
Under the Rules of the United Nations Commission on International Trade Law

In the matter of

WorleyParsons International Inc.

Claimant

v.

The Republic of Ecuador

Respondent

CLAIMANT'S NOTICE OF ARBITRATION

February 14, 2019

WorleyParsons International Inc. v. Republic of Ecuador

CLAIMANT’S NOTICE OF ARBITRATION

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WorleyParsons International Inc. v. Republic of Ecuador

CLAIMANT'S NOTICE OF ARBITRATION

I. INTRODUCTION

1. WorleyParsons International Inc. (“WorleyParsons” or “Claimant”) hereby notifies the Republic of Ecuador (“Ecuador,” the “Republic,” or “Respondent”) of its demand to refer the dispute described herein and arising from the Treaty between the United States of America and the Republic of Ecuador concerning the Encouragement and Reciprocal Protection of Investment (the “US-Ecuador BIT,” “BIT” or “Treaty”)¹ to arbitration pursuant to the Rules of the United Nations Commission on International Trade Law (the “UNCITRAL Arbitration Rules” or “UNCITRAL Rules”).

2. This dispute involves unlawful and opportunistic actions by Ecuador to profit from the fruits of WorleyParsons’s labor and to benefit from its investment, in violation of WorleyParsons’s BIT-protected contractual and legal rights and its legitimate expectations. The basic facts of this case are clear and undisputed:

3. WorleyParsons entered into several contracts with Ecuador’s State-owned oil company, EP Petroecuador (“Petroecuador” or “EPP”), and with Refinería del Pacífico Eloy Alfaro RDP Compañía de Economía Mixta (“Refinería del Pacífico” or “RDP”), for the development of different projects (*i.e.*, the Esmeraldas Refinery, RDP Refinery, and Machala Gas Liquefaction Plant (“GLP”), together the “Projects”). Additionally, WorleyParsons performed works for a port facility on the coast of Ecuador, known as project Monteverde, which facilitates the discharge of propane and butane, and is capable of receiving ships with a capacity of 75,000 tons.

4. Petroecuador is an oil company wholly-owned by the Republic, and Refinería del Pacífico is a mixed company owned both by Petroecuador (51%) and the Venezuelan State-owned oil company, Petróleos de Venezuela, S.A. (“PDVSA”) (49%).² Between 2011 and 2015, Ecuador,

¹ A copy of the Treaty is attached as **Exhibit C-1**.

² See Public deed regarding the increase of equity (including annexes), 1 June 2015, at 4, 14, **Exhibit C-2**.

through its agencies and instrumentalities, awarded WorleyParsons several contracts for the development of the Projects.³

5. As would be expected of a world-class company, WorleyParsons complied with all of its contractual obligations and was therefore entitled to receive full payment for its performance. Beginning in 2014, however, RDP and Petroecuador began to fall behind on their payments to WorleyParsons. By May 2016, RDP had stopped making payments altogether; Petroecuador followed suit shortly after, in August 2016. To date, Ecuador and its instrumentalities have failed to pay Claimant over US\$ 83 million, plus interest. RDP and Petroecuador put forward many excuses and purported justifications to explain their failure to comply with their payment obligations, each more convoluted and illegitimate than the last. Ultimately, it became apparent that the real motive for their conduct was that they had direct instructions from the Presidency of the Republic not to pay any company that had a relationship with a third company named Tecnazul Cia. Ltda. (“Tecnazul”). Tecnazul is an Ecuadorian company that acted subcontractor for some of the contracts that WorleyParsons entered into with Ecuador.

6. The motivation behind the President’s instructions became clear in early 2016 when, much to WorleyParsons’s and the general public’s surprise, it became known that Government authorities, including the General Manager of Petroecuador, were involved in acts of corruption. In the context of the ensuing scandal, and the investigation that gave rise to it, it also became known that Ecuadorian officials had accepted illicit payments from third-parties, including Tecnazul’s representatives. Despite the fact that WorleyParsons was in no way involved with the scandal, Ecuador has used that situation as an excuse to refuse to honor its contractual obligations and to illegally refused to pay the amounts duly owed to WorleyParsons.

³ Agreement for the Supervision and Management of the Refurbishment of the Esmeraldas Refinery Project, No. 2011030, 14 November 2011 (“Refurbishment Agreement”), **Exhibit C-3**; Agreement for the study of the re-engineering and construction of the drainage system of the Esmeraldas Refinery, No. 2014187, 25 July 2014 (“Drainage Agreement”), **Exhibit C-4**; Agreement for Detail Engineering of Merox 200, Merox 300 and Waste Waters Z3, No. 2014070, 20 December 2014 (“Merox Agreement”), **Exhibit C-5**; Agreement for the provision of specialized technical assistance for the natural gas liquefaction plant, No. 2014047, 5 March 2014 (“Machala I Agreement”), **Exhibit C-6**; Second Agreement for the provision of specialized technical assistance of the natural gas liquefaction plan, No. 2015066, 6 June 2015 (“Machala II Agreement”), **Exhibit C-7**; Project Management Consultancy (PMC) Support Services Agreement, 22 November 2011 (“RDP Agreement”), **Exhibit C-8**.

7. Additionally, between October 2015 and April 2016, WorleyParsons performed, on an open-account basis, works for Petroecuador related to the Monteverde Project. Despite the fact that Petroecuador has accepted that WorleyParsons performed the relevant services, it has refused to execute payment agreements that would allow WorleyParsons to be paid for its work.⁴ Petroecuador owes a total amount of approximately US\$ 615,000 for such services.

8. Ecuador's unlawful conduct did not stop there. In addition to not paying WorleyParsons for the services it had already provided, Ecuador initiated a harassment campaign against WorleyParsons and its personnel by initiating a series of investigations through the General Comptroller's Office. These investigations ultimately resulted in unsubstantiated audit reports, which in turn led to baseless criminal investigations against WorleyParsons's personnel. In total, the General Comptroller's Office has created a contingency for WorleyParsons amounting to approximately US\$ 97 million. This amount is likely to continue to increase as the General Comptroller Office continues to carry investigations motivated by Ecuador's aim to persecute WorleyParsons.

9. More recently, Ecuador's tax authority, the *Servicio de Rentas Internas* ("SRI"), confirmed an audit of the income tax paid by WorleyParsons for fiscal year 2014, and issued an assessment of approximately US\$ 18 million plus interests against the company. As Claimant will demonstrate in this proceeding, there is no basis in law or fact for this charge, which is just another means of harassing WorleyParsons. In parallel, SRI began an unwarranted audit for fiscal years 2015 and 2016 on the same grounds as the 2014 audit. Although the 2015 and 2016 income tax audit is still ongoing, SRI will presumably reach the same arbitrary, groundless outcome and the existing contingency will also likely continue to increase.

10. Ecuador's acts and omissions, conducted either on its own behalf or through its instrumentalities and agencies, such as Petroecuador, RDP, the General Comptroller's Office, the District Attorney's Office, and SRI, for which Respondent is internationally responsible, violate the US-Ecuador BIT with respect to WorleyParsons's investment, and have substantially damaged WorleyParsons: Ecuador owes Claimant US\$ 83 million plus interests for unpaid services and

⁴ See Letter from WorleyParsons to Petroecuador, 13 August 2018, **Exhibit C-10**.

created a baseless liability of US\$ 115 million plus interests. Ecuador is liable for all damages arising from its acts and omissions, and is obligated to fully compensate WorleyParsons therefor.

11. For the avoidance of doubt, Claimant does not elect to treat this Notice of Arbitration as its Statement of Claim, and expressly continues to reserve all of its rights with regard to this matter.

II. THE PARTIES

A. Claimant

12. WorleyParsons is a company duly incorporated and existing under the laws of the State of Delaware, USA,⁵ and is headquartered in Houston, Texas. WorleyParsons has its principal place of business at the following address:

WorleyParsons
Suite 100, Energy Center II
575 North Dairy Ashford Road
Houston, TX 77079, USA

13. WorleyParsons is represented in this arbitration proceeding by White & Case and Ferrere.⁶ All required notifications should be addressed to:

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Paul Friedland
White & Case LLP
1221 Avenue of the Americas
New York, NY 10020-1095, USA

⁵ See Certificate of Incorporation of Parsons E&C International, Inc., 4 January 2002 and Certificate of Amendment of Certificate of Incorporation, 15 June 2006, **Exhibit C-11**; Superintendent of Companies, Resolution No. SC.IJ.DJCPTE.Q115205, **Exhibit C-12**.

⁶ See Power of Attorney dated February 2019, **Exhibit C-13**.

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B. Respondent

14. The Republic of Ecuador (“Ecuador” or “Respondent”) is the properly constituted *de jure* government of the people and territory of Ecuador, and it is represented by the State’s Attorney General (*Procurador General del Estado*).

15. For purposes of this dispute, the Republic of Ecuador’s address is:

Dr. Iñigo Salvador Crespo
Procurador General del Estado
Av. Amazonas No 39-123 y Arizaga
Edificio Amazonas Plaza
Quito, Ecuador

III. FACTUAL BACKGROUND

16. In November 2011, WorleyParsons set up offices, retained new personnel, and expatriated existing personnel to implement several contracts that it entered into with Ecuador through its instrumentalities, Petroecuador and RDP, relating to the construction and/or redevelopment of several major projects in the Ecuadorian oil & gas sector, including two refineries (Esmeraldas and RDP), the Machala GLP, and the Monteverde Project.

17. The Esmeraldas Refinery is located in the northern Ecuadorian province of Esmeraldas. Built in the 1970s, the refinery was designed to have a refining capacity of 55,600 barrels per day (bpd).⁷ The Esmeraldas Refinery's capacity was later increased to 90,000 bpd in 1987, and 110,000 bpd in 1997.⁸ In 2015, the refinery received a total of 21,727,858 barrels (59,990 bpd).⁹ Reportedly, the refurbishment of the Esmeraldas Refinery was finished in December 2015.¹⁰ As a result, in 2016, the total number of barrels received on a yearly basis increased to 38,444,541 (*i.e.*, 105,677 bpd).¹¹

⁷ Petroecuador, *Informe Estadístico 2016*, at 21, **Exhibit C-15**.

⁸ *Id.*

⁹ Petroecuador, *Informe Estadístico 2016*, Chart 10, at 27, **Exhibit C-15**.

¹⁰ *See Refinería Esmeraldas resurge luego de 38 años*, EL TELÉGRAFO, 17 December 2015:

“Hoy, tras 7 años de procesos de rehabilitación y \$ 1.200 millones en inversión, será reinaugurado el complejo petrolero que estará en capacidad de procesar 110 mil barriles de petróleo al día (BPD) y le permitirá generar al país \$ 305 millones de ingresos adicionales por el ahorro en compra de combustibles. Según el Gobierno Nacional, si no se hubiese tomado la decisión de rehabilitar este complejo, hoy habría sido una catástrofe para el país.”

“Today, after 7 years of the rehabilitation processes and \$ 1.200 million in investments, the oil complex that is going to be capable of processing 110 thousand barrels of oil per day (BPD) will be re-inaugurated; and this will allow the State to generate \$ 305 million of additional income due to savings in the import of fuels. According to the National Government, if the decision to rehabilitate this complex would have not been taken, the country would face a catastrophe today” (free translation)

Exhibit C-14.

¹¹ Petroecuador, *Informe Estadístico 2016*, Chart 8, at 25, **Exhibit C-15**.

18. The Machala GLP is located on a 17-hectare space in Bajo Alto, which in turn is located in the coastal province of El Oro.¹² The estimated construction cost of this plant was US\$ 60 million, and it was expected to produce 300 metric tons of liquefied gas per day.¹³

19. The RDP Refinery, located in El Aromo, in the province of Manabí, had an estimated construction cost of US\$ 10.5 billion and was designed to produce 300,000 barrels of crude oil per day.¹⁴ The RDP Refinery's potential export capacity, its job creation potential, and potential attraction of foreign investment, made this refinery a key piece in Ecuador's future economic development.

20. The Monteverde Project, located in the province of Santa Elena, is a gas terminal with a 1,350-meter dock that allows the discharge of propane and butane, and receives ships with a capacity of up to 75,000 tons.¹⁵

A. WorleyParsons Enters into Several Investment Agreements with Ecuador's Instrumentalities

1. The Petroecuador Agreements

21. WorleyParsons and Petroecuador entered into five major agreements between 2011 and 2015. Three of the agreements related to Esmeraldas and two to Machala. In addition, WorleyParsons also performed works for the Monteverde Project that were to conclude with the execution of a payment agreement recognizing all works performed by WorleyParsons as their performance was based on requests from Petroecuador falling out of the scope of existing agreements that had been executed until then.

22. In November 2011, WorleyParsons entered into its first agreement with Petroecuador, the purpose of which was to provide management and supervision services in connection with the refurbishment of Esmeraldas (the "Refurbishment Agreement").¹⁶

¹² See *Gas natural para Azuay, en agosto*, EL COMERCIO, 21 June 2011, **Exhibit C-16**.

¹³ *Id.*

¹⁴ *Refinería del Pacífico el primer complejo refinador y petroquímico ecuatoriano*, EL CIUDADANO, 3 August 2015, **Exhibit C-17**.

¹⁵ See *Sistema de GLP, Monteverde-Chorrillo, Una megaobra que beneficia a todo el Ecuador*, EKOSNEGOCIOS.COM, November 2014, at 31, **Exhibit C-18**.

¹⁶ Refurbishment Agreement, **Exhibit C-3**.

Petroecuador's Technical Commission, which managed the contracting process of the management and supervision of the Refurbishment of the Esmeraldas Refinery Project through a competitive international bid, recommended Petroecuador awarding the agreement to WorleyParsons and Petroecuador awarded the Refurbishment Agreement to WorleyParsons in October 2011. As consideration for the services performed under this agreement, Petroecuador agreed to pay WorleyParsons approximately US\$ 38 million based on a fixed hourly rate per professional ("man/hour").¹⁷

¹⁷ Refurbishment Agreement, Clause 5, **Exhibit C-3**. Subsequently, WorleyParsons and Petroecuador executed six complementary agreements:

- a) Refurbishment Complementary Agreement No. 2012036, 28 September 2012, Clauses 3, 4.1 **Exhibit C-19**. This agreement was executed to provide additional man-hours to perform the prime agreement, including services such as: quality control and industrial safety, management and engineering, organizational assessment of the project, and inspection of critical equipment. This agreement amounted to an estimate of approximately US\$ 25.5 million;
- b) Refurbishment Complementary Agreement No. 2013027, 28 August 2013, Clauses 3, 4 **Exhibit C-20**. The purpose of this agreement was also to incorporate additional man-hours to perform the Prime Agreement including additional services of supervision of agreements executed between EP Petroecuador and the companies TESCA, KBC, EAGLEBURGMANN for the refurbishment of the Esmeraldas Refinery. It was also executed to provide a plan for improving fuels in the Refinery. This agreement amounted to approximately US\$ 37 million;
- c) Refurbishment Complementary Agreement No. 2014015, 2 April 2014, Clauses, 3, 4, and pp. 32-35, 56- 57, **Exhibit C-21**. The agreement was executed for providing management and supervising services for the plan for the electrical improvement of the Esmeraldas Refinery and the performance of a study of the quality of asphalt produced in the refinery. This agreement amounted to approximately US\$ 12.5 million;
- d) Refurbishment Complementary Agreement No. 2014048, 9 October 2014, Clauses, 3, 4, and p. 36, **Exhibit C-22**. This was a agreement executed to incorporate additional man/hours to perform the Prime Agreement, including additional services for the management and supervising several projects within the Esmeraldas Refinery, including among others: disposal of dangerous material, maintenance of tanks for the storage of crude oil, design and construction of facility for scrap material, and a plant for the treatment of hazardous material. This agreement amounted to approximately US\$ 19.7 million;
- e) Refurbishment Complementary Agreement No. 2014051, 17 October 2014, Clause 3, **Exhibit C-23**. This agreement amended the Refurbishment Agreement to incorporate a "Reimbursable Expenses Protocol" to be applied for complementary agreements; and
- f) Refurbishment Complementary Agreement No. 2015205, 29 October 2015, Clauses, 3, 4, **Exhibit C-24**. This agreement was executed to incorporate additional man/hours for the performance of services under the prime agreement. This agreement amounted to approximately US\$ 57.4 million. The Refurbishment Complementary Agreements jointly amounted to approximately US\$ 152 million.

As of today, there are still additional man/hours and reimbursable expenses for an amount of approximately US\$ 36 million that are pending to be included in the economic settlement of these agreements.

23. In July 2014, WorleyParsons executed a second agreement with Petroecuador in connection with the Esmeraldas Refinery.¹⁸ That agreement was for the performance of design and construction studies for a drainage system at the Refinery (the “Drainage Agreement”). As was the case with the Refurbishment Agreement, the Technical Commission of Petroecuador recommended awarding the agreement to WorleyParsons. WorleyParsons’s reputation and credentials carried the day, and Petroecuador awarded it the Drainage Agreement. As consideration for the services performed under this agreement, Petroecuador agreed to pay WorleyParsons approximately US\$ 11 million. Subsequently, the parties executed a complementary agreement for the provision of additional services, such as the performance of studies on the electrical scheme of the Refinery’s drainage system.¹⁹ Petroecuador agreed to pay WorleyParsons approximately US\$ 3 million for these services. WorleyParsons’s total compensation for the services rendered under the Drainage Agreement and the complimentary agreement was expected to be around US\$ 14 million.

24. In December 2015, WorleyParsons and Petroecuador entered into a third agreement related to the Esmeraldas Refinery. This specific agreement (the “Merox Agreement”) was for the provision of engineering services in support of the refurbishment of the Merox 200 and Merox 300 units, and for the construction of a new water plant at the Esmeralda Refinery.²⁰ As consideration for the services performed under the Merox Agreement, Petroecuador agreed to pay WorleyParsons approximately US\$ 16.2 million. Thereafter, Petroecuador and WorleyParsons entered into a complementary agreement on October 20, 2015.²¹ As consideration for the services performed under the complementary agreement, Petroecuador agreed to pay WorleyParsons approximately US\$ 5 million. Between the two agreements, WorleyParsons was entitled to receive compensation in the amount of approximately US\$ 21 million.

25. Petroecuador and WorleyParsons entered into two additional agreements related to the Machala GLP. These two agreements, the first of which was executed on March 5, 2014 (the

¹⁸ Drainage Agreement, **Exhibit C-4**.

¹⁹ Drainage Complementary Agreement No. 2015449, 26 November 2015, Clause 2, **Exhibit C-25**.

²⁰ Merox Agreement, Clause 4.1, **Exhibit C-5**.

²¹ Merox Complementary Agreement No. 2015197, 20 October 2015, **Exhibit C-26**.

“Machala I Agreement”), and the second of which was entered into on June 6, 2015 (the “Machala II Agreement” and together with the Machala I Agreement, the “Machala Agreements”) were for the provision of specialized technical assistance in the inspection of existing equipment.²² Petroecuador agreed to pay WorleyParsons approximately US\$ 1 million under the Machala I Agreement and US\$ 1.8 million under the Machala II Agreement. Following their entry into the Machala I Agreement, but prior to entering into the Machala II Agreement, WorleyParsons and Ecuador entered into two complementary agreements on August 1, 2014 and November 14, 2014, respectively.²³ Under these agreements, Petroecuador agreed to pay WorleyParsons approximately US\$ 740,000.

26. Petroecuador and WorleyParsons also entered into a payment agreement on December 4, 2015, whereby Petroecuador was to pay WorleyParsons approximately US\$ 856,000 for work performed at Petroecuador’s request that fell outside the scope of the Machala Agreements (including the complimentary agreements).²⁴

27. WorleyParsons’s total compensation for the Machala Agreements, the complementary agreements, and the payment agreement, amounted to approximately US\$ 4.3 million.

28. Petroecuador later requested WorleyParsons to provide additional services between October 2015 and April 2016 that, again, fell outside the scope of both the Machala Agreements and the existing payment agreement for approximately US\$ 3 million.²⁵ The parties were to execute a new and different payment agreement with respect to the provision of these services. To date, however, Petroecuador has refused to do so.

²² Machala I Agreement, **Exhibit C-6**; Machala II Agreement, **Exhibit C-7**.

²³ See Machala I Complementary Agreement No. 2014191, 1 August 2014, Clause 2 (this Agreement was executed due to the necessity to reschedule works under the Machala I Agreement, resulting in an increase of 720 hours and 218 hours in the provision of supervising and management services, respectively), **Exhibit C-27**; Machala I Complementary Agreement No. 2014286, 14 November 2014, Clause 2 (this Agreement was executed due to the necessity to reschedule works under the Machala I Agreement and Machala I Complementary Agreement No. 2014191, resulting in an increase of 356 hours and 564 hours in the provision of supervising and management services, respectively), **Exhibit C-28**.

²⁴ Machala Payment Agreement No. 2015006, 4 December 2015, Clause 3-4, **Exhibit C-9**.

²⁵ See Letter from WorleyParsons to Petroecuador, 28 February 2018, **Exhibit C-30**.

29. Finally, the parties were also to include the services that WorleyParsons provided for the Monteverde project (approximately \$615,000) in a payment agreement.²⁶ To date, Petroecuador has also refused to execute that agreement.

2. The RDP Agreement

30. On November 22, 2011, shortly after the execution of the Refurbishment Agreement, WorleyParsons entered into a Project Management Consultancy (PMC) Support Services Agreement with RDP (the “RDP Agreement”).²⁷ Under the RDP Agreement, WorleyParsons agreed to perform (or cause to be performed) a number of project management and consultancy services for the construction of the Pacifico refinery. As consideration for the services performed under the RDP Agreement, RDP agreed to pay WorleyParsons’s fees according to the man/hour rates in the agreement. In the RDP Agreement, RDP and WorleyParsons agreed to a maximum contract price of approximately US\$ 205.5 million. To date, RDP owes WorleyParsons approximately US\$ 37 million under the RDP Agreement.²⁸ WorleyParsons Performs its Obligations Under the Agreements

31. In order to perform its obligations under the agreements, WorleyParsons set up offices in Ecuador, retained new personnel and sent existing personnel to Ecuador. In addition, and in furtherance of its right to do so, WorleyParsons retained Tecnazul, an Ecuadorian company, to act as subcontractor and perform certain services under the agreements. WorleyParsons and Tecnazul entered into “back-to-back” agreements for almost all of the agreements WorleyParsons entered into with Petroecuador and RDP, and agreed to make the terms and conditions of the Petroecuador and RDP Agreements binding upon Tecnazul.²⁹

32. WorleyParsons performed all of the services it was obliged to perform under the agreements, and went as far as performing extra-contractual services as instructed by Ecuador. It is worth noting that, in order to perform all of the services under the agreements, and servicing

²⁶ See Letter from WorleyParsons to Petroecuador, 13 August 2018, **Exhibit C-10**.

²⁷ RDP Agreement, **Exhibit C-8**.

²⁸ *Id.* at Sections 4.1.1, 4.1.3.

²⁹ WorleyParsons did not enter into a subcontract with Tecnazul for the Merox Agreement and for the works performed in Monteverde. In all other instances, a “back-to-back” subcontract was executed.

each of Ecuador's additional requests, WorleyParsons not only established a local branch in Ecuador and subcontracted with local and foreign companies, but it also sent foreign consultants and advisors to Ecuador.³⁰ Notably, WorleyParsons incurred substantial expenses in executing these agreements, none of which the respective governmental entities reimbursed the company for, in breach of their obligations.

33. WorleyParsons's main asset in Ecuador was the know-how that it brought with it by the expatriation of different experts that were to participate on each project. For the performance of the services, WorleyParsons was required, *inter alia*, to have experienced technical personnel; state-of-the-art technology equipment; adequate and last generation software for the application of mathematic design models; to implement a HAZOP study of risk and operability; and to determine the technical-economic scope of the engineering to be performed.³¹

34. Critically, neither Petroecuador nor RDP has ever claimed that WorleyParsons failed to comply with its obligations under any of the Agreements, or even questioned the propriety of WorleyParsons's performance thereunder. Nor could they, since WorleyParsons has complied with all of its obligations by the letter, in a timely and professional manner, and in good faith. In fact, the administrators of different agreements expressly and unqualifiedly acknowledged on numerous occasions that WorleyParsons had performed all of its obligations thereunder. For example, the administrator of the Refurbishment Agreement issued a "Final technical and economic report" on August 1, 2017, in which it expressly acknowledged WorleyParsons's full compliance with the original and complementary agreements.³² Similarly, in June 2016, Petroecuador acknowledged with respect to the Drainage Agreement that "the work product such

³⁰ See, e.g., Commercial Proposal submitted for the RDP Agreement, 21 June 2011, Schedule 4: Mobilization, Re-mobilization, and De-mobilization Cost, at 28-29 ("RDP Commercial Proposal"), **Exhibit C-31**; Commercial Proposal submitted for the Drainage Agreement, 20 May 2014, *Formulario No-3 Listado del Personal Principal Asignado al Proyecto*, at 29-32 ("Drainage Commercial Proposal") (listing the nationality of each professional that was to participate in the project), **Exhibit C-32**.

³¹ Bidding Papers for the development of the Drainage Agreement, 30 April 2014, Section IV, Scope of the Works, at 12, **Exhibit C-33**.

³² Final Technical and Economic Report for the Refurbishment Agreement, Memorandum No. 00518-OPE-REE-MAN-PMR-2017, 1 August 2017, at 8 ("Until the date established by the Refining Department for the termination of the contract by mutual agreement, the contractor for supervising the agreements executed by EP Petroecuador, WorleyParsons, fulfilled any and all the terms of agreements 2011030, 2012036, 2013027, 2014015, 2014048 and 2015205 [...]"), **Exhibit C-34**.

as the conceptual, basic and detailed engineering; studies, designs, accounting reports, among others, were received and duly approved by all supervisors.”³³

B. Petroecuador and RDP Arbitrarily Decide to Stop Payment of WorleyParsons’s Invoices

35. Notwithstanding WorleyParsons’s full compliance with its obligations under the Agreements, starting in July 2014, RDP suddenly, arbitrarily, and with no explanation whatsoever, delayed and later on definitely stopped paying WorleyParsons’s invoices.³⁴ Petroecuador followed suit shortly thereafter, delaying, and finally stopping all payments in 2016. To date, Ecuador and its instrumentalities owe WorleyParsons approximately US\$ 83 million, plus interest.

36. That conduct was inconsistent with Petroecuador and RDP’s past practices. Indeed, throughout the period the agreements were in force, WorleyParsons submitted regular invoices to Petroecuador and RDP in accordance with the Agreements’ terms. For a time, Petroecuador and RDP paid these invoices regularly and without objection. Starting in 2014, however, Petroecuador and RDP began to refuse to receive, from WorleyParsons, documents for both the approval of *planillas* (*i.e.*, reports of the dates and hours worked by WorleyParsons’ personnel) and for the reimbursement of expenses. From that point onward, the Republic’s instrumentalities made payments on an irregular basis. This was followed by the occasional withholding of full payments starting in 2015. Initially, Petroecuador and RDP attributed the lack of payment to cash-flow problems. In 2016, however, it became apparent that Petroecuador and RDP’s progressively worsening payment practices were part of a deliberate scheme by Ecuador to disavow its obligations to WorleyParsons. Even more egregiously, it eventually came to light that their purposeful withholding of payments was being done in furtherance of a direct order issued by the Office of the President of the Republic not to pay WorleyParsons, in what amounts to a clear and blatant breach of the Agreements and the Treaty.

37. At first, Ecuador purported to “justify” withholding of payments due under the Esmeraldas, Machala and RDP agreements by asserting that both RDP and Petroecuador were

³³ Petroecuador’s Report on Drainage Agreement, Memorandum No. 00209-RPRY-REE-2016, June 2016, at 2, **Exhibit C-35**.

following the recommendations of the General Comptroller or the conclusions of the audits. These were pretexts and nothing more. Petroecuador ultimately suggested that the parties terminated the Esmeraldas Refurbishment Agreement by mutual agreement. WorleyParsons agreed to this termination, hoping that this would facilitate the economic liquidation of this contract and the payment of all amounts owed. The Parties undertook negotiations to execute the economic liquidation of the Esmeraldas Refurbishment Agreement (“*liquidación económica*”). To date, however, Petroecuador has refused to agree to close the Esmeraldas Refinery and Drainage Agreements and has refused to make any additional payments to WorleyParsons.

38. Adding insult to injury, WorleyParsons also learned that the Legal Secretary of the Office of the President of the Republic, Alexis Mera, directly ordered the General Manager of Petroecuador not to pay WorleyParsons “while [criminal investigations against Tecnazul] are pending.”³⁵ In other words, Petroecuador’s failure to pay WorleyParsons was no oversight, it was a deliberate action carried out in furtherance of the Ecuadorian Government’s campaign against the company. Indeed, in a communication dated October 21, 2016, addressed to Petroecuador’s General Manager, Pedro Merizalde, Mr. Mera stressed as follows: “it is necessary for you to instruct the personnel under your command to abstain from making any payments in favor of [Tecnazul] or to any related companies.”³⁶ As the next section explains, from Petroecuador’s subsequent conduct, namely, its failure to pay any of WorleyParsons’s invoices, it is clear that Petroecuador, or Ecuador, or both, assumed that because WorleyParsons has a contractual relationship with Tecnazul, WorleyParsons qualified as a “related company.” As the next section explains, this is nonsense.

C. Ecuador’s Investigation into Petroecuador

39. WorleyParsons’s unfair and unwarranted embroilment in Ecuador’s investigation of Petroecuador’s malfeasance dates back to early 2016, when Ecuador initiated a series of investigations into certain alleged acts of corruption involving officers of Petroecuador and

³⁵ See Letter No. T.J.901-SGJ-16-624, from Alexis Mera Giler, Legal Secretary of the President, 21 October 2016, Exhibit C-36.

³⁶ See Letter No. T.J.901-SGJ-16-624, from Alexis Mera Giler, Legal Secretary of the President, 21 October 2016, Exhibit C-36.

Tecnazul's officers. Ecuador simultaneously targeted Claimant despite having no indication of wrongdoing on its part.

40. One of these investigations was a criminal prosecution against members of Petroecuador and representatives of Tecnazul for the crime of bribery (*cohecho*). Under Ecuadorian law, bribery occurs when a public servant (here, Petroecuador's employees) receives illicit payments for "making, omitting, facilitating, delaying or conditioning" any matters related to his functions. As alluded to above, it was in the context of the bribery investigations that the then-Legal Secretary of the Presidency of the Republic, Alexis Mera, ordered the General Manager of Petroecuador to refrain from making any payments to Tecnazul and any companies related to it on October 21, 2016.³⁷

41. In a public interview, Mr. Mera affirmed: "just a few days ago, I have personally requested Petroecuador's officials to refrain from continuing with the contracts" executed with companies involved in corruption.³⁸ The brazenness of Mr. Mera's public statements and behavior, and his complete disregard for the rule of law, the sanctity of contracts, and WorleyParsons's due process rights, are astounding: WorleyParsons had not been "involved in corruption," yet, the Government conveniently decided to stop paying any amounts it owed to the company.

42. On March 30, 2017, the administrator of the Refurbishment Agreement, Leoncio Córdova, issued a report on the status of the Refurbishment Agreement and its complementary agreements (the "Córdova Report") affirming that payments in favor of WorleyParsons had been stopped pursuant to the direct orders of Mr. Mera. In his report, Mr. Córdova also affirmed that the Superintendent of the Esmeraldas Refinery gave the order to comply with Mr. Mera's instructions and to terminate the agreement with WorleyParsons. The Córdova Report states as follows:

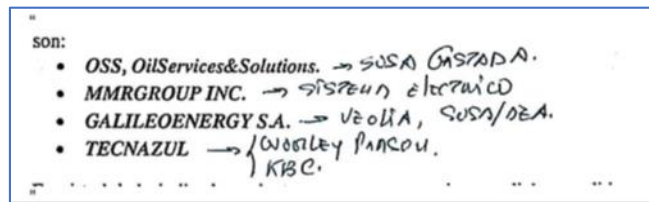
On October 21, 2016, by means of communication No. T.J. 901-SGJ-16-624, Dr. Alexis Mera Giler, Legal Secretary of the Presidency of the

³⁷ See Letter No. T.J.901-SGJ-16-624, from Alexis Mera Giler, Legal Secretary of the President, 21 October 2016, Exhibit C-36.

³⁸ See *Alexis Mera believes that agreements with companies involved in corruption should be stopped*, October 2017, Exhibit C-37.

Republic, communicated to Petroecuador’s General Manager the following: “[...] [W]hile [criminal investigations] are pending, it is considered necessary for you to instruct the personnel under your command to abstain from making any payments in favor of [Tecnazul] or to any related companies.”³⁹

43. Keen to secure compliance with the orders of Legal Secretary of the Presidency of the Republic, the Superintendent of the Esmeraldas Refinery issued memorandum No. 00402- RREF-REE-IRE-2016 on October 28, 2016 highlighting that the following companies should not receive payments from Petroecuador:⁴⁰



44. Put simply, Ecuador arbitrarily decided that WorleyParsons was “guilty by association” with Tecnazul and that, as a result, Ecuador and its instrumentalities would no longer pay for the services that WorleyParsons indisputably provided them. Ecuador failed to provide WorleyParsons with formal notice of its inclusion on this list, nor did it ever inform WorleyParsons of the reasons why it considered WorleyParsons a “related company,” or of any mechanisms or legal remedies the company could pursue to vindicate its position. Ecuador’s decision was an exercise in arbitrariness, plain and simple.

45. On January 25, 2017, WorleyParsons issued a public communication in which it reaffirmed that it was not involved in Tecnazul’s unlawful actions, and clarifying that it was not even aware of the corrupt nature of the relationship between Tecnazul and Petroecuador’s former general manager.⁴¹

³⁹ Report on the Status of the Refurbishment Agreement and its Complementary Agreements, Memorandum No. 00261-OPE-REE-MAN-PMR-2017 (“Córdova Report”), 30 March 2017, at 25 (free translation), **Exhibit C-38**.

⁴⁰ Although the name of WorleyParsons appears in a handwritten note in an internal document of Petroecuador, a snapshot of that text (including the note) was later included in the Córdova Report. See Córdova Report at 26, **Exhibit C-38**.

⁴¹ See *Fiscalizadora WorleyParsons se aleja de Tecnazul*, EL UNIVERSO, 25 January 2017, **Exhibit C-39**.

46. On March 19, 2018, WorleyParsons sent letters to the Attorney General’s Office, the Minister of Hydrocarbons, and the General Manager of Petroecuador, in which it “emphatically den[ie]d any suggestion that WorleyParsons is controlled by Tecnazul or that Tecnazul was the company that performed the agreements and that WorleyParsons has any connections with authorities of the Government of Ecuador.”⁴² In addition, WorleyParsons expressed “[i]t is not ethical, legal, or acceptable to claim that WorleyParsons or its employees are responsible for possible illegal acts allegedly committed by [Tecnazul] or its employees; much less to suggest that the company was complicit or an accessory to such crimes.”⁴³ Although WorleyParsons offered to provide any information that may be necessary to ensure that the “dialogue between Ecuador and WorleyParsons will remain objective,” it never received a reply from Ecuador other than abusive conduct herein described.⁴⁴

47. Willful non-payment for services duly performed was just one of the many ways in which WorleyParsons was wronged. Because each of the wrongful acts committed against WorleyParsons were instigated and carried out by Ecuadorian public servants in their official capacities, Ecuador is internationally responsible. Due to the political scandal created by the investigations against Tecnazul and Petroecuador’s officers, Ecuadorian authorities seemed determined to find any reason to malign WorleyParsons before different national institutions. Thus, investigations before the General Comptroller’s Office and even criminal investigations were initiated.⁴⁵ As part of these investigations, the authorities proceeded to scrutinize each and every agreement even remotely related to WorleyParsons. Although characterized as “investigations” Ecuador’s actions are nothing short of harassment.

D. Ecuador Launches a Series of Unsubstantiated Audits Against WorleyParsons

48. While the Petroecuador scandal continued to develop, the audits focused on the Esmeraldas Refinery, and in many instances, existing ongoing audits and audits on other projects became political and Ecuador’s pressure on WorleyParsons intensified. Between March 2016, and

⁴² Letters from to Attorney General, 20 March 2018, **Exhibit C-41**.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *See for example, Cuatro procesados en el caso Petroecuador, sobreseídos*, EL COMERCIO, 8 August 2017, **Exhibit C-40**.

November 2018, the General Comptroller's Office conducted approximately 30 audits. As a result of the audits that have been carried out, the General Comptroller's Office enacted 24 preliminary decisions finding WorleyParsons liable for its alleged failure to comply with its obligations under the relevant agreements. The General Comptroller's Office reached that conclusion despite of all evidence to the contrary that WorleyParsons provided from the beginning, and despite of the various meetings that the company held with Comptroller's officers to respond to their questions. In total, as at the date of this Notice of Arbitration, the General Comptroller's Office has created a contingency for WorleyParsons amounting to approximately US\$ 97 million. Although other audits are still ongoing, it is most likely that the State will impose additional liabilities on WorleyParsons.⁴⁶

49. With respect to the RDP Agreement, in October 2017, the General Comptroller sent reports to the State Prosecutor for the initiation of a criminal investigation of WorleyParsons personnel.⁴⁷ To date, the General Comptroller has initiated two additional audits regarding the RDP Agreement, both of which remain pending.

50. With regard to the Machala I Agreement, the General Comptroller's Office initiated an audit that resulted in an "observation" ("pre-Glosa") creating a contingency of approximately US\$ 656,000.00.⁴⁸ The General Comptroller's Office argued that Petroecuador made payments under the complementary agreement to the Machala I Agreement for work that WorleyParsons had not performed, disregarding all the documentary evidence that WorleyParsons had submitted.⁴⁹ For this reason, Ecuador forced WorleyParsons into a situation in which it had to reimburse this amount to Petroecuador, despite which Petroecuador later agreed that these funds should not have been disgorged by WorleyParsons and it executed a payment agreement to repay

⁴⁶ This amount does not include any contingencies arising from criminal investigations initiated against WorleyParsons's personnel.

⁴⁷ See, Letter from the General Comptroller's Office to the State Prosecutor, No. 29035, 11 October 2017, at 1 (initiating criminal investigations against WorleyParsons personnel (Andrew William Thiess, Supervising Chief Officer)), **Exhibit C-44**; Letter from the General Comptroller's Office to the State Prosecutor, No. 29049, 11 October 2017, at 41 (initiating criminal investigations against WorleyParsons personnel (Fernando Escobar Noriega, Supervising Chief Officer)), **Exhibit C-45**.

⁴⁸ General Comptroller's Office, Draft Audit Report No. 797-DPR on Machala I Agreement, 10 June 2016, at 1, **Exhibit C-46**.

⁴⁹ Machala Payment Agreement No. 2015006, 4 December 2015, Clause 2.20, **Exhibit C-9**.

that amount (along with other amounts for additional works that WorleyParsons performed). Despite of all of this, the General Comptroller's Office issued the pre-Glosa against WorleyParsons.

51. All of the Kafkaesque audit procedures conducted by the General Comptroller's Office appeared to simply *assume* that WorleyParsons participated in irregular activities. This "shoot first, ask questions later" approach is emblematic of the conduct WorleyParsons has faced at the hands of the Ecuadorian authorities. Although WorleyParsons provided the General Comptroller with evidence, including relevant documentation and detailed explanations, the State's auditors simply disregarded the evidence produced.

52. Since September 2018, the General Comptroller Office issued four decisions imposing civil responsibility on WorleyParsons regarding the Esmeraldas Refinery Project creating a contingency on WorleyParsons of approximately US\$ 18.8 million plus interest.⁵⁰ Although the other cases in the General Comptroller Office have not yet concluded, these proceedings are likely to reach the same arbitrary outcome.

53. Ecuador's unlawful conduct did not stop there. Ecuador also initiated bogus criminal investigations against WorleyParsons's officers. In relation to the Esmeraldas Refinery Project, Ecuador targeted the legal representative of WorleyParsons, Mr. Raymond Falcon, against whom Ecuador initiated several criminal investigations under the same premise of "shoot first, ask questions later." In particular, Ecuadorian authorities have accused Mr. Falcon of embezzlement and influence peddling, and even requested the publication of an Interpol red notice, despite ultimately choosing not to prosecute some of the allegations for lack of grounds for continuing with the criminal prosecution.⁵¹ Similarly, other WorleyParsons managers are subject to criminal investigations in relation to the RDP Project as part of Ecuador's strategy to persecute

⁵⁰ General Comptroller's Office, Resolution No. 14486, 13 July 2018, **Exhibit C-42**; General Comptroller's Office, Resolution No. 14522, 1 August 2018, **Exhibit C-43**; General Comptroller's Office, Resolution No. 5262, 17 September 2018, **Exhibit C-47**; General Comptroller's Office, Resolution No. 14824, 20 September 2018, **Exhibit C-48**; General Comptroller's Office, Resolution No. 15112, 24 October 2018, **Exhibit C-49**.

⁵¹ See Notification from District Attorney to Raymond Falcon Notifying of Interpol's Red Alert Request, 23 March 2017, **Exhibit C-50**; see also Criminal Courts Notification of District Attorney's Decision Not to Prosecute Raymond Falcon, 26 June 2017, **Exhibit C-51**.

WorleyParsons by pursuing baseless and unfounded accusations. Many of these investigations are ongoing and Ecuador has even commenced new ones, which are equally unfounded.

54. Ecuador has not made any attempt to pay the outstanding amounts owed to WorleyParsons. To the contrary, both RDP and Petroecuador have openly affirmed to WorleyParsons that they will not proceed with payment while other state instrumentalities' bogus criminal investigations and/or the General Comptroller's audit procedures against WorleyParsons are pending. Ecuador's conduct is blatantly unlawful, and in clear disregard of the rule of law.

IV. WORLEYPARSONS SUBMITS THIS BIT DISPUTE PURSUANT TO THE UNCITRAL ARBITRATION RULES

55. Article VI of the BIT contains Ecuador's agreement to arbitrate this dispute under the UNCITRAL Arbitration Rules, as well as the requirements for WorleyParsons to bring a BIT claim against Ecuador. Article VI of the BIT reads, in relevant part:

1. For purposes of this Article, an investment dispute is a dispute between a Party and a national or company of the other Party arising out of or relating to (a) an investment agreement between that Party and such national or company; (b) an investment authorization granted by that Party's foreign investment authority to such national or company; or (c) an alleged breach of any right conferred or created by this Treaty with respect to an investment.

2. In the event of an investment dispute, the parties to the dispute should initially seek a resolution through consultation and negotiation. If the dispute cannot be settled amicably, the national or company concerned may choose to submit the dispute, under one of the following alternatives, for resolution:

(a) to the courts or administrative tribunals of the Party that is a party to the dispute; or

(b) in accordance with any applicable, previously agreed dispute-settlement procedures; or

(c) in accordance with the terms of paragraph 3.

3. (a) Provided that the national or company concerned has not submitted the dispute for resolution under paragraph 2 (a) or (b) and that six months have elapsed from the date on which the dispute arose, the national or company concerned may choose to consent in writing to the submission of the dispute for settlement by binding arbitration:

(i) to the International Centre for the [*sic*] Settlement of Investment Disputes (“Centre”) established by the Convention on the Settlement of Investment Disputes between States and Nationals of other States, done at Washington, March 18, 1965 (“ICSID Convention”), provided that the Party is a party to such Convention; or

(ii) to the Additional Facility of the Centre, if the Centre is not available; or

(iii) in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL); or

(iv) to any other arbitration institution, or in accordance with any other arbitration rules, as may be mutually agreed between the parties to the dispute.

(b) once the national or company concerned has so consented, either party to the dispute may initiate arbitration in accordance with the choice so specified in the consent.

4. Each Party hereby consents to the submission of any investment dispute for settlement by binding arbitration in accordance with the choice specified in the written consent of the national or company under paragraph 3. Such consent, together with the written consent of the national or company when given under paragraph 3 shall satisfy the requirement for:

(a) written consent of the parties to the dispute for Purposes of Chapter II of the ICSID Convention (Jurisdiction of the Centre) and for purposes of the Additional Facility Rules; and

(b) an “agreement in writing” for purposes of Article II of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, June 10, 1958 (“New York Convention”).

5. Any arbitration under paragraph 3(a) (ii), (iii) or (iv) of this Article shall be held in a state that is a party to the New York Convention.

56. Thus, under Article VI of the BIT, an investor may pursue arbitration in accordance with the UNCITRAL Rules if: (i) the investment dispute involves violations of the BIT; (ii) the party has not submitted the dispute for resolution either to the courts or administrative tribunals of the host State or in accordance with any previously-agreed dispute-settlement procedures; and (iii) six months have elapsed from the date on which the dispute arose. In addition, the BIT suggests that the parties “should” initially seek a resolution through consultation and negotiation.

As explained in the paragraphs that follow, WorleyParsons has satisfied each of these requirements and that suggestion.

A. The Dispute Involves Violations of Investment Agreements, the BIT, and International Law

57. Ecuador's conduct, including the conduct of Ecuador's instrumentalities and political subdivisions, such as Petroecuador, RDP, the SRI, and the General Comptroller's Office, for which Ecuador is internationally responsible, violated the BIT. In turn, Ecuador's instrumentalities breached several provisions of the Agreements, which qualify as "investment agreements" under the Treaty. Breaches of those Agreements amount to breaches of the Treaty and international law, with respect to WorleyParsons's investment in Ecuador. In particular, Ecuador failed to observe its obligations under the Agreements by failing to compensate WorleyParsons for the services it provided under them.

58. Ecuador has in turn violated the Republic's obligations toward WorleyParsons's investment under the BIT, including but not limited to the obligations to (i) accord fair and equitable treatment to investments, (ii) ensure full protection and security to investments, (iii) treat WorleyParsons's investment on a basis no less favorable than that accorded in like situations to nationals or investors of third states, whichever is more favorable, (iv) not to impair by arbitrary or discriminatory measures the management, operation, maintenance, use, enjoyment, acquisition, expansion, or disposal of investments, (v) observe any obligation it may have entered into with regard to investments, and (vi) not to expropriate or nationalize investments, either directly or indirectly through measures tantamount to expropriation or nationalization, except for a public purpose, in a non-discriminatory manner, upon payment of prompt, adequate, and effective compensation, and in accordance with the due process of law and the general principles of treatment established in Article II(3) of the BIT.

59. With respect to fair and equitable treatment, and as will be further demonstrated at the proper stage, Ecuador acted in a manner contrary to WorleyParsons's legitimate expectations at the time of investing in Ecuador. Ecuador acted in an arbitrary, non-transparent manner, which constitutes a breach of the BIT's fair and equitable treatment standard. Because Ecuador's measures also amount to breaches of the Agreements, they violate the Treaty's Umbrella Clause (BIT Article II(3)(c)) and they constitute breaches of an investment agreement (BIT Article VI(1)).

60. Ecuador's violation of the full protection and security and non-impairment standards is equally flagrant. Ecuador has harassed WorleyParsons and its personnel by conducting investigations against the company and even criminally charging its personnel without any basis.

61. WorleyParsons notes that the factual and legal claims and arguments made herein should not be taken as limiting WorleyParsons's right to take other actions to protect its rights under the BIT. Furthermore, WorleyParsons expressly reserves its right to specify, supplement, or amend the factual and legal claims and arguments made herein.

B. WorleyParsons Has Not Submitted its BIT Dispute to Ecuadorian Courts or Administrative Tribunals, or to "Any Other Previously Agreed Dispute-Settlement Procedure"

62. WorleyParsons has not submitted this investment dispute under the BIT either to the courts or administrative tribunals of Ecuador or to any other previously-agreed dispute-settlement procedure.

C. Six Months Have Elapsed Since the Dispute Arose

63. WorleyParsons's representatives have held numerous meetings with public officers of the Republic of Ecuador to discuss a potential settlement of the present dispute. In addition, on February 16, 2018, WorleyParsons formally notified Ecuador of the dispute under the Treaty.⁵² Subsequent to that notice, WorleyParsons met Ecuadorian representatives at least two additional times in Quito, on May 29, 2018, and September 11, 2018, but to no avail.

V. PROCEDURAL MATTERS

A. Applicable Rules

64. Pursuant to Article 1 of the 1976 UNCITRAL Arbitration Rules and Article 1 of the 2010 UNCITRAL Arbitration Rules (with new article 1, paragraph 4, as adopted in 2013), the 1976 UNCITRAL Arbitration Rules would apply to the instant arbitration. WorleyParsons, however, proposes that the 2010 UNCITRAL Arbitration Rules (with new article 1, paragraph 4,

⁵² The Notice of Dispute was submitted to the Attorney General's Office by letter dated February 6, 2018, on February 16, 2018 (the "Notice of Dispute"). The Notice was also delivered to the Hydrocarbons Ministry and Petroecuador on the same day. *See* Notice of Dispute, 6 February 2018, **Exhibit C-29**.

as adopted in 2013) apply and invites Ecuador to accept WorleyParsons's proposal. For the sake of clarity, and pending Ecuador's agreement, any reference to the UNCITRAL Arbitration Rules in this Request for Arbitration shall be understood as the 1976 UNCITRAL Arbitration Rules.

B. Number and Appointment of Arbitrators

65. Article VI of the BIT does not specify the number of arbitrators to hear and decide the dispute. In accordance with Articles 5 and 7 of the UNCITRAL Rules, WorleyParsons proposes that this dispute be adjudicated by a panel of three arbitrators, one to be appointed by Claimant, one by Respondent, and the presiding arbitrator to be chosen by agreement of the two party-appointed arbitrators in consultation with each party within 30 days after nomination by Ecuador of its party-appointed arbitrator.

66. If within 30 days after the appointment of the second arbitrator the two arbitrators have not agreed on the choice of the presiding arbitrator, the presiding arbitrator shall be appointed by the appointing authority agreed upon by the parties. Claimant hereby proposes that the Secretary-General of the Permanent Court of Arbitration serve as appointment authority for purposes of Article 7 of the UNCITRAL Rules.

C. Seat of Arbitration

67. With respect to Article 16 of the UNCITRAL Rules, Claimant proposes that the arbitration have its seat in a neutral country where neither Claimant nor Respondent is based, and one that is not only conveniently located but also located in a country that is a party to the New York Convention as required by Article VI(5) of the BIT, and where arbitration laws have been established and are robust in terms of non-interference with arbitral proceedings and ready recognition and enforcement of awards.

68. For these reasons, Claimant proposes that the seat of arbitration be Paris, France, but that the Tribunal be permitted to hold hearings at any location of its choosing, in consultation with the parties, as a matter of convenience.

VI. LANGUAGE

69. With respect to Article 17 of the UNCITRAL Rules, WorleyParsons requests English as the procedural language for this proceeding.

A. Case Administration And Appointing Authority

70. Claimant proposes that this arbitration be administered by the International Bureau of the Permanent Court of Arbitration (the “PCA”) and that the latter also serve as appointing authority.⁵³

B. Nomination of Claimant’s Arbitrator

71. In accordance with Article 7 of the UNCITRAL Rules, Claimant appoints Mr. Bernard Hanotiau, a national of Belgium, as arbitrator. Mr. Bernard Hanotiau’s contact information is as follows:

Mr. Bernard Hanotiau
IT Tower
480, avenue Louise – box 9
B – 1050 Brussels
Tel.: (32.2) 290.39.00
Fax: (32.2) 290.39.39
e-mail: bernard.hanotiau@hvdb.com

72. Based on available information, Claimant understands that Mr. Hanotiau satisfies the requirements of independence and impartiality set forth in Article 9 of the UNCITRAL Rules.

C. Reservation of Rights

73. Claimant reserves all of its rights, including the right to vary, amend, and/or supplement this Notice of Arbitration and/or subsequent pleadings, and in particular its claims for relief, to the full extent permitted by the Treaty, the UNCITRAL Rules, and applicable law.

⁵³ A list of the administrative services provided by the PCA may be found here: <http://pca-cpa.org/en/services/arbitration-services/case-administration/>

VI. Request for Relief

For the reasons stated herein, WorleyParsons requests an award granting it the following relief:

- (i) A declaration that the dispute is within the jurisdiction and competence of the Tribunal;
- (ii) A declaration that Ecuador has violated the Treaty and international law with respect to WorleyParsons's investment;
- (iii) A declaration that Ecuador's actions and omissions at issue and those of its instrumentalities for which it is internationally responsible, among others things, are unlawful, arbitrary, discriminatory, unfair and inequitable; constitute an expropriation or measures tantamount to expropriation without prompt, adequate and effective compensation; failed to provide fair and equitable treatment; failed to provide full protection and security; failed to fulfill obligations entered into with regard to WorleyParsons's investment; and failed to ensure that WorleyParsons receive national or most-favored-nation treatment;
- (iv) An award to WorleyParsons of restitution or the monetary equivalent of all damages caused to its investment as set forth herein and as may be further developed and quantified in the course of this proceeding, including enhanced damages;
- (v) Pre-and-post award interest until the date of Ecuador's full and effective payment;
- (vi) An award to WorleyParsons for all costs of these proceedings, including attorneys' fees and expenses; and
- (vii) Any other relief the Tribunal may deem just and proper.

Respectfully submitted,



FERRERE
Quito

WHITE & CASE
Miami
Houston
New York
Washington D.C

Counsel for Claimant
February 14, 2019