

**INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES**

**Amec Foster Wheeler USA Corporation, Process Consultants, Inc., and Joint Venture  
Foster Wheeler USA Corporation and Process Consultants, Inc.**

**v.**

**Republic of Colombia**

**(ICSID Case No. ARB/19/34)**

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**PROCEDURAL ORDER NO. 2  
(HEARING ORGANIZATION)**

***Members of the Tribunal***

Mr. José Emilio Nunes Pinto, President of the Tribunal

Mr. John Beechey, Arbitrator

Prof. Marcelo Kohen, Arbitrator

***Secretary of the Tribunal***

Ms. Marisa Planells-Valero

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April 26, 2022

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(ICSID Case No. ARB/19/34)  
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**I. INTRODUCTION**

1. Pursuant to Section 19 of Procedural Order No. 1, a pre-hearing organizational meeting between the Parties and the Tribunal was held by video conference on April 19, 2022 (the “**Pre-Hearing Call**” or “**PHC**”). Participating in the video conference were:

Arbitral Tribunal:

Mr. José Emilio Nunes Pinto, President of the Tribunal<sup>1</sup>

ICSID Secretariat:

Ms. Marisa Planells-Valero, Secretary of the Tribunal

On behalf of the Claimant:

*Pillsbury Winthrop Shaw Pittman LLP*

- Robert Sills
- Charles Conrad
- Richard Deutsch
- Derek Soller
- Elizabeth Dye
- Kristina Fridman
- Martin Ruiz Garcia

On behalf of the Respondent:

*Agencia Nacional de Defensa Jurídica del Estado*

- Ana María Ordoñez Puentes
- Giovanny Andrés Vega Barbosa
- Elizabeth Prado López
- Cesar Leonardo Rodriguez Martinez
- Marcela María Silva Zambrano

*Curtis, Mallet-Prevost, Colt & Mosle LLP*

- Claudia Frutos-Peterson
- Elisa Botero
- Fernando Tupa
- Maria Paulina Santacruz
- Juan Jorge
- Sara Dangón

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<sup>1</sup> As proposed by the Tribunal to the Parties on February 24, 2022, in accordance with Section 19.1 of Procedural Order No. 1.

2. During the Pre-Hearing Call, the Parties and the Tribunal discussed the draft agenda for the Hearing circulated to the Parties on April 7, 2022, and the Parties' joint statement of April 15, 2022, advising the Tribunal of any agreements reached on the agenda open items, as well as their respective positions where no agreement was reached.
3. An audio recording of the Pre-Hearing Call was made and deposited in the archives of ICSID. The recording was made available to the Members of the Tribunal and the Parties on April 19, 2022.
4. Having considered the Parties' positions, this Order sets out the Procedural Rules upon which the Parties have agreed and/or the Tribunal has determined will govern the conduct of the Hearing.

## **II. ORGANIZATION OF THE HEARING ON PRELIMINARY OBJECTIONS**

### **A. Date and Venue**

5. The Hearing on Preliminary Objections ("**Hearing**") is scheduled to take place from May 19 to May 20, 2022.
6. The Hearing will take place in person at the ICSID facilities in Washington D.C., subject to the arrangements detailed in **Annex B**. Given the exceptional circumstances created by the COVID-19 pandemic and the limitations on the number of Participants allowed in the in-person Hearing Room,<sup>2</sup> arrangements will also be made to facilitate connection to the Hearing Room through a virtual platform for Participants who might need to attend remotely (*see* arrangements detailed in **Annex C**). Should any future sanitary restriction or regulation in connection with the COVID-19 pandemic make it unviable to conduct the Hearing in-person as planned, the Tribunal will discuss next steps with the Parties, including whether the Hearing could still be held in an entirely remote format on the same dates.

### **B. Order of Proceedings and Schedule**

7. On May 19, 2022, the Hearing will start at 9:00 AM and conclude by 5:30 PM. There will be three coffee breaks (two of 30 minutes each and one of 15 minutes), and a 1-hour lunch break. On May 20, 2022, the Hearing will start at 10:30 AM and conclude by 1:00 PM, including a 15-minute break. The order of proceedings and structure of the Hearing will be as indicated in the agenda incorporated as **Annex A**.

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<sup>2</sup> See Annex B, Section 2 below.

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8. Following consultation with the Parties, the Tribunal may adjust the Agenda in **Annex A** to account for unexpected disruptions during the Hearing.

**C. Time Allocation**

9. The time allocation shall be guided by the principles established in Section 20.6 of Procedural Order No. 1 (reproduced below):

“Unless the parties agree otherwise, the total hearing time shall be split evenly between them, subject to the time the Tribunal intends to reserve for itself for questions and other matters. [...]”

10. Considering the start and end times, the Hearing shall comprise a total of 11 hours and 30 minutes. A total of 2 hour and 30 minutes shall be reserved for lunches and breaks. Thus, excluding the time reserved for breaks, there will be a total of 9 hours, to be allocated as follows: (i) 30 minutes will be reserved for housekeeping matters; (ii) 1 hour on May 19 will be reserved for the Tribunal;<sup>3</sup> (iii) 30 minutes on May 19 will be reserved for an oral submission from the United States, in case the United States decides to make one; and (iv) the remaining time (5 hours on May 19, and 2 hours on May 20) will be available for use by the Parties.
11. Accordingly, considering the total number of Hearing days (2 days), each Party shall have a total of 3 hours and 30 minutes available to it during the entire Hearing.
12. Time shall be kept using the chess-clock method. Each Party may use the time available to it at each stage of the Hearing in the manner it desires, subject to the following:
- a. *Opening Statements*. Each Party shall be allowed a maximum of 2 hours and 30 minutes for its Opening Statement.
  - b. *Closing Statements*. Each Party shall be allowed a maximum of 60 minutes for its Closing Statement.
  - c. *Housekeeping*. Time used for housekeeping or to resolve technical difficulties shall be counted against the time reserved for housekeeping or against the Tribunal’s reserved time, if needed.
13. The Secretary of the Tribunal shall keep the time, under the direction of the Tribunal, and she will advise the Parties of the total daily time used at the end of each Hearing Day.

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<sup>3</sup> Any unused balance of the Tribunal’s time will be carried over to the next day.

14. The Parties are expected to use each Hearing Day efficiently and to avoid unnecessary slippage (e.g. delays in returning from breaks). In the event of excess slippage, the Tribunal may revisit the length of the sitting day, or in unusual circumstances the time allocations of the Parties, bearing in mind principles of predictability, equal treatment and a fair opportunity for the Parties to be heard.

**D. Order of Proceedings**

15. General Order (sequence of presentations): The order will be as follows: (i) Respondent's Opening Statement; (ii) Claimants' Opening Statement; (iii) Questions from the Tribunal; (iv) Respondent's Closing Statement; (v) Claimants' Closing Statement. The general structure of the Hearing will be as indicated in **Annex A**.
16. The Hearing Schedule established in **Annex A** shall be subject to any such modification as the Tribunal may deem necessary or appropriate in the course of the Hearing, in particular, on account of any delay or interruption due to technical difficulties.

**E. Documents for Use at the Hearing**

**1. Electronic Core Bundle**

17. There shall be a single Electronic Core Bundle in USB form, to be prepared jointly by the Parties.
18. The Electronic Core Bundle shall contain all pleadings, exhibits and legal authorities on file to date, with a unified hyperlinked index. It shall not contain any document not previously filed. It shall be organized as follows:

**Electronic Hearing Bundle:**

**01. Pleadings on Preliminary Objections**

- A. Claimant
- B. Respondent

**02. Pleadings on Interim Measures (including witness statements)**

- A. Claimant
- B. Respondent

**03. Exhibits**

- A. Claimant
- B. Respondent

**04. Legal Authorities**

- A. Claimant
- B. Respondent

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**05. Tribunal Procedural Orders**

**06. Tribunal Rulings**

19. The Parties shall upload the Electronic Hearing Bundle to a designated sub-folder in the electronic file sharing platform (“BOX”) **by May 16, 2022**. To ensure operation of the hyperlinked index in BOX, if feasible, the entire Electronic Hearing Bundle shall be housed within one folder and then uploaded to BOX as a single zip file. Should the size of the single zip file make uploading it to BOX not possible, the Parties may simply upload the Electronic Hearing Bundle to a designated sub-folder in the BOX organized in sub-folders using the structure indicated at paragraph 18 *supra*, including a consolidated (but non-hyperlinked) index.
20. Hearing Participants are advised to have the Electronic Hearing Bundle downloaded into their own computer devices and available for access offline, if necessary.
21. In addition, the Parties shall distribute at the outset of the Hearing the Electronic Core Bundle USB with the hyperlinked version of the index to each Member of the Tribunal (3 copies) and the Secretary of the Tribunal (1 copy); opposing counsel (1 copy); court reporters (2 copies), and interpreters (1 copy).
22. There shall be no hard copy Core Bundle.

**2. Demonstrative Exhibits**

23. Section 16.8 of Procedural Order No. 1 concerning Demonstrative Exhibits applies. The Parties understand that Demonstrative Exhibits are not an opportunity to submit, nor should they resemble, supplementary briefs. Demonstrative Exhibits shall indicate the source of the information contained therein through references to the record and shall not contain new evidence. In accordance with Section 11.12 concerning Hearings, all Demonstrative Exhibits shall be submitted in English.
24. The Parties will upload to the BOX their Opening/Closing Presentations immediately before the beginning of their respective argument. In addition, the Parties will provide a hard copy of the Opening/Closing Presentations at the beginning of the respective argument, to the Tribunal (3 copies), the Secretary of the Tribunal (1 copy), the other Party (1 copy), the court reporters (2 copies), and the interpreters (1 copy).
25. Any Demonstrative Exhibits other than the Opening/Closing Presentation, shall be promptly uploaded to the BOX after the conclusion of the Hearing Day in which the corresponding Demonstrative Exhibit is used, with the required CD-\_\_ or RD-\_\_ number.

#### **F. Interpretation**

26. In accordance with Section 11.12 of Procedural Order No. 1, the Hearing shall be conducted in English, and there shall be simultaneous English-Spanish interpretation throughout the Hearing.
27. It is anticipated that the interpreters will attend the Hearing in person.

#### **G. Sound Recordings and Transcripts**

28. Pursuant to Section 21.1 of Procedural Order No. 1, sound and video recordings will be made of the Hearing in the two procedural languages. The sound and video recordings shall be provided to the Parties and the Tribunal.
29. ICSID has also made arrangements to have English and Spanish *verbatim* transcripts available in real-time using Live Note or a similar software during the Hearing.
30. It is expected that the court reporters will attend the Hearing in person. Should court reporters be participating remotely, however, the real-time court reporting shall be made available to the Participants via an online link connection to be provided by the court reporters, and the Participants shall be required to access the streamed transcripts from their own devices (as there will be no court reporter devices available on-site to display the transcript). The connectivity details (links and instructions) to connect to the streamed real-time transcripts in both procedural languages will be shared by ICSID prior to the start of the Hearing.
31. Electronic versions of the transcripts will be provided to the Parties and the Tribunal on a same-day basis.
32. The Parties shall agree on any major corrections to the transcripts within 30 days of the date of receipt of the sound recordings or transcripts, whichever is the later. The agreed corrections may be entered by the court reporters in the transcripts. The Tribunal shall decide upon any disagreement between the Parties on this matter and any correction adopted by the Tribunal shall be entered by the court reporter in the revised transcripts.

#### **H. Transparency**

33. In accordance with Article 10.21 of the US-Colombia TPA and Sections 20.5 and 24 of Procedural Order No. 1, the Hearing shall be made public, subject to a procedure to ensure that protected information is not disclosed to the public.
34. Given the exceptional circumstances created by the COVID-19 pandemic, and the limitations on the number of Participants allowed in the in-person Hearing Room, the Hearing shall be

video recorded, and the video recording will be streamed on the ICSID website as soon as possible after the conclusion of the Hearing. An announcement to this effect shall be published on the ICSID website.

35. A protocol for the redaction of protected information during the Hearing is attached as **Annex D**.

**I. Attendance of the Non-Disputing Party (NDP)**

36. On April 14, 2022, the Tribunal invited the NDP to indicate whether it wished to attend the hearing. On April 18, 2022, the NDP accepted the Tribunal invitation to attend the hearing. In doing so, the NDP indicated that it is not its intention at present to make a submission at the Hearing but it reserved its right to do so if issues were to arise in further submissions from the Parties before the Hearing which bear upon the interpretation of the US-Colombia TPA.

**J. Post-Hearing Briefs**

37. The Parties are willing to consider the submission of Post-Hearing Briefs to answer specific questions from the Tribunal that the Tribunal may want the Parties to address in writing. At the conclusion of the Hearing, the Tribunal will confer with the Parties on whether such Post-Hearing Briefs will be filed. The exact length, format, and due date of Post-Hearing Briefs, if any, shall be discussed by the Tribunal and the Parties at the conclusion of the Hearing.

**K. Statement on Costs**

38. The Parties shall submit Statements on Costs at least 21 days after receiving the final transcripts of the Hearing or submitting Post-Hearing Briefs, whichever is later. The exact length, format, and due date shall be discussed by the Arbitral Tribunal and the Parties at a later time following the conclusion of the Hearing.

**L. LIST OF PARTICIPANTS AND DATA PRIVACY**

39. Each Party shall provide its respective List of Participants for the Hearing (“**List of Participants**”) no later than **May 5, 2022**, using the format provided in **Annex E**.
40. The List of Participants for the Hearing will contain personal data provided to ICSID in the context of the Hearing, including names and contact information, such as business email addresses and telephone numbers. This data is processed for the purpose of the legitimate interests of the Parties in resolving efficiently their dispute and, in particular, to ensure that procedural documents and Hearing arrangements are properly communicated to the Parties, their legal representatives, the Members of the Tribunal and other participants providing services for the Hearing.



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For and on behalf of the Tribunal,

[Signed]

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Mr. José Emilio Nunes Pinto  
President of the Tribunal  
Date: April 26, 2022

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**ANNEX A**

**Amec Foster Wheeler USA Corporation, Process Consultants, Inc., and Joint Venture Foster Wheeler USA Corporation and Process Consultants, Inc.**  
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**HEARING SCHEDULE**

**Day 1: Thursday, May 19, 2022**

<i>Hour</i>	<i>Duration</i>	<b>PROCEDURAL STEP</b>
<b>00:00 AM/PM</b>	<b>(# hours/min.)</b>	
9:00 AM	90 minutes	Respondent' Opening Presentation
<b>10:30 AM</b>	<b>30 minutes</b>	<b>Break</b>
11:00 AM	60 minutes	Respondent's Opening Presentation (continued)
<b>12:00 PM</b>	<b>60 minutes</b>	<b>Lunch</b>
1:00 PM	90 minutes	Claimants' Opening Presentation
<b>2:30 PM</b>	<b>30 minutes</b>	<b>Break</b>
3:00 PM	60 minutes	Claimants' Opening Presentation (continued)
<b>4:00 PM</b>	<b>15 minutes</b>	<b>Break</b>
<i>[4:15 PM]</i>	<i>[30 minutes]</i>	<i>[U.S. Non-disputing Party Oral Submission]</i>
4:45 PM	60 minutes	Questions from the Tribunal
	<i>*15 minutes</i>	<i>Housekeeping</i>
<b>6:00 PM</b>		<b>End</b>

**Day 2: Friday, May 20, 2022**

<b>Hour</b>	<b>Duration</b>	<b>PROCEDURAL STEP</b>
<b>00:00 AM/PM</b>	<b>(# hours/min.)</b>	
10:30 AM	60 minutes	Respondent's Closing Argument
<b>11:30 AM</b>	<b>15 minutes</b>	<b>Break</b>
11:45 AM	60 minutes	Claimants' Closing Argument
12:45 PM	<i>*15 minutes</i>	<i>Housekeeping</i>
<b>1:00 PM</b>		<b>End</b>

**ANNEX B**  
**IN PERSON MODALITY ADDITIONAL ARRANGEMENTS**

1. This Annex contemplates certain additional protocols applicable for an in-person format.

**I. CONDITIONS AT THE WORLD BANK FACILITIES IN WASHINGTON D.C.**

2. The conditions currently in force for entry to the premises of the World Bank facilities in Washington D.C. for purposes of attending an ICSID Hearing are reproduced in this Section. These constitute the applicable conditions at present and might be subject to changes that may be notified by the World Bank should the circumstances related to the pandemic change.

**A. NUMBER OF PARTICIPANTS**

3. There shall be a maximum of 22 in person Participants in total for the Hearing, which shall be distributed as follows: Members of the Tribunal (3), Secretary of the Tribunal (1), Claimant (9), and Respondent (9).<sup>4</sup>
4. The number of Participants that can be present in each break-out room is also capped (it being clear that this is not a number in addition to the 22-person cap, and therefore, any Participant even if physically located in a break-out room would count towards the global 22-person cap):
  - Break Out Room 1 – Claimant : 9 people maximum
  - Break Out Room 2 – Respondent: 9 people maximum
  - Break Out Room 3 – Tribunal: 4 people maximum

**B. ID DOCUMENTS**

5. Each Participant must present a valid identity document with a photograph.

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<sup>4</sup> The interpreters (3), who will attend from the interpretation booths adjacent to the Hearing Room, and the court reporters (2), who may attend in-person, shall **not** count towards the 22-person cap. One (1) additional spot has been provisionally reserved for the potential in-person participation of an NDP representative (*see* para. 37 above).

**C. COVID-19 SANITARY REQUIREMENTS**

6. All individuals who will be attending the Hearing in person must be fully vaccinated against COVID-19 and provide to the ICSID Secretariat **by 7:00pm (EST) on May 18, 2022**, a negative COVID-19 antigen or PCR test not older than 72 hours and carried out by authorized health professionals. Counsel for each Party should convey this requirement to all intended Hearing Participants as soon as possible. Additionally, World Bank visitors will be asked to sign an attestation form confirming their vaccination status before entering the World Bank premises.
7. Each Participant attending in person will be required to wear a mask while inside the premises of the World Bank facilities, except while making an oral intervention at the Hearing or while eating.
8. Each Participant attending in person will have to abide by any other sanitary guidelines that might be communicated by the World Bank in Washington D.C. Additional COVID testing may be required closer to the date of the Hearing.
9. In advance of the Hearing, the Parties will be required to provide **no later than May 5, 2022**, for each Participant on their side planning to attend in-person: a complete List of Participants (using the format provided in **Annex E**) with (i) indication of the Participants who are vaccinated, and (ii) a copy (a scan) of each Participant's vaccination certificate or copy of proof of vaccination in another form.

**D. ACCESS OF DOCUMENTS**

10. The number of document boxes that can enter the premises of the World Bank in Washington DC might be limited. ICSID will provide further guidance in this regard. Any materials are to be brought by the Parties directly on the day of the set up.

**E. FOOD SERVICES**

11. Food services (lunch and break refreshments) will be provided in individually wrapped items, with lunches for the Parties to be served in the breakout rooms.

**F. OTHER REQUIREMENTS**

12. The Parties and the Tribunal are aware that the above only concerns the requirements for entry into the premises of the World Bank facilities in Washington D.C. Each Hearing participant planning to attend in person bears the responsibility for making all necessary arrangements to ensure that they meet any other conditions necessary to attend in person. For example, Hearing participants planning to travel from abroad bear the responsibility of checking the conditions of entry into the USA to determine whether they will be able to participate in person at the Hearing in compliance with all the conditions provided for by USA law and regulations.

**II. ADDITIONAL SANITARY CONDITIONS**

13. Any Participant who experiences signs of a cold, shortness of breath, temperature or other COVID-19 symptoms is asked to refrain from coming to the Hearing until they have obtained a negative rapid antigen test. Any Participant who has already been in attendance at the Hearing and experiences such symptoms during the course of the Hearing shall immediately inform the Tribunal and the ICSID Secretariat of this development, pending the results of their test.
14. If any Participant is to experience COVID-19 symptoms, the Tribunal and the Parties will discuss at the Hearing to what extent it will be possible for such Participant to continue participating at the Hearing remotely.

**III. OTHER LOGISTICAL ARRANGEMENTS**

15. Other logistical details (*e.g.*, confirmation of break-out room number assignments, set up day details, on-site internet access codes, and catering orders, etc.) will be handled through correspondence directly by the ICSID Hearing Organization Team.

**ANNEX C**  
**HYBRID MODALITY ADDITIONAL ARRANGEMENTS**

16. This Annex contemplates certain additional protocols applicable to a hybrid format, *i.e.*, a scenario with certain Participants attending in-person at the World Bank facilities in Washington D.C. (“**In-Person Participants**”), and others joining the Hearing remotely (“**Remote Participants**”). The protocols for an in-person scenario in **Annex B** will remain applicable to the In-Person Participants.

**IV. LOGISTICAL ARRANGEMENTS**

**1. Videoconference Platform and Streamed Transcript**

17. The virtual platform shall be managed by the AV technicians on site at the World Bank facilities in Washington D.C. (“Operator”).
18. Real-time court reporting shall be made available to the Remote Participants via an online link connection to be provided by the court reporters. The Remote Participants will be able to access the streamed transcripts from their own devices.
19. The connectivity details (links and instructions) for Remote Participants to join the videoconference session, and to connect to the streamed real-time transcripts in both procedural languages will be shared by ICSID prior to the start of the Hearing.

**2. Participants**

20. As provided *supra* each Party shall provide its respective List of Participants for the Hearing (“**List of Participants**”) no later than **no later than May 5, 2022**, using the format provided in **Annex E**. In that List of Participants, each Party shall identify those who will attend in person (“**In-Person Participants**”) and those participating remotely (“**Remote Participants**”). Each Party shall also designate those Participants that will have an active speaking role (“**Active Participants**”), and those who will be passive attendees (“**Passive Participants**”).

21. For ease of identification, Remote Participants shall join the videoconference using the naming convention indicated in the format in **Annex E**.
22. Access to the videoconference session shall be restricted to those identified in the List of Participants as Remote Participants.
23. Remote Participants shall join the videoconference 30 minutes in advance of the start on each day to facilitate the identification and to address any technical contingencies.

### **3. Technical Testing of WebEx Platform**

24. There shall be a technical test with the Remote Participants in advance of the Hearing, to test connectivity to the videoconference platform and to the online real-time transcriptions. For the efficient conduct of this test, Remote Participants are advised to replicate the technical conditions in which they will participate in the Hearing (location and equipment).

### **4. Connectivity**

25. The Parties shall ensure that each of their representatives planning to attend as Remote Participants will connect to the videoconference through a stable internet connection offering sufficient bandwidth and using a camera and microphone/headset of adequate quality.
26. If available, Remote Participants are advised to use a wired Ethernet connection instead of Wi-Fi. Remote Participants are also encouraged to keep a smartphone or tablet, having a 4G data connection and mobile hotspot functionality, available as a backup internet connection at all times during the Hearing.
27. The virtual platform will also offer a dial-in telephone audio connection as a backup option should a Remote Participant experience a temporary technical difficulty with a computer online connection.

## **5. Equipment and Set Up for Remote Participants**

28. For optimum sound quality, especially important for the audio recording, the transcription and the interpretation, Remote Participants that are also Active Participants are encouraged to use a headset which incorporates a microphone.
29. While not indispensable, Remote Participants are also encouraged to have at least two screens, and preferably three (it can be one device with multiple screens or a combination of devices including tablets) to facilitate simultaneous viewing of: (i) the video connection; (ii) the online real time transcripts; and (iii) documents.

## **6. Electronic Document Display**

30. During their interventions at the Hearing, each Party shall have the ability to electronically display documents (*e.g.*, PowerPoints presentations, demonstrative exhibits, exhibits and authorities) through the screen-sharing function of the video conference platform, and the displayed document will be visible to the In-Person Participants and the Remote Participants. Each Party will designate a person(s) in its own team (“**Party Document Manager**”) to manage the document display during the respective Party’s interventions at the Hearing.

## **7. Videoconference Etiquette for Remote Participants**

31. For optimum operation of the videoconference platform, the Parties are advised to keep the number of Remote Participants with video connection to a minimum. Remote Participants that are Passive Participants should preferably join the meeting through their computer but turning their video off.
32. Remote Participants shall use the “mute microphone” function when not speaking to reduce background noise and to avoid interference with the audio recording. The Operator serving as host of the videoconference shall have the ability to mute Remote Participants if needed to avoid background noise, under the Tribunal’s control.



33. Remote Participants are advised to join the Hearing from a location without background noise and with adequate lighting. Remote Participants joining via video shall avoid sitting with a window or source of light behind them.

**8. Technical Issues**

34. The Tribunal may temporarily or permanently suspend the Hearing if it deems the functioning of the videoconference system for Remote Participants to be inadequate or likely to prejudice the due process rights of either of the Parties or the integrity of the proceeding. Full recordings and real-time streamed transcripts will also be available to mitigate any prejudice arising from the temporary failure of a given Remote Participant to be able to follow the entire Hearing on the videoconference platform.

**ANNEX D - CONFIDENTIALITY PROTOCOL**

Before streaming the recording on the ICSID Website, and in order to ensure protected information is not disclosed, the recording will be edited considering the following:

- (i) At any time during the Hearing, the Parties may request that a part of the Hearing be held in private. To this effect, a Party shall orally alert the Tribunal each time it intends to refer to protected information during the Hearing.
- (ii) If the other Party has an objection to the request, it shall immediately alert the Tribunal, which shall hear the Parties and decide on the matter.
- (iii) Resumption of the non-confidential part of the hearing shall be orally requested by the same Party which made the confidentiality request or by the other Party, if it deems it necessary;
- (iv) The Tribunal shall rule on any dispute between the Parties in that respect;
- (v) Exceptionally, either Party may request that a specific section of the Hearing be considered confidential and therefore excluded from the recording after the allegedly “protected” information has been discussed, addressed, or shown by the Party (“ex-post confidentiality requests”). The Party making the ex-post confidentiality request shall be responsible for providing to the Tribunal, the Secretary of the Tribunal and the opposing Party the exact period of time which it seeks to be removed from the recording. If the opposing Party has an objection to such request, the Tribunal shall decide after hearing both Parties;
- (vi) The Parties will edit the video recording and the transcripts to exclude (a) any discussion between the Parties and the Tribunal regarding any request for the Hearing to be held in private, and (b) the information marked as “protected” throughout the Hearing and send them to ICSID for publication within 15 calendar days from receipt of the video recordings. The Tribunal will decide if there are any pending disagreements.
- (vii) The NDP will be invited to temporarily leave the hearing room when confidential information is about to be covered. The NDP will be invited back into the hearing room following resumption of the non-confidential part of the Hearing.

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**ANNEX E**  
**[TEMPLATE] LIST OF PARTICIPANTS<sup>5</sup>**

(1)	(2)	(3)	(4)	(5)	(6)	(7)
<b>TRIBUNAL</b>						
Break Out Room	Name	Mode	Type <sup>7</sup>	Affiliation	COVID-19 Vaccination [Y/N]	Place of Connection
T	[T] – José Emilio Nunes Pinto <a href="mailto:jpinto@jenp.com.br">jpinto@jenp.com.br</a>		A	President		
T	[T] – John Beechey <a href="mailto:jb@beecheyarbitration.com">jb@beecheyarbitration.com</a>		A	Arbitrator		
T	[T] – Marcelo Kohen <a href="mailto:marcelo.kohen@graduateinstitute.ch">marcelo.kohen@graduateinstitute.ch</a>		A	Arbitrator		

<b>ICSID SECRETARIAT</b>						
Break Out Room	Name	Mode	Type	Affiliation	COVID-19 Vaccination [Y/N]	Place of Connection
T	[T] – Marisa Planells Valero <a href="mailto:mplanellsvalero@worldbank.org">mplanellsvalero@worldbank.org</a>		A	Secretary of the Tribunal		

<b>CLAIMANT</b>						
Break Out Room	Name	Mode	Type	Affiliation	COVID-19 Vaccination [Y/N]	Place of Connection
	<i>Counsel:</i>					
C	[C] - Name and Last name [Email]					[C] Room # 1 [City]
C						[R] Office / Home [City]
	<i>Party Representatives:</i>					
C	[C] - Name and Last name [Email]					
C						

<sup>5</sup> Note: Columns (1) and (7) only applicable if remote modality.

<sup>6</sup> “IP” (In-Person Participant) / “RP” (Remote Participant)

<sup>7</sup> “A” (Active Participant) / “P” (Passive Participant).

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RESPONDENT						
Break Out Room <sup>8</sup>	Name	Mode	Type	Affiliation	COVID-19 Vaccination [Y/N]	Place of Connection
	<i>Counsel:</i>					
R	[R] - Name and Last name [Email]					[R] Room # 1 [City]
R						[R] Office / Home [City]
	<i>Party Representatives:</i>					
R	[R] - Name and Last name [Email]					
R						

COURT REPORTERS						
Break Out Room	Name	Mode	Type	Affiliation	COVID-19 Vaccination [Y/N]	Place of Connection
N/A	[CR] - Name and Last name [Email]		P			
N/A			P			
N/A			P			

*Amec Foster Wheeler USA Corporation, Process Consultants, Inc., and Joint Venture Foster Wheeler USA Corporation and Process Consultants, Inc. v. Republic of Colombia*  
 (ICSID Case No. ARB/19/34)  
 Procedural Order No. 2

N/A			P			
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<b>INTERPRETERS</b>						
<b>Break Out Room</b>	<b>Name</b>	<b>Mode</b>	<b>Type</b>	<b>Affiliation</b>	<b>COVID-19 Vaccination [Y/N]</b>	<b>Place of Connection</b>
N/A	[INT] - Name and Last name [Email]		P			
N/A			P			
N/A			P			
N/A			P			

<b>TECHNICAL SUPPORT</b>						
<b>Break Out Room</b>	<b>Name</b>	<b>Mode</b>	<b>Type</b>	<b>Affiliation</b>	<b>COVID-19 Vaccination [Y/N]</b>	<b>Place of Connection</b>
N/A	[TECH] - Name and Last name [Email]		P			
N/A			P			
N/A			P			
N/A			P			