
INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

MARIO NORIEGA WILLARS
&
COMPAÑÍA DE FERROCARRILES CHIAPAS-MAYAB, S.A. DE C.V.,

Claimants,

v.

UNITED MEXICAN STATES,

Respondent.

REQUEST FOR ARBITRATION

HOGAN LOVELLS US LLP

Richard C. Lorenzo
Juliana de Valdenebro
Juan C. García
Eduardo Lobatón Guzmán

600 Brickell Avenue
Suite 2700
Miami, Florida 33131
United States of America

Attorneys for Claimants

29 June 2023

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1. Mario Noriega Willars (the “**Investor**” or “**Mr. Willars**”), on his behalf and on behalf of Compañía de Ferrocarriles Chiapas-Mayab, S.A. de C.V. (“**CFCM**,” and together with Mr. Willars, the “**Claimants**”) serves this Request for Arbitration against the United Mexican States (the “**State**,” “**Mexico**,” or “**Respondent**”) (together with the Claimants, the “**Parties**”), pursuant to Articles 1116, 1117, 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**”), Annex 14-C of the United States-Mexico-Canada Agreement, which entered into force on 1 July 2020 (“**USMCA**”), 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 is straightforward: Mexico failed to pay full, prompt, adequate, and effective compensation after it directly expropriated Claimants’ investment.

3. On 26 August 1999, the *Secretaría de Comunicaciones y Transportes*, now the *Secretaría de Infraestructura, Comunicaciones y Transportes*, (the “**SCT**”) awarded CFCM a concession for the operation, exploitation, and maintenance of two of Mexico’s primary railroads that connect the Yucatán Peninsula with the Pacific coast and Guatemala’s border: the Chiapas and Mayab railroads (the “**Concession**”). The Concession was first set to expire in 2029, but in 2012 the SCT, recognizing CFCM’s compliance with its obligations, agreed to amend and extend the Concession until 2049. In spite of Mexico’s repeated assurances that CFCM would be allowed to operate the railway for the Concession’s term, the SCT suddenly expropriated the Concession through a *rescate* declaration in 2016. While Mexico initially promised to compensate CFCM for its expropriation, such promise has yet to be fulfilled. After years of litigation in Mexican courts, Mexico’s judicial branch has done nothing but prevent CFCM from receiving the appropriate compensation due.

4. Contrary to Mexico’s treatment of Mr. Willars and his investment, Mexico has paid full and prompt compensation to its own nationals, facing similar or analogous circumstances. In 2023, Mexico’s President announced that the government had issued a *rescate* declaration against Ferrosur, S.A. de C.V.—a Mexican entity owned by Germán Larrea, a prominent Mexican businessman—which held a concession to operate another railway (the *rescate* was only over part of Ferrosur’s concession, namely the 127 kilometers of track that follow CFCM’s Mayab line). Ferrosur, however, had no need to wait nor litigate to be compensated. Within two weeks of that *rescate*, Mexico agreed to pay the Mexican company and its Mexican owner the full compensation owed after the *rescate*. Mr. Willars, as a foreigner, however, was not afforded that preferential treatment.

5. Mexico's conduct is a continued breach of the provisions of NAFTA prohibiting expropriation without full, prompt, adequate and effective 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 Claimants. Pursuant to well-settled principles of international law, Claimants seek full reparation for the losses resulting from Mexico's violations of NAFTA and international law, in the form of monetary compensation sufficient to remediate the consequences of Mexico's wrongful and unlawful acts.

II. THE PARTIES

A. CLAIMANTS

6. Claimant, Mario Noriega Willars, is a United States national of legal age and a foreign investor in Mexico.¹

7. Mr. Willars acquired a majority ownership interest in CFCM on 14 December 2015. Mr. Willars currently owns a 16.38% direct interest in CFCM and a 48% interest in Viabilis Holding, S.A. de C.V. (“**Viabilis**”), a Mexican entity, which in turn owns a 73.71% direct interest in CFCM. Consequently, Mr. Willars owns a 51.76% majority interest in CFCM.² CFCM’s other shareholder is Consorcio de Desarrollo Intercontinental, S.A. de C.V., a Mexican entity that owns a 9.91% interest in CFCM.

8. CFCM was incorporated in Mexico on 25 March 1999.³ Given that Mr. Willars owns or controls CFCM, he brings this claim on his own behalf, pursuant to Article 1116 of NAFTA, and also on behalf of CFCM, pursuant to Article 1117 of NAFTA.

9. Claimants are represented in these proceedings by Hogan Lovells US LLP.⁴ All required notifications should be addressed to:

Hogan Lovells US LLP
Mr. Richard C. Lorenzo
Ms. Juliana de Valdenebro Garrido
Mr. Juan C. Garcia
Mr. Eduardo Lobatón Guzmán

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

¹ See **Exhibit C-1** (Copy of Mr. Willars’ United States Passport).

² See **Exhibit C-2** (CFCM’s Shareholder Registry); **Exhibit C-3** (Viabilis’ Shareholder Registry).

³ See **Exhibit C-4** (CFCM Incorporation Deed dated 22 April 1999).

⁴ See **Exhibit C-5** (Power of Attorney on behalf of Mr. Willars in favor of Hogan Lovells US LLP); **Exhibit C-6** (Power of Attorney on behalf of CFCM in favor of Hogan Lovells US LLP).

juliana.devaldenebro@hoganlovells.com
juan.garcia@hoganlovells.com
eduardo.lobaton@hoganlovells.com

B. RESPONDENT

10. Mexico is a sovereign state located in the southern area of North America. Mexico is the second largest economy in Latin America.

11. Mexico has appointed the General Directorate of Legal Counseling of International Trade (*Dirección General de Consultoría Jurídica de Comercio Internacional* in Spanish) of the Ministry of Economy to receive official notifications related to disputes under international treaties.⁵ Therefore, in addition to its filing with the International Centre for Settlement of Investment Disputes (the “Centre” or “ICSID”), Claimants are sending a copy of this Request to:

Dirección General de Consultoría Jurídica de Comercio Internacional
Secretaría de Economía
Torre Ejecutiva Secretaría de Economía
Calle Pachuca 189, Piso 7, Colonia Condesa, 06140, Cuauhtémoc
Ciudad de México
Estados Unidos Mexicanos

12. Claimants are also sending courtesy copies of this Request to the following individuals and State agencies and instrumentalities:

Honorable Andrés Manuel López Obrador
Presidente de los Estados Unidos Mexicanos
Av. Constituyentes 161, San Miguel de Chapultepec 11 Secc, 11850
Ciudad de México
Estados Unidos Mexicanos

Honorable Raquel Buenrostro Sánchez
Secretaria de Economía
Pachuca 189, Colonia Condesa, Cuauhtémoc, 06140
Ciudad de México
Estados Unidos Mexicanos
raquel.buenrostro@economia.gob.mx

Honorable Alejandro Encinas Nájera
Subsecretario de Comercio Exterior
Pachuca 189, Colonia Condesa, Cuauhtémoc, 06140
Ciudad de México

⁵ See **Exhibit C-7** (Internal Regulation of the Ministry of Economy, published in Mexico’s Federal Official Gazette on 17 October 2019).

Estados Unidos Mexicanos
alejandro.encinas@economia.gob.mx

Honorable Mtro. Gibran Alberto Briones Acosta
Dirección General de Inversión Extranjera
Secretaría de Economía
Av. de los Insurgentes Sur 1940, Colonia La Florida,
Ciudad de México
Estados Unidos Mexicanos
gibran.briones@economia.gob.mx

III. STATEMENT OF FACTS

A. MEXICO AWARDS CFCM THE CONCESSION TO OPERATE THE CHIAPAS-MAYAB RAILWAY

13. The Chiapas-Mayab railway consists of two separate lines located in Mexico's southeast region and connects the Mexican states of Chiapas, Oaxaca, Veracruz, Tabasco, Campeche, and Yucatán. The Chiapas line ran through the south of the Yucatán Peninsula and covered approximately 459.43 kilometers. The Mayab line ran through the northern part of the peninsula and extended approximately for 1,090.4 kilometers. The Chiapas and Mayab lines are connected by a third rail line, which is operated by Ferrocarril del Istmo de Tehuantepec, S.A. de C.V. ("FIT"), a Mexican State-owned entity. The Chiapas-Mayab lines are depicted in yellow below.⁶



14. The Chiapas-Mayab railway is vital to the economic development of Mexico's southeastern region because it connects Mexico with transatlantic transportation lines and key foreign markets, like Guatemala, and allows for the transport and trade of goods and services. As a result, the development of these railway lines, as well as the supporting infrastructure, has been a key priority of several Mexican governments, including the present executive administration.

⁶ See **Exhibit C-8** (Map of Chiapas-Mayab railway, available at https://www.proyectosmexico.gob.mx/proyecto_inversion/279-via-ferroviaria-chiapas-y-mayab/).

15. On 24 March 1999, the SCT initiated a public bidding process allowing companies to submit proposals for the operation and exploitation of the Chiapas-Mayab railway lines.

16. In response to the public bidding process, on 25 June 1999, CFCM submitted to the SCT a technical and economic proposal. In its proposal, CFCM offered to: (i) pay MXN \$141,000,000 for the Concession; (ii) acquire all movable goods related to the operation of the railway lines that were described in the “List of Movable Goods of the Chiapas-Mayab Railway Unit,” valued at approximately MXN \$116 million; and (iii) invest approximately MXN \$91 million to perform urgent rehabilitation work on the tracks within the first twelve months of the Concession. CFCM’s total investment to acquire the Concession was estimated at MXN \$165 million (approximately USD \$16,500,000.00 at that time).

17. On 9 July 1999, the SCT declared CFCM the winner of the public bidding process, given its “superior economic and technical proposal that guaranteed the best conditions for the State.”⁷ As a result, on 26 August 1999, the SCT awarded CFCM the Concession, which was published in the Official Gazette on 30 September 1999.

B. THE CONCESSION AGREEMENT

18. The Concession granted CFCM: (i) the exclusive right to operate and exploit the Chiapas-Mayab rail lines for 30 years; (ii) the exclusive right to use state-owned property and goods needed to operate the lines, also for 30 years; and (iii) the exclusive right to render public freight transportation service on the lines for 18 years. CFCM could request an extension of the 30-year term, and the terms of the Concession could be amended by mutual agreement between CFCM and the SCT.⁸

19. The Concession included a business plan that detailed the investment to be made by CFCM and the revenues expected from the Concession. In accordance with this business plan, CFCM was to invest additional amounts totaling over MXN \$300,000,000 during the next 10 years.

20. In the event of a natural disaster, security threat, or other force majeure event, the Concession allowed the SCT to impose a “*modalidad*” in order to ensure the continued operation of the railway. Imposing a “*modalidad*” is a temporary remedy intended to address unforeseen

⁷ See **Exhibit C-9** (Official Communication from the SCT to CFCM, dated 9 July 1999) (“*Una vez efectuada la evaluación de las propuestas económicas presentadas en la licitación para el concesionamiento de la operación y explotación de la vías cortas Chiapas-Mayab . . . la Comisión Intersecretarial de Desincorporación . . . designar ganador de la licitación de la Unidad Ferroviaria a [CFCM] en virtud de que la propuesta económica que presentó es superior al valor técnico de referencia y garantiza las mejores condiciones para el Estado.*”).

⁸ See **Exhibit C-10** (Concession Agreement entered on 26 August 1999, without exhibits).

events and does not eliminate a concessionaire's rights under a concession agreement. Once the unforeseen event is resolved, the operation of the concession must be returned to the concessionaire.

C. OPERATION OF THE CONCESSION (1999 TO 2005)

21. Between 1999 and 2005, CFCM provided rail transportation and interconnection services on the Chiapas and Mayab lines, transporting petrochemicals and other raw materials to power-generating facilities in the Southeast of Mexico, as well as construction materials, farming products, and electronic equipment, among others. CFCM also entered into a number of framework agreements with critical clients, and agreements with operators of other railways in Mexico to foster interlineal services.

22. In addition to successfully operating the rails, CFCM also performed the rehabilitation works required under the Concession and complied with the Concession's business plan, making the committed investments. The State raised no concerns during this period with respect to CFCM's operation of or compliance with the Concession.

23. In early October 2005, Hurricane Stan struck Mexico's Yucatán Peninsula. The storm, which caused more than 1,500 fatalities and significant damage, destroyed several bridges and railway sections of the Chiapas line that ran through the southern portion of the peninsula, leaving a large section of the line inoperable.⁹ As a result, CFCM could not operate 283 km of the Chiapas line, rendering the Concession financially unviable.

24. Given the extensive damage, CFCM attempted to reach an agreement with the Mexican government under which Mexico would assume responsibility for repairing the tracks. This agreement was vital for CFCM because it would allow CFCM to resume operation on the Chiapas line. While Mexico agreed to repair the lines, it took several years to begin and complete the necessary work, and failed to do maintenance work on the operating tracks.

25. As such, in August 2007, the SCT imposed a "*modalidad*" appointing FIT to operate the Chiapas and Mayab lines. As previously mentioned, FIT is the Mexican State-owned entity that had been operating the line connecting the Chiapas and Mayab rail lines. Appointing FIT allowed the government to begin operating the usable portion of the railway while the tracks were repaired.

⁹ Hurricane Stan caused only minor damage to the Mayab line, which CFCM repaired, allowing it to resume transport on that line.

26. Unfortunately, years passed and Mexico failed to timely complete the repair of the tracks or compensate CFCM for the undue delay in retuning the operation, compelling CFCM's original shareholders to sell their interest in the company to a new group of investors—Viabilis and related partners.

27. Noting the slow progress on Mexico's reparation works, in 2008 CFCM and its new investor approached the SCT seeking to re-negotiate the Concession and find different alternatives to allow CFCM to regain control of the operation, and reactivate and improve the freight transportation services in the region. CFCM initiated efforts to negotiate an agreement with Mexico whereby CFCM agreed to improve the freight transportation services, in exchange for Mexico completing the necessary repairs, and accepting certain amendments to the Concession. CFCM and the SCT created a working group (*mesa de trabajo*) to jointly prepare a business plan intended to allow CFCM to regain the operation of the Concession by 2013.

D. THE AMENDED CONCESSION

28. As part of these negotiations, CFCM and the SCT developed a comprehensive business plan in which CFMC agreed to make an additional investment of USD \$201 million to reactive the Concession and improve the freight transportation services. The business plan also projected the cash flows that would be generated by the operation of the lines.

29. Given this important investment, in June 2012, CFCM and the SCT assessed the need to amend the Concession to extend the Concession's term and the exclusivity period for providing the public freight transportation service. These modifications were critical for CFCM because it needed the cashflows that would be generated by the extended term and exclusivity period to support the investments by CFCM.

30. In reviewing the possible amendment, the SCT performed an extensive analysis of CFCM's performance under the Concession. On 22 October 2012, Mexico determined that the requested modifications were warranted and agreed to amend the Concession. Among other modifications, the amended Concession: (i) extended the Concession's term for an additional 20 years, granting CFCM the Concession for a total of 50 years, ending in 2049; and (ii) extended the exclusive period for CFCM to provide freight transportation service for an additional 12 years, until 2029 (the "**Amended Concession**").¹⁰

31. In amending the Concession, the SCT recognized that CFCM had complied with its obligations under the Concession, stating that "it is appropriate to make the modifications

¹⁰ See **Exhibit C-11** (Amended Concession, dated 22 October 2012).

requested . . . [because CFCM] *has complied with the conditions in the concession granted to it, in accordance with the systematic verifications made,*¹¹ as shown below:

X. La Dirección General de Transporte Ferroviario y Multimodal de la "SECRETARÍA" realizó el análisis de la solicitud de el "CONCESIONARIO", y con fecha diecisiete de julio de 2012 determinó que es procedente realizar las modificaciones solicitadas, derivado de los compromisos de inversión que el "CONCESIONARIO" señala en el Plan de Negocios presentado, conforme a las constancias que obran en el expediente que al efecto lleva la citada unidad administrativa; aunado al hecho de que la ampliación del plazo solicitado se encuentra permitido por la legislación aplicable y **ha cumplido con las condiciones previstas en la concesión que le fue otorgada**; de acuerdo con las verificaciones sistemáticas practicadas.

32. By October 2012, FIT continued to operate the Chiapas-Mayab lines at the time of the amendment and as such, CFCM worked with the Mexican government on a plan by which CFCM would regain the Concession and resume operations. Mexico and CFCM agreed that Mexico would return the operation of the lines to CFCM by February 2013, with Mexico promising that the lines would be repaired and in good condition. On 22 November 2012, the SCT affirmed that it would deliver the assets and the rail lines to CFCM in good operating condition:¹²

Subsecretaría de Transporte
Dirección General de Transporte
Ferroviario y Multimodal

4.3.811 / 2012

México, D.F., a 22 de noviembre de 2012

C. PEDRO TOPETE VARGAS
REPRESENTANTE LEGAL DE COMPAÑÍA DE
FERROCARRILES CHIAPAS-MAYAB, S.A. DE C.V.

PRESENTE

Hago referencia a la concesión otorgada por el Gobierno Federal, por conducto de esta Secretaría de Comunicaciones y Transportes (la "Secretaría"), en favor de Compañía de Ferrocarriles Chiapas Mayab, S.A. de C.V. ("CFCM"), para operar y explotar las Vías Cortas "Chiapas" y "Mayab", a fin de prestar el servicio público de transporte ferroviario de carga que en ellas opera y los servicios auxiliares, en los términos establecidos en el título de concesión publicado en el Diario Oficial de la Federación el 30 de septiembre de 1999, y modificado el 22 de octubre de 2012 (la "Concesión" o el "Título de Concesión").

Asimismo, hago referencia al convenio de fecha 23 de octubre de 2012, celebrado entre la Secretaría y CFCM para procurar la viabilidad operativa y financiera del transporte ferroviario en el sureste del país.

El proceso que se deberá seguir para que la Secretaría entregue a CFCM y ésta reciba física y materialmente tanto los bienes asegurados como las Vías Cortas "Chiapas" y "Mayab", se hará constar en una o varias actas específicas de entrega-recepción, que deberán ser suscritas por la Secretaría y CFCM.

Al efecto, la Secretaría entregará a CFCM los bienes asegurados y las vías concesionadas en buen estado físico y de mantenimiento, así como en buenas condiciones de operación. Para efectos del presente escrito, por bienes asegurados se entiende todos y cada uno de los bienes propiedad o en la legal posesión de CFCM y en poder o resguardo del FIT, que enunciativa y no limitativamente se relacionan en la lista de fecha 1º de julio de 2011, suscrita por el FIT y CFCM, copia de la cual se agrega al presente escrito como Anexo "A".

Bienes asegurados, siempre y cuando no se trate de información reservada o sujeta a obligaciones de confidencialidad, en términos de la normatividad aplicable.

Asimismo se realizará una inspección del estado físico de dichos bienes y vías concesionadas, así como del estado de mantenimiento y las condiciones de operación de

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¹¹ *Id.* (emphasis added).

¹² See **Exhibit C-12** (Official Communication 4.3.811/2012 by the SCT, dated 22 November 2012).

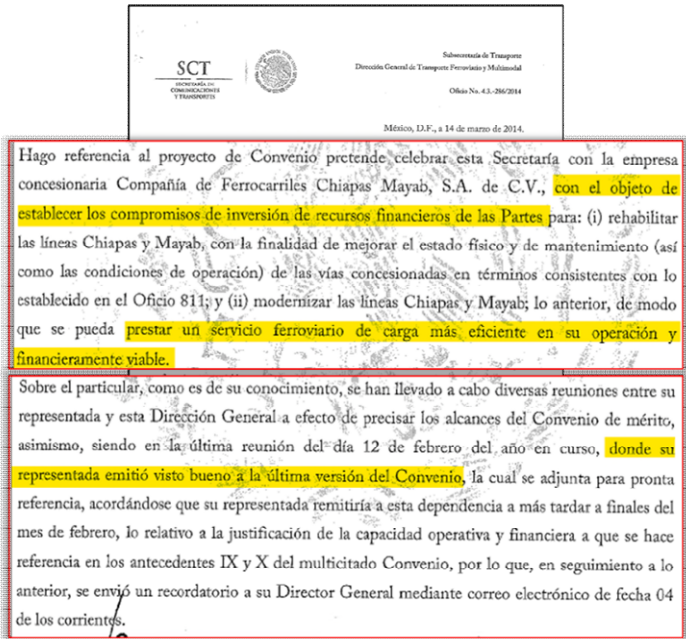
33. As part of this agreement, Mexico and CFCM performed a joint inspection of the Chiapas and Mayab lines starting in late 2012 to determine their condition. The inspection revealed that certain sections of the tracks were not in the condition that the SCT had represented, and were not ready to be safely operated. Given the SCT's breach in returning the tracks in good condition, CFCM and Mexico once again entered into negotiations to ensure that the SCT would bear the additional cost of these repairs.

34. During these negotiations, Mexico made a number of representations stating that it would assume responsibility for the repairs and return the tracks to CFCM in good operating condition.

E. MEXICO REAFFIRMS ITS COMMITMENTS REGARDING THE CHIAPAS-MAYAB RAILWAY

35. Consistent with its prior commitments, the SCT proposed to enter into an agreement once again as a way of raising the additional capital needed to repair the tracks. Under its proposal, Mexico would now invest additional amounts, in addition to the investment contemplated by CFCM in its business plan.

36. On 14 March 2014, the SCT sent CFCM a final version of a draft agreement, which established that Mexico and CFCM would make additional investments on the tracks. The communication acknowledges that both Parties agreed to these final terms:¹³



¹³ See Exhibit C-13 (Official Communication 4.3.286/2014 by the SCT, dated 14 March 2014).

37. The draft agreement established that the Parties would invest MXN \$6,058,370,175.00 (approximately USD \$459,500,000.00 at that time) in restoring and modernizing the tracks. The SCT would invest in order to finally comply with its commitment to return the Chiapas and Mayab railway tracks in good condition, allowing CFCM to take back the operation:¹⁴

CONVENIO QUE CELEBRAN, POR UNA PARTE EL EJECUTIVO FEDERAL POR CONDUCTO DE LA SECRETARÍA DE COMUNICACIONES Y TRANSPORTES "LA "SECRETARÍA", REPRESENTADA EN ESTE ACTO POR SU TITULAR, LIC. GERARDO RUIZ ESPARZA Y POR LA OTRA, COMPAÑÍA DE FERROCARRILES CHIAPAS-MAYAB, S.A. DE C.V. INDISTINTAMENTE, "FCCM" O "LA CONCESIONARIA", REPRESENTADA EN ESTE ACTO POR EL LIC. PEDRO TOPETE VARGAS EN SU CALIDAD DE APODERADO LEGAL; A QUIENES DE MANERA CONJUNTA SE LES DENOMINARÁ COMO "LAS PARTES", AL TENOR DE LOS ANTECEDENTES, DECLARACIONES Y CLÁUSULAS SIGUIENTES:

SEGUNDA. DE ALGUNAS OBLIGACIONES DE LAS PARTES. Por virtud del presente Convenio: las partes se comprometen a invertir la cantidad de \$6,058,370,175.00 (seis mil cincuenta y ocho millones trescientos setenta mil ciento setenta y cinco pesos 00/100 moneda nacional) en la forma siguiente:

a) la Concesionaria se obliga a invertir la cantidad de _____ principalmente para la modernización de la vía; y

b) la Secretaría se obliga a aportar la cantidad de _____, para rehabilitar las líneas Chiapas y Mayab, con la finalidad de mejorar el estado físico y de mantenimiento (así como las condiciones de operación) de las vías concesionadas, de modo que se pueda prestar un servicio ferroviario de carga más eficiente en su operación y financieramente viable, a cuyo efecto, solicitará oportunamente a la Secretaría de Hacienda y Crédito Público (y gestionará) la autorización de recursos presupuestales para cumplir en tiempo los compromisos de aportación de recursos que asume en este Convenio.

Las cantidades anteriores se aportarán dentro de los siguientes cinco años contados a partir de la fecha del presente Convenio y de conformidad con el Plan de Negocios vigente.

38. In 2014, Mexico released its National Infrastructure Program for 2014-2018, in which it described the infrastructure investments to be made during the period. The Program emphasized the importance of investing in the infrastructure of Mexico's southeast region, including roads, airports, bridges, ports, and railways, in order to improve access to key foreign markets, facilitate the efficient transport of goods to communities in need, and ultimately spur economic growth.¹⁵ With respect to the Chiapas-Mayab railway, Mexico reiterated its commitment to invest significant

¹⁴ See **Exhibit C-14** (Draft agreement establishing the investment commitments of CFCM and Mexico).

¹⁵ See **Exhibit C-15** (Mexico's 2014-2018 National Infrastructure Program, published in Mexico's Federal Official Gazette on 29 April 2014) ("*Con la visión de mejorar la infraestructura del Sur-Sureste para acercar a las comunidades más alejadas, mejorar el acceso a los mercados, promover el acceso a mejores servicios y agilizar el traslado de las mercancías por la región, la Secretaría de Comunicaciones y Transportes está generando infraestructura que permita el desarrollo acelerado de la región con una inversión estimada de 163,324 mdp. Para ello, se modernizan las carreteras, completando corredores troncales y de acceso a las principales poblaciones, puertos, nodos logísticos, zonas turísticas y desarrollos industriales de la región. . . De la misma manera, se modernizarán las vías férreas para el traslado. . .*").

sums, over MXN \$6 billion (approximately USD \$459 million at that time), between 2014 and 2018 to rebuild and repair approximately 1,046 kilometers of the railway tracks as well as other infrastructure required to allow the railway to resume full operation, as depicted below:¹⁶

Mantenimiento de líneas ferroviarias Chiapas à Mayab.- El proyecto se llevará a cabo a partir de 2014 y hasta 2018, con un monto total de inversión de 6,058 mdp. Incluye la rehabilitación de vías, mantenimiento a puentes y alcantarillas; así como la adquisición de rieles y cambio de durmientes, herrajes y juegos de cambio para un total de 1,046 km de líneas ferroviarias. Dicha obra beneficiará el transporte de carga ya que permitirá transportarla a mayores velocidades y con costos más competitivos entre la frontera de Guatemala y la Península de Yucatán con el interior del país.

39. Mexico’s proposed agreement and its infrastructure plan evidenced a clear commitment by the government to invest in the railway lines and improve the infrastructure in the region. The repair and development of the Chiapas-Mayab railway was a priority for the Mexican government.

40. Given Mexico’s repeated commitments to not only repair the Chiapas-Mayab railway, but also improve the transportation infrastructure in the surrounding region, it was imminent that Mexico would finally give CFCM control over the operation of the rail tracks. Based on the Concession, its amendment, and Mexico’s subsequent representations and commitments, Mr. Willars committed to invest in CFCM, and did so in 2015, taking control of the company.

F. THE “RESCATE” ADMINISTRATIVE PROCEEDING

41. Less than four years after the Amended Concession, and only a few months after Mexico’s renewed commitments to invest in the repair of the tracks, the SCT abruptly expropriated the Concession through a *rescate* declaration.

42. Under Mexican law, specifically Mexico’s General Law of National Goods (*Ley General de Bienes Nacionales*), a “*rescate*” is an administrative proceeding through which the State may order public goods subject to a concession to be returned to the possession, control, and administration of the State.¹⁷ A *rescate* can only be issued for reasons of public interest, public utility, or national security.¹⁸ As such, a *rescate* may occur in situations where there is no breach by the concessionaire and there is no specific action or omission by the concession holder that could justify an early termination of the concessionaire’s rights.

¹⁶ *Id.*

¹⁷ See **Exhibit CL-1** (Mexico’s General Law of National Goods), Article 19.

¹⁸ *Id.*

43. Importantly, Article 19 of the *Ley General de Bienes Nacionales* expressly mandates that the State **pay compensation** (*indemnización*) as a consequence of a *rescate*. Pursuant to Mexican law, the *rescate* declaration must establish the general criteria that will be used to determine the amount of compensation to be paid to the concession holder, taking into consideration, among other factors, the investment made, the depreciation of the assets, and the equipment and facilities to be used in the operation of the concession.¹⁹

44. In essence, a *rescate* declaration is a direct expropriation which, like under international law and the Treaty, requires full, prompt, adequate, and effective compensation. Indeed, requiring the State to pay compensation in a *rescate* proceeding is consistent with Article 27 of the Mexican Constitution, which sets forth that expropriations mandate the payment of compensation.²⁰ Thus, while Mexico may issue a *rescate* declaration to expropriate a concession, it may not do so without compensating the concessionaire.

45. On 4 May 2016, the SCT notified CFCM through communication No. 1.-83 that the SCT initiated a *rescate* proceeding and, through that, the expropriation of the Concession. On 13 July 2016, the SCT issued its final decision in the administrative *rescate* proceeding, declaring, among other things, that: (i) the *rescate* of the Concession was due to public interest, public utility, and national security concerns; (ii) compensation should be paid to CFCM in accordance with the *Ley General de Bienes Nacionales*; (iii) the goods and assets subject to the Concession should be returned to the possession, control, and administration of the SCT; and (iv) trains, wagons and other CFCM equipment should be returned to CFCM within 60 days of the *rescate*. The decision was served on 26 July 2016.²¹

¹⁹ *Id.*

²⁰ **Exhibit CL-2** (Political Constitution of the United Mexican States), Article 27.

²¹ **Exhibit C-16** (*Rescate* declaration dated 13 July 2016).

SCT
SECRETARÍA DE COMUNICACIONES Y TRANSPORTES

SECRETARÍA
Ciudad de México, 13 de junio de 2016
Oficio 1.- 133
Expediente: Chiapas y Mayab No. 75.18.311.01/16

Compañía de Ferrocarriles Chiapas-Mayab, S.A. de C.V.
Por conducto de su representante legal.
Av. Presidente Masaryk 101, piso 10, Despecho 1002-A

VISTOS, para resolver los autos del **procedimiento de rescate** de la Concesión otorgada a favor de Compañía de Ferrocarriles Chiapas-Mayab, S.A. de C.V., respecto de las vías generales de comunicación ferroviaria Chiapas y Mayab, en términos del título de Concesión de 26 de agosto de 1999, modificado el 22 de octubre de 2012, y

el 29 de junio de 1998 y el 23 de agosto de 1999, la entonces Secretaría de Contraloría y Desarrollo Administrativo destinó al servicio de la Secretaría de Comunicaciones y Transportes (en lo sucesivo la SCT), los inmuebles que constituyen las vías generales de comunicación ferroviaria Chiapas y Mayab. Lo anterior, con objeto de que se otorgaran, sobre dichos inmuebles, las concesiones y permisos correspondientes, en términos de la Ley Reglamentaria del Servicio Ferroviario.

2. El 26 de agosto de 1999, la SCT otorgó Concesión a Compañía de Ferrocarriles Chiapas-Mayab, S.A. de C.V. (en lo sucesivo CFCM) para la **operación, explotación y conservación de las vías cortas Chiapas y Mayab**, así como de los bienes de dominio público y la prestación del servicio público de transporte ferroviario de carga en las vías de referencia. Dicha Concesión comprende los permisos para prestar los servicios auxiliares que indica. El 30 de septiembre de 1999, el título fue publicado en el DOF.

3. El 25 de junio de 2007, CFCM renunció a la Concesión.

Ar. [Signature]

Av. Universidad y Nube s/n, Col. Narvosa, C.P. 03020, Delegación Benito Juárez, México, D.F.
Tel. 55102211-5100 www.sct.gob.mx

RESOLUTIVOS

PRIMERO. Por causas de interés público, utilidad pública y seguridad nacional **se declara el rescate de la Concesión** otorgada en favor de Compañía de Ferrocarriles Chiapas-Mayab, S.A. de C.V., respecto de las vías generales de comunicación ferroviaria Chiapas y Mayab, en términos del Título de Concesión, de fecha 26 de agosto de 1999 y modificado con fecha 22 de octubre de 2012.

SEGUNDO. A partir de la legal notificación de la presente resolución que contiene la Declaratoria de rescate, **queda extinguida y sin efectos la Concesión a que se refiere el resolutivo Primero.**

TERCERO. A partir de la fecha de la legal notificación de esta Declaratoria, los bienes materia de la Concesión vuelven de pleno derecho a la posesión, control y administración de la Secretaría de Comunicaciones y Transportes e ingresan a su patrimonio la totalidad de los bienes, derechos, equipos e instalaciones destinados directamente a los fines de la Concesión, de conformidad con lo previsto en el párrafo segundo del artículo 19 de la Ley General de Bienes Nacionales.

CUARTO. La Secretaría de Comunicaciones y Transportes **autoriza a Compañía de Ferrocarriles Chiapas-Mayab, S.A. de C.V. a retirar y disponer de los bienes, equipos e instalaciones de su propiedad** afectos a la concesión. Para tal efecto, se le concede un plazo de 60 (sesenta) días hábiles, contados a partir de la fecha de la legal notificación de la presente Declaratoria.

46. On 1 December 2016, CFCM requested that the SCT pay the compensation due, including, among others, reimbursement of all investments made, payments owed to CFCM during the *modalidad* term, as well as CFCM's lost profits due to the expropriation, and provided the relevant documentation supporting its request.²² Unfortunately, to date no compensation has been

²² Exhibit C-17 (CFCM's communication to the SCT requesting compensation, dated 1 December 2016).

paid and the SCT has not allowed CFCM to remove and dispose of its assets and equipment.²³ In fact, CFCM's assets appear to have been sold, transferred, or lost.

G. JUDICIAL PROCEEDINGS CHALLENGING THE *RESCATE* DECLARATION

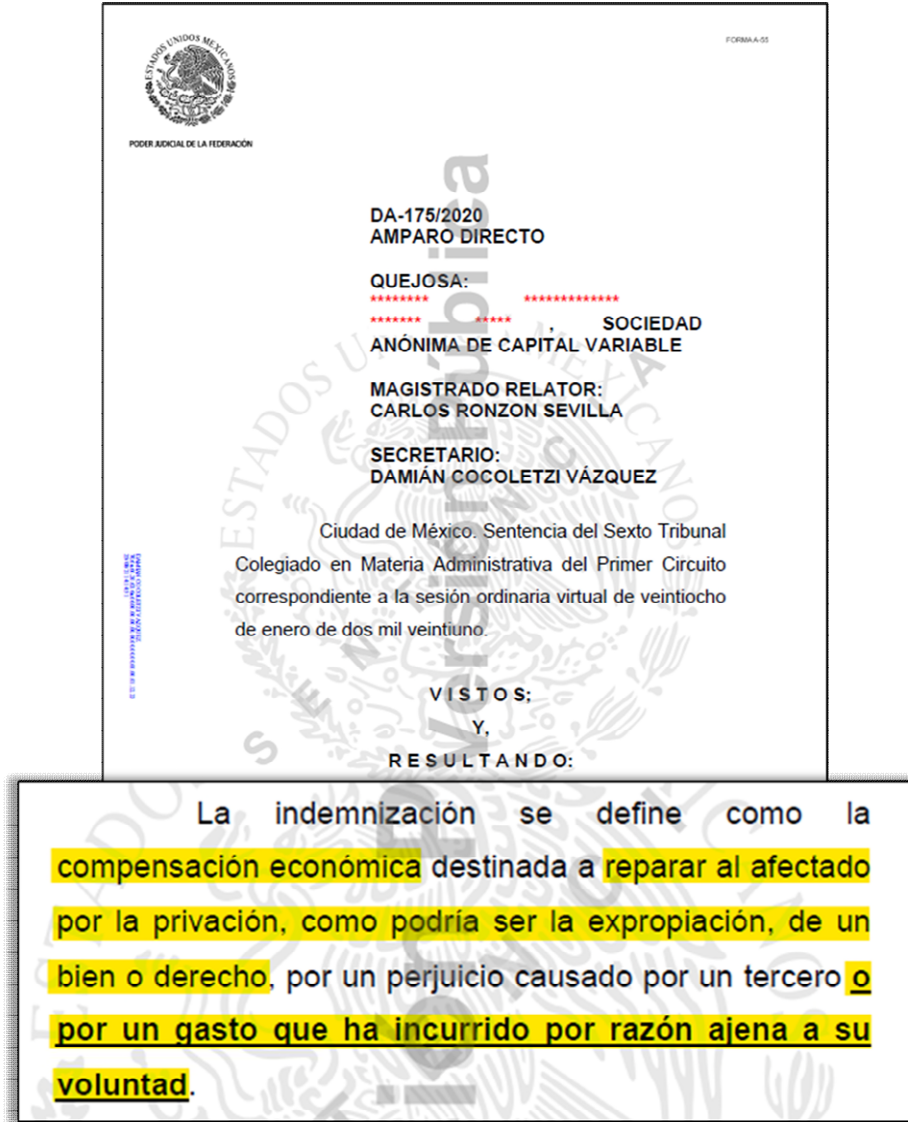
47. Given the SCT's arbitrary actions, including its failure to pay CFCM compensation, on 10 January 2017, CFCM initiated court proceedings in an effort to obtain the full, prompt, adequate, and effective compensation it was owed.

48. Three years after the commencement of these judicial proceedings, a Mexican Administrative Tribunal rendered its decision. The tribunal confirmed the validity of the *rescate* declaration but arbitrarily held that it is "*not possible*" to pay *full* compensation to CFCM, including *daño emergente y lucro cesante* (damages and lost profits).

49. CFCM challenged this decision through a direct *amparo*. On 28 January 2021, the *amparo* court, however, confirmed, in the Administrative Tribunal's decision, that CFCM was not entitled to full compensation. The *amparo* court acknowledged that compensation was due and that the purpose of compensation is to "repair" the aggrieved party for the deprivation of rights and for damages caused.²⁴

²³ Further, in accordance with the *rescate* declaration, CFCM repeatedly requested that the SCT specify which assets and equipment are at CFCM's disposal and their location, so that CFCM could recover those assets. The SCT failed to respond to CFCM's requests.

²⁴ See **Exhibit C-18** (Final judgment of the *amparo* court confirming that CFCM was not entitled to full compensation, dated 28 January 2021). The Court established that compensation (*indemnización*) is "*the economic compensation destined to repair the aggrieved party for the deprivation, such as an expropriation, of a good or right, for a damage caused by a third party or for an expense incurred for unintentional reasons.*"



50. However, the *amparo* court also arbitrarily held that CFCM was not entitled to all damages incurred, including lost profits.²⁵

²⁵ See **Exhibit C-18** (Final judgment of the *amparo* court confirming that CFCM was not entitled to full compensation, dated 28 January 2021).

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2. La depreciación de los bienes, equipos e instalaciones destinados directamente a los fines de la concesión, sin que pueda tomarse como base para fijarlos, el valor de los bienes concesionados.

La indemnización se define como la compensación económica destinada a reparar al afectado por la privación, como podría ser la expropiación, de un bien o derecho, por un perjuicio causado por un tercero o por un gasto que ha incurrido por razón ajena a su voluntad.

En este asunto, el demandante alega que como el artículo 19 de la Ley General de Bienes Nacionales no dice expresamente que el único elemento para calcular la indemnización sea la inversión efectuada y debidamente comprobada, es factible que pueda incluirse el pago de daños y perjuicios, los que son inherentes al pago de toda indemnización.

La postura de la demandante carece de sustento jurídico porque **no es posible acceder a su petición de que el monto de la indemnización deba incluir el pago de daños y perjuicios**, porque la norma es clara al establecer que únicamente debe tomarse en cuenta, entre otros elementos, **la inversión efectuada y debidamente comprobada que hubiera efectuado al concesionario.**

51. In short, while the Mexican courts acknowledged that some compensation was due (which has yet to be paid), the court unlawfully and arbitrarily denied CFCM's rights to receive full, prompt, adequate, and effective compensation, as required by NAFTA, Mexican, and international law.

52. With the above judgment, the State—through its judiciary—issued a final ruling that the compensation to be paid to CFCM would not include full, prompt, adequate, and effective compensation, despite a clear provision in Mexican law that compensation is due and a clear

obligation under international law to pay compensation equivalent to the fair market value of the investment.

53. To date, and notwithstanding Mexico's expropriation, the State has failed to compensate Mr. Willars and/or CFCM.

H. THE "RESCATE" OF FERROSUR'S RAIL LINES

54. While denying CFCM full compensation, Mexico has been willing to give its own nationals full compensation under similar circumstances.

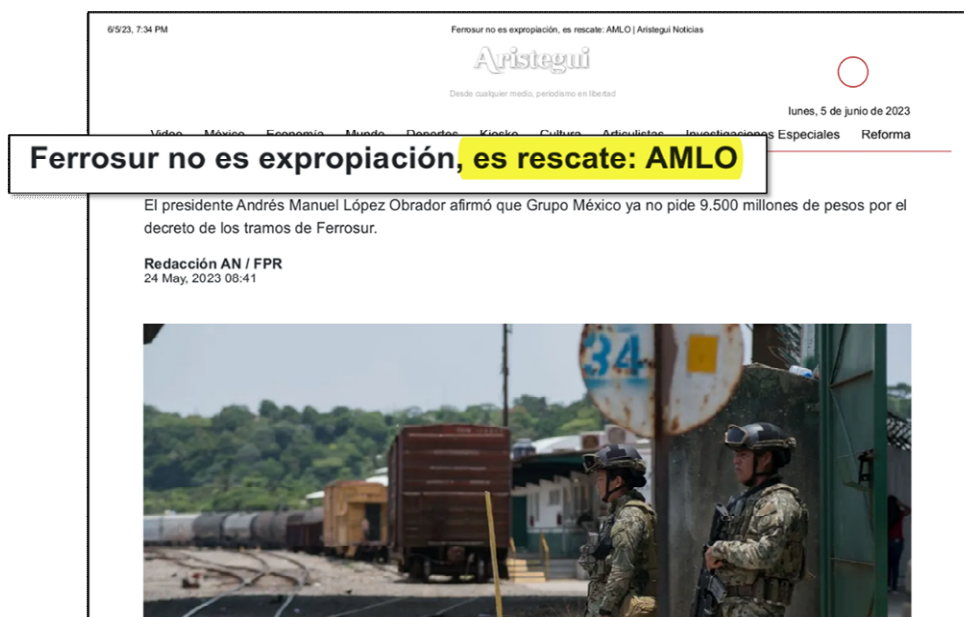
55. On 19 May 2023, Mexico issued a *rescate* declaration²⁶ against Ferrosur, S.A. de C.V. ("**Ferrosur**"), a *Mexican entity* owned by *Grupo Mexico*, another Mexican entity. It is publicly known that Ferrosur is controlled by Mr. Germán Larrea, a prominent *Mexican businessman*. The *rescate* declared the immediate occupation of several sections of the railway concession held by Ferrosur (the "**Ferrosur Concession**") and transferred ownership of the sections to FIT.²⁷

56. The Mexican President publicly affirmed that this constituted a "*rescate*" of Ferrosur's railways:²⁸

²⁶ The decree issued by Mexico refers to a "temporary occupation;" however, the Mexican president publicly called the act a "*rescate*." A subsequent amendment to the Ferrosur Concession published in the Federal Official Gazette also refers to the "*rescate*" of the tracks.

²⁷ **Exhibit C-19** (Decree containing the *rescate* declaration of several sections of the Ferrosur Concession, dated 19 May 2023).

²⁸ **Exhibit C-20** (News Article regarding Ferrosur's *rescate*, dated 24 May 2023).



57. Within days after the *rescate* decree, Mexico noted that the compensation amount for the *rescate* would be approximately MXN \$7 billion (around US \$400 million).²⁹

58. Within two weeks after the *rescate* decree, Mexico reached an agreement with Mr. Larrea and Grupo Mexico's representatives regarding the *rescate* of its rail tracks. Grupo Mexico agreed to return to Mexico 127 kilometers of rail tracks, and in exchange, Mexico agreed to compensate Grupo Mexico by extending the Ferrosur Concession for an additional 8 years. Mexico valued the rail tracks at MXN \$836,894,000.00 (approximately USD \$47,888,748.47):³⁰

El favorable acuerdo que logró el Gobierno Federal con Grupo México para la devolución a favor del Estado mexicano de 127 km de vía, concesionados a la subsidiaria Ferrosur, **incluyó la extensión de ocho años a la concesión de la firma ferroviaria (venía en 2048 y pasa a 2056)** y levantar una demanda que se había interpuesto luego de que el Estado decidió terminar anticipadamente un contrato para la construcción del tramo 5 Sur del Tren Maya, a finales del año pasado.

59. In the amendment to the Ferrosur Concession, the SCT acknowledged that the extension of the concession's term was a *compensation* for the *rescate* of the rail tracks:³¹

²⁹ **Exhibit C-21** (News Articles noting the compensation amount recognized by Mexican authorities, dated 23 May 2023).

³⁰ **Exhibit C-22** (News Articles explaining the agreement reached by Mexico with Grupo Mexico, dated 2 June 2023); *see also* **Exhibit C-23** (Amendment to the Ferrosur Concession, dated 7 June 2023).

³¹ **Exhibit C-23** (Amendment to the Ferrosur Concession, dated 7 June 2023).

VII.- Con base en los objetivos del Gobierno Federal y para el cumplimiento del objeto del CIIT, el Gobierno Federal y "EL CONCESIONARIO" convinieron: (i) excluir de la Concesión la operación, explotación y prestación del servicio público de transporte ferroviario de carga de los tramos de las líneas "Z", "ZA" y "FA", que corren de Coatzacoalcos a Medias Aguas, de Hibuerras a Minatitlán y de Coatzacoalcos a El Chapo, respectivamente, y establecer derechos de paso a "EL CONCESIONARIO" respecto de esos mismos tramos. Como indemnización en especie por el rescate de dichas vías el Gobierno Federal otorgará la primera prórroga de "EL TÍTULO DE CONCESIÓN" y la ampliación de la exclusividad, con base en la opinión de valor del Instituto de Administración y Avalúos de Bienes Nacionales.

60. Mr. Willars, however, was not given the same treatment as similarly situated Mexican nationals. Despite the fact that CFCM's rail lines were also subject to a *rescate* declaration, after almost seven years of litigation, Claimants have been unable to obtain any kind of economic compensation.

61. Mexico's actions and continued breaches described above were, and continue to be, unreasonable, arbitrary, and discriminatory, and violate the State's international obligations to not take measures that deprive Mr. Willars of his investment without just compensation, as well as its obligations to provide full protection and security, and to treat Mr. Willars fairly and equitably without frustrating his legitimate expectations.

62. In light of the above, Claimants seek immediate redress through this arbitration in an effort to obtain an award that confirms the State's violations of NAFTA and international law, and that compensates them for the damages suffered.

IV.
THE CONDITIONS FOR JURISDICTION HAVE BEEN MET

63. As demonstrated below, Claimants have met all of the conditions to submit this dispute to arbitration under NAFTA, the USMCA, and the ICSID Convention.

A. NAFTA’S JURISDICTIONAL REQUIREMENTS HAVE BEEN MET

64. The jurisdictional requirements under the Treaty and the USMCA have been met. First, Mexico was a Party to NAFTA and consented to arbitration arising out of a legacy investment. Second, Claimant is an investor of a Party, as defined in the Treaty. Third, Claimant has made an “investment,” as defined in the Treaty. Fourth, both Mexico and Claimant have consented to submit this dispute to arbitration. Finally, more than six months have elapsed since the events that gave rise to this dispute, and more than three months have elapsed since the filing of the Notice of Intent. Each of these requirements will be examined in more detail below.

1. Mexico was a Party to NAFTA and consented to arbitration arising out of a Legacy Investment

65. Mexico signed NAFTA on 17 December 1992 and the Treaty entered into force on 1 January 1994.

66. The USMCA entered into force on 1 July 2020. In Annex14-C(1) of the USMCA Mexico:

consents with respect to a legacy investment, to the submission of a claim to arbitration in accordance with Section B of Chapter 11 (Investment) of NAFTA 1994 and this Annex alleging breach of an obligation under (a) Section A of Chapter 11 (Investment) of NAFTA 1994.³²

67. Under Article 1, Annex14-C of the USMCA, Mexico’s consent expires three years after NAFTA’s termination. NAFTA terminated on 1 July 2020, and was replaced by the USMCA.³³ Thus, Mexico’s consent will not expire until **1 July 2023**. Therefore, this Request for Arbitration has been timely submitted under the requirements of the USMCA.

68. Under Annex14-C(6) of the USMCA, a “legacy investment” means “an investment of an investor of another Party in the territory of the Party established or acquired between January

³² See **Exhibit CL-3** (USMCA, Chapter 14), Annex14-C(1).

³³ See **Exhibit CL-4** (Protocol replacing NAFTA with USMCA, dated 30 November 2018).

1 1994 and the date of NAFTA's termination, and in existence on the date of the entry into force of USCMA."³⁴

69. Annex 14-C of the USMCA permits submission of claims under Chapter 11, Section B of NAFTA to allege a breach of an obligation under Chapter 11, Section A of NAFTA with respect to a legacy investment in Mexico by U.S. investors. In this case, Mr. Willars' and CFCM's investment meets the requirements of a "legacy investment."

70. As shown,³⁵ Mr. Willars is a United States national who invested in Mexico through his 51.76% majority interest in CFCM. Mr. Willars' and CFCM's investment in the State consists of, among other things: (i) his direct and indirect interest in CFCM; (ii) the Concession; and (iii) all physical assets and real property owned or acquired by CFCM to operate the Concession. As further explained below,³⁶ this constitutes an "investment" in accordance with Article 1139 of NAFTA.

71. Mr. Willars' investments predate NAFTA's termination and were made while NAFTA was in force. Thus, Mr. Willars' Investment existed when the USMCA entered into force and Mr. Willars has made legacy investments in Mexico that qualify under Annex 14-C of USMCA.

72. Under Annex 14-C of USMCA, Mexico's consent to the submission of a claim to arbitration under NAFTA, Chapter 11, Section B and USMCA, Annex 14-C also expressly satisfies the requirements of ICSID Convention Chapter II (Jurisdiction of the Centre).³⁷

2. Mr. Willars is an "Investor" under the Treaty

73. Article 1139 of NAFTA defines "investor of a Party" 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."³⁸

74. Mr. Willars is a natural person and national of the United States of America³⁹ who has made an investment in Mexico. Mr. Willars has never been a Mexican national. As such, Mr.

³⁴ See **Exhibit CL-3** (USMCA, Chapter 14), Annex 14-C, Art. 6(a).

³⁵ *Supra*, [Section II.A](#).

³⁶ *Infra*, [Section IV.A.3](#).

³⁷ See **Exhibit CL-3** (USMCA, Chapter 14), Annex 14-C, Art. 2.

³⁸ See **Exhibit CL-5** (NAFTA), Chapter 11, Article 1139.

³⁹ See **Exhibit C-1** (Copy of Mr. Willars' United States Passport).

Willars is an “investor of a Party” under the terms of NAFTA. Further, Mr. Willars owns or controls CFCM and, as such, may also bring the claim on behalf of CFCM.

3. Mr. Willars holds a protected “Investment” under NAFTA

75. Article 1139 of NAFTA defines “investment” as follows:

[I]nvestment means:

- (a) an enterprise;
- (b) an equity security of an enterprise;
- (c) a debt security of an enterprise
 - (i) where the enterprise is an affiliate of the investor, or
 - (ii) where the original maturity of the debt security is at least three years, but does not include a debt security, regardless of original maturity, of a state enterprise;
- (d) a loan to an enterprise
 - (i) where the enterprise is an affiliate of the investor, or
 - (ii) where the original maturity of the loan is at least three years, but does not include a loan, regardless of original maturity, to a state enterprise;
- (e) an interest in an enterprise that entitles the owner to share in income or profits of the enterprise;
- (f) an interest in an enterprise that entitles the owner to share in the assets of that enterprise on dissolution, other than a debt security or a loan excluded from subparagraph (c) or (d);
- (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, 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, or
 - (ii) contracts where remuneration depends substantially on the production, revenues or profits of an enterprise.

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).⁴⁰

76. Mr. Willars made an “investment” within the meaning of the Treaty. Mr. Willars’ Investment includes, without limitation: (i) “an enterprise” (CFCM); (ii) “an equity security” (Mr. Willars’ direct and indirect interest in CFCM); (iii) “an interest in an enterprise that entitles the owner to share in income or profits of the enterprise” (Mr. Willars’ direct and indirect shareholding in CFCM); (iv) “an interest in an enterprise that entitles the owner to share in the assets of that enterprise on dissolution” (Mr. Willars’ direct and indirect shareholding in CFCM); (v) “real estate or other property, tangible or intangible, acquired in the expectation or used for the purpose of economic benefit or other business purposes” (all physical assets and real property owned or acquired by CFCM to operate the Concession); (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 CFCM); and (vii) “claims to money” arising from the interests detailed in sections (a) to (h) of Article 1139 of NAFTA (claims to money arising from the Concession). Mr. Willars’ Investment, therefore, satisfies subsections (a), (b), (e), (f), (g) and (h) of Article 1139 and falls within the definition of “investment” under the Treaty.

77. Consequently, Mr. Willars’ investment qualifies as a protected “investment” under the Treaty.

4. The Parties have consented to arbitration of this dispute

78. Article 1116 of NAFTA sets forth that:

⁴⁰ See Exhibit CL-5 (NAFTA), Chapter 11, Article 1139.

1. 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 or Article 1503(2) (State Enterprises), or
 - (b) Article 1502(3)(a) (Monopolies and State Enterprises) where the monopoly has acted in a manner inconsistent with the Party's obligations under Section A,

and that the investor has incurred loss or damage by reason of, or arising out of, that breach.

2. An 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.⁴¹

79. Further, Article 1117 of NAFTA provides that:

1. An investor of a Party, on behalf of an enterprise of another Party that is a juridical person that the investor owns or controls directly or indirectly, may submit to arbitration under this Section a claim that the other Party has breached an obligation under:
 - (a) Section A or Article 1503(2) (State Enterprises), or
 - (b) Article 1502(3)(a) (Monopolies and State Enterprises) where the monopoly has acted in a manner inconsistent with the Party's obligations under Section A, and that the enterprise has incurred loss or damage by reason of, or arising out of, that breach.
2. An investor may not make a claim on behalf of an enterprise described in paragraph 1 if more than three years have elapsed from the date on which the enterprise first acquired, or should have first acquired, knowledge of the alleged breach and knowledge that the enterprise has incurred loss or damage.
3. Where an investor makes a claim under this Article and the investor or a non-controlling investor in the enterprise makes a claim under Article 1116 arising out of the same events that gave rise to the claim under this Article, and two or more of the claims are submitted to arbitration under Article 1120, the claims should be heard together by a Tribunal established under Article 1126, unless the Tribunal finds that the interests of a disputing party would be prejudiced thereby.

⁴¹ See **Exhibit CL-5** (NAFTA), Chapter 11, Article 1116.

4. An investment may not make a claim under this Section.⁴²

80. Article 1122 of NAFTA 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.”⁴³

81. Mexico expressly consented in the Treaty to submit to arbitration all disputes with United States investors related to the State’s investment obligations under the Treaty.

82. As for Claimants, they express their written consent to arbitrate by filing this Request for Arbitration. In compliance with Article 1121 of NAFTA, Claimants further attach to this Request for Arbitration their “written waiver.”⁴⁴ Mr. Willars, on his own behalf and on behalf of the subsidiaries he 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 through 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.

83. Consequently, both Parties have expressed their consent, in writing, to submit this dispute to arbitration.

5. More than six months have elapsed since the events that give rise to the dispute, more than three months have elapsed since the filing of the Notice of Intent, and consultations have occurred

84. 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 the claim.*”⁴⁵ Here, the events and *continued breaches* that give rise to the claim commenced years ago when Mexico decided not to pay *full* compensation to CFCM, including *daño emergente y lucro cesante* (damages and lost profits). Consequently, more than six months have elapsed since the events that give rise to the dispute.

85. Further, Mexico confirmed that it was not possible to pay full compensation to CFCM on 28 January 2021, which is within the three-year limitation period established in Articles

⁴² See **Exhibit CL-5** (NAFTA), Chapter 11, Article 1117.

⁴³ *Id.*, Article 1122.

⁴⁴ *Id.*, Article 1121; **Exhibit C-24** (Claimants’ Written Waiver in compliance with Article 1121 of NAFTA).

⁴⁵ See **Exhibit CL-5** (NAFTA), Chapter 11, Article 1120(1).

1116 and 1117 of NAFTA. These continued breaches of Mexico’s treaty obligations continue to this day.

86. 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*.”⁴⁶ Here, Mr. Willars served a formal Notice of Intent to Mexico under NAFTA on 30 March 2023.⁴⁷ Mr. Willars has thus timely submitted this Request for Arbitration in accordance with Article 1119 of NAFTA.

87. Finally, Article 1118 of NAFTA provides that “[t]he disputing parties should first attempt to settle a claim through consultation or negotiation.”⁴⁸ Through the Notice of Intent, Mr. Willars sought an amicable resolution of his dispute with Mexico. Mr. Willars and Mexico held an in-person meeting in Mexico City, Mexico, on 6 June 2023 to seek to amicably resolve this dispute through consultations. Regrettably, Mexico has refused to acknowledge its NAFTA breaches and to pay the required compensation, or otherwise take steps to resolve this dispute. More than 90 days have elapsed since the service of the Notice of Intent, and more than six months have passed since the events that gave rise to this dispute, and the dispute remains unresolved as Mexico has refused to acknowledge its breaches of the Treaty.

88. As a result, and pursuant to Articles 1118, 1119 and 1120 of NAFTA, this dispute can now be submitted to international arbitration for its resolution.⁴⁹

B. ICSIDS’ JURISDICTIONAL REQUIREMENTS HAVE BEEN MET

89. Article 25(1) of the ICSID Convention governs ICSID’s jurisdictional requirements. It provides as follows:

The jurisdiction of the Centre shall extend to any legal dispute arising directly out of an investment, between a Contracting State (or any constituent subdivision or agency of a Contracting State designated to the Centre by that State) and a national of another Contracting State, which the parties to the dispute consent in writing to submit to the Centre. When the

⁴⁶ *Id.*, Article 1119.

⁴⁷ See **Exhibit C-25** (Mr. Willars’ Notice of Intent dated 30 March 2023); **Exhibit C-26** (Official communication dated 31 March 2023, where Mexico’s Ministry of Economy acknowledges receipt of Mr. Willars’ Notice of Intent).

⁴⁸ See **Exhibit CL-5** (NAFTA), Chapter 11, Article 1118.

⁴⁹ See **Exhibit CL-5** (NAFTA), Chapter 11, Articles 1119 and 1120.

parties have given their consent, no party may withdraw its consent unilaterally.⁵⁰

90. All jurisdictional requirements under the ICSID Convention have also been met in this case.

1. There is a legal dispute arising directly out of Claimant’s investment

91. Mr. Willars has an “investment” in Mexico within the meaning of Article 25(1) of ICSID Convention. Although Article 25 does not itself provide a definition of “investment,” significant, long-term interests in property, shareholdings, concessions, and other contractual rights, such as Mr. Willars’ interests in Mexico, are all understood to constitute investments under any reasonable definition. Under ICSID jurisprudence, these are investments within the meaning of Article 25(1). Moreover, the legal dispute described in this Request of Arbitration arises out of Mr. Willars’ investments in Mexico.

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

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

“National of another Contracting State” means:

(a) any natural person who 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 as well as on the date on which the request was registered pursuant to paragraph (3) of Article 28 or paragraph (3) of Article 36, but does not include any person who on either date also had the nationality of the Contracting State party to the dispute;

...⁵¹

93. Further, Article 25(2)(b) of the ICSID Convention also provides for a local company subject to foreign control to be considered as a “National of another Contracting State,” if the State has consented:

[A]ny 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

⁵⁰ See **Exhibit CL-6** (ICSID Convention), Article 25(1).

⁵¹ *Id.*, Article 25(2).

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.⁵²

94. Mr. Willars is a natural person with U.S. nationality. Therefore, Mr. Willars is a “natural person who had the nationality of a Contracting State other than the State party to the dispute” under Article 25(2)(a) of the ICSID Convention. The United States of America and Mexico are both Contracting States to the ICSID Convention. In addition, CFCM is a juridical person incorporated in Mexico, a Contracting State, which is subject to foreign control through Mr. Willars, and Mexico gave its consent for CFCM to bring a claim under Article 1117 of the Treaty.

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

95. The Parties consented in writing to submit this dispute to arbitration before ICSID. As discussed above,⁵³ Mexico’s consent in writing to submit investment disputes to ICSID arbitration is expressed in Article 1122 of NAFTA. Mr. Willars expresses his consent in this Request for Arbitration.

4. Mario Willars complied with other procedural requirements

96. Mr. Willars provides in this Request for Arbitration the information and materials specified in ICSID Institution Rules 2 and 3.⁵⁴ Pursuant to ICSID Institution Rule 2(1)(f), CFCM has taken all internal actions necessary to authorize Mr. Willars to bring this Request for Arbitration on its behalf. Attached as **Exhibit C-27** is the internal authorization from CFCM.⁵⁵ Claimants have also paid the USD \$25,000 filing fee required under ICSID Administrative and Financial Regulation 18,⁵⁶ and a copy of the wire transfer instruction is filed together with this Request. Further, in accordance with Rule 2(2)(b)(iv) of ICSID’s Institution Rules, Claimants have complied with all conditions for submission of this dispute to arbitration.⁵⁷

⁵² See **Exhibit CL-6** (ICSID Convention), Article 25(2)(b).

⁵³ *Supra*, [Section IV.A.4](#).

⁵⁴ See **Exhibit CL-7** (ICSID Institution Rules).

⁵⁵ See **Exhibit C-27** (CFCM’s internal authorization to file the Request for Arbitration, dated 16 June 2023).

⁵⁶ See **Exhibit CL-8** (ICSID Administrative and Financial Regulations), Regulation 18.

⁵⁷ See **Exhibit CL-7** (ICSID Institution Rules), Rule 2(2)(b)(iv).

97. Accordingly, all procedural requirements under the ICSID Convention, the ICSID Institution Rules, and ICSID's Administrative and Financial Regulations are met, and this dispute can be submitted to international arbitration for its resolution.

V.

MEXICO BREACHED ITS OBLIGATIONS UNDER THE TREATY

98. Based upon the facts stated above, which will be expanded upon at the appropriate stage of these proceedings, Mexico's actions constitute breaches of several of its obligations under NAFTA.

99. Specifically, Mexico violated the following provisions of Chapter 11 of NAFTA:

- (a) Article 1110: Expropriation and Compensation;
- (b) Article 1105: Minimum Standard of Treatment;
- (c) Article 1102: National Treatment; and
- (d) Article 1103: Most-Favored-Nation Treatment.

A. BREACH OF ARTICLE 1110 OF NAFTA: MEXICO EXPROPRIATED MR. WILLARS' INVESTMENT WITHOUT COMPENSATION

100. 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.
2. Compensation shall be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place ("date of expropriation"), and shall not reflect any change in value occurring because the intended expropriation had become known earlier. Valuation criteria shall include going concern value, asset value including declared tax value of tangible property, and other criteria, as appropriate, to determine fair market value.
3. Compensation shall be paid without delay and be fully realizable.⁵⁸

⁵⁸ See **Exhibit CL-5** (NAFTA), Chapter 11, Article 1110.

101. Pursuant to Article 1110 of NAFTA, if a Party nationalizes or expropriates an investment, it must do so “*in accordance with due process of law*” and “*on payment of compensation.*” The compensation “shall be equivalent to the *fair market value* of the expropriated investment immediately before the expropriation took place” and “shall be paid *without delay* and be fully realizable.” Mexico breached its obligation under Article 1110 of Chapter 11 of NAFTA by failing to provide full, prompt, adequate, and effective compensation to Mr. Willars following the decision to nationalize (or “*rescatar*”) the Concession.

102. Specifically, Mexico illegally expropriated Mr. Willars’ Investment by the following acts, among others: (i) the failure to pay full, prompt, adequate, and effective compensation to Mr. Willars or CFCM; (ii) the State’s arbitrary judicial decision to limit the compensation owed to Mr. Willars, denying full, prompt, adequate, and effective compensation based on the fair market value of the Investment, as mandated by NAFTA and international law; and (iii) the failure to afford due process by avoiding a meaningful discussion to determine the appropriate compensation due to the *rescate* decision.

103. Accordingly, Mexico’s expropriation, albeit for a public purpose, is unlawful under NAFTA and international law given the continued lack of compensation and due process.

B. BREACH OF ARTICLE 1105 OF NAFTA: MEXICO DID NOT AFFORD CLAIMANTS FAIR AND EQUITABLE TREATMENT NOR FULL PROTECTION AND SECURITY

104. Article 1105 of NAFTA provides that the State 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*.⁵⁹

105. Tribunals have established 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 these elements of the FET standard through several discriminatory and arbitrary acts, including, but not limited to, the following: (i) Mexico’s arbitrary and contradictory decision not to pay CFCM full, prompt, adequate, and effective compensation, as required by Mexican law, the Treaty, and international law; (ii) Mexico’s failure to fulfill Mr. Willars’ legitimate expectation that full, prompt, adequate, and effective compensation would be paid upon the expropriation of the Investment, as required by Mexican law, NAFTA, and international law, among others; and (iii) Mexico’s unjustified and

⁵⁹ See **Exhibit CL-5** (NAFTA), Chapter 11, Article 1105.

unwarranted delay in resolving the judicial proceedings initiated by CFCM, which, even after years of delay, denied Mr. Willars and CFCM the full compensation they are entitled to under Mexican law, NAFTA, and international law.

106. 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 investments; in that sense, it is said to be a standard of due diligence. Arbitral tribunals have consistently held that while the standard 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.⁶⁰ Here, Mexico's actions withdrew and withheld legal protections from the investment made by Mr. Willars in violation of its obligation to provide full protection and security under NAFTA. 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"⁶¹

C. BREACH OF ARTICLES 1102 AND 1103 OF NAFTA: MEXICO DISCRIMINATED AGAINST CLAIMANTS

107. 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.⁶²

⁶⁰ See **Exhibit CL-9** (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.").

⁶¹ See **Exhibit CL-10** (*American Manufacturing & Trading, Inc. v. Republic of Zaire*, ICSID Case No. ARB/93/1), ¶ 6.05.

⁶² See **Exhibit CL-5** (NAFTA), Chapter 11, Article 1102.

108. Mexico breached its obligation by treating Mr. Willars, a United States National, and his Investment differently when compared to Mexico's nationals and their investments.

109. As discussed above, Mexico expropriated 127 kilometers of rail track which were operated by Ferrosur, a Mexican entity owned by Grupo México, another Mexican entity. The Mexican President publicly declared that this was a *rescate* of the Ferrosur Concession. Unlike with Claimants, in a matter of weeks the Mexican Government reached an agreement with Ferrosur, who received economic compensation as a consequence of the *rescate* declaration. Notably, such compensation was by no means limited to the "investments" made by Ferrosur, but rather included an extension of the current concession that represents an economic value of more than USD \$300 million. In contrast, after almost seven years of litigation, Claimants have not received any kind of compensation from the State, and both the executive and the judicial branches have denied CFCM's right to receive full compensation. Consequently, Mr. Willars, a U.S. investor, and his Investment, received treatment less favorable than that afforded to Ferrosur, a Mexican investor, and Mexico violated the National Treatment standard included in Article 1102 of NAFTA.

110. As will be demonstrated later on in these proceedings, the State's actions against Claimants were arbitrary and discriminatory given that the State favored local companies and entities to the detriment of Mr. Willars' rights as a foreign investor.

111. Claimants also reserve their 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.
DAMAGES CLAIMED

112. Mexico's breaches of NAFTA have caused substantial damages to Claimants. These damages include, without limitation:

- (a) Compensatory damages for the State's expropriation of Mr. Willars' Investment as well as the State's discriminatory and arbitrary actions;
- (b) Compensatory damages for the State's discriminatory action by favoring local companies and entities to the detriment of Mr. Willars' rights as a foreign investor;
- (c) Lost profits, including profits Claimants would have earned had they been permitted to operate the Concession for its full term and had the State not expropriated the Investment without fair compensation;
- (d) Lost business opportunities, which the Investor would have been able to capitalize on had the State not breached its obligations; and
- (e) Incidental damages.

113. Claimants presently estimate their damages at not less than USD \$303 million. Claimants will provide a more detailed quantification and substantiation of their damages in due course during these proceedings.

VII. PROCEDURAL MATTERS

A. NUMBER OF ARBITRATORS AND METHOD OF APPOINTMENT

114. 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.⁶³

115. Pursuant to this provision, Claimants appoint Mr. Andrés Moreno as their party-appointed arbitrator. Mr. Moreno’s contact information is as follows:

Mr. Andrés Moreno
amorenog@emba.com.bo
+591 2 2791554
Moreno Baldivieso
Torre Pacifico, Piso 8, Av. Sánchez Bustamante No. 977 esq. Calle 16,
La Paz, Bolivia

B. PLACE OF ARBITRATION

116. 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 Convention.⁶⁴

117. Article 1120 of NAFTA states that a claimant may submit a claim under “the ICSID, provided that both the disputing Party and the Party of the investor are parties to the Convention.”⁶⁵

⁶³ See Exhibit CL-5 (NAFTA), Chapter 11, Article 1123.

⁶⁴ *Id.*, Article 1130.

⁶⁵ *Id.*, Article 1120(1)(a).

118. In accordance with the above, Claimants are submitting this arbitral dispute under the ICSID Convention and ICSID's Rules of Arbitration in effect as of 1 July 2022 ("**ICSID's Arbitration Rules**"). Both the United States of America and Mexico are parties to the ICSID Convention.

119. In light of the above, and pursuant to Article 62 of the ICSID Convention, Claimants propose that the arbitration proceedings be held at the seat of the Centre in Washington D.C., United States of America.⁶⁶

C. LANGUAGE OF THE ARBITRATION

120. NAFTA does not specify the language of the arbitration. Pursuant to Rule 7(1) of ICSID's Arbitration Rules, Claimants propose that English be the procedural language of the arbitration.⁶⁷

⁶⁶ See **Exhibit CL-6** (ICSID Convention), Article 62.

⁶⁷ See **Exhibit CL-11** (ICSID Arbitration Rules), Rule 7(1).

VIII.
REQUEST FOR RELIEF

121. On the basis of all the foregoing, without limitation and fully reserving their rights to supplement this Request for Arbitration, Claimants respectfully request an award from the Tribunal containing the following relief:

- a. A declaration that the dispute is within the jurisdiction and competence of the Arbitral Tribunal;
- b. A declaration that Mexico breached the Treaty, international law, and in particular:
 - a. That the State breached Article 1110 of NAFTA by failing to pay full, prompt, adequate, and effective compensation after expropriating Mr. Willars' Investment in contravention of the Treaty and international law;
 - b. That the State breached Article 1105 of NAFTA and violated its obligation under the Treaty to treat Mr. Willars' Investment fairly and equitably;
 - c. That the State breached Article 1105 and violated its obligation under the Treaty to grant Mr. Willars' Investment full protection and security; and
 - d. That the State breached Articles 1102 and 1103 and violated its obligation under the Treaty to not treat Mr. Willars, or his Investment, less favorably than the State's own investors and/or third party investors, or their investments.
- c. An order directing the State to compensate Claimants 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 to fully compensate Claimants for the loss of the use of this capital as from the date of Mexico's breaches of the Treaty;

- d. An order directing the State to pay moral damages to Claimants, in an amount to be determined at a later stage in these proceedings;
- e. An order directing the State to pay pre-award and post-award interest to Claimants at the applicable rate until the date of the State's full and effective payment;
- f. A declaration that: (i) the award of damages and interest 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;
- g. An order directing the State to pay all of Claimants' costs relating to the present 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 Claimants' legal representation, and the fees and expenses of any expert appointed by Claimants or the Tribunal, plus interest; and
- h. An order granting any further relief the Tribunal deems just and proper under the circumstances.

IX.
RESERVATION OF RIGHTS

122. Claimants reserve the right to seek interim or conservative measures at the appropriate time or as necessary. Claimants also reserve the right to alter, amend, and/or supplement the foregoing claims during the course of this arbitral proceeding, and to submit such further pleadings, arguments, exhibits, and evidentiary materials as may be appropriate or necessary in connection with these proceedings.

Respectfully submitted by:

Hogan Lovells US LLP
600 Brickell Avenue
Suite 2700
Miami, Florida 33131
U.S.A.
1.305.459.6500 (telephone)
1.305.459.6550 (fax)

[signed]

By: _____

Richard C. Lorenzo
Juliana de Valdenebro Garrido
Juan C. García
Eduardo Lobatón Guzmán

Counsel for Claimants