

1280      **INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES**

**In the arbitration proceeding between**

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Astracommex Regional Satellite Communication Inc.

*(Claimant)*

**and**

The Republic of Celestria

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*(Respondent)*

**ICSID Case No. ARB/22/99**

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**PROCEDURAL ORDER NO. 2**

*(Document Production)*

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***Members of the Tribunal***

Mr. Jackson Cole, President of the Tribunal

Dr. Nika Havendale, Arbitrator

Prof. Brynn Sterling, Arbitrator

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***Secretary of the Tribunal***

Mr. Dapo Olasibi

**1 June 2024**

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## **I. INTRODUCTION**

1. This Procedural Order No. 2 (“**PO2**”) comprises the Tribunal’s decision on the Astracommex Regional’s and Celestria’s (together the “**Parties**”) requests to produce documents as set out in their respective Redfern schedules. The Tribunal’s decision on Astracommex Regional’s requests is set out in annex A to this PO2 and the Tribunal’s decision on Celestria’s requests is set out in annex B to this PO2.

## **II. PROCEDURAL BACKGROUND**

2. *[Intentionally omitted]*

## **III. APPLICABLE PRINCIPLES**

3. In accordance with paragraph 10 of Procedural Order No. 1 (“**PO1**”) and without prejudice to Article 43(a) of the ICSID Convention, the Tribunal has been guided by ICSID Arbitration Rule 37 in evaluating the Parties’ requests (including their objections and replies).
4. The Tribunal has carefully considered each of the requests, objections and replies made by the Parties as set out in their respective schedules. The Tribunal’s decision on each individual request is set out in the last column of the Parties’ Redfern schedules.

## **IV. THE TRIBUNAL’S GENERAL OBSERVATIONS**

5. For the avoidance of doubt, the term “document” has the meaning of a writing, communication, picture, drawing, program or data of any kind, whether recorded or maintained on paper or by electronic, audio, visual or any other means.
6. Where ordered to do so, the Parties are required to produce documents that are within their possession, custody or control.
7. Any document the production of which is ordered by the Tribunal shall be communicated within the time limit set out in the Procedural Timetable, directly to the requesting Party without copying the Tribunal.
8. Documents produced voluntarily as well as those produced pursuant to this PO2, shall only form part of the record if and when they are submitted as exhibits to the main pleadings. Otherwise, they shall not be taken into account by the Tribunal.

1340 9. The Parties must undertake reasonable searches in relation to the requests that have been granted or voluntarily complied with. Any search that has already been undertaken by a Party does not need to be carried out again, provided that such search was reasonable.

1345 10. The Tribunal directs that where a party wishes to assert privilege, legal impediment or confidentiality over a responsive document that it has been ordered to produce (or as otherwise directed by the Tribunal), it should record that document in a privilege and confidentiality log to be provided to the other side. The Parties must produce any privilege and confidentiality logs at the latest on the 15 June 2024.

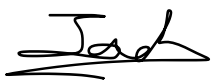
## V. DECISION

11. In light of the above, after having carefully considered the assertions made by the Parties and taking into account the applicable principles, the Tribunal unanimously:

1350 i. **DECIDES** on the Parties' requests as set out in the Redfern schedules that are attached to this PO2 as annexes A and annex B, subject to the Parties applying the agreed and reasonable search terms and date ranges as ordered above. These annexes form an integral part of the PO2.

1355 ii. **ORDERS** each Party to produce the documents pertaining to each of the requests that have been fully or partially granted by 15 June 2024 at the latest. Each Party that wishes to assert that any of the documents to be disclosed or part thereof is privileged, subject to legal impediment or confidential, to file a privilege and confidentiality log in accordance with the general guidelines above.

1360 On behalf of the Tribunal,



1365 Mr. Jackson Cole  
President of the Tribunal  
1 June 2024

## Annex A Astracommex Regional's Redfern schedule

	A. Documents or Category of Documents Requested	B. Relevance and Materiality	C. Objections to the Request	D. Reply to the Objections	E. Decision
1.	<i>[Intentionally omitted]</i>	<i>[Intentionally omitted]</i>	<i>[Intentionally omitted]</i>	<i>[Intentionally omitted]</i>	<i>[Intentionally omitted]</i>
...	<i>[Intentionally omitted]</i>	<i>[Intentionally omitted]</i>	<i>[Intentionally omitted]</i>	<i>[Intentionally omitted]</i>	<i>[Intentionally omitted]</i>
23.	Any and all documents and communications between Celestria and Valinor between December 2020 and June 2021 regarding the collision between Astracommex's AS100 and Valinor's satellite, including, without being limited to, emails or other communications, minutes of meetings, reports, presentations and/or decisions of authorities.	<p>Astracommex submits that Astracommex was not liable for the collision. Celestria used the incident to initiate an investigation against Astracommex and to suspend the operation of satellites.</p> <p>This move was discriminatory because no investigation and suspension of operations was issued for Valinor.</p> <p>The requested documents are relevant to assess whether the behavior of the Department of Defense was non-discriminatory and justified.</p>	<p>Celestria objects to the request for the following reasons:</p> <ul style="list-style-type: none"> <li><b>Complying with the request is likely to entail data protection issues.</b> As Valinor is in a long-term partnership with Celestria's military, the search will likely entail data protection issues. Celestria should not have to incur such a risk.</li> </ul> <p><b>The request is unreasonably burdensome.</b> The request should be dismissed because of the overwhelming likelihood that requested documents will be privileged or confidential. Celestria should not be required to incur the costs and efforts to look for and log such documents.</p>	<p>Astracommex maintains the request and respectfully applies to the Tribunal to order the production of responsive documents.</p> <ul style="list-style-type: none"> <li><b>Celestria failed to specify and substantiate the alleged "data protection issues."</b> Celestria did not even attempt to conduct a reasonable search and only speculates that such search would "<i>likely entail</i>" unspecified "<i>data protection issues.</i>" This objection is therefore too unspecific for Astracommex to respond to.</li> </ul> <p><b>The request is reasonable in its scope and is not burdensome.</b> Celestria again only "<i>expects</i>" the search to be burdensome, without providing any reason. Moreover, the request is not more burdensome than any other document production request.</p>	The Request relates to matters potentially relevant to this arbitration and is granted, unless said documents are privileged or confidential under PO2.

## Annex B Celestria's Redfern Schedule

*[Intentionally omitted]*