

**INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES**

**Red Eagle Exploration Limited**

**v.**

**Republic of Colombia**

**(ICSID Case No. ARB/18/12)**

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**PROCEDURAL ORDER No. 4  
On the Organization of the Hearing**

***Members of the Tribunal***

Dr. Andrés Rigo Sureda, President of the Tribunal  
Mr. José Martínez de Hoz, Arbitrator  
Prof. Philippe Sands KC, Arbitrator

***Secretary of the Tribunal***

Ms. Catherine Kettlewell

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Date: January 30, 2023

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## I. PROCEDURAL BACKGROUND

1. Pursuant to Section 19.1 of Procedural Order No. 1, a pre-hearing organizational meeting between the Parties and the Tribunal was held by video conference on January 27, 2023 (the “**Pre-Hearing Conference**”), to discuss any outstanding procedural, administrative, and logistical matters in preparation for the Hearing. Participating were:

Tribunal:

Dr. Andrés Rigo Sureda, President of the Tribunal  
Mr. José Martínez de Hoz, Arbitrator  
Prof. Philippe Sands KC, Arbitrator

ICSID Secretariat:

Ms. Catherine Kettlewell, Secretary of the Tribunal

On behalf of the Claimant:

Mr. Jonathan C. Hamilton, *White & Case LLP*  
Mr. Francisco X. Jijon, *White & Case LLP*  
Mr. Damien Nyer, *White & Case LLP*  
Mr. John Dalebroux, *White & Case LLP*

On behalf of the Respondent:

Mr. Giovanni Vega Barbosa, *Agencia Nacional de Defensa Jurídica del Estado*  
Mr. Fernando Mantilla-Serrano, *Latham & Watkins*  
Mr. Samuel Pape, *Latham & Watkins*  
Mr. Diego Romero, *Latham & Watkins*  
Mr. Hugo Varenne, *Latham & Watkins*

2. During the Pre-Hearing Conference, the Parties and the Tribunal discussed the draft Procedural Order *circulated* to the Parties on December 13, 2022, and the Parties’ joint statement of January 13, 2023 advising the Tribunal of any agreements reached on the various items, as well as their respective positions where no agreement was reached.
3. A recording of the Pre-Hearing Conference was made and deposited in the archives of ICSID, and it was made available to the Members of the Tribunal and the Parties on January 27, 2023.
4. The Tribunal has considered the Parties’ positions and, in the present Order, sets out the procedural rules that the Parties have agreed upon and/or the Tribunal has determined will govern the conduct of the Hearing.

## **II. ORGANIZATION OF THE HEARING**

### **A. DATE AND FORMAT OF THE HEARING**

5. In their comments to the draft Procedural Order, the Parties differed on the amount of days required to hold the Hearing. After hearing the Parties' arguments, the Tribunal has decided that it is not required to hold March 4<sup>th</sup> in reserve and that five days would be sufficient. Therefore, the Hearing will take place in person in Washington DC from February 27 to March 3, 2023 at ICSID's Hearing Center located at 1225 Connecticut Ave. NW, Washington, DC.
6. In the event that any future health restriction or regulation related to the COVID-19 pandemic makes it unfeasible to hold the Hearing in person as planned, the Tribunal will consult the Parties on the next steps, including whether to hold the Hearing remotely on the same scheduled dates.
7. Further logistical details including setup, entry passes, room assignment, internet connection and catering will be provided in due course.

### **B. ORDER OF PROCEEDINGS AND SCHEDULE**

8. The Hearing will start at 9:30 AM. It is expected to conclude by 5:30 PM (with possible adjustment depending on pace of testimony). There will be three breaks during the day, two of 15 minutes and a lunch break of 60 minutes at times to be determined by the Tribunal depending on the progress of the hearing.
9. The Tribunal reserves discretion to adjust the Hearing schedule as needed to accomplish the prescribed agenda and to accommodate any technical disruptions.

### **C. TIME ALLOCATION**

10. The order of proceedings and structure of the Hearing will be as indicated in the agenda incorporated as **Annex A**.
11. The Hearing will proceed on the principle that the Parties should have equal time to present their case within the time allocation agreed upon for each phase of the Hearing.

12. Pursuant to Section 20.8 of Procedural Order No. 1 and Article 827(2) of the Canada-Colombia Free Trade Agreement (the “**Treaty**”), Canada may attend the hearing and make oral submissions to the Tribunal on questions of interpretation of the Treaty. Upon the issuance of this Procedural Order, the ICSID Secretariat, on instructions of the Tribunal and the Parties, will request Canada to confirm its attendance and whether it intends to make oral submissions at the Hearing.
13. Time used by the Parties in oral argument or in examination of witnesses and experts shall be attributable to the Party making such argument or conducting such examination, as detailed below. Time used by expert witnesses for their presentations shall be attributable to the Party that has presented the expert.
14. Each Party shall have (a) time for oral arguments; and (b) time for witnesses and expert examination, as detailed below.
15. Time taken by the Tribunal for its own questions during the Parties’ presentations and cross-examinations and the answers to those questions shall not be counted against the Parties’ time.
16. Time used for housekeeping or to resolve technical difficulties shall be counted against the time for housekeeping or against the Tribunal’s time, if needed.
17. Each Party shall have the following allocated time for each stage of the Hearing:
  - (a) *Opening Statement*. Each Party shall be allowed a maximum of 2.5 hours for its Opening Statement.
  - (b) *Witnesses/Expert testimony*: Each party shall be allowed a maximum of 11.5 hours for witness and expert testimony.
    - *Direct Examination of Fact Witnesses*. The direct examination of a fact witness shall not exceed 10 minutes.
    - *Direct Presentations by Experts*. The presentation by an expert envisioned in Section 18.7 of Procedural Order No. 1 shall not exceed 30 minutes.
  - (c) *Closing statements*: The Tribunal will not hear closing statements from the Parties. However, in the course of the Hearing the Tribunal will inform the Parties whether it will require them to be available to address questions from the Tribunal at the end of the Hearing. For this purpose,

the Tribunal requests that the Parties be prepared to reserve up to two hours at the end of the Hearing.

18. The Secretary of the Tribunal shall keep a chess clock account of time and advise the Parties of the total daily time used at the end of each Hearing day.
19. The Tribunal emphasizes that the Parties are expected to use the Hearing day efficiently and avoid unnecessary slippage (*e.g.*, delays in returning from breaks). In the event of excess slippage, the Tribunal may revisit the length of the sitting day, bearing in mind principles of predictability, equal treatment and a fair opportunity for the Parties to be heard. In principle, witnesses and experts should be available one-half day before and after the time they are scheduled to be examined.

**D. WITNESS AND EXPERT EXAMINATION**

20. The rules set out in Procedural Order No. 1 for the examination of witnesses and experts are confirmed. The examination and cross-examination will proceed in accordance with Section 18 of Procedural Order No. 1 which reads as follows:
  - 18.1. “Unless otherwise stated, the rules below apply to the examination of fact and expert witnesses.
  - 18.2. In advance of any hearing, by the deadline provided in Annex B, each Party shall provide to the opposing party with a copy to the Tribunal and the ICSID Secretariat: the names of the witnesses whose statement or report has been submitted by the other Party with the request that they be available for cross-examination at the hearing.
  - 18.3. The facts contained in the written statement of a witness whose cross-examination has been waived by the other Party and who has not been called by the Tribunal to testify shall not be deemed established by the sole fact that no cross-examination has been requested. The Tribunal will assess the weight of the written statement taking into account the entire record and all the relevant circumstances.
  - 18.4. If a witness is unable to appear personally at a hearing for valid cause, the Tribunal may permit alternative arrangements (such as videoconference facilities), upon consultation with the Parties.
  - 18.5. If a witness whose appearance has been requested pursuant to §18.1 fails without a valid reason to appear for testimony at a hearing, the Tribunal shall assess the

weight of the written statement taking into account the entire record and all the relevant circumstances.

- 18.6. Witnesses and experts shall be examined before the Tribunal by the Parties under the control of its President. The Tribunal may examine the witnesses or experts at any time, either before, during or after examination by one of the Parties.
  - 18.7. Witnesses giving oral evidence shall, before giving evidence, make the declaration in ICSID Arbitration Rule 35(2), and experts shall make the declaration in ICSID Arbitration Rule 35(3). The witnesses will be asked to confirm their statement or report and may then be briefly examined by counsel for the Party that is presenting the witness for “direct examination” which may not introduce new matters not already covered by the written statement or report. During the brief direct examination, the Party who has presented the witness may ask the witness introductory questions, including about any corrections to be made to the written statements, and in a focused manner, to address new matters raised in the Rejoinder. Experts may give a presentation before the start of their cross-examination. The witness may then be examined by counsel for the opposing Party (“cross-examination”), and subsequently by counsel for the Party offering the witness, limited to matters that arose during cross-examination (“re-direct examination”).
  - 18.8. Each Party shall be responsible for the practical arrangements, cost and availability of any witness it offers, without prejudice to the final decision of the Tribunal as to the allocation of costs.
  - 18.9. A fact witness shall not be present in the hearing room during the hearing of oral testimony, discuss the testimony of any other witness who has already testified prior to giving his/her testimony, or read any transcript of any oral testimony, prior to his or her examination, except with the express permission of the Tribunal upon request from a Party. This condition does not apply to experts.
  - 18.10. The Tribunal shall, at all times, have complete control over the procedure for hearing a witness. The Tribunal may in its discretion refuse to hear a witness when it appears that the facts on which he or she is to testify are already proven by other evidence or are irrelevant. It may also order that a witness be recalled for further examination at any time. Any witness may only be recalled by the Tribunal (of its own motion) if such intention is announced in reasonable time to assure the availability of the witness during the hearing.
  - 18.11. Counsel may meet witnesses and potential witnesses to establish the facts, assist with the preparation of witness statements and oral examinations.”
21. If a fact or expert witness’s examination is interrupted and must continue in the following session, the fact or expert witness may not speak with or contact any of the Parties, their representatives or

counsel until the examination is completed. The Parties will use their best efforts to ensure that the examination of a given fact or expert witness is conducted in its entirety on the same day.

22. In the case of joint expert examination, by the date of the pre-hearing organizational meeting, the Parties will designate which of its expert will in each instance respond to a question, or defer the response in its totality to his partner. On January 27, 2023, the Respondent informed by email that for the joint examination of Prof. Graham A. Davis and Dr. Florin A. Doronbantu (Brattle Group), the designated expert is Dr. Doronbantu the designated expert, and the Claimant informed during the pre-hearing organizational meeting that for the joint examination of Dr. Wayne Barnett & Mr. Guy Dishaw (SRK Consulting), the designated expert is Mr. Guy Dishaw.
23. On December 15, 2022, as agreed by the Parties, the Parties called for cross-examination the following witnesses and experts:
  - a. The Respondent called for cross-examination the following witnesses and experts produced by the Claimant:
    - i. Ana Milena Vásquez
    - ii. Juan Arturo Franco Quintero
    - iii. Adriana Martínez Villegas
    - iv. Kiran Siqueira
    - v. Wayne Barnett & Guy Dishaw
  - b. The Claimant called for cross-examination the following witnesses and experts produced by the Respondent:
    - i. Brigitte Baptiste
    - ii. Juan Manuel Pinzón (testifying remotely)
    - iii. Felipe de Vivero Arciniegas
    - iv. Mario Rossi
    - v. Graham Davis & Florin Dorobantu



**E. DOCUMENTS FOR USE AT THE HEARING**

**1. Electronic Hearing Bundle**

24. There shall be a single Electronic Hearing Bundle to be prepared jointly by the Parties. The Electronic Hearing Bundle which shall contain all pleadings, expert reports, exhibits, legal authorities and Tribunal's orders or decisions on file to date, with a consolidated hyperlinked index.
25. The Electronic Hearing Bundle index shall identify with RED material that has been designated as "confidential information", in accordance with Article 830(2) of the Canada-Colombia FTA and Section 20.7 of Procedural Order No. 1.
26. The Electronic Hearing Bundle shall be uploaded by the Parties to a designated sub-folder in the BOX filesharing platform no later than February 16, 2023. To ensure operation of the hyperlinked index, the entire Electronic Hearing Bundle shall be housed within one folder and then uploaded to BOX as a single zip file. Should the size of the zip file make the upload to BOX impossible, the Parties shall upload the organized Electronic Hearing Bundle to a designated sub-folder on to the BOX filesharing platform, in a sub-folder, including a consolidated (non-hyperlinked) index.
27. The court reporters and interpreters will be provided with a copy of the Electronic Hearing Bundle via the ICSID Secretariat.
28. In addition to uploading the Electronic Hearing Bundle to Box, and unless otherwise advised by the Tribunal, a USB (PC and Mac compatible) with a copy of the Electronic Hearing Bundle shall be sent to: (i) each Member of the Tribunal and (ii) the Secretary of the Tribunal no later than February 16, 2023. The USB shall contain the hyperlinked version of the index.
29. At the conclusion of the Hearing and following the submission of any scheduled post-hearing submissions, the Parties shall also distribute updated consolidated and hyperlinked index in a USB (PC and Mac compatible) to be sent by courier no later than 30 days following the last scheduled post-hearing submission directly to: (i) each Member of the Tribunal and (ii) the Secretary of the Tribunal. The USB shall contain the hyperlinked version of the index and be updated to include demonstratives introduced during the hearing and any post-hearing submissions.

## **2. Electronic Hearing Bundle for Cross-Examination**

30. During cross-examination, the Parties will only refer to documents that already form part of the record of the case.
31. Prior to the beginning of each cross-examination, the cross-examiner shall provide a cross-examination bundle (i) in electronic format to the opposing Party, each Member of the Tribunal, the Secretary, the Arbitral Assistant, and the court reporter via the BOX folder created for this case, to be downloaded before the cross-examination, and (ii) in paper copy to the witness or expert (if testifying in person) counsel to the opposing party, the interpreter(s), and any Member of the Tribunal who requests one in advance. Witnesses and experts testifying remotely will only receive an electronic version of the cross-examination bundle. Electronic cross-examination bundles will be provided to the Tribunal and to the other Party and the Witness/Expert at a minimum 15 minutes before the relevant cross-examination.
32. The witness and experts are entitled to be provided with a paper copy of the Cross-Examination Bundle and shown a full copy of any exhibit or authority on which they will be questioned (*i.e.*, they are not to be restricted to reviewing excerpts of documents shown on a screen).

## **3. Demonstrative Exhibits**

33. The Parties may use PowerPoint or other slide presentations for their oral statements, subject to the below rule on demonstrative exhibits.
34. Demonstrative exhibits shall be used in accordance with Sections 16.8 of Procedural Order No. 1 (reproduced below), with certain adjustments indicated in paragraph 35 *infra*:

“16.8. Demonstrative exhibits (such as PowerPoint slides, charts, tabulations, etc.) may be used at any hearing, provided they contain no new evidence. Each party shall number its demonstrative exhibits consecutively, and indicate on each demonstrative exhibit the number of the document(s) from which it is derived. The party submitting such exhibits shall provide them in electronic and hard copy to the other party, the Tribunal Members, the Tribunal Secretary, the court reporter(s) and interpreter(s) at the hearing at a time to be decided at the pre-hearing organizational meeting.”

35. Electronic and hard copies provided pursuant to Section 16.8 of Procedural Order No. 1 shall be distributed prior to their use at the Hearing. The electronic copy of each demonstrative shall be

distributed by the party intending to use it *via* an electronic mail sent to the entire case email distribution for each party, the Secretary of the Tribunal, the Members of the Tribunal, to the court reporter and to the interpreters as necessary no later than 15 minutes *prior* to its use.

36. In addition, promptly after the conclusion of the Hearing day in which the corresponding demonstrative exhibit is used, the Parties shall upload such demonstrative to the case folder in the BOX filesharing platform, designating each with the corresponding CD-\_\_ or RD-\_\_ number.

**F. AUDIO AND VIDEO RECORDINGS**

37. The provision of Section 21.1 of Procedural Order No. 1 concerning audio recording (reproduced below) applies.

“21.1. Sound recordings shall be made of all hearings and sessions, including the preliminary consultation. The sound recordings shall be provided to the parties and the Tribunal Members.”

38. The Secretariat shall make audio and video recordings of the Hearing, and the audio and video recording will be shared with the Parties and the Tribunal at the conclusion of the Hearing.
39. Except for the court reporter(s) that will make their own audio recording of the Hearing, attendees will not otherwise make any audio, video or screenshot record of the Hearing or any part of it.

**G. TRANSCRIPTION**

40. The provisions of Procedural Order No. 1, Sections 21.2 and 21.3 concerning transcription (reproduced below) apply.

“21.2. Verbatim transcript(s) in the procedural language(s) shall be made of any hearing and session other than sessions on procedural issues. Unless otherwise agreed by the parties or ordered by the Tribunal, the verbatim transcripts shall be available in real-time using LiveNote or similar software and electronic transcripts shall be provided to the parties and the Tribunal on a same-day basis.

21.3. The parties shall agree on any corrections to the transcripts within 28 days of the later of the dates of the receipt of the sound recordings and transcripts. The agreed corrections may be entered by the parties in the transcripts (“revised transcripts”). The Tribunal shall decide upon any disagreement between the parties and any correction adopted by the Tribunal shall be entered by the parties in the revised transcripts.”

41. Real-time court reporting in English and Spanish shall be made available to the Hearing Participants and electronic versions of the transcripts will be provided to the Parties and the Tribunal on a same-day basis.
42. In accordance with Section 21.3 of Procedural Order No. 1, the deadline for corrections to the transcript shall be 28 days following the later of the dates of the receipt of the sound recordings and/or transcripts. The Parties are to focus on substantive corrections to the transcripts rather than format, translation, or punctuation. In the event of any discrepancy, the audio recording of the original language spoken at the Hearing will prevail.

#### **H. INTERPRETATION**

43. ICSID has arranged interpretation in English and Spanish language for the duration of the Hearing.
44. The Parties confirm that the following witnesses and experts require interpretation when testifying:

- a. *Fact witnesses:*

Ms. Ana Milena Vásquez

Mr. Juan Arturo Franco Quintero

Ms. Brigitte Baptiste

Mr. Juan Manuel Pinzón

- b. *Expert witnesses:*

Ms. Adriana Martínez Villegas

Mr. Felipe De Vivero

45. The Participants should speak slowly, one person at a time, and should pause briefly when handing the floor to another Participant.
46. Each Participant should, insofar as possible, circulate any PowerPoint slides to the interpreters prior to the start of each intervention. These notes should be emailed directly to the interpreters (see **Annex B** with their email addresses) and are to be treated as confidential information.

**I. OPEN HEARING**

47. In accordance with Section 20.7 of Procedural Order No. 1 and Article 830(2) of the Treaty, the Hearing shall be open to the public. The Tribunal may hold portions of the Hearing *in camera* to the extent necessary to ensure the protection of confidential information.
48. To comply with the above-referenced open hearing provision, video recordings of the Hearing will be posted for viewing in the ICSID website, in the “floor” language, *i.e.*, using the original language of the speaker. The video recordings of the Hearing will be available online for 7 days only.
49. Any information designated by one or both of the Parties as being confidential will be excluded from the public recordings. The required mechanics for the Parties to alert the Tribunal about the use of confidential information during the Hearing are addressed in the Protocol attached hereto as **Annex D**.
50. The availability of the Hearing recordings will be announced publicly via the ICSID website in English and Spanish.

**J. POST-HEARING SUBMISSIONS**

51. The provisions of Procedural Order No. 1, Sections 22.1 (reproduced below) apply.

“22.1. All matters concerning post-hearing memorials and statements of costs shall be discussed at the close of the oral hearing. In any event, such submissions, if any, shall not contain new evidence, documents, sources, witness statements or expert reports or opinions, except in exceptional circumstances, as determined by the Tribunal upon consultation with the Parties.”
52. Should the Tribunal have remaining questions to pose to the Parties after the conclusion of the Hearing, it shall submit them to the Parties in writing within 30 days following conclusion of the Hearing. The Parties shall respond in writing in simultaneous Post-Hearing Submissions. The Tribunal shall give instructions about the length, format, and deadline of such Post-Hearing Submissions, if needed, at the time of transmission of the questions to the Parties. The Parties differed in their positions whether legal authorities could be submitted together with post-hearing submissions. The Tribunal heard the Parties’ positions at the Pre-hearing organizational meeting and decided to allow legal authorities to be submitted with Post-Hearing Submissions which are either (i) published at any day on or after the first date of the Hearing, or (ii) are specifically

responsive to a question or particular point raised by the Tribunal during the Hearing , subject in the latter case to requesting prior leave from the Tribunal to submit such legal authority or authorities.

**K. PARTICIPANTS**

53. Each Party shall provide its respective List of Hearing Participants (“**List of Participants**”) by February 22, 2023, using the format provided in **Annex B**.
54. The ICSID Secretariat has reserved a hearing room and break out rooms for each Party and the Tribunal.

**L. HEALTH AND COVID PROTOCOL**

55. The ICSID Secretariat will communicate any COVID-19 related restrictions regarding in-person attendance at the Hearing to the Parties and Tribunal; all in person Hearing Participants are expected to abide by any applicable rules in this regard. The current requirements for entry to the Hearing room is that all individuals who will be attending the Hearing must be fully vaccinated against COVID-19.<sup>1</sup> On January 27, 2023, counsel for each Party confirmed that all intended in-person participants are in compliance with this requirement.
56. Any participant who experiences signs of a cold, shortness of breath, chills, soar throat, temperature or other COVID-19 symptoms shall immediately inform the Tribunal and the ICSID Secretariat and self-isolate and refrain from coming to the Hearing until they have obtained a negative rapid antigen or PCR test.

**M. VIRTUAL HEARING ARRANGEMENTS**

57. If the hearing or any portion thereof is held virtually pursuant to paragraph 6 *supra*, the details and link to the Hearing virtual platform will be provided to the Tribunal, court reporter(s), interpreters,

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<sup>1</sup> For purposes of entry into World Bank premises, a person is considered “fully vaccinated” two weeks after having received the required number of doses from any of the COVID-19 vaccines accepted internationally or nationally in any given country. This includes vaccines that have received national approval but may not yet have been approved by the WHO.

technical assistance personnel, and the Parties' delegations. Hearing Participants shall not forward or share the Hearing link or password except to witnesses and experts when applicable.

58. In addition to the rules set out above, the procedures specified in **Annex C** shall apply as needed.

For and on behalf of the Tribunal,

[Signed]

Dr. Andrés Rigo Sureda  
President of the Tribunal  
Date: January 30, 2023

**ANNEX A**

**HEARING AGENDA**

**Day 1: Monday, 27 February 2023**

<i>Hour</i>	<i>Duration</i>	<b>PROCEDURAL STEP</b>
<b>00:00 AM/PM</b>	<b>(# hours/min.)</b>	
09:30 AM	0.5 hours	<b>INTRODUCTION AND PROCEDURAL MATTERS</b>
		<b>OPENING STATEMENTS</b>
10:00 AM	2.5 hours	Claimant's Opening Statement
1:45 PM	2.5 hours	Respondent's Opening Statement

**Day 2: Tuesday, 28 February 2023**

09:30 AM		<b>WITNESSES</b>
		Claimant: Ana Milena Vásquez
		Claimant: Juan Franco Quintero
~ 02:00 PM		Respondent: Brigitte Baptiste
		Respondent: Juan Manuel Pinzón (to testify virtually)

**Day 3: Wednesday, 1 March 2023**

09:30 AM		<b>LEGAL EXPERTS</b>
		Claimant: Adriana Martinez Villegas
		Respondent: Felipe de Vivero Arciniegas
~ 02:00 PM		<b>TECHNICAL EXPERTS</b>
		Claimant: Wayne Barnett & Guy Dishaw
		Respondent: Mario Rossi

**Day 4: Thursday, 2 March 2023**

09:30 AM		<b>QUANTUM EXPERTS</b>
		Claimant: Kiran Sequeira
~ 02:00 PM		Respondent: Graham Davis & Florin Dorobantu

**Day 5: Friday, 3 March 2023**

09:30 AM		<b>(Continuation of examination of experts, if needed)</b>
		<b>CLOSING STATEMENTS – To be addressed by the Tribunal during the Hearing</b>

\* Coffee and lunch breaks to be allocated based on time of respective witnesses and experts.



**ANNEX B<sup>2</sup>**

**LIST OF PARTICIPANTS<sup>3</sup>**

TRIBUNAL						
Room	Name	Role	In person (IP) or virtual (V)	Affiliation to Case	Location of Connection (if remote)	Personal Contact
T	[T] – Dr. Andrés Rigo Sureda	A	IP	President	N/A	
T	[T] – Mr. José Martínez de Hoz	A	IP	Co-arbitrator	N/A	
T	[T] – Prof. Philippe Sands	A	IP	Co-arbitrator	N/A	

SECRETARY OF THE TRIBUNAL						
Room	Name	Role	In person (IP) or virtual (V)	Affiliation to Case	Location of Connection (if remote)	Personal Contact
T	[T] – Ms. Catherine Kettlewell	A	IP	Secretary of the Tribunal	N/A	

CLAIMANT						
Room <sup>4</sup>	Name	Role	In person (IP) or virtual (V)	Affiliation to Case	Location of Connection (if remote)	Personal Contact
	<i>Counsel:</i>					
C	[C] – Name Last name	A			Room [Firm] [C] [City]	Email: Phone:

<sup>2</sup> This form of list of participants will differ if no virtual participants are requested by the Parties and approved by the Tribunal.

<sup>3</sup> Use “A” (Active Participants) / “P” (Passive Participants). Only participants marked as “A” who are participating virtually will activate their cameras during the Hearing, except as provided in para. [x].

<sup>4</sup> Witnesses [W] and Experts [E] called to testify and who will be testifying virtually will be assigned to the waiting room W/E during their cross-examination. Experts [E] will be assigned to Waiting Room [C] if they are present during any other time.

C	[C] –	A			Room [Firm] [C] [City]	Email: Phone:
C	[C] –	A				Email: Phone:
	<b>Party Representative:</b>					
C	[C] – Name Last name	P			Home [C] []	
	<b>Witnesses:</b>					
W	[W] – Name Last name	A				
	<b>Experts:</b>					
C	E	[E] – Name Last name	A			

RESPONDENT						
Room <sup>5</sup>	Name	Role	In person (IP) or virtual (V)	Affiliation to Case	Location of Connection (if remote)	
	<b>Counsel:</b>					
R	[R] – Name Last name	A			Room [Firm] # 1 [R] [Washington, DC]	Email: Phone:
R	[R] – Name Last name	A			Room # 1 [R] [Washington, DC]	
	<b>Party Representatives:</b>					
R	[R] – Name Last name	P			Home [R] []	
R	[R] – Name Last name	P			Home [R] []	
	<b>Witnesses:</b>					
W	[W] – Name Last name	A				
	<b>Experts:</b>					
R	E	[E] – Name Last name	A			

<sup>5</sup> Witnesses [W] and Experts [E] called to testify and who will be testifying virtually will be assigned to Waiting Room W/E during their cross-examination. Experts [E] will be assigned to Waiting Room [R] if they are present during any other time.

<b>COURT REPORTERS</b>				
<b>Room</b>	<b>Name and Contact</b>	<b>Role</b>	<b>Affiliation</b>	<b>Location of Connection</b>
N/A	[TRA] – Name Last name [Email/Phone]	P		[City]
N/A		P		

<b>INTERPRETERS</b>				
<b>Room</b>	<b>Name and Contact</b>	<b>Role</b>	<b>Affiliation to Case</b>	<b>Location of Connection</b>
N/A	[INT] – Name Last name [Email/Phone]	P	Interpreter	[City]
N/A		P	Interpreter	[City]
N/A		P	Interpreter	[City]

<b>TECHNICAL SUPPORT STAFF</b>				
<b>Room</b>	<b>Name</b>	<b>Role</b>	<b>Affiliation to Case</b>	<b>Location of Connection</b>
N/A	[IT] – Name Last name [Email]	P	[xx]	[xx]
N/A		P	Paralegal, ICSID	Home [City]
N/A		P	IT FROM THE LAW FIRM	Room [Firm] # 1 [C] [City]
N/A		P		Room [Firm] # 1 [R] [City]

## ANNEX C

### PROTOCOL REGARDING VIRTUAL HEARING MATTERS

#### 1. Testing

1. The Secretariat will conduct technical tests with the Tribunal and each Party in advance of the Hearing, to test connectivity of the remote access via Zoom (“**Hearing Platform**”).
2. The Secretariat recommends that as many virtual Hearing Participants as possible connect for each test. The date of each test will be communicated in due course. Tests may also include the court reporters and the interpreters.
3. Each virtual Hearing Participant should join the tests with the same device(s) and internet connection and from the same physical location that he/she intends to use for the Hearing.

#### 2. Participants

4. The List of Participants shall designate those participants that will have an active speaking role (“**Active Participants**”), and those who will be passive attendees (“**Passive Participants**”). The Parties should also indicate if several Hearing Participants will be connecting to the Hearing from the same location (in such circumstances, Hearing Participants shall continue to follow applicable social distancing guidelines).
5. For ease of identification, the virtual Hearing Participants shall join the videoconference using the naming convention indicated in the format in **Annex B**, namely, first and last name preceded by [T] (for Members of the Tribunal), [C] (for Hearing Participants for Claimants), [R] (for Hearing Participants for Respondent), [E] (for experts), or [W] (for witnesses). Should there be virtual Hearing Participants joining from a common conference room, the conference room connection may be identified as “[C or R] Conference Room #” as appropriate.
6. Virtual Hearing Participants will join the videoconference through a “waiting room”.
7. Access to the Hearing Platform shall be restricted to those included in the List of Participants. Should any non-listed Hearing Participant attempt to connect, the Technical Operator will alert the Secretary of the Tribunal, and, if necessary, the Tribunal will address the matter with the Parties.

All Hearing Participants bear an ongoing duty to warn the Technical Operator and the Secretary of the Tribunal of the presence of any other person on the Hearing Platform.

8. Virtual Hearing Participants shall join the videoconference 30 minutes in advance of the start on each day to facilitate the identification of virtual Hearing Participants and to address any technical contingencies.

### **3. Connectivity**

9. The Parties shall ensure that each of their representatives, witnesses and experts who will connect to the Hearing Platform use a stable internet connection offering sufficient bandwidth, and use a camera and microphone/headset of adequate quality.
10. The Hearing Platform will also offer a dial-in telephone audio connection as a backup option should a virtual Hearing Participant experience a temporary technical difficulty with a computer online connection. The Parties are advised that the dial-in back up telephone connection provides access to the “floor” audio channel only, not to the interpretation channels.
11. If a virtual Hearing Participant experiences any technical issue during the Hearing, they may (i) use the chat function in Zoom to communicate with the host; or (ii) send an email to the Operator with copy to the ICSID Secretariat. Contact details for the host will be provided by the Secretariat closer to the date of the Hearing. All other remote hearing support issues should be addressed to the Tribunal Secretary and the paralegal.

### **4. Transcripts**

12. Instructions to access the live transcript will be provided by the Secretary of the Tribunal.

### **5. Interpretation**

13. The virtual Hearing Participants who will be speaking should use headsets (or external high-quality microphone), as this will help to ensure a good quality of the audio for the interpreters and for all participants more generally. On the Zoom platform, there will be a Spanish and English channels in addition to the Floor (which will be the “Off” button). The participants are asked to be mindful of the interpreters when speaking, just as in an in-person hearing.

Participants on one channel can only be heard by other participants on that channel. If participants wish to address the Members of the Tribunal in English, they need to select the “English” channel. If they wish to address the Members of the Tribunal in Spanish with interpretation, they may do so from the “Spanish” channel.

## **6. Equipment and Set Up**

14. For optimum sound quality, especially for the audio recording and transcription, the Secretariat highly recommends that the main speakers who are connecting virtually use an external microphone connection such as a headset through the USB or “mic” jack of the computer or laptop that they will be using for the videoconference. If an external headset is not available, Active Participants are asked to speak close to the microphone.
15. While not indispensable, virtual Hearing Participants are advised to have at least two screens, and preferably three (it can be one device with multiple screens or a combination of devices including tablets) to facilitate simultaneous viewing of: (i) the Zoom video connection; (ii) the online Real-time transcript; and (iii) offline documents.

## **7. Videoconference Etiquette**

16. Once admitted to the videoconference, and barring technical issues or other exceptional circumstances, virtual participants should remain connected throughout the Hearing day.
17. Upon the joining of the Hearing Participants to the videoconference on the first day of the Hearing, those using their computer should turn both their audio and video on. The President will invite each Party to introduce its team. After each Party has introduced all of its relevant Hearing Participants, the Hearing Participants who are not expected to speak should turn off their video feed and mute their microphones.
18. Other than the first part of the first day of the Hearing, the Parties are advised to keep the number of video connections (i.e., connections transmitting video of the virtual Hearing Participant to the videoconference) to a minimum, and to Active Participants only. Passive Participants should join the meeting through their computer but should keep their video feed off.

19. Virtual Hearing Participants shall use the “mute microphone” function when not speaking to reduce background noise and to avoid interference with the audio recording. The Technical Operator shall have the ability to mute virtual Hearing Participants if needed to avoid background noise, under the Tribunal’s control. Speakers should keep their phones and other devices on silent mode.
20. Virtual Hearing Participants are advised to join the Hearing from a location without background noise and with adequate lighting. Virtual Hearing Participants transmitting video feeds shall avoid sitting with a window or source of light behind them.
21. The above provisions on etiquette may be adjusted or supplemented by the Tribunal, in consultation with the Parties, in the course of the Hearing.

### **8. Break-Out Rooms**

22. If applicable and requested, break-out rooms separate from the virtual Hearing Room, to be used securely by each Party and the Tribunal during breaks, will be arranged on the Hearing Platform.
23. During the designated Hearing breaks, the Parties will be assigned to breakout rooms within the Hearing Platform to enable all the virtual Hearing Participants to promptly reconvene following breaks.
24. The List of Participants shall indicate the break-out room to which Hearing Participants shall be assigned, with [C] for the Claimants break-out room, [R] for the Respondent’s break-out room. Should there be a break in the course of a given witness- or expert- examination, the testifying witness/expert will be isolated in a separate break out room identified as [W/E].
25. Each Party will make its own separate arrangements for private communication within its team during the Hearing by instant messenger or other appropriate means. The Zoom built-in chat function will be disabled, except for communications with the Technical Operator.

### **9. Technical Difficulties**

26. Each Party shall designate, in its List of Participants, one of its representatives to act as videoconferencing emergency contact person (“**VC Emergency Contact Person**”) for purposes of addressing any technical incidents that might arise during the videoconference. The VC Emergency Contact Person shall be responsible for advising the Tribunal and the Tribunal Secretary if an

essential Hearing Participant on his/her side is disconnected or is otherwise unable to participate. In all other cases, the VC Emergency Contact Person shall notify and address technical issues with the Tribunal Secretary and the Technical Operator.

27. The Tribunal may temporarily or permanently suspend the Hearing if it deems the functioning of the Hearing Platform to be inadequate or likely to prejudice the due process rights of either of the Parties or the integrity of the proceeding. The Parties are asked to bear in mind that full recordings and transcripts will be available to them, mitigating any potential prejudice arising from the failure of any given virtual Hearing Participant to be able to follow the entire Hearing live on the Hearing Platform.

#### **10. Witnesses and experts**

28. To the extent any fact witness or expert is examined via video conference, the following rules shall apply:
- a. Each witness and expert shall affirm at the start of the examination that he or she will not receive or provide communications of any sort during the course of his or her examination.
  - b. Each Party shall be responsible for ensuring that Hearing Participants in the examination connect to the Hearing Platform through a stable internet connection, offering sufficient bandwidth, and use a camera, microphone, and speaker of good quality. All Active Participants are required to use good quality microphones and cameras, as tested by the ICSID Secretariat and the Technical Operator before the start of the examination.
  - c. Each Party shall instruct its witness/expert to testify from a quiet room, to the extent possible with a white or plain colored background, avoiding light sources (such as windows) behind them. The witnesses shall not use a virtual background, filter, or in any way prevent or limit the recording of them or the remote venue from which they are testifying.
  - d. Witnesses/Experts shall give evidence sitting at an empty desk or table, and their face shall be clearly visible on the video. To the extent possible, the camera should be positioned at



face level, relatively close to the witness/expert, who shall speak directly to the camera while testifying and avoid making quick movements.

- e. The witness/expert shall use a computer set-up on which no programs other than the Hearing Platform. Except for an unannotated copy of his/her witness statement(s)/expert report(s) and the documents which will be shown on the screen during the examination, the witness/expert shall not be aided by any other documents, notes or otherwise, unless permitted by the Tribunal upon application by a Party.
- f. During testimony, the witness/expert shall switch his/her mobile phone to flight mode and shall have no access to emails, chat programs, or other means of communication.
- g. Witnesses/Experts are to be alone in the room from where they participate except that one technician may be in the same room. The Parties may also designate a representative to be present in the room. Each witness and expert shall affirm at the start of the examination that he or she is the only person present in the room or confirm the presence of any additional individuals, and will not receive or make communications of any sort during the course of his or her examination.
- h. The witness or expert to be examined will be connected to the virtual waiting room of the Hearing Platform 30 minutes before his/her examination to ensure that s/he is available in time to be brought into the virtual Hearing Room. During the breaks, the witness or expert will be placed in a virtual waiting room.
- i. Any non-purely logistical communication with the witness or expert during his/her examination or during breaks in his/her examination is prohibited.
- j. The Parties shall (i) provide their respective witnesses/experts with the contact details of the Tribunal Secretary and the Technical Operator to be contacted (off Platform) in the event of a disconnection or other technical failure, and (ii) instruct their witnesses/experts that it is impermissible to record the examination and to allow unauthorized observers, i.e., persons who are not Hearing Participants, to attend.

- k. The Hearing Platform will also offer a dial-in telephone audio connection as a backup option should a witness/expert experience a temporary technical difficulty with a computer online connection
15. Witnesses/Experts testifying remotely are encouraged to have two screens to facilitate simultaneous viewing of the video connection and documents.

## ANNEX D

### PROTOCOLS FOR PROTECTION OF “CONFIDENTIAL INFORMATION”

#### 1. OBJECTIVES

1. These protocols are established to ensure:
  - a. Appropriate logistical arrangements for the open Hearing, in accordance with the transparency regime established by Article 830 of the Treaty.
  - b. The protection of “confidential information” (as defined in Article 838 of the Treaty).
  - c. An efficient, smooth and minimally disrupted Hearing.

#### 2. GENERAL RULES

2. As agreed by the Parties, the Hearing will be recorded. A copy of the recording will be posted on the ICSID website within 90 days after the conclusion of the Hearing.
3. The disclosure of confidential information shall be prevented, when necessary, through the moderation of the recording of the Hearing. The term ‘moderation’ means that the video recording of the hearing will be edited by ICSID to exclude confidential information, within six (6) weeks after the hearing concludes. The Parties will have the opportunity to review the video recording before it is posted on the ICSID website.
4. The Parties shall follow the protocols established below to alert the Tribunal of the use of “confidential information” during the Hearing and request the “moderation” of the video feed.

#### 3. PROTOCOLS

5. At any time during the Hearing, a Party may request that a part of the Hearing be held in private and that confidential information be excluded from the recording. To this effect, a Party shall inform the Tribunal **before** the “confidential information” is discussed, addressed or shown at the Hearing.
6. The Parties are responsible to identify, **before** discussing, addressing or showing documents or information, whether these are “confidential information” or could raise confidentiality issues.
7. To minimize the number of interruptions, the Parties are invited to organize the topics addressed during their oral statements so that those which involve “confidential information” are grouped together, wherever possible.
8. Each Party shall designate one member of its legal team who shall be responsible for bringing moderation requests to the Tribunal’s attention.

9. If a Party has an objection to a moderation request made by the other Party, it shall immediately alert the Tribunal, which shall hear the Parties and decide on the matter. The discussion between the Parties and the Tribunal shall be held “in private” (i.e. excluded from the public video recordings of the Hearing).
10. If the Tribunal decides that documents and information about to be discussed, addressed or shown warrant the Hearing to be temporarily held “in private”, the recording shall be moderated per the Tribunal’s instructions.
11. Resumption of the video feed shall be requested by the Party which requested and obtained moderation or proposed by the Tribunal. Resumption may also be requested by the other Party if it deems it necessary. The Tribunal shall rule on any dispute between the Parties in that respect.