

**IN THE MATTER OF AN ARBITRATION UNDER
1. THE TREATY BETWEEN THE GOVERNMENT OF THE UNITED
STATES OF AMERICA AND THE GOVERNMENT OF THE
REPUBLIC OF BOLIVIA CONCERNING THE ENCOURAGEMENT
AND RECIPROCAL PROTECTION OF INVESTMENT**

-and-

**2. THE AGREEMENT BETWEEN THE GOVERNMENT OF THE
UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN
IRELAND AND THE GOVERNMENT OF THE REPUBLIC OF
BOLIVIA FOR THE PROMOTION AND PROTECTION OF
INVESTMENTS**

-and-

THE UNCITRAL ARBITRATION RULES

-between-

**1. GUARACACHI AMERICA, INC. (U.S.A.)
2. RURELEC PLC (UNITED KINGDOM)**

(the "Claimants")

-and-

THE PLURINATIONAL STATE OF BOLIVIA

(the "Respondent," and together with the Claimants, the "Parties")

**TERMS OF APPOINTMENT AND
PROCEDURAL ORDER NO. 1**

The Tribunal and the Parties agree as follows:

1. Parties to the Arbitration

Claimant	Counsel for Claimant
<p>1. Guaracachi America, Inc (U.S.A) 32 Loockerman Square Suite L-100 Dover Delaware United States of America</p> <p>2. Rurelec Plc. (United Kingdom) Prince Consort House Fifth Floor 27-29 Albert Embankment London SE1 7TJ United Kingdom</p>	<p>Nigel Blackaby Lluís Paradell Caroline Richard Jeffery Commission Daniel Chertudi Freshfields Bruckhaus Deringer US LLP 701 Pennsylvania Ave. NW, Suite 600 Washington, DC 20004 United States Tel: +1 202 777 4500 Fax: +1 202 777 4555 E-mail: nigel.blackaby@freshfields.com lluis.paradell@freshfields.com caroline.richard@freshfields.com jeffrey.commission@freshfields.com daniel.chertudi@freshfields.com</p>
Respondent	Counsel for Respondent
<p>Plurinational State of Bolivia Office of the Attorney General Calle Martín Cárdenas N^o 109 El Alto, La Paz Bolivia</p>	<p>Hugo Raúl Montero Lara (Attorney General) Elizabeth Arismendi Chumacero (Deputy Defense Attorney and Legal Counsel to the State) Office of the Attorney General Calle Martín Cárdenas N^o 109 Zona Ferropetrol de El Alto, La Paz Bolivia Tel: +591 2 2118454 E-mail: hnontero@procuraduria.gob.bo earismendi@procuraduria.gob.bo mergueta@procuraduria.gob.bo ipennycook@procuraduria.gob.bo</p>

2. The Dispute and the Commencement of the Arbitration

- 2.1. According to the Claimants, a dispute has arisen between the Claimants and the Respondent under the Treaty between the Government of the United States of America and the Government of the Republic of Bolivia Concerning the Encouragement and Reciprocal Protection of Investment (the "US-Bolivia BIT") and the Agreement between the Government of the United Kingdom of Great Britain and

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Northern Ireland and the Government of the Republic of Bolivia for the Promotion and Protection of Investments (the “UK-Bolivia BIT,” and together with the US-Bolivia BIT, the “Treaties”).

- 2.2. On November 24, 2010, the Claimants sent a Notice of Arbitration to the Respondent pursuant to Article IX of the US-Bolivia BIT and Article 8 of the UK-Bolivia BIT. The Notice of Arbitration was received by the Respondent on November 30, 2010.

3. Representation

- 3.1. The Parties have designated their respective representatives listed above as being authorized to act on their behalf in these arbitration proceedings.
- 3.2. To the extent they have not already done so, the Parties shall confirm these designations by providing each other with copies of the powers of attorney granted to its representative(s).
- 3.3. In the event of any change by a Party in the designation or contact details of any of its representatives, that change shall be notified promptly in writing to opposing counsel, to each member of the Tribunal, and to the Permanent Court of Arbitration (the “PCA”).

4. Appointment of the Tribunal

- 4.1. By notification dated January 12, 2011, the Claimants appointed Mr. Manuel Conthe as the first arbitrator. The Respondent received the Claimants’ notification on January 21, 2011. Mr. Conthe’s contact details are as follows:

Mr. Manuel Conthe
Bird & Bird
Jorge Juan, 8, 1º
28001 Madrid
España
Tel: +34 (91) 790 60 27
E-mail: manuel.conthe@twobirds.com

- 4.2. By letter dated April 28, 2011, the Respondent appointed Dr. Raúl Emilio Vinuesa as the second arbitrator. Dr. Vinuesa’s contact details are as follows:

Dr. Raúl Emilio Vinuesa
Vinuesa & Asociados
Alsina 2360
San Isidro (1642)
Buenos Aires - Argentina
Tel: +54 11 47236664
Fax: +54 11 47236780
E-mail: revinu@fibertel.com.ar

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- 4.3. By letter dated August 8, 2011, H.E. Judge Gilbert Guillaume, acting as the appointing authority in this matter, appointed Dr. José Miguel Júdice as the presiding arbitrator. Dr. Júdice's contact details are as follows:

Dr. José Miguel Júdice
PLMJ - AM Pereira Sáragga Leal Oliveira Martins Júdice e
Associados
Edifício Eurolex
Avenida da Liberdade 224
Lisbon 1250-148
Portugal
E-mail: josemiguel.judice@plmj.pt
Fax: + 351 21 319 7345
Tel: + 351 21 319 7351

- 4.4. The Parties confirm that the members of the Tribunal have been validly appointed in accordance with the Treaties and the UNCITRAL Rules (as defined in section 5 below).
- 4.5. The members of the Tribunal are and shall remain impartial and independent of the Parties.
- 4.6. Each of the members of the Tribunal confirms that he has confirmed, to the best of his knowledge, the inexistence of any circumstances likely to give rise to justifiable doubts as to his impartiality or independence and that he will promptly disclose any such circumstances that may arise in the future.
- 4.7. The Parties confirm that they have no objection to the appointment of any member of the Tribunal on the grounds of conflict of interest or lack of independence or impartiality in respect of matters known to them at the date of signature of these Terms of Appointment, without prejudice to the application of Article 12 of the UNCITRAL Rules to matters that are unknown as of the execution date of the present Terms of Appointment.

5. Applicable Arbitration Rules

- 5.1. The Arbitration Rules of the United Nations Commission on International Trade Law (the "UNCITRAL Rules") in force at the date of the Notice of Arbitration shall govern the proceedings.
- 5.2. Pursuant to designation by the Secretary-General of the PCA, H.E. Judge Gilbert Guillaume shall act as the appointing authority in this matter for all purposes under the UNCITRAL Rules.
- 5.3. For issues not covered by the UNCITRAL Rules, and pursuant to Article 17 of the UNCITRAL Rules, the Tribunal shall have the widest discretion to discharge its duties, provided that the Parties are treated fairly and impartially and that at any stage of the proceedings each Party is given a full opportunity to present its case and deal with the case of its opponent.

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5.4. Procedural decisions shall be issued by the presiding arbitrator after consultation with his co-arbitrators or, in cases of urgency or if a co-arbitrator cannot be reached, by him alone.

6. Place of Proceedings

6.1. The Hague, The Netherlands was agreed as the place (and legal seat) of the arbitral proceedings pursuant to Article 18 of the UNCITRAL Rules. Hearings may be held at other locations if so ordered by the Tribunal, after consultation with the Parties without prejudice to the establishment of the legal seat as The Hague, The Netherlands. The Tribunal may hold meetings or hearings by telephone or videoconference after consultation with the Parties. Deliberations and internal meetings of the members of the Tribunal may be held at other locations considered appropriate by the Tribunal, including by video or telephone conference without prejudice to the establishment of the legal seat as The Hague, The Netherlands

7. Case Administration

7.1. The Parties agree that the PCA shall act as administering authority (the "Administering Authority") and administer the arbitral proceedings on the following terms:

7.1.1. The Administering Authority shall designate a staff member of the International Bureau to act as Registrar and Secretary to the Tribunal.

7.1.2. The Administering Authority shall maintain an archive of filings of correspondence and submissions.

7.1.3. The Administering Authority shall manage Party deposits to cover the costs of the arbitration, subject to the Tribunal's supervision.

7.1.4. If needed, the Administering Authority shall make its hearing and meeting rooms in the Peace Palace in The Hague or elsewhere available to the Parties and the Tribunal at no charge. Costs of catering, court reporting, or other technical support associated with hearings or meetings at the Peace Palace or elsewhere shall be borne by the Parties.

7.1.5. Upon request, the Administering Authority shall carry out administrative tasks on behalf of the Tribunal, the primary purpose of which would be to reduce the costs that would otherwise be incurred by the Tribunal carrying out purely administrative tasks. Work carried out by the Administering Authority shall be billed in accordance with the Administering Authority's schedule of fees.

7.1.6. The Administering Authority's fees and expenses shall be paid in the same manner as the Tribunal's fees and expenses.

7.2. The contact details of the Administering Authority are as follows:

Permanent Court of Arbitration

Attn: Mr. Martin Doe

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Peace Palace
Carnegieplein 2
2517 KJ The Hague
The Netherlands
Tel: +31 70 302 4140
Fax: +31 70 302 4167
E-mail: mdoe@pca-cpa.org
bureau@pca-cpa.org

- 7.3. The appointment of the PCA as Registry shall not affect the determination of the place of arbitration, the applicable procedural rules, or other aspects of the arbitral proceedings, which shall remain subject to these Terms of Appointment and Procedural Order, any agreement between the Parties, and any determinations by the Tribunal.

8. Communications

- 8.1. The Parties shall not engage in any oral or written communications with any member of the Tribunal *ex parte* in connection with the subject-matter of the arbitration.
- 8.2. The Parties shall send all communications for the attention of the Tribunal simultaneously to opposing counsel, to each member of the Tribunal, and to the Administering Authority to the email addresses set out in this Order.
- 8.3. A hard copy of all communications exceeding 30 pages (including all attached documents) shall also be sent by courier to the addresses indicated above for (i) Nigel Blackaby for the Claimants, (ii) the Attorney General of Bolivia, to the attention of the Attorney General of the State and the Deputy Attorney General for the Defense and Legal Representation of the State), (iii) to the Administering Authority, and (iv) to the members of the Tribunal.
- 8.4. The Parties shall send copies of correspondence between them to the Tribunal and to the Administering Authority only if such correspondence relates to a matter where the Tribunal is required to take action or to abstain from acting or if it gives notice of a relevant event that the Tribunal and the Administering Authority should be apprised of.

9. Procedural Languages and Translation

- 9.1. The Parties agreed that the proceedings shall be conducted in English and Spanish. The Parties may submit their pleadings, witness statements and expert reports in either language, with a courtesy translation to be submitted within 21 days of the date of the filing of the pleading.
- 9.2. All documentary evidence shall be submitted in its original language, without translation.
- 9.3. All oral proceedings, including witness and expert testimony at the hearing, will be translated simultaneously from Spanish to English and from English to Spanish.

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- 9.4. Routine communications, such as the transmittal of letters, may be sent in either English or Spanish without the need for translation.
- 9.5. The award, orders and other decisions or communications of the Tribunal or of the PCA will be drafted in the two languages of the arbitration.

10. Deposit

- 10.1. In order to assure sufficient funds for the Tribunal's fees and expenses, the Parties shall establish an initial deposit of EUR 100,000 (EUR 50,000 from each side), to be deposited, within the reasonable time (which will be determined by the Tribunal following consultation with the Parties) required for the State to dispatch funds according to procedure, by wire transfer to the following Administering Authority account:

Bank:	ING Bank N.V. Schenkkade 65 2519 AS The Hague The Netherlands
Account number:	68.55.45.369
IBAN:	NL71 INGB 0685 5453 69
BIC:	INGBNL2A
Name of beneficiary:	Permanent Court of Arbitration
Reference:	GUA-BO

- 10.2. The Administering Authority will review the adequacy of the deposit from time to time and, at the request of the Tribunal, may invite the Parties to make supplementary deposits.
- 10.3. Any transfer fees or other bank charges will be charged by the Administering Authority to the deposit. No interest will be paid on the deposit.
- 10.4. The unused balance held on deposit at the end of the arbitration shall be returned to the Parties as directed by the Tribunal.

11. Tribunal's Fees and Expenses

- 11.1. Each member of the Tribunal shall be remunerated at the rate specified in the current ICSID Schedule of Fees plus VAT, if applicable, for all time spent in connection with the arbitration. Time spent on travel will be charged at 50% of this rate.
- 11.2. The arbitrators shall be only remunerated in the amount of 50% of their fees, for each day reserved for a hearing or meeting, based on an eight hour day, in respect of any hearing or other meeting for which they had to reserve more than one day, whenever that hearing or meeting is cancelled or postponed by more than one week, at the request of either one or both Parties, without a previous four weeks notice from the day when such hearing or meeting was scheduled to start. If the cancellation or postponement materialized once an arbitrator has already started his travelling, the rule set out in article 11.1 in regard of travels will also apply.

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- 11.3. Members of the Tribunal shall be reimbursed for all charges reasonably incurred in connection with the arbitration, including but not limited to travel expenses, telephone, fax, delivery, printing, and other expenses.
- 11.4. Members of the Tribunal may bill the reimbursement of charges in which they incur, and may submit to the Administering Authority periodic bills in respect of fees and charges.
- 11.5. All payments to the Tribunal shall be made from the deposit administered by the Administering Authority.

12. Pleadings: Number, Sequence, Time Limits

- 12.1. The Claimant shall file its Statement of Claim on 1 March 2012.
- 12.2. The Respondent shall file its Statement of Defence, pursuant to the UNCITRAL Rules, on 1 August 2012.
- 12.3. The Claimant shall file its Reply, in accordance with Article 24 of the UNCITRAL Rules, on 1 November 2012.
- 12.4. The Respondent shall file its Rejoinder, in accordance with Article 24 of the UNCITRAL Rules, on 1 February 2013.
- 12.5. Each Party shall include in the above written submissions all allegations of fact and law in support of its claims and annex to such submissions all signed witness statements, signed expert reports, factual exhibits and legal authorities upon which it relies. The Reply and Rejoinder may only contain evidence that is responsive to the other Party's last submission or evidence of new facts.
- 12.6. In accordance with section 8 above: (a) the text of the above submissions, witness statements and expert reports shall be submitted by e-mail without exhibits, legal authorities or annexes on the dates set out above to the other Party, to the Tribunal and to the PCA; (b) the Parties shall send hard copies and copies in electronic form via memory device (such as USB stick or DVD) of the submissions, with all witness statements, expert reports, annexes, exhibits and legal authorities through courier service the following day and provide proof of delivery to such service by email to the other Party, to each member of the Tribunal and the PCA.
- 12.7. An oral hearing will be held from 1 to 10 April 2013 (exclusive of the weekend) at which the Parties will present their experts and witnesses, and make oral submissions.
- 12.8. The holding of a pre-hearing conference call shall be at the discretion of the Tribunal. At the end of the hearing the Tribunal shall decide whether to order post-hearing briefs.

13. Fact and Expert Witnesses

- 13.1. Any person may present evidence as a witness, including a Party or its officials, officers, employees or other representatives. For each witness, a sworn or affirmed witness statement shall be submitted to the Tribunal in accordance with the schedule

set out above. Testimony of fact and expert witnesses which is not produced with the relevant written submission shall not be admissible absent a showing of reasonable cause for the omission, as determined by the Tribunal.

- 13.2. By 28 February 2013, each Party shall provide the opposing Party, with a copy to the Tribunal: (a) 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; and (b) as the case may be, a request for the Tribunal to permit the appearance at the hearing of witnesses whose statement or report has been submitted by that Party. The Tribunal shall rule on any outstanding issue in connection with the appearance of witnesses by, at or soon after the pre-hearing conference call.
- 13.3. Failure to make a witness available for cross-examination without good cause shall result in the witness statement or expert report being struck from the record. If a witness is unable to appear personally at the final hearing for reasons of health or force majeure, the Tribunal may permit alternative arrangements (such as videoconference facilities).
- 13.4. Witnesses shall be heard on affirmation.
- 13.5. Witnesses giving oral evidence shall first be asked to confirm their statement or report. Subject to limited examination-in-chief, each witness shall then be examined by counsel for the opposing Party (“cross-examination”), and subsequently by counsel for the Party offering the witness, with respect to matters that arose during cross-examination (“re-direct examination”). The Tribunal shall have the right to pose questions during or after the examination of any witness.
- 13.6. The Tribunal shall at all times have control over the oral proceedings, including the right to limit or deny the right of a Party to examine a witness when it appears to the Tribunal that such evidence is not likely to serve any further relevant purpose.
- 13.7. A fact witness, even if also a representative of a Party, shall not be present in the hearing room during opening statements and 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. The Parties’ representatives that are also witnesses will be cross-examined before all other witnesses. These conditions do not apply to expert witnesses.
- 13.8. Counsel may meet witnesses and potential witnesses to establish the facts, assist with the preparation of witness statements and oral examinations.

14 Production of Documents

- 14.1 Documentary evidence of a Party that is not filed by the dates set out in Section 12 above shall not be admitted into the documentary record of the case absent a showing of reasonable cause for the omission, as determined by the Tribunal, or unless produced upon an order from the Tribunal or following a request by the other Party.

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- 14.2 Copies of documents shall have the same evidentiary weight as originals, unless the other Party promptly challenges their authenticity. Exhibits shall be numbered continuously in all submissions. Exhibits submitted by Claimants and Respondents shall be numbered respectively as follows "C-1, C-2, ..." and "R-1, R-2, ...".
- 14.3 The IBA Rules on the Taking of Evidence in International Commercial Arbitration shall be used as non-mandatory guidelines by the Tribunal and the Parties insofar as they are not in conflict with any applicable mandatory provisions of law determined to be applicable to the case by the Parties or by the Arbitral Tribunal.
- 14.4 The Parties may request documents from each other after the Parties have exchanged their Statements of Claim and Defense. Any request shall identify a specific document or a narrow and specific category of documents and establish the relevance of each document or category of documents to the issues in dispute. The Parties may refer any dispute to the Tribunal.
- 14.5 The Tribunal may, in its discretion, order one Party to disclose to the other Party documents or limited categories of documents. In the exercise of its discretion, the Tribunal will have regard to the specificity of the request, the relevance of the requested documents, the fact that they are in the possession, power or control of the Party from whom they are requested, the legitimate interests of the opposing Party, including any applicable privileges, and all surrounding circumstances. The Tribunal shall rule on any outstanding issue in connection with the disclosure of documents at least two months prior to the Final Hearing.
- 14.6 Documents so disclosed pursuant to the above provisions need not be communicated to the Tribunal and shall not be considered on record unless and until the requesting Party annexes them to one of the submissions set out at section 12 above or seeks leave from the Tribunal to incorporate them at a later stage.
- 14.7 In addition, the Tribunal may of its own motion order a Party to produce documents at any time.

15 Records of Meetings and Hearings

- 15.1 The Parties agree that for procedural meetings, only minutes in both languages will be required, and for hearings, tape recordings and transcripts in both languages will be necessary.

16 Transparency of the Arbitral Proceedings

- 16.1 Subject to paragraphs 16.2 and 16.3, the Parties agree to make the following documents available to the public through publication by the Administering Authority to the PCA website, as well as through the Parties' respective websites, should they so desire:

16.1.1. The Notice of Arbitration;

16.1.2. Arbitrator designations and statements of independence;

16.1.3. Orders, awards and decisions of the Tribunal;

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16.1.4. Memorials, briefs and legal submissions presented by the Parties; and

16.1.5. Minutes and transcripts of hearings of the Tribunal.

16.2 The Tribunal shall conduct hearings open to the public and shall determine, in consultation with the Parties, the appropriate logistical arrangements no later than one month prior to any hearing. However, any Party that intends to use information designated as protected information in a hearing shall so advise the Tribunal. The Tribunal shall make appropriate arrangements to prevent its disclosure.

16.3 Any protected information that is submitted to the tribunal shall be protected from disclosure in accordance with the following procedures:

16.3.1 Subject to subparagraph 16.3.4, neither the Parties nor the Tribunal shall disclose to the public any protected information where the disputing party that provided the information clearly designates it in accordance with subparagraph 16.3.2;

16.3.2 Any Party considering/claiming that certain information constitutes protected information shall clearly designate the information at the time it is submitted to the Tribunal;

16.3.3 A Party shall, at the same time that it submits a document containing information claimed to be protected information, submit a redacted version of the document that does not contain the information. Only the redacted version shall be made public in accordance with paragraph 16.1; and

16.3.4 The Tribunal shall decide any objection regarding the designation of information claimed to be protected information. If the Tribunal determines that such information was not properly designated, the Party that submitted the information may (i) withdraw all or part of its submission containing such information, or (ii) agree to resubmit complete and redacted documents with corrected designations in accordance with the Tribunal's determination and subparagraph 16.3.3. In either case, the other Party shall, whenever necessary, resubmit complete and redacted documents which either remove the information withdrawn under (i) by the Party that first submitted the information or redesignate the information consistent with the designation under (ii) of the Party that first submitted the information.

16.4. Nothing in this Section requires a Party to withhold from the public information required to be disclosed by any national law.

17 Immunity from Suit

17.1 The Parties shall not seek to make the Tribunal or any of its members liable in respect of any act or omission in connection with any matter related to the arbitration.

18 Signature of the Terms of Appointment

18.1 These Terms of Appointment may be signed in counterparts.

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[Signature page follows]

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Signed in Washington, DC, USA
this 11 day of November 2011

Freshfields Bruckhaus Deringer

1. Guaracachi America, Inc. (U.S.A.)
2. Rurelec plc (United Kingdom)

Signed in El Alto, Bolivia
this 23 day of November 2011



Plurinational State of Bolivia

Signed in Madrid
this 7th day of December 2011

Mr. Manuel Conthe

Signed in Buenos Aires
this 1 day of December 2011

Dr. Raúl Emilio Vinuesa

Signed in Los
this 9 day of December 2011

Dr. José Miguel Júdece
Presiding Arbitrator