
INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

ESPÍRITU SANTO HOLDINGS, LP,

Claimant,

v.

UNITED MEXICAN STATES,

Respondent.

REQUEST FOR ARBITRATION

HOGAN LOVELLS US LLP
600 Brickell Avenue
Suite 2700
Miami, Florida 33131
United States of America

SIDLEY AUSTIN LLP
787 7th Avenue
New York, New York 10019
United States of America

Attorneys for Claimant

1 May 2020

TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	THE PARTIES.....	3
	A. CLAIMANT.....	3
	B. RESPONDENT.....	5
III.	STATEMENT OF FACTS.....	6
	A. THE DEVELOPMENT OF THE LIBRE SYSTEM.....	6
	B. MEXICO CITY AWARDS THE CONCESSION TO LUSAD.....	8
	C. THE CONCESSION AGREEMENT.....	9
	D. THE CONCESSION’S IMPLEMENTATION AND MEXICO CITY’S ASSURANCES TO LUSAD ...	11
	E. MEXICO’S UNLAWFUL ACTIONS AGAINST LUSAD	16
IV.	JURISDICTION	22
	A. THE JURISDICTIONAL REQUIREMENTS OF NAFTA ARE MET	22
	1. ES Holdings is an Investor and has made a protected Investment	22
	2. Mexico and ES Holdings have consented to submit this dispute to arbitration, and ES Holdings hereby submits its waiver under Article 1121.....	23
	3. More than six months have elapsed since the events that give rise to the dispute and more than three months have elapsed since the Notice of Intent	24
	4. The three-year statute of limitations has not elapsed.....	25
	B. THE JURISDICTIONAL REQUIREMENTS OF THE ICSID CONVENTION ARE MET	25
	1. There is a legal dispute arising out of ES Holdings’ investment.....	25
	2. The legal dispute involves a Contracting State and a National of another Contracting State.....	26
	3. The parties have consented to submit the dispute to the Centre	26
	4. ES Holdings has complied with other procedural requirements.....	26
V.	MEXICO BREACHED ITS OBLIGATIONS UNDER THE TREATY.....	27
	A. MEXICO CITY’S ACTIONS CAN BE ATTRIBUTED TO MEXICO UNDER THE TREATY AND INTERNATIONAL LAW.....	27
	B. MEXICO EXPROPRIATED ES HOLDINGS’ INVESTMENT WITHOUT COMPENSATION.....	28
	C. MEXICO DID NOT AFFORD ES HOLDINGS FAIR AND EQUITABLE TREATMENT NOR FULL PROTECTION AND SECURITY	29
	D. MEXICO DISCRIMINATED AGAINST ES HOLDINGS.....	30
VI.	ES HOLDINGS’ DAMAGES	31

VII. PROCEDURAL MATTERS.....	31
A. NUMBER OF ARBITRATORS AND METHOD OF APPOINTMENT	31
B. PLACE OF THE ARBITRATION	32
C. LANGUAGE OF THE ARBITRATION	32
VIII. RESERVATION OF RIGHTS	32
IX. REQUEST FOR RELIEF	33

1. Espiritu Santo Holdings, LP (“**ES Holdings**” or “**Claimant**”), serves this Request for Arbitration (the “**Request**”) against the United Mexican States (“**Mexico**” or “**Respondent**,” and collectively with ES Holdings, the “**Parties**”), pursuant to Articles 1116, 1119, and 1120 of the North American Free Trade Agreement between Mexico, Canada, and the United States of America, signed by Mexico on 17 December 1992 and entered into force on 1 January 1994 (the “**Treaty**” or “**NAFTA**”) and Article 36 of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the “**ICSID Convention**”).

I. INTRODUCTION

2. This dispute arises from Mexico’s unilateral, arbitrary, and politically motivated measures that deprived ES Holdings of its rights under, and the value and benefit of a multi-billion dollar concession granted to its subsidiary, Servicios Digitales Lusad, S. de R.L. de C.V. (“**Lusad**”), by the Mexico City Secretariat of Mobility (*Secretaría de Movilidad* in Spanish, hereinafter “**Semovi**”) on 17 June 2016 (the “**Concession**”). Based on political interests and promises made by the mayor of Mexico City during her electoral campaign, Mexico obstructed Lusad’s performance under the Concession, indefinitely suspended Lusad’s rights, and eventually terminated the Concession. Ultimately, Mexico displaced Lusad, misappropriated Lusad’s technology, and offered the same services that Lusad had the exclusive right to provide under the Concession.

3. The Concession granted Lusad the exclusive right to install its proprietary digital taximeters and other technology in all 138,000 taxis operating within Mexico City, develop a mobile application allowing users to, among other functions, remotely request a taxi, and charge fees for these services. The Concession was awarded for a period of ten years and was renewable for two additional ten-year periods.

4. The Concession’s prospects were so promising that, in October 2018, a leading multinational investment bank and financial services company (Goldman Sachs) conservatively valued the Concession, and therefore Lusad’s business, in excess of two billion dollars over the initial five years of the Concession.

5. Just two years after awarding the Concession, however, Mexico initiated without notice or any valid justification a series of unlawful, arbitrary, and discriminatory measures culminating in the expropriation of ES Holdings' investment in Mexico. These measures were politically motivated, as expressly admitted by Mexico City's newly elected government, violated Mexico's Treaty obligations, and ultimately obliterated ES Holdings' investment in Mexico.

6. Semovi suspended the Concession based on political reasons in May 2018, claiming that this measure was necessary to avoid the Concession being politically used during the municipal elections taking place in July 2018. During the electoral campaign, Ms. Claudia Sheinbaum ("**Ms. Sheinbaum**"), a candidate to become mayor of Mexico City, openly campaigned that she was in favor of permanently revoking the Concession. Ms. Sheinbaum was ultimately elected mayor, causing a change of government. As a result, the newly appointed Secretary of Semovi (a member of Mayor Sheinbaum's political party), publicly stated that the Concession would be revoked based on the "right" of the current administration to implement its own public policies.

7. Several months later, in October 2018, consistent with Mayor Sheinbaum's promises during her political campaign, the new government of Mexico City announced the permanent suspension of the Concession.

8. Less than a year later, in September 2019, the Mexico City government announced that it had launched a mobile application, called "Mi Taxi," that included most of the technologies and services that were to be offered exclusively by Lusad under the Concession.

9. Ultimately, through wrongful and politically motivated actions, Mexico terminated the Concession, displaced Lusad, misappropriated Lusad's technology, and offered the same services through a State instrumentality. Mexico deprived ES Holdings and its subsidiary of its rights under the Concession and under international law and, as a result, ES Holdings' investment was completely destroyed and rendered worthless.

10. Mexico's conduct is in breach of the provisions of the Treaty prohibiting expropriation without just, effective, and prompt compensation, as well as the provisions

requiring Mexico to afford fair and equitable treatment, full protection and security, and treatment no less favorable than that afforded to its own nationals or to other foreign investors. These Treaty breaches caused direct and substantial harm to Claimant and its subsidiaries.

11. Pursuant to well-settled principles of international law, Claimant seeks full reparation for the losses resulting from Mexico's violations of the Treaty and international law in the form of monetary compensation sufficient to remediate the consequences of Mexico's wrongful acts.

II. THE PARTIES

A. CLAIMANT

12. Claimant ES Holdings is a limited partnership incorporated under the laws of the province of Alberta, Canada.¹ ES Holdings confirms that it has taken all necessary internal actions to authorize this Request.²

13. ES Holdings owns Espiritu Santo Technologies, LLC ("**ES Technologies**"),³ a company incorporated under the laws of the state of Delaware, United States.⁴ ES Technologies is the only shareholder of L1bre Holding LLC, a Delaware corporation. L1bre Holding LLC and its wholly owned subsidiary, L1bre LLC, also a Delaware corporation, own 100% of Lusad, the Mexican entity that held the Concession. Therefore, ES Holdings, through its interest in ES

¹ See **Exhibit C-1** (Certificate of Good Standing of ES Holdings, under the laws of Alberta, Canada).

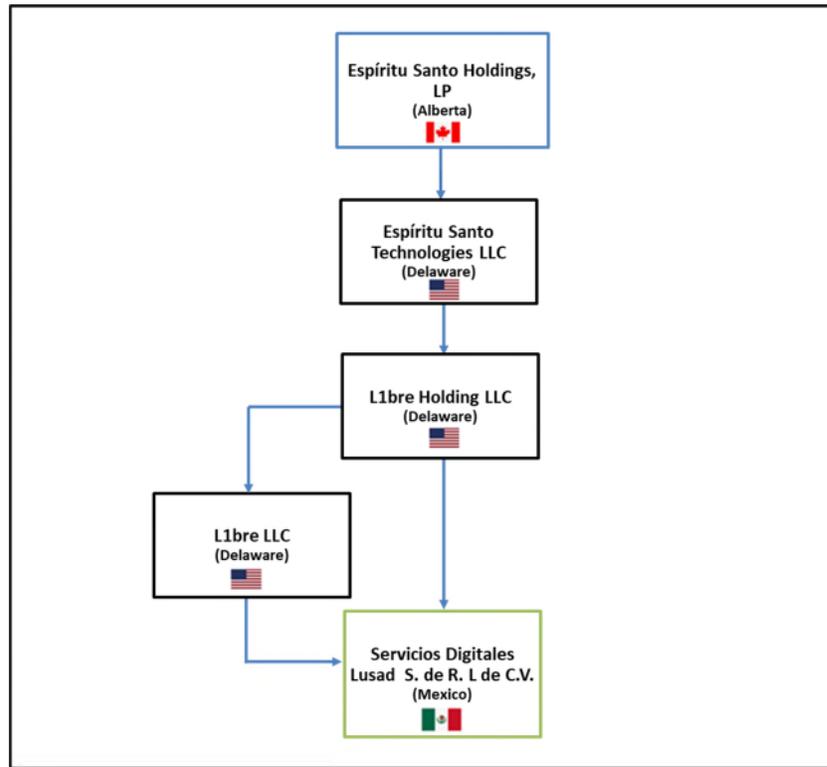
² See **Exhibit C-31** (ES Holdings' internal authorization to file this Request, dated 29 April 2020).

³ From approximately 2017 to 2019, ES Holdings possessed a 50% interest in ES Technologies, while L1bero Partners, L.P., a company incorporated in Alberta, Canada ("**L1bero Partners**"), possessed the remaining 50%. On 10 October 2019, however, ES Holdings formally cancelled L1bero Partners' shares in ES Technologies based on L1bero Partners' breaches of a Partners Agreement (see **Exhibit C-25**, Letter from ES Holdings to L1bero Partners, dated 10 October 2019). As a result, ES Holdings became the sole shareholder of ES Technologies. L1bero Partners disputes this share cancellation, and ES Holdings is seeking a declaration of the validity of the cancellation in an arbitration under the Rules of the International Chamber of Commerce (the "**ICC Arbitration**").

The pending ICC Arbitration does not affect ES Holdings' status as an investor or the fact that it possesses investments covered under the Treaty. However, in light of the potential impact on, *e.g.* quantum calculations, ES Holdings undertakes to promptly advise the Tribunal in this case about the outcome of the ICC Arbitration.

⁴ See **Exhibit C-26** (Certificate of Incorporation of ES Technologies).

Technologies, owns Lusad and the Concession. Below is an image of Lusad's corporate structure:



14. ES Holdings is represented in these proceedings by Hogan Lovells US LLP and Sidley Austin LLP. All required notifications should therefore be addressed to:

Hogan Lovells US LLP

Mr. Richard C. Lorenzo
Mr. Mark R. Cheskin
Mr. Juan C. Garcia
Ms. Juliana de Valdenebro Garrido

Hogan Lovells US LLP
600 Brickell Avenue, Suite 2700
Miami, Florida 33131
United States of America
Telephone: +1.305.459.6500
Fax: +1.305.459.6550
richard.lorenzo@hoganlovells.com
mark.cheskin@hoganlovells.com
juan.garcia@hoganlovells.com
juliana.devaldenebro@hoganlovells.com

Sidley Austin LLP
Mr. Tai-Heng Cheng
Ms. Marinn Carlson
Mr. Simon Navarro

Sidley Austin LLP
787 7th Avenue
New York, New York 10019
United States of America
Telephone: +12128395300
Fax: +12128395599
tcheng@sidley.com
mcarlson@sidley.com
snavarro@sidley.com

B. RESPONDENT

15. Mexico is a sovereign State located in the southern area of North America. Mexico is the most populous Spanish-speaking country in the world and the fifth largest country in the Americas. Mexico City is the capital and the most populous municipality in Mexico.

16. Mexico has appointed the General Directorate for Foreign Investment (*Dirección General de Inversión* in Spanish) to receive official notifications under NAFTA.⁵ Consequently, in addition to its filing with the International Centre for Settlement of Investment Disputes (the “Centre”), ES Holdings is sending a copy of this Request to:

Dirección General de Inversión Extranjera
Secretaría de Economía
Av. De los Insurgentes Sur 1940, Colonia La Florida
Ciudad de México
Estados Unidos de México

⁵ See **Exhibit C-27** (Official Registry of Mexico, dated 12 June 1996) (“Acuerdo por el que se le faculta a la Dirección General de Inversión Extranjera para fungir como lugar de entrega de notificaciones y otros documentos, de conformidad con lo señalado en el artículo 1137.2 del Tratado de Libre Comercio de América del Norte.”).

17. In addition, ES Holdings is sending courtesy copies of this Request for the information of the following individuals and State agencies and instrumentalities:

Honorable Andrés Manuel López Obrador

Presidente de los Estados Unidos de México
Av. Constituyentes 161, San Miguel de Chapultepec II Secc, 11850
Ciudad de México
Estados Unidos de México

Honorable Lic. Graciela Márquez Colín

Secretaría de Economía
Pachuca 189, Colonia Condesa, Cuauhtémoc, 06140
Ciudad de México
Estados Unidos de México
graciela.marquez@economia.gob.mx

Honorable Lic. Luz María de la Mora Sánchez

Subsecretaria de Comercio Exterior
Pachuca 189, Colonia Condesa, Cuauhtémoc, 06140
Ciudad de México
Estados Unidos de México
luzma.delamora@economia.gob.mx

Honorable Lic. Orlando Pérez Gárate

Dirección General de Consultoría Jurídica de Comercio Internacional
Pachuca 189, Colonia Condesa, Cuauhtémoc, 06140
Ciudad de México
Estados Unidos de México
orlando.perez@economia.gob.mx

III. STATEMENT OF FACTS

A. THE DEVELOPMENT OF THE LIBRE SYSTEM

18. There are approximately 138,000 registered taxis in Mexico City that account for approximately 2.7 million taxi trips per day. Most of these taxis are equipped with technologically obsolete, inefficient equipment. For example, Mexico City's taxis cannot be hailed from smart-phone applications or paid for with credit cards like the applications now commonly employed by ridesharing companies, such as Uber and Lyft. Many of the taxis have inaccurate fare-calculation systems and lack geolocation or safety features.

19. Understanding these shortcomings and relying on Mexico’s obligations under the Treaty, ES Holdings, through Lusad and its affiliates, began developing digital taximeter and hailing technologies specifically for their use, at least initially, in Mexico City. In October 2015, Lusad was incorporated to hold the investment in Mexico.⁶ Lusad recruited and built a team that included former senior managers from companies such as Uber and Apple. Lusad and its affiliates also developed the required technology and related software to implement its taximeter and hailing services. Additionally, ES Holdings created and registered the “L1bre” trademark and associated trademarks for its technologies.

20. Lusad’s technologies (the “**L1bre System**”) included two tablets to be installed in the taxis of Mexico City. The first tablet would be used as a taximeter and would be placed at the front of the taxi with the driver. The second tablet would be placed on the backseat and would be used as an electronic, interactive media display. In addition, Lusad developed a smart-phone application that enabled on-line hailing and other services. Below is an image depicting the placement of the L1bre System tablets:⁷



⁶ See **Exhibit C-2** (Deed of Incorporation of Lusad).

⁷ See **Exhibit C-3** (Multiple images concerning Lusad’s technology from the L1bre official website).

B. MEXICO CITY AWARDS THE CONCESSION TO LUSAD

21. Under Mexican law, a party that possesses the means to provide a public service may request a concession from the appropriate branch of government. Pursuant to Mexican law, Lusad approached Semovi to describe and promote the benefits of the L1bre System and propose the framework of a potential concession. Ultimately, Lusad submitted a formal request for a concession to Semovi on 22 April 2016 seeking a concession to replace the taximeters in the whole Mexico City taxi fleet with a safer, fraud-proof system and to develop a mobile application that would allow users to remotely request a taxi.⁸

22. Semovi's representatives considered that the technology was appropriate and necessary and, as a result, Semovi put the project out for public bid. On 30 May 2016, Semovi published a necessity declaration (*Declaratoria de Necesidad* in Spanish, the "**Necessity Declaration**") in Mexico City's Official Gazette stating that the digital taximeters and other associated technology would enhance, improve, and modernize a public service.⁹ The Necessity Declaration opened a public bidding process for any party to submit an offer to participate in the concession.

23. Eight companies, including Lusad, presented proposals to Semovi. Because of its extensive work in the field and its product development, Lusad's bid was able to comply with all of Semovi's bidding specifications and requirements. As a result, Semovi's Adjudication Committee (the "**Adjudication Committee**") concluded that Lusad "satisf[ie]d the necessity for the substitution, installation and maintenance of taximeters" in Mexico City and "presented a proposal meeting the requirements established in article 85 of the Patrimony Law."¹⁰ Accordingly, on 17 June 2016, the Adjudication Committee awarded Lusad the Concession "for the substitution, installation, and maintenance of taximeters for Mexico City's individual public passenger transport service, with GPS, as well as for the design, operation, and use of the remote taxi-hailing application in Mexico City."¹¹

⁸ See **Exhibit C-4** (Request for Concession to Semovi, dated 22 April 2016).

⁹ See **Exhibit C-5** (Necessity Declaration issued by Mexico City, dated 30 May 2016).

¹⁰ See **Exhibit C-6** (Adjudication of the Concession by the Adjudication Committee, dated 17 June 2016).

¹¹ See *id.*

C. THE CONCESSION AGREEMENT

24. On 17 June 2016, Semovi and Lusad entered into the concession agreement, which was subsequently amended on 9 January 2017, to allow Lusad to charge an additional fee, known as the “**Recuperation Fee**,” for its services (the “**Amendment**”).¹² The Amendment was important to Lusad’s business because it provided an additional source of income. The Concession’s relevant provisions, as amended under the Amendment, are summarized below.

25. Object: The Concession granted Lusad exclusive rights and obligations to: (i) substitute, install, and maintain the digital taximeters, which would provide GPS location and other services to the Mexico City taxi fleet; and (ii) operate a remote taxi-hailing mobile application.¹³ The installation of the taximeters was to be mandatory for all taxi owners. Lusad therefore had the exclusive right to install the taximeters in Mexico City’s estimated 138,000 taxis and any potential new taxis licensed by the Mexico City authorities.

26. Time Periods: The Concession was subject to a twelve-month trial period to allow Lusad to demonstrate the functionality of its technology (the “**Trial Period**”).¹⁴ The Concession also provided for an installation period of twenty-four months (from the date Semovi notified taxi operators of the required mandatory installation of the L1bre System), during which Lusad had to install the taximeters in Mexico City’s taxis.¹⁵ The Concession’s original term was ten years. Lusad had the option to extend the term for ten additional years if certain conditions were met and could request a further ten-year extension under Mexican law.¹⁶

¹² See **Exhibit C-7** (Concession agreement, dated 17 June 2016, as amended on 9 January 2017); see also **Exhibit C-8** (Amendment to Concession agreement to incorporate the Recuperation Fee, dated 9 January 2017).

¹³ See **Exhibit C-7** (Concession agreement, dated 17 June 2016, as amended on 9 January 2017), Section 2.

¹⁴ See *id.*, Section 6(b).

¹⁵ See *id.*, Annex 1.

¹⁶ See *id.*, Sections 12 and 13.

27. Lusad's Obligations: Lusad as the concessionaire was required to, *inter alia*: (i) maintain the technology and its operation in good conditions of accessibility, security, convenience, hygiene, and efficiency;¹⁷ (ii) update the technology as required to reduce its environmental impact;¹⁸ (iii) bear the cost of the acquisition, installation, maintenance, reparation, and reposition of the necessary equipment;¹⁹ (iv) guarantee GPS service twenty-four hours per day, every day of the year;²⁰ (v) operate the service according to the technical feasibility study;²¹ and (vi) operate the appropriate control systems to guarantee the quality of the service.²²

28. Mexico City's Obligations: Mexico City and Semovi were required to, *inter alia*: (i) establish the necessary centers for the installation of the L1bre System; and (ii) inform taxi operators about the installation procedure.²³ Consequently, Semovi's cooperation was required for Lusad to complete the installation of the L1bre System in all of Mexico City's taxis.

29. Fee Structure: The Concession, as amended under the Amendment, granted Lusad the right to receive the following fees in exchange for its services:

- (i) Application Fee: Each time that a user hailed a taxi by means of the application, Lusad would receive MXN \$12 (plus VAT), the "**Application Fee**."²⁴

After an investment recovery period of thirty-six months, the Application Fee would be shared between Lusad and Mexico City on a ratio of 91.77% for Lusad and 8.33% for Mexico City. At the end of thirty-six months, the Application Fee would be updated annually to account for inflation.²⁵

¹⁷ See *id.*, Clause 4.1.

¹⁸ See *id.*, Clause 4.8.

¹⁹ See *id.*, Clause 5.

²⁰ See *id.*, Clause 5.1.1.

²¹ See *id.*, Clause 5.1.2.

²² See *id.*, Clause 5.3.

²³ See *id.*, Clause 7.2(a).

²⁴ See *id.*, Clause 6.c(i).

²⁵ See *id.*

- (ii) Recuperation Fee: Each time that a user hailed a taxi that had the L1bre System installed, Lusad would receive MXN \$12 (plus VAT), the Recuperation Fee.²⁶ The Recuperation Fee was included to account for, among other reasons, the maintenance costs of the technology.
- (iii) Wi-Fi Fee: Each time that a user used the L1bre System's Wi-Fi, Lusad would receive MXN \$3 (plus VAT).²⁷
- (iv) Advertisement Fee: Lusad was entitled to receive the total income derived from the advertisements displayed on the tablets. Semovi, however, was entitled to provide 40% of the content on the tablets without being charged.²⁸

D. THE CONCESSION'S IMPLEMENTATION AND MEXICO CITY'S ASSURANCES TO LUSAD

30. Relying on its rights under the Concession and under international law, ES Holdings, through Lusad, undertook the necessary steps to develop, install, and maintain the L1bre System. Ultimately, Lusad spent millions of dollars developing the technology, acquiring the necessary equipment, and preparing to install the L1bre System in all 138,000 taxis in Mexico City.

31. Lusad also obtained the relevant certifications and licenses required under Mexican Law. On 18 April 2016, Lusad obtained a certification from Mexico's Ministry of the Economy authorizing the use of its digital taximeter as a lawful measurement instrument.²⁹ On 1 June 2016, Semovi granted Lusad a certification formally registering Lusad as a taxi-hailing application provider.³⁰ On 29 June 2016, Semovi also issued a permit authorizing Lusad to display advertising and publicity content on the backseat tablet to be installed in each taxi.³¹

²⁶ See *id.*, Clause 6.c(ii).

²⁷ See *id.*, Clause 6.e.

²⁸ See *id.*, Clause 6.d.

²⁹ See **Exhibit C-11** (Oficio No. DGN.312.01.2016.1534, dated 18 April 2016).

³⁰ See **Exhibit C-12** (Certificate of Registration No. 6D6C61F3232F227C-1651180691531691, dated 1 June 2016).

³¹ See **Exhibit C-9** (Oficio No. DGJR-001291-2016, dated 29 June 2016).

32. Subsequently, Lusad started the installation of the L1bre System in the Mexico City taxi fleet during the Trial Period, collected data from the installed systems, and made any required adjustments or corrections. In August 2016, Lusad informed Semovi that it had installed the L1bre System in 100 taxies and provided Semovi with the data collected by those systems.³² In November 2016, Lusad notified Semovi that it had successfully installed the L1bre System in 1,000 taxis and provided Semovi with the data collected by those systems.³³

33. In early 2017, Semovi inspected the progress made by Lusad during the Trial Period, and on 21 March 2017, Semovi's Legal Director of the Directorate General of Regulation, confirmed that the inspection had generated "favorable and satisfactory" results.³⁴ Lusad had successfully completed the Trial Period. In the same communication, Semovi re-issued the Concession, this time incorporating the Amendment that allowed Lusad to charge the Recuperation Fee.³⁵ Below is an image of Semovi's communication (in Spanish) confirming the successful completion of the Trial Period:

³² See **Exhibit C-13** (Confirmation of installation of the L1bre System in 100 taxis, dated 9 August 2016).

³³ See **Exhibit C-14** (Confirmation of installation of the L1bre System in 1,000 taxis, dated 7 November 2016).

³⁴ See **Exhibit C-10** (Reissued Concession agreement, dated 21 March 2017).

³⁵ See *id.*

A partir de esa fecha se han realizado trabajos constantes y continuos de supervisión, monitoreo y seguimiento por parte de la Secretaría de Movilidad respecto de los objetivos y fines del Título Concesión, éstos a través de la Dirección General de Servicio de Transporte Público Individual, la Dirección Ejecutiva de Sistemas de Información y Comunicación y la Dirección General Jurídica y de Regulación; encontrándose resultados favorables y satisfactorios respecto la supervisión ejercida.

De lo anterior, se ha determinado re expedir el Título Concesión de fecha 17 de junio de 2016, respetando las mismas características y contenido del original, sin embargo, adecuándose los tiempos que esta dependencia ha invertido en las pruebas y supervisiones hechas, por lo que la modificación en sí, de ningún modo afecta los derechos del concesionario o modifica el fin de la propia concesión.

34. Lusad also took the steps necessary to connect the L1bre System’s panic button to Mexico City’s Command, Control, Computing, Communication, and Citizen Contact Center of Mexico City, known as the “C5.”³⁶ In February 2018, Semovi confirmed that the panic button was working satisfactorily.³⁷

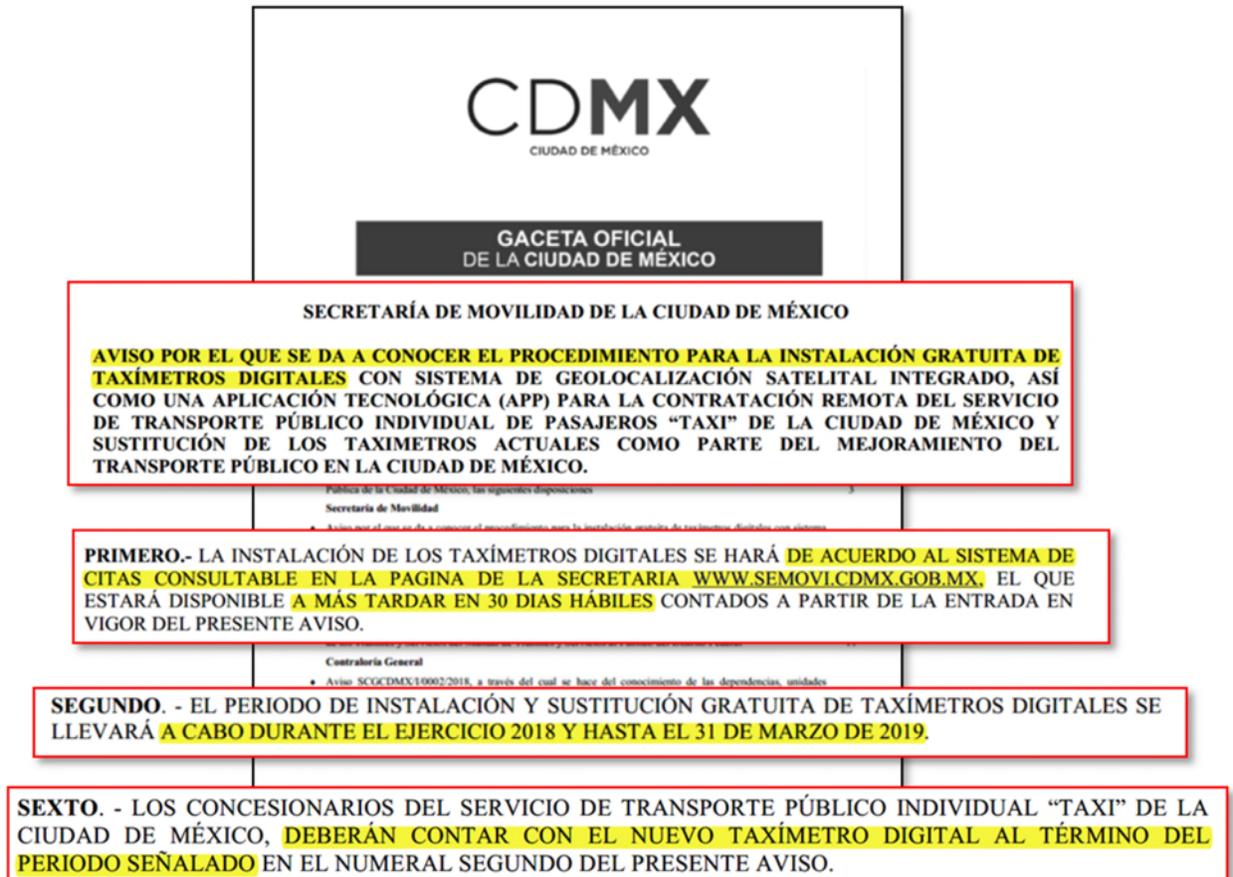
35. As a result of the satisfactory L1bre System tests, on 17 April 2018, Semovi issued a mandatory installation notice to all taxi operators stating that the installation of the L1bre System would occur via an electronic appointment system between April 2018 and March 2019 (the “**Mandatory Installation Notice**”).³⁸ Importantly, the electronic appointment system was dependent on Semovi’s implementation of a platform on its website that would allow taxi operators to request an appointment to have the L1bre System installed in their taxis. The

³⁶ See **Exhibit C-15** (Letter from Semovi acknowledging proper functioning of the panic button, dated 28 February 2018).

³⁷ See **Exhibit C-16** (Mandatory Installation Notice mandating the installation of the taximeters, dated 17 April 2018).

³⁸ See *id.*, at p. 6.

Mandatory Installation Notice also required Lusad to complete the installation of the taximeters by 31 March 2019. Below is an image of Semovi's Mandatory Installation Notice (in Spanish):



36. With the issuance of the Mandatory Installation Notice, Mexico City government officials of the prior administration, including the former mayor, held an event announcing the launch of the L1bre System.³⁹ Below are images from that event:

³⁹ See Exhibit C-36 (Pictures of official launch of the L1bre System).



37. Semovi, however, failed to create the required platform on its website, which in turn precluded Lusad from installing the Libre System in the remaining Mexico City taxis. Further, as described below, in May 2018, Mexico City suspended the Concession in anticipation of the upcoming municipal elections.

E. MEXICO'S UNLAWFUL ACTIONS AGAINST LUSAD

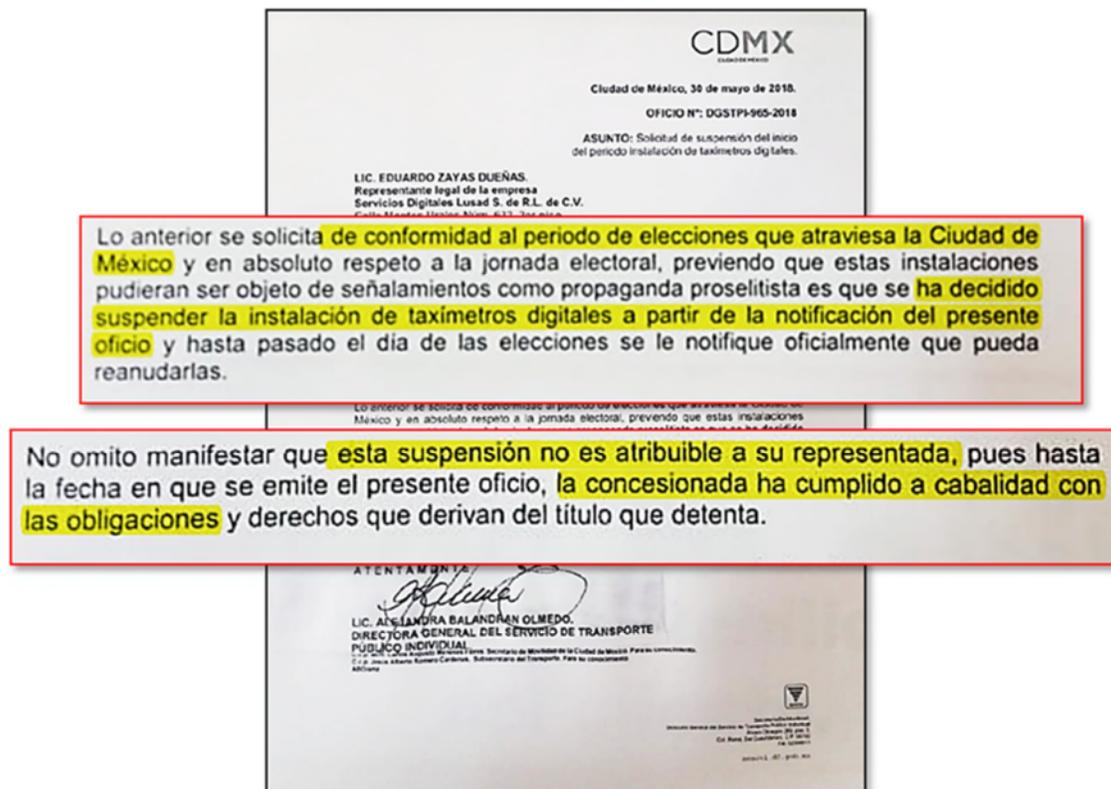
38. Notwithstanding the benefits of the L1bre System, following Semovi's issuance of the Mandatory Installation Notice, a relatively small but vocal group of taxi drivers protested against the required installation of the system. Certain mayoral candidates in the upcoming Mexico City municipal elections used these protests as an opportunity to try to court taxi-driver votes. One of these candidates, Ms. Sheinbaum, promised, in relation to the L1bre tablets, that she would "put an end to abuses on taxi drivers."⁴⁰ Ms. Sheinbaum's statements were based on the (false) premise that the taxi operators would be responsible for the costs associated with installing the tablets. This premise was untrue. Under the Concession, Lusad bore the costs of installing and maintaining the L1bre System, not the taxi operators. Below is an image depicting Ms. Sheinbaum's statements (in Spanish):



39. Using this political environment as a pretext, Semovi took its first step to unlawfully terminate the Concession. On 30 May 2018, claiming the need to respect the electoral process because the Concession had become a political issue in the upcoming elections, Semovi unilaterally and unlawfully suspended the installation of the L1bre System in the remaining taxis

⁴⁰ See **Exhibit C-17** (Press article "Sheinbaum says she will end abuses to taxi drivers," dated 11 May 2018).

until after the day of the election.⁴¹ Semovi expressly acknowledged that the decision was not made for legal, but rather *political reasons*, in consideration of “the electoral period [in] Mexico City and in absolute respect for the electoral day.”⁴² Notably, Semovi also expressly acknowledged that “this suspension *is not attributable to [Lusad]* since to the day this writ is issued, *the concessionaire has fully complied with its rights and obligations* [under the Concession].”⁴³ Semovi’s suspension notice is shown below (in Spanish):



40. In July 2018, Ms. Sheinbaum won the mayoral election, leading to a government change in Mexico City. After her election, Ms. Sheinbaum continued making derogatory statements related to, and announced that she would terminate, Lusad’s Concession.⁴⁴ On 28

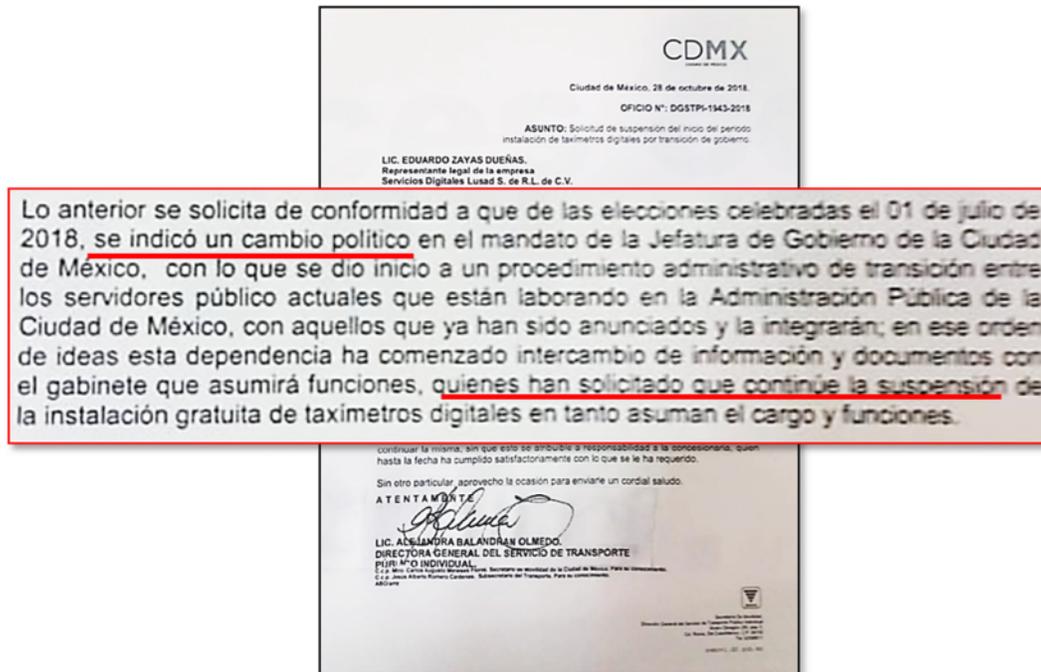
⁴¹ See **Exhibit C-18** (Letter from Semovi announcing suspension of the Concession, dated 30 May 2018).

⁴² See *id.*

⁴³ See *id.*

⁴⁴ See **Exhibit C-29** (Video showing Ms. Sheinbaum’s hostility towards Lusad’s Concession).

October 2018, fulfilling Ms. Sheinbaum’s campaign promise, the new administration, in complete disregard of Lusad’s rights under the Concession and ES Holdings’ rights under the Treaty, issued a notice permanently suspending the installation of the L1bre System in the remaining taxis based solely on the fact that a new political party had come to power in Mexico City.⁴⁵ Mexico did not even attempt to legally justify the permanent suspension of the Concession in the notice, which reads as follows (in Spanish):



41. Days after suspending the installation of the L1bre System, Semovi summoned Lusad’s representatives to attend a meeting to, supposedly, deal with matters relating to the Concession. Yet, the reality was different. Claiming that a new signature page to the Concession agreement was necessary due to the change in government, Semovi induced Lusad to sign an additional signature page, representing that the Concession terms would remain the same. Contrary to this representation, however, Semovi attached the new signature page to an altered, back-dated version of the Concession agreement that removed significant fees that would be due to Lusad (the “**Forged Concession Agreement**”).⁴⁶

⁴⁵ See **Exhibit C-19** (Letter from Semovi announcing indefinite suspension of the Concession, dated 28 October 2018).

⁴⁶ See **Exhibit C-20** (Forged Concession Agreement, dated 13 April 2018), Section 4.

42. Notwithstanding this episode, Mexico has not gone so far as to claim that the Forged Concession Agreement is the valid and applicable concession. Instead, during a visit of Lusad’s representatives to Semovi’s offices, Mexico City’s government officials changed their approach and stated that the Concession had been terminated. Thus, both privately and publicly, Mexico’s government officials in no uncertain terms made clear that the concession agreement would not be honored by Mexico City.

43. Unfortunately, Mexico’s actions were not limited to terminating the Concession. In June 2019, the Mexico City Government announced that the staff of the Digital Agency of Public Innovation (a State instrumentality) had been working on the development of a technology “similar to the one that big companies of transport through applications use.”⁴⁷ Below is an image of Mexico City’s announcement (in Spanish):



⁴⁷ See **Exhibit C-21** (Press article “Mexico City’s Government will Create app for Taxis,” dated 14 June 2019).

44. It then became apparent that, while Mexico City was unlawfully terminating the Concession, it also was developing its own system to replace that of Lusad, effectively misappropriating Lusad’s technology and business concept.

45. As a result, on 5 September 2019, Mayor Sheinbaum, along with the new Secretary of Mobility, announced the launch of the “Mi Taxi” application,⁴⁸ which included most of the technologies and services that were to be offered by Lusad under the Concession including, but not limited to: (i) GPS service for taxi drivers; (ii) a platform for users to hail taxis; and (iii) a panic button for the passengers’ safety. Below is an image of a news article announcing the launch of “Mi Taxi” (in Spanish):



46. On that same day (5 September 2019), Eduardo Clark (“**Mr. Clark**”), Director General of the Center of Technological Development of the Digital Agency of Public Innovation (“**DAPI**”), stated during a radio interview that Lusad’s Concession was no longer in effect and

⁴⁸ See **Exhibit C-22** (Press article “Launch of ‘Mi Taxi’ app that Includes a Panic Button,” dated 6 September 2019); **Exhibit C-28** (Press article “Sheinbaum Presents First Phase of Digital Application ‘Mi Taxi,’” dated 5 September 2019).

that the L1bre System had been replaced by the “Mi Taxi” application.⁴⁹ In addition, on 16 February 2020, Mayor Sheinbaum held a press conference announcing that the “Mi Taxi” application would be formally launched in March 2020, confirming that the application had replaced the L1bre System developed by the “prior administration.”⁵⁰ Mr. Clark’s and Mayor Sheinbaum’s statements confirmed what was already a reality: Mexico had terminated Lusad’s Concession.⁵¹

47. Culminating the destruction and misappropriation of ES Holdings’ investment, on 8 April 2020, Semovi issued a resolution formally calling all taxi operators in Mexico City to adhere to and install the “Mi Taxi” application,⁵² and granting a fee of MXN \$13/per ride (*banderazo* in Spanish)—which is higher than the fee of MXN \$12 fee/per ride that was awarded to Lusad under the Concession. This resolution is further evidence of Mexico’s expropriation of ES Holdings’ investment.

48. In summary, relying on Mexico’s obligations under the Treaty, ES Holdings spent tens of millions of dollars to develop the technology for the Concession, acquire the tablets, and obtain the necessary permits and certifications. ES Holdings further completed the Trial Period to Mexico’s full satisfaction. In clear disregard of its obligations under NAFTA, however, Mexico unilaterally, arbitrarily, and unlawfully terminated the Concession purely for political reasons, misappropriated Lusad’s technology and business concept, and offered substantially the same service to Mexico City taxi operators through a State instrumentality. As a result, Mexico unlawfully destroyed ES Holding’s investment and rendered it worthless. ES Holdings files this Request to hold Mexico accountable for these actions.

⁴⁹ See **Exhibit C-23** (Interview with Eduardo Clark, General Director of the Center of Technological Development of the Digital Agency of Public Innovation of the Government of Mexico City, dated 6 September 2019).

⁵⁰ See **Exhibit C-30** (Video recording of Mayor Sheinbaum’s 16 February 2020 press conference); **Exhibit C-33** (Press article “Taxi Drivers Will Operate via App as of 15 March 2020,” dated 16 February 2020).

⁵¹ *Id.*

⁵² See **Exhibit C-32** (Call to public individual transport services concessionaires to adhere to the “Mi Taxi” application, published in the Official Gazette on 16 April 2020).

IV. JURISDICTION

A. THE JURISDICTIONAL REQUIREMENTS OF NAFTA ARE MET

1. ES Holdings is an Investor and has made a protected Investment

49. Article 1139 of Chapter 11 of the Treaty defines an “investor” as “a Party or state enterprise thereof, or a national or an enterprise of such Party, that seeks to make, is making or has made an investment.”⁵³ ES Holdings is a company incorporated in Canada⁵⁴ and thus it is an “investor” under the terms of the Treaty.

50. Article 1139 of Chapter 11 of the Treaty defines “investment,” in relevant part, as:

- (a) an enterprise;
- (b) an equity security of an enterprise; . . .
- (e) an interest in an enterprise that entitles the owner to share in income or profits of the enterprise; . . .
- (g) real estate or other property, tangible or intangible, acquired in the expectation or used for the purpose of economic benefit or other business purposes; and
- (h) interests arising from the commitment of capital or other resources in the territory of a Party to economic activity in such territory . . .⁵⁵

but investment does not mean,

- (i) claims to money that arise solely from
 - (i) commercial contracts for the sale of goods or services by a national or enterprise in the territory of a Party to an enterprise in the territory of another Party, or
 - (ii) the extension of credit in connection with a commercial transaction, such as trade financing, other than a loan covered by subparagraph (d); or
- (j) any other claims to money, that do not involve the kinds of interests set out in subparagraphs (a) through (h)⁵⁶

⁵³ See **Exhibit CL-1** (Treaty), Chapter 11, Article 1139.

⁵⁴ See **Exhibit C-1** (Certificate of Good Standing of ES Holdings, under the laws of Alberta, Canada).

⁵⁵ See **Exhibit CL-1** (Treaty), Chapter 11, Article 1139.

⁵⁶ See *id.*

51. ES Holdings' investment satisfies this definition. ES Holdings' investment includes, *inter alia*: (i) "an enterprise" (Lusad); (ii) "an equity security" (ES Holdings' indirect shareholding in Lusad); (iii) "an interest in an enterprise that entitles the owner to share in income or profits of the enterprise" (ES Holdings' indirect shareholding in Lusad); (iv) "an interest in an enterprise that entitles the owner to share in the assets of that enterprise on dissolution" (ES Holdings' indirect shareholding in Lusad); (v) "intangible property" (the technology developed by Lusad); (vi) "interests arising from the commitment of capital or other resources in the territory of a Party to economic activity in such territory, such as under (i) contracts involving the presence of an investor's property in the territory of the Party, including turnkey or construction contracts, or *concessions*" (the Concession granted to Lusad); and (vii) "claims to money" arising from the interests detailed sections (a) to (h) of NAFTA Article 1139 (claims to money arising from the Concession). ES Holdings' investment therefore satisfies subsections (a), (b), (e), (g), and (h) of Article 1139, and falls within the definition of investment under the Treaty.

2. Mexico and ES Holdings have consented to submit this dispute to arbitration, and ES Holdings hereby submits its waiver under Article 1121

52. Article 1116 of the Treaty provides that "[an] investor of a Party may submit to arbitration under this Section a claim that another Party has breached an obligation under: (a) Section A [of Chapter 11 titled "Investment"]."⁵⁷ Article 1122 of Chapter 11 of the Treaty further provides that "[e]ach Party consents to the submission of a claim to arbitration in accordance with the procedures set out in this Agreement."⁵⁸

53. Both Mexico and Canada are parties to the ICSID Convention. Mexico expressly consented in the Treaty to submit to arbitration all investment disputes with Canadian investors

⁵⁷ See *id.*, Chapter 11, Article 1116.

⁵⁸ See *id.*, Chapter 11, Article 1120.

related to Mexico's obligations under the Treaty.⁵⁹ ES Holdings provides its written consent to arbitrate through the filing of this Request.

54. Consequently, both Parties have expressed their consent, in writing, to submit this investment dispute to arbitration under the Treaty.

55. Further, in compliance with Article 1121 of NAFTA, ES Holdings on its own behalf, and on behalf of the subsidiaries it owns or controls directly or indirectly, waives the right to initiate or continue before any administrative tribunal or court under the law of any Party, or other dispute settlement procedures, any proceedings with respect to the measures of Mexico that are alleged to be a breach of Section A of Chapter 11 of NAFTA, except for proceedings for injunctive, declaratory or other extraordinary relief, not involving the payment of damages, before an administrative tribunal or court under the law of Mexico.⁶⁰

3. More than six months have elapsed since the events that give rise to the dispute and more than three months have elapsed since the Notice of Intent

56. Article 1120(1) of NAFTA provides that an investor may submit a claim to arbitration "provided that *six months have elapsed since the events giving rise to a claim.*" Here, the events that give rise to the claim commenced at least on 30 May 2018 when Semovi suspended the installation of the L1bre System until after the day of the election.⁶¹ Consequently, more than six months have elapsed since the events that give rise to the dispute.

57. Article 1119 of NAFTA further provides that "[t]he disputing investor shall deliver to the disputing Party written notice of its intention to submit a claim to arbitration at least *90 days before the claim is submitted.*" Here, ES Holdings served a formal Notice of Intent to Mexico under the Treaty on 30 May 2019.⁶² Through the Notice of Intent, ES Holdings pursued an amicable resolution of its dispute with Mexico. Regrettably, Mexico has refused to

⁵⁹ See **Exhibit C-37** (Official webpage of the Mexican Government evidencing of treaties signed by Mexico).

⁶⁰ See **Exhibit C-34** (ES Holdings' waiver in compliance with Article 1121).

⁶¹ See **Exhibit C-18** (Letter from Semovi announcing suspension of the Concession, dated 30 May 2018).

⁶² See **Exhibit C-24** (ES Holdings' Notice of Intent, dated 30 May 2019).

acknowledge its breaches of the Treaty. Ninety days have passed since the service of the Notice of Intent and the dispute remains unresolved.

4. The three-year statute of limitations has not elapsed

58. Article 1116 of NAFTA provides that “[a]n investor may not make a claim if more than three years have elapsed from the date on which the investor first acquired, or should have first acquired, knowledge of the alleged breach and knowledge that the investor has incurred loss or damage.”⁶³ In this case, as discussed above, the events that give rise to the dispute commenced at the earliest in May 2018 (which would mean that the claim is within the statute of limitations), but further extended over a period of time, at least until 8 April 2020, when Semovi officially displaced Lusad and called all taxi drivers in Mexico City to adhere to, and install, the new “Mi Taxi” application developed by the government. Therefore, the three-year statute of limitations has not elapsed.

B. THE JURISDICTIONAL REQUIREMENTS OF THE ICSID CONVENTION ARE MET

59. Article 25(1) of the ICSID Convention governs ICSID’s jurisdictional requirements:

*The jurisdiction of the Centre shall extend to any legal dispute arising directly out of an investment, between a Contracting State . . . and a national of another Contracting State, which the parties to the dispute consent in writing to submit to the Centre.*⁶⁴

60. These jurisdictional requirements of the Convention are also met here.

1. There is a legal dispute arising out of ES Holdings’ investment

61. ES Holdings has an “investment” in Mexico within the meaning of Article 25(1) of the Convention. Although Article 25 does not itself provide a definition of “investment,” significant, long-term interests in property, shareholdings, concessions, and other contract rights, such as ES Holdings’ interests in Mexico, are all understood to constitute investments under the any reasonable definition. Under ICSID jurisprudence, these are investments within the meaning

⁶³ See **Exhibit CL-1** (Treaty), Chapter 11, Article 1116.

⁶⁴ See **Exhibit CL-3** (ICSID Convention), Article 25(1).

of Article 25(1). Moreover, the legal dispute described in this Request arises out of ES Holdings' investments in Mexico.

2. The legal dispute involves a Contracting State and a National of another Contracting State

62. Article 25(2) of the ICSID Convention provides as follows:

“National of another Contracting State” means:

Any juridical person which had the nationality of a Contracting State other than the State party to the dispute on the date on which the parties consented to submit such dispute to conciliation or arbitration and any juridical person which had the nationality of the Contracting State party to the dispute on that date and which, because of foreign control, the parties have agreed should be treated as a national of another Contracting State for the purposes of this Convention.⁶⁵

63. ES Holdings is a company with Canadian nationality because it is incorporated in Canada in accordance with Canadian law and has its registered office in Canada. Therefore, ES Holdings is a “juridical person which had the nationality of a Contracting State other than the State party to the dispute” under Article 25(2)(b) of the ICSID Convention. Canada and Mexico are both Contracting States to the ICSID Convention.

3. The parties have consented to submit the dispute to the Centre

64. The Parties to the dispute have consented in writing to submit this dispute to arbitration before the Centre. As discussed above, Mexico's consent in writing to submit investment disputes to ICSID arbitration is expressed in Article 1122 of NAFTA. ES Holdings expresses its consent in this Request.

4. ES Holdings has complied with other procedural requirements

65. ES Holdings has provided in this Request the information and materials specified in ICSID Institution Rules 2 and 3. Pursuant to ICSID Institution Rule 2(1)(f), ES Holdings affirms that it has taken all internal actions necessary to authorize this Request. Attached as

⁶⁵ See **Exhibit CL-3** (ICSID Convention), Article 25(1).

Exhibit C-31 is the internal authorization from ES Holdings.⁶⁶ Claimant has also paid the US \$25,000 filing fee required under ICSID Administrative and Financial Regulation 16 and a copy of the wire transfer instruction is attached as Exhibit C-35.⁶⁷ Accordingly, all procedural requirements under the ICSID Convention and the ICSID Institution Rules are met.

V. MEXICO BREACHED ITS OBLIGATIONS UNDER THE TREATY

66. Mexico's actions described above violated its obligations under the Treaty. Specifically, Mexico violated the following provisions of Annex III of the Treaty:

- (i) Article 1110: Expropriation and Compensation;
- (ii) Article 1105: Minimum Standard of Treatment and Full Protection and Security;
- (iii) Article 1102: National Treatment; and
- (iv) Article 1103: Most-Favored-Nation Treatment.

A. MEXICO CITY'S ACTIONS CAN BE ATTRIBUTED TO MEXICO UNDER THE TREATY AND INTERNATIONAL LAW

67. Article 105 of Chapter 1 of the Treaty provides that:

The Parties shall ensure that all necessary measures are taken in order to give effect to the provisions of this Agreement, including their observance... by state and provincial governments.⁶⁸

68. The reference to "state and provincial governments" in the Treaty includes local governments pursuant to Article 201(2) of the Treaty.⁶⁹ The Treaty thus explicitly provides that Mexico is responsible for the actions of state and provincial governments, including the Mexico City government and its instrumentalities, such as Semovi.

69. Further, Article 4 of the International Law Commission's Articles on State Responsibility provides that "[t]he conduct of any State organ shall be considered an act of that

⁶⁶ See **Exhibit C-31** (ES Holdings' internal authorization to file this Request, dated 29 April 2020).

⁶⁷ See **Exhibit C-35** (Wire confirmation evidencing payment of US \$25,000 to ICSID).

⁶⁸ See **Exhibit CL-1** (Treaty), Chapter 1, Article 105 (emphasis added).

⁶⁹ See *id.*, Article 201(2).

State under international law.”⁷⁰ Accordingly, Mexico is also responsible for breaches of international law by the Mexico City government and Semovi.

B. MEXICO EXPROPRIATED ES HOLDINGS’ INVESTMENT WITHOUT COMPENSATION

70. Article 1110 of the Treaty prohibits all direct and indirect expropriations, as follows:

1. No Party may directly or indirectly nationalize or expropriate an investment of an investor of another Party in its territory or take a measure tantamount to nationalization or expropriation of such an investment (“expropriation”), except:
 - (a) for a public purpose;
 - (b) on a non-discriminatory basis;
 - (c) in accordance with due process of law and Article 1105(1);
and
 - (d) on payment of compensation in accordance with paragraphs 2 through 6.⁷¹

71. Mexico breached its obligation under Article 1110 of Chapter 11 of the Treaty by indirectly expropriating ES Holdings’ rights under the Concession, as well as its interest in Lusad, without just or fair cause, without due process or compensation, and without any public purpose.

72. Specifically, Mexico, *inter alia*: (i) permanently suspended the Concession for political reasons; (ii) fraudulently created a forged version of the Concession agreement eliminating substantial fee income for Lusad; (iii) ultimately terminated the Concession; and (iv) replaced Lusad and misappropriated its technology by launching an application that provides substantially the same services as those that Lusad had the exclusive right to provide under the Concession. As a result of Mexico’s actions, ES Holdings has been entirely deprived of the value, use, and benefit of its investment, which is now worthless.

73. Mexico’s expropriation was not for a public purpose but rather, as expressly acknowledged by the municipal government, for political reasons. During her campaign for

⁷⁰ See **Exhibit CL-2** (International Law Commission’s Draft Articles on State Responsibility), Article 4(1).

⁷¹ See **Exhibit CL-1** (Treaty), Chapter 1, Article 1110.

mayor of Mexico City, Ms. Sheinbaum promised to terminate the Concession to appease a vocal group of taxi operators. After she was elected mayor, Ms. Sheinbaum's political party made good on that promise and permanently suspended the Concession because it did not agree with the prior administration's decision to grant Lusad the Concession. In expropriating ES Holdings' investment, Mexico did not afford ES Holdings due process of law nor did it compensate ES Holdings for its loss. Accordingly, Mexico's expropriation was unlawful under the Treaty and international law.

C. MEXICO DID NOT AFFORD ES HOLDINGS FAIR AND EQUITABLE TREATMENT NOR FULL PROTECTION AND SECURITY

74. Article 1105 of Chapter 11 of the Treaty provides that Mexico shall treat investors according to international law:

Each Party shall accord to investments of investors of another Party treatment in accordance with international law, including *fair and equitable treatment* and *full protection and security*.⁷²

75. Tribunals have elucidated a number of specific categories required by the *fair and equitable treatment standard* (“FET”), including the duty to safeguard legitimate expectations, provide transparency and due process, act for a proper purpose, refrain from arbitrary or discriminatory measures, and act in good faith. Mexico violated all of these elements of the FET standard. Mexico frustrated ES Holdings' reasonable expectations by preventing Lusad from fulfilling its obligations, indefinitely suspending and subsequently terminating the Concession, and displacing Lusad by launching a technology practically identical to the Libre System. Mexico's measures were arbitrary and discriminatory since they were not based in law but on political interest. Mexico therefore did not act for a proper purpose or in good faith. Mexico also did not accord ES Holdings due process of law. Mexico unilaterally, unlawfully, and arbitrarily terminated the Concession without giving Lusad or ES Holdings an opportunity to be heard or to challenge Semovi's actions.

76. In addition, the obligation to accord *full protection and security* requires the State to enforce its laws in a manner reasonably expected under the circumstances to protect covered

⁷² See *id.*, Chapter 11, Article 1105.

investments; in that sense, it is said to be a standard of due diligence. Arbitral tribunals have consistently held that while the standard certainly includes the obligation to provide police protection, it relates broadly to the State's obligation to provide protection and security to investments through the enforcement of laws and by maintaining and making available a legal system capable of providing adequate remedies against harms more generally.⁷³ Here, Mexico's actions withdrew and withheld legal protections from the investment made by ES Holdings in violation of its obligation to provide full protection and security under the Treaty. These wrongful failures of protection have cumulatively caused the complete deprivation of the use, value, and enjoyment of the investment. Mexico breached its "obligation of vigilance" and failed to "take all measures necessary to ensure the full enjoyment of protection and security of [the] investment"⁷⁴

D. MEXICO DISCRIMINATED AGAINST ES HOLDINGS

77. Article 1102 of Chapter 11 of the Treaty, "National Treatment," provides that Mexico must treat foreign investors and investments no less favorably than its own national investors and investments:

1. Each Party shall accord to investors of another Party treatment no less favorable than that it accords, in like circumstances, to its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.
2. Each Party shall accord to investments of investors of another Party treatment no less favorable than that it accords, in like circumstances, to investments of its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.⁷⁵

⁷³ See **Exhibit CL-4** (C. Schreuer, *Full Protection and Security*, J. INT'L DISP. SETTLEMENT (2010), p. 1) ("More recently tribunals have found that provisions of this kind also guaranteed legal security enabling the investor to pursue its rights effectively.").

⁷⁴ See **Exhibit CL-5** (*American Manufacturing & Trading, Inc. v. Republic of Zaire*, ICSID Case No. ARB/93/1), ¶ 6.05.

⁷⁵ See **Exhibit CL-1** (Treaty), Chapter 11, Article 1102.

78. Mexico breached its obligation by treating ES Holdings, a Canadian company, and its investment differently when compared to Mexico’s nationals and their investments. Mexico displaced Lusad’s L1bre System for “Mi Taxi,” an application developed and launched by DAPI—a Mexican instrumentality—which offers services practically identical to those offered by Lusad under the Concession. DAPI qualifies as an investor under Article 1139 NAFTA, since it is a “state enterprise” of a Party. Consequently, ES Holdings, a Canadian investor, received treatment less favorable than that afforded to DAPI, a Mexican investor. Mexico violated the National Treatment standard included in Article 1102 of NAFTA.

79. ES Holdings also reserves its right to invoke Article 1103 of NAFTA (Most Favored Nation treatment) based on Mexico’s conduct, to the extent that Mexico has treated investors of other countries more favorably, including in other investment treaties.

VI. ES HOLDINGS’ DAMAGES

80. Mexico’s breaches of the Treaty have caused substantial damages to ES Holdings. These damages include, without limitation: (i) compensatory damages; (ii) lost profits; (iii) lost business opportunities; and (iv) incidental damages.

81. ES Holdings presently estimates its damages in the billions of dollars. Notably, one of the most reputable investments firms globally, Goldman Sachs, valued the Concession in excess of US \$2.3 billion over the first five years of operation. ES Holdings will provide a more detailed quantification and substantiation of its damages in due course during these proceedings.

VII. PROCEDURAL MATTERS

A. NUMBER OF ARBITRATORS AND METHOD OF APPOINTMENT

82. Article 1123 of Chapter 11 of the Treaty, “Number of Arbitrators and Method of Appointment,” provides:

Except in respect of a Tribunal established under Article 1126, and unless the disputing parties otherwise agree, the Tribunal shall comprise three arbitrators, one arbitrator appointed by each of the disputing parties and

the third, who shall be the presiding arbitrator, appointed by agreement of the disputing parties.⁷⁶

83. Pursuant to this provision, ES Holdings appoints Dr. Charles Poncet as its party-appointed arbitrator. Dr. Poncet's contact information is as follows: Rue Bovy-Lysberg 2, Case Postale 5824, 1211 Geneva 11, Switzerland. His email is charles@poncet.law.

B. PLACE OF THE ARBITRATION

84. Article 1130 of Chapter 11 of the Treaty, "Place of Arbitration," provides:

Unless the disputing parties agree otherwise, a Tribunal shall hold an arbitration in the territory of a Party that is a party to the New York Convention, selected in accordance with:

- (a) the ICSID Additional Facility Rules if the arbitration is under those Rules or the ICSID Convention⁷⁷

85. In accordance with Article 62 of the ICSID Convention, the place of arbitration shall be Washington D.C., United States, the seat of the Centre.

C. LANGUAGE OF THE ARBITRATION

86. The Treaty is silent on the language of the arbitration. Pursuant to Rule 22(1) of ICSID's Arbitration Rules, ES Holdings proposes that, given the nationality of the Parties, both English and Spanish be used as the procedural languages of this arbitration.

VIII. RESERVATION OF RIGHTS

87. ES Holdings reserves the right to seek interim or conservatory measures at the appropriate time or as necessary. ES Holdings also reserves the right to alter, amend, and/or supplement its claims during the course of these proceeding, and to submit such further pleadings, arguments, damages, claims, exhibits, and evidentiary materials as may be appropriate or necessary.

⁷⁶ See *id.*, Chapter 11, Article 1123.

⁷⁷ See *id.*, Chapter 11, Article 1130.

IX. REQUEST FOR RELIEF

88. On the basis of the foregoing, without limitation and fully reserving its right to supplement this Request, ES Holdings respectfully requests that the Tribunal:

- (i) DECLARE that Mexico breached Articles 1102, 1103, 1105, and 1110 of the Treaty;
- (ii) ORDER Mexico to compensate ES Holdings for their losses resulting from Mexico's breaches of the Treaty and international law, in an amount to be determined at a later stage in these proceedings; such compensation to be paid without delay, be effectively realizable and be freely transferable, and bear (pre and post award) interest at a compound rate sufficient fully to compensate ES Holdings for the loss of the use of this capital as from the date of Mexico's breaches of the Treaty;
- (iii) DECLARE that: (i) the award of damages and interest in (ii) be made net of all Mexico's taxes; and (ii) Mexico may not deduct taxes in respect of the payment of the award of damages and interest in (ii);
- (iv) AWARD such other relief as the Tribunal considers appropriate; and
- (v) ORDER Mexico to pay all of the costs and expenses of these arbitration proceedings, including the fees and expenses of the Tribunal, the fees and expenses of the institution which is selected to provide appointing and administrative services and assistance to this arbitration, the fees and expenses relating to ES Holdings' legal representation, and the fees and expenses of any expert appointed by ES Holdings or the Tribunal, plus interest.

Respectfully submitted by:

Hogan Lovells US LLP
600 Brickell Avenue
Suite 2700
Miami, Florida 33131
United States of America
Telephone: +1.305.459.6500
Fax: +1.305.459.6550



By:

Richard C. Lorenzo
Mark R. Cheskin
Juan C. Garcia
Juliana de Valdenebro Garrido

Sidley Austin LLP
787 7th Avenue
New York, New York 10019
United States of America
Telephone: +12128395300
Fax: +12128395599



By:

Tai-Heng Cheng
Marinn Carlson
Simon Navarro

Counsel for Claimant