

**PCA Case No. 2023-37**

**IN THE MATTER OF AN ARBITRATION UNDER THE UNITED STATES – COLOMBIA  
TRADE PROMOTION AGREEMENT, ENTERED INTO FORCE ON 15 MAY 2012 (the  
“TPA”)**

**- and -**

**THE ARBITRATION RULES OF THE UNITED NATIONS COMMISSION ON  
INTERNATIONAL TRADE LAW, AS REVISED IN 2021 (the “UNCITRAL Rules”)**

**- between -**

**SEA SEARCH-ARMADA, LLC (USA)**

**(the “Claimant”)**

**- and -**

**THE REPUBLIC OF COLOMBIA**

**(the “Respondent”, and together with the Claimant, the “Parties”)**

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**PROCEDURAL ORDER NO. 1**

**Rules of Procedure**

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*Arbitral Tribunal*

Mr. Stephen Drymer (Presiding Arbitrator)  
Mr. Stephen Jagusch KC  
Dr. Claus Von Wobeser

*Registry*

Permanent Court of Arbitration

**22 August 2023**

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## Background

This Procedural Order No. 1 is drawn up and executed further to a procedural meeting that took place (virtually) on 25 July 2023 (“**First Procedural Meeting**”) during which the Tribunal and the Parties discussed the following:

- The Draft Terms of Appointment circulated by the Permanent Court of Arbitration to the Parties on 20 June 2023.
- The Draft Procedural Order No. 1 circulated by the Permanent Court of Arbitration to the Parties on 20 June 2023.
- The Parties’ communications of 29 June 2023, 6 July 2023, 11 July 2023, 12 July 2023 and 25 July 2023 indicating the procedural matters on which they agreed and their respective positions regarding the items on which they did not agree. As discussed during the First Procedural Meeting, these communications were supplemented by the Parties on 28 July 2023 and 8 August 2023, and the agreements set out in that correspondence are reflected herein as appropriate.

### 1. Continuation in force of prior orders

- 1.1 The provisions of this and future orders shall apply in addition to the Terms of Appointment executed by the Parties and the Tribunal.
- 1.2 Procedural orders made by the Tribunal shall remain in force unless expressly amended or terminated.

### 2. Language

- 2.1 The languages of the arbitration shall be English and Spanish, subject to the provisions below.<sup>1</sup>
- 2.2 Notwithstanding the bilingual nature of the proceedings, submissions shall be made as follows:
  - 2.2.1 **Correspondence** among the Parties, the Tribunal and the PCA shall be in English only.
  - 2.2.2 Regarding **submissions** and **production of documents**:
    - 2.2.2.1 Written requests, applications and pleadings shall be submitted in English (“**Main Documents**”). Expert opinions, witness statements, and any other accompanying documentation may be submitted in either procedural language. If the expert opinion, witness statement, and any other accompanying documentation is made in English, unless the Tribunal directs otherwise, no Spanish translation will be needed. If the expert opinion, witness statement, and any other accompanying documentation is made in Spanish, a translation into English will follow within 15 calendar days.
    - 2.2.2.2 Exhibits, legal authorities, and annexes (together, “**Supporting Documents**”) may be submitted in their original language. For the convenience of the

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<sup>1</sup> The position of the Republic of Colombia as to the language of the arbitration in these proceedings, and in particular, its acceptance to submit its pleadings in English, is explained by considerations of expediency and cost efficiency only. Importantly, Colombia’s position in this case does not derogate from its previous practice in investor-State arbitration proceedings. Colombia’s position in this regard is noted by the Tribunal with both respect and appreciation.

Tribunal, an English translation of any Supporting Document provided in a language other than English shall be filed no later than three (3) weeks after the relevant filing date. Translations may be limited to all relevant excerpts together with such other portions of the document necessary to place such excerpts in proper context. In case of disagreement, the Tribunal will decide.

2.2.2.3 Translations shall be accepted as accurate unless contested by the other Party, in which case the Parties shall attempt to reach agreement on the translation of the document. If no agreement is reached, the Tribunal shall take the corresponding decision, for which it may appoint a certified translator to have the document(s) in question translated.

2.2.2.4 The Tribunal may request on its own initiative that any document be translated in whole or in part.

2.2.3 Regarding **oral testimony and argument**:

2.2.3.1 Oral testimony and argument before the Tribunal may be in either English or Spanish. The Tribunal and the Parties will be provided with interpretation into English and Spanish of oral testimony and arguments.

2.2.3.2 The Parties will notify the Tribunal, as soon as practicable and no later than at the pre-hearing organizational meeting, of the language in which their witnesses and experts will be testifying and which witnesses or experts will require interpretation.

2.2.3.3 The Tribunal may address the Parties, witnesses and experts in English or Spanish.

2.2.3.4 The PCA will make arrangements for English and Spanish *verbatim* transcripts to be produced.

2.2.3.5 In case of conflict between the transcripts in Spanish and in English, the transcription in the original language in which the oral testimony or the presentation of arguments was made will prevail.

2.2.3.6 The costs of the interpreter(s) will be paid from the deposit made by the Parties, without prejudice to the decision of the Tribunal as to the allocation of costs.

2.2.3.7 Any procedural conferences, sessions or meetings involving the Tribunal and the Parties, other than hearings, shall be conducted in English or Spanish without the need for interpretation, unless otherwise requested by either Party or by the Tribunal.

2.2.4 Regarding the **awards, decisions and procedural orders**:

2.2.4.1 Award(s), decisions and procedural orders may be issued in English or Spanish, with a translation in the other language to follow as soon as possible thereafter. Both language versions shall be equally authentic. Any disagreement between the Parties as to interpretation shall be decided as necessary by the body tasked

with determining the matter.

### **3. Procedural calendar**

- 3.1 The procedural calendar is set forth in **Annex 1** to this order and is issued after consultation with the Parties. By their respective communications of 8 August 2023 the Parties, having taken note of Article 10.20.5 of the TPA, consented to the procedural calendar, to which they do not and will not object. The Parties hereby agree that they will not seek to challenge the decision on the Respondent's objections pursuant to Article 10.20.5 of the TPA based solely on the fact that the award might be issued later than 17 February 2024 and agree to waive any challenge on those grounds.
- 3.2 Unless otherwise specified, all relevant references are to calendar days. Business day means any day except Saturday, Sunday, or a public holiday (the list of which is included as **Annex C**).
- 3.3 On or before the Filing Date for any written submission, the Party in question shall send the Main Documents (but excluding the Supporting Documents), to the Tribunal, Assistant to the Tribunal, PCA, and opposing counsel by e-mail in accordance with Section 11 of the Terms of Appointment.
- 3.4 To facilitate filing, citations, and word processing, all written submissions, including pleadings, witness statements and expert reports or opinions shall be provided as unsecured, searchable and editable Adobe Portable Document Format (**PDF**) files without any restrictions so that they can be annotated, printed and the text copied, and preceded by a hyper-linked table of contents.
- 3.5 Within five (5) business days following the submission of the Main Documents, the Parties will also upload the Main Documents and all Supporting Documents (also as unsecured, searchable and editable PDF files without any restrictions so that they can be annotated, printed and the text copied) to a secure online document exchange platform, such as Box Platform, to be established, administered and controlled by the PCA. The selected document exchange platform must be accessible to the Parties, the Tribunal and the PCA. Any costs associated with establishing a secure document exchange platform shall be paid from the case deposit established with the PCA.
- 3.6 Within two (2) business days following the submission of the Main Documents regarding proceedings under Article 10.20.5 of the TPA, the Parties will also upload the Main Documents and all Supporting Documents to the secure online document exchange platform referred to in Section 3.5 above.
- 3.7 For any simultaneous submissions, each Party shall submit all electronic copies only to the PCA. The PCA will then distribute copies to the Tribunal and opposing counsel once both submissions have been received.
- 3.8 Unless otherwise provided, all time limits shall refer to midnight Colombia time ("**COT**").
- 3.9 Extensions may be agreed between the Parties or granted by the Tribunal for justifiable reasons provided that such extensions do not affect the dates fixed for any hearing or other meeting and that the request for an extension is submitted as soon as practicable after a Party becomes aware of the circumstances which prevent it from complying with the deadline.
- 3.10 The Tribunal may modify the Procedural Calendar upon Party agreement or on its own motion if it deems it necessary or appropriate in view of the development of the arbitration proceedings, or upon a reasoned request by a Party or the Parties.

#### **4. Written Submissions**

- 4.1 In the first exchange of submissions in any phase (if there should be more than one), the Parties shall set forth all the facts and legal arguments on which they intend to rely. Together with such submissions, each Party shall produce all evidence upon which it wishes to rely, including documentary evidence, written witness statements and expert reports, if any, with the exception of documents to be obtained during the document production phase.
- 4.2 The second exchange of submissions in any phase (if there should be more than one) may only include new factual allegations and additional evidence which respond to or rebut matters raised by the other Party's previous submissions or which relate to new evidence obtained in the document production process, unless new facts have arisen after the first exchange of submissions which justify new allegations of fact and/or legal arguments or the Tribunal determines that good reasons exist to allow a deviation from this rule. This determination shall be based on a reasoned written request by the Party seeking to raise new legal arguments or submit new factual allegations and/or additional evidence (which shall not attach the evidence in question), followed by observations from the other Party.
- 4.3 Together with this second exchange of submissions, the Parties may file additional documents, witness statements and expert reports only insofar as the relevance of such additional evidence has arisen as a result of the adverse Party's preceding submission (including the documents, witness statements and expert reports produced therewith) or the documents produced by the Parties during the document production phase.
- 4.4 Neither Party shall be permitted to submit additional evidence after the filing of its respective last written submission in any phase (if there should be more than one), unless the Tribunal determines that exceptional circumstances exist. This determination shall be based on a reasoned written request by the Party seeking to submit additional evidence (which shall not attach the evidence in question), followed by observations from the other Party.

#### **5. Document Production**

- 5.1 The IBA (International Bar Association) Rules on the Taking of Evidence in International Arbitration (2020) ("**IBA Rules**") may guide the Tribunal and the Parties regarding document production in this case, insofar as it is consistent with the TPA.
- 5.2 The Parties may exchange requests for production of documents, limited in scope to documents relevant to the case and material to its outcome. The exchange shall be done simultaneously, in accordance with the procedural calendar (each a "**Request to Produce**"). Each Request to Produce shall be in writing and set forth reasons for the request in respect of each document or class of documents requested. Unless the requested Party objects to production, it shall produce the requested documents within the time limit set forth in the procedural calendar. If a Party objects to only a certain aspect of a request, it shall produce responsive documents that are responsive to the non-objected portion of the request within the time limit set forth in the procedural calendar.
- 5.3 If the requested Party objects to production, the following procedure shall apply:
- 5.3.1 The requested Party shall submit a response stating which documents or class of documents it objects to producing. The response shall state the reasons for each objection and shall indicate the documents, if any, that the Party would be prepared to produce instead of those requested.
- 5.3.2 The requesting Party shall respond to the other Party's objection, indicating, with reasons,

whether it disputes the objection.

- 5.3.3 The Parties shall seek agreement on production requests to the greatest extent possible.
  - 5.3.4 To the extent that agreement cannot be reached between the requesting and the requested Party, the Parties shall submit all outstanding requests to the Tribunal for decision. All other correspondence or documents exchanged in the course of this process shall not be copied to the Tribunal, PCA, Tribunal Assistant, or Tribunal Secretary.
  - 5.3.5 Document production requests submitted to the Tribunal for decision, together with objections and responses, must be in tabular form pursuant to the model appended to this Procedural Order as **Annex 2** (vertical Redfern Schedule). The Parties shall use the model format throughout their exchange of requests, objections, and responses.
  - 5.3.6 The Tribunal shall rule on any such application. Documents ordered by the Tribunal to be disclosed shall be produced within the time limit set forth in the procedural calendar.
  - 5.3.7 Should a Party fail to produce documents as ordered by the Tribunal, the Tribunal shall draw the inferences it deems appropriate, taking into consideration all relevant circumstances.
- 5.4 Documents produced according to the above procedure shall not be considered part of the evidentiary record unless and until a Party subsequently submits them to the Tribunal in accordance with the procedural calendar.
  - 5.5 Pursuant to Article 27(3) of the UNCITRAL Rules, the Tribunal may also, on its own motion, request the production of documents.

## **6. Evidence and legal authorities**

- 6.1 The Tribunal shall determine the admissibility, relevance, materiality, and weight of the evidence offered.
- 6.2 The Tribunal may, on its own motion, order the production of certain documents, the preparation of expert opinions, the testimony of certain witnesses, or the taking of other evidence it deems appropriate.
- 6.3 In addition to the relevant articles of the UNCITRAL Rules of 2021, but only insofar as consistent with the TPA, the Tribunal may use as an additional guideline, but will not be bound by, the IBA Rules when considering matters of evidence and document production.
- 6.4 In accordance with Section 4, the Parties shall submit with their written submissions all evidence and authorities on which they intend to rely in support of the factual and legal arguments advanced therein, including witness statements, expert reports, documents, and all other evidence in whatever form.
- 6.5 In accordance with Section 4, in their rebuttal submissions (*i.e.*, Reply and Rejoinder), the Parties shall submit only additional written witness testimony, expert opinion testimony and documentary or other evidence to respond to or rebut matters raised in the other Party's prior written submission, except for new evidence they receive through document production or unless other exceptional circumstances exist, as determined by the Tribunal.
- 6.6 Following submission of the Reply and Rejoinder, the Tribunal shall not consider any evidence that has not been introduced as part of the written submissions of the Parties, unless the Tribunal

grants leave on the basis of exceptional circumstances. Should such leave be granted to one Party, the other Party shall have an opportunity to submit counter-evidence. When making an application for leave to submit new evidence, a Party shall not append the new evidence that the Party seeks to admit to such application. The Party may only produce the evidence to the Tribunal once it grants leave for the admission of the evidence or if the Tribunal otherwise orders it.

- 6.7 The Parties shall identify each exhibit submitted to the Tribunal with a distinct number. Each exhibit submitted by the Claimant shall begin with a letter “C” followed by the applicable number (i.e., C-1, C-2, etc.); each exhibit submitted by the Respondent shall begin with a letter “R” followed by the applicable number (i.e., R-1, R-2, etc.). The Parties shall use sequential numbering throughout the proceedings. The Parties shall number each exhibit page separately and consecutively using Bates numbering (i.e., C-1\_001, C-1\_002, C-1\_003, C-2\_001, etc. or R-1\_001, R-1\_002, R-1\_003, R-2\_001, etc.). To avoid multiple copies of the same exhibit in the record, a document shall be submitted as an exhibit only once. Subsequent references to that exhibit shall use the same “C” or “R” numbering originally applied to the exhibit (for example, Respondent’s reference to an exhibit filed by Claimant as “C-x” shall bear the same “C-x” designation, and vice versa).
- 6.8 Statements of fact witnesses or reports of experts shall be numbered separately as “CWS-” for Claimant’s witness statements and as “CER-” for Claimant’s expert reports, and “RWS-” for Respondent’s witness statements and “RER-” for Respondent’s expert reports, followed by the applicable number and name (for example, CWS-1 [Jones]). Numbered paragraphs should be used in witness statements and expert reports.
- 6.9 The Parties shall identify each legal authority submitted to the Tribunal with a distinct number. Each legal authority submitted by the Claimant shall begin with the letters “CLA” followed by the applicable number (i.e., CLA-1, CLA-2, etc.); each legal authority submitted by the Respondent shall begin with the letters “RLA” followed by the applicable number (i.e., RLA-1, RLA-2, etc.). The Parties shall use sequential numbering throughout the proceedings.
- 6.10 Excel spreadsheets or other calculations performed by experts shall be provided in their native electronic format (i.e. in Excel format rather than PDF).
- 6.11 All evidence submitted to the Tribunal shall be deemed to be authentic and complete, including evidence submitted in the form of copies, unless a Party disputes within a reasonable time its authenticity or completeness, or the Party submitting the relevant evidence indicates the respects in which any document is incomplete.
- 6.12 All written submissions shall be accompanied by an index of exhibits and legal authorities, stating for each exhibit and legal authority: (a) the number; (b) date; and (c) title.

## **7. Witnesses**

- 7.1 Any person may present relevant evidence as a witness, including a Party or a Party’s officer, employee, or other representative.
- 7.2 For each witness, a written and signed witness statement shall be submitted to the Tribunal. Where in exceptional circumstances a Party is unable to obtain such a statement from a witness, the evidence of that witness shall be admitted only with leave of the Tribunal and in accordance with its directions. Should such a situation arise, a Party shall seek leave from the Tribunal and the Tribunal’s directions well in advance to allow sufficient time to produce the evidence in whatever form ordered by the Tribunal within the time limit set forth in the procedural calendar.
- 7.3 Each witness statement shall contain at least the following:



- 7.3.1 the name, date of birth, and present address of the witness;
  - 7.3.2 a description of the witness' position and qualifications, if relevant to the dispute or to the contents of the statement;
  - 7.3.3 a description of any past and present relationship between the witness and the Parties, counsel, or members of the Tribunal;
  - 7.3.4 a description of the facts on which the witness' testimony is offered and, if applicable, the source of the witness' knowledge; this should be done in a narrative form containing the full substance of the witness' testimony;
  - 7.3.5 a statement as to the language in which the witness statement was originally prepared and the language in which the witness anticipates giving testimony at the hearing;
  - 7.3.6 an affirmation of the truth of the statement; and
  - 7.3.7 the signature (physical or electronic) of the witness, together with the date and place.
- 7.4 Before any oral hearing, and within the deadline set forth in the procedural calendar, a Party may be called upon by the Tribunal or the other Party to produce at the hearing for examination and cross-examination any witness or expert whose written testimony has been submitted with the written submissions. The Tribunal shall, at all times, have the power to request the presence of any witness or expert presented by the Parties for examination at the hearing, on its own motion or upon application by any Party, within a deadline to be set by the Tribunal.
- 7.5 Each Party shall be responsible for summoning its own witnesses to the applicable hearing, except when the other Party has waived cross-examination of a witness and the Tribunal does not direct his or her appearance. The Tribunal may grant leave for a witness to testify by video-conference in appropriate circumstances or if the Parties so agree.
- 7.6 The Tribunal may, on its own initiative or at the request of a Party, summon any other witness to appear.
- 7.7 If a witness or expert who has been called to testify by the Tribunal or the other Party does not appear to testify at the hearing, the witness' or expert's testimony may be stricken from the record. In making this determination, the Tribunal will examine whether a valid reason has been provided for failing to appear. In such case, the Tribunal may summon the witness to appear a second time if satisfied that the testimony of the witness is relevant and material.
- 7.8 Each Party shall cover the costs of appearance of its own witnesses, including video-conferencing costs if any. The Tribunal will decide upon the appropriate allocation of such costs in its final award.
- 7.9 At any hearing, the examination of each witness shall proceed as follows:
- 7.9.1 the witness shall make a declaration of truthfulness;
  - 7.9.2 although witness statements and expert reports shall stand as evidence-in-chief, the Party presenting the witness may conduct a brief direct examination. Such direct examination shall be confined to the facts included in the witness statement, save that, with the prior authorization of the Tribunal requested with reasonable advance notice, there may be limited direct examination of witnesses in respect of new facts or issues that arose since the date of the witness' last signed statement;

- 7.9.3 the adverse Party may then cross-examine the witness on relevant matters that were addressed or presented in the witness statement or during direct examination;
  - 7.9.4 the Party summoning the witness may then re-examine the witness with respect to any matters or issues arising out of the cross-examination; and
  - 7.9.5 the Tribunal may examine the witness at any time, either before, during or after examination by any of the Parties.
- 7.10 The Tribunal shall, at all times, have complete control over the procedure for hearing a witness. The Tribunal may in its discretion:
- 7.10.1 refuse to hear a witness if it considers that the facts with respect to which the witness will testify are either proven by other evidence or are irrelevant;
  - 7.10.2 limit or refuse the right of a Party to examine a witness when it appears that a question has been addressed by other evidence or is irrelevant; or
  - 7.10.3 direct that a witness be recalled for further examination at any time.
- 7.11 It shall not be improper for counsel to meet with witnesses and potential witnesses to establish the facts, prepare the witness statements, and prepare the examinations.
- 7.12 Unless the Parties agree otherwise, a factual witness shall not be present in the hearing room during opening statements or the hearing of oral testimony, discuss the testimony of any other witness, or read any transcript of any oral testimony or have access to any video or audio recording of the opening statements or oral testimony, prior to his or her examination. Upon application by one of the Parties, the Tribunal may make exceptions to this rule for Party or State representatives who also are factual witnesses.

## **8. Experts**

- 8.1 Each Party may retain and submit the evidence of one or more experts to the Tribunal.
- 8.2 Expert reports shall be accompanied by any documents or information upon which they rely, unless such documents or information have already been submitted with the Parties' written submissions, in which case the reference to the number of the exhibit will be enough.
- 8.3 The provisions set out in relation to witnesses shall apply, *mutatis mutandis*, to the evidence of experts, except that, unless the Parties agree otherwise, expert witnesses shall be allowed to be present in the hearing room at any time.
- 8.4 An expert witness may, if he or she so chooses, prepare a brief opening presentation (that does not exceed 30 minutes, unless otherwise permitted by the Tribunal) summarizing his or her methodology and conclusions in lieu of direct examination, provided that any such presentation is limited to the scope of his or her expert report(s) and any joint statement prepared in accordance with Section 8.7 below. PowerPoint slides and demonstrative exhibits may be used, and the provisions set out in Section 9.4 apply, *mutatis mutandis*, to an expert's presentation.
- 8.5 Following examination of the experts by the Parties, the Tribunal may in its discretion order two or more experts to be examined together.

- 8.6 Pursuant to Article 10.24 of the TPA, the Tribunal may, on its own initiative or at the request of a Party, appoint one or more experts. The Tribunal shall consult with the Parties on the selection, terms of reference (including expert fees), and conclusions of any such expert.
- 8.7 The Tribunal shall also be entitled to order the Parties' experts to confer with each other (and with any Tribunal-appointed expert) prior to the hearing so as to identify points of agreement and disagreement between them and to reduce the scope of disagreement to the extent possible, and to report to the Tribunal accordingly.

## 9. Hearings

- 9.1 After consultation with the Parties, the Tribunal shall issue, for each hearing, a procedural order convening the hearing and establishing its format, place, time, agenda, and all other technical and ancillary aspects.
- 9.2 The Tribunal may order that any hearing take place by video conference in lieu of in person, if the circumstances so require, following consultation with the Parties.
- 9.3 As indicated in the Procedural Calendar set out in Annex 1, and as agreed by the Parties, a hearing on Respondent's objections pursuant to Article 10.20.5 of the TPA will be held in Bogotá, Colombia on the dates indicated in the Procedural Calendar. The format and location of additional hearings will be determined as may be necessary in due course.
- 9.4 No new evidence may be presented at a hearing except with leave of the Tribunal. PowerPoint slides and demonstrative exhibits may be used by any Party during the hearing, provided that those materials reflect evidence on the record and do not introduce new evidence, directly or indirectly, and that the exhibit from which the referred information originates is clearly identified in each presentation. Slides and demonstrative exhibits should refer to evidence or legal authorities already on the record. The Party submitting demonstrative exhibits shall provide electronic copies (and hard copies if so required by the Tribunal) to opposing counsel, the members of the Tribunal, the PCA, the court reporter and, if applicable, the interpreters, at a time to be decided during the pre-hearing organizational meeting. For the avoidance of doubt, not all PowerPoint slides constitute demonstrative exhibits.
- 9.5 Should the Tribunal grant leave to a Party to present new evidence in the course of a hearing, it should grant the other Party the opportunity to introduce new evidence to rebut it. When making an application for leave to submit new evidence, a Party may not append the new evidence that the Party seeks to admit to such application. The Party may only produce the evidence to the Tribunal once it grants leave for the admission of the evidence or if the Tribunal otherwise orders it.
- 9.6 The Parties shall, one week after the last substantive written submission before a hearing, provide the Tribunal with a Hearing Bundle ("**HB**") in electronic form, which shall:
- 9.6.1 include all memorials, witness statements, expert reports, exhibits, legal authorities and procedural orders (the latter in their English version only), each of which shall be identified with its own Hearing Bundle reference "**HB**" followed by the applicable number (i.e., HB-1, HB-2, etc.), indicating separately the applicable document reference as per Section 6.7 of this Order (if applicable), together with a hyper-linked index;
  - 9.6.2 be uploaded to the file sharing platform established by the PCA for this case; and
  - 9.6.3 USB flash drive (or hard-drive) copies of the HB shall be provided to the Tribunal at the addresses detailed in Section 5 of the Terms of Appointment, to the Assistant to the

Tribunal at the address indicated at Section 8 of the Terms of Appointment and to the PCA at the address indicated at Section 11 of the Terms of Appointment unless otherwise instructed.

- 9.7 Hearings shall be recorded and shall be transcribed in English, and, if the hearing involves simultaneous / consequential interpretation, Spanish, using LiveNote or similar software so that the transcript is available on a real-time basis. At the end of each day of hearings, the Parties shall be provided with the transcript of that day.

## **10. Pre-Hearing Meeting, Filings and Other Matters**

- 10.1 Prior to any hearing a pre-hearing organization meeting shall be convened to consider the hearing agenda and all other procedural, technical and ancillary or other matters related to the hearing that may not already be agreed or otherwise determined.
- 10.2 No later than one week prior to the pre-hearing organizational meeting the Parties shall provide the Tribunal with a jointly proposed daily hearing schedule including any opening and closing presentations, witness examinations, etc.
- 10.3 By the same date—that is, no later than one week prior to the pre-hearing organizational meeting—the Parties shall also provide the Tribunal with an agreed (i) *dramatis personae*, (ii) chronology of key events, (iii) list of proposed issues, and (iv) list of areas of agreement/disagreement between their respective experts and any joint statement in accordance with Section 8.7 above.

## **11. Post-Hearing Submissions and other Matters, and Closure of the Record**

- 11.1 At the end of any hearing, the Tribunal shall decide, in consultation with the Parties, the format and timing of the Parties' submissions on costs, potential response to questions and whether the Parties shall submit post-hearing submissions and replies to post-hearing submissions whether in writing or orally. The Tribunal may fix a page-limit and deadlines for such written post-hearing submissions in further consultation with the Parties. In any event, such written or oral 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.
- 11.2 The Parties shall agree on any corrections to the transcripts within 30 days after the hearing. The agreed corrections may be entered by the court reporter 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 court reporter in the Revised Transcripts. The Secretary to the Tribunal shall provide the Parties and the Tribunal the final version of the transcripts once the Revised Transcripts have been approved by the Tribunal.
- 11.3 At the close of any hearing or at such later date as it considers appropriate, the Tribunal may close the record as regards all issues addressed at that hearing.

## **12. Transparency/Confidentiality**

- 12.1 Article 10.21 of the TPA applies and governs the transparency provisions of these proceedings. At Colombia's request, and without opining on its interpretation or according it any more importance than it would otherwise be due, we note that Article 10.21 includes Article 10.21(3), which reads: “*Nothing in this Section requires a respondent to disclose protected information or to furnish or allow access to information that it may withhold in accordance with Article 22.2 (Essential Security) or Article 22.4 (Disclosure of Information).*”

- 12.2 The UNCITRAL Rules on Transparency in Treaty Based Investor State Arbitration apply to this arbitral proceedings, insofar as they are consistent with the TPA.
- 12.3 The PCA shall make available to the public, on its website, the documents listed in Article 10.21(1) of the TPA in accordance with the provisions set out in such Article and any other relevant provisions of the TPA. For the purposes of this provision, the reference in Article 10.21(1) of the TPA to the “notice of arbitration” and to “pleadings, memorials and briefs” does not include accompanying material (i.e. witness statements, expert reports, exhibits and legal authorities.)
- 12.4 Absent any objection under Article 10.21(4) of the TPA, the Parties agree that the materials may be published 14 days after the filing date of the pleading, memorial, brief, or submission; the date of issuance of the order, decision, or award; or the date of transmission of the final version of the minutes or hearing transcript in question.
- 12.5 The PCA shall make appropriate logistical arrangements to conduct hearings open to the public pursuant to Article 10.21(2) of the TPA.

**13. Submissions from Non-Disputing Parties and *Amicus Curiae***

- 13.1 Pursuant to Article 10.20.2 of the TPA, a non-disputing party to the TPA may make oral and written submissions regarding the interpretation of the TPA pursuant to the Procedural Calendar. The Parties may comment on any non-disputing party submissions in their rebuttal pleadings.
- 13.2 Pursuant to Article 10.20.3 of the TPA, the Tribunal shall have the authority to accept and consider *amicus curiae* submissions.
- 13.3 Should the Tribunal receive a request for leave to make a non-disputing party or *amicus curiae* submission, the Tribunal will give the necessary directions, following consultation with the Parties.

**Place of Arbitration: London, United Kingdom**



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Mr. Stephen Drymer  
(Presiding Arbitrator)

On behalf of the Tribunal

**Annex 1: Procedural Calendar**

<b>Description</b>	<b>By</b>	<b>Days</b>	<b>Dates</b>
<i>Proceedings under Article 10.20.5 of the TPA</i>			
Respondent's objections pursuant to Article 10.20.5 of the TPA	Respondent	-	Saturday, 22 July 2023
First Procedural Meeting	All	-	Tuesday, 25 July 2023
Claimant's response to Respondent's request pursuant to Article 10.20.5 of the TPA	Claimant	60 (from Submission of Art. 10.20.5 Objection)	Wednesday, 20 September 2023
Respondent's reply to Claimant's response	Respondent	30	Friday, 20 October 2023
Claimant's rejoinder	Claimant	30	Sunday, 19 November 2023
Hearing Bundle (PO1 § 9.6)	Parties	7	Sunday, 26 November 2023
Hearing schedule, dramatis personae, chronology, etc. (PO1 §§ 10.2-10.3)	Parties	(7 days before Pre-hearing Conference)	Wednesday, 29 November 2023
Experts' joint statements (PO1 § 8.7)	Experts	(7 days before Pre-hearing Conference)	Wednesday, 29 November 2023
Pre-hearing Conference	All	7	Wednesday, 6 December 2023 (starting at 11:00 AM Mexico City / 12 PM Bogota, Montréal, New York, Washington / 5:00 PM London / 6:00 PM The Hague)
Hearing on Respondent's objections pursuant to Article 10.20.5 of the TPA	All	24 (from Claimant's rejoinder)	Thursday 14-Friday 15 December 2023, Bogota, Colombia

Decision on Article 10.20.5 Objection	Tribunal	[ <i>best efforts</i> ] 210 days since Respondent's objections pursuant to Article 10.20.5 of the TPA	[ <i>best efforts</i> ] Saturday, 17 February 2024
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[\*\*the Tribunal will fix the schedule for the remainder of the proceedings in consultation with the Parties after issuing its Decision on the TPA Article 10.20.5 Objection\*\*]

**Annex 2: Model Vertical Redfern Schedule for Document Requests**

<b>Document Request No.</b>	
<b>Documents or category of documents requested (requesting Party)</b>	
<b>Relevance and materiality, incl. references to submission (requesting Party)</b>	
<b>Reasoned objections to document production request (objecting Party)</b>	
<b>Response to objections to document production request (requesting Party)</b>	
<b>Decision of the Tribunal</b>	



**Annex 3: List of Public Holidays**

<b>No.</b>	<b>Date</b>	<b>Name of Public Holiday</b>	<b>Country</b>
1.	7 August 2023	Batalla de Boyacá	COL
2.	21 August 2023	Asunción de la Virgen	COL
3.	28 August 2023	Summer Bank Holiday	UK
4.	4 September 2023	Labor Day	US
5.	9 October 2023	Columbus Day	US
6.	16 October 2023	Día de la Raza	COL
7.	6 November 2023	Día de Todos los Santos	COL
8.	10 November 2023	Veterans' Day	US
9.	11 November 2023	Veterans' Day	US
10.	13 November 2023	Independencia de Cartagena	COL
11.	23 November 2023	Thanksgiving Day	US
12.	24 November 2023	Day After Thanksgiving Day	US
13.	8 December 2023	Inmaculada Concepción	COL
14.	25 December 2023	Christmas Day / Navidad	US / COL
15.	26 December 2023	Boxing Day	UK
16.	1 January 2024	New Year's Day / Año Nuevo	US / UK / COL
17.	8 January 2024	Día de los Reyes Magos	COL
18.	15 January 2024	Martin Luther King Day	US
19.	19 February 2024	President's Day	US
20.	24 March 2024	Domingo de Ramos	COL
21.	25 March 2024	Día de San José	COL
22.	28 March 2024	Jueves Santo	COL
23.	29 March 2024	Good Friday / Viernes Santo	UK / COL
24.	31 March 2024	Domingo de Pascua	COL
25.	1 April 2024	Easter Monday	UK
26.	1 May 2024	Día del Trabajo	COL
27.	6 May 2024	May Day	UK
28.	13 May 2024	Día de la Ascensión	COL
29.	27 May 2024	Memorial Day / Spring Bank Holiday	US / UK
30.	3 June 2024	Día de Corpus Christi	COL
31.	10 June 2024	Día del Sagrado Corazón de Jesús	COL

32.	19 June 2024	Juneteenth National Independence Day	US
33.	1 July 2024	Día de San Pedro y San Pablo	COL
34.	4 July 2024	Independence Day	US
35.	20 July 2024	Día de la Independencia	COL
36.	7 August 2024	Batalla de Boyacá	COL
37.	19 August 2024	Asunción de la Virgen	COL
38.	26 August 2024	Summer Bank Holiday	UK
39.	2 September 2024	Labor Day	US
40.	14 October 2024	Columbus Day / Día de la Raza	US / COL
41.	4 November 2024	Día de Todos los Santos	COL
42.	11 November 2024	Veterans' Day / Independencia de Cartagena	US / COL
43.	28 November 2024	Thanksgiving Day	US
44.	29 November 2024	Day After Thanksgiving Day	US
45.	8 December 2024	Inmaculada Concepción	COL
46.	25 December 2024	Christmas Day / Navidad	US / COLs
47.	26 December 2024	Boxing Day	UK