INTERNATIONAL CHAMBER OF COMMERCE

INTERNATIONAL COURT OF ARBITRATION

(2012 ICC Arbitration Rules)

Case no. 22467/DDA

BETWEEN:

GLOBAL VOICE GROUP SA (Seychelles)

Claimant/

Respondent in counterclaim

And

1. THE POSTAL AND TELECOMMUNICATIONS REGULATORY AUTHORITY OF GUINEA (Guinea)
2. THE REPUBLIC OF GUINEA (Guinea)

Respondents/

Claimants in counterclaim

FINAL AWARD

Members of the Arbitral Tribunal:

Maître Sophie Nappert (President)

Professor Charles Jarrosson (Co-Arbitrator)

Carmen Núñez-Lagos, Esq. (Co-Arbitrator)

Jurisdiction: **Paris, France**

IN THE PROCEEDINGS BETWEEN:

Global Voice Group SA, 1st Floor, #5 Dekk: House, De Zippora Street, PO Box 456, Providence Industrial Estate, Mahé, the Republic of Seychelles.

Claimant/Respondent in counterclaim

Represented by:

Marianne Kecsmar, Esq., lawyer with the firm of Pellerin Kecsmar Mirza Avocats, 20, Rue des Pyramides 75001 Paris, France. Email address: marianne.kecsmar@pkm-avocats.com;

and

Bassam Mirza, Esq., lawyer with the firm of Pellerin Kecsmar Mirza Avocats, 11, Place de l'Étoile, Wakf Al-Marouni Building, Beirut Center-Ville 2011-8860, Lebanon. Email address: bassam.mirza@pkm-avocats.com;

and

Bertrand Madsen, Esq., with the firm of Madsen Law PC, 1115 Broadway, 11th Floor, New York, NY 10010. Email address: bmadsen@madsenlawpc.com.

In

The Postal and Telecommunications Regulatory Authority of Guinea, Almamya District, Municipality of Kaloum, BP: 1500, Conakry, Republic of Guinea.

and

The Republic of Guinea

Respondents/Claimants in counterclaim

Represented by:

Sena Agbayissah, Esq., lawyer with the firm of Hughes Hubbard & Reed LLP, 5-7, rue de Monttessuy 75007 Paris, France. Email address: sena.agbayissah@hugheshubbard.com.

Before the Arbitral Tribunal composed of:

Sophie Nappert, Esq., President, 3 Verulam Buildings, Gray's Inn, London WClR 5NT, the United Kingdom. Email address: snappert@3vb.com;

Professor Charles Jarrosson, Co-Arbitrator, 15, rue Alphonse de Neuville, 75017 Paris, France. Email address: charles.jarrosson@wanadoo.fr;

Carmen Núñez-Lagos, Esq., Co-Arbitrator, 125 Avenue de Villiers, 75017 Paris, France. Email address: carmen.nunezlagos@orange.fr.

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A. BACKGROUND

I. THE PARTIES

1. **The Claimant**, Global Voice Group SA ("**the Claimant**" or "**GVG**") is a company incorporated under Seychellois law, with a capital of USD 100,000, whose registered office is located at 1st Floor, #5 Dekk House, De Zippora Street, PO Box 456, Providence Industrial Estate, Mahé, Republic of Seychelles, registered under number 022185. GVG supplies advanced technologies and financial protection and income generation systems related to telecommunications flows and operations. GVG was created in 2005 when its two shareholders decided to transfer their activities previously based in Haiti to the Seychelles, due to the group's international expansion.
2. The Respondents are:
   a. The Postal and Telecommunications Regulatory Authority of Guinea ("**PTRA**") is a public legal entity, governed by the statute defined by Guinean law L/2005/018/AN of September 8, 2005, relating to general telecommunications regulations. The PTRA comes under the supervision of the Minister responsible for telecommunications; and
   b. The Republic of Guinea ("**State**" or "**Guinea**").

II. THE APPLICABLE ARBITRATION AND LAW CLAUSE

3. Under Article 17 of the Partnership Agreement entered into on May 22, 2009 between GVG and APRT (**"the Partnership Agreement or the Agreement") [Exhibit C-1]**:

   "*In the absence of an amicable agreement between the Parties within a period of six (6) months following the date on which a dispute arises, any dispute of any kind, including the Annexes and any amendments thereto, which may arise between them, shall be subject to the exclusive jurisdiction of the Arbitration Rules of the International Chamber of Commerce in Paris by one or more arbitrators appointed in accordance with these Rules*".

4. Article 17.1 of the Partnership Agreement stipulates that: "[t]*he present Contract is subject to the laws of the Republic of Guinea*" **[Exhibit C-1]**.

III. SUMMARY OF THE LITIGATION

5. The following summary is based on the pleadings of the parties, as indicated in the references in square brackets.

6. In 2002, GVG entered the telecommunications market in Guinea by entering into a contract with the Société Guinéenne des Télécommunications (**"Sotelgui"**) relating to a "*wholesale carrier*" activity **[Summary and Response Memorandum ¶¶25-26]**.

7. On September 8, 2005, Guinea adopted Law L/2005/018/AN establishing the PTRA under the oversight of the Minister responsible for telecommunications. The PTRA's mission is, among other things, to ensure compliance by the telephone carriers with the provisions of the aforementioned text, to take the necessary measures to ensure continuity of service, to issue licenses and authorizations and to plan and manage frequencies. **[Summary and Response Memorandum ¶¶20-21; Statement of Rejoinder ¶¶37-40; Exhibit C-32].**

8. On October 6, 2006, GVG and Sotelgui signed a technical assistance and service contract with the provision of equipment for the management of the Sotelgui international gateway, under which GVG assumed "*management of the entire international transport network and international traffic invoicing for SOTELGUI [..]*" **[Summary and Response Memorandum ¶27; Exhibit C-41].**

9. On December 22, 2009, the President of Guinea Mr. Lansana Conté died. On December 24, 2009, state power was seized by the military forces **[Statement of Rejoinder ¶47].**

10. On May 22, 2009, GVG and PTRA entered into the Partnership Agreement for a period of 5 years, the purpose of which was "*to establish the general framework of a technological partnership aiming to assist the PTRA in the process of modernizing its structures of control and supervision of national and international signaling networks in Guinea*". The Partnership Agreement was also signed "[f]*or the Ministry of Telecommunications and New Information Technologies*" by the Minister at the time, Mr. Mathurin Banghoura **[Summary and Response Memorandum ¶¶30 - 31; Statement of Rejoinder ¶47; Exhibit C-1].**

11. In execution of the Partnership Agreement (Annex 1), on May 29, 2009 the Minister of Telecommunications and New Information Technologies and the Minister for the Presidency in charge of Economy and Finance established a Decree ("**Order**") "*setting the international tariff for the Republic of Guinea destination and shares to be transferred to the postal and telecommunications regulatory authority and to local carriers of telecommunications networks open to the public*" **[Summary and Response Memorandum ¶41; Statement of Rejoinder ¶55; Exhibit C-2].**

12. GVG alleges that on July 6, 2009, GVG and PTRA entered into an Amendment ("**Amendment**") bringing the initial term of the Partnership Agreement to six years. Under the terms of the Amendment, GVG undertook to finance up to USD 1,200,000 (by paying a

monthly sum of USD 100,000) for the construction of a building intended to house the equipment covered by the Partnership Agreement, part of the PTRA staff as well as any other equipment belonging to it or belonging to the Ministry of Telecommunications and New Information Technologies. The amount paid by GVG in respect of the Amendment was to be deducted from the remuneration which GVG was to receive under the Partnership Agreement. The Respondents question the authenticity of this Amendment **[Summary and Response Memorandum ¶47; Statement of Rejoinder ¶¶58-64; Exhibit C-3].**

13. In August 2009, GVG set up an IMS-STP supervision system, which became operational in September 2009 by giving the PTRA the possibility of collecting revenue after this date **[Summary and Response Memorandum ¶¶51, 56; Exhibit C-23].**

14. At the end of 2009, GVG offered two interscholastic computer laboratories on the occasion of the inauguration of the PTRA Traffic Control and Supervision Center **[Summary and Response Memorandum ¶460; Statement of Rejoinder ¶423; Exhibits C 24-25].**

15. GVG produced a Certificate dated January 18, 2010 issued by the Minister of Telecommunications of New Information Technologies certifying the payment of the first tranche (in September 2009) as an Amendment concerning the construction of the PTRA national and international telephone traffic control headquarters. Nevertheless, the Respondents invoked the doubtful nature of this certificate and contested its authenticity **[Summary and Response Memorandum ¶230; Statement of Rejoinder ¶¶486-489; Exhibit C-53].**

16. On May 11, 2010, the new Director of PTRA, Mr. Morlaye Youla, informed GVG of the account in which to make a transfer of USD 151,800 for the purchase of two vehicles **[Summary and Response Memorandum ¶¶60, 460; Statement of Rejoinder ¶72; Exhibit C-46].**

17. By letter dated July 9, 2010, the Director of PTRA, Mr. Morlaye Youla, thanked GVG for its invitation to Cape Town in South Africa on the occasion of the Africa Network Summit, stressing "*the quality of the welcome and the special attention we received during our stay*". In the same letter, the Director of PTRA congratulated GVG "*for the quality, the seriousness and the expertise that you bring to us within the framework of the assistance agreements which bind you to our institution*" **[Summary and Response Memorandum ¶¶58, 509; Statement of Rejoinder ¶74; Exhibit C-44].**

18. On July 15, 2010, the Director of PTRA said in a letter, "*Global Voice Group delivered for the Traffic Control and Supervision Center, high quality redundant STP solutions. The level of support provided by Global Voice Group, both for the management of signaling data collection, for billing and the fight against fraud, allowed us to obtain very good results in just ten (10) months of activity*" **[Summary and Response Memorandum ¶509; Statement of Rejoinder ¶¶70-75; Exhibit C-45].**

19. At the end of 2009, Guinea elected a new President, Mr. Alpha Condé. Subsequently, Mr. Oyé Guilavogui was appointed as the new Minister of Telecommunications and New Information Technology **[Summary and Response Memorandum ¶61; Statement of Rejoinder ¶81].**
20. On December 2, 2010, PTRA issued a communication referring to GVG's services in these terms: "*from the launch of the project to the establishment of infrastructure, including staff training, we highly appreciated the unique skills and the exemplary professionalism of Global Voice Group SA. We highly recommend the services of this group to our counterparts in other governments and Regulatory Authorities*" **[Summary and Response Memorandum ¶510; Statement of Rejoinder ¶¶70-75; Exhibit C-5].**
21. By letter dated December 28, 2010, GVG congratulated Mr. Oyé Guilavogui on his appointment as Minister **[Summary and Response Memorandum ¶231; Statement of Rejoinder ¶82; Exhibit C-27].**
22. On February 4, 2011, the PTRA sent a letter entitled "*Contract revision and notice of termination*," referring to a letter dated February 3, 2011 from Boucabar Sow, Attorney-at-Lae,, relating to a "*private agreement for the facilitation of the signature* [of a decree] *fixing the termination tariff in Guinea and obtaining customs exemptions*," and inviting GVG "*to support this case before the State Judicial Agent on Thursday February 10, 2011*" **[Summary and Response Memorandum ¶539; Statement of Rejoinder ¶83; Exhibit R-6].**
23. By letter dated February 10, 2011, the Minister involved GVG in events organized for the promotion of the communications sector **[Summary and Response Memorandum ¶511; Exhibit C- 48].**
24. By letter dated March 22, 2011, Mr. Moustapha Mamy Diaby, new Director General of PTRA, invited GVG to participate "*in an evaluation from April 12, 2011*" **[Summary and Response Memorandum ¶515; Statement of Rejoinder ¶¶84-85; Exhibit C-28].**
25. From April 2011 until May 2012, GVG's activity was the subject of a "Mid-term review" evaluation by PTRA **[Summary and Response Memorandum ¶¶65-66; Statement of Rejoinder ¶¶84-88].**
26. On November 3, 2011, the PTRA and GVG signed a first report specifying the actions and commitments taken by GVG to finalize the outstanding points relating to: (i) the local installation of supervision applications and tools; (ii) measuring the quality of service; (iii) the spectrum management system and; (iv) the solution for the migration of national traffic **[Statement of Rejoinder ¶87; Exhibit R-7].**
27. On May 11, 2012, Ms. Aminata Camara Kaba on behalf of the PTRA and GVG signed a Performance Report of contractual obligations between the PTRA and GVG ("**Performance Report**") detailing the results of the joint assessment of contractual performance and implementation of the obligations of the Partnership Agreement **[Summary and Response Memorandum ¶69; Statement of Rejoinder ¶502; Exhibit C-6].**

28. On June 10, 2012, Mr. Katim Touray on behalf of GVG and Mr. Diaby on behalf of PTRA signed an Addendum to the Partnership Agreement ("**Addendum**") stipulating that GVG "*executed the Action Plan agreed between the parties relating to the obligations mentioned in the*" Performance report. Under the Addendum, the PTRA owed GVG a balance of USD 13,237,182.60 from the invoices accumulated from September 2009 to December 31, 2011. Under the terms of the Addendum: (i) GVG waived the revenues (USD) corresponding to the remainder of the share of Sotelgui's international traffic for the period from September 2009 to December 31, 2011; (ii) GVG reduced the PTRA debt to USD 2 million, which had to be paid no later than June 30, 2012; (iii) the fees to be paid by the PTRA to GVG were reduced from USD 0.07 to USD 0.025/minute retroactively, as of April 1, 2011 **[Summary and Response Memorandum ¶¶79-82; Statement of Rejoinder ¶¶90-92; Exhibit C-7].**
29. On March 28, 2014, an Action Plan was signed between the PTRA and GVG providing a report on the actions implemented by GVG, as well as future commitments **[Summary and Response Memorandum ¶¶467, 494; Statement of Rejoinder ¶¶194-95; Exhibits C-9, R-8].**
30. In May 2014, the PTRA interrupted the payment of GVG's invoices. The PTRA considered that the Partnership Agreement ended on May 22, 2014 **[Summary and Response Memorandum ¶530; Statement of Rejoinder ¶99; Exhibit C-11].**
31. By email dated June 18, 2014, the PTRA informed GVG that their contractual relations had ended on May 22, 2014 **[Statement of Rejoinder ¶¶97; Exhibit R-9].**
32. On July 10, 2014 GVG wrote to the PTRA informing it of the renewal of the Partnership Agreement for a period of two years by virtue of the Amendment of July 6, 2009, exclusive of twelve months' notice, and of the arrival of a GVG delegation during the first week of August 2014 to continue discussions **[Summary and Response Memorandum ¶90; Statement of Rejoinder ¶99; Exhibit R-2].**
33. By letter dated July 15, 2014, the PTRA stated that "*there has never been an amendment relating to a contribution from GVG to the construction of a building let alone an extension of the duration of the initial contract. Consequently, we consider that this amendment is deemed to have never existed*" **[Summary and Response Memorandum ¶90; Exhibit C-10].**
34. By letter dated July 15, 2014, the PTRA requested that GVG send it a report on the implementation of the Partnership Agreement. GVG sent this report in July 2014 **[Statement of Rejoinder ¶98; Exhibits C-4, R-10].**
35. By letter dated November 24, 2014, the PTRA stated that "[a]*ccording to the provisions of the partnership agreement of May 22, 2009, these invoices are outside the contractual period which ended on May 22, 2014, for this reason we cannot honor the payment of said invoices*" **[Summary and Response Memorandum ¶92; Statement of Rejoinder ¶99; Exhibit C-11].**

36. By letter dated May 8, 2015, GVG indicated to the PTRA "*We extend our sincere* [sic] *thanks to the PTRA for its perfect collaboration. (...) In view of the consolidation of relationships over the years and with a view to bringing our discussions to a successful conclusion, GVG proposes an automatic renewal of the contract which binds us to your entity.*" **[Statement of Rejoinder ¶100; Exhibit R-11].**
37. By letter dated May 15, 2015, the PTRA recalled that it had already clarified its position regarding GVG's request for the renewal of the Partnership Agreement. The PTRA added that GVG had been requested in March 2014 to present "*a technical and commercial proposal*" for "[a] *verification system for the tariffs of telephone carriers*" and "[a] *carrier revenues supervision system*" **[Summary and Response Memorandum ¶93; Statement of Rejoinder ¶101; Exhibit C-12].**
38. By letter dated July 2, 2015, GVG demanded payment of its invoices which had remained unpaid for more than 13 months for an amount of more than USD 6 million **[Summary and Response Memorandum ¶94; Statement of Rejoinder ¶102; Exhibit C-13].**
39. By letter dated July 9, 2015, the PTRA disputed the terms of GVG's letter by recalling GVG's breaches of its contractual commitments transcribed in the 2011 and 2014 reports **[Summary and Response Memorandum ¶94; Statement of Rejoinder ¶104; Parts C 14, R- 13].**
40. On July 24, 2015 the Minister of Posts, Telecommunications and New Information Technology, Mr. Guilavogui, invited GVG to a meeting in the week of July 27, 2015 in order to find an amicable solution: "[I] *have exchanged with the National Council for the Regulation of Posts and Telecommunications and the General Management that is why I invite you to a meeting during the week of July 27, 2015 in Conakry so that we can find an amicable solution*" **[Summary and Response Memorandum ¶242; Statement of Rejoinder ¶106; Exhibit C-30].**
41. By letter dated July 27, 2015, GVG disputed the terms of the PTRA letter dated July 9, 2015 and indicated that "*for us, our contract does not expire until May 22, 2017*" 16) **[Summary and Response Memorandum ¶97; Statement of Rejoinder ¶105; Exhibit C-16].**
42. A meeting between GVG and PTRA was held on August 3, 2015. Following this meeting, GVG, by letter dated August 4, 2015, presented a new commercial offer to the PTRA. By letter dated the same day, GVG referred to the "*difficulties with which it carried out the inventory of equipment and materials belonging to the PTRA*" **[Summary and Response Memorandum ¶98; Statement of Rejoinder ¶¶107-109; Exhibit C-17, R-14].**
43. On August 6, 2015, the PTRA sent a letter to GVG stating "[that] *at the request of the Minister of State in charge of Telecommunications we met with you once again to inform you of these points and you yourself have recognized that your first contracts were all poorly written. In view of all the above, we reiterate our non-satisfaction, both technically and relational. As*

you also know, your current services do not meet our control, security and anti-fraud needs; and we no longer intend to continue working with you". The letter also added that "[o]f *the 14 points entered in the basic contract, as being GVG's obligations, 64% (9 out of 14 points) were not achieved on time or not at all*" **[Summary and Response Memorandum ¶¶239, 471-472, 521, 555, 557-560; Statement of Rejoinder ¶¶110,209,497,505,540; Exhibit C-15].**

44. On August 24, 2015, the Minister invited GVG to a meeting in the week of August 31, 2015 in order to finalize negotiations for an amicable resolution of the situation **[Summary and Response Memorandum ¶242; Statement of Rejoinder ¶210; Exhibit C-31].**

45. On September 8, 2015, the Minister and the President of the National Council for the Regulation of Posts and Telecommunications established a friendly resolution which provided for "[t]*he payment in full and in one instalment of the sum of 300,000 dollars per month for a total amount of 3,900,000 dollars representing the thirteen (13) months The payment of 6,824,441 dollars claimed by GVG in respect of fees on the basis of 2.5 US cents per minute of incoming international communications, based on a schedule spread over five (5) years with 10 payments spaced six (06) months apart. It is understood that this amount will be confirmed on the basis of the CSRs*". By letter dated September 14, 2015, GVG refused this offer **[Summary and Response Memorandum ¶242 Statement of Rejoinder ¶114-115; Exhibits C-19, C-20].**

46. On November 20, 2015, the PTRA concluded with Subah Infosolutions Limited ("**Subah**"), a "*Service contract for the supervision of international and national traffic, certification of carriers' revenues, monitoring pricing and the fight against fraud*" ("**Subah Contract**"). **[Summary and Response Memorandum ¶¶566-571; Statement of Rejoinder ¶¶526-536; Exhibit R-30]**. The Subah Contract was concluded without a request for proposals. It also stipulates a ICC arbitration clause in its Article 10.3.

47. In January 2016, Mr. Diaby took office as Minister of Posts, Telecommunications and Digital Economy.

48. On May 3, 2016, the GVG's counsel sent a letter giving formal notice to the PTRA to pay the sum of USD 103,171,862.66, in the absence of an agreement between the parties before June 30, 2016 **[Summary and Response Memorandum ¶¶01; Statement of Rejoinder ¶118; Exhibit C-21].**

IV. THE ARBITRAL PROCEDURE

IV.1. Brief reminder of the procedure and constitution of the Arbitral Tribunal

49. By letter dated December 13, 2016, the ICC Secretariat ("**the Secretariat**") acknowledged receipt of the Request for Arbitration dated December 8, 2016 and received on December 9, 2016.
50. By letter dated December 28, 2016, the Secretariat transmitted the Request for arbitration to the Respondents, informing them inter alia that they had 30 days from the day following receipt of this correspondence to respond to the Request, as well as the possibility for them to request an extension of this deadline by providing their comments on the number of arbitrators and, if necessary, by appointing an arbitrator (Article 5(2) of the 2012 ICC Arbitration Rules ("**the Rules**")).
51. By letter dated February 14, 2017, the Secretariat informed the parties that the Request for Arbitration had been received by the Respondents via DHL on December 30, 2016 and that, therefore, the period of 30 days to submit a Response to the Request for Arbitration had expired on January 31, 2017 without this Response having been submitted. The Secretariat added that in accordance with Article 6(3) of the Rules, the arbitration would continue despite the absence of a Response; that in the absence of comments from the Respondents, the Court would constitute the Arbitral Tribunal (Article 12(2) of the Rules) and fix the location of the arbitration (Article 18(1) of the Rules).
52. By letter dated February 17, 2017, the PTRA acknowledged receipt of the letter from the Secretariat dated February 14, 2017, expressed its surprise and transmitted a letter dated August 6, 2015 which it had addressed to the President Director-General of GVG.
53. By letter dated April 18, 2017, the Secretariat informed the parties that the Court, on April 13, 2017 had:
    a. Decided to submit this arbitration to three arbitrators (Article 12(2) of the Rules);
    b. Fixed Paris (France) as the location of the arbitration (Article 18(1) of the Rules);
    c. Noted the designation of Professor Jarrosson as co-arbitrator appointed by the Claimant;
    d. Invited the Respondents to appoint a co-arbitrator within 15 days, failing which the Court would be invited to take the necessary measures to constitute the Arbitral Tribunal.
54. By letter dated July 6, 2017, the Secretariat informed the Arbitral Tribunal and the parties that the Court, on the same date:
    a. Had confirmed Charles Jarrosson as co-arbitrator upon appointment of the Claimant (Article 13(1) of the Rules);
    b. Had directly appointed Carmen Núñez-Lagos as co-arbitrator in place of the Respondents who had not appointed a co-arbitrator (Article 13(4)(a) of the Rules);

c. Had directly appointed Sophie Nappert as president of the Arbitral Tribunal (Article 13(4)(a) of the Rules).

55. By letter dated July 6, 2017, the Secretariat transmitted the file to the Arbitral Tribunal.

56. By email dated July 11, 2017, also sent to the Respondents by courier, the Arbitral Tribunal, through its president, contacted the parties in order to convene the conference on the management of the procedure (Article 24 of the Rules).

57. By email dated July 19, 2017, counsel for the Claimant responded to the above email and informed the Arbitral Tribunal of the addition to the file of Hughes Hubbard as counsel for the PTRA.

58. By email dated July 19, 2017, Messrs. Sena Agbayissah and Marc Henry of the law firm of Hughes Hubbard confirmed their mandate to represent PTRA in this arbitration and sent a letter dated July 6, 2017 addressed to the Secretariat, by which they requested a period of 30 days, that is until August 4, 2017, to submit the PTRA Response and its choice of co-arbitrator.

59. By email dated July 20, 2017, counsel for the Claimant objected to the grant of the delay requested by counsel for the PTRA, on the grounds in particular that the Respondents had received all useful notifications for submitting their Response and appointing their co-arbitrator but had done nothing with it.

60. By email dated July 28, 2017, also sent by courier to the State, the Arbitral Tribunal, after having contacted the Secretariat and after deliberation, informed the parties that, to the extent that the Respondents had been informed in due course of the proceedings, where the Arbitral Tribunal had been validly constituted and unless the Court intervened, it appeared to the Arbitral Tribunal that the arbitral proceedings had to run their course and that the conference on the management of the proceedings was held in order to conclude the Terms of Reference. The Arbitral Tribunal also noted that the Respondents would have every opportunity to submit their position within the Terms of Reference and their pleadings. The Claimant's counsel having indicated their availability for the conference, in particular for September 4, the Arbitral Tribunal requested the availability of the Respondents.

61. By email dated July 31, 2017, Mr. Henry acknowledged receipt of the communication from the Arbitral Tribunal and informed it of a response as soon as possible.

62. By email dated August 7, 2017, the Arbitral Tribunal followed up the Respondents.

63. By email dated August 11, 2017, Mr. Agbayissah acknowledged receipt of the communication from the Arbitral Tribunal and assured it of a return as soon as possible.

64. By email dated August 14, 2017, also sent by courier to the State, the Arbitral Tribunal informed the parties that in the absence of a response from the Respondents by August 18, 2017, the procedural conference would take place on September 4, 2017.

65. By email dated August 29, 2017 addressed to the parties, the Arbitral Tribunal confirmed that the procedural conference would be held on September 4, 2017 at 2:30 p.m. Paris time, unless counsel indicated another availability, and circulated telephone contact information. The Arbitral Tribunal also invited counsel to come together in an attempt to agree on a procedural timetable and to inform the Arbitral Tribunal of the outcome of their discussions on September 1, 2017.
66. By email dated August 29, 2017, counsel for the Claimant confirmed their availability for the procedural conference.
67. By email dated August 30, 2017, the Arbitral Tribunal circulated a draft Terms of Reference to the parties and to the Secretariat.
68. By email dated September 1, 2017, counsel for the Claimants circulated a draft procedural timetable, counsel for the Respondents having informed them that they were not yet in a position to discuss it.
69. By email dated September 1, 2017, the Arbitral Tribunal circulated an agenda for the conference call of September 4, and requested counsel for the Respondents to indicate whether they intended to participate.
70. By email dated September 4, 2017, Mr. Henry confirmed the participation of counsel for the Respondents in the conference call.
71. The procedural conference was held on September 4, 2017 at 2.30 p.m. Paris time, in the presence of the Arbitral Tribunal and counsel for the parties.
72. By subsequent email dated September 4, 2017, the Arbitral Tribunal confirmed that the counsel of the Guinean parties had agreed to inform the Arbitral Tribunal and the Claimant of the status of their mandate, and of the Respondents' intentions regarding their participation in this arbitration, by September 15, 2017.
73. By email dated September 18, 2017, the Arbitral Tribunal requested counsel for the Respondents to follow up on the above email.
74. By email dated September 19, 2017, Messrs. Agbayissah and Henry transmitted their mandate to represent the State for the purposes of this arbitration.
75. By email dated September 20, 2017, the Arbitral Tribunal acknowledged receipt of the mandate to represent counsel for the Respondents, noted that all the parties involved participated in the arbitration proceedings through their respective counsel, and invited the parties to define their respective positions within the draft Terms of Reference by September 27, 2017.
76. By email dated September 25, 2017, counsel for the Claimant transmitted the summary of the Claimant's claims for inclusion in the Terms of Reference.
77. By email dated September 28, 2017, the Arbitral Tribunal granted the Respondents an additional period until October 13 to produce a summary of their claims and their observations on the draft Terms of Reference and procedural timetable.

78. By email dated October 12, 2017, the counsel for the parties transmitted their joint observations on the draft Terms of Reference as well as a procedural timetable which they had agreed to.
79. By email dated October 13, 2017, the counsel for the Respondents transmitted the summary of the Respondents' claims for the purpose of inclusion in the Terms of Reference.
80. The Terms of Reference, signed by the representatives of the parties and by the members of the Arbitral Tribunal, is dated October 16, 2017.

IV.2. The parties' pleadings

81. On January 30, 2018, GVG filed its Brief in Question **[Brief in Question]**.
82. On April 30, 2018 the Respondents filed their Defense Brief **[Defense Brief]**.
83. On July 31, 2018, GVG filed its Summary and Response Memorandum **[Summary and Response Memorandum].**
84. On October 31, 2018, the Respondents filed their Statement of Rejoinder **[Statement of Rejoinder].**
85. On February 4 and 11, 2019, the parties filed their Post-hearing notes.
86. On March 1, 2019, the parties filed their Notes relating to the costs of the arbitration.

IV.3. Witness attestations

87. The Claimant has submitted the following attestations:
    a. Katim Touray's witness attestation dated January 30, 2018;
    b. Witness attestation no.1 by Patrice Baker dated January 30, 2018;
    c. Witness attestation no. 2 by Patrice Baker dated July 31, 2018.
88. The Respondents submitted the following attestation:
    a. Aminata Camara Kaba's witness attestation dated April 30, 2018;
    b. Witness attestation by Diaby Moustapha Many dated April 30, 2018;
    c. Witness attestation by Mamadou Lamarana Bah dated April 30, 2018.

IV.4. The expert's report

89. In support of their Statement of Rejoinder, the Respondents filed a consultation with Professor François-Xavier Train **[Exhibit RL-34].**

IV.5. Procedural orders

90. During the arbitral proceedings the Tribunal issued the following procedural orders:
    a. Procedural order no. 1 (Procedural calendar) of October 29, 2017;
    b. Procedural order no. 2 (Redfern Schedule) of May 17, 2018;
    c. Procedural order no. 3 (Procedure to follow for the merit hearing) of December 10, 2018.

IV.6. The main hearing

91. The hearing on the merits was held from January 28 to 30, 2019 at the ICC "Hearing Center" in Paris. The agenda for the hearing, agreed between the parties and the Arbitral Tribunal, was as follows:
    a. January 28, 2019:
        (i). The trial proceedings;
        (ii). Procedural matters;
        (iii). Introductory argument by Mr. Agbayissah on the preliminary questions (Respondents);
        (iv). Introductory argument by Mr. Mirza on the preliminary questions (Claimant);
        (v). Introductory pleading by Mr. Kecsmar on the merits (Claimant); (vi). Introductory oral argument of Mr. Agbayissah on the merits (Respondents).
    b. January 29, 2019:
        (i). The trial proceedings;
        (ii). Procedural matters;
        (iii). Hearing of Mr. Diaby (examination by Mr. Agbayissah, cross-examination by Mr. Kecsmar, re-examination by Mr. Agbayissah);
        (iv). Hearing of Mr. Parker (examination by Mr. Kecsmar, cross-examination by Mr. Agbayissah; re-examination by Mr. Kecsmar).
    c. January 30, 2019:
        (i). The trial proceedings;
        (ii). Hearing of Mr. Tourny (cross-examination by Mr.. Agbayissah);
        (iii). Hearing of Ms. Kaba (cross-examination by Mr.. Kecsmar, re-examination by Mr. Agbayissah);
        (iv). Closing arguments by Mr. Kecsmar;
        (v). Closing arguments by Mr. Agbayissah;
        (vi). Procedural issues.

IV.7. Closing arguments

92. By email dated March 2, 2019, the Arbitral Tribunal declared the proceedings closed in accordance with Article 27 of the 2012 ICC Arbitration Rules.

IV.8. The Arbitration Regulations

93. The present arbitration procedure is governed by the 2012 ICC Arbitration Rules. The Court fixed the deadline for rendering the final award on April 30, 2019 during its session on November 2, 2017. This deadline was extended to May 31, 2019 on April 18, 2019; to June 28, 2019 on May 9, 2019 and to July 31, 2019 on June 13, 2019.

B. THE CLAIMS OF THE PARTIES

94. The claims of the Parties are set out below.

I. CLAIMS OF THE CLAIMANT

95. In its Summary and Response Memorandum, GVG summarizes all of its claims mentioned in the Brief in Question **[Brief in Question 386].** It requests the Tribunal **[Summary and Response Memorandum 613] to:**

    a. Reject the Respondents' request for the cancellation of the arbitration clause contained in Article 17 of the Partnership Agreement and therefore declare them competent;

    b. Rule that the Republic of Guinea is party to the Partnership Agreement and therefore to the arbitration clause it contains;

    c. Dismiss the Respondents' counterclaims for a declaration that the Partnership Agreement is void, for restitution and damages and any other claim;

    d. Rule that the Respondents improperly terminated the Partnership Agreement;

    e. Declare the Addendum void;

f. Indemnify, accordingly, GVG for all of its loss suffered up to USD 106,558,275.20 in respect of outstanding payments during the contractual period in addition to default interest from August 2015 with capitalization on the above amounts at the rate deemed appropriate by the Arbitral Tribunal, to which should be added the costs incurred by GVG during the transactional negotiations estimated at USD 150,000 in addition to default interest;

g. Order the Respondents to pay all costs relating to the arbitration, including the fees and expenses of lawyers as well as the fees and expenses of any expert engaged by GVG in the context of these proceedings.

II. THE CLAIMS OF THE RESPONDENTS

96. In their Statement of Rejoinder, the Respondents summarize all of their requests mentioned in the Defense Brief **[Defense Brief ¶300]**. They request the Tribunal **[Statement of Rejoinder ¶554]:**

a. As a preliminary point, to declare that it lacks subject matter jurisdiction to hear requests by GVG against both the PTRA and the Republic of Guinea, and to reject them accordingly;

b. In the alternative, if the Tribunal does not recognize that it lacks subject matter jurisdiction, to declare that it lacks jurisdiction against the Republic of Guinea, and to accordingly reject GVG's claims against it;

c. As a preliminary point, to declare the action brought against the Republic of Guinea void and to accordingly reject GVG's claims against it;

d. As a preliminary point, to declare and rule GVG inadmissible in its requests vis-à-vis the PTRA and in the alternative vis-à-vis the Republic of Guinea, and to reject them accordingly,

e. In the alternative, to declare and deem unfounded the requests of GVG, and to reject them accordingly;

f. In the alternative, pronounce the termination of the Partnership Agreement at the exclusive wrongs of GVG;

g. Conversely, to condemn GVG in case of nullity to return the sums wrongfully received, that is to say the sum of USD 48,093,160 to be completed, GVG being unable to derive any benefit from its own turpitude; alternatively to order GVG for poor performance to pay damages in compensation for the damage suffered as a result of GVG's behavior, for an amount of USD 10,000,000 to be completed;

h. In any event, to order GVG to pay each of the Respondents the sum of USD 100,000 as compensation for the moral prejudice suffered by each of them as a result of the allegations contained in GVG's pleadings;
i. To order GVG to pay each Respondent the sum of USD 100,000 for abusive procedure;
j. In any event, to order GVG to bear all the costs relating to the arbitration, including the fees and expenses of lawyers and the fees and expenses of any expert appointed by the Respondents for the requirements of these proceedings.

C. THE TRIBUNAL'S ANALYSIS AND DECISION

I. PRELIMINARY RESERVATIONS

I.1. Summary of the parties' positions

97. The Arbitral Tribunal briefly recalls the reservations expressed by the Respondents as regards the constitution of the Arbitral Tribunal by the Court on the one hand, and as to the time allowed for producing a summary statement of their position for the purposes of the Terms of Reference on the other hand **[Defense Brief ¶¶86-91].**
98. With regard to the constitution of the Arbitral Tribunal, the PTRA and Guinea consider that the latter contravenes the principle of equal treatment of the parties, insofar as GVG freely appointed a co-arbitrator but objected to PTRA and Guinea also being able to exercise this right.
99. The Respondents add that this situation is all the more questionable in the current context of a multi-party arbitration in which the Respondents are imposed a joint arbitrator, when their respective positions and their interests could have been disjoined. Consequently, the only equitable solution would have been to have the entire Arbitral Tribunal designated by the arbitration institution.
100. For its part, GVG, after a reminder of the chronology of exchanges between counsel for the parties and the Secretariat **[Summary and Response Memorandum ¶¶103-104]**, finds that the Request for Arbitration of December 8, 2016 was received by Respondents on December 30, 2016, and that the Respondents were granted numerous extensions of time by the Secretariat to present their claims and appoint their co-arbitrator, which they did not do. The Arbitral Tribunal was not finally constituted until July 6, 2017 and the Terms of Reference signed on October 16, 2017, so that the Respondents actually had six months to appoint their

co-arbitrator, a time period that greatly exceeds the 30 days provided for in the Rules **[Summary and Response Memorandum ¶¶110-111].**

101. GVG adds that, contrary to what the Respondents state, it did not deny the Respondents the right to appoint a co-arbitrator, but instead requested them to make a proposal, which request remained unanswered. State participation in the proceedings was only confirmed on September 19, 2017 **[Summary and Response Memorandum ¶112].**

102. With regard to the time limit prescribed by the Arbitral Tribunal for the production of the summary statement of the position of the Respondents for the purposes of the Terms of Reference, the PTRA and Guinea stress that their counsel could not invest in this procedure only from September 19, 2017, the date of production of the mandate of the State's representation. However, the Regulation provides for a minimum period of 30 days to allow the Respondent to respond to the request for arbitration. The time limit imposed by the Arbitral Tribunal being lower than the standard provided for in the Rules, the Respondents produced their summary statement subject to being able to amplify and supplement it with new means and claims at any time during the proceedings **[Defense Brief ¶87].**

103. GVG replied that the Respondents had 10 months to produce their summary statement and that, in any event, they had all the opportunity necessary to present their arguments in accordance with the procedural timetable agreed between the parties **[Summary and Response Memorandum ¶¶107-108].**

I.2. Analysis

104. Regarding the reservations expressed on the validity of the constitution of the Arbitral Tribunal, it appears to the Tribunal that this is a question which is eminently within the jurisdiction of the Court, which, upon presentation of the position of the parties, made its decision by applying the Rules. It is not for the Tribunal to retry it. At the most, the Tribunal notes that at no time did the PTRA and the Guinean State mention divergent interests which could have justified the appointment by the arbitration institution of all the arbitrators.

105. Furthermore, the Arbitral Tribunal notes that the Court, in making its decision, did not encroach on the questions raised by the Respondents with regard to the Tribunal's jurisdiction to hear this dispute, questions which will be discussed below.

106. As to the reservations relating to the time limit given to the Respondents to produce a summary statement of their claims for the purposes of the Terms of Reference, the Arbitral Tribunal notes that the Respondents have made full use of the opportunities to assert their position in their pre- and post-hearing pleadings, as well as at the hearing itself, so that the alleged procedural defect that they raise, even supposing that they exist, did not cause them any grievance.

107. The Tribunal concludes from this that with regard to the procedural aspects within its jurisdiction, the rights of the Respondents were respected throughout this Arbitration and that the reservations they express do not affect its validity. In addition, the Tribunal recalls that with regard to the procedure followed before it, it questioned the Parties, at the end of the oral hearing on January 30, 2019, on any comments they might have to make **[T3/61:9-15]**. They both replied that they had no comments to make.

II. JURISDICTION OF THE ARBITRAL TRIBUNAL

108. As a preliminary point, the Respondents claim that the Arbitral Tribunal has no jurisdiction to hear this dispute, firstly *subject matter* for violation of the Guinean Public Procurement Code ("**PPC**"), but also personal jurisdiction with regard to the State.

II.1. Subject Matter Jurisdiction

II.1.a. Summary of the parties' positions

109. The Respondents claim that the law applicable to the Partnership Agreement is Guinean law by virtue of its Article 17. However, the Partnership Agreement falls under the PPC regime, the terms of which are mandatory, and of which Article 77 provides that disputes between Guinean public legal entities and foreign holders of public contracts must be subject to ad hoc arbitration. This makes Article 17 of the Partnership Agreement and the present procedure incompatible with the mandatory provisions of the PPC **[Statement of Rejoinder ¶¶127-137].**

110. GVG submits that the Respondents cannot be admitted to invoke a violation of the PPC and Guinean national law in the light of French case law **[Exhibits CL-1 to CL-6]**, explained by doctrine **[Exhibit CL-7]**, according to which a State cannot invoke its national law or the law of the contract to withdraw *a posteriori* from an arbitration to which it agreed **[Summary and Response Memorandum ¶¶147-157].**

111. Concerning the *Dalico* jurisprudence invoked by GVG, the Respondents argue that the rule aiming at the autonomy of the arbitration clause compared to any state law is specific to French law and does not constitute a transnational rule. This case law is particularly justified by the desire to promote arbitration and the arbitrability of disputes. However, it is not a question for the Respondents of claiming the jurisdiction of the Guinean domestic courts, but the respect of an *ad hoc* arbitration procedure specially provided for by Guinean law for public procurement contracts concluded with foreign companies **[Statement of Rejoinder ¶¶145-151].**

112. In support of their arguments, the Respondents invoke a critical doctrine of the approach adopted by the *Dalico* judgment and its aftermath, advocating a functional, and not conceptual, understanding of this jurisprudence **[Exhibits RL-1 to RL-3].**

113. They add that there is no need to apply the substantive rules of French law of international arbitration in the present case, the only link with French law being the arbitration jurisdiction, fixed fortuitously by the institution given the silence of the Partnership Agreement on the subject. Furthermore, the award is not intended to be executed in France **[Statement of Rejoinder ¶¶155-158].**

114. With their Statement of Rejoinder, the Respondents filed the Legal Opinion of Professor François-Xavier Train dealing with these questions, and in particular *Dalico* case law and the police laws of the *lex contractus* **[Exhibit RL-34].**

115. Professor Train bases his Opinion on the premise that the PPC applies to the present dispute by reason of the election of Guinean law as *lex contractus* and, therefore, equally the arbitration clause of Article 77 of the PPC by reference to a national police law **[Exhibit RL-34 17].** Professor Train adds that "*this imperative provision cannot be neutralized on the basis of the* Dalico *jurisprudence, since it cannot be assimilated to a local law prohibiting recourse to arbitration for one reason or another, or subjecting the arbitration agreement to excessively restrictive conditions of validity*." **[Exhibit RL-34128 (1)]**.

116. In response, by way of introductory oral argument, GVG argues in particular that there is no incompatibility between Article 77 of the PPC and Article 17 of the Partnership Agreement **[T1/29:1-25]**; that Professor Train does not explain how Article 77 of the PPC would be police law **[T1/32:32-33:8]**; and that the Subah contract, having succeeded the Partnership Agreement for the benefit of a GVG competitor, also contains a ICC arbitration clause in its Article 10.3 **[T1/33:9-17; Exhibit R-30].**

II.1.b. Analysis

117. The Arbitral Tribunal notes at the outset that Professor Train's Opinion is based on the presumption that the Partnership Agreement falls under the aegis of the PPC, a presupposition which is not explained in the Opinion but that the Respondents substantiated in their Statement of Rejoinder **[Statement of Rejoinder ¶¶269-282]** and introductory oral argument at the hearing **[T1/11:22-15:32].**

118. GVG argues for its part that the PPC regime does not apply, the Partnership Agreement constituting a public service delegation, subsidiary to the regime of contracts negotiated by mutual agreement and not public contracts **[Summary and Response Memorandum ¶¶313-352; T1/70:21-73:9].**

119. Professor Train's Opinion also rests on the basis of a second presupposition, namely the qualification of the arbitration procedure of Article 77 of the PPC as ad hoc arbitration,

which contrasts with the ICC institutional arbitration provided for in the Partnership Agreement, which in his opinion renders the two clauses incompatible: "*Ad hoc arbitration and institutional arbitration indeed follow a fairly distinctly different regime, precisely because of the intervention of an arbitration institution which can replace the parties in a certain number of cases, a difference which is particularly significant at the constitution of the Arbitral Tribunal stage*" **[Exhibit RL-34 9; note 6].**

120. On this point, GVG argues the absence of any incompatibility, Article 77 of the PPC making reference to arbitration in the generic sense of the term, without, however, prescribing a particular type of arbitration, whether it is *ad hoc* or institutional **[T1/27:20-28:14].**

121. It does not appear necessary for the determination of the subject matter jurisdiction of the Tribunal to have to rule on the qualification of the Partnership Agreement because, even assuming that the PPC found application, the present procedure does not present any incompatibility with the terms of Article 77 of the PPC which reads as follows: "*In the context of Large Public Markets, or disputes arising between the contracting authority and an entrepreneur, a supplier, an industrialist or a service provider under foreign law must be submitted to arbitration under the conditions established below:*

- *The parties to the arbitration are the contracting authority and the contractor;*
- *The Arbitral Tribunal consists of three appointed arbitrators, the first by the contracting authority, the second by the foreign contract holder and the third by agreement of the parties.*

In the event of the death or resignation of one of the appointed arbitrators, his or her successor is designated in accordance with the provisions of this Article applicable to the appointment of the arbitrator who preceded him or her, and said successor has the powers and obligations of his or her predecessor"

122. These terms are laconic, broadly framed and just as compatible with a procedure managed by an institution (such as the ICC in this case) as with an *ad hoc* procedure (governed for example by UNCITRAL regulations). The Tribunal also notes that Article 77 remains silent on the modalities of the constitution of the Arbitral Tribunal when a party refrains from appointing an arbitrator (as was the case here for the Respondents). In this regard, it is important to recall that ad hoc arbitration as well as institutional arbitration provides that this arbitrator is then appointed, either by an appointing authority for *ad hoc* arbitration, or by the institution in the case of institutional arbitration. Consequently, nothing in the constitution of this Arbitral Tribunal violates the terms of Article 77 of the PPC.

123. For the sake of completeness, the Tribunal notes that ICC arbitration is all the less contrary to Guinean public order since Article 134 of the PPC, in its 2012 version[1] once again contemplates the use of arbitration in terms just as general as the PPC under which the Partnership Agreement with GVG was concluded. However, the Subah contract **[Exhibit R-30]**, concluded on November 24, 2015 and which succeeded the Partnership Agreement here in question, included in its Article 10.3 an arbitration clause which specifically refers to the arbitration of ICC, without questioning its validity.

124. The Tribunal therefore considers that it has subject matter jurisdiction to hear this arbitration and dismisses the objection of lack of jurisdiction raised by the Respondents under this head.

II.2. Personal jurisdiction

II.2.a. Summary of the parties' positions

125. The Respondents contend that the Arbitral Tribunal must declare that it has no jurisdiction over the State, which, although it signed the Partnership Agreement as supervising authority, did not consent to being a party to it nor was it involved in its conclusion, its execution, or its rupture **[Statement of Rejoinder ¶¶68].**

126. The Respondents claim the absence of the State's direct consent on the grounds that the mere signature of the State as supervisory authority is not sufficient to make it a party to the Agreement in the absence of a clear, express and unequivocal manifestation of its will to adhere to it **[Statement of Rejoinder ¶¶169-174; Exhibits RL-6 and RL-15].**

127. In the present case, the content of the Partnership Agreement, like that of the Amendment or the Addendum, makes no mention of the State **[Statement of Rejoinder ¶¶176-178]**, nor does it impose any obligation on the State **[Statement of Rejoinder ¶¶183-185].**

128. The adoption of the decree of May 29, 2009 fixing the international tariff **[Exhibit C-2]** cannot confer party status on the State, the function of the latter being limited to publishing the standards designed and developed by the PTRA **[Statement of Rejoinder ¶¶189-193]**.

129. Exhibits on the record, including the Contract Performance Report **[Exhibit C-6]** and the invoices sent only to the PTRA **[Exhibits R-4; C-52-1; C-52-2 and C-52-3]**, demonstrate that the State was not involved in the execution of the Agreement and that only GVG and the PTRA are parties to it **[Statement of Rejoinder ¶¶194 -199].**

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[1] Art. 134 of the PPC 2012: "*Any litigation which has previously been the subject of a hierarchical appeal and which has not been settled amicably within fifteen (15) working days following the lodging of the appeal, will be brought, in accordance with the applicable law and contractual stipulations, before the competent courts or arbitral bodies* ".

130. As for the letters invoked by GVG in favor of State involvement in the execution of the Agreement, a majority emanates from GVG itself and therefore has no probative value **[Exhibits C-24 to C-27; Statement of Rejoinder ¶¶200-201].**

131. The letter from Minister Oyé Guilavogui reflects clumsy drafting which is not confirmed by any other element of the file **[Exhibit C-28; Statement of Rejoinder ¶202].**

132. Finally, the PTRA letter dated July 16, 2012 only reminds us that the State representative signed the Agreement **[Exhibit C-29; Statement of Rejoinder ¶203]**, which he did as a supervisory authority.

133. In addition, other documents confirm the Respondents' position, in particular a progress report signed between the PTRA and GVG (without State intervention) on November 3, 2011 in order to specify the actions and commitments taken to finalize certain outstanding points **[Exhibit R-7; Statement of Rejoinder ¶204]**, as well as the formal notice of GVG of May 3, 2016 preceding the Request for arbitration, addressed to the PTRA alone **[Exhibit C-21; Statement of Rejoinder ¶¶205].**

134. With regard to the termination of the contractual relationship between GVG and the PTRA, the Minister of Telecommunications only intervened as a mediation authority, and at the request of GVG **[Statement of Rejoinder ¶¶206-212].**

135. For its part, GVG recalls the doctrinal and jurisprudential teachings to the effect that the will of the parties, as expressed through all the circumstances of the case, makes it possible to resolve the question of whether an entity has or not consented to being a party to an arbitration clause **[Summary and Response Memorandum ¶¶180-197]**. GVG cites the *Dallah* judgment in particular, Paris CA, Judgment of February 17, 2011 **[Exhibit CL-19]**, where the arbitration clause was extended to the Pakistani State, which had neither signed nor approved the contract, on the basis of its behavior in contractual relationships **[Summary and Response Memorandum ¶¶194-195; T1/35:7-10].**

136. GVG does not claim that the signing of the Agreement by the State alone confers on it party status; however, it contends that this is an important circumstance demonstrating that the State was aware of the arbitration clause. The tripartite nature of the Agreement is further established by the fact that it was signed in triplicate **[Summary and Response Memorandum ¶202]** and in particular by the mention, in the minutes of the meeting of October 6, 2009, of GVG and the Minister of Telecommunications and New Information Technologies as parties to the Agreement **[Exhibit C-22; Summary and Response Memorandum ¶205]**.

137. GVG invokes the close interweaving of the State and GVG and their inseparable designation within the documents in the file as being the beneficiaries of the technological means that GVG was to set up within the framework of the Partnership Agreement **[Summary and Response Memorandum ¶¶211-216].**

138. GVG also invokes the active participation of the State throughout the contractual process. The financial conditions of the Agreement, in the Decree of May 29, 2009, clearly demonstrate that the State negotiated and agreed on the revenue distribution key with GVG. The Decree also adds new obligations in its Article 10 to be borne by GVG, not provided for under the terms of the Agreement **[Exhibit C-2; Summary and Response Memorandum ¶¶218-225].**
139. The State also participated in the implementation of the Partnership Agreement, as demonstrated by the responsibilities assigned to it within the Matrix of Responsibilities annexed to the Agreement, which require the Minister's active intervention in the contractual process **[Summary and Response Memorandum ¶¶226-228].**
140. In addition, the first installment under the Amendment to the Agreement was sent directly to the State **[Summary and Response Memorandum ¶¶229-230].**
141. GVG also argues that in any event, the State indirectly consented to the Partnership Agreement through the PTRA, itself emanating from the State and acting as its agent **[Summary and Response Memorandum ¶¶246-280].**
142. On this point, the Respondents, although they do not deny that the PTRA belongs to the Guinean state apparatus, rely on Article 24 of Law L/2005/018/AL **[Exhibits C-32; RL-9]** to the effect that the PTRA is an independent administrative authority, acting on behalf of the State without, however, coming under the authority of the government. They add that GVG's position leads to the absurd result that the State would necessarily be a party to any contract that would have been concluded by the PTRA **[Statement of Rejoinder ¶¶215-217]**.
143. The Respondents add that GVG does not provide proof that the State would have given the PTRA the power to conclude the Partnership Agreement in its name and account, and that within the framework of a real mandate the Minister did not sign the Agreement **[Statement of Rejoinder ¶¶218-221; 235].**
144. As for the Matrix of Responsibilities invoked by GVG, the Respondents say that they do not know it and that in any event, the responsibilities devolved in this Matrix to the Minister of Posts and Telecommunications proceed from its duties of supervisory authority as well as the environment of the Partnership Agreement, rather than its content **[Statement of Rejoinder ¶¶238-240].**

II.2.b. Analysis

145. The Tribunal notes first of all that the two Parties explain themselves on the question of its personal jurisdiction by referring, in addition to Guinean law, largely to law: French, law of arbitration jurisdiction **(Summary and Response Memorandum ¶¶180 et seq.; Statement of Rejoinder ¶¶171 et seq.)**. The Tribunal will also situate its reasoning on these grounds. As taught by the jurisprudence and doctrine referred to in GVG in its pleadings, including the *Dallah* judgment cited above **[Exhibit CL-19]**, the question of whether or not the State consented to be bound by the Partnership Agreement and its arbitration agreement proceeds

from an examination of its behavior during contractual relations, with regard to the elements deposited in the file.

146. To use the terms of GVG's pleadings, this examination reveals circumstances demonstrating the close interweaving of the State and the PTRA as beneficiaries of the technological means that GVG was to set up under the Partnership Agreement. In addition, the Agreement was a necessary instrument for the implementation of a new fiscal policy in Guinea and enabled the Guinean State to collect some USD 212 million in tax revenue **[Exhibit C-1, Preamble; T1/59:24-29; Mr. Diaby T2/123:19-26; Summary and Response Memorandum ¶¶213-216].**

147. The Tribunal also notes the active participation of the State throughout the contractual process, from its conclusion to its termination, including its execution.

148. At the entry of the Agreement, the Tribunal notes that the Ministerial Order of October 29, 2009, issued in accordance with point 10 of the Matrix of Responsibilities assigning this stage to the State, completes the terms of the Agreement specifying the financial conditions. The Tribunal agrees with GVG's position that the Partnership Agreement cannot be conceived without the Order **[Summary and Response Memorandum ¶223].**

149. At the execution stage of the Agreement, here again the Ministerial Decree places no less than twelve specific responsibilities at the charge of the State, whether under the title "*Signature and Establishment*" (Points 1, 2, 5, 6); under *"Project Launch Phase*" (Points 1 to 7 and Point 10); or finally under "*Logistics*" (Points 4 and 6). The Tribunal added that these responsibilities, which had been assumed by the State, were essential to the implementation and proper functioning of the Agreement. The Tribunal can therefore only reject the Respondents' argument that the Agreement "*does not impose any obligation on Guinea*" as being incompatible with this set of facts **[Statement of Rejoinder ¶¶179-187].**

150. The documents added to the file also show the active intervention of the State during the execution of the Agreement. As an indication, the Tribunal notes the Minutes of the meeting between the GSM carriers, the MTNTI and the PTRA Directorate General of October 6, 2009 **[Exhibit C-22]**, which notes that "*the purpose of this meeting is to inform carriers of the signing of an agreement between the* [GVG] *and the* [MTNTI] *relating to the flow of incoming/outgoing international traffic*". This wording is consistent with the terms of the letter dated March 22, 2011 from Minister Oyé Guilavogui to GVG *("As part of our contractual relationship, we invite you to an evaluation from April 12, 2011")* **[Exhibit C-28]** as well as those of the letter dated July 16, 2012 from the PTRA to GVG ("*However, we are ready to reconsider our decision provided that you take into account the realities that have always existed [sic] long before the signing of the agreement protocol between the Guinean State and GVG...*" **[Exhibit C-29].**

151. At the end of the Agreement stage, the Tribunal notes the State's involvement, both at the end of the collaboration between GVG and the PTRA **[Exhibit C-15; Summary and Response Memorandum ¶¶237-239]** only during attempts to reach an amicable settlement **[Exhibits C-16; C-19; C-20; C-30; C-31; Summary and Response Memorandum ¶242].**

152. The Tribunal considers that the foregoing elements clearly establish that the State was a party to the Partnership Agreement and that it considered itself not only bound by its terms and by the Arbitration Agreement it contains, but that it also knew it was the beneficiary of the tools and services provided under the Agreement and of their contribution to the better organization of the Guinean tax system.

153. The Tribunal therefore decides that it has personal jurisdiction with regard to the State and dismisses the objection of lack of jurisdiction raised by the Respondents under this head.

III. NULLITY OF THE PROCEDURE AGAINST THE STATE

III.1. On the format

III.1.a. Summary of the parties' positions

154. The Respondents claim that the proceedings instituted by GVG against the State are void because they have not been served on the State Judicial Agent, the only one empowered by Guinean law **[Exhibit RL-4: Guinean Decree 083/PRG/SGG on the powers and organization of the State Judicial Agency of May 5, 1997]** to receive citations, summonses or introductory petitions served or notified to the State, under penalty of nullity **[Statement of Rejoinder ¶¶244-249].**

155. The Respondents point out that the Hughes Hubbard LLP firm, which represents them, was first mandated verbally and by the Minister of Posts and Telecommunications and by the State Judicial Agent, these verbal mandates having been regularized in writing on September 14, 2017 for the Minister, and on October 15, 2018 for the Judicial Agent **[Exhibits C-64; R-26; Statement of Rejoinder ¶¶255-256].**

156. These regularizations, like GVG's desire to consider that the State is represented by the Minister and by the Judicial Agent, cannot, however, make valid an initially null request for arbitration **[Statement of Rejoinder ¶¶265-267].**

157. For its part, GVG emphasizes that the Terms of Reference signed by the parties, like the mandate initially produced by the Respondents **[Exhibit C-26]**, clearly state that the State is represented for the purposes of this procedure by the Minister of Posts, Telecommunications and Digital Economy. Citing a judgment of the Paris Court of Appeal of May 15, 2012, *Mr. Sylvain X, Esq., c/ The State of the Ivory Coast* **[Exhibit CL-34]**, GVG argues that the State cannot, without contradicting itself to the detriment of GVG, on the one hand produce a

mandate attesting that the State is represented by the Minister of Posts and Telecommunications then to consent to a Terms of Reference resuming this attestation; and on the other hand to maintain thereafter that this same Minister has no power to represent the State **[Summary and Response Memorandum ¶¶125-127].**

158. GVG adds that the Respondents' request for a declaration of invalidity is ill-founded in the light of the ICC Rules, which do not penalize an error in the appointment of the legal representative of the legal person attracted to arbitration; and that in any event, even assuming that Guinean law is applicable to such a procedural question, the Decree on which the Respondents rely only concerns judicial proceedings, and not arbitral proceedings **[Summary and Response Memorandum ¶¶128-138].**

159. GVG finally concludes that it accepts that, as the Respondents now say, the State is represented both by the Minister and by the State Judicial Agent **[Summary and Response Memorandum ¶139].**

III.1.b. Analysis

160. The Tribunal notes at the outset that the *ratio legis* of the rules relating to summons rests on the need to ensure that the State is well informed of the proceedings brought against it.

161. In any event, even if we were to be in a situation where Decree RL-4 would apply, the facts which emerge from the file lead to reject a nullity of principle which was covered by each of the Parties: one (GVG) because it indicates that it considers that it is now also addressed to the Judicial Agent and the other (the Respondents) because the State's verbal response was followed by a written response produced during the procedure and dated October 15, 2018, following the response given by the PTRA on September 14, 2017.

162. It also appears clear to the Tribunal, having regard to the terms of the mandates conferred on counsel for the Respondents and the Terms of Reference, that to allow the State to withdraw may subsequently invoke the nullity of the proceedings against it the fundamental principles of the duty of procedural loyalty as recalled in judgement *Maitre X c/ the Ivory Coast* **[Exhibit CL-34]** as well as the authorities cited by the Respondents **[Exhibit RL-14].**

163. The Respondents' action for nullity under this head is therefore dismissed.

<u>III.2. On the merits</u>

III.2.a. Summary of the parties' positions

164. The Respondents submit that GVG's action is inadmissible on the ground of infringement of Article 2 of the Implementing Decree of the PPC of November 3, 1997 in that the contracting party of a public person whose public procurement contract was not concluded, approved and notified in accordance with the PPC has no action in execution of the financial commitments

against the contracting public authority under Guinean law **[Exhibit R-1; Statement of Rejoinder ¶¶280-282].**

165. The Respondents rely on the following extract from Article 2 of the Decree in support of the objection of inadmissibility they raise: "*Public contracts must be concluded, approved and notified before the start of any execution. Any contract not approved by the competent authority cannot commit the State financially - also, except in the case provided for in Article 27.2.5 of the Public Procurement Code, if it begins to receive a start of execution, this can only be at the risk of the entrepreneur, supplier, manufacturer, or service provider concerned.*"

166. At the hearing, counsel for GVG argued that Article 2 of the Decree made no reference to inadmissibility and therefore that the objection of inadmissibility raised by the Respondents had no basis. Insofar as the Respondents' motion for inadmissibility is linked to their counterclaim for a declaration of invalidity for violation of the PPC, the arguments put forward by GVG in this respect also apply to inadmissibility **[T1/49:27-48:11].**

III.2.b. Analysis

167. Even in the event that the PPC finds application, the Arbitral Tribunal finds that the Respondents do not substantiate to what extent Article 2 of the Decree would constitute a dismissal of GVG's claim, other than by reference under the terms "*Any contract not approved by the competent authority cannot commit the State financially; also except in the case provided for in Article 27.2.5 of the Public Procurement Code if it begins to receive a start of execution, it can only be at the risk and peril of the entrepreneur, the supplier, the manufacturer or the service provider concerned*". The Respondents do not cite any authoritative source capable of enlightening the Tribunal on the issue.

168. Article 2 does not in fact mention inadmissibility or any other measure which could penalize the service provider other than saying that the procurement is done *"at its own risk*," without the meaning of these terms being otherwise made explicit. If there is a sanction, it explicitly targets the agents of the Administration, as stated in the third paragraph of Article 2 of the Decree: "*The agents of the Administration who intervene in the conclusion or execution of such a contract are liable to the sanctions provided for in Article 78 of the Public Procurement Code*". As for Article 79 of the PPC, entitled "*Faults Committed by the Candidate or the Holder of the Public Contract*" under Title 6, itself entitled "*Sanctions for attacks on the regulation of public procurement*," of which the Respondents have not sought to invoke the application, it does not provide further clarification on this point.

169. For these reasons, the Arbitral Tribunal is of the opinion that the Respondents, on whom the burden of proving their allegations rests, have not demonstrated how Article 2 of the Decree

may constitute an end of inadmissibility to GVG's claim and therefore rejects the objection of inadmissibility under this head.

IV. VALIDITY OR INVALIDITY OF THE PARTNERSHIP AGREEMENT

IV.1. Summary of the parties' positions

170. By way of counterclaim, the Respondents seek the nullity of the Partnership Agreement, first on the basis of the violation of the mandatory provisions of the PPC and in particular, in the case of the public contract constituted by the Partnership, the need to proceed to a request for proposals before the award of this public procurement **[Statement of Rejoinder ¶¶285-412]**; and secondly because of a corruption pact **[Statement of Rejoinder ¶¶413-492]**.
171. Consequently, the Respondents claim in return the restitution of all the sums collected by GVG, which they calculate at USD 48,093,160.00 as well as damages which they assess at USD 10 million **[Statement of Rejoinder ¶¶493-495; 554].**
172. GVG argues: (i) primarily, that the action for a declaration of invalidity is time-barred and therefore inadmissible **[Summary and Response Memorandum ¶¶287-312]**; (ii) in the alternative, that the PPC is inapplicable to the Partnership Agreement **[Summary and Response Memorandum ¶¶313-327]**; (iii) on a very subsidiary basis, assuming that the PPC is applicable, that the Partnership Agreement falls within the category of contracts concluded by mutual agreement, and not contracts concluded on a request for proposals **[Summary and Response Memorandum ¶¶328-352]**; (iv) on an infinitely subsidiary basis, supposing that the Partnership Agreement does not fall into the category of contracts concluded by mutual agreement, that the Respondents cannot today avail themselves of the nullity of the Partnership Agreement, thus contradicting themselves at the expense of GVG **[Summary and Response Memorandum ¶¶353-397].**
173. On the action for the nullity of the agreement on the grounds of a corruption pact, GVG pleads expiration of statute of limitations in the main title; and the merits of this action **[Summary and Response Memorandum ¶¶398-463].**

IV.2. Analysis

IV.2.a. Exception of inadmissibility of the action for nullity based on the violation of the PPC due to expiration of statute of limitations

174. The Arbitral Tribunal grants the objection of inadmissibility raised by GVG on the basis of Article 770 of the Guinean Civil Code **[Exhibit RL-11].**

175. Since the PPC has not provided for a course of action in nullity of a contract for non-compliance with the request for proposals procedure, it is common law that must be applied, that is to say Article 770 which provides that the action for the nullity of a contract is time-barred after five years:

"*Subject to what will be examined in the section dealing with 'statute of limitations' in all cases where an action for the nullity or rescission of an agreement is not limited to a lesser period of time by law, such action may be brought for a period of five years This short period of time:*

- *for the violence, from the day it ceased;*
- *for error or fraud, from the day they were discovered;*
- *for a minor, from the day he or she becomes independent or reaches the age of majority;*
- *for a protected adult, from the day he or she became aware of the acts injuring him or her, when he or she had acquired the possibility of validly repeating them*."

176. As the Partnership Agreement was entered into on May 22, 2009 and the Amendment on July 6, 2009, the action for nullity for breach of the PPC counterclaimed by the Respondents on October 13, 2017 is therefore time-barred.

177. The Respondents for their part maintain that the thirty-year statute of limitations is applicable, the nullity invoked by GVG not proceeding from the law of obligations, but constituting a specific nullity based on Article 37.3 of the PPC. This Article provides that "[t]*he public contracts which have not been approved in accordance with the provisions of this chapter are void and of no effect, as well as all acts performed for their execution*".

178. The Arbitral Tribunal's reading of Article 37.3 of the PPC does not prevent the application of Article 770 of the Guinean Civil Code; the fact remains that the PPC does not provide for a remedy for the nullity of a contract, nor does it state a time limit for bringing such an action which is less (or even more) than five years. Article 770, which expressly deals with the action for contractual nullity and which concerns an extinctive statute of limitations, is therefore intended to apply, rather than the provisions concerning the thirty-year statute of limitations applicable to acquisitive statute of limitations.

179. As it stood at the time when the parties entered into the Partnership Agreement, the Guinean Civil Code did not contain any specific provision for absolute nullity and therefore could not provide for a thirty-year period in its regard. Since the Code does not distinguish between the various types of invalidity, the Tribunal sees no reason to distinguish where the law itself does not distinguish. Consequently, the Tribunal also rejects the Respondents' argument that a thirty-year statute of limitations was applicable.

IV.2.b. Invalidity for violation of the PPC

180. Notwithstanding the foregoing conclusions concerning the objection of inadmissibility of the action for a declaration of invalidity on the grounds of expiration of statute of limitations, and

for the sake of completeness, the Arbitral Tribunal wishes to state the following with regard to the question of the invalidity of the Agreement due to violation of the PPC.

181. The question of whether the PPC applies to the Partnership Agreement and whether it falls within the category of either contracts entered into on a request for proposals, or to contracts entered into by mutual agreement was the subject of written **[Summary and Response Memorandum ¶¶313-352; Statement or Rejoinder ¶¶285-292; 314-372]** and oral pleadings **[T1/11:21-19:13; 22:8-23:12; 70:21-73:9]** prepared by the parties, which the Tribunal has considered with great care.

182. After careful examination of the arguments, the Arbitral Tribunal concludes that this demonstration, as instructive as it is, eludes the heart of the debate on the validity or not of the Partnership Agreement.

183. Indeed, the essential question underlying the determination of the validity or otherwise of the Partnership Agreement is whether the Respondents, who to date have never challenged the validity of the signing of the Agreement with regard to the PPC, who signed, renegotiated and executed the Agreement without reference to the PPC, can *ex post facto* plead the application of the PPC and, assuming it is applicable, non-compliance with their own regulations.

184. This question comes first from an examination of the circumstances surrounding the signing of the Agreement and of the intention of the parties at the time of this signing.

185. This question also falls under the duty of good faith and loyalty of the parties in the execution of their contractual agreement, a principle enshrined in Guinean law: "*The binding force of conventions has a double foundation: - A moral idea, keeping one's word - An economic interest, the necessity of the credit. This double foundation implies that they must be entered into in good faith and that they require not only compliance with the terms expressed therein, but also with all that equity, custom or law gives them according to their nature.*" **[Article 669 of the Guinean Civil Code; Summary and Response Memorandum ¶364].**

186. On the question of the circumstances surrounding the conclusion of the Agreement, the Arbitral Tribunal makes the following findings. The first is that the Subah contract of November 20, 2015, the validity of which is not disputed and which replaced the Partnership Agreement **[Exhibit R-30]**, was also not subject to a prior call for competition under the terms of the 2012 PPC. The Respondents explain that the Subah contract was entered into without a request for proposals in accordance with Article 11.4 of the law of October 11, 2012 laying down the rules governing the award, control and regulation of public contracts and public service delegations, which text allows the contract to be awarded by direct agreement "*in the case of extreme urgency, for the works, supply or service that the contracting authority must have performed in place of the defaulting contractor, supplier or service provider.*" **[Statement of Rejoinder ¶535; T3/290:10-13]**.

187. The Arbitral Tribunal also notes that the PPC contains similar provisions in its Articles 27.2(4) and 24.2(5) **[Exhibit R-1]**. It maintains that the State is empowered, in certain circumstances, to go beyond the request for proposals stage.
188. However, it is clear from the hearing of Mr. Diaby that in 2009, at the time of the signing of the Partnership Agreement, the Republic of Guinea was subject to a military regime and in a state of deep political instability **[T2/165:25]**. The Arbitral Tribunal understands that such circumstances also participate in the state of emergency provided for under the terms of the PPC, resulting in a search for stability by all means, easily explaining that the Partnership Agreement has not been the subject of a competitive bidding process. It should be noted that the reference to urgency also existed in the 1997 PPC applicable in this case [cited in the **Summary and Response Memorandum ¶332]** and that it is coupled with other arguments **[Summary and Response Memorandum ¶333].**
189. The Arbitral Tribunal therefore considers that, as for the Subah contract which succeeded it, the circumstances at the time of the signing of the Partnership Agreement justified that the PPC's request for proposals procedure be excluded. It follows that, throughout the duration of the Agreement, it was not subject to the requirements of the PPC, which is entirely consistent with the fact that the Respondents never invoked its application during the period of their contractual relations with GVG.
190. Mr. Diaby continued his testimony by saying that his arrival in office at the PTRA in 2011, once the military regime was ousted, was marked by the concern to "*readjust things, come towards normalcy and build a dynamic ecosystem*" rather than by taking proceedings against the former leaders or GVG **[Monsieur Diaby T2/165:20-166:17; 168:8-12; 172:18-31]**. The Tribunal indeed notes that, even at the stage where the Respondents were dissatisfied with the terms and the execution of the Agreement, they never reported an alleged nullity of the Agreement for lack of competition, the will of Mr. Diaby being rather to seek the maintenance of the Agreement and an adjustment of its terms in particular via the Addendum of 2012 **[Mr. Diaby T2/160:9-24]**.
191. In such circumstances, the Tribunal concludes that the parties have excluded the application of the PPC with respect to the Agreement.
192. Furthermore, the Arbitral Tribunal considers that Article 669 of the abovementioned Guinean Civil Code finds full application and that it would be contrary to its letter and spirit to allow the State to withdraw by invoking for the first time, in favor of this arbitration, the invalidity of the Agreement.
193. The Tribunal adds that this is not a question of confusing the duty of good faith and contractual loyalty with the principle of estoppel. There is no need to resort to the principle of estoppel to conclude that the position of the Respondents, who invoke long after the facts the alleged nullity under Guinean law of the Partnership Agreement from which they benefited during five years with gross revenues of around USD 212 million **[Exhibit C-49;T3/277:13-18; Attestation no. 1 of Mr. Baker 161]** without questioning the validity of this Agreement and

without ever being denounced **[Mr. Diaby T2/150:27-155:21; Ms Kaba T3/263:19-26; 278:33-35-279:3]**, is contrary to their duty of good faith and contractual loyalty.

194. Similarly it is not necessary to invoke the Respondents' confirmation of the Agreement by virtue of their execution of it without protest as to its validity **[T1/103:10-27]**, although it is clear from the facts and documents on file that such confirmation has taken place.

195. For these reasons, the Respondents' request for cancellation on account of a violation of the PPC is rejected. It is therefore not necessary for the Arbitral Tribunal to rule on the other arguments of the Parties under this head.

IV.2.c. Exception of inadmissibility of the action for nullity of a corruption pact due to expiration of statute of limitations

196. The Arbitral Tribunal notes that the Guinean Constitution of May 7, 2010 expressly states in its Preamble that there is no statute of limitations for corruption and economic crimes **[T1/84:11-16; T3/289:16-19].**[2]

197. Although the Constitution is subsequent to the Agreement and the Amendment, the Arbitral Tribunal considers on the one hand that the rule laid down by the Guinean Constitution is of Guinean public order and applies immediately and on the other hand apart from the fact that the invalidity of nullity due to a corruption pact stems from the fact that corruption is contrary to international public order, as explained below.

198. Consequently, the objection of inadmissibility on the grounds of expiration of statute of limitations is rejected.

IV.2.d. Invalidity for corruption pact

199. The fight against corruption is part of international public order, as evidenced by the important interstate conventions of which it is the subject, such as the United Nations Convention against Corruption **[Exhibit RL-16; Statement of Rejoinder ¶¶414-416].**

200. The fight against corruption is also enshrined in the Guinean Criminal Code of 1998 in its Articles 191 to 194, which reflect the international consensus on the subject **[Exhibit RL-18; Statement of Rejoinder ¶¶417-419].**

201. As was clearly stated at the hearing, the Arbitral Tribunal is extremely sensitive to the gravity of these allegations **[T1/89:6-11].**

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[2] Guinean Constitution http://mjp.univ-perp.fr /constit/gn2010 .htm : "*...the people of Guinea ... Reaffirms... - its commitment to promote good governance and resolutely fight against corruption and economic crimes. There is no statute of limitations for these crimes.*"

IV.2.d. (i). Burden of proof. Standard of proof

202. The Respondents, who invoke them, have the burden of proving the elements of corruption - the reversal of the burden of proof, advocated by a certain doctrine, is rejected by case law, as Professor Emmanuel Gaillard indicates in his recent Article on the subject **[Exhibit RL-55 ¶33].**

203. On the question of the standard that should be applied to the proof of these allegations, the Arbitral Tribunal endorses the words of Professor Gaillard: "*It has been noted that, while the majority of arbitral tribunals have so far demanded 'clear and convincing' evidence of the alleged bribery, arbitrators seem to be increasingly inclined to take a flexible approach and depart from high standards of proof. This discussion is in reality fairly theoretical, the arbitrators in all cases having a broad discretion to assess the convincing nature or not of the evidence submitted to them without being particularly influenced by the abstract discussion of the standard of proof required*." **[Exhibit RL-55 ¶34].**

204. The Tribunal therefore bases its examination of the Respondents' allegations on the twin principles that they have the burden of proof, and that this proof must convince of the existence of corruption on a balance of probabilities, by means of a bundle of "*serious, precise and corroborating evidence*," as the Paris Court of Appeal teaches in its judgment in Republic of Kyrgyzstan v. Belokon **[Exhibit CL-60]**, while taking into account the occult nature of acts of corruption. The Tribunal points out that its non-exclusive references to French law are non-exclusive, in particular because they concern the jurisdiction law, to which the review of the award would be subject, if necessary, and that Article 41 of the Arbitration Rules invites the arbitrators to make "*every effort to ensure that the award is subject to legal sanction*".

205. The Tribunal also exercised its power to directly examine witnesses in order to probe them on these questions **[T2/181:14-183:7; T3/251:8-252:6].**

206. The Respondents raised new evidence of corruption throughout the arbitration proceedings, up to and including during the hearing and in the Post-hearing notes. The Tribunal will first recall the essentials of the parties' respective positions. It will then present its analysis.

IV.2.d. (ii). Summary of the Respondents' position

207. In support of their allegations of corruption by GVG in the framework of the Partnership Agreement, the Respondents have insisted on the "economic model" which underlies the latter. In essence, their argument on this point amounts to saying that, by its very nature, the Agreement can only result from a corruption pact, having regard to the circumstances in which it was concluded and the economic benefits that it generated for the benefit of GVG: *"A State which signs a contract with a private sector, and a civil servant who accepts, on the basis of an absolutely improbable risk analysis, as what has just been indicated to us. There's no rigor in that. And we are told that the civil servant agrees to give 60% of the revenue that the state can derive from this case. He gives it to the private section. This is unheard of. I think that this model is necessarily consubstantial with corruption. It is not possible, otherwise. No civil*

servant, no person normally constituted in this world could agree to sign a contract of this nature. It's impossible. It's totally impossible." **[T1/82:27-83:6. To the same effect, T1/83:10-22; T1/86:19-25; T1/91:16-23; Post-hearing note no. 1 Respondents ¶¶51-54)**.

208. Taking into account such an economic model and the political circumstances surrounding the signing of the Agreement, the Respondents also rely on a circumstantial evidence, which they believe converges towards the inevitable conclusion that the Partnership Agreement is vitiated by corruption.

209. Thus in their Statement of Rejoinder, the Respondents rely on the following circumstances, circumstances which they argue form a cluster which converges towards the indication of a corruption pact **[Statement of Rejoinder ¶¶470-492):**

    a. Allocation of cars outside the Partnership Agreement;
    b. Circumvention of public procurement rules;
    c. Lack of economic justification of the contract price;
    d. Collusion with public officials;
    e. Excessive donations and gifts;
    f. GVG's bad reputation, as reported in the press;
    g. False documents produced by GVG in this arbitration.

210. On Saturday January 26, 2019, two days before the start of the hearing, the Respondents announced a new element, adding to the bundle of evidence, namely a set of thirteen checks deposited at the hearing as **[Exhibit R-28]**. The Respondents argue that there is no cause for the checks; that the beneficiary of the checks was Mr. Ismaïla N'Diaye, the "country representative" of GVG in Guinea, in an individual capacity; that these checks were not crossed out; and that GVG's explanations for them are misleading **[Post-hearing note no. 1 Respondents ¶¶28-49].**

211. On the second day of the hearing, the Respondents, during the cross-examination of Mr. Patrice Baker, produced Amendment no. 3 to the Agreement of May 22, 2009 **[Exhibit R-29]**, in which they argue in their Post-hearing note no. 1 that it is unfounded in its existence; fraudulent in its purpose; and constituting a predation tool on Guinean public funds; and they therefore request its cancellation **[Post-hearing note no. 1 Respondents ¶¶6-21; 65-70].**

IV.2.d. (iii). Summary of GVG's position

212. To the foregoing, GVG opposes that the Respondents' assertions, although peremptory, are false and are at a level of generality such that they are insufficient to meet the burden of proof which falls on them. GVG also presents explanations showing that the circumstances mentioned by the Respondents have nothing to do with any corruption pact whatsoever.

213. Thus, the cordial relations maintained by Mr. Laurent Lamothe, CEO of GVG at the time of the signing of the Agreement, with Mr. Nfa Ousmane Camara, Director General of PTRA at the time, are explained in Mr. Baker's Attestation no.1 **[¶¶18-20]**. These cordial relations have also been maintained with the successors of Mr. Camara, Messrs. Laminé Diallo and Morlay Youla. None of these successors, including Mr. Diaby upon his arrival at the head of the PTRA in March 2011, has ever reported any suspicion on the obtaining of the STP Project by GVG **[Summary and Response Memorandum ¶445].**

214. The appointment of Mr. Camara on November 26, 2012 as Honorary Consul of Haiti in Guinea (an unpaid position) was pronounced, not by Mr. Lamothe, but by the President of the Republic of Guinea, himself elected in 2010 following democratic elections **[Exhibit C-51]**. This appointment would not have taken place if suspicions had weighed on Mr. Camara. It is inconceivable that Mr. Camara granted the STP Project to GVG on the promise of such an appointment in 2009, when Mr. Lamothe did not hold any ministerial office in Haiti **[Summary and Response Memorandum ¶¶445-446].**

215. The alleged violation of the PPC's tendering requirements, even if proven, is insufficient in itself to establish a corruption pact, as the Paris Court of Appeal recalls in its judgment in the *Democratic Republic of Congo* **[Exhibit CL-51; Summary and Response Memorandum ¶¶448-449].**

216. As for GVG's contractual remuneration, it is not exorbitant in view of the extent of its investment, the duration of the contract and the assumption of financial risks and political stability by GVG **[Summary and Response Memorandum ¶¶451-452]**. The fact that GVG subsequently agreed to lower this remuneration by way of the Addendum does not prove the contrary, in view of the particular circumstances surrounding the signing of the Addendum and the impact that a disagreement with the PTRA allegedly provoked on GVG's business in Africa **[Summary and Response Memorandum ¶¶453-454].**

217. The so-called "suspicious" donations and congratulations (including letters of congratulations, invitation to a professional congress, donation of two mediatized school computer laboratories, financing against the invoice of two vehicles within the framework of the STP Project) occurred after the conclusion of the Partnership Agreement. None of Mr. Camara's successors at the head of the PTRA, nor any of the Ministers who succeeded Mr. Bangoura, have ever reported suspicions of corruption on the part of GVG. These accusations appeared for the first time in the context of this arbitration **[Summary and Response Memorandum ¶¶460-462].**

218. The thirteen checks and Amendment no. 3 products in extremis and in bad faith by the Respondents concern the payment by the PTRA of the quotas due to GVG for the national telephone traffic, which is not disputed by the Respondents nor does it form the subject of the requests for GVG in this procedure **[Exhibits R-28; R-29; Post-hearing note no. 1 GVG].** In any event, GVG filed a reconciliation table for the amounts subject to checks, which explains the basis **[Exhibits C-74.1; C-74.2; C-74.3; C-75]**.
219. Amendment no. 3 has in any case been canceled and replaced by another fixed rate contract, and as part of the Addendum of June 10, 2012 the sums collected by GVG have been reimbursed, which is accepted by the Respondents. Their request for cancellation of Amendment no. 3 is therefore not applicable **[Post-hearing note no. 2 GVG ¶¶20-33]**.
220. The documents which the Respondents claimed, at various stages of the proceedings, to be false (and by this very fact, signs of corruption) are: The Amendment to the Agreement of July 6, 2009 **[Exhibit C-3]**; the Departmental Certificate of January 18, 2010 relating to the payment made by GVG under the Amendment to the Agreement **[Exhibit C-53]**; and the Matrix of Responsibilities annexed to the Agreement **[Exhibit C-1]**. The Respondents subsequently developed an argument based precisely on these documents, thus demonstrating the inconsistency of their position **[Post-hearing note no. 2 GVG ¶¶2-3]**.

IV.2.d.(iv). Analysis

221. The Tribunal first notes that the Respondents' allegation that the "economic model" which underlies the Partnership Agreement can only be consubstantial with corruption amounts to arguing for a reversal of the burden of evidence **[T1/95:31-33]**, compelling GVG to justify the ins and outs of the Agreement. As noted in the introductory remarks above, international arbitral practice rejects the reversal of the burden of proof of corruption, an approach which the Tribunal also adopts.
222. Furthermore, the Tribunal takes note of GVG's initial investment of some USD 13 million, of the costs of the operation borne by it, as well as of the risks which it alone assumed in this Project **[Attestation no. 1 from Mr. Baker ¶¶32-36; Mr. Baker T2/188:1-25]**, in particular the country risk associated with investments in Guinea, which both parties agree is among the highest in the world **[T1/74:1-2; 81:31-33]**.
223. With regard to such an investment and endorsement of the risks, the Tribunal notes that the Respondents, on which the burden of proof rests, have not demonstrated by what standard the Partnership Agreement, in force for five years and bringing in significant revenues to the state, proceeds from an abusive economic model; nor how this model is in itself indicative of corruption. During the cross-examination of Mr. Baker **[T2/199:6-201:5]**, counsel for the Respondents indicated figures and percentages, without these being substantiated in any way that would allow the Tribunal or GVG to precisely verify their basis.

224. The Tribunal concludes that the Respondents have not demonstrated the merits of their allegations of an abusive economic model in a precise and consistent manner. This index is therefore discarded.

225. As regards the other elements put forward by the Respondents as being indicative of corruption, they do not pass the test of gravity, precision and concordance either; this despite the Respondents' use of a highly pictorial vocabulary with regard to GVG (Mr. Diaby spoke of "*banditry*" **[T2/180:5-6]**; the closing remarks mentioned "*swindle*" **[T3/286:28-34]** and "*money laundering*" **[T3/288:28-29]**). More precisely, it is a list of disparate and time-varying (and therefore inconsistent) factors, which remain at the stage of general allegations without being proven (and therefore not precise).

226. The Respondents thus plead GVG's bad reputation as reported in a press release the sources of which are not verified ("*GVG's bad reputation, as reported in the press*"); certain donations and gifts granted <u>after</u> the signing of the Agreement (including the two cars), of which it is not demonstrated how they could have influenced the obtaining of the Agreement ("*Excessive donations and gifts" "Allocation of cars outside Partnership Agreement*"); as well as the so-called falsification of documents deposited by GVG in this procedure's file ("*False documents produced by GVG in this arbitration*") without the appearance of a link which could link these elements to the signing of the Agreement for the benefit of GVG rather than its competitors.

227. As for the donation by GVG of two school computer laboratories, for the Tribunal, this is a sponsorship operation exclusive of any corruption, common in the context of investments of the scope of the STP Project, even if such an operation was indirectly intended to give GVG a good image.

228. For the invitation to Mr. Morlaye Youla in 2010, then Director of the PTRA, to attend a professional summit in South Africa **[Exhibit C-44]**, the Tribunal notes, on the one hand that the fact that the invitation was official makes it unlikely that the Respondents' argument would be "*improper advantages*," and secondly that this argument calls into question the probity of Mr. Youla, in which the Guinean State has enough faith to promote Mr. Youla to the rank of Secretary General of the Ministry led by Mr. Diaby, a position he still occupies today **[T2/183:10-12]**.

229. As for the allocation of the two vehicles, the Tribunal notes that Exhibit C-46 is, on the one hand, an official letter from Mr. Youla, then Director of the PTRA, which indicates on May 10, 2010 the account number in which to pay the funds which would be used to acquire the agreed vehicles, and on the other hand, the official receipt of May 13, 2010 attesting to the successful reception of the funds. It is difficult for the Tribunal to accept that to bribe a particular official by offering that person vehicles a company would have officially written to the Tribunal to find out the account number to be credited (which does not include the name of the beneficiary) and that the Deputy Director of PTRA would have sent an official receipt on letterhead.

230. As for the "*Circumvention of the rules of the public market*," the Tribunal rejected this argument for the foregoing reasons.

231. Finally, with regard to "*Collusion with public officials*," the testimony of Mr. Diaby, who mentions payments of money by GVG to public officials and attempts to bribe his own people, is contradicted not only by Mr. Baker **[Attestation no. 2 of Mr. Baker, 45]**, but also and without hesitation by Mr. Tourny, with whom Mr. Diaby worked closely and discussed his suspicions **[T2/171:1]**, and whom he praised with "*considerable contribution*," lucidity and courtesy **[T2/117:10-15; 174:22-26]**: "***Madam President:*** *(...) You are an experienced telecom carrier and have had very close involvement in this project. Have you yourself had the opportunity to observe that there were embezzlement, circumstances which could be consistent with allegations of corruption?* ***M. K Touray*** *(interpretation): No, absolutely not*." **[T3/251:8-16]**; "***Madam President****: Your answer to my first question was that you yourself did not see any circumstances that were consistent with a phenomenon of corruption or embezzlement? M. K Touray (interpretation): No, definitely not.*" **[T3/252:3-6]**.

232. The evidence on this point is therefore contradictory and does not allow the conclusions sought by the Respondents to be drawn.

233. With regard to the thirteen checks deposited by the Respondents **[Exhibit R-28]** as well as Amendment no. 3 **[Exhibit R-29]**, the Arbitral Tribunal notes that the Respondents' arguments also boil down to the application of the maxim *res ipsa loquitur* (and therefore the reversal of the burden of proof) for these indices without demonstrating how these elements may constitute corruption **[Post-hearing note no. 2 Respondents ¶43]**. In any event, the Arbitral Tribunal accepts that the cheque reconciliation table filed by GVG explains the basis for this reconciliation **[Exhibits 74.1-74.3]** and notes that, in Amendment no. 3 having been replaced by another contract, there is no need to declare it void and rejects the Respondents' request in this regard.

234. Examination of the pleadings of the parties and of the documents lodged in the file, as well as of the hearing of witnesses, leads the Arbitral Tribunal to the conclusion that the information at its disposal does not indicate a cluster of serious, precise and consistent indications of corruption on the part of GVG in order to obtain by these means the Partnership Agreement.

235. The Tribunal, while having dismissed each of the indicia of corruption alleged by the Respondents and considered them separately, questioned the possible different conclusions that could have resulted from bringing them together they were not convinced that these disparate elements were such as to constitute a coherent and convergent whole that could establish the alleged corruption.

236. For these reasons, the Respondents' counterclaim for a declaration that the Partnership Agreement is void because of a corruption pact is dismissed.
237. The Tribunal having dismissed the Respondents' requests to have the Partnership Agreement declared void, it therefore rejects their consecutive counterclaims for the restitution of the sums collected by GVG.

V. EXECUTION OF THE PARTNERSHIP AGREEMENT

238. The Arbitral Tribunal having determined that the Partnership Agreement is valid, the question arises as to whether, as claimed by GVG, it has been improperly terminated by the Respondents despite its perfect performance by GVG; or rather if, as the Respondents claim, the faulty performance of GVG justified termination or, alternatively, suspension.

V.1. Summary of the parties' positions

V.1.a. GVG

V.1.a.(i). The Partnership Agreement and the obligations of the parties

239. As a preliminary point, GVG recalls that the main purpose of the Partnership Agreement, and therefore GVG's essential obligation, was to "*[p]rovide and install control tools for the Guinean State, it providing the ability to view and invoice all local and international traffic for each carrier in real time*," in accordance with the terms of Article 3.2, sub clause 2 of the Agreement, as well as the tools necessary to combat telephone fraud **[Summary and Response Memorandum ¶¶32; 465].**
240. GVG specifies that while the Partnership Agreement covered international and national traffic, the establishment of the national traffic control system was the subject of a separate contract between the parties, under which GVG does not make any claim **[Summary and Response Memorandum ¶33].**
241. GVG says that it undertook, within the framework of the Agreement, to put into operation and maintain a supervision system (IMS-STP Supervision System) of international calls to telephone carriers in Guinea by STP ("Signaling Transfer Point") centralizing the carriers' SS7 signaling links. This system required the installation of the following equipment **[Summary and Response Memorandum ¶34]:**
    a. The "Main Data Processing Center," to store and process the call data of all carriers. As the infrastructure necessary to supply such a system is not perfectly reliable in Guinea, GVG also had to install two redundant platforms to avoid the

loss of information in the event of a breakdown: the IMS STP 1 platform on PTRA premises; and the IMS STP 2 platform at an carrier's;

b. The "Capture and Processing Subsystem" of SS7 signaling messages and management of signaling signals by STP, by means of which elements of the telephone network exchange information, making it possible to connect the IMS STP 1 and IMS-STP 2 platforms to each carrier;

c. The "Data Transport Subsystem," transmission interfaces placed at each carrier's and at each entry point of international traffic, necessary for the transport of data to the IMS-STP 1 and IMS-STP 2 platforms and synchronization of all the SS7 Signaling and Processing Subsystems distributed across the different networks.

242. The system installed by GVG also had to integrate quality of service management (**QoS**) tools allowing the collection of service quality data on the international interconnections received, as well as a fraud detection system allowing the detection, the identification and disconnection of fraudulent numbers carrying illegal international traffic to Guinean carriers **[Summary and Response Memorandum ¶35].**

243. Finally, under the terms of the Partnership Agreement, GVG was to provide training for PTRA staff, in order to enable them in the long term to take charge of the operations of a "Control and Surveillance Center," that GVG also had to set up, including the operations of the "Traffic Monitoring Unit" and the "System Maintenance Unit" **[Summary and Response Memorandum ¶36].**

244. GVG's obligations under the STP Project in accordance with the Agreement were as follows **[Summary and Response Memorandum ¶37]:**

a. The turnkey supply of means and services to control the flow of incoming international traffic as well as related management tools, including a new CDR ("Call Detail Records" or a call report for invoicing purposes);

b. Providing the resources necessary for the evaluation of the QoS of each carrier with a license to operate in Guinea for the traffic received by GVG installations;

c. Providing means for detecting telephone fraud;

d. Training PTRA staff;

e. Maintaining and upkeeping installations and equipment;

f. Monitoring price evolution in the call termination markets.

245. GVG adds that the Respondents, for their part, undertook to establish the technical-legal framework for interconnection between carriers, as well as to determine the new international interconnection tariffs and the new taxes applicable on incoming international calls. In addition, they were to assign the technical and legal staff necessary for the development of the technical-legal and regulatory framework allowing the establishment of "*an infrastructure of "Supervision of national and international interconnections" by centralizing and standardizing SS7 signaling system networks for carriers in Guinea*" under the terms of Article 3.1 of the Agreement and the annexed Responsibility Matrix **[Summary and Response Memorandum ¶¶38-40].**

VI.a.(ii). GVG's remuneration

246. GVG received remuneration on the income generated by international call flows, according to a rate in accordance with Annex 1 to the Agreement and established by means of the Order of May 29, 2009 **[Exhibit C-2].** This tariff for international traffic entering Guinea was USD 0.28 (28 cents) per minute, distributed as follows **[Summary and Response Memorandum ¶41]:**

   a. 16 cents to the local carrier;
   b. 3.5 cents to PTRA;
   c. 7 cents to "*the technical carrier who ensures the supply, commissioning, maintenance and training in use during the contractual period*";
   d. 1.5 cents "*for the financing assistance fund to connect Guinea to submarine cable, optical fiber and broadband*".

247. In view of the importance of its financial investment and the risks it assumed, GVG was therefore entitled, out of the USD 0.12 accruing to the Respondents, to a remuneration of USD 0.07 per minute for incoming international calls to Guinea. This amounts to 58% of the revenues collected by the State, in the range of tariffs of 30-60% generally applied by GVG in similar projects **[Summary and Response Memorandum ¶42].**

248. In accordance with the Decree, revenues due to the State on incoming international traffic to Guinea were invoiced on the basis of data collected by the IMS-STP Supervision System from which CDRs were extracted to establish monthly traffic reports. From these monthly reports, the PTRA cell responsible for billing and collection - also set up and trained by GVG - was to issue monthly invoices at USD 0.12 for each minute of incoming international call, then ensure receipt and payment by each carrier. The Respondents undertook to proceed "*to the repayment of the share due to [GVG] no later than 15 days after the due date and the receipt of the invoice*" **[Summary and Response Memorandum ¶43].**

249. GVG adds that the Respondents have never disputed that the STP-IMS supervision system was put into operation from September 2009, allowing the State to collect revenue from incoming international calls to Guinea as of this date; invoices were indeed paid during the debates demonstrating the effective deployment of the said System **[Summary and Response Memorandum ¶465].**
250. The IMS-STP Supervision System, fully funded by GVG at the cost of an initial investment of USD 12,645,000 **[Exhibit C-43]**, enabled the State to invoice on the basis of the minutes captured by the said System for the period from September 2009 to September 2015 (date of GVG's departure from Guinea) gross revenues of USD 212,260,733.53 and net of USD 149,328,320.84 **[Exhibit C-49; Summary and Response Memorandum ¶¶524-528].**
251. In addition, the Respondents have themselves recognized the perfect performance by GVG of its contractual obligations on numerous occasions and in several forms: first by mail **[Exhibits C-44; C-45; Summary and Response Memorandum ¶¶508-509]**; by an official attestation on the skills and technical expertise of GVG **[Exhibit C-5; Summary and Response Memorandum ¶510]**; through the involvement of GVG in events organized for the promotion of the telecommunications sector in Guinea to present and promote the STP Project **[Exhibit C-48; Summary and Response Memorandum ¶511].**
252. Upon the arrival of Mr. Diaby as Director General of the PTRA in March 2011, he ceased, upon his arrival, the settlement of invoices issued by GVG, alleging in particular a non-compliant execution of GVG within the framework of the STP Project. In this context, the Minister invited GVG to participate in a technical evaluation from April 12, 2011 **(Mid-term review) [Exhibit C-28; Summary and Response Memorandum ¶¶60-61; 515].**
253. The Mid-term review lasted from April 2011 to May 2012 and was jointly conducted by the parties. The Performance Report of May 11, 2012 **[Exhibit C-6]** attests to the perfect execution of the Partnership Agreement by GVG, as well as additional requests from the Respondents that GVG agreed to satisfy **[Summary and Response Memorandum ¶¶65-74; 516-523].**

V.1.a.(iii). The alleged breaches of GVG as alleged by the Respondents

254. On the technical points raised by the Respondents as being breaches by GVG of its contractual obligations, GVG pleads the following:
255. GVG's technical assistance in establishing the regulatory framework was fully provided by GVG and enabled the implementation of the IMS-STP supervision system within the 90 days provided for under the terms of the Order **[Summary and Response Memorandum ¶¶474-475].**
256. The IMS-STP supervision system was fully implemented in August 2009 and became operational from September 2009. From that date, the viewing and invoicing of all incoming

international traffic was effective, which is not disputed by the Respondents **[Summary and Response Memorandum ¶¶476-477]**. The Respondents' criticisms of the lack of supervision of "on-net" traffic (that is to say, where calls are made in an carrier's network without interconnection with another carrier) are without subject, "on-net" traffic not being part of the Agreement **[Summary and Response Memorandum ¶478].**

257. In accordance with its obligations under the Agreement, GVG installed a first set of tools to measure the quality of service of carriers in the IMS-STP supervision system, which worked perfectly from the start-up of the STP project in September 2009.

258. The progress report on the Action Plan decided in August 2011 (dated November 2, 2011) confirms on page 2, point 2, that the tool is available and operational **[Exhibit R-7; T1/63:1-15].** This tool allowed the collection of QoS service data on interconnections carrying international traffic flows.

259. With the arrival of Mr. Diaby, the new administration of the PTRA indicated that it interpreted this commitment as relating to the provision of a separate QoS control system for all the telecommunications carrier networks in Guinea. Since the parties could not reach an agreement on this question of contractual interpretation, GVG agreed to acquire and install a new QoS system at its own expense for an amount of USD 2.4 million even though it considered that this request coming from the Respondents exceeded the framework of its contractual obligations under the terms of the Agreement **[Summary and Response Memorandum ¶¶479-483]**. This second tool was indeed supplied and installed as evidenced by the acceptance report of February 22, 2012 **[Exhibit C-65]** and the Performance Report of May 11, 2012 **[Exhibit C-6]**.

260. The implementation and perfect operation of the applications integrating the CDR collection mechanism and the production of invoices is amply demonstrated by the fact that the Respondents were able to collect revenues from September 2009 and throughout the period of their relations with GVG without any interruption, which has never been disputed by the Respondents. The failure to set up a CDR comparison tool, criticized today by the Respondents, was not part of the Agreement. It concerns national traffic and the new GVG offer including the installation of a passive solution **[Summary and Response Memorandum ¶¶484-486]**.

261. The 2009-2014 IMS Project Status Report indicates that the IMS-STP supervision system prevented the fall in tariffs, allowing the State to collect new income as indicated in the IMS Project Report 2009-2014 **[Exhibit C-4; Summary and Response Memorandum ¶¶487-488].**

262. The training plan for PTRA staff drawn up by GVG was to be established over the entire contractual period in order to allow a gradual transfer of skills and the PTRA agents' management of the operation of the IMS-STP Supervision System upon expiration of the Agreement. This training began as early as 2010, as GVG gave priority during the first months of operation to setting up the technological infrastructure and stabilizing its operation, as well

as to delivering the accurate data required by the State. Between May 2010 and August 2012 GVG provided 7 training courses, the detailed list of which is provided in the Project Status Report **[Exhibit C-4]**. The Performance Report **[Exhibit C-6]** also notes that the training plan was satisfied by GVG with the exception of two training sessions scheduled for May and June 2012 and provided on these dates. The training plan accepted by GVG in March 2014 constitutes a new obligation which could not be executed due to the improper termination of the contractual relations by the Respondents **[Summary and Response Memorandum ¶¶489-495]**.

263. The anti-fraud system was implemented during the installation of the IMS-STP supervision system in September 2009. Its objective was the detection, identification and disconnection of fraudulent numbers used to route illegal international traffic to Guinean carriers. GVG's obligation was to install this fraud detection and data supply system to the PTRA, which then had to coordinate with the carriers to dismantle the routes taken by fraudulent calls by removing the SIMs concerned. From September 2009 to May 2014, this anti-fraud system allowed the detection of 186,490 fraudulent lines as indicated in the Report **[Exhibit C-4]**. The Performance Report, for its part, did not note any comments regarding the anti-fraud system. During the discussions between the parties leading to the Action Plan decided in March 2014 **[Exhibit C-9]**, GVG undertook to provide a "SIM Box Locator" at its own expense. The Respondents do not dispute that this is a new commitment by GVG outside the Partnership Agreement. In any event, the table annexed to the Action Plan decided in March 2014 mentions that the lack of efficiency observed was due to the delay in the systematic disconnection of fraudulent numbers by carriers, the responsibility for the dismantling of which lies with the PTRA **[Summary and Response Memorandum ¶¶496-500]**.

264. The Performance Report describes the perfect performance by GVG of its obligations in respect to the maintenance of installations and equipment **[Summary and Response Memorandum ¶¶501-503].**

265. The Performance Report **[Exhibit C-6]** notes that the financing of the acquisition of radio frequency spectrum management has been completed to the satisfaction of the parties by means of a financial agreement, according to which the Respondents decided to acquire the spectrum monitoring tool themselves, GVG reimbursing its price up to USD 2.35 million **[Exhibit C-6; T1/63 17-23; Summary and Response Memorandum ¶¶504-507].**

V.1.a.(iv). Services provided outside the Partnership Agreement

266. GVG recalls that it has not only perfectly fulfilled its obligations contained in the Partnership Agreement but has also agreed to provide certain additional services at its own expense **[Summary and Response Memorandum ¶¶60; 67; 85; 529]:**

a. The financing of two vehicles dedicated to the STP Project;
b. Upgrading electrical installations;
c. Payment of the Internet connection and colocation charges for the IMS-STP 2 platform at Cellcom;
d. The installation of a second QoS tool at a cost of USD 2.4 million at the Respondents' request;
e. The transfer of the IMS-STP 2 platform from Cellcom to Orange;
f. Installation of a SIM Box location system;
g. Study and submission of technical offers for a passive mode supervision system, as well as a system for controlling pricing and revenues from "Airtime" sales.

V.1.a.(v). The Respondents' non-resolution of the Agreement

267. The Respondents have never implemented, nor have they ever intended to implement, the resolutory clause of the Agreement by operation of law under Article 5 thereof, which provides that "*[i]n the event of a breach by one of the Parties of any of its obligations under this Agreement which is not remedied by the defaulting Party within a period of one month from the date of the initial receipt of a registered letter with acknowledgement of receipt sent by the complaining Party providing notice of the breaches in question, this Agreement shall be terminated by operation of law, without prejudice to any damages that may be claimed from either of the Parties.*" **[Exhibit C-1; Summary and Response Memorandum ¶¶549-552].**

268. The Respondents have never had any real reason which could have justified a termination of the Agreement. In fact, no termination of the Agreement has ever taken place. The Respondents simply ceasing to settle the invoices issued by GVG as of May 2014. The very behavior of the Respondents, who by way of example requested a technical-commercial proposal from GVG by letter dated May 15, 2015, is incompatible with that of a party who considers that its co-contractor has failed in his obligations **[Exhibit C-12; Summary and Response Memorandum ¶553].**

269. It is by their letter dated August 6, 2015 that the Respondents indicate for the first time their desire to put an end to their contractual relations with GVG because of their dissatisfaction on the technical and relational level. However, this letter does not correspond to the notification required by Article 5 of the Agreement **[Summary and Response Memorandum ¶555]:**
    a. It is not a registered letter with acknowledgment of receipt;
    b. The alleged breaches of contract are not mentioned for the purpose of redress, the letter merely announces the end of the contractual relationship in May 2014;
    c. The letter does not explain the reasons for stopping payment of GVG's invoices;

d. No mention is made of termination for poor performance.

V.1.a.(vi). Non-suspension of contractual relations

270. The Respondents invoke the suspension of the Agreement in accordance with its Article 9, which provides that "*Each of the Parties may, without prejudice and without compensation to the other Party, suspend the performance of the Agreement (...) in the event that the performance of the Agreement is likely to result in the violation of a law or any other equal provisions in force.*"

271. However, the Respondents make no mention of Article 9 of the Agreement or of an alleged violation of the PPC in their letter dated August 6, 2015, and for good reason, since they considered that the Agreement had ended in May 2014. The Partnership Agreement has therefore not been suspended **[Summary and in Response Memorandum ¶¶557-561].**

V.1.b. The Respondents

272. In the alternative to their action for the nullity of the Agreement, the Respondents plead for the termination of the Agreement at the fault of GVG for improper performance of its obligations.

273. The Respondents rely on the PTRA's letter to GVG of August 6, 2015 **[Exhibit C-6]** stating that GVG's services were insufficient under the Agreement **[Statement of Rejoinder ¶497]**.

274. Difficulties related to the performance of its obligations by GVG have necessitated on two occasions, in 2011 and 2014, an assessment by the PTRA of GVG's performance of its obligations in respect of the Agreement **[Statement of Rejoinder ¶498].**

275. On February 4, 2011, the PTRA sent GVG a termination notice **[Exhibit R-6]**, which was followed by an evaluation procedure **[Statement of Rejoinder ¶499].**

276. On November 3, 2011, the PTRA and GVG signed a first report specifying the actions and commitments taken to finalize the outstanding points relating to the local installation of applications and supervision tools; measuring the quality of service; the spectrum management system; and the solution for the migration of national traffic. These shortcomings related to essential elements of the Partnership Agreement, which had been concluded to allow the PTRA to have the appropriate technological means to cross-check the carriers' tax returns and to better understand the new technologies relating to interconnection of carriers **[Exhibit R-7; Statement of Rejoinder ¶¶500-501].**

277. The report of May 11, 2012 pointed to performance difficulties on the quality of service, the system still not being operational nearly three years after the signing of the Agreement, and training having been postponed. It was found that prior to the evaluation leading to this report, the PTRA staff had not received the necessary training and that GVG had full control over the operations. GVG had not provided the PTRA with the means of assessing the quality of service of each carrier, nor had it financed the acquisition of equipment for monitoring and

managing the radio-frequency spectrum, contrary to its commitments **[Exhibit C-6; Statement of Rejoinder ¶502].**

278. A new evaluation was conducted in 2014, and an Action Plan established on March 26, 2014 **[Exhibit C-9]**. To this plan were added PTRA's observations to GVG on the difficulties in carrying out GVG's obligations **[Exhibit R-8; Statement of Rejoinder ¶503].**

279. This shows that, almost five years after the conclusion of the Partnership Agreement, GVG still had not fulfilled a number of its obligations, in particular **[Statement of Rejoinder ¶504]:**

    a. The obligation to supply and install control tools which had only been partially fulfilled, the system not supervising on-net traffic;
    b. The obligations to provide the means to assess the quality of service of each carrier, the means to monitor the flow of local telephone traffic and the balances due between local carriers, which were not met until 2012;
    c. The obligation to provide the tools necessary for the production of international interconnection invoices to each carrier, which was only partially carried out. GVG had to put a tool in place to give more visibility on the comparison of CDRs, which was not done;
    d. GVG neglected the objective of fighting fraud. The volume of fraud detected by the new geolocation tool, which was intended to locate Simboxes, turned out to be lower than the volume of fraud detected by each of the carriers present on the market who had developed their own tool. The system developed by GVG did not include functionality allowing the detection of fraudulent numbers, which was the ultimate goal of the fight against fraud. GVG's negligence had significant financial repercussions for the PTRA, GVG itself having estimated the loss of revenue due to fraud for the Guinean State and carriers at USD 23 million **[Exhibit C-4]**;
    e. GVG overcharged its equipment and services, in particular the SS7 probes;
    f. The training of PTRA staff, one of GVG's obligations under the Partnership Agreement, was carried out with much delay. In 2014, PTRA staff had still not obtained access to the system that would have enabled them to track incidents.

280. This led the PTRA to recall, in its letter dated August 6, 2015 **[Exhibit C-15]**, the following points **[Statement of Rejoinder ¶505]**:

    a. 9 of GVG's 14 obligations under the Agreement were not fulfilled or were fulfilled late;

b. Several intermediate Action Plans were drawn up, but the majority of the points remained without tangible results;
c. After acknowledging the unfair nature of the financial clauses of the Agreement, GVG's remuneration was reduced;
d. GVG overcharged or attempted to overcharge the prices of equipment and services;
e. GVG refused to integrate the PTRA's technicians into actual operations and maintenance activities;
f. No serious offer from GVG was received to switch from an intrusive to a passive system, despite requests from the PTRA to this effect since 2012;
g. GVG was very far from its objectives for the fight against fraud, the software was not received until 2014.

281. The Respondents request the Arbitral Tribunal to declare the ipso jure termination of the Partnership Agreement **[Statement of Rejoinder ¶¶524-525]**.

282. GVG also displayed disloyalty in the performance of its services, its behavior showing that it was part of a fraud scheme. This behavior is so serious as to justify the termination of the contractual relations to the detriment of GVG, as notified by PTRA. GVG cannot claim any compensation for the period after said termination **[Statement of Rejoinder ¶523]**.

283. In the alternative, the Respondents plead for the suspension of the contractual relations under Article 9 of the Agreement, according to which "*Each of the Parties may, without prejudice and without compensation to the other Party, suspend the performance of the Agreement (...) in the event that the performance of the Agreement is likely to result in the violation of a law or any other similar provisions in force.*"

284. The suspension of contractual relations took place because the Agreement was signed in violation of the PPC, because it was obtained by means of a corruption pact, and in any case, because of the very terms of the PTRA's letter of August 6, 2015. **[Exhibit C-15; Statement of Rejoinder ¶¶538-541].**

V.2. Analysis

285. On the question of the performance by GVG of its contractual obligations, the Arbitral Tribunal finds at first sight that, as it recalled earlier, the Respondents do not dispute that the IMS-STP Supervision System provided by GVG has allowed the Guinean State to invoice, on the basis of the minutes captured by the said System for the period from September 2009 to September 2015 (date of GVG's departure from Guinea), gross revenues of USD 212,260,733.53 and net of USD 149,328,320.84 **[Exhibit C-49].**

286. For the Tribunal, these instructive results clearly demonstrate that the System provided by GVG under the Agreement was in working order during the entirety of this period and that it met the contractual requirements for control and supervision of incoming international traffic, optimization of the tax revenues generated by this traffic and the endowment of tools and technological means necessary for the management by the State of this traffic, stipulated in the Agreement.

287. The Arbitral Tribunal then notes that, as explained by Mr. Touray during his hearing **[T3/240]**, it is not only common practice but sound management that a project of the scope of the STP Project, taking place over a number of years and containing a significant element of innovation, is subject to *ad hoc* updates (in particular by means of evaluations such as the Mid-term review) in order to verify that the objectives are met and if needs evolve, and to make the necessary corrections.

288. It is from this angle that the Arbitral Tribunal sees the Mid-term review and the Report resulting therefrom, and not as proof of contractual breaches on the part of GVG of such gravity that they can justify termination of the Agreement, all the less since the Report states the Respondents' satisfaction on several points of verification.

289. It is also important to stress that some of the points raised in the Mid-term review concerned national and non-international traffic **[Summary and Response Memorandum ¶518]**. The 2009-2014 Project Status Report **[Exhibit C-4]** and the March 2014 Action Plan, which focuses almost entirely on domestic traffic **[Exhibit C-9]** also support the conclusion that GVG has properly implemented its commitments.

290. It follows that, to the extent that the Respondents may have had certain criticisms to make regarding the progress of the Project, these criticisms never led to and were not likely to lead to the termination of the Agreement. The evidence on file establishes that solutions were discussed and implemented by the Parties such that the System continued to meet the objectives of the Agreement, to be operational and to generate significant revenues for the State, until the departure of GVG.

291. Furthermore, the Respondents never denounced the Agreement, whether on the basis of breaches by GVG of its contractual obligations or for another reason, as confirmed by Mr. Diaby and Ms. Kaba at the hearing **[Mr. Diaby T2/150:27-155:21; Ms. Kaba T3/263:19-26; 278:33-35-279:3].**

292. Finally, the Respondents' letter of August 6, 2015 could not have effected the suspension of contractual relations under Article 9 of the Agreement, as this letter did not mention such suspension, as the Respondents stated in any event that they considered that the Agreement had ended in May 2014.

293. For the reasons set out above supporting the conclusions of the Arbitral Tribunal concerning the absence of violation of the PPC and the absence of evidence of corruption, there was no further suspension of the contractual relations on these bases.

294. The Arbitral Tribunal is therefore of the opinion and rules that there is no basis for concluding that GVG has breached its contractual obligations or that there has been a valid termination of the Agreement. The termination of the Agreement by the Respondents is therefore unfounded and improper. Consequently, the Tribunal also rejects the Respondents' alternative claim for payment of USD 10,000,000 for improper performance by GVG of its obligations.

VI. VALIDITY OF THE AMENDMENT OF JULY 6, 2009 AND OF THE ADDENDUM OF JULY 10, 2012

VI.1. Summary of the parties' positions

VI.1.a.GVG

295. Article 2 of the Partnership Agreement provides that it is entered into for an initial period of 5 years, automatically renewable for two years: "*This Agreement is entered into for an initial period of sixty (60) months from the date of signature by the two parties. The Agreement is automatically renewable for a successive period of 2 years unless expressly terminated in writing by either party within 12 months before the end of the Agreement*" **[Exhibit C-1].** It follows that under the Partnership Agreement, it was to be renewed at the end of the initial contractual period of 5 years (May 22, 2014), unless expressly terminated, addressed in writing by one of the parties to the other party 12 months before the contractual term, i.e. no later than May 22, 2013 **[Summary and Response Memorandum ¶¶44-45; 531].**

VI.1.a. (i). The Amendment

296. The initial duration of 5 years was extended by an additional 12 months by agreement of the parties under the terms of the Amendment of July 6, 2009, in return for the financing by GVG of USD 1.2 million for the construction of a building "*intended to house the equipment objects* [of the Agreement]*, part of its personnel as well as any other equipment belonging to it or belonging to the Ministry of Telecommunications and New Information Technologies*." **[Exhibit C-3]**. Consequently, the initial term of the Agreement was extended from May 22, 2014 to May 22, 2015 **[Summary and Response Memorandum ¶¶47-48]**.

297. Article 3 of the Amendment providing that the other provisions of the Agreement would remain "*fully applicable*," the Agreement was to automatically renew on May 22, 2015 for a period of two years, unless either party expressly denounces it to the other party twelve months beforehand, that is to say no later than May 22, 2014. As no denunciation had been sent to GVG by that date, the Agreement was therefore extended until May 22, 2017 **[Summary and Response Memorandum ¶¶49; 531].**
298. GVG was financed by 12 monthly instalments of USD 100,000 over the course of one year (by way of deduction from the remuneration to be received by GVG under the Agreement, with the exception of the first instalment, which was the subject of a bank transfer from GVG, duly received by the Minister). **[Exhibit C-53; Summary and Response Memorandum ¶50].**
299. These payments by deduction of the invoices from GVG's shares were agreed between GVG and the Minister given the systematically delayed payment of said invoices **[Exhibit C-62; Summary and Response Memorandum ¶535].**
300. It is therefore indisputable that the Amendment was entered into between the parties and executed by GVG. The absence of an express mention of the monthly deduction of USD 100,000 from the invoices issued by GVG is not proof of the non-performance of the Amendment, the invoices strictly reporting only the income related to international traffic entering Guinea to serve as a basis for the State to calculate its own fees **[Summary and Response Memorandum ¶¶532-536].**

VI.1.a.(ii). The automatic renewal of the Agreement

301. The Respondents contend that the implied renewal clause in the Agreement is illegal and that GVG is therefore prohibited from availing itself of the non-performance of the Agreement beyond its initial period. They plead the principle of French administrative law that "*the automatic renewal clauses contained in public procurement contracts*" are in principle illegal and that, consequently, "*no damage, and therefore no right to compensation, can be born, for the contracting partner of the administration, of the automatic renewal of a contract at the end of the initial duration agreed by the parties*." **[Exhibit CL-61; Summary and Response Memorandum ¶¶540-541].**
302. Even supposing that French administrative law would apply in this case, which is not the case, this illegality in principle does not include the automatic renewal clause here in question. The *Commune de Païta* jurisprudence **[Exhibit CL-62]** limits the illegality of the automatic renewal clauses to those contained in "*a contract which, by reason of its nature and amount, can be concluded only after the obligations of publicity and competitive tendering provided for by the applicable regulations have been complied with*," such clauses allowing the conclusion of a new contract without compliance with those obligations **[Summary and Response Memorandum ¶542].**

303. However, the Partnership Agreement can be legally concluded by mutual agreement, the automatic renewal clause is therefore legal, and with it the renewal of the contract resulting from its implementation, the conditions of mutual agreement having been fulfilled on the renewal date. In any event, even assuming that the automatic renewal or its implementation was illegal, jurisprudence considers that it is not an irregularity involving a defect of gravity as the judge should, as an exception to the requirement of loyalty in contractual relations, dismiss this new contract **[Exhibit CL-63; Summary and Response Memorandum ¶¶543-544].**

304. Finally, when, as an exception, the administrative judge dismisses a contract due to the illegality of its content or a particularly serious defect, thus refusing to settle the dispute on the contractual ground, the contracting partner of the administration retains the possibility of obtaining compensation on the basis of unjust enrichment and/or quasi-judicial administrative responsibility **[Exhibits CL-64, CL-65; Summary and Response Memorandum ¶545].**

VI.1.a.(iii). The Addendum

305. Since the beginning of the implementation of the STP Project, GVG had been experiencing difficulties in obtaining payment of its invoices, most of which had been paid late. This situation worsened particularly with the arrival of Mr. Diaby as Director General of the PTRA after the coming to power of President Alpha Condé, the Respondents simply ceasing to settle the invoices issued by GVG, while under Annex I to the Agreement, the quotas due on the international tariff were to be paid "*15 days after the due date and the receipt of the invoice*" by the Respondents **[Summary and Response Memorandum ¶¶61-62]**. Mr. Baker, in his attestation, explains that although GVG continued to provide services in accordance with its obligations under the Agreement, the Respondents' arrears amounted to more than USD 13 million **[Attestation no. 1 by Mr. Baker ¶¶39-41].**

306. Mr. Baker organized a meeting with President Condé in an attempt to resolve the situation. The President indicated that he would not hesitate to terminate GVG's contract if the latter did not meet Mr. Diaby's requests made following his instructions, and in particular to a substantial reduction in the claim and the share of GVG. It is in this context that GVG was forced to sign the Addendum **[Attestation by Mr. Touray 119; Summary and Response Memorandum ¶¶75-78].**

307. Under the Addendum **[Exhibit C-7]**, the Respondents acknowledge that "[GVG] *has carried out the Action Plan agreed between the parties relating to the obligations mentioned in the "PERFORMANCE REPORT ON CONTRACTUAL OBLIGATIONS BETWEEN GVG AND THE PTRA, DATED May 14, 2012"*". They acknowledge their duty to GVG **[Summary and Response Memorandum ¶81]:**

a. The sum of USD 13,237,182.60 for "*invoices accumulated from September 2009 to December 31, 2011*";

b. The sum of USD 2,206,906 for the "*balance of the share of international traffic in Sotelgui*" for the period from September 2009 to December 31, 2011.

308. Despite the Respondents' acknowledgments, GVG had to agree to reduce the PTRA's debt from USD 13,237,182.60 to USD 2 million; renounce the income corresponding to the remainder of the share of Sotelgui's international traffic, ie USD 2,206,906; and reduce the fees to be paid by PTRA to GVG under the Agreement from USD 0.07 to USD 0.025 per minute of international incoming call retroactive to April 1, 2011 **[Summary and Response Memorandum ¶82].**

309. In return for these very important concessions, GVG requested Mr. Diaby to undertake the terms of the Addendum to extend the Agreement for two more years. Mr. Diaby indicated that he could not commit himself in writing without the President's instructions, but he promised that the Agreement would not be terminated 12 months before the expiration (May 22, 2014) and would be renewed for a further two years after the expiration (May 22, 2017) **[Summary and Response Memorandum ¶83].**

310. The substantial waivers on the part of GVG were therefore agreed without any real counterpart on the part of the Respondents (apart from a general reference to the "*strengthening of the partnership*" between the parties), in the sense that the duration of the Partnership Agreement (which extended at the time of the signing of the Addendum until May 22, 2015 with the possibility of automatic renewal of 2 years) had not been contractually extended in order to guarantee GVG additional revenues **[Summary and Response Memorandum ¶¶575-580].**

311. Consequently, and with regard to Articles 643, 649 and 664 of the Guinean Civil Code, GVG's obligation to consent to the reductions and renunciations imposed by the Respondents is devoid of cause and therefore null and the obligation of the Respondents to "strengthening the partnership" is just as void, for lack of purpose **[Summary and Response Memorandum ¶¶581-596].**

VI.1.b. The Respondents

VI1.b.(i). The Amendment

312. The Amendment does not appear in the archives of the PTRA, which received a copy of it through its exchanges with GVG in 2014 **[Exhibit R-2]**. The Amendment was also never executed by GVG, the accounting documents of the PTRA showing no deduction on GVG's

invoices from September 2009 to September 2010. The question of the validity of the Amendment therefore arises **[Exhibits R-3, R-4, R-5; Statement of Rejoinder ¶¶58-64].**

VI.1.b.(ii). Illegality of the automatic renewal clause

313. The Respondents having amply demonstrated that the Agreement cannot constitute a contract by mutual agreement, it follows that the automatic renewal clause cannot escape its congenital illegality resulting from non-observance of the rules governing the awarding of public contracts **[Statement of Rejoinder ¶¶509-515].**

314. As for the possibility of GVG obtaining compensation on the basis of quasi-contractual or quasi-tort liability, if this can exist in theory, this course of action is drastically closed as soon as the contracting party is guilty of acts likely to vitiate the administration's consent **[Exhibit RL-47]**. This remedy is also closed to the contracting party who is guilty, prior to the conclusion of the contract, of fraudulent acts tainting the fraudulent contract, such as the corruption pact **[Exhibits RL-57, RL-58; Statement of Rejoinder ¶¶516-519].**

315. In any event, if the Tribunal were to decide that GVG was justified in seeking compensation in the quasi-tort field, it would be appropriate, in assessing this compensation, to take into account the fault attributable to GVG, which could not ignore the need to initiate a publicity and competitive bidding process. It is also important to remember that Guinean law does not recognize any possibility of a public person being challenged by his or her contracting partner in the event of a violation of the PPC **[Statement of Rejoinder ¶¶520-522].**

VI.1.b.(iii). The Addendum

316. Following the Contractual Obligations Performance Report **[Exhibit C-6]**, the parties signed the Addendum, GVG agreeing to reduce its alleged claim on the PTRA for the services allegedly rendered since the conclusion of the Agreement from USD 13 million to USD 2 million. In doing so, GVG agreed to reduce the price of its services by approximately 85%. For the future, GVG agreed to reduce the price of its share by approximately 65% **[Statement of Rejoinder ¶¶90-92].**

317. The Addendum never constituted anything other than a price revision agreement, therefore an act modifying the contract, and not a transaction which, according to GVG, would be void for want of providing for reciprocal concessions. If the Agreement and the Amendment were not canceled, the Addendum would necessarily apply, and GVG's claims for damages based exclusively on the Agreement would be dismissed **[Statement of Rejoinder ¶¶542-549].**

318. At no time did the President of the Republic of Guinea interfere in the negotiations of the Addendum, and at no time was an extension of the duration of the Agreement promised by the PTRA as part of the negotiations. If the new distribution proposed by the PTRA was not appropriate to GVG, it could choose to terminate the Agreement, and especially as the amount of its initial investment, valued at USD 7.5 million under the Order **[Exhibit C-2]** had largely paid for itself at the time. In reality, the new distribution provided for in the Addendum still

allowed GVG to collect a comfortable margin, failing which it would not have accepted it **[Statement of Rejoinder ¶¶454-455].**

VI.2. Analysis

319. The positions of the Parties can therefore be summarized as follows: GVG requests (i) confirmation of the validity of the Amendment; and (ii) the nullity of the Addendum. The Respondents argue of (i) the inexistence/non-performance/invalidity of the Amendment; and (ii) in the alternative, the validity of the Addendum (primarily, the invalidity of the Agreement resulting in the nullity of the subsequent agreements.

VI.2.a. The Amendment

320. With regard to the validity of the Amendment, the Tribunal first notes that the Amendment bears the signature of Mr. Camara on behalf of the PTRA, this signature also appearing on the Partnership Agreement.
321. The Arbitral Tribunal also notes that the Respondents claim that the validity of the Amendment is questioned on the following two bases: (i) they did not have a copy of the Amendment in their archives; and (ii) the invoices issued by GVG do not show deductions of USD 100,000 per month for one year.
322. None of this contradicts the fact that the building which is the subject of the Amendment was constructed, which the Respondents do not dispute **[Attestation no. 1 by Mr. Baker ¶¶37-38]**. It is reasonable to conclude that the building was indeed financed by the deductions reported by GVG. The Tribunal adds that the Respondents do not prove that the Addendum would be a forgery and that relying on the fact that they would not find any trace of it in their archives does not in any way constitute proof.
323. Consequently, the Arbitral Tribunal sees no reason to doubt the validity of the Amendment or its execution, and accepts that by its terms the duration of the Partnership Agreement has been extended by one year, therefore until May 22, 2015.

VI.2.b. Automatic renewal

324. On the question of the validity of the automatic renewal clause, the Arbitral Tribunal notes that the position of the Respondents amounts to seeking the annulment of the said clause on the basis of the absence of a call for competition under the PPC, despite the fact that neither

the Partnership Agreement, nor the Subah contract which was concluded in replacement of the Agreement, included a call for competition or a request for proposals. This being the case, it is difficult to conceive on what basis the sole operation of the automatic renewal clause should be subject to such a condition on pain of cancellation, as an exception to the requirement of loyalty in contractual relations. The Respondents have not provided any clarification on this subject.

325. The Respondents based part of their arguments on French administrative law **[Statement of Rejoinder ¶511 et seq.]** which the Claimant itself considered in the alternative **[Summary and Response Memorandum ¶541 et seq.]**; the Tribunal will refer to it for this reason. The Tribunal takes note of the case-law of the French State Council according to which, even supposing that the Agreement falls under the aegis of the PPC and that the automatic renewal clause or its implementation was unlawful, that is not an irregularity involving a defect of such gravity that the Tribunal should, by way of exception to the requirement of fairness in contractual relations, set aside the new contract for the settlement of the present dispute **[Exhibit CL-63].**

326. The Arbitral Tribunal accepts from this jurisprudence the importance given to the principle of fairness of contractual relations in the assessment of the elements of the dispute, as notably stated in the *Commune de Béziers* judgment **[Exhibit CL-50]** in these terms: "*Considering, first of all, that the parties to an administrative contract may bring an action of full judicial review challenging the validity of the contract which binds them; that it is then for the court, when it notes the existence of irregularities, to assess their importance and consequences, after having verified that the irregularities relied on by the parties are those which they may, having regard to the requirement of fairness of contractual relations, invoke before it; that it is for the court, after having taken into consideration the nature of the illegality committed and having regard to the objective of stability of contractual relations, either to decide that further performance of the contract is possible, possibly subject to regularization measures taken by the public entity or agreed between the parties, or to pronounce, where appropriate with deferred effect, after having ascertained that its decision will not unduly prejudice the public interest, the termination of the contract or, solely because of an irregularity invoked by one of the parties or of its own motion, relating to the unlawful nature of the content of the contract or to a particularly serious defect relating in particular to the conditions under which the parties gave their consent, the annulment of the contract; Considering, secondly, that, where the parties submit to the court a dispute relating to the performance of the contract binding them, it is in principle incumbent on the court, having regard to the requirement of fairness in contractual relations, to enforce the contract; that, however, only if it finds an irregularity invoked by one of the parties or discovered by it of its own motion, relating to the unlawfulness of the content of the contract or to a particularly serious defect relating in particular to the conditions under which the parties gave their consent, it must set aside the contract and cannot settle the dispute on the contractual ground.*"

327. The Arbitral Tribunal, in its assessment of the elements of the present dispute, holds that, even assuming that the competitive process required by the PPC would apply in the present case, the absence of competition, both for the award of the Agreement itself and for the award of the Subah contract, is not relevant, as well as the Respondents' silence as to the need for such a competitive process throughout the contractual relationship with GVG and until the commencement of the arbitration proceedings, are elements which militate in favor of compliance with the requirement of fairness in the contractual relationship. The Tribunal adds that in the absence of corruption as judged above, the Respondents have not established that the Agreement is vitiated by a "*defect of particular gravity relating in particular to the conditions in which the parties have given their consent*" justifying the rejection of the contract.

328. Consequently, the Arbitral Tribunal rules that the Partnership Agreement has been validly renewed for a period of two years until May 22, 2017.

VI.2.c. The Addendum

329. On the question of the nullity of the Addendum for want of cause, the Arbitral Tribunal notes that the text of the Addendum qualifies it as being an "*amendment*" modifying the contracts concluded between the parties which "*remains from now on the law of the parties on all the modified clauses*".

330. The Arbitral Tribunal therefore considers the Addendum as a price revision agreement, an amendment to the contract, and not a transaction which would be void for want of providing for reciprocal concessions.

331. As for the signing of the Addendum under duress, the Arbitral Tribunal notes that this signing took place at a time when relations between GVG and PTRA were tense and in a context where the invoices unpaid by the PTRA accumulated from the start of the Project up to more than USD 13 million. Evidence on file indicates that GVG made the decision to accept a revision of the financial terms of the Agreement on a commercial basis in order to manage PTRA's debt and to find common ground on the distribution key, with a view to avoiding termination of the Agreement and allowing the Project to continue **[Mr. Baker T2/189:5-24].**

332. For the Arbitral Tribunal, the renegotiation of an agreement under the threat of termination constitutes a situation which, however unpleasant it may be, is part of the risks of a company such as the STP Project, and not a constraint likely to invalidate the Addendum. Even supposing that GVG had no real choice but to sign this Addendum, the fact remains that GVG then executed it and that it avails itself of it several times in its pleadings **[see for example Summary and Response Memorandum 63, 73, 81, 91].**

333. The Tribunal rules that the Addendum is valid and that its terms apply.

VII. DAMAGES

VII.1. Summary of the parties' positions

VII.1.a.GVG

334. On the basis of the nullity of the Addendum, and in application of Articles 682 and 683 of the Guinean Civil Code, GVG requests compensation for its damage (i) in respect of invoices paid at the rate of USD 0.025 per minute instead of USD 0.07; and (ii) for outstanding payments and outstanding invoices for the entire contractual period, at the same rate of USD 0.07 **[Summary and Response Memorandum ¶573].**
335. GVG also requests the reimbursement of all of its costs incurred during transactional negotiations **[Summary and Response Memorandum ¶574].**
336. For the period from September 1, 2009 to December 31, 2011, the Respondents acknowledged that, under the Addendum, they owed the sum of USD 13,237,182.60. The Respondents having paid the sum of USD 2 million under the Addendum, GVG requests payment of the remainder of USD 11,237,182.60 **[Summary and Response Memorandum ¶601].**
337. For the period from January 1, 2012 to May 31, 2015, GVG issued the following invoices, calculated on the basis of the rate of USD 0.025 per minute **[Exhibit C-52; Summary and Response Memorandum ¶602]:**

	2012	**2013**	**2014**	**2015**
January	699,333.26	679,322.13	653,615.30	587,012.44
February	657,990.38	617,900.41	566,389.51	562,937.85
March	665,059.77	708,897.68	620,035.82	637,386.28
April	646,679.97	640,937.23	595,119.73	607,993.32
May	657,868.11	693,749.62	600,855.03	627,164.76
June	633,474.02	672,474.89	576,601.52	
July	684,302.42	707,420.43	583,408.14	
August	676,922.91	730,493.18	540,232.59	

September	638,619.62	658,114.68	519,623.83	
October	669,060.40	695,592.33	522,039.85	
November	620,034.75	628,370.46	486,305.59	
December	671,471.78	658,524.42	573,735.36	
TOTAL	**7,920,817.39**	**8,091,797.46**	**6,837,962.27**	**3,022,494.65**

338. For this period, a distinction must be made between two periods **[Summary and Response Memorandum ¶603]:**
    a. From January 1, 2012 to May 31, 2014, the invoices issued according to the above table were settled on the basis of the Addendum rate (USD 0.025). GVG requests the difference between this rate and the rate of USD 0.07 agreed under the Agreement;
    b. From June 1, 2014 to May 31, 2015, the invoices issued according to the above table remained unpaid. GVG requests payment of these invoices, but at the rate of USD 0.07 per minute.
339. For the period from January 1, 2012 to May 31, 2014, GVG invoiced the total amount of USD 19,048,630.24, applying the rate imposed by the Respondents of USD 0.025. GVG today requests, on the basis of the invoices paid for the said period, the difference between the total amount thus invoiced and the amount which should have been invoiced under the tariff initially provided for, namely USD 0.07 (USD 53,336,164.67). Consequently, GVG claims damages for outstanding payments for the period from January 1, 2012 to May 31, 2014 in the amount of USD 34,287,534 (USD 53,336,164.67 minus USD 19,048,630.24 already paid) **[Summary and Response Memorandum ¶604].**
340. For the period from June 1, 2014 to May 31, 2015, GVG invoiced, applying the rate imposed (USD 0.025) under the Addendum, the total amount of USD 6,824,441.28, which amount has never been settled by the Respondents. GVG today requests payment of its invoices, the amount of which should be recalculated by applying the rate initially agreed (USD 0.07), ie the sum of USD 19,108,436.28 **[Summary and Response Memorandum ¶605].**
341. Finally, and concerning the period from June 1, 2015 to May 22, 2017, during which GVG could no longer issue invoices, the Respondents having prohibited them from accessing the PTRA site where the IMS-STP 1 platform was installed, it claims damages for outstanding payments, the amount of which will be calculated on the average of the invoices it had previously established, as follows **[Summary and Response Memorandum ¶606]:**
    a. The average of a monthly invoice being USD 631,050.53 (the total invoice amount of USD 25,873,071.77 divided by the 41 months invoiced according to the table above);

b. The daily average invoiced being USD 20,868 (the annual average invoiced in 2012, 2013 and 2014, i.e. the sum of USD 7,616,859, divided by 365 days);

c. The Respondents, applying the tariff imposed on GVG under the Addendum (USD 0.025), owed the total amount of USD 14,973,258.19 for this period (USD 631,050.53 x 23 months, corresponding to the period from June 1, 2015 to April 30, 2017, or USD 14,514,162.19, to which should be added the sum of USD 459,096 corresponding to the period from May 1 to May 22, 2017, calculated by multiplying the daily average of USD 20,868 by 22).

342. However, and as explained above, due to the nullity of the Addendum, GVG claims for the period from June 1, 2015 to May 22, 2017, and therefore applying the initial rate of USD 0.07, the sum of USD 41,925,122.32 **[Summary and Response Memorandum ¶607].**

343. In summary, GVG claims, as outstanding payments by the Respondents for the entire contractual period, the following amounts **[Summary and Response Memorandum ¶608]:**

a. USD 11,237,182.60, corresponding to the amount by which the Respondents' debt has been reduced under Articles 2 and C of the Addendum;

b. USD 34,287,534, corresponding to outstanding payments during the period from January 1, 2012 to May 31, 2014, according to the table above indicating the monthly amounts invoiced by GVG (by applying the rate imposed at USD 0.025), recalculated by applying the rate initially agreed (USD 0.07);

c. USD 19,108,436.28, corresponding to invoices unpaid by the Respondents during the period from June 1, 2014 to May 31, 2015, applying the rate initially agreed (USD 0.07);

d. USD 41,925,122.32, corresponding to an estimate of the amounts due for the period from June 1, 2015 to May 22, 2017 (calculated on the basis of reported traffic and therefore the average of the amounts invoiced by GVG according to the table above), applying the rate of USD 0.07).

344. GVG therefore claims damages for outstanding payments for the entire contractual period in the total amount of USD 106,558,275.20 **[Summary and Response Memorandum ¶609]**.

345. GVG also requests, within the framework of the present proceedings, reimbursement of the costs which it had to incur during the process of contractual negotiations which were not successful, the Respondents having decided to award the contract to one of their competitors, with whom they negotiated in parallel. These costs are estimated at USD 150,000.00 **[Summary and Response Memorandum¶610].**

346. The Respondents will also be ordered to pay interest on arrears from August 2015 with capitalization on the above-mentioned amounts at the rate that will be deemed appropriate by the Arbitral Tribunal **[Summary and Response Memorandum ¶611].**

347. GVG also requests that the Respondents be ordered to pay all costs relating to the arbitration, including the fees and expenses of lawyers as well as the fees and expenses of any expert engaged by GVG in the context of these proceedings **[Summary and Response Memorandum ¶612].**

348. In its Post-hearing notes no. 1 and no. 2 **[¶52]**, GVG requests that the Respondents' *"unlimited bad faith,"* in particular in the context of corruption allegations, be taken into account in the calculation of its damages and invokes the terms of Article 684 of the Guinean Civil Code, to the effect that "*damages, distinct from those due for non-performance or delay in performance, may also be claimed in case of manifest bad faith of the debtor*."

VII.1.b. The Respondents

349. Conversely, GVG must be condemned in the event of nullity to the restitution of the sums unduly collected, that is to say the sum of USD 48,093,160.00 to be completed, GVG being unable to derive any benefit from its own turpitude **[Post-hearing note no. 2].**

350. In the alternative, if the agreements invoked by GVG in support of its requests were not canceled, order GVG for wrong performance to pay damages in compensation for the damage suffered as a result of GVG's behavior for an amount of USD 10 million, to be completed **[Post-hearing note no. 2; Statement of Rejoinder ¶537].**

351. In any event, GVG's challenge to the morality of the PTRA and the Republic of Guinea cases, as well as GVG's numerous denigrating allegations against them in its pleadings, cause the Respondents to suffer substantial moral prejudice, which cannot be less than USD 100,000 for each of them **[Post-hearing note no. 2; Statement of Rejoinder ¶550].**

352. In addition, GVG's manifest fraud in Guinean public procurement regulations constitutes the one and only support for the claims made by GVG in the context of this arbitration procedure. This procedure is therefore undoubtedly abusive. The damage suffered by each of the Respondents cannot be estimated, having regard to the seriousness of GVG's behavior, to be less than USD 100,000 **[Post-hearing note no. 2; Statement of Rejoinder ¶551].**

353. In any event, GVG must be ordered to bear all of the costs relating to the arbitration, including the fees and expenses of lawyers and the fees and expenses of any expert appointed by the Respondents for the needs of this procedure.

354. GVG's latest request that the Arbitral Tribunal take into account the alleged bad faith of the Respondents in the calculation of the damages comes as no surprise. The same applies to the claim for compensation for costs incurred by GVG in the process of unsuccessful contractual

negotiations with the PTRA, while the Partnership Agreement, in its Article 6, excludes any compensation for indirect damage **[Post-hearing note no. 2 ¶ 61].**

355. Thus also, in the context of the economic crimes committed by GVG, of its main claim relating to the amount of the alleged outstanding payments during the contractual period, in addition to the default interest from August 2015 with capitalization of interest **[Post-hearing note no. 2 ¶ 62].**

VII.2. Analysis

VII.2.a. Outstanding payments for the contractual period

356. With regard to the conclusions of the Arbitral Tribunal in terms of the contractual liability of the Respondents, the validity of the Agreement, and that of the Amendment and the Addendum, and therefore in application of the binding force of the GVG's claim, that is to say, for the payment of invoices issued under the Partnership Agreement between September 1, 2009 and May 31, 2015 and remained unpaid, same as for the payment of the amounts that would have been invoiced for the period from June 1, 2015 to May 22, 2017 as damages.

357. These amounts will therefore be calculated at the Addendum rate, ie USD 0.025 per minute as from April 1, 2011 and not at the original rate of USD 0.07 per minute.

358. GVG's claim on this count is therefore upheld in the following terms:

    a. **The sum of USD 6,824,441.28**, corresponding to outstanding invoices by the Respondents during the period from June 1, 2014 to May 31, 2015, applying the rate of USD 0.025 under the Addendum;

    b. **The sum of USD 14,973,258.19**, corresponding to the estimate of the amounts due for the period from June 1, 2015 to May 22, 2017, applying the rate of USD 0.025.

359. The claim of USD 11,237,182.60, corresponding to the amount by which the Respondents' debt has been reduced under Articles 2 and C of the Addendum, is rejected; that of USD 34,287,534, corresponding to outstanding payments during the period from January 1, 2012 to May 31, 2014, recalculated by applying the rate of USD 0.07; and that of USD 41,925,122.32 corresponding to the estimate of the amounts due for the period from June 1, 2015 to May 22, 2017, applying the rate of USD 0.07.

360. The Tribunal also rejects GVG's claim for reimbursement of the costs estimated at USD 150,000.00 which it would have incurred during the process of contractual negotiations which were unsuccessful, this sum being neither explained nor justified, in principle or in amount.

361. As to GVG's request that the Respondents' "*unlimited bad faith*" under Article 684 of the Guinean Civil Code be taken into account in the calculation of its damages, to the effect that "*damages, distinct from those due for non-performance or delay in performance, shall be awarded, may also be requested in case of manifest bad faith on the part of the Debtor*," the Arbitral Tribunal finds that it has not been substantiated, as GVG has neither quantified its request nor provided any authorities that could guide the Tribunal in its assessment of the financial measure of "*unlimited bad faith*" alleged against the Respondents. This request, insofar as it is upheld, is therefore rejected.

362. GVG claims **[Summary and Response Memorandum ¶611]** that the sums due be increased by "*interest on arrears from August 2015 with capitalization on the abovementioned amounts at the rate that will be deemed appropriate by the Arbitral Tribunal*". On this point the Respondents do not respond otherwise than by requesting a total rejection of GVG's requests, do not express themselves precisely on the starting point of interest and neither do they contest the power left to the Tribunal to fix the appropriate rate.

363. The Tribunal considers that the interest should run not from the time when the termination was considered to be abusive, i.e. August 6, 2015, as GVG wishes, but only from the date on which the Claimant gave notice to the Respondents to comply. It is indeed from the moment a party claims its rights that the delay in performance takes effect from the point of view of interest. However, in the absence of a specific formal notice, it is the legal claim, i.e. the Request for Arbitration, that is equivalent to a formal notice and this one is dated December 8, 2016, since it contains such a claim.

364. For the sake of completeness, the Tribunal notes that the solution it chooses corresponds to the provisions of Guinean law, chosen by the Parties as the applicable law, since Article 681 of the Guinean Civil Code[3] provides that interest accrued count from the formal notice and that Article 722 al. 2 of the same Code[4] considers (in relation to the penal clause, but in general terms) that the summons to appear in court is equivalent to a formal notice.

365. The sums due by the Respondents will therefore bear interest from December 8, 2016 and until full payment.

366. The parties have said little about the interest rate to be used. GVG leaves it to the discretion of the Tribunal, and the Respondents, who have not proposed an applicable rate, at no time having contested this discretion left to the Tribunal. The Tribunal therefore considers that the parties have abandoned to it the free determination of the rate to be used. The interest rate that seems reasonable to the Tribunal is that of 2%, which is slightly higher than the French legal rate (0.86%), but lower than the savings rate quoted on the website of the Guinean Central Bank (2.79%).

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[3] Article 681 of the Guinean Civil Code: "*Damages due, for example, within the meaning of Article 673 above, can only be due after a formal notice has been given to the debtor to fulfil his or her obligation*".

[4] Article 722 al. 2 of the Guinean Civil Code: *"A subpoena is equivalent to a formal notice"*.

367. The Tribunal rejects the capitalization request, GVG not justifying the source in Guinean law chosen by the Parties, or even in "*the relevant commercial practice*," the application of which in this case could have been envisaged on the basis of Article 21(2) of the ICC Rules.

D. THE ARBITRATION COSTS

I. SUMMARY OF THE PARTIES' POSITIONS

368. Under the terms of the note concerning its claim for the arbitration costs, GVG claims, supporting documents:

a. USD 452,500.00 for the provision paid to the ICC;

b. EUR 429,435.40 for the fees and disbursements of its external counsel and consultants in connection with the conduct of this arbitration;

c. EUR 14,836.00 for the logistics of the hearings (room rental, transcription, translation and meals);

d. EUR 23,391.16 for travel expenses relating to the hearings and preparation of witnesses and hearings;

e. 7.5% of the amount of the future award representing the additional fees for GVG's counsel;

f. Interest on arrears capitalized quarterly on said sums at the rate that the Tribunal considers appropriate, from the date of the award until full payment.

369. GVG requests that the Tribunal, in its decision regarding the costs of the arbitration, take into account "*the procedural bad faith of the Respondents who delayed the constitution of the Arbitral Tribunal and the signing of the Terms of Reference; produced Professor Train's legal consultation in extremis; and produced new exhibits two days prior to the hearings, which resulted in the production of two Post-hearing notes whose contents, which should have been limited to the thirteen checks, were not respected by the Respondents*."

370. The Respondents, for their part, claim a total of EUR 919,800.57, with supporting documents, distributed as follows:

a. EUR 419,565.50 for lawyers' fees;

b. EUR 34,788.06 for costs and disbursements;

c. EUR 12,947.01 for client travel expenses;

d. EUR 452,500.00 for the ICC fees.

371. The Respondents add that they oppose with the most extreme vigor the granting of the additional fee claimed by GVG and that only costs incurred with certainty must be taken into account.

II. ANALYSIS

372. The Arbitral Tribunal notes that GVG prevails in these proceedings up to USD 21,797,699.47, or approximately 20% of its total claim which amounts to USD 106,558,275.20.

373. The Arbitral Tribunal also held that the Respondents' counterclaim for nullity was entirely inadmissible.

374. Consequently, the Arbitral Tribunal, pursuant to Article 37 of the Regulations and in the exercise of its discretion in apportioning the costs of the arbitration, rejects the Respondents' claim for their costs in this arbitration, and awards GVG's claim for costs up to 20% of its costs. The Tribunal specifies that the Court fixed the arbitration costs at USD 891,000.00.

375. In calculating the costs of GVG, the Arbitral Tribunal is entitled to the additional fee of 7.5% of the principal sums recovered, which it considers reasonable and standard practice for disputes of this nature. The Arbitral Tribunal calculates the additional fee at USD 1,634,827.46. Only 20% of this amount will be charged to the Respondents, i.e. USD 326,965.49.

376. The Arbitral Tribunal therefore partially grants GVG's claim for its costs and, by applying the rate of 20% to the sums in question, establishes the amount as follows:

a. USD 90,500.00 for the ICC fees;

b. EUR 85,887.08 for fees and disbursements;

c. EUR 2,967.20 for logistics costs;

d. EUR 4,678.23 for travel expenses;

e. USD 326,965.49 for the additional fee.

377. These sums will bear interest at the rate of 2% per year from the date of this Award, until full payment. The Arbitral Tribunal rejects the request for quarterly capitalization of interest for late payment for the reasons set out above with regard to the prejudice.

378. The decisions of the Tribunal relating to the allocation of defense and arbitration costs make it possible to take into consideration the weakness of some of the Respondents' arguments as well as their production in extremis of certain documents.

E. COUNTERCLAIMS

379. As a result of that which has been decided on the main claims, the counterclaims are dismissed.

F. THE DECISION

380. The Arbitral Tribunal, for the reasons set out above and after hearing the parties and deliberating, issues the following Final Award:

   a. **RULES** that the arbitration clause contained in Article 17 of the Partnership Agreement is valid, **REJECTS** the Respondents' request for the cancellation of said arbitration clause, and therefore **REAFFIRMS** its *subject matter jurisdiction* to hear this dispute;

   b. **RULES** that the two Respondents are parties to the Partnership Agreement, **RULES** that these proceedings have been validly constituted against the two Respondents, and therefore **REAFFIRMS** its personal jurisdiction to hear this dispute;

   c. **RULES** that the Partnership Agreement is lawful and **REJECTS** the Respondents' counterclaims for the invalidity of the said Partnership Agreement as well as for restitution, damages and any other financial claim by the Respondents;

   d. **RULES** that GVG has fulfilled its obligations with regard to the Partnership Agreement and that the Respondents have improperly terminated the said Agreement;

   e. **RULES** that the Amendment and the Addendum are both lawful and have full effect;

   f. **ORDERS** the Respondents to pay GVG the following sums as compensation for its loss, said sums bearing simple interest at the rate of 2% per annum as of December 8, 2016 and until full payment by the Respondents:

      (i). **USD 6,824,441.28** corresponding to invoices outstanding by the Respondents during the period from June 1, 2014 to May 31, 2015, applying the rate of USD 0.025 under the Addendum;

      (ii). **USD 14,973,258.19** corresponding to the estimate of the amounts due for the period from June 1, 2015 to May 22, 2017, applying the rate of USD 0.025;

   g. **REJECTS** GVG's other claims;

h. **ORDERS** the Respondents to pay to GVG the following sums, said sums bearing simple interest at the rate of 2% per annum from the date of this Award until full payment by the Respondents:

(i). **USD 90,500.00** for the ICC fees;

(ii). **EUR 85,887.08** for fees and disbursements;

(iii). **EUR 2,967.20** for logistics costs;

(iv). **EUR 4,678.23** for travel expenses;

(v). **USD 326,965.49** for the additional fee.

1. **REJECTS** the Respondents' claims relating to the costs of arbitration and defense.

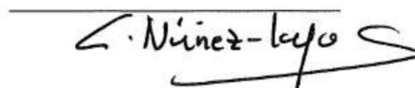
Date: July 18, 2019

Jurisdiction of arbitration: Paris, France

Signature:

Professor Charles Jarrosson
(Co-Arbitrator)

Carmen Núñez-Lagos, Esq.
(Co-Arbitrator)



Sophie Nappert, Esq.
(President)