



ICC (INTERNATIONAL CHAMBER OF COMMERCE)

ICC Case No. 20910/ASM/JPA (C-20911/ASM)

(1) GRUPO UNIDOS POR EL CANAL, S.A., (2) SACYR, S.A., (3) WEBUILD, S.P.A. (FORMERLY SALINI-IMPREGILO S.P.A.), (4) JAN DE NUL, N.V. V. AUTORIDAD DEL CANAL DE PANAMÁ
(II)

FINAL AWARD

17 February 2021

Tribunal:

[Robert Gaitskell](#) (Appointed by the respondent)

[Claus von Wobeser](#) (Appointed by the claimant)

[Pierre-Yves Gunter](#) (President)

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Final Award

I. INTRODUCTION

1. In accordance with the Rules of Arbitration of the International Chamber of Commerce in force as from 1 January 2012 (the "ICC Rules"), the Arbitral Tribunal hereby issues the Final Award in ICC Case No. 20910/ASM/JPA (C-20911/ASM).
2. Unless otherwise noted, all capitalized terms and abbreviations used in this Final Award shall have the same meaning as in the Partial Award dated 21 September 2020 (the "Partial Award").

II. THE PARTIES AND THEIR REPRESENTATIVES

A. The Claimants

3. The First Claimant in this Arbitration is Grupo Unidos por el Canal, S.A. (hereinafter referred to as "GUPC S.A." or the "First Claimant"), a corporation duly organized under the laws of Panama, with its registered address at:
Grupo Unidos por el Canal, S.A.
Building 22B, Brujas Road
Cocoli
Republic of Panama
4. The Second Claimant is Sacyr, S.A. (hereinafter referred to as "Sacyr" or the "Second Claimant"), a company incorporated under the laws of Spain, with its registered address at:
Sacyr, S.A.
Paseo de la Castellana 83-85
28046 Madrid
Spain
5. The Third Claimant is Webuild, S.p.A. (formerly Salini-Impregilo, S.p.A) (hereinafter referred to as "Webuild" or the "Third Claimant"), a company incorporated under the laws of Italy, with its registered address at:
Webuild S.p.A.
Via dei Missaglia, 97
20142 Milan
Italy

6. The Fourth Claimant is Jan De Nul, N.V. (hereinafter referred to as "Jan De Nul" or the "Fourth Claimant"), a company incorporated under the laws of Belgium, with its registered address at:
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9308 Hofstade-Aalst
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7. The First, Second, Third and Fourth Claimants are jointly and collectively referred to as the "Claimants".

8. The Claimants are represented in this Arbitration by:
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B. The Respondent

9. The Respondent in this Arbitration is Autoridad del Canal de Panama (hereinafter referred to as "ACP" or the "Respondent"), an autonomous legal entity of the Republic of Panama having its offices at:
Building 740, Corozal West
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Republic of Panama
10. The Respondent is represented in this Arbitration by: Vinson & Elkins RLLP and Mayer Brown International LLP. All correspondence to the Respondent may be addressed solely to its legal representatives, whose contact details are as follows:
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III. THE ARBITRAL TRIBUNAL

11. The Arbitral Tribunal is composed of the following three members:
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IV. SECRETARY TO THE ARBITRAL TRIBUNAL

12. The Secretary to the Arbitral Tribunal is:
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V. SECRETARIAT COUNSEL OF THE ICC INTERNATIONAL COURT OF ARBITRATION

13. The case management team in charge of this file at the Secretariat of International Court of Arbitration of the International Chamber of Commerce ("the ICC Secretariat") is:
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VI. PROCEDURAL HISTORY

14. On 30 July 2020, the Arbitral Tribunal declared the close of the proceedings in relation to the matters finally decided in the draft award that had been deposited with the International Court of Arbitration of the International Chamber of Commerce ("the Court") in accordance with [Article 27\(a\) of the ICC Rules](#).
15. On 31 July 2020, the ICC Secretariat informed the Arbitral Tribunal and the Parties that at its session of 23 July 2020, the Court had extended the deadline for the issuance of the award to 31 August 2020.
16. On the same day, the Arbitral Tribunal deposited its draft Partial Award.
17. On 27 August 2020, the ICC Court approved the draft Partial Award.
18. On 28 August 2020, the ICC Secretariat informed the Arbitral Tribunal and the Parties that on 20 August 2020, the Court had extended the time limit for establishing the final award until 30 September 2020.
19. On 21 September 2020, the Arbitral Tribunal issued the Partial Award, in which it held (in operative part):

A. With respect to the First Claimants' Claims relating to Concrete Aggregate Production

1. Unanimously, fully dismisses the First Claimant's claims, including alternative claims, relating to Concrete Aggregate Production.

B. With respect to the First Claimant's Claims relating to the Foundation Conditions

1. Aguadulce Fault Zone ("AFZ" - Claim 50)

2. Unanimously, concludes that the First Claimant is entitled to compensation by the Respondent for its losses as determined in Section G below.

2. Lock Head 1 Fault Zone (Claim 57)

3. Unanimously, concludes the First Claimant is entitled to compensation by the Respondent for its losses as determined in Section G below;

3. Inlet Wing Wall Fault Zone (Claim 47(ii))

4. Unanimously, dismisses the First Claimant's claims relating to the Inlet Wing Wall Fault Zone.

4. The Basalt Reach of the PLE (Claim 47(i))

5. With respect to the sheared and fractured basalt, unanimously, concludes that the First Claimant is entitled to compensation by the Respondent for its losses as determined in Section G below;

6. Unanimously, dismisses the First Claimant's claims relating to "laminations" or "horizontal planes of weakness" encountered by the First Claimant in the columnar basalt;

7. Unanimously, dismisses the First Claimant's claim based on the presence of smectite in the joint in-fill.

5. Alternative Claim of the First Claimant based on Sub-Clause 4.10 of the Conditions of Contract

8. Unanimously, dismisses the First Claimant's claim based on Sub-Clause 4.10 of the Conditions of Contract.

6. Alternative Claim of the First Claimant based on the Respondent's alleged breaches of its duties under Panamanian law

9. Unanimously, dismisses the First Claimant's alternative claim based on alleged breaches by the Respondent of its duties under Panamanian law.

C. With respect to the First Claimant's claims relating to the Concrete Mix Design

10. Unanimously, concludes that to the extent that the First Claimant's Concrete Mix Design claims relate to the allegedly improper management of the design submittal process, the claims were properly notified to the Respondent;

11. Unanimously, concludes that the First Claimant's claim for an Extension of Time and/or costs based on an alleged Variation on 16 February 2011 and/or on 21 February 2011 is time-barred for lack of proper notification;

12. Unanimously, concludes that the First Claimant's claims relating to an alleged Variation concerning exposure conditions in December 2010 and an alleged Variation to use silica fume in 2011 are time-barred for lack of proper notification;

13. Unanimously, dismisses the First Claimant's claims, including alternative claims, relating to Concrete Mix Design.

D. With respect to the First Claimant's Claim relating to On-Site Laboratories

14. Unanimously, concludes that the Respondent's instruction requiring the First Claimant to subcontract the on-Site laboratories work to third-party external testing agencies was a Variation within the meaning of Sub-Clause 1.1.6.43 of the Conditions of Contract;

15. Consequently and unanimously, concludes that the First Claimant is entitled to compensation by the Respondent for its Cost Plus Reasonable Profit as determined in Section G below.

E. With respect to the First Claimant's Claim for an Extension of Time

16. Unanimously, concludes that the First Claimant is not entitled to an Extension of Time under

Sub-Clause 8.4 of the Conditions of Contract on the basis of a delay to the beginning of Structural Marine Concrete placement.

F. With respect to the Respondent's Claim for Delay Damages

17. Unanimously, dismisses the Respondent's claim for delay damages without prejudice to the merits of the claim and without prejudice to the position and decisions of the same panel to be made in the Parties' second ICC arbitration (ICC Arbitration Case No. 22466/ASM/JPA (C-22967/JPA)).

G. With respect to the First Claimant's Claim for Damages

1. Foundation Conditions

a. Basalt Reach of the PLE (Claim 47(i))

18. Unanimously, concludes that the First Claimant is entitled to reimbursement by the Respondent of (i) the First Claimant's direct costs associated with the portion of the additional lean concrete and additional excavation in the Basalt Reach of the PLE where it encountered unforeseeable shear zones, (ii) ITBMS on said direct costs and (iii) financing costs on said direct costs, and orders the First Claimant and the Respondent to make the calculations of such amounts on the basis of the parameters identified in paragraphs 2032 to 2050 of this Partial Award;

19. Unanimously, rules that if the First Claimant and the Respondent fail to reach an agreement on the calculations referred to in section 18 above, they shall revert to the Arbitral Tribunal at the latest within 30 (thirty) business days from the notification of this Partial Award for a determination of such calculations;

20. Unanimously, rules that if the First Claimant and the Respondent reach an agreement on the calculations referred to in section 18 above, they shall inform the Arbitral Tribunal at the latest within 30 (thirty) business days from the notification of this Partial Award and provide the Arbitral Tribunal with the content of their agreement and determination for incorporation in the final award;

21. Unanimously, concludes that, in accordance with Sub-Clause 4.12.4(b) of the Conditions of Contract, the First Claimant is not entitled to profit on its Costs incurred in relation to the Unforeseeable physical conditions encountered in the Basalt Reach of the PLE.

b. Aguadulce Fault Zone ("AFZ" - Claim 50)

22. Unanimously, concludes that the First Claimant is entitled to reimbursement by the Respondent of USD 3,230,676 as direct costs and as calculated in the table contained in paragraph 2059 above;

23. Unanimously, concludes that the First Claimant is entitled to reimbursement by the Respondent of (i) the First Claimant's direct costs of additional lean concrete and additional excavation that were required due to unforeseeable physical conditions in the Aguadulce Fault Zone, (ii) ITBMS on said direct costs and (iii) financing costs on said direct costs, and orders the First Claimant and the Respondent to make the calculations of such amount on the basis of the parameters identified in paragraphs 2051 to 2061 of this Partial Award;

24. Unanimously, rules that if the First Claimant and the Respondent fail to reach an agreement on

the calculations referred to in section 23 above, they shall revert to the Arbitral Tribunal at the latest within 30 (thirty) business days from the notification of this Partial Award for a determination of such calculations;

25. Unanimously, rules that if the First Claimant and the Respondent reach an agreement on the calculations referred to in section 23 above, they shall inform the Arbitral Tribunal at the latest within 30 (thirty) business days from the notification of this Partial Award and provide the Arbitral Tribunal with the content of their agreement and determination for incorporation in the final award;

26. Unanimously, concludes that, in accordance with Sub-Clause 4.12.4(b) of the Conditions of Contract, the First Claimant is not entitled to profit on its Costs incurred in relation to the Unforeseeable physical conditions encountered in the Aguadulce Fault Zone.

c. Lock Head 1 Fault (Claim 57)

27. Unanimously, concludes that the First Claimant is entitled to reimbursement by the Respondent of (i) the First Claimant's direct costs of additional lean concrete and additional excavation that were required due to the presence of the Lock Head 1 Fault, (ii) ITBMS on said direct costs and (iii) financing costs on said direct costs, and orders the First Claimant and the Respondent to make the calculation of such amounts on the basis of the parameters identified in paragraphs 2062 to 2067 of this Partial Award;

28. Unanimously, concludes that the First Claimant is entitled to the reimbursement by the Respondent of its direct costs of USD 301,491 for the additional geological investigation and additional design work;

29. Unanimously and without prejudice to its majority/minority position on the merits, rules that if the First Claimant and the Respondent fail to reach an agreement on the calculations referred to in section 27 above, they shall revert to the Arbitral Tribunal at the latest within 30 (thirty) business days from the notification of this Partial Award for a determination of such calculations;

30. Unanimously, rules that if the First Claimant and the Respondent reach an agreement on the calculations referred to in section 27 above, they shall inform the Arbitral Tribunal at the latest within 30 (thirty) business days from the notification of this Partial Award and provide the Arbitral Tribunal with the content of their agreement and determination for incorporation in the final award;

31. Unanimously, concludes that, in accordance with Sub-Clause 4.12.4(b) of the Conditions of Contract, the First Claimant is not entitled to profit on its Costs incurred in relation to the Unforeseeable physical conditions encountered at Lock Head 1.

d. Inlet Wing Wall Fault Zone (Claim 47(ii))

32. Unanimously, dismisses the First Claimant's claim for damages since the claim has been dismissed on liability.

e. Overheads on direct costs (Claims 47(i), 50 and 57)

33. Unanimously, concludes that the First Claimant is entitled to payment by the Respondent of 4.9%

of its direct costs incurred in relation to Claim 47(i), 50 and 57 for head office overheads;

34. Unanimously, invites the First Claimant and the Respondent to make the calculations of the amount referred to in section 33 above;

35. Unanimously, concludes that the First Claimant is entitled to payment by the Respondent of a 10% uplift on its direct costs for its additional site office overheads in relation to claims 47(i), 50 and 57;

36. Unanimously, invites the First Claimant and the Respondent to make the calculations of the amount referred to in section 35 above;

37. Unanimously, rules that if the First Claimant and the Respondent fail to reach an agreement on the calculations referred to in sections 33 and 35 above, they shall revert to the Arbitral Tribunal at the latest within 30 (thirty) business days from the notification of this Partial Award for a determination of such calculations;

38. Unanimously, rules that if the First Claimant and the Respondent reach an agreement on the calculations referred to in sections 33 and 35 above, they shall inform the Arbitral Tribunal at the latest within 30 (thirty) business days from the notification of this Partial Award and provide the Arbitral Tribunal with the content of their agreement and determination for incorporation in the final award.

2. On-Site Laboratories

39. Unanimously, concludes that the First Claimant is entitled to payment by the Respondent of the following compensation as a result of the On-Site Laboratories Variation:

i. USD 14,901,319 (namely USD 14,916,235 (direct costs) - USD 14,916 (0.1% decrease for site office overheads))

ii. USD 730,895 (4.9% for head office overheads)

iii. USD 745,812 (5% for ITBMS)

iv. USD 819,647.15 (5% profit on (i), namely USD 745,811.80, on (ii), namely USD 36,544.75, and on (iii), namely USD 37,290.60).

TOTAL: USD 17,197,673.20

40. Unanimously, concludes that the First Claimant is further entitled to reimbursement by the Respondent of its financing charges on the above cost items (i), (ii), (iii), and (iv) to be calculated by the First Claimant and the Respondent in accordance with the Arbitral Tribunal's instructions set out in paragraphs 2072 to 2087 of this Partial Award;

41. Unanimously and without prejudice to its majority/minority position on the merits, rules that if the First Claimant and the Respondent fail to reach an agreement on the calculations referred to in section 40 above, they shall revert to the Arbitral Tribunal at the latest within 30 (thirty) business days from the notification of this Partial Award for a determination of such calculations;

42. Unanimously, rules that if the First Claimant and the Respondent reach an agreement on the

calculations referred to in section 40 above, they shall inform the Arbitral Tribunal at the latest within 30 (thirty) business days from the notification of this Partial Award and provide the Arbitral Tribunal with the content of their agreement and determination for incorporation in the final award.

H. With respect to the Respondent's Counterclaims

1. The Respondent's Counterclaim for the repayment of the amounts awarded by the DAB

43. Unanimously, concludes that the Respondent is entitled to reimbursement by the First Claimant and jointly and severally by the Second to Fourth Claimants of the overpayment made, consisting of the difference between the amounts due to the First Claimant as a result of the Foundation Conditions and On-Site Laboratories claims (once fully determined) and the amount of USD 265,299,500 already paid by the Respondent following the DAB decisions.

2. The Respondent's Counterclaim for Interest

44. Unanimously, dismisses the Respondent's counterclaim for pre-award interest on the amounts overpaid pursuant to the DAB's decisions;

45. Unanimously, dismisses the Respondent's counterclaim for interest on delay damages without prejudice to the merits of the claim and without prejudice to the position and decisions of the same panel to be made in the Parties' second ICC arbitration (ICC Arbitration Case No. 22466/ASM/JPA (C-22967/JPA)).

I. With respect to the Respondent's Request for Declaratory Relief

46. Unanimously, dismisses the Respondent's Request for Declaratory Relief that the Second to Fourth Claimants pay by way of an indemnity in accordance with the JSG and/or the GAA all losses, damages, costs and expenses, which the ACP shall incur in the enforcement of this any Award made in ACP's favour.

J. With respect to the Second to Fourth Claimants' Claim for Damages

47. Unanimously, dismisses the Second to Fourth Claimants' claim for damages.

K. With respect to the Parties' Cost Claims

48. Unanimously, decides that the Parties' Cost Claims will be determined in the final award.

L. WITH RESPECT TO ANY OTHER CLAIM OR COUNTERCLAIM OR REQUEST MADE BY ANY OF THE PARTIES

49. Unanimously, dismisses any other claim or counterclaim or request made by any of the Parties, with the reservation of the issues to be decided in the final award.¹

20. On 25 September 2020, the ICC Secretariat provided an electronic courtesy copy of the Partial Award to the Parties and informed them that the hard copy originals had been sent by courier. A hard copy

¹ Partial Award dated 21 September 2020, Section XIX, "Operative Part".

original of the Partial Award was received by counsel for Claimants and Respondent on 28 September 2020, and by in-house counsel for the Respondent on 29 September 2020.

21. By email dated 30 September 2020, the ICC Secretariat indicated that at its session of 17 September 2020, the Court extended the time limit for rendering the final award until 30 October 2020.
22. On 8 October 2020, the ICC Secretariat sent an updated Financial Table and indicated that the Court had, on that same day, granted a further advance on fees to the members of the Arbitral Tribunal.
23. On 13 October 2020, the Claimants requested an opportunity to make further submissions on costs in light of the Tribunal's findings in the Partial Award. By email of the same day, the Arbitral Tribunal invited the Respondent to take position on the Claimants' request by 15 October 2020.
24. On 15 October 2020, the Respondent objected to the Claimants' request for further costs submissions, which it stated should not be permitted in light of the closing of the proceedings that had occurred on 30 July 2020. The Respondent further stated that if the Arbitral Tribunal were to allow further cost submissions, it reserved the right to take position on the format and procedure for such additional submissions and reserved the right to claim its costs incurred for the same.
25. On 17 October 2020, the Arbitral Tribunal informed the Parties that in light of the additional work that was required for certain limited quantum issues following the issuance of the Partial Award, the Parties would be granted an opportunity to update their position on the costs apportionment but only with respect to the impact, if any, of the additional work and costs for the period after the issuance of the Partial Award. However, the Claimants' request for additional cost submissions on any other issue, in particular on the issues of the merits decided in the Partial Award, was dismissed.
26. On 28 October 2020, the Claimants filed an application to correct the Partial Award, pursuant to [Article 35\(2\) of the ICC Rules](#).
27. On the same day, the Claimants submitted a challenge pursuant to [Article 14 of the ICC Rules](#) (the "Challenge Application"), stating that "facts and circumstances [...] show that the members of the Tribunal failed to disclose important connections between themselves, the president of the Cofferdam Tribunal, and counsel for Respondent" and requesting that all three members of the Arbitral Tribunal be replaced. The Claimants further requested, pursuant to Section II.D of the ICC Note to Parties and Arbitral Tribunals on the Conduct of the Arbitration ("ICC Note"), that the Court communicate the reasons for its decision on the challenge.
28. On 30 October 2020, the ICC Secretariat indicated that at its session of 22 October 2020, the ICC Court had extended the time limit for rendering the final award to 31 January 2021.
29. Also on 30 October 2020, the ICC Secretariat invited the Respondent to take position on the Claimants' Challenge Application by 6 November 2020.
30. Further on 30 October 2020, the ICC Secretariat acknowledged receipt of the Claimants' request to correct the Partial Award and informed the Arbitral Tribunal that it should grant a time limit of no more than 30 days to the Respondent to respond to such request, and thereafter should issue its

draft decision on the request no later than 30 days after the expiry of such time limit.

31. On 31 October 2020, the Arbitral Tribunal granted the Respondent a time limit until 16 November 2020 to take position on the Claimants' request to correct the Partial Award.
32. On 1 November 2020, the Respondent wrote to the ICC Secretariat in regard to the Claimants' Challenge Application, taking the position that the Claimants should not be allowed to supplement their challenge with further information at a later date, and requesting that the Claimants be directed to set out all of the bases of their challenge by no later than 3 November 2020. The Respondent reserved its right to take position on the Challenge Application in due course.
33. On the same day, the ICC Secretariat granted the Claimants a time limit until 3 November 2020 to submit comments on the Respondent's email of 1 November 2020.
34. On 3 November 2020, the Claimants took position on the Respondent's email of 1 November 2020, stating that the Respondent's arguments had no legal basis and that the Claimants would be fully within their rights to supplement their challenge with any new information within 30 days of obtaining such information, in accordance with [Article 14\(2\) of the ICC Rules](#).
35. On 5 November 2020, the ICC Secretariat invited the Respondent and the members of the Tribunal to take position on the Claimants' Challenge Application by 16 November 2020 (without prejudice to any further deadline that might be granted if the Claimants were to supplement or complement the Challenge Application).
36. On 9 November 2020, the Parties jointly informed the Arbitral Tribunal of their agreement on most of the outstanding quantum issues identified in the Partial Award, stating:

The Parties have made the following agreements:

1. *Claim 47 paragraph 20 of Section XIX of the Partial Award: the parties have agreed a total calculation (inclusive of site overhead, head office overhead and ITBMS) of \$624,269;*
 2. *Claim 50 paragraph 25 of Section XIX of the Partial Award: the parties have agreed a total calculation (inclusive of site overhead, head office overhead and ITBMS and the other direct costs of \$3,230,676 already determined as per paragraph 22 of Section XIX of the Partial Award) of \$6,818,645;*
 3. *Labour Escalation Credit for Claim 47 paragraph 2021 of the Partial Award: the parties have agreed a credit in the amount of \$1,513; and*
 4. *Financing paragraphs 18, 23, 27 and 40 of Section XIX of the Partial Award: the parties have agreed the methodology for the finance calculation. However, the final calculation is dependent on the determined costs of Claims 47, 50 and 57 and the Laboratories claim.*
37. At the same time, the Parties informed the Arbitral Tribunal that they were still attempting to reach an agreement on Claim 57 and requested an extension of the deadline to do so until 12 November 2020. By email of the same day, the Arbitral Tribunal granted the Parties' requested extension until

12 November 2020 to inform it of their agreement on Claim 57 (failing which, the Parties were invited to submit a proposed timeline for further submissions on that issue).

38. On 10 November 2020, the Respondent requested an extension of the time limit for its response to the Claimants' Challenge Application until 25 November 2020, to permit the Respondent to review and take into account further exchanges that had been made between the Parties and the members of the Arbitral Tribunal following the Claimants' requests for disclosures.
39. On the same day, the ICC Secretariat granted an extension of the time limit for the Respondent to take position on the Claimants' Challenge Application until 20 November 2020
40. On 12 November 2020, the members of the Arbitral Tribunal each submitted their respective comments on the Claimants' Challenge Application.
41. On the same day, the Parties informed the Arbitral Tribunal that they had reached an agreement on all remaining quantum issues and provided the Arbitral Tribunal with an overall summary of the quantum position in light of the Partial Award.
42. On 13 November 2020, the Arbitral Tribunal invited the Parties to submit, by 18 November 2020, a proposed procedure for the filing of updated cost submissions. The Arbitral Tribunal also invited the Parties to take position, within the same time limit, on the closing of the proceedings before the issuance of the final award.
43. On 16 November 2020, the Respondent submitted its response to the Claimants' request to correct the Partial Award.
44. On 18 November 2020, the Respondent submitted its proposed procedure for the filing of updated cost submissions, which it had sent to the Claimants but to which it had received no response. By email of the same day, the Claimants responded stating that they had only just received the Respondent's proposal shortly before the Respondent's email to the Arbitral Tribunal and requested an extension of time for the Parties' discussions until 23 November 2020. By further email of the same day, the Respondent objected to the Claimants' requested extension and requesting that the Claimants be required to make their counter-proposal by 19 November 2020, following which the Parties would revert to the Tribunal on 20 November 2020.
45. On the same day, the Arbitral Tribunal granted an extension of the time limit for the Parties to attempt to reach an agreement on the procedure for their updated cost submissions until 23 November 2020, and instructed the Claimants to provide the Respondent with its position by 19 November 2020.
46. On 19 November 2020, the Claimants wrote to the ICC Secretariat regarding "additional disclosures made by the members of the Tribunal on 29 and 30 October, and 2 and 3 November 2020, following Claimants' submission of a challenge to the Tribunal on 28 October 2020", as well as in regard to the comments provided by the members of the Arbitral Tribunal on the Challenge Application. The Claimants maintained their request that all three members of the Tribunal be disqualified and replaced by a new tribunal, and requested that the challenge be examined and decided in a Plenary Session of the ICC Court, open to all Court Members.

47. On the same day, the Respondent requested an extension of the time limit for its reply to the Claimants' Challenge Application until 1 December 2020, in light of the Claimants' additional comments.
48. On 20 November 2020, the ICC Secretariat granted the Respondent's requested extension of the time limit to take position on the Challenge Application until 1 December 2020, and also invited the members of the Arbitral Tribunal to submit, within the same time limit, any additional comments with respect to the Claimants' correspondence of 19 November 2020.
49. On 23 November 2020, the Respondent informed the Arbitral Tribunal that the Parties had been unable to reach an agreement on all of the practical aspects of the updated cost submissions and provided the Arbitral Tribunal with its proposed procedure. As to the closing of the proceedings, the Respondent submitted that this should be done following the submission of reply updated cost submissions, after which the Arbitral Tribunal should issue its final award as soon as possible. The Arbitral Tribunal invited the Claimants to submit their position by COB on the same day.
50. Later on the same day, the Claimants submitted their position concerning the procedure to be followed for updated cost submissions. Concerning the closing of the proceedings, the Claimants stated that they considered it would be premature for the Arbitral Tribunal to make any decision in that regard and proposed that the Arbitral Tribunal invite comments from the Parties following the reply updated cost submissions before closing the proceedings.
51. On 24 November 2020, the members of the Arbitral Tribunal each provided the ICC Secretariat with their respective further comments on the Claimants' Challenge Application, and in particular on the Claimants' correspondence of 19 November 2020.
52. On 25 November 2020, the Arbitral Tribunal provided the Parties with its decision concerning the filing of updated cost submissions, according to which a first, simultaneous round of updated cost submissions (on the limited issue of the cost of the work required for the quantum issues identified in the Partial Award and in preparing the updated cost submissions) would be filed by 9 December 2020, followed by a simultaneous round of reply updated cost submissions on 18 December 2020. The Arbitral Tribunal also indicated that it would, in due course, determine the appropriate time for closing the proceedings.
53. On 1 December 2020, the Arbitral Tribunal provided the Parties with an updated revised procedural timetable, including the dates for the updated cost submissions.
54. Also on 1 December 2020, the Respondent submitted its comments on the Claimants' Challenge Application, requesting that the challenges against each of the members of the Arbitral Tribunal be dismissed and that the Court give reasons for its decision on the Challenge Application in accordance with Section II.D of the ICC Note.
55. On 2 December 2020, the ICC Secretariat acknowledged receipt of the Respondent's submission on the Challenge Application and took note of the Respondent's agreement to the Claimants' request that the Court provide reasons for its decision.
56. On 9 December 2020, the Parties submitted their respective Updated Cost Submissions, along with

supporting documents.

57. On 13 December 2020, the Arbitral Tribunal submitted a draft Addendum to the Partial Award upon the application under [Article 35 of the ICC Rules](#) to the Court for its approval.
58. On 14 December 2020, the Claimants wrote to the ICC Secretariat to provide their comments on the Respondent's submission dated 1 December 2020 concerning the Challenge Application, as well as in regard to "new relevant circumstances not disclosed by the President of the Arbitral Tribunal". The ICC Secretariat granted the Respondent a time limit until 19:00 (CET) on 16 December 2020 to file any final comments in response to the Claimants' communication.
59. By letter dated 15 December 2020 (received on 16 December 2020), the Respondent provided its response to the Claimants' correspondence of 14 December 2020.
60. On 16 December 2020, the ICC Secretariat invited the members of the Arbitral Tribunal to file any comments in response to the Claimants' letter of 14 December 2020 and the Respondent's letter of 15 December 2020 by close of business on the same day.
61. On the same day, Mr. Gunter provided the ICC Secretariat with his comments on the Parties' latest correspondence concerning the Challenge Application. Mr. Gaitskell and Mr. von Wobeser both informed the ICC Secretariat that they had no further comments.
62. On 17 December 2020, the ICC Secretariat informed the Parties that at its session of the same day, the Court (i) decided that the Challenge Application was admissible ([Article 14\(3\) ICC Rules](#)); (ii) rejected the challenge of the three members of the Arbitral Tribunal on the merits ([Article 14\(3\) ICC Rules](#)); (iii) decided to communicate the reasons for its decision on the Challenge Application ([Article 11\(4\) ICC Rules](#)); (iv) readjusted the advance on costs from USD 4,000,000 to USD 4,210,000, subject to later readjustments ([Article 36\(5\) ICC Rules](#)); and (v) approved the draft submitted by the Arbitral Tribunal pursuant to [Article 35 of the ICC Rules](#). The ICC Secretariat also provided the Parties with an updated Financial Table and requested the payment of a further advance on costs in the amount of USD 105,000 each from the Claimants and the Respondent by 18 January 2021.
63. On 18 December 2020, the Parties submitted their respective Reply Updated Cost Submissions, with supporting documents.
64. On 29 December 2020, the ICC Secretariat communicated the Court's reasons for its decision of 17 December 2020 on the Challenge Application.
65. On the same day, the Claimants wrote to the Arbitral Tribunal requesting its resignation. By email of the same day, the Arbitral Tribunal granted the Respondent a time limit until 31 December 2020 to take position on the Claimants' correspondence.
66. On 31 December 2020, the Respondent submitted its comments on the Claimants' letter of 29 December 2020, requesting that the Arbitral Tribunal reject the Claimants' invitation to resign and proceed to the closing of the proceedings and issuance of the final award.

67. On 1 January 2021, the Arbitral Tribunal issued its decision on the Claimants' invitation to the Tribunal to resign, declining such request and stating that all members of the Arbitral Tribunal would remain independent and impartial vis-à-vis all Parties.
68. On 8 January 2021, the Addendum to the Partial Award dated 22 December 2020 was notified to the Parties.
69. On 10 January 2021, the Arbitral Tribunal informed the Parties that it intended to close the proceedings and invited the Parties to submit any comments in that regard and/or any related requests by 12 January 2021 COB (Miami time) and, in the event any such comments or requests were filed by any Party, invited the Parties to file their reply comments by 13 January 2021 COB (Miami time).
70. On 12 January 2021, the ICC Secretariat acknowledged receipt of USD 105,000 from the Respondent and provided an updated Financial Table.
71. Also on 12 January 2021, the Respondent submitted a request for reimbursement of its costs incurred in responding to the Claimants' Challenge Application. By email of the same day, the Arbitral Tribunal invited the Claimants to reply to the Respondent's request by 13 January 2021 COB (Miami time).
72. On 13 January 2021, the Claimants provided their comments on the Respondent's correspondence of 12 January 2021. The Claimants objected to the Respondent's request for costs related to the Challenge Application, stating that it was inadmissible and should be rejected by the Arbitral Tribunal. The Claimants further stated that if the Tribunal is inclined to consider Respondent's cost submission, it shall afford Claimants an appropriate amount of time to respond and to provide any countervailing costs.
73. On 18 January 2021, the Arbitral Tribunal declared the proceedings closed in accordance with [Article 27 of the ICC Rules](#), and informed the Parties that it was depositing the draft Final Award on the same day to the Court for its approval. The Arbitral Tribunal further informed the Parties that its decision on the admissibility of the Respondent's cost claim for the costs incurred during the challenge proceedings was contained in said decision.
74. Also, on 18 January 2021, the Arbitral Tribunal submitted its draft Final Award to the Court.
75. On 19 January 2021, the ICC Secretariat confirmed receipt of the draft Final Award and stated that it would be submitted to the Court at one of its next sessions. The ICC Secretariat also indicated that payment of the further advance on costs had not yet been received by the Claimants and requested that such payment be received by 26 January 2021
76. On 28 January 2021, the Court approved the draft Final Award.
77. On 29 January 2021, the ICC Secretariat acknowledged receipt of USD 105,000 from the Claimants and provided an updated Financial Table. The ICC Secretariat also informed the Parties that at its session of 21 January 2021, the Court extended the time limit for rendering the Final Award until 30

April 2021 ([Article 30\(2\) ICC Rules](#)), and that at its session of 28 January 2021, the Court had fixed the arbitration costs at USD 4,210,000.

VII. THE ARBITRATION AGREEMENTS

78. Sub-Clause 20.6 of the Conditions of Contract entitled "*Arbitration*", as modified by Variation Order No. 108 dated 1 August 2014, provides:

Unless settled amicably, any dispute in respect of which the DAB's decision (if any) has not become final and binding shall be finally settled by international arbitration in law (within the meaning of Panamanian law). Unless otherwise agreed by both Parties:

(a) the dispute shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce (the "Rules");

(b) in addition to the Rules, the arbitrators will be guided but will not be bound, by the International Bar Association Rules on the Taking of Evidence in International Commercial Arbitration;

(c) the dispute shall be settled by three arbitrators who shall all be licensed lawyers appointed in accordance with the Rules;

(d) the arbitration shall be decided in law (within the meaning of Panamanian law) and shall be conducted in the language for communications defined in Sub-Clause 1.4 [Law and Language];

(e) the venue of the arbitration shall be Miami, Florida - United States of America; and

(f) the arbitration agreement and the arbitration shall be governed by the United States Federal Arbitration Act, 9 U.S.C. §§ 1 et seq.

The arbitrators shall have full power to open up, review and revise any certificate, determination, instruction, opinion or valuation of the Employer's Representative, and any decision of the DAB, relevant to the dispute. Nothing shall disqualify the Employer's Representative from being called as a witness and giving evidence before the arbitrators on any matter whatsoever relevant to the dispute.

Neither Party shall be limited in the proceedings before the arbitrators to the evidence or arguments previously put before the DAB to obtain its decision, or to the reasons for dissatisfaction given in its notice of dissatisfaction. Any decision of the DAB shall be admissible in evidence in the arbitration.

Arbitration may be commenced prior to or after completion of the Works. The obligations of the Parties, the Employer's Representative and the DAB shall not be altered by reason of any arbitration being conducted during the progress of the Works.²

79. Sub-Clause 20.10 of the Conditions of Contract entitled "*Arbitration Procedure*" (added by Variation Order N° 108 dated 1 August 2014) provides:

² Conditions of Contract (as amended through Variation Order No. 175) dated February 2009, Sub-Clause 20.6 [Exhibit C-0311].

*The Employer and the Contractor agree that it is their intention that all disputes referred to ICC arbitration pursuant to Sub-Clause 20.6 [Arbitration] of the Contract shall be the subject of final award by no later than October 31, 2018 [3]. The Employer and the Contractor agree to work together with each other, the DAB, any ICC tribunal and the ICC in good faith to put in place mutually agreeable timetables for all disputes so as to facilitate this goal. The Employer and the Contractor agree that they will each honor and promptly give full effect to and comply with any ICC arbitral award, notwithstanding that any such Party so complying may subsequently challenge or otherwise appeal or dispute such award in any court of competent jurisdiction.*⁴

80. Clause 9.2 of the JSG of 31 May 2010 provides:

Any dispute arising out of, under or in connection with this Guarantee or out of the subject matter of this Guarantee shall be finally settled by international arbitration in law (within the meaning of Panamanian law). Unless otherwise agreed by the Parties:

(a) the dispute shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce (the "Rules");

(b) in addition to the Rules, the arbitration shall be conducted according to the International Bar Association Rules on the Taking of Evidence in International Commercial Arbitration;

(c) the dispute shall be settled by three arbitrators who shall all be licensed lawyers appointed in accordance with these Rules;

(d) the arbitration shall be decided in law (within the meaning of Panamanian law) and conducted in the English language;

(e) the venue of the arbitration shall be Miami, Florida - United States of America; and

(f) the arbitration agreement and the arbitration shall be governed by the United States Federal Arbitration Act, 9 U.S. C. §§ 1 et seq.

*Arbitration may be commenced prior to or after completion of the Works*⁵

81. Sub-Clauses 6.2 and 6.3 of the GAA of 1 August 2014 provide:

6.2 Any and all disputes or controversy arising out of or related to this Agreement, including its interpretation, application and enforcement, shall be resolved by International arbitration in law (within the meaning of Panamanian law).

6.3 Unless otherwise agreed by both Parties:

(a) the dispute shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce (the "Rules");

³ As set out in paragraph 95 of the Terms of Reference, the Parties subsequently agreed that "If the time limit of 31 October 2018 for the rendering of the Final Award cannot be met, the ICC Court is authorized to extend such time limit for the purpose of this Arbitration."

⁴ Conditions of Contract (as amended through Variation Order No. 175) dated February 2009, Sub-Clause 20.10 [Exhibit C-0311].

⁵ *Joint and Several Guarantee in Respect of the Third Set of Locks Contract dated 31 May 2010, Sub-Clause 9.2 [Exhibit R-0015].*

(b) in addition to the Rules, the arbitrators shall be guided, but will not be bound, by the International Bar Association Rules on the Taking of Evidence in International Commercial Arbitration;

(c) the dispute shall be settled by three arbitrators who shall all be licensed lawyers appointed in accordance with the Rules, provided that the two arbitrators nominated by the Parties shall nominate by mutual agreement the presiding arbitrator;

(d) the arbitration shall be decided in law (within the meaning of Panamanian law) and shall be conducted in the English language;

(e) the seat, or legal place, of the arbitration shall be Miami, Florida -United States of America; and

(f) the arbitration agreement and the arbitration shall be governed by the United States Federal Arbitration Act, 9 U.S.C. §§ 1 et seq. except as modified herein or by the Rules⁶

VIII. APPLICABLE LAW

A. Procedure

82. Pursuant to Sub-Clause 20.6 of the Conditions of Contract, Sub-Clause 9.2 of the JSG, and Sub-Clause 6.3 of the GAA, the arbitral proceedings are governed by the Rules of Arbitration of the International Chamber of Commerce dated 1 January 2012 (the "ICC Rules") and the United States Federal Arbitration Act ("FAA").

83. The Arbitral Tribunal may also take guidance from the 2010 IBA Rules on the Taking of Evidence in International Commercial Arbitration ("IBA Rules").⁷

B. Merits

84. According to the Contract Agreement⁸ and to Sub-Clause 1.4 of the Conditions of Contract⁹, the Contract is governed by Panamanian law. According to Sub-Clause 9.1 of the JSG, the JSG is governed by Panamanian law¹⁰, as is the GAA according to its Sub-Clause 6.1¹¹.

85. Pursuant to Sub-Clause 20.6(d) of the Conditions of Contract, "the arbitration shall be decided in law

⁶ Guarantor Arbitration Agreement dated 1 August 2014, Sub-Clauses 6.2 and 6.3 [Exhibit R-0108].

⁷ See Sub-Clause 20.6(b) of the Conditions of Contract (as amended through Variation Order No. 175) dated February 2009 [Exhibit C-0311], Sub-Clause 9.2(b) of the Joint and Several Guarantee in Respect of the Third Set of Locks Contract dated 31 May 2010 [Exhibit R-0015] and Sub-Clause 6.3(b) of the Guarantor Arbitration Agreement dated 1 August 2014 [Exhibit R-0108].

⁸ Contract Agreement dated 11 August 2009, Clause 5 [Exhibit C-0069].

⁹ Conditions of Contract (as amended through Variation Order No. 175) dated February 2009, Sub-Clause 1.4 [Exhibit C-0311].

¹⁰ Joint and Several Guarantee in Respect of the Third Set of Locks Contract dated 31 May 2010, Sub-Clause 9.1 [Exhibit R-0015].

¹¹ Guarantor Arbitration Agreement dated 1 August 2014, Sub-Clause 6.1 [Exhibit R-0108].

(within the meaning of Panamanian law)".¹² Sub-Clause 9.2(d) of the JSG¹³ and Sub-Clause 6.3(d) of the GAA¹⁴ also provide that "the arbitration shall be decided in law (within the meaning of Panamanian law)".

IX. QUANTUM

86. At Section XIX (Operative Part), paragraphs 18-20, 23-25, 27-30, 34-38 and 40-42, of the Partial Award, the Arbitral Tribunal instructed the Parties to attempt to agree on the calculation of the quantum of the First Claimant's entitlement in relation to Claims 47(i), 50, and 57 of the Foundation Conditions claims, and the quantum of the First Claimant's entitlement to financing costs in relation to the On-Site Laboratories claim.
87. On 12 November 2020, the Parties provided the Arbitral Tribunal with the following summary of their agreement on quantum:

Head of Claim	Sum	Comment
<u>Foundation Conditions Claims</u> Claim 47	\$624,269.00	Agreed between the Parties pursuant to paragraphs 20 and 35 of Section XIX of the Partial Award.
Claim 50	\$6,818,645.00	Agreed between the Parties pursuant to paragraph 25 and 38 of Section XIX of the Partial Award and inclusive of the sum determined at paragraph 22 of Section XIX of the Partial Award.
Claim 57	\$794,468.00	Agreed between the Parties pursuant to paragraph 30 and 38 of the Partial Award and inclusive of the sum determined at paragraph 28 of Section XIX of the Partial Award.
<u>Total</u>	<u>\$8,237,382.00</u>	
<u>On-site Laboratories</u>	\$17,197,673.20	See paragraph 39 of Section XIX of the Partial Award.
<u>Concrete Aggregate Production</u>	so.00	See paragraph 1 of Section XIX of the Partial Award.
<u>Concrete Mix Design and Delay</u>	\$0.00	See paragraphs 10-17 of Section XIX of the Partial Award.

¹² Conditions of Contract (as amended through Variation Order No. 175) dated February 2009, Sub-Clause 20.6(d) [Exhibit C-0311].

¹³ Joint and Several Guarantee in Respect of the Third Set of Locks Contract dated 31 May 2010, Sub-Clause 9.2(d) [Exhibit R-0015].

¹⁴ Guarantor Arbitration Agreement dated 1 August 2014, Sub-Clause 6.3(d) [Exhibit R-0108].

<u>Labour Escalation</u>	\$1,513.00	Agreed between the Parties pursuant to paragraph 2021 of the Partial Award.
<u>Financing Costs</u>	\$1,405,336.00	Agreed between the Parties pursuant to paragraphs 20, 25, 30 and 42 of the Partial Award.
<u>Total</u>	<u>\$26,838,878.20</u>	
<u>Deduct from Reimbursement for DAB Decisions</u>	\$265,299,500.00	See paragraph 43 of Section XIX of the Partial Award.
<u>TOTAL OWING TO ACP</u>	<u>\$238,460,621.80</u>	

88. In light of the Parties' agreement and their common statement in the email sent by Respondent's Counsel on 12 November 2020 ("There are no further quantum matters that remain to be agreed or determined."), the Arbitral Tribunal concludes that there are no further issues of quantum to be determined.
89. In its Partial Award, the Arbitral Tribunal dismissed the Respondent's claim for pre-award interest ("financing charges") on the amounts paid pursuant to the DAB decisions on Referrals 10, 11 and 14B, but reserved its decision as to the question of post-award interest on the amounts due pursuant to a final award. Whereas both the Claimants and the Respondent included a claim for interest on the damages claimed in their Prayers for Relief¹⁵, neither provided any specific argument as to the interest rate that should apply.
90. The Arbitral Tribunal cannot ignore the fact that such claims for interest were made by all Parties and needs to determine the applicable rate. In that context, the Arbitral Tribunal recalls that Panamanian law is the law governing the merits of the Parties' dispute (as noted above, see paras 84-85). Moreover, the Arbitral Tribunal notes that both the Claimants and the Respondent submitted English translations of Panamanian law, including a translation of Article 993 of the Panamanian Civil Code¹⁶, which provides:

If the obligation consists in the payment of a sum of money and the debtor defaults, the compensation for damages, unless otherwise agreed, shall entail payment of the agreed interest and, in the absence of agreement, the legal interest.

*As long as no other is fixed by law, it will be deemed legal the interest of six percent per year.*¹⁷

91. This provision provides where a payment obligation exists and the debtor defaults on such payment, interest shall be payable at the rate of 6% per year "as long as no other is fixed by law".

¹⁵ See Claimants' First PHB, Chapter XI, para. 1 and ACP's Reply Post-Hearing Brief, para. 29.1, sub-sections (c), (d), and (g).

¹⁶ See Exhibits C-LA-0001, p.5 and R-LA-0121, 2.

¹⁷ Article 993 of the English translation of the Civil Code of Panama [Exhibits C-LA-0001, p.5 and R-LA-0121, 2].

The Arbitral Tribunal stresses that the Parties never provided materials referring to a different interest rate fixed by a different law. The Arbitral Tribunal further notes that pursuant to Article 993 of the Civil Code, the legal interest of 6% per year shall apply "unless otherwise agreed." The Arbitral Tribunal does not consider that the Parties agreed in any of the relevant contracts to another interest rate that would apply to post-award interest. In that context, the Tribunal considers that Sub-Clause 14.8 [*Delayed Payment*] of the Conditions of Contract applies to late payment by Employer in the context of the Project, and that it cannot be relied upon to determine the rate applicable to post-award interest, in particular in a situation where ultimately there is a payment due from the Claimants to the Respondent. In the absence of a contractually agreed interest rate for post-award interest on damages and no evidence that another legal provision would apply, the Arbitral Tribunal concludes that the Article 993 of the Panamanian Civil Code is the applicable provision. Therefore, in the event of late payment of the amounts due from the Claimants to the Respondent, as awarded herein, the Respondent shall be entitled to interest at the rate of 6% per annum in accordance with Article 993 of the Panamanian Civil Code.

92. As to the *dies a quo* for such interest on the payment due from the Claimants to the Respondent, neither the Claimants nor the Respondent addressed this point in their submissions, but Sub-Clause 20.9 [*Payment of Dispute Proceeds*] of the Conditions of Contract states, at sub-paragraph (c):

If, following any payment by the Employer of any Dispute Proceeds in accordance with this Sub-Clause 20.9:

(i) a decision by the DAB pursuant to Sub-Clause 20.4 [Obtaining a Dispute Adjudication Board's Decision]; and/or

(ii) an award rendered by the ICC in respect of arbitration proceedings pursuant to Sub-Clause 20.6 [Arbitration],

*overturns in whole or in part any determination, agreement or decision which formed the basis of the original payment by the Employer of such Dispute Proceeds such that sums are due and owing from the Contractor to the Employer, then the Contractor shall immediately repay to the Employer the full amount of such sums so decided or awarded.*¹⁸ (Emphasis added).

93. "Dispute Proceeds" is defined at Sub-Clause 1.1.6.15 of the Conditions of Contract and includes any amounts awarded to the Contractor pursuant to a decision of the DAB.¹⁹ In the present case, the Arbitral Tribunal has determined that Dispute Proceeds that were awarded to the Contractor pursuant to certain DAB decisions must be repaid by the Contractor to the Employer, which is the situation envisaged in Sub-Clause 20.9(c) of the Conditions of Contract. Thus, this provision applies and repayment by the Contractor of the sums awarded herein is due "immediately".
94. Moreover, Sub-Clause 20.10 [*Arbitration Procedure*] of the Conditions of Contract further provides, in pertinent part, that "[t]he Employer and the Contractor agree that they will each honor and promptly give full effect to and comply with any ICC arbitral award, notwithstanding that any such Party so complying may subsequently challenge or otherwise appeal or dispute such award in any court of competent jurisdiction."²⁰

¹⁸ Sub-Clause 20.9(c) [*Payment of Dispute Proceeds*] of the Conditions of Contract [Exhibit C-0311, p. 322].

¹⁹ See "Dispute Proceeds" at Sub-Clause 1.1.6.15 of the Condition of Contract [Exhibit C-0311, p. 50].

95. Finally, Sub-Clause 2.1 of the Guarantor Arbitration Agreement states:
in the event of any Award, the Guarantors agree jointly and severally that, notwithstanding any right (howsoever arising) to subsequently challenge or otherwise appeal or dispute any such Award, or to resist or dispute enforcement thereof, and regardless of whether the Guarantors, or any of them, are or were parties to the arbitral proceedings which resulted in the Award, they will immediately:
- (a) pay on first demand any sum ordered in any Award in favour of the Employer including any and all, losses, costs (including legal costs), damages, interest, fees and expenses without any deduction, withholding, set-off or counterclaim: and*
- (b) give full effect, or cause the Contractor to give full effect, to the terms of any Award.*²¹
96. In light of the above, the Arbitral Tribunal concludes that the Claimants must pay the amount due to the Respondent immediately upon notification of the present award and interest on that sum shall begin to run from such date.
97. Consequently, the Arbitral Tribunal decides that the amount of USD 238,460,621.80, plus interest at the rate of 6% per annum as from the date of notification of the present Final Award and until payment in full, shall be paid by the Claimants, jointly and severally²², to the Respondent.

X. COSTS

A. Claimants' Position

98. In their Cost Submission and Reply Cost Submission, the Claimants took the position that under [Article 37 of the ICC Rules](#) and the applicable law, the Arbitral Tribunal has broad discretion in awarding costs. The Claimants stated that while the general approach is that the costs be allocated between the parties taking into account their relative success on the relief requested, under [Article 37\(5\) of the ICC Rules](#) the Arbitral Tribunal may also take into account any bad faith or improper conduct by the parties. According to the Claimants, the Tribunal should therefore also take into account any obstructionist behavior and the legitimacy of the Respondent's resistance to the claims.²³
99. In line with the above stated principles, the Claimants submitted that they should be awarded costs for their successful claims, as well as for the Respondent's jurisdictional objections and abusive procedural conduct.²⁴ The Claimants rejected the argument put forth by the Respondent that it should be awarded costs associated with any claim for which the Claimants are awarded less than

²⁰ Sub-Clause 20.10 [*Arbitration Procedure*] of the Conditions of Contract [Exhibit C-0311, p. 323].

²¹ *Sub-Clause 2.1 of the Guarantor Arbitration Agreement* [Exhibit R-0108, pp. 5-6].

²² See Sub-Clause 2.1 of the Guarantor Arbitration Agreement dated 1 August 2014 [Exhibit R-0108, pp. 5-6] and the Arbitral Tribunal's discussion of such provision at paragraph 2097 of the Partial Award.

²³ Claimants' Cost Submission dated 20 November 2019, paras 3-7; Claimants' Reply Cost Submission dated 20 December 2019, paras 3-8.

²⁴ Claimants' Cost Submission dated 20 November 2019, paras 8 et seq.

was awarded previously by the DAB, and stated that, to the contrary, any level of success upon a claim should be considered a success for the Claimants for the allocation of costs.²⁵

100. In their Cost Submission and Reply Cost Submission, the Claimants also stated that the circumstances of the Arbitration in fact warrant the Claimants being awarded their full costs, even if they are not fully successful on the merits of their claims.²⁶ In particular, the Claimants submitted that they incurred significant additional and unnecessary costs due to the Respondent's jurisdictional objections, the Respondent's "unreasonable litigation strategy", and its "persistent procedural misconduct".²⁷
101. In their Updated Costs Submission, the Claimants confirmed their position that under the ICC Rules, the Arbitral Tribunal has broad discretion to decide upon an award of costs, but stated that it is critical to the present Arbitration that under U.S. law, the general rule is that each party bears its own legal fees, unless a rule or statute permits the award of such fees, or in the case of serious, bad faith conduct of a party.²⁸ On this basis, the Claimants contend that each Party should mainly bear their own legal costs, but the Claimants maintain that the Tribunal should also take into account the bad faith conduct of the Respondent and allocate the cost of that conduct to the Respondent.²⁹ In this regard, the Claimants reiterate in their Updated Cost Submission that the ACP's conduct in the Arbitration (in relation to jurisdiction, to the repayment of letters of credit, and to the procedure in general) prevented the expeditious and efficient resolution of the dispute and caused the Claimants to incur significant additional costs, and that this must be taken into account when allocating costs.³⁰
102. In particular, in regard to the costs of the jurisdiction phase, it is the Claimants' position that they should be awarded all of their costs associated with the Respondent's meritless jurisdictional objections, which were eventually withdrawn at the jurisdiction hearing. Moreover, the Claimants argue, the Respondent was during this same period (between the filing of written submissions on jurisdiction and the jurisdiction hearing in February 2017) engaging in disruptive behavior in regard to the Advance Payments that forced the Claimants to file their Emergency Application for interim measures, as well as disclosing confidential information about said Emergency Application that resulted in the Claimants having to seek a Confidentiality Order (which was granted).³¹ The Claimants contend that they are entitled to an award of their costs in relation to both of those procedural incidents, and that the Respondent's argument that it would be the prevailing party in relation to the Emergency Application is incorrect since it was the Respondent's behavior that made the application necessary and that, in the end, rendered it largely unnecessary.³² Especially in light of the Respondent's improper disclosures of confidential information to the press, the Claimants submit that they should be awarded all of their costs for that phase of the proceedings.³³

²⁵ Claimants' Reply Cost Submission dated 20 December 2019, paras 9-17.

²⁶ Claimants' Cost Submission dated 20 November 2019, para. 10.

²⁷ Claimants' Cost Submission dated 20 November 2019, paras 10-24; Claimants' Reply Cost Submission dated 20 December 2019, paras 18-37.

²⁸ Claimants' Updated Cost Submission dated 9 December 2020, para. 3.

²⁹ Claimants' Updated Cost Submission dated 9 December 2020, para. 13.

³⁰ Claimants' Updated Cost Submission dated 9 December 2020, paras 5-9.

³¹ Claimants' Cost Submission dated 20 November 2019, paras 12-14; Claimants' Reply Cost Submission dated 20 December 2019, paras 21-25.

³² Claimants' Reply Cost Submission dated 20 December 2019, paras 26-31.

³³ Claimants' Reply Cost Submission dated 20 December 2019, paras 28-29.

103. The Claimants further submit that the ACP's request to be awarded costs in relation to the Claimants' jurisdictional objection to its delay damages claim must be rejected since it was not the Claimants' objection that led to the costly jurisdiction phase of these proceedings.³⁴ The Claimants assert that the Respondent has also apportioned its costs between the jurisdiction submissions and the Emergency Application in what appears to be a highly disproportionate and likely incorrect way.³⁵
104. The Claimants also contend that the ACP engaged in a litigation strategy of raising "exaggerated, spurious, unsubstantiated, and irrelevant arguments" to each of the Claimants' claims, resulting in inefficient and costly arbitration proceedings. The Claimants cite to numerous examples which they consider demonstrate the ACP's disruptive strategy and frivolous arguments and submit that the Arbitral Tribunal should take this into account when allocating costs.³⁶ The Claimants also submit that the Respondent's allegations concerning the Claimants' conduct during the proceedings, for instance in regard to document production and the instruction of experts, are baseless and must be rejected, as it is in fact the Respondent's approach to the claims that has caused additional time and costs.³⁷ The Claimants argue that in reality, many of the incidents that the Respondent claims would entitle it to the full award of its costs (such as the Respondent's consolidation request, the Claimants' request to add Claim 78 to the arbitration, the allegedly deficient access to the Claimants' cost control system, and the Claimants' requests to introduce evidence at the Hearing) had very little if any cost implications.³⁸
105. As to matters of procedure, the Claimants also submit that the Respondent consistently acted in an "obstructionist and intransigent manner" that delayed the proceedings and engendered additional costs for the Claimants, such as in regard to document production, the time-limit for filing of the Rejoinder, the hearing organization and the closing arguments. The Claimants argue that this also must be taken into account by the Arbitral Tribunal in allocating costs.³⁹
106. In regard to the costs incurred in calculating the outstanding quantum after the issuance of the Partial Award, the Claimants submit that the Respondent should bear these costs.⁴⁰ The Claimants contend that, contrary to the Respondent's allegations, it was the specific findings of the Arbitral Tribunal that made the quantum calculations necessary and not any deficiency in the Claimants' presentation of the quantum of their claims. Moreover, the Claimants assert, they acted diligently and efficiently in reaching agreement with the Respondent on the outstanding quantum calculations, contrary to the Respondent who did not make any calculation efforts until having received the Claimants' proposed calculations and who then delayed agreement by raising minor issues that had little impact on the overall figures. The Claimants also assert that it is wrong of the Respondent to claim it was successful on the On-Site Laboratories claim, when such claim was decided in favor of the First Claimant. As such, the Respondent should not be awarded any costs in relation to that claim, or to any of the quantum matters.⁴¹

³⁴ Claimants' Reply Cost Submission dated 20 December 2019, para. 24.

³⁵ Claimants' Reply Cost Submission dated 20 December 2019, para. 30.

³⁶ Claimants' Cost Submission dated 20 November 2019, paras 17-19.

³⁷ Claimants' Reply Cost Submission dated 20 December 2019, paras 32-37.

³⁸ Claimants' Reply Cost Submission dated 20 December 2019, para. 36.

³⁹ Claimants' Cost Submission dated 20 November 2019, paras 20-24.

⁴⁰ Claimants' Updated Cost Submission dated 9 December 2020, para. 11.

⁴¹ Claimants' Reply Updated Cost Submission dated 18 December 2020, paras 3-9.

107. As to the amount of their legal fees and costs, the Claimants submit that their costs are reasonable in light of the complexity of the case and the ACP's procedural misconduct.⁴² Specifically in regard to their internal costs, the Claimants contend that the Arbitral Tribunal has the discretion to award such costs to a party according to the leading doctrine, and that they have used a reasonable methodology to calculate such costs, first by identifying the personnel that devoted significant time to the arbitration, calculating the time spent and applying their hourly rate, and adding expenses such as travel.⁴³ The Claimants submit that the internal costs claimed by the Respondent, on the other hand, are unreasonable and have not been properly justified and must be rejected.⁴⁴
108. In respect of the Respondent's claim for its costs incurred during the DAB proceedings, the Claimants submit that such request has no legal basis and in fact goes against the Parties' clear agreement set out in Sub-Clause 20.2 of the Conditions of Contract that the DAB costs be borne by the Parties equally. Moreover, the Claimants state, the Respondent cannot recover costs for DAB proceedings in which it was found liable and Notices of Dissatisfaction were filed, and in any case the alleged DAB-related costs claimed by the Respondent are unreasonably high (USD 12,704,576.79 as compared to the Claimants' costs in the amount of USD 8,524,685.21). However, if the Tribunal deems DAB costs recoverable, the Claimants also request an award of their costs incurred for the DAB proceedings.⁴⁵
109. The Claimants contend that the Respondent's requests for future costs and pre-award interest on its costs must also be rejected. As to the latter, the Claimants submit that there is no legal basis for an award of pre-award interest on costs, and that such requests are generally rejected by tribunals for the reason that costs that are awarded to a party only become due as of the date of such award of costs.⁴⁶
110. The Claimants further contend that the Respondent's request for reimbursement of its costs incurred in responding to the Challenge Application must be dismissed as the request is untimely and inadmissible. The Claimants contest the Respondent's allegation that their Challenge Application was unfounded, and note that the Challenge Application was deemed admissible by the Court, despite being rejected on the merits. The Claimants also assert that if the Arbitral Tribunal were minded to consider Respondent's request for costs related to the Challenge Application, the Claimants must have an opportunity to also take position on such costs.⁴⁷
111. In Annex C to the Claimants' Reply Costs Submission dated 20 December 2019, the Claimants apportioned their total costs across five main claims as follows:

	CAP	FC	CMD/Delay	OSL	Claimants 2-4
Total	USD	USD	USD	USD	USD
(USD)Total	22,127,322.10	15,304,101.76	16,003,467.97	1,216,821.70	8,544,747.28
(EUR)Total	EUR	EUR	EUR	EUR	EUR
(CHF)	2,220,185.78	1,624,828.70	1.364.359.97	62,016.36	930.245.44

⁴² Claimants' Cost Submission dated 20 November 2019, paras 25-31; Claimants' Reply Cost Submission dated 20 December 2019, paras 50-51.

⁴³ Claimants' Cost Submission dated 20 November 2019, paras 27-29.

⁴⁴ Claimants' Reply Cost Submission dated 20 December 2019, paras 43-48.

⁴⁵ Claimants' Reply Cost Submission dated 20 December 2019, paras 38-42.

⁴⁶ Claimants' Reply Cost Submission dated 20 December 2019, paras 49-50.

⁴⁷ The Claimants' letter to the Arbitral Tribunal dated 13 January 2021.

CHF	CHF	CHF	CHF	CHF
431,182.52	315,558.16	264,972.50	12,044.20	180,663.07

112. The Claimants' total legal fees and costs, including costs incurred in relation to the post-Partial Award quantum matters, are set out as follows:⁴⁸

	EUR	CHF	USD
White & Case LLP	Fees		40,728,384
	Expenses		1,783,166
Schellenberg Wittmer	Fees		1,100,874
	Expenses		103,547
Bonelli Erede Studio Legale	Fees	1,331,235	
	Expenses	23,993	
Seyfarth Shaw LLP	Fees		4,586,682
	Expenses		158,103
Aleman, Cordero, Galindo & Lee	Fees		1,211,829
	Expenses		404,220
Total Legal Fees & Expenses		1,355,228	1204.420
Claim management costs			
<i>GUPC</i>		1,551,757	850,518
<i>Sacyr</i>		1,255,039	
<i>Salini-Impregilo</i>		880,973	
<i>Jan de Nul</i>		1,187,108	
Expert and Consultant Fees & Expenses			10,723,388
Database Support Fees & Expenses			760,771
Translation Costs			66,584
Printing Costs			67,473
ICC Advances			2,000,000

⁴⁸ Claimants' Reply Updated Cost Submission dated 18 December 2020, Section IV.

Total Incurred Costs	6,230,105	1,204,420	63,341,119
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113. In their Reply Updated Cost Submission, the Claimants request that the Arbitral Tribunal "direct that each Party mainly bear their own costs, but should take into account the improper procedural conduct ACP exhibited throughout the Arbitration and allocate the costs related to that conduct to the Claimants."⁴⁹ The Claimants also reserved their right to "rectify, amend and/or supplement" their statement of costs, as well as to "request other relief as Claimants may consider necessary or appropriate to defend their rights" (including by requesting a stay of this Arbitration pending the decision of the Southern District Court of Florida on the Claimants' motion to vacate the Partial Award).⁵⁰

B.Respondent's Position

114. The Respondent submits that, under the Contract and the applicable law (being the U.S. Federal Arbitration Act and the ICC Rules), the Arbitral Tribunal is empowered to decide upon the Parties' costs claims, and that under the ICC Rules the Tribunal enjoys broad discretion in fixing costs (including the arbitrators fees and expenses, the ICC administrative expenses, the Parties' reasonable legal fees, and the other reasonable costs incurred by the Parties).⁵¹

115. The legal principles that should be taken into account according to the ICC Commission Report on Decisions on Costs in International Arbitration ("ICC Report") include the Parties' relative success on the claims, the reasonableness and reality of the costs incurred, the conduct of the proceedings and any "bad faith or improper" behavior of the Parties.⁵² In applying these principles to the present case, the Respondent argues that the costs should be determined on a claim-by-claim basis and according to the relative success of the Parties on each individual claim.⁵³

116. In response to the Claimants' Updated Cost Submission, the Respondent asserts that any new arguments presented by the Claimants as to the apportionment of the Parties' costs prior to the issuance of the Partial Award should be ignored by the Tribunal, as this goes beyond the permissible scope of the updated cost submissions.⁵⁴ In any case, the Respondent contends that the Claimants are incorrect in stating that the Arbitral Tribunal would be restricted in its determination of costs by the principle applied in U.S. courts that each party bear its own legal fees. The Respondent submits that the correct position is that where, as here, the Parties have agreed to arbitration under the ICC Rules, the recovery of such costs is permitted.⁵⁵ Moreover, in regard to the allegations of misconduct over the course of the Arbitration, the Respondent contests such allegations which are in any case outside the scope of the updated cost submissions and have no relation to the Respondent's conduct in carrying out the post-Partial Award work.⁵⁶

⁴⁹ Claimants' Reply Updated Cost Submission dated 18 December 2020, para. 13.

⁵⁰ Claimants' Reply Updated Cost Submission dated 18 December 2020, para. 14 and fn. 41.

⁵¹ The ACP's Cost Submission dated 20 November 2019, paras 2.1-2.6.

⁵² The ACP's Cost Submission dated 20 November 2019, para. 3.1.

⁵³ The ACP's Cost Submission dated 20 November 2019, paras 3.5-3.13.

⁵⁴ The ACP's Reply Updated Cost Submissions dated 18 December 2020, paras 2.1-2.4.

⁵⁵ The ACP's Reply Updated Cost Submissions dated 18 December 2020, paras 2.5-2.11.

117. The Respondent takes the position that in regard to the Concrete Aggregates, Concrete Mix Design, and On-Site Laboratories claim, any decision of the Tribunal that grants the Contractor less than that which was granted by the DAB should be considered a success for the Respondent and costs should be awarded to the Respondent in such case.⁵⁷ As to the Foundation Conditions and Shareholders' claims, the Respondent's position prior to the issuance of the Partial Award was that it should be awarded its costs (including its DAB costs incurred for the Foundation Conditions claims) if the Claimants are not awarded any sums.⁵⁸ The Respondent also submits that costs associated with the Foundation Conditions claims should be considered in relation to the relative value of the four sub-claims (namely, Claim 47(i), Claim 47(ii), Claim 50 and Claim 57).⁵⁹
118. Regardless of the success on the merits of the claims, the Respondent also submits that the costs should follow the event for any applications upon which the Respondent was successful, as well as for the jurisdiction phase. The Respondent contends it was successful on its application to consolidate Case No. 20910/ASM and Case No. 20911/ASM, on the Emergency Application, on the Claimants' application to add Claim 78 to the Arbitration, on the Claimants' application to consolidate Cases Nos. 20910, 22466, and 22967, and the Claimants' applications to introduce evidence at the hearing on the merits.⁶⁰ Specifically in regard to the jurisdictional phase, the Respondent submits that the Claimants mischaracterize the facts, when in reality it was the Claimants' wrongful objection to the ACP's delay damages claim, their position regarding Claimants 2-4's claims under the Contract, and their insistence on a bifurcated jurisdiction phase that led to additional costs being incurred.⁶¹ Moreover, in regard to the Emergency Application, the Respondent contends that this "ill-conceived" and "unfounded" application was decided entirely in its favor and that the Claimants' arguments otherwise are merely an attempt to distract from this reality.⁶² As to the issue of confidentiality, the Respondent also submits that this application by the Claimants was not entirely successful and that the Claimants' own disruptive behavior (in disseminating confidential information) should also be taken into account by the Tribunal when deciding upon costs.⁶³
119. In respect of the Claimants' arguments concerning the Respondent's conduct during the proceedings, the Respondent submits that the Claimants have improperly used their cost submissions to make inappropriate argument on the merits, in breach of the agreed arbitral procedure, and that such arguments (which are irrelevant to costs and in any event, incorrect⁶⁴) should be ignored by the Tribunal.⁶⁵ The Respondent further contends that the Claimants' allegations of "procedural misconduct" on the part of the Respondent, for example in relation to document production and the organization of the Hearing, are entirely baseless.⁶⁶
120. In their Cost Submission dated 20 November 2019, the Respondent stated that the Claimants had not

⁵⁶ The ACP's Reply Updated Cost Submissions dated 18 December 2020, paras 2.12-2.14.

⁵⁷ The ACP's Cost Submission dated 20 November 2019, paras 3.9-3.10.

⁵⁸ The ACP's Cost Submission dated 20 November 2019, paras 3.11-3.13.

⁵⁹ The ACP's Cost Submission dated 20 November 2019, para. 3.13.

⁶⁰ The ACP's Cost Submission dated 20 November 2019, paras 3.14-3.15.

⁶¹ The ACP's Reply Cost Submissions dated 20 December 2019, paras 4.1-4.9.

⁶² The ACP's Reply Cost Submissions dated 20 December 2019, paras 4.10-4.11.

⁶³ The ACP's Reply Cost Submissions dated 20 December 2019, paras 4.12-4.13.

⁶⁴ The ACP's Reply Cost Submissions dated 20 December 2019, paras 5.1-5.67.

⁶⁵ The ACP's Reply Cost Submissions dated 20 December 2019, paras 2.1-2.4.

⁶⁶ The ACP's Reply Cost Submissions dated 20 December 2019, paras 6.1-6.6.

provided any proper breakdown of their costs in relation to each claim, in relation to the procedural applications, nor in relation to their expert fees and internal costs. According to the Respondent, any attempt by the Claimants to provide such detail in their Reply Cost Submissions should not be accepted since the Respondent will not have had an opportunity to respond. In light of the deficiencies with the Claimants' cost details, the Respondent took the position that the Tribunal should not grant to the Claimants any more costs than those claimed by the Respondent in relation to any issue of the proceedings, as this would be the only fair approach.⁶⁷

121. As to the amount of its legal fees and costs, the Respondent contends that its costs are reasonable in light of the size and complexity of the case and were properly incurred.⁶⁸ In addition to its external legal fees and costs, the Respondent submits that it is entitled to its internal costs, which meet the requirements of and are recoverable under the applicable ICC principles and practice,⁶⁹ as well as its various expenses (such as travel and printing costs).⁷⁰ The Respondent claims that it should also recover its future costs up to the date of the Final Award⁷¹ and the amounts paid as ICC advances⁷², as well as pre-award interest on its costs (from the date that the ACP made payment of each monthly invoice up to the date of the award, on a cumulative basis) at the rate of 1.53% per annum.⁷³ According to the Respondent, pre-award interest is recoverable under the *lex arbitri*, being the U.S. Eleventh Circuit case law on pre-judgment interest, as well as under the substantive law (being either the Panamanian Commercial Code or Civil Code, depending on how the debt is characterized).⁷⁴
122. The Respondent further submits that it should be entitled to compensation of its costs incurred during the DAB proceedings on Referrals 1, 10, 11, 13A and 14B, in the event the Arbitral Tribunal finds in favor of the Respondent on any of the underlying claims.⁷⁵ The Respondent states that while the Contract is silent on the issue, such costs should be recoverable since the DAB proceedings were a mandatory pre-arbitration step, no decision was taken by the DAB on costs, and the work done in the context of the DAB proceedings was clearly used for the purposes of this Arbitration.⁷⁶
123. The Respondent also argues that it should be awarded a proportion of its costs due to the Claimants' conduct, in particular in regard to document production⁷⁷, the instruction of the Claimants' experts⁷⁸, and more generally, the Claimants' unmeritorious procedural applications and failure to cooperate on issues such as the consolidation of Cases Nos. 20910/ASM and 20911/ASM or granting access to the Contractor's cost control system.⁷⁹
124. The Respondent also claims the costs it incurred in responding to the Claimants' Challenge

⁶⁷ The ACP's Reply Cost Submissions dated 20 December 2019, paras 3.2-3.24.

⁶⁸ The ACP's Cost Submission dated 20 November 2019, paras 3.16 et seq.

⁶⁹ The ACP's Cost Submission dated 20 November 2019, paras 3.21-3.24.

⁷⁰ The ACP's Cost Submission dated 20 November 2019, paras 3.25-3.26.

⁷¹ The ACP's Cost Submission dated 20 November 2019, paras 3.27-3.28.

⁷² The ACP's Cost Submission dated 20 November 2019, para. 3.32.

⁷³ The ACP's Cost Submission dated 20 November 2019, paras 3.29-3.31.

⁷⁴ The ACP's Cost Submission dated 20 November 2019, para. 3.31.

⁷⁵ The ACP's Cost Submission dated 20 November 2019, paras 3.33-3.35.

⁷⁶ The Respondent's Cost Submission dated 20 November 2019, para. 3.33.

⁷⁷ The ACP's Cost Submission dated 20 November 2019, paras 3.37-3.42.

⁷⁸ The ACP's Cost Submission dated 20 November 2019, paras 3.43-3.45.

⁷⁹ The ACP's Cost Submission dated 20 November 2019, para. 3.36.

Application, which the Respondent submits was completely unfounded. The Respondent asserts that the Tribunal is empowered to award costs associated with challenge applications within its broad discretion to award costs under [Article 37 of the ICC Rules](#), and that this is confirmed by multiple legal authorities.⁸⁰

125. In respect to the costs claimed by the Claimants, the Respondent submits that the fees and expenses of legal counsel being claimed are unreasonably high (USD 50,193,679.54 as compared to the Respondent's USD 30,401,402.00)⁸¹, and that the Claimants have failed to prove that the costs claimed were incurred specifically in relation to this Arbitration and reasonably incurred.⁸²
126. As to the costs incurred in carrying out the post-Partial Award quantum calculations and in preparing its updated cost submissions, the Respondent submits that the Claimants should bear the entirety of these costs because such additional work was made necessary by the Claimants' failure to adequately present its claims and deficiencies in the Claimants' supporting records.⁸³ Additionally, the Respondent contends, the Claimants caused unnecessary costs by delaying providing their quantum calculations to the Respondent, which led the Respondent to have to carry out its own calculations in preparation for the deadline to revert to the Arbitral Tribunal.⁸⁴ As to the recalculation of financing charges related to the On-Site Laboratories claim, the Respondent contends that since the First Claimant was awarded less than what the ACP already paid pursuant to the DAB decisions, the Respondent should be considered the successful party on such claim and therefore the Claimants should bear the costs of finalizing the quantum in relation to that claim as well.⁸⁵ Finally, as to the costs incurred in preparing the updated cost submissions, the Respondent submits that they should be borne between the Parties in the same manner as the costs themselves.⁸⁶
127. In sum, the Respondent claims the following costs of the Arbitration in respect to each claim:
- i. USD 23,043,743.17 in respect of Concrete Aggregate Production;
 - ii. USD 11,642,478.68 in respect of Foundation Conditions;
 - iii. USD 20,433,383.28 in respect of Concrete Mix Design and Delay;
 - iv. USD 1,079,194.34 in respect of On-Site Laboratories;
 - v. USD 2,488,348.12 in respect of Return on Investment;
 - vi. USD 633,713.04 in respect of Delay Damages.⁸⁷

⁸⁰ See the Respondent letter to the Arbitral Tribunal dated 12 January 2021.

⁸¹ The ACP's Reply Cost Submission dated 20 December 2019, para. 3.11.

⁸² The ACP's Reply Cost Submission dated 20 December 2019, paras 3.12-3.13.

⁸³ The ACP's Updated Cost Submissions dated 9 December 2020, paras 2.1-2.16; The ACP's Reply Updated Cost Submissions dated 18 December 2020, para. 3.4.

⁸⁴ The ACP's Updated Cost Submissions dated 9 December 2020, paras 2.17-2.18; The ACP's Reply Updated Cost Submissions dated 18 December 2020, para. 3.4(d).

⁸⁵ The ACP's Updated Cost Submissions dated 9 December 2020, para. 2.19; The ACP's Reply Updated Cost Submissions dated 18 December 2020, para. 3.4(e).

⁸⁶ The ACP's Updated Cost Submissions dated 9 December 2020, para. 3.1; The ACP's Reply Updated Cost Submissions dated 18 December 2020, para. 3.4(f).

⁸⁷ The Respondent's Reply Cost Submissions dated 20 December 2019, para. 7.2.

128. The Respondent also claims the following costs of the DAB proceedings in respect to each claim:
- i. USD 4,650,235.41 in respect of Concrete Aggregate Production (Referral 11);
 - ii. USD 3,145,118.88 in respect of Foundation Conditions (Referral 13A);
 - iii. USD 4,755,649.40 in respect of Concrete Mix Design and Delay (Referral 11);
 - iv. USD 153,573.10 in respect of On-Site Laboratories (Referrals 1, 10 and 14B).⁸⁸
129. In addition, the Respondent claims pre-award interest on all of the above amounts, as well as USD 150,000 in future costs.
130. The Respondent also claims its costs incurred in carrying out the post-Partial Award quantum calculations and in preparing its updated cost submissions, in the amount of USD 193,241.25;⁸⁹ and its costs in responding to the Challenge Application in the amount of USD 246,629.51.⁹⁰
131. In any event and regardless of the Tribunal's decision on the substantive claims, the Respondent claims the following costs:
- i. USD 1,517,777.80 for the ACP's costs of document production⁹¹;
 - ii. USD 926,793.13 in respect of Jurisdiction;
 - iii. USD 1,868,018.25 in respect of those applications in which the ACP prevailed.⁹²

C. Arbitral Tribunal's Determination

132. In the following sections, the Arbitral Tribunal shall first set out the legal principles governing awards of costs under the applicable laws. The Tribunal will then summarize the advances that have been made by the Parties to the ICC and set out its determination on the fees of the Arbitral Tribunal. Finally, the Arbitral Tribunal will address the legal costs and expenses that are being claimed by the Parties, and, according to the principles governing awards of costs, make a determination on the allocation of these costs.

1. Legal principles governing costs

133. The Arbitral Tribunal is empowered to make a cost award in accordance with [Article 37 of the ICC Rules](#), which reads in pertinent part:

⁸⁸ The Respondent's Reply Cost Submissions dated 20 December 2019, para. 7.2.

⁸⁹ The Respondent's Reply Updated Cost Submissions dated 18 December 2020, Schedules 1 and 2.

⁹⁰ See the Respondent's letter to the Arbitral Tribunal dated 12 January 2021, p. 3.

⁹¹ It is noted that this amount of USD 1,517,777.80 identified by the Respondent as relating to the issue of document production is nevertheless included in its overall costs that have been apportioned between the main claims, which are set out in paragraph 120 above.

⁹² The Respondent's Reply Cost Submissions dated 20 December 2019, paras 7.4 and 7.6.

1. *The costs of the arbitration shall include the fees and expenses of the arbitrators and the ICC administrative expenses fixed by the Court, in accordance with the scale in force at the time of the commencement of the arbitration, as well as the fees and expenses of any experts appointed by the arbitral tribunal and the reasonable legal and other costs incurred by the parties for the arbitration.*

[...]

3. *At any time during the arbitral proceedings, the arbitral tribunal may make decisions on costs, other than those to be fixed by the Court, and order payment.*

4. *The final award shall fix the costs of the arbitration and decide which of the parties shall bear them or in what proportion they shall be borne by the parties.*

5. *In making decisions as to costs, the arbitral tribunal may take into account such circumstances as it considers relevant, including the extent to which each party has conducted the arbitration in an expeditious and cost-effective manner.*

134. It is well-established and accepted that the Tribunal enjoys broad discretion in fixing the costs of the Arbitration, including the reasonable legal and other costs incurred by the Parties.⁹³ Amongst the costs typically deemed to be recoverable are the legal fees and expenses of the Parties' external counsel, the costs of party-appointed experts, witnesses, translators and interpreters, including travel and accommodation expenses, and other litigation costs such as those associated with document production and hearings.⁹⁴ It is also within the Arbitral Tribunal's discretion to consider that the internal costs incurred by the Parties are recoverable.⁹⁵ In the present case, the Arbitral Tribunal notes that both the Claimants and the Respondent have claimed their internal costs and that, understandably in light of complexity and size of the dispute, each Party incurred significant costs in preparing for and managing the Arbitration. The Parties' reasonable internal costs shall therefore be recoverable.

135. The Respondent has also claimed its costs incurred during the DAB proceedings related to the underlying claims in this Arbitration, namely those costs incurred in Referrals 1, 10, 11, 13A, and 14B. This raises the question of whether such costs should be included in the "costs of the arbitration", and in particular the "reasonable legal and other costs incurred by the parties for the arbitration", that would be recoverable under [Article 37\(3\) of the ICC Rules](#).

136. As a first point, the Arbitral Tribunal understands that in the course of the relevant DAB proceedings, costs were not claimed by either Party and no decision as to costs was taken by the DAB. Moreover, the Contract is silent on the issue of whether the Parties' legal costs incurred during DAB proceedings are recoverable, although as noted by the Claimants, the Contract does provide that the fees of the DAB members be split equally between the Parties.⁹⁶

137. It is further noted that, in regard to costs of "ancillary judicial proceedings relating to the

⁹³ See Fry/Greenberg/Mazza, *The Secretariat's Guide to ICC Arbitration* (2012), Section 3-1490 [Exhibit C-LA-0023, p. 30].

⁹⁴ Ibid.

⁹⁵ Fry/Greenberg/Mazza, *The Secretariat's Guide to ICC Arbitration* (2012), Section 3-1491 [Exhibit C-LA-0023, p. 30].

⁹⁶ See Sub-Clause 20.2 [*Appointment of the Dispute Adjudication Board*] and Appendix 1 of the Conditions of Contract (as amended through Variation Order No. 175) of February 2009 [Exhibit C-0311, pp. 316 and 326].

arbitration", for example in the case of an application to state court for interim measures, the general approach taken by arbitral tribunals is that such costs should be claimed in the court in which the proceedings were brought.⁹⁷ While the proceedings before the DAB are not entirely analogous to ancillary state court proceedings which would be governed by specific procedural rules including in regard to a party's right to recover its costs, the Arbitral Tribunal nevertheless considers that the proceedings before the DAB must be considered as separate from the Arbitration. Even if the DAB proceedings were considered to be part of the dispute resolution process related to the Arbitration, it appears to be generally accepted that "[c]osts relating to a previous stage of the dispute resolution process (e.g. negotiation or mediation) will not necessarily be recoverable".⁹⁸

138. In light of the above, the Arbitral Tribunal is not convinced that the costs incurred by the Parties in relation to DAB Referrals 1, 10, 11, 13A, and 14B should be included as costs of this Arbitration. In the Tribunal's view, the Parties' agreement to split the DAB members' fees equally⁹⁹ and the contractual silence regarding the recovery of any other costs associated with the DAB proceedings suggest that the Parties would bear their own costs in this respect, and not that such costs would be recoverable in related arbitration proceedings.
139. The Respondent has also made a claim for pre-award interest on its costs, to which the Claimants object. In the Arbitral Tribunal's view, such a claim for pre-award interest on costs is not justified under the Contract or the law, for the primary reason that any entitlement to reimbursement of arbitration costs only exists as of the date of the award in which such costs are awarded. Prior to a final award and decision on costs, neither Party has a vested right to payment of its costs by another Party and thus there is no justification for interest to begin to run on such amounts. The Respondent's references to the position of the U.S. Eleventh Circuit District Court on pre-judgment interest are non-availing, as this case law relates to pre-judgment interest on damages, not litigation costs.¹⁰⁰ The Respondent's claim for pre-award interest on its costs is therefore dismissed.
140. In determining the allocation of costs between the Parties, the general principle that shall guide the Tribunal's decision is the success of the Parties on their claims and counterclaims relative to the relief sought, otherwise known as the "costs follow the event" principle.¹⁰¹ Prior to the issuance of the Partial Award dated 28 September 2020, the Parties both took the position that in the present case, in applying the "costs follow the event" principle, the Tribunal should apportion costs on a claim-by-claim, or issue-by-issue, basis.¹⁰² The Parties separated their costs between the substantive claims accordingly, and also identified the separate costs incurred for the jurisdictional phase and certain procedural issues.
141. In light of the fact that this is an international arbitration governed by the ICC Rules and the broad discretion in deciding upon costs issues granted to the Arbitral Tribunal under [Article 37 ICC Rules](#),

⁹⁷ Fry/Greenberg/Mazza, *The Secretariat's Guide to ICC Arbitration* (2012), Section 3-1491 [Exhibit C-LA-0023, p. 31].

⁹⁸ Fry/Greenberg/Mazza, *The Secretariat's Guide to ICC Arbitration* (2012), Section 3-1492 [Exhibit C-LA-0023, p. 31].

⁹⁹ See Sub-Clause 20.2 [*Appointment of the Dispute Adjudication Board*] of the Conditions of Contract, fifth paragraph [Exhibit C-0311, p. 316].

¹⁰⁰ See *St. Paul Fire and Marine Ins. Co. v. Lago Canyon, Inc.*, 561 F.3d 1181 (11th Cir. 2009) [Appendix 20 to the ACP's Cost Submission dated 20 November 2019] and *Allstate Ins. Co. v. Palterovich*, 653 F. Supp. 2d 1306,1327 (S.D. Fla. 2009) [Appendix 21 to the ACP's Cost Submission dated 20 November 2019].

¹⁰¹ See, e.g. Webster/Bühler, *Handbook of ICC Arbitration* (3rd ed.) (2014), para. 37-101 [Exhibit C-LA-0017, p. 63]. See also, ICC Commission Report: Decisions on Costs in International Arbitration, ICC Dispute Bulletin, Issue 2 (2015), p. 19 [Exhibit C-LA-0514, p. 21]; and Fry/Greenberg/Mazza, *The Secretariat's Guide to ICC Arbitration* (2012), Section 3-1488 [Exhibit C-LA-0023, p. 28].

¹⁰² Claimants' Cost Submission dated 20 November 2019, para. 8; The ACP's Cost Submission dated 20 November 2019, paras 3.5-3.7.

the Arbitral Tribunal does not consider the law or practice concerning the award of costs that is applied by U.S. courts (namely, the principle that each party shall bear its own legal fees referred to by the Claimants in their Updated Costs Submission) to be relevant to its determination. Instead, the Arbitral Tribunal concludes that in general, it is the principle of the "costs follow the event" that is widely accepted in international arbitration which should apply.

142. That being said, the Arbitral Tribunal notes that in addition to the relative success of the Parties on each claim or issue, it may also take into consideration the Parties' conduct during the proceedings and any other circumstances that it deems relevant, in accordance with [Article 37\(5\) of the ICC Rules](#). In this respect, the Arbitral Tribunal may take into account, for example, "whether a party (i) brought unsubstantiated arguments late in the proceedings; or exaggerated, unmeritorious or legally untenable claims; (ii) made unnecessarily lengthy submissions or pleadings; (iii) raised new or unsubstantiated arguments late in the proceedings; or (iv) misused the procedure to cause extensive and unwarranted delays (e.g. by bringing groundless challenges against an arbitrator pursuant to Article 14)." ¹⁰³

2. The Arbitration costs

a. Advances on ICC arbitration fees

143. On 18 March 2015, the ICC Secretariat acknowledged receipt of the Respondent's registration fees of USD 3,000 in ICC Case No. 20910/ASM (prior to consolidation with ICC Case No. 20911/ASM).
144. Also on 18 March 2015, the ICC Secretariat acknowledged receipt of the Claimants' registration fees of USD 3,000 in ICC Case No. 20911/ASM (prior to consolidation with ICC Case No. 20910/ASM).
145. On 20 March 2015, the Secretary General of the Court fixed the provisional advance on costs of arbitration in ICC Case No. 20910/ASM (prior to consolidation with ICC Case No. 20911/ASM) until the establishment of the Terms of Reference at USD 150,000 ([Article 36\(1\) ICC Rules](#)).
146. On 2 April 2015, the Secretary General of the Court fixed the provisional advance on costs of arbitration in ICC Case No. 20911/ASM (prior to consolidation with ICC Case No. 20910/ASM) until the establishment of the Terms of Reference at USD 150,000 ([Article 36\(1\) ICC Rules](#)).
147. On 20 April 2015, the ICC Secretariat acknowledged receipt of the Respondent's payment of USD 147,050 in ICC Case No. 20910/ASM (prior to consolidation with ICC Case No. 20910/ASM), as a first advance on costs of the arbitration.
148. On 7 May 2015, the ICC Secretariat acknowledged receipt of the Claimants' payment of USD 147,000 (USD 150,000 less USD 3,000) in ICC Case No. 20911/ASM (prior to consolidation with ICC Case No. 20910/ASM) as a first advance on costs of the arbitration.
149. On 23 July 2015, the Court fixed the advance on costs in ICC Case No. 20911/ASM (prior to

¹⁰³ Fry/Greenberg/Mazza, *The Secretariat's Guide to ICC Arbitration* (2012), Section 3-1488 [Exhibit C-LA-0023, p. 29].

consolidation with ICC Case No. 20910/ASM) at USD 650,000, subject to later readjustments ([Article 36\(2\) ICC Rules](#)) and invited the Claimants to pay USD 175,000 (USD 325,000 less USD 150,000 already paid) and the Respondent to pay USD 325,000.

150. Also on 23 July 2015, the Court fixed the advance on costs in ICC Case No. 20910/ASM (prior to consolidation with ICC Case No. 20911/ASM) at USD 650,000, subject to later readjustments ([Article 36\(2\) ICC Rules](#)) and invited the Respondent to pay USD 174,050 (USD 325,000 less USD 150,050 already paid) and the First Claimant to pay USD 325,000.
151. On 4 April 2016, the Court again invited the Parties to pay their respective portions of the advance on costs in ICC Case No. 20911/ASM (prior to consolidation with ICC Case No. 20910/ASM), namely USD 175,000 from the Claimants and USD 325,000 from the Respondent.
152. Also on 4 April 2016, the Court again invited the Parties to pay their respective portions of the advance on costs in ICC Case No. 20910/ASM (prior to consolidation with ICC Case No. 20911/ASM), namely USD 174,050 from the Respondent and USD 325,000 from the First Claimant.
153. On 27 April 2016, following the consolidation of ICC Cases Nos. 20910/ASM and 20911/ASM, the ICC Secretariat acknowledged receipt of the Parties' respective payments of the further advance on costs, for a total advance on costs in the amount of USD 650,000 in the consolidated case (USD 325,000 from Claimants and USD 325,000 from Respondent).
154. On 1 June 2017, the Court increased the advance on costs to USD 1,330,000 ([Article 36\(5\) ICC Rules](#)) and requested a further payment of USD 340,000 from the Claimants and from the Respondent, respectively.
155. On 7 July 2017, the ICC Secretariat acknowledged receipt of the Respondent's payment of USD 340,000.
156. On 13 July 2017, the ICC Secretariat acknowledged receipt of the Claimants' payment of USD 340,000.
157. On 15 November 2018, the Court increased the advance on costs to USD 2,200,000 ([Article 36\(5\) ICC Rules](#)) and requested the payment of USD 435,000 from the Claimants and from the Respondent, respectively.
158. On 5 December 2018, the ICC Secretariat acknowledged receipt of the Respondent's payment of USD 435,000.
159. On 14 December 2018, the ICC Secretariat received the Claimants' payment of USD 435,000.
160. On 15 March 2019, the ICC Court readjusted the advance on costs and increased it from USD 2,200,000 to USD 3,200,000, subject to later readjustments ([Article 36\(5\) ICC Rules](#)) and requested the payment of USD 500,000 from the Claimants and from the Respondent, respectively.
161. On 23 April 2019, the ICC Secretariat acknowledged receipt of the Claimants' payment of USD 500,000.

162. On 7 May 2019, the ICC Secretariat acknowledged receipt of the Respondent's payment of USD 500,000.
163. On 12 December 2019, the ICC Court readjusted the advance on costs and increased it from USD 3,200,000 to USD 4,000,000 ([Article 36\(5\) ICC Rules](#)) and requested the payment of USD 400,000 from the Claimants and from the Respondent.
164. On 13 January 2020, the ICC Secretariat acknowledged receipt of the Respondent's payment of USD 400,000.
165. On 13 March 2020, the ICC Secretariat acknowledged receipt of the Claimants' payment of USD 400,000.
166. On 17 December 2020, the ICC Court readjusted the advance on costs and increased it from USD 4,000,000 to USD 4,210,000, subject to later readjustments ([Article 36\(5\) ICC Rules](#)) and requested the payment of USD 105,000 from the Claimants and from the Respondent.
167. On 12 January 2021, the ICC Secretariat acknowledged receipt of the Respondent's payment of USD 105,000.
168. On 29 January 2021, the ICC Secretariat acknowledged receipt of the Claimants' payment of USD 105,000.
169. In total, the Claimants and the Respondent each paid an amount of USD 2,105,000 towards the advance on costs, for a total amount of USD 4,210,000.

b. The ICC administrative expenses and Arbitral Tribunal's fees

170. At its session of 28 January 2021, the Court fixed, pursuant to [Article 37 of the ICC Rules](#), the arbitration costs to a total amount of USD 4,210,000.
171. Over the duration of these proceedings, the Arbitral Tribunal spent a total of 8,909 hours, namely 4,317 hours spent by Mr. Pierre-Yves Gunter (President), 2,351 hours spent by Dr. Claus von Wobeser (arbitrator) and 2,241 hours spent by Dr. Robert Gaitskell (arbitrator).
172. In light of the agreement of the members of the Arbitral Tribunal to split the arbitrator's fees with 50% going to the President and 25% going to each party-appointed arbitrator, the allocation of the fees among the members of the Arbitral Tribunal is the following:
 - Claus von Wobeser: USD 963,250
 - Robert Gaitskell: USD 963,250
 - Pierre-Yves Gunter: USD 1,926,500 (which includes the financial compensation for the assistance of the Secretary to the Arbitral Tribunal).

173. The expenses of the Arbitral Tribunal amount to USD 177,000.
174. The ICC administrative expenses amount to USD 180,000.
175. Since the total amount of costs fixed by the ICC Court corresponds to the total amount of the advance on costs made by the Parties, no money will be reimbursed to the Parties.
176. The Arbitral Tribunal has determined that these total arbitration costs shall be allocated as follows (i) 95% for the work up to the issuance of the Partial Award (namely USD 4,000,000) and (ii) 5% for the additional work after the Partial Award (namely, USD 210,000). The Arbitral Tribunal notes that the Parties have apportioned the arbitration costs paid up to the issuance of the Partial Award between the various heads of claim, whereas the arbitration costs paid for the period after the issuance of the Partial Award and up to the issuance of this Final Award shall be determined separately.

c. The Parties' legal fees and other costs

177. The Claimants' total legal fees and costs (including USD 2,000,000 paid in advances to the ICC) amount to:
- EUR 6,230,105
 - CHF 1,204,420
 - USD 63,341,119¹⁰⁴
178. The Respondent's total legal fees and costs (including USD 2,000,000 paid in advances to the ICC and USD 150,000 claimed for "future costs") amount to;
- USD 62,458,913.26¹⁰⁵
179. As mentioned above, the Respondent objects to the reasonableness of the Claimants' legal fees, which it considers disproportionate in comparison to its own legal fees. At the same time, the Claimants object to the reasonableness of the internal costs claimed by the Respondent for the same reason. Both Parties recognize that in determining whether the Parties' costs are reasonable, an important factor to take into consideration is the complexity of the case, the extent of the submissions that were required, and the value in dispute.
180. The present Arbitration was unique in respect of the complexity of the claims (each of which could have been the subject of its own arbitration) and the volume of material submitted by the Parties. This is evident from the procedural history detailed in the Partial Award and in fact has already been noted by the Arbitral Tribunal in its email to the Parties dated 24 October 2019.

¹⁰⁴ See table set out at Claimants' Reply Updated Cost Submission, Section IV.

¹⁰⁵ See Updated Summary of all of the ACP's monthly costs of the Arbitration (continues overleaf) [Updated Appendix 11 to The ACP's Reply Cost Submission dated 20 December 2019] and the ACP's Updated Reply Cost Submission dated 18 December 2020, Schedules 1 and 2.

181. For this reason alone, the Arbitral Tribunal is of the view that the total costs claimed by both the Claimants and the Respondent are reasonable in the circumstances. The Tribunal also notes that while the Claimants have incurred higher external legal costs, the Respondent has incurred higher internal costs, and in the end there is not an enormous disparity between the total costs claimed by the Parties. The Parties have taken similar approaches to detailing their individual heads of cost and the Arbitral Tribunal does not consider there to be strong reasons to reject or reduce any of the individual cost items claimed by either Party.
182. As to the breakdown of the Parties' costs between the individual claims and issues, the Arbitral Tribunal also finds the Parties' calculations to be reasonable and does not agree with the Respondent that it would be unfair for the Tribunal to consider the breakdown provided by the Claimants in their Reply Cost Submissions. The Arbitral Tribunal notes that the percentages of total costs claimed by the Claimants for each claim are very similar to the percentages claimed by the Respondent, albeit slightly higher in respect to the Foundation Conditions claim and lower in respect to the Concrete Mix Design and Delay. The Arbitral Tribunal also notes that the Claimants and the Respondent appear to take very similar approaches in apportioning their costs between the various claims, which is based on the actual time recorded by their external legal counsel for each issue and applying that same ratio to the general arbitration costs.¹⁰⁶ The Arbitral Tribunal accepts that the amount claimed by each Party in respect to each individual claim is a reasonably accurate reflection of the actual costs incurred for the same.
183. This being said, the Arbitral Tribunal notes that the Parties have taken slightly different approaches to the breakdown of their costs between, on the one hand, the various heads of claim and, on the other hand, the issues of jurisdiction, the Emergency Application and Request for a Confidentiality Order, and other procedural incidents. Although the Claimants provided a separate quantification of their costs incurred in relation to jurisdiction and the Emergency Application and Request for a Confidentiality Order, these costs were nevertheless included in the total amount of costs that the Claimants apportioned between the main heads of claim. The Respondent, on the other hand, did not include the costs of jurisdiction and the Emergency Application and Request for a Confidentiality Order in its costs apportioned between the main heads of claim. Therefore, in order to apply a uniform approach and since the Arbitral Tribunal shall make a determination as to the allocation of the Parties' costs for the above-mentioned procedural issues separately from the main claims, the Arbitral Tribunal has deducted the Claimants' costs for jurisdiction and the Emergency Application/Request for a Confidentiality Order from the costs claimed by the Claimants for the main claims (proportionally in the same ratio that the Claimants' themselves applied¹⁰⁷). This adjustment has been taken into account in the amounts awarded herein.
184. As to the amount of costs claimed by the Parties for these procedural issues, the Claimants have provided only the total costs of their external counsel for the three issues of jurisdiction, the Emergency Application, and the Request for a Confidentiality Order (lumping it all together as the "jurisdictional phase")¹⁰⁸, while the Respondent has provided its costs related to the jurisdiction phase¹⁰⁹ separately from its costs related to the Emergency Application and Request for a

¹⁰⁶ See Claimants' Reply Cost Submission dated 20 December 2019, fn. 21; and the ACP's Reply Cost Submission dated 20 December 2019, fn. 139 and Updated Appendices 2 to 7.

¹⁰⁷ That is to say, the amounts of USD 3,066,936.05 and EUR 235,090 identified by the Claimants as relating to the "jurisdictional phase" have been deducted proportionally across the Claimants' costs for the main claims as follows: 35.8% for Concrete Aggregates Production, 26.2% for Foundation Conditions, 22% for Concrete Mix Design and Delay, 1% for On-Site Laboratories, and 15% for the Shareholders' ROI claims.

¹⁰⁸ See Annex D to Claimants' Reply Cost Submission dated 20 December 2019.

Confidentiality Order¹¹⁰. The Claimants object to the Respondent's figures, stating that it is unlikely that the Respondent incurred less costs for the jurisdiction issue than for the Emergency Application. As explained further below, the Arbitral Tribunal has decided that the cost allocation for these three issues of jurisdiction, the Emergency Application, and the Request for Confidentiality Order will be determined together.

185. The Respondent has also objected to the lump sum figures claimed by the Claimants for their expert costs, where no detail has been provided as to when such costs were incurred or for which claims, and on this basis questions the "propriety and reasonableness" of such costs. The Tribunal notes that in the additional details provided with the Claimants' Reply Cost Submission, the Claimants have provided a breakdown of these expert costs across the various heads of claim¹¹¹, although there is still no detail as to the monthly breakdown. The Arbitral Tribunal does not consider this to be grounds to reject the Claimants' expert costs, which appear to be reasonably proportionate to the claims and to the total costs incurred by the Respondent in connection with its expert evidence (which are in fact higher than the Claimants' total expert costs). As such, the Respondent's objection to these costs is dismissed.
186. Finally, the Arbitral Tribunal notes that the Respondent claimed in its Cost Submissions an amount of USD 150,000 for "future costs", which it estimated would be incurred in completing its cost submissions (beyond 31 October 2019), drafting its Reply Cost Submission, responding to any additional inquiries of the Tribunal, and reviewing the Award.¹¹² The Arbitral Tribunal understands that when filing the Reply Cost Submission, the Respondent updated the figures in its "Updated Appendix 11" up to December 2019, therefore including the actual costs up to the filing of the Reply Cost Submission. However, in said appendix, the Respondent still claimed an amount of USD 150,000 for future costs. The Arbitral Tribunal notes that the Claimants did not make a similar cost claim for future costs. Moreover, the Tribunal considers that it is very unusual to claim costs for the review of the cost submissions as well as for the review of a future award. For those reasons, the Arbitral Tribunal will not include that amount of USD 150,000 for future costs as part of the Respondent's recoverable costs.

3. Allocation of costs between the Parties

187. The Arbitral Tribunal considers that in the present case, its decision as to which Party shall bear the arbitration costs and in what proportion should be guided exclusively by the general principle of "the costs follow the event". While both the Claimants and the Respondent have argued that the opposing side engaged in disruptive procedural conduct that should be taken into account in the apportionment of costs, the Arbitral Tribunal does not see this as a case where any Party engaged in procedural misconduct or dilatory tactics meriting cost consequences. To the contrary, the Arbitral Tribunal considers that the Parties were faced with a complex and legitimate dispute over complicated legal, contractual and factual issues and that the time and cost expended in arbitrating

¹⁰⁹ See the ACP's costs in respect of the jurisdiction phase of the Arbitration [Appendix 8 to the ACP's Cost Submission dated 20 November 2019].

¹¹⁰ See the ACP's costs in respect of applications made or responded to in which it prevailed in the Arbitration [Appendix 12 to the ACP's Cost Submission dated 20 November 2019].

¹¹¹ See Annex C to Claimants' Reply Cost Submission dated 20 December 2019.

¹¹² The ACP's Cost Submissions dated 20 November 2019, paras 3.27-3.28.

this dispute was at all stages entirely justified.

188. When apportioning the costs and applying the "costs follow the event" principle, the Arbitral Tribunal considers that it must take into account not only the Parties' relative success on the merits of the claims and counterclaims, but also their success on their jurisdictional objections and on those procedural applications that resulted in Procedural Orders being issued by the Tribunal, namely:
- Procedural Order No. 1, concerning the Claimants' Emergency Application and request for a confidentiality order;
 - Procedural Order No. 2, concerning the Respondent's alleged breaches of the Confidentiality Order;
 - Procedural Order No. 3, concerning additional alleged breaches of the Confidentiality Order; and
 - Procedural Order No. 4, concerning the Claimants' request to add "Tranche 2" to the Arbitration.
189. As to the other procedural incidents raised by the Parties, such as the issues of document production and hearing organization, the Arbitral Tribunal does not consider these issues to have had such significant time or cost implications that they would merit an award of costs in either Party's favor. In any case, the Arbitral Tribunal notes that both Parties include their general costs and costs of document production in the costs that they are claiming for the main heads of claim.
190. With this framework in mind, the Arbitral Tribunal makes the following observations and findings.
191. First, the Arbitral Tribunal notes that the Parties have both taken the approach of apportioning the advances paid toward the ICC Arbitration Costs prior to the Partial Award amongst each head of claim. Therefore, the Arbitral Tribunal does not need to take a separate decision on the apportionment of those costs. However, the Parties did not account for the additional ICC advance of USD 210,000 and the Arbitral Tribunal has therefore determined the allocation of this amount between the Parties separately (see below, para. 210).
192. Second, the Arbitral Tribunal notes that in respect to the Concrete Aggregates, Concrete Mix Design, On-Site Laboratories, and Shareholders' ROI claims there was a clearly successful Party.
193. Indeed, the Respondent is clearly the successful party in relation to the Concrete Aggregates, Concrete Mix Design, and Shareholders' ROI claims. The Respondent is entitled to recover its full costs in defending against these claims, namely:
- USD 23,048,094.37¹¹³ in respect of Concrete Aggregates;
 - USD 20,437,241.68¹¹⁴ in respect of Concrete Mix Design and Delay; and
 - USD 2,488,817.40¹¹⁵ in respect of Return on Investment.

¹¹³ This figure represents the Respondent's costs claimed in respect of the Concrete Aggregates claims (USD 23,043,743.17) plus 38.5% of the costs claimed for other procedural incidents (namely, USD 4,351.20), as noted in footnote 131 below.

¹¹⁴ This figure represents the Respondent's costs claimed in respect of the Concrete Mix Design and Delay claims (USD 20,433,383.28) plus 34.45% of the costs claimed for other procedural incidents (namely, USD 3,858.40), as noted in footnote 131 below.

194. On the other hand, the First Claimant is clearly the successful party in relation to the On-Site Laboratories claim and is entitled to recover the full costs claimed by the Claimants in relation to that claim¹¹⁶, namely the amounts of USD 1,182,290.86¹¹⁷, EUR 59,665.46¹¹⁸, and CHF 12,044.20.
195. As to the Foundation Conditions claim, the Arbitral Tribunal notes that there is no substantial discrepancy between the total amount of costs claimed by each Party in relation to this claim. Based on the findings of the majority of the Arbitral Tribunal, the First Claimant is to a large extent successful on this claim, since it was successful on both Claims 50 and 57, and partially successful on Claim 47(i), as well as on its entitlement to financing costs and ITBMS. Only Claim 47(ii) was fully dismissed by the Arbitral Tribunal, and the value of such claim was a minor portion of the total damages claimed in relation to the Foundation Conditions. Although the final amount of the First Claimant's entitlements is only a fraction of the total damages that had been claimed, these were highly technical claims for which the liability and the quantum issues were intricately related. Thus, the First Claimant's success on the liability issues for the majority of these claims is more indicative of the overall success on the merits than the mere value of those claims. The Arbitral Tribunal considers also that the dismissal of the First Claimant's alternative claims related to the Foundation Conditions does not diminish its overall success on its main claims.
196. For these reasons, namely the complexity of the Foundation Conditions claims and the fact that the First Claimant was largely successful on the merits of the same, the Arbitral Tribunal considers that the overall apportionment of the costs incurred in relation to the Foundation Conditions claims should be largely in the First Claimant's favor. The Arbitral Tribunal finds that the First Claimant is therefore entitled to reimbursement by the Respondent of 70% of the costs incurred by the Claimants¹¹⁹ for the Foundation Conditions claims, namely USD 10,079,575.62¹²⁰, EUR 1,094,264.58¹²¹; and CHF 220,890.71¹²², while the Respondent shall bear 100% of its own costs incurred in defending against the Foundation Conditions claims.
197. As to the Respondent's counterclaim for Delay Damages, it is recalled that in light of the circumstances of the Parties' outstanding claims regarding delays and Extensions of Time that are the subject of other pending arbitrations, the Delay Damages counterclaim has been dismissed

¹¹⁵ This figure represents the Respondent's costs claimed in respect of the Shareholders' ROI claims (USD 2,488,348.12) plus 4.19% of the costs claimed for other procedural incidents (namely, USD 469.28), as noted in footnote 131 below.

¹¹⁶ The Arbitral Tribunal notes that while the Claimants claimed their legal and arbitration costs collectively, the costs allocated to the First Claimant's On-Site Laboratories claims shall be reimbursed specifically to the First Claimant.

¹¹⁷ This figure represents 100% of the Claimants' USD costs allocated to the On-Site Laboratories claim after taking the original amount claimed by the Claimants (USD 1,216,821.70) and deducting from this figure (i) 1% of the costs claimed in USD for the "jurisdictional phase" as noted in footnote 107 above (namely USD 30,669.36); and (ii) 1% of the costs deemed to be related to other procedural incidents as noted in footnote 129 below (namely USD 3,861.48)

¹¹⁸ This figure represents 100% of the Claimants' EUR costs allocated to the On-Site Laboratories claim after taking the original amount claimed by the Claimants (EUR 62,016.36) and deducting from this figure 1% of the costs claimed in EUR for the "jurisdictional phase" as noted in footnote 107 above (namely EUR 2,350.90).

¹¹⁹ See note at fn. 116, *supra*, which applies equally to the Foundation Conditions claims.

¹²⁰ This figure represents 70% of the Claimants' USD costs allocated to the Foundation Conditions claims after taking the original amount claimed by the Claimants (USD 15,304,101.76) and deducting from this figure (i) 26.2% of the costs claimed in USD for the "jurisdictional phase" as noted in footnote 107 above (namely USD 803,537.25); and (ii) 26.2% of the costs deemed to be related to other procedural incidents as noted in footnote 129 below (namely USD 101,170.78).

¹²¹ This figure represents 70% of the Claimants' EUR costs allocated to the Foundation Conditions claims after taking the original amount claimed by the Claimants (EUR 1,624,828.70) and deducting from this figure 26.2% of the costs claimed in EUR for the "jurisdictional phase" as noted in footnote 107 above (namely EUR 61,593.58).

¹²² This figure represents 70% of the Claimants' CHF costs allocated to the Foundation Conditions claims.

without prejudice to its merits. As such, the Arbitral Tribunal does not consider either Party to have, at this stage, been successful on such claim and concludes that each Party shall bear its own costs in relation to it, without prejudice to any future cost decision in the context of those other arbitrations.

198. As to the jurisdictional objections raised by the Parties that resulted in the Partial Award on Jurisdiction and Standing, the Arbitral Tribunal notes that neither Party was entirely successful on its objections. In particular, it is recalled that the Respondent's withdrawal of its objection to the Tribunal's jurisdiction to hear Claimants 2-4's claims was the result of a clear change of position by the Claimants as to the contractual basis for those claims, which rendered the Respondent's objections largely moot. The Claimants were nevertheless successful in the sense that the Tribunal did conclude that it had jurisdiction to hear Claimants 2-4's claims. On the other hand, the Respondent was successful concerning the Tribunal's jurisdiction to hear its Delay Damages claim, despite that claim being ultimately dismissed without prejudice. For the jurisdictional phase, the Arbitral Tribunal therefore concludes that the Parties should bear their own costs.
199. However, the Tribunal notes that the Claimants have included their costs related to the Emergency Application and confidentiality issues in their costs claimed in relation to the "jurisdictional phase". Normally, the Arbitral Tribunal would examine these procedural incidents separately from the issue of jurisdiction and consider that a portion of the costs claimed by the Claimants for the jurisdictional phase¹²³ be allocated to the issues of the Emergency Application and Request for a Confidentiality Order. However, if one looks at the total costs claimed by the Respondent for both the jurisdictional phase and the Emergency Application (which the Arbitral Tribunal understands to also include the confidentiality issues¹²⁴), approximately 40% of these costs are allocated to jurisdiction (USD 926,793,13) and 60% for the Emergency Application (USD 1,470,670.25). As the Claimants have noted¹²⁵, it is difficult to understand how the Respondent could have incurred significantly more costs dealing with the Emergency Application and Request for a Confidentiality Order, which were isolated procedural incidents, than during the whole of the jurisdictional phase, which was a much longer process that involved multiple submissions and a two-day hearing in Miami. As such, in exercise of its broad discretion in allocating costs, the Arbitral Tribunal considers that instead of attempting to apportion the costs of jurisdiction and the Emergency Application separately, the Arbitral Tribunal will treat the three issues of jurisdiction, the Emergency Application, and the Request for a Confidentiality Order as a whole.
200. Looking at these three elements together, the Arbitral Tribunal notes that, despite the fact that the Respondent was the more successful party in regard to the Emergency Application¹²⁶, the Claimants were successful in their request for a Confidentiality Order, and finally it was both Parties that were found to have breached that order. For these reasons, the Parties shall bear their own costs in

¹²³ See Annex D of the Claimants' Reply Cost Submission dated 20 December 2019.

¹²⁴ The costs claimed by the Respondent in relation to the Emergency Application appear to include also its costs in relation to the Request for a Confidentiality Order, since it is claiming costs from January, February and March 2017 (see Appendix 12, p. 3 of the Respondent's Reply Cost Submissions). The Arbitral Tribunal's decision on the Emergency Application was issued on 31 December 2016, whereas Procedural Orders Nos 2 and 3, which dealt with the confidentiality issues, were rendered in February and March 2017, respectively. Thus, the Arbitral Tribunal understands that the amount of USD 1,470,670.25 claimed by the Respondent relates to all of these issues.

¹²⁵ See Claimants' Reply Cost Submission dated 20 December 2019, para. 30.

¹²⁶ While the Claimants suggest that it was the Respondent's inflexibility regarding the repayment of certain Advance Payments that rendered the Emergency Application necessary and that it was the Respondent's eventual agreement to extend the repayment deadline for some of these Advance Payments that rendered the application partially moot, the Arbitral Tribunal recalls that the Respondent's position on the contractual repayment mechanism was upheld by the Tribunal and the interim measures requested by the Claimants were either withdrawn or dismissed entirely in Procedural Order No. 1.

relation to both the jurisdictional phase (as noted above) as well as the Emergency Application and Request for a Confidentiality Order.

201. It is noted that the Claimants have included their costs for the "jurisdictional phase" in their overall costs that they apportioned between the main claims. As such, this amount must be deducted from their costs claimed in relation to the main claims (proportionally in the same manner that the Claimants have apportioned their costs)¹²⁷. This adjustment has been taken into account in the amounts awarded herein.
202. As to the Claimants' request to add "Tranche 2" to the Arbitration, the Arbitral Tribunal dismissed such request by way of Procedural Order No. 4. The Claimants shall therefore bear 100% of the costs associated with their application to add Tranche 2 to the Arbitration, and the Respondent is entitled to recover the costs it incurred in relation to that application, namely the amount of USD 117,738.50.
203. Regarding the Respondent's request to consolidate ICC Cases Nos. 20910/ASM/JPA and 20911/ASM, it is recalled that the Respondent's request was rejected by the Court, but that the Claimants subsequently agreed to the consolidation of ICC Cases Nos. 20910/ASM/JPA and 20911/ASM. As such, the Tribunal concludes that the Parties shall each bear their own costs in relation to the Respondent's application. As to the Claimants' request to consolidate the present Arbitration with ICC Cases Nos. 22466/ASM/JPA and 22967/JPA, this request was rejected by the Court, and therefore the Claimants shall bear 100% of the Respondent's costs in relation to their application, as well as their own costs. Consequently, the Respondent is entitled to reimbursement by the Claimants of USD 129,824.50 in relation to the Claimants' application to consolidate. Moreover, as noted by the Respondent in its Reply Cost Submissions, the Claimants have not provided a breakdown of their costs related to these procedural applications.¹²⁸ Instead, the Claimants have simply apportioned their total costs across five main heads of claim. As such, the Claimants' costs claimed for the main claims necessarily include the costs incurred for the various procedural incidents identified by the Respondent, costs which the Tribunal determines shall be borne by the Claimants. In the exercise of the broad discretion granted to the Arbitral Tribunal in determining a proper allocation of costs, the Arbitral Tribunal therefore finds that an amount equal to that claimed by the Respondent for these procedural applications must be deducted from the costs claimed by the Claimants for the main heads of claim (proportionally in the same manner that the Claimants themselves have apportioned their costs between the main claims).¹²⁹ This adjustment has been taken into account in the amounts awarded herein.
204. As to the other procedural incidents raised by the Respondent in Annex 12 of its cost submissions¹³⁰, these are standard and rather minor procedural issues and the Arbitral Tribunal does not consider that these incidents warrant a cost award in the Respondent's favor. Since these costs were only claimed separately by the Respondent, but the costs for the same incidents were included in the

¹²⁷ Indeed, as noted in fn. 107 above, the amounts of USD 3,066,936.05 and EUR 235,090 that the Claimants identify as relating to the "jurisdictional phase" have been deducted proportionally across the Claimants' costs for the main claims as follows: 35.8% for Concrete Aggregates Production, 26.2% for Foundation Conditions, 22% for Concrete Mix Design and Delay, 1% for On-Site Laboratories, and 15% for the Shareholders' ROI claims.

¹²⁸ The ACP's Reply Cost Submissions dated 20 December 2019, para. 3.7.

¹²⁹ That is to say, the total amount of USD 386,148 has been deducted proportionally across the Claimants' costs for the main claims as follows: 35.8% for Concrete Aggregates Production, 26.2% for Foundation Conditions, 22% for Concrete Mix Design and Delay, 1% for On-Site Laboratories, and 15% for the Shareholders' ROI claims.

¹³⁰ See Appendix 12 to Respondent's Reply Cost Submission dated 20 December 2019.

Claimants' overall costs apportioned between the main heads of claim, the Arbitral Tribunal concludes that in order for these costs to be properly allocated, they must be added back to the amounts claimed by the Respondent for the main claims (proportionally in the same manner that the Respondent itself has apportioned its costs between the main claims).¹³¹ This adjustment has been taken into account in the amounts awarded herein.

205. As to the Respondent's request for reimbursement of its costs incurred in relation to the Challenge Application, the Arbitral Tribunal for the following reasons dismisses such request as inadmissible. First, the Respondent surprisingly filed such request and raised the issue for the first time in reply to an invitation by the Arbitral Tribunal to the Parties to provide comments relating to the Tribunal's intent to close the proceedings. Moreover, such request was not only filed outside of the agreed procedural timetable, but at no time before filing of such request did the Respondent address that point or did request leave to do so. The Respondent had plenty of opportunity to raise this issue earlier. For example, when the Updated Cost Submissions were filed, and even considering that those submissions were limited in scope to other issues, the Respondent could have made an express reservation in respect to its cost incurred in relation to the Challenge Application. At least when the ICC Secretariat notified the Parties on 17 December 2020 of the Court's decision to dismiss the Claimants' Challenge Application, Respondent could have raised the issue, which it did not. Therefore, the Arbitral Tribunal concludes that the Respondent's request was not made in time and is inadmissible. As a consequence, there is no need to invite Claimants to take position on the merits of Respondent's cost claim nor to submit its own costs in relation to the Challenge Application (see paragraph 72 above).
206. Finally, as to the costs incurred by the Parties in coming to an agreement on certain quantum issues following the issuance of the Partial Award, the Arbitral Tribunal considers that the apportionment of such costs must be assessed separately from the success on the merits of the underlying claims. Indeed, a determination as to who should bear such costs should not depend on the success on the underlying claims but instead on the circumstances that led to such additional work needing to be carried out.
207. In this regard, the Arbitral Tribunal notes that, when it comes to the additional calculations that were required in relation to the direct costs associated with Claims 47(i), 50 and 57, this was a result of the specific findings of the Arbitral Tribunal on the very complex sub-issues of the various causes of additional lean concrete being required beyond what should have been foreseen at Tender. While it is true that the Tribunal requested, prior to the Closing Arguments, that the Claimants clarify the breakdown of the cost of additional lean concrete between Lock Head 1, the Inlet West Wing Wall, and the remainder of the Basalt Reach of the PLE¹³², the findings of the Arbitral Tribunal in the Partial Award required an even more specific calculation based on the lean concrete allowance at tender and the breakdown between the causative factors that led to over-excavation that were ultimately accepted by the Tribunal. Although the Respondent argues that the Claimants should have anticipated such a result, in reality it is not always possible for a party to anticipate all of the possible scenarios that a tribunal might accept and present their damages based on numerous alternative calculations. In the specific case of their quantum for Claim 47(i), the Arbitral Tribunal notes that the Claimants could have provided a clearer breakdown of their quantum in relation to

¹³¹ That is to say, the total amount of USD 11,200 claimed by the Respondent for these procedural incidents has been added proportionally across the Respondent's costs for the main claims as follows: 38.85% for Concrete Aggregate Production, 19.63% for Foundation Conditions, 34.45% for Concrete Mix Design, 1.82% for On-Site Laboratories, 4.19% for the Shareholders' ROI claims, and 1.07% for Delay Damages.

¹³² See Arbitral Tribunal's Questions for Closing Arguments dated 28 September 2019, item 38.

the three causative factors that they claimed led to over-excavation, but this would not have completely eliminated the need for further calculations because another factor was the Arbitral Tribunal's finding in relation to the reasonable tender allowance for lean concrete. The Claimants could not have been expected to present alternative calculations for every combination of factors that the Arbitral Tribunal might have ultimately accepted, and for this reason, the Arbitral Tribunal considers that the Claimants are not entirely to blame for such additional calculations needing to be carried out.

208. Moreover, aside from these calculations relating to the First Claimant's direct costs, the other quantum items that required further calculation by the Parties following the Partial Award related to overheads, financing costs, ITBMS, and labor escalation credit. For the Foundation Conditions claims, these items were dependent on the final calculation of the First Claimant's direct costs and thus it was inevitable that they would need to be recalculated once those figures were agreed. For the financing charges to be applied to the First Claimant's entitlement relating to its On-Site Laboratories claim, it was also inevitable that these be recalculated following the Partial Award in order to take into account the full time period for which financing charges were due. Neither party was responsible for these calculations having to be carried out.
209. Both sides have also accused the other of engendering additional costs during the post-Partial Award period due to delays in presenting their quantum calculations or errors in the underlying evidence. The Arbitral Tribunal has reviewed the Parties' correspondence that was provided with their updated cost submissions and considers that, (i) the issues to be agreed required careful examination and thus the time taken in preparing the quantum calculations was justified on both sides; and (ii) the clerical errors identified in the Claimants' evidence can be easily understood in light of the vast amounts of data that were being handled by the Claimants' claims team and had a very minimal impact on the overall amounts claimed. As such, the Arbitral Tribunal does not consider that any of the alleged delays or inaccuracies were of such a nature to warrant an award of costs.
210. On balance, the Arbitral Tribunal considers that the Claimants must be held partially responsible for the quantum calculations that were required in relation to their Foundation Conditions claims, and as such should (i) bear a small portion, namely 30%, of the Respondent's costs incurred in carrying out the post-Partial Award quantum calculations, including the costs incurred in preparing the updated cost submissions (which were directly related to the additional post-Partial Award work) (i.e. USD 57,972.38), as well as (ii) bear 100% of their own costs. As to the arbitration costs (ICC advances and arbitrator fees) relating to the period following the Partial Award and up to the issuance of this Final Award (USD 210,000), these shall be borne 50% by the Claimants and 50% by the Respondent (i.e. USD 105,000 each).
211. Finally, while the Arbitral Tribunal notes that the Respondent "reserve[d] its rights to claim post-award interest" on its costs¹³³, no such claim for post-award interest on costs was made by the Respondent. The Claimants, on the other hand, have requested interest on "all sums awarded to them, running from the date of the award".¹³⁴ While this is understood to include a claim for post-award interest on any amount of costs awarded to the Claimants, the Arbitral Tribunal notes that the Claimants have not provided any legal basis for such a request of post-award interest, nor any

¹³³ See the ACP's Reply Cost Submission dated 20 December 2019, fn. 150 and 155.

¹³⁴ Claimants' PHB, Ch. XI, para. 1, point 7.

indication of the applicable interest rate. However, the Arbitral Tribunal considers that the same approach can and shall be followed by the Arbitral Tribunal as the approach adopted when dealing with post-award interest on the main claims (see paras 90-91 above). Consequently, the Arbitral Tribunal will apply pursuant to Article 993 of the Panamanian Civil Code an interest rate of 6% per annum. As to the *dies a quo* for interest on the Claimants' costs, the Arbitral Tribunal concludes that, in accordance with the Parties' agreement in Sub-Clause 20.10 [*Arbitration Procedure*] of the Conditions of Contract to "promptly give full effect to and comply with any ICC arbitral award"¹³⁵, such interest shall begin to run as from the date of notification of the present award.

XI. OPERATIVE PART

For the reasons set forth above, the Arbitral Tribunal unanimously:

1. Orders the Claimants to pay, jointly and severally, to the Respondent damages in the amount of USD 238,460,621.80, plus 6% interest per annum as from the date of the notification of this Final Award and up to the date of payment in full;
2. Decides that the Claimants shall bear their own costs as well as the Respondent's costs in relation to the Concrete Aggregates claim;
3. Consequently, orders the Claimants, jointly and severally, to pay to the Respondent the amount of USD 23,048,094.37;
4. Decides that the Respondent shall bear 100% of its own costs and 70% of the Claimants' costs in relation to the Foundation Conditions claim;
5. Consequently, orders the Respondent to pay to the First Claimant the amounts of USD 10,079,575.62, EUR 1,094,264.58 and CHF 220,890.71 (being 70% of the Claimants' costs in relation to the Foundation Conditions claim following the adjustments made by the Arbitral Tribunal), plus interest at the rate of 6% per annum as from the date of notification of this Final Award and up to the date of payment in full;
6. Decides that the Claimants shall bear their own costs as well as the Respondent's costs in relation to the Concrete Mix Design claim;
7. Consequently, orders the Claimants to pay, jointly and severally, to the Respondent the amount of USD 20,437,241.68;
8. Decides that the Respondent shall bear its own costs as well as the Claimants' costs in relation to the On-Site Laboratories claim;
9. Consequently, orders the Respondent to pay to the First Claimant the amounts of USD 1,182,290.86, EUR 59,665.46 and CHF 12,044.20 (being the Claimants' costs allocated to the On-Site Laboratories claims following the adjustments made by the Arbitral Tribunal), plus interest at the rate of 6% per annum as from the date of notification of this Final Award and up to the date of payment in full;
10. Decides that the Claimants shall bear their own costs as well as the Respondent's costs in relation to the Shareholders' ROI claim;

¹³⁵ Sub-Clause 20.10 [*Arbitration Procedure*] of the Conditions of Contract [Exhibit C-0311, p. 323].

11. Consequently, orders the Claimants to pay, jointly and severally, to the Respondent the amount of USD 2,488,817.40;
12. Decides that the Claimants and the Respondent shall each bear their own costs in relation to the Delay Damages claim;
13. Decides that the Claimants and the Respondent shall each bear their own costs in relation to the jurisdictional phase, Emergency Application and Request for a Confidentiality Order;
14. Decides that the Claimants and the Respondent shall each bear their own costs in relation to the Respondent's application to consolidate ICC Cases Nos. 20910 and 20911;
15. Decides that the Claimants shall bear their own costs as well as the Respondent's costs in relation to their Application to Add Tranche 2 to the Arbitration;
16. Consequently, orders the Claimants to pay, jointly and severally, to the Respondent the amount of USD 117,738.50;
17. Decides that the Claimants shall bear their own costs as well as the Respondent's costs in relation to their application to consolidate the present Arbitration with ICC Cases Nos. 22466 and 22967;
18. Consequently, orders the Claimants to pay, jointly and severally, to the Respondent the amount of USD 129,824.50;
19. Dismisses the Respondent's claim for reimbursement of its costs incurred in DAB Referrals 1, 10, 11, 13A and 14B;
20. Dismisses the Respondent's claim for reimbursement of USD 150,000 as "future costs";
21. Decides that the Claimants shall bear 30% of the Respondent's costs incurred for additional post-Partial Award work, including the preparation of updated cost submissions;
22. Consequently, order the Claimants to pay, jointly and severally, to the Respondent the amount of USD 57,972.38;
23. Dismisses the Respondent's request for reimbursement of its costs incurred in responding to the Claimants' Challenge Application as inadmissible;
24. Decides that the Claimants and the Respondent shall each bear 50% of the post-Partial Award arbitration costs (ICC advances and arbitrator fees), namely an amount of USD 105,000 each; and
25. Dismisses any and all other claims, counterclaims, and/or requests made by the Parties.