

RUBY RIVER CAPITAL LLC

Claimant

v.

CANADA

Respondent

REQUEST FOR ARBITRATION

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1. Pursuant to Article 36 of the Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (the **Convention** or **ICSID Convention**), Rules 1 and 2 of the Rules of Procedure for the Institution of Conciliation and Arbitration Proceedings (the **Institution Rules**), Annex 14-C of the United States-Mexico-Canada Agreement (**USMCA**), and Articles 1117(1) and 1120(1)(a) of the North American Free Trade Agreement (**NAFTA**), Ruby River Capital LLC (**Ruby River** or **Claimant**) hereby respectfully requests, on behalf of Symbio Infrastructure Partnership Limited (**Symbio**), that the Secretary-General of the International Centre for the Settlement of Investment Disputes (**ICSID** or the **Centre**) register this arbitration against the Respondent, the Government of Canada (**Canada** or the **Respondent**) concerning the claims stated herein.

I. INTRODUCTION

2. This claim arises out of the Government of Québec's and the Government of Canada's fundamentally arbitrary, procedurally grossly unjust, expropriatory, and discriminatory treatment of Symbio in connection with the proposed construction of a state-of-the-art, carbon-neutral liquefied natural gas (**LNG**) facility in Saguenay, Québec (the **GNLQ Project**) and parallel project to construct a natural gas pipeline connecting existing natural gas transmission infrastructure in Northern Ontario to the GNLQ Project facility in the Saguenay (the **Gazoduc Project**) (collectively, the **Projects**).
3. Between 2014 and 2022, acting on the basis of the repeated and specific commitments and public encouragements made by the highest levels of the Québec Government, and of the continued encouragement and support by senior officials of the Government of Canada, Symbio expended no less than US\$ 120 million and considerable time and resources to obtain from the Québec and Canadian Governments the permits and approvals necessary to proceed with the Projects.
4. The GNLQ Project alone would have been one of the largest private industrial projects in Québec history and would have acted as a major driver of the Province's economic development. Conscious from the start of the need to design the project in an environmentally responsible manner, Symbio undertook enormous efforts to ensure that the GNLQ Project met and surpassed all relevant provincial and federal environmental

standards and to demonstrate as much to both Québec and Canadian regulators. Symbio also made the unprecedented commitment to realise the Projects while maintaining a net-zero impact on Québec's greenhouse gas (**GHG**) emissions footprint.

5. The Projects held out the promise of making Québec and Canada world leaders in energy transition at a critical environmental and political juncture. The Projects had the goal of supplying world markets with a substantial amount of safe and environmentally sound LNG as a key transitional energy source from a politically stable jurisdiction, making a material contribution to the overall global reduction of GHG emissions by displacing more pollutive energy sources such as coal, oil and LNG from higher-emitting suppliers, while addressing urgent geopolitical energy sourcing needs and concerns.
6. All of these efforts came to naught when the Québec Government radically altered its longstanding stance towards the Projects. After years of encouragement and direct support for the Projects both through specific commitments and through public statements, the highest political leadership of Québec suddenly developed cold feet and ultimately scuttled the Projects in the run-up to an election year. The Québec Cabinet unlawfully instrumentalized the applicable environmental review process to accomplish its political agenda, imposing criteria devised solely to negatively target the Projects. To attain its objective, Québec at the eleventh hour moved the goalposts of the review process, abruptly announcing that compliance with newly-framed "core criteria" would be required to obtain its approval; applied these new criteria in a manner never before nor subsequently applied to comparable projects in Québec; granted Symbio little time to assemble evidence demonstrating its compliance with the newly-framed criteria; ignored Symbio's expert demonstration and even its own experts' conclusions that GNLQ in fact met such criteria on the basis of scientific evidence; and ultimately, in July 2021, refused the GNLQ Project based on these newly-framed core criteria, not applied to other similar projects approved either before or since. Québec did so by abusively relying on statutory discretion intended to support the object and purpose of Québec's environmental protection regime. That statutory discretion was not meant to provide an arbitrary lever for imposing different standards based on the identity of the proponent, solely to gain political support ahead of an election.

7. Additionally, while dismissing the GNLQ Project on arbitrary and discriminatory grounds and in a procedurally grossly unfair manner, senior Québec politicians cynically stated that the termination of the GNLQ Project also implied the termination of the Gazoduq Project, without giving any reasons – even though the environmental approval process for the Gazoduq Project was (and remains) still formally underway.
8. Unwilling to wear the political flak of contradicting Québec, Canada’s federal political leaders quickly followed suit. In September 2021, on the heels of Québec’s manifestly arbitrary and discriminatory decision to deny approval to GNLQ, and only weeks before Canadians would vote in snap federal elections, the Liberal Party of Canada suddenly announced that the GNLQ Project would never be approved. This announcement prejudged the federal approval process that was still ongoing at the time, in gross breach of procedural justice. Unsurprisingly, a formal denial ultimately followed a few months later, confirming the *fait accompli*. This was despite express prior recognition by multiple federal ministers of the Projects’ environmental soundness and expected contribution to the transition to a global low carbon economy, alongside the economic benefits the Projects would bring to Québec, Ontario and Canada more generally.
9. Meanwhile, both the Federal and the Québec Governments approved equivalent industrial projects in Québec, including in the Saguenay area, while failing to even consider factors allegedly “crucial” to the Projects, or applying substantially more lenient approval standards. The two governments also promoted – and in many cases invested in – politically favoured projects, despite such support being fundamentally at odds with their alleged rationale for destroying the Projects. In so doing, Canada and Québec acted in a manifestly arbitrary and discriminatory manner, contrary to the legitimate expectations of the Claimant and Symbio that the decision-making processes relevant to the approval of the Projects at a minimum would comply with Canadian law.
10. These measures individually and collectively violate NAFTA Articles 1102, 1103, 1105, and 1110. Canada is responsible both for Québec’s and for its own measures in breach of the NAFTA, pursuant to NAFTA Article 105 and in accordance with customary

international law. These breaches have resulted in material damages for Symbio in an amount to be fully quantified at a later stage, but no less than US\$ 20 billion.

11. Following the termination of the GNLQ and Gazoduq Projects, the Claimant and Symbio have sought to resolve the matter amicably with the Québec and Federal Governments through direct discussions, to no avail. On 16 January 2023, the Claimant held formal consultations with the Respondent under Article 1118 of NAFTA regarding the damages they have suffered as a result of Québec and Canada’s measures in breach of NAFTA Chapter Eleven. Since these consultations failed to result in a mutually agreeable resolution of the claim, this Request for Arbitration (**Request**) is filed to ensure that the Respondent compensates the Claimant in full for all damages, costs and other related losses that Symbio incurred as a result of Québec and Canada’s measures.

II. THE PARTIES

A. The Claimant and the enterprise on whose behalf the Request is submitted

12. The Claimant is Ruby River, a U.S. corporation organized under the laws of Delaware.¹ It was incorporated on 29 April 2014² with its principal registered place of business at 651 N. Broad Street, Suite 201, Middletown, DE 19709, United States of America.
13. Pursuant to Rule 3(b) of the ICSID Institution Rules, the requesting party Ruby River is owned and controlled by Freestone International LLC (**Freestone**)³ and Breyer Capital L.L.C. (**Breyer Capital**),⁴ both U.S. corporations. Together, Freestone and Breyer Capital own 100% of Ruby River.⁵
14. The Claimant submits this Request pursuant to NAFTA Article 1117 on behalf of Symbio. Symbio is a Québec limited partnership organised under the laws of Canada. It was

¹ Ruby River Capital LLC, Certificate of Good Standing (State of Delaware), 13 February 2023, **Exh. C-2**.

² Ruby River Capital LLC, Certified Copy of Certificate of Formation (State of Delaware), 26 September 2022, **Exh. C-3**.

³ Freestone International LLC, Certificate of Status (State of California), 6 February 2023, **Exh. C-4**.

⁴ Breyer Capital L.L.C., Certificate of Good Standing (State of Delaware), 6 February 2023, **Exh. C-5**.

⁵ See Ruby River Capital LLC, Operating Agreement, 11 August 2014, **Exh. C-6 (extracts)**. In particular, *see* the definitions of “Member”, “Membership Interest” and “Voting Interest” (Article 1) at p. 3; the provisions on “Management” (Article 4) at pp. 5-6; provisions on “Voting” (Article 6) at p. 8-9; and “Exhibit A” at p. 15 for the list of “Members” identifying Freestone and Breyer Capital as the sole Members.

established on 10 October 2014 and registered on 10 February 2015, with its principal registered place of business at 4000-1 Place Ville-Marie, Montreal (Québec), H3B 4M4, Canada.⁶

15. Ruby River majority owns and controls Symbio, as required by NAFTA Article 1117. First, Ruby River holds a majority and controlling interest in Symbio through its 100% owned subsidiary 9311-0385 Québec Inc.,⁷ a company incorporated in Québec, Canada. 9311-0385 Québec Inc. owns 51.265686% of Series A (voting) Units and 70.768240% of Series B (non-voting) Units of Symbio.⁸ Accordingly, Ruby River owns more than half of both the voting and the non-voting equity interests of Symbio LP and can exercise 51.265686% of the voting rights associated with Symbio and therefore controls Symbio.⁹
16. Second, Ruby River is the sole shareholder of Symbio Infrastructure GP Inc. (**Symbio GP**).¹⁰ Symbio GP is the designated General Partner under Symbio’s Limited Partnership Agreement (**LPA**).¹¹ Symbio’s LPA states that Symbio GP, as designated General Partner: (i) “shall have the exclusive right to control the business of the Limited Partnership and is hereby authorized to take any action in furtherance of the purposes of [Symbio LP]”; and (ii) “is hereby vested with the full, exclusive and complete right, power and discretion to operate, manage and control the affairs of [Symbio LP] and to make all decisions affecting

⁶ See Symbio, Statement of Information on a Partnership in the Québec Enterprise Registry, 6 April 2022 **Exh. C-7**; Symbio, Certificate of Attestation, 30 September 2022, **Exh. C-8**.

⁷ See 9311-0385 Québec Inc., Statement of Information on a Juridical Person in the Québec Enterprise Registry, 5 April 2022, **Exh. C-9**; 9311-0385 Québec Inc., Certificate of Attestation, 30 September 2022, **Exh. C-10**.

⁸ See Symbio, Schedule of Partners and Pro Rata Share as of 31 May 2021, certified and confirmed on 6 February 2023 (updated version of original Exhibit D to the Symbio LPA), **Exh. C-11**. See also Section 7.01(a) of Symbio, Fourth Amended and Restated Limited Partnership Agreement (**LPA**), 28 January 2019, **Exh. C-12 (extracts)**, which specifies that Series A units have voting rights and Series B units have no voting rights.

⁹ See Section 14.01(d) of Symbio, Fourth Amended and Restated Limited Partnership Agreement, 28 January 2019, **Exh. C-12 (extracts)**, which defines “change of control” over Symbio LP as the result of transactions whereby a new person or entity holds more than 50% “or more, by voting power, of the equity security [i.e., Series A Units] of [Symbio LP]”.

¹⁰ Symbio Infrastructure GP Inc., Statement of Information on a Juridical Person in the Québec Enterprise Registry, 5 April 2022, **Exh. C-13**; Symbio Infrastructure GP Inc., Certificate of Attestation, 30 September 2022, **Exh. C-14**.

¹¹ Preamble to Symbio, Fourth Amended and Restated Limited Partnership Agreement, 28 January 2019, p. 1, **Exh. C-12 (extracts)**. Symbio GP was previously named 9311-0401 Québec Inc.: see Symbio Infrastructure GP Inc., Statement of Information of a Juridical Person in the Québec Enterprise Registry, 5 April 2022, **Exh. C-13**.

the affairs of [Symbio LP]’’.¹² Therefore, through Symbio GP, Ruby River enjoys full, exclusive and complete rights, power and discretion to operate, manage and control Symbio’s affairs.

17. Symbio was established to pursue the GNLQ and Gazoduq Projects through two separate legal entities. Symbio is the 100% owner of GNL Québec Inc. (**GNLQ**), a Québec corporation that was incorporated on 24 April 2014 with its principal registered place of business located at 4000-1 Place Ville-Marie, Montreal (Québec), H3B 4M4, Canada.¹³ Symbio is also the 100% owner of Gazoduq Inc. (**Gazoduq**), also a Québec corporation that was incorporated on 26 June 2018 with its principal registered place of business located at 4000-1 Place Ville-Marie, Montreal (Québec), H3B 4M4, Canada.¹⁴

B. The Respondent

18. Canada is a sovereign State which is a Party to the NAFTA and the USMCA and a Contracting State to the Convention.
19. Under Article 1137(2) of the NAFTA, delivery of notices and documents to the Government of Canada shall be made to the following address:

Office of the Deputy Attorney General of Canada
284 Wellington Street
Ottawa, Ontario K1A 0H8
Canada

20. The following has been identified as the principal point of contact within the Government of Canada concerning this matter:

Scott Little
Trade Law Bureau | Direction générale du droit commercial
international – JLTB
Lester B. Pearson Building
125 Sussex Drive

¹² Sections 6.03 and 6.04 of Symbio, Fourth Amended and Restated Limited Partnership Agreement, 28 January 2019, **Exh. C-12 (extracts)**.

¹³ GNL Québec Inc., Statement of Information on a Juridical Person in the Québec Enterprise Registry, 5 April 2022, **Exh. C-15**; GNL Québec Inc., Certificate of Attestation, 3 February 2023, **Exh. C-16**.

¹⁴ Gazoduq Inc., Statement of Information on a Juridical Person in the Québec Enterprise Registry, 5 April 2022, **Exh. C-17**; Gazoduq Inc., Certificate of Attestation, 3 February 2023, **Exh. 18**.

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III. CONSENT TO THE JURISDICTION OF THE CENTRE

A. The Claimant's consent

21. The Claimant has consented to the submission of this dispute to the jurisdiction of the Centre by the filing of this Request for Arbitration.

B. The Respondent's consent

22. The Respondent's consent arises through the text of the NAFTA, and the operation of Annex 14-C of the United States-Mexico-Canada Agreement (USMCA).
23. In NAFTA Article 1122(1), Canada consented to submit to arbitration claims for breaches of a substantive obligation of Chapter Eleven of that treaty. Further, NAFTA Article 1122(2) states that "[t]he consent given by paragraph 1 and the submission by a disputing investor of a claim to arbitration shall satisfy the requirement of ... Chapter II of the ICSID Convention (Jurisdiction of the Centre) ... for written consent of the parties."
24. The NAFTA entered into force in 1994, and was terminated on 1 July 2020.¹⁵ However, pursuant to Articles 1 to 3 of Annex 14-C of the USMCA, Canada consented to the submission to arbitration of a claim alleging breach of an obligation under Section A of Chapter Eleven of the NAFTA with respect to "legacy investments" for the three years following the termination of the NAFTA, *i.e.* until 1 July 2023.¹⁶ The USMCA remains in force between the United States and Canada.¹⁷
25. Article 1(a) of Annex 14-C specifically provides that "[e]ach Party 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

¹⁵ See North American Free Trade Agreement (1994), Chapter Eleven, **Exh. CL-1**; Protocol Replacing the North American Free Trade Agreement with the Agreement between the United States of America, the United Mexican States, and Canada (30 November 2018), **Exh. CL-2**.

¹⁶ United States-Mexico-Canada Agreement, Annex 14-C, **Exh. CL-3**.

¹⁷ Government of Canada, Treaties (Excerpt), **Exh. C-19**.

an obligation under: (a) Section A of Chapter 11 (Investment) of NAFTA 1994”. Footnote 20 to Annex 14-C clarifies that the relevant provisions set out in Chapters 2, 11, 14, 15, 17, 21 and Annexes I-VII of the NAFTA “apply with respect to such a claim”. The facts that form the basis of the present Request occurred before and within the three-year period set out in Article 3 of Annex 14-C. Consequently, the relevant provisions of the NAFTA apply with respect to such facts and events.

26. Article 6(a) of Annex 14-C defines “legacy investment” as “an investment of an investor of another Party in the territory of the Party established or acquired between January 1, 1994, and the date of termination of NAFTA 1994, and in existence on the date of entry into force of this Agreement”.¹⁸ The Claimant holds a “legacy investment” for the purposes of the USMCA, in that the investment predates the termination of the NAFTA; was made between the date of entry into force of the NAFTA (1 January 1994) and prior to the date of termination of the NAFTA (1 July 2020); and existed on the date of entry into force of the USMCA.
27. Article 3 of Annex 14-C establishes that “[a] Party’s consent under paragraph 1 shall expire three years after the termination of NAFTA 1994”. This Request has been filed within three years of the termination of the NAFTA.
28. Article 2(a) of Annex 14-C further confirms that “[t]he consent under paragraph 1 and the submission of a claim to arbitration in accordance with Section B of Chapter 11 (Investment) of NAFTA 1994 and this Annex shall satisfy the requirements of: (a) Chapter II of the ICSID Convention (Jurisdiction of the Centre)”.
29. In addition, NAFTA Article 1120(1) provides that if both the disputing Party and the Party of the investor are parties to the Convention, the dispute may be submitted to the Centre at the request of the investor. The Claimant is an enterprise organised under the laws of the United States, and is therefore an investor of the United States under the definitions set out

¹⁸ See United States-Mexico-Canada Agreement, Annex 14-C, section 6(a), definition of “legacy investment”, **Exh. CL-3**.

in Article 1139 of the NAFTA.¹⁹ Canada ratified the Convention on 1 November 2013, and the Convention entered into force with respect to Canada on 1 December 2013.²⁰ The United States ratified the Convention on 10 June 1966, and the Convention entered into force with respect to the United States on 14 October 1966.²¹ Therefore, each of Canada and the United States is Party to the Convention, and the Claimant may submit its arbitration claim to the Centre.

30. Canada's consent to arbitration, and the Claimant's filing of this Request for Arbitration thus form the agreement to arbitrate between the Parties to the dispute.
31. Accordingly, the conditions for consent to arbitration under the ICSID Convention have been fulfilled.

C. The Claimant has fulfilled the NAFTA's procedural requirements

32. The procedural requirements set out in Articles 1117(2), 1119 and 1120(1) of the NAFTA have been met. First, the Claimant has complied with Article 1119 by submitting the notice of intention to submit a claim to arbitration to Canada "at least 90 days before" filing this Request for Arbitration.²² Second, the Claimant has satisfied Article 1117(2), which states that a disputing investor may not make a claim on behalf of an enterprise "if more than three years have elapsed from the date on which the enterprise first acquired ... knowledge of the alleged breach and knowledge that the enterprise has incurred loss or damage", and Article 1120(1), which states that a disputing investor may submit a claim to arbitration "provided that six months have elapsed since the events giving rise to a claim." As set out in Section IV (The Factual Basis for the Claim), more than six months and less than three

¹⁹ Ruby River, Certificate of Good Standing, 13 February 2023, **Exh. C-2**.

²⁰ ICSID, List of Contracting States and Other Signatories of the Convention (as of 25 October 2022), **Exh. C-20**.

²¹ List of Contracting States and Other Signatories of the Convention (as of 25 October 2022), ICSID, **Exh. C-20**.

²² Notice of Intent to Submit a Claim to Arbitration under Chapter Eleven of the North American Free Trade Agreement, 19 October 2022, **Exh. C-1**. *See also* Letter from Julie Boisvert (Global Affairs Canada) to Claimant's counsel, 7 November 2022, **Exh. C-21** ("This letter confirms receipt by the Government of Canada, on October 19 ... 2022, of a Notice of Intent to Submit a Claim to Arbitration under ... Section B of Chapter Eleven of the North American Free Trade Agreement ... served on behalf of Ruby River Capital LLC").

years have elapsed since the date when Symbio first acquired knowledge of the breach and knowledge that Symbio had incurred loss or damages.

33. The conditions precedent to submission of a claim to arbitration, as provided for in Article 1121(2) of the NAFTA, have also been satisfied. The Claimant is submitting the requisite consents to arbitration and waivers in the form contemplated by Article 1121(3) in support of this Request for Arbitration,²³ a copy of which (along with the Request and supporting documentation) has also been delivered to the Respondent.

IV. THE FACTUAL BASIS FOR THE CLAIM

34. This claim arises out of the Québec Government's and the Government of Canada's refusal to authorise the GNLQ Project, through decision-making processes that were manifestly arbitrary and expropriatory; fundamentally unjust in procedural terms; that were instrumentalized to achieve improper purposes, and ultimately resulted in the discriminatory treatment of Symbio and its investments as compared to other projects and industrial actors in like circumstances in Canada.
35. It also arises from the related targeting of the Gazoduq Project, as reflected in public statements by the Québec Government confirming its intention to deny the latter Project's approval, regardless of the fact that Gazoduq's approval process is formally still pending and no official decision has been reached on its application.

A. The GNLQ and Gazoduq Projects were amongst the largest private industrial projects in Québec's history

36. The Claimant launched the GNLQ Project in 2013 and through Symbio continued to pursue the investment until it came to an abrupt halt as a result of Québec and Canada's measures in breach of the NAFTA.
37. The GNLQ Project had as its goal the construction and operation of an LNG facility and export terminal in La Baie, Québec. The Project site is located near the Grande-Anse marine terminal, at the Port of Saguenay. GNLQ's planned natural gas liquefaction

²³ Ruby River Capital LLC and Symbio Infrastructure Limited Partnership, Consent and Waiver Form Pursuant to NAFTA Article 1121(3), 14 February 2023, **Exh. C-22**.

facilities had a production capacity of 10.5 million tons per year. The GNLQ Project also included the creation of port infrastructures for marine tanker loading of LNG, LNG storage tanks and support infrastructures. Maritime transport of LNG was planned to take place on the St. Lawrence and Saguenay Rivers, with an estimated 140 to 165 shipments per year. The GNLQ Project was projected to be in operation during a period of between 25 and 50 years.

38. In addition to the GNLQ Project, through its subsidiary Gazoduq, Symbio pursued a parallel plan to construct and operate a natural gas pipeline approximately 780 km long from North Ontario to the GNLQ Project site in the Saguenay. The Gazoduq pipeline was designed to transport natural gas produced in Western Canada to the GNLQ LNG facility. In this way, the Projects foresaw an integrated delivery corridor bringing Western Canadian natural gas directly to the GNLQ facility, where it would be liquefied, transferred to specially-designed ships, and sent on to markets around the world.
39. Symbio foresaw powering GNLQ's LNG plant and the Gazoduq pipeline with renewable hydroelectricity – one of the key benefits of a Québec location – making them among the most environmentally sustainable projects of their kind. Symbio also took the unprecedented step of committing to a net-zero impact on Québec's GHG emissions footprint throughout the Projects' respective construction and operating lifespans.
40. The Projects would individually and collectively have been among the largest private industrial projects in Québec's history. Symbio estimated that construction of the GNLQ Project would require a Can\$ 9 billion investment (US\$ 7.2 billion), and that construction would extend over a five-year period. Symbio further estimated that construction of the Gazoduq Project would require a separate Can\$ 5 billion investment, with construction lasting over a three-year period, in parallel with the construction of the GNLQ Project.
41. Based upon financial modelling as of 2021, the GNLQ Project was expected to generate a total profit to investors of no less than US\$ 16 billion over its initial 25-year operating period. The Gazoduq Project was expected to generate a total profit to investors of no less than US\$ 4 billion during its initial 25-year operating period. Based on conservative assumptions predating the recent surge in prices on the LNG market (due to growing LNG

demand), as of 2021 the two Projects together were reasonably estimated to generate profits totalling no less than US\$ 20 billion.

42. The Projects were also considered as major drivers for the development of the Province of Québec as a whole. According to Symbio's estimates, construction of the GNLQ Project was to generate 4,000 direct jobs and 2,000 indirect jobs over a five-year period. Once constructed and operating, the GNLQ Project was projected to create between 250 and 300 direct jobs in Québec and 1,000 indirect jobs over a 25 to 50-year period. In addition, the GNLQ and Gazoduq Projects included projected benefits of more than CAD\$ 1 billion to indigenous communities over their initial 25-year operating period.

B. Symbio invested no less than US\$ 120 million in the GNLQ and Gazoduq Projects

43. Between 2014 and 2022, the Claimant and Symbio invested substantial resources, time and effort in the preparatory phase of the GNLQ and Gazoduq Projects for the technical planning as well as the legal, financial, commercial, environmental and social aspects of both Projects. By the end of 2020, Symbio had made capital contributions to wholly-owned subsidiaries GNLQ and Gazoduq that together amounted to just under US\$ 114 million.
44. Relying on a continuing stream of positive comments made by the Government of Québec and the continued encouragement of senior officials to continue work on the Projects up until the July 2021 rejection, Symbio made additional capital contributions of no less than US\$ 5.2 million to GNLQ and US\$ 2.3 million to Gazoduq in 2021. This brought the total cash capital contributions made by Symbio to both GNLQ and Gazoduq up to 31 December 2021 to US\$ 121.5 million.²⁴
45. In the nine years between the initial Project feasibility studies undertaken in 2013 and the Québec Government's manifestly arbitrary refusal to authorise the GNLQ Project in July 2021, GNLQ and Gazoduq spent no less than US\$ 120 million in cash and in equivalent services to prepare every aspect of the planned undertaking and ensure its success.

²⁴ As of the date of filing the present Request, the financial statements for the year ending 31 December 2022 had not yet been finalised. This amount is subject to review once such financial statements become available.

46. GNLQ's expenditures in Canada in connection with the GNLQ Project included professional fees to generate feasibility, engineering, design, consultation, environmental impacts and market analysis reports, related salaries and benefits, legal fees, project promotion and travel expenses, office expenses, communications and public and external relations (including consultation efforts with local communities, First Nations and a wide array of stakeholders), engineering, LNG marketing, gas supply, financing, and pipeline-related expenses, the land option agreement with the Saguenay Port Authority that provided control over the intended site of the GNLQ Project, and required permits (including Canada's LNG export licence process and the federal and provincial approvals processes).
47. GNLQ also invested in capital assets in Canada, including computer hardware and software, office furniture, leasehold improvements, plant power supply, and preliminary front end engineering design (including multiple technical studies with international and local engineering experts, such as geotechnical studies, liquefaction process design, and multi-year engineering support of the regulatory approval processes). It also invested in the production of a local socio-economic impact assessment for regulatory approval purposes.
48. Similarly, Gazoduc's expenditures included those aimed at securing Canadian regulatory approvals and permits (including consultation efforts with local communities and First Nations), engineering (*e.g.*, Canadian-sourced front-end engineering design, detailed route assessments, river crossing assessments, geophysical studies, electrification studies), employee salaries and benefits.
49. Symbio pursued the GNLQ and Gazoduc Projects with a high degree of professionalism and care, as recognised by senior representatives of the Québec Government. It was supported by a broad range of expertise and backed by significant financial investors, including high-net worth US individuals and investment trusts. Between 2014 and 2021, GNLQ and Gazoduc together employed more than 55 individuals and retained the services of more than a dozen consultants in Canada, as well as a significant number of contractor personnel, at times exceeding 100 persons dedicated full time to the Projects.

C. The highly favourable prospects of the GNLQ Project

50. The GNLQ Project had enormous potential. The Project's founder and Chairman, Jim Illich, is a former Bechtel executive with decades of experience leading the conception and realisation of LNG plants and large diameter pipelines in locations around the world. Under his guidance, and after careful research and analysis and a review of multiple sites, GNLQ selected the Port of Saguenay on the South shore of the Saguenay fjord as the ideal location for its investment.
51. The Saguenay site offered uniquely favourable conditions for the GNLQ Project: access to Québec's abundant hydroelectric resources; relatively cold local temperatures maximising the efficiency of the liquefaction process; a substantial and skilled local industrial workforce linked to the presence of significant heavy industry in the region; and a site that met all relevant engineering, construction and operational criteria. The site was of considerable size; was easily accessible by major road infrastructure; was far removed from any densely populated area; was zoned as an industrial and port area; incorporated a deep-water port; was located near an airport; was closer to Western gas supplies than other sites located farther to the East; and gave immediate access through the Saguenay to a navigable waterway that allowed for shipping LNG to Europe and Asia.
52. Given the high environmental standards with which GNLQ's planned production was set to comply, experts at the Ministry of the Environment and Fight Against Climate Change (Ministère de l'Environnement et de la Lutte contre les changements climatiques, **MELCC**) engaged in the review of the GNLQ Project recognized that consumption of its LNG would displace the use of coal (a far more pollutive fuel), contributing in this way to a global reduction in GHG emissions and not impeding the objectives of the Paris Agreement. Given its environmentally positive design and operation, experts recognised that GNLQ's LNG would have a positive impact on the environment even if it merely displaced other higher emitting sources of LNG, produced elsewhere in far less environmentally sound conditions.
53. The GNLQ Project was also poised for success given the high degree of care its proponents had taken to secure demonstrable support for the project from municipalities in the region,

local residents and indigenous communities – with less than a tenth of surveyed locals firmly opposed to the GNLQ Project, and agreements in place from early on to develop the Projects in a collaborative manner with First Nations communities.

54. In light of steadily and considerably increasing global demand for LNG, as of 2021 the GNLQ Project was poised for success from an economic perspective. Strong global demand in the wake of the COVID-19 pandemic had prompted record high prices for LNG and natural gas in both Europe and Asia.
55. The Projects' favourable economic outlook was further reinforced by dramatic shifts in the global geopolitical and energy landscape as of February 2022, following Russia's invasion of Ukraine and Europe's deepening energy security crisis. Demand for LNG, already at all-time highs in the wake of the COVID pandemic, has since gone through the roof in 2022. The tragic events in Ukraine only reinforced the economic and environmental merits of LNG as a transitional energy: the scarcity of natural gas supplies in Europe has led to a surge in Germany's coal consumption, prompting several European countries to bring coal-fired electricity generation facilities back online. Recognizing the urgency of Europe's energy needs, the Government of Canada has continued to actively pursue efforts to develop sources of Canadian LNG for export, repeatedly acknowledging LNG's role as a transitional energy in the fight against climate change.

D. The Québec Government repeatedly encouraged Symbio to proceed with the GNLQ Project through specific commitments and supportive statements

56. The Québec Government was hugely enthusiastic about the GNLQ Project from the start. Over the course of Symbio's investments, the Québec Government repeatedly encouraged GNLQ to proceed with its proposed Project through specific commitments inciting pursuit of the GNLQ Project, and multiple supportive public statements.

1. The Québec Government made specific commitments supportive of the GNLQ Project

57. Among its initial signs of support, in July 2015, the Québec Government confirmed that Hydro-Québec (a corporation wholly-owned by the Québec Government and regularly used as an instrument of economic development in the Province) would allocate a block of

550MW of electricity to GNLQ, over a period of 20 years. The Québec Government subsequently reiterated this commitment by Hydro-Québec in August 2016, with the added undertaking that the GNLQ Project could access its low-cost industrial power rate for 20 years and receive benefit from a 20% electricity tariff rebate over a period of seven years. This commitment was reiterated and extended multiple times by the Québec Government, including as recently as in October 2020.

58. To facilitate Symbio's pursuit of the GNLQ Project at the planned site, the Government of Québec also brokered a deal between itself, the Canadian Federal Government and local governments to ensure that the GNLQ Project would have access to sufficient lands at the Port of Saguenay. In the fourth quarter of 2015, public officials of the Saguenay and Canada rapidly approved and completed a sale of 1,000 acres of Québec crown land to the Saguenay Port Authority (under Transport Canada's jurisdiction) with the expressed intent of helping optimize GNLQ's site layout for the GNLQ Project at Grande-Anse.
59. The Québec Government also recognized the GNLQ Project as a major contributor to the Québec economy, and for this reason confirmed that it would benefit from funding and preferential tax treatment. In August 2016, the Québec Government undertook to provide GNLQ significant tax incentives to encourage its investment, including a multi-year provincial income tax holiday and an exemption of employer social and health contributions for a period of up to 15 years from the launch of the Project's operations and linked to the pursuit of the Project. The Québec Government made further commitments: (i) to provide funding through an investment in the share capital of Symbio/GNLQ, to be undertaken by Investissement Québec up to a maximum of Can\$ 20 million and up to approximately 5% of GNLQ's share capital over the life of the project; (ii) to provide financial assistance for employee training purposes; and (iii) to establish a timetable for the purpose of carrying out the environmental assessment and review.
60. In August 2016, the Québec Government also set up an Inter-Ministerial Committee comprised of representatives of key ministries and relevant provincially-owned corporations. That Committee was dedicated to facilitating and assisting the GNLQ Project to advance through the various stages of provincial approval towards

implementation in the most efficient and effective manner possible. The Committee proceeded to meet approximately once a month for the next 5 years with the express mandate of facilitating the Project's progress.

61. In addition to these commitments, the Québec Government made a formal offer of financing to the GNLQ Project through its economic development and investment agency, Investissement Québec. Following the Québec Government's August 2016 funding offer, Investissement Québec wrote to GNLQ on 11 September 2017 offering to loan GNLQ US\$ 10 million interest-free over a period of ten years. GNLQ accepted the loan offer on the same day. However, the Québec Government ultimately did not provide the offered equity or loan. In February 2020, Investissement Québec offered GNLQ additional funding of US\$ 15 million that Québec affirmed it was willing to contribute to GNLQ in exchange for an ownership interest in GNLQ. Again, the Québec Government ultimately did not provide this funding.

2. The Québec Government made multiple public statements supportive of the GNLQ Project

62. In addition to its specific commitments to Symbio to invest in the GNLQ Project, the highest levels of the Québec Government repeatedly touted the GNLQ Project in the press and voiced their support for the GNLQ Project in the National Assembly and in the media.
63. During his term in office (2014-2018), Québec's Liberal Premier Philippe Couillard affirmed Québec's support for LNG projects in the Province in general, acknowledged LNG as a form of transitional energy, and repeatedly expressed his specific support for the GNLQ Project in public fora, describing the Project's consultation efforts as "exemplaire".²⁵

²⁵ See Radio-Canada, « Philippe Couillard fait son bilan de 2015 pour le Saguenay-Lac-Saint-Jean », 21 December 2015, **Exh. C-23**. During the 2018 electoral campaign, Premier Couillard also reiterated the Québec Government's support for the GNLQ Project which offered an undeniable economic advantage to the region: see Journal de Québec, « GNL Québec – des citations qui prouvent que le gouvernement a complètement changé d'idée », 21 July 2021, **Exh. C-24**.

64. The successor Coalition Avenir Québec (CAQ) Government that took power in October 2018, with Premier François Legault at its helm, continued this course of multiple statements supporting the GNLQ Project. Between June 2019 and September 2020, Québec Premier Legault²⁶ as well as Québec’s Energy and Natural Resources Minister Jonatan Julien,²⁷ Québec’s Environment Minister Benoit Charette,²⁸ and Minister for Regional Economic Development Marie-Ève Proulx²⁹ took turns publicly to underline and defend the social, environmental and economic merits of the GNLQ Project on several occasions.

²⁶ On 13 June 2019, Premier Legault defended his endorsement of the GNLQ Project before Québec’s National Assembly as a project “that would create thousands of paying jobs in Saguenay-Lac-Saint-Jean” and “reduce GHG emissions globally” (in the original French text: « un projet qui va créer des milliers d’emplois payants au Saguenay-Lac-Saint-Jean » and « qui va réduire les gaz à effet de serre sur la planète »): *see* Radio-Canada, « Échange musclé entre François Legault et Pascal Bérubé sur fond de projets gaziers », 13 June 2019, **Exh. C-25**. On 17 January 2020, Premier Legault issued a statement after meeting with Jim Illich and other GNLQ representatives stating that the GNLQ Project “would create 4,000 jobs during construction and 250 permanent jobs per year at 100,000 \$ per year” and “would reduce greenhouse gases by 28 million tonnes by replacing coal-fired power plants.” *See* Radio-Canada, « François Legault rencontre GNL Québec et vante le projet Énergie Saguenay », 16 January 2020, **Exh. C-26**. (in the original French text: un projet qui « créerait 4000 emplois durant la construction et 250 emplois permanents à 100 000 \$ par année » and « réduirait les gaz à effet de serre de 28 millions de tonnes en remplaçant des centrales au charbon »). In April 2021, Premier Legault stated before Québec’s National Assembly that the GNLQ Project would lead to replacement, in Europe, of energy sources such as coal with LNG, noting that LNG is a form of transitional energy that will globally reduce global GHG emissions: *see* Journal des Débats de l’Assemblée nationale, Vol. 45 No. 182, 22 April 2021, p. 12231, **Exh. C-27**. (in the original French text: « je l’ai dit à plusieurs reprises, l’idée du projet GNL Québec, c’est de remplacer des formes d’énergie comme l’énergie au charbon, en Europe, par du gaz liquéfié, qui n’est pas parfait, mais qui est une forme de transition qui va réduire ou qui réduirait au total les émissions de gaz à effet de serre sur la planète »).

²⁷ In February 2020, Minister Jonatan Julien described the GNLQ Project before the Québec National Assembly as “virtuous” and “hyper important” to the fight against climate change and as “fantastic” for Québec’s economic development. *See* Le Devoir, « GNL Québec est un projet « vertueux » pour l’environnement, selon Jonatan Julien », 12 February 2020, **Exh. C-28**.

²⁸ On 19 August 2020, Minister Charette confirmed that he shared his Government’s “favourable approach” (in French, « préjugé favorable ») towards the GNLQ Project, stating that “this is a project that has clear economic and environmental merits”. (In the original French text: « [c]’est un projet qui a des mérites économiques et environnementaux manifestes ».) *See* Le Devoir, « Aucun engagement financier dans GNL Québec pour le moment », 19 August 2020, **Exh. C-29**.

²⁹ In September 2020, Minister Proulx stated that the construction of a natural gas liquefaction plant on the shores of the Saguenay river was “a promising project for the future of Québec” that had “the overall support of “social, economic and municipal stakeholders”, stressing that “there is a very concrete will to move forward with this project.” *See* e.g., CBC, “With environmental review still pending, Québec minister touts benefits of natural gas project”, 25 September 2020, **Exh. C-30**.

65. Québec’s sustained and specific commitments and positive statements towards the GNLQ Project engendered the legitimate expectation that the decision-making process provided for by law would be followed; that the analysis of the various elements of the GNLQ Project would be done in accordance with the rule of law; and that Symbio would at the very least be dealt with in a fair and equitable manner by provincial authorities and by the provincial executive without discrimination and for proper and valid ends. These statements individually and collectively induced Symbio to commit tens of millions of dollars in pursuit of the GNLQ Project until Québec’s unforeseen and fatal volte-face, as confirmed in July 2021.
66. In addition to their numerous targeted and specific comments supportive of the GNLQ Project, as referenced above, the Governments of both Canada and Québec have repeatedly affirmed the role that LNG can play as a key “transition” source of energy, facilitating the shift towards carbon-neutral economies. Between 2014 and 2022, the Québec Government itself repeatedly favoured or initiated LNG-related investments across the Québec Province. This has included tens of millions of dollars in direct provincial government investment in Québec-owned LNG businesses; provincial and federal approval of substantial new port terminals on the St. Lawrence Seaway specifically designed to accommodate the export and distribution of LNG; millions of dollars in grants to private industry to convert existing industrial facilities to LNG use; and tens of millions of dollars in subsidies to develop natural gas and LNG-related infrastructure.

E. The Québec Government suddenly changed its conditions for supporting the GNLQ Project financially and ultimately backtracked on its funding overtures

67. In February 2020, notwithstanding its years of specific encouragement for the Projects, the Québec Government began changing its behaviour *vis-à-vis* GNLQ, in a manner ultimately confirmed by the Project’s manifestly arbitrary and discriminatory refusal. Québec’s shifting behaviour and outlook led to a series of backtracking on their initial financial commitments to the GNLQ Project. This change of heart was later manifested in improper intervention by high-level Québec politicians in the orderly conduct of the Project’s

environmental review, and ultimately resulted in the denial of both the GNLQ and the Gazoduq Projects on spurious grounds.

68. GNLQ realised with hindsight that the Québec Government had begun to “backslide” in its longstanding overtures of financial and other support for the Project as of February 2020, when the Legault Government began to impose additional conditions on its initial offer of financing, contradicting the Québec Government’s proposal to invest in the range of US\$ 15 million in the GNLQ Project. Québec notably expressed reluctance to invest in the Project unless GNLQ put forward evidence of some substantial and new high-profile investor, or of funding from either the Government of Alberta and/or the Government of Canada – apparently seeking political “cover” for its proposed financial contributions. Yet at the same time as it began hedging its support for the GNLQ Project on new conditions on the basis of political calculations, the Québec Government continued to encourage Symbio’s existing investors to invest more funds and continue developing the GNLQ Project, while further dangling the possibility that the Québec Government would make larger investments in Symbio in the future.
69. The disappointing conduct of Québec’s political leadership was mirrored by the sudden disengagement from the Project after February 2020 by Québec’s economic development and investment agency, Investissement Québec, which after that month ceased communications with Symbio, without expressly signalling any decision against investing in the Project throughout the rest of 2020 or the first half of 2021.
70. In December 2020, Premier Legault publicly confirmed that the Québec Government would not invest in the GNLQ Project. This statement flatly contradicted the Government’s prior commitments and supportive statements, as well as actions undertaken by senior officials of the Québec Government – both before and indeed after December 2020 – which were clearly aimed at inducing Symbio to continue to invest. Québec officials cited as an excuse the fact that the GNLQ Project was currently undergoing a public hearing process as required by Québec law – a pre-existing and well-known fact that they had previously disregarded.

71. Despite such actions, over the course of 2020 and well into 2021, high-ranking Québec Government officials continued to voice support for the GNLQ Project in private, specifically encouraging Symbio to persist in its plans. Officials among other things conveyed that the Québec Government could invest in the GNLQ Project after the release of the public hearing report. GNLQ therefore pursued its investment, still expecting to be treated in a fair and equitable, non-discriminatory manner, in accordance with both domestic and international law. Unfortunately, the opposite proved true.

F. The Québec Government acted with manifest arbitrariness and exhibited gross procedural unfairness toward the GNLQ Project

1. GNLQ spared no effort in ensuring the environmental approval of the GNLQ Project

72. GNLQ had from the start sought to design and pursue its Project in accordance with the highest standards of environmental compliance. Environmental review of the GNLQ Project began in 2015 and required sustained engagement by Symbio over a six-year period, at the expense of tens of millions of dollars in up-front investment.

73. By the first quarter of 2021, all appeared to be proceeding as planned. The Environmental impact assessment and review procedure set forth in the *Environment Quality Act* (Q-2) (the **EQA**), was duly followed. As of March 2021, GNLQ had:

- Provided formal notice of the GNLQ Project to the MELCC in November 2015 (as required by section 31.2 of the EQA);
- Received a lengthy list of detailed instructions from the MELCC on the parameters of the required environmental assessment, in the form of a Directive that the MELCC issued in December 2015 (the **MELCC Directive**). As provided by section 31.3 of the EQA, “the Minister shall send to the project proponent, within a reasonable time prescribed by government regulation, a directive specifying the nature, scope and extent of the environmental impact assessment statement the proponent must prepare”. The MELCC Directive is therefore the official document that encompasses the elements that will be considered during the decision-making process;
- Submitted to the MELCC in January 2019 a complete and comprehensive environmental impact study covering all of the elements identified by the MELCC in the MELCC Directive (envisaged in section 31.3.1 of the EQA);

- Responded to two full rounds of technical questions from the MELCC, the first round of questions having been received in May 2019 and the second in November 2019 (in accordance with section 31.3.3 of the EQA);
- Received confirmation from the MELCC, on 3 February 2020, that the Minister considered that the environmental impact study satisfactorily dealt with the subjects it was required to address under the MELCC Directive and that the review process could proceed to public consultation after rendering it public (pursuant to sections 31.3.2 to 31.3.5 of the EQA);
- Successfully taken part in extensive public consultations, including a lengthy public consultation hearing before the Bureau d'audiences publiques sur l'environnement (**BAPE**) which led to the issuance by the BAPE of a report of its findings and analysis (pursuant to section 31.3.7 of the EQA); and
- Made a series of undertakings and rigorous commitments to mitigate the environmental impact of the GNLQ Project during the construction and operation phase in order to comply with various unprecedented requests of the MELCC throughout the environmental review process (pursuant to section 31.4 of the EQA).

74. Québec's legally mandated environmental review process, and more precisely the detailed MELCC Directive which specified the nature, scope and extent of the environmental impact assessment statement that needed to be prepared specifically for the GNLQ Project, gave rise to the reasonable and legitimate expectation on the part of GNLQ that it would know in advance the environmental criteria by which the Project would be assessed, that it would have a reasonable opportunity to plan its Project in such a manner as to fulfil those criteria, and that it would have its proposed project judged on such criteria in an evidence-based, non-discriminatory fashion. The EQA, by requiring the MELCC to issue its MELCC's Directive at the beginning of the decision-making process, mandates the MELCC to adopt a process that is both transparent and predictable. As a result, the MELCC Directive itself confirmed that the GNLQ Project would be assessed on the basis of standard environmental considerations, notably on potential impacts that both the construction and operation of the LNG facility might have on the local environment (*i.e.*, within the remit of provincial government jurisdiction). All of these expectations were consistent with the criteria and standards ordinarily applied by the MELCC to other projects, as well as fundamental principles of procedural fairness and rational public decision-making.

75. Unfortunately, through the improper intervention of Québec politicians at the highest levels, GNLQ saw this orderly legal process upended in favour of an arbitrary series of last-minute interventions, not foreseen in the usual regulatory approvals process, all aimed at supplying the government with motives to refuse the Project it no longer wished to approve despite the fact that GNLQ responded to every criterion listed in the MELCC Directive. This course of events ultimately resulted in Québec's manifestly arbitrary and unfair rejection of the Project.

2. GNLQ fully addressed the MELCC's questions over GHG emissions and belugas that the Québec Government communicated to GNLQ between December 2015 and March 2021

76. Relying in good faith upon the guidance set forth in the relevant MELCC Directive, GNLQ spent the 2014 to 2019 period collecting data, generating studies and developing a design for the GNLQ Project that would set a new global benchmark in environmental innovation. GNLQ consulted heavily with the local community and First Nations during this period, prompting a number of further environmental enhancements to the overall project design. Overall, the GNLQ Project design went far beyond what was required to demonstrate its compliance with the environmental conditions laid down by the MELCC in its Directive.

77. In January 2019, GNLQ submitted its main environmental impact study to the MELCC. The next step in this process was for the MELCC to review GNLQ's study and revert with a primary set of questions. In May 2019, in accordance with the pre-established process, the MELCC reverted to GNLQ with 139 follow-up questions. GNLQ duly responded to these questions, providing all required information. The next step was a follow-up set of questions by the MELCC in November 2019, to which GNLQ also duly responded in January 2020. The Minister next declared that the environmental impact study satisfactorily dealt with the environmental implications of the GNLQ Project as identified in the MELCC Directive and rendered it public. Pursuant to section 31.3.4 of the EQA, if the Minister considered at that point that the requirements the MELCC set out in its Directive had not been met by the proponent's impact assessment, the MELCC would have terminated the process. It did the opposite.

a) Pre-March 2021, MELCC's questions concerning GHG emissions were reasonable and consistent with its treatment of other comparable projects

78. The MELCC's first series of questions in May 2019 included three narrow questions relating to GHG emissions that sought additional and targeted information. GNLQ fully answered these questions in its replies of August 2019, while recalling that GNLQ had undertaken to make the GNLQ facility 100% carbon-neutral. In its second series of questions dated November 2019, the MELCC invited GNLQ to further elaborate on additional measures aimed at mitigating GHG emissions arising out of the GNLQ Project. GNLQ provided details responsive to this query in its replies of January 2020, reiterating its aim of making the GNLQ Project carbon-neutral, while providing additional details on tangible steps already underway to achieve this aim and the preferred means being further investigated. The Minister declared that the environmental impact study satisfactorily dealt with this subject and rendered it public pursuant to section 31.3.2 of the EQA.
79. After the public hearings and shortly after the BAPE report was issued, the MELCC issued a final series of questions that, following typical practice, included various commitments and conditions that the MELCC asked GNLQ to accept in order for the Project to be approved. The MELCC notably asked GNLQ to commit to submitting independently-verified annual reports of the GHG emissions generated during both the construction and the operation phases of the LNG facility. GNLQ undertook to provide the requested data regarding construction and operation.

b) Pre-March 2021, the MELCC's questions concerning the potential impact on beluga whales were reasonable and consistent with its treatment of other comparable projects

80. In its first series of questions in May 2019, the MELCC enquired into the possible risks (notably, risks of noise and of disturbance) that LNG tankers might pose to female and young belugas in the Saguenay and St. Lawrence Seaway. The MELCC enquired as to whether the LNG tankers that would be used might create an acoustic barrier that would be difficult for marine life to overcome. If such a risk did exist, the MELCC asked GNLQ to foresee mitigation measures, advising that these would be validated once the GNLQ Project reached an operational stage. The MELCC added that, until scientific knowledge

had progressed sufficiently as to allow it to reach any conclusions on the effects of tanker shipping on belugas, the Department of Forests, Wildlife and Parks (Ministère des Forêts, de la Faune et des Parcs, **MFFP**) would continue to support the identification of applicable prevention measures with relevant organisations and federal authorities. Thus, the MELCC confirmed that GNLQ should undertake to implement its planned measures to mitigate the impact of its activities on marine mammals, and to implement its monitoring programs in collaboration with the MFFP to measure the efficacy of such mitigation measures.

81. In its first series of replies in August 2019, GNLQ confirmed its awareness of the need to accommodate the presence of marine mammals in the Saguenay–St. Lawrence Marine Park and made a series of undertakings to meet MELCC’s concerns. GNLQ provided detailed explanations, data and measures regarding subaquatic noise during the construction phase of GNLQ Project, such as the choice of quieter subaquatic construction methods.
82. In its second series of questions and comments of November 2019, the MELCC considered these explanations, measures and data regarding the construction phase to be satisfactory. It also noted that, should the subaquatic noise threshold be exceeded, the Project proponent would have to modify its working methods.
83. In sum, GNLQ engaged in good faith throughout the MELCC’s environmental review on the basis of the criteria identified by the MELCC and the guidance set out in the MELCC Directive. For their part, both the MELCC and the MFFP signalled their openness to prevention and mitigation measures with regard to potential beluga whale-related impacts of the GNLQ Project, and clearly signalled that any potential risks the Project posed to beluga whales could be managed and addressed.

3. The BAPE commission conducted biased hearings which led to an equally biased Report, which nonetheless did not reject the GNLQ Project

84. On 3 February 2020, the MELCC notified GNLQ that its environmental impact study was admissible and could proceed to public consultations in accordance with the procedure laid down in Québec legislation. On 20 February 2020, Québec Environment Minister Benoit Charette instructed the BAPE to hold public consultations on the GNLQ Project pursuant to Section 31.3.5 of the EQA and to produce a report on its analysis and findings regarding

the GNLQ Project. Pursuant to Section 6.3 of the EQA, the function of the BAPE is to “inquire into any question relating to the quality of the environment submitted to it by the Minister and to make to him a report of its findings and of its analysis thereof”. However, BAPE reports do not bind the Environment Minister or the Québec Cabinet; they are for information and consideration.

85. After several COVID-19 pandemic-related delays, the BAPE officially launched its activities on 14 September 2020. GNLQ engaged extensively in the public consultation process, including its hearings. That process and its hearings, however, were marred by substantial failures of due process and resulted in a seriously compromised and biased final report (the **BAPE Report**).
86. At its in-person public hearings of September 2020, the BAPE spontaneously allowed two highly politicized environmentalists, who at the time were engaged in an active campaign against the GNLQ Project, to present alleged “expert” evidence without any prior notice and for several hours. Neither of them was appointed by the BAPE through its standard procedure. The BAPE did so despite the clear and obvious bias both witnesses had publicly demonstrated against the GNLQ Project by that time, including by making calls for a moratorium – which they had themselves described as “dropping a bomb” on the GNLQ Project – and by orchestrating a public campaign aimed at derailing the GNLQ Project.
87. The BAPE released its (non-binding) Report on 24 March 2021, in which it summarized a series of ambiguous and unsubstantiated allegations against the GNLQ Project based on things said by members of the public during the public hearings:
 - a. On the one hand, the BAPE Report repeated a range of speculative allegations concerning the alleged impacts the GNLQ Project might have on global GHG emissions. None of these allegations was based on evidence, nor did they reflect the scope of considerations the MELCC itself had raised in its own, science-based consideration of the Project. The BAPE Report simply ignored the independent expert analyses that GNLQ had adduced on the potential energy source displacement facilitated by the export of LNG.

- b. On the other hand, the BAPE Report relayed misleading conclusions regarding the alleged impact of the GNLQ Project on beluga whales, again based on no evidence. In fact, the BAPE ignored its own previous findings that additional ship movement linked to GNLQ's operations would amount to a negligible change in subaquatic noise, and referred instead to a vague and arbitrary threshold of not imposing any additional "stress" on belugas, based on the personal comments made by the same two biased witnesses who had vastly overstated the anticipated ship traffic and were mischaracterised as "Government experts" (they clearly were not). Further, the BAPE disregarded evidence confirming the negligible risk posed to belugas by the GNLQ Project, as well as GNLQ's proposed mitigation and monitoring measures.
88. In its final conclusions, the BAPE recognized that there were many proponents both for and against the GNLQ Project, and stated that it could not reach any conclusions about the overall social acceptability of the GNLQ Project.
89. Unusually in light of its past practice, the BAPE Report failed to reach any overall conclusion either for or against the GNLQ Project.

4. The Québec Government unexpectedly and arbitrarily moved the goalposts at the end of the environmental review and approval process in March 2021

90. After over five years of intensive engagement by GNLQ in the MELCC environmental review and approval stages, by March 2021, GNLQ had reached the end of the process and was ready to turn to the Québec cabinet for its final decision.
91. Up until this point, GNLQ had proceeded on the good faith understanding that the MELCC Directive encompassed the elements and criteria that were relevant and applicable to the Project and that the Cabinet does not enjoy an absolute or unfettered discretion to exercise its statutory powers however it chooses and for whatever reason – no matter how arbitrary, discriminatory or politically-motivated. GNLQ held and relied upon the legitimate expectation that the Cabinet would exercise its statutory discretion among other things in good faith, fairly, with a rational appreciation of the object, purpose and intent of the statute

governing the environmental review process, consistently with its previous practice, and certainly not to achieve improper ends.³⁰

92. Unfortunately, at this late stage of the process, Québec’s highest political levels turned the process on its head, introduced new criteria and ultimately reached an arbitrary and discriminatory conclusion, ignoring available evidence, in cavalier disregard of procedural fairness and the rule of law, including the international law applicable in this case.

a) Québec Environment Minister Benoit Charette unexpectedly and completely rewrote the rules governing the environmental review and approval of the GNLQ Project after the release of the BAPE Report

93. On 24 March 2021, the same day as the issuance of the BAPE Report, Québec Environment Minister Benoit Charette held a press conference in which he suddenly announced that the Québec Cabinet would *only* approve the GNLQ Project if it met three “core criteria”, namely: (i) that the Project made a “positive net contribution” to *global* GHG emissions reductions; (ii) that the Project “promoted energy transition”; and (iii) that the Project achieved “social acceptability”.³¹
94. The first two “core criteria” that from then on conditioned the Québec Cabinet’s acceptance of the GNLQ Project had never before been formulated by the MELCC in the public process set out under Québec law, as set in motion in December 2015. These two new “core criteria” are discriminatory since they had never been applied to the environmental assessment of any other project(s) in Québec before, nor have they been applied since.
95. Suddenly put to the task of compliance with these newly-invented-and-imposed, vaguely-worded criteria, GNLQ officials sought clarifications from Environment Minister Charette and his staff after the latter had proposed a call. Yet the Minister and his own staff were

³⁰ *Roncarelli v. Duplessis*, 1959 S.C.R. 121, pp. 140-141 and 143, **Exh. CL-4**; and *Canada (Ministre de la Citoyenneté et de l’Immigration) c. Vavilov*, [2019] 4 R.C.S. 653, paras. 129-131, **Exh. CL-5**.

³¹ Assemblée Nationale du Québec, « Point de presse de M. Benoit Charette, ministre de l’Environnement et de la Lutte contre les changements climatiques », 24 March 2021, **Exh. C-31**. Minister Charette said: “[i]n fact, we have posed three very clear conditions that are maintained to this day, social acceptability, promoting energy transition and, ultimately, contributing to the global reduction of GHG emissions.” (French original : « En fait, on a posé trois conditions très claires qui sont maintenues encore à ce jour, acceptabilité sociale, favoriser la transition énergétique et, ultimement, contribuer aux diminutions mondiales des gaz à effet de serre. »)

unable to provide any guidance, admitting that they themselves had no idea how one might comply with these newly-stated “core criteria”, and that they were unwilling to provide direction. The technical lead analyst at the MELCC was equally unable and unwilling to provide any direction. In effect, the MELCC proceeded in a totally non-transparent fashion, and rendered the process fundamentally procedurally unfair since it became obvious that these criteria were invented haphazardly, at the last minute, and specifically to hinder the Project’s approval.

b) Post-March 2021 MELCC concerns over GHG emissions were unrecognisable, draconian and arbitrary

96. On 26 April 2021, one month after Minister Charette’s press conference on the BAPE Report, the MELCC issued a final series of follow-up questions to GNLQ. At this advanced stage of an environmental review process, the MELCC typically puts forward only final, technical questions arising out of well-considered issues mentioned in the MELCC Directive and linked to prior exchanges between MELCC specialists and the project proponent. Instead, in this case the MELCC tacked on the end of its technical questions a few brief, vaguely-worded queries relating to the newly-announced “core criteria”. In this way, the MELCC disregarded its own Directive and sought at the eleventh hour to integrate and legitimise Minister Charette’s newly-revealed “core criteria” into its legally-mandated environmental review process.
97. Notwithstanding the lack of sufficient notice or reasonable guidance from either the Minister or the MELCC, GNLQ managed to produce in June 2021 a significant evidence-backed expert study that was aimed at responding to its understanding of the questions raised by: (i) providing detailed and comprehensive replies to the MELCC’s late-stated questions; (ii) demonstrating the Project’s contribution to reductions of global GHG emissions; (iii) substantiating the Project’s contribution to the worldwide transition to cleaner energy; and (iv) addressing the MELCC’s alleged preoccupation with energy “lock-in”. GNLQ’s response was accompanied by a nearly 100-page Annex report, itself accompanied by two comprehensive studies that GNLQ commissioned from experts specifically to address MELCC’s late-stated questions.

98. Based upon the reports submitted by GNLQ in June 2021, the MELCC’s own specialist on GHG emissions and climate change impacts concluded that GNLQ had adequately responded to the newly-stated and late-announced GHG criteria. The MELCC’s specialist on climate change went so far as to specifically conclude that:

« En somme, nous considérons que le projet n’est pas incompatible avec les objectifs de réduction de [gaz à effet de serre] du Québec ni avec les exigences de réduction de [gaz à effet de serre] établies dans l’Accord de Paris. »³²

99. Faced with such unambiguous, science-backed conclusions, the MELCC simply chose to ignore its own experts and pursue its political agenda. In its final report to the Québec Cabinet of 30 June 2021, the MELCC stated that it was not in a position to conclude that the GNLQ Project was environmentally acceptable.

c) Post-March 2021 MELCC concerns over belugas were drastic and intransigent

100. The Québec Government matched its cavalier assessment of GHG issues with equally arbitrary conclusions regarding the impact of the GNLQ Project on beluga whales. Throughout the environmental review process, the MELCC had consistently signalled that it accepted and was satisfied by the science-based and rigorous mitigation measures that GNLQ proposed. Despite this, in March 2021 the MELCC radically and unexpectedly changed its approach to the risk posed to belugas by subaquatic noise and the related threshold for acceptable risks to belugas.
101. For the first time, in March 2021 the MELCC suddenly inquired as to whether GNLQ could operate the GNLQ Project in a way that avoided generating *any* additional subaquatic noise in the Saguenay fjord between April and October each year. Essentially, this amounted to a zero-tolerance approach to maritime traffic. Consistent with this radical approach, in its final environmental analysis report the MELCC took the position that the *only* effective

³² See Avis des experts - Recueil des avis issus de la consultation auprès des ministères et organismes, Complexe de liquéfaction de gaz naturel à Saguenay - Projet Énergie Saguenay, Dossier 3211-10-021, 8-17 juin 2021 (Doc. No. PR9.3), p. 48, **Exh. C-32**. (Translation to English from French original: “[i]n sum, we consider that the project is not incompatible with Québec’s GHG emission reduction objectives or with the GHG emission reduction requirements set out in the Paris Agreement”).

measure to counter risks posed to belugas by subaquatic noise was “avoidance”, *i.e.*, preventing the navigation of *any* LNG tanker for seven out of twelve months each year.

102. The MELCC’s newly-espoused requirement of not generating *any* additional subaquatic noise in the Saguenay fjord between April and October each year would prevent LNG tankers from navigating through the Saguenay fjord during seven months out of any given year. This would have made the GNLQ Project financially unsustainable, in addition to generating multiple highly complex technical problems for the LNG plant, linked to suspending operations for seven out of twelve months each year. In essence, the new zero-noise threshold made it *de facto* impossible for the GNLQ Project to secure the MELCC’s approval.
103. As the main basis for its sudden adoption of an intransigent zero-noise approach in relation to belugas, the MELCC for the first time cited a new scientific study which itself cited new, previously undisclosed, preliminary and non-peer-reviewed data. The authors of the study were precisely the same biased intervenors that the BAPE had mischaracterized as “Québec Government experts”. In plain disregard of fairness and due process, GNLQ was never granted the opportunity to comment upon this new scientific study or analyse its data or findings.
104. The MELCC’s sudden zero-noise threshold with regard to subaquatic noise risks posed by LNG tankers to belugas was another of the principal bases that the MELCC formulated in refusing to approve the GNLQ Project. This entirely new threshold, as well as its previously undisclosed underpinnings, simply ignored all discussions on the topic that had taken place between GNLQ and the MELCC over the prior two and a half years.
105. The espousal of an entirely new and absolutist “zero-noise” threshold was essentially pre-ordained and politically motivated to selectively target the GNLQ Project. Just a few weeks after rejecting the GNLQ Project on this alleged basis, the Québec Government and the Canadian Federal Government jointly invested Can\$ 66 million in the construction of a mechanised transport conveyor system at the Grande-Anse terminal. This government-funded conveyor belt was expected to increase industrial shipping on the Saguenay River in order to transport mining products, in direct contradiction of the “zero-noise” threshold.

In his first public statement in Saguenay after the rejection of the GNLQ Project, Premier Legault said that such funding would improve the competitiveness of marine transportation in Québec and stimulate investment in the region.

106. The pretextual and discriminatory nature of this suddenly-adopted and selectively-applied zero-noise threshold was further evidenced by subsequent statements made by Premier Legault in May 2022. Premier Legault stressed that all industrial projects were welcome in the Saguenay. When asked about the refusal of the GNLQ Project, the Premier dismissed the notion that increased tanker traffic on the Saguenay River was the reason for the Québec Government's rejection of the GNLQ project. He explained that:

« Je ne pense pas que c'était la raison essentielle. La raison essentielle, c'est que c'est du gaz, d'abord du gaz qui n'est même pas fabriqué au Québec, qui vient de l'Ouest Canadien, qu'on n'a pas besoin vraiment ici au Québec, donc qu'il faudrait envoyer par bateau éventuellement en Europe. Donc je ne pense pas qu'on puisse associer le refus de GNL avec le fait qu'on va continuer de regarder des projets pour le port de Saguenay. »³³

107. Presumably to avoid the criticism that the Québec Government might not support more economic development projects on the Saguenay River, Premier Legault expressed his support for *other* industrial projects in the region (which would inevitably and substantially increase tanker traffic and, therefore, resulting noise on the river).³⁴ This reinforced the conclusion that the new criteria only applied to GNLQ and had been invented to allow for

³³ See Radio Station CKYK-FM 95.7, "Le show du matin" (radio interview of 19 May 2022), **Exh. C-33**. (Translation to English from French audio recording: "I don't think that [increased tanker traffic] was the main reason. The main reason is that it is natural gas, natural gas that is not even produced in Québec, that comes from Western Canada, that we don't really need here in Québec, and that we would eventually need to send by boat to Europe. So, I don't think we can link the rejection of GNL with the fact that we would continue to look at projects for the Port of Saguenay.")

³⁴ See Radio Station CKYK-FM 95.7, "Le show du matin" (radio interview of 19 May 2022), **Exh. C-33**. Premier Legault stated that: « Non, moi, écoutez, je suis toujours pour l'équilibre. On a annoncé d'ailleurs des investissements au port, et ici. Il y a des projets comme Black Rock. C'est complexe, à cause de l'actionariat et des anciens actionnaires mais moi je crois dans ce projet-là. Puis, tous les projets industriels sont bienvenus ». (Translation to English from French transcript: "I am always for balance. Besides, we have announced investments at the port and here, there are projects like Blackrock. It is complex with all the shareholding issues and the former shareholders, but I believe in this project. All industrial projects are welcome.")

the targeted rejection of the GNLQ Project on political, rather than environmental, science-based, considerations.

d) The MELCC's concerns over social acceptability arose only at the 11th hour and were arbitrary and discriminatory

108. The arbitrary and discriminatory conduct of Québec's environmental review process was also demonstrated by the irrational and inconsistent interpretation and application of the requirement of "social acceptability" to the GNLQ Project. During the first phase of the environmental review process, the MELCC had not sent to GNLQ a single written question concerning the Project's social acceptability. This concept only rose to prominence in Québec's environmental review process on 24 March 2021, when Québec Environment Minister Benoit Charette suddenly made it one of the three "core criteria" of the Québec Government's decision-making process on the GNLQ Project, without providing any details as to how to measure or establish the existence or lack of social acceptability.
109. Contrary to the Québec Government's public posturing, senior officials had consistently indicated to GNLQ that the Government's views on social acceptability were linked to the Project's support in the Saguenay region, and not across the entire Province. The same senior officials were consistently pleased that opinion polls conducted in the Saguenay region showed strong community support for the GNLQ Project.
110. In its last-minute set of questions from April 2021, the MELCC did not actually ask about the GNLQ Project's social acceptability as such. Rather, it suddenly asked – without any prior notice or indication – whether GNLQ had made any *changes* to the GNLQ Project with regard to social acceptability following the BAPE's public hearings and the BAPE Report conveying the hostility of certain members of the public toward the GNLQ Project.
111. In its final series of replies in June 2021, GNLQ provided the MELCC with a detailed and comprehensive reply on social acceptability that covered all points raised by members of the public who came forward during the BAPE hearings to express concerns about the Project. GNLQ also provided the MELCC with copies of declarations by multiple local municipalities that had formally declared their support for the GNLQ Project and its social acceptability.

112. In its final report to the Québec Cabinet of 30 June 2021, the MELCC merely echoed the BAPE Report’s alleged inability to reach any conclusion on the social acceptability of the GNLQ Project and ignored GNLQ’s evidence and data. This conclusion was purely arbitrary and at odds with Québec’s previous practice in determining the social acceptability of other large projects. In essence, it selectively transformed the “social acceptability” criterion from a rational, evidence-based requirement into a *carte blanche* within which all sorts of political intents and purposes could be disguised at the end of the process without any possibility for the proponent to reply or respond.

e) The Québec Cabinet refused to authorise the GNLQ Project in July 2021 on manifestly arbitrary and discriminatory grounds

113. In a Cabinet Decision of 21 July 2021 (released to the public only in mid-August 2021), the Québec Government refused to authorise the GNLQ Project. The Cabinet Decision was based almost exclusively on criteria that were not listed in the MELCC Directive, that had never been imposed on another proponent before July 2021, and without any specific reason explaining the Decision’s departure from precedent.

114. In its Decision, the Québec Government cited GNLQ’s alleged failure to address the last-minute, unprecedented “core criteria” of the Project’s projected contribution to global GHG emissions and to the energy transition towards cleaner fuels, as the primary reasons for rejecting the GNLQ Project. This was notwithstanding the evidence and the conclusions from MELCC’s own climate change experts demonstrating the Project’s compliance even with these late-announced criteria, and the Québec Government’s own support for LNG as an effective transitional energy supply and key contributor to the transition towards greener energy. Just one day before rejecting the GNLQ Project, for example, Québec’s Minister of Energy and Natural Resources announced new public funding to extend the province’s natural gas pipeline system and declared that: « [l]e gaz naturel est une énergie de transition profitable pour le Québec ».³⁵

³⁵ Gouvernement du Québec, « Prolongement du réseau de distribution de gaz naturel – Québec investit plus de 1 M\$ pour le développement économique en Montérégie », 20 juillet 2021, **Exh. C-34** (Translation to English from French original: “Natural gas is a profitable transitional energy for Québec”).

115. In its Cabinet Decision, the Québec Government further cited the potential impact on belugas as one of the main reasons for refusing to authorise the GNLQ Project. This was despite Premier Legault’s public admission many months later that the addition of new tanker traffic on the Saguenay was not what drove the rejection of GNLQ, and his government’s continued openness to projects that would result in increased ship traffic in the Saguenay.³⁶
116. In its Cabinet Decision, the Québec Government also cited the uncertainty surrounding the GNLQ Project’s social acceptability as one of the main reasons for refusing to authorise the GNLQ Project. That is despite the fact that this “core criterion” did not even appear in the MELCC’s press release announcing the Cabinet Decision. On the contrary, during his press conference of 21 July 2021 on the Cabinet Decision, Québec Environment Minister Charette admitted that the Cabinet did not even evaluate social acceptability because the first two conditions had allegedly not been met.

G. The Québec Government also acted with manifest arbitrariness and exhibited gross procedural unfairness toward the Gazoduq Project

117. With regard to the Gazoduq Project, since July 2021, and despite its prior efforts to coordinate and consolidate that Project’s provincial and federal environmental assessment and impact assessment processes, the Québec Government has mirrored the arbitrary and discriminatory conduct it meted out to GNLQ. This is even though the environmental impact assessment for the Gazoduq Project is still formally ongoing. Notably, in a press conference held in July 2021, Minister for Environment Benoît Charette stated that the Gazoduq Project “died” together with GNLQ, and that there would not be a second BAPE procedure to evaluate the Gazoduq Project.³⁷

³⁶ See Radio Station CKYK-FM 95.7, “Le show du matin” (radio interview of 19 May 2022), **Exh. C-33**.

³⁷ See Radio-Canada, « Rejet de GNL Québec: il n’y aura pas de BAPE sur le projet de Gazoduq », 21 July 2021, **Exh. C-35**. Minister Charette stated that: « sans usine de liquéfaction, il n’y aura pas de gazoduc, donc on peut conclure qu’il n’y aura pas de second BAPE pour évaluer le projet de gazoduc qui meurt avec le projet d’usine de liquéfaction ». (Translation to English from French original: “[w]ithout an LNG facility, there will be no pipeline, so we can conclude that there will be no second BAPE to assess the Gazoduq project, which dies together with the LNG plant project”.)

118. Minister Charette’s arbitrary intervention was taken in manifest disregard of fundamental requirements of due process and the rule of law. Neither Symbio nor Gazoduq were able to present their views or defend their interests against this impromptu statement. The Government of Québec offered no reasoning whatsoever to support this summarily announced effective dismissal of the Gazoduq Project, in violation of both Québec and federal environmental procedure and fundamental standards of procedural justice. In effect, Minister Charette’s announcement confirmed that Québec’s intention had effectively been to kill the entirety of Symbio’s investments in Canada, for reasons of political expediency unrelated to any legitimate public purpose.

H. The Federal Government of Canada also acted with manifest arbitrariness and exhibited gross procedural unfairness toward the GNLQ Project

119. Following the Cabinet Decision of the Québec Government, it was for the Federal Government of Canada to determine whether the GNLQ Project should be approved, in accordance with the criteria and procedures set out in federal law. GNLQ engaged in that process in good faith, in the reasonable expectation that it would be treated fairly, equitably, in a non-discriminatory fashion, on the basis of precedents as well as an evidence-based review of its application that would comply with fundamental requirements of due process. Ultimately, hard on the heels of Québec’s Cabinet Decision of 21 July 2021, Canada’s governing Liberal Party altogether overturned these legitimate expectations for reasons of its own political expediency.

120. On 14 September 2021, in the midst of a snap federal election campaign, a spokesperson for the governing Liberal Party of Canada took the public position that the GNLQ Project “will not see the light of day”, even though the Government’s environmental assessment process on the GNLQ Project was still pending at that time. The spokesperson for the Liberal Party of Canada was quoted as saying:

« Le Parti libéral du Canada est d'accord avec le gouvernement du Québec et n'appuie pas ce projet. Il est clair pour nous qu'il ne verra pas le jour ». ³⁸

121. Therefore, the federal rejection of the GNLQ Project was a foregone conclusion at least as early as September 2021. Aware of the Québec Government's political disapproval of the GNLQ Project, the Federal Liberal Party did not want to run the political risk of contradicting Québec over such a major infrastructure project at a critical juncture in its electoral campaign. It thus unfairly and arbitrarily pre-empted the outcome of the Federal Government's independent environmental review process within a few weeks of the Québec Cabinet's Decision being released to the public. The Liberal Party went on to be returned to power, as a minority government, in the ensuing October 2021 federal election.
122. On 7 February 2022, the Minister of Environment and Climate Change Canada released its Decision Statement that refused to authorize the GNLQ Project (the **Decision Statement**). The decision was made in reference to the environmental assessment report produced by the Impact Assessment Agency of Canada (the **IAAC Report**). The formal decision issued in February 2022 simply rendered concrete what was already a *fait accompli*, further to the Liberal Party policy announcement of September 2021. Multiple substantive and procedural deficiencies in both the Decision Statement and the underlying IAAC Report evidence the foreordained nature of the environmental assessment outcome by the Federal Government. These deficiencies are especially glaring with regard to:
- (i) the IAAC Report's conclusion that the GNLQ Project would have significant adverse effects on GHG emissions, a conclusion that was based on no evidence whatsoever; contradicted the conclusions reached by MELCC's expert on climate change; and disregarded the GHG emission mitigation undertakings and carbon-neutrality plans that GNLQ had already put forward; and

³⁸ @AShields_Devoir, Twitter account of Alexandre Shields (journalist at Le Devoir), tweet dated 14 September 2021, **Exh. C-36** (English translation from French original: "The Liberal Party of Canada agrees with the Québec Government and does not support this project. It is clear to us that it will not see the light of day").

- (ii) the IAAC Report’s conclusion that the increase in maritime traffic by the GNLQ Project “would cause significant adverse environmental effects on the cultural heritage of the Innu First Nations, given the disturbance of marine mammals that would be caused by the tankers”.³⁹ The IAAC Report failed to explain how a marginal increase in shipping traffic with no discernible impact on belugas could have any impact on First Nations’ cultural heritage.
123. The manifestly arbitrary character of the Government of Canada’s Decision Statement is made manifest when contrasted with Canada’s complete disregard, in respect of other projects both before and after its Decision Statement, for the very considerations at the heart of the IAAC Report.
124. The IAAC Report’s conclusions notably flatly contradicted the IAAC’s previous findings of October 2018, when assessing the environmental impact of another project developed just a few kilometres away from GNLQ’s site on the opposite shore of the Saguenay: the North Shore Terminal. Tellingly, in its 2018 Environmental Assessment Report, Canada found that the North Shore Terminal caused “no significant adverse direct or cumulative impacts” on the beluga population or on the cultural heritage of the Innu First Nations, *notwithstanding* the Terminal’s potential to add 140 new ships per year to the Saguenay River. Canada reached these conclusions after expressly taking into account the *cumulative* impact of other proposed projects on the Saguenay, including the maximum projected ship traffic per year of GNLQ (which was, at the time, estimated at 200 roundtrip ship transits per year).
125. In 2015, Canada had also approved the Shell-sponsored LNG Canada Export Terminal Project, despite that project’s anticipated addition of more than 4 million tonnes of estimated annual GHG emissions to Canada’s overall emissions load. Canada did not even bother to assess the lifecycle GHG emissions of that project, despite the Federal Government’s confirmation in June 2019 that it would provide Can\$ 275 million of federal

³⁹ Impact Assessment Agency of Canada, *Energie Saguenay Project – Environmental Assessment Report*, November 2021, p. 133, **Exh. C-37**.

support to the Terminal Project citing the project's potential to help the world build a low-carbon energy future.

126. Canadian Ministers and officials continued touting the LNG Canada Project's environmental attributes to Europeans and Asian Governments in 2022 (stressing its low GHG emissions profile) despite LNG Canada's significantly larger environmental footprint and GHG emissions impacts than GNLQ both on an absolute basis and on a per-unit basis.
127. Further, during a "Canada-Germany Natural Gas And LNG Workshop" convened in January 2022, officials from Natural Resources Canada presented a video to representatives of the German Government setting out the compelling competitive and environmental merits of sourcing LNG from Eastern Canada. GNLQ was the only advanced LNG project in Eastern Canada undergoing the environmental assessment process at the time. GNLQ's permits were nonetheless targeted for rejection by the Government of Canada less than two weeks later.
128. In April 2022, the Government of Canada also approved the Bay Du Nord Offshore Oil Project, having identified no significant adverse environmental impacts from this project, notwithstanding the fact that it projected significant GHG emissions and potential material impacts on endangered and culturally important marine mammals and fish species, and without considering the role of the drilled oil to transitioning towards cleaner energy. The approval included no apparent limit on the maximum allowable oil production by the project owners. The proponent was even praised by Canada's Minister of Environment and Climate Change for agreeing to a requirement for its oil drilling project to reach net-zero emissions by 2050 – despite the project proponent's failure to provide any detailed plan for achieving that target.
129. By contrast, GNLQ's GHG emission mitigation efforts – including an unprecedented commitment to net-zero GHG emissions throughout construction of the LNG facility and the LNG facility's entire operating life – were disregarded in Canada's decision to refuse the GNLQ Project on the spurious grounds that GHG emissions cause environmental effects on a global scale and that the Project might impact on the achievement of Québec's

and Canada's GHG emission and climate change objectives.⁴⁰ This conclusion was predicated on Canada's insistence on considering the global impact of the GNLQ Project and its potential detrimental impact on international energy transition, an approach which flatly contradicted Canada's own finding that "the potential international impact of substituting other energy sources with natural gas ... is beyond the scope of the environmental assessment of the Project".

130. At no point did Canada consider "GHG emissions on a global scale" or "the potential international impact of substituting other energy sources" in the case of the Shell-sponsored LNG Canada Export Terminal Project or in the case of the Equinor-sponsored Bay Du Nord Offshore Oil Project (contrary to how it singled out the GNLQ Project). The application of these criteria solely to the GNLQ Project is manifestly discriminatory.

I. The Government of Québec and the Government of Canada have applied double standards to the GNLQ Project and other industrial projects in like circumstances

131. The manifestly arbitrary character of the political decisions that led to the demise of the GNLQ and Gazoduq Projects is further demonstrated by the Québec Government and the Government of Canada's application of entirely different standards and decision-making processes to other investment projects in like circumstances, both with respect to GHG emissions (1) and the potential impact of such projects to the beluga whale population arising from maritime traffic (2).

1. Double standards over the impact of investment projects in like circumstances with regard to GHG emissions

132. Despite having refused to authorise the GNLQ Project allegedly on the basis of GNLQ's purported inability to demonstrate the Project's contribution to *worldwide* reductions in GHG emissions, or of a concern about supposed "lock-in" effects of promoting new LNG projects on the transition to cleaner energy, for years the Québec Government and the Government of Canada have touted LNG as an effective transitional energy supply and as a key contributor to the transition towards greener energy. This support has translated into

⁴⁰ Impact Assessment Agency of Canada, *Energie Saguenay Project – Environmental Assessment Report*, November 2021, pp. 43, 49, **Exh. C-37**.

provincial and federal authorisation of projects whose circumstances are similar to those of the GNLQ Project, but that are owned either by Canadian (notably, Québécois) entities, and in certain cases by owners from other jurisdictions. Additionally, multiple senior Federal Ministers and officials have confirmed on numerous occasions that LNG is part of energy transition, that LNG exports would replace high GHG-emitting energy sources such as coal, and that they were supportive of providing LNG from Canada's East Coast to Europe.

133. To give but a few examples, in April 2019, the Québec Government issued a decree authorising the construction and operation of a vanadium processing facility operated by Blackrock Metals (**Blackrock**) at the Port of Saguenay, within a few kilometres of the GNLQ Project site. The Québec Government authorised this project despite the MELCC's finding that the project would emit 395,000 tonnes of GHG emissions annually during operation. Blackrock made no commitment to offset its 395,000 tons of annual GHG emissions. Nevertheless, the MELCC applauded Blackrock's efforts to reduce GHG emissions which would otherwise have reached a least 731,000 tons per year. Blackrock did not complete a lifecycle assessment of its products' impact on global GHG emissions. This in spite of the fact that: (i) the core demand for vanadium comes from GHG-emissive industries such as aerospace, automotive and building materials; and (ii) Blackrock proposed to sell an additional 135,000 tons per year of titanium slag to China. The MELCC did not analyse the global GHG emissions impact of these slag sales. By contrast, the MELCC shortly thereafter ignored GNLQ's efforts to reduce the typical 4 million tons of GHG emissions associated with an LNG export facility of comparable size by nearly 90 percent, coupled with GNLQ's commitment to achieving carbon-neutrality during its construction and operations.
134. In June 2019, the Québec Government approved the Corporation Internationale d'Avitaillement de Montréal (**CIAM**)'s proposed project to build an airport oil fuel supply terminal, an oil marine terminal and a new oil pipeline in Montreal. The BAPE expressly refused to consider the project's carbon lock-in risk or its lifecycle impact on global GHG emissions, notably in light of the resulting air travel both in Québec and globally, on the grounds that it extended far beyond the scope of its mandate. The MELCC, for its part,

did not assess the project's potential to contribute to millions of tons of GHG emissions annually, did not evaluate the impacts of increased oil tanker traffic on beluga whales, and did not consult with any indigenous communities before determining that the project was environmentally acceptable.

2. Double standards over the impact of investment projects in like circumstances with regard to their potential impact on beluga whales

135. The Québec Government and the Government of Canada's apparent concern for the GNLQ Project's alleged impact on belugas also ran counter to these Governments' support for other projects that had substantively similar or greater impacts. In relation to such other projects, the Québec Government and the Government of Canada either failed to consider these impacts altogether, or disregarded them if they were raised.
136. For example, the Québec Government authorised Arianne Phosphate's apatite mine project located at Lac à Paul in December 2015. The MELCC's environmental analysis report completely disregarded how the project's apatite concentrate product would be shipped to customers. Beluga whales were not even mentioned in the MELCC's environmental analysis report.
137. The Québec Government also authorised Blackrock's vanadium processing facility project in April 2019 further to the MELCC's finding that Blackrock's shipping impacts on beluga whales were deemed acceptable, in the absence of any specified Blackrock mitigation measures and on the basis of a mere commitment to generate such (unspecified) measures at some point in the future.
138. Still further, less than a month after reaching its decision to reject the GNLQ Project, the Government of Canada joined the Québec Government in each providing Can\$ 33 million of funding in new port infrastructure at the Port of Saguenay intended to increase ship traffic within the critical habitat of the beluga whales inside the Saguenay–St. Lawrence Marine Park.
139. The discriminatory nature of the "zero-noise" threshold that was applied against the GNLQ Project is further demonstrated by the fact that Canada has invested, promoted or

subsidised numerous large industrial projects that will increase maritime traffic in the beluga whales' habitat without seeking to quantify the accompanying subaquatic noise and without purporting to apply a "zero-noise" threshold. To give but a simple example, as recently as 2021, Canada committed hundreds of millions of dollars in funding to the Contrecoeur Port Terminal Expansion Project, while the Québec Government provided a Can\$ 55 million grant to the project, without even waiting for the outcome of the environmental assessment process in connection with that Project. In March 2021, the Canadian Environment Minister approved the Contrecoeur Port Terminal Expansion Project proposed by the Montreal Port Authority without the IAAC having conducted any assessment of potential impacts on beluga whales. This was despite the fact that the Contrecoeur Terminal will add more than one hundred industrial ship round-trip journeys passing through the beluga whales' habitat every year. At no point did the IAAC: (i) apply a "zero-noise" threshold on the river (as it did for the GNLQ Project); (ii) impose any restrictions upon shipping (as it did for the GNLQ Project); (iii) assess any effects resulting from beluga-related impacts on the cultural heritage of First Nations (as it did for the GNLQ Project); or (iv) ask the Montreal Port Authority to take project-specific measures to mitigate potential impacts on marine mammals.

140. The obvious double standards applied between the GNLQ and Gazoduq Projects, on the one hand, and other industrial projects operating in like circumstances in the same region, on the other hand, further confirm that the rejection of the GNLQ and Gazoduq Projects were politically-driven decisions that were taken in bad faith, for reasons entirely unrelated to genuine environmental considerations.

J. Subsequent discussions with Québec and Canadian Government officials confirmed that the Projects' refusal was entirely unrelated to genuine environmental considerations

141. What Symbio suspected to be arbitrary political decisions at the time was confirmed in the months that followed the rejection by first the Québec, and then the Canadian Federal Government.
142. Following the tragic events in Ukraine which intensified the need for LNG supply to Europe, Symbio approached the Government of Québec and the Federal Government of

Canada in an attempt to revive the Projects, engaging in candid discussions with senior government representations. In the course of these discussions, senior Québec and Canadian officials frankly admitted that the initial decisions at both the provincial and the federal levels had nothing to do with the environment, and were simply taken for arbitrary reasons of political expediency.

143. Notably, in the course of separate discussions held with Symbio representatives in March, April and May 2022, multiple high-ranking officials from the Québec and Canadian Federal Governments (including a senior advisor to Québec Premier Legault, a Québec Minister in Premier Legault’s administration and senior officials at Natural Resources Canada) separately confirmed Symbio’s suspicions that, in line with the substance of the Liberal Party of Canada’s 2021 campaign pledge, the July 2021 and February 2022 refusals were “purely political” as the GNLQ Project raised no material environmental concerns.
144. Tellingly, in one of these discussions the senior advisor to Québec Premier Legault confirmed point-blank that it was easier for the Québec Government to hide behind environmental reasons as grounds for rejecting the GNLQ Project than to take political heat for approving it in advance of an upcoming provincial election. Over the course of many discussions that took place in 2022, senior Québec political officials affirmed that Premier Legault was supportive of reviving the GNLQ Project – and that he went so far as telling a European Head of State in August 2022 that the Québec Government would support the GNLQ Project if the Government of Canada would support it – but only after the election of October 2022.
145. Senior officials at Natural Resources Canada for their part confirmed that: (i) the Federal Government’s position regarding the GNLQ Project had changed completely following the Québec Government’s Cabinet Decision of 21 July 2021 refusing to authorise the GNLQ Project; and (ii) neither GHG emissions nor the subaquatic noise impacts on beluga whales were material to the Government of Canada’s decision to refuse to approve the GNLQ Project.
146. Indeed, over the course of 2022, notwithstanding their official position, Federal officials, echoing the position of Québec officials, recognized that the Projects would: (i) allow

Canada to assist its European allies by providing an alternative to Russian LNG; (ii) provide extensive economic benefits to Canada; and (iii) be a flagship project for the transition away from more carbon-polluting energy sources. Senior Québec officials and European officials confirmed that, given these acknowledged benefits, several Federal Ministers were in favour of fast-tracking the Projects.

147. For their part, over the course of 2022 senior politicians and senior civil servants in Europe made extensive representations to their counterparts both in Québec and in Ottawa confirming their strong interest in obtaining supply from the Projects, because they would displace the use of more polluting sources of energy and diversify their energy sources. These senior European government officials even offered hundreds of millions of dollars in financial support to ensure the Projects were realised. These expressions of interest in GNLQ's competitive, low-emission LNG were further validated by European energy companies signing long-term offtake agreements with GNLQ in 2022.
148. Ultimately, all of these promising developments came to naught. Canada's federal and the Québec provincial governments each refused to take the lead in publicly supporting the Projects. The outcome was an enormous failure of environmental, political, economic and global leadership on the part of both the federal and provincial Governments. Regardless, exchanges over 2022 confirmed the manifestly arbitrary and discriminatory nature of the initial federal and provincial refusals.

V. CANADA HAS BREACHED ITS OBLIGATIONS UNDER NAFTA CHAPTER ELEVEN

A. Canada has breached NAFTA Article 1105(1)

149. NAFTA Article 1105(1) requires Canada to “accord to investments of investors of another Party treatment in accordance with international law, including fair and equitable treatment and full protection and security”. The Québec Government and the Government of Canada's decisions to refuse to authorise the GNLQ Project – and, by extension, the Gazoduq Project – were tainted by gross procedural unfairness and manifest arbitrariness, in violation of NAFTA Article 1105(1).

150. At the provincial level, GNLQ engaged in Québec’s environmental review and approval process in good faith, securing substantial expertise, collecting extensive evidence and devoting enormous resources over the 2014-2021 period in order to ensure and demonstrate its compliance with relevant environmental standards. GNLQ followed in good faith the express directions given by the MELCC issued in December 2015. GNLQ responded fulsomely to two full rounds of detailed technical questions by the MELCC concerning the project, as well as to a third and unexpectedly substantial final round of questions. GNLQ engaged extensively in exacting public consultations and responded to all issues raised.
151. All of these efforts were in vain, given that Québec Environment Minister Benoit Charette and the MELCC radically moved the goalposts, imposing a new set of “core criteria” at the eleventh hour, once the ordinary MELCC and BAPE processes had been completed. The biased BAPE hearings offered an opportunity that the Québec Government seized and amplified as window dressing to reject the GNLQ Project. This altered course set the stage for the Québec Government’s refusal to authorise the GNLQ Project a few months later.
152. The Québec Government’s conduct makes clear that an arbitrary “moving of the goalposts” took place, through the application of criteria that the Québec Government itself could not explain, compliance with which was assessed in disregard of ample evidence and of the conclusions of the Québec Government’s own experts. Moreover, the new “core criteria” that the Québec Government unexpectedly set out at the eleventh hour were idiosyncratic and inconsistent with the MELCC Directive applicable to the Project as well as Québec Government’s own longstanding and continuing practice, all of which points to a manifestly unfair and arbitrary singling out of the GNLQ Project.
153. The Québec Government’s refusal to authorise the GNLQ Project flew in the face of the multiple specific commitments that the Québec Government and some of its key agencies undertook under two consecutive administrations to encourage and support the GNLQ Project over the years, as well as to induce Symbio to make additional investments. With its refusal to authorise the GNLQ Project, the Québec Government repudiated GNLQ’s reasonable and legitimate expectations that it had fostered and which must be taken into account when ascertaining a breach of NAFTA Article 1105(1).

154. At the federal level, GNLQ engaged in Canada's environmental assessment process in good faith and undertook similar efforts to those it had deployed at the provincial level, all along abiding by the instructions that the IAAC had set out to govern the environmental assessment of the GNLQ Project. These efforts were similarly in vain, given that five months before issuing its Decision Statement, and while the environmental process was still ongoing, the Government of Canada had already made known to the public and to its analysts at the IAAC, in the midst of a snap federal election, its clear intention to reject the GNLQ Project.
155. The Québec Government's decision also to unilaterally terminate the Gazoduq Project as a direct result of its refusal to authorise the GNLQ Project, without any decision, process or forewarning, was in and of itself an additional instance of illegal and manifest arbitrariness and gross procedural unfairness toward Symbio, which also violates NAFTA Article 1105(1).

B. Canada has breached NAFTA Articles 1102 and 1103

156. NAFTA Articles 1102 and 1103 require Canada to accord treatment no less favourable than that which it accords, in like circumstances, to its own investors or to investors of any other Party or non-Party, and to their investments, with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.
157. The Québec Government and Government of Canada's decisions to refuse to authorise the GNLQ Project constituted discriminatory treatment towards the GNLQ Project and, by extension, towards Symbio and its U.S. investors. As explained above, the Québec Government and the Government of Canada's environmental assessment and approval processes were marred by obvious double-standards both with regard to their consideration of GHG emissions and of shipping impacts of the GNLQ Project: refusing the GNLQ Project based upon one (draconian) standard, while authorising projects in like circumstances owned by Canadian (including Québécois) proponents or proponents from third countries, based upon a wholly different (lenient) standard and through a materially different (and much more lenient) decision-making process.

158. Québec and Canada's unfair refusals to authorise the GNLQ and Gazoduq Projects on the basis of double standards and different processes violates NAFTA Articles 1102 and 1103.

C. Canada has breached NAFTA Article 1110

159. NAFTA Article 1110 requires Canada not to nationalize or expropriate directly or indirectly the investment of an investor of another Party, or take any measure tantamount to nationalization or expropriation of such an investment, 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 equivalent to the fair market value of the expropriated investment immediately before the expropriation took place.
160. The Québec Government and Government of Canada's decisions to refuse to authorise the GNLQ and Gazoduq Projects are measures tantamount to expropriation within the meaning of Article 1110(1) of the NAFTA, in that they substantially deprived Symbio and its U.S. investors of all economic value in their investments and of any reasonably-to-be-expected economic benefit. Following these decisions, Symbio's investments in both Projects have essentially become worthless and any prospect of commercial return has now disappeared despite extremely strong global demand for LNG – and for reliable long-term supply from net-zero emissions export projects such as the GNLQ Project. Given that the costs and expenditures incurred for the purposes of the preparatory phases of both Projects were inherently site-specific and project-specific, the commercial value of these costs has been effectively neutralized, as Symbio has been left with assets that can no longer be used for commercial purposes and can no longer make any commercial return.
161. The expropriatory conduct of the Québec Government and of the Government of Canada fell short of the conditions set forth in Article 1110(1)(a) to (d) of the NAFTA. As explained in the preceding sections, Canada's measures did not pursue a legitimate public purpose as they were manifestly arbitrary and politically-motivated, in plain disregard of scientific evidence, including from the government's own environmental experts. Moreover, both decisions were taken in gross violation of the requirements of due process of law and of NAFTA Article 1105(1), and eventually led to discriminatory treatment against Symbio and its investments on the basis of double standards and different processes

in comparison to other project proponents, in breach of NAFTA Articles 1102 and 1103. By failing to pay Symbio compensation for the full market value of the expropriated investment without delay, Canada has breached Article 1110 of the NAFTA.

VI. THE CLAIMANT HAS SUFFERED DAMAGES AS A RESULT OF THE RESPONDENT'S VIOLATIONS OF NAFTA CHAPTER ELEVEN

A. The Claimant has suffered damages in connection with its investment as a result of acts in breach of the treaty standards that are attributable to Canada under international law

162. The measures described above, which are measures attributable to the Québec Government and the Government of Canada, constitute violations of Canada's obligations under NAFTA Chapter Eleven and have caused Symbio loss and damage, notably:

- (i) The Québec Government Cabinet Decision of 21 July 2021 which refused to authorise the GNLQ Project and the decision-making process that led to that decision;
- (ii) The Québec Government's pre-ordained decision, as reflected in a statement dated 21 July 2021, that Québec's termination of the GNLQ Project was also intended to terminate the Gazoduq Project, and the manifestly unfair and arbitrary decision-making process that led to that decision; and
- (iii) The Decision Statement of 7 February 2022 which embodied the Canadian Environment Minister and the Canadian Governor in Council's refusal to authorise the GNLQ Project, as well as the decision-making processes that led to these decisions.

163. The Québec Government's actions are attributable to Canada according to customary international law and the NAFTA. Pursuant to NAFTA Article 105, the Government of Canada is responsible for measures of sub-national governments that fail to respect, among other things, the obligations Canada has agreed to uphold vis-à-vis investors of another Party.

B. Approximate damages suffered

164. As a result of Québec's and Canada's measures, Symbio has suffered losses in an amount to be fully quantified, but no less than sunk costs of approximately **US\$ 120 million**, as well as all related costs and interests including, but not limited to:

- (i) The management, administrative and overhead costs incurred in connection with the winding down of Symbio's operations in Canada;
- (ii) The management, administrative and overhead costs that Ruby River incurred in taking remedial steps and to obtain relief in response to the measures and the injuries the measures caused Symbio;
- (iii) The costs of in-house and outside counsel, including, but not limited to, the costs of preparing the Notice of Intent, the Request for Arbitration, and the costs of any subsequent consultations and arbitration, enforcement or other proceedings related to the injuries caused to Symbio by the measures; and
- (iv) Compound interest, at a rate to be determined, running from the date of the losses caused by the measures through full payment.

165. Additionally, Symbio has suffered damage in the form of lost profits totalling no less than **US\$ 20 billion**. As explained in Sections IV.A and IV.C above, the GNLQ and Gazoduq Projects were poised for success from an economic perspective. That is all the more given the current market conditions following the COVID-19 pandemic and the Russian invasion of Ukraine, which have cumulatively led to an energy crisis and a pressing need for increased LNG supply to Europe from its allies, including Canada. But for the Government of Québec's and Canada's arbitrary and discriminatory measures, GNLQ would have been able to enter into profitable contracts for the supply of LNG to global markets. Based upon conservative assumptions as of 2021, the GNLQ and Gazoduq Projects together were conservatively estimated to generate profits totalling no less than US\$ 20 billion, profits that were lost as a result of Canada's unlawful conduct.

VII. THERE IS A LEGAL DISPUTE ARISING DIRECTLY OUT OF AN INVESTMENT

166. In light of the foregoing, there is a clear legal dispute arising directly out of an investment between the Claimant and the Respondent within the meaning of Article 25(1) of the ICSID Convention. The Parties hold opposite views over the question whether the Government of Québec's and the Government of Canada's fundamentally arbitrary, procedurally grossly unjust, expropriatory, and discriminatory treatment of Symbio in connection with the two Projects amount to violations of Canada's obligations under Articles 1102, 1103, 1105 and 1110 of the NAFTA, and the legal consequences arising from those breaches.

VIII. REQUESTED RELIEF

167. The Claimant requests that the Arbitral Tribunal constituted in accordance with NAFTA Chapter Eleven:
- a. Award damages to Symbio pursuant to Article 1117 for breaches of Articles 1102, 1103, 1105(1) and 1110 of the NAFTA in an amount to be fully quantified, but no less than US\$ 20 billion;
 - b. Grant pre- and post-Award compound interest on the amount of damages awarded;
 - c. Compensate Ruby River and Symbio for all costs of the arbitration, as well as for their costs of legal representation and other related costs; and
 - d. Grant such other relief as the Arbitral Tribunal may deem just.
168. The Claimant reserves its right to amend, modify or supplement these claims.

IX. OTHER INFORMATION

A. Authorization of the Request

169. The Claimant has taken all necessary internal actions to authorize this Request for Arbitration. The Claimant's two Co-Founders and Members, as well as Symbio's President and two Directors have considered the matter and authorised consent to arbitration and execution of the instruments necessary to make this request.⁴¹ In addition, the Claimant has appointed the undersigned as attorneys in this matter, provided the appropriate notification to the Secretariat pursuant to Rule 2(2) of the Arbitration Rules, and specifically authorised the undersigned to file this Request. This Request has been fully authorised in accordance with the law and applicable corporate instruments.

B. Appointment of Counsel

170. Legal counsel for the Claimant is Christophe Bondy, Steptoe & Johnson UK LLP, 5 Aldermanbury Square, London EC2V 7HR, United Kingdom.

⁴¹ Authorisation and Power of Attorney signed by the Co-Founders and Members of Ruby River Capital LLC and the President and Directors of Symbio Infrastructure Partnership Limited, 14 February 2023, **Exh. C-38**.

171. All correspondence in this matter should be directed to:

Christophe Bondy
Steptoe & Johnson UK LLP
cbondy@steptoe.com
Tel: +44(20) 7367 8028
Fax: +44(20) 7367 8001

C. Fee for lodging the Request

172. The Claimant has paid the fee for lodging this Request, a confirmation of which is attached.⁴²

D. Constitution of the Tribunal

173. Having regard to Article 1123 of the NAFTA, Article 37 of the Convention, Rule 3(a)(i) of the Institution Rules and Rules 15 and 16 of the Arbitration Rules, the Claimant requests the constitution of a tribunal consisting of three arbitrators, one appointed by each party, and the President of the tribunal appointed by agreement of the parties or, failing such agreement, by the Secretary-General of the Centre.

E. Language of the arbitration

174. Pursuant to Rule 3(a)(ii) of the Institution Rules, the Claimant proposes that further to Rule 7 of the Arbitration Rules, the language of the arbitration be English and French.

F. Third-party funding

175. Pursuant to Rule 14 of the Arbitration Rules, the Claimant is submitting the requisite written notice in support of this Request for Arbitration which discloses the name and address of the non-party from which the Claimant has received funds for the pursuit of the proceeding (**third-party funding**).⁴³ As the non-party providing funding is a juridical person, the requisite written notice includes the names of the persons and entities that own and control that juridical person, in conformity with Rule 14 of the Arbitration Rules.

⁴² Ruby River Capital LLC, Payment of Lodging Fee, Wire Transfer Confirmations, 17 February 2023, **Exh. C-39**.

⁴³ Ruby River Capital LLC and Symbio Infrastructure Limited Partnership, Notice of Third-Party Funding, **Exh. C-40**.

G. Supporting documentation

176. This Request is accompanied by Exhibits C-1 to C-40, and by Legal Authorities CL-1 to CL-5, listed in the attached Index of Exhibits and Legal Authorities.

X. SUBMISSION

177. On the basis of the above, the Claimant respectfully requests that the Secretary-General: (a) acknowledge receipt of the Request; and (b) proceed to register the Request as soon as possible and notify the Parties of the registration, in accordance with Rules 6(1) and 6(2) of the Institution Rules.

Dated: 17 February 2023
London, United Kingdom

[SIGNATURE]

Christophe Bondy
Steptoe & Johnson UK LLP

For and on behalf of Claimant