

PCA Case No. 2023-22

**IN THE MATTER OF AN ARBITRATION UNDER THE UNITED STATES – PERU TRADE
PROMOTION AGREEMENT, ENTERED INTO FORCE ON 1 FEBRUARY 2009**

- and -

**THE ARBITRATION RULES OF THE UNITED NATIONS COMMISSION ON
INTERNATIONAL TRADE LAW, AS REVISED IN 2013 (THE “UNCITRAL RULES”)**

- between -

BACILIO AMORRORTU (USA)

(the “Claimant”)

- and -

THE REPUBLIC OF PERU

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

PROCEDURAL ORDER NO. 8

(Claimant’s Applications to Admit Documents and Compel Production)

Tribunal

Hon. Justice Mr. David Unterhalter (Presiding Arbitrator)
Professor Bryan Schwartz
Mr. Hugo Perezcano Díaz

Registry

Permanent Court of Arbitration

21 August 2025

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I. PROCEDURAL BACKGROUND

1. On 29 August 2024, the Tribunal issued Procedural Order No. 4 (Decision on Document Production) (“**PO4**”), whereby it ruled on the Parties’ requests for document production (“**RFPs**”) set forth in the Redfern Schedules they had filed with the Tribunal on 9 July 2024.
2. On 6 February 2025, the Tribunal issued Procedural Order No. 5 (Second Decision on Document Production) (“**PO5**”), whereby it ruled on the Parties’ RFPs left outstanding in PO4. Among other things, the Tribunal ordered production in relation to the Claimant’s RFPs Nos. 1, 2 (as reframed), 3 (as reframed), 4 (as reframed), 8, and 9 (which was granted only in part), subject to a confidentiality regime being agreed between the Parties.
3. On 31 March 2025, the Tribunal issued Procedural Order No. 6 (First Confidentiality Agreement) (“**PO6**”), whereby it entered as an order, at the Parties’ request, their First Confidentiality Agreement – which “in essence replicates the Tribunal’s instructions as set out in [PO5]”.¹
4. On 16 May 2025, the Claimant filed an application requesting (i) “the introduction and admission into the record of key responsive documents that have been produced, and to be allowed to share them with specific persons for the purpose of seeking instructions or witness/expert testimony”; and (ii) “that documents incorporated by reference in a number of produced documents be immediately produced for the sake of integration of the evidence” (the “**Claimant’s First Application**”).
5. On 23 May 2025, the Respondent provided its comments on the Claimant’s First Application (the “**Respondent’s First Response**”).
6. On 29 May 2025, the Claimant sought the Tribunal’s leave to respond to the Respondent’s First Response.
7. On 30 May 2025, the Tribunal (i) requested the Claimant to identify particular aspects of the Respondent’s First Response he intended to address in any prospective response; and (ii) clarified that it had not, at that stage, granted leave to the Claimant to submit a response.
8. On 2 June 2025, the Claimant identified eight questions he intended to raise in his response to the Respondent’s First Response. He also indicated that his “Second Application to Admit and Compel ... is forthcoming and will be addressed separately.”
9. On 5 June 2025, the Tribunal issued Procedural Order No. 7 (Second Confidentiality Agreement) (“**PO7**”), whereby it entered as an order the Second Confidentiality Agreement executed by the Parties – which “in essence replicates the Tribunal’s instructions as set out in [PO5]”.²
10. On the same date, the Tribunal issued the following directions:

The Tribunal has taken note of the Claimant’s indication that it intends to file a Second Application to Admit and Compel (see Claimant’s communication of 2 June 2025, item 8). The Respondent has also confirmed that “all of the documents located by Peru that are responsive to Claimant’s RfP, as granted by Procedural Order No. 5,

¹ See PO6, para. 6.

² See PO7, para. 4.

have been reviewed by Claimant's counsel" (see Respondent's Letter of 23 May 2025, p. 2). In the circumstances, the Tribunal believes that every effort should be made to complete the document production phase and fix a revised procedural calendar leading to a hearing in January 2026 as soon as possible.

Accordingly, the Tribunal directs that the Claimant file its Second Application to Admit and Compel no later than Friday, 13 June 2025. In principle, the Tribunal shall not allow any further applications to compel production or admit documents arising from the Tribunal's production orders in Procedural Orders Nos. 4 and 5. The Claimant may also address items 1-7 of its 2 June 2025 communication in its Second Application to Admit and Compel.

11. On 13 June 2025, the Claimant filed his Second Application to Admit and Compel (the "**Claimant's Second Application**").
12. On 14 June 2025, the Respondent requested the Tribunal's leave to submit a response to the Claimant's Second Application, which the Tribunal granted on 16 June 2025.
13. On 23 June 2025, the Respondent filed its response to the Claimant's Second Application (the "**Respondent's Second Response**").

II. THE PARTIES' POSITIONS

14. The Claimant's First and Second Applications encompass four distinct requests:
 - a. A request for the admission into the record of eight documents produced by the Respondent in accordance with PO5 (the "**PO5 Documents**");
 - b. A request for the "complete production" of one of the PO5 Documents – DOC-OP5-1-002 – which, according to the Respondent, [REDACTED]
 - c. A request for the Tribunal to compel production of "a series of documents expressly referenced in [the PO5 Documents] for the sake of the integrity of the evidence";⁴ and
 - d. A request that the Respondent either complete the outstanding production in accordance with PO5 or, in the alternative, provide certain clarifications concerning whether the requested documents exist or have already been fully produced.
15. The Tribunal addresses each of these requests in turn.

³ Respondent's Second Response, pp. 3-4.

⁴ Claimant's First Application, p. 2.

1. The Claimant's Request for the Admission into the Record of the PO5 Documents

(i) The Claimant's Position

16. The Claimant requests the admission into the record of the eight PO5 Documents, namely:⁵
- a. DOC-OP5-1-001, Attorney's eyes only (produced in response to Claimant's RFP No. 1);
 - b. DOC-OP5-1-002, Attorney's eyes only (produced in response to Claimant's RFP No. 1);
 - c. DOC-OP5-2-003, Attorneys' eyes only (produced in response to Claimant's RFP No. 2);
 - d. DOC-OP5-4-001, Attorneys' eyes only (produced in response to Claimant's RFP No. 4);
 - e. DOC-OP5-4-002, Attorneys' eyes only (produced in response to Claimant's RFP No. 4);
 - f. DOC-OP5-4-003, Attorneys' eyes only (produced in response to Claimant's RFP No. 4);
 - g. DOC-OP5-4-005, Attorney's eyes only (produced in response to Claimant's RFP No. 4); and
 - h. DOC-OP5-4-006, Attorney's eyes only (produced in response to Claimant's RFP No. 4).⁶
17. Recalling that only four members of Claimant's counsel's team have been granted access to the PO5 Documents thus far,⁷ the Claimant requests permission to share these documents with specific persons for the purposes of seeking instructions or witness/expert testimony if they are admitted into the record. At this stage, the Claimant requests permission to access the PO5 Documents for himself and for two of his experts, Ms Monica Yaya and Mr Anibal Quiroga.⁸ However, the Claimant reserves the right to seek leave to share the PO5 Documents with additional individuals "if necessary, relevant, and material to his case."⁹

⁵ Claimant's First Application, pp. 2-7, 12, 14; Claimant's Second Application, pp. 2-5.

⁶ See Claimant's First Application, p. 14; Claimant's Second Application, p. 9.

⁷ See Tribunal's Second Letter to the Parties, 13 March 2025.

⁸ Claimant's Second Application, pp. 2, 8.

⁹ Claimant's Second Application, p. 8.

(ii) The Respondent's Position

18. The Respondent does not object to the Claimant's request to admit the PO5 Documents into the record, provided three conditions are fulfilled.¹⁰
19. First, the Respondent requests that the Claimant (i) identify the individuals that will be granted access to the PO5 Documents (the "**Authorized Persons**"); (ii) provide a sufficiently detailed explanation for why each Authorized Person requires access; and (iii) ensure that all Authorized Persons sign a confidentiality agreement prior to accessing the PO5 Documents. The Respondent reserves the right to object to any individual proposed as an Authorized Person by the Claimant.¹¹
20. In this respect, the Respondent acknowledges that, as circumstances evolve, a party may need to make certain requests to preserve its right to present its case, and does not suggest that the Claimant should forego his rights in this respect. The Respondent notes, however, that the Claimant "has made no effort to explain why he and his two experts" require full access to the PO5 Documents.¹²
21. Second, the Respondent requests that Claimant's counsel implement a security protocol to ensure that only Authorized Persons access or view the PO5 Documents, explaining "what the protocol consists of with sufficient detail."¹³ In addition, the Respondent requests that (i) the security protocol extend beyond Claimant's counsel internal system; and (ii) Claimant's counsel undertake to maintain the security protocol in place and make all necessary efforts to ensure that the PO5 Documents remain strictly confidential.¹⁴
22. In addition, the Respondent notes that the Claimant has not indicated whether his counsel and the additional individuals for whom he seeks clearance to access the PO5 Documents would agree to sign a confidentiality undertaking; nor does he address the security measures to be implemented to safeguard the confidentiality of the PO5 Documents.¹⁵
23. Third, once the PO5 Documents are admitted into the record, the Respondent requests that the Tribunal issue a confidentiality regime as a procedural order in the terms set out in its First Response.¹⁶
24. Lastly, the Respondent states that its agreement to the admission of the PO5 Documents into the record shall not be construed as an endorsement of the Claimant's characterization of said documents or their purported relevance for his claims.¹⁷ The Respondent further reserves the right

¹⁰ Respondent's First Response, pp. 3, 5; Respondent's Second Response, pp. 2, 3, note 19.

¹¹ Respondent's First Response, p. 3.

¹² Respondent's Second Response, p. 14.

¹³ Respondent's First Response, p. 3.

¹⁴ Respondent's First Response, p. 3.

¹⁵ Respondent's Second Response, p. 14.

¹⁶ Respondent's First Response, p. 4.

¹⁷ Respondent's First Response, pp. 4-5; Respondent's Second Response, note 19.

to “correct [the Claimant’s] arguments and mischaracterization” of the PO5 Documents in subsequent phases of these proceedings.¹⁸

(iii) The Tribunal’s Analysis

25. The Tribunal notes that the Respondent does not object to the admission into the record of the PO5 Documents, contingent upon the implementation of suitable confidentiality safeguards.¹⁹
26. In this connection, the Tribunal recalls that the PO5 Documents contain sensitive information concerning an ongoing investigation and are currently under seal. The Tribunal thus determined in PO5 that exceptional measures are required in order properly to address the risk of undue disclosure in the circumstances of this case.²⁰ This was the case at the time of production and remains so now, as the Claimant moves for the admission of the PO5 Documents into the record.
27. Accordingly, the Tribunal directs the Parties to confer and attempt to seek agreement on the terms of a confidentiality protocol governing the disclosure, handing, and use of the PO5 Documents in the context of these proceedings. They should revert to the Tribunal on this matter no later than **Thursday, 28 August 2025**. The Tribunal shall permit the filing of the PO5 Documents into the record once an appropriate confidentiality protocol is in place.
28. Among other measures that may be deemed necessary, the Tribunal is of the view that an appropriate confidentiality protocol should:
 - a. Provide for the designation of the PO5 Documents as confidential material;
 - b. Identify the Authorized Persons;
 - c. Ensure that access to the PO5 Documents is limited to the Authorized Persons;
 - d. Require all Authorized Persons to keep the PO5 Documents confidential;
 - e. Require all of Claimant’s representatives and experts designated as Authorized Persons to sign an appropriate confidentiality undertaking;
 - f. Establish procedures governing the use of the PO5 Documents in the arbitration, whether as exhibits accompanying written pleadings or presented during a hearing or procedural meeting, in order to prevent undue disclosure;
 - g. Remain consistent with the procedures for the publication of case-related documents set forth in Section 10 (Transparency) of Procedural Order No. 1, dated 7 June 2023;
 - h. Establish procedures for the destruction of any copies of the PO5 Documents, as well as any documents referencing the PO5 Documents, after the issuance of the Tribunal’s final award;

¹⁸ Respondent’s Second Response, pp. 3, 13.

¹⁹ Respondent’s First Response, pp. 3-4; Respondent’s Second Response, pp. 2, 3, note 19.

²⁰ Procedural Order No. 5, 6 February 2025, paras. 42, 60, 81.

- i. Remain consistent with the provisions of paragraph 42 of PO5, as well as PO6 and PO7; and
- j. Be suitable to govern the confidentiality of certain additional documents the Respondent is required to produce to the Claimant in accordance with the present Procedural Order, as more fully explained below.

2. The Claimant's Request for the Complete Production of the Outlook Calendar

(i) The Claimant's Position

29. The Respondent produced a copy of [REDACTED] – one of the PO5 Documents – in response to RFP No. 1.²¹ At this juncture, the Claimant requests the “complete production” of the [REDACTED]. He clarifies that this is not a new request, but rather a request for “legible and complete production.”²³
30. The Claimant describes the [REDACTED] noting that it “has information that cannot be fully read or understood because it is consistently [cut off].”²⁵ In the Claimant's submission, [REDACTED]
[REDACTED]²⁶
31. According to the Claimant, [REDACTED]
[REDACTED]

(ii) The Respondent's Position

32. The Respondent objects to the Claimant's request for the complete production of [REDACTED]
[REDACTED]²⁸
33. According to the Respondent, [REDACTED]
[REDACTED]

²¹ Claimant's Second Application, p. 3. As set out in PO4, by its RFP No. 1 the Claimant requested the following documents: “Full copies of all personal journals or agendas belonging to José Graña, Hernando Graña, and Nadine Heredia, in the possession, custody, or control of the Lava Jato Special Team, and which memorialize, or relate to, any meetings between Graña y Montero and Nadine Heredia (including, but not limited to, those held at the Government Palace) during the years 2014 and 2015.”

²² Claimant's Second Application, pp. 3-4, 10.

²³ Claimant's Second Application, pp. 3-4.

²⁴ Claimant's Second Application, p. 2.

²⁵ Claimant's Second Application, p. 3.

²⁶ Claimant's Second Application, p. 3.

²⁷ Claimant's Second Application, p. 3.

²⁸ Respondent's Second Response, pp. 3-7.

34. In the Respondent's view, the Claimant's request under the present heading constitutes a new RFP.³² In addition, the Respondent objects to this request on the basis that the version of [REDACTED] it produced (i) is "perfectly legible"; (ii) [REDACTED]

35. Second, the Respondent argues that [REDACTED] fall outside the scope of the Claimant's RFP No. 1, which is expressly limited to personal journals or agendas of Mr. José Graña, Mr. Hernando Graña, and Ms. Nadine Heredia that "memorialize, or relate to, any meetings between Graña y Montero and Nadine Heredia."³⁴ According to the Respondent,

(iii) The Tribunal's Analysis

36. The Tribunal understands that the [REDACTED] to the Claimant in accordance with PO5. At this juncture, the Claimant requests the production of a complete version of the [REDACTED] “with full legible invitees, subject lines, and locations”.³⁶

37. The Respondent, in turn, asserts that the copy of [REDACTED] responsive to Claimant's RFP No. 1."³⁷

³⁷ Respondent's Second Response, p. 5.

38. In sum, therefore, the Respondent represents that [REDACTED]. The Tribunal takes note of the Respondent's indication and shall not issue further directions on this matter in this Procedural Order. The Parties are invited to confer so as to resolve the question as to why [REDACTED], and report the result of their efforts to the Tribunal.

3. The Claimant's Request to Compel Production of Documents Allegedly Referenced in the PO5 Documents

(i) The Claimant's Position

39. The Claimant requests the Tribunal to "compel" the production of the following eleven documents, which, in his submission, are expressly referenced in the PO5 Documents and should be produced "for the sake of the integrity of the evidence".³⁸
- a. The [REDACTED] related to the contact group in DOC-OP5-1-001 (in relation to DOC-OP5-1-001 and RFP No. 1);
 - b. Related correspondence discussing scheduling, or otherwise addressing the agenda further (in relation to DOC-OP5-1-001 and RFP No. 1);
 - c. Attachment 39 (in relation to DOC-OP5-2-003 and RFP No. 2);
 - d. Doc 160 and folios 5043 through and including 5050 (in relation to DOC-OP5-4-001 and RFP No. 4);
 - e. Doc 158 and folios 1340 through and including 1429 (in relation to DOC-OP5-4-001 and RFP No. 4);
 - f. Doc 159 and folios 356 through and including 376 (in relation to DOC-OP5-4-001 and RFP No. 4);
 - g. Doc 189 and folios 2569 through 2572 (in relation to DOC-OP5-4-001 and RFP No. 4);
 - h. [REDACTED] and related Annex G (in relation to DOC-OP5-4-001 and RFP No. 4);
 - i. Doc 207 folios 4308 a 4353 (in relation to DOC-OP5-4-001 and RFP No. 4);
 - j. [REDACTED] (in relation to DOC-OP5-4-001 and RFP No. 4); and
 - k. The denial letter from Perupetro to Upland reference no. LPI-Perupetro-001-2014/022 and any follow ups on decisions made from Upland's appeal (in relation to DOC-OP5-8-001 and RFP No. 8).
40. As more fully detailed below, the Claimant considers that all of the above documents are relevant and material to the outcome of the dispute. He states that production is necessary to afford him a

³⁸ Claimant's First Application, pp. 3-4, 7-12, 14-15; Claimant's Second Application, p. 9.

reasonable opportunity to present his case in accordance with Article 17(1) of the UNCITRAL Rules.³⁹

(ii) The Respondent's Position

41. The Respondent states that it has produced “all responsive documents to Claimant’s RFP that have been located pursuant to PO4 and PO5.”⁴⁰ In the Respondent’s view, the Claimant’s application to compel production of new documents (i) “violates the terms of PO5”, which did not contemplate a second document production phase; (ii) is “an attempt to upend the natural progression of the proceeding and secure additional time and elements with which to present what is evidently a meritless claim”; and (iii) “seeks a third bite at the apple” after the Claimant was afforded two opportunities to submit requests for document production, both before and after the issuance of PO4.⁴¹
42. Moreover, the Respondent rejects the Claimant’s unsupported assertion that his request is made to preserve the integrity of the evidence.⁴² In the Respondent’s view, the fact that the PO5 Documents refer to other documents falling outside the scope of the Claimant’s RFPs and the Tribunal’s production orders does not justify their production.⁴³

(iii) The Tribunal's Analysis

43. At the outset, the Tribunal recalls the importance of bringing finality to the document production phase of these proceedings, which, having extended for over a year, has necessitated multiple amendments to the procedural calendar and the postponement of the hearing. The Tribunal reiterates that every effort should be made to complete the document production phase and fix a revised procedural calendar as soon as possible.
44. The Tribunal also recalls that the Claimant had an opportunity to request the production of documents at the time of filing its Redfern Schedule in July 2024.⁴⁴ After ruling on the Parties’ requests for production in PO4, the Claimant was granted the opportunity to reframe and re-submit RFPs Nos. 2, 3, 4, and 6, which the Tribunal believed were overly broad.⁴⁵ The Tribunal ruled on the Claimant’s reframed requests for document production in PO5. At this stage, therefore, the Claimant is only entitled to receive documents falling within the scope of the Tribunal’s document production orders set out in PO4 and PO5. Absent exceptional circumstances, the Tribunal shall not allow new requests for the production of documents in these proceedings.

³⁹ Claimant’s First Application, pp. 3-5, 7-13; Claimant’s Second Application, pp. 3-5.

⁴⁰ Respondent’s First Response, p. 5.

⁴¹ Respondent’s First Response, pp. 5-7.

⁴² Respondent’s Second Comments, p. 15.

⁴³ Respondent’s Second Comments, p. 15, Annex 1.

⁴⁴ See PO4, para. 4.

⁴⁵ PO4, para. 9(a).

45. The Tribunal turns to the Claimant's request to compel production. The Tribunal notes that all documents for which the Claimant seeks production share the common feature that they are referenced in the PO5 Documents, which the Respondent produced in accordance with the Tribunal's orders. In the Claimant's submission, these additional documents must be produced "for the sake of the integrity of the evidence".⁴⁶
46. The Tribunal disagrees with the Claimant. The mere fact that a document appears referenced or is annexed to another document that was produced by a Party is, in itself, an insufficient basis on which to order production. Such an expansive interpretation of the scope of a document production order would impose an undue burden and could disincentivize good-faith efforts by a party otherwise willing to cooperate in the document production process.
47. This does not mean, however, that the Respondent may withhold documents falling within the scope of the Tribunal's document production orders, even at this late stage of the document production phase. Nor does it mean that the Tribunal should disregard any potentially relevant and material information that places the PO5 Documents in their proper context or renders them properly comprehensible. So too, if the referenced documents could not have been apparent to the Claimant, they may be of such evidential relevance and materiality as to warrant production. In this latter respect, the Tribunal recalls that it retains discretion under Article 27(3) of the UNCITRAL Rules to order a party to produce documents "[a]t any time during the arbitral proceedings".
48. Accordingly, at this stage, the Tribunal will only entertain requests for documents referenced in the PO5 Documents where (i) the newly requested documents fall within the scope of the Tribunal's prior production orders; or (ii) to the extent they do not, the Claimant has nonetheless established that they are likely to place the PO5 Documents to which they relate in a broader context, revealing relevant and material information that was not initially apparent.
49. Having addressed these threshold issues, the Tribunal turns to the Claimant's individual requests to compel production. The Tribunal will first set out the Claimant's description of the PO5 Document forming the basis for each of the Claimant's production requests, as well as his description of the documents for which he requests production. Thereafter, the Tribunal shall set out the Parties' positions on each request, followed by its analysis and decision on each request.

a. [REDACTED] related to the contact group in
DOC-OP5-1-001 (in relation to DOC-OP5-1-001 and RFP No. 1)

50. **PO5 Document Forming the Basis for the Request.** According to the Claimant, "DOC-OP5-1-001, Attorney's eyes only", which the Respondent produced in response to RFP No. 1, "[REDACTED]

⁴⁶ Claimant's First Application, pp. 3-4, 7-12, 14-15; Claimant's Second Application, p. 9.

⁴⁷ Claimant's First Application, p. 2.

51. **Document for which Production is Requested.** The Claimant requests production of the [REDACTED]
52. **The Claimant's Position.** The Claimant posits that [REDACTED] is relevant and material, as more fully set out in RFPs No. 1 and 2. He requests the production of this document for purposes of confirming [REDACTED]⁴⁹
53. **The Respondent's Position.** The Respondent submits that [REDACTED] is outside the scope of both RFPs No. 1 and 2 as (i) it is not one of the "personal journals or agendas belonging to José Graña, Hernando Graña, and Nadine Heredia" for which production was ordered in connection with RFP No. 1; and (ii) it is not an "Effective Collaboration Agreement and Guilty Plea Agreement entered into by Graña y Montero", for which production was ordered in connection with RFP No. 2.⁵⁰
54. **The Tribunal's Analysis.** The Tribunal recalls that the Claimant's RFP No. 1 reads:
- Full copies of all personal journals or agendas belonging to José Graña, Hernando Graña, and Nadine Heredia, in the possession, custody, or control of the Lava Jato Special Team, and which memorialize, or relate to, any meetings between Graña y Montero and Nadine Heredia (including, but not limited to, those held at the Government Palace) during the years 2014 and 2015.
55. In turn, the Claimant's RFP No. 2, as reframed, reads:
- Copies of: (i) the Effective Collaboration Agreement ("Acuerdos de Colaboración Eficaz") entered into by the company Graña y Montero with the Peruvian Prosecutor's Office, in the custody of the Public Ministry of Peru, which ended in a Guilty Plea Agreement by Graña y Montero in May of 2021; and (ii) the Guilty Plea Agreement ("Acuerdo de Culpabilidad") entered into by the company Graña y Montero in May 2021, whereby Graña y Montero admitted to participating in acts of corruption involving various public works and government contracts.
- This request is limited to two files encompassing agreements entered into by the company Graña y Montero, which detail the methods and practices used by this company and to secure public contracts through corrupt means. The scope of this request includes testimony that discusses or pertains to payments made by Graña y Montero to Nadine Heredia and other public officials (referred to in Peru as "coimas adelantadas") who were involved in, or had influence over, the allocation or adjudication of Blocks III and IV, as well as files which can prove corruption in this case.
56. By its PO5, the Tribunal ordered the production of all documents responsive to RFP Nos. 1 and 2 (as reframed), subject to the issuance of an appropriate confidentiality order.⁵¹

⁴⁸ Claimant's First Application, p. 3.

⁴⁹ Claimant's First Application, p. 3.

⁵⁰ Respondent's First Response, pp. 8-9.

⁵¹ See PO5, paras. 41, 81.

57. Against this background, the Tribunal is persuaded that [REDACTED] for which the Claimant requests production falls within the ambit of RFP No. 1 for full copies of all personal agendas. Based on its description, DOC-OP5-1-001, Attorney's eyes only (which the Respondent has produced in response to RFP No. 1) is [REDACTED]. The Tribunal therefore orders its production.
- b. Related correspondence discussing scheduling, or otherwise addressing the agenda further (in relation to DOC-OP5-1-001 and RFP No. 1)**
58. **PO5 Document Forming the Basis for the Request.** The Tribunal has already provided a description of the [REDACTED] in paragraph 50 above.
59. **Document for which Production is Requested.** By reference to the [REDACTED], the Claimant requests the production of "related correspondences discussing scheduling, or otherwise addressing the agenda further (whether in anticipation of this meeting, or occurring afterwards) [the "Correspondence"]." To the extent that no such document exists, the Claimant demands a statement to that effect from Peru.⁵²
60. **The Claimant's Position.** The Claimant submits that the Correspondence is relevant and material pursuant to RFPs No. 1 and 2 to establish the nature of [REDACTED]
[REDACTED]
[REDACTED] 53
61. **The Respondent's Position.** The Respondent submits that the Correspondence is outside the scope of both RFPs No. 1 and 2, since (i) it is not one of the "personal journals or agendas belonging to José Graña, Hernando Graña, and Nadine Heredia" for which production was ordered in connection with RFP No. 1; and (ii) it is not an "Effective Collaboration Agreement and Guilty Plea Agreement entered into by Graña y Montero", for which production was ordered in connection with RFP No. 2.⁵⁴
62. **The Tribunal's Analysis.** The Tribunal concurs with the Respondent's position that the Correspondence does not fall within the ambit of RFPs Nos. 1 and 2, which concern only "personal journals or agendas" and an "Effective Collaboration Agreement and Guilty Plea Agreement entered into by Graña y Montero".
63. Furthermore, the Claimant has failed to explain precisely how the production of [REDACTED] in a broader context, revealing relevant and material information that was not initially apparent in this document. The Claimant has only noted

⁵² Claimant's First Application, p. 3.

⁵³ Claimant's First Application, p. 3; Statement of Claim, paras. 11, 148, 149.

⁵⁴ Respondent's First Response, pp. 8-9.

that he “has reason to believe that these documents [*i.e.*, the Correspondence] exist”.⁵⁵ Accordingly, the Tribunal declines to order production.

c. Attachment 39 (in relation to DOC-OP5-2-003 and RFP No. 2)

64. **PO5 Document Forming the Basis for the Request.** According to the Claimant, DOC-OP5-2-003, Attorneys eyes only [REDACTED].
65. **Document for which Production is Requested.** The Claimant “requests the production of Attachment 39 (‘Anexo 39’), which is referenced in [REDACTED]”⁵⁷ (“Attachment 39”).
66. **The Claimant’s Position.** The Claimant alleges that Ms. Rocio Calderón was Ms. Nadine Heredia’s assistant and right hand, and was tasked with greeting Ms. Heredia’s guests at the Presidential Palace.⁵⁸ The Claimant thus submits that Attachment 39 is critical to his case, as it references [REDACTED]⁵⁹ Considering that Attachment 39 is an enclosure to [REDACTED] which was expressly requested in the Claimant’s reframed RFP No. 2, the Claimant states that its production is necessary “for the sake of the integrity of the evidence”.⁶⁰ On the grounds that Attachment 39 is an “agenda” of a meeting of Nadine Heredia, the Claimant states that this document is also responsive to RFP No. 1.⁶¹
67. **The Respondent’s Position.** The Respondent argues that Attachment 39 falls outside the scope of the Claimant’s RFPs Nos. 1 and 2, on the grounds that (i) for the purposes of RFP No. 1, [REDACTED] cannot be characterized as either a “personal journal” or an “agenda”; (ii) Attachment 39 [REDACTED] who is not one of the three individuals named in RFP No. 1; (iii) [REDACTED] was not sent to any of the three individuals identified in RFP No. 1, but to a third party; and (iv) Attachment 39 equally does not fall within the scope of RFP No. 2, as [REDACTED] cannot be characterized as an Effective Collaboration Agreement or Guilty Plea Agreement entered into by Graña y Montero.⁶²

⁵⁵ Claimant’s First Application, p. 3; Statement of Claim, paras. 11, 148, 149.

⁵⁶ Claimant’s First Application, p. 4.

⁵⁷ Claimant’s First Application, p. 4.

⁵⁸ Claimant’s First Application, p. 4.

⁵⁹ Claimant’s First Application, p. 5.

⁶⁰ Claimant’s First Application, p. 5.

⁶¹ Claimant’s First Application, p. 5.

⁶² Respondent’s First Response, pp. 10-11.

68. Moreover, the Respondent clarifies that the reference to Attachment 39 in t [REDACTED] does not render Attachment 39 a component of [REDACTED].⁶³ According to the Respondent, the Peruvian Constitutional Court has expressly recognized the distinction between an effective collaboration agreement and the supporting documents referenced in that agreement.⁶⁴
69. **The Tribunal's Analysis.** The Tribunal notes that Attachment 39 is [REDACTED]. In this regard, the Claimant argues that t [REDACTED].⁶⁵ In turn, the Claimant has provided *prima facie* evidence suggesting that Ms. Calderón regularly provided assistance to Ms. Heredia in the organization of meetings at the Presidential Palace, [REDACTED].⁶⁶
70. Against this background, the Tribunal is persuaded that Attachment 39 should be regarded on a *prima facie* basis as forming part of [REDACTED].⁶⁷
71. As such, Attachment 39 falls within the scope of the Tribunal's production order in respect of RFP No. 1, which refers to "[f]ull copies of all personal journals or agendas belonging to José Graña which memorialize, or relate to, any meetings between Graña y Montero and Nadine

⁶³ Respondent's First Response, p. 11.

⁶⁴ Respondent's First Response, p. 11; Constitutional Court of Peru, Second Chamber, Judgment 1758/2024, 5 December 2024 (**Annex 1**), p. 7 [PDF]: "*De modo que la carpeta fiscal del proceso de colaboración eficaz es un cuaderno individual diferente al acuerdo ... en sí mismo.*"

⁶⁵ Claimant's First Application, p. 5.

⁶⁶ Claimant's First Application, p. 6.

⁶⁷ G. Castañeda Palomino, "*Gasoducto del Sur case: the prosecutor's office has an agenda with the meetings of José Graña, Jorge Barata and Nadine Heredia,*" *El Comercio*, 31 August 2020 (**C-29/C-34**), p. 2: "There were also his meetings with Heredia at the Government Palace before the award, organized by the former Brazilian executive. 'He had to ask for Rocío Calderón [Heredia's friend] at the Carabaya door', said José Graña"; p. 3: "As detailed by José Graña, in May 2013, Barata explained that Heredia had expressed her discomfort over the articles in the newspaper *El Comercio*. She indicated that she wanted to meet her. 'He coordinated a meeting with Heredia. It was at the Government Palace. I had to ask for Rocío Calderón at the Carabaya door (PCM) and Heredia received me with a file with many clippings of articles from *El Comercio* that he considered against the government...'; p. 4: "Months later, in November 2013 as recorded on the agenda, Barata again told José Graña that he had 'new complaints' from Heredia and coordinated another meeting at the Palace: he also entered asking for Rocío Calderón and Heredia insisted on the same issue..."; p. 4: "'NdH'. That is how it appears on José Graña's agenda, on April 28, 2014. That was the third meeting he had with the former first lady and it was recorded. At that time, Graña explained, Barata had told them that they could not participate in the consortium for the GSP tender. The meeting with Heredia was, he said, to talk about the 'veto'. She also entered through Carabaya asking for Rocío Calderón"; p. 6: "In José Graña's agenda, there are two more meetings noted as 'Rocío Calderón', which were confirmed by the aspiring effective collaborator. One was on October 27, 2014 'about the project Via Expresa Javier Prado in which I was summoned by Palacio'. The second was in February 2015, also in the Palace. 'I attended at the call of Heredia to deal with lots III and IV of PetroPerú', he said" (emphasis by the Tribunal).

Heredia (including, but not limited to, those held at the Government Palace) during the years 2014 and 2015”.⁶⁸ Accordingly, the Tribunal orders the Respondent to produce Attachment 39.

d. Doc 160 and folios 5043 through and including 5050 (in relation to DOC-OP5-4-001 and RFP No. 4)

72. **PO5 Document Forming the Basis for the Request.** According to the Claimant, DOC-OP5-4-001 comprises [REDACTED].⁶⁹
73. **Document for which Production is Requested.** The Claimant requests the production of “Doc 160 and the related folios 5043 to 5050, expressly referenced in [REDACTED].”
74. **The Claimant’s Position.** The Claimant argues that Doc 160 is relevant and material for the reasons set forth in his RFP No. 4. According to the Claimant, Doc 160 (i) forms part of the José Graña Agreements must therefore be produced, since the Respondent was ordered to produce “full copies” of those documents; and (ii) Doc 160 expressly acknowledges that [REDACTED].⁷¹
75. **The Respondent’s Position.** The Respondent submits that Doc 160 falls outside the scope of RFP No. 4, which is circumscribed to the Effective Collaboration Agreements and the Guilty Plea Agreements entered into by José and/or Hernando Graña.⁷² Accordingly, the Respondent considers that RFP No. 4 does not extend to any other types of agreements executed by either José or Hernando Graña, nor to documents to which they are not a party.⁷³ The Respondent reiterates that the fact that Doc 160 is referenced in [REDACTED] does not render it a component of [REDACTED] as confirmed by the Peruvian Constitutional Court.⁷⁴
76. **The Tribunal’s Analysis.** The Tribunal recalls that the Claimant’s RFP No. 4, as reframed, reads:

Copies of: (i) the Effective Collaboration Agreement (“Acuerdo de Colaboración Eficaz”) entered into by the executive José Graña, which either contributed to or is directly related to José Graña’s guilty plea in January 2023 for public corruption; (ii) the Guilty Plea Agreement (“Acuerdo de Culpabilidad”) entered into by the executive José Graña; (iii) the Effective Collaboration Agreement (“Acuerdo de Colaboración Eficaz”) entered into by the executive Hernando Graña; and (iv) the

⁶⁸ See para. 54 above.

⁶⁹ Claimant’s First Application, p. 5.

⁷⁰ Claimant’s First Application, p. 7 (Claimant’s translation).

⁷¹ Claimant’s First Application, p. 7.

⁷² Respondent’s First Response, p. 13.

⁷³ Respondent’s First Response, p. 13.

⁷⁴ Respondent’s First Response, p. 13; Constitutional Court of Peru, Second Chamber, Judgment 1758/2024, 5 December 2024 (**Annex 1**), p. 7 [PDF]. See para. 68 above.

Guilty Plea Agreement (“Acuerdo de Culpabilidad”) entered into by the executive Hernando Graña.

This request is limited to documents in the possession of the Public Ministry of Peru that discuss or relate to individuals José Graña and Hernando Graña’s involvement in the corrupt adjudication of public contracts, including the details and amounts of payments made by Graña y Montero to public officials (“coimas adelantadas”). This includes, but is not limited to, the \$3 million payment to Nadine Heredia in 2011 and the specific benefits or advantages these payments were intended to secure for Graña y Montero.

77. In PO5, the Tribunal ordered the production of all documents responsive to RFP No. 4 (as reframed), subject to the issuance of an appropriate confidentiality order.⁷⁵
78. The Tribunal concurs with the Respondent’s position that Doc 160 – [REDACTED] – does not fall within the ambit of RFP No. 4, which concern only “copies” of four clearly defined collaboration and plea agreements and does not necessarily extend to other documents related to those agreements.
79. The Claimant has also failed to explain precisely how the production of Doc 160 may place [REDACTED] in a broader context, revealing relevant and material information that was not initially apparent in them. In essence, the Claimant argues that [REDACTED] show that “Lots III and IV were expressly mentioned as having been discussed by Nadine Heredia [and the Graña y Montero team] as part of a series of five meetings”⁷⁶ including the so-called fifth meeting, which took place on 10 February 2015 and sought “to address topics around Lots III and IV of Petroperu”.⁷⁷ On the other hand, the Claimant seeks the production of Doc 160 on the basis that this document “expressly [confirms] that Lots III and IV were part of the projects being discussed by Nadine Heredia and G&M, and that the meeting to discuss the same occurred in February of 2015.”⁷⁸ The Claimant does not otherwise identify any relevant and material information appearing in Doc 160 that does not already appear in [REDACTED]. Accordingly, the Tribunal declines to order production.

e. Doc 158 and folios 1340 through and including 1429 (in relation to DOC-OP5-4-001 and RFP No. 4)

80. **PO5 Document Forming the Basis for the Request.** The Tribunal has already described [REDACTED] in paragraph 72 above.
81. **Document for which Production is Requested.** The Claimant requests the production of “Doc 158 and the related folios 1340 to 1429 expressly referenced in [REDACTED], Attorneys eyes only, pg. 106-107 of 194. This document is referenced as follows: ‘[REDACTED]’”

⁷⁵ See PO5, para. 60.

⁷⁶ Claimant’s First Application, p. 5.

⁷⁷ Claimant’s First Application, p. 6.

⁷⁸ Claimant’s First Application, p. 7.

- [REDACTED]
82. **The Claimant's Position.** The Claimant submits that Doc 158 is relevant and material for the reasons set forth in his RFPs Nos. 4 and 1. According to the Claimant, Doc 158 (i) forms part of the José Graña Agreements must therefore be produced, since the Respondent was ordered to produce “full copies” of those documents; and (ii) proves the existence of the so-called fifth meeting between Ms. Nadine Heredia and Graña y Montero held on 10 February 2015, during which Blocks III and IV were allegedly discussed.⁸⁰
83. The Claimant further argues that Doc 158 is responsive to his RFP No. 1, by which he requested the Respondent to produce the agendas of Mr. José Graña.⁸¹
84. **The Respondent's Position.** The Respondent argues that Doc 158 falls outside the scope of RFP No. 4. This document, being “[REDACTED]”, does not constitute an agreement entered into by José or Hernando Graña, nor an Effective Collaboration Agreement or a Guilty Plea Agreement executed by them.⁸² The Respondent reiterates that the fact that Doc 158 is referenced in [REDACTED] does not render it a component of [REDACTED], as confirmed by the Peruvian Constitutional Court.⁸³
85. **The Tribunal's Analysis.** The Tribunal notes that [REDACTED] characterize Doc 158 as the “[REDACTED]”⁸⁴ The Claimant has also provided *prima facie* evidence suggesting that Mr. José Graña held a meeting with Ms. Heredia in February 2015.⁸⁵
86. As such, Doc 158 falls squarely within the scope of the Tribunal's production order in respect of RFP No. 1, which refers to “[f]ull copies of all personal journals or agendas belonging to José Graña which memorialize, or relate to, any meetings between Graña y Montero and Nadine

⁷⁹ Claimant's First Application, pp. 7-8 (Claimant's translation); Respondent's First Response, p. 13.

⁸⁰ According to the Claimant, the Blocks were the topic of the fifth meeting held on 10 February 2015 between Nadine Heredia and José Graña at the Presidential Palace, Claimant's First Application, pp. 5-6, 8.

⁸¹ Claimant's First Application, p. 8.

⁸² Respondent's First Response, p. 14.

⁸³ Respondent's First Response, p. 14; Constitutional Court of Peru, Second Chamber, Judgment 1758/2024, 5 December 2024 (**Annex 1**), p. 7 [PDF]. *See* para. 68 above.

⁸⁴ Claimant's First Application, pp. 7-8 (Claimant's translation); Respondent's First Response, p. 13.

⁸⁵ G. Castañeda Palomino, “*Gasoducto del Sur case: the prosecutor's office has an agenda with the meetings of José Graña, Jorge Barata and Nadine Heredia*,” *El Comercio*, 31 August 2020, p. 6 (**C-29/C-34**): “In José Graña's agenda, there are two more meetings noted as “Rocío Calderón”, which were confirmed by the aspiring effective collaborator. One was on October 27, 2014 ‘about the project Vía Expresa Javier Prado in which I was summoned by Palacio’. The second was in February 2015, also in the Palace. ‘I attended at the call of Heredia to deal with lots III and IV of PetroPerú,’ he said.”

Heredia (including, but not limited to, those held at the Government Palace) during the years 2014 and 2015”.⁸⁶ Accordingly, the Tribunal orders the Respondent to produce Doc 158.

f. Doc 159 and folios 356 through and including 376 (in relation to DOC-OP5-4-001 and RFP No. 4)

87. **PO5 Document Forming the Basis for the Request.** The Tribunal has already described the [REDACTED] in paragraph 72 above.
88. **Document for which Production is Requested.** The Claimant requests the production of “Doc 159 and the related folios 356 to 376, expressly referenced in [REDACTED], Attorneys eyes only, pg. 106-107 of 194. This document is referenced as follows: “[REDACTED]”.
89. **The Claimant’s Position.** The Claimant submits that Doc 159 is relevant and material for the reasons set forth in his RFPs Nos. 4 and 1. According to the Claimant, Doc 159 (i) forms part of the José Graña Agreements must therefore be produced, since the Respondent was ordered to produce “full copies” of those documents; and (ii) proves the existence of the so-called fifth meeting between Nadine Heredia and Graña y Montero held on 10 February 2015, during which Blocks III and IV were allegedly discussed.⁸⁸
90. **The Respondent’s Position.** The Respondent argues that Doc 159 falls outside the scope of RFP No. 4.⁸⁹ In particular, the Respondent submits that Doc 159, [REDACTED], can in no way be characterized as agreement entered into by José or Hernando Graña, nor an Effective Collaboration Agreement or a Guilty Plea Agreement entered into by either of them.⁹⁰ The Respondent reiterates that the fact that Doc 158 is referenced in [REDACTED] does not render it a component of [REDACTED], as confirmed by the Peruvian Constitutional Court.⁹¹ Moreover, the Respondent submits that [REDACTED] cannot fall within the scope of the Claimant’s RFP No. 1, as Doc 159 is neither a “personal journal” nor an “agenda”.⁹²
91. **The Tribunal’s Analysis.** The Tribunal concurs with the Respondent’s position that Doc 159 – [REDACTED] – does not fall within the ambit of RFPs Nos. 1 and 4, which concern only “personal journals or agendas” and four clearly defined collaboration and plea agreements.

⁸⁶ See para. 54 above.

⁸⁷ Claimant’s First Application, p. 8.

⁸⁸ Claimant’s First Application, p. 8.

⁸⁹ Respondent’s First Response, p. 14.

⁹⁰ Respondent’s First Response, p. 14.

⁹¹ Respondent’s First Response, p. 15; Constitutional Court of Peru, Second Chamber, Judgment 1758/2024, 5 December 2024 (**Annex 1**), p. 7 [PDF]. See para. 68 above.

⁹² Respondent’s First Response, p. 15.

92. The Claimant has also failed to explain precisely how the production of Doc 159 may place [REDACTED] in a broader context, revealing relevant and material information that was not initially apparent in them. In essence, the Claimant argues that [REDACTED] show that “Lots III and IV were expressly mentioned as having been discussed by Nadine Heredia [and the Graña y Montero team] as part of a series of five meetings”⁹³ including the so-called fifth meeting, which took place on 10 February 2015 and sought “to address topics around Lots III and IV of Petroperu”.⁹⁴ On the other hand, the Claimant seeks the production of Doc 159 on the basis that this document “expressly proves the occurrence of the fifth meeting, i.e. the meeting where Lots III and IV formed part of the projects being discussed by Nadine Heredia and G&M, and that the meeting to discuss the same occurred in February of 2015.”⁹⁵ The Claimant does not otherwise identify any relevant and material information appearing in Doc 159 that does not already appear in [REDACTED]. Accordingly, the Tribunal declines to order production.

g. Doc 189 and folios 2569 through 2572 (in relation to DOC-OP5-4-001 and RFP No. 4)

93. **PO5 Document Forming the Basis for the Request.** The Tribunal has already described the [REDACTED] in paragraph 72 above.

94. **Document for which Production is Requested.** The Claimant requests the production of “Doc 189 and the related folios 2569 to 2572, expressly referenced in [REDACTED], Attorneys eyes only, pg. 117 of 194. This document is referenced as follows: “

[REDACTED]

.⁹⁶

95. **The Claimant’s Position.** The Claimant submits that Doc 189 is relevant and material for the reasons set forth in his RFP No. 4. According to the Claimant, Doc 189 (i) forms part of the José Graña Agreements must therefore be produced, since the Respondent was ordered to produce “full copies” of those documents; and (ii) “expressly acknowledges that the government of Peru paid bribes in connection with the referenced projects”.⁹⁷ In the Claimant’s view, the fact that

⁹³ Claimant’s First Application, p. 5.

⁹⁴ Claimant’s First Application, p. 6.

⁹⁵ Claimant’s First Application, pp. 8-9.

⁹⁶ Claimant’s First Application, p. 9 (Claimant’s translation).

⁹⁷ Claimant’s First Application, p. 9.

Doc 189 is included as an attachment to [REDACTED] “clearly illustrates that the bribes were related to José Graña.”⁹⁸

96. **The Respondent’s Position.** The Respondent argues that [REDACTED] falls outside the scope of RFP No. 4, as it is not an agreement entered into by José or Hernando Graña, nor an Effective Collaboration Agreement or a Guilty Plea Agreement executed by either of them.⁹⁹ Furthermore, the Respondent reiterates that the fact that Doc 189 is referenced in the [REDACTED] does not render it a component of [REDACTED], as confirmed by the Peruvian Constitutional Court.¹⁰⁰
97. **The Tribunal’s Analysis.** The Tribunal concurs with the Respondent’s position that Doc 189 – [REDACTED] – does not fall within the ambit of RFP No. 4, which concerns only “copies” of four clearly defined collaboration and plea agreements and does not necessarily extend to other documents related to those agreements.
98. The Claimant has also failed to explain precisely how the production of Doc 189 may place the [REDACTED] in a broader context, revealing relevant and material information that was not initially apparent in them. In the Claimant’s submission, [REDACTED] “expressly reference[] the bribes paid to Peruvian officials by G&M”,¹⁰¹ while Doc 189 “clearly illustrates” the same proposition.¹⁰² The Claimant does not otherwise identify any relevant and material information appearing in Doc 189 that does not already appear in [REDACTED]
99. Moreover, while Doc 189, as described in paragraph 94 above, [REDACTED] [REDACTED] nothing in the description of Doc 189 provided by the Claimant supports the inference that such document also contains information relating to Graña & Montero and/or Blocks III and IV. The mere fact that Doc 189 is referenced in [REDACTED] is, on its own, insufficient to support a contrary conclusion. In sum, the Claimant has failed to establish that Doc 189 contains information that is relevant to the present dispute and material to its outcome.
100. Accordingly, the Tribunal declines to order production of Doc 189.

⁹⁸ Claimant’s First Application, p. 9.

⁹⁹ Respondent’s First Response, p. 15.

¹⁰⁰ Respondent’s First Response, pp. 15-16; Constitutional Court of Peru, Second Chamber, Judgment 1758/2024, 5 December 2024 (**Annex 1**), p. 7 [PDF]. See para. 68 above.

¹⁰¹ Claimant’s First Application, p. 6: “[REDACTED] expressly references the bribes paid to Peruvian officials by G&M. See [REDACTED] s], pg. 27 of 194 (“[REDACTED]”)” (Claimant’s translation).

¹⁰² Claimant’s First Application, p. 9.

**h. [REDACTED] and related Annex G (in relation to
DOC-OP5-4-001 and RFP No. 4)**

101. **PO5 Document Forming the Basis for the Request.** The Tribunal has already described [REDACTED] in paragraph 72 above.
102. **Document for which Production is Requested.** The Claimant requests the production of the [REDACTED].
103. **The Claimant's Position.** According to the Claimant, "[i]t is relevant and material that what Claimant seeks here [REDACTED] has been produced and admitted into the record of another ICSID Arbitration", a case "that also dealt with similar corruption allegations that transpired around the same time as those alleged by Claimant in his SoC."¹⁰⁴ Furthermore, the Claimant states that [REDACTED] (i) forms part of the José Graña Agreements must therefore be produced, since the Respondent was ordered to produce "full copies" of those documents; (ii) "expressly acknowledges that the government of Peru paid bribes in connection with the referenced projects"; and (iii) without the [REDACTED] José Graña would not have been convicted and would not have entered into the José Graña Agreements.¹⁰⁵
104. **The Respondent's Position.** The Respondent argues that [REDACTED] falls outside the scope of RFP No. 4. This document, being [REDACTED], does not constitute an agreement entered into by José or Hernando Graña, nor an Effective Collaboration Agreement or a Guilty Plea Agreement executed by them.¹⁰⁶ The Respondent reiterates that the fact that [REDACTED] is referenced in [REDACTED] does not render it a component of [REDACTED] as confirmed by the Peruvian Constitutional Court.¹⁰⁷
105. **The Tribunal's Analysis.** The Tribunal concurs with the Respondent's position that [REDACTED] does not fall within the ambit of RFP No. 4, which concerns only copies of four clearly defined collaboration and plea agreements and does not necessarily extend to other documents related to those agreements.

¹⁰³ Claimant's First Application, p. 9 (Claimant's translation).

¹⁰⁴ Claimant's First Application, p. 10.

¹⁰⁵ Claimant's First Application, p. 10.

¹⁰⁶ Respondent's First Response, p. 16.

¹⁰⁷ Respondent's First Response, p. 16; Constitutional Court of Peru, Second Chamber, Judgment 1758/2024, 5 December 2024 (**Annex 1**), p. 7 [PDF]. See para. 68 above.

106. The Claimant has also failed to explain precisely how the production of [REDACTED] may place [REDACTED] in a broader context, revealing relevant and material information that was not initially apparent in them. First, the fact that [REDACTED] “has been produced and admitted into the record of another ICSID Arbitration”¹⁰⁸ sheds no light on whether such declaration contains any information that might be considered relevant and material.
107. Second, the Claimant provides no support for (i) his assertion that [REDACTED] “expressly acknowledges that the government of Peru paid bribes in connection with the referenced projects”; or (ii) the allegation that without [REDACTED], José Graña would not have been convicted and would not have entered into t [REDACTED].¹⁰⁹ Even assuming the foregoing to be true, the Claimant would have still failed to identify any relevant and material information appearing in [REDACTED] that does not already appear in t [REDACTED]; in the Claimant’s own submission, [REDACTED] already “reference[] the bribes paid to Peruvian officials by G&M”.¹¹⁰ Accordingly, the Tribunal declines to order production.

i. Doc 207 folios 4308 a 4353 (in relation to DOC-OP5-4-001 and RFP No. 4)

108. **PO5 Document Forming the Basis for the Request.** The Tribunal has already described the [REDACTED] in paragraph 72 above.
109. **Document for which Production is Requested.** The Claimant requests production of “Doc 207, and related folios 4308-4353, expressly referenced in [REDACTED], Attorneys eyes only, pg. 117 of 194. This document is referenced as follows: ‘ [REDACTED]’¹¹¹
110. **The Claimant’s Position.** The Claimant submits that Doc 207 is relevant and material for the reasons set forth in his RFPs Nos. 4 and 1. Furthermore, the Claimant states that Doc 207 (i) forms part of the José Graña Agreements must therefore be produced, since the Respondent was ordered to produce “full copies” of those documents; (ii) is further relevant and material “because [REDACTED] is broad and likely includes lots III and IV, and because of the time (occurring a few months before the fifth meeting in February of 2015 where Nadine Heredia and G&M

¹⁰⁸ Claimant’s First Application, p. 10.

¹⁰⁹ Claimant’s First Application, p. 10.

¹¹⁰ Claimant’s First Application, p. 6: “[REDACTED] expressly references the bribes paid to Peruvian officials by G&M. See [REDACTED], pg. 27 of 194 (“[REDACTED]”) (Claimant’s translation).

¹¹¹ Claimant’s First Application, pp. 10-11.

discussed Lots III and IV”); and (iii) it includes “agenda annotations tied to personal meetings with, inter alia, Nadine Heredia in 2014.”¹¹²

111. **The Respondent’s Position.** The Respondent argues that Doc 207 falls outside the scope of RFPs Nos. 1 and 4. This document, [REDACTED], does not constitute a “personal journal” or “agenda”, nor an Effective Collaboration Agreement or a Guilty Plea Agreement executed by José or Hernando Graña.¹¹³ The Respondent reiterates that the fact that Doc 207 is referenced in [REDACTED] does not render it a component of [REDACTED], as confirmed by the Peruvian Constitutional Court.¹¹⁴
112. **The Tribunal’s Analysis.** The Tribunal concurs with the Respondent’s position that Doc 207 – [REDACTED] – does not fall within the ambit of RFPs Nos. 1 and 4, which concern only “personal journals or agendas” and four clearly defined collaboration and plea agreements.
113. The Claimant has also failed to establish how the production of Doc 207 may place [REDACTED] in a broader context, revealing relevant and material information that was not initially apparent in them. First, the Claimant provides no support for his assertion that Doc 207 is relevant and material because [REDACTED] is broad and likely includes lots III and IV, and because of the time (occurring a few months before the fifth meeting in February of 2015 where Nadine Heredia and G&M discussed Lots III and IV).¹¹⁵
114. Second, while the description of Doc 207 provided by the Claimant, set out in paragraph 109 above, would confirm the Claimant’s assertion that Doc 207 contains “agenda annotations tied to personal meetings with, inter alia, Nadine Heredia in 2014,”¹¹⁶ there is no indication as to how such meetings would relate to Blocks III and IV or any other aspect of the present dispute. In particular, Doc 207 would only appear to address the “projects GSP [Gasoducto Sur Peruano], Kuntur” and Agenda Lima.¹¹⁷ The Claimant has failed to establish any connection between those projects and Blocks III and IV.
115. For these reasons, the Tribunal declines to order production of Doc 207.

j. [REDACTED] (in relation to
DOC-OP5-4-001 and RFP No. 4)

116. **PO5 Document Forming the Basis for the Request.** The Tribunal has already described the [REDACTED] in paragraph 72 above.
117. **Document for which Production is Requested.** The Claimant requests the production of [REDACTED]

¹¹² Claimant’s First Application, p. 11.

¹¹³ Respondent’s First Response, p. 17.

¹¹⁴ Respondent’s First Response, p. 17; Constitutional Court of Peru, Second Chamber, Judgment 1758/2024, 5 December 2024 (**Annex 1**), p. 7 [PDF]. See para. 68 above.

¹¹⁵ Claimant’s First Application, p. 11.

¹¹⁶ Claimant’s First Application, p. 11.

¹¹⁷ Claimant’s First Application, pp. 10-11.

- [REDACTED]
118. **The Claimant's Position.** The Claimant submits that [REDACTED] is relevant and material for the reasons set forth in his RFP No. 4. Furthermore, the Claimant states that this document (i) forms part of the José Graña Agreements must therefore be produced, since the Respondent was ordered to produce “full copies” of those documents; and (ii) is further relevant and material “because Lots III and IV are in Talara, because José Graña was involved, and because it shows the executive’s involvement in the sophisticated corruption scheme that transpired over many years and which is directly related to the case at hand”.
119. In addition, the Claimant states that [REDACTED] “is also relevant and material pursuant to Claimant’s initial RFP No. 3, as it “surely was part of the ‘files encompassing the preparatory investigation and oral trial in the custody of the Public Ministry of Peru, including but not limited to, investigation reports, evidentiary documents, and other proofs, that relate to acts of corruption in the award of government contracts involving [...] José Graña [...]’.”¹¹⁹ While the Claimant acknowledges that he was instructed to reframe RFP No. 3, he considers that [REDACTED] remains relevant and material because the Respondent’s production of [REDACTED] “has opened the door” to it.¹²⁰
120. **The Respondent's Position.** The Respondent argues that [REDACTED] falls outside the scope of RFPs Nos. 1 and 4. This document, by definition, does not constitute a “personal journal” or “agenda”, nor an Effective Collaboration Agreement or a Guilty Plea Agreement executed by José or Hernando Graña.¹²¹ In the Respondent’s view, the fact that Doc 158 is referenced in [REDACTED] does not render it a component of [REDACTED], as confirmed by the Peruvian Constitutional Court.¹²² Lastly, the Respondent considers the Claimant’s attempt to request the production of [REDACTED] on the basis of the original version of RFP No. 3 to be invalid, as the Claimant was ordered to reframe such request, narrowing its scop.¹²³
121. **The Tribunal's Analysis.** The Tribunal concurs with the Respondent’s position that [REDACTED] does not fall within the ambit of RFPs Nos. 1 and 4, which concern only “personal journals or agendas” and four clearly defined collaboration and plea agreements. In turn, the question whether [REDACTED] falls within the scope of the Claimant’s original

¹¹⁸ Claimant’s First Application, p.11 (Claimant’s translation).

¹¹⁹ Claimant’s First Application, p. 11.

¹²⁰ Claimant’s First Application, p.12.

¹²¹ Respondent’s First Response, pp. 17-18.

¹²² Respondent’s First Response, pp. 17-18; Constitutional Court of Peru, Second Chamber, Judgment 1758/2024, 5 December 2024 (**Annex 1**), p. 7 [PDF]. *See* para. 68 above.

¹²³ Respondent’s First Response, p. 18.

RFP No. 3 is moot, as the Tribunal only ordered production of documents responsive to RFP No. 3 as reframed by the Claimant after the issuance of PO4.

122. The Claimant has also failed to explain precisely how the production of [REDACTED] may place [REDACTED] in a broader context, revealing relevant and material information that was not initially apparent in them. As particularized by the Claimant (*see* paragraph 117 above) [REDACTED] merely suggests that [REDACTED]

[REDACTED]¹²⁴ There is no indication as to how such visit would relate to Blocks III and IV, Ms. Heredia or any other matter distinctly at issue in these proceedings.

123. Accordingly, the Tribunal declines to order production of [REDACTED]

k. The denial letter from Perupetro to Upland reference no. LPI-Perupetro-001-2014/022 and any follow ups on decisions made from Upland's appeal (in relation to DOC-OP5-8-001 and RFP No. 8)

124. **PO5 Document Forming the Basis for the Request.** The Claimant states that the Respondent produced DOC-OP5-8-001 in response to the Claimant's RFP No. 8. He has otherwise failed to explain the nature of this document.¹²⁵
125. **Document for which Production is Requested.** The Claimant requests the production "the denial letter from Perupetro to Upland reference no. LPI-Perupetro-001-2014/022, referenced in DOC-OP5-8-001, Attorneys eyes only, and any follow ups on decisions made by Upland's appeal"¹²⁶ (the "**Denial Letter**").
126. **The Claimant's Position.** The Claimant submits that the Denial Letter is relevant and material for the reasons set forth in his RFP No. 8, "whereby Claimant requested the production of full copies of the entire bidding file."¹²⁷
127. In his Second Application, the Claimant states that the Respondent has not produced the Denial Letter.¹²⁸
128. **The Respondent's Position.** The Respondent submits that it has already produced the entirety of the bidding files as they are kept in PeruPetro's archives, including documents concerning Upland's appeal.¹²⁹ In its Second Response, the Respondent indicates that it conducted additional searches and produced the responsive document to the Claimant on 17 June 2025.¹³⁰

¹²⁴ Statement of Claim, 21 August 2023, para. 74.

¹²⁵ Claimant's First Application, p. 13.

¹²⁶ Claimant's First Application, p. 13.

¹²⁷ Claimant's First Application, p. 13.

¹²⁸ Claimant's Second Application, p. 6.

¹²⁹ Respondent's First Response, p. 18.

¹³⁰ Respondent's Second Response, p. 8.

129. **The Tribunal's Analysis.** The Tribunal takes note of the Respondent's indication that it has produced the Denial Letter to the Claimant and shall not issue further directions on this matter in this Procedural Order.

4. The Claimant's Reiterated Request for Document Production

(i) The Claimant's Position

130. The Claimant asserts that the Respondent's document production "remains incomplete". On this basis, the Claimant reiterates his request for the production of the following documents:¹³¹
- a. **RFP No.1.** According to the Claimant, the Respondent is yet to produce the journals and Agendas of Mr. José and Hernando Graña for the years of 2014-2015, and those of Ms. Nadine Heredia for the years of 2014-2015. Noting that "no custodian was identified for the two documents produced" by the Respondent, the Claimant states that it has no way of confirming complete production.¹³²
 - b. **RFP No. 3.** The Claimant submits that, while the Respondent has not produced any documents in connection with RFP No. 3, [REDACTED] produced under, for example, 'DOC-OP5-4-004, Attorney's eyes only,' reference a number of Prosecutorial Files that should have been produced as requested (i.e., the ones with the following case numbers: [REDACTED]).¹³³
 - c. **RFP Nos. 5, 6, 7, 11 and 12.** The Claimant states that the Respondent has not produced any document in response to these RFPs. To the extent that no responsive documents exist, the Claimant demands a statement to that effect from the Respondent.¹³⁴
 - d. **RFP Nos. 2, 4, 9, 10 and 13.** The Claimant requests the Respondent's confirmation that the documents produced in response to RFPs No. 2, 4, 9, 10 and 13 are the "complete universe of responsive documents."¹³⁵

(ii) The Respondent's Position

131. The Respondent submits that it has produced all documents responsive to RFP Nos. 1, 3, 5, 6, 7, 11 and 12 in accordance with PO4 and PO5.¹³⁶ Accordingly, it denies the Claimant's assertion that there is outstanding production to date.¹³⁷ As regards the individual RFPs, the Respondent provides the following explanations:

¹³¹ Claimant's Second Application, pp. 5-7.

¹³² Claimant's Second Application, p. 5.

¹³³ Claimant's Second Application, p. 5.

¹³⁴ Claimant's Second Application, pp. 5-6.

¹³⁵ Claimant's Second Application, p. 10.

¹³⁶ Respondent's Second Response, pp. 7-12, Annex 1.

¹³⁷ Respondent's Second Response, p. 12.

- a. **RFP No. 1.** The Respondent confirms that that the documents it produced in response to RFP No. 1 – DOC-OP5-1-001 and DOC-OP5-1-002 – [REDACTED]¹³⁸ In the Respondent’s view, this disproves the Claimant’s argument that he has no way of confirming complete production.¹³⁹
- b. **RFP No. 8.** As already noted, the Respondent indicates that it conducted additional searches for the Denial Letter and produced this document to the Claimant on 17 June 2025.¹⁴⁰
- c. **RFP No. 3 and 12.** The Respondent posits that, in a letter sent to the Claimant on 6 September 2024, it noted that while it had conducted diligent and reasonable searches for documents responsive to RFP Nos. 3 and 12, it had not identified any.¹⁴¹ In addition, the Respondent confirmed that there were no responsive documents for RFP No. 3 in *inter-partes* correspondence dated 1 May 2025.¹⁴²
- d. **RFP No. 5, 6, 7 and 11.** The Respondent recalls that the Tribunal rejected these RFPs in PO4 and PO5. Accordingly, it is under no obligation to produce any responsive documents.¹⁴³

(iii) The Tribunal’s Analysis

- 132. The Tribunal takes note of the Respondent’s indication that it has produced all documents required pursuant to PO4 and PO5. Accordingly, the Tribunal shall not issue further directions on this matter in this Procedural Order.
- 133. Mindful once more of the necessity to conclude the present phase of the proceedings without undue delay, the Tribunal calls upon the Parties to cooperate to ensure that the production of documents under this order, and the resolution of any subsequent requests to admit documents, are addressed as promptly as possible. The Tribunal also reiterates that, absent exceptional circumstances, it shall not allow new requests for the production of documents in these proceedings.
- 134. In the circumstances, in order to avoid further delay, the Tribunal advises the Parties that they shall be instructed to agree on a revised procedural calendar within 7 days from the issuance of a confidentiality protocol in accordance with paragraph 27. Upon the issuance of such confidentiality protocol, the Tribunal shall also fix a deadline for the Claimant to request the admission into the record of any documents produced by the Respondent in accordance with this Procedural Order.

¹³⁸ Respondent’s Second Response, pp. 7, 16.

¹³⁹ Respondent’s Second Response, p. 7.

¹⁴⁰ Respondent’s Second Response, p. 8. *See* paras. 124-129 above.

¹⁴¹ Respondent’s Second Response, p. 8.

¹⁴² Respondent’s Second Response, p. 8.

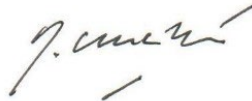
¹⁴³ Respondent’s Second Response, pp. 9-10.

III. THE TRIBUNAL'S ORDER

135. For the above, reasons, the Tribunal decides as follows:

- a. The Parties are instructed to confer and attempt to seek agreement on the terms of a confidentiality protocol governing the disclosure, handing, and use of the PO5 Documents in the context of these proceedings in accordance with the Tribunal's directions set out in paragraphs 27-28 above. They should revert to the Tribunal on this matter no later than **Thursday, 28 August 2025**.
- b. The Respondent shall produce the following documents to the Claimant: (i) [REDACTED]; (ii) Attachment 39; and (iii) and Doc 158. These documents shall be subject to the same level of confidentiality protection foreseen under paragraph 42 of PO5 for the PO5 Documents. The Parties are instructed to seek agreement on an appropriate confidentiality regime, which may be modelled on the First and Second Confidentiality Agreements entered as PO6 and PO7 by the Tribunal. They shall revert to the Tribunal no later than **Thursday, 28 August 2025** to report the extent of their agreement, and their reasons for any remaining disagreement.

Place of Arbitration: New York, United States of America



Justice David Unterhalter
(Presiding Arbitrator)

On behalf of the Tribunal