

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Red Eagle Exploration Limited

v.

Republic of Colombia

(ICSID Case No. ARB/18/12)

PROCEDURAL ORDER NO. 1

Members of the Tribunal

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

Secretary of the Tribunal

Ms. Catherine Kettlewell

12 December 2019

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Introduction

The Members of the Tribunal held a first session by telephone conference pursuant to Rule 13 of the ICSID Arbitration Rules on June 12, 2019. On the same date, the Secretary of the Tribunal informed the parties and indicated that the Tribunal would invite the parties at a later date to consult on the procedural matters for this case.

The preliminary procedural consultation of the Tribunal with the parties was held on December 4, 2019, at 9:00 a.m., by telephone conference. The consultation was adjourned at 10:42 a.m.

The preliminary procedural consultation was held in English and Spanish. An audio recording of the session in both languages was made and deposited in the archives of ICSID. The recording was distributed to the Members of the Tribunal and the parties.

Participating in the conference were:

Members of the Tribunal

Dr. Andrés Rigo Sureda, President of the Tribunal

Sr. José Martínez de Hoz, Arbitrator

Professor Philippe Sands, Arbitrator

ICSID Secretariat:

Ms. Catherine Kettlewell, Secretary of the Tribunal

Participating on behalf of the Claimant:

Mr. Jonathan C. Hamilton, White & Case LLP

Mr. John Dalebroux, White & Case LLP

Participating on behalf of the Respondent:

Mr. Fernando Mantilla-Serrano, Latham & Watkins LLP

Mr. John Adam, Latham & Watkins LLP

Mr. Diego Romero, Latham & Watkins LLP

Ms. Paloma García Guerra, Latham & Watkins LLP

Ms. Ana María Ordóñez Puentes, Director of International Legal Defense, Agencia Nacional de Defensa Jurídica del Estado, Republic of Colombia

Mr. Juan Sebastián Torres Oliver, Defense Attorney, Agencia Nacional de Defensa Jurídica del Estado, Republic of Colombia

Interpretation:

Mr. Charles Roberts

Ms. Silvia Colla

The Tribunal and the parties considered the following:

- The Draft Agenda circulated by the Tribunal Secretary on 2 May 2019 .
- The Draft Procedural Order circulated by the Tribunal Secretary on 2 May 2019 ; and
- The parties' comments on the Draft Agenda and the Draft Procedural Order received on November 28, 2019, indicating the items on which they agreed and their respective positions regarding the items on which they did not agree.

Following the session, the Tribunal now issues the present Order:

Order

Pursuant to ICSID Arbitration Rules 19 and 20, this first Procedural Order sets out the Procedural Rules that govern this arbitration. The timetable is attached as **Annex B**.

1. Applicable Arbitration Rules

Convention Article 44

- 1.1. These proceedings are conducted in accordance with the ICSID Arbitration Rules in force as of April 10, 2006, and the Free Trade Agreement between Canada and the Republic of Colombia signed on November 21, 2008 and which entered into force on August 15, 2011 (the "Treaty" or the "FTA"), including as applicable Section B of Chapter Eight (Investment) of the FTA, and any rules adopted by the Commission under Articles 822(2), 832, and 2001(3)(a) of the FTA.

2. Constitution of the Tribunal and Tribunal Members' Declarations

Arbitration Rule 6

- 2.1. The Tribunal was constituted on April 19, 2019 in accordance with the ICSID Convention and the ICSID Arbitration Rules.
- 2.2. The Members of the Tribunal timely submitted their signed declarations in accordance with ICSID Arbitration Rule 6(2). Copies of all these declarations were distributed to the parties by the ICSID Secretariat on April 19, 2019.
- 2.3. The Members of the Tribunal confirmed that they have sufficient availability during the next 24 months to dedicate to this case.

3. Fees and Expenses of Tribunal Members

Convention Article 60; Administrative and Financial Regulation 14; ICSID Schedule of Fees

- 3.1. The fees and expenses of each Tribunal Member shall be determined and paid in accordance with the ICSID Schedule of Fees and the Memorandum on Fees and

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Expenses of ICSID Arbitrators in force at the time the fees and expenses are incurred.

- 3.2. Under the current Schedule of Fees, each Tribunal Member receives:
 - 3.2.1. US\$3,000 for each day of meetings or each eight hours of other work performed in connection with the proceedings or pro rata; and
 - 3.2.2. subsistence allowances, reimbursement of travel, and other expenses pursuant to ICSID Administrative and Financial Regulation 14.
- 3.3. Each Tribunal Member shall submit his claims for fees and expenses to the ICSID Secretariat on a quarterly basis.
- 3.4. Non-refundable expenses incurred in connection with a hearing as a result of a postponement or cancellation of the hearing shall be reimbursed.
- 3.5. In addition, the following shall apply in the event of a cancellation or postponement of the hearing:
 - 3.5.1. at any time during the hearing for reasons not attributable to any member of the Tribunal, the Tribunal may charge to the parties 100% of its notional daily sitting rate, based on an 8-hour day multiplied by the number of days yet to be completed for the time reserved for the hearing, or
 - 3.5.2. less than 1 month before the scheduled start date, or at any time during the hearing, for reasons which are not attributable to any member of the Tribunal; the Tribunal may charge to the parties 50% of its notional daily sitting rate, based on an 8-hour day multiplied by the number of days reserved for the hearing.

4. Presence and Quorum

Arbitration Rules 14(2) and 20(1)(a)

- 4.1. The presence of all Members of the Tribunal constitutes a quorum for its sittings, including by any appropriate means of communication.

5. Rulings of the Tribunal

Convention Article 48(1); Arbitration Rules 16, 19 and 20

- 5.1. Decisions of the Tribunal shall be taken by a majority of the Members of the Tribunal.
- 5.2. ICSID Arbitration Rule 16(2) applies to decisions taken by correspondence except that where the matter is urgent, the President may decide procedural matters without consulting the other Members, subject to possible reconsideration of such decision by the full Tribunal.
- 5.3. The Tribunal will draft all rulings, including the award, within a reasonable time

period. If a ruling, other than the award, has not been issued within one month after the final submission on a particular matter, the Tribunal will provide the parties with status updates every month. If the award has not been issued within six months after the final submission, the Tribunal will provide the parties with status updates every three months.

5.4. The President is authorized to issue Procedural Orders on behalf of the Tribunal.

5.5. The Tribunal's rulings on procedural matters may be communicated to the parties by the Tribunal Secretary in the form of a letter or email.

6. Power to Fix Time Limits
Arbitration Rule 26(1)

6.1. The President may fix and extend time limits for the completion of the various steps in the proceeding.

6.2. In exercising this power, the President shall consult with the other Members of the Tribunal. If the matter is urgent, the President may fix or extend time limits without consulting the other Members, subject to possible reconsideration of such decision by the full Tribunal.

7. Secretary of the Tribunal
Administrative and Financial Regulation 25

7.1. The Tribunal Secretary is Ms. Catherine Kettlewell, Legal Counsel, ICSID, or such other person as ICSID may notify the Tribunal and the parties from time to time.

7.2. To send copies of communications by email, mail, and courier/parcel deliveries to the ICSID Secretariat, the contact details are:

Catherine Kettlewell
ICSID
MSN C3-300
1818 H Street, N.W.
Washington, D.C. 20433
USA
Tel.: + 1 (202) 473-7231
Fax: + 1 (202) 522-2615
Email: ckettlewell@worldbank.org
Paralegal email: ifernandez1@worldbank.org

7.3. For local messenger deliveries, the contact details are:

Catherine Kettlewell
ICSID
1225 Connecticut Ave. N.W.
(World Bank Group C Building)

3rd Floor
Washington, D.C. 20036
USA
Tel. 202-458-1534

8. Representation of the Parties
Arbitration Rule 18

8.1. Each party shall be represented by its counsel (below) and may designate additional agents, counsel, or advocates, including external counsel or counsel not appearing before the Arbitral Tribunal, by notifying the Tribunal and the Tribunal Secretary promptly of such designation. The Secretary of the Tribunal shall promptly inform the other Parties of such designation.

For Claimant

Mr. Jonathan C. Hamilton
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Mr. Damian Nyer
White & Case LLP
701 Thirteenth Street N.W.
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For Respondent

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Ms. Ana María Ordoñez Puentes
Ms. Sylvia Helena García
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Carrera 7 No. 75-66
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9. Apportionment of Costs and Advance Payments to ICSID

Convention Article 61(2); Administrative and Financial Regulation 14; Arbitration Rule 28

- 9.1. The parties shall cover the direct costs of the proceeding in equal parts, without prejudice to the final decision of the Tribunal as to the allocation of costs.
- 9.2. By letter of 22 April 2019, ICSID requested that each party pay US\$200,000 (two hundred thousand US dollars) to cover the initial costs of the proceeding. ICSID received Claimants' payment on 1 August 2019. The Centre informed the Tribunal that no payment from the Respondent had been received as of the date of the preliminary procedural consultation.
- 9.3. ICSID shall request further advances as needed. Such requests shall be accompanied by a detailed interim statement of account.

10. Place of Proceeding

Convention Articles 62 and 63; Administrative and Financial Regulation 26; Arbitration Rule 13(3)

- 10.1. Washington, D.C., United States, shall be the place of the proceeding.
- 10.2. The Tribunal may hold hearings at any other place that it considers appropriate if the parties so agree.
- 10.3. The Parties also agree that the Tribunal may hold meetings or hearings, other than the hearing on jurisdiction and the hearing on the merits, by telephone or video conference upon consultation with the Parties.
- 10.4. The Tribunal may deliberate at any place it considers convenient, including by video or telephone conference.

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11. Procedural Language(s), Translation and Interpretation

Administrative and Financial Regulation 30(3) and (4); Arbitration Rules 20(1)(b) and 22

- 11.1. English and Spanish are the procedural languages of the arbitration.
- 11.2. Routine, administrative, or procedural correspondence shall be in English.

For Parties' Pleadings

- 11.3. Pleadings, expert opinions, and witness statements shall be submitted in either procedural language. If submitted in Spanish, the Parties shall submit translations of any such documents into English, in accordance with § 13.1.3 below.
- 11.4. English- and Spanish-language exhibits, legal authorities, and annexes will be filed in their original language only, and need not be translated into the other procedural language, unless the Tribunal requests translations of any Spanish-language exhibits and legal authorities into English.
- 11.5. Documents filed in any language other than English or Spanish must be accompanied by a translation into English.
- 11.6. If the document is relevant only in part, it is sufficient to translate only the relevant parts, provided that the Tribunal may require a fuller or a complete translation at the request of any party or on its own initiative.
- 11.7. The governing language of documents shall be the original language of the document. Translations need not be certified. If a Party wishes to challenge the translation of a document, it may submit a new translation that clearly identifies the differences.
- 11.8. Documents exchanged between the parties under § 15 below (Production of Documents) may be produced in the original language and need not be translated.

For Hearing

- 11.9. Either procedural language, English or Spanish, may be used during hearings. The Tribunal may request simultaneous interpretation into English. Transcripts shall be taken in English or in Spanish, as appropriate.
- 11.10. The testimony of a witness called for examination during the hearing who prefers to give evidence other than in English or Spanish shall be interpreted simultaneously into either procedural language, as required by the Arbitral Tribunal.
- 11.11. The parties will notify the Tribunal, as soon as possible, and no later than at the pre-hearing organizational meeting (see § 19 below), which witnesses or experts require interpretation.

11.12. The costs of the interpreter(s) will be paid from the advance payments made by the parties, without prejudice to the decision of the Tribunal as to which party shall ultimately bear those costs. However, the costs of interpretation for non-English or non-Spanish speaking witnesses or experts shall be borne by the Party presenting such witnesses or experts.

For Tribunal's Documents Except the Award

11.13. The Tribunal may initially make any order or decision in English and subsequently issue that order or decision in Spanish. Both language versions shall be equally authentic.

For Tribunal's Award

11.14. The Tribunal shall render the Award in English and Spanish simultaneously. For the avoidance of doubt, both the English and the Spanish versions shall be equally authentic, in accordance with ICSID Arbitration Rule 22(2).

12. Routing of Communications

Administrative and Financial Regulation 24

12.1. The ICSID Secretariat shall be the channel of written communications between the parties and the Tribunal.

12.2. Each party's written communications to the Tribunal shall be transmitted by email or other electronic means to the Tribunal Secretary, who shall send them to the opposing party and the Tribunal.

12.3. The Tribunal Secretary shall not be copied on direct communications between the parties which are not intended to be transmitted to the Tribunal.

12.4. The email addresses of the Members of the Tribunal are:

Dr. Andrés Rigo
Sureda
arigo@rigo.net

Sr. José Martínez de Hoz
Jose.martinezdehoz@mhrlegal.com

Prof. Philippe Sands
philippesands@matrixlaw.co.uk

13. Number of Copies and Method of Filing of Parties' Pleadings

Administrative and Financial Regulation 30; Arbitration Rules 20(1)(d) and 23

13.1. By the relevant filing date, the relevant Party shall:

13.1.1. submit by email to the Tribunal Secretary and the opposing party an electronic version of the pleading, along with electronic copies of the

witness statements, expert reports and an index of all the exhibits and legal authorities supporting the pleading (the “Electronic Email Filing”);¹ and,

- 13.1.2. within three (3) business days² after the Electronic Email Filing, the Parties shall upload the entire pleading, including electronic copies of the witness statements, expert reports, the index of all the exhibits and legal authorities, and all exhibits and legal authorities, to the file sharing platform that will be created by ICSID for purposes of this case (the “Electronic Platform Filing”).
 - 13.1.3. Any translations of submissions and evidence are to be uploaded to the World Bank’s electronic file sharing platform within 14 days of the Electronic Platform Filing. In the case of the request for bifurcation mentioned in **Annex B** the relevant translations shall be submitted within 5 business days.
- 13.2. Within seven (7) days of the Electronic Platform Filing indicated in § 13.1.2 or § 13.1.3, whichever is later,³ the relevant Party shall courier to the Tribunal Secretary:
- 13.2.1. one (1) unbound hard copy in A4/Letter format⁴ of the entire submission⁵ both in the original language and translations, including originals of the pleading, witness statements, and expert reports, together with any exhibits (but not including legal authorities); and
 - 13.2.2. two USB drives with a full copy of the entire submission both in the original language and translations, including the pleading, the witness statements, expert reports, exhibits, legal authorities and a cumulative index hyperlinked to all supporting documentation submitted by the relevant party to date.
- 13.3. Also seven days following the electronic filing of the translations, the parties shall courier to each Member of the Tribunal at the addresses indicated at § 13.4 below.
- 13.3.1. one hard copy in A5 format of the entire submission both in the original language and translations including the pleading, the witness statements, expert reports, together with any exhibits (but not including legal authorities);⁶ and

¹ Please note that the World Bank server does not accept emails larger than 25 MB.

² “Business days” shall be understood as those in the place where the international counsel filing the relevant pleading is located.

³ For the avoidance of doubt it is clarified that the hard copies of the *original* pleading shall be filed together with the hard copies of the *translations*, i.e., within seven (7) days of the Electronic Platform Filing of the translations.

⁴ The A4/Letter format is required for ICSID’s archiving.

⁵ The Secretariat’s copy will be kept in the official repository of ICSID, and is not intended to be used at hearings.

⁶ Dr. Andres Rigo will only require the main pleadings in A5 format.

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13.3.2. one minimum USB drive with a full copy of the entire submission, both in the original language and translations, including the pleading, the witness statements, expert reports, exhibits, legal authorities and a cumulative index hyperlinked to all supporting documentation submitted by the relevant party to date.

13.4. The addresses of the Tribunal Members are as follows:

Dr. Andrés Rigo Sureda
7002 Beechwood Drive
Chevy Chase, MD 20815
USA
Tel. (240) 605-9037

Dr. Jose A. Martinez de Hoz, Jr.
MHR Legal
Bouchard 680, 19th floor
Buenos Aires,
Argentina C1106ABJ
Tel. (54 11) 2150-9775

Professor Philippe Sands
Matrix Chambers
Grays Inn
London, U.K.
WC1R 5LN
Tel. (44) 20 7404-3447

- 13.5. Legal authorities shall be submitted in electronic format only, unless a hard copy is specifically requested by the Tribunal.
- 13.6. Electronic versions of pleadings, witness statements, expert reports, and legal authorities shall be text searchable (i.e., OCR PDF or Word).
- 13.7. All pleadings shall be accompanied by a cumulative index hyperlinked to all the supporting documentation that the party has submitted up to the date of the pleading. The index will follow the naming conventions contained in **Annex A**.
- 13.8. At the conclusion of the written phase of the proceeding, on a date to be determined by the Tribunal, or at any other time the Tribunal or the Secretariat so requests, the parties shall courier to the ICSID Secretariat and each Member of the Tribunal a USB drive containing an electronic copy of the entire case file (including pleadings, witness statements, expert reports, exhibits, legal authorities and Tribunal decisions and orders to date) with a consolidated hyperlinked index of all documents.
- 13.9. The official date of receipt of a pleading or communication shall be the day on which the electronic version is sent to the Tribunal Secretary by email.
- 13.10. A filing shall be deemed timely if sent by a party by midnight, Washington, D.C. time, on the relevant date.

14. Number and Sequence of Pleadings

Arbitration Rules 20(1)(c), 20(1)(e), 29 and 31

- 14.1. The Parties shall submit their pleadings in accordance with the procedural calendar established in **Annex B**.

15. Production of Documents

Convention Article 43(a); Arbitration Rules 24 and 33-36

- 15.1. Both parties made proposals regarding the timing and number of production of documents requests. After considering them, the Tribunal notes that usually there is no need for production of documents at the jurisdiction phase and none has been provided in **Annex B**. Should a party consider such production necessary, the Tribunal may consider it if requested and justified by exceptional circumstances.
- 15.2. The Tribunal may be guided by the International Bar Association Rules on the Taking of Evidence in International Arbitration (2010) in relation to document production.
- 15.3. On the date provided in **Annex B**, each Party may submit a request for production of documents to the other party. The request shall be made in the form of a Redfern Schedule as attached in **Annex C** hereto, in both Word and PDF format, and shall not be copied to the Tribunal. The Parties shall send their request for production of documents to the Tribunal Secretary, who will circulate the Parties' objections to the Parties once both Redfern Schedules have been received, in accordance with § 12.
- 15.4. On the date provided in **Annex B** the other Party shall, using the Redfern Schedule provided by the first Party, provide the requesting Party with its reasons and/or objections for its failure or refusal to produce responsive documents. The Parties shall send their objections to the Tribunal Secretary, who will circulate the Parties' objections to the Parties once both Redfern Schedules have been received, in accordance with § 12.
- 15.5. On the date provided in **Annex B** the other Party shall produce the requested documents to which it has not filed any objection.
- 15.6. On the date provided in **Annex B**, the requesting Party shall reply to the other Party's objections in that same Redfern Schedule and shall submit such Redfern Schedule to the Tribunal and the Tribunal Secretary. In accordance with § 12, the Tribunal Secretary will circulate the Parties' objections to the Parties once both Redfern Schedules have been received (in both Word and PDF formats).
- 15.7. The Tribunal will make its best efforts to rule on the objections within a reasonable time but no more than four weeks from receiving the Redfern Schedule. Provided that the Tribunal rules within such weeks of receiving the Redfern Schedule, a Party shall produce documents ordered by the Tribunal by the date provided in **Annex B**.
- 15.8. Documents shall be communicated directly to the requesting Party without copying the Tribunal or the Tribunal Secretary. Documents so communicated shall not be considered to be admitted to the record unless and until a Party subsequently files them as exhibits in accordance with § 16 below.

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15.9. The Tribunal notes that the parties agreed to be reasonable in their requests for production of documents.

16. Submission of Documents

Convention Article 44; Administrative and Financial Regulation 30; Arbitration Rule 24

16.1. The Memorial and Counter-Memorial shall be accompanied by the documentary evidence relied upon by the parties, including exhibits and legal authorities. Further documentary evidence relied upon by the parties in rebuttal shall be submitted with the Reply and Rejoinder.

16.2. The documents shall be submitted in the manner and form set forth in § 13 above.

16.3. Neither party shall be permitted to submit additional or responsive documents after the filing of its respective last written submission, unless the Tribunal determines that exceptional circumstances exist based on a reasoned written request followed by observations from the other party.

16.3.1. Should a party request leave to file additional or responsive documents, that party may not annex the documents that it seeks to file to its request.

16.3.2. If the Tribunal grants such an application for submission of an additional or responsive document, the Tribunal shall ensure that the other party is afforded sufficient opportunity to make its observations concerning such a document.

16.4. The Tribunal may call upon the parties to produce documents or other evidence in accordance with ICSID Arbitration Rule 34(2).

16.5. The documents shall be submitted in the following form:

16.5.1. Exhibits shall be numbered consecutively throughout these proceedings.

16.5.2. The number of each Exhibit containing a document produced by Claimant shall be preceded by the letter “C-” for factual exhibits and “CL-” for legal exhibits containing authorities etc. The number for each Exhibit containing a document produced by Respondent shall be preceded by the letter “R-” for factual exhibits and “RL-” for legal exhibits containing authorities etc.

16.5.3. Each Exhibit shall have a divider with the Exhibit identification number on the tab.

16.5.4. Exhibits shall also be submitted in PDF format and be numbered consecutively starting with the number 1 and the prefix “C-” and “R-” respectively. The numbering shall also indicate the language of the document *e.g.* C-1-ENG for a document submitted only in English, C-1-SPA for a document submitted only in Spanish and C-0001-ENG/SPA for a document submitted simultaneously in English and Spanish.

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- 16.5.5. Electronic filings and the accompanying indexes shall follow the naming conventions contained in **Annex A**.
- 16.6. Copies of documentary evidence shall be assumed to be authentic unless specifically objected to by a party, in which case the Tribunal will determine whether authentication is necessary.
- 16.7. The parties shall file all documents only once by attaching them to their pleadings. Documents need not be resubmitted with witness statements and expert reports even if referred to in such statements and reports, and vice versa.
- 16.8. Demonstrative exhibits (such as PowerPoint slides, charts, tabulations, etc.) may be used at any hearing, provided they contain no new evidence. Each party shall number its demonstrative exhibits consecutively, and indicate on each demonstrative exhibit the number of the document(s) from which it is derived. The party submitting such exhibits shall provide them in electronic and hard copy to the other party, the Tribunal Members, the Tribunal Secretary, the court reporter(s) and interpreter(s) at the hearing at a time to be decided at the pre-hearing organizational meeting.
17. Witness Statements and Expert Reports
Convention Article 43(a); Arbitration Rule 24
- 17.1. Witness statements and expert reports shall be filed together with the parties' pleadings. If a Party has submitted a witness statement and/or expert report or opinion, it shall make every reasonable effort to make that witness and/or expert available for cross-examination, if requested.
- 17.2. Any person may present evidence as a witness, including a Party or its officials, officers, employees or other representatives. Witness statements shall include:
- 17.2.1. the full name of the witness, a statement regarding his or her present and past relationship (if any) with any of the Parties, and a description of his or her background, qualifications, training and experience, if such a description may be relevant to the dispute or to the contents of the statement; and
- 17.2.2. an affirmation of the truth of the Witness Statement.
- 17.3. Expert reports shall include:
- 17.3.1. the full name of the expert, a statement regarding his or her present and past relationship (if any) with any of the Parties, and a description of his or her background, qualifications, training and experience;
- 17.3.2. a description of the instructions pursuant to which he or she is providing his or her opinions and conclusions;

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- 17.3.3. a statement of his or her independence from the Parties, their legal advisors and the Arbitral Tribunal;
 - 17.3.4. his or her expert opinions and conclusions, including a description of the methods, evidence and information used in arriving at the conclusions. Documents on which the expert relies that have not already been submitted shall be provided;
 - 17.3.5. an affirmation of his or her genuine belief in the opinions expressed in the Expert Report; and
 - 17.3.6. if the Expert Report has been signed by more than one person, an attribution of the entirety or specific parts of the Expert Report to each author.
- 17.4. Neither party shall be permitted to submit any testimony that has not been filed with the written submissions, unless the Tribunal determines that exceptional circumstances exist based on a reasoned written request followed by observations from the other party (following the procedure outlined in § 16.3).
- 17.5. Each witness statement and expert report shall be signed and dated by the witness.

18. Examination of Witnesses and Experts

Arbitration Rules 35 and 36

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

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

19. Pre-Hearing Organizational Meetings

Arbitration Rule 13

- 19.1. A pre-hearing organizational meeting shall be held by telephone at a date determined by the Tribunal after consultation with the parties and in accordance with **Annex B** between the Tribunal, or its President, and the parties in order to resolve any outstanding procedural, administrative, and logistical matters in preparation for the hearing.

20. Hearings

Arbitration Rules 20(1)(e) and 32

- 20.1. The oral procedure shall consist of a hearing for examination of witnesses and experts, if any, and for oral arguments.
- 20.2. The hearing shall be held at a place to be determined in accordance with §10 above.
- 20.3. The hearing shall take place, subject to the availability of the Tribunal and the Parties, within 120 days (but not before 60 days) following the Claimant's Rejoinder on Jurisdiction, for the hearing on Jurisdiction, if applicable, and/or Respondent's Rejoinder (or the Claimant's Rejoinder on Jurisdiction, as provided in **Annex B**), for the hearing on the merits, at which the Parties will present their experts and witnesses, and make oral submissions.
- 20.4. The Members of the Tribunal shall endeavor to reserve at least one day after the hearing to determine the next steps and to hold deliberations.
- 20.5. Prior to the hearing, the parties shall use their best efforts to agree and prepare a single USB drive (PC and Mac compatible) including all pleadings, witness statements, expert reports, exhibits, legal authorities, decisions and orders in the arbitration file, with a unified hyper-linked index. As soon as possible, but no later than two (2) weeks before the hearing, the parties shall courier two (2) copies of the USB drive to the Secretary of the Tribunal and one (1) copy of the USB drive (PC and Mac compatible) to each Member of the Tribunal.
- 20.6. The Tribunal shall inform the parties at least one month before the hearing whether each party shall provide one additional hard copy in A4, letter or other format of its entire set of pleadings, including supporting documents (excluding legal authorities), in their original language and translated into the other procedural language, for use by the Tribunals during the hearing.
- 20.7. In accordance with Article 830(2) of the FTA, hearings shall be open to the public. The Tribunal may hold portions of hearings *in camera* to the extent necessary to ensure the protection of confidential information. The Tribunal shall establish procedures for the protection of confidential information and appropriate logistical arrangements for open hearings, in consultation with the parties.]
- 20.8. Pursuant to Article 827(2) of the FTA, Canada, as the other Contracting Party to the Treaty, shall have the right to attend any hearings. Upon written notice to the disputing parties, the Government of Canada may make oral and written submissions to the Tribunal on a question of interpretation of the Treaty.

21. Records of Hearings and Sessions

Arbitration Rules 13 and 20(1)(g)

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

the Tribunal Members.

- 21.2. Verbatim transcript(s) in the procedural language(s) shall be made of any hearing and session other than sessions on procedural issues. Unless otherwise agreed by the parties or ordered by the Tribunal, the verbatim transcripts shall be available in real-time using LiveNote or similar software and electronic transcripts shall be provided to the parties and the Tribunal on a same-day basis.
- 21.3. The parties shall agree on any corrections to the transcripts within 28 days of the later of the dates of the receipt of the sound recordings and transcripts. The agreed corrections may be entered by the parties in the transcripts (“revised transcripts”). The Tribunal shall decide upon any disagreement between the parties and any correction adopted by the Tribunal shall be entered by the parties in the revised transcripts.

22. Post-Hearing Matters

Convention Article 44; Arbitration Rule 28(2)

- 22.1. All matters concerning post-hearing memorials and statements of costs shall be discussed at the close of the oral hearing. In any event, such submissions, if any, shall not contain new evidence, documents, sources, witness statements or expert reports or opinions, except in exceptional circumstances, as determined by the Tribunal upon consultation with the Parties.

23. Publication

Convention Article 48(5), Administrative and Financial Regulation 22, Arbitration Rule 48(4), Treaty Article 830

- 23.1. In accordance with Article 830(1) of the Treaty, the award shall be publicly available, subject to the deletion of confidential information.
- 23.2. The Tribunal’s procedural orders, the Notice of Intent, and the Request for Arbitration shall also be publicly available, subject to the deletion of confidential information.
- 23.3. Unless the parties otherwise agree, and always subject to the deletion of confidential information, no other documents submitted to, or issued by, the Tribunal shall be publicly available.
- 23.4. A party providing information that it claims is confidential has the burden of designating it as confidential.
- 23.5. Pursuant to Article 830(3) of the Treaty, a party may disclose to other persons in connection with the arbitral proceedings such unredacted documents as it considers necessary for the preparation of its case, but it shall ensure that those persons protect the confidential information in such documents.

- 23.6. Pursuant to Article 830 (4) of the FTA, Claimant may share with Canadian national or sub-national officials all relevant unredacted documents related to the dispute.
- 23.7. In accordance with Article 830(5) of the Treaty, to the extent that a Tribunal's confidentiality order designates information as confidential and a law on access to information of either Contracting Party to the Treaty requires public access to that information, such domestic law shall prevail. However, a Contracting Party to the Treaty should endeavour to apply its law on access to information so as to protect information designated confidential by the Tribunal.

24. Submissions by a Non-Disputing Party

Arbitration Rule 37(2), Treaty Article 831 and Annex 831

- 24.1. In accordance with **Annex B**: (i) an application to the Tribunal for leave to file a non-disputing party submission may be submitted no later than one month after the first exchange of pleadings on jurisdiction or merits, as applicable, between the Parties has taken place; and (ii) any non-disputing party submission must be filed no later than one month before the second exchange of pleadings on jurisdiction or merits, as applicable, begins.
- 24.2. The Parties will be granted an opportunity to submit observations in relation to any non-disputing party application for leave to file a non-disputing party submission, and to any non-disputing party submissions, as provided in **Annex B**.
- 24.3. In accordance with ICSID Arbitration Rule 37(2) and Article 831 of the Treaty, the Tribunal shall ensure that any non-disputing party submission does not disrupt the proceeding or unduly burden or unfairly prejudice either Party.
- 24.4. In the event that a non-disputing party is granted leave to make a submission, the non-disputing party shall present its submission within the deadline set in **Annex B**.
- 24.5. The Tribunal shall likewise decide whether and to what degree a non-disputing party granted leave to make a submission shall be granted access to the pleadings submitted by the Parties, subject to the deletion of confidential information and excluding their supporting documentation (including exhibits, witness statements, and expert reports). Access to the pleadings shall be granted upon the execution of a non-disclosure agreement by the non-disputing party.
- 24.6. Non-disputing parties that demonstrate the same significant interest in the arbitration shall submit a joint submission.
- 24.7. An application for the Tribunal for leave to file a non-disputing party submission, and the filing of a submission, if allowed by the Tribunal, shall be made in accordance with ICSID Arbitration Rule 37(2), and Article 831 and Annex 831 of the Treaty.

[Signed]

Dr. Andrés Rigo Sureda
President of the Tribunal
Date: 12 December 2019

ANNEX A

ELECTRONIC FILE NAMING GUIDELINES

Please follow these guidelines when naming electronic files and for the accompanying Consolidated Hyperlinked Index. The examples provided (in *italics*) are for demonstration purposes only and should be adapted to the relevant phase of the case.

All pleadings and accompanying documentation shall indicate the LANGUAGE in which they are submitted (e.g. SPA=Spanish; FR=French; ENG= English). Such indication should be reflected both i) in the name used to identify each individual electronic file and ii) in the Consolidated Hyperlinked Index (which shall be attached to each submission).

For cases with a single procedural language, the “LANGUAGE” designation may be omitted, except for documents in a language other than the procedural language and the corresponding translations.

SUBMISSION TYPE	ELECTRONIC FILE NAMING GUIDELINES
MAIN PLEADINGS	Title of Pleading–LANGUAGE
	<i>Memorial on Jurisdiction-FR</i>
	<i>Counter-Memorial on the Merits and Memorial on Jurisdiction-SPA</i>
	<i>Reply on Annulment-FR</i>
	<i>Rejoinder on Quantum-ENG</i>
SUPPORTING DOCUMENTATION Exhibits	C-####–LANGUAGE
	R-####–LANGUAGE
	To be produced sequentially throughout the case.
	CLAIMANT’S FACTUAL EXHIBITS
	<i>C-0001-ENG</i>
	<i>C-0002-SPA</i>
	RESPONDENT’S FACTUAL EXHIBITS
	<i>R-0001-FR</i>
<i>R-0002-SPA</i>	
Legal Authorities	CL-####–LANGUAGE
	RL-####–LANGUAGE
	To be produced sequentially throughout the case.
	CLAIMANT’S LEGAL AUTHORITIES
	<i>CL-0001-ENG</i>
	<i>CL-0002-FR</i>
	RESPONDENT’S LEGAL AUTHORITIES
	<i>RL-0001-SPA</i>
<i>RL-0002-ENG</i>	
Witness Statements	Witness Statement-Name of Witness-Name of Submission-LANGUAGE
	<i>Witness Statement-Maria Jones-Memorial on Jurisdiction-SPA</i>
	<i>Witness Statement-Maria Jones-Reply on Jurisdiction-[Second Statement]-ENG</i>
Expert Reports	Expert Report-Name of Expert-Type-Name of Submission-LANGUAGE
	<i>Expert Report-Lucia Smith-Valuation-Memorial on Quantum-ENG</i>
	<i>Expert Report-Lucia Smith-Valuation-Reply on Quantum-[Second Report]-ENG</i>
Legal Opinions	Legal Opinion-Name of Expert-Name of Submission-LANGUAGE
	<i>Legal Opinion-Tom Kaine-Counter-Memorial on the Merits-FR</i>

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	<i>Legal Opinion-Tom Kaine-Rejoinder on the Merits-[Second Opinion]-FR</i>
Exhibits to Witness Statements, Expert Reports, Legal Opinions	WITNESS/EXPERT INITIALS-###
	<i>For exhibits filed with the Witness Statement of [Maria Jones]</i>
	<i>MJ-0001</i>
	<i>MJ-0002</i>
	<i>For exhibits filed with the Legal Opinion of [Tom Kaine]</i>
	<i>TK-0001</i>
	<i>TK-0002</i>
	<i>For exhibits filed with the Expert Report of [Lucia Smith]</i>
	<i>LS-0001</i>
	<i>LS-0002</i>
INDICES	Consolidated Hyperlinked Index
	Index of Exhibits-C-#### to C-####
	<i>Index of Exhibits-C-0001 to C-0023</i>
	Index of Legal Authorities-RLA-### to RLA-###
	<i>Index of Legal Authorities-RLA-0001 to RLA-0023</i>
OTHER APPLICATIONS	Name of Application-[Party]-LANGUAGE
	<i>Preliminary Objections under Rule 41(5)-SPA</i>
	<i>Request for Bifurcation-ENG</i>
	<i>Request for Provisional Measures-[Respondent]-SPA</i>
	<i>Request for Production of Documents-[Claimant]-SPA</i>
	<i>Request for Stay of Enforcement-FR</i>
	<i>Request for Discontinuance-[Claimant]-ENG</i>
	<i>Post-Hearing Brief-[Claimant]-SPA</i>
	<i>Costs Submissions-[Respondent]-ENG</i>
<i>Observations to Request for [XX]-[Claimant]-SPA</i>	

ANNEX B

PROCEDURAL CALENDAR

SCENARIO 1

The following timetable shall apply in the event that objections to jurisdiction (if any) are made with the counter-memorial, and there is no request for bifurcation.

Date / [Period of Time]	Party / Tribunal	Description
Procedural Consultation (4 December 2019)	All	Procedural Consultation
Within 14 days of the Procedural Consultation (18 December 2019)	Tribunal	Decision on the Preliminary Objection
Assuming that the Decision on the Respondent's Preliminary Objection is not dispositive of the entirety of the arbitration		
Within 120 days of the Decision on the Preliminary Objection (16 April 2020)	Claimant	Memorial on the Merits
+120 days from the Memorial on the Merits (14 August 2020)	Respondent	Counter-Memorial on the Merits and Memorial on Jurisdictional Objections
+21 days from the Memorial on Jurisdictional Objections and Counter-Memorial on the Merits (4 September 2020)	Parties Non-Disputing Parties	Requests for Production of Document, Cut-off date to apply for leave to file a non-disputing party submission
+ + 14 days from Requests for Production of Document/Cut-off date to apply for leave to file a non-disputing party submission (18 September 2020)	Parties	Responses to Document Requests, Responses to Non-Disputing Party Application, if any

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Date / [Period of Time]	Party / Tribunal	Description
+14 days from Responses to Document Requests/Responses to Non-Disputing Party Application, if any (2 October 2020)	Parties	Reply to Responses on Document Requests, Submission to Tribunal; Voluntary Production
+14 days from Reply to Responses on Document Requests/Submission to Tribunal; Voluntary Production (16 October 2020)	Tribunal	Decision on Document Requests, Decision on Non-Disputing Party Submissions
+14 days from Decision on Document Requests, Decision on Non-Disputing Party Submissions (30 October 2020)	Parties	Deadline for Production of Documents, Deadline for Non-Disputing Party Submissions
+105 days from the Counter-Memorial on the Merits and Memorial on Jurisdictional Objections (27 November 2020)	Claimant	Reply on the Merits and Counter-Memorial on Jurisdictional Objections
+119 days [105 days + 14 days for Christmas holidays] from the Reply on the Merits and Counter-Memorial on Jurisdictional Objections (26 March 2021)	Respondent	Rejoinder on the Merits and Reply on Jurisdictional Objections
+42 days from Rejoinder on the Merits and Reply on Jurisdictional Objections (7 May 2021)	Claimant	Rejoinder on Jurisdictional Objections
+45 days before the Hearing	Parties	Witness notification
+30 days before the Hearing	All	Pre-Hearing Organizational Meeting
within 60 to 120 days from Rejoinder on Jurisdictional Objections (6 July 2021 – 4 September 2021)	All	Hearing

SCENARIO 2

The following timetable shall apply in the event that objections to jurisdiction are made in response to the memorial on the merits, and there is a request for bifurcation which is granted.

Date / [Period of Time]	Party / Tribunal	Description
Procedural Consultation (4 December 2019)	All	Procedural Consultation
Within 14 days of the Procedural Consultation (18 December 2019)	Tribunal	Decision on the Preliminary Objection
Assuming that the Decision on the Respondent’s Preliminary Objection is not dispositive of the entirety of the arbitration		
Within 120 days of the Decision on the Preliminary Objection (16 April 2020)	Claimant	Memorial on the Merits
+30 days from delivery Memorial on the Merits (16 May 2020)	Respondent	Request for Bifurcation
+30 days from Request for Bifurcation (15 June 2020)	Claimant	Observations on Request for Bifurcation
+30 days from Observations on Request for Bifurcation (15 July 2020)	Tribunal	Decision granting bifurcation
+60 days from decision granting bifurcation (14 September 2020)	Respondent	Memorial on Jurisdictional Objections
+60 days from Memorial on Jurisdictional Objections (13 November 2020)	Claimant	Counter-Memorial on Jurisdictional Objections
Only exceptionally a document production phase for jurisdiction would be granted upon reasoned request		

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Date / [Period of Time]	Party / Tribunal	Description
+59 [45 days + 14 days for Christmas holidays] days from the Counter-Memorial on Jurisdictional Objections (11 January 2021)	Respondent	Reply on Jurisdictional Objections
+45 days from Reply on Jurisdictional Objections (25 February 2021)	Claimant	Rejoinder on Jurisdictional Objections
+45 days before the Hearing	Parties	Witness notification
+30 days before the Hearing	All	Pre-Hearing Organizational Meeting
within 60 to 120 days from Rejoinder on Jurisdictional Objections (26 April 2021 – 25 June 2021)	All	Hearing on Jurisdiction
	Tribunal	Decision on Jurisdiction
Assuming that the Decision on Jurisdiction is not dispositive of the entirety of the arbitration		
+90 days from Decision on Jurisdiction	Respondent	Counter-Memorial on the Merits
+21 days from the Counter-Memorial on the Merits	Parties Non-Disputing Parties	Requests for Production of Document, Cut-off date to apply for leave to file a non-disputing party submission on merits
+14 days from Requests for Production of Document/ cut-off date for applications for leave to file a non-disputing party submission from Non-Disputing Parties	Parties	Responses to Document Requests, Responses to Non-Disputing Party Application, if any
+14 days from Responses to Document Requests/Responses to Non-Disputing Party Application, if any	Parties	Reply to Responses on Document Requests, Submission to Tribunal; Voluntary Production

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Date / [Period of Time]	Party / Tribunal	Description
+14 days from Reply to Responses on Document Requests/Submission to Tribunal; Voluntary Production	Tribunal	Decision on Document Requests, Decision on Non-Disputing Party Submissions
+14 days from Decision on Document Requests, Decision on Non-Disputing Party Submissions	Parties	Deadline for Production of Documents, Deadline for Non-Disputing Party Submissions
+105 days from Counter-Memorial on the Merits	Claimant	Reply on the Merits
+105 from Reply on the Merits	Respondent	Rejoinder on the Merits
+45 days before the Hearing	Parties	Witness notification
+30 days before the Hearing	All	Pre-Hearing Organizational Meeting
within 60 to 120 days from Rejoinder on the Merits	All	Hearing on the Merits

SCENARIO 3

The following timetable shall apply in the event that objections to jurisdiction are made in response to the memorial on the merits, and there is a request for bifurcation which is refused.

Date / [Period of Time]	Party / Tribunal	Description
Procedural Consultation (4 December 2019)	All	Procedural Consultation
Within 14 days of the Procedural Consultation (18 December 2019)	Tribunal	Decision on the Preliminary Objection
Assuming that the Decision on the Respondent's Preliminary Objection is not dispositive of the entirety of the arbitration		
Within 120 days of the Decision on the Preliminary Objection (16 April 2020)	Claimant	Memorial on the Merits
+30 days from delivery Memorial on the Merits (16 May 2020)	Respondent	Request for Bifurcation
+30 days from Request for Bifurcation (15 June 2020)	Claimant	Observations on Request for Bifurcation
+30 days from Observations on Request for Bifurcation (15 July 2020)	Tribunal	Decision refusing bifurcation or joinder of jurisdictional objections to the merits
+90 days from the decision refusing bifurcation (13 October 2020)	Respondent	Counter-Memorial on the Merits and Memorial on Jurisdictional Objections
+21 days from the Memorial on Jurisdictional Objections and Counter-Memorial on the Merits (3 November 2020)	Parties Non-Disputing Parties	Requests for Production of Document, Cut-off date to apply for leave to file a non-disputing party submission

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Date / [Period of Time]	Party / Tribunal	Description
+14 days from Requests for Production of Document/Cut-off date to apply for leave to file a non-disputing party submission (17 November 2020)	Parties	Responses to Document Requests, Responses to Non-Disputing Party Application, if any
+14 days from Responses to Document Requests/Responses to Non-Disputing Party Application, if any (1 December 2020)	Parties	Reply to Responses on Document Requests, Submission to Tribunal; Voluntary Production
+14 days from Reply to Responses on Document Requests/Submission to Tribunal; Voluntary Production (15 December 2020)	Tribunal	Decision on Document Requests, Decision concerning applications from Non-Disputing Parties
+14 days from Decision on Document Requests, Decision on Non-Disputing Party Submissions (29 December 2020)	Parties	Deadline for Production of Documents, Deadline for Non-Disputing Party Submissions
+119 days [105 days + 14 days for Christmas holidays] from the Counter-Memorial on the Merits and Memorial on Jurisdictional Objections (9 February 2021)	Claimant	Counter-Memorial on Jurisdictional Objections and Reply on the Merits
+105 days from the Counter-Memorial on Jurisdictional Objections and Reply on the Merits (25 May 2021)	Respondent	Rejoinder on the Merits and Reply on Jurisdictional Objections
+42 days from Rejoinder on the Merits and Reply on Jurisdictional Objections (6 July 2021)	Claimant	Rejoinder on Jurisdictional Objections
+45 days before the Hearing	Parties	Witness notification
+30 days before the Hearing	All	Pre-Hearing Organizational Meeting

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Date / [Period of Time]	Party / Tribunal	Description
within 60 to 120 days from Rejoinder on Jurisdictional Objections (4 September 2021 – 3 November 2021)	All	Hearing

ANNEX C
INTERNATIONAL CENTRE FOR THE SETTLEMENT OF INVESTMENT
DISPUTES
ICSID

RED EAGLE EXPLORATION LIMITED

Claimant

v.

REPUBLIC OF COLOMBIA

Respondent

ICSID Case No. ARB/18/23

CLAIMANT'S/RESPONDENT'S REQUEST FOR PRODUCTION OF
DOCUMENTS
(REDFERN SCHEDULE)

XX MONTH YYYY

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Procedural Order No. 1 – Annex C

1	2	3		4	5	6
Row	Documents or Category of Documents Requested	Statement of Relevance/Materiality		Answer / Objections to the Request to Produce	Reply to Objections to the Request to Produce	Tribunal's Decision
		Reference to Memorials, Annexes, Witness Statements, or Expert Reports	Comments			
1						
2						
3						
4						
5						
6						
7						
8						
9						