

UNDER THE CONVENTION ON THE SETTLEMENT OF INVESTMENT DISPUTES BETWEEN STATES AND NATIONALS OF OTHER STATES AND THE INSTITUTION RULES AND ARBITRATION RULES OF THE INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

AND

THE TRADE PROMOTION AGREEMENT BETWEEN THE REPUBLIC OF PANAMA AND THE UNITED STATES OF AMERICA DATED 31 OCTOBER 2012

Regarding a dispute between

(1) IBT GROUP, LLC,

(2) IBT, LLC,

Claimants,

-and-

The Republic of Panama

Respondent.

REQUEST FOR ARBITRATION

Hughes Hubbard & Reed LLP

24 July 2020

Amended 11 August 2020

Counsel for Claimants

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	THE PARTIES	2
A.	Claimants	2
B.	Respondent	4
III.	THE CLAIMANTS' INVESTMENT	4
IV.	SUMMARY OF THE DISPUTE	5
A.	Panama Interfered with the Claimants' Attempts to Complete Construction ..	5
B.	Panama Denied Justice to the Claimants	9
C.	The Respondent has Demonstrated an Antagonistic and Discriminatory Attitude against IBT Group and its Affiliated Companies during the past Ten Years	13
V.	RESPONDENT'S BREACHES OF THE TPA	14
A.	Fair and Equitable Treatment	14
B.	Expropriation	14
C.	Investment Authorization and Investment Agreement	15
D.	Rights granted pursuant to the most-favoured-nation (MFN) clause	17
VI.	JURISDICTION	18
A.	The Jurisdictional Requirements of the TPA are Satisfied	18
1.	Panama is a Party to the TPA	18
2.	Claimants are "Investors" of the United States	18
3.	Claimants have a Dispute with Panama Related to their Investments....	19
4.	All other Jurisdictional Requirements are Satisfied	20
B.	The Jurisdictional Requirements of the ICSID Convention are Satisfied	22
VII.	FURTHER PROCEEDINGS	23
VIII.	CONSTITUTION OF THE TRIBUNAL	24
IX.	RELIEF REQUESTED	24

Appendix 1: List of Fact Exhibits

Appendix 2: List of Legal Authorities

I. INTRODUCTION

1. IBT Group, LLC ("**IBT Group**"), and IBT, LLC ("**IBT LLC**", and collectively the "**Claimants**" or "**IBT**") submit this Request for Arbitration ("**Request**") to the Secretary-General of the International Centre for Settlement of Investment Disputes ("**ICSID**" or the "**Centre**") in accordance with Article 36 of the Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (the "**ICSID Convention**") and the Rules of the International Centre for Settlement of Investment Disputes (the "**ICSID Rules**").
2. The Request concerns a legal dispute between the Claimants and the Republic of Panama ("**Panama**" or the "**Respondent**") under Article 10.16 of the Trade Promotion Agreement between the Republic of Panama and the United States of America dated 31 October 2012 (the "**TPA**"),¹ with respect to Claimants' investment in the CEFERE Consortium in Panama.
3. Claimants IBT Group and IBT LLC formed el Consorcio CEFERE (the "**CEFERE Consortium**" or the "**Consortium**") in order to execute the design, construction and equipment of a new Women's Rehabilitation Center (the "**Rehabilitation Center**") in Pacora, Panama. Consorcio CEFERE signed the contract with the Ministerio de Gobierno ("**Mingob**") for the construction of the Rehabilitation Center, however from the outset, various Government agencies in Panama, including Mingob, conspired to stifle the Claimants' attempts to construct the Rehabilitation Center and receive adequate compensation for their work.
4. Drawing on their ample experience in global construction works, during the initial stage of the project the Claimants brought to the Respondent's attention the impossibility of constructing the Rehabilitation Center on the site required by the contract and suggested several alternate locations. Although the Respondent selected an alternate site that was much more complicated and expensive to build on (because the alternative site required the redirection of

1. The executed version of the TPA is attached as Exhibit **CLA-1**.

a river in order for construction on the Rehabilitation Center to proceed), the Claimants accommodated Panama's requests to expand the scope of the project and generated a new complete project design that met all of Panama's needs. Respondent, however, failed to execute the addendum – necessary as a matter of Panamanian law – to cover the expanded scope of the project. As a result, the Claimants incurred significant costs that went unreimbursed.

5. Citing the lack of adherence with the original construction schedule – and ignoring completely its own complicity in causing that nonconformity – Respondent subsequently administratively terminated the contract. The Claimants appealed that administrative termination and, demonstrating the prejudice of the Panamanian State against IBT, the Panamanian administrative court (attached to the Executive Branch) refused and/or denied the admission of most of the Claimants' evidence and issued a final decision even though the Panamanian courts were closed by Executive Decree due to the international Covid crisis. The termination of the contract resulted in the disqualification of IBT from entering into new contracts with Panama for three years.
6. As a result of these actions and omissions by Panama, the Claimants now find themselves deprived of the value of their investment, without an opportunity for appeal, and unable to do further work in Panama.

II. THE PARTIES

A. Claimants

7. Claimant IBT Group is a limited liability company constituted under the laws of the United States of America, with its principal place of business at 1200 Brickell Ave., Suite 1700, Miami, Florida 33131.² Claimant IBT LLC is a limited liability company constituted under the laws of the United States of America, which shares its principal place of business with IBT Group at 1200 Brickell Ave. Suite 1700, Miami, Florida 33131.³ Both IBT Group and IBT LLC are

2. IBT Group's Certificate of Status is attached as Exhibit **CE-1**.

3. IBT, LLC's Certificate of Status is attached as Exhibit **CE-2**.

registered in the Merchant Section of the Public Registry of Panama as foreign companies (of the state of Florida).

8. IBT Group is 33.33% owned by Carimex International Holding Inc. (BVI), for the benefit of Jose Ramon Brea, a citizen of the Dominican Republic, and 66.67% owned by Eurofinsa Concesiones e Inversiones, S.L., a limited company registered and headquartered in Madrid. IBT Group owns 99% of IBT LLC.
9. IBT Group maintains its headquarters in Miami, Florida. Fifteen employees work at the Miami headquarters, as well as the company's President, Chief Financial Officer, and General Counsel, along with other members of the legal team. The members of the Board of Directors, all of whom reside in Florida, also meet at the Miami headquarters. From its Miami headquarters, IBT Group manages its affiliates' operations throughout Latin America, including those in Panama. In addition, IBT Group, through its subsidiaries in the United States, has executed projects in Florida, Georgia, Colorado, and Puerto Rico.
10. The Claimants are represented in this arbitration by Hughes Hubbard & Reed LLP.⁴ All communications intended for the Claimants should be addressed to Hughes Hubbard & Reed LLP at the addresses below:

Luis O'Naghten
Hughes Hubbard & Reed LLP
201 S. Biscayne Blvd.
Suite 2500
Miami, Florida 33131
luis.onaghten@hugheshubbard.com

Eleanor Erney
Alexander Bedrosyan
Hughes Hubbard & Reed LLP
1775 I St NW Suite 600
Washington, DC 20006
eleanor.erney@hugheshubbard.com
alexander.bedrosyan@hugheshubbard.com

4. A copy of the Power of Attorney granted to Hughes Hubbard & Reed is attached as Exhibit CE-3.

B. Respondent

11. Respondent is the Republic of Panama, a sovereign State and party to the TPA. The contact details known for Panama to the Claimants are as follows:

Republic of Panama
c/o H.E. Minister Héctor E. Alexander H.
and Mr. Aristides Valdonedo
Ministry of Economy and Finances
Vía España y Calle 52E
Edificio OGAWA, 3er Piso
Apartado Postal 0816-02886
Panama City
Republic of Panama
halexander@mef.gob.pa
avaldonedo@mef.gob.pa

III. THE CLAIMANTS' INVESTMENT

12. On 8 November 2016, the Ministerio de Gobierno of Panama called for tenders for the study, construction, and equipment of a new Women's Rehabilitation Center in Pacora, Panama. IBT Group and IBT LLC formed the CEFERE Consortium to bid on the project. Following a successful tender, the CEFERE Consortium was awarded the contract on 29 March 2017. The contract was signed on 7 June 2017 and was referred to the Comptroller General of the Republic on 6 July 2017.⁵
13. To guarantee its obligations, the CEFERE Consortium obtained a performance bond in the amount of B/. 13,813,012.25. The Consortium purchased equipment, contracted many employees, both for construction and for design, and invested significantly in the infrastructure necessary to complete the work for the Rehabilitation Center. In total, the Consortium invested more than USD 9 million in the project.

5. A copy of the contract, including applicable addenda, is attached as Exhibit **CE-4**.

IV. SUMMARY OF THE DISPUTE

A. Panama Interfered with the Claimants' Attempts to Complete Construction

14. Work began immediately after the contract was signed, on 8 June 2017, and pursuant to the contract should have been completed within 20 months. In accordance with the tender documentation, the contract contemplated a "fast track" process, whereby the design and construction phases would proceed simultaneously. The tender documentation also specified a site for the construction of the Rehabilitation Center and gave specifications for the construction, which the CEFERE Consortium took into account in constructing its bid. The tender documentation established that "*[e]s recomendable que el Proponente visite el sitio antes de dar su propuesta, ya que no se reconocerán cargos por condiciones que se encuentren en la inspección y cuya presencia se hubiese podido observar mediante la inspección **ocular** del sitio.*"⁶ Notwithstanding this, for reasons attributable to Panama, there was neither the possibility nor the opportunity to conduct a professional environmental study of the site before the tendering.
15. The Consortium made a visit to the site during the tender phase, but did not detect any problems in plain sight. Shortly after commencing the work, however, it became evident that it was impossible to build on the site designated in the contract.
16. Law 1 of 3 February 1994 (the Panamanian Forestry Law) provides that a developer cannot complete construction on land containing "*ojos de agua.*" Following the environmental impact analysis, the CEFERE Consortium found several *ojos de agua* on the site designated for construction, making the site unusable as a matter of Panamanian law. None of these *ojos de agua* were immediately evident by visual inspection. On 20 July 2017, the CEFERE Consortium thus notified Mingob of the results of its Field Evaluation and

⁶ See tender documentation, attached as Exhibit CE-5.

Environmental Impact Assessment (note 20797-C-007) and informed it of the need to select an alternative site.⁷

17. Drawing from their ample experience in siting such projects, the Claimants suggested three alternative sites for the project. Mingob, however, did not accept any of the Claimants' suggestions. Instead, Miguel Crespo, then Director of Architecture and Engineering at Mingob, designated a new location for the construction which was 500 meters from the original location. This was communicated to the CEFERE Consortium on 1 August 2017.
18. The alternate site selected by Mingob presented additional challenges not contemplated in the offer or the contract. It ran alongside a river and required that the river be diverted in order to begin construction, which increased both the cost and the time needed for construction. Since this deviation was not included in the original contract, a change order and subsequent addendum was required pursuant to Law 22 of 2006 (the Public Procurement Law). The negotiations between the CEFERE Consortium and Mingob to finalize the necessary addendum were stalled due to Mingob's administrative disarray.
19. The Consortium, however, in an effort to not significantly delay the work and as a sign of good faith, moved forward with the study and design for the Rehabilitation Center and submitted the designs for approval. Given that the contract was designated a "fast track" contract, it contemplated simultaneous design and construction phases. During the initial design phase, the CEFERE Consortium met multiple times with Mingob and other State agencies that made recommendations for the Rehabilitation Center. These recommendations resulted in a final design that was substantially more detailed than the contract (and the request for proposals) originally contemplated, which would also require an addendum to the contract. That addendum was never issued, let alone endorsed by the Comptroller General.

7. A copy of note 20797-C-007 is attached as Exhibit **CE-6**.

20. In addition to the design delays caused exclusively by Mingob, progress was also delayed by a national construction worker strike organized by the Sindicato Unico de los Trabajadores de la Construccion (SUNTRACS) in April-May 2018, which seized national attention. Thus, on 6 June 2018, in view of the delay attributable to Mingob and the strike, having not yet received the necessary addenda (nor any reimbursement for the first million balboas invested in the project by the Claimants), the CEFERE Consortium was forced to request an extension of time to complete construction, citing the significant amount of post-construction work needed – including review and approval of the final work, testing and commissioning of equipment, and training the necessary personnel – as reasons to extend the contract an additional 12 months. Mingob did not respond to the request.
21. On 10 August 2018, the Office of the Comptroller General, following a pattern of boycott, harassment and continual targeting of IBT Group and its local subsidiaries and projects, recommended that Mingob execute on the performance bond, purportedly to protect the interests of Panama.
22. Notwithstanding that recommendation, six months later, on 4 February 2019, in order to continue the project, the CEFERE consortium repeated its request for an extension, which was finally granted on 28 February 2019, extending the time for completion of the contract to 8 February 2020 in an addendum to the contract.⁸ That addendum, however, did not address the expanded site layout, the deviation of the river, the increase in area, or the other factors that needed to be formalized in order to comply with the Law on Public Procurement and were recognized as pending in the addendum.
23. In addition, in a single-sentence email on 18 May 2019, Mingob informed the CEFERE Consortium that it no longer had even the original budget for the execution of the project, let alone an expanded budget to cover the cost of diverting the river:

8. This was formalized in Addendum 1 to the Contract, submitted as part of Exhibit **CE-4**.

De: Deisy Maraña Gonzalez <dmarana@mingob.gob.pa>
Fecha: 18/5/19 8:53 a. m. (GMT-05:00)
A: Natalio Chocron <natalio.chocron@ibtgroup.com>
Asunto: RE: Consulta Gest#5 IBT LLC

Buenos días Licdo. Natalio,

Esa cuenta aún esta pendiente de partida.

Saludos



Licda. Deisy Maraña

Jefa del Departamento de Tesorería

512-2085

24. The Consortium could not continue indefinitely to complete work that was not in the original scope of the contract and without certainty of payment for the monthly progress made, as there was no budget to pay the advances, in breach of Law 22 on Public Procurement. In view of this obvious legal uncertainty, the CEFERE Consortium was forced to suspend work on 5 July 2019.
25. Only 35 days after the new Mingob administration took office, on 6 August 2019, Mingob informed the CEFERE Consortium of its intention to administratively terminate the contract. In view of this, the Claimants met with Mingob on 8, 12, and 13 August 2019 to try to resolve the outstanding problems to allow the works to continue. Surprisingly, Mingob officials did not allow minutes to be recorded during those meetings, but the CEFERE Consortium recorded the roadmap for continuing and completing the works in note 201-2019-CEFERE-MINGOB.⁹ In addition, as required by Law 22 of 2006 on Public Procurement, the CEFERE Consortium filed its defenses to the termination on 13 August 2019, notwithstanding the ongoing negotiations.
26. Following its meetings with Mingob, the CEFERE Consortium sent multiple notes detailing the new completion schedule, including plans and applications

9. A copy of this letter is included as Exhibit CE-7.

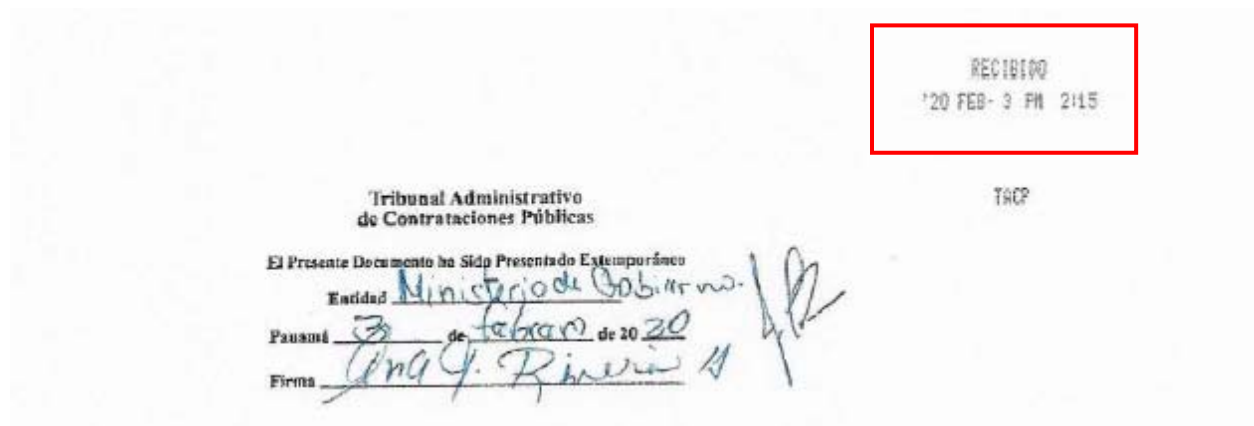
for approval. Following the pattern of conduct of the State against the Claimants, Mingob never answered those notes, nor did it grant the Consortium further meetings. In addition, Mingob refused to approve the assignment of payments to a local bank, thus stymying financial flows necessary to continue the work.

27. After almost four months of administrative silence, on 16 January 2020, while the CEFERE consortium was still waiting for a response, the Ministerio de Gobierno issued resolution No. O11-R-006 administratively terminating the contract, executing on the performance bond, and disqualifying both Claimants from further Government tenders for a period of three years for alleged failures to comply with the contract. At the time of termination, the project was 35% complete.

B. Panama Denied Justice to the Claimants

28. On 28 January 2020, the CEFERE Consortium presented an appeal to the decision to terminate the contract to the Tribunal Administrativo de Contrataciones Publicas (“**TACP**”). In addition to the evidence submitted with its initial defense, with its appeal the Consortium included reasons to sustain its objections and 25 pieces of evidence supporting breaches of contract on the part of Mingob. In particular, the CEFERE Consortium explained that it had fully complied with its obligations under the contract, delivering its work execution schedules on time.
29. In addition, the CEFERE Consortium explained the necessity of moving the site of the Rehabilitation Center, and pointed out that the new end site crossed a river which required diversion in order to execute the work, which affected the economics of the works. Finally, the CEFERE Consortium argued that the lack of knowledge on the part of Mingob staff about the use of the “fast track” program demonstrated its bad faith in entering into the contract.
30. On 3 February 2020, Mingob untimely presented its reply before the TACP, backdated to 30 January 2020, and improperly included written denial of all of the Consortium’s evidence. In its reply, Mingob also advanced a claim that the

CEFERE Consortium's reasons were untimely, because they were not presented with its defense on 13 August 2019. Ironically, the TACP reception stamp conclusively shows that Mingob's reply was received late (on 3 February, not 30 January):



31. The response presented by Mingob provided the administrative file of the contract, which consisted of some 6,207 pages. Only eight days after receiving it, however, on 11 February 2020, the TACP issued a non-appealable resolution denying most of the evidence produced by the Consortium and ordering only an ex-officio test to be carried out by an expert to be appointed by the University of Technology of Panama on the nature of the “fast track” system.
32. The CEFERE Consortium asked the TACP permission to appoint its own expert, but TACP summarily denied that request on 3 March 2020. Following the appointment of the expert by the University of Technology of Panama, however, the expert deemed himself unable to perform his duties due to an apparent and suspiciously tenuous conflict of interest. Instead of appointing a new expert, the TACP opted to decide on the basis of the administrative file alone, by resolution of 17 March 2020.
33. Just three weeks later, in the middle of a state of national emergency, the TACP issued its decision on 7 April 2020, which consists of a mere 15 pages and confirmed the cancelation of the contract.
34. The TACP found that the Consortium's appeal was timely, in accordance with Article 145 of the Law on Public Procurement. It also found, however, that the

change in site did not "*sirva de escudo justificativo frente a los incumplimientos que derivaron en la atacada resolución administrativa del contrato.*"¹⁰

35. With respect to the fast track program, despite having first ordered a test and then revoked its order, the TACP noted that it is proper that projects with strict construction deadlines require work to proceed in parallel in compliance of such a program, but that "*[c]omo consecuencia, la obra inicia sin tener definido su alcance final, por lo cual la mayoría del riesgo lo asume la entidad contratante, al quedar a merced del diseño y necesidades que surjan.*" In light of this determination of who bears the risk of changes to the plan contained in the contract and tender documentation, the TACP found that the CEFERE Consortium had not adequately documented its allegations of problems with the "fast track" system (despite the presence of such evidence in the file) and itself acted with apathy in complying with Mingob's instructions.
36. The TACP further found that it would not accept the CEFERE Consortium's assertion that Mingob did not properly formalize the required change orders and term extensions, because according to the TACP the Consortium did not properly endorse the performance guarantee (despite Mingob having reportedly called on that same performance bond in its 16 January resolution). On these limited grounds, TACP confirmed Mingob's termination of the contract.
37. As of the date of this Request, Panama continues to find itself in a State of Emergency caused by the international Covid crisis. For the most part, as a result of closures caused by that State of Emergency, the TACP has not operated at full capacity since March of 2020.
38. On 24 March 2020, the President of Panama, via Executive Decree No. 507, declared a national state of emergency effective the following day. On 25 March 2020, the TACP issued Decree No. 009-2020, which suspended

10. TACP Decision dated 7 April 2020, included as Exhibit **CLA-2**.

deadlines in all pending administrative proceedings and other administrative actions for the duration of the state of emergency.¹¹

39. On 27 March 2020, the President of Panama amended Article 9 of Decree No. 507 solely to exempt procedures for the selection of contractors and purchases of equipment, goods and hospital supplies from suspension. All other administrative processes remained subject to suspension.
40. The TACP typically takes between 4 and 6 months to render a decision on the merits of an appeal before it. Nevertheless, the TACP somehow found a way to issue its decision on 7 April, only some 13 days after it suspended operations and a little more than 60 days since receiving the Claimants' appeal. In addition, despite the state of emergency, the TACP reached its decision on the Consortium's appeal approximately two months after Mingob submitted its untimely response on 3 February 2020, much faster than the average, and especially fast in light of the size of the file and the state of emergency.
41. In view of the closure of the Courts of Justice due to the state of emergency, the Consortium attempted to appeal the decision of the TACP by means of a constitutional appeal before the Supreme Court, but its appeal was deemed inadmissible for allegedly lacking on the merits; that is, the Supreme Court decided on the merits of the appeal before giving IBT the opportunity to make its case on appeal. As a result, the CEFERE Consortium has barely had the opportunity to appeal Mingob's determination in the Administrative Chamber, which confirms that the TACP's decision remains in effect. Instead, Mingob now seeks to call on the performance guaranty that it already claimed had expired.
42. These facts demonstrate violations of due process accorded to the Claimants and denial of justice.

11. A copy of Decree No. 009-2020 is attached as Exhibit **CE-8**.

C. The Respondent has Demonstrated an Antagonistic and Discriminatory Attitude against IBT Group and its Affiliated Companies during the past Ten Years

43. The actions of Mingob, the Comptroller General, and the TACP are symptomatic of Panama's overall attitude to working with IBT Group and its related companies in Panama.
44. On 3 February 2020, for example, the Government of Panama terminated another project that IBT Group contracted for.¹² In cancelling that contract, Panama cited "delays" in four other IBT projects as grounds that "*la concesión de un contrato más podría representar un riesgo para el proyecto...y por lo tanto para los intereses del Estado.*"
45. Panama's antagonistic behavior towards IBT has been detailed in the Notice of Intent dated July 20, 2020, which supplements the notice sent to Panama on the present dispute regarding the Rehabilitation Center and which demonstrates that this dispute is part of a discriminatory course of conduct towards IBT.
46. In addition, as detailed in the Notice of 20 July, the many breaches on the part of Panama of its agreements with the Claimants have affected the Claimants' relationships with other companies. In its letter of 27 January 2020 to Mingob, for example, Canal Factoring, which previously provided financing, terminated its credit agreement with IBT LLC, because:

a la fecha dicho memorial no ha sido firmado y no tenemos ningún tipo de comunicación de [parte del ministerio]... tenemos conocimiento de la falta de pago de las gestiones de cobro presentadas por parte de IBT, LCC. al ministerio en los meses de mayo y junio, así como la disminución significativa en la ejecución del proyecto. Lo que ha motivado la decisión de dejar sin efecto el financiamiento ofrecido a IBT, LLC.¹³

12. This termination forms part of the basis of the Claimants' supplemental trigger letter, sent to Panama on 20 July 2020.

13. See Letter from Canal Factoring to Mingob, dated 27 January 2020, attached as Exhibit CE-9.

47. Taken thus in context, the termination of the CEFERE contract and the resulting three-year disqualification from contracting with IBT Group and its subsidiaries are clear nails in the coffin of the Claimants' work in Panama.

V. RESPONDENT'S BREACHES OF THE TPA

48. The actions described above constitute multiple breaches of Respondent's obligations under the TPA.

A. Fair and Equitable Treatment

49. Respondent breached the fair and equitable treatment obligation contained in Article 10.5 of the TPA, which provides:

1. Each Party shall accord to covered investments treatment in accordance with customary international law, including fair and equitable treatment.

....

2. (a) "fair and equitable treatment" includes the obligation not to deny justice in criminal, civil, or administrative adjudicatory proceedings in accordance with the principle of due process embodied in the principal legal systems of the world;

50. Through its actions described above, the Respondent failed to accord due process to the Claimants. The speed with which the TACP issued its final decision, having foregone its own attempts to appoint an expert and denying the submission of a large part of the Consortium's evidence, the internal contradictions in the reasoning of the decision, and the fact that it issued the decision during a time its operations were supposed to be suspended, and that it was the only decision of substance during that period, demonstrates the denial of due process accorded to the Claimants and constitutes a denial of justice to the Claimants.

B. Expropriation

51. Respondent breached Article 10.7 of the TPA, which provides:

Neither Party may expropriate or nationalize a covered investment either directly or indirectly through measures

equivalent to expropriation or nationalization ("expropriation"), except:

(a) for a public purpose;

(b) in a non-discriminatory manner;

(c) on payment of prompt, adequate, and effective compensation in accordance with paragraphs 2 through 4; and

(d) in accordance with due process of law and Article 10.5.

52. Through its actions described above, by forcing the Claimants to relocate the Women's Rehabilitation Center to a site that required additional work and cost, refusing to finalize the addendum required under Panamanian law to formalize that extension, and then ignoring every effort the Claimants made to resolve the issues and resume construction, Panama denied Claimants the benefit of their investment in the CEFERE Consortium and the Women's Rehabilitation Center and directly and indirectly expropriated that investment.

C. Investment Authorization and Investment Agreement

53. Respondent's conduct described above breached the contract Mingob signed with the Claimants for the Women's Rehabilitation Center project.¹⁴ That contract constitutes an investment authorization, as defined in Article 10.29 of the TPA, which provides that "*investment authorization means an authorization that the foreign investment authority of a Party grants to a covered investment or an investor of the other Party.*"¹⁵
54. That contract also constitutes an investment agreement, as defined in Article 10.29 of the TPA. An investment agreement is:

a written agreement...that takes effect on or after the date of entry into force of this Agreement between a national authority...of a Party and a covered investment or an investor

14. The contract for the Rehabilitation Center does not include a dispute resolution clause. Claimants therefore rely on the TPA and its definitions of an investment authorization and investment agreement for the resolution of their related disputes.

15. In footnote 14 of the TPA, Chapter 10, Section C, both Contracting Parties recognized that neither had a foreign investment authority at the time of signing the TPA.

of the other Party that grants the covered investment or investor rights:

(a) with respect to natural resources or other assets that a national authority controls; and

(b) upon which the covered investment or the investor relies in establishing or acquiring a covered investment other than the written agreement itself.¹⁶

55. The CEFERE Consortium's contract with Mingob is a written agreement signed after 31 October 2012 between a national authority of Panama and two United States companies, which formed a Consortium in order to execute the project. That contract granted them the exclusive right to design, construct, and equip the Rehabilitation Center on land controlled by national authorities. Both IBT Group and IBT LLC relied on that contract in forming the CEFERE Consortium and in acquiring licenses and movable property in Panama.
56. Through the actions described above, the Respondent has violated its obligations included in the following provisions of the contract between the Parties:¹⁷
- a) The eighth clause of the contract, which establishes Mingob's payment obligations;
 - b) The fourteenth clause of the contract, which establishes that Mingob must support the contract in accordance with its obligations under the Law on Public Procurement;
 - c) The twenty-ninth clause of the contract, which governs the creation of addenda;

16. Footnote 12 explains that a "national authority" *"means an authority at the central level of government."* Article 2.1 of the TPA defines the "central level of government," for Panama, as *"the national level of government."*

17. As is specified in clause 4 of the contract, the contract consists of: *"a. El contrato y sus adendas se las hubiera. b. El Pliego de Cargo y sus Adendas. C. La oferta presentada por El Contratista, junto con las cartas y documentos que complementen el alcance del contrato..."*

- d) The obligations to approve progress reports in accordance with the schedule and to make payments in accordance with the tender documentation;
- e) The obligation to have the necessary budget to execute the contract;
- f) Its obligations under the "fast track" program; and
- g) The obligations contained in addendum 1.

D. Rights granted pursuant to the most-favoured-nation (MFN) clause

57. In addition, Article 10.4 of the TPA, which includes its Most-Favoured Nation provision, entitles the Claimants to protections contained in other bilateral investment treaties with third states. Panama has provided a number of additional protections to investors from certain other nations that are made applicable to the Claimants by virtue of Article 10.4. Panama has also breached these obligations, including:

- a) A requirement in the Netherlands-Panama BIT that Panama "*observe any obligations it may have entered into with regard to investments of investors of the other Contracting Party*";¹⁸
- b) A requirement in the Italy-Panama BIT that Panama not hinder "*el funcionamiento, la gestión, el mantenimiento, la utilización, el disfrute, expansión y la venta o, en su caso, la liquidación de tales inversiones*";¹⁹ and
- c) A requirement in the Finland-Panama BIT that Panama accord "*full and constant protection and security*" to investments and refrain from

18. Agreement on encouragement and reciprocal protection of investments between the Republic of Panama and the Kingdom of the Netherlands dated 28 August 2000, Art. 3(4), included as Exhibit **CLA-3**.

19. Agreement between the Government of the Italian Republic and the Government of the Republic of Panama on the Promotion and Protection of Investments signed in Venice, Italy on 6 February 2009, Art. II(3), included as Exhibit **CLA-4**.

*"impair[ing] by arbitrary measures the operation of investments of investors of the other Contracting Party."*²⁰

VI. JURISDICTION

A. The Jurisdictional Requirements of the TPA are Satisfied

58. All jurisdictional requirements of the TPA are satisfied. Article 10.17 of the TPA explicitly provides Panama's consent to submit claims under the TPA to arbitration in accordance with the Contracting Parties' agreement.
59. Article 10.16 of the TPA provides that a claimant may submit claims that the respondent breached an obligation under Section A of Chapter 10, an investment authorization, or an investment agreement and that the claimant *"has incurred loss or damage by reason of, or arising out of, that breach."* The primary jurisdictional requirements of the TPA are thus that (i) the claimant be an *"investor of a Party that is a party to an investment dispute with the other party;"* (ii) the dispute relate to an investment; and (iii) that the respondent be a Contracting Party to the TPA.

1. Panama is a Party to the TPA

60. Panama is a Contracting Party to the TPA. It signed the TPA with the United States on 28 June 2007, and approved it by Law No. 53 dated 13 December 2007. The TPA entered into force on 31 October 2012.
61. Panama's consent to the submission of claims under the TPA is recorded in Article 10.17, which provides: *"Each Party consents to the submission of a claim to arbitration under this Section in accordance with this Agreement."*

2. Claimants are "Investors" of the United States

62. Claimants are Investors of the United States, as defined in Article 10.29 of the TPA, which provides:

20. Agreement between the Government of the Republic of Finland and the Government of the Republic of Panama on the promotion and protection of investments, dated 19 February 2009, Art. 2(2), 2(3), included as Exhibit **CLA-5**.

investor of a Party means a Party or state enterprise thereof, or a national or an enterprise of a Party, that attempts to make, is making, or has made an investment in the territory of the other Party; provided, however, that a natural person who is a dual national shall be deemed to be exclusively a national of the State of his or her dominant and effective nationality.

63. Both IBT Group and IBT LLC are incorporated and headquartered in the United States and therefore constitute enterprises of the United States. Claimants have also, as described above and elaborated in the next section, made investments in Panama in the Women's Rehabilitation Center project.

3. Claimants have a Dispute with Panama Related to their Investments

64. The Claimants have investments in Panama as defined in Article 10.29 of the TPA:

investment means every asset that an investor owns or controls, directly or indirectly, that has the characteristics of an investment, including such characteristics as the commitment of capital or other resources, the expectation of gain or profit, or the assumption of risk. Forms that an investment may take include:

(a) an enterprise;

(b) shares, stock, and other forms of equity participation in an enterprise;

(c) bonds, debentures, other debt instruments, and loans;^{7 8}

(d) futures, options, and other derivatives;

(e) turnkey, construction, management, production, concession, revenue-sharing, and other similar contracts;

(f) intellectual property rights;

(g) licenses, authorizations, permits, and similar rights conferred pursuant to domestic law; and

(h) other tangible or intangible, movable or immovable property, and related property rights, such as leases, mortgages, liens, and pledges.

65. The Claimants' ownership of the CEFERE Consortium constitutes, jointly, ownership of an enterprise within the meaning of part (a) and, separately, equity participation in an enterprise within the meaning of part (b). The Consortium signed a construction and management contract within the meaning of part (e) and obtained licenses, authorizations, permits and other rights within the meaning of part (g) and movable and immovable property and related property rights within the meaning of part (h). In exploiting these assets, Claimants committed substantial capital and assumed risk in the expectation of gain or profit.
66. The dispute between Claimants and Panama relates directly to the Claimants' investments in Panama and therefore constitutes an "investment dispute" as used in Article 10.16(1) of the TPA.

4. All other Jurisdictional Requirements are Satisfied

67. In addition to the primary jurisdictional requirements specified above, Claimants meet any and all other additional jurisdictional requirements contained in the TPA.
68. These include:
- a) As specified in Article 10.15, that the parties attempt to resolve the dispute through consultation and negotiation.
 - b) As specified in Article 10.16(2), that the claimant deliver a "notice of intent" to the respondent specifying (a) the name and address of the claimant, (b) the provisions of the TPA and any investment authorization or investment agreement breached invoked in each claim, (c) the legal and factual basis for each claim, and (d) the relief sought and the approximate amount of damages claimed, at least 90 days before submitting the claim to arbitration.
 - c) As specified in Article 10.16(3), that six months elapse since the events giving rise to the claim before submitting it to arbitration under the

ICSID Convention and the ICSID Rules of Procedure for Arbitration Proceedings.

- d) As specified in Article 10.18(1), that no more than three years have elapsed from the date on which the claimant "*first acquired, or should have first acquired, knowledge of the breach alleged under Article 10.16.1 and knowledge that the claimant (for claims brought under Article 10.16.1(a)) or the enterprise (for claims brought under Article 10.16.1(b)) has incurred loss or damage.*"
 - e) As specified in Article 10.18(2), that the claimant waive any right to initiate or continue before an administrative tribunal or court under the laws of Panama any proceeding with respect to any measure alleged to constitute a breach of the TPA.
69. The Claimants sent a Notice of Intent to the Respondent on 13 April 2020, which provided all of the information required by Article 10.16(2) and indicated their willingness to reach an amicable resolution of the dispute, as required by Article 10.15.²¹ To date, the Respondent has not responded nor made any attempt to negotiate with the Claimants.
70. The dispute between the CEFERE Consortium and Panama crystallized with Panama's announced intention to terminate the contract on 6 August 2019. Thus, at least six months, but no more than three years, have elapsed since the events that gave rise to the current dispute and the Claimants' submission of that dispute to arbitration.
71. Finally, the Claimants hereby waive any right to continue, before any administrative body or court of Panama, all ongoing cases related to the claims included in this Notice of Arbitration, except any cases, as specified in Article 10.18(3) of the TPA, "*that seek[] interim injunctive relief and do[] not involve the payment of monetary damages before a judicial or administrative tribunal.*"

21. A copy of that letter is included as Exhibit **CE-10**.

B. The Jurisdictional Requirements of the ICSID Convention are Satisfied

72. All jurisdictional requirements under the ICSID Convention are also satisfied. Article 25(1) of the ICSID Convention, governing the jurisdiction of the Centre, provides:

The jurisdiction of the Centre shall extend to any legal dispute arising directly out of an investment, between a Contracting State (or any constituent subdivision or agency of a Contracting State designated to the Centre by that State) and a national of another Contracting State, which the parties to the dispute consent in writing to submit to the Centre. When the parties have given their consent, no party may withdraw its consent unilaterally.

73. The ICSID Convention thus contains three requirements: (1) that the dispute be between a Contracting State and a national of another Contracting State (jurisdiction *ratione personae*); (2) that the dispute be a legal dispute arising directly out of an investment (jurisdiction *ratione materiae*); and (3) that the parties consent in writing to submit the dispute to the Centre (jurisdiction *ratione voluntatis*).
74. First, the jurisdiction *ratione personae* requirement is satisfied. Both Panama and the United States are Contracting States to the ICSID Convention. It entered into force in Panama on 8 May 1996, and in the United States on 14 October 1966.²² As noted above, both IBT Group and IBT LLC are enterprises validly incorporated and operating in the United States. The dispute is thus between a Contracting State and a national of another Contracting State.
75. Second, the jurisdiction *ratione materiae* requirement is satisfied. The Claimants' dispute is a legal dispute arising out of their investment in Panama, as set forth above.
76. Third, the *ratione voluntatis* requirement is satisfied, because both Panama and the Claimants have consented in writing to submit the dispute to arbitration before ICSID. Panama's consent is expressed in Article 10.17 of the

22. See ICSID List of Contracting States, as of 9 June 2020, included as Exhibit CE-11.

TPA, which further specifies that “[t]he consent under paragraph 1 and the submission of a claim to arbitration under this Section shall satisfy the requirements of: (a) Chapter II of the ICSID Convention.” The Claimants hereby provide their written consent to submit this dispute to arbitration under the ICSID Convention.

77. Therefore, all procedural requirements of the Centre have been met. Claimants have provided with this Request for Arbitration the information and materials specified in ICSID Institution Rules 2 and 3. Pursuant to ICSID Institution Rule 2(1)(f), the Claimants hereby affirm that they have taken all necessary internal actions to authorize this request.²³ Claimants have also paid the US\$ 25,000 filing fee required under ICSID Administrative and Financial Regulation 16.²⁴ Accordingly, all procedural requirements under the ICSID Convention and ICSID Institution Rules are satisfied.

VII. FURTHER PROCEEDINGS

78. As noted above, the Claimants executed a B./ 13,813,012.12 performance bond in relation to the Women’s Rehabilitation Center project. The Comptroller General of Panama recommended that Mingob execute on that that guaranty on 10 August 2018, while the consortium was awaiting formalization of the first addendum to the contract. Mingob purported to do so in its 16 January 2020 resolution terminating the contract.
79. Pursuant to Article 10.16(4)(a) of the TPA, the Claimants’ claims will be deemed to have been submitted to arbitration when this Request is received by the Secretary General of ICSID. It is well-established in international law that once a proceeding has begun, the Parties should take no steps to exacerbate the existing situation or alter the status quo. The Claimants therefore respectfully express their willingness and intent to initiate provisional measures proceedings, including the submission of a Request for Provisional

23. See Resolution of the Board of Directors of IBT Group dated 13 April 2020, included as Exhibit **CE-12**.

24. See Wire Transfer Confirmation, dated 17 July 2020, included as Exhibit **CE-13**.

Measures pursuant to ICSID Arbitration Rule 39 to the Secretary-General prior to the constitution of the Tribunal, should Panama take any further steps to execute on the performance bond absent a determination from the Tribunal as to the merits of the dispute before it.

80. Finally, and in addition to the current dispute, the Claimants have notified Panama by letter dated 20 July 2020 of 12 other investments out of which a dispute has arisen. Once the requisite waiting period has lapsed for each of these disputes, and assuming that no other solution is reached by negotiation or consultation, the Claimants intend to submit those disputes to arbitration and to consolidate them with this proceeding pursuant to Article 10.25 of the TPA.²⁵

VIII. CONSTITUTION OF THE TRIBUNAL

81. Article 10.19(1) of the TPA provides that:

Unless the disputing parties otherwise agree, the tribunal shall comprise three arbitrators, one arbitrator appointed by each of the disputing parties and the third, who shall be the presiding arbitrator, appointed by agreement of the disputing parties.

82. The Claimants see no reason for the Tribunal to consist of fewer than three members, and otherwise agree to the procedure specified in the TPA. Claimants therefore propose the appointment of Guido Santiago Tawil as their designated arbitrator in these proceedings.

IX. RELIEF REQUESTED

83. As a result of breaches of the TPA and Claimants' Investment Authorization and Investment Agreement, the Respondent has deprived the Claimants of their investments in Panama without justification or compensation and all semblance of due process has been denied. Pursuant to this Request, Claimants respectfully request compensation from Respondent for the latter's

25. For purposes of a future consolidated proceeding, which pursuant to Article 10.25 of the TPA would proceed under the UNCITRAL Rules, the Claimants note that the present Request meets the requirements for a Notice of Arbitration as set out in Rule 3(3) of the UNCITRAL Rules (2013).

violations of the TPA, investment authorization, and investment agreement, including accrued interest, in excess of more than USD 20 million, to be more precisely specified in Claimants' subsequent submission, and which is sufficient to "*wipe out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed*"²⁶ as well as applicable damages for breach of contract under Panamanian law.

84. In particular, Claimants seek the following:

- a) An Award of the Tribunal declaring that Respondent has breached its obligations under the TPA, investment authorization, and investment agreement with the Claimants;
- b) An Award of the Tribunal awarding compensation for damages suffered by the Claimants due to Respondent's breaches of its obligations under the TPA, investment authorization, and investment agreement, including accrued interest, to be specified in the course of the arbitration;
- c) An Award of the Tribunal for recovery of all costs and legal fees incurred by Claimant in connection with this arbitration in accordance with Article 61(2) of the Convention;
- d) An Award of the Tribunal for payment of interest on any monetary award from the date of the award until the date of final payment, at the applicable rate of interest as may be determined by the Tribunal; and
- e) Any other relief that the Tribunal may deem appropriate.

26. *Case concerning the Factory at Chorzow*, Judgment No. 13, September 13, 1928, PCIJ Ser. A. No. 17 at p. 47, included as Exhibit **CLA-6**.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Luis O'Naghten", is positioned above a horizontal line. The signature is written in a cursive style.

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Appendix 1: List of Fact Exhibits

Exhibit No.	Date	Document Description
CE-1	2 October 2008	IBT Group's Certificate of Status
CE-2	12 November 2003	IBT, LLC's Certificate of Status
CE-3-SPA	7 July 2020	Copy of the Power of Attorney Granted Hughes Hubbard & Reed
CE-4-SPA	11 May 2017	Copy of the Contract
CE-5-SPA	April 2016	Tender Documentation
CE-6-SPA	20 July 2017	Copy of Note 20797-C-007
CE-7-SPA	14 August 2019	Copy of Note 201-2019-CEFERE-MINGOB
CE-8-SPA	25 March 2020	Copy of Decree No. 009-2020
CE-9-SPA	27 January 2020	Letter from Canalfactoring to Mingob dated 27 January 2020
CE-10-SPA	13 April 2020	Copy of Notice of Intent to the Respondent dated 13 April, 2020
CE-11	9 June 2020	ICSID, List of Contracting States (as of 9 June 2020)
CE-12-SPA	13 April 2020	Resolution of the Board of Directors of IBT Group dated 13 April 2020
CE-13	16 July 2020	Wire Transfer Confirmation

Appendix 2: List of Legal Authorities

Exhibit No.	Date	Document Description
CLA-1-ENG CLA-1-SPA	31 October 2012	United States-Republic of Panama Trade Promotion Agreement dated 31 October 2012
CLA-2	7 April 2020	TACP Decision dated 7 April 2020
CLA-3	28 August 2000	Agreement on Encouragement and Reciprocal Protection of investments between the Republic of Panama and the Kingdom of the Netherlands dated 28 August 2000
CLA-4-SPA- ITA	6 February 2009	Agreement between the Government of the Italian Republic and the Government of the Republic of Panama on the Promotion and Protection of Investments dated 6 February 2009
CLA-5-ENG CLA-5-SPA	19 February 2009	Agreement between the Government of the Republic of Finland and the Government of the Republic of Panama on the Promotion and Protection of Investments dated 19 February 2009
CLA-6	13 September 1928	Case concerning the Factory at Chorzow, Judgment No. 13, September 13, 1928, PCIJ Ser. A. No. 17