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INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES  
ADDITIONAL FACILITY

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**SARGEANT PETROLEUM, LLC**

Claimant

-against-

**THE DOMINICAN REPUBLIC**

Respondent

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**CLAIMANT'S APPLICATION FOR ACCESS  
&  
REQUEST FOR ARBITRATION**

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Dated: 23 March 2022

**O'MELVENY & MYERS LLP**

Times Square Tower  
7 Times Square  
New York, New York 10036-6537  
Telephone: +1 212 326 2000  
Facsimile: +1 212 326 2061

19th Floor  
100 Bishopsgate  
London EC2N 4AG, United Kingdom  
Telephone: +44 20 7088 0000  
Facsimile: +44 20 7088 0001

400 South Hope Street  
18<sup>th</sup> Floor  
Los Angeles, California 90071-2899  
Telephone: +1 213 430 6000  
Facsimile: +1 213 430 6407

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## **APPLICATION FOR ACCESS TO ADDITIONAL FACILITY**

### **I. Introduction**

1. Pursuant to Article 4 of the Rules Governing the Additional Facility for the Administration of Proceedings by the Secretariat of the International Centre for Settlement of Investment Disputes (“Additional Facility Rules”), Claimant Sargeant Petroleum, LLC (“Sargeant” or “Claimant”) hereby requests that the Secretary-General of the International Centre for Settlement of Investment Disputes (“Secretary-General”) approve access to the Additional Facility for the Administration of Proceedings by the Secretariat of the International Centre for Settlement of Investment Disputes (“Additional Facility”) for purposes of conclusively resolving the claims asserted in Sargeant’s concurrently-filed Request for Arbitration.

### **II. The Parties**

#### **A. Claimant’s Name and Contact Details**

1. Sargeant is a limited liability company that was formed under the laws of the U.S. State of Texas on or around March 4, 2013. A true and correct copy of Sargeant’s Certificate of Formation with the U.S. State of Texas is provided herewith as **Attachment A**.
2. Sargeant’s current address is:

Sargeant Petroleum, LLC  
1601 Elm Street, Suite 300  
Dallas, Texas 75201  
USA

*[Continued on following page]*

3. Sargeant may be reached through its counsel, O'Melveny & Myers LLP ("O'Melveny"), as stated below:

ALLEN W. BURTON  
aburton@omm.com  
O'MELVENY & MYERS LLP  
Times Square Tower  
7 Times Square  
New York, New York 10036-6537  
Telephone: +1 212 326 2000  
Facsimile: +1 212 326 2061

DAVID FOSTER  
dfoster@omm.com  
O'MELVENY & MYERS LLP  
19th Floor  
100 Bishopsgate  
London EC2N 4AG, United Kingdom  
Telephone: +44 20 7088 0000  
Facsimile: +44 20 7088 0001

ANDREW J. WEISBERG  
aweisberg@omm.com  
O'MELVENY & MYERS LLP  
400 South Hope Street  
18<sup>th</sup> Floor  
Los Angeles, California 90071-2899  
Telephone: +1 213 430 6000  
Facsimile: +1 213 430 6407

#### **B. Respondent's Name and Contact Details**

1. Respondent, the Dominican Republic ("Respondent" or "Dominican Republic") is a sovereign nation and a party to the Dominican Republic – Central America – United States Free Trade Agreement ("DR-CAFTA").

2. The Dominican Republic's address is:

Dirección de Comercio Exterior y Administración de Tratados Comerciales Internacionales  
Secretaría de Estado de Industria y Comercio  
Santo Domingo, República Dominicana

3. Annex 10-G of the DR-CAFTA provides that "Notices and other documents in disputes under Section B shall be served on the Dominican Republic by delivery" to the above address.

4. The Dominican Republic can be reached via e-mail as follows:

Antoliano Peralta  
*Legal Counsel to the President; Officer,  
Ministry of Industry and Commerce*  
[antolianoperalta@consultoria.gov.do](mailto:antolianoperalta@consultoria.gov.do)  
[Antolianopr@hotmail.com](mailto:Antolianopr@hotmail.com)

Leidylin Contreras  
*Director of Commercial Treaties and  
International Agreements, Ministry of  
Industry and Commerce*  
[leidylin.contreras@micm.gob.do](mailto:leidylin.contreras@micm.gob.do)

The Dominican Republic's applicable facsimile and telephone numbers are not known to Sargeant at this time.

### III. Consent to Arbitration Under the Additional Facility

1. Sargeant hereby consents to arbitration under the Additional Facility Rules, for the purposes of conclusively resolving its claims against the Dominican Republic, as set out in Sargeant's concurrently-filed Request for Arbitration.
  - a. The Secretariat of the International Centre for Settlement of Investment Disputes is authorized to administer Sargeant's dispute with the Dominican Republic pursuant to Art. 2(a) of the Additional Facility Rules.
  - b. As discussed below, there is an existing legal dispute between Sargeant and the Dominican Republic arising directly out of an investment by Sargeant. That dispute is not within the jurisdiction of the International Centre for Settlement of Investment Disputes established pursuant to Article 1 of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, because the Dominican Republic is not a state for which that Convention has entered into force.<sup>1</sup>
2. The Dominican Republic has already consented to arbitration proceedings under the Additional Facility pursuant to Chapter Ten of the DR-CAFTA.
  - a. The Dominican Republic is a party to the DR-CAFTA treaty, the "Investor-State Dispute Settlement" section of which (Section B) contains the consent of each DR-CAFTA party to this form of arbitration. See DR-CAFTA Arts. 10.16(3)(b) (claimant "may submit a claim . . . under the ICSID Additional Facility Rules, provided that either the respondent or the Party [sic] of the claimant is a party to the ICSID Contention"), 10.17(1) ("Each Party consents to the submission of a claim to arbitration under this Section in accordance with this Agreement."), 10.17(2)(a) ("The consent under paragraph 1 and the submission of a claim to arbitration under this Section shall satisfy the requirements of: (a) Chapter II of the ICSID Convention (Jurisdiction of the Centre) and the ICSID Additional Facility Rules for written consent of the parties to the dispute[.]").
  - b. A true and correct copy of Chapter Ten of the DR-CAFTA is provided herewith as **Attachment B**.
  - c. For further reference, a copy of an announcement by the Embassy of the Dominican Republic in the United States, showing the date of the DR-

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<sup>1</sup> See <https://icsid.worldbank.org/about/member-states/database-of-member-states> (last accessed 23 March 2022)

CAFTA's entry into force on 1 March 2007, is provided herewith as **Attachment D**.

**IV. Signature by Duly Authorized Representative**

1. This Application for Access is signed on Sargeant's behalf by its duly-authorized counsel, O'Melveny. O'Melveny's authority to sign on Sargeant's behalf is evidenced by the authorization letter provided herewith as **Attachment C**.

Dated: 23 March 2022

**Counsel for Claimant Sargeant Petroleum LLC:**



ALLEN W. BURTON  
aburton@omm.com  
O'MELVENY & MYERS LLP  
Times Square Tower  
7 Times Square  
New York, New York 10036-6537  
Telephone: +1 212 326 2000  
Facsimile: +1 212 326 2061

DAVID FOSTER  
dfoster@omm.com  
O'MELVENY & MYERS LLP  
19th Floor  
100 Bishopsgate  
London EC2N 4AG, United Kingdom  
Telephone: +44 20 7088 0000  
Facsimile: +44 20 7088 0001

ANDREW J. WEISBERG  
aweisberg@omm.com  
O'MELVENY & MYERS LLP  
400 South Hope Street  
18<sup>th</sup> Floor  
Los Angeles, California 90071-2899  
Telephone: +1 213 430 6000  
Facsimile: +1 213 430 6407

## REQUEST FOR ARBITRATION

### **I. Introduction**

1. Pursuant to Articles 2 and 3 of Schedule C of the Additional Facility Rules (“Additional Facility Rules Schedule C”), Sargeant submits this Request for Arbitration against the Dominican Republic.

### **II. The Parties**

1. Pursuant to Article 3(1)(a) of Additional Facility Rules Schedule C, Sargeant states as follows:

#### **A. Claimant’s Name and Contact Details**

2. Sargeant is a limited liability company that was formed under the laws of the U.S. State of Texas on or around March 4, 2013. A true and correct copy of Sargeant’s Certificate of Formation with the U.S. State of Texas is provided herewith as **Attachment A**.
3. Sargeant’s current address is:

*Sargeant Petroleum, LLC*  
1601 Elm Street, Suite 300  
Dallas, Texas 75201  
USA

*[Continued on following page]*



4. Sargeant may be reached through its counsel, O'Melveny, as stated below:

ALLEN W. BURTON  
aburton@omm.com  
O'MELVENY & MYERS LLP  
Times Square Tower  
7 Times Square  
New York, New York 10036-6537  
Telephone: +1 212 326 2000  
Facsimile: +1 212 326 2061

DAVID FOSTER  
dfoster@omm.com  
O'MELVENY & MYERS LLP  
19th Floor  
100 Bishopsgate  
London EC2N 4AG, United Kingdom  
Telephone: +44 20 7088 0000  
Facsimile: +44 20 7088 0001

ANDREW J. WEISBERG  
aweisberg@omm.com  
O'MELVENY & MYERS LLP  
400 South Hope Street  
18<sup>th</sup> Floor  
Los Angeles, California 90071-2899  
Telephone: +1 213 430 6000  
Facsimile: +1 213 430 6407

**B. Respondent's Name and Contact Details**

2. Respondent, the Dominican Republic, is a sovereign nation and a member to DR-CAFTA.
3. The Dominican Republic's address is:
- The Dominican Republic  
Dirección de Comercio Exterior y Administración de Tratados Comerciales Internacionales  
Secretaría de Estado de Industria y Comercio  
Santo Domingo, República Dominicana
4. Annex 10-G of the DR-CAFTA provides that "Notices and other documents in disputes under Section B shall be served on the Dominican Republic by delivery" to the above address.
5. The Dominican Republic can be reached via e-mail as follows:

Antoliano Peralta  
*Legal Counsel to the President; Officer,  
Ministry of Industry and Commerce*  
[antolianoperalta@consultoria.gov.do](mailto:antolianoperalta@consultoria.gov.do)  
[Antolianopr@hotmail.com](mailto:Antolianopr@hotmail.com)

Leidylin Contreras  
*Director of Commercial Treaties and  
International Agreements, Ministry of  
Industry and Commerce*  
[leidylin.contreras@micm.gob.do](mailto:leidylin.contreras@micm.gob.do)

The Dominican Republic's applicable facsimile and telephone numbers are not known to Sargeant at this time.

### III. Sargeant's Right to Arbitrate Its Claims

#### A. DR-CAFTA Article 10.16 and the Submission of Claims to Arbitration

1. Article 10.16 of the DR-CAFTA sets forth the parties' arbitration agreement and the steps aggrieved investors must take to submit disputes with the host nation to arbitration under the DR-CAFTA.
2. Article 10.16(1)(a) of the DR-CAFTA provides that investors may directly assert claims against host states on the basis that the host state violated protections set forth in Section A of Chapter 10 of the CAFTA, in an investment authorization, or in an investment agreement.
3. Sargeant discusses its specific claims against the Dominican Republic in greater detail below.
4. Article 10.16(2) of the DR-CAFTA provides that investors must deliver written notice of their intent to submit claims to arbitration at least ninety days before commencing any arbitration.
5. Provided herewith as **Attachment F** is a true and correct copy of a letter and Notice of Intent that Sargeant sent to the Dominican Republic on December 10, 2021, which discusses Sargeant's claims against the Dominican Republic and the monetary damages (exclusive of costs and attorneys' fees) that Sargeant sought as of the date of that letter and Notice.
6. Sargeant's sending of that letter and Notice of Intent satisfied the requirements of DR-CAFTA Article 10.16(2).
7. DR-CAFTA Article 10.16(3)(b) provides that investors may commence an arbitration under the ICSID Additional Facility Rules once six months have elapsed from the time of the events that gave rise to the investor's claims.
8. As **Attachment F** and this Request for Arbitration demonstrate, more than six months have elapsed since the Dominican Republic took the actions that have given rise to Sargeant's claims.
9. Sargeant has therefore fulfilled the conditions necessary to commence this Arbitration.

## **B. Consent to Arbitration Under the Additional Facility**

10. Pursuant to Article 3(1)(b) of Additional Facility Rules Schedule C, Sargeant states as follows:

### **i. Sargeant's Consent to Arbitration**

11. In accordance with DR-CAFTA Art. 10.18(2)(a), Sargeant consents to arbitration under the Additional Facility Rules, and in accordance with the procedures set out in the DR-CAFTA, for the purposes of conclusively resolving its instant legal dispute with the Dominican Republic.

a. The Secretariat of the International Centre for Settlement of Investment Disputes is authorized to administer Sargeant's dispute with the Dominican Republic, subject to and in accordance with the Additional Facility Rules, pursuant to Art. 2(a) of the Additional Facility Rules.

b. As discussed in more detail below, the requested arbitration proceedings would settle an existing legal dispute between Sargeant and the Dominican Republic arising directly out of an investment by Sargeant, which is not within the jurisdiction of the International Centre for Settlement of Investment Disputes established pursuant to Article 1 of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States. That is because the Dominican Republic is not a state for which that Convention has entered into force.<sup>2</sup>

### **a. Written Waiver (DR-CAFTA Art. 10.18)**

12. Pursuant to DR-CAFTA Art. 10.18(2), in submitting this Request for Arbitration, and conditional on the acceptance of same, Sargeant hereby waives any right to initiate or continue before any administrative tribunal or court under the law of any party to DR-CAFTA (or through other dispute settlement procedures) any proceeding with respect to any measure alleged to constitute a breach referred to in DR-CAFTA Article 10.16.

### **b. No Prior Submission (DR-CAFTA Art. 10.18(4))**

13. Pursuant to DR-CAFTA Art. 10.18(4), Sargeant hereby affirms that it has not previously submitted claims for the breaches of DR-CAFTA alleged herein to an administrative tribunal or court of the Dominican Republic, or to any other binding dispute settlement procedure, for adjudication or resolution.

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<sup>2</sup> See <https://icsid.worldbank.org/about/member-states/database-of-member-states> (last accessed 23 March 2022)

ii. **The Dominican Republic's Consent to Arbitration**

14. The Dominican Republic has already consented to arbitration proceedings under the Additional Facility, pursuant to Chapter Ten of the DR-CAFTA.
- c. The Dominican Republic is a party to the DR-CAFTA treaty, the "Investor-State Dispute Settlement" section of which (Section B) contains the consent of each DR-CAFTA party to this form of arbitration. See DR-CAFTA Arts. 10.16(3)(b) (claimant "may submit a claim . . . under the ICSID Additional Facility Rules, provided that either the respondent or the Party [sic] of the claimant is a party to the ICSID Contention"), 10.17(1) ("Each Party consents to the submission of a claim to arbitration under this Section in accordance with this Agreement."), 10.17(2)(a) ("The consent under paragraph 1 and the submission of a claim to arbitration under this Section shall satisfy the requirements of: (a) Chapter II of the ICSID Convention (Jurisdiction of the Centre) and the ICSID Additional Facility Rules for written consent of the parties to the dispute[.]").
  - d. A true and correct copy of Chapter Ten of the DR-CAFTA is provided herewith as **Attachment B**.
  - e. For further reference, a copy of an announcement by the Embassy of the Dominican Republic in the United States, showing the date of the DR-CAFTA's entry into force on 1 March 2007, is provided herewith as **Attachment D**.

**IV. Approval of Access by Secretary-General**

1. Pursuant to Article 3(1)(c) of Additional Facility Rules Schedule C, Sargeant confirms as follows:
- a. Sargeant's Application for Access is concurrently filed with this Request for Arbitration.
  - b. Accordingly, the Secretary-General's approval of access to the Additional Facility is pending, and has not yet been granted.

**V. Issues in Dispute and Amount Involved**

1. Pursuant to Article 3(1)(d) of Additional Facility Rules Schedule C, Sargeant states as follows:

**A. The Dominican Republic Has Breached Its Obligations to Sargeant Under the DR-CAFTA and Under Its Investment Agreement With Sargeant**

2. This case arises from a series of measures taken by the Dominican Republic designed to drive Sargeant out of the Dominican asphalt market. By targeting Sargeant in this way, the Dominican Republic has unlawfully interfered with Sargeant's business to such an extent that Sargeant's investments in the Dominican Republic have indirectly been expropriated, and has treated Sargeant inequitably and unfairly in violation of numerous provisions of the DR-CAFTA. Consequently, Sargeant hereby requests to commence arbitration proceedings to address the Dominican Republic's breaches of its obligations under the following provisions of Section A of Chapter 10 of the DR-CAFTA: Article 10.3 (National Treatment); Article 10.4 (Most-Favored-Nation Treatment); Article 10.5 (Minimum Standard of Treatment); and Article 10.7 (Expropriation).<sup>3</sup>
3. The Dominican Republic has also breached its obligations under an investment agreement with Sargeant: a contract between Sargeant and the Dominican Republic's Ministry of Public Works and Communications ("MOPC") dated 10 May 2013 (the "2013 Contract"). The Dominican Republic has breached Articles 2 (Purpose of the Contract/Objecto Del Contrato), 7 (Measurement Method and Payment/Forma De Medicion Y Pago), and 17 (Obligations of the MOPC/Obligaciones Del MOPC) of the 2013 Contract.

**B. Factual Background and Events Giving Rise to Sargeant's Claims**

4. The Dominican Republic (specifically, its MOPC) has engaged in a series of orchestrated actions in furtherance of a deliberate policy to deprive Sargeant of the cashflow necessary to operate its business and drive it out of the Dominican asphalt market in favor of a state-owned company. The Dominican Republic has taken these illegal steps even though Sargeant has operated there for over 25 years with an exemplary record, and even though the state-owned company that is now being treated more favorably charges the Dominican government a higher price for the same product. Sargeant has made repeated attempts, contacting multiple government offices, in an effort to amicably resolve this issue. Those efforts have been met with deflections, stalling, and silence. Accordingly, Sargeant now brings this arbitration proceeding to defend its rights and obtain compensation for its damages.

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<sup>3</sup> The full text of each Article of the DR-CAFTA at issue can be found in **Attachment B**.

i. **Sargeant Enters and Modernizes the Dominican Republic's Asphalt Industry**

5. Sargeant and its affiliates are part of the Global Oil Management Group, which owns and/or operates facilities that store and distribute billions of gallons of petroleum products in the United States, the Dominican Republic, Puerto Rico, Jordan, and Panama. In the Dominican Republic alone, they have distributed over 200 million gallons of asphalt cement since 2003. Sargeant has also provided the Dominican Republic with asphalt cement freight and storage services for all asphalt cement imported from Venezuela, all asphalt cement provided under the Export-Import Bank bilateral agreement, and most of the asphalt cement provided under the Petrocaribe bilateral agreement.
6. Sargeant has worked with the MOPC since 1995, when Sargeant won an MOPC contract, pursuant to a public tender, to supply, store, and handle AC-30 asphalt cement ("AC-30").
7. Before 1995, the Dominican Republic's asphalt industry had been inefficient and had failed to satisfy its people's needs. Dominican contractors used AC-20, a soft asphalt cement product unsuited to the country's climate and roadways. The Dominican Republic was only capable of storing and handling enough asphalt for nine trucks per day, and its asphalt cement supplies were frequently cut off completely for weeks at a time, making it difficult for the Dominican government to build and maintain roads.
8. Sargeant's 1995 arrival modernized the Dominican asphalt industry. Sargeant helped contractors working on government road projects transition from AC-20 to AC-30—a harder asphalt product that was not only better suited to the country's climate, but allowed the government to pave roads with less material. Sargeant also introduced new recycling and mixing practices that improved the quality, strength, and long-term performance of Dominican asphalt. With Sargeant's help, dispatch capacity on the MOPC's Duarte Highway project alone rose to more than 33 trucks per day.<sup>4</sup>
9. The benefits of Sargeant's arrival in the Dominican Republic extend well beyond the Duarte Highway project. AC-30 was soon adopted for use nationwide, and Sargeant imported the first PG 76-10 (a performance-grade bitumen) into the country, where it was used on three separate projects. Sargeant also introduced modern hot mix plants, which complied with international environmental standards, to the Dominican Republic.

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<sup>4</sup> By April 2016, Sargeant's Dominican operations were capable of dispatching up to 62 trucks per day and supplying more than 7 million gallons per month, which would have been inconceivable before Sargeant invested in the Dominican Republic.

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10. To bring those benefits to the Dominican Republic, Sargeant made considerable, long-term investments in its capacity and physical infrastructure there. Sargeant has erected a state-of-the-art facility to store and handle AC-30 in the Port of Haina, acquired and imported millions of gallons of AC-30 to the Dominican Republic, entered into a 20-year lease in the Port of Haina, and has made irrevocable contractual commitments to spend millions of dollars improving its operations there.
11. Sargeant has helped develop the Dominican asphalt industry in other ways too. In 1999, the Dominican government underwrote a \$25 million loan with the Venezuelan Investment Fund to acquire AC-30, and asked Sargeant—which handled worldwide transportation for 85% of all of Venezuela’s asphalt cement—to transport and store that product. In 2002, Sargeant worked with the Export-Import Bank of the United States to finance \$50 million in US-origin asphalt cement for the Dominican Republic, under terms very favorable to the Dominican Republic. Finally, Sargeant has provided the majority of the transport and storage services to the Dominican Republic under the Petrocaribe bilateral agreement.
  - i. ***Sargeant’s Current Contracts with the MOPC Come into Force, and MOPC Orders Additional AC-30 from Sargeant***
12. In 2003, pursuant to another public tender, the MOPC, under the administration of President Mejia, awarded Sargeant a second contract for the transport, storage, and handling of 229 million gallons of AC-30 (the “2003 Contract”). The 2003 Contract included an option exercisable by the MOPC to order supplies of AC-30 directly from Sargeant.
13. In 2013, shortly after President Medina took office, the MOPC asked Sargeant to replace the 2003 Contract with a new one. Sargeant agreed, and the 2003 Contract was replaced by the 2013 Contract, which governed storage of the AC-30 then remaining under the 2003 Contract. The 2013 Contract’s main focus was Sargeant’s storage and handling of AC-30, which Sargeant would perform at a cost of \$0.75 per gallon. The 2013 Contract also gave the MOPC an option to purchase AC-30 directly from Sargeant. Under the 2013 Contract, the purchase price for AC-30 would be determined at the time of purchase, but would not exceed \$3.75 per gallon. The 2013 Contract also required the MOPC to ensure payment for Sargeant’s storage, handling, and optional sale of AC-30 by means of a Standby Letter of Credit from the Dominican Republic’s Banco de Reservas. The 2013 Contract remains in full force and effect.
14. Shortly after the 2013 Contract was signed, the MOPC began issuing written requests to Sargeant for the sale and delivery of AC-30 under the 2013 Contract.

ii. ***The MOPC's Treaty Violations Begin***

15. In February 2019, Sargeant heard through indirect sources that the MOPC believed the 2013 Contract had concluded, based on an incorrect understanding that Sargeant had already supplied all the AC-30 contracted for under the 2013 Contract. Sargeant quickly explained that 40,000,000 gallons of AC-30 storage remained under the 2013 Contract
16. Sargeant raised this issue (and also the issue of the MOPC's unpaid debts due to Sargeant) in a meeting on July 14, 2020 with Minister Ramon Pepin, the Minister of the MOPC at the time. Minister Pepin assured Sargeant that the MOPC was "*not going to leave anyone hooked,*" representing that the MOPC would pay all of its debts to the company. Based on the Minister's assurances, Sargeant continued to provide its normal services to the MOPC.
17. Despite this assurance, the MOPC did not pay Sargeant as promised. But the MOPC did continue to pay its other asphalt contractors—all of whom were operating under contracts entered into without a transparent tender process.<sup>5</sup> That the MOPC breached its legitimate contract with Sargeant while continuing to honor illegitimate contracts with local entities demonstrates the MOPC's overt selective treatment among its asphalt contractors.
18. On August 5, 2020, Sargeant sent the MOPC a letter documenting the MOPC's breaches and resulting debts to Sargeant. As stated in that letter, as of August 3, 2020, the MOPC owed Sargeant \$40,091,523.41—an amount that Sargeant noted would "continue[ ] to grow daily" because Sargeant was continuing to store and sell AC-30 pursuant to the 2013 Contract.
19. After receiving Sargeant's letter, the MOPC made a partial payment of \$16 million to Sargeant. Later that month, on August 11, 2020, the MOPC approved two payment orders ("libramientos") to Sargeant, totaling \$22,484,104.62,<sup>6</sup> for services performed under the 2013 Contract. Under Dominican law, a libramiento should be issued only after all checks and audits have been conducted and, once issued, is supposed to be fulfilled without further review.
20. But the funds allocated in those libramientos have never been disbursed to Sargeant. Neither the MOPC nor any other Dominican government entity has explained why these approved funds have never been paid. The reason for non-payment is a political one: On Sunday, August 16, 2020—just five days after the

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<sup>5</sup> The only exception to this was the asphalt contractor Blueport, which was paid most of the debts due from the MOPC by July 2020, with the remaining balance of approximately \$600,000 being settled by the Abinader administration in November 2020. The MOPC settled its debt to Blueport in November 2020.

<sup>6</sup> The first libramiento (# 7856-1) was for \$9,408,034.50, and the second libramiento (# 7652) was for \$13,076,070.12.



libramientos were issued—Dominican President Luis Abinader was sworn into office, succeeding President Medina. The next day, Monday August 17, payment of the libramientos was stopped.

21. Sargeant's dispute with the MOPC only intensified under the Abinader Administration. On August 28, 2020, Sargeant sent the MOPC another letter protesting the discriminatory treatment it had received to date. In that letter, Sargeant noted that the MOPC had ordered 10,549,363.72 gallons of AC-30 directly from Sargeant under the 2013 Contract, but had only received about 6 million gallons, leaving Sargeant on the hook for the remaining 4.5 million gallons, more than half of which Sargeant had already imported to the Dominican Republic to fulfil the MOPC's orders. Accordingly, Sargeant asked that the MOPC pay its existing debts and open a Letter of Credit as required under the 2013 Contract. Sargeant also noted in that letter that, based on the prices the MOPC was paying for AC-30 under illegitimate contracts with local suppliers, the MOPC could save as much as \$10 million per year by purchasing asphalt AC-30 under the terms of the 2013 Contract with Sargeant.
22. Sargeant met with the MOPC's new minister, Deligne Ascencion, on September 9, 2020, following a letter congratulating him on his appointment and offering to waive September's monthly storage fee as a sign of good faith. The next day, Sargeant sent a follow-up letter reminding Minister Ascencion that the MOPC had 4,530,678.88 gallons of already-purchased (but unpaid for) AC-30 sitting unused, 2,336,275.62 gallons of which were already in the Dominican Republic and readily available. Despite Sargeant's efforts, the Dominican government continued to ignore its obligations and still refused to pay what it owed to Sargeant.
23. Furthermore, once the Abinader Administration took power, MOPC began obtaining most of its AC-30 from Refidomsa, a petroleum company in which the Dominican Republic held a substantial ownership stake. Refidomsa (despite having no facilities or AC-30 in the Dominican Republic) signed its supply contract with the MOPC on September 22, 2020, roughly a month after President Abinader entered office. As with other favored suppliers, Refidomsa's contract with the MOPC was not subject to a public tender or other anti-corruption mechanisms as required under Dominican law. As discussed below in Paragraph 31, at that time the Dominican government had also solidified its plan to eventually acquire the entire ownership interest in Refidomsa, which it completed in August 2021.
24. Because the MOPC was getting AC-30 from Refidomsa and other suppliers, it refused to take delivery of AC-30 from Sargeant's supply. MOPC also continued to refuse to pay Sargeant what it was owed under the 2013 Contract.
25. By continuing to tie up Sargeant's storage facilities with undelivered AC-30, refusing to pay storage and handling fees, and likewise refusing to pay for the AC-

30 it had ordered directly from Sargeant, MOPC—the Dominican Republic’s only major purchaser of asphalt—deliberately deprived Sargeant of the cashflow necessary to operate its business. This financial chokehold is part of a government campaign to drive Sargeant out of the Dominican asphalt market, enabling state-owned Refidomsa to take its place.

26. As part of this deliberate scheme, the MOPC went to ever-increasing lengths to route AC-30 orders through Sargeant’s politically-favored competitors instead of taking delivery of AC-30 that the MOPC had already ordered from Sargeant (but not paid for). For example, on October 1, 2020, after a deeply flawed tender process, Refidomsa subcontracted its AC-30 supply obligations with the MOPC to Ichor Oil—a company with no facilities, no infrastructure, no prior experience, and no assets or product in the Dominican Republic. On October 21, 2020, when it became clear that Ichor Oil could not fulfill its AC-30 supply obligations, the MOPC’s Minister, Deligne Ascension, wrote a letter to Director General of Customs, Eduardo Sanz, requesting that Customs release a cargo of AC-30 that had been seized from another contractor, General Asphalt, due to a lack of proper documentation and scheduled for public auction. Minister Ascension requested that the AC-30 be released back to General Asphalt so that the company could, in turn, sell the cargo to Ichor Oil. Ichor Oil, in turn, sold the AC-30 to Refidomsa, which then sold it to the MOPC. Again, all of this took place while Sargeant had more than 2 million gallons of AC-30 sitting in its tanks. Sargeant will present additional evidence on these points in the arbitration, but it bears note that the Dominican government recently indicted Ichor Oil and its officers for involvement in a wide-ranging corruption scheme relating to, *inter alia*, the fraudulent sale of AC-30.
27. Sargeant continued to write seeking payment of the outstanding debts due from MOPC, and to meet senior officials to try to find a way to resolve the apparent impasse. During one such meeting with the MOPC’s vice-minister, Roberto Herrera, in December 2020, Mr. Herrera told Sargeant’s representatives that the problem was “*with the presidential palace.*” When Sargeant’s representatives asked Mr. Herrera to be more specific, he refused to elaborate.
28. Finally, Minister Ascension agreed to meet in person with Sargeant’s representative in late December 2020. Sargeant’s representative travelled from Dubai to the Dominican Republic solely to meet with Minister Ascension as promised. Sargeant’s representatives stayed in the Dominican Republic for a week, but Minister Ascension’s office did not return his calls, and the meeting ultimately did not take place.
29. After receiving no response to its correspondence, and having tried and failed to resolve the situation by speaking to senior officials, on May 14, 2021 Sargeant sent the MOPC formal notice that its aforementioned actions had violated the DR-

CAFTA, that MOPC had breached the 2013 Contract, and that Sargeant sought to be made whole. Sargeant requested a reply within five business days. None came.

30. Sargeant followed up with another letter on July 7, 2021, providing updated figures on the amounts owed by the MOPC. As of that date, MOPC owed Sargeant \$71,866,421.82 in total.
31. On or around August 27, 2021, the Dominican government acquired the remaining ownership interests in Refidomsa. As noted in a contemporaneous press release, the Dominican government's plan to purchase those remaining shares was solidified just a few days after President Abinader took office, as one of his administration's main measures to be taken in the asphalt sector.
32. As of December 1, 2021, the MOPC owed Sargeant \$71,866,521.83 under the 2013 Contract, comprised of (1) \$41,102,530.22 due under the 2013 Contract; (2) \$16,890,487.11 for the AC-30 in Sargeant's inventory and the remaining balance to pay all of MOPC's dispatch orders; and (3) \$13,873,504.50 for storage of the 18,498,006 gallons of AC-30 remaining under the 2013 Contract.
33. However, the combined effect of all the measures taken by the Dominican Republic against Sargeant, starving it of funds by refusing to settle undisputed debts, refusing to comply with contractual obligations owed to Sargeant, and directing business towards its competitors, means that Sargeant's asphalt business in the Dominican Republic is no longer viable. The economic impact of the government's actions is equivalent to an expropriation, and Sargeant's primary claim, as explained below, is for adequate and effective compensation equivalent to the fair market value of its investments, which is at least \$50 million.

### **C. Legal Bases for Sargeant's Claims**

#### **i. Jurisdiction**

34. Article 10.1 of the DR-CAFTA sets forth the jurisdictional requirements for asserting violations of the substantive protections offered by Section A of Chapter 10 of the DR-CAFTA.
35. First, the conduct of the MOPC and other emanations of, or agents for, the Dominican Republic about which Sargeant complains constitute "measures adopted or maintained by" the Dominican Republic, which is a Party within the meaning of Article 10.1 of the DR-CAFTA.

36. Sargeant was at all relevant times, and continues to be, an enterprise of the U.S. State of Texas within the United States, and is therefore an investor of another Party to the DR-CAFTA within the meaning of DR-CAFTA Article 10.1(a).
37. Sargeant has made covered investments in the territory of the Dominican Republic within the meaning of DR-CAFTA Article 10.1(b). These covered investments include the 2013 Contract itself, which is an investment, as defined by DR-CAFTA Article 10.28, in the territory of the Dominican Republic made by an investor of another Party that was established, acquired or expanded after the date of entry into force of the DR-CAFTA.
38. Sargeant's covered investments in the territory of the Dominican Republic also include the various purchase orders issued pursuant to the 2013 Contract, product inventory acquired in reliance upon the 2013 Contract, physical infrastructure erected in the Port of Haina for the purpose of storage and handling AC-30, the lease and concession granted to Sargeant in the Port of Haina, and irrevocable contractual commitments entered into by Sargeant to make improvements to the port facilities in the Port of Haina.
39. The actions about which Sargeant complains took place after the DR-CAFTA came into force in the Dominican Republic on 1 March 2007 within the meaning of Article 10.1.2 of the DR-CAFTA.
40. There is consequently an investment dispute between Sargeant and the Dominican Republic. Sargeant has attempted to resolve the dispute through consultation and negotiation, in accordance with Article 10.15 of the DR-CAFTA, and Sargeant considers that the investment dispute cannot be settled by such means.
41. By this Request for Arbitration, Sargeant therefore, on its own behalf, submits to arbitration its claims that the Dominican Republic has breached obligations under Section A of Chapter 10 of the DR-CAFTA, and that it has breached an investment agreement, and it is permitted to refer such claims to arbitration by Articles 10.16(1)(a)(i)(A) and 10.16(1)(a)(i)(C) of the DR-CAFTA. Furthermore, Sargeant has incurred loss or damage by reason of, or arising out of, the said breaches, as required by Article 10.16(1)(a)(ii) of the DR-CAFTA.

ii. **Sargeant's Claims Against the Dominican Republic Under the DR-CAFTA**

a. **Breach of DR-CAFTA Article 10.7**

42. The Dominican Republic has indirectly expropriated Sargeant's covered investments through measures equivalent to expropriation. The measures are not

for a public purpose, they have not been imposed in a non-discriminatory manner, and no payment of compensation has been made. The expropriation is therefore unlawful and violates Article 10.7 of the DR-CAFTA.

**b. Breach of DR-CAFTA Article 10.3**

43. Article 10.3 of the DR-CAFTA requires the Dominican Republic to accord to Sargeant and its investments treatment no less favorable than the it has provided to its own nationals and their investments. The Dominican Republic has failed to meet this standard.
44. The Dominican government gave Refidomsa and other Dominican companies preferential treatment compared to Sargeant, violating Article 10.3. As discussed in paragraphs 4 - 33 above, Sargeant's Dominican competitors received timely (or slightly delayed) payment in full from the MOPC, but payments to Sargeant were materially delayed and were never made in full. In addition, whereas the MOPC resolved its outstanding debts to BluePort after the Abinader Administration came to power, the Abinader Administration stopped Sargeant's *libramientos*—which had already been approved—after it was sworn in. And while Sargeant's contracts were awarded pursuant to a transparent tender process, the Dominican government has repeatedly awarded Sargeant's Dominican competitors numerous AC-30 contracts without a transparent or lawful tender process.

**c. Breach of DR-CAFTA Article 10.4**

45. Also pursuant to Article 10.4, Sargeant requires the Dominican Republic to accord to it the same treatment it has promised to accord to the investors and investments of third countries under other investment protection treaties, including Article 3(4) of the 2006 Dominican Republic – Netherlands BIT, Article 12(2) of the 2001 Dominican Republic – Finland BIT, Article 3(3) of the 1999 Dominican Republic – Taiwan BIT, and Article 3(3) of the 2000 Chile-Dominican Republic BIT.
46. In particular, Article 3(4) of the Dominican Republic – Netherlands BIT provides:

*“4. Each Contracting Party shall observe any obligation it may have entered into with regard to investments of nationals of the other Contracting Party.”*
47. By virtue of Article 10.4 of the DR-CAFTA, Sargeant is entitled to any substantive protections which might be considered to be more favorable than those contained in the DR-CAFTA but are found in third-party investment protection treaties. One such protection is the express treaty obligation of a host state to observe any obligation it may have entered into with regard to investments of nationals of the counter-party contracting state, including obligations arising under contracts.

48. The Dominican Republic has breached various terms of the 2013 Contract, including Articles 2, 7 and 17. By its failure to comply with the 2013 Contract, the Dominican Republic has breached its obligation under Article 10.4 of the DR-CAFTA. Sargeant is entitled to seek a financial remedy for such contractual breaches from an arbitral tribunal constituted in accordance with Articles 10.16 and 10.17 of the DR-CAFTA.

**d. Breach of DR-CAFTA Article 10.5**

49. Article 10.5 of the DR-CAFTA requires the Dominican Republic to accord to Sargeant the minimum standard of treatment required by customary international law. The Dominican Republic has failed to meet this standard. The treatment accorded to Sargeant, as summarized in paragraphs 4 - 33 above, has been arbitrary, grossly unfair, unjust, and idiosyncratic.

**iii. Sargeant's Claims Against the Dominican Republic Under the Investment Agreement**

50. Article 10.16 of the DR-CAFTA permits Sargeant to commence arbitration proceedings where the Dominican Republic has breached an obligation under Section A of the DR-CAFTA, an investment authorization, or an investment agreement. The 2013 Contract is an investment agreement, as defined by Article 10.28 of the DR-CAFTA.
51. As set out in paragraphs 1 - 33 above, the Dominican Republic has breached various terms of the 2013 Contract, and Sargeant is entitled to commence arbitration proceedings pursuant to Articles 10.16 and 10.17 of the DR-CAFTA seeking a financial remedy for breaches of the 2013 Contract.

**D. Relief Sought and Damages Demanded**

52. Sargeant seeks the following relief from the Arbitral Tribunal:
- a. A declaration that the Dominican Republic ("Dominican Republic") has violated its obligations under the DR-CAFTA, including obligations owed on the basis of national treatment under DR-CAFTA Article 10.3; most favored nation treatment under DR-CAFTA Article 10.4; the minimum standard of treatment under Article 10.5; and the prohibition against unlawful expropriation under Article 10.7;
  - b. A declaration that the 2013 Contract is an investment agreement as defined by the DR-CAFTA and that the Dominican Republic has violated its obligations under the 2013 Contract including Articles 2, 7 and 17;

- c. An order that the Dominican Republic immediately pay to Sargeant damages not less than \$50 million, as the fair market value of its covered investments in the Dominican Republic, for breach of Article 10.7;
- d. Alternatively, damages for the losses caused by, or arising out of, the Dominican Republic's conduct, which is inconsistent with its other obligations contained within Part A of DR-CAFTA Chapter 10;
- e. Alternatively, damages for breaches of the 2013 Contract;
- f. Alternatively, an order that the Dominican Republic immediately pay, or procure that the MOPC immediately pay, to Sargeant all amounts owed to Sargeant by the MOPC under the 2013 Contract (being \$71,866,521.83 as at December 1, 2021 as particularized at paragraph 32 above);
- g. An award requiring the MOPC to comply with its obligations under the 2013 Contract to provide Stand-by Letters of Credit via the Reserve Bank of the Dominican Republic for AC-30 that it has ordered from Sargeant but not yet received and/or for unused storage services;
- h. All of the damages incurred in contesting the Dominican Republic's conduct and all of the costs incurred in proceeding with this arbitration, including all legal and other professional fees and disbursements;
- i. Pre-award interest at a rate to be fixed on the basis of the average interest rate in the Dominican Republic at all relevant times, but nonetheless paid out in U.S. dollars;
- j. Post-award interest at a rate to be fixed on the basis of the average deposit rate prevailing on the date of the award, but nonetheless paid out in US dollars;
- k. Payment of a sum of compensation equal to any tax consequences of the award, if necessary in order to maintain the award's integrity;
- l. An order that any damages or costs awarded to Sargeant shall be paid out to them, by means of wire transfer, in United States currency, to the foreign financial institutions of their choosing, without delay, and in no case later than two months from the date the award is recognized or otherwise becomes enforceable pursuant to the terms of CAFTA Article 10.26(6); and
- m. Such further relief as counsel may advise, such further relief that an Arbitral Tribunal may deem appropriate, and Sargeant expressly reserves all rights to

amend its alleged damages in view of the Dominican Republic's ongoing and continued violations

53. Article 10.15 of the DR-CAFTA mandates that the parties "should initially seek to resolve [their] dispute through consultation and negotiation." Although Sargeant has done so in good faith, the Dominican Republic has not.

**VI. Sargeant's Authority to Authorize Request for Arbitration**

1. Pursuant to Article 3(1)(e) of Additional Facility Rules Schedule C, Sargeant states as follows:
  - a. Sargeant is a juridical person.
  - b. As shown by the letter provided herewith as **Attachment C**, and the Joint Resolution provided herewith as **Attachment E**, Sargeant has taken all necessary internal actions to authorize this Request for Arbitration.

**VII. Conduct of Arbitration**

1. Pursuant to Article 3(2) of Additional Facility Rules Schedule C, Sargeant states as follows:

**A. Arbitral Tribunal**

**i. Tribunal Composition**

2. Pursuant to DR-CAFTA Art. 10.19(1), the Arbitral Tribunal presiding over this arbitration shall be comprised of three arbitrators.
3. In further accordance with that provision, Sargeant and the Dominican Republic shall each appoint one arbitrator (the "Appointed Arbitrators"), and the third arbitrator (who will be the presiding arbitrator ("Presiding Arbitrator")) shall be appointed by their mutual agreement. *Id.*
4. Pursuant to DR-CAFTA Art. 10.19(3), that if any arbitrators remain unselected at least 75 days after the date hereof (*i.e.*, the submission of Sargeant's instant Request for Arbitration), then upon either party's request the Secretary-General may appoint arbitrators to fill those vacancies.

**ii. Arbitrator Appointments**

5. Pursuant to DR-CAFTA Art. 10.16(6), Sargeant hereby appoints Mr. David R. Haigh, Q.C. as its Appointed Arbitrator.



- a. Mr. Haigh is a national of Canada.
- b. Mr. Haigh's contact details are as follows:

David R. Haigh, Q.C.  
2400, 525 - 8th Avenue S.W.  
Calgary, Alberta T2P 1G1  
Ph.: (403) 260-0135  
Email: drh@bdplaw.com

- c. Mr. Haigh has confirmed that he is free of conflicts and will be independent and impartial.

**B. Arbitration Location**

6. Sargeant proposes that the seat of the arbitration proceedings be New York, New York.

**C. Arbitration Language**

7. Sargeant proposes that the arbitration proceedings to resolve its instant dispute with the Dominican Republic, and all filings related thereto, be conducted in English.

**VIII. Additional Submissions**

1. Pursuant to Article 3(3) of Additional Facility Rules Schedule C, Sargeant is concurrently submitting five additional signed copies of this Application for Access and Request for Arbitration, and has wired the \$25,000 registration fee prescribed by Regulation 16 of ISCID's Administrative and Financial Regulations.<sup>7</sup>

*[Continued on following page]*

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<sup>7</sup> See <https://icsid.worldbank.org/services/content/schedule-fees> (last accessed 23 March 2022).

**IX. Signature by Duly Authorized Representative**

1. This Request for Arbitration is signed on Sargeant's behalf by its duly-authorized counsel, O'Melveny. O'Melveny's authority to sign on Sargeant's behalf is evidenced by the letter provided herewith as **Attachment C**.

Dated: March 23, 2022

**Counsel for Claimant Sargeant Petroleum LLC:**



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ALLEN W. BURTON  
aburton@omm.com  
O'MELVENY & MYERS LLP  
Times Square Tower  
7 Times Square  
New York, New York 10036-6537  
Telephone: +1 212 326 2000  
Facsimile: +1 212 326 2061

DAVID FOSTER  
dfoster@omm.com  
O'MELVENY & MYERS LLP  
19th Floor  
100 Bishopsgate  
London EC2N 4AG, United Kingdom  
Telephone: +44 20 7088 0000  
Facsimile: +44 20 7088 0001

ANDREW J. WEISBERG  
aweisberg@omm.com  
O'MELVENY & MYERS LLP  
400 South Hope Street  
18<sup>th</sup> Floor  
Los Angeles, California 90071-2899  
Telephone: +1 213 430 6000