

30 May 2019

**Via Electronic Mail and Hand Delivery**

**Honorable Andrés Manuel López Obrador**

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

**Honorable Lic. Graciela Márquez Colín**

Secretaría de Economía  
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**Honorable Lic. Luz Marfa de la Mora Sánchez**

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**Dirección General de Inversión Extranjera**

Secretaría de Economía  
Av. De los Insurgentes Sur 1940, Colonia La Florida, CDMX, México



**Re: Notice of Intent to Submit Claims to Arbitration Pursuant to Chapter Eleven of the North American Free Trade Agreement between the United Mexican States, Canada, and the United States of America (“Notice of Intent”)**

Dear Sirs and Mesdames:

Pursuant to Articles 1116, 1119, and 1120 of Chapter Eleven of the North American Free Trade Agreement between the United Mexican States (the “State” or “Mexico”), Canada, and the United States of America, signed by the State on 17 December 1992 and entered into force on 1 January 1994 (the “Treaty”), Espiritu Santo Holdings, LP, an enterprise incorporated under the laws of Alberta, Canada, and a foreign investor in the State (“ES Holdings” or the “Investor”), provides the State with its Notice of Intent to submit to arbitration a claim against the State for breach of its obligations under the Treaty.

*[Handwritten mark]*

**I. Name and Address of the Investor**

1. ES Holdings is an investor constituted under the laws of Alberta, Canada, and a foreign investor in the State.<sup>1</sup> ES Holdings' contact information is as follows:

Espiritu Santo Holdings, LP  
c/o Richard C. Lorenzo  
Hogan Lovells US LLP

[REDACTED]

Eliminado: 6 renglones  
Fundamento: Artículo 113  
fracción I de la LFTAIP y  
Artículo 116 de la LGTAIP.  
En virtud de tratarse de datos  
personales concernientes a una  
persona identificada o identificable

**II. Legal Representative and Sendee of Documents**

2. ES Holdings is represented in this matter by Hogan Lovells US LLP. Please direct all correspondence and communications related to this matter to Richard C. Lorenzo, at the following address:

Hogan Lovells US LLP

[REDACTED]

Eliminado: 6 renglones  
Fundamento: Artículo 113  
fracción I de la LFTAIP y  
Artículo 116 de la LGTAIP.  
En virtud de tratarse de datos  
personales concernientes a una  
persona identificada o identificable

<sup>1</sup> See Exhibit 1 (Certificate of Good Standing of Espiritu Santo Holdings, LP under the laws of Alberta, Canada).

### III. Service

3. This Notice of Intent is submitted to:

**Honorable Andres Manuel Ldpez Obrador**  
Presidente de los Estados Unidos de Mexico  
Av. Constituyentes 161, San Miguel Chapultepec II Secc, 11850, CDMX, Mexico

**Honorable Lie. Graciela Marquez Colin**  
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**Direccion General de inversion Exfranjera**  
Secretaria de Economia  
Av. De los Insurgentes Sur 1940, Colonia La Florida, CDMX, Mexico

### IV. Investment in the State

4. ES Holdings' investment in the State consists of: (i) its 50% indirect interest in Servicios Digitalcs Lusad, S. de R.L. de C.V., a company duly incorporated in Mexico ("Lusad"); and (ii) the concession agreement, as amended (the "Concession"), awarded by Mexico City Secretary of Mobility (*Secretaria de Movilidad*, commonly referred to as "Seniovi") to Lusad on 17 June 2016, to replace the taximeters in all taxis operating within Mexico City and to develop a mobile application that would allow users, among other functions, to remotely request a taxi (together, the "Investment").<sup>2</sup>

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<sup>2</sup> See Exhibit 2 (Concession Agreement, as amended).

5. ES Holdings owns a 50% interest in Espirilu Santo Technologies LLC (“ES Technologies”), a Delaware limited liability company. ES Technologies, is the 100% indirect owner of Lusad and die Concession, through two other entities—LI bre Holding LLC and LI bre LLC (both Delaware limited liability companies owned 100% by ES Technologies).

#### V. Breached Treaty Provisions

6. The State has breached its obligations under the following provisions of Chapter Eleven of the Treaty:

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

#### VI. Factual Basis for the Claim

##### A. Jurisdiction

7. First, Article 1139 of the Treaty defines “investor of a Party” as a “national or an enterprise of such Party, that seeks to make, is making or has made an investment.” ES Holdings is a Canadian enterprise that has made an investment in Mexico. ES Holdings is an investor under the Treaty and brings this claim on its own behalf, pursuant to Article 1116 of the Treaty.

8. Second, pursuant to Article 1139 of the Treaty, “investment” means: “(a) an enterprise; (b) an equity security of an enterprise; . . . (e) an interest in an enterprise that entitles the owner to share in income or profits of the enterprise; . . . (g) real estate or other property, tangible or intangible, acquired in the expectation or used for the purpose of economic benefit or other business purposes; and (h) interests arising from the commitment of capital or other sources in the territory of a Party to economic activity in such territory, such as under (i) contracts involving the presence of an investor’s property in the territory of the Party, including turnkey or construction contracts or concessions, or (ii) contracts where the remuneration depends substantially on the production, revenues or profits of an enterprise.” As a result of ES Holdings’ 50% interest in Lusad and in the Concession, ES Holdings has an investment under Article 1139 (a), (b), (e), (g) and (h) of the Treaty.

9. Finally, the State has consented to submit this dispute to arbitration under Article 1122 of the Treaty.

**B. Factual Background**

10. There are approximately 138,000 registered taxis in Mexico City that, each day, account for approximately 2.7 million taxi trips. Most of this fleet is equipped with technologically obsolete equipment that is inefficient for service optimization. The Mexico City taxi fleet cannot be hailed from smart-phone applications or paid for with credit cards like the applications now commonly employed by ridesharing companies, such as Uber and Lyft. Many of the taxis' fair-calculation systems are inaccurate and lack geolocation or safety features.

11. Understanding these shortcomings and considering Mexico's alleged enshrined protections for foreign investments, the Investor began to develop digital taximeter and hailing technologies specifically for use, at least initially, in Mexico City. The Investor recruited and built a team that included senior managers formerly from companies such as Uber and Apple. The Investor created and registered the "Ll bre" tradename and associated trademarks for the system. The Investor also developed the required technology and related software. In October 2015, the Investor incorporated an operating company in Mexico named Servicios Digitales Lusad, S. de R.L. de C.V., or "Lusad."

12. The Investor then approached the Mexico City Secretariat of Mobility (the "Semovi") in order to explain and promote the benefits of the system the Investor was developing.

13. Under Mexican law, a party that possesses the means to provide a public service may request a concession from the appropriate branch of government. Pursuant to this law, Lusad submitted a request to the Semovi on 22 April 2016 seeking a concession allowing it to replace the taximeters in all taxis operating in Mexico City with a safer, fraud-proof model, and to develop a mobile application that would allow users to remotely request a taxi. Lusad also submitted documentation confirming that it possessed the necessary experience to develop the concession.

14. Prior to the Semovi granting the concession, it published a necessity declaration (*Declaratorici de Necesidad*) in Mexico City's official gazette on 30 May 2016 (the "Necessity Declaration"), declaring the "necessity for [the] substitution, installation and maintenance of taximeters of the public individual (taxi) passenger transportation service in Mexico City, with satellite geo-localization system," as well as the "design, operation and exploitation of the taxi services remote hiring application in Mexico City."

15. The Semovi did not directly award the Concession to Lusad; instead, the Semovi allowed other proposals to be submitted for consideration. Through the Necessity Declaration, Semovi opened a public bid for any party to submit an offer to participate in the concession bidding process. The Semovi received eight proposals, including a proposal submitted by Lusad. The proposals were reviewed by the Adjudication Committee, which was comprised of representatives from the various branches of Mexico City's government.

16. On 17 June 2016, the Adjudication Committee determined that Lusad's proposal "satisfied] the necessity for the substitution, installation and maintenance of taximeters" in Mexico City and "presented a proposal meeting the requirements established in article 85 of the Patrimony Law." As such, the Adjudication Committee "approved] granting to Lusad . . . the concession."

17. With this approval, Lusad was awarded concession SEMOVI/DGSTPI/001/2016 on 17 June 2016 "for the substitution, installation, and maintenance of taximeters for Mexico City's individual public passenger transport service, with GPS, as well as for the design, operation, and use of the remote taxi-hailing application in Mexico City."

18. The Concession was subject to a 12-month trial period to allow Lusad to demonstrate the functionality of its technology. During this period (which was extended), Lusad installed taximeters in a limited number of operators, collected data from installed meters, and made the necessary adjustments and corrections. In August 2016, Lusad provided the Semovi the data from the first 100 taximeters installed, and in November 2016, Lusad notified the Semovi that it had successfully installed a total of 1,000 taximeters.

19. On 9 January 2017, considering, among other factors, the costs of maintenance of the taximeters and the technology, the Semovi agreed to amend the Concession to include additional sources of compensation for Lusad. By way of example, section 6(c) of the Concession was amended so that Lusad could earn a fee for every trip made by each taxi operating with Lusad's taximeters.

20. In early 2017, the Semovi inspected the progress made by Lusad during the trial period, and on 21 March 2017, the Semovi's Legal Director of the General Directorate of Regulation, through Oficio No. DNRM-0626-2017, confirmed that the inspection had yielded "favorable and satisfactory results." In that same communication, the Semovi "re-issued" the Concession, to include the terms of the January 2017 amendment.

21. As set forth above, the Concession was to allow Lusad to substitute the existing analogic taximeters used by Mexico City's taxi fleet with a digital tablet containing Lusad's proprietary taximeter platform and to develop a mobile application allowing users to remotely hail a taxi from anywhere in Mexico City. The Semovi, through the Concession, made the installation of the new, digital taximeters and use of the application mandatory for all taxis operating in Mexico City.

22. As such, the Concession required Lusad to carry out the necessary actions to "substitute, install, maintain, renovate, and repair" the digital taximeters at its own cost, as well as "perform related actions," for the entire Mexico City taxi fleet. (Exhibit 1, §§ 5.2.1, 7). The new taximeters were to contain geo-positioning services, allowing authorities to determine the location of each taxi, at any time. *hi* § 6(a). Lusad was also required to take all necessary actions to develop and maintain the application to allow individuals to hire a taxi remotely through electronic devices. *hi* § 7. Further, during the term of the Concession, the application

"shall be the only useable remote application . . . meant for the hiring of the public taxi service," and operators "will not be able to modify the equipment delivered to them . . . nor add programs to it." *Id.*

23. The Concession entitled the Investor, through Lusad, to receive fees for the use of the application, and after an initial investment recovery period, a portion of the fees earned were to be paid to the Semovi. *Id.* § 6(c)(i).

24. The Concession was for an initial term of 10 years, which, pursuant to the Concession and applicable law, could be extended for two additional 10-year periods, provided that Lusad complied with its obligations under the Concession. *Id.* §§ 12-13.

25. Pursuant to the Concession, the Semovi was required to establish centers for the installation of the equipment and to notify all taxi operators to report to the installation centers at specified times. *Id.* § 7. On 17 April 2018, the Semovi issued an advisory ordering that the installation of the digital taximeters would occur via an electronic appointment system (the "Advisory"). The electronic appointment system was dependent on the Semovi's implementation of a platform on its website that would allow taxi operators to request an appointment to have the new technology installed. The Advisory also required Lusad to complete the installation of the taximeters by 31 March 2019.

26. The Investor and Lusad took all actions necessary to meet its obligations under the Concession and to prepare for the installation of the taximeters and the implementation of the mobile application, including successfully obtaining required certifications and licenses. On 18 April 2016, Lusad obtained a certification (Oficio No. DON.312.01.2016.1534) from Mexico's Ministry of the Economy, authorizing the use of its digital taximeter as a lawful measurement instrument. On 1 June 2016, the Semovi granted Lusad a certification (Certificate of Registration No. 6D6C61F32327F227C-1651180691531691), formally registering Lusad as a taxi-hailing application provider. And then on 29 June 2016, the Semovi issued Lusad a permit (Oficio No. DG.IR-001291-2016), authorizing it to display advertising and publicity content on the second taxi tablet.

27. The Investor expended more than [REDACTED] in developing the taximeter technology and mobile application, in acquiring the digital tablets, and in complying with the terms of the Concession. So promising was the Concession and its potential future that, in October 2018, a leading investment banker conservatively valued the Concession, and therefore the business, at over [REDACTED]. Importantly, this valuation did not take into account the full initial term of the Concession or its extensions.

28. Even though the Investor had complied with its obligations, developed the technology, and acquired the equipment, human capital, and technical expertise to complete the installation of the digital taximeters in Mexico City's taxi fleet, the Semovi and the government of Mexico City have breached their obligations under the Concession and the Treaty.

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Fundamento:  
Articulo 113  
fraccion II de la  
LFTAIP y Articulo  
116 de la LGTAIP.  
En virtud de  
tratarse de  
secreto bancario  
y comercial cuya  
titularidad  
corresponde a un  
particular

29. First, by way of example but not limitation, the Semovi failed to comply with its obligation to implement a webpage or platform allowing taxi operators to schedule an appointment for the installation of the taximeters, as required by the Concession.

30. Second, in May 2018, the Semovi suspended the taxi fleet installation program, arguing that the suspension was necessary to avoid the Concession being the subject of political campaigns during the municipal elections that were taking place in July 2018. In breach of the Semovi's obligations, the suspension was never lifted.

31. Third, Mexico City held mayoral and municipal elections in July 2018, in which Ms. Claudia Sheinbaum, whose party was out of power when the Concession was awarded, was elected Mayor of Mexico City. During her campaign, and after her election, Mayor Sheinbaum repeatedly affirmed that the Concession would be revoked. Similarly, the current Secretary of the Semovi (also a member of Mayor Sheinbaum's party) has publicly stated that the Concession would be revoked, claiming that the new administration had the "right" to implement its own public policies. Through its statements and actions, the Mexico City government has *de facto* terminated the Concession and expropriated the Investor's Investment.

32. In Mexico City's efforts to wrongfully terminate and/or invalidate the Concession, on 7 November 2018, the Semovi summoned Lusak's representatives to a meeting to allegedly discuss the Concession and other matters. During the meeting, however, the Semovi requested that Lusak's representatives sign an additional Concession signature page, representing that the page would be included as part of the 2017 amended Concession, executed over a year earlier. Regrettably, and without Lusak's knowledge or consent, the Semovi, in breach of the Concession and Mexican law, affixed the signature page to a backdated document and a revised version of the Concession, attempting to cause a fraudulent version of the Concession to be deemed the active version of the Concession. This fraudulent, bad faith action is a further breach of the Concession and the Treaty.

C. Basis for the Investor's Claim

33. Fair and Equitable Treatment: The State violated Article 1105 of the Treaty, which requires the State to treat investors fairly and equitably. The fair and equitable treatment standard contains the broadest substantive notions of good governance and the rule of law as expressed in terms of stability, transparency, and predictability. It also includes notions of protection of legitimate expectations, due process, freedom from discrimination, and freedom from coercion and harassment. The State violated Article 1105 through several discriminatory and arbitrary acts, which include:

- a. Semovi's failure to comply with its obligations to implement a webpage or platform allowing taxi operators to schedule an appointment for the

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<sup>3</sup> See Exhibit 3 (Public statements by Mayor-Elect Sheinbaum on 26 July 2018).



installation of the taximeters as required by the Concession, and its arbitrary decision to suspend, and then tacitly terminate, the Concession. Consequently, Mexico frustrated the Investor's legitimate expectations to develop and operate a long-term Concession and recover its Investment.

- b. The State's failure to provide the Investor with due process of law, by unilaterally deciding to terminate the Concession through, among other actions, Mayor SheinbaunTs statements and actions. Moreover, while the State took every step to effectively terminate the Concession, it did not issue an official administrative act in that regard. The Investor also has been denied legal recourse against the State's arbitrary acts due to the lack of an official determination.
- c. The Semovi defrauded the Investor by attempting to cause a different and invalid version of the Concession to be deemed legitimate.

34. **National Treatment and Most-Favored-Nation Treatment:** The State breached Articles 1102 (National Treatment) and 1103 (Most-Favored-Nation Treatment) by breaching its obligation to the Investor, a Canadian national, by treating the Investor differently when compared to the State's nationals and to investors of other States.

35. **Expropriation:** The State violated Article 1110 of the Treaty, by expropriating the Investor's rights under the Concession without just compensation or due process.

## VII. Relief Sought and Damages Claimed

36. Given the State's evident and egregious violations of its Treaty obligations, the Investor has suffered and continues to incur significant financial damage for which the State must be held responsible. The Investor seeks full compensation for the losses and other injuries suffered as a result of the State's breaches and will claim an amount of damages in excess [REDACTED], exclusive of interest, costs, and such other relief, as the arbitrators deem appropriate.

Eliminado: 2 palabras y 1 cifra numerica

Fundamento: Artículo 113 fraccion II de la LFTAIP y Artículo 116 de la LGTAIP.

En virtud de tratarse de secreto bancario y comercial cuya titularidad corresponde a un particular.

### **VIII. Conclusion**

37. Notwithstanding the Investor's willingness to attempt to resolve the dispute, the Investor reserves all of its rights and remedies. The Investor also reserves any other rights under Mexican law, the Concession, or any other applicable agreements or instruments, including the right to seek compensation for any remaining damages that are not settled directly or through an international arbitration proceeding. Finally, the Investor reserves the right to amend and/or modify this Notice of Intent.

38. Nothing herein is intended to prejudice or waive any rights or entitlements that the Investor or any other parties may have under the law, the Concession, or any other applicable agreements, treaty or instruments.

Eliminado: 1 firma  
Fundamento: Artículo 113  
fraccion I de la LFTAIP y  
Artículo 116 parrafo 1 de  
la LGTAIP  
Contiene datos personales  
concernientes a una  
persona física o  
identificable.

Very truly yours,

**HOGAN LOVELLS US LLP**

Richard C. Lorenzo  
*Counsel for Espiritu Santo Holdings, LP*

cc: Espiritu Santo Holdings, LP