

**Loan Agreement**

**No. 24987**

between

**The Dominican Republic,**

**represented by  
The Ministerio de Hacienda,  
Santo Domingo, Dominican Republic**

(hereinafter the "**Borrower**")

and

**KfW**

for EUR 26,329,306

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## Preamble

On December 9<sup>th</sup>, 2010 the Importer and an Exporter's consortium consisting of CIM S.A., Siemens AG, Siemens S.A., Siemens S.R.L., Thales Security Solutions & Services S.A.S., Sofratesa and TSO S.A. ("**EURODOM**" or the "**Exporter's Consortium**") entered into the Export Contract as amended subsequently, such contract having a total contract value of EURO 166,231,874 for supplies and services for the construction of line two, phase I of the metro in Santo Domingo, Dominican Republic (the "**Project**"). From the total contract value up to EUR 22,129,116 concerns deliveries/services from Germany, up to EUR 40,715,863 deliveries/services from Spain, up to EUR 61,539,102 deliveries/services from France and up to EUR 41,847,793 deliveries/services from the Dominican Republic. 85% of the contract value, eligible for cover by CESCE, HERMES and COFACE shall be financed pursuant to the provisions of the Export Contract as follows:

- a) This Loan Agreement in an amount of EUR 23.529.306 corresponding to the Credit Portion of the Eligible Contract Value, such loan being covered by an export credit cover of HERMES
- b) A loan agreement in an amount of EUR 44,950,930 between Deutsche Bank S.A.E., KfW, BNP Paribas und Citibank Europe Plc and the Borrower such loan being covered by an export credit cover from CESCE (the "**CESCE Loan Agreement**"),
- c) A loan agreement in an amount of EUR 64,581,185 between BNP Paribas, Deutsche Bank AG and Citibank International Plc and the Borrower such loan being covered by an export credit cover from COFACE (the "**COFACE Loan Agreement**"),

KfW is prepared to finance the Credit Portion and the HERMES Portion by means of this Loan Agreement.

Based on the foregoing, the parties have entered into the following agreement:

## Article 1 – Definitions

In this Loan Agreement, unless the context requires otherwise:

- "Advance"** shall mean an instalment disbursed by KfW pursuant to the provisions of this Loan Agreement;
- "Banking Day"** shall mean a day (other than a Saturday or Sunday) on which banks are generally open for business in Frankfurt am Main and Santo Domingo;
- "CIRR"** shall mean the Euro commercial reference rate fixed as the minimum interest rate applicable to official financing support for export credits according to the rules and practises of the OECD-Consensus for a band of maturities corresponding to that of this Loan;
- "Commencement Date"** means the earlier of:
- (i) the date of commencement of the construction of the Project as defined in the Export Contract – Article 36.3- and notified to KfW by the Borrower and
  - (ii) the date falling 180 days after signing of this Loan Agreement;

in any event not earlier than the date of approval of the Loan Agree-

- ment by the National Congress and publication in the National Gazette
- "Credit Portion"** shall mean up to eighty-five per cent (85%) of the Eligible Contract Value, to be financed by KfW through a tied buyer's credit;
- "Drawdown Certificate"** shall mean a fully completed certificate substantially in the form set forth in Annex A1-A3 to this Loan Agreement, specifying the amount of the Credit Portion to be disbursed hereunder, as being duly issued;
- "Down Payment"** shall mean the balance between the Credit Portion and the eligible Contract Value which amounts to 15% of the Eligible Contract Value, which according to applicable HERMES regulations is not eligible for HERMES-Cover, but payable by the Borrower on behalf of the Importer as down payment in order to obtain HERMES-Cover;
- "Drawdown Period"** means the period starting on the Commencement Date - which should not occur before the approval of the Loan Agreement by the National Congress and publication in the National Gazette - and ending 34 months after such date;
- "Eligible Contract Value"** shall mean the overall value of the goods supplied and services rendered by the Exporter with German origin and of Dominican Republic's origin as determined to be eligible for cover by HERMES;
- "Effective Date"** Shall mean the date on the approval by the National Congress and publication on the National Gazette of this contract.
- "Event of Default"** shall have the meaning as set forth in Article 14 hereof;
- "Export Contract"** shall mean the contract dated December 9<sup>th</sup>, 2010 and entered into between the Exporter's consortium EURODOM and the Importer concerning the supply of goods and services with regard to the Eligible Contract Value;
- "Exporter"** shall mean Siemens AG, a corporation being registered under the laws of Germany and having its corporate seat in the Federal Republic of Germany, being in charge under the Export Contract for the supply of goods and services relating to the Eligible Contract Value;
- "Financing Costs"** shall mean the premium and any fees charged by HERMES for the provision of the HERMES-Cover as pre-calculated by KfW;
- "First Repayment Date"** the day falling six (6) months after the Starting Point, provided however, that if the First Repayment Date would fall on a day which is not a Banking Day the First Repayment Date shall be the next succeeding Banking Day;
- "HERMES"** shall mean, as the case may be, EULER HERMES Kreditversicherungs-Aktiengesellschaft, Hamburg acting for and on behalf of the Federal Republic of Germany;
- "HERMES-Cover"** shall mean the export credit cover (*Finanzkreditdeckung*) provided by HERMES for the Loan;

<b>"HERMES Portion"</b>	shall have the meaning as set forth in Article 2 (2)b) hereof and shall be equal to one-hundred per cent (100%) of the Financing Costs as pre-calculated by KfW;
<b>"Importer"</b>	shall mean Oficina para el Reordenamiento del Transporte – OPRET;
<b>"Interest Payment Date"</b>	shall mean any date pursuant to Article 5 and Article 6 of the Loan Agreement on which interest is due and payable;
<b>"Interest Period"</b>	shall have the meaning as set forth in Article 5 hereof, but, for the purposes of Articles 6 (4) and 12 (9) shall mean a period of six (6) months;
<b>"Legal Counsel"</b>	shall mean the Consultor jurídico del poder Ejecutivo duly authorised by the Borrower;
<b>"Loan"</b>	shall mean the loan being made available to the Borrower hereunder and being equal to the aggregate of all Advances outstanding from time to time during the term hereof;
<b>"Loan Agreement"</b>	shall mean this agreement;
<b>"Margin"</b>	shall mean  the effective funding costs of KfW with respect to the financing hereunder (deducting the applicable CIRR) on the date on which the Borrower (the "Borrower's Notice") has notified KfW in writing that approval of this Loan Agreement by the National Congress of the Dominican Republic is published in the National Gazette, as notified by KfW to the Borrower.  KfW will inform the Borrower of the applicable Margin promptly after receipt of the Borrower's Notice. The Margin so notified by KfW to the Borrower shall be binding to the parties hereunder for all purposes of this Loan Agreement unless the determination is inaccurate on its face or fraud can be shown.
<b>"Ministerio de Hacienda"</b>	shall mean Ministry of Finance
<b>"Project"</b>	Manufacture, supply and installation of electromechanic equipment for the Line 2 (phase 1) of mass transportation underground system for the city of Santo Domingo – Dominican Republic;
<b>"Starting Point"</b>	shall mean the earlier of  (i) the date of provisional acceptance of the Project by the Importer and certified by the Borrower; the applicable date is to be certified in the Starting Point Certificate or  (ii) the date falling 22 months after the Commencement Date;
<b>"Starting Point Certificate"</b>	shall mean a certificate duly issued and being substantially in the form as set forth in Annex E to this Loan Agreement;

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"Undrawn Balance" shall mean with respect to the relevant tranche of the Loan the difference between the Loan actually made and the maximum amount of the Loan at any time.

## **Article 2 – Amount and Purpose of Loan**

(1) KfW hereby grants to the Borrower a Loan up to the maximum amount of

EUR 26.329.306

(in words: EURO twenty six million three hundred twenty nine thousand three hundred and six).

(2) The Loan consists of the following tranches:

- a) the Credit Portion of up to EUR 23.529.306 (in words: EURO twenty three million five hundred twenty nine thousand three hundred and six);
- b) the HERMES Portion of up to EUR 2.800.000 (in words: EURO two million eight hundred thousand).

(3) The Loan shall serve exclusively, and the Borrower shall apply funds from the Loan exclusively to finance the Credit Portion and the HERMES Portion.

## **Article 3 – Conditions Precedent**

(1) *Obligations in General:* KfW shall have no obligation hereunder prior to the fulfilment of the following requirements and/or the receipt (within 60 days after signing or regarding subsection c) (i), within 180 days after signing) of the following documents in form and substance satisfactory to KfW:

- a) evidence that HERMES-Cover for the Loan is in full force and effect and Financing Costs have been paid;
- b) a legal opinion from Legal Counsel (Consultor jurídico del poder Ejecutivo) substantially in the form of Annex B hereto and issued after approval of the Loan Agreement by the National Congress and publication of such approval in the National Gazette, as well as certified copies with certified English translations of the documents on which the Legal Opinion is essentially based;
- c) (i) all resolutions and decisions of the National Congress authorizing this Loan Agreement by the Borrower's representatives and the assumption of payment obligations hereunder and evidence that all budgetary provisions required under the constitutional laws of the Dominican Republic for the fulfilment of its obligations hereunder have been made, (ii) evidence satisfactory to identify and to authorize the person(s) signing and executing this Loan Agreement;
- d) an executed copy of the Export Contract;
- e) a legally binding declaration substantially in accordance with Annex C hereto confirming that the Export Contract became effective;

- f) a declaration substantially in the form as set forth in Annex D hereto and issued by the agent of service of process being appointed by the Borrower pursuant to Article 20 hereof, accepting such appointment;
  - g) a list of authorised signatures of the Borrower in accordance with Annex F hereto;
  - h) a list of authorised signatures of the Importer in accordance with Annex G hereto;
  - i) a list of authorised signatures of the Exporter;
  - j) the Exporter's Declaration;
  - k) payment of any fees due and payable to KfW;
  - l) a copy of any other document, declaration, authorisation, opinion or assurance specified and reasonably requested by KfW;
  - m) that the following agreements have become affective i) COFACE Loan Agreement, ii) CESCE Loan Agreement and iii) an intercreditor agreement relating to the rights and obligations of KfW, Deutsche Bank, BNP Paribas and Citi under the HERMES, CESCE and COFACE Loan Agreements, in form and substance satisfactory to KfW;
  - n) a legal opinion from Jimenez Cruz Pena Abogados with respect to the Borrower and the execution of the Loan Agreement by the Borrower and the performance by the Borrower of its obligations hereunder, issued after approval of the Loan Agreement by the National Congress and publication of such approval in the National Gazette, as well as certified copies with certified English translations of the documents on which that legal opinion is essentially based.
- (2) *Obligation to Disburse*: KfW shall have no obligation to disburse any amount under this Loan Agreement in case
- a) of any Event of Default, any event which, given the elapse of time or the giving of notice, would constitute an Event of Default;
  - b) under any of the CESCE or COFACE Loan Agreement, the lender exercises its right to suspend or cancel one or more disbursements.

**Article 4 – Disbursement Requirements**

- (1) Upon compliance with the requirements set forth in Article 3, KfW will disburse the Credit Portion of the Loan in one or more Advances directly to the account of the Exporter within the period stated below against receipt of a legally signed Drawdown Certificate according to either (i) Annex A1 together with Annex A4 and the authorization of the Ministerio de Hacienda according to Annex A2 or (ii) Annex A3 and the authorization of the Ministerio de Hacienda according to Annex A2, provided that
- (a) KfW has received a statement of account of the Exporter evidencing its receipt of the 15% down payment with regard to the eligible Contract Value pursuant to the Export Contract, and
  - (b) the Advance for the Credit Portion drawn together with all other Advances relating to the Credit Portion then outstanding does not exceed the maximum amount of the Credit Portion.

For the avoidance of doubt KfW will receive from the Exporter either

- the legally signed originals of Annex A1 together with Annex A4
- or
- the legally signed original of Annex A3.

KfW will give notice to the Borrower confirming that a Drawdown Certificate according to Annex A1 and/or A3 in correct form has been duly presented to KfW by the Exporter. The "Ministerio de Hacienda" will submit a declaration to KfW either authorising the Advance according to Annex A2 hereof or disputing the Advance not later than five (5) Banking Days after the date of the notice ("**Notification Period**"). After receipt of such authorisation KfW will disburse the Advance within three (3) Banking Days.

If, however, after the lapse of the Notification Period, no declaration has been received by KfW, the authorisation for the request for drawdown will be deemed as having been received. KfW will submit a confirmation of receipt respectively non-receipt of the declaration to the Borrower within two Banking Days. In case KfW does not receive the authorisation of the Ministerio de Hacienda according to Annex A2 within the Notification Period, then KfW will disburse the respective Credit Portion within three (3) further Banking Days directly to the account of the Exporter.

In case KfW receives, within the Notification Period, a refusal of the Ministerio de Hacienda in respect of the disbursement concerned or the disbursement of certain amounts concerned in writing, KfW is entitled but not obliged to refrain from disbursing such amounts.

- (2) Upon receipt by KfW of the preliminary invoice of HERMES for the Financing Costs and upon compliance with the requirements set forth in Article 3, the Ministerio de Hacienda will submit a declaration to KfW authorising the payment of the Hermes Portion. After receipt of such authorisation KfW will disburse the HERMES Portion. In case the Exporter has made any payment with regard to the preliminary invoice of HERMES for the Financing Costs, KfW shall reimburse the relevant amount to the Exporter against presentation of the respective proof of payment to the extent still available under the HERMES Portion.
- (3) If after lapse of the Drawdown Period an Undrawn Balance remains within any tranche KfW may at any time refuse to make (further) Advances notwithstanding the receipt of a Drawdown Certificate, subject to necessary internal approval and the prior written approval of HERMES.

#### **Article 5 – Interest Periods**

- (1) The period for which an Advance is outstanding shall be divided into successive periods (each an "**Interest Period**") each of which (other than the first, which shall begin on the day the Advance is made) shall begin on the last day of the preceding Interest Period.
- (2) Notwithstanding the provisions of Sub-Article 5.1 hereof and in order to ensure that all Interest Periods are concurrent and ultimately coincide with the repayment dates pursuant to Article 9 hereof,
  - a) the first Interest Period of the first Advance made shall commence on the date upon which the disbursement is made hereunder and shall end on the first day after the six-month period has elapsed.

- b) each subsequent Interest Period will commence forthwith upon the expiry of the previous Interest Period and will end on the day which falls six months thereafter;
- c) If the last Interest Period of the Draw Down Period extend beyond a repayment date, it shall end on such repayment date.
- d) if any Interest Period would otherwise end on a day which is not a Banking Day, such Interest Period shall be extended to the next succeeding day which is a Banking Day in the same calendar month or, if there is no such Banking Day, the Interest Period will end on the last preceding Banking Day.

#### **Article 6 – Interest**

- (1) The Borrower shall pay interest on the Loan in arrears on the last day of any Interest Period.
- (2) The Borrower shall pay interest to KfW on the Loan at the rate which will be fixed without undue delay after the Effective Date of this Loan Agreement (i.e. the CIRRR plus the Margin) (altogether the “**Rate of Interest**”).
- (3) KfW shall promptly notify the Borrower of each interest rate determined under this Article. Such determination shall, save for manifest error, be conclusive and binding on the Borrower.
- (4) KfW shall, without further notice, be entitled to demand on repayment instalments overdue default interest at a rate exceeding by two percentage points per annum (2.0 % p.a.) the then current Rate of Interest as determined in accordance with this Article calculated from the due date until receipt of payment according to Article 11 hereof. This default interest shall be paid without delay upon KfW's first demand.
- (5) On amounts overdue other than instalments, KfW may without further notice demand as indemnification for damages an amount calculated at a rate of two percentage points per annum (2.0% p.a.) above the then current Rate of Interest, which shall be paid upon first demand.

#### **Article 7 – Commitment Fee / Arrangement Fee**

- (1) The Borrower shall pay a commitment fee at a rate of 0.45% (in words: zero point forty-five percent) per annum on the Undrawn Balance for the period from the Effective Date up to the date on which the Loan is disbursed in full. Such commitment fee is payable in arrears and shall be calculated on any last Banking Day of each of the first and the third calendar quarters.
- (2) Within 30 days after the date of approval of the Loan Agreement by the National Congress of the Dominican Republic the Borrower shall pay a non-refundable arrangement fee at a rate of 0.80 % (in words: zero point eighty percent) flat on the maximum amount of the Loan.

#### **Article 8- Computation**

Interest, default interest and lump sum indemnification shall be calculated on the basis of the actual number of calendar days elapsed and a 360-day year.

#### Article 9- Repayment

- (1) The Borrower shall repay the Loan in 20 (twenty) equal, consecutive, semi-annual repayment instalments, the first instalment being due on the First Repayment Date. Amounts repaid in full or in part may not be reborrowed.
- (2) Prior to payment of the first repayment, KfW shall send to the Borrower a repayment schedule, which shall become integral part of this Loan Agreement
- (3) Disbursements made after the First Repayment Date shall be repaid by increasing all and any repayment instalments becoming due after such disbursement by equal amounts which in the aggregate correspond with the relevant disbursements.

#### Article 10 - Prepayment

- (1) Should the Borrower wish to prepay Loan amounts in whole or in part, the Borrower shall notify KfW thereof. The Borrower's notice shall be irrevocable, state the amount and the date of the intended Prepayment and shall be made at least 30 days prior to such date. For each Prepayment the Borrower shall pay to KfW the amount it requires as compensation for any loss and/or reasonable expense or cost it may suffer or incur as a result of such Prepayment ("**Prepayment Compensation**"); such Prepayment Compensation shall be equal to the present value of the difference between (i) the interest which KfW would have earned if the amount had not been prepaid, and (ii) the interest which KfW can obtain by investing the amounts prepaid for the remaining term of the Loan as calculated by KfW and notified to the Borrower in reasonable detail.
- (2) Amounts prepaid hereunder may not be reborrowed and shall be applied against the outstanding repayment instalments in the inverse order of their maturity.

#### Article 11 - Payments

- (1) Payments to the Borrower under the Loan Agreement (including the disbursement of Advances) shall be remitted exclusively to an account of and specified by the Exporter exclusively for the purposes of the Export Contract.
- (2) The Borrower's payment obligations in connection with this Loan Agreement shall be discharged only when and insofar as the respective amounts have been credited without any deduction to account no. 9400954586. or to any other account as specified by KfW from time to time in EURO not later than 4:00 p.m. Frankfurt time. If any such credit has been effected after such time the relative discharge shall be deemed to have occurred on the next succeeding Banking Day.
- (3) Payments to be made by the Borrower hereunder on a day which is not a Banking Day may be effected on the next succeeding Banking Day.
- (4) All payments required to be made by the Borrower hereunder shall be made without set-off of any amounts attributed to claims the Borrower asserts against KfW ("**Borrower's Claims**") against claims arising to the benefit of KfW from this Loan Agreement, unless the Borrower's Claims are (i) undisputed by KfW or (ii) confirmed by a final and binding judgment by a competent court or arbitration panel.

- (5) If any amount received by KfW in respect of sums due from the Borrower hereunder is less than the full amount due, KfW shall have the right to allocate the amount received towards principal, interest and/or other sums owed hereunder or as it considers appropriate or as prescribed by HERMES, and notwithstanding any instructions of the Borrower to the contrary.

#### **Article 12 – Taxes, Levies, Fees, Costs and Indemnification**

- (1) All sums payable by the Borrower hereunder shall be paid in full and, except to the extent permitted or required by any law or regulation, free and clear of any deduction or withholding on account of tax or otherwise originated in the Dominican Republic.
- (2) If the Borrower is required by any law or regulation in the Dominican Republic to make any such deduction or withholding, the Borrower shall, together with the relevant payment, pay such additional amount as will ensure that KfW receives and is entitled to retain, free and clear of any such deduction or withholding, the full amount which it would have received if no such deduction or withholding had been required.
- (3) The Borrower undertakes - if necessary in co-operation with KfW - to duly discharge any obligations it or KfW may have toward the authorities of the Borrower's country (whether by providing information and/or documents or by making payments) in connection with this Loan Agreement; to the extent the Borrower acts on behalf of KfW it shall at the end of each calendar year furnish evidence to KfW of any payments made to that regard.
- (4) Any taxes arising from the Dominican Republic, levies, fees and costs in connection with the registration of the Loan and execution until fully amortisation of this Loan Agreement and the costs for the HERMES-Cover shall be borne by the Borrower.
- (5) After the approval of this contract by the National Congress, on KfW's first demand the Borrower shall make available to KfW any funds necessary to discharge the Financing Costs.
- (6) All costs and expenses, including legal fees, travel expenses and costs and expenses arising out of or in connection with the preparation, negotiation, execution and registration of this Loan Agreement shall be borne by the Borrower. However, the Borrower shall not be liable for any type of costs, expenses and fees of any kind hereunder in excess of EUR 20,000 .
- (7) The Borrower shall indemnify KfW at its first demand for any costs arising from the performance and enforcement of the Loan such as legal costs and court fees as well as any extrajudicial costs
- (8) In case that after receipt of the final invoice of HERMES any amounts should be reimbursed by HERMES to KfW may apply such amounts to any amount overdue or due hereunder or apply them to the next repayment instalment(s) under this Loan Agreement on the immediately succeeding Interest Payment Date or pay such refund to the Borrower without undue delay.
- (9) On any payments (other than repayment instalment) not being made by the Borrower when due pursuant to the provisions of this Loan Agreement KfW, without further notice, is entitled to demand a lump sum indemnification at a rate exceeding by two percentage points (2% p.a.) the then current Rate of Interest as to be determined pursuant to Article 6 para 2 hereof, calculated from the due date until receipt of payment according to Article 11 hereof. Notwithstanding the Borrower's right to prove that losses suffered by KfW due to the non-payment did not accrue at all or are significantly lower than the lump sum

indemnification calculated hereunder, the lump sum indemnification shall be paid without delay upon KfW 's first demand.

- (10) If any sum due from the Borrower under any order or judgment given or made in relation to this Loan Agreement has to be converted from EURO into another currency for the purpose of (i) making or filing a claim or proof against the Borrower, or (ii) obtaining or enforcing an order or judgment in any court or other tribunal, the Borrower shall indemnify KfW from and against any loss suffered or incurred as a result of any discrepancy between (a) the rate of exchange used for such purpose to convert such sum from EURO into the other currency and (b) the rate or rates of exchange available to KfW at the time of receipt of such sum.
- (11) If by reason of (a) compliance with requests or requirements of any central bank or other fiscal, monetary or other authority made after the date of this Loan Agreement, or (b) any change in law or its interpretation and administration, or (c) an introduction, termination or renegotiation of any applicable bi- or multilateral treaty or agreement, in particular on double taxation, KfW incurs additional costs or loses or is unable to obtain the agreed margin over its refinancing costs as a result of its having entered into and funded this Loan Agreement ("**Increased Costs**"), then KfW shall notify the Borrower thereupon and the Borrower shall promptly on demand indemnify KfW against any and all such Increased Costs. Any such demand by KfW shall be accompanied by a notice from KfW stating the basis for its demand and setting forth in reasonable detail the calculation of the amount thereof.

#### **Article 13 – Confidentiality**

KfW will keep this Loan Agreement and any information in connection herewith confidential, except as required by applicable law or HERMES regulation or by the Exporter or the Bank or any Assignee. KfW is however entitled to share confidential information with KfW and its affiliates. The Federal Republic of Germany, the European Union or HERMES may disclose information concerning this Loan Agreement to competent international organisations. KfW recognizes that this contract will become public when it is published in the National Gazette.

#### **Article 14 – Event of Default**

- (1) Each important reason (*wichtiger Grund*), including but not limited to the following events and circumstances, shall constitute an Event of Default:
- a) the Borrower fails to fulfil a payment obligation hereunder or under the CESCE Loan Agreement or under COFACE Loan Agreement or any other financing agreement in connection with the Export Contract as and when due, or
  - b) the Borrower fails to perform any other obligation hereunder for a period of 30 calendar days or longer, or fails to comply with Article 2 (3) hereof, or
  - c) the Borrower fails to pay any indebtedness toward a third party when due for the period of the applicable grace period or for 30 calendar days, whichever is shorter, or
  - d) the Borrower admits its inability to effect payments, conversion or transfers, or
  - e) a statement, confirmation, representation, warranty or information provided in or in connection with this Loan Agreement is or will become materially incorrect, incomplete or contested, or

- f) the Export Contract has been cancelled, rescinded or terminated for any reason other than the performance of its terms or ceases to be fully effective, or
- g) HERMES suspends, restricts or revokes the HERMES-Cover with respect to this Loan Agreement, such suspension, restriction or revocation duly evidenced by HERMES, or
- h) other circumstances are imminent or occur which imperil, delay or preclude the full and unconditional performance of the Borrower's obligations towards KfW.

(2) If and when an Event of Default has occurred KfW may notify the Borrower thereof and:

- (a) declare the Loan, accrued interest and all other sums payable thereunder to be, whereupon they shall become:
  - (i) immediately due and payable;
  - (ii) payable immediately upon demand
- (b) suspend or cancel any disbursements hereunder.

#### **Article 15 – Representations, Warranties and Covenants**

(1) The Borrower represents and warrants to KfW (and also represents and warrants for on behalf of the Importer, to the extent relevant) that:

- (a) Once the loan agreement is approved by the National Congress, it has full power, authority and legal right, and all necessary constitutional, parliamentary or governmental action has been taken in order to authorise the Borrower and its representatives on behalf of the Borrower, to enter into and to exercise its rights and perform its obligations under this Loan Agreement;
- (b) once approved by the National Congress, this Loan Agreement constitutes legal, valid and binding obligations of the Borrower enforceable in accordance with its terms;
- (c) once approved by the National Congress, all authorisations required from any constitutional, parliamentary, governmental or other authority (including, but not limited to, any exchange control or transfer permit) for or in connection with the execution, validity, performance and enforceability of this Loan Agreement have been obtained and are in full force and effect;
- (d) neither the conclusion of nor the performance under this Loan Agreement conflict with the Borrower's constitution or any law applicable to the Borrower;
- (e) no potential Event of Default or Event of Default has occurred and is continuing at the time hereof;
- (f) it is not in default under any agreement or obligation applicable to it or any of its assets, the consequences of which default could adversely affect the Borrower's ability to perform its obligations under this Loan Agreement;

- (g) there is no litigation, arbitration or administrative proceeding taking place or pending which could have a material adverse effect on the Borrower's ability to perform its obligations under this Loan Agreement;
  - (h) the execution by the Borrower of this Agreement, and the performance of its obligations thereunder, constitutes a commercial act done and performed for commercial purposes and governed by commercial law (*Código de comercio*). The Borrower has duly waived any immunity from jurisdiction, execution or enforcement which it enjoys at present or may enjoy and that are allowed by law. Regarding the Borrower's assets, apply restrictions referring to public goods ("bienes estatales o municipales") pursuant to Art. 45 of Law 6-06 of Public debt and Art. 45 of Law 1494 of Administrative Fiscal jurisdiction; and that
  - (i) with respect to the Loan it acts on its own account exclusively.
- (2) The Borrower's representations and warranties according to paragraph (1) shall be deemed to be repeated on any date of receipt of a Drawdown Certificate by KfW.
- (3) Until full and final discharge of its obligations under this Loan Agreement the Borrower undertakes and covenants
- (a) that its obligations under this Loan Agreement will at all times rank at least *pari passu* in all respect with all its other existing or future unsubordinated indebtedness owed by the Borrower towards persons outside the Dominican Republic and shall be secured equally and rateably, if and when the Borrower secures the aforementioned indebtedness by way of any charge on its assets or any of its subsidiaries' assets;
  - (b) (i) to cause its officers, directors, employees or other official representatives acting on its behalf (and the Importer to cause its respective staff) not to offer, give, insist on, receive or solicit any illegal payment or improper advantage to influence the action of any person in connection with the performance of the Export Contract and (ii) represents and warrants that none of the aforementioned improper or illegal acts have occurred prior to the date of conclusion of this Loan Agreement;
  - (c) to furnish KfW upon its request with any information as KfW may reasonably request in connection with the performance of this Loan Agreement;
  - (d) to promptly inform KfW about the occurrence of (i) an Event of Default and (ii) any events or circumstances which may cause the occurrence of an Event of Default and (iii) any other events which are or could be of significance to KfW as lender in respect of this Loan Agreement; and
  - (e) upon KfW's request to promptly inform KfW about the state of performance of the Export Contract.
- (4) The Borrower will confirm the approval of Loan Agreement by the National Congress of the Dominican Republic within 10 calendar days after such approval and publication in the National Gazette.

#### **Article 16 - Assignability**

- (1) This Agreement shall be binding upon and inure to the benefit of each contract party and its successors, transferees and assigns.
- (2) The Borrower shall not be entitled to assign or transfer any of its rights or obligations under this Agreement.
- (3) So long as amounts hereunder are available for disbursements, KfW may transfer all or any of its rights, benefits or obligations hereunder with the consent of the Borrower which shall not be unreasonably withheld. Once the entire loan amount will have been disbursed, prior consent shall no longer be required from the Borrower. Any assignments of rights, benefits and claims or transfers following the occurrence of an event of default shall, however, not require the Borrower's consent.
- (4) Provided, however, that any such assignment shall not be deemed to modify any rights and interest or obligations of the Borrower hereunder.
- (5) KfW shall previously notify the Borrower accordingly of any assignment pursuant to this clause and no additional cost related to such assignment will be paid by the Borrower.
- (6) The Borrower hereby explicitly authorises KfW to release and disclose any information regarding the Project or this financing in conjunction with any transfer and/or assignment as permitted under this Article 16.

#### **Article 17 - Legal Independence**

The Borrower's rights and obligations under this Loan Agreement shall be separate from and independent of its rights and obligations under the Export Contract, and nothing in the Export Contract may provide the Borrower with a defence or objection with respect to its obligations pursuant to the terms of this Loan Agreement.

#### **Article 18 - Notices**

- (1) Each notice, demand or other communication to be given or made hereunder or under this Loan Agreement shall be in writing and delivered or sent to the relevant party at its address or telex number or fax number set out below:

Borrower: The Dominican Republic represented by  
the Ministerio de Hacienda  
to the attention of : Daniel Toribio, Minister of Finance  
Av. México ' 45, Gazcue  
Santo Domingo  
Apdo. Postal 1478  
Dominican Republic

Phone: +1809 687-5131 ext 2030  
Fax: +1809 686-0204

KfW: c/o KfW IPEX-Bank GmbH  
(as representative of KfW)

to the attention of X2b4, Ms. Pilar Skall

Palmengartenstrasse 5 - 9  
60325 Frankfurt (Main)  
Germany

Phone: +49 69 7431 4102  
Fax: +49 69 7431 2428

- (2) Alterations to the business names, addresses, the authority to sign or to specimen signatures shall be binding only as of receipt of a notice to that regard by the other party of statements or documents advising such alteration in accordance with the preceding paragraph.
- (3) Each notice or other communication in connection with this Loan Agreement shall be in English. Any other document required to be delivered pursuant to the terms of this Loan Agreement shall be either in English or be accompanied by a certified translation into English.
- (4) Each notice made by KfW to the Borrower in connection with Article 14 hereof shall be deemed to be received by Borrower within three (3) Banking Days after having been received by the Borrower's agent of service of process.

#### **Article 19 – Severability / No Waiver / Waiver of Immunity**

- (1) The invalidity, illegality or unenforceability of any provision of this Loan Agreement shall not affect the validity, illegality and enforceability of the remaining provisions. The invalid, illegal or unenforceable provision shall be deemed to be substituted by a provision consistent with the meaning and purpose of this Loan Agreement.
- (2) No failure to exercise nor any partial exercise of any rights of KfW in connection with this Loan Agreement shall preclude their assertion in the future.
- (3) Should the Borrower be entitled to claim immunity for itself in proceedings intended to result or resulting in a judgment, arbitration award, preliminary injunction and/or attachment the Borrower hereby irrevocably and unconditionally waives such immunity, except those immunities that are obligatory by law.

#### **Article 20 – Agent of Service of Process**

The Borrower irrevocably appoints Embajada Dominicana en Alemania with address at , Dessauer Str 28/29 10963, Berlin as its agent to receive and acknowledge on its behalf service of any notice made by KfW (or KfW IPEX-Bank GmbH as representative of KfW) in connection with Article 14 hereof, and of any writ, summons, order, judgment or other notice of legal process in the Federal Republic of Germany. If for any reason the agent named above (or its successor) no longer serves as agent of the Borrower for this purpose, the Borrower shall promptly appoint a successor agent and notify KfW thereof. Until KfW receives such notification, it shall be entitled to treat the agent named above (or its said successor) as the agent of the Borrower for the purposes of this provision. The Borrower agrees that any such legal process shall be sufficiently served on it if delivered to such agent for service at its address for the time being in Germany whether or not such agent gives notice thereof to the Borrower.

**Article 21 – Law, Jurisdiction and Place of Performance**

- (1) This Loan Agreement shall be governed by and construed in accordance with the laws of the Federal Republic of Germany.
- (2) Any disputes arising out of or in connection with this Loan Agreement, including disputes concerning the validity of this Loan Agreement or of any provision thereof, shall be finally settled by arbitration under the Rules of Arbitration of the International Chamber of Commerce in the then current version by one or more arbitrators appointed in accordance with such Rules of Arbitration. The arbitrator(s) shall be qualified to practise as a judge in the Federal Republic of Germany. Notwithstanding the foregoing, the Borrower submits to the courts of law in Frankfurt am Main, and to the courts of law of its domicile in any legal proceedings against it.
- (3) Place of performance of this Loan Agreement is Frankfurt (M), Germany.

**Article 22 – Coming into force of the Loan Agreement**

This Loan Agreement shall become effective on the day on which the approval of this Loan Agreement by the National Congress of the Dominican Republic is published in the National Gazette provided that such approval is published within 180 day after signing of this Loan Agreement by the parties thereto (such period, the "Effectiveness Period"). For the avoidance of doubt, if such approval is not published in the National Gazette within the Effectiveness Period, this Loan Agreement shall not become effective. KfW is entitled but not obliged to extend the Effectiveness Period by up to 180 days by written notice to the Borrower.

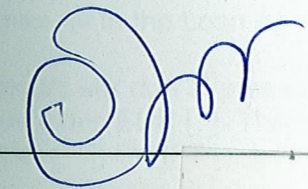
**Article 23 – Number of Counterparts**

Each party shall receive one signed original of this Loan Agreement.

Santo Domingo, on April 12, 2011

**The Dominican Republic  
represented by the  
Ministerio de Hacienda**

**KfW, duly represented by KfW IPEX-BANK  
GmbH**



**Melanie Abels  
Director**

**Pilar Skall  
Vice President**



KfW IPEX-Bank GmbH  
(as representative of KfW)

to the attention of [...]

Palmengartenstrasse 5 - 9  
60325 Frankfurt (Main)  
Germany

**Drawdown Certificate No. ...**

**Loan Agreement No. 24987, entered into between the Dominican Republic represented by the Ministerio de Hacienda and KfW on .....**

We hereby confirm to you that supplies and services in an amount of EUR [ ] in accordance with the invoice list attached and further supporting documents evidencing the delivery of the goods (i.e. bill of lading or any other shipping documents deemed to be necessary by KfW) relating to the Contract Value of [...] have been fulfilled under the Export Contract.

Please find attached the respective authorization by the Importer in form and substance as per Annex A4 to the Loan Agreement.

The amount still due at present under the Export Contract represents ..... % of such amount and thus totals EUR [ ]. This amount is to be disbursed to our account with [...], Account No [...]; IBAN [...]; SWIFT [...]; Project [...].

We also hereby confirm that

1. the Export Contract is in full force and effect;
2. the supplies and services covered by the present Drawdown Certificate are in conformity with the Export Contract and with the provisions of the export and financial credit guarantee granted by the Federal Republic of Germany.
3. an<sup>\*)</sup>/the<sup>\*)</sup> export licence for the Export Contract issued by the Bundesamt für Wirtschaft und Arbeit is not required<sup>\*)</sup>/still valid<sup>\*)</sup>.
4. the Importer has so far fulfilled all of its payment obligations assumed vis-à-vis us under the Export Contract and its obligation to furnish security, if any, in our favour;
5. we have not previously requested disbursement for amounts which form part of this Drawdown Certificate.

.....  
.....  
[legally binding signature(s) of the  
Exporter]

\*) please delete what is not applicable



KfW IPEX-Bank GmbH  
(as representative of KfW)

to the attention of [...]

Palmengartenstrasse 5 - 9  
60325 Frankfurt (Main)  
Germany

Drawdown Certificate No. ...

**Loan Agreement No. 24987, entered into between the Dominican Republic represented by the Ministerio de Hacienda and KfW on .....**

We hereby confirm to you that supplies and services in an amount of EUR [ ] relating to the Contract Value of [...] have been fulfilled under the Export Contract.

Please find attached the confirmation of receipt by the Importer of our request for authorization of the payment request. We have not received any objection or confirmation from the Importer regarding our payment request within 10 working days from the date of receipt. According to the Export Contract we are now entitled to receive payment of the amount due.

The amount still due at present under the Export Contract represents ..... % of such amount and thus totals EUR [ ]. This amount is to be disbursed to our account with [ ].

We also hereby confirm that

1. the Export Contract is in full force and effect
2. the Importer has so far fulfilled all of its payment obligations assumed vis-à-vis us under the Export Contract and its obligation to furnish security, if any, in our favour;
3. the supplies and services covered by the present Drawdown Certificate are in conformity with the Export Contract and with the provisions of the export and financial credit guarantee granted by the Federal Republic of Germany.
4. an\*/the\*) export licence for the Export Contract issued by the Bundesamt für Wirtschaft und Ausfuhrkontrolle is not required\*/still valid\*).
5. we have not previously requested disbursement for amounts which form part of this Drawdown Certificate

.....  
.....  
[legally binding signature(s) of the  
Exporter]

KfW IPEX-Bank GmbH  
(as representative of KfW)

to the attention of [...]

Palmengartenstrasse 5 - 9  
60325 Frankfurt (Main)  
Germany

**Importer's Authorization**  
**Relating to the Drawdown Certificate No. ...**

**Loan Agreement No. 24987, entered into between the Dominican Republic represented by the Ministerio de Hacienda and KfW on.....**

We hereby confirm that supplies and services in an amount of EUR [ ] relating to the Contract Value of [...] have been fulfilled under the Export Contract. The amount still due at present under the Export Contract represents ..... % of such amount and thus totals EUR [ ]. We herewith confirm that we authorize the payment of this amount to an account of the Exporter.

We also hereby confirm that the Export Contract is in full force and effect

.....

.....  
[legally binding signature(s) of the  
Importer]

KfW  
c/o KfW IPEX-Bank GmbH

to the attention of [...]

Palmengartenstrasse 5 - 9  
60325 Frankfurt (Main)  
Germany

L E G A L O P I N I O N

Re: **Loan Agreement No. 24987**; entered into between the Dominican Republic represented by the Ministerio de Hacienda and [...] on ..... (the "Loan Agreement")

Dear Sirs,

I, [name], acting as Legal Counsel to your benefit, have examined a signed original of the Loan Agreement (hereinafter together the "**Agreement**") and such documents, agreements and instruments, all verified for their effectiveness by me as far as necessary, and such laws, rules, regulations, decisions, registers and the like as I have considered necessary or appropriate for the purposes of this Legal Opinion.

The important ones, certified copies and certified English translations of which are attached hereto, are:

- a) The resolution(s) of the Borrower's Cabinet of Ministers, dated ..... authorising the contracting of the Agreement and the signing thereof by.....
- b) The power of attorney for the persons signing the loan agreement.

I am qualified and authorized to practise law in the Dominican Republic ("**this Country**"). I assume the validity and enforceability of the Agreement under the laws of the Federal Republic of Germany and render this Legal Opinion with respect to the laws of this Country only. Terms and definitions not defined herein shall have the meaning as set forth in the Agreement.

This being premised, I am of the opinion that:

1. The Agreement has been duly executed and delivered for and on behalf of the Borrower by ..... and ..... who have been duly authorised for such purposes by virtue of .....
2. The execution, delivery and performance of the Agreement does not contravene, or result in any violation of, any provision of the Borrower's constitution, any law, regulation, order, decree or decision of any legislative body or any authority, agency or court or public policy in this Country.

3. All requirements and actions necessary or advisable to ensure that (a) the obligations of the Borrower under the Agreement are legally valid, binding, irrevocable and enforceable, and (b) the Agreement is admissible in evidence in this Country, are fulfilled or have been taken and are not subject to any restriction; in particular all constitutional, parliamentary and governmental authorisations, approvals and consents (including any exchange control, conversion and transfer permits) and any stamps, registration, publication and recording from or with the competent authorities have been obtained.
4. The Agreement constitutes legal, valid and binding obligations of the Borrower, enforceable against the Borrower in accordance with their terms.
5. Neither the execution nor the performance of the Agreement nor any payments by the Borrower thereunder give rise to any tax or duty in this Country. Should, however, any such tax or duty be imposed in the future, Article 12 (2) of the Agreement will be a valid, binding and enforceable obligation of the Borrower.
6. The submission by the Borrower to arbitration under the Rules of Arbitration of the International Chamber of Commerce, the appointment of the arbitrators in accordance with such rules, and the submission to the jurisdiction of courts in the Federal Republic of Germany, and the appointment of [...] as the Borrower's agent for service of process is valid and binding and not subject to any time limit.
7. Any arbitration award rendered by the arbitrary council, and any judgement obtained in courts of the Federal Republic of Germany would be recognised and enforced by the courts in this Country without re-examination of the merits of the case and the Borrower has duly waived any immunity from jurisdiction, execution or enforcement which it enjoys at present or may enjoy and that are allowed by law. Regarding the Borrower's assets, restrictions apply referring to public goods ("bienes estatales o municipales") pursuant to Art. 45 of Law 6-06 of Public debt and Art. 45 of Law 1494 of Administrative Fiscal jurisdiction
8. The law of the Federal Republic of Germany would, irrespective of the place of signature of the Agreement, be applied by any court in this Country as the proper law should it have to give a ruling on any claim under the Agreement.
9. You are not and will not be deemed to be resident, domiciled, carrying on business or be subject to taxation in this Country by reason only of the execution, performance or enforcement of the Agreement. It is not necessary or advisable that you be licensed, qualified or otherwise entitled to carry on business or that you appoint agents or representatives in this Country.
10. Furthermore, the following legal implications or considerations are of importance in connection with the Agreement:  
.....

This Legal Opinion is for your own benefit and the benefit of your successors and assigns. You are allowed to disclose this Legal Opinion to Euler Hermes, if so requested.

I am not aware that the current legal position is likely to change in the future (through an alteration of the laws, change of jurisdiction or otherwise) in such a way as to materially affect the statements in this Legal Opinion. Should this occur, however, I (or my successor) will promptly supplement this Legal Opinion with further information, documents and other material of relevance or specifically requested by you. The same applies should you deem further clarification, substantiation of or amendment to this Legal Opinion necessary or appropriate.

.....  
[place]

.....  
[date]

.....  
[signature]

KfW IPEX-Bank GmbH  
(as representative of KfW)

to the attention of [...]

Palmengartenstrasse 5 - 9  
60325 Frankfurt (Main)  
Germany

**List of authorised signatures - Borrower**

**Loan Agreement No. 24987, entered into between the Dominican Republic represented by the Ministerio de Hacienda and KfW on .....**

Dear Sirs,

On ..... / ....., an Exporter's consortium consisting of [...] and the Importer entered into an Export Contract for the construction of line one of the metro in Santo Domingo, Dominican Republic.

For the purpose of the financing of this contract you granted us loan No. [...] dated .....

Under the provisions of the loan agreement we are to submit to you evidence of the authority to sign all statements made by us in connection with the said loan agreement.

Accordingly we hereby confirm to you that the persons listed hereafter are authorised to make all statements on our behalf in connection with the said loan agreement:

First Name      Last Name      Title      Specimen Signature

A.  
Persons  
authorised  
to sign individually:

B.  
Persons  
authorised  
to sign jointly  
with any person  
from Group A or  
Group B:

Alterations to the powers of representation and to the specimen signatures listed above shall be binding only as of receipt by you of statements by us advising such alterations.

.....  
(date, place)

**The Dominican Republic represented  
by the Ministerio de Hacienda**

\_\_\_\_\_  
signature(s) with name(s) and title(s)

I, in my capacity as Consultor Juridico del Poder Ejecutivo, hereby certify that the specimen signatures listed above are the signatures of persons authorised by The Dominican Republic to make all statements on the Borrower's behalf in connection with the Loan Agreement No. 24987 dated .....

Alterations to the powers of representation of the Borrower and to the specimen signatures listed above shall be binding only as of receipt by you of statements of the Borrower advising such alteration.

..... (place), ..... (date)

.....

(name and signature)

KfW IPEX-Bank  
(as representative of KfW)

to the attention of [...]

Palmengartenstrasse 5 - 9  
60325 Frankfurt (Main)  
Germany

**List of authorised signatures - Importer**

**Loan Agreement No. 24987, entered into between the Dominican Republic represented by the Ministerio de Hacienda and KfW on .....**

Dear Sirs,

On ..... / ....., an Exporter's consortium consisting of [...] and the Importer entered into an Export Contract for the construction of line one of the metro in Santo Domingo, Dominican Republic.

For the purpose of the financing of this contract you granted the loan No. [...] dated .....

Under the provisions of the loan agreement we are to submit to you evidence of the authority to sign all statements made by us in connection with the said loan agreement.

Accordingly we hereby confirm to you that the persons listed hereafter are authorised to make all statements on our behalf in connection with the said loan agreement:

First Name      Last Name      Title      Specimen Signature

A.  
Persons  
authorised  
to sign individually:

B.  
Persons  
authorised  
to sign jointly  
with any person  
from Group A or  
Group B:

Alterations to the powers of representation and to the specimen signatures listed above shall be binding only as of receipt by you of statements by us advising such alterations.

.....  
(date, place)

**Oficina para el Reordenamiento del  
Transporte – OPRET**

\_\_\_\_\_  
signature(s) with name(s) and title(s)

We hereby certify that the specimen signatures listed above are the signatures of persons authorised by the Importer to make all statements on the Importer's behalf in connection with the Loan Agreement No. **24987** dated .....

Alterations to the powers of representation of the Importer and to the specimen signatures listed above shall be binding only as of receipt by you of statements of the Importer advising such alteration.

..... (place), ..... (date)

.....  
**The Dominican Republic represented by**  
**the Ministerio de Hacienda**

