

EXHIBIT B

I, Ana Beatriz Sánchez Melgar, a Sworn Translator, authorized to translate the English and Spanish languages in the Republic of Guatemala, according to resolution issued by the Minister of Education, number two thousand five hundred sixty-one of the year two thousand nine, giving to such translations legal value, DO HEREBY CERTIFY: having had at hand an **ARBITRATION AWARD**, written in Spanish which faithfully translated by me into English to the best of my knowledge and ability reads: ""(Four signatures appear in every page of the Arbitration Award) -----

ARBITRATION AND CONCILIATION CENTER OF THE CHAMBER OF COMMERCE OF GUATEMALA. -----

Case No. 02-2020. -----

Plaintiff: Sigma Constructores, Sociedad Anónima -----

Defendant: State of Guatemala -----

ARBITRATION AWARD -----

Guatemala, October 27, 2021 -----

Arbitral Tribunal: -----

Alcira Melgar Corado, co-arbitrator -----

Alejandro Solares Morales, co-arbitrator -----

Gerardo Recinos Jo, President -----

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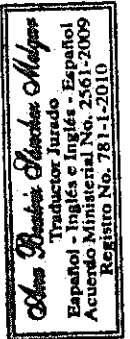
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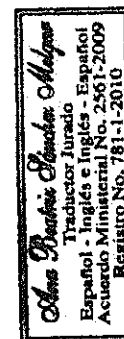
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DEFINITIONS

"CENAC"	Arbitration and Conciliation Center of the Chamber of Commerce of Guatemala -----
"CORELIP"	General Management of Road’s Control and Project Execution Unit -----
"DGC" or "Directorate"	General Directorate of Roads -----
"BCIE" or "CABEI"	Central American Bank for Economic Integration -----
"SIGMA" or "THE PLAINTIFF"	Sigma Constructores, Sociedad Anónima -----
"CONTRACT"	Contract No. 093-2014-DGC-CONSTRUCTION, signed on November 7, 2014, by Sigma and the State of Guatemala, approved by the Ministry of Communications, Infrastructure and Housing through Ministerial Decree No.925-2014 dated November 18, 2014. -----
"APPOINTED RESIDENT"	Active civil engineer, who acts on behalf of the Directorate in the project for which he has been hired or assigned to and who oversees the project, as well as the administrative and technical aspects of the hired works. Relies directly on the Engineer. This definition can be found on the Specifications, which are part of the Contract. -----



Alfonso Banchón Sánchez

"DIRECTOR"	Superior administrative authority of the General Directorate of Roads -----
"STATE" or "DEFENDANT"	State of Guatemala -----
"MINISTRY"	Ministry of Communications, Infrastructure and Housing -----
"MINISTER"	Minister of Communications, Infrastructure and Housing. -----
"PROJECT"	Rehabilitation of existing route and expansion of four lanes of CA-2 Oriente Route: Escuintla – Ciudad Pedro de Alvarado, which is the purpose of the Contract -----
"SPECIFICATIONS"	General Specifications for Road and Bridge Construction (September 2001 edition) issued by the Directorate, which are part of the Contract, as agreed in its Second Clause, section E), approved by Ministerial Decree No.1035-2001, issued on August 20, 2001, by THE MINISTER, published on August 24, 2001 in the Official Gazette. -----
"ARBITRATION AND CONCILIATION RULES"	The Conciliation and Arbitration Rules of the Arbitration and Conciliation Center of the Chamber of Commerce of Guatemala and the Cenac Foundation. -----

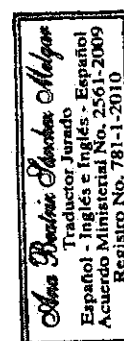
The terms and headings defined or identified on documentation within this process will have the meaning therein established. Words or expressions stated in singular will include its plural and vice versa. Words using the masculine gender will include its corresponding feminine version and vice versa. -----

In accordance with the Conciliation and Arbitration Rules of the Arbitration and Conciliation Center of the Chamber of Commerce of Guatemala, approved on July 14, 2014, the Arbitral tribunal issues this: -----

ARBITRATION AWARD -----

I. IDENTIFICATION OF THE PARTIES AND THEIR LEGAL REPRESENTATIVES: -----

1. The plaintiff is Sigma Constructores, S.A. (hereinafter referred as "Sigma" or the "Plaintiff", indistinctively), a company established in accordance with the laws of the Republic of Guatemala. -----



Beatriz Sánchez Alvarado

2. Its representatives and proxies in this case are: -----

Jorge David Melgar Gómez, who acts as Commercial Manager and Legal Representative -----

Juan Pablo Pons Castillo, as proxy, with administrative and judicial representation -

Fernando José Quezada Toruño, legal counselor and lead attorney; and -----

Najman Alexander Aizenstadt Leistenschneider, legal counselor and lead attorney.-

E-mails: melgarj@sigmacorp.com.gt -----

juanpablo.pons@gmail.com -----

fquezadat@hotmail.com -----

alexander@aizenstadtd.com -----

(Adress:) Avenida de la Reforma, 9-00 de la zona 9, ciudad de Guatemala, Edificio Plaza Panamericana, 7°. Piso, local A. -----

3. The defendant is the State of Guatemala (hereinafter referred as the "Defendant" or the "State"), acting by means of the Office of the Attorney General -----

4. Its representatives and proxies in this case are: -----

Ilse Noemí Castro Sierra, by delegation of the Attorney General -----

Edwin Alberto León Pineda, as legal counselor and lead attorney -----

Edwin Estuardo Mejicano Arguello, as legal counselor and lead attorney -----

Nery Aroldo Martínez Núñez, as legal counselor and lead attorney -----

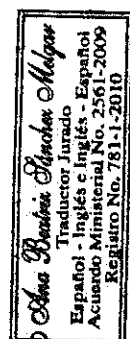
(Adress:) 15 avenida, 9-69 de la zona 13, Ciudad de Guatemala, Guatemala. -----

The Plaintiff and the Defendant will be hereinafter referred jointly as the "Parties". --

II. ARBITRATION AGREEMENT: -----

5. The dispute originates from the breach of Contract No. 093-2014-DGC-CONSTRUCTION, signed on November 7, 2014 by Sigma and the State of Guatemala, regarding the performance of the final design and construction of project referred to as "Rehabilitation of existing route and expansion to four lanes of CA-2 Orient Route: Escuintla – Pedro de Alvarado City", which was approved by the Minister of Communications, Infrastructure and Housing through Ministerial Decree No. 925-2014 issued on November 18, 2014 (hereinafter referred to as the "Contract"). -----

6. The arbitration agreement can be found on clause 17 of the Contract, which states: -----



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"The parties agree that disputes resulting from the execution, interpretation, application, and effects of this contract, bonds, and insurance, will be resolved between the parties directly. If this is not possible, the parties must then turn to the conciliation procedure established in the Arbitration Law, under the administration and rules of the Arbitration and Conciliation Center of the Chamber of Commerce of Guatemala and CENAC Foundation (CENAC). If after thirty (30) working days no agreement is reached, the controversy will be resolved by means of arbitration at law, in accordance with the laws of Guatemala, by an arbitral tribunal appointed under the Arbitration and Conciliation Center of the Chamber of Commerce of Guatemala rules applicable at the time in which the conflict originates. The arbitration will take place in the city of Guatemala and will be administered by CENAC, the language of the arbitration will be Spanish. The Arbitration Award will be subject to challenge and shall be complied with in good faith and without delay by the Parties. On the documents containing the bonds and insurance policies the following text must be included in clear, precise, and bold face letters: THIS CONTRACT INCLUDES AN ARBITRATION AGREEMENT."

7. According to the arbitration clause, the arbitration shall be resolved in accordance with the law, the seat shall be the City of Guatemala and the language shall be Spanish.

III. ARBITRAL TRIBUNAL:

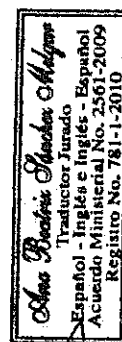
8. Lawyer Alcira Melgar Corado was proposed as arbitrator by the Plaintiff, she was later confirmed by the Arbitration and Conciliation Center of the Chamber of Commerce of Guatemala (hereinafter referred as "CENAC");

9. Lawyer Alejandro Solares Morales was named as arbitrator by CENAC, because the State of Guatemala failed to do so and did not appear to appoint an arbitrator from the list of arbitrators of the Center, within the period conferred to it in order to make the appointment

10. Lawyer Gerardo Recinos Jo, was named arbitrator and President of the Arbitral tribunal by CENAC, in accordance with the Arbitration Rules; and

11. Lawyer Hugo Roberto Figueroa Ovalle, was named Secretary by the Arbitral Tribunal.

IV. DISPUTE'S BACKGROUND, CLAIMS AND POSITION OF THE PARTIES



Alcira Melgar Corado

12. Hereafter are outlined the facts, claims and requests of the parties, which support the conflict, as stated on the legal briefs presented by the parties, including the communication sent by the Attorney General of Guatemala. -----

IV.1 DISPUTE'S BACKGROUND: -----

13. On November 7, 2014, the State of Guatemala and Sigma signed the Contract, which was approved by Ministerial Decree No.925-2014 dated November 18, 2014 in order to rehabilitate the existing route and expand to four lanes the CA-2 Orient Route: Escuintla – City of Pedro de Alvarado. -----

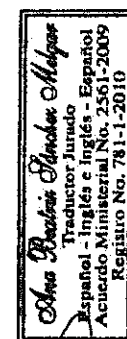
14. Nevertheless, on August 2, 2016, by means of administrative record, it was stated that with the permission of the General Directorate of Roads, the project was suspended beginning on July 16, 2016. The reason for suspending the project was that the State failed to comply with its obligation to pay. -----

15. Later, via document issued by the Minister of Communications, Infrastructure and Housing, reference No. DM No.-364-2017/ega dated March 30,2017, a request was sent to the Minister of Public Finances in order for him to arrange that the Central American Bank for Economic Integration (CABEI) discontinue the remaining funds related to loan 2107. The economic resources to finance the project came from that loan. For this, the Minister of Communications, Infrastructure and Housing, indicated that the works were suspended due to lack of payment of work estimates and informed that it was the Ministry's decision to prematurely terminate the contract. -

16. On May 10, 2017, through document identified as GERGUA-222/2017, CABEI informed the Ministry of Public Finances that the remaining resources related to loan 2107 had been discontinued as of May 5, 2017. -----

17. On November 30, 2017, the Director of the General Directorate of Roads issued resolution No. 298-2017 declaring the unilateral and premature termination of the contract, appointing an Acceptance and Liquidation Commission. -----

18. On December 7, 2017, SIGMA presented an appeal against resolution No. 298-2017 issued by the Director of the General Directorate of Roads, resolution that terminated the contract. Later, the Ministry of Communications, Infrastructure and Housing, through order No.SA-423-2018 issued on May 31, 2018, ruled on the matter and denied the appeal. -----



19. On January 25, 2019, the Commission proceeded to the final acceptance of the works, without any complaint, as recorded on minute No.002-2019-CONSTRUCCION-RECEPCION. -----

20. After the acceptance of the executed works, SIGMA presented before the Division for the Supervision of Constructions of the General Directorate of Roads a series of documents requesting that the amounts that resulted from each file to be approved and then sent to the Commission in order for them to include each of those amounts in the project's liquidation. Therefore, on June 6th of 2019, the Commission issued liquidation minute No.001-2019-LIQUIDACION-CONSTRUCCION. -

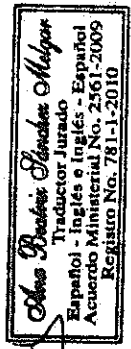
21. On June 11, 2019, the Director of the General Directorate of Roads, approved the liquidation of the contract approving the amount owed to the contractor as established by the Commission, ordering its transfer to the Financial Division of the General Directorate of Roads for the purpose of payment, taking into consideration the Budgetary Availability of funds and in case there was no availability in the budget "to file it away and pay in its opportunity". -----

22. On June 19, 2019, SIGMA appealed the order issued by the Director of the General Directorate of Roads, which approved the liquidation of the contract. -----

23. During the appeals process, the Ministry of Communications, Infrastructure and Housing, ordered the Director of the General Directorate of Roads to gather new evidence in order to better resolve the matter, in these gathering a report issued by the Unit for Control and Liquidation of Projects of the General Directorate of Roads (CORELIP) is found that is contained in administrative document No.:67-UCL-2020 dated February 24, 2020. -----

24. SIGMA has stated that there has not been a final decision issued on the appeal.

25. On July 21, 2020, SIGMA filed note No.GC-039-2020 requesting the Ministry of Communications, Infrastructure and Housing to settle the dispute directly between the parties, because there was no answer from the Ministry, on August 12, 2020, SIGMA filed note No.GC-043-2020, informing the Ministry that the direct phase of negotiations was to be considered finalized, that it would resort to the conciliation procedure and then to the arbitration proceedings to resolve disputes, as agreed in the contract. -----



A handwritten signature in black ink, appearing to read "Ana Beatriz Sánchez Málaga", written over the bottom portion of the stamp.

26. On September 8, 2020, CENAC issued resolution No. 2, whereby it determined that the conciliation procedure had concluded. -----

IV.2 Plaintiff's claims -----

27. The plaintiff filed a claim against the State of Guatemala, requesting us to declare that the State of Guatemala failed to comply with its contractual obligations and therefore that it must pay the Plaintiff thirty-two million, eight hundred twenty-seven thousand, nine hundred eighty-nine United States dollars with twelve cents (US\$ 32,827,989.12), or the amount established by the Arbitral tribunal, for the following items: -----

a) Four million, six hundred two thousand, six hundred twenty United States dollars with zero four cents (US\$ 4,602,620.04), which is the amount determined in the liquidation of the contract No.093-2014-DGC-CONSTRUCCION. -----

b) Seventeen million, eighty-two thousand, nine hundred seventy-one United States dollars with ninety-six cents (US\$ 17,082,971.96), as compensation for eliminated work items. -----

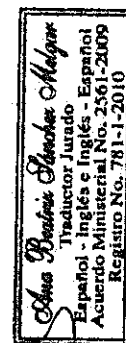
c) One million, seven hundred thirty thousand, three hundred fifty-seven United States dollars with sixty-five cents (US\$ 1,730,357.65), due to expenses during suspension of the works. -----

d) Five hundred forty-six thousand, four hundred six United States dollars with ninety cents (US\$ 546,406.90), due to work performed, but not included in work estimates.-

e) Two hundred and fifty-three thousand, forty-two United States dollars with ninety-one cents (US\$253,042.91), due to demobilization costs. -----

f) One hundred fifty-seven thousand seven hundred thirty-three dollars and forty-five cents of the United States of America (US\$157,733.45) for improperly deducted amounts from the advance that was reduced from the gross amount in the request for work performed but not included in the work estimates, because it was improperly deducted since the advance had been used in its entirety. -----

g) Sixty-one thousand, nine hundred forty United States dollars with eighty-nine cents (US\$ 61,940.89), due to improperly deducted amounts from the gross amount in the request for demobilization costs, which should not have been deducted since the advance was used up entirely. -----



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h) Eight million, three hundred ninety-two thousand, nine hundred fifteen United States dollars with thirty-two cents (US\$ 8,392,915.32), due to interests produced by the pending payment of work estimates (No. 8 to No.19) from March 1, 2019, to June 30, 2021. -----

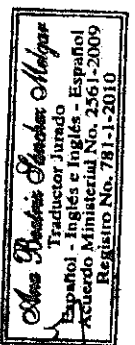
i) Because to date the State of Guatemala has not paid work estimates identified as No. 8 to No. 19, for a total amount that adds up to twenty eight million three hundred ninety-three thousand one hundred forty United States dollars with forty-nine cents (US\$ 28,393,140.49), it is requested that an order be issued to the State of Guatemala to pay all corresponding interest, from the moment in which the amount of interest is updated in the arbitration award until the day in which payment is made in full, applying the maximum annual interest rate established for tax purposes by the Monetary Board. -----

j) That the State of Guatemala must pay default interests in the following manner: (a) Contractual Interests, at maximum annual interest rate established for tax purposes by the Monetary Board, applied to work estimates No.8 to No.19 which to this date have not been paid; and (b) Legal interest for any other amount due by the State of Guatemala, starting from the following day from the date in which the arbitration award is final until the date in which the State of Guatemala pays the owed amounts to SIGMA. -----

IV.3 DEFENDANT’S POSITION: -----

28. The defendant appeared before the Arbitral tribunal and only presented objections against the orders and proceedings of the Arbitral Tribunal and to express that the State of Guatemala would not subject itself to arbitration. Nevertheless, the State of Guatemala did not answer plaintiff’s complaint, did not file any defense or motion against plaintiff’s requests or claims. The State of Guatemala did not offer any evidence and only filed a written brief in the hearing for closing arguments, via memorial filed on the 20th day of September of 2021, also requesting the proceeding to be suspended. -----

29. The Attorney General of Guatemala, through document dated August 2, 2021, directed to the President of the Arbitral tribunal, expressed: “[...] *The State of Guatemala reiterates that it does not accept to being a party in arbitration at law No. 2-2020 because it is in a condition of defenselessness (...)*”. -----



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V. PROCEDURAL HISTORY: -----

30. On April 28, 2021, the hearing for the installation of the arbitral tribunal took place, in which the plaintiff filed the complaint against the State of Guatemala and the Arbitral Tribunal granted the State of Guatemala ten days in order to answer the complaint. -----

31. The State of Guatemala did not answer plaintiff's complaint and did not file any defense or motion against SIGMA's requests or claims. -----

32. On June 3, 2021, the hearing for scheduling evidence took place, in which order No. 4 was issued declaring: (a) That the arbitral tribunal has jurisdiction to hear and decide this arbitration and any related matter, without prejudging about the appropriateness or inappropriateness of plaintiff's requests, and (b) set the evidentiary period to three months. -----

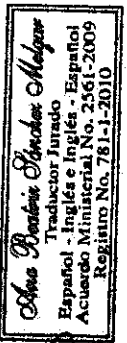
33. The State of Guatemala did not appear in the scheduled hearing and did not offer any evidence. -----

34. The plaintiff offered evidence into record; the following evidence was submitted and produced: (a) The documents identified on the complaint dated April 28, 2021. (b) Written reports, attached to the memorial dated August 23, 2021, identified as follows: (a) Order No. UAIP-DS-2021-310 issued by the Ministry of Communications, Infrastructure and Housing Public Information Unit, dated August 10, 2021, and annexed documents; (b) Order No. UAIP-DS-2021-308 issued by the Ministry of Communications, Infrastructure and Housing Public Information Unit, dated August 10, 2021, and annexed documents. -----

35. Expert report issued on August 10, 2021, by expert engineer Oscar Marcelo Gaytán Tánchez, who was appointed by the Arbitral tribunal. -----

36. The State of Guatemala did not offer any evidence during the evidentiary period. -----

37. Once the evidentiary period had concluded, with all the evidence offered, produced, and considered, the Arbitral Tribunal, scheduled the hearing for closing arguments to take place on September 20, 2021. On the scheduled date, SIGMA presented a brief with its closing arguments and provided an oral presentation of its arguments to the Tribunal. The State of Guatemala, on its part, only appeared in writing by means of memorial dated September 20, 2021. -----



Oscar Marcelo Gaytán Tánchez

VI. OBJECTIONS

38. During the arbitration proceedings, the State of Guatemala filed the following objections:

- a. Objection via memorial dated May 6, 2021, against order no. 1 dated April 28, 2021, which was noted by the arbitral tribunal by order No. 2 dated May 26, 2021. --
- b. Objection via memorial dated May 28, 2021, against order No. 3, dated May 26, 2021, which was noted by the arbitral tribunal by order No. 4 dated June 3, 2021. --
- c. Objection via memorial dated June 9, 2021, against order No. 4, dated June 3, 2021, which was noted by the arbitral tribunal by order No. 5 dated June 17, 2021. -
- d. Objection via memorial dated June 22, 2021, against order No. 5, dated June 17, 2021, which was noted by the arbitral tribunal by order No. 6 dated July 14, 2021. --
- e. Objection via memorial dated July 19, 2021, against order No. 7, dated July 14, 2021, which was noted by the arbitral tribunal by order No. 8 dated August 16, 2021.
- f. Objection via memorial dated September 13, 2021, against order No. 9, dated September 7, 2021, which was noted by the arbitral tribunal by order No. 10 dated September 20, 2021.
- g. Objection via memorial dated September 28, 2021, against order No. 10, dated September 20, 2021, which was noted by the arbitral tribunal by order No. 11 dated October 19, 2021.

39. Because the objections were presented in a timely manner, the Arbitral Tribunal took note of them.

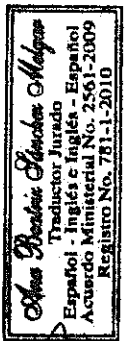
VII. ABOUT THE ARBITRATION PROCEEDINGS

40. According to the Arbitral Tribunal, all requirements and procedures established by the Arbitration Law and its regulations were complied with, maintaining at all times the sequence of procedural phases, the principles of the right to a hearing, the adversarial principle, and fair treatment to the parties.

41. The hearings took place through oral argument, and all the mandatory legal proceedings were complied with, all of which was duly documented via minutes and recordings of digital video.

VIII. ANALYSIS OF THE PROCEEDINGS

42. The Arbitral Tribunal having concluded the proceedings and before issuing the arbitration award, verified that the terms established by the law, its regulations and



Ana Patricia Sanchez Mayas

orders of the Tribunal were duly observed, that service was legally performed in the addresses informed by the parties and that they were duly recorded. The arguments and requests of the parties were considered, deciding what was appropriate in each case. There were some relevant situations in the proceedings for which the Tribunal makes the following considerations. -----

IX. ARBITRAL TRIBUNAL'S BASIS -----

IX.1 LEGAL BASIS I: OF THE ARBITRATION OF LAW -----

43. The Arbitral Tribunal analyzed the nature of an **ARBITRATION AT LAW**, as follows:

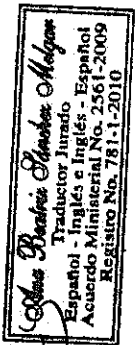
44. In this type of arbitration process the Arbitral Tribunal must decide the dispute and issue an award based exclusively on the applicable laws, constitutional law, imperative or prohibitive norms which for reasons of public order and of mandatory consideration are of compulsory application. -----

45. Therefore we certify that in order to issue this AWARD, we not only took in consideration ordinary laws but also legal precepts, principles of law, scientific doctrine and/or any jurisprudence considered as necessary or useful to form our own conviction. -----

46. Because the main disputes brought to this Tribunal correspond to issues established in the Contract (both the claims and the arbitration clause) it is necessary to cite article 1519 of the Civil Code, which reads as follows: *"From the moment in which a contract enters into force it binds the contracting parties to comply with what was convened, as long as the agreement complies with the legal rules applicable to the business entered into, and it must be performed in good faith and in accordance with the common intent of the parties."* Therefore, during an arbitration process based on law, it its especially relevant to take into consideration what was agreed upon by the parties in the contract from which the disputes arise.

47. It is also necessary to take into consideration article 36, section 3 of the Arbitration Law: *"On national and international arbitration proceedings the Tribunal will decide based on the contract's provisions and will consider the trade usages applicable to the case."* -----

IX.2. LEGAL BASIS II: ABOUT THE SCOPE OF THE ARBITRATION AGREEMENT AND THE ARBITRATION CLAUSE -----



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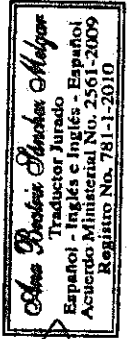
48. The Arbitral Tribunal deems necessary and essential to start by establishing the jurisdiction and competence of the Arbitral Tribunal to issue an Award; therefore, the arbitration clause is analyzed in order to establish if the claims filed by Sigma Constructores, Sociedad Anónima are within the jurisdictional scope assigned by the Parties in the Contract. It will also be determined if the Arbitration Clause is binding on both parties, Sigma Constructores, Sociedad Anónima and the State of Guatemala, as the defendant. -----

49. The Arbitral Tribunal examined Contract **No.093-2014-DGC-CONSTRUCCIÓN**, which was signed by the legal representative of Sigma Constructores, Sociedad Anónima and the Director of the General Directorate of Roads in representation of the State of Guatemala. The contract was approved by Ministerial Decree issued by the Ministry of Communications, Infrastructure and Housing, based on articles 47 and 48 of the Public Procurement Law. Because Contract **No.093-2014-DGC-CONSTRUCCIÓN**, is a duly executed contract, accepted, and signed by the parties, the parties are obliged to respect and comply with clause Seventeen which contains an Arbitration Agreement. -----

50. Also, the Arbitration Agreement is considered valid, since article 103 of the Public Procurement Law, allows the State of Guatemala to submit to arbitration proceedings to resolve disputes that arise in relation to the Contract, as well as any matter regarding its interpretation, application, and effects. -----

51. In this case the Plaintiff filed a claim against the State of Guatemala, and in the representation of the State of Guatemala here appeared Lawyer Ilse Noemí Castro Sierra, by delegation of Guatemala's Attorney General, who represents the State of Guatemala according to article 252 of the Political Constitution of the Republic of Guatemala. Even though the above-mentioned professional was duly notified of every stage of the arbitration process, she did not answer plaintiff's complaint, did not file any motion against the plaintiff's requests or claims, did not offer any evidence against the plaintiffs' claims and only filed objections against the Arbitral Tribunal's rulings, claiming that the State of Guatemala is supposedly defenseless (a claim that will be analyzed in this Award). -----

52. Based on these matters, the Arbitral tribunal concludes that: -----



a) Contract **No.093-2014-DGC-CONSTRUCCIÓN**, signed by **SIGMA CONSTRUCTORES, SOCIEDAD ANÓNIMA** and the **STATE OF GUATEMALA**, was validly entered into, it was accepted and ratified by the parties based on the applicable legal norms previously cited. -----

b) The Contract includes a valid and binding Arbitration Agreement, which specifies that disputes derived from compliance, interpretation, application, effects, warranties, and insurance regarding the Contract will be solved via Arbitration of Law. -----

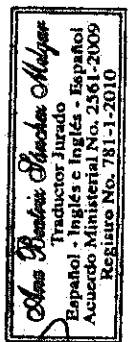
c) The parties did not file a request for the recusal of any of the members of the Arbitral Tribunal; therefore, it was established that the Tribunal was duly appointed in observation of CENAC’s arbitration rules. Neither party raised any objection to the Tribunal’s jurisdiction, therefore, the Arbitral Tribunal, for these reasons, and after analyzing the Arbitration Agreement, on June 3, 2021, declared itself competent to rule on the petition filed by Sigma Constructores, Sociedad Anónima, against the State of Guatemala. -----

IX.3. LEGAL BASIS III: ABOUT THE ARGUMENTS PRESENTED BY THE STATE OF GUATEMALA

53. The State of Guatemala, through the Attorney General, was duly served with the complaint filed by Sigma Constructores, Sociedad Anónima, against the State of Guatemala, and was given a period of 15 days to file its answer as established on CENAC’s arbitration rules. -----

54. Notwithstanding, Lawyer Ilse Noemí Castro Sierra, who appeared in representation of the State of Guatemala, by delegation of Guatemala’s Attorney General, did not answer plaintiff’s complaint against the State, but only limited herself to filing objections against the Arbitral Tribunal’s orders, hearings, and other arbitral proceedings. -----

55. That is to say, that within the period granted by the Tribunal, she not only did not answer the complaint, but also did not file any motions, did not contradict plaintiff's arguments, did not submit any contradictory evidence, and did not object the evidence offered and proposed by the plaintiff. What she did do, is file a brief in the hearing for **closing arguments**, accompanying several documents which this tribunal noticed had never been offered or proposed to be entered as evidence within the appropriate procedural stage, that is, when answering the complaint. -----



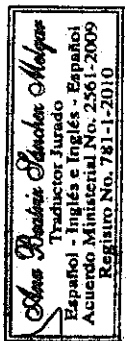
Ilse Noemí Castro Sierra

56. Having stated these issues, The State of Guatemala, legally represented by Lawyer Ilse Noemí Castro Sierra, used as a foundation to file OBJECTIONS to the Arbitral Tribunal's orders and proceedings – that the contract signed between **SIGMA CONSTRUCTORES, SOCIEDAD ANÓNIMA** and the **STATE OF GUATEMALA**, is supposedly judicially sealed in charge of the Special Prosecutor's Office Against Impunity, which supposedly is currently investigating a case against Sigma Constructores, Sociedad Anónima; and because the Contract is supposedly under seal, the State of Guatemala could not have access to it, because the Prosecutor's office could not give more information with regards to the investigation or the Contract. -----

57. Also, it argued that the Contract signed by the parties was under judicial seal at the Special Prosecutor's Office Against Impunity, due to a current investigation identified as CASE SIGMA CA2 ORIENT, reference No.MP001-2017-16291, therefore the State of Guatemala was defenseless, so it did not accept to being party to the Arbitration Process. The State of Guatemala claimed that it did not agree to be part of the arbitration proceedings due to the Contract being under seal at the Prosecutor's Office. -----

58. About this last argument (not accepting the Arbitration Process), the Arbitral Tribunal considers that it is not a valid argument because the Arbitration Agreement was binding from the moment in which the Contract was signed and approved. Therefore, it is not possible to argue or merely to invoke the non-acceptance of the arbitration (or of the Arbitration Agreement) to resolve a dispute in the moment it arises, because the acceptance was granted when the contract was executed. –

59. In order to substantiate its arguments, during the arbitration proceedings, the State of Guatemala filed various memorials annexing copies of documents and what seemed like it could be a judicial ruling with the purpose of accrediting its arguments. However, the Arbitral Tribunal cannot consider or give evidentiary value to any such documents or analyze them in this Award, since the Defendant did not submit them to substantiate a motion or defense during the period of time given to answer the complaint; it did not submit them or request for them to be entered into as evidence during the established evidentiary period and the Plaintiff did not have an opportunity to contradict them or to offer rebuttal evidence. -----

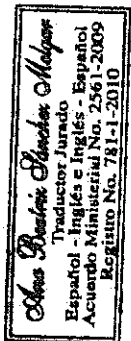


A handwritten signature in black ink, appearing to read "Alfonso Ramírez Sánchez Molinos", written over the notary seal.

60. Also, this Arbitral Tribunal was able to establish that the supposed sealing of the Contract, which was claimed by the State of Guatemala, but was not accredited or proven during the arbitration proceedings, was not an obstacle for the State of Guatemala to have knowledge of, decide and rule on issues regarding the same Contract since 2017. For example, in 2017, the State of Guatemala rescinded the loan that had been established to provide the financing that was needed to comply with its obligation to pay the plaintiff for the works and services agreed to in the Contract. In the year 2018, the State of Guatemala decided to terminate the Contract. In the year 2019, the State of Guatemala accepted the works; during that same year the State of Guatemala liquidated the Contract and approved the amount, that based on that liquidation, it considered was owed to the Plaintiff, deciding at that moment that the amount owed to Plaintiff was four million six hundred and two thousand six hundred and twenty dollars of the United States of America with four cents (US\$ 4,602,620.04). -----

61. The Arbitral Tribunal also noticed that, after the Contract's liquidation, the State of Guatemala received and initiated the administrative procedure to an appeal filed by the plaintiff against the ruling that decided the Contract's liquidation, the file shows activities carried out by the Ministry of Public Finances, the Ministry of Communications, Infrastructure and Housing, the General Directorate of Roads, the Division of Approval of Records of that Directorate and the Office of the Attorney General. -----

62. In order to carry-out the aforementioned actions that the State performed by means of its offices, it was indispensable for it to have access to the records to which each of them referred to. Therefore, the supposed defenselessness claimed by the State of Guatemala, not only was never demonstrated, but the Plaintiff did submit as evidence (in the proper manner and time to do so) a certified copy of the Contract and of the Ministerial Decree that approved the Contract, both issued by the Ministry of Communication, Infrastructure and Housing, as well as copies of the beginning and end of the records containing the appeal that it filed against the ruling by the Director of the General Directorate of Roads that approved the liquidation of the Contract, a file that was provided by the Public Information Unit of



A handwritten signature in black ink, appearing to read "Jana Samu", written vertically below the stamp.

said Ministry, which proved that neither the Contract, nor the documents related to it, where under any type of seal. -----

63. In addition, within the copies of the records of the appeals process issued by the Public Information Unit of the Ministry, there are documents that prove that the General Attorney's Office by means of Lawyer Ilse Noemí Castro Sierra, requested the Ministry to provide certified copies of the Contract as well as all documents that the State would require in order to defend itself, which were issued to her by the Ministry even before this arbitration proceeding commenced. -----

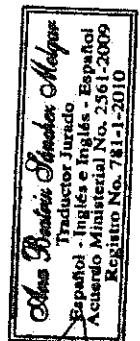
64. Therefore, this Arbitral Tribunal dismisses the arguments of the State of Guatemala, concerning the supposed defenselessness, because it was proven that it did have at its disposal, at all times, the documents necessary to defend itself and to take a position in this arbitration. -----

65. Finally, Lawyer Ilse Noemí Castro Sierra, representing the Defendant, argued that the Arbitral Tribunal should wait until the final outcome of the alleged criminal investigation taking place against the plaintiff in order to continue with the arbitration proceedings. -----

66. The Arbitral Tribunal does not grant merit to that argument presented by the State of Guatemala because of three main reasons. **First**, the Arbitral Tribunal's jurisdiction to decide about this controversy arises from the will of the parties, expressed on the Contract, jurisdiction which was not subject to any limitations or conditions beyond what it is established in the arbitration agreement. **Second**, the tribunal has not been notified of any judicial proceeding associated with the alleged criminal investigation alluded by the State of Guatemala, or of any order that prevents the adequate exercise of the mandate conferred to it to decide this controversy. **Third**, lastly, article 103 of the Public Procurement Law states: "*No criminal action may be commenced without the previous conclusion of administrative or arbitration proceedings*". -----

67. Therefore, this Arbitral Tribunal has achieved a sufficient degree of certainty regarding this matter and concludes that: -----

a) The State of Guatemala was duly served with the complaint presented by Sigma Constructores, Sociedad Anónima, and summoned to answer it, so that it could appear in the arbitration and exercise the procedural conduct it deemed



Ilse Noemí Castro Sierra

appropriate, answer the complaint, file motions, or any other type of defense it considered appropriate. -----

b) Lawyer Ilse Noemí Castro Sierra, appeared in the arbitration exercising the representation of the State of Guatemala, by delegation of the Attorney General of Guatemala.-----

c) The State of Guatemala, even though properly served, did not answer plaintiff's complaint, nor did it file any motions. -----

d) The State of Guatemala did not offer, propose, or request that any evidence be produced and entered as evidence into the record. -----

e) The State of Guatemala did not object or refute the evidence offered, proposed, and produced by the plaintiff. -----

f) the State of Guatemala was not present in any scheduled hearing of the proceedings even though it was duly notified of every stage of the proceedings. ---

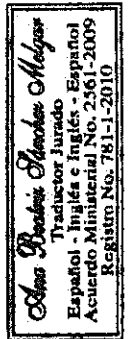
g) That the document mentioned by Lawyer Ilse Noemí Castro Sierra, acting in the previously established representation, issued by Special Prosecutor's Office Against Impunity, concerning Case Sigma CA2 ORIENT with reference number MP001-2017-16291, was not offered or proposed to be entered as evidence into the record. ----

h) That the documents that accompanied the different briefs presented by the State of Guatemala to this Tribunal, because they were not offered or proposed to be entered into evidence at the appropriate time (when answering the complaint) cannot be given any weight, value, or consideration in issuing this award. -----

i) Contrary to what was argued by the State of Guatemala, the Arbitral Tribunal, was able to establish that the Contract object of this arbitration proceedings was not under any kind of seal, be it judicial or prosecutorial, and therefore the supposed defenselessness argued by the State of Guatemala is baseless and unfounded.

Specially because it was dully proven within the arbitration that during the period in which the Defendant alleged that the Contract was under seal, the State was able to carry-out a variety of actions concerning the Contract, which would have been impossible to perform if the Contract had been under the alleged judicial seal. ----

j) That the Arbitral Tribunal is not able to accept the argument that the State of Guatemala was unable to defend itself, because, before the installation of the Arbitral Tribunal, Lawyer Ilse Noemí Castro Sierra, had already requested and



obtained certified copies of the Contract and of the different documents of which she said she supposedly not had access to and that were necessary to defend the State of Guatemala.-----

k) That the Arbitral Tribunal, after observing the procedural behavior of the State of Guatemala, by not answering the complaint and not submitting any evidence, decided to send several notices directly to the Attorney General of Guatemala informing him of the conduct of the lawyer to whom he had delegated the representation of the State, but by means of written communication the Attorney General of Guatemala stated that he confirmed the attitude and position presented by lawyer Castro.-----

IX.4. LEGAL BASIS IV: ABOUT THE ESTOPPEL THEORY AS GOOD FAITH PRINCIPLE APPLICABLE TO EVERY CONTRACT-----

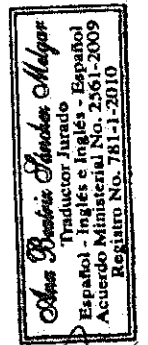
68. The estoppel theory is a rule of law that derives from good faith and rejects any legal behavior that is objectively contradictory with respect to a parties' own previous conduct. This theory is directly connected to general principles of law and specially to the principle of good faith. It is also a defense against incoherent actions and as a new form of restriction or limitation of the exercise of rights. -----

69. Its purpose is to require persons to act in a consistent manner in their daily actions. It penalizes persons who act inconsistently by limiting the possibility of exercising rights that in a first moment, they could have claimed. -----

70. This theory is based on the concept that people act in good faith relying on the conduct of others. Therefore, if a person acts in a manner in which his conduct would make it apparent that it will not claim to exercise a right, it cannot latter make that same claim against the person that relied on that appearance. It is a rule of good conduct based on the good faith of the parties. -----

71. Therefore, if a person executes an action that induces reliance on a way of acting and later acts in a manner that contradicts that action, it can be concluded that the person is acting against its own actions, in that case the estoppel theory may be invoked to bar the party to prevent this conduct. -----

72. The Arbitral Tribunal concludes that the State of Guatemala has no legal basis to argue or invoke as a defense mechanism that the arbitration process does not apply or that the State of Guatemala is unable to defend itself, because those statements



Ana Beatriz Sanchez Melgar

contradict actions taken by the State of Guatemala, which consist of the execution, approval and performance of a valid Contract that includes an Arbitration Agreement to resolve disputes between the parties. -----

IX.5. LEGAL BASIS V: ABOUT THE CONTRACT'S LIQUIDATION -----

73. This Arbitral Tribunal, from documentary evidence offered, presented and produced by the Plaintiff, finds the existence of order No.108-2019, issued by the Director of the General Directorate of Roads, in which the liquidation of the Contract is approved and an amount of **four million, six hundred two thousand, six hundred twenty United States dollars with cero four cents (US\$ 4,602,620.04)** is recognized as owed to the plaintiff. -----

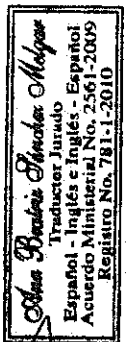
74. It has also has been established that in the Contract's liquidation, amounts concerning various claims presented by the plaintiff were not included, even though those claims were (a) endorsed by the Appointed Resident, (b) approved by the General Directorate's Division for Approval of Records, (c) approved by the Coordinating Engineer of the Division of Construction Supervision and (d) transferred to the Acceptance and Liquidation Commission with a favorable opinion in order for those amounts to be included in the liquidation of the contract. -----

75. Therefore, this Arbitral Tribunal has achieved a sufficient degree of certainty regarding the following matters: -----

a) That there was a liquidation of the Contract, which is the one approved by order No.108-2019 issued by the Director of the General Directorate of Roads, which establishes and recognizes a debt in favor of Plaintiff for an amount of **FOUR MILLION, SIX HUNDRED TWO THOUSAND, SIX HUNDRED TWENTY UNITED STATES DOLLARS WITH CERO FOUR CENTS (US\$ 4,602,620.04)** . -----

b) That the amount previously indicated is not the subject of any discussion or dispute, because it was recognized and is contained in an order that established it (order No.108-2019 issued by the Director of the General Directorate of Roads). -----

c) That in the liquidation, several amounts regarding claims presented by Plaintiff were not included, which should have been included in the liquidation because they had been ENDORSED by: (a) the Appointed Resident, (b) approved by the General Directorate's Division for Approval of Records, (c) approved by the



Juan Barrios Sanchez Maypa

Engineer, and (d) the files had been sent to the Acceptance and Liquidation Commission, with a favorable opinion for their inclusion in the Contract's liquidation.

IX.6. LEGAL BASIS VI: ABOUT PLAINTIFF'S CLAIM

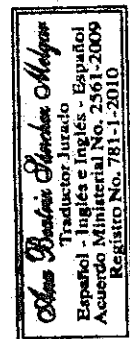
76. With regards to the claims presented by plaintiff, this Arbitral Tribunal examines the amounts of each claim that should have been included in the liquidation and were not included even though they were ENDORSED by: (a) the Appointed Resident, (b) approved by the General Directorate's Division for Approval of Records, (c) approved by the Engineer, and (d) had been sent to the Acceptance and Liquidation Commission with a favorable opinion in order for them to be included in the liquidation of the Contract.

(i) COMPENSATION CONCERNING ELIMINATED ITEMS TOTALING AN AMOUNT OF US\$ 17,082,971.96:

77. The Arbitral Tribunal observes that the parties agreed that in case any given item was removed from the Contract's Work Items, the State must pay Sigma Constructores, Sociedad Anónima, compensation for eliminated work items, this is logical in order to make it whole for expenses it incurred.

78. It was also observed that the Director of the General Directorate of Roads, unilaterally terminated the Contract, which is shown on order No.298-2017 issued on November 30, 2017. Therefore, because the Contract was terminated early then every item of the Contract that was in the process of being performed at that moment was immediately removed as an item in the contract, as well as every item that was going to be performed in the future, but had not yet commenced in accordance to the schedule, therefore a compensation for those items should be paid to SIGMA.

79. The Arbitration Tribunal notices that the expenses incurred by SIGMA CONSTRUCTORES, SOCIEDAD ANÓNIMA, due to the elimination of contractual items were calculated in compliance with sub section 110.66 of the General Specifications for the Construction of Roads and Bridges, specifications that are a part of the Contract. The calculated amount has been checked and approved by the Appointed Resident, the General Directorate's Division for Approval of Records, and the Engineer. Therefore, it has been established that the payment owed by the State of Guatemala to SIGMA CONSTRUCTORES, SOCIEDAD ANÓNIMA, amounts to



Beatriz Sánchez Méjico

SEVENTEEN MILLION, EIGHTY-TWO THOUSAND, NINE HUNDRED SEVENTY-ONE UNITED STATES DOLLARS WITH NINETY CENTS (US\$ 17,082,971.96). -----

80. For this purpose the Arbitral Tribunal examined the expert report issued by engineer Oscar Marcelo Gaytan Sanchez, on August 10, 2021, where he ratifies the result and shows the calculations made in order to obtain it. The report by the expert appointed by the Arbitral Tribunal was admitted and valued as evidence, after notifying all parties, by means of order No.9 issued on September 7, 2021 issued by this Arbitral Tribunal. -----

(II) EXPENSES INCURRED DURING THE SUSPENSION OF WORKS, FOR AN AMOUNT OF US\$ 1,730,357.65 -----

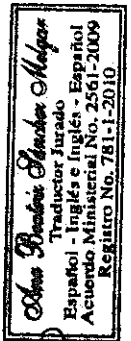
81. The Arbitral Tribunal also points out during the arbitration proceedings that according to the Contract, specifically in section D, Clause fourteen, based on subsection 109.10(c) of the Specifications, that the parties, agreed, that in case the works were suspended for causes not attributable to Plaintiff, it should be paid for all expenses incurred and duly proven that such suspension of the works caused. -----

82. It was determined that the works were suspended because of lack of payment of the work estimates, with the General Directorate of Roads' authorization, since July 16 of the year two thousand sixteen, as stated in certified copy of minute No. 21-2016 issued on August second of year two thousand sixteen. -----

83. It was also established that on June 29, 2018, order No .298-2017 issued by the Director of the General Directorate of Roads which unilaterally terminated the Contract became final; on that date the Contractor was notified of the Ministry's decision to deny the appeal filed against the aforementioned order. -----

84. As a consequence, work on the Project was suspended from July 16, 2016, until June 29, 2018, date in which order No. 298-2017, which terminated the Contract, became final. -----

85. The expenses incurred by the Plaintiff during the suspension of the works have been calculated in accordance with the Specifications, subsection 109.10(c). The amount has been checked and approved by the Appointed Resident, Division for Approval of Records, and the Engineer. Therefore, it has been established to be equal to **ONE MILLION, SEVEN HUNDRED THIRTY THOUSAND, THREE HUNDRED FIFTY-**



SEVEN UNITED STATES DOLLARS WITH SIXTY-FIVE CENTS (US\$ 1,730, 357.65), which is also equivalent to the results contained in the expert report.

86. The Arbitral Tribunal examined the expert report by engineer Oscar Marcelo Gaytan Sanchez, issued on August 10, 2021, where he confirms the amount and shows the calculations made to obtain such result. -----

(III) EXECUTED WORKS THAT WERE NOT INCLUDED IN WORK ESTIMATES FOR AN AMOUNT OF US\$546,406.90: -----

87. The Arbitral Tribunal determined that there is an amount claimed by the plaintiff that derives from executed works that were not included in the work estimates, because the General Directorate of Roads did not conclude the administrative proceedings required to produce the documents for them to be included. -----

88. It was established that there is a gross amount which corresponds to this concept, which was checked and approved by the Appointed Resident, Division for Approval of Records, and authorized by the Engineer that equals an amount of **FIVE HUNDRED FORTY-SIX THOUSAND, FOUR HUNDRED SIX UNITED STATES DOLLARS WITH NINETY CENTS (US\$ 546,406.90)**. -----

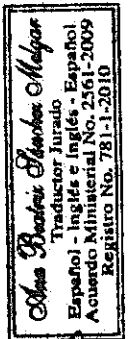
89. This amount has been verified by the Arbitral Tribunal by examining documents that support it and consists of copies of each one of the work estimates, all dully approved by the corresponding authorities and government officials of the General Directorate of Roads, and the amounts established in every single one of them were dully ratified by the expert appointed by the Arbitral Tribunal in his expert report. ---

90. For this purpose, the Arbitral Tribunal examined the expert report prepared by engineer Oscar Marcelo Gaytan Sanchez, issued on August 10, 2021, where he ratifies that amount and shows the calculations made in order to support it. -----

(iv) DEMOBILIZATION COSTS FOR AN AMOUNT OF US\$ 253,042.91: -----

91. The plaintiff claims an amount owed for demobilization costs, because the contract in Annex 1, Section 151.01, includes an agreement for payment of demobilization costs. -----

92. Therefore, the Arbitral Tribunal notes that this payment is properly owed, because due to the early termination of the Contract, the Plaintiff incurred in demobilization costs in order to move to its central workshop and other facilities, equipment, machinery, and vehicles which were located in the camps in the Project. -----



Oscar Marcelo Gaytan Sanchez

93. The net amount of these expenses was checked and timely approved not only by the Appointed Resident, but it was also approved by the General Directorate's Division for Approval of Records and authorized by the Engineer for an amount of **TWO HUNDRED FIFTY-THREE THOUSAND, FORTY-TWO UNITED STATES DOLLARS WITH NINETY-ONE CENTS (US\$ 253,042.91)**. -----

94. The amount claimed in this category was verified by the supporting documents submitted by the plaintiff and the calculations of the claimed amounts were duly ratified by the expert appointed by the Arbitral Tribunal, in his expert report. -----

95. For this purpose, the Arbitral Tribunal examined the expert report by engineer Oscar Marcelo Gaytan Sanchez, issued on August 10, 2021, where he confirms this amount and shows the calculations made in order to obtain it. -----

(V) ADJUSTMENT DUE TO IMPROPER DEDUCTION OF THE ADVANCE PAYMENT RECEIVED FROM AMOUNTS CLAIMED FOR WORKS PERFORMED BUT NOT INCLUDED IN WORK ESTIMATES FOR US\$157,733.45: -----

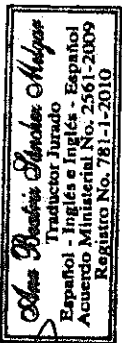
96. The Plaintiff claims this item by explaining that when it presented the request for payment of works performed but not included in the work estimates (before the liquidation of the Contract was made), from the gross amount a total of US\$ 157,733.45 was subtracted. That is why the amount authorized by the General Directorate's Division for Approval of Records and the Engineer for that item was the net amount of the item claimed, that is to say, with a deduction from the gross amount for a quantity that was established as a deduction from the advance payment. -----

97. Nevertheless, after the request from Plaintiff, in the Contract's liquidation, the entire amount of an unused portion of the advance payment was included in favor of the State. -----

98. Therefore, it is appropriate to declare that the amount subtracted as unused portion of the advance be added as an amount in favor of the Plaintiff. -----

99. This amount has been proven with the documents presented by Plaintiff and its calculation has been dully ratified by the expert appointed by the Arbitral Tribunal, in his expert report. -----

100. For this purpose, the Arbitral Tribunal examined the expert report prepared by



Ana Beatriz Sánchez O'Malley

engineer Oscar Marcelo Gaytan Sanchez, on August 10, 2021, where he ratifies the amount and shows the calculations made in order to obtain it. -----

(vi) ADJUSTMENT DUE TO DEDUCTION OF THE ADVANCE PAYMENT FROM DEMOBILIZATION COSTS FOR AN AMOUNT OF US\$ 61,940.89: -----

101. This adjustment is claimed by explaining that when the Plaintiff made an administrative request for the payment of demobilization costs, before the liquidation of the Contract was made, to the gross amount a deduction was made of US\$ 61,940.89 as a subtraction of the unused portion of the advance payment. --

102. That is why the amount that was later authorized by the GENERAL DIRECTORATE'S DIVISION FOR APPROVAL OF RECORDS and the ENGINEER for that item was for the net amount claimed, that is to say, with a deduction from the gross amount for a quantity established as a subtraction of the unused portion of the advanced payment. -----

103. After the request from the plaintiff, in the Contract's liquidation, an amount in favor of the State was included for the total amount of the unused portion of the advanced payment. -----

104. Therefore, it is appropriate to declare that the amount subtracted as unused portion of the advanced payment be added as an item in favor of the Plaintiff. ---

105. This amount has been proven with the documents presented as evidence by the plaintiff and its amount was dully ratified by the expert appointed by the Arbitral Tribunal, in his expert report. -----

106. For this purpose, the Arbitral Tribunal examined the expert report prepared by engineer Oscar Marcelo Gaytan Sanchez, on August 10, 2021, where he ratifies the amount and shows the calculations made in order to obtain it. -----

(vii) INTEREST PRODUCED BY UNPAID WORK ESTIMATES FROM MARCH 1, 2019, TO JUNE 30, 2021, FOR AN AMOUNT OF US\$ 8,392,915.28: -----

107. This Tribunal concludes that as agreed in the Contract and as established by article 63 of the Public Procurement Law, in the liquidation, interests should be included for the delay in payment of unpaid work estimates, which are No. 8 to No.19 dated from March 1, 2019 to June 30 2021, and which equal an amount of US\$ 8,392,915.28. -----

Julia Sanchez

<i>Julia Sanchez</i>
Traductor Jurado
Español - Inglés e Inglés - Español
Acuerdo Ministerial No. 2561-2009
Registro No. 781-1-2010

108. This amount has been proven by supporting documents and the calculations have been ratified by the expert appointed by the Arbitral Tribunal in his expert report.-----

109. For this purpose, the Arbitral Tribunal examined the expert report prepared by engineer Oscar Marcelo Gaytan Sanchez, on August 10, 2021, where he ratifies the amount and shows the calculations made in order to obtain it. -----

(viii) INTEREST PRODUCED BY DELAY IN PAYMENT OF WORK ESTIMATES FROM JULY 1, 2021 TO DECEMBER 31, 2021, FOR AN AMOUNT OF US\$ 1,759,098.98: -----

110. The amount for interests caused by unpaid work estimates, from July 1, 2021 to December 31, 2021, was calculated with the supporting documents prepared by the expert appointed by the Arbitral Tribunal, in his expert report for an amount of ONE MILLION, SEVEN HUNDRED FIFTY-NINE THOUSAND, NINETY-EIGHT UNITED STATES DOLLARS WITH NINETY-EIGHT CENTS (US\$ 1,759,098.98). -----

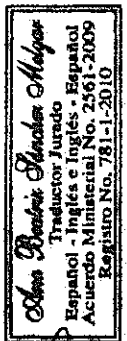
IX.7. LEGAL BASIS VII: ABOUT INTEREST IN ARREARS -----

111. The Arbitral Tribunal determines, that with regards to the interest in arrears for delay in payment of work estimates No. 8 to 19, (for a total amount of US\$28,393,140.49), that they must continue from January 1, 2022 until they are effectively paid in full, by applying to their sum the maximum annual interest rate for tax purposes established by the Monetary Board, in accordance with paragraph c) of the Clause Five of Contract No.093-2014-DGC-CONSTRUCCION, based on article 63 of the Public Procurement Law. -----

112. For the amounts ordered in this Award, which do not originate from work estimates, the default interest rate should be established by applying the legal interest rate in accordance with the process established in article 1947 of the Civil Code, from the 31st day following the day in which this award becomes final. -----

113. Therefore, this Tribunal infers after assessing the documentary evidence presented by the Plaintiff and the expert report prepared by the appointed expert, that the total amount that the State of Guatemala owes SIGMA CONSTRUCTORES, SOCIEDAD ANÓNIMA adds up to **THIRTY-FOUR MILLION FIVE HUNDRED EIGHTY-SEVEN THOUSAND, EIGHTY-EIGHT UNITED STATES DOLLARS WITH CERO SIX CENTS (US\$ 34,587,088.06)**. -----

IX.8. LEGAL BASIS VIII: ARBITRATION COSTS AND EXPENSES -----



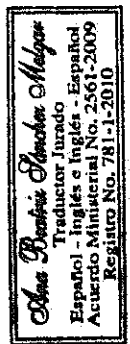
Oscar Marcelo Gaytan Sanchez

114. Article 40, subsection 5 of Arbitration Law established that, subject to what the parties have decided about costs, the Arbitral Tribunal will issue a ruling about the costs and expenses of the arbitration. In this case, the parties have not made any declaration about this issue, therefore, because this is an arbitration at law, in order to decide this issue, it is necessary to first observe what the law states on this matter.

115. In this regard, article 573 of the Procedural Civil and Commercial Code, establishes as a general rule, that the judgment that concludes a process (in this case the award) must order the losing party to pay the court costs. Nevertheless, article 574 that follows, indicates that the losing party might be exempt from the payment of costs in the cases in which that party has acted in good faith. But, article 575 indicates that one cannot be considered to have acted in good faith if several actions have taken place, among them, if the defendant did not appear in the proceedings to answer to the complaint (as letter b, number 1 of article 32 of Arbitration Law qualifies) the procedural conduct of the State of Guatemala by not answering the complaint even though it was duly served of the time period given in order to do so. Therefore, taking into consideration the procedural conduct by the State of Guatemala during this proceedings, which was extensively reasoned in this Award, the Arbitral Tribunal considers that the conduct of the State of Guatemala cannot be deemed to have been in good faith, therefore the losing party cannot be declared to be exempt from paying the arbitral costs and expenses and will therefore be ordered to pay them. -----

116. In order to calculate the amount of procedural costs in this manner, one must apply the Tariff for Lawyers, Arbitrators, Procurators, Proxys, Experts, Auditors and Custodians, Decree No.111-96 issued by the Congress of the Republic of Guatemala, for the legal services of the lawyers for the Plaintiff, which add up to TWO MILLION FIVE HUNDRED NINETY-FOUR THOUSAND, THIRTY-ONE UNITED STATES DOLLARS WITH SIXTY CENTS (US\$ 2,594,031.60). -----

117. Therefore, we must now deal with the expenses of the arbitration itself, caused by the participation of a private entity that was in charge of its administration. In this respect, the Arbitral Tribunal has the criteria that in accordance with article 66 of the Rules, unless otherwise agreed by the parties, those expenses must be paid by the losing party. Even though the law allows the Arbitral Tribunal to apportion those



expenses between the parties, the Tribunal believes that the Plaintiff should not be forced to burden the weight of those expenses, because despite its requests and the delivery of the corresponding documentation, the payments it had a right to receive were not made and Plaintiff was practically forced to incur in the arbitration costs in order to defend its rights. -----

118. Because of those reasons, the Tribunal considers that the arbitration costs should be paid in its entirety by the State of Guatemala, this includes the arbitration expenses as well as the fees for the expert that should be completely reimbursed to the Plaintiff since it paid for them. For this purpose it is stated that the total amount of arbitration expenses in accordance with the liquidation provided by CENAC adds to TWO HUNDRED FORTY THOUSAND UNITED STATES DOLLARS (US\$ 240,000.00), and FORTY THOUSAND QUETZALES (Q.40,000.00) for the fees of the expert appointed by the Tribunal which were also paid by the Plaintiff, therefore in order for these amounts to be paid, an order should be included in the operative part of the holding section of this Award. -----

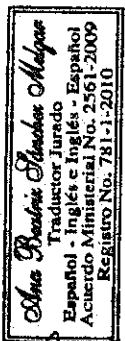
X. HOLDING -----

119. Therefore, this Arbitral Tribunal based on what was previously considered, the proceedings, admitted evidence, cited rules of law in this award and in articles 12, 28, 29, 30, 203 and 204 of the Political Constitution of the Republic of Guatemala; 1, 3, 4, 5, 6, 8, 9, 10, 12, 15, 20, 22 section 2, 23, 24, 25, 26, 28, 29, 30, 31 and 32 of the Arbitration Law; and 14, 17, 23, 39, 40, 41, 42, 43, 53, 54, 57, 59, 61, 62 of the Arbitration and Conciliation Rules of CENAC, as a matter of law declares: -----

120. **GRANTS** the complaint filed by **SIGMA CONSTRUCTORES, SOCIEDAD ANÓNIMA** against the **STATE OF GUATEMALA**. -----

121. Finds that that there was a **BREACH** of Contract by the State of Guatemala, therefore **ORDERS** it to pay the amount of **THIRTY-FOUR MILLION FIVE HUNDRED EIGHTY-SEVEN THOUSAND, EIGHTY-EIGHT UNITED STATES DOLLARS WITH CERO SIX CENTS (US\$ 34,587,088.06)**, to Sigma Constructores, Sociedad Anónima, plus default interests which has been calculated up to December 31, 2021, plus the interest that continue to generate for unpaid work estimates, until paid in full.-----

122. That the amount the State of Guatemala is ordered to pay, must be paid to Sigma Constructores, Sociedad Anónima in dollars of the United States of America



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or its equivalent in Quetzales, at the exchange rate published by the Guatemalan Central Bank on the day in this Award is issued, within the thirty calendar days after this award becomes final. -----

123. That the amount that must be paid to Sigma Constructores, Sociedad Anónima arises from the following items: -----

a) US\$ 4,602,620.04 which is the amount determined in the contract's liquidation issued by the General Directorate of Roads; -----

b) US\$ 17,082,971.96 for the expenses incurred as a result of the reduction of the contractual scope of work; -----

c) US\$ 1,730,357.65 for the expenses incurred by the Plaintiff during the suspension of the works; -----

d) US\$ 546,406.90 due to work performed that was not included in work estimates; -

e) US\$ 253,042.91 due to demobilization costs; -----

f) US\$ 157,733.45 due to the deduction of the advance payment from the gross amount of the work performed that was not included in the work estimates; -----

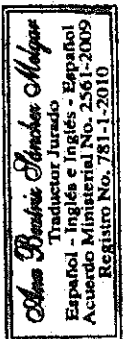
g) US\$ 61,940.89 due to the deduction of the advance payment in the gross amount of the demobilization costs; -----

h) US\$ 8,392,915.32 as interest for delay in payment of the work estimates (No. 8 to No.19) during the period from March 1, 2019, to June 30, 2021; -----

i) US\$ 1,759,098.98 as interest for the delay in payment of work estimates during the period from July 1, 2021 to December 31, 2021. -----

124. According to the Arbitration Agreement, the Arbitration Award must be complied with good faith and without delay by the parties. The State of Guatemala, through the Ministry of Communications, Infrastructure and Housing must pay Sigma Constructores, Sociedad Anónima, withing thirty calendar (30) days from the date in which this Award becomes final, the amounts herein established, without having to be requested to do so or sent any request for payment, and will be considered to be in arrears since that moment, and will have to pay interest for all owed amounts until full payment is made. -----

125. With regards to the payment of interest for delay in payment of unpaid work estimates No. 8 to 19 (for a total amount of US\$28,393,140.49), interest should continue to generate since January 1, 2022, until the effective payment date of the



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full amount of those work estimates, which must be calculated by applying the maximum annual interest rate established for tax purposes by the Monetary Board, as was agreed to by the parties in paragraph c) of Clause Five of the Contract, based on article 63 of the Public Procurement Law. -----

126. In case of delay of payment of all other amounts established in this award that are not a result of unpaid work estimates, that means the amounts established in sections a) to g) of paragraph 123 of this award, the State of Guatemala must pay default interest which must be calculated by applying the statutory interest rate as established in article 1947 of the Civil Code, starting from the thirty first day after this award becomes final. -----

127. The losing party, the State of Guatemala, is **ORDERED TO PAY PROCEDURAL COSTS**, for an amount of TWO MILLION FIVE HUNDRED NINETY-FOUR THOUSAND, THIRTY-ONE UNITED STATES DOLLARS WITH SIXTY CENTS (US\$ 2,594,031.60), for the legal fees of the attorneys of the Plaintiff, amount that must be paid in dollars of the United States of America or its equivalent in quetzales along with the previously established amounts and those that follow in this award, at the exchange rate published by Guatemalan Central Bank on the day in which this Award is issued. -----

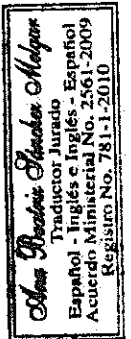
128. The State of Guatemala is ORDERED to pay arbitration costs which add up to TWO HUNDRED FORTY THOUSAND UNITED STATES DOLLARS (US\$ 240,000.00), amount that must be paid in dollars of the United States of America or its equivalent in quetzales, at the exchange rate published by Guatemalan Central Bank on the day in which this Award is issued; and must pay the fees of the expert which add up to FORTY THOUSAND QUETZALES (Q.40,000.00); which must be reimbursed by the State of Guatemala to the Plaintiff. -----

129. It is hereby ordered that this award be notified. -----

This Award is signed by the Arbitrators and the Secretary of the Tribunal, and is contained in thirty-three pages, printed only on the front side of each page. -----

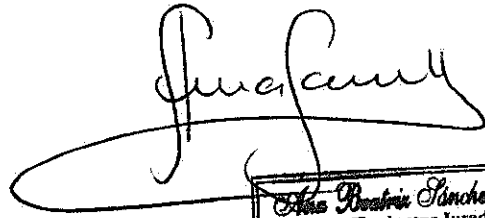
(Illegible signature:) Lawyer Alcira Melgar Corado, Co-arbitrator; (Illegible signature:) Lawyer Alejandro Solares Morales, Co-arbitrator; (Illegible signature:) Lawyer Gerardo Recinos Jo., President; (Illegible signature:) Lawyer Hugo Roberto Figueroa Ovalle, Secretary." -----

In witness whereof at the request of the interested party, and for the legal uses that such party may deem convenient and without assuming any responsibility



[Handwritten signature]

whatsoever for the contents of the translated document, I issue, sign, and seal this sworn legal translation duly compared with the original document written in Spanish and contained in thirty-one sheets of paper in the City of Guatemala on the fourteenth day of December of the year two thousand twenty-three.



Ana Beatriz Sánchez Melgar
Traductor Jurado
Español - Inglés e Inglés - Español
Acuerdo Ministerial No. 2561-2009
Registro No. 781-1-2010



MINISTERIO DE EDUCACIÓN

EL INFRAESCRITO COORDINADOR DEL DEPARTAMENTO DE ATENCIÓN AL CIUDADANO DE LA DIRECCIÓN DE SERVICIOS ADMINISTRATIVOS DEL MINISTERIO DE EDUCACIÓN

Certifica: que es auténtica la firma del señor(a)

ANA BEATRIZ SANCHEZ MELGAR

Quien a la fecha de firmar, desempeña el cargo de:

**TRADUCTOR JURADO AUTORIZADO
ESPAÑOL – INGLÉS / INGLÉS - ESPAÑOL**

Acuerdo Ministerial No. 2561-2009

Registro No. 781-1-2010

M.Sc. Luis Eduardo Morales Salguero
Coordinador de Atención al Ciudadano
Dirección de Servicios Administrativos
Ministerio Educación



Guatemala 18 de diciembre de 2023

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