevant conditions precedent in this Agreement have been met.

**SECTION 3
UTILISATION**

5. UTILISATION

5.1 Delivery of a Utilisation Request

- (a) For the first Utilisation under:
- (i) the Spanish ECA Tranche, for the purpose specified in paragraph (a)(i) of Clause 3.1 (*Purpose*); and
 - (ii) the French ECA Tranche, for the purpose specified in paragraph (b)(i) of Clause 3.1 (*Purpose*),

the appropriate Utilisation Request is deemed delivered (no express Utilisation Request is required to be delivered by the Borrower) and these Utilisations shall be made in accordance with Clause 5.4 (*Lenders' participation*) at the Specified Time (counting from the date on which the Agent has given the notification described in paragraph (b) of Clause 4.1 (*Initial conditions precedent*)).

- (b) The Facility may be utilised for the purposes specified in paragraphs (a)(ii) or (b)(ii) of Clause 3.1 (*Purpose*) by delivery to the Agent of a duly completed Utilisation Request not later than the Specified Time:
- (i) in the case of a Utilisation for the purpose specified in paragraph (a)(ii) of Clause 3.1 (*Purpose*), by Siemens S.A.;
 - (ii) in the case of a Utilisation for the purpose specified in paragraph (b)(ii) of Clause 3.1 (*Purpose*) in relation to a payment to Thales Communications & Security S.A.S. or Sofratesa, Inc., by Thales Communications & Security S.A.S.; and
 - (iii) in the case of a Utilisation for the purpose specified in paragraph (b)(ii) of Clause 3.1 (*Purpose*) in relation to a payment to Compagnie Internationale de Maintenance, S.A. or TSO, S.A.S., by Compagnie Internationale de Maintenance, S.A..
- (c) If a Utilisation Request is delivered by an Exporter, the Agent shall notify the Borrower, and the Borrower may approve the Utilisation Request by notice to the Agent, in each case not later than the Specified Time. If no such notification is received, the Borrower shall be deemed to have cancelled the making of the Utilisation.
- (d) The Facility may be utilised for the purposes specified in paragraphs (a)(iii) or (b)(iii) of Clause 3.1 (*Purpose*) by delivery to the Agent of a duly completed Utilisation Request not later than the Specified Time by the Borrower.

5.2 Completion of a Utilisation Request

- (a) Without prejudice to paragraph (c) of Clause 5.1 (*Delivery of a Utilisation Request*), each Utilisation Request is irrevocable.
- (b) Each Utilisation Request will not be regarded as having been duly completed unless:
 - (i) it identifies the Tranche to be utilised, and the purpose of the Utilisation;
 - (ii) the proposed Utilisation Date is a Business Day within the Availability Period;
 - (iii) the currency and amount of the Utilisation comply with Clause 5.3 (*Currency and amount*);
 - (iv) it specifies the account to which the proceeds of the Utilisation are to be credited;
 - (v) it is accompanied by a duly completed and signed copy of the relevant Exporter Certification and all documents required to be supplied with that Exporter Certification; and
 - (vi) the appropriate form of Utilisation Request set out in Schedule 2 (*Utilisation Request*) is delivered, being:
 - (A) in the case of a Utilisation for a purpose described in paragraphs (a)(ii) or (b)(ii) of Clause 3.1 (*Purpose*), Part I (*Form of Utilisation Request from the Exporter*) of Schedule 2; and
 - (B) in the case of a Utilisation for the purposes specified in paragraphs (a)(iii) or (b)(iii) of Clause 3.1 (*Purpose*), Part II (*Form of Utilisation Request from the Borrower*) of Schedule 2.
- (c) A Utilisation Request may not request that a Utilisation be made to more than one Exporter.
- (d) Only one Loan may be requested in each Utilisation Request.

5.3 Currency and amount

- (a) The currency specified in a Utilisation Request must be euro.
- (b) The amount of the first Utilisation under:
 - (i) the Spanish ECA Tranche, for the purpose specified in paragraph (a)(i) of Clause 3.1 (*Purpose*), shall be the amount set out in the invoice relating to the Spanish ECA Insurance Premium issued by Spanish ECA; and

- (ii) the French ECA Tranche, for the purpose specified in paragraph (b)(i) of Clause 3.1 (*Purpose*), shall be the amount set out in the invoice relating to the French ECA Insurance Premium issued by French ECA.
- (c) The amount of any Utilisation for a purpose specified in paragraphs (a)(ii) or (b)(ii) of Clause 3.1 (*Purpose*) shall be:
 - (i) a minimum of €1,000,000 or, if less, the Available Tranche;
 - (ii) less than or equal to the aggregate amount(s) shown in the invoice(s) delivered the Utilisation Request (less any part of any such amount which has been paid by the Borrower directly to the relevant Exporter or which otherwise does not relate to Eligible Goods and Services); and
 - (iii) less than an amount which would cause the applicable Exporter Limit to be exceeded.

5.4 Lenders' participation

- (a) If the conditions set out in this Agreement have been met, each Lender shall make its participation in each Loan available by the Utilisation Date through its Facility Office.
- (b) The amount of each Lender's participation in each Loan will be equal to the proportion borne by its Available Commitment to the Available Tranche immediately prior to making the Loan.
- (c) The Agent shall notify each Lender of the amount of each Loan and the amount of its participation in that Loan, in each case by the Specified Time.

5.5 Loans paid to an ECA or Exporter

- (a) The Borrower acknowledges and agrees that the payment of the proceeds of any Loan directly to an ECA or (as applicable) Exporter shall constitute a Loan for the purposes of this Agreement as if the proceeds thereof had been made available directly to the Borrower and the Borrower hereby unconditionally and irrevocably waives any right of protest that it may have to the contrary.
- (b) Without prejudice to paragraph (c) of Clause 5.1 (*Delivery of a Utilisation Request*), the Borrower hereby unconditionally and irrevocably authorises the Agent to pay the proceeds of each Utilisation to the relevant person and bank account in accordance with the Utilisation Request (or paragraph (a) of Clause 5.1 (*Delivery of a Utilisation Request*) as appropriate).

**SECTION 4
REPAYMENT, PREPAYMENT AND CANCELLATION**

6. REPAYMENT OF LOANS

- (a) The Borrower shall repay:
- (i) the aggregate Spanish ECA Tranche Loans in 28 equal, successive, semi-annual instalments by repaying on each Repayment Date an amount which reduces the amount of the outstanding aggregate Spanish ECA Tranche Loans by an amount equal to 1/28th of all the Spanish ECA Tranche Loans borrowed as at immediately before the First Repayment Date; and
 - (ii) the aggregate French ECA Tranche Loans in 20 equal, successive, semi-annual instalments by repaying on each Repayment Date an amount which reduces the amount of the outstanding aggregate French ECA Tranche Loans by an amount equal to 1/20th of all the French ECA Tranche Loans borrowed as at immediately before the First Repayment Date,

each such instalment, a "**Repayment Instalment**".

- (b) The Borrower shall repay the first Repayment Instalment under each Tranche on the First Repayment Date and thereafter a Repayment Instalment on each subsequent Repayment Date.
- (c) The Agent shall notify the Borrower 30 days before each Repayment Date the amount of principal to be repaid on such Repayment Date **provided that** the Borrower shall not be relieved from its obligations to effect any payment hereunder in the event that the Agent fails to inform the Borrower of the amount of each Repayment Instalment.
- (d) All amounts still outstanding under a Tranche will be repaid on the Termination Date applicable to that Tranche.
- (e) The Borrower may not reborrow any part of a Tranche which is repaid.

7. PREPAYMENT AND CANCELLATION

7.1 Illegality and Sanctions

- (a) If, in any applicable jurisdiction, the adoption of, or any change in any requirement of, law or regulation or in the interpretation or application thereof or any other event that occurs after the date of this Agreement shall make it unlawful for any Lender to perform any of its obligations as contemplated by this Agreement or to fund or maintain its participation in any Loan or it becomes unlawful for any Affiliate of a Lender for that Lender to do so:
 - (i) that Lender shall promptly notify the Agent upon becoming aware of that event;

- (ii) upon the Agent notifying the Borrower, the Available Commitment of that Lender will be immediately cancelled; and
 - (iii) the Borrower shall repay that Lender's participation in the Loans made to the Borrower on the last day of the Interest Period for each Loan occurring after the Agent has notified the Borrower or, if earlier, the date specified by the Lender in the notice delivered to the Agent (being no earlier than the last day of any applicable grace period permitted by law) and that Lender's corresponding Commitment shall be cancelled in the amount of the participations repaid.
- (b) If the Borrower becomes a Sanctioned Person:
- (i) any Lender may promptly notify the Agent upon becoming aware of that event;
 - (ii) upon the Agent notifying the Borrower, if that Lender so specifies in its notice referred to in paragraph (b)(i) above or in any subsequent notice, the Available Commitment of that Lender will be immediately cancelled; and
 - (iii) if that Lender so specifies in its notice referred to in paragraph (b)(i) above or in any subsequent notice, the Borrower shall repay that Lender's participation in the Loans made to the Borrower on the last day of the Interest Period for each Loan occurring after the Agent has notified the Borrower or, if earlier, the date specified by the Lender in the notice delivered to the Agent (being no earlier than the last day of any applicable grace period permitted by law) and that Lender's corresponding Commitment shall be cancelled in the amount of the participations repaid.

7.2 Drawstop on cancellation of the ICO Interest Make-up Agreement

If the Agent receives notice that the ICO Interest Make-up Agreement is suspended, terminated, withdrawn or cancelled (in whole or in part) or otherwise ceases to be in full force and effect, it shall promptly notify the Borrower and the Lenders, and the Agent may suspend the Available Commitment of each Lender until, in the opinion of the Agent (acting reasonably), such status has ceased to exist.

7.3 Mandatory cancellation

- (a) The Commitments under each Tranche which, at that time, are unutilised shall be immediately cancelled at the end of the Availability Period for the Tranche, unless otherwise agreed with the Lenders under that Tranche, the relevant ECA and, in the case of the Spanish ECA Tranche, the ICO.
- (b) If the Loan Registration Date or the Effective Date does not occur within 90 (ninety) days of the date hereof, unless otherwise agreed by all the Lenders, the ECAs and ICO, each Available Tranche will be automatically cancelled in full, whereupon each Lender's Available Commitment under each Tranche shall be reduced to zero.

- (c) If, when an ECA Insurance Policy is issued, at any time the Total Spanish ECA Tranche Commitments or, as applicable, Total French ECA Tranche Commitments exceed the amount of principal insured by the relevant ECA under that ECA Insurance Policy (the "**Non-Eligible Commitment Portion**"), a portion of the Total Spanish ECA Tranche Commitments or, as applicable, Total French ECA Tranche Commitments equal to such Non-Eligible Commitment Portion will be automatically cancelled upon the issuance of that ECA Insurance Policy. Any cancellation under this paragraph (c) shall reduce the Commitments of the Lenders rateably under the relevant Tranche.

7.4 Voluntary prepayment and cancellation of Loans

- (a) The Borrower may, if it gives the Agent not less than 30 (thirty) days' (or such shorter period as the Majority Lenders may agree) prior notice, prepay the whole or any part of any Loan (but, if in part, being an amount that reduces the Loan by an aggregate minimum amount of EUR 10,000,000 and multiples of EUR 1,000,000 in excess thereof), **provided that**, in relation to a prepayment of a Spanish ECA Tranche Loan, the Agent has received any consent from ICO required under the ICO Interest Make-up Agreement and any amount requested by ICO to be paid by the Borrower in accordance with Clause 7.9 (*Payments to ICO*).
- (b) A Loan may only be prepaid under this Clause 7.4 on a Repayment Date.
- (c) The Borrower may, if it gives the Agent not less than 30 (thirty) days' (or such shorter period as the Majority Lenders may agree) prior notice, cancel the whole or any part (being a minimum amount of an aggregate minimum amount of EUR 10,000,000 and multiples of EUR 1,000,000 in excess thereof) of an Available Tranche. Any cancellation under this Clause shall reduce the Commitments of the Lenders rateably under that Tranche.

7.5 Right of replacement or repayment and cancellation in relation to a single Lender

- (a) If:
 - (i) any sum payable to any Lender by the Borrower is required to be increased under paragraph (c) of Clause 14.2 (*Tax gross-up*); or
 - (ii) any Lender claims indemnification from the Borrower under Clause 14.3 (*Tax indemnity*) or Clause 15 (*Increased costs*),

the Borrower may, whilst the circumstance giving rise to the requirement for that increase or indemnification continues, give the Agent at least 10 (ten) Business Days' notice of cancellation of the Commitment of that Lender under each Tranche and its intention to procure the repayment of that Lender's participation in the Loans under each Tranche or give the Agent notice of its intention to replace that Lender in accordance with paragraph (d) below.

- (b) On receipt of a notice of cancellation referred to in paragraph (a) above, the Commitment of that Lender under each Tranche shall immediately be reduced to zero.
- (c) On the last day of each Interest Period which ends after the Borrower has given notice of cancellation under paragraph (a) above (or, if earlier, the date specified by the Borrower in that notice), the Borrower shall repay that Lender's participation in the Loans.
- (d) If any of the circumstances set out in paragraph (a) above apply to a Lender, the Borrower may, on 30 (thirty) days' prior notice to the Agent and that Lender, replace that Lender by requiring that Lender to (and, to the extent permitted by law, that Lender shall) transfer pursuant to Clause 23 (*Changes to the Lenders and ECAs*) all (and not part only) of its rights and obligations under this Agreement to a Lender or other bank or financial institution selected by the Borrower which confirms its willingness to assume and does assume all the obligations of the transferring Lender in accordance with Clause 23 (*Changes to the Lenders and ECAs*) for a purchase price in cash payable at the time of the transfer in an amount equal to the outstanding principal amount of such Lender's participation in the outstanding Loans and all accrued interest (to the extent that the Agent has not given a notification under Clause 23.9 (*Pro rata interest settlement*)), Break Costs and other amounts payable in relation thereto under the Finance Documents.
- (e) The replacement of a Lender pursuant to paragraph (d) above shall be subject to the following conditions:
 - (i) the Borrower shall have no right to replace the Agent;
 - (ii) neither the Agent nor any Lender shall have any obligation to find a replacement Lender;
 - (iii) in no event shall the Lender replaced under paragraph (d) above be required to pay or surrender any of the fees received by such Lender pursuant to the Finance Documents; and
 - (iv) the Lender shall only be obliged to transfer its rights and obligations pursuant to paragraph (d) above once it is satisfied that it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to that transfer.
- (f) A Lender shall perform the checks described in paragraph (e)(iv) above as soon as reasonably practicable following delivery of a notice referred to in paragraph (d) above and shall notify the Agent and the Borrower when it is satisfied that it has complied with those checks.

7.6 Right of cancellation in relation to a Defaulting Lender

- (a) If any Lender becomes a Defaulting Lender, the Borrower may, at any time whilst the Lender continues to be a Defaulting Lender, give the Agent no less

than 5 (five) Business Days' notice of cancellation of each Available Commitment of that Lender.

- (b) On the notice referred to in paragraph (a) above becoming effective, each Available Commitment of the Defaulting Lender shall immediately be reduced to zero.
- (c) The Agent shall as soon as practicable after receipt of a notice referred to in paragraph (a) above, notify all the Lenders, ECAs and ICO.

7.7 Restrictions

- (a) Any notice of cancellation or prepayment given by any Party under this Clause 7 shall be irrevocable and, unless a contrary indication appears in this Agreement, shall specify the date or dates upon which the relevant cancellation or prepayment is to be made and the amount of that cancellation or prepayment.
- (b) Any prepayment under this Agreement shall be made together with accrued interest on the amount prepaid and, subject to any Break Costs, without premium or penalty.
- (c) Without prejudice to Clauses 7.1 (*Illegality and Sanctions*) and 7.5 (*Right of replacement or repayment and cancellation in relation to a single Lender*), any prepayment under this Clause 7 shall be applied *pro rata* across the Tranches and *pro rata* across the Loans under each Tranche and satisfy the obligations under Clause 6 (*Repayment of Loans*) rateably.
- (d) The Borrower may not reborrow any part of a Tranche which is prepaid.
- (e) The Borrower shall not repay or prepay all or any part of the Loans or cancel all or any part of the Commitments except at the times and in the manner expressly provided for in this Agreement.
- (f) No amount of the Total Commitments cancelled under this Agreement may be subsequently reinstated.
- (g) If the Agent receives a notice under this Clause 7 it shall promptly forward a copy of that notice to either the Borrower or the affected Lender, as appropriate.
- (h) If all or part of any Lender's participation in a Loan under a Tranche is repaid or prepaid and is not available for redrawing (other than by operation of Clause 4.2 (*Further conditions precedent*)), an amount of that Lender's Commitment (equal to the amount of the participation which is repaid or prepaid) in respect of that Tranche will be deemed to be cancelled on the date of repayment or prepayment.

7.8 Application of prepayments

Any prepayment of a Loan pursuant to Clauses 7.4 (*Voluntary prepayment of Loans*) shall be applied *pro rata* to each Lender's participation in that Loan.

7.9 Payments to ICO

- (a) If the Borrower prepays any Spanish ECA Tranche Loan and/or any Available Commitment under the Spanish ECA Tranche is suspended or cancelled (in each case in whole or in part), the Borrower shall pay on demand to the Agent (for the account of ICO) any amount requested by ICO as due under the ICO Interest Make-up Agreement in respect of such prepayment, suspension or cancellation.
- (b) Subject to paragraph (c) below, the Borrower shall promptly upon demand pay to the Agent, for the account of (as applicable):
 - (i) ICO;
 - (ii) the Agent; or
 - (iii) a Lender,the amount (if any) required to be paid, respectively, by the Borrower, Agent or such Lender to ICO in connection with the termination, withdrawal or revocation of the ICO Interest Make-up Agreement or (without double counting any amounts already paid under this Agreement by the Borrower) otherwise under the ICO Interest Make-up Agreement.
- (c) With respect to the Agent or any Lender only, to the extent that any amounts owing in accordance with paragraph (b) above result directly from the gross negligence, fraud or wilful misconduct of the Agent or, as the case may be, that Lender, the Borrower shall not be obliged to make such payment to the Agent or such Lender, respectively.
- (d) The Agent shall promptly pass on to the Borrower any request of ICO received by it in relation to paragraphs (a) and (b) above. The Borrower may at any time (but not more often than once per calendar semester), by notice to the Agent, request that the Agent obtains from ICO a breakdown and estimate of the aggregate amount which would be required to be paid and/or refunded to ICO in the circumstances contemplated in paragraphs (a) and (b) above. Any such estimate shall be without prejudice to the Borrower's obligations under paragraphs (a) and (b) above. The Agent shall have no liability or responsibility in the event that any such estimate by ICO proves to be incorrect.

8. ECA SUBROGATION AND REIMBURSEMENT

8.1 Subrogation

- (a) Each of the Parties acknowledges that each ECA will be subrogated to the rights of the Lenders to the extent of any payment made by or on behalf of such ECA under the relevant ECA Insurance Policy in accordance with that ECA Insurance Policy and the Lenders shall provide all assistance required by such ECA to enforce its rights under this Agreement and the other Finance Documents following such subrogation to the rights of the Lenders.

- (b) Any irrevocable payment made by the Borrower to an ECA arising out of any subrogation referred to in paragraph (a) shall reduce the Borrower's corresponding payment obligations under Clause 8.2 (*Reimbursement*) in the amount of such irrevocable payment.

8.2 Reimbursement

- (a) Without prejudice to each ECA's rights of subrogation, the Borrower shall keep each ECA indemnified for payments made to the Finance Parties under the ECA Insurance Policies and shall, within 20 Business Days of demand from any ECA, reimburse and pay to that ECA an amount in euro:

- (i) in respect of each payment made by that ECA to any Finance Party (or person on its behalf) under the relevant ECA Insurance Policy, equal to the amount of such payment; and
- (ii) in respect of any deduction or withholding imposed, levied, collected, withheld or assessed on any payment by that ECA to any Finance Party (or any person on its behalf) under the relevant ECA Insurance Policy, equal to the amount of such deduction or withholding,

together with interest thereon (calculated in accordance with Clause 9.4 (*Default Interest*)) accruing from the date that ECA made the payment referred to in paragraph (i) above or the withholding or deduction referred to in paragraph (ii) above until receipt of the amounts due under this Clause 8.2 from the Borrower.

- (b) The Borrower agrees that its obligations under this Clause 8.2 are separate from and in no way conditional upon the Borrower's obligations to the Finance Parties under this Agreement and (subject to paragraph (b) of Clause 8.1 (*Subrogation*)) will not be affected or discharged by any matter relating thereto including, but not limited to, whether or not the Borrower is itself liable to make payment, or is disputing its liability to make payment under this Agreement or any Finance Documents.
- (c) Any irrevocable payment made by the Borrower to an ECA under this Clause 8.2 shall reduce, in the amount of such irrevocable payment, the Borrower's corresponding payment obligations to the Lenders or that ECA under any subrogation referred to in paragraph (a) of Clause 8.1 (*Subrogation*).

8.3 ECA Third Party Rights

- (a) The following Clauses shall be applicable to any payments made or to be made by the Borrower to an ECA (i) under this Agreement; or (ii) pursuant to any subrogation referred to in paragraph (a) of Clause 8.1 (*Subrogation*) to the extent available under such subrogation:
 - (i) Clause 9.4 (*Default interest*);
 - (ii) paragraphs (a) to (d) of Clause 14.2 (*Tax gross-up*) and, for the purposes of that Clause, each ECA shall be deemed to be a Protected

Party, any reference to "Lender" or "Finance Party" shall be deemed to include each ECA;

- (iii) paragraph (a) and (b) of Clause 14.3 (*Tax indemnity*) and, for the purposes of that Clause, each ECA shall be deemed to be a Protected Party;
 - (iv) paragraphs (a) and (c) of Clause 14.6 (*VAT*) as if any reference to Finance Party therein was a reference to each ECA;
 - (v) Clauses 15.1 (*Increased costs*) and 15.3 (*Exceptions*); and
 - (vi) Clause 16.1 (*Currency indemnity*).
- (b) Each ECA has the right to enforce and to enjoy the benefit of this Clause 8 (*ECA Subrogation and Reimbursement*), subject to the provisions of the Third Party Act.

**SECTION 5
COSTS OF UTILISATION**

9. INTEREST

9.1 Calculation of interest

The rate of interest on each Loan for each Interest Period is the percentage rate per annum which is:

- (a) in the case of a Spanish ECA Tranche Loan, but subject to Clause 9.2 (*Calculation of interest on ICO Event*), the Spanish ECA Tranche Fixed Rate; and
- (b) in the case of a French ECA Tranche Loan, the French ECA Tranche Interest Rate.

9.2 Calculation of interest on ICO Event

- (a) If at any time:
 - (i) the ICO Interest Make-up Agreement is terminated, withdrawn or cancelled (in whole or in part) or otherwise ceases to be in full force and effect;
 - (ii) the ICO Interest Make-up Agreement is suspended (in whole or in part) in respect of a Loan for a period exceeding 30 days;
 - (iii) ICO fails to make an interest make-up payment on the due date in accordance with the ICO Interest Make-up Agreement with respect to a Loan and such failure is continuing after a period of ten Business Days; or
 - (iv) the Agent (acting upon the instructions of the Majority Lenders) determines that adequate and fair means do not exist for ascertaining the interest rate under the ICO Interest Make-up Agreement for the purposes of determining the interest make-up payable by ICO in relation thereto,

(each of the above, an "ICO Event"),

then the Agent shall, as soon as practicable, notify the Borrower of such ICO Event and interest on the Spanish ECA Tranche Loans shall, as from the first day of the then current Interest Period for each Spanish ECA Tranche Loan, cease to accrue at the Spanish ECA Tranche Fixed Rate and instead be deemed to have accrued interest at the percentage rate per annum which is the aggregate of EURIBOR and 1.50% per annum.

For the avoidance of doubt, the Borrower may prepay the outstanding amount of such Spanish ECA Tranche Loans in accordance with the provisions set out in Clause 7.4 (*Voluntary prepayment and cancellation of Loans*) on the last day of each Interest Period which ends after the ICO Event.

- (b) In the case of a failure to pay by ICO as referred to in paragraph (a)(iii) above, if the Borrower makes the interest make-up payment due within the ten Business Day grace period set out in such paragraph, the Lenders shall consider, for the purposes only of this Clause 9.2, that such failure is no longer continuing for that payment and the Spanish ECA Tranche Fixed Rate shall continue to apply to the Spanish ECA Tranche Loans.

9.3 Payment of interest

The Borrower shall pay accrued interest on each Loan on the last day of each Interest Period (and, if the Interest Period is longer than six Months, on the dates falling at six monthly intervals after the first day of the Interest Period).

9.4 Default interest

- (a) If the Borrower fails to pay any amount payable by it under a Finance Document on its due date, interest shall accrue on the overdue amount from the due date up to the date of actual payment (both before and after judgment) at a rate which, subject to paragraph (b) below, is the sum of 2 per cent per annum and the rate which would have been payable if the overdue amount had, during the period of non-payment, constituted a Loan (under the Tranche to which the overdue amount is related) in the currency of the overdue amount for successive Interest Periods, each of a duration selected by the Agent (acting reasonably). Any interest accruing under this Clause 9.4 shall be immediately payable by the Borrower on demand by the Agent.
- (b) If any overdue amount consists of all or part of a Loan which became due on a day which was not the last day of an Interest Period relating to that Loan:
 - (i) the first Interest Period for that overdue amount shall have a duration equal to the unexpired portion of the current Interest Period relating to that Loan; and
 - (ii) the rate of interest applying to the overdue amount during that first Interest Period shall be the sum of 2 per cent per annum and the rate which would have applied if the overdue amount had not become due.
- (c) Default interest (if unpaid) arising on an overdue amount will be compounded with the overdue amount at the end of each Interest Period applicable to that overdue amount but will remain immediately due and payable.
- (d) For the avoidance of doubt, the payment of default interest shall not constitute a waiver of any right or remedy by the Lenders under this Agreement and any applicable law.

9.5 Notification of rates of interest

- (a) The Agent shall promptly notify the Lenders and the Borrower of the determination of a rate of interest under this Agreement.

- (b) The Agent shall notify the Borrower, no later than 30 Business Days prior to the last day of each Interest Period, of the aggregate amount of interest that will be due and payable on each Loan in respect of such Interest Period.

10. INTEREST PERIODS

10.1 Selection of Interest Periods

- (a) Subject to this Clause 10, each Interest Period shall be six Months or, such other period agreed between the Borrower and the Agent (acting on the instructions of all the Lenders).
- (b) If the Utilisation Date of a Loan (other than the first Loan which was made under the same Tranche (the "**First Loan**")) does not fall on the first day of an Interest Period of the First Loan, then:
 - (i) the first Interest Period of such subsequent Loan shall be of such duration as is necessary to ensure that it shall end on the last day of the then current Interest Period of the First Loan; or
 - (ii) if the Utilisation Date of the subsequent Loan falls 45 (forty-five) days or less before the last day of the then current Interest Period of the First Loan, then the first Interest Period of the subsequent Loan shall be of such duration as is necessary to ensure that it shall end on the last day of the Interest Period for the First Loan immediately following the then current Interest Period of the First Loan.
- (c) Each Interest Period for a Loan shall start on the Utilisation Date or (if already made) on the last day of its preceding Interest Period.
- (d) If an Interest Period for a Loan would otherwise extend beyond the First Repayment Date, it shall end on the First Repayment Date.
- (e) An Interest Period for a Loan shall not extend beyond the Termination Date.

10.2 Non-Business Days

If an Interest Period would otherwise end on a day which is not a Business Day, that Interest Period will instead end on the next Business Day in that calendar month (if there is one) or the preceding Business Day (if there is not).

10.3 Consolidation and division of Loans

- (a) If two or more Interest Periods:
 - (i) relate to Loans under the same Tranche; and
 - (ii) end on the same date,those Loans will be consolidated into, and treated as, a single Loan under that Tranche on the last day of the Interest Period.

- (b) No Loan may be divided.

11. CHANGES TO THE CALCULATION OF INTEREST

11.1 Unavailability of Screen Rate

- (a) *Interpolated Screen Rate*: If no Screen Rate is available for EURIBOR for the Interest Period of a Loan, the applicable EURIBOR shall be the Interpolated Screen Rate for a period equal in length to the Interest Period of that Loan.
- (b) *Reference Bank Rate*: If no Screen Rate is available for EURIBOR for:
 - (i) the currency of a Loan; or
 - (ii) the Interest Period of a Loan and it is not possible to calculate the Interpolated Screen Rate,

the applicable EURIBOR shall be the Reference Bank Rate as of the Specified Time for the currency of that Loan and for a period equal in length to the Interest Period of that Loan.

- (c) *Cost of funds*: If paragraph (b) above applies but no Reference Bank Rate is available for the relevant currency or Interest Period there shall be no EURIBOR for that Loan and Clause 11.4 (*Cost of funds*) shall apply to that Loan for that Interest Period.

11.2 Calculation of Reference Bank Rate

- (a) Subject to paragraph (b) below, if EURIBOR is to be determined on the basis of a Reference Bank Rate but a Reference Bank does not supply a quotation by the Specified Time, the Reference Bank Rate shall be calculated on the basis of the quotations of the remaining Reference Banks.
- (b) If at or about noon on the Quotation Day none or only one of the Reference Banks supplies a quotation, there shall be no Reference Bank Rate for the relevant Interest Period.

11.3 Market disruption

In relation to a Loan for which the interest rate is to be determined by reference to EURIBOR, if before close of business in London on the Quotation Day for the relevant Interest Period, the Agent receives notifications from a Lender or Lenders (whose participations in a Loan exceed 35 per cent. of that Loan) that the cost to it of funding its participation in that Loan from whatever source it may reasonably select would be in excess of EURIBOR then Clause 11.4 (*Cost of funds*) shall apply to that Loan for the relevant Interest Period.

11.4 Cost of funds

- (a) If this Clause 11.4 applies, the Agent and the Borrower shall enter into negotiations (for a period of not more than 30 days) with a view to agreeing a substitute basis for determining the rate of interest.

- (b) Any alternative basis agreed pursuant to paragraph (a) above shall, with the prior consent of all the Lenders and the Borrower, be binding on all Parties.
- (c) If no alternative basis pursuant to paragraphs (a) and (b) above is agreed, the rate of interest on each Lender's share of the relevant Loan for the relevant Interest Period shall be the percentage rate per annum which is the sum of:
 - (i) in relation to French ECA Tranche Loans, the French ECA Tranche Margin; and
 - (ii) the weighted average of the rates notified to the Agent by the Lenders as soon as practicable and in any event by close of business on the date falling five Business Days after the Quotation Day (or, if earlier, on the date falling five Business Days) prior to the date on which interest is due to be paid in respect of that Interest Period), such rate notified by each Lender to be that which expresses as a percentage rate per annum the cost to that Lender of funding its participation in that Loan from whatever source it may reasonably select.
- (d) If this Clause 11.4 applies pursuant to Clause 11.1 (*Unavailability of Screen Rate*) but any Lender does not supply a quotation by the time specified in paragraph (c)(ii) above the rate of interest shall be calculated on the basis of the quotations of the remaining Lenders.

11.5 Break Costs

- (a) The Borrower shall, within 20 (twenty) Business Days of demand by a Finance Party, pay to that Finance Party its Break Costs attributable to all or any part of a Loan or Unpaid Sum being paid by the Borrower on a day other than the last day of an Interest Period for that Loan or Unpaid Sum.
- (b) Each Lender shall, as soon as reasonably practicable after a demand by the Agent, provide a certificate confirming the amount and the basis of calculation of its Break Costs for any Interest Period in which they accrue.

12. FEES

12.1 Commitment fee

- (a) The Borrower shall pay to the Agent (for the account of each Lender) a fee computed at the rate of 0.38% per annum on that Lender's Available Commitment under each Tranche in respect of the Availability Period on and from the earliest of:
 - (i) the Effective Date; and
 - (ii) the date falling 90 days after the date of this Agreement.
- (b) The accrued commitment fee is payable on the date falling six Months after the Effective Date and on the last day of each successive period of six Months which ends during the Availability Period and, if cancelled in full, on the

cancelled amount of the relevant Lender's Commitment at the time the cancellation is effective.

12.2 Structuring fee

The Borrower shall pay to the Arranger a structuring fee in an amount of €252,077.80 on or before the earlier of:

- (a) the date falling 15 Business Days after the Loan Registration Date; and
- (b) the Effective Date.

13. ECA INSURANCE PREMIUM

13.1 No refund of ECA Insurance Premium

- (a) Subject to paragraph (b) below, the Borrower acknowledges and agrees that it shall not be entitled to claim any credit or reimbursement of any ECA Insurance Premium, including in the event of an acceleration or a prepayment of any Loan.
- (b) If an Available Commitment is cancelled pursuant to Clause 7 (*Prepayment and Cancellation*), then the Borrower may be entitled to reimbursement of an amount of the relevant ECA Insurance Premium determined in accordance with the relevant ECA Insurance Policy.
- (c) Promptly following request by the Borrower, the Agent shall request from the ECA reimbursement of any amount of the relevant ECA Insurance Premium that the Borrower is entitled to.
- (d) While a Default is continuing, or if the relevant ECA so instructs, the Borrower shall apply any amount of ECA Insurance Premium reimbursed by an ECA towards prepayment of the Loans:
 - (i) if a Default is continuing, promptly; and
 - (ii) otherwise, on the date agreed between the Agent (acting on the instructions of all affected Lenders), any relevant ECA, ICO (if any Spanish ECA Tranche Loan will be prepaid) and the Borrower (the "**Agreed Prepayment Date**") or, if sooner on the last day permitted by the relevant ECA.
- (e) In relation to each Agreed Prepayment Date, the Agent shall exercise all reasonable endeavours to facilitate an agreement to a date that tries to avoid Break Costs arising in connection with the prepayment.
- (f) The Borrower unconditionally and irrevocably instructs the Agent to apply any amounts of the relevant ECA Insurance Premium reimbursed to the Agent for the account of the Borrower by the ECA (while a Default is continuing, or if the relevant ECA so instructs) in prepayment of Loans instructed by the Borrower (or, in the absence of such instruction, as the Agent may determine).

- (g) Any Break Costs payable as a result of any prepayment under this Clause 13.1 shall be paid by the Borrower to the Agent within five Business Days of demand.

13.2 Acknowledgement by Borrower

The Borrower:

- (a) acknowledges and agrees that none of the Parties is in any way involved in the final determination of any ECA Insurance Premium and the Borrower will not raise against any Finance Party any claim or defence of any kind whatsoever in relation to the calculation or payment of any ECA Insurance Premium; and
- (b) acknowledges and undertakes to pay, on or before the date falling 30 days after notice from the Agent, any additional premium amount which may become payable by the Finance Parties to an ECA under an ECA Insurance Policy for the purposes of maintaining that ECA Insurance Policy in full force and effect. The Agent shall notify the Borrower of any such additional premium and give an explanation as to why the premium is payable.

**SECTION 6
ADDITIONAL PAYMENT OBLIGATIONS**

14. TAX GROSS UP AND INDEMNITIES

14.1 Definitions

- (a) In this Agreement:

"**Protected Party**" means a Finance Party which is or will be subject to any liability, or required to make any payment, for or on account of Tax in relation to a sum received or receivable (or any sum deemed for the purposes of Tax to be received or receivable) under a Finance Document.

"**Tax Credit**" means a credit against, relief or remission for, or repayment of any Tax.

"**Tax Deduction**" means a deduction or withholding for or on account of Tax from a payment under a Finance Document, other than a FATCA Deduction.

"**Tax Payment**" means either the increase in a payment made by the Borrower to a Finance Party under Clause 14.2 (*Tax gross-up*) or a payment under Clause 14.3 (*Tax indemnity*).

- (b) Unless a contrary indication appears, in this Clause 14 a reference to "determines" or "determined" means a determination made in the absolute discretion of the person making the determination.

14.2 Tax gross-up

- (a) The Borrower shall make all payments to be made by it without any Tax Deduction, unless a Tax Deduction is required by law.
- (b) The Borrower shall promptly upon becoming aware that it must make a Tax Deduction (or that there is any change in the rate or the basis of a Tax Deduction) notify the Agent accordingly. Similarly, a Lender shall notify the Agent on becoming so aware in respect of a payment payable to that Lender. If the Agent receives such notification from a Lender it shall notify the Borrower.
- (c) If a Tax Deduction is required by the law of the Borrower's Country to be made by the Borrower, the amount of the payment due from the Borrower shall be increased to an amount which (after making any Tax Deduction) leaves an amount equal to the payment which would have been due if no Tax Deduction had been required.
- (d) If the Borrower is required to make a Tax Deduction, it shall make that Tax Deduction and any payment required in connection with that Tax Deduction within the time allowed and in the minimum amount required by law.
- (e) Each Finance Party and the Borrower shall cooperate in completing any reasonable procedural formalities necessary to allow the Borrower to obtain

authorisation to make payments to that Finance Party without any Tax Deduction (or, if applicable, with a Tax Deduction at a reduced rate) including but not limited to any formalities necessary for the purpose of availing such Finance Party of the benefits of any tax treaty or internal law applicable to the jurisdiction of such Finance Party's incorporation or (if different) the jurisdiction(s) of its residence for tax purposes.

- (f) Within 30 (thirty) Business Days of making either a Tax Deduction or any payment required in connection with that Tax Deduction, the Borrower making that Tax Deduction shall deliver to the Agent for the Finance Party entitled to the payment evidence reasonably satisfactory to that Finance Party that the Tax Deduction has been made or (as applicable) any appropriate payment paid to the relevant taxing authority or a certification issued by the taxing authority indicating that any such payment to the Agent for the Finance Party is tax exempted.

14.3 Tax indemnity

- (a) The Borrower shall (within 20 (twenty) Business Days of demand by the Agent) pay to a Protected Party an amount equal to the loss, liability or cost which that Protected Party determines will be or has been (directly or indirectly) suffered for or on account of Tax by that Protected Party in respect of a Finance Document.
- (b) Paragraph (a) above shall not apply:
 - (i) with respect to any Tax assessed on a Finance Party:
 - (A) under the law of the jurisdiction in which that Finance Party is incorporated or, if different, the jurisdiction (or jurisdictions) in which that Finance Party is treated as resident for tax purposes; or
 - (B) under the law of the jurisdiction in which that Finance Party's Facility Office is located in respect of amounts received or receivable in that jurisdiction,

if that Tax is imposed on or calculated by reference to the net income received or receivable (but not any sum deemed to be received or receivable) by that Finance Party; or
 - (ii) to the extent a loss, liability or cost is compensated for by an increased payment under Clause 14.2 (*Tax gross-up*); or
 - (iii) relates to a FATCA Deduction required to be made by a Party.
- (c) A Protected Party making, or intending to make, a claim under paragraph (a) above shall promptly notify the Agent of the event which will give, or has given, rise to the claim, following which the Agent shall notify the Borrower.
- (d) A Protected Party shall, on receiving a payment from the Borrower under this Clause 14.3, notify the Agent.

14.4 Tax Credit

If the Borrower makes a Tax Payment and the relevant Finance Party determines that:

- (a) a Tax Credit is attributable to an increased payment of which that Tax Payment forms part, to that Tax Payment or to a Tax Deduction in consequence of which that Tax Payment was required; and
- (b) that Finance Party has obtained, utilised and retained that Tax Credit,

the Finance Party shall pay an amount to the Borrower which that Finance Party determines will leave it (after that payment) in the same after-Tax position as it would have been in had the Tax Payment not been required to be made by the Borrower.

14.5 Stamp taxes

- (a) The Borrower shall pay and, within 20 (twenty) Business Days of demand, indemnify each Finance Party and ECA against any cost, loss or liability that Finance Party or ECA incurs in relation to all stamp duty, registration and other similar Taxes payable in respect of any Finance Document.
- (b) Paragraph (a) of this Clause 14.5 shall not apply to any stamp duty, registration or other similar Taxes payable in respect of any Transfer Certificate or Assignment Agreement entered into in accordance with the terms of this Agreement, other than any Transfer Certificate or Assignment Agreement whose execution is requested by the Borrower, in which case the Borrower shall bear any stamp duty, registration or similar Taxes payable in respect thereof.
- (c) The Borrower shall promptly upon becoming aware that a stamp duty, registration or other similar Tax is payable in respect of any Finance Document notify the Agent accordingly.
- (d) Notwithstanding Clause 1.4 (*Third party rights*), the ECAs have the right to enforce and to enjoy the benefit of this Clause 14.5, subject to the provisions of the Third Party Act.

14.6 VAT

- (a) All amounts expressed to be payable under a Finance Document by any Party to a Finance Party which (in whole or in part) constitute the consideration for any supply for VAT purposes are deemed to be exclusive of any VAT which is chargeable on that supply, and accordingly, subject to paragraph (b) below, if VAT is or becomes chargeable on any supply made by any Finance Party to any Party under a Finance Document and such Finance Party is required to account to the relevant tax authority for the VAT, that Party must pay to such Finance Party (in addition to and at the same time as paying any other consideration for such supply) an amount equal to the amount of the VAT (and such Finance Party must promptly provide an appropriate VAT invoice to that Party).

- (b) If VAT is or becomes chargeable on any supply made by any Finance Party (the "**Supplier**") to any other Finance Party (the "**Recipient**") under a Finance Document, and any Party other than the Recipient (the "**Relevant Party**") is required by the terms of any Finance Document to pay an amount equal to the consideration for that supply to the Supplier (rather than being required to reimburse or indemnify the Recipient in respect of that consideration):
- (i) (where the Supplier is the person required to account to the relevant tax authority for the VAT) the Relevant Party must also pay to the Supplier (at the same time as paying that amount) an additional amount equal to the amount of the VAT. The Recipient must (where this paragraph (i) applies) promptly pay to the Relevant Party an amount equal to any credit or repayment the Recipient receives from the relevant tax authority which the Recipient reasonably determines relates to the VAT chargeable on that supply; and
 - (ii) (where the Recipient is the person required to account to the relevant tax authority for the VAT) the Relevant Party must promptly, following demand from the Recipient, pay to the Recipient an amount equal to the VAT chargeable on that supply but only to the extent that the Recipient reasonably determines that it is not entitled to credit or repayment from the relevant tax authority in respect of that VAT.
- (c) Where a Finance Document requires any Party to reimburse or indemnify a Finance Party for any cost or expense, that Party shall reimburse or indemnify (as the case may be) such Finance Party for the full amount of such cost or expense, including such part thereof as represents VAT, save to the extent that such Finance Party reasonably determines that it is entitled to credit or repayment in respect of such VAT from the relevant tax authority.
- (d) Any reference in this Clause 14.6 to any Party shall, at any time when such Party is treated as a member of a group or unity (or fiscal unity) for VAT purposes, include (where appropriate and unless the context otherwise requires) a reference to the person who is treated at that time as making the supply, or (as appropriate) receiving the supply, under the grouping rules (provided for in Article 11 of Council Directive 2006/112/EC (or as implemented by the relevant member state of the European Union) or any other similar provision in any jurisdiction which is not a member state of the European Union) so that a reference to a Party shall be construed as a reference to that Party or the relevant group or unity (or fiscal unity) of which that Party is a member for VAT purposes at the relevant time or the relevant representative member (or head) of that group or unity (or fiscal unity) at the relevant time (as the case may be).
- (e) In relation to any supply made by a Finance Party to any Party under a Finance Document, if reasonably requested by such Finance Party, that Party must promptly provide such Finance Party with details of that Party's VAT registration and such other information as is reasonably requested in connection with such Finance Party's VAT reporting requirements in relation to such supply.

14.7 FATCA Information

- (a) Subject to paragraph (c) below, each Party shall, within 10 (ten) Business Days of a reasonable request by another Party:
 - (i) confirm to that other Party whether it is:
 - (A) a FATCA Exempt Party; or
 - (B) not a FATCA Exempt Party;
 - (ii) supply to that other Party such forms, documentation and other information relating to its status under FATCA as that other Party reasonably requests for the purposes of that other Party's compliance with FATCA; and
 - (iii) supply to that other Party such forms, documentation and other information relating to its status as that other Party reasonably requests for the purposes of that other Party's compliance with any other law, regulation, or exchange of information regime.
- (b) If a Party confirms to another Party pursuant to paragraph (a)(i) above that it is a FATCA Exempt Party and it subsequently becomes aware that it is not or has ceased to be a FATCA Exempt Party, that Party shall notify that other Party reasonably promptly.
- (c) Paragraph (a) above shall not oblige any Finance Party to do anything, and paragraph (a)(iii) above shall not oblige any other Party to do anything, which would or might in its reasonable opinion constitute a breach of:
 - (i) any law or regulation;
 - (ii) any fiduciary duty; or
 - (iii) any duty of confidentiality.
- (d) If a Party fails to confirm whether or not it is a FATCA Exempt Party or to supply forms, documentation or other information requested in accordance with paragraph (a)(i) or (a)(ii) above (including, for the avoidance of doubt, where paragraph (c) above applies), then such Party shall be treated for the purposes of the Finance Documents (and payments under them) as if it is not a FATCA Exempt Party until such time as the party in question provides the requested confirmation, forms, documentation or other information.

14.8 FATCA Deduction

- (a) Each Party may make any FATCA Deduction it is required to make by FATCA, and any payment required in connection with that FATCA Deduction, and no Party shall be required to increase any payment in respect of which it makes such a FATCA Deduction or otherwise compensate the recipient of the payment for that FATCA Deduction.

- (b) Each Party shall promptly, upon becoming aware that it must make a FATCA Deduction (or that there is any change in the rate or the basis of such FATCA Deduction) notify the Party to whom it is making the payment and, in addition, shall notify the Borrower, the Agent and the other Finance Parties.

15. INCREASED COSTS

15.1 Increased costs

- (a) Subject to Clause 15.3 (*Exceptions*) the Borrower shall, within 20 (twenty) Business Days of a demand by the Agent, pay for the account of a Finance Party the amount of any Increased Costs incurred by that Finance Party or any of its Affiliates as a result of (i) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation or (ii) compliance with any law or regulation made after the date of this Agreement or (iii) the implementation or application of or compliance with Basel III or CRD IV or any law or regulation that implements or applies Basel III or CRD IV.

- (b) In this Agreement:

"**Basel III**" means:

- (i) the agreements on capital requirements, a leverage ratio and liquidity standards contained in "Basel III: A global regulatory framework for more resilient banks and banking systems", "Basel III: International framework for liquidity risk measurement, standards and monitoring" and "Guidance for national authorities operating the countercyclical capital buffer" published by the Basel Committee on Banking Supervision in December 2010, each as amended, supplemented or restated;
- (ii) the rules for global systemically important banks contained in "Global systemically important banks: assessment methodology and the additional loss absorbency requirement – Rules text" published by the Basel Committee on Banking Supervision in November 2011, as amended, supplemented or restated; and
- (iii) any further guidance or standards published by the Basel Committee on Banking Supervision relating to "Basel III".

"**CRD IV**" means:

- (i) Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms; and
- (ii) Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms.

"Increased Costs" means:

- (i) a reduction in the rate of return from a Tranche or on a Finance Party's (or its Affiliate's) overall capital;
- (ii) an additional or increased cost arising in connection with the realisation of the rate of return from a Tranche or on a Finance Party's (or its Affiliate's) overall capital; or
- (iii) a reduction of any amount due and payable under any Finance Document,

which is incurred or suffered by a Finance Party or any of its Affiliates to the extent that it is attributable to that Finance Party having entered into its Commitment or funding or performing its obligations under any Finance Document.

15.2 Increased cost claims

- (a) A Finance Party intending to make a claim pursuant to Clause 15.1 (*Increased costs*) shall notify the Agent of the event giving rise to the claim, following which the Agent shall promptly notify the Borrower.
- (b) Each Finance Party shall, as soon as practicable after a demand by the Agent, provide a certificate confirming the amount of its Increased Costs and setting out the explanation and calculation of the Increased Costs being claimed.

15.3 Exceptions

- (a) Clause 15.1 (*Increased costs*) does not apply to the extent any Increased Cost is:
 - (i) attributable to a Tax Deduction required by law to be made by the Borrower;
 - (ii) attributable to a FATCA Deduction required to be made by a Party;
 - (iii) compensated for by Clause 14.3 (*Tax indemnity*) (or would have been compensated for under Clause 14.3 (*Tax indemnity*) but was not so compensated solely because any of the exclusions in paragraph (b) of Clause 14.3 (*Tax indemnity*) applied);
 - (iv) attributable to the wilful breach by the relevant Finance Party or its Affiliates of any law or regulation; or
 - (v) attributable to the implementation or application of or compliance with the "International Convergence of Capital Management and Capital Standard, a Revised Framework" published by the Basel Committee on Banking Supervision in June 2004 in the form existing on the date of this agreement ("**Basel II**") or any other law or regulation which implements Basel II (whether such implementation, application or

compliance is by a government, regulator, Finance Party or any of its Affiliates).

- (b) In this Clause 15.3, a reference to a "Tax Deduction" has the same meaning given to that term in Clause 14.1 (*Definitions*).

16. OTHER INDEMNITIES

16.1 Currency indemnity

- (a) If any sum due from the Borrower under the Finance Documents (a "Sum"), or any order, judgment or award given or made in relation to a Sum, has to be converted from the currency (the "First Currency") in which that Sum is payable into another currency (the "Second Currency") for the purpose of:

- (i) making or filing a claim or proof against the Borrower;
- (ii) obtaining or enforcing an order, judgment or award in relation to any litigation or arbitration proceedings,

the Borrower shall as an independent obligation, within 15 (fifteen) Business Days of demand, indemnify each Finance Party to whom that Sum is due against any cost, loss or liability arising out of or as a result of the conversion including any discrepancy between (A) the rate of exchange used to convert that Sum from the First Currency into the Second Currency and (B) the rate or rates of exchange available to that person at the time of its receipt of that Sum.

- (b) The Borrower waives any right it may have in any jurisdiction to pay any amount under the Finance Documents in a currency or currency unit other than that in which it is expressed to be payable.

16.2 Other indemnities

The Borrower shall, within 20 (twenty) Business Days of demand, indemnify each Finance Party, each ECA and ICO against any cost, loss or liability incurred by that Finance Party, ECA or ICO as a result of:

- (a) the occurrence of any Event of Default;
- (b) a failure by the Borrower to pay any amount due under a Finance Document on its due date, including without limitation, any cost, loss or liability arising as a result of Clause 27 (*Sharing among the Finance Parties*);
- (c) funding, or making arrangements to fund, its participation in a Loan requested by the Borrower in a Utilisation Request but not made by reason of the operation of any one or more of the provisions of this Agreement (other than by reason of default or negligence by that Finance Party alone);
- (d) a Loan (or part of a Loan) not being prepaid in accordance with a notice of prepayment given by the Borrower;

- (e) the operation of paragraph (a) of Clause 7.1 (*Illegality and Sanctions*) (other than by reason of gross negligence or wilful misconduct of a Finance Party alone and only if the relevant illegality is attributable to the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation in the Borrower's Country);
- (f) the operation of paragraph (b) of Clause 7.1 (*Illegality and Sanctions*);
- (g) the occurrence of any Environmental Claim or Environmental Incident;
- (h) the enforcement of an ECA Insurance Policy; or
- (i) investigating any event or obtaining any additional information, in each case, as required under the terms and conditions of an ECA Insurance Policy or otherwise by an ECA.

16.3 Indemnity to the Agent

The Borrower shall promptly indemnify the Agent and each ECA against any cost, loss or liability incurred by the Agent (acting reasonably) as a result of:

- (a) investigating any event which it reasonably believes is a Default;
- (b) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised; or
- (c) instructing lawyers, accountants, tax advisers, surveyors or other professional advisers or experts as permitted under this Agreement.

16.4 ECA indemnity reliance

Each ECA may rely on Clauses 16.2 (*Other indemnities*) and 16.3 (*Indemnity to the Agent*) subject to Clause 1.4 (*Third Party Rights*) and the provisions of the Third Parties Act.

17. MITIGATION BY THE LENDERS

17.1 Mitigation

- (a) Each Finance Party shall, in consultation with the Borrower, take all reasonable steps to mitigate any circumstances which arise and which would result in any amount becoming payable under or pursuant to, or cancelled pursuant to, any of Clause 7.1 (*Illegality*), Clause 14 (*Tax gross-up and indemnities*) or Clause 15 (*Increased costs*) including (but not limited to) transferring its rights and obligations under the Finance Documents to another Affiliate or Facility Office.
- (b) Paragraph (a) above does not in any way limit the obligations of the Borrower under the Finance Documents.

17.2 Limitation of liability

- (a) The Borrower shall, within ten Business Days of demand, indemnify each Finance Party for all costs and expenses reasonably incurred by that Finance Party as a result of steps taken by it under Clause 17.1 (*Mitigation*).
- (b) A Finance Party is not obliged to take any steps under Clause 17.1 (*Mitigation*) if, in the opinion of that Finance Party (acting reasonably), to do so might:
 - (i) be prejudicial to it and/or have an adverse effect upon its business, operations or financial condition and/or conflict with its banking policies; or
 - (ii) require the Finance Party to incur or suffer an Increased Costs (as defined under Clause 15 (*Increased costs*)) not compensated under Clause 15 (*Increased costs*); or
 - (iii) reasonably be expected to be contrary to the provisions of any ECA Insurance Policy or the ICO Interest Make-up Agreement; or
 - (iv) require the Finance Party to disclose any information as to its banking policies or other matters which it regards, in its sole discretion, as confidential or commercially sensitive.

18. COSTS AND EXPENSES

18.1 Transaction expenses

- (a) Unless otherwise agreed between the Arranger or the Agent and the Borrower, and subject to paragraph (b) below, the Borrower shall promptly on demand pay the Agent, the Arranger and each ECA the amount of all costs and expenses (including legal fees, taxis, translations, travel and out-of-pocket expenses) reasonably incurred by any of them in connection with the negotiation, preparation, printing and execution of:
 - (i) this Agreement and any other documents referred to in this Agreement; and
 - (ii) any other Finance Documents executed after the date of this Agreement.
- (b) The Borrower shall not be obliged under paragraph (a)(i) above to pay costs or expenses incurred by the Agent, the Arranger and the ECAs in connection with the negotiation, preparation, printing and execution of this Agreement and any other documents referred to in this Agreement, which exceed \$40,000 (or its equivalent in other currencies, and excluding VAT and any disbursements) in aggregate (being the sum of \$20,000 budgeted by the Borrower in relation to each of the Spanish ECA Tranche and the French ECA Tranche).

18.2 Amendment costs

If the Borrower requests an amendment, waiver or consent, the Borrower shall, within 20 Business Days of demand, reimburse the Finance Parties and each ECA for the amount of all costs and expenses (including legal fees) reasonably incurred by any Finance Party or ECA in responding to, evaluating, negotiating or complying with that request or requirement. If the aggregate costs and expenses in relation to any request for amendment, waiver or consent are expected to exceed \$10,000, the Agent shall seek the Borrower's agreement to such costs and expenses prior to incurring them.

18.3 Enforcement costs

The Borrower shall, within five Business Days of demand, pay to each Finance Party and each ECA the amount of all costs and expenses (including legal fees) incurred by that Finance Party or ECA in connection with the enforcement of, or the preservation of any rights under, any Finance Document.

18.4 Site visit costs

The Borrower shall, within 20 Business Days of demand, reimburse the ECAs the amount of all costs and expenses (including travel and out-of-pocket expenses) reasonably incurred by an ECA in connection with any visit and inspection of the site of the Project and any of the properties of the Borrower connected to the Project made when an Event of Default is continuing or which reveal a Default.

18.5 ECA indemnity reliance

The ECAs may rely on Clauses 18.1 (*Transaction Expenses*), 18.2 (*Amendment costs*), 18.3 (*Enforcement costs*) and 18.4 (*Site visit costs*) subject to Clause 1.4 (*Third Party Rights*) and the provisions of the Third Parties Act.

SECTION 7
REPRESENTATIONS, UNDERTAKINGS AND EVENTS OF DEFAULT

19. REPRESENTATIONS

The Borrower makes the representations and warranties set out in this Clause 19 to each Finance Party on the date of this Agreement.

19.1 Status

It has the power to own its assets and carry on its business as it is being conducted.

19.2 Binding obligations

The obligations expressed to be assumed by it in each Finance Document are, subject to any general principles of law limiting its obligations which are specifically referred to in any legal opinion delivered pursuant to Clause 4 (*Conditions of Utilisation*), legal, valid, binding and enforceable obligations.

19.3 Non-conflict with other obligations

- (a) The entry into and performance by it of, and the transactions contemplated by, the Finance Documents do not and will not conflict with:
 - (i) any law or regulation, treaty, convention, judgment, judicial order or decree applicable to it; or
 - (ii) any agreement or instrument binding upon it or any of its assets.
- (b) Neither the execution of the Finance Documents nor the performance by the Borrower of its obligations or the exercise of its rights thereunder result in the existence of, or oblige it to create, any Security over the whole or any part of its undertaking, revenues or assets, present or future.

19.4 Power and authority

- (a) It has the power and capacity to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, the Finance Documents to which it is a party and the transactions contemplated by those Finance Documents.
- (b) It has the capacity to sue and be sued before any court and/or arbitration tribunal which may be competent pursuant to the Finance Documents.

19.5 Validity and admissibility in evidence

The Borrower has put into effect all procedures required by the law of the Borrower's Country:

- (a) to enable it lawfully to enter into, exercise its rights and comply with its obligations in the Finance Documents to which it is a party; and

- (b) to make the Finance Documents to which it is a party admissible in evidence in the Borrower's Country,

and all Authorisations required or desirable to do the same have been obtained or effected and are in full force and effect.

19.6 Governing law and enforcement

- (a) The choice of English law as the governing law of the Finance Documents will be recognised and enforced in the Borrower's Country.
- (b) The agreement not to claim any immunity in relation to a Finance Document to which it or its assets may be entitled will be recognised and enforced in the Borrower's Country.
- (c) Any judgment or arbitral award obtained in England in relation to a Finance Document will be recognised and enforced in the Borrower's Country.

19.7 Due execution

Each Finance Document has been signed by representatives of the Borrower, duly empowered for such purpose, as per internal procedures applicable to such effect. All necessary acts for the valid and binding execution thereof have been followed.

19.8 Deduction of Tax

Without prejudice to paragraph (c) of Clause 14.2 (*Tax gross-up*), as of the date of this Agreement and the Loan Registration Date it is not required to make any Tax Deduction (as defined in Clause 14.1 (*Definitions*)) from any payment it may make under any Finance Document to a Lender.

19.9 No filing or stamp taxes

Without prejudice to Clause 14.5 (*Stamp taxes*), as of the date of this Agreement and the Loan Registration Date it is not necessary under the law of the Borrower's Country that:

- (a) the Finance Documents be filed, recorded or enrolled with any court or other authority in that jurisdiction or that any stamp, registration or similar tax be paid on or in relation to the Finance Documents or the transactions contemplated by the Finance Documents; or
- (b) any type of pay-out or payment made under this Agreement is registered or approved by any authority of the Borrower's Country.

19.10 No default

- (a) No Event of Default is continuing or might reasonably be expected to result from the making of any Utilisation.
- (b) No other event or circumstance is outstanding which constitutes a default under any other agreement or instrument which is binding on it or to which its

assets are subject which has or is reasonably likely to have a Material Adverse Effect.

19.11 No misleading information

- (a) Any factual information provided by or on behalf of the Borrower for the purposes of the Project, the Commercial Contract, the Finance Documents, the ECA Insurance Policies and the ICO Interest Make-up Agreement was true and accurate in all material respects as at the date it was provided or as at the date (if any) at which it is stated.
- (b) No information has been given or withheld that results in such information being untrue or misleading in any material respect and it is not aware of any information which, if disclosed to any Lender and/or ECA, could have altered the decision of that Lender to enter into this Agreement and/or of that ECA to enter into the relevant ECA Insurance Policy. Each ECA may rely on this paragraph (b) subject to Clause 1.4 (*Third Party Rights*) and the provisions of the Third Parties Act.

19.12 Pari passu ranking

Its payment obligations under the Finance Documents rank at least equally with the claims of all its other unsecured and unsubordinated creditors.

19.13 No proceedings pending or threatened

No litigation, arbitration or administrative proceedings of or before any court, arbitral body or agency (including any arising from or relating to any Environmental Claim) which, if adversely determined, might reasonably be expected to have a Material Adverse Effect has or have (to the best of its knowledge and belief) been started or threatened against it.

19.14 Material adverse change

No event or series of events is occurring or threatened to occur which has or is reasonably likely to have a Material Adverse Effect.

19.15 No Immunity

- (a) The waiver of immunity set out under Clause 39.3 (*Waiver of Immunity*) constitutes a legal, valid, binding and enforceable obligation of the Borrower.
- (b) Its entry into the Finance Documents to which it is a party constitutes, and the exercise of its rights and performance of and compliance with its obligations under the Finance Documents will constitute, private and commercial acts done and performed for private and commercial purposes.

19.16 Documents

All documents (including each and every document comprising the Commercial Contract) delivered (from time to time) to a Finance Party or an ECA by or on behalf of the Borrower pursuant to the Finance Documents, are genuine and, in the case of

copy documents, are true, complete and accurate copies in all material respects of the originals.

19.17 No adverse consequence

- (a) It is not necessary under the laws of the Borrower's Country:
- (i) in order to enable the Finance Parties to enforce their rights under this Agreement; or
 - (ii) by reason of the execution of this Agreement or the performance by the Finance Parties of their obligations under this Agreement,
- that the Finance Parties should be licensed, qualified or otherwise entitled to carry on business in the Borrower's Country.
- (b) No Finance Party is deemed to be resident, domiciled or carrying on business in the Borrower's Country by reason only of the execution, performance and/or enforcement of any Finance Document.

19.18 Foreign Exchange Reserves

The Borrower has full power and authority, to use, any available foreign currency reserves of the Borrower's Country for the satisfaction and discharge of its obligations under the Finance Documents.

19.19 Environmental laws and licences

The Borrower:

- (a) is in compliance with all Environmental Laws applicable to the Project to which it may be subject;
- (b) is in compliance with all Environmental Standards and Social Standards applicable to the Project to which it may be subject;
- (c) has all Environmental Licences required in connection with the Project; and
- (d) is in compliance with the terms of those Environmental Licences in connection with the Project.

19.20 Environmental Claim

No Environmental Claim in connection to the Project has been commenced or (to the best of its knowledge and belief, having made due and careful enquiry) is threatened against the Borrower or any of its Governmental Authorities other than claims which are frivolous or vexatious and have been or will be discharged, stayed or dismissed within 30 (thirty) days of commencement.

19.21 Compliance with laws

The Borrower is in compliance in all material respects with:

- (a) any resolution or directive issued by the United Nation or any international organization under the control or co-ordination of the latter; and
- (b) any treaty entered into by the Borrower;

establishing mandatory provisions applicable to the Borrower and its assets, including mandatory provisions applicable to the Borrower and its assets concerning pollution, the Environment or Hazardous Substances, in each case to the extent applicable to the Project.

19.22 Prohibited Activities and Sanctions

- (a) Neither it nor or any of its Governmental Authorities has engaged in any activity or conduct in connection with the Project which would violate any applicable anti-bribery, anti-corruption or anti-money laundering laws or regulations in any applicable jurisdiction and the Borrower has instituted and maintain policies and procedures designated to prevent violation of such laws, regulations and rules.
- (b) Neither it, nor any of its Governmental Authorities, is a Sanctioned Person.
- (c) None of the Utilisations have been used to finance equipment or sectors under embargo decisions of the United Nations, the World Bank, the United States of America or the European Union.
- (d) No payments made by the Borrower in respect of the Commercial Contract have been funded out of funds of Illicit Origin.
- (e) The funds used to pay all amounts due by it under the Finance Documents are not derived from any Prohibited Activities in any way whatsoever.
- (f) Neither it, or any of its Governmental Authorities, is listed by any international financial institution (including, without limitation, the World Bank, the European Bank for Reconstruction and Development, the African Development Bank, the Asian Development Bank, and the Inter-American Development Bank) as an entity excluded from the financings granted by such institutions and it has not otherwise been subject to any sanction from any such institutions.
- (g) No Prohibited Payment has been made as an incentive in exchange for the Commercial Contract, the Finance Documents or the Project.

19.23 Commercial Contract

- (a) The Borrower (acting through its *Oficina Para El Reordenamiento Del Transporte*) (i) has capacity to execute the Commercial Contract and exercise the rights and fulfil the obligations arising therefrom, as well as to sue and be sued before any court and/or arbitration tribunal which may be competent

pursuant to the Commercial Contract; (ii) has taken all necessary action to authorise its entry into, and the performance and delivery of, the Commercial Contract; and (iii) has good legal title to, or valid leases or licenses of, or is otherwise entitled to use, all assets necessary to conduct the Project.

- (b) The Commercial Contract has been signed by representatives of the Borrower, duly empowered for such purpose, as per internal procedures applicable to such effect. All necessary acts for the valid and binding execution thereof have been followed.
- (c) Subject to the condition described at paragraph 6(b) of Part I (*Conditions precedent to initial Utilisation*) of Schedule 1, the Commercial Contract constitutes the Borrower's legal, valid, binding and enforceable obligations and is in full force and effect and has not been repudiated by any party thereto.
- (d) The Borrower has not received any written notice of any dispute in connection with the Commercial Contract or of any termination, cancellation or material suspension thereof in whole or in part (other than any notice already disclosed in writing to the Agent in accordance with this Agreement).
- (e) There is no outstanding breach of or outstanding claim (other than claims for payments under the Commercial Contract which are not overdue) under the Commercial Contract nor has any event occurred which would entitle the Borrower or (to the knowledge of the Borrower) the Consortium or any member of the Consortium to terminate the Commercial Contract.
- (f) The award of the Commercial Contract to the Consortium was made in accordance with all applicable Dominican law.
- (g) The award of the Commercial Contract to the Consortium has not been challenged or the subject of any claim or litigation.
- (h) All public procurement rules which are applicable to the Borrower in relation to its entry into and the exercise of its rights and performance of its obligations under the Commercial Contract and the Project has been and are being complied with.
- (i) There is no Environmental Claim applicable to the Project pending or threatened against the Borrower which is reasonably likely to have a Material Adverse Effect.
- (j) The members of the Consortium have joint and several responsibility to perform the obligations arising from the Commercial Contract.

19.24 Repetition

The Repeating Representations are deemed to be made by the Borrower, by reference to the facts and circumstances then existing, on the Loan Registration Date, the date of each Utilisation Request and the first day of each Interest Period.

20. INFORMATION UNDERTAKINGS

The undertakings in this Clause 20 remain in force from the date of this Agreement for so long as any amount is outstanding under the Finance Documents or any Commitment is in force.

20.1 Quarterly Progress Report

The Borrower shall procure the supply to the Agent, as soon as the same becomes available but in any event within ten Business Days of the end of each calendar quarter, the Quarterly Progress Report.

20.2 Budget

The Borrower shall supply to the Agent, as soon as the same becomes available but in any event on or before 3 March 2017, evidence (in form and substance satisfactory to the Agent) of the Borrower's allocation of the appropriate budget to complete the Project in respect of the Borrower's financial year ending in 2017.

20.3 Information: miscellaneous

The Borrower shall promptly:

- (a) inform the Agent of the occurrence of any Default upon becoming aware of the same;
- (b) furnish or procure that there shall be furnished to the Agent written details of any Default forthwith, and of all remedial steps being taken and proposed to be taken in respect of that Default;
- (c) notify the Agent of (1) any breach, or if it has reasonable ground for belief that there will be any breach by any party under the Commercial Contract; (2) any event of *force majeure* (howsoever described) under the Commercial Contract giving details thereof and of the anticipated length of such event of force majeure, and the date on which such event of force majeure ceases to exist; and (3) any proposed amendment to the Commercial Contract;
- (d) furnish or procure that there shall be furnished to the Agent, as soon as the same are instituted or, to its knowledge, threatened, details of any material litigation, arbitration, proceeding or investigation in connection with the Project, of any kind whatsoever and carried out by any kind of local or international authority;
- (e) furnish or procure that there shall be furnished to the Agent, as soon as the same are instituted or, to its knowledge, threatened, details of any material litigation, arbitration, proceeding or investigation, of any kind whatsoever and carried out by any kind of local or international authority, involving the Borrower, where such litigation, arbitration, proceeding or investigation is reasonably likely to be adversely determined against the Borrower and if so adversely determined is reasonably likely to have a Material Adverse Effect;

- (f) promptly upon its occurrence, notify the Agent of (i) the completion of the Project and (ii) the Starting Point of Credit;
- (g) promptly and immediately inform the Agent of the occurrence of any circumstances (including any change in law or regulation) which could determine a Material Adverse Effect; and
- (h) promptly provide the Agent with such other information as the Agent may reasonably request which is relevant to the Finance Documents, the Facility, or the Project, including for the avoidance of doubt any information that may be requested by an ECA or ICO in accordance with the terms of an ECA Insurance Policy or (as applicable) the ICO Interest Make-up Agreement.

20.4 Environmental information

- (a) The Borrower shall notify the Agent:
 - (i) within 15 (fifteen) Business Days of becoming aware of:
 - (A) any Environmental Claim affecting the Project;
 - (B) details of any non-compliance by it with any applicable Environmental Standards applicable to the Project and any communication received by it in respect of any actual or alleged breach of or liability under Environmental Law applicable to the Project and, no later than 10 (ten) Business Days after such notification, inform the Agent of the action it intends to take with respect to those matters to restore and/or remedy it; or
 - (C) any facts or circumstances which shall or are reasonably likely to result in any Environmental Claim affecting the Project; and
 - (ii) within 5 (five) Business Days of becoming aware of any Environmental Incident affecting the Project and, no later than 10 (ten) Business Days after such notification, inform the Agent of its proposals for remedying it.
- (b) The Borrower shall:
 - (i) procure that each Environmental Report is prepared in form and substance satisfactory to the Agent;
 - (ii) procure the delivery of the Environmental Reports in accordance with the PMMA and supply to the Agent a copy of any Environmental Report within ten Business Days of its delivery pursuant to the PMMA; and
 - (iii) to the extent not included in an Environmental Report delivered to the Agent pursuant to paragraph (ii) in any six-month calendar period, evidence (in form and substance satisfactory to the Agent) that no condition, circumstance or situation relating to the resettlement

(referred to in the documentation delivered in relation to paragraph 6(h) of Schedule 1 (*Conditions precedent*)), which may have an adverse affect on the Project, has arisen.

20.5 "Know your customer" checks

The Borrower shall promptly upon the request of the Agent or any Lender supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Agent (for itself or on behalf of any Lender) or any Lender (for itself or, on behalf of any prospective new Lender) in order for the Agent, such Lender or, as the case may be, any prospective new Lender to carry out and be satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Finance Documents.

21. GENERAL UNDERTAKINGS

The undertakings in this Clause 21 remain in force from the date of this Agreement for so long as any amount is outstanding under the Finance Documents or any Commitment is in force.

21.1 Pari passu ranking

The Borrower undertakes that its payment obligations under the Finance Documents shall at all times rank at least equally with the claims of all its other unsecured and unsubordinated creditors.

21.2 Project

The Borrower (acting through its *Oficina Para El Reordenamiento Del Transporte* or otherwise) shall:

- (a) obtain all necessary Environmental Licenses in connection with the Project, and comply in all material respects with all applicable laws in connection with the Project; and
- (b) observe and perform all of its obligations and otherwise comply with all the provisions of the Commercial Contract and obtain and maintain all Authorisations required in relation to and in accordance with the terms of the Commercial Contract;
- (c) promptly upon receipt of the same, notify the Agent of any material claim, notice or other communication in connection with the Project served on the Borrower in respect of any alleged breach of or corrective or remedial obligation or liability under any applicable law; and
- (d) not amend the Commercial Contract (other than amendments of a non-material or technical nature) without the prior written approval of the Agent (acting on the instructions of the Majority Lenders) and each ECA.

21.3 Insurance

The Borrower (acting through its *Oficina Para El Reordenamiento Del Transporte*) shall:

- (a) insure and keep insured all its properties and assets in connection with the Project:
 - (i) with reputable insurance companies or underwriters, and through reputable insurance brokers; and
 - (ii) to such extent and against such risks (including, without limitation, those pertaining to environmental contamination and relevant claims) as prudent enterprises engaged in business similar to the Project normally insure; and
- (b) produce to the Agent upon request copies of all insurance policies from time to time effected by the Borrower in connection with the Project, or on its behalf.

21.4 No change to its business

The Borrower shall procure that no substantial change is made to the general nature of the Project from that carried on as at the date of this Agreement.

21.5 Compliance with laws

The Borrower shall comply with all applicable laws and regulations to an extent and in a manner which will ensure that the Borrower is able to comply with its obligations under the Finance Documents, and where failure to do so would have, or would be reasonably likely to have, a Material Adverse Effect.

21.6 Access

The Borrower shall (not more than once every calendar year, unless an Event of Default is continuing), at its own cost and expense (other than for the Lenders that shall bear their own costs, unless an Event of Default is continuing) and upon reasonable notice from the Agent and at reasonable times, permit, and ensure that it is possible for, the Agent, each Lender, each ECA and any officer and designated representatives of the same to visit and inspect the site of the Project and any of the properties of the Borrower connected to the Project for the purposes of (1) carrying out inspections or verifications in accordance with the terms of an ECA Insurance Policy with respect to the compliance with the applicable Environmental Law and the other provisions of Clause 21.11 (*Environmental undertakings*), (2) examining and making copies of the books and documents in the possession, or subject to the control of, the Borrower relating to the the Project and (3) discussing the affairs and accounts of the Borrower and the Project with, and to be advised as to the same by, the personnel of the Borrower.

21.7 Authorisations

The Borrower shall (1) obtain or cause to be obtained, (2) comply with and (3) do all that is necessary to maintain in full force and effect:

- (a) every consent, authorization, license or approval of, or registration with or declaration to, governmental or public bodies or authorities or courts; and
- (b) every notarization, filing, recording, registration or enrolment in any court or public office in the Borrower's Country,

in each case required by the Borrower to enable it to perform its obligations under the Finance Documents and to ensure the legality, validity, enforceability or admissibility in evidence of this Agreement where failure to do so has, or would be reasonably likely to have, a Material Adverse Effect.

21.8 Treasury Transactions

The Borrower may enter into hedging arrangements to manage interest rate and/or currency risk on payments under the Facility, provided:

- (a) any such hedging arrangement must be based on the 2002 standard ISDA Master Agreement;
- (b) the Borrower shall, before entering into such arrangements, notify the Arranger, and the Arranger shall be entitled to match *pro rata* the pricing and terms or otherwise to offer pricing and terms that are acceptable to the Borrower. If the Arranger does not accept or so agree the pricing and terms with the Borrower within 5 (five) Business Days, the Borrower shall be entitled to enter into the hedging arrangements with third parties on the pricing and terms it confirmed or advised to the Arranger.

21.9 Purpose

The Borrower shall not use the proceeds of any Loan for purposes other than that set out in Clause 3 (*Purpose*).

21.10 Negative pledge

- (a) Other than Permitted Security, the Borrower undertakes that without the prior written consent of all Lenders it shall not create any Security over any of its present or future revenues or assets to secure any of its External Indebtedness, unless the same Security is equally granted in favour of the Finance Parties to secure the Borrower's obligations under the Finance Documents.
- (b) The Agent agrees that any Permitted Security shall be permitted without further notice to or consent of the Lenders, **provided that** the Borrower shall promptly notify in writing the Agent of the issuance of such Security and shall provide the Agent with information thereon.

21.11 Environmental undertakings

The Borrower shall:

- (a) comply with all Environmental Laws applicable to the Project;
- (b) comply with all Environmental Standards and Social Standards applicable to the Project;
- (c) obtain, maintain and ensure compliance with all requisite Environmental Licences applicable to the Project;
- (d) implement procedures to monitor compliance with and to prevent liability under any Environmental Law applicable to the Project, in each case, in respect of the Commercial Contracts, and/or the Project; and
- (e) resolve any condition, circumstance or situation identified in an Environmental Report or other evidence delivered pursuant to paragraph (b) of Clause 20.4 (*Environmental information*) or in relation to paragraph 6(h) of Schedule 1 (*Conditions precedent*), such resolution to be to the satisfaction of the Agent and effected as soon as reasonably practicable.

21.12 Corrupt Practices and Sanctions

- (a) The Borrower shall not, and shall ensure that none of its Governmental Authorities will, engage in any activity or conduct in connection with the Project which would violate any applicable anti-bribery, anti-corruption or anti-money laundering laws or regulations in any applicable jurisdiction.
- (b) The Borrower shall not, and shall ensure that none of its Governmental Authorities will, directly or indirectly, use the proceeds of any Loan, or lend, contribute or otherwise make available such proceeds to any person:
 - (i) to fund any activities or business of or with any person, or in any country or territory, that, at the time of such funding, is, a Sanctioned Person; or
 - (ii) in any other manner that would result in a violation of Sanctions by any person (including any person participating in the Facility, whether as Arranger, Agent, Lender or otherwise).
- (c) The Borrower shall ensure that:
 - (i) no person that is a Sanctioned Person will have any legal or beneficial interest in any funds repaid or remitted by the Borrower to any Finance Party in connection with this Agreement, and
 - (ii) it shall not use any revenue or benefit derived from any activity or dealing with a Sanctioned Person for the purpose of discharging amounts owing to any Finance Party in respect of the Facility.

- (d) The Borrower shall implement and maintain appropriate safeguards designed to prevent any action that would be contrary to paragraphs (a), (b) and (c) above.
- (e) The Borrower shall, promptly upon becoming aware of the same, supply to the Agent details of any claim, action, suit, proceedings or investigation against it with respect to Sanctions.

21.13 Embargoes

The Borrower shall ensure that none of the Loans will be used to finance equipment under embargo decisions of the United Nations, the World Bank, the European Union or the United States of America.

21.14 No Illicit Origin

The Borrower shall ensure that no payments made by it in respect of the Commercial Contract are funded out of funds of Illicit Origin.

22. EVENTS OF DEFAULT

Each of the events or circumstances set out in Clause 22 is an Event of Default (save for Clause 22.17 (*Acceleration*)).

22.1 Non-payment

The Borrower does not pay on the due date any amount payable pursuant to a Finance Document at the place at and in the currency in which it is expressed to be payable unless:

- (a) its failure to pay is caused by:
 - (i) administrative or technical error; or
 - (ii) a Disruption Event; and
- (b) payment is made within 5 (five) Business Days of its due date.

22.2 Other obligations

- (a) The Borrower does not comply with any provision of the Finance Documents (other than those referred to in Clause 22.1 (*Non-payment*)).
- (b) No Event of Default under paragraph (a) above will occur if the failure to comply is capable of remedy and is remedied within 20 (twenty) Business Days of the earlier of (A) the Agent giving notice to the Borrower and (B) the Borrower becoming aware of the failure to comply.

22.3 Misrepresentation

Any representation or statement made or deemed to be made by the Borrower in the Finance Documents or any other document delivered by or on behalf of the Borrower

under or in connection with any Finance Document is or proves to have been incorrect or misleading in any material respect when made or deemed to be made unless, except for the representation set out in Clause 19.22 (*Prohibited Activities and Sanctions*), the underlying circumstances are capable of remedy and are remedied within 20 (twenty) Business Days of being made or repeated.

22.4 Cross default

- (a) Any External Indebtedness of the Borrower is not paid when due nor within any originally applicable grace period.
- (b) Any External Indebtedness of the Borrower is declared to be or otherwise becomes due and payable prior to its specified maturity as a result of an event of default (however described).
- (c) Any commitment for any External Indebtedness of the Borrower is cancelled or suspended by a creditor of the Borrower as a result of an event of default (however described).
- (d) Any creditor of the Borrower becomes entitled to declare any External Indebtedness of the Borrower due and payable prior to its specified maturity as a result of an event of default (however described).
- (e) No Event of Default will occur under this Clause 22.4 if the aggregate amount of External Indebtedness or commitment for External Indebtedness falling within paragraphs (a) to (d) above is less than EUR 10,000,000 (or its equivalent in any other currency or currencies), except for External Indebtedness in any way guaranteed or insured by any export credit agency, which shall have no such limit.

22.5 Insolvency

- (a) The Borrower, by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors (excluding any Finance Party in its capacity as such) with a view to rescheduling any of its indebtedness.
- (b) The Borrower declares a general suspension of, or a moratorium on, payments in respect of its External Indebtedness.

22.6 Security

Any writ, execution, attachment or similar process is levied against assets of the Borrower in connection with any judgement for the payment of money exceeding EUR 25,000,000 (or its equivalent in other currencies), and the Borrower fails to (a) satisfy or discharge such judgement, or (b) contest in good faith and receive a stay of execution or continuance in respect of such judgement, in each case within a period of 120 days.

22.7 Unlawfulness

It is or becomes unlawful for the Borrower to perform any of its obligations under the Finance Documents.

22.8 Repudiation

The Borrower repudiates a Finance Document or evidences an intention to repudiate a Finance Document.

22.9 Material adverse change

Any event or circumstance occurs which, in the opinion of the Majority Lenders, has or is reasonably likely to have a Material Adverse Effect.

22.10 Effectiveness of Finance Documents

Any Finance Document is not or ceases to be in full force and effect in accordance with its terms or does not or ceases to constitute legal, valid, binding and enforceable obligations of the Borrower.

22.11 ECA Insurance Policies

Any ECA Insurance Policy is fully or partially suspended, interrupted, withdrawn, cancelled, rescinded or otherwise is not or ceases to be in full force and effect.

22.12 Authorisations

Any Authorisation necessary for the validity or enforceability of any Finance Document or the implementation or operation of the Project is not renewed, or is otherwise cancelled, revoked, suspended or amended.

22.13 Litigation

Any litigation, arbitration or administrative proceedings or investigation (other than as disclosed in writing to the Agent prior to the date of this Agreement or claims which are frivolous or vexatious and have been discharged, stayed or dismissed within 30 (thirty) days of commencement) is started or threatened to which the Borrower is or would be party which has been adversely determined, or if adversely determined, would be reasonably likely to have, in each case, a Material Adverse Effect.

22.14 Commercial Contract

- (a) The Commercial Contract is for whatever reason suspended, cancelled or terminated or otherwise is not in full force and effect.
- (b) The Commercial Contract is amended without the prior written consent of the Agent and relevant ECA(s) except for any amendments of a non-material or technical nature.
- (c) The award of the Commercial Contract to the Consortium was not made in accordance with the laws of the Borrower's Country.

22.15 **International Monetary Fund**

The Dominican Republic is not or ceases to be a member in good standing or is not or becomes ineligible to use the resources of the International Monetary Fund ("IMF") or any funding programme applicable to it is cancelled or suspended by the IMF without the agreement of the Borrower.

22.16 **Governmental action**

Any action or decision is taken either by the Borrower directly or any other Governmental Authority that:

- (a) prohibits or prevents (in whole or in part) the transactions contemplated under the Finance Documents or the performance by the Borrower of its obligations under the Finance Documents; or
- (b) imposes any reserve requirement on the flow of funds to or from the Finance Parties; or
- (c) declares payments in local currency of the Borrower's Country to be valid discharge of the Borrower's payment obligations hereunder notwithstanding that, as a result of fluctuations in exchange rates, such payment, when converted into the contractual currency no longer cover the amount of the amounts due and payable at the date of transfer of the relevant funds; or
- (d) imposes any restrictions on owning, dealing with, or transferring, gold or foreign currency which have or are reasonably likely to have an adverse effect on the ability of the Borrower to perform and comply with its payment obligations under any Finance Document.

22.17 **Acceleration**

On and at any time after the occurrence of an Event of Default which is continuing the Agent may, and shall if so directed by the Majority Lenders, by notice to the Borrower:

- (a) cancel the Total Commitments whereupon they shall immediately be cancelled;
- (b) declare that all or part of the Loans, together with accrued interest, and all other amounts accrued or outstanding under the Finance Documents be immediately due and payable, whereupon they shall become immediately due and payable; and/or
- (c) declare that all or part of the Loans be payable on demand, whereupon they shall immediately become payable on demand by the Agent on the instructions of the Majority Lenders.

**SECTION 8
CHANGES TO PARTIES**

23. CHANGES TO THE LENDERS AND ECAS

23.1 Assignments and transfers by the Lenders

Subject to this Clause 23, a Lender (the "Existing Lender") may:

- (a) assign any of its rights; or
- (b) transfer by novation any of its rights (including such as relate to that Lender's participation in each Loan) and obligations,

under any Finance Document to another bank or financial institution; to a trust, fund, insurance and reinsurance company or other entity which is regularly engaged in or established for the purpose of making, purchasing or investing in loans, securities or other financial assets; to an ECA; or to ICO (the "New Lender").

23.2 Conditions of assignment or transfer

- (a) The consent of the French ECA is required for an assignment or transfer by an Existing Lender of the French ECA Tranche. The consent of the Spanish ECA and/or ICO may be required for an assignment or transfer by an Existing Lender of the Spanish ECA Tranche. The Existing Lender is responsible for obtaining any consent of an ECA or ICO that may be required for an assignment or transfer.
- (b) The consent of the Borrower is required for an assignment or transfer by an Existing Lender, unless the assignment or transfer is made by the Existing Lender:
 - (i) on or after the Starting Point of Credit;
 - (ii) to another Lender or an Affiliate of any Lender; or
 - (iii) at a time when an Event of Default is continuing.
- (c) The consent of the Borrower to an assignment or transfer must not be unreasonably withheld or delayed. The Borrower will be deemed to have given its consent five Business Days after the Existing Lender has requested it unless consent is expressly refused by the Borrower within that time.
- (d) Subject to paragraph (h) below, an assignment will only be effective on:
 - (i) receipt by the Agent (whether in the Assignment Agreement or otherwise) of written confirmation from the New Lender (in form and substance satisfactory to the Agent) that the New Lender will assume the same obligations to the other Finance Parties as it would have been under if it was an Original Lender; and

- (ii) performance by the Agent of all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to such assignment to a New Lender, the completion of which the Agent shall promptly notify to the Existing Lender and the New Lender.
- (e) A transfer will only be effective if the procedure set out in Clause 23.5 (*Procedure for transfer*) is complied with.
- (f) If:
 - (i) the Existing Lender assigns or transfers any of its rights or obligations under the Finance Documents, and
 - (ii) as a result of circumstances existing at the date the assignment or transfer occurs, the Borrower would be obliged to make a payment to the New Lender or Existing Lender under Clause 14.2 (*Tax gross-up*) or Clause 15 (*Increased Costs*),

then the New Lender or Existing Lender is only entitled to receive payment under those Clauses to the same extent as the Existing Lender would have been if the assignment or transfer had not occurred.

- (g) Each New Lender, by executing the relevant Transfer Certificate or Assignment Agreement, confirms, for the avoidance of doubt, that the Agent has authority to execute on its behalf any amendment or waiver that has been approved by or on behalf of the requisite Lender or Lenders in accordance with this Agreement on or prior to the date on which the transfer or assignment becomes effective in accordance with this Agreement and that it is bound by that decision to the same extent as the Existing Lender would have been had it remained a Lender.
- (h) The Borrower acknowledges and agrees that if a Lender assigns any of its rights (but not any of its obligations) under the Finance Documents to an ECA in accordance with the relevant ECA Insurance Policy, in no circumstances will the ECA be deemed to have become a Lender.
- (i) Unless the relevant ECA otherwise agrees, the Agent (including any successor appointed after the resignation or removal of an Agent in accordance with Clause 25 (*Role of the Agent, the Arranger and the Reference Banks*)) shall always maintain, in its capacity as a Lender, the minimum participation of the outstanding Loans as indicated in the relevant ECA Insurance Policy.

23.3 Assignment or transfer fee

The New Lender shall, on the date upon which an assignment or transfer takes effect, pay to the Agent (for its own account) a fee of EUR 5,000, unless the New Lender is an Affiliate of a Lender. For the avoidance of doubt, for the purposes of this Clause 23.3, no ECA shall be considered a New Lender.

23.4 Limitation of responsibility of Existing Lenders

- (a) Unless expressly agreed to the contrary, an Existing Lender makes no representation or warranty and assumes no responsibility to a New Lender for:
- (i) the legality, validity, effectiveness, adequacy or enforceability of the Finance Documents, the ECA Insurance Policies or any other documents;
 - (ii) the financial condition of the Borrower;
 - (iii) the performance and observance by the Borrower of its obligations under the Finance Documents or any other documents; or
 - (iv) the accuracy of any statements (whether written or oral) made in or in connection with any Finance Document or any other document,
- and any representations or warranties implied by law are excluded.
- (b) Each New Lender confirms to the Existing Lender and the other Finance Parties that it:
- (i) has made (and shall continue to make) its own independent investigation and assessment of the financial condition and affairs of the Borrower and its related entities in connection with its participation in this Agreement and has not relied exclusively on any information provided to it by the Existing Lender in connection with any Finance Document; and
 - (ii) will continue to make its own independent appraisal of the creditworthiness of the Borrower and its related entities whilst any amount is or may be outstanding under the Finance Documents or any Commitment is in force.
- (c) Nothing in any Finance Document obliges an Existing Lender to:
- (i) accept a re-transfer or re-assignment from a New Lender of any of the rights and obligations assigned or transferred under this Clause 23; or
 - (ii) support any losses directly or indirectly incurred by the New Lender by reason of the non-performance by any Borrower of its obligations under the Finance Documents or otherwise.

23.5 Procedure for transfer

- (a) Subject to the conditions set out in Clause 23.2 (*Conditions of assignment or transfer*) a transfer is effected in accordance with paragraph (c) below when the Agent executes an otherwise duly completed Transfer Certificate delivered to it by the Existing Lender and the New Lender. The Agent shall, subject to paragraph (b) below, as soon as reasonably practicable after receipt by it of a duly completed Transfer Certificate appearing on its face to comply with the

terms of this Agreement and delivered in accordance with the terms of this Agreement, execute that Transfer Certificate.

- (b) The Agent shall only be obliged to execute a Transfer Certificate delivered to it by the Existing Lender and the New Lender once it is satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to the transfer to such New Lender.
- (c) Subject to Clause 23.9 (*Pro rata interest settlement*), on the Transfer Date:
 - (i) to the extent that in the Transfer Certificate the Existing Lender seeks to transfer by novation its rights and obligations under the Finance Documents the Borrower and the Existing Lender shall be released from further obligations towards one another under the Finance Documents and their respective rights against one another under the Finance Documents shall be cancelled (being the "**Discharged Rights and Obligations**");
 - (ii) the Borrower and the New Lender shall assume obligations towards one another and/or acquire rights against one another which differ from the Discharged Rights and Obligations only insofar as the Borrower and the New Lender have assumed and/or acquired the same in place of the Borrower and the Existing Lender;
 - (iii) the Agent, the Arranger, the New Lender and other Lenders shall acquire the same rights and assume the same obligations between themselves as they would have acquired and assumed had the New Lender been an Original Lender with the rights and/or obligations acquired or assumed by it as a result of the transfer and to that extent the Agent, the Arranger and the Existing Lender shall each be released from further obligations to each other under the Finance Documents; and
 - (iv) the New Lender shall become a Party as a "Lender".

23.6 Procedure for assignment

- (a) Subject to the conditions set out in Clause 23.2 (*Conditions of assignment or transfer*) an assignment may be effected in accordance with paragraph (c) below when the Agent executes an otherwise duly completed Assignment Agreement delivered to it by the Existing Lender and the New Lender. The Agent shall, subject to paragraph (b) below, as soon as reasonably practicable after receipt by it of a duly completed Assignment Agreement appearing on its face to comply with the terms of this Agreement and delivered in accordance with the terms of this Agreement, execute that Assignment Agreement.
- (b) The Agent shall only be obliged to execute an Assignment Agreement delivered to it by the Existing Lender and the New Lender once it is satisfied it has complied with all necessary "know your customer" or other similar checks

under all applicable laws and regulations in relation to the assignment to such New Lender.

- (c) Subject to Clause 23.9 (*Pro rata interest settlement*), on the Transfer Date:
- (i) the Existing Lender will assign absolutely to the New Lender the rights under the Finance Documents expressed to be the subject of the assignment in the Assignment Agreement;
 - (ii) the Existing Lender will be released by the Borrower and the other Finance Parties from the obligations owed by it (the "**Relevant Obligations**") and expressed to be the subject of the release in the Assignment Agreement; and
 - (iii) the New Lender shall become a Party as a "Lender" and will be bound by obligations equivalent to the Relevant Obligations.
- (d) Lenders may utilise procedures other than those set out in this Clause 23.6 to assign their rights under the Finance Documents (but not, without the consent of the Borrower or unless in accordance with Clause 23.5 (*Procedure for transfer*), to obtain a release by the Borrower from the obligations owed to the Borrower by the Lenders nor the assumption of equivalent obligations by a New Lender) **provided that** they comply with the conditions set out in Clause 23.2 (*Conditions of assignment or transfer*).

23.7 Copy of Transfer Certificate or Assignment Agreement to Borrower

The Agent shall, as soon as reasonably practicable after it has executed a Transfer Certificate or an Assignment Agreement, send to the Borrower a copy of that Transfer Certificate or Assignment Agreement.

23.8 Security over Lenders' rights

In addition to the other rights provided to Lenders under this Clause 23, each Lender may without consulting with or obtaining consent from the Borrower, at any time charge, assign or otherwise create Security in or over (whether by way of collateral or otherwise) all or any of its rights under any Finance Document to secure obligations of that Lender including, without limitation:

- (a) any charge, assignment or other Security to secure obligations to a federal reserve or central bank; and
- (b) in the case of any Lender which is a fund, any charge, assignment or other Security granted to any holders (or trustee or representatives of holders) of obligations owed, or securities issued, by that Lender as security for those obligations or securities,

except that no such charge, assignment or Security shall:

- (i) release a Lender from any of its obligations under the Finance Documents or substitute the beneficiary of the relevant charge,

assignment or Security for the Lender as a party to any of the Finance Documents; or

- (ii) require any payments to be made by the Borrower other than or in excess of, or grant to any person any more extensive rights than, those required to be made or granted to the relevant Lender under the Finance Documents.

23.9 Pro rata interest settlement

- (a) If the Agent has notified the Lenders that it is able to distribute interest payments on a "pro rata basis" to Existing Lenders and New Lenders then (in respect of any transfer pursuant to Clause 23.5 (*Procedure for transfer*) or any assignment pursuant to Clause 23.6 (*Procedure for assignment*) the Transfer Date of which, in each case, is after the date of such notification and is not on the last day of an Interest Period):
 - (i) any interest or fees in respect of the relevant participation which are expressed to accrue by reference to the lapse of time shall continue to accrue in favour of the Existing Lender up to but excluding the Transfer Date ("Accrued Amounts") and shall become due and payable to the Existing Lender (without further interest accruing on them) on the last day of the current Interest Period (or, if the Interest Period is longer than six Months, on the next of the dates which falls at six Monthly intervals after the first day of that Interest Period); and
 - (ii) the rights assigned or transferred by the Existing Lender will not include the right to the Accrued Amounts, so that, for the avoidance of doubt:
 - (A) when the Accrued Amounts become payable, those Accrued Amounts will be payable to the Existing Lender; and
 - (B) the amount payable to the New Lender on that date will be the amount which would, but for the application of this Clause 23.9, have been payable to it on that date, but after deduction of the Accrued Amounts.
- (b) In this Clause 23.9 references to "Interest Period" shall be construed to include a reference to any other period for accrual of fees.

23.10 Assignment by ECA

The Parties acknowledge and agree that each ECA may:

- (a) obtain risk/credit enhancement or reinsurance/counter-guarantee by reference to the relevant ECA Insurance Policy and/or the Finance Documents and/or the Borrower, **provided that** no such transaction will relieve such ECA of its obligations under the relevant ECA Insurance Policy; and
- (b) assign or transfer all or any of its rights, benefits and/or interests in, under or in connection with the relevant ECA Insurance Policy or the Finance

Documents, to any person with whom it enters into (or may potentially enter into) any of the transactions referred to in paragraph (a) above and to any of that person's affiliates, funds, representatives and professional advisers or, following any payment due under the relevant ECA Insurance Policy, to any other person.

24. **CHANGE TO THE BORROWER**

The Borrower may not assign any of its rights or transfer any of its rights or obligations under the Finance Documents.

**SECTION 9
THE FINANCE PARTIES**

25. ROLE OF THE AGENT, THE ARRANGER AND THE REFERENCE BANKS

25.1 Appointment of the Agent

- (a) Each of the Arranger and the Lenders appoints the Agent, to the extent permitted by law, to act as its agent under and in connection with the Finance Documents, the ECA Insurance Policies and the ICO Interest Make-up Agreement.
- (b) Each of the Arranger and the Lenders authorises the Agent to perform the duties, obligations and responsibilities and to exercise the rights, powers, authorities and discretions specifically given to the Agent under or in connection with the Finance Documents, the ECA Insurance Policies and the ICO Interest Make-up Agreement together with any other incidental rights, powers, authorities and discretions.

25.2 Instructions

- (a) The Agent shall:
 - (i) unless a contrary indication appears in a Finance Document, exercise or refrain from exercising any right, power, authority or discretion vested in it as Agent in accordance with any instructions given to it by:
 - (A) all Lenders if the relevant Finance Document stipulates the matter is an all Lender decision; and
 - (B) in all other cases, the Majority Lenders; and
 - (ii) not be liable for any act (or omission) if it acts (or refrains from acting) in accordance with paragraph (i) above.
- (b) The Agent shall be entitled to request instructions, or clarification of any instruction, from the Majority Lenders (or, if the relevant Finance Document stipulates the matter is a decision for any other Lender or group of Lenders, from that Lender or group of Lenders) as to whether, and in what manner, it should exercise or refrain from exercising any right, power, authority or discretion. The Agent may refrain from acting unless and until it receives any such instructions or clarification that it has requested.
- (c) Save in the case of decisions stipulated to be a matter for any other Lender or group of Lenders under the relevant Finance Document and unless a contrary indication appears in a Finance Document, any instructions given to the Agent by the Majority Lenders shall override any conflicting instructions given by any other Parties and will be binding on all Finance Parties.
- (d) The Agent may refrain from acting in accordance with any instructions of any Lender or group of Lenders until it has received any indemnification and/or security that it may in its discretion require (which may be greater in extent

than that contained in the Finance Documents and which may include payment in advance) for any cost, loss or liability which it may incur in complying with those instructions.

- (e) In the absence of instructions, the Agent may act (or refrain from acting) as it considers to be in the best interest of the Lenders.
- (f) The Agent is not authorised to act on behalf of a Lender (without first obtaining that Lender's consent) in any legal or arbitration proceedings relating to any Finance Document, any ECA Insurance Policy or the Interest Make-up Agreement.

25.3 Duties of the Agent

- (a) The Agent's duties under the Finance Documents, the ECA Insurance Policies and the ICO Interest Make-up Agreement are solely mechanical and administrative in nature.
- (b) Subject to paragraph (c) below, the Agent shall promptly forward to a Party the original or a copy of any document which is delivered to the Agent for that Party by any other Party.
- (c) Without prejudice to Clause 23.7 (*Copy of Transfer Certificate or Assignment Agreement to Borrower*), paragraph (b) above shall not apply to any Transfer Certificate or any Assignment Agreement.
- (d) Except where a Finance Document specifically provides otherwise, the Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.
- (e) If the Agent receives notice from a Party referring to this Agreement, describing a Default and stating that the circumstance described is a Default, it shall promptly notify the other Finance Parties.
- (f) If the Agent is aware of the non-payment of any principal, interest, commitment fee or other fee payable to a Finance Party (other than the Agent or the Arranger) under this Agreement, it shall promptly notify the other Finance Parties.
- (g) The Agent shall have only those duties, obligations and responsibilities expressly specified in the Finance Documents to which it is expressed to be a party (and no others shall be implied).

25.4 Role of the Arranger

Except as specifically provided in the Finance Documents, the Arranger has no obligations of any kind to any other Party under or in connection with any Finance Document.

25.5 No fiduciary duties

- (a) Nothing in any Finance Document constitutes the Agent or the Arranger as a trustee or fiduciary of any other person.
- (b) Neither the Agent nor the Arranger shall be bound to account to any Lender for any sum or the profit element of any sum received by it for its own account.

25.6 Business with Governmental Authorities

The Agent and the Arranger may accept deposits from, lend money to and generally engage in any kind of banking or other business with any Governmental Authority related to the Borrower or established in the Borrower's Country.

25.7 Rights and discretions

- (a) The Agent may:
 - (i) rely on any representation, communication, notice or document believed by it to be genuine, correct and appropriately authorised;
 - (ii) assume that:
 - (A) any instructions received by it from the Majority Lenders, any Lenders or any group of Lenders are duly given in accordance with the terms of the Finance Documents; and
 - (B) unless it has received notice of revocation, that those instructions have not been revoked; and
 - (iii) rely on a certificate from any person:
 - (A) as to any matter of fact or circumstance which might reasonably be expected to be within the knowledge of that person; or
 - (B) to the effect that such person approves of any particular dealing, transaction, step, action or thing,

as sufficient evidence that that is the case and, in the case of paragraph (A) above, may assume the truth and accuracy of that certificate.
- (b) The Agent may assume (unless it has received notice to the contrary in its capacity as agent for the Lenders) that:
 - (i) no Default has occurred (unless it has actual knowledge of a Default arising under Clause 22.1 (*Non-payment*)); and
 - (ii) any right, power, authority or discretion vested in any Party or any group of Lenders has not been exercised.

- (c) The Agent may, after consultation with the Lenders, engage and pay for the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts.
- (d) Without prejudice to the generality of paragraph (c) above or paragraph (e) below, the Agent may at any time engage and pay for the services of any lawyers to act as independent counsel to the Agent (and so separate from any lawyers instructed by the Lenders) if the Agent in its reasonable opinion deems this to be necessary.
- (e) The Agent may rely on the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts (whether obtained by the Agent or by any other Party) and shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of its so relying.
- (f) The Agent may act in relation to the Finance Documents, the ECA Insurance Policies and the Interest Make-up Agreement through its officers, employees and agents.
- (g) Unless a Finance Document expressly provides otherwise the Agent may disclose to any other Party any information it reasonably believes it has received as agent under this Agreement.
- (h) Without prejudice to the generality of paragraph (g) above, the Agent:
 - (i) may disclose; and
 - (ii) on the written request of the Borrower or the Majority Lenders shall, as soon as reasonably practicable, disclose,

the identity of a Defaulting Lender to the Borrower and to the other Finance Parties.
- (i) Notwithstanding any other provision of any Finance Document to the contrary, neither the Agent nor the Arranger is obliged to do or omit to do anything if it would, or might in its reasonable opinion, constitute a breach of any law or regulation or a breach of a fiduciary duty or duty of confidentiality.
- (j) Notwithstanding any provision of any Finance Document to the contrary, the Agent is not obliged to expend or risk its own funds or otherwise incur any financial liability in the performance of its duties, obligations or responsibilities or the exercise of any right, power, authority or discretion if it has grounds for believing the repayment of such funds or adequate indemnity against, or security for, such risk or liability is not reasonably assured to it.

25.8 Responsibility for documentation

Neither the Agent nor the Arranger is responsible or liable for:

- (a) the adequacy, accuracy or completeness of any information (whether oral or written) supplied by the Agent, the Arranger, the Borrower or any other person

in or in connection with any Finance Document, any ECA Insurance Policy, the ICO Interest Make-up Agreement or the transactions contemplated in the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document, any ECA Insurance Policy or the ICO Interest Make-up Agreement;

- (b) the legality, validity, effectiveness, adequacy or enforceability of any Finance Document, any ECA Insurance Policy, the ICO Interest Make-up Agreement or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document, any ECA Insurance Policy or the ICO Interest Make-up Agreement; or
- (c) any determination as to whether any information provided or to be provided to any Finance Party is non-public information the use of which may be regulated or prohibited by applicable law or regulation relating to insider dealing or otherwise.

25.9 No duty to monitor

The Agent shall not be bound to enquire:

- (a) whether or not any Default has occurred;
- (b) as to the performance, default or any breach by any Party of its obligations under any Finance Document; or
- (c) whether any other event specified in any Finance Document has occurred.

25.10 Exclusion of liability

- (a) Without limiting paragraph (b) below (and without prejudice to any other provision of any Finance Document excluding or limiting the liability of the Agent), the Agent will not be liable for:
 - (i) any damages, costs or losses to any person, any diminution in value, or any liability whatsoever arising as a result of taking or not taking any action under or in connection with any Finance Document, any ECA Insurance Policy or the ICO Interest Make-up Agreement, unless directly caused by its gross negligence or wilful misconduct;
 - (ii) exercising, or not exercising, any right, power, authority or discretion given to it by, or in connection with, any Finance Document, any ECA Insurance Policy, the ICO Interest Make-up Agreement or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with, any Finance Document, other than by reason of its gross negligence or wilful misconduct; or
 - (iii) without prejudice to the generality of paragraphs (i) and (ii) above, any damages, costs or losses to any person, any diminution in value or any liability whatsoever (including, without limitation, for negligence or

any other category of liability whatsoever but not including any claim based on the fraud of the Agent) arising as a result of:

- (A) any act, event or circumstance not reasonably within its control; or
- (B) the general risks of investment in, or the holding of assets in, any jurisdiction,

including (in each case and without limitation) such damages, costs, losses, diminution in value or liability arising as a result of: nationalisation, expropriation or other governmental actions; any regulation, currency restriction, devaluation or fluctuation; market conditions affecting the execution or settlement of transactions or the value of assets (including any Disruption Event); breakdown, failure or malfunction of any third party transport, telecommunications, computer services or systems; natural disasters or acts of God; war, terrorism, insurrection or revolution; or strikes or industrial action.

- (b) No Party (other than the Agent) may take any proceedings against any officer, employee or agent of the Agent in respect of any claim it might have against the Agent or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Finance Document, any ECA Insurance Policy or the ICO Interest Make-up Agreement and any officer, employee or agent of the Agent may rely on this Clause subject to Clause 1.4 (*Third party rights*) and the provisions of the Third Parties Act.
- (c) The Agent will not be liable for any delay (or any related consequences) in crediting an account with an amount required under the Finance Documents to be paid by the Agent if the Agent has taken all necessary steps as soon as reasonably practicable to comply with the regulations or operating procedures of any recognised clearing or settlement system used by the Agent for that purpose.
- (d) Nothing in this Agreement shall oblige the Agent or the Arranger to carry out:
 - (i) any "know your customer" or other checks in relation to any person; or
 - (ii) any check on the extent to which any transaction contemplated by this Agreement might be unlawful for any Lender,

on behalf of any Lender and each Lender confirms to the Agent and the Arranger that it is solely responsible for any such checks it is required to carry out and that it may not rely on any statement in relation to such checks made by the Agent or the Arranger.

- (e) Without prejudice to any provision of any Finance Document excluding or limiting the Agent's liability, any liability of the Agent arising under or in connection with any Finance Document shall be limited to the amount of actual loss which has been suffered (as determined by reference to the date of default of the Agent or, if later, the date on which the loss arises as a result of

such default) but without reference to any special conditions or circumstances known to the Agent at any time which increase the amount of that loss. In no event shall the Agent be liable for any loss of profits, goodwill, reputation, business opportunity or anticipated saving, or for special, punitive, indirect or consequential damages, whether or not the Agent has been advised of the possibility of such loss or damages.

- (f) The Agent will not be liable for any termination of any ECA Insurance Policy or the ICO Interest Make-up Agreement, except where such termination is caused by the Agent's gross negligence or wilful misconduct.

25.11 Lenders' indemnity to the Agent

- (a) Each Lender shall (in proportion to its share of the Total Commitments or, if the Total Commitments are then zero, to its share of the Total Commitments immediately prior to their reduction to zero) indemnify the Agent, within 5 (five) Business Days of demand, against any cost, loss or liability including without limitation for negligence or any other category of liability whatsoever incurred by the Agent (otherwise than by reason of the Agent's gross negligence or wilful misconduct) (or in the case of any cost, loss or liability pursuant to Clause 28.9 (*Disruption to payment systems etc*) notwithstanding the Agent's negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Agent) in acting as Agent under the Finance Documents (unless the Agent has been reimbursed by the Borrower pursuant to a Finance Document).
- (b) Subject to paragraph (c) below, the Borrower shall immediately on demand reimburse any Lender for any payment that Lenders makes to the Agent pursuant to paragraph (a) above.
- (c) Paragraph (b) above shall not apply to the extent that the indemnity payment in respect of which a Lenders claims reimbursement relates to a liability of the Agent to the Borrower.

25.12 Resignation of the Agent

- (a) The Agent may (with the prior written consent of the ECAs and ICO) resign and appoint one of its Affiliates as successor by giving notice to the Lenders and the Borrower.
- (b) Alternatively the Agent may (with the prior written consent of the ECAs and ICO) resign by giving 30 days' notice to the Lenders and the Borrower, in which case the Majority Lenders (after consultation with the Borrower) may appoint a successor Agent.
- (c) If the Majority Lenders have not appointed a successor Agent in accordance with paragraph (b) above within 20 (twenty) days after notice of resignation was given, the retiring Agent (after consultation with the Borrower) may appoint a successor Agent.

- (d) The appointment of a successor Agent pursuant to paragraphs (a) to (c) above shall be subject to the Lenders being satisfied that the successor Agent has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to that appointment.
- (e) If the Agent wishes to resign because (acting reasonably) it has concluded that it is no longer appropriate for it to remain as agent and the Agent is entitled to appoint a successor Agent under paragraph (c) above, the Agent may (if it concludes (acting reasonably) that it is necessary to do so in order to persuade the proposed successor Agent to become a party to this Agreement as Agent and subject to the Lenders' prior consent, not to be unreasonably withheld) agree with the proposed successor Agent amendments to this Clause 25 and any other term of this Agreement dealing with the rights or obligations of the Agent consistent with then current market practice for the appointment and protection of corporate trustees together with any reasonable amendments to the agency fee payable under this Agreement which are consistent with the successor Agent's normal fee rates and those amendments will bind the Parties.
- (f) The retiring Agent shall, at its own cost, make available to the successor Agent such documents and records and provide such assistance as the successor Agent may reasonably request for the purposes of performing its functions as Agent under the Finance Documents.
- (g) The Agent's resignation notice shall only take effect upon the appointment of a successor.
- (h) Upon the appointment of a successor, the retiring Agent shall be discharged from any further obligation in respect of the Finance Documents (other than its obligations under paragraph (f) above) but shall remain entitled to the benefit of Clause 16.3 (*Indemnity to the Agent*) and this Clause 25 (and any agency fees for the account of the retiring Agent shall cease to accrue from (and shall be payable on) that date). Any successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original Party.
- (i) After consultation with the Borrower, the Majority Lenders may, by notice to the Agent, require it to resign in accordance with paragraph (b) above. In this event, the Agent shall resign in accordance with paragraph (b) above.
- (j) The Agent shall resign in accordance with paragraph (b) above (and, to the extent applicable, shall use reasonable endeavours to appoint a successor Agent pursuant to paragraph (c) above) if on or after the date which is 3 (three) Months before the earliest FATCA Application Date relating to any payment to the Agent under the Finance Documents, either:
 - (i) the Agent fails to respond to a request under Clause 14.7 (*FATCA Information*) and a Lender reasonably believes that the Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date;

- (ii) the information supplied by the Agent pursuant to Clause 14.7 (*FATCA Information*) indicates that the Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date; or
- (iii) the Agent notifies the Borrower and the Lenders that the Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date;

and (in each case) a Lender reasonably believes that a Party will be required to make a FATCA Deduction that would not be required if the Agent were a FATCA Exempt Party, and that Lender, by notice to the Agent, requires it to resign.

25.13 Confidentiality

- (a) In acting as agent for the Finance Parties, the Agent shall be regarded as acting through its agency division which shall be treated as a separate entity from any other of its divisions or departments.
- (b) If information is received by another division or department of the Agent, it may be treated as confidential to that division or department and the Agent shall not be deemed to have notice of it.

25.14 Relationship with the Lenders

- (a) Subject to Clause 23.9 (*Pro rata interest settlement*), the Agent may treat the person shown in its records as Lender at the opening of business (in the place of the Agent's principal office as notified to the Finance Parties from time to time) as the Lender acting through its Facility Office:
 - (i) entitled to or liable for any payment due under any Finance Document on that day; and
 - (ii) entitled to receive and act upon any notice, request, document or communication or make any decision or determination under any Finance Document made or delivered on that day,

unless it has received not less than 5 (five) Business Days prior notice from that Lender to the contrary in accordance with the terms of this Agreement.

- (b) Any Lender may by notice to the Agent appoint a person to receive on its behalf all notices, communications, information and documents to be made or despatched to that Lender under the Finance Documents. Such notice shall contain the address and (where communication by electronic mail or other electronic means is permitted under Clause 30.5 (*Electronic communication*)) electronic mail address and/or any other information required to enable the transmission of information by that means (and, in each case, the department or officer, if any, for whose attention communication is to be made) and be treated as a notification of a substitute address electronic mail address (or such other information), department and officer by that Lender for the purposes of Clause 30.2 (*Addresses*) and paragraph (a)(ii) of Clause 30.5 (*Electronic*

communication) and the Agent shall be entitled to treat such person as the person entitled to receive all such notices, communications, information and documents as though that person were that Lender.

25.15 Credit appraisal by the Lenders

Without affecting the responsibility of the Borrower for information supplied by it or on its behalf in connection with any Finance Document, any ECA Insurance Policy or the ICO Interest Make-up Agreement, each Lender confirms to the Agent and the Arranger that it has been, and will continue to be, solely responsible for making its own independent appraisal and investigation of all risks arising under or in connection with any Finance Document including but not limited to:

- (a) the financial condition, status and nature of the Borrower;
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Finance Document, any ECA Insurance Policy, the ICO Interest Make-up Agreement and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document, any ECA Insurance Policy or the ICO Interest Make-up Agreement;
- (c) whether that Lender has recourse, and the nature and extent of that recourse, against any Party or any of its respective assets under or in connection with any Finance Document, any ECA Insurance Policy or the ICO Interest Make-up Agreement, the transactions contemplated by the Finance Documents, any ECA Insurance Policy, the ICO Interest Make-up Agreement or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document, any ECA Insurance Policy or the ICO Interest Make-up Agreement; and
- (d) the adequacy, accuracy or completeness of any information provided by the Agent, any Party or by any other person under or in connection with any Finance Document, any ECA Insurance Policy, the ICO Interest Make-up Agreement, the transactions contemplated by any Finance Document, any ECA Insurance Policy, the ICO Interest Make-up Agreement or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document, any ECA Insurance Policy or the ICO Interest Make-up Agreement.

25.16 Agent's management time

Any amount payable to the Agent under Clause 16.3 (*Indemnity to the Agent*), Clause 18 (*Costs and expenses*) and Clause 25.11 (*Lenders' indemnity to the Agent*) shall include the cost of utilising the Agent's management time or other resources and will be calculated on the basis of such reasonable daily or hourly rates as the Agent may notify to the Borrower and the Lenders, and is in addition to any fee paid or payable to the Agent under Clause 12 (*Fees*).

25.17 Deduction from amounts payable by the Agent

If any Party owes an amount to the Agent under the Finance Documents the Agent may, after giving notice to that Party, deduct an amount not exceeding that amount from any payment to that Party which the Agent would otherwise be obliged to make under the Finance Documents and apply the amount deducted in or towards satisfaction of the amount owed. For the purposes of the Finance Documents that Party shall be regarded as having received any amount so deducted.

25.18 Role of Reference Banks

- (a) No Reference Bank is under any obligation to provide a quotation or any other information to the Agent.
- (b) No Reference Bank will be liable for any action taken by it under or in connection with any Finance Document, or for any Reference Bank Quotation, unless directly caused by its gross negligence or wilful misconduct.
- (c) No Party (other than the relevant Reference Bank) may take any proceedings against any officer, employee or agent of any Reference Bank in respect of any claim it might have against that Reference Bank or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Finance Document, or to any Reference Bank Quotation, and any officer, employee or agent of each Reference Bank may rely on this Clause 25.18 subject to Clause 1.4 (*Third Party Rights*) and the provisions of the Third Parties Act.

25.19 Third party Reference Banks

A Reference Bank which is not a Party may rely on Clause 25.18 (*Role of Reference Banks*), Clause 34.3 (*Other exceptions*) and Clause 36 (*Confidentiality of Reference Bank Quotations*) subject to Clause 1.4 (*Third Party Rights*) and the provisions of the Third Parties Act.

26. CONDUCT OF BUSINESS BY THE FINANCE PARTIES

No provision of this Agreement will:

- (a) interfere with the right of any Finance Party to arrange its affairs (tax or otherwise) in whatever manner it thinks fit;
- (b) oblige any Finance Party to investigate or claim any credit, relief, remission or repayment available to it or the extent, order and manner of any claim; or
- (c) oblige any Finance Party to disclose any information relating to its affairs (tax or otherwise) or any computations in respect of Tax, including in connection with any provision of Clause 14 (*Tax gross-up and indemnities*).

27. SHARING AMONG THE FINANCE PARTIES

27.1 Payments to Finance Parties

If a Finance Party (a "**Recovering Finance Party**") receives or recovers any amount from the Borrower other than in accordance with Clause 28 (*Payment mechanics*) (a "**Recovered Amount**") and applies that amount to a payment due under the Finance Documents then:

- (a) the Recovering Finance Party shall, within 3 (three) Business Days, notify details of the receipt or recovery to the Agent;
- (b) the Agent shall determine whether the receipt or recovery is in excess of the amount the Recovering Finance Party would have been paid had the receipt or recovery been received or made by the Agent and distributed in accordance with Clause 28 (*Payment mechanics*), without taking account of any Tax which would be imposed on the Agent in relation to the receipt, recovery or distribution; and
- (c) the Recovering Finance Party shall, within 3 (three) Business Days of demand by the Agent, pay to the Agent an amount (the "**Sharing Payment**") equal to such receipt or recovery less any amount which the Agent determines may be retained by the Recovering Finance Party as its share of any payment to be made, in accordance with Clause 28.5 (*Partial payments*).

27.2 Redistribution of payments

The Agent shall treat the Sharing Payment as if it had been paid by the Borrower and distribute it between the Finance Parties (other than the Recovering Finance Party) (the "**Sharing Finance Parties**") in accordance with Clause 28.5 (*Partial payments*) towards the obligations of that Borrower to the Sharing Finance Parties.

27.3 Recovering Finance Party's rights

On a distribution by the Agent under Clause 27.2 (*Redistribution of payments*) of a payment received by a Recovering Finance Party from the Borrower, as between the Borrower and the Recovering Finance Party, an amount of the Recovered Amount equal to the Sharing Payment will be treated as not having been paid by the Borrower.

27.4 Reversal of redistribution

If any part of the Sharing Payment received or recovered by a Recovering Finance Party becomes repayable and is repaid by that Recovering Finance Party, then:

- (a) each Sharing Finance Party shall, upon request of the Agent, pay to the Agent for the account of that Recovering Finance Party an amount equal to the appropriate part of its share of the Sharing Payment (together with an amount as is necessary to reimburse that Recovering Finance Party for its proportion of any interest on the Sharing Payment which that Recovering Finance Party is required to pay) (the "**Redistributed Amount**"); and

- (b) as between the Borrower and each relevant Sharing Finance Party, an amount equal to the relevant Redistributed Amount will be treated as not having been paid by the Borrower.

27.5 Exceptions

- (a) This Clause 27 shall not apply to the extent that the Recovering Finance Party would not, after making any payment pursuant to this Clause, have a valid and enforceable claim against the Borrower.
- (b) A Recovering Finance Party is not obliged to share with any other Finance Party any amount which the Recovering Finance Party has received or recovered as a result of taking legal or arbitration proceedings, if:
 - (i) it notified that other Finance Party of the legal or arbitration proceedings; and
 - (ii) that other Finance Party had an opportunity to participate in those legal or arbitration proceedings but did not do so as soon as reasonably practicable having received notice and did not take separate legal or arbitration proceedings.

**SECTION 10
ADMINISTRATION**

28. PAYMENT MECHANICS

28.1 Payments to the Agent

- (a) On each date on which the Borrower or a Lender is required to make a payment under a Finance Document, the Borrower or Lender shall make the same available to the Agent (unless a contrary indication appears in a Finance Document) for value on the due date at the time and in such funds specified by the Agent as being customary at the time for settlement of transactions in the relevant currency in the place of payment.
- (b) Payment shall be made directly through TARGET, using IBAN ES350049 549336 2919999999 if necessary, to:

Beneficiary: Banco Santander S.A.

Swift Code: BSCHEM33

Ref: 1797-Eurodom2

or such other account in the principal financial centre in such Participating Member State or London, and with such bank as the Agent, in each case, specifies.

28.2 Distributions by the Agent

Each payment received by the Agent under the Finance Documents for another Party shall, subject to Clause 28.3 (*Distributions to the Borrower*) and Clause 28.4 (*Clawback and pre-funding*), be made available by the Agent as soon as practicable after receipt to the Party entitled to receive payment in accordance with this Agreement (in the case of a Lender, for the account of its Facility Office), to such account as that Party may notify to the Agent by not less than 5 (five) Business Days' notice with a bank specified by that Party in the principal financial centre of a Participating Member State or London, as specified by that Party).

28.3 Distributions to the Borrower

The Agent may (with the consent of the Borrower or in accordance with Clause 29 (*Set-off*)) apply any amount received by it for that Borrower in or towards payment (on the date and in the currency and funds of receipt) of any amount due from that Borrower under the Finance Documents or in or towards purchase of any amount of any currency to be so applied.

28.4 Clawback and pre-funding

Where a sum is to be paid to the Agent under the Finance Documents for another Party, the Agent is not obliged to pay that sum to that other Party (or to enter into or perform any related exchange contract) until it has been able to establish to its satisfaction that it has actually received that sum.

28.5 Partial payments

- (a) If the Agent receives a payment that is insufficient to discharge all the amounts then due and payable by the Borrower under the Finance Documents, the Agent shall apply that payment towards the obligations of that Borrower under the Finance Documents in the following order:
- (i) *first*, in or towards payment *pro rata* of any unpaid amount owing to the Agent (for its own account or on account of costs and expenses and other amounts payable to an ECA or ICO under an ECA Insurance Policy or the ICO Interest Make-up Agreement) or the Arranger under the Finance Documents;
 - (ii) *secondly*, in or towards payment *pro rata* of any accrued interest, fee or commission due but unpaid under this Agreement;
 - (iii) *thirdly*, in or towards payment *pro rata* of any principal due but unpaid under this Agreement; and
 - (iv) *fourthly*, in or towards payment *pro rata* of any other sum due but unpaid under the Finance Documents.
- (b) The Agent shall, if so directed by the Majority Lenders, vary the order set out in paragraphs (a)(ii) to (iv) above.
- (c) Paragraphs (a) and (b) above will override any appropriation made by the Borrower.

28.6 No set-off by Borrower

All payments to be made by the Borrower under the Finance Documents shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim.

28.7 Business Days

- (a) Any payment under the Finance Documents which is due to be made on a day that is not a Business Day shall be made on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not).
- (b) During any extension of the due date for payment of any principal or Unpaid Sum under this Agreement interest is payable on the principal or Unpaid Sum at the rate payable on the original due date.

28.8 Currency of account

- (a) Subject to paragraphs (b) to (d) below, euro is the currency of account and payment for any sum due from the Borrower under any Finance Document.
- (b) A repayment of a Loan or Unpaid Sum or a part of a Loan or Unpaid Sum shall be made in the currency in which that Loan or Unpaid Sum is denominated, pursuant to this Agreement, on its due date.

- (c) Each payment of interest shall be made in the currency in which the sum in respect of which the interest is payable was denominated, pursuant to this Agreement, when that interest accrued.
- (d) Each payment in respect of costs, expenses or Taxes shall be made in the currency in which the costs, expenses or Taxes are incurred.
- (e) Any amount expressed to be payable in a currency other than euro shall be paid in that other currency.

28.9 Disruption to payment systems etc.

If either the Agent determines (in its discretion) that a Disruption Event has occurred or the Agent is notified by the Borrower that a Disruption Event has occurred:

- (a) the Agent may, and shall if requested to do so by the Borrower, consult with the Borrower with a view to agreeing with the Borrower such changes to the operation or administration of the Facility as the Agent may deem necessary in the circumstances;
- (b) the Agent shall not be obliged to consult with the Borrower in relation to any changes mentioned in paragraph (a) if, in its opinion, it is not practicable to do so in the circumstances and, in any event, shall have no obligation to agree to such changes;
- (c) the Agent may consult with the Finance Parties in relation to any changes mentioned in paragraph (a) but shall not be obliged to do so if, in its opinion, it is not practicable to do so in the circumstances;
- (d) any such changes agreed upon by the Agent and the Borrower shall (whether or not it is finally determined that a Disruption Event has occurred) be binding upon the Parties as an amendment to (or, as the case may be, waiver of) the terms of the Finance Documents notwithstanding the provisions of Clause 34 (*Amendments and Waivers*);
- (e) the Agent shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever (including, without limitation for negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Agent) arising as a result of its taking, or failing to take, any actions pursuant to or in connection with this Clause 28.9; and
- (f) the Agent shall notify the Finance Parties of all changes agreed pursuant to paragraph (d) above.

29. SET-OFF

A Finance Party may set off any matured obligation due from the Borrower under the Finance Documents (to the extent beneficially owned by that Finance Party) against any matured obligation owed by that Finance Party to the Borrower, regardless of the place of payment, booking branch or currency of either obligation. If the obligations

are in different currencies, the Finance Party may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

30. NOTICES

30.1 Communications in writing

Any communication to be made under or in connection with the Finance Documents shall be made in writing and, unless otherwise stated, may be made by letter.

30.2 Addresses

The address (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with the Finance Documents is:

- (a) in the case of the Borrower, that identified with its name below;
- (b) in the case of each Lender, that notified in writing to the Agent on or prior to the date on which it becomes a Party; and
- (c) in the case of the Agent, that identified with its name below,

or any substitute address, or department or officer as the Party may notify to the Agent (or the Agent may notify to the other Parties, if a change is made by the Agent) by not less than 5 (five) Business Days' notice.

30.3 Delivery

- (a) Any communication or document made or delivered by one person to another under or in connection with the Finance Documents will only be effective:
 - (i) if by way of letter, when it has been left at the relevant address or 5 (five) Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address; and
 - (ii) if a particular department or officer is specified as part of its address details provided under Clause 30.2 (*Addresses*), if addressed to that department or officer.
- (b) Any communication or document to be made or delivered to the Agent will be effective only when actually received by the Agent and then only if it is expressly marked for the attention of the department or officer identified with the Agent's signature below (or any substitute department or officer as the Agent shall specify for this purpose).
- (c) All notices from or to the Borrower shall be sent through the Agent.
- (d) Any communication or document which becomes effective, in accordance with paragraphs (a) to (d) above, after 5.00 p.m. in the place of receipt shall be deemed only to become effective on the following day.

30.4 Notification of address

Promptly upon changing its address, the Agent shall notify the other Parties.

30.5 Electronic communication

- (a) Any communication to be made between any two Parties under or in connection with the Finance Documents may be made by electronic mail or other electronic means to the extent that those two Parties agree that, unless and until notified to the contrary, this is to be an accepted form of communication and if those two Parties:
 - (i) notify each other in writing of their electronic mail address and/or any other information required to enable the sending and receipt of information by that means; and
 - (ii) notify each other of any change to their address or any other such information supplied by them by not less than 5 (five) Business Days' notice.
- (b) Any electronic communication made between those two Parties will be effective only when actually received in readable form and in the case of any electronic communication made by a Party to the Agent only if it is addressed in such a manner as the Agent shall specify for this purpose.
- (c) Any electronic communication which becomes effective, in accordance with paragraph (b) above, after 5.00 p.m. in the place of receipt shall be deemed only to become effective on the following day.

30.6 English language

- (a) Any notice given under or in connection with any Finance Document must be in English.
- (b) All other documents provided under or in connection with any Finance Document must be:
 - (i) in English; or
 - (ii) if not in English, and if so required by the Agent, accompanied by a certified English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

31. CALCULATIONS AND CERTIFICATES

31.1 Accounts

- (a) In any litigation or arbitration proceedings arising out of or in connection with a Finance Document, the entries made in the accounts maintained by a Finance Party are *prima facie* evidence of the matters to which they relate.

- (b) Any failure by a Finance Party to maintain any account or any error therein shall not affect the obligation of the Borrower to comply with its payment and other obligations under and in accordance with the Finance Documents.

31.2 Certificates and Determinations

Any certification or determination by a Finance Party of a rate or amount under any Finance Document is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

31.3 Day count convention

Any interest, commission or fee accruing under a Finance Document will accrue from day to day and is calculated on the basis of the actual number of days elapsed and a year of 360 days or, in any case where the practice in the Relevant Interbank Market differs, in accordance with that market practice.

32. PARTIAL INVALIDITY

If, at any time, any provision of a Finance Document is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

33. REMEDIES AND WAIVERS

No failure to exercise, nor any delay in exercising, on the part of any Finance Party, any right or remedy under a Finance Document shall operate as a waiver of any such right or remedy or constitute an election to affirm any of the Finance Documents. No waiver or election to affirm any Finance Document on the part of any Finance Party shall be effective unless in writing. No single or partial exercise of any right or remedy shall prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in each Finance Document are cumulative and not exclusive of any rights or remedies provided by law.

34. AMENDMENTS AND WAIVERS

34.1 Required consents

- (a) Subject to Clause 34.2 (*All Lender matters*) and Clause 34.3 (*Other exceptions*) any term of the Finance Documents may be amended or waived only with the consent of the Majority Lenders and the Borrower and any such amendment or waiver will be binding on all Parties.
- (b) The Agent may effect, on behalf of any Finance Party, any amendment or waiver permitted by this Clause.

34.2 All Lender matters

An amendment or waiver of any term of any Finance Document that has the effect of changing or which relates to:

- (a) the definition of "Majority Lenders" in Clause 1.1 (*Definitions*);
- (b) an extension to the date of payment of any amount under the Finance Documents;
- (c) a reduction in the French ECA Tranche Margin or a reduction in the amount of any payment of principal, interest, fees or commission payable;
- (d) an increase in any Commitment, an extension of the Availability Period or any requirement that a cancellation of Commitments reduces the Commitments of the Lenders rateably under a Tranche;
- (e) a change to the Borrower;
- (f) any provision which expressly requires the consent of all the Lenders or establishes a right for each Lender;
- (g) Clause 2.2 (*Finance Parties' rights and obligations*), Clause 3 (*Purpose*), Clause 6 (*Repayment*), Clause 7.8 (*Application of prepayments*), Clause 18 (*Costs and Expenses*), Clause 23 (*Changes to the Lenders and ECAs*), Clause 27 (*Sharing among the Finance Parties*), this Clause 34, Clause 38 (*Governing law*) or Clause 39.1 (*Jurisdiction*);
- (h) a change in currency of payment under the Finance Documents; or
- (i) the validity or enforceability of any ECA Insurance Policy or the ICO Interest Make-up Agreement,

shall not be made without the prior consent of all the Lenders.

34.3 Other exceptions

- (a) An amendment or waiver which relates to the rights or obligations of the Agent or the Arranger (each in their capacity as such) may not be effected without the consent of the Agent or, as the case may be, the Arranger.
- (b) Any amendment or waiver which relates to Clause 8 (*ECA Subrogation and Reimbursement*) and/or the rights of the ECAs under this Agreement, including under Clause 16 (*Other indemnities*), Clause 18 (*Costs and expenses*) and 36.2 (*Disclosure of Confidential Information*), may not be affected without the consent of the ECAs.

34.4 Voting rights

- (a) The Parties hereby acknowledge that, pursuant to the terms of the ECA Insurance Policies, the ECAs shall be entitled to direct the manner in which

voting rights or any other rights, powers, authorities and discretions held by the Lenders with respect to a Tranche, are exercised.

- (b) To the extent required by any ECA Insurance Policy, the Agent shall seek the instructions of the relevant ECA with respect to any matter on which any Lender is entitled to vote or exercise any right, power, authority or discretion (whether under this Agreement, any other Finance Document or any related agreements). The Agent shall notify the Lenders of an ECA's instructions in respect thereof.
- (c) The Parties hereby acknowledge that the granting of the consent by the Lenders in accordance with Clause 34 (*Amendments and waivers*) to certain amendments and waivers to the terms of the Finance Documents may require that the Agent seek the prior consent of ICO under the ICO Interest Make-up Agreement.

34.5 Disenfranchisement of Defaulting Lenders

- (a) For so long as a Defaulting Lender has any Available Commitment, in ascertaining:
 - (i) the Majority Lenders; or
 - (ii) whether:
 - (A) any given percentage (including, for the avoidance of doubt, unanimity) of the Total Commitments under the Facility; or
 - (B) the agreement of any specified group of Lenders,has been obtained to approve any request for a consent, waiver, amendment or other vote of Lenders under the Finance Documents, that Defaulting Lender's Commitments under the relevant Tranche(s) will be reduced by the amount of its Available Commitments under the relevant Tranche(s) and, to the extent that that reduction results in that Defaulting Lender's Total Commitments being zero, that Defaulting Lender shall be deemed not to be a Lender for the purposes of paragraphs (i) and (ii) above.
- (b) For the purposes of this Clause 34.5, the Agent may assume that the following Lenders are Defaulting Lenders:
 - (i) any Lender which has notified the Agent that it has become a Defaulting Lender;
 - (ii) any Lender in relation to which it is aware that any of the events or circumstances referred to in the definition of "Defaulting Lender" has occurred,

unless it has received notice to the contrary from the Lender concerned (together with any supporting evidence reasonably requested by the Agent) or

the Agent is otherwise aware that the Lender has ceased to be a Defaulting Lender.

34.6 Replacement of a Defaulting Lender

- (a) The Borrower may, at any time a Lender has become and continues to be a Defaulting Lender, by giving 3 (three) Business Days' prior written notice to the Agent and such Lender, replace such Lender by requiring such Lender to (and, to the extent permitted by law, such Lender shall) transfer pursuant to Clause 23 (*Changes to the Lenders and ECAs*) all (and not part only) of its rights and obligations under this Agreement to a Lender or other bank, financial institution, trust, fund or other entity (a "**Replacement Lender**") selected by the Borrower, which confirms its willingness to assume and does assume all the obligations, or all the relevant obligations, of the transferring Lender in accordance with Clause 23 (*Changes to the Lenders and ECAs*) for a purchase price in cash payable at the time of transfer which is either:
- (i) in an amount equal to the outstanding principal amount of such Lender's participation in the outstanding Utilisations and all accrued interest and/or fees (to the extent that the Agent has not given a notification under Clause 23.9 (*Pro rata interest settlement*)), Break Costs and other amounts payable in relation thereto under the Finance Documents; or
 - (ii) in an amount agreed between that Defaulting Lender, the Replacement Lender and the Borrower.
- (b) Any transfer of rights and obligations of a Defaulting Lender pursuant to this Clause 34.6 shall be subject to the following conditions:
- (i) the Borrower shall have no right to replace the Agent;
 - (ii) neither the Agent nor the Defaulting Lender shall have any obligation to the Borrower to find a Replacement Lender;
 - (iii) the transfer must take place no later than 30 (thirty) days after the notice referred to in paragraph (a) above;
 - (iv) in no event shall the Defaulting Lender be required to pay or surrender to the Replacement Lender any of the fees received by the Defaulting Lender pursuant to the Finance Documents; and
 - (v) the Defaulting Lender shall only be obliged to transfer its rights and obligations pursuant to paragraph (a) above once it is satisfied that it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to that transfer to the Replacement Lender.
- (c) The Defaulting Lender shall perform the checks described in paragraph (b)(v) above as soon as reasonably practicable following delivery of a notice referred to in paragraph (a) above and shall notify the Agent and the Borrower when it is satisfied that it has complied with those checks.

35. CONFIDENTIALITY

35.1 Confidential Information

- (a) Each Finance Party agrees to keep all Confidential Information confidential and not to disclose it to anyone, save to the extent permitted by Clause 35.2 (*Disclosure of Confidential Information*), Clause 35.3 (*Disclosure of risk*) and Clause 35.4 (*Disclosure to numbering service providers*), and to ensure that all Confidential Information is protected with security measures and a degree of care that would apply to its own confidential information.
- (b) The Borrower shall not disclose any information arising out of or in connection with the Finance Documents and/or the Project in relation to a Finance Party unless the prior consent of that Finance Party is obtained, it remaining understood that this paragraph (b) shall not apply to information whose disclosure is:
 - (i) required by law or by any applicable governmental or other regulatory authority; or
 - (ii) made to the employees or professional advisers of the Borrower for the purposes of the Facility, who have been made aware of, and agree to be bound by, the obligations under this paragraph or are in any event subject to confidentiality obligations as a matter of law or professional practice.
- (c) Each Finance Party shall not disclose any information arising out of or in connection with the Finance Documents and/or the Project in relation to another Finance Party unless the prior consent of that Finance Party is obtained, it remaining understood that this paragraph (c) shall not apply to information whose disclosure is:
 - (i) required by law or by any applicable governmental or other regulatory authority; or
 - (ii) made to the employees or professional advisers of the relevant Finance Party for the purposes of the Facility, who have been made aware of, and agree to be bound by, the obligations under this paragraph or are in any event subject to confidentiality obligations as a matter of law or professional practice.

35.2 Disclosure of Confidential Information

Any Finance Party may disclose:

- (a) to any of its Affiliates and Related Funds and any of its or their officers, directors, employees, professional advisers, auditors, partners and Representatives such Confidential Information as that Finance Party shall consider appropriate if any person to whom the Confidential Information is to be given pursuant to this paragraph (a) is informed in writing of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no such requirement

to so inform if the recipient is subject to professional obligations to maintain the confidentiality of the information or is otherwise bound by requirements of confidentiality in relation to the Confidential Information;

(b) to any person:

- (i) to (or through) whom it assigns or transfers (or may potentially assign or transfer) all or any of its rights and/or obligations under one or more Finance Documents or which succeeds (or which may potentially succeed) it as Agent and, in each case, to any of that person's Affiliates, Related Funds, Representatives and professional advisers;
- (ii) with (or through) whom it enters into (or may potentially enter into), whether directly or indirectly, any sub-participation in relation to, or any other transaction under which payments are to be made or may be made by reference to, one or more Finance Documents and/or the Borrower and to any of that person's Affiliates, Related Funds, Representatives and professional advisers;
- (iii) appointed by any Finance Party or by a person to whom paragraph (b)(i) or (b)(ii) above applies to receive communications, notices, information or documents delivered pursuant to the Finance Documents on its behalf (including, without limitation, any person appointed under paragraph (c) of Clause 25.14 (*Relationship with the Lenders*));
- (iv) who invests in or otherwise finances (or may potentially invest in or otherwise finance), directly or indirectly, any transaction referred to in paragraph (b)(i) or (b)(ii) above;
- (v) to whom information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation;
- (vi) to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations, proceedings or disputes;
- (vii) to whom or for whose benefit that Finance Party charges, assigns or otherwise creates Security (or may do so) pursuant to Clause 23.8 (*Security over Lenders' rights*);
- (viii) who is a Party; or
- (ix) with the consent of the Borrower, not to be unreasonably withheld;

in each case, such Confidential Information as that Finance Party shall consider appropriate if:

- (A) in relation to paragraphs (b)(i), (b)(ii) and (b)(iii) above, the person to whom the Confidential Information is to be given has

entered into a Confidentiality Undertaking except that there shall be no requirement for a Confidentiality Undertaking if the recipient is a professional adviser and is subject to professional obligations to maintain the confidentiality of the Confidential Information;

- (B) in relation to paragraph (b)(iv) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking or is otherwise bound by requirements of confidentiality in relation to the Confidential Information they receive and is informed that some or all of such Confidential Information may be price-sensitive information;
 - (C) in relation to paragraphs (b)(v), (b)(vi) and (b)(vii) above, the person to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of that Finance Party, it is not practicable so to do in the circumstances;
- (c) to any person appointed by that Finance Party or by a person to whom paragraph (b)(i) or (b)(ii) above applies to provide administration or settlement services in respect of one or more of the Finance Documents including without limitation, in relation to the trading of participations in respect of the Finance Documents, such Confidential Information as may be required to be disclosed to enable such service provider to provide any of the services referred to in this paragraph (c) if the service provider to whom the Confidential Information is to be given has entered into a confidentiality agreement substantially in the form of the LMA Master Confidentiality Undertaking for Use With Administration/Settlement Service Providers or such other form of confidentiality undertaking agreed between the Borrower and the relevant Finance Party;
 - (d) to any rating agency (including its professional advisers) such Confidential Information as may be required to be disclosed to enable such rating agency to carry out its normal rating activities in relation to the Finance Documents and/or the Borrower if the rating agency to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information;
 - (e) to any Exporter, such Confidential Information as that Finance Party shall consider appropriate in the context of the financing of the Project under the Finance Documents; and

- (f) to each ECA and ICO, such Confidential Information as that Finance Party shall consider appropriate, and that ECA and ICO may, in turn, disclose any Confidential Information:
- (i) to any persons (A) to whom that ECA or ICO assigns or transfers (or potentially assign or transfers) its rights, benefits and/or interests in, under or in connection with the Finance Documents and/or the relevant ECA Insurance Policy and/or the ICO Interest Make-up Agreement or (B) from whom that ECA obtains (or potentially obtains) any risk/credit enhancement or reinsurance/counter-guarantee by reference to the relevant ECA Insurance Policy or the Finance Documents;
 - (ii) to any French or Spanish governmental institution and any of their affiliates or professional advisers;
 - (iii) to any of its Affiliates, holding company and/or ultimate shareholder;
 - (iv) required or requested to be disclosed by applicable law, regulation, rule and/or by any court of competent jurisdiction, tribunal, administrative or public agency or other governmental, banking, taxation or other regulatory authority or similar entities;
 - (v) required to be disclosed in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations, claim, action, proceeding or disputes;
 - (vi) required to be disclosed to an export credit agency or to an international organisation of which an ECA, ICO, France or Spain is a member;
 - (vii) to whom or for whose benefit a Finance Party charges, assigns or otherwise creates Security (or may do so) pursuant to Clause 23.8 (*Security over Lenders' rights*);
 - (viii) to any rating agency (including its professional advisers) as may be required to enable such rating agency to carry out its normal rating activities in relation to this Agreement and/or the Borrower; and
 - (ix) with the consent of the Borrower, not to be unreasonably withheld.

Notwithstanding Clause 1.4 (*Third party rights*), each ECA has the right to enforce and to enjoy the benefit of this paragraph (f) subject to the provisions of the Third Party Act.

35.3 Disclosure of risk

Without prejudice to the provisions of Clause 35.2 (*Disclosure of Confidential Information*), any Finance Party may inform the relevant ECA or ICO of any increase or material change in any risk insured under an ECA Insurance Policy including without limitation:

- (a) any amendment to the Commercial Contract which may affect the repayment of any Loan;
- (b) any amendment to the terms and conditions of any Finance Document; and
- (c) any circumstance concerning the Borrower and/or the Borrower's Country, which in the reasonable opinion of that Finance Party may affect the Borrower's ability to duly and timely meet its obligations under the Finance Documents.

35.4 Disclosure to numbering service providers

- (a) Any Finance Party may disclose to any national or international numbering service provider appointed by that Finance Party to provide identification numbering services in respect of this Agreement, the Facility and/or the Borrower the following information:
 - (i) names of Borrower;
 - (ii) country of domicile of Borrower;
 - (iii) place of incorporation of Borrower;
 - (iv) date of this Agreement;
 - (v) Clause 38 (*Governing law*);
 - (vi) the names of the Agent and the Arranger;
 - (vii) date of each amendment and restatement of this Agreement;
 - (viii) amounts of, and names of, the Facility and the Tranches;
 - (ix) amount of Total Commitments;
 - (x) currency of the Facility;
 - (xi) type of Facility;
 - (xii) ranking of Facility;
 - (xiii) Termination Dates for Tranches;
 - (xiv) changes to any of the information previously supplied pursuant to paragraphs (i) to (xiii) above; and
 - (xv) such other information agreed between such Finance Party and the Borrower,

to enable such numbering service provider to provide its usual syndicated loan numbering identification services.

- (b) The Parties acknowledge and agree that each identification number assigned to this Agreement, the Facility, the Tranches and/or the Borrower by a numbering service provider and the information associated with each such number may be disclosed to users of its services in accordance with the standard terms and conditions of that numbering service provider.
- (c) The Borrower represents that none of the information set out in paragraphs (i) to (xv) of paragraph (a) above is, nor will at any time be, unpublished price-sensitive information.
- (d) The Agent shall notify the Borrower and the other Finance Parties of:
 - (i) the name of any numbering service provider appointed by the Agent in respect of this Agreement, the Facility, the Tranches and/or the Borrower; and
 - (ii) the number or, as the case may be, numbers assigned to this Agreement, the Facility, the Tranches and/or the Borrower by such numbering service provider.

35.5 Entire agreement

This Clause 35 constitutes the entire agreement between the Parties in relation to the obligations of the Finance Parties under the Finance Documents regarding Confidential Information and supersedes any previous agreement, whether express or implied, regarding Confidential Information.

35.6 Inside information

Each of the Finance Parties acknowledges that some or all of the Confidential Information is or may be price-sensitive information and that the use of such information may be regulated or prohibited by applicable legislation including securities law relating to insider dealing and market abuse and each of the Finance Parties undertakes not to use any Confidential Information for any unlawful purpose.

35.7 Notification of disclosure

Each of the Finance Parties agrees (to the extent permitted by law and regulation) to inform the Borrower:

- (a) of the circumstances of any disclosure of Confidential Information made pursuant to paragraph (b)(v) of Clause 35.2 (*Disclosure of Confidential Information*) except where such disclosure is made to any of the persons referred to in that paragraph during the ordinary course of its supervisory or regulatory function; and
- (b) upon becoming aware that Confidential Information has been disclosed in breach of this Clause 35

35.8 Continuing obligations

The obligations in this Clause 35 are continuing and, in particular, shall survive and remain binding on each Finance Party for a period of twelve months from the earlier of:

- (a) the date on which all amounts payable by the Borrowers under or in connection with this Agreement have been paid in full and all Commitments have been cancelled or otherwise cease to be available; and
- (b) the date on which such Finance Party otherwise ceases to be a Finance Party.

35.9 Supply of Lender details to the Borrower

The Agent shall provide to the Borrower as soon as practicable a list (which may be in electronic form) setting out the names of the Lenders as at that Business Day or as at the date or that request, their respective Commitments, the address (and the department or officer, if any, for whose attention any communication is to be made) of each Lender for any communication to be made or document to be delivered under or in connection with the Finance Documents, the electronic mail address and/or any other information required to enable the transmission of information by electronic mail or other electronic means to and by each Lender to whom any communication under or in connection with the Finance Documents may be made by that means and the account details of each Lender for any payment to be distributed by the Agent to that Lender under the Finance Documents.

36. CONFIDENTIALITY OF REFERENCE BANK QUOTATIONS

36.1 Confidentiality and disclosure

- (a) The Agent agrees to keep each Reference Bank Quotation confidential and not to disclose it to anyone, save to the extent permitted by paragraphs (b), (c) and (d) below.
- (b) The Agent may disclose any Reference Bank Quotation to any person appointed by it to provide administration services in respect of one or more of the Finance Documents to the extent necessary to enable such service provider to provide those services if the service provider to whom that information is to be given has entered into a confidentiality agreement substantially in the form of the LMA Master Confidentiality Undertaking for Use With Administration/Settlement Service Providers or such other form of confidentiality undertaking agreed between the Agent and the relevant Reference Bank, as the case may be.
- (c) The Agent may disclose any Reference Bank Quotation to:
 - (i) any of its Affiliates and any of its or their officers, directors, employees, professional advisers, auditors, partners and Representatives if any person to whom that Reference Bank Quotation is to be given pursuant to this paragraph (i) is informed in writing of its confidential nature and that it may be price-sensitive information except that there shall be no such requirement to so inform if the

recipient is subject to professional obligations to maintain the confidentiality of that Reference Bank Quotation or is otherwise bound by requirements of confidentiality in relation to it;

- (ii) any person to whom information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation if the person to whom that Reference Bank Quotation is to be given is informed in writing of its confidential nature and that it may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of the Agent, as the case may be, it is not practicable to do so in the circumstances;
 - (iii) any person to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations, proceedings or disputes if the person to whom that Reference Bank Quotation is to be given is informed in writing of its confidential nature and that it may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of the Agent, as the case may be, it is not practicable to do so in the circumstances; and
 - (iv) any person with the consent of the relevant Reference Bank.
- (d) The Agent's obligations in this Clause 36 relating to Reference Bank Quotations are without prejudice to its obligations to make notifications under Clause 9.5 (*Notification of rates of interest*) **provided that** the Agent shall not include the details of any individual Reference Bank Quotation as part of any such notification.

36.2 Related obligations

- (a) The Agent acknowledges that each Reference Bank Quotation is or may be price-sensitive information and that its use may be regulated or prohibited by applicable legislation including securities law relating to insider dealing and market abuse and the Agent undertakes not to use any Reference Bank Quotation for any unlawful purpose.
- (b) The Agent agrees (to the extent permitted by law and regulation) to inform the relevant Reference Bank:
 - (i) of the circumstances of any disclosure made pursuant to paragraph (c)(ii) of Clause 36.1 (*Confidentiality and disclosure*) except where such disclosure is made to any of the persons referred to in that paragraph during the ordinary course of its supervisory or regulatory function; and
 - (ii) upon becoming aware that any information has been disclosed in breach of this Clause 36.

37. **COUNTERPARTS**

Each Finance Document may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of the Finance Document.

**SECTION 11
GOVERNING LAW AND ENFORCEMENT**

38. GOVERNING LAW

This Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.

39. ENFORCEMENT

39.1 Jurisdiction

- (a) The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute relating to the existence, validity or termination of this Agreement or any non-contractual obligation arising out of or in connection with this Agreement) (a "**Dispute**").
- (b) The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.

39.2 Service of process

The Borrower agrees that the documents which start any proceedings in relation to any Finance Document, and any other documents required to be served in connection with those proceedings, may be served on it by being delivered to the Embassy of the Dominican Republic at 139 Inverness Terrace, London W2 6JF, United Kingdom, or to such other address in England and Wales as each the Borrower may specify by notice in writing to the Agent. Nothing in this Clause 39.2 shall affect the right of any Finance Party to serve process in any other manner permitted by law. This Clause 39.2 applies to proceedings in England and proceedings elsewhere.

39.3 Waiver of immunity

- (a) The Borrower hereby irrevocably waives, to the extent permitted by applicable law and international conventions, (i) any immunity from jurisdiction it may have in any proceeding in any court; (ii) any immunity it may have from service of process, (iii) any immunity it may have from injunctive or other interim relief or any order for specific performance or recovery of land in any court; and (iv) except as provided below, any immunity from attachment or execution to which its assets or property might otherwise be entitled in any proceeding in any court, and agrees that it will not claim any such immunity in any such proceeding.
- (b) Notwithstanding the foregoing, the above waiver shall not constitute a waiver of immunity from attachment or execution with respect to:
 - (i) assets and property of the Borrower located in the Dominican Republic;
 - (ii) the premises and property of the Borrower's diplomatic and consular missions;

- (iii) assets and property of the Borrower outside the Dominican Republic not used or intended to be used for a commercial purpose;
 - (iv) assets and property of the Borrower's central bank or monetary authority;
 - (v) assets and property of a military character or under the control of a military authority or defence agency of the Borrower; or
 - (vi) assets and property forming part of the cultural heritage of the Borrower.
- (c) For the purposes of the foregoing, "**property**" includes, without limitation, accounts, bank deposits, cash, revenues, securities and rights, including rights against third parties.
- (d) The foregoing constitutes a limited and specific waiver by the Borrower solely for the purposes of this Agreement, and under no circumstance shall it be construed as a general waiver by the Borrower or a waiver with respect to proceedings unrelated to this Agreement.

THIS AGREEMENT has been entered into on the date stated at the beginning of this Agreement.

SCHEDULE 1
CONDITIONS PRECEDENT

PART I
CONDITIONS PRECEDENT TO INITIAL UTILISATION

1. Borrower and others

- (a) Special power of attorney granted by the President of the Dominican Republic to the Minister of Finance (the "**Executive Branch**") for the execution of the Facility Agreement.
- (b) Resolution issued by Congress approving the Facility executed by the Executive Branch duly published in the corresponding Official Gazette.
- (c) Certification issued by the Ministry of Finance (*Ministerio de Hacienda*) indicating that the Facility is included in the General Budget of the State (*Presupuesto General del Estado*) for 2016.
- (d) Certification issued by the Public Credit Office (*Dirección General de Crédito Público*) indicating that the Facility is registered as a public credit transaction, and this is recognized as public debt in accordance with the provisions of Law 6-06 dated as of January 21, 2006.
- (e) Certificates with signature facsimiles of the persons holding a sufficient power of attorney to represent and bind the Borrower and to execute any Finance Document and other documents and notices (including, if relevant, any Utilisation Request or similar) to be signed and/or despatched by the Borrower under or in connection with the Finance Documents, together with a certified copy of the powers of attorney stating the delegation of authorities granted for the acts such persons intend to carry out.
- (f) A certificate of an authorised signatory of the Borrower certifying that each copy document relating to it specified in this Part I of Schedule 1 is correct, complete and in full force and effect as at a date no earlier than the date of approval of the Facility by Congress, as applicable.

2. Legal opinions

- (a) A legal opinion of Clifford Chance, S.L., legal advisers to the Arranger and the Agent in respect of English law, substantially in the form satisfactory to the Original Lender distributed to the same prior to the signing of this Agreement.
- (b) A legal opinion of Pellerano & Herrera, legal advisers to the Arranger and the Agent in respect of laws of the Dominican Republic, substantially in form satisfactory to the Original Lender distributed to the same prior to the signing of this Agreement.
- (c) A legal opinion of the legal advisers to the Borrower in respect of the Borrower and the laws of the Dominican Republic, substantially in the form of Schedule 7 (*Form of Legal Certification*) and satisfactory to the Original

Lender, attaching thereto documentary proof which duly accredits its contents and agreeing to provide, in addition, any proof which may be requested by the Lenders and/or ECAs for this purpose (acting reasonably).

- (d) A legal opinion of Clifford Chance Europe LLP, legal advisers to the Arranger and the Agent in respect of French law, substantially in the form satisfactory to the Original Lender distributed to the same prior to the signing of this Agreement.
- (e) A legal opinion of Clifford Chance, S.L., legal advisers to the Arranger and the Agent in respect of Spanish law, substantially in the form satisfactory to the Original Lender distributed to the same prior to the signing of this Agreement.

3. ECA documents and evidence

Evidence that each ECA Insurance Policy has been duly executed in favour of the Lenders and all conditions to the ECA Insurance Policies are fulfilled and each ECA Insurance Policy is in full force and effect.

4. ICO Interest Make-up Agreement

Evidence that the ICO Interest Make-up Agreement has been duly executed by all parties, and is in full force and effect with all conditions precedent thereunder having been fulfilled.

5. Financing documents and evidence

- (a) This Agreement duly executed by the parties thereto and in full force and effect and duly registered in the Public Credit Office (*Dirección General de Crédito Público*).
- (b) Evidence that the Loan Registration Date has occurred.

6. Commercial Contract and Project

- (a) A copy of the Commercial Contract (certified by a duly authorised signatory of the Borrower as a true, complete, and accurate copy of the original) duly executed by all parties thereto and in full force and effect.
- (b) Evidence that the conditions to the effectiveness of the Commercial Contract, set out at clause 2 (*Entrada en vigor de las Condiciones del Contrato para la Ejecución de las Obras*) of the Commercial Contract, have been satisfied (except to the extent that such conditions require evidence of the Agent's satisfaction pursuant to paragraph (a) of Clause 4.1 (*Initial conditions precedent*) of this Agreement).
- (c) Evidence of insurance in respect of goods to be provided under the Commercial Contract.
- (d) Evidence that the Advance Payment has been received by the relevant Exporters.

- (e) Evidence that the Ineligible Amount Payment has been received by the relevant Exporters.
- (f) Evidence of the Borrower's allocation of the appropriate budget to the Project in respect of the Borrower's financial years ending in 2015 and 2016.
- (g) A copy of the Environmental Reports delivered pursuant to the PMMA to-date.
- (h) Evidence that all resettlement related to the Project has been completed.

7. Other documents and evidence

- (a) A copy of any other Authorisation or other document, opinion or assurance which the Agent considers to be necessary or desirable (if it has notified the Borrower accordingly) in connection with the entry into and performance of the transactions contemplated by any Finance Document or for the validity and enforceability of any Finance Document.
- (b) Any other condition(s) or documents, opinion or assurance required by an ECA or ICO under or in connection with an ECA Insurance Policy or the ICO Interest Make-up Agreement, which the Agent has notified the Borrower is necessary or desirable in connection with the entry into and performance of, and the transactions contemplated by, any Finance Documents.
- (c) Evidence that the fees, costs and expenses then due from the Borrower pursuant to Clause 12 (*Fees*) and/or Clause 18 (*Costs and expenses*) have been paid or will be paid by the first Utilisation Date.
- (d) Details of the account(s) of the Borrower and each Exporter to which the proceeds of Utilisations are to be credited, as applicable.
- (e) A copy of all "know your customer" documents and information that are reasonably required by each Lender, the Agent, the ECAs and/or ICO in order to satisfy their respective requirements.

**PART II
FURTHER CONDITIONS PRECEDENT**

1. In the case of all Utilisations:

- (a) No ECA has advised the Agent that the making of any Utilisation should be suspended.
- (b) The Agent has not received a notification from an ECA in respect of any termination or suspension in whole or in part of an ECA Insurance Policy.
- (c) Each ECA Insurance Policy and the ICO Interest Make-up Agreement are in full force and effect and nothing has arisen to invalidate or otherwise remove, terminate, withdraw or cancel an ECA Insurance Policy or the ICO Interest Make-up Agreement.
- (d) Any other documents or evidence required by an ECA and/or ICO in connection with the proposed Utilisation.
- (e) Any additional premium amount referred to under Clause 13.2 (*Acknowledgement by the Borrower*), which is due and payable to an ECA, has been paid.
- (f) Any amount which is due and payable by the Borrower pursuant Clause 7 (*Prepayment and cancellation*) has been paid.

2. In the case of a Utilisation Request in relation to Eligible Goods and Services:

- (a) A duly completed Exporter Certification from the relevant Exporter in relation to the Commercial Contract and including any document listed therein and to be attached thereto.
- (b) No suspension, rescission, termination, novation or substantial modification of the Commercial Contract has occurred, unless the Lenders have previously approved such suspension, rescission, termination, novation or substantial modification in accordance with this Agreement.
- (c) No decision has been taken by any third country, to be understood as meaning any measure, act or decision of the government of a country, including measures, acts and decisions of public authorities which are deemed to constitute government interventions, which prevents performance of the Commercial Contract.

**SCHEDULE 2
UTILISATION REQUEST**

**PART I
FORM OF UTILISATION REQUEST FROM THE EXPORTER**

[Letterhead of relevant Exporter]

From: *[name of relevant Exporter]*

To: Banco Santander, S.A. as Agent

Dated:

Dear Sirs

**Santo Domingo Metro €42,012,926.41 Facility Agreement
dated [•] April 2016 (the "Agreement")**

1. We refer to the Agreement. This is a Utilisation Request. Terms defined in the Agreement have the same meaning in this Utilisation Request unless given a different meaning in this Utilisation Request.
2. We confirm that *[name of relevant Exporter]* has issued the following invoices in accordance with the Commercial Contract:

Invoice date	Invoice no.	Invoice amount (Eligible Goods and Services only)	Due date
[•]	[•]	[•]	[•]
[•]	[•]	[•]	[•]

3. For the purpose of the settling of the above invoice amounts, we request [on behalf of the Borrower] a Loan on the following terms:

Proposed Utilisation Date: [•] or, if that is not a Business Day, the next Business Day)

Tranche: [Spanish ECA Tranche]/[French ECA Tranche]

Amount: €[•] or, if less, the Available Tranche

Loan to be made available to: *[name of relevant Exporter]*/[Borrower]

4. We confirm that:
 - (a) the Commercial Contract is in full force and effect;
 - (b) the Borrower has to date fulfilled all of its payment obligations assumed towards *[name of relevant Exporter]* under the Commercial Contract and its obligation to furnish security, if any, in favour of *[name of relevant Exporter]*;

- (c) neither the Borrower nor [*name of relevant Exporter*] has previously requested disbursement of invoice amounts specified above;
- (d) the invoice amounts specified above relate only to Eligible Goods and Services as set out in the table below; and

<u>Origin¹</u>	<u>Amount</u>
[France][Spain] ²	€[•]
Borrower's Country	€[•]
Other	€[•]

- (e) [*name of relevant Exporter*] has not received any payment of invoice amounts specified above directly from the Borrower.
5. We attach a copy of the Exporter Certification in connection with the proposed Utilisation and each other document required to be delivered with the Exporter Certification.
 6. The proceeds of this Loan should be credited to [*details of Exporter's account*].
 7. This Utilisation Request is irrevocable [other than by the Borrower in accordance with paragraph (c) of Clause 5.1 (*Delivery of a Utilisation Request*)].
 8. This Utilisation Request is governed by English law.

Yours faithfully

.....
 authorised signatory for
 [*name of relevant Exporter*]

¹ Goods produced or manufactured in, or services provided by persons ordinarily resident or carrying out a business in, the specified country.

² Select as applicable: Spain for Spanish ECA Tranche utilisation, France for French ECA Tranche utilisation.

**PART II
FORM OF UTILISATION REQUEST FROM THE BORROWER**

[Letterhead of Borrower]

From: The Dominican Republic acting through the Ministry of Finance

To: Banco Santander, S.A. as Agent

Dated:

Dear Sirs

**Santo Domingo Metro €42,012,926.41 Facility Agreement
dated [•] April 2016 (the "Agreement")**

1. We refer to the Agreement. This is a Utilisation Request. Terms defined in the Agreement have the same meaning in this Utilisation Request unless given a different meaning in this Utilisation Request.
2. We confirm that we have settled the following invoices issued by [*name of relevant Exporter*] in accordance with the Commercial Contract:

Invoice date	Invoice no.	Invoice amount (Eligible Goods and Services only)	Settlement date
[•]	[•]	[•]	[•]
[•]	[•]	[•]	[•]

3. For the purpose of the reimbursing our payment of the above invoice amounts, we request a Loan on the following terms:

Proposed Utilisation Date: [•] or, if that is not a Business Day, the next Business Day)

Tranche: [Spanish ECA Tranche]/[French ECA Tranche]

Amount: €[•] or, if less, the Available Tranche

Loan to be made available to: Borrower

4. We confirm that:
 - (a) the Commercial Contract is in full force and effect;
 - (b) the Borrower has to date fulfilled all of its payment obligations assumed towards [*name of relevant Exporter*] under the Commercial Contract and its obligation to furnish security, if any, in favour of [*name of relevant Exporter*];
 - (c) the invoice amounts specified above relate only to Eligible Goods and Services as set out in the table below; and

Origin³	Amount
[France][Spain] ⁴	€[.]
Borrower's Country	€[.]
Other	€[.]

(d) [*name of relevant Exporter*] has received a payment of invoice amounts specified above directly from the Borrower.

5. The proceeds of this Loan should be credited to [*details of Borrower's account*].
6. This Utilisation Request is irrevocable.
7. This Utilisation Request is governed by English law.

Yours faithfully

.....
 authorised signatory for
The Dominican Republic, acting through the Ministry of Finance

³ Goods produced or manufactured in, or services provided by persons ordinarily resident or carrying out a business in, the specified country.

⁴ Select as applicable: Spain for Spanish ECA Tranche utilisation, France for French ECA Tranche utilisation.

**SCHEDULE 3
EXPORTER CERTIFICATION**

**PART I
EXPORTER CERTIFICATION TO BE USED WITH UTILISATION REQUEST
FROM THE EXPORTER**

From: [name of relevant Exporter] having Tax ID [•] (the "Exporter")

To: Banco Santander, S.A. as Agent

Dated:

Dear Sirs

**Santo Domingo Metro €42,012,926.41 Facility Agreement
dated [•] April 2016 (the "Agreement")**

1. We refer to the Agreement. This is an Exporter Certification. Terms defined in the Agreement have the same meaning in this Exporter Certification unless given a different meaning in this Exporter Certification.
2. We refer to the Utilisation Request dated [•] requesting a Loan in the amount of €[•].
3. We enclose certified true copies of:
 - (a) certified true copies of the commercial invoices issued by us;
 - (b) [a certified true copy of the account statement(s) evidencing relevant payments we have received under the Commercial Contract;]
 - (c) [certified true copies of the bills of landing/airway bills;]
 - (d) a certified true copy of the certificate confirming that the goods and/or services are supplied in accordance with the relevant purchase order in accordance with terms of the Commercial Contract; and
 - (e) a certified true copy of all documents, issued or received by the Exporter in relation to the equipment [to be] purchased by the Borrower under the Commercial Contract (including any packing list(s), cargo specification list(s) and acceptance certificate(s) as well as in relation to the completion of any milestones (which are set out in the table below) required to verify the purchase);

<u>Name of Milestone</u>	<u>Justification</u>	<u>Date of achievement</u>	<u>Number of items requested</u>	<u>Amount requested</u>	<u>Currency</u>
[•]	[•]	[•]	[•]	[•]	[•]

- (f) a report regarding the degree of execution of the Commercial Contract, as well as the progress and development of the Project corresponding to the period between the date of the previous Exporter Certificate from us and the date of this Exporter Certificate including, at least, the following information:
 - (i) an execution schedule, indicating the main items and estimated milestones, and assessment of the degree of execution of the Commercial Contract;
 - (ii) a list of detected or foreseen incidents which may cause delays in the timetables envisaged for the Project execution; and
 - (iii) the payments made against the Agreement and other financing resources, evidencing that those payments are adequate to the project execution.

- 4. We hereby represent and warrant that:
 - (a) all documents in support of this Exporter Certification are in all material respects in conformity with the Commercial Contract;
 - (b) we have complied with all applicable laws and policies of the [Kingdom of Spain/Republic of France] in relation to the preparation and issuance of the commercial invoice(s) and the [goods]/ [services] to be supplied satisfies [CESCE's/COFACE's] requirement as to [Spanish/French] content. We undertake to promptly supply all documentary evidence required by you to verify any of the foregoing; and
 - (c) the payment referred hereto [is due and payable/has been made] under the Commercial Contract in respect of [goods]/[services] for an amount of €[•] supplied by us to the Borrower and that such payment represents no more than 75.39% of the value of such [goods]/[services].

- 5. You may rely on the accuracy and completeness of all information and all documents contained in or supplied with this Exporter Certification or delivered pursuant thereto.

- 6. We confirm that: (a) the Commercial Contract has not been amended without the prior written consent of CESCE and COFACE; (b) it remains in full force and effect; (c) there has been no dispute with the Borrower; and (d) there is not any dispute pending with the Borrower regarding the performance of the Commercial Contract.

Yours faithfully

.....
authorised signatory for
[name of relevant Exporter]

**PART II
EXPORTER CERTIFICATION TO BE USED WITH UTILISATION REQUEST
FROM THE BORROWER**

From: [*name of relevant Exporter*] having Tax ID [•] (the "Exporter")

To: Banco Santander, S.A. as Agent

Dated:

Dear Sirs

**Santo Domingo Metro €42,012,926.41 Facility Agreement
dated [•] April 2016 (the "Agreement")**

1. We refer to the Agreement. This is an Exporter Certification. Terms defined in the Agreement have the same meaning in this Exporter Certification unless given a different meaning in this Exporter Certification.
2. We refer to the Utilisation Request dated [•] requesting a Loan in the amount of €[•].
3. We confirm we have received payment[s] in settlement of the invoice[s] number [*invoice number*], as referred to in paragraph 2 of the Utilisation Request.
4. We confirm that the invoice amounts and the breakdown provided in paragraph 4(c) of the Utilisation Request are correct.

Yours faithfully

.....
authorised signatory for
[*name of relevant Exporter*]

**SCHEDULE 4
FORM OF TRANSFER CERTIFICATE**

To: Banco Santander, S.A. as Agent

From: [The Existing Lender] (the "Existing Lender") and [The New Lender] (the "New Lender")

Cc: The Dominican Republic, represented by the Ministry of Finance

Dated:

**Santo Domingo Metro €42,012,926.41 Facility Agreement
dated [•] April 2016 (the "Agreement")**

1. We refer to the Agreement. This is a Transfer Certificate. Terms defined in the Agreement have the same meaning in this Transfer Certificate unless given a different meaning in this Transfer Certificate.
2. We refer to Clause 23.5 (*Procedure for transfer*):
 - (a) The Existing Lender and the New Lender agree to the Existing Lender transferring to the New Lender by novation, and in accordance with Clause 23.5 (*Procedure for transfer*), all of the Existing Lender's rights and obligations under the Agreement and the other Finance Documents which relate to that portion of the Existing Lender's Commitment(s) and participations in Loans under the Agreement as specified in the Schedule.
 - (b) The proposed Transfer Date is [].
 - (c) The Facility Office and address and attention details for notices of the New Lender for the purposes of Clause 30.2 (*Addresses*) are set out in the Schedule.
3. The New Lender expressly acknowledges the limitations on the Existing Lender's obligations set out in paragraph (c) of Clause 23.4 (*Limitation of responsibility of Existing Lenders*).
4. This Transfer Certificate may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Transfer Certificate.
5. This Transfer Certificate and any non-contractual obligations arising out of or in connection with it are governed by English law.
6. This Transfer Certificate has been entered into on the date stated at the beginning of this Transfer Certificate.

THE SCHEDULE

Commitment/rights and obligations to be transferred

[insert relevant details]

[Facility Office address and attention details for notices and account details for payments.]

[Existing Lender]

[New Lender]

By: By:

This Transfer Certificate is accepted by the Agent and the Transfer Date is confirmed as

[.....].

[Agent]

By:

**SCHEDULE 5
FORM OF ASSIGNMENT AGREEMENT**

To: Banco Santander, S.A. as Agent and the Dominican Republic acting through the Ministry of Finance as Borrower

From: [the *Existing Lender*] (the "**Existing Lender**") and [the *New Lender*] (the "**New Lender**")

Dated:

**Santo Domingo Metro €42,012,926.41 Facility Agreement
dated [•] April 2016 (the "Agreement")**

1. We refer to the Agreement. This is an Assignment Agreement. Terms defined in the Agreement have the same meaning in this Assignment Agreement unless given a different meaning in this Assignment Agreement.
2. We refer to Clause 23.6 (*Procedure for assignment*):
 - (a) The Existing Lender assigns absolutely to the New Lender all the rights of the Existing Lender under the Agreement and the other Finance Documents which relate to that portion of the Existing Lender's Commitment(s) and participations in Loans under the Agreement as specified in the Schedule.
 - (b) The Existing Lender is released from all the obligations of the Existing Lender which correspond to that portion of the Existing Lender's Commitment(s) and participations in Loans under the Agreement specified in the Schedule.
 - (c) The New Lender becomes a Party as a Lender and is bound by obligations equivalent to those from which the Existing Lender is released under paragraph (b) above.
3. The proposed Transfer Date is [].
4. On the Transfer Date the New Lender becomes Party to the Finance Documents as a Lender.
5. The Facility Office and address and attention details for notices of the New Lender for the purposes of Clause 30.2 (*Addresses*) are set out in the Schedule.
6. The New Lender expressly acknowledges the limitations on the Existing Lender's obligations set out in paragraph (c) of Clause 23.4 (*Limitation of responsibility of Existing Lenders*).
7. This Assignment Agreement acts as notice to the Agent (on behalf of each Finance Party) and, upon delivery in accordance with Clause 23.7 (*Copy of Transfer Certificate or Assignment Agreement to Borrower*), to the Borrower of the assignment referred to in this Assignment Agreement.

8. This Assignment Agreement may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Assignment Agreement.
9. This Assignment Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.
10. This Assignment Agreement has been entered into on the date stated at the beginning of this Assignment Agreement.

THE SCHEDULE

Rights to be assigned and obligations to be released and undertaken

[insert relevant details]

[Facility office address and attention details for notices and account details for payments]

[Existing Lender]

[New Lender]

By: By:

This Assignment Agreement is accepted by the Agent and the Transfer Date is confirmed as [].

Signature of this Assignment Agreement by the Agent constitutes confirmation by the Agent of receipt of notice of the assignment referred to herein, which notice the Agent receives on behalf of each Finance Party.

[Agent]

By:

**SCHEDULE 6
TIMETABLES**

	<u>Utilisation in respect of ECA Insurance Premium</u>	<u>Other Utilisations</u>
Delivery of a duly completed Utilisation Request (Clause 5.1 (<i>Delivery of a Utilisation Request</i>)) by an Exporter	N/A	U – 10 10:00 a.m.
In respect of a Utilisation Request delivered by an Exporter, Agent notifies the Borrower of such Utilisation Request	N/A	U – 9
In respect of a Utilisation Request delivered by an Exporter, Agent notifies the Lenders of the prospective Loan, which remains subject to the Borrower's approval	N/A	U – 8
Delivery of a duly completed Utilisation Request (Clause 5.1 (<i>Delivery of a Utilisation Request</i>)) by the Borrower	N/A	U – 5 10:00 a.m.
If applicable, Borrower notifies the Agent that the Utilisation Request delivered by an Exporter is cancelled	N/A	U – 3 10:00 a.m.
Agent gives the notification under paragraph (a) of Clause 4.1 (<i>Initial Conditions Precedent</i>)	U – 4	N/A
Agent determines (in relation to a Utilisation) the amount of the Loan, if required under Clause 5.4 (<i>Lenders' participation</i>) and notifies the Lenders of the Loan in accordance with Clause 5.4 (<i>Lenders' participation</i>)	U – 3 11:00 a.m.	U – 3 11:00 a.m.
EURIBOR is fixed	Quotation Day 11:00 a.m.	Quotation Day 11:00 a.m.

"U" = date of utilisation

"U – X" = X Business Days prior to date of utilisation

**SCHEDULE 7
FORM OF LEGAL CERTIFICATION**

To: Banco Santander, S.A. as Agent under (and as defined in) the Facility Agreement referred to below

To: [ECA]

I, (), (), hereby

CERTIFY:

1. That I, [*capacity of signatory to be inserted*], have examined the following documents:
 - (a) a EUR 42,012,926.41 buyer credit facility agreement signed by, amongst others, Mr. [•], in representation of the Dominican Republic, as borrower (the "**Borrower**"), and by Mr. [•] in representation of Banco Santander, S.A., as Agent, on [•] April 2016 (the "**Facility Agreement**");
 - (b) the accreditation instrument granted to Mr. [•] by way of special power of the President of the Dominican Republic to sign and execute the said Facility Agreement for and on behalf of the Dominican Republic (photocopy attached); and
 - (c) the administrative authorizations, consents and/or permits granted by any relevant Dominican authorities including the Congress of the Dominican Republic (*Congreso Nacional de la República Dominicana*), necessary for the signature and validity of the Facility Agreement (photocopies attached).
2. That [•] has sufficient legal capacity to enter into the Facility Agreement and exercise the rights and perform the obligations arising therefrom.
3. That all necessary acts for the valid and binding execution of the Facility Agreement by the Dominican Republic have been followed.
4. That Mr. [•] is duly empowered to sign and execute the Facility Agreement for and on behalf of the Dominican Republic.
5. That all of the terms, covenants and commitments contained in the Facility Agreement are valid, binding and enforceable pursuant to the laws of the Dominican Republic. The signature of the Facility Agreement mentioned above does not directly or indirectly violate any judgment, ruling, rule, decree, order or regulation presently in force in the Dominican Republic or any treaty or international convention to which the Dominican Republic is a party.
6. That [•] is liable for the performance of its obligations legally acquired with all of its present and future assets. The obligations assumed by [•] by virtue of the Facility Agreement are obligations legally acquired, and shall at all times have a ranking at least *pari passu* together with those other present or future obligations which are assumed by virtue of any other credit facility agreement.

7. That [•] is subject to private, civil and commercial law, in its relations and obligations deriving from the Facility Agreement.
8. That prior to the signature of the Facility Agreement, all consents, authorizations, licenses and approvals which are necessary for the valid execution and enforceability of the Facility Agreement and of such acts as are contemplated therein, have been obtained.
9. That all of the representations formulated by [•] in the Facility Agreement are fully in compliance with the law in all of their terms.
10. That the preparation and execution of the Facility Agreement is no cause for the accrual of any tax existing in the Dominican Republic. No tax exists in the Dominican Republic applicable to the payments which the Borrower (as defined in the Facility Agreement) has to make in compliance with its obligations arising out of the Facility Agreement.
11. That the obligation assumed by the Borrower in the Facility Agreement whereby the Borrower will be responsible for present or future tax charges which may apply to the Finance Parties (as defined in the Facility Agreement) in the Dominican Republic by virtue of this contract, should these exist, is a valid and legal obligation pursuant to the laws of the Dominican Republic.
12. That, in accordance with the laws of the Dominican Republic, the choice of English law as the law governing the Facility Agreement and the election of the English Courts as competent courts constitutes valid and legal options. Any judgment handed down by English Courts shall be eligible for validation and enforceable in the Dominican Republic, **provided that** an *exequatur* decision authorising the validity of the judgement has been obtained from the relevant Court of first instance in the Dominican Republic. Based on existing law, Dominican Courts will ratify such a judgment:
 - (i) if there is an applicable treaty between the United Kingdom and the Dominican Republic; or
 - (ii) if such a judgement:
 - (a) complies with all formalities required for the enforceability thereof under the laws of the country where the same was issued;
 - (b) has been translated into Spanish, together with related documents, and satisfies the authentication requirements of Dominican law;
 - (c) was issued by a competent court after valid service of process upon the parties to the action;
 - (d) was issued after an opportunity was given to the defendants to present its defence; and
 - (e) is not subject to further appeal.

13. That, to the best of my knowledge, the signature of the Facility Agreement does not represent any violation of any prior agreement of the Dominican Republic.
14. That, to the best of my knowledge, no circumstance has occurred which may give way, in the terms of the pertinent clause of the Facility Agreement, to the termination or early maturity of the Facility Agreement.
15. That, to the best of my knowledge, there has not been initiated against the Dominican Republic any judicial claim which reasonably may adversely affect its capacity to meet the obligations deriving from the Facility Agreement, or which questions the legality, validity and enforceability of any such obligations.
16. That, to the best of my knowledge, the Dominican Republic is current in the performance of its obligations, and no breach exists which reasonably may adversely affect its capacity to meet the obligations deriving from the Facility Agreement.
17. That it is not necessary under the laws of the Dominican Republic in order to enable the Finance Parties to enforce their rights under the Facility Agreement or by reason of the entry of the Finance Parties into the Facility Agreement or the performance by them of their obligations under the Opinion Documents that the Finance Parties should be licensed, qualified or otherwise entitled to carry on business in the Dominican Republic.
18. That the waiver of immunity set out under Clause 39.3 (*Waiver of Immunity*) of the Facility Agreement constitutes a legal, valid, binding and enforceable obligation of the Borrower and, other than as set out therein, neither the Borrower nor any of its assets is entitled to immunity from suit, execution, attachment or other legal process.
19. That the entry by the Borrower into the Facility Agreement constitutes, and the exercise of its rights and performance of and compliance with its obligations under the Facility Agreement will constitute, private and commercial acts done and performed for private and commercial purposes.

It is so declared for all appropriate legal purposes, in [•], this [•] day of [•] 2016.

Signed:

[]

**SCHEDULE 8
FORM OF FRENCH ECA TRANCHE FIXED RATE NOTICE**

From: Banco Santander, S.A. as Agent under (and as defined in) the Facility Agreement referred to below

To: The Dominican Republic acting through the Ministry of Finance (the "Borrower")

Dated:

Dear Sirs

**Santo Domingo Metro €42,012,926.41 Facility Agreement
dated [•] April 2016 (the "Agreement")**

1. We refer to the Agreement. This is a French ECA Tranche Fixed Rate Notice. Terms defined in the Agreement have the same meaning in this French ECA Tranche Fixed Rate Notice unless given a different meaning in this French ECA Tranche Fixed Rate Notice.
2. We refer to the following French ECA Tranche Loan[s] with an Interest period ending on [•].
3. By countersigning this notice you confirm that the French ECA Tranche Fixed Rate (for the avoidance of doubt, excluding the French ECA Tranche Margin and any application of Clause 11.3 (*Market disruption*) of the Agreement) is [•]% per annum, and shall apply to the above French ECA Tranche Loan[s] from [•].
4. This notice and all non-contractual obligations arising out of or in connection with it are governed by English law.

Yours faithfully

.....
Banco Santander, S.A. as Agent

Acknowledged and confirmed by:

.....
authorised signatory for
The Dominican Republic, acting through the Ministry of Finance

SIGNATORIES

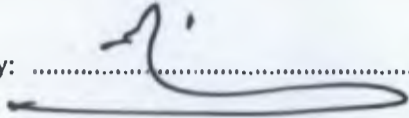
The Borrower

**THE DOMINICAN REPUBLIC, ACTING THROUGH THE
MINISTRY OF FINANCE**

Address: Avenida México 45, Gazcue
Santo Domingo, República Dominicana

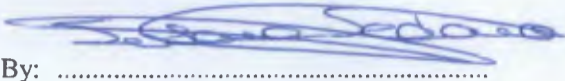
Email: infodeuda@creditopublico.gov.do

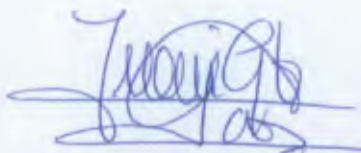
Attention: Dirección General de Crédito Público

By:


The Arranger


BANCO SANTANDER, S.A.

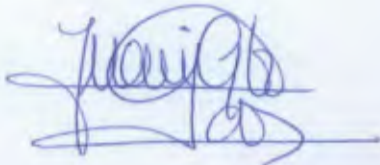
By: 
.....
Susana Sedano
Executive Director


.....
JUANA ISABEL GONZÁLEZ DAMÉN
SENIOR VICE PRESIDENT

The Original Lender

BANCO SANTANDER S.A.

By: 
.....
Susana Sedano
Executive Director


.....
JUANA ISABEL GONZÁLEZ DAMÉN
SENIOR VICE PRESIDENT


The Agent


BANCO SANTANDER S.A.

Address: Ciudad Grupo Santander, Global Export & Agency Finance
Avenida Cantabria s/n, Edificio Encinar planta baja
28660 Boadilla del Monte, Madrid, Spain

Email: fverdugm@gruposantander.com / jigondam@gruposantander.com /
sallabrador@gruposantander.com / ssedano@gruposantander.com

Attention: Francisco Verdugo / Juana Isabel González / Salvador Labrador / Susana Sedano

By: 
.....
Susana Sedano
Executive Director


.....
JUANA ISABEL GONZÁLEZ DAMÉN
SENIOR VICE PRESIDENT