

COURT FILE NUMBER 2301-03179  
COURT COURT OF KING'S BENCH OF ALBERTA  
JUDICIAL CENTRE CALGARY

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF DYNAMIC TECHNOLOGIES GROUP INC., DYNAMIC ATTRACTIONS LTD., DYNAMIC ENTERTAINMENT GROUP LTD., DYNAMIC STRUCTURES LTD. and DYNAMIC ATTRACTIONS INC.

DOCUMENT **AFFIDAVIT**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

**MLT AIKINS LLP**  
Barristers and Solicitors  
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File No.: 0119375.00031

**SUPPLEMENTAL AFFIDAVIT OF ALLAN FRANCIS**  
**Sworn March 16 2023**

I, Allan Francis, of the City of Winnipeg, in the Province Manitoba, SWEAR AND SAY THAT:

1. I am the Corporate Secretary and Vice-President Corporate Affairs and Administration of Dynamic Technologies Group Inc. ("**DTG**") and as such I have personal knowledge of the matters deposed to in this Affidavit, except where stated to be based on information and belief, in which case I verily believe same to be true.
2. I am also the Corporate Secretary of Dynamic Attractions Ltd. ("**DAL**"), the Corporate Secretary and Treasurer of Dynamic Entertainment Group Ltd. ("**DEGL**"), the Corporate Secretary of Dynamic Attractions Inc. ("**DAI**"), the Corporate Secretary of Dynamic Structures Ltd. ("**DSL**"; together with DTG, DAL, DAI and DEGL, the "**Dynamic Group**" or the "**Applicants**").

3. All capitalized terms not otherwise defined herein shall have the same meaning as within my Affidavit sworn on March 8, 2023 (the "**First Affidavit**") and the Affidavit sworn on March 14, 2023 (the "**Second Affidavit**").

4. This Affidavit is supplemental to the Second Affidavit and is sworn to provide additional evidence on the matters referred to in the Brief of Law (the "**Brief**") dated March 15, 2023 served by Export Development Canada ("**EDC**") on Wednesday, March 15, 2023.

5. Unless otherwise indicated, monetary references in this affidavit are references to Canadian dollars.

#### **I. EDC SECURITY AND PRIORITY COLLATERAL**

6. The term "EDC Priority Collateral" as used in the Brief describes amounts that may become payable under an "Equipment and Supply and Installation Agreement". The Equipment and Supply Agreement (the "**Mission Ferrari Agreement**") is the contract to build the Mission Ferrari indoor roller coaster in Abu Dhabi for Theme Parks L.L.C. (the "**Owner**") Attached hereto and marked as Exhibit "1" is a copy of the Mission Ferrari Agreement.

7. The Applicants understand that there remains approximately USD\$1,000,000 to be paid under the Mission Ferrari Agreement by the Owner. However, there are significant back charges, direct vendor payments, and delay penalties owed by DAL to the client for the completion of Mission Ferrari Abu Dhabi project. Attached hereto and marked as Exhibit "2" is a copy of email correspondence from the Owner under the Mission Ferrari Agreement setting out its position on the amounts outstanding by DAL under the Mission Ferrari Agreement and indicating that DAL owes the Owner USD\$3,215,918.00.



THIS IS EXHIBIT "1" TO THE  
AFFIDAVIT OF ALLAN FRANCIS  
SWORN BEFORE ME AT CALGARY, ALBERTA  
This 16<sup>th</sup> day of March, 2023



A handwritten signature in blue ink, which appears to be "C. Nyberg", is written over a horizontal line.

A Notary Public in and for the Province of Alberta

**Christopher A. Nyberg**  
Barrister & Solicitor



DATED January 13 2013 *EA*

THEME PARKS L.L.C (1)

AND

DYNAMIC ATTRACTIONS LIMITED (2)

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**EQUIPMENT SUPPLY AND INSTALLATION AGREEMENT**

**RELATING TO THE "INDOOR ROLLER COASTER"- F10**

**PART OF THE PHASE 2 DEVELOPMENT AT  
FERRARI WORLD ABU DHABI,  
ABU DHABI, UNITED ARAB EMIRATES**

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FARAH LEISURE PARKS MANAGEMENT L.L.C.  
P.O. BOX 128717, ABU DHABI  
UNITED ARAB EMIRATES

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*EA*  
*Legal Dept.*

فرح لإدارة الحدائق الترفيهية ذ.م.م.
Legal Dept. - LB
Farah Leisure Parks Management L.L.C.

THIS EQUIPMENT SUPPLY AGREEMENT is dated the

13<sup>th</sup> day of *Jan* 2013 *gr*

BETWEEN:

**THEME PARKS L.L.C**, a company registered and incorporated in Abu Dhabi, and whose registered office address is situated at P.O. Box 128717, Abu Dhabi, United Arab Emirates ("Employer").

AND

**DYNAMIC ATTRACTIONS LIMITED** a company registered and incorporated in Canada, and whose registered office address is situated at 1932B Oak Bay Avenue, Victoria, BC Canada V8R 1C9 ("Vendor").

Each a "Party" and collectively referred to as the "Parties" to this Agreement.

WHEREAS:

- (A) The Employer is carrying out a refurbishment of the leisure facility known as Ferrari World Abu Dhabi, such refurbishment is known as the Phase 2 Development ("Phase 2").
- (B) The Vendor is in the business of designing, manufacturing, shipping, supplying, and delivering on site advisory services for the installation, testing and commission of certain equipment ("Works") as further defined below.
- (C) The Vendor is ready willing and able to provide the Works to the Employer, and the Employer has agreed to appoint the Vendor to carry out the Works on the terms and conditions set out in this Agreement.

THE PARTIES HEREBY AGREE as follows:-

## 1 Definitions and Interpretation

1.1 In this Agreement, unless the context otherwise requires the following words and expressions shall have the following meanings:

"Aconex Platform" means the web-based electronic document management system Aconex specified by the Employer for use for communication;

"Affiliate" means in relation to any legal entity, any holding company or subsidiary of that legal entity or any subsidiary of such holding company;

"Agreement" means this Agreement, the Schedules and the Appendices annexed, which together form one Agreement between the Parties, all of which may be amended from time to time in accordance with this Agreement;

"Amendments to Conditions of Contract" means the amendments set out in Schedule 10 of this Agreement (if any);

"Appendix" means the appendix attached to this Agreement.

"Authority" means all local, regional, territorial, free zone, municipal government, ministry, governmental department, commission, board, bureau, agency, instrumentality, executive, judicial or administrative body, having jurisdiction over the Works or the Project including any supranational authority with relevant competence, as well as any of their respective affiliates;

*gr*  
*gr*



**"Best Industry Practice"** means using standards, practices, methods, codes of practice and procedures conforming to the Law and exercising that degree of skill, care, diligence, prudence and foresight that would reasonably be expected from a large, reputable, professionally qualified, competent and skilled organization experienced in carrying out a similar type of undertaking to those comprised in the design, manufacture, supply, construction, installation and maintenance of similar equipment to the Equipment and seeking in good faith to comply with its contractual obligations and all duties owed by it;

**"Calendar Day"** means any day of the week;

**"Change Order"** means any addition, modification, reduction or omission in respect of the Works or any other term of this Agreement instructed or requested by Employer or Vendor in accordance with Clause 24;

**"Change Procedure"** means the variation procedure set out in Clause 24;

**"Code"** means the United Arab Emirates Federal Law No. 5 of 1985 regarding Civil Transactions Law;

**"Commencement Date"** means the 17<sup>th</sup> June 2013 as stated in Appendix 1 to this Agreement;

**"Confidential Information"** means any information which has been designated as confidential by either Party or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which relates to the business, affairs, properties, assets, trading practices, goods, services, developments, trade secrets, Intellectual Property Rights, know-how or personnel of either Party;

**"Consents"** means without limitation all permissions, consents, approvals, certificates, permits, licenses, agreements and authorizations (including those required by Law) needed to carry out the Works and any reference to "consent" shall mean written consent;

**"Defect Notice"** shall have the meaning given to it in Clause 32.2;

**"Defects Notification Period"** means the period of time stated in Appendix 1 to this Agreement;

**"Delay"** shall have the meaning given to it in clause 38.

**"Design Standard"** means the latest version of EN 13814 (*Standard Practice for Design of Amusement Rides and Devices*), as at the date of this Agreement, of the standard and code of practice for the design and construction of temporary structures, as prepared by the "Deutsches Institut für Normung E.V." organisation;

**"Dispute"** means any Dispute, difference, or unresolved claim between the Parties in connection with or arising from this Agreement to be dealt with in accordance with the Dispute Resolution Procedure set out in this Agreement;

**"Dispute Resolution Procedure"** means the procedure provided for in Clause 49 of this Agreement;

**"Dynamic Attractions Warranty"** means the Defects Notification Period referred to in Appendix 1 to this Agreement;

**"Effective Date"** means the date both Parties have signed this Agreement;

**"Employer Default"** shall have the meaning given to it in Clause 45;

**"Employer Notice of Change"** means a notice served by Employer pursuant to Clause 25.2;

**"Employer Policies"** means the policies included in Schedule 8 (*Employer Policies*);

**"Employer's Parties"** means any advisers appointed by the Employer or any of the Employer's employees, agents, contractors, consultants and sub-contractors of any tier and its or their directors, officers and employees (excluding the Vendor, or any Vendor Party);

**"Employer's Representative"** means the person or persons named in Appendix 1 to this Agreement and as may be appointed by Employer from time to time under this Agreement and notified to the Vendor;

**"Employer's Requirements"** means the requirements set out in Schedule 2 (*Employer's Requirements*);

**"Equipment"** means those parts of the Works to be designed, manufactured, shipped, supplied, delivered, constructed, installed, integrated, tested and/or commissioned pursuant to the Design Standard;

**"Force Majeure"** means one or more of the following events:

- (a) war, hostilities (whether war be declared or not), invasion, act of foreign enemies,
- (b) rebellion, terrorism, revolution, insurrection, military or usurped power, or civil war, within the United Arab Emirates,
- (c) riot, commotion or disorder within the United Arab Emirates by persons other than the Vendor, the Vendor Parties and other employees of the Vendor and Vendor Parties,
- (d) munitions of war, the presence of explosive materials, ionizing radiation or contamination by radio-activity, within the United Arab Emirates, except as may be attributable to the Vendor's use of such munitions, explosives, radiation or radio-activity,
- (e) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds, and
- (f) any operation of the forces of nature which is unforeseeable or against which an experienced Vendor could not reasonably have been expected to have taken adequate preventative precautions.

**"Health and Safety Guidelines"** means the health and safety guidelines produced by the Employer and attached as Schedule 9 to this Agreement.

**"Indemnified Liabilities"** means actions, claims (including third party claims) demands, proceedings, Losses, damages, liabilities, costs and expenses (including legal and other professional charges and expenses);

**"Indemnified Parties"** shall have the meaning given to it in Clause 36.1;

**"Indirect Loss"** means any damage, cost, third party claim, expense or loss incurred by a Party to this Agreement or a Theme Park LLC Party (or an Indemnified Party) as a consequence of a breach of this Agreement or a negligent act or omission which relates to consequential or indirect loss of profits, or loss of revenue, loss of use, loss of production or output, interruption or loss of business or business opportunity or other consequential or indirect loss, loss of contract, loss of goodwill and whether or not the Party committing the breach knew, or ought to have known, that such indirect or consequential loss would be likely to be suffered as a consequence of such breach;

**"Information"** means all and any materials, documents, drawings, plans or other information in paper, electronic or any other form, relating in any way to this Agreement and made available to the Vendor by Employer and/or any of their respective members, officers, agents and/or advisers



in connection with this Agreement or during the procurement competition relating to this Agreement or thereafter;

**"Insolvency Event"** means any of the following events:

- (a) the Vendor is unable to pay its debts as they fall due or is insolvent or admits (in writing) its inability to pay its debts as they fall due;
- (b) the Vendor ceases business or announces an intention to do so;
- (c) the following are entered into:
  - (i) a voluntary arrangement (other than a solvent one) for a composition of debts of the Vendor; or
  - (ii) a material composition or arrangement other than a solvent one with the Vendor's creditors;
- (d) either of the following:
  - (i) the winding-up of the Vendor (including passing a shareholders' resolution or the presentation of a petition by the Vendor for the purpose of winding up the Vendor); or
  - (ii) the administration of the Vendor (including where an application is made by the Vendor for, or petition is presented by the Vendor for, or any meeting of its directors or members resolves to make an application for, an administration order);
- (e) an order for the winding-up or administration of the Vendor is made;
- (f) any liquidator, judicial custodian, receiver, administrative receiver, administrator or the like is appointed in respect of the Vendor or any material part of the Vendor's assets;

**"Insuring Party"** means the Party to this Agreement whose obligation it is pursuant to the table of insurance set out in Appendix 2 to this Agreement, and attached hereto and as a condition precedent hereto, to procure, implement and maintain through the relevant periods as approved by the Employer, (such approval not to be unreasonably withheld), the various insurance policy or policies described therein.

**"Intellectual Property Rights"** or **"IPR"** means any rights in or to any patent, design right, utility model, trade mark, brand name, service mark, trade name, business name, logo, invention (whether registered or unregistered), domain name, semi-conductor right, topography right, software designs and/or other materials, source code, copyright, moral right, know-how or rights in databases and any other rights in respect of any industrial or intellectual property, whether capable of being registered or not, including all rights to apply for any of the foregoing rights or for an extension, revival or renewal of any of the foregoing rights and any similar or analogous rights to any of the above;

**"Key Personnel"** means those persons listed in Schedule 5 (Key Personnel);

**"Law"** means:

- (a) all legislation (whether supranational, federal or local), including the Code, decrees, resolutions, acts, statutes, ordinances, rules, regulations, directives and other orders, treaties, by-laws, and other subordinate legislation, of any Authority;
- (b) codes of practice of any Authority or which are customarily used in the Emirate of Abu Dhabi;

- (c) the requirements, rules and regulations of any Authority; and
- (d) the guidelines of the Emirate of Abu Dhabi, the United Arab Emirates and of all relevant Authorities.

"**Liquidated Damages**" means the liquidated damages payable pursuant to Clause 36 (as the context requires).

"**Letter of Award- LOA**" means the LOA entered into between the Parties and dated 17<sup>th</sup> June 2013.

"**Letter of Award Extension**" means the extension to the LOA made between the Parties and dated 5<sup>th</sup> September 2013, increasing the capped amounts awarded to the Vendor by the Employer under the LOA.

"**Losses**" means all damages, Losses, liabilities, costs, expenses and charges whether arising under statute, contract or at common law or in connection with judgments, proceedings, internal costs or demands;

"**Milestone**" means the output to be achieved before payment of a Milestone Payment is made as set out in the Milestone Payment Schedule;

"**Milestone Payment**" means the payment to be made against the achievement of a Milestone for an amount set out in the Milestone Payment Schedule;

"**Milestone Payment Schedule**" means the schedule of Milestones and Milestone Payments set out at Schedule 4 (**Price, Payment and Milestone Payment Schedule**) together with any penalty for non-compliance of the Milestone

"**Operator**" means Farah Leisure Parks Management L.L.C. or such other person or persons stated as may be appointed by Theme Parks LLC from time to time to operate the completed Works and the Project;

"**Payment Certificate**" shall have the meaning ascribed to it in Clause 33.3;

"**Parent Company Guarantee**" means the guarantee offered by the parent company of the Vendor to the Employer guaranteeing the obligations of the Vendor under this Agreement, the original of which shall be provided by the Vendor to the Employer on the signing of this Agreement, and the form of which is as per Appendix 3 to this Agreement;

"**Performance Security**" means the performance bond issued by a first class financial institution in the form set out in Schedule 6 (**Performance Security and Novation Agreement**) and referred to in clause 34 of the Agreement;

"**Performance Certificate**" means the certificate to be issued by Employer in accordance with Clause 32 in the form set out in Schedule 7 (**Certificates**);

"**Permitted Change**" means a Change Order requested by either Party pursuant to clause 25 and/or a change proposed by the Vendor pursuant to clause 25 which has been authorized to proceed in accordance with the provisions of this Agreement;

"**Product Warranties**" means those warranties which will be separate or in addition to the Dynamic Attractions Warranty, and which are available from any and all manufacturers of any part or parts of the Works, which if not issued in the name of the Employer, shall be assigned to the Employer by the Vendor in accordance with Schedule 2 (if any);

**"Programme"** means the programme for the Works set out in Schedule 3 (**Programme**) as the same may be amended from time to time in accordance with the terms of this Agreement;

**"Project"** means the project to design, construct and install the ride to be known as the **"Indoor Roller Coaster – F10"** within Ferrari World Abu Dhabi on Yas Island in Abu Dhabi, United Arab Emirates;

**"Project IPR"** means all Intellectual Property Rights created in the performance of the Works;

**"Rectification Period"** shall have the meaning given to it in Clause 32.3 (b);

**"Rectification Plan"** shall have the meaning given to it in Clause 32.3 (b);

**"Required Standards"** means the standards and codes with which the Vendor must comply with, as set out in Schedule 1 (**Scope of Works**) and Schedule 2 (**Employer's Requirements**);

**"Scheduled Opening Date"** means 30 October 2014 or the date assigned by the Employer prior to novating this Agreement pursuant to clause 54 hereof;

**"Security Interests"** means any mortgage, pledge, lien, security interest or other charge or encumbrance or any other agreement or arrangement having substantially the same economic effect;

**"Site"** means the site known as Ferrari World Abu Dhabi Theme Park on Yas Island, Abu Dhabi, United Arab Emirates;

**"Spare Parts"** means the spare parts referred to and set out in Schedule 1 (**Scope of Works**);

**"Sub-Contractor"** means any sub-contractor, sub-consultant, supplier, specialist and/or other party appointed in accordance with Clause 54 or otherwise approved by Employer, and Sub-Contract is to be interpreted accordingly;

**"Taking Over Certificate"** means the certificate to be issued by Employer in accordance with Clause 31 in the form set out in Schedule 7 (**Certificates**), such issuance not to be unreasonably withheld;

**"Termination Date"** means any date of termination of this Agreement in accordance with its terms or operation of the Law;

**"Time for Completion of the Works"** means the time for completion set out in Appendix 1 to this Agreement as may be adjusted from time to time in accordance with this Agreement;

**"Total Fee"** means the sum of United States Dollars Sixteen Million Eight Hundred and Seventy One and Fifty Six Dollars (US\$16,871,056), to include any agreed adjustments, and such fee to be paid in accordance with the Milestone Payments referred to in Schedule 4 of this Agreement excluding all shipping and transportation costs;

**"TUV"** means third party review association as chosen by the Employer that certifies that the design, manufacturing, installation and operation of the system comply with the current European Standard (EN 13814) and its referenced specifications;

**"Vendor Default"** shall have the meaning given to it in Clause 43.1;

**"Vendor IPR"** means:

(a) all Intellectual Property Rights (including Intellectual Property Rights in relation to the

- Vendor's software) which the Vendor can demonstrate by documentary evidence were already existing and owned by, or licensed to, the Vendor prior to the Commencement Date including, without limitation, any control programming system operated by the Vendor which is not comprised within the Project IPR; and
- (b) any modifications or developments of any of the Intellectual Property Rights referred to in paragraph (a) above which are generic in nature;

**"Vendor Party"** means any of the vendors, agents, Sub-Contractors, professional advisors or consultants engaged by the Vendor to perform, facilitate or assist with the performance of any of the Works and any of its or their Sub-Contractors of any tier and its or their directors, officers, employees and workmen in relation to the Project and **"Vendor Parties"** shall be construed accordingly;

**"Vendor's Representative"** means the Vendor's authorised representative as stated in Appendix 1 to this Agreement, or such other person to be appointed as Vendor's Representative under Clause 17;

**"Works"** means the design, manufacture, shipping, supply, delivery, on site advisory services for installation, testing and commissioning of the Equipment as more fully described in Schedule 1.

1.2 In this Agreement, except where the context otherwise requires:

- (a) words importing gender include masculine, feminine and neuter;
- (b) the singular includes the plural and vice versa;
- (c) a reference to any part, Clause, sub-Clause, Schedule or Appendix is, except where it is expressly stated to the contrary, a reference to such part, Clause or sub-Clause of or Schedule or Appendix to this Agreement;
- (d) a reference in any Schedule or Appendix to any part, paragraph or sub-paragraph is, except where it is expressly stated to the contrary, a reference to such part, paragraph or sub-paragraph of that Schedule or Appendix (as the case may be);
- (e) any reference to this Agreement or to any other document shall include any variation, amendment, or supplement to this Agreement or such other document expressly permitted under the terms of this Agreement;
- (f) a reference to a person includes individuals, firms, partnerships, bodies corporate, joint ventures, government departments and any organization capable of suing or being sued and references to any of the same include the others and their successors and permitted assignees and permitted transferees;
- (g) headings and the contents list are for convenience of reference only and do not affect the interpretation of this Agreement; and
- (h) the word "including" means "including without limitation".
- (i) This Agreement shall be interpreted and construed as a whole provided that in the event of any inconsistency in or conflict between the main body of this Agreement and/or the Schedules, then the Employer shall be entitled to determine the order of priority.

## 2. Appointment of Vendor

2.1 The Employer hereby appoints the Vendor to carry out the Works in the Time for Completion of the Works, unless terminated earlier under this Agreement or extended by the Parties pursuant to

clause 4.3 below, and the Vendor hereby agrees to perform the Works in accordance with the terms and conditions set out in this Agreement and the Best Industry Practice.

2.2 In consideration of the payments to be made by the Employer to the Vendor under the terms of the Agreement, the Vendor hereby covenants with the Employer to execute and complete the Works and remedy any defects in the Works to the reasonable satisfaction of the Employer, and comply with all the obligations of the Vendor set out in this Agreement.

### 3. Effective Date

3.1 The obligations of the parties under this Agreement shall commence on the Effective Date.

3.2 Any Works carried out and any money paid to the Vendor prior to the Effective Date are deemed to have been carried out and paid under this Agreement.

### 4. Time for Completion of the Works

4.1 The Vendor shall carry out the Works from the Commencement Date in the Time for Completion of the Works as defined in Appendix 1.

4.2 Time for completion of each Milestone calculated from the Commencement Date is set out in the Table of Milestones.

4.3 The Parties may extend the Time for Completion of the Works by mutual agreement in writing, but not without the Vendor incurring Liquidated Damages as referred to in clause 36.6. and set out in the Appendix.

### 5. General Obligations on the Part of the Vendor

5.1 Without prejudice to any other provision of this Agreement, the Vendor warrants to the Employer that in carrying out and completing the Works it has exercised and shall continue to exercise the level of professional skill, care and diligence to be expected of a properly qualified and competent professional vendor experienced in carrying out works and services of a similar nature to the Works in connection with international world-class projects of a similar scope and complexity. The Vendor acknowledges that Employer will rely upon the skill, care and diligence of the Vendor in connection with all matters for which the Vendor is responsible under this Agreement.

5.2 The Vendor shall carry out the Works and design, manufacture, ship, supply, deliver, provide on-site advisory services on the installation, test and commission and provide on-site advisory services of the Equipment, and otherwise perform its obligations under this Agreement to the best of its ability in line with Best Industry Practice at all times.

5.3 The Vendor shall carry out the Works:

- (a) in accordance with the Agreement;
- (b) in compliance with the Employer's Requirements;
- (c) in accordance with the Programme;
- (d) so as to ensure that all parts, components, systems, devices, software and mechanisms incorporated in the Works and the Equipment are fit for purpose;
- (e) in compliance with all applicable Laws and Consents whereas in case of discrepancies and or conflicts the Design Standard shall prevail;

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- (f) in a manner which does not infringe the Intellectual Property Rights of any third party;
  - (g) in a manner, as appropriate, which does not infringe the instructions issued to it by Employer or its authorized representatives or assignees;
  - (h) so that in relation to the Works and each item of Equipment, that they meet the Required Standards;
  - (i) so that all workmanship and materials are fit for purpose;
  - (j) so as to ensure that it obtains all Consents;
  - (k) in accordance with the Law;
  - (l) not take any action that would have a material adverse effect on the business, goodwill or reputation of the Employer;
  - (m) during all normal working hours applicable to the Site, as set out in Appendix 1 to this Agreement;
  - (n) in a manner that is not injurious to persons or property; and
  - (o) using mainly the Key Personnel.
  - (p) provide such support, assistance and co-operation as can reasonably be expected within the scope of the Works to Employer's Parties and Employer in relation to the Project as Employer may request from time to time;
  - (q) keep Employer's Representative fully informed of all relevant developments in relation to the design, manufacturing, shipping, supply, delivery, installing, testing and commissioning of the Equipment in a timely manner; and
  - (r) maintain the Works and the Equipment until the issuance of the Taking Over Certificate.
- 5.4 The Vendor undertakes that the Works and the Equipment and any materials supplied shall meet the Design Standard.
- 5.5 The Vendor shall promptly provide such information, assistance and expertise as any of the Employer Parties and Employer may request to meet their respective obligations in respect of the Project.
- 5.6 The commencement or continuance of any proceedings pursuant to the Dispute Resolution Procedure shall not:
- (a) relieve the Vendor from performing its obligations; or
  - (b) suspend in whole or in part the Vendor's obligations, under or in relation to this Agreement.
- 5.7 The Vendor shall at all times keep itself fully informed about current professional and technical standards and about all matters relating to, or which might have a bearing on, the carrying out of the Works.
- 5.8 The Vendor is deemed to have satisfied itself that it fully understands the scope and extent of the requirements in respect of its obligations pursuant to this Agreement, and that it has sufficient information or that it will on the Commencement Date, have sufficient information to enable it to

*Handwritten signatures*



carry out its obligations pursuant to this Agreement. In connection with such information the Vendor is deemed to have satisfied itself that it has or will have satisfied itself that it is accurate and complete before placing reliance upon it.

- 5.9 The Vendor shall ensure that the execution of the Works and the completed Works shall comply with all local Law and all applicable United Arab Emirates' and the Emirate of Abu Dhabi's specifications, technical standards, codes of practice and regulations applicable to the Works and any product being produced from the Works, and the standards specified in this Agreement.
- 5.10 The Vendor shall be granted access to the Site during normal working hours for the performance of the Works and acknowledges that such access will be non-exclusive.

## **6. Liaison Between Vendor and Employer**

- 6.1 Whenever reasonable the Vendor shall (and shall procure that the Vendor Parties) liaise with the Employer, any Employer Party, the Operator and any other parties as may be required by the Employer to facilitate the timely production, by such persons, of any Information required from them, in order that the carrying out of the Works and its other obligations under this Agreement can be progressed according to the Programme. The Vendor shall (and shall procure that the Vendor Parties) liaise with Employer any Employer Party, the Operator, and any other parties as may be required as often as is necessary in order to ensure that the Works are carried out properly and in accordance with the terms of this Agreement.
- 6.2 The Vendor shall (and shall procure that the Vendor Parties shall) liaise with the Employer, any Employer Party, the Operator and any other parties as may be reasonably required by Employer and shall provide such information as may be requested by such persons in relation to the design, manufacturing, shipping, supply, delivery, installing, construction, testing, commissioning, integration, operation and maintenance of the Equipment.

## **7. Prohibited Materials**

- 7.1 The Vendor undertakes and warrants to the Employer that it will promptly notify the Employer in writing if he becomes aware, or has reason to suspect or believe that any lead, lead paint or any material containing lead which may be ingested, inhaled or absorbed except where copper alloy fittings containing lead are specifically required in drinking water pipe work or by any relevant statutory requirements has been or will be used in connection with the Works. The Vendor shall resolve the discrepancy and the responsibility for any related costs shall be mutually agreed between the Parties at the time.
- 7.2 The Vendor further undertakes and warrants that no asbestos will be used in any part of the Works whatsoever, and that no asbestos is or will be present in any of the Works.

## **8. Discrepancies in Documentation**

The Vendor confirms that it has studied in detail the Agreement and has satisfied itself that no discrepancies or errors exist within the Agreement and it has satisfied itself as to the veracity, accuracy, reasonableness, scope, materiality, currency (where applicable) and completeness of the Agreement. The Vendor acknowledges that it accepts all risks arising from any discrepancies, errors or omissions that are subsequently found within or between its own documents and that it shall not be entitled to make any claim against the Employer for an extension of time, additional payment, any relief or otherwise in respect of any such errors, discrepancies or omissions. Where there is such discrepancy or error, the Vendor shall as soon as reasonably practicable, and in any event within 5 Calendar Days of discovery, provide the Employer with proposals for resolving such discrepancy or error which comply with this Agreement.

**9. Product Warranties**

9.1 Before the date of issue of the Taking Over Certificate, the Vendor shall deliver the Product Warranties to the Employer.

9.2 If any Product Warranties have been issued to the Vendor, the Vendor will ensure that such Product Warranties, will be transferred/assigned into the name of the Employer, or such other associated company as requested and confirmed by the Employer to the Vendor on completion of the Works. The Vendor hereby agrees to do all things necessary and enter into all documents necessary to ensure that the benefit of the Product Warranties are transferred/assigned to the Employer.

**10. Code of Business Conduct**

The Vendor acknowledges that it has:

- (a) read and that it understands the Employer's Code of Business Conduct which is set out in Schedule 8 (**Employer's Policies**), and
- (b) signed a copy of the Statement of Compliance within the Employer's Code of Business Conduct which is set out in Schedule 8 (**Employer's Policies**) and will abide by the Code of Business Conduct until issue of the Performance Certificate.

**11. Working Hours**

11.1 No Works shall be carried out on Site on locally recognized days of rest, or outside the normal working hours stated in Appendix 1, unless otherwise stated in the Agreement or if the Employer so requests or the work is unavoidable, or necessary for the protection of life or property or for the safety of the Works, in which case the Vendor shall immediately advise the Employer.

11.2 In the event that any of the Employer's staff, personnel, contractors or consultants is required by Vendor to supervise the Vendor's operations in excess of the normal working hours stipulated in Appendix 1, or on Fridays or declared public holidays in the Emirate of Abu Dhabi, the supervision by the Employer's Representative of such out of hours working shall be agreed in advance between the Employer's Representative and the Vendor's Representative and approved by the Employer.

**12. Project Partnering**

12.1 The Parties agree to work in mutual co-operation to fulfill their agreed roles and responsibilities.

12.2 The Employer and the Vendor shall procure that each Employer Party and each Vendor Party (as appropriate) shall work in accordance with the principles set out in Clause 12.1.

12.3 The Parties shall at their own cost:

- (a) use reasonable endeavors to avoid unnecessary complaints, Disputes and claims against or with each other;
- (b) comply with the provisions of the Dispute Resolution Procedure set out in this Agreement in relation to any such complaints, Disputes and claims with or against the Employer;
- (c) take all necessary steps to mitigate any Losses and liabilities of the other Party; and
- (d) take all reasonable steps to manage, minimize and mitigate all costs.

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- 12.4 Senior representatives of the Parties shall meet on a monthly basis (or as may be otherwise required by the Parties) to review:
- (a) any matter which has adversely affected or may adversely affect:
    - (i) the completion of the Works;
    - (ii) the performance and presentation of the Works and or the Project;
    - (iii) the functioning of the Works and or the Project; and/or
    - (iv) the ability of each Party to perform its obligations in terms of this Agreement.
- 12.5 Either Party may propose measures to address the matters set out in Clause 12.4.(a) and a determination of what measures (if any) should be undertaken by the Vendor and/or Employer to address such matters shall be considered in accordance with and subject to each Party's existing rights, obligations and the existing contractual mechanisms under this Agreement.
- 12.6. The Vendor shall procure the attendance of any of the relevant Vendor Parties at the meetings described in Clause 12.4.
- 12.7 The Vendor shall comply with the requirements of the Co-operation Protocol set out in Schedule 8 (**Employer Policies**). Whenever crucial the Vendor shall ensure that all his Sub-Contractors, sub-sub-contractors and key suppliers are bound by the requirements of the Co-operation Protocol and shall include a copy of the Co-operation Protocol in each contract made by all such Sub-Contractors, sub-sub-contractors and suppliers. The Vendor shall ensure that all such Sub-Contractors, sub-sub-Contractors and suppliers abide by the terms of the Co-operation Protocol.
- 12.8 The Vendor shall submit documentary evidence with every notice of a claim to the Employer under this Agreement.
- 13. Support for System Integration**
- 13.1 The Vendor shall cooperate with the Employer (in any way as Employer may reasonably request) in ensuring that the following key elements of the system integration of the Works with the Project by and under the responsibility of the Employer are implemented, including:
- (a) management of interfaces by and with Employer Parties and the equipment supplied and installed and works performed by other vendors and suppliers;
  - (b) alignment of operations and maintenance procedures with those of the Project to ensure they form a whole and safe system of work;
  - (c) cooperation over system activation; and
  - (d) safety assurances.
- 13.2 The Vendor shall cooperate with the Employer in ensuring that the Works are fully integrated with the rest of the Project and the works of all Employer Parties.
- 13.3 The Vendor shall cooperate with the Employer for system integration activities described in the Employer's Requirements.
- 13.4 The Vendor shall liaise with the Operator and Employer in relation to system operation and maintenance issues.

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- 13.5 The Vendor shall cooperate with the Employer in ensuring that all elements of the design (which are relevant to the carrying out of the Works), and which are relative to the Project are compatible with the system integration of the Project and the Vendor shall make qualified personnel available to support effective system integration as requested by the Employer.
- 13.6 System integration support in this Clause 13 includes the following as part of the Total Fee:-
- (a) Foundation layout and erection supervision: maximum of 120 man days on site.
  - (b) Testing and commissioning supervision: a total of 135 man days on site.

Any additional system integration support requested by the Employer will be provided by the Vendor at the Vendor's standard rates.

#### 14. INTERACTION WITH THE OPERATOR

- 14.1 The Vendor shall take account of any comments made by the Employer in relation to operational issues. The Vendor shall comment on functional and maintainability issues to the Employer during the design and construction process. These comments shall be delivered to the Operator and the Employer.
- 14.2 The Vendor acknowledges that the Operator and or the Employer shall be responsible for the operation and maintenance of the Project and the Works and in relation to such operation and maintenance, the Vendor shall at all times liaise with the Operator and or Employer in relation to the carrying out of the Works.
- 14.4 The Vendor shall work together with Employer, Employer Parties and the Operator with the continual objective that the Works be delivered in accordance with the Employer's Requirements.
- 14.5 The Vendor:
- (a) shall co-operate with the Employer, Employer Parties and the Operator in relation to the planning and execution of the Works; and
  - (b) shall co-operate with the Operator and or the Employer where relevant to the Vendor's scope of Works.
- 14.6 The Vendor shall develop and implement a safety management system which shall address without limitation:
- (a) Vendor staff competency;
  - (b) training on relevant safety related issues;
  - (c) relevant Design Standard safety procedures;
  - (d) relevant Design Standard record keeping and audit; and
  - (e) relevant Design Standard certification of materials and equipment.
- 14.7 Employer and the Operator shall be entitled to review the safety management system (and its implementation) at any time upon notice which is appropriate in the circumstances and in any case within no more than 3 days' notice. For the avoidance of doubt, the Employer and the Operator shall be entitled to immediate access of the safety management system and the Site upon the occurrence of an incident which potentially involves the safe functioning of the Works and/or the Equipment on the Project.
- 14.8 It shall be the responsibility of the Vendor to undertake and complete verification for Vendor's scope of supply according to Schedule 1, as per Vendor's procedure, of the safety and service

readiness of the Equipment prior to use, testing and commissioning and to certify this status to the Employer and to the Operator by a properly trained and skilled member of the Vendor's Key Personnel in the relevant field, in an agreed form.

- 14.9 The Vendor shall liaise effectively with Employer and the Operator in co-ordination of the relevant Design Standard health and safety issues on the Project and ensure that the Health and Safety Guidelines of the Employer, the Operator and the Law are properly adhered throughout the Project.
- 14.10 Following the issue of the Taking Over Certificate for the Works, the day-to-day operation of the Project shall be the responsibility of the Operator. For the purpose of operating and maintaining the Project and to enable the efficient operation of the Project, the Vendor shall provide technical advice to the Employer and the Operator regarding the operational deployment and integration of the various components of the Works and Equipment and any other information regarding their design, standards, integration, operation and maintenance which the Operator and/or Employer may request. The Vendor shall also provide operation and maintenance manuals in sufficient detail to allow for the Employer and the Operator to operate, maintain, dismantle, reassemble, adjust and repair the Works.
- 14.11 The Vendor shall at all times provide to the Operator and Employer such access to the Site, and the places where the Works are being performed, during the performance of the Works as may be required by them.
- 14.12 The Vendor agrees that it will co-operate with the Operator and Employer and plan to avoid any interference with mobilization by the Operator.
- 14.13 The Vendor shall ensure that at all times it works closely and effectively with the Operator in the performance of both the Operator and the Vendor's obligations in respect of testing and commissioning as set out in Schedule 2 (**Employer's Requirements**).
- 14.14 The Vendor shall work collaboratively with the Operator and Employer at all times in order to:
- (a) maximize productivity during the Works and minimize disruption to the public and all third parties;
  - (b) ensure the effective discharge of the Vendor's obligation to support system integration in accordance with Clause 13;
  - (c) minimize and give best advance notice to one another and to Employer of any interruption to Works caused by any Vendor Default, maintenance (planned or unplanned) or third party incident;
  - (d) safeguard proper performance of the Works and all obligations under this Agreement; and
  - (e) mutually support adherence to the Programme and all related timelines and programmes and to share with Employer and the Operator on a systematic basis key information connected with such adherence.
- 14.15 The Vendor shall at all times seek to minimize any nuisance or inconvenience to or interference with the business or operations of the owners, tenants or occupiers of premises in the locality of the Project.
- 15. General Warranties**
- 15.1 The Parties represent and warrant to each other that all factual information in relation to the Works which has been given by the Vendor or the Employer or any of their respective officers, employees, agents or Affiliates was when given and remains as at the Effective Date, true and accurate in all material respects and all projections, estimates and statements of belief have been

prepared with due care and attention and there is no fact or matter known to either the Vendor or the Employer not already disclosed in writing to the other Party which renders any such information untrue, inaccurate or misleading or might, if disclosed, adversely affect the decision of anyone considering whether or not to contract with such Party;

15.2 The Vendor warrants that it:-

- (a) has full power and authority to enter into and perform this Agreement which constitutes a binding obligation on the Vendor in accordance with its terms;
- (b) will not, by performing its obligations under this Agreement, be in breach of any undertaking, agreement or legal obligation of any nature in respect of any third party or of any applicable Law so as to have a material adverse effect on its ability to discharge its obligations under this Agreement;
- (c) the Vendor currently is not involved in any Dispute with any fiscal or regulatory authority in any jurisdiction concerning any matter which could affect the business of the Vendor or its ability to perform the Works in any way;
- (d) all documents, equipment, plant, goods and materials produced or provided by the Vendor in relation to this Agreement do not involve the use of any designs, materials, know how, trademark, business names, or processes which represent or would represent a breach of any Intellectual Property Rights belonging to any third party, or a breach of any duties of confidentiality owed to any third party, or otherwise infringes the legal rights of any third party;
- (e) no act has been committed or event or circumstance occurred in respect of the Vendor which constitutes a Vendor Default as at the Commencement Date and no circumstances are known which make it likely that such a Vendor Default will occur during the performance of the Works;
- (f) as at the date of this Agreement no litigation, arbitration or proceedings are in progress or, to the best of the knowledge and belief of the Vendor, are pending or threatened, against it or any of its assets which might have an adverse effect on the ability of the Vendor to observe and perform the Works;
- (g) the performance of the Works does not create any situation in which a conflict of interest arises for the Vendor; and
- (h) the Vendor does not use any processes and is not engaged in any activities which involve the misuse of any confidential or proprietary information belonging to any third party.
- (i) The Vendor hereby undertakes with Employer that it will as soon as reasonably practicable (and in any event within 7 Calendar Days) disclose in writing to the Employer any event or circumstance which may arise or become known to it after the Effective Date which is inconsistent with any of the warranties or representations set out in this Clause 15 or which has or is likely to have an adverse effect on the Works or the Project.

16. Employer's Representative

16.1 The Employer's Representative shall:

- (a) exercise the functions and powers of the Employer in relation to the Project which are identified in this Agreement as functions and powers that are to be carried out by the Employer's Representative;

- (b) exercise such other functions and powers of Employer under this Agreement as Employer may notify in writing to the Vendor from time to time; and
- (c) be the primary point of contact for the Vendor with Employer, and the Vendor shall observe, and shall procure that any Vendor Parties observe, all reasonable instructions of Employer and Employer's Representative. The Vendor shall not, and shall procure that any Vendor Parties shall not, act upon any instruction from any other party unless confirmed by Employer or Employer's Representative in writing. If the Vendor or any Vendor Parties shall receive any instructions from any other parties, the Vendor shall notify Employer or Employer's Representative immediately.
- 16.2 The Employer's Representative shall be entitled at any time, by notice in writing to the Vendor, to authorize any other persons to exercise the functions and powers of the Employer delegated to him, either generally or specifically. Until further notice from Employer, any act of any such person shall, for the purposes of this Agreement, constitute an act of Employer's Representative and all references to "Employer's Representative" in this Agreement shall be taken as references to such person so far as they concern matters within the scope of such person's authority.
- 16.3 Employer may by notice in writing to the Vendor change the identity of Employer's Representative. Such change shall have effect on the date specified in written notice.
- 16.4 No decision, act or omission of Employer, or Employer's Representative shall, except as otherwise expressly provided in this Agreement:
- (a) in any way relieve or absolve the Vendor from, modify, or act as a waiver or personal bar of, any liability, responsibility, obligation or duty under this Agreement;
- (b) in the absence of an express written instruction or authorization issued by Employer under Clause 24, constitute or authorize a variation; or
- (c) be construed as restricting or binding Employer in any way save with regard to the specific project matters to which it relates.
- 16.5 The Vendor shall be entitled to treat all instructions and directions of the Employer's Representative in respect of any functions and powers of the Employer which have been delegated to the Employer's Representative in accordance with Clause 16.1 as those of Employer. The Vendor shall, as soon as reasonably practicable, bring to the attention of the Employer any instructions or directions that are given to the Vendor that are ambiguous or in conflict or inconsistent, and the Employer will verify such instructions.
- 16.6 If for any reason the Employer's Representative considers it necessary to give any instructions or directions orally, then, where the Employer does not confirm such instruction or direction in writing within fourteen Calendar Days, the Vendor shall have no obligation to follow such oral instruction or direction.

## 17. Vendor's Representative

- 17.1 The Vendor shall appoint a Vendor's Representative who shall:
- (a) act as the principal point of contact for the Employer, and the Employer's Representative in relation to all matters related to this Agreement;
- (b) have full authority to act on behalf of the Vendor for all purposes of this Agreement, and the Employer and the Employer's Representative shall be entitled to treat all instructions and directions of the Vendor Representative as those of the Vendor;

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- (c) manage and co-ordinate the provision of the Works by the Vendor (and any Vendor Party) and the integration of provision of the Works with the tasks being performed by the Employer's internal team and the other advisers appointed by the Employer; and
  - (d) liaise with Employer's Representative in relation to various matters including the scope of the Works to be carried out from time to time.
- 17.2 The Vendor may by written notice to the Employer change the identity of the Vendor's Representative. However, before the Vendor changes the Vendor's Representative, it must first obtain the Employer's prior written approval.
- 17.3 The Vendor shall also nominate a deputy to the Vendor's Representative who shall be able to carry out the functions of the Vendor's Representative, and who will provide cover for the Vendor's Representative as and when needed.
- 17.4 The Vendor shall, from the Commencement Date until the date of issue of the Performance Certificate or such other time as may be agreed between the Vendor and the Employer:-
- (a) comply with, and ensure that all of its contractors, consultants and subcontractors of any tier comply with, all directly applicable Law including Abu Dhabi Law Number 2 of 2009 (establishment of the Department of Economic Development) and will ensure that none of its activities under or related to this Agreement breach the same; and
  - (b) procure that the Vendor's Representative shall be present in Abu Dhabi if reasonably required.
- 17.5 Compliance with Clause 17.4 is a condition precedent to the receipt of any payment by the Vendor under this Agreement.

## **18. Meetings**

- 18.1 The Vendor and Employer shall procure that the Vendor's Representative and Employer's Representative (respectively) attend, or be available by teleconference if agreed to by the Employer, progress meetings as required by the Employer at Employer's premises or at the Vendor's premises (unless agreed otherwise in writing), with Employer any Employer Party, and/or any person authorized by the Vendor's Representative or Employer's Representative in writing to review progress in relation to the Works or any other matter.
- 18.2 The Vendor shall attend and shall procure that the Vendor's Representative, any Key Personnel and/or Vendor Parties attend relevant meetings called by Employer, Employer's Representative, any Employer Party or any other party.

## **19. Work to be to the Satisfaction of the Employer**

- 19.1 The Vendor shall complete the Works in strict accordance with this Agreement
- 19.2 All of the materials, Equipment and labour to be provided by the Vendor and the mode, manner and speed of the Works are to be in accordance with this Agreement, however in case of any conflict between this Agreement and the Design Standard, the Design Standard shall prevail.

## **20. Errors and Omissions in the Works**

- 20.1 The Employer has the right to inspect the Works during manufacturing and prior to delivery, and the Employer shall give the Vendor at least seven (7) days' Notice of its intention to inspect the Works. If during the carrying out of the Works and/or where the Vendor has completed the



Works, Employer becomes aware of any error or omission or breach in the carrying out of the Works or of any other breach of this Agreement, Employer shall notify the Vendor, who shall, at its own expense and in liaison with Employer, as promptly as possible rectify any error or omission or breach and the Employer shall grant him the right to do so, or, where this is agreed by the Employer to be impracticable or undesirable, take such other agreed steps to address the error or omission.

20.2 These arrangements shall in no respect diminish the Employer's ability to recover from the Vendor for Losses incurred by the Employer consequent upon the error or omission or breach in question.

20.3 If and to the extent that the Vendor fails to carry out the necessary rectification and/or other agreed steps in accordance with Clause 20.1 within a reasonable period of time, the Employer shall be entitled to carry out such rectification if mutually agreed by the parties. Such rectification shall be at the Vendor's sole expense and the Employer shall be entitled to set off any costs incurred against any amounts due to the Vendor under this Agreement or recover any costs from the Vendor as a debt.

## 21. Testing and Commissioning Inspections

21.1 The Employer's Representative or anyone authorized by it to act on its behalf shall be entitled to attend and witness any and all inspections and/or tests carried out pursuant to this Agreement. Notice to this effect shall be given at least seven (7) working days prior to such inspection.

21.2 The Vendor's Representative, Employer's Representative and Employer shall work together and keep each other informed as to any key Milestone Events or inspections that are to take place, giving the Employer's Representative and Employer sufficient notice to attend any such inspection should the Employer's Representative and/ or Employer wish to do so.

21.3 The Vendor shall procure that the Employer's Representative or anyone authorized by it to act on its behalf, Employer and Employer's Representative shall have such access as is necessary at all times during normal working hours to the sites where the works are to be delivered, tested, constructed, installed or assembled.

21.4 The Vendor shall, where it has access to the Site and any site and/or premises in relation to this Agreement which are not controlled or owned by it comply with all rules and regulations notified to it by the owner or occupier of such areas or otherwise applicable to it in relation to it accessing and using such areas.

## 22. Personnel

22.1 The Vendor shall ensure that the Key Personnel are appointed on or prior to the Commencement Date. The Vendor shall obtain the prior written consent of the Employer's Representative before removing or replacing any Key Personnel at any time from the Commencement Date up to the date of the issue of the final Taking Over Certificate in respect of the Works.

22.2 The Vendor acknowledges that the Key Personnel are essential to the proper performance of the Vendor's obligations under this Agreement. The Vendor shall ensure that the role of any Key Personnel is not vacant for any longer than 10 consecutive Calendar Days and shall replace any Key Personnel who leave its employment with employees with similar levels of training expertise and experience.

22.3 If requested by the Employer, the Vendor shall make available to the Employer, personnel of appropriate competence, expertise and qualifications (employed either by the Vendor or any relevant Sub-Contractor) for the purposes of dealing with matters referred to in this Agreement. In

particular the duties of such personnel shall include, but shall not be limited to:

- (a) attending meetings called in accordance with Clause 18; and
- (b) providing reports, information, advice and/or assistance in relation to matters referred to in this Agreement, including prior to and/or following any such meeting.

- 22.4 Within commercially reasonable limits (to include timing, and where applicable, delivery of services and/or parts required), and as agreed between the Parties, the Vendor shall until the expiry of the Defects Notification Period, render to the Employer and any Employer Party such technical assistance and advice in relation to the Works and Equipment as such parties may at any time require. Following expiry of the Defects Notification Period, the Vendor shall provide such technical assistance and advice as requested by the Employer at a reasonable charge.
- 22.5 The Vendor shall procure that it and its Key Personnel, staff employed in the performance of the Works, and the Vendor Parties comply with all Laws, regulatory requirements appropriate to and required for the performance of the Works and any rules, regulations and instructions from the Employer's Representative.
- 22.6 The Vendor shall employ or cause to be employed in and about the construction and completion of the Works and in the superintendence thereof, only persons who are careful, skilled and experienced in their several trades and callings. The Vendor shall ensure that its supervisors and operatives who are involved in carrying out the Works shall have appropriate certification, if relevant to the works they are performing.
- 22.7 Employer's Representative shall have the right to object to and require the Vendor to remove or cause to be removed from the site of the Works any person employed thereon who misconducts himself in the performance of his duties or fails to conform with any particular provisions with regard to safety which may be set out in this Agreement or persists in any conduct which is prejudicial to safety or health, and such persons shall not be again employed on the Works without the prior written agreement of the Employer's Representative.

### 23. Approvals and Consents

- 23.1 The Vendor shall (at its own cost and expense) obtain and maintain in effect all Consents which may be required for the performance of the Works and/or pursuant to this Agreement from time to time.
- 23.2 If applicable the Vendor shall provide copies of such Consents to Employer's Representative.
- 23.3 The Vendor shall keep Employer's Representative informed about its programme for seeking Consents and its progress in obtaining Consents and, within 5 Calendar Days of a Consent being granted or refused, supply to Employer's Representative a copy of such Consent or refusal.
- 23.5 The Vendor shall provide such information and assistance as Employer may request to assist Employer in obtaining, maintaining in effect and implementing all other consents which may be required for the purposes of the Project.
- 23.6 No act or omission of Employer, Employer's Representative or any of Employer Parties shall:
- (a) in any way relieve or absolve the Vendor from, modify, or act as a waiver of, any liability, responsibility, obligation or duty under this Agreement; or
  - (b) in the absence of an express order or authorization under Clause 24 constitute or authorize an Employer Change.



- 23.7 Any approval, consent or certificate given or issued by Employer in accordance with this Agreement shall take effect in accordance with its terms but shall not relieve the Vendor from any liability to Employer arising out of, or connected with the performance or non-performance of the Vendor's obligations under this Agreement.
- 23.8 Notwithstanding any other provision of this Agreement, the Vendor undertakes that it shall not accept any instructions from any third party which, if implemented would cause a variation to any term of this Agreement unless Employer has in its absolute discretion given its prior written consent to such instructions.
- 23.9 All certificates to be issued under this Agreement shall be issued in multiple with a copy being sent to each of Employer's Representative, Employer and the Vendor's Representative.

#### 24. Change Procedure

- 24.1 The Equipment shall be manufactured as per the specifications documented in Schedule 1. Should either Party for any reason wish to make changes to those specifications or should technological advances necessitate or make available changes to the Equipment, then the Party requesting such changes shall notify the other Party promptly in writing by way of a Change Order, and both Parties shall work together in good faith to reach mutual agreement on the changes. Such changes once agreed shall then be duly documented and be made part of this Agreement as an addendum which must be signed by both Parties by an officer of their respective entities. Unless otherwise agreed to in writing by both Parties, all additional costs and schedule impact, if any, are the sole responsibility of the Vendor, and the Vendor waives all rights to seek contribution from Employer over and above the Total Fee of this Agreement.
- 24.2 Any change in costs and project delay caused by requirements exceeding the system specification or scope of supply as specified in Schedule 1 according to the Agreement shall be treated as a Relief event according to Clause 39.

#### 25. Vendor Changes

- 25.1 Within 10 Calendar Days of the Vendor becoming aware of the need or desirability for a variation to the Works, the Vendor shall notify the Employer of the reasons for such variation and make proposals for the proposed variation in writing. Employer shall be free to accept or reject any proposed variation and Employer shall determine whether such proposal is dealt with in accordance with Clause 25.2 below.
- 25.2 If Employer wants to proceed with a variation proposed by the Vendor, the Employer shall serve an Employer Notice of Change on the Vendor and Clause 24 shall be adhered to by Employer and the Vendor, provided that in the event that the proposed Vendor change is of benefit only to the Vendor any anticipated increase to the costs of the Vendor resulting from any change requested by the Vendor pursuant to Clause 25.1, shall not result in a variation to the Contract Price.

#### 26. Inspection

- 26.1 The Vendor shall promptly provide Employer and Employer Parties with all co-operation and assistance in relation to any TUV inspection including without limitation:
- (a) providing all information required by TUV and/or Employer Parties for the purposes of the TUV inspection;
  - (b) providing two copies of any relevant documents or records requested by TUV, and/or Employer Parties in the format available; and

- (c) complying with Employer's requests for access to personnel engaged in the Vendor's performance of this Agreement.
- 26.2 The Vendor shall bear the costs of all design review, including TUV design review and manufacturing inspections. Employer shall bear the costs of TUV inspections on site.
- 26.3 Notwithstanding that the Vendor is responsible for all additional costs and schedule impact (if any), and that the Vendor agrees to waive all rights to seek any additional contribution from the Employer towards such costs over and above the Total Fee as per clause 24.1 above, the Vendor has approved travel costs in respect of the TUV design review up to Euros Thirty Thousand (€ 30,000) which is equivalent to approximately US Dollars Forty Thousand Five Hundred and Fifty Nine and Seventy cents ("Travel Costs"), should the Travel Costs of the TUV design review exceed this sum, the Employer has agreed that the Vendor may in such circumstance seek a Change Order in accordance with Clause 25 hereof. The Employer will then consider such Change Order, and where possible assist the Vendor in negotiations with TUV to reduce any costs over and above the original Travel Costs.
- 27. Programming of the Works**
- 27.1 The Vendor shall submit the detailed time Programme to the Employer within 30 Calendar Days of the Commencement Date, and in MS Project or software of a similar nature as agreed between the Parties. The Vendor shall also submit a revised Programme whenever the previous Programme is inconsistent with actual progress or with the Vendor's obligations or as instructed by the Employer.
- 27.2 The Vendor shall:
- (a) undertake and programme all activities, so as to ensure the timely delivery of Equipment and completion of the Works in accordance with the Programme;
- (b) undertake the testing and commissioning of the Equipment, including:
- (c) provision of testing advisors and or managers throughout the testing of the Works; and take all steps to mitigate the effects of any delay to its progress in accordance with the Programme.
- 27.3 If for any reason which does not entitle the Vendor to an extension of time, the rate of progress of the Works is at any time, in the opinion of Employer's Representative, as substantiated, too slow to ensure substantial completion in accordance with the Programme, Employer's Representative shall notify the Vendor in writing and the Vendor shall thereupon take such steps as are necessary to expedite the progress so as to complete the Works in accordance with the Programme. The Vendor shall not be entitled to any additional payment for taking such steps.
- 27.4 Where Employer requires either:
- (a) a date for completion of certain of the Vendor's obligations under this Agreement earlier than the date set out in the Programme; or
- (b) to have certain of the Works completed by the relevant date set out in the Programme where, following delays or stoppage to programme for whatever reason, the Works would not be so completed in the absence of any mitigation or re-sequencing arrangements, Employer's Representative may issue an instruction to do so.
- 27.5 If Employer's Representative issues such an instruction to the Vendor to alter the sequence or timing of any work to be executed under the provisions of this Agreement, Employer's

Representative shall, in such instruction set out the exact nature of the requirements of Employer with regard to the Programme for which the instruction has been issued.

27.6 Within 5 Calendar Days of receipt of the instruction the Vendor shall inform Employer's Representative in writing in respect of the proposed instruction:

- (a) of the amount of any additional cost to which the Vendor should be entitled as a result of compliance with the instruction when issued by Employer's Representative, subject to Clause 27.3; and
- (b) of the earlier date for completion of the relevant aspect of the Works and the necessary amendment to the Programme.

27.7 Following receipt of the information given to the Employer's Representative under Clause 27.6, the Employer may cause Employer's Representative to issue an instruction:

- (a) confirming the details of the alteration of sequence or timing required; and
- (b) fixing the new date for completion of the relevant aspect of the Works and the amount to which Clause 27.6 (a) refers shall be included as if it were a variation.

## 28. Delivery

28.1 The Vendor shall:

- (a) in accordance with Equipment CIF (Incoterms 2013) be responsible for delivery of the Equipment on an Ex-Works basis, but for the avoidance of doubt, the Seller will be responsible for the loading of the Equipment on departure from its premises, and will bear the risk and be responsible for all such costs associated with such loading;
- (b) provide advisory service during the unloading of the Equipment at the Site; and
- (c) be responsible for obtaining such export licenses and other consents in relation to the Equipment as are from time to time required and, if required by the Employer will make those licenses and consents available to Employer prior to the relevant shipment.

28.2 The Parties agree that all costs of shipping and transportation insurance, including demurrage and warehousing if applicable, shall be to the Employer's account as an addition to the Total Fee. However, the Vendor will arrange all paperwork in this regard on behalf of the Employer, providing the Employer with at least three (3) quotes in terms of shipping and transportation costs.

## 29. Spare Parts

29.1 The Vendor shall deliver to the Employer the Spare Parts as set out in Schedule 1 as a condition precedent to receiving the Taking Over Certificate.

29.2 If any Spare Part is considered by Employer to be defective within two years of delivery then the Vendor shall (at the cost of the Vendor) replace or modify (as appropriate) such Spare Part within 30 days of the notification (or such other period as the parties may agree acting reasonably and taking into account the nature of the relevant Spare Part) provided the Spare Parts are stored in accordance with such storage requirements as the Vendor notifies Employer in advance and of which Employer is fully aware.

## 30. Training, Commissioning, Testing and Certification

- 30.1 The Vendor, Employer and the Operator shall within 3 months of the Commencement Date (each Party acting reasonably and in good faith) agree a training programme (the "Training Programme") and the detailed implementation of the Training Programme. The Vendor shall implement the Training Programme in accordance with this Clause 30 and the terms of the Training Programme. Training Programme support as provided for in this Clause 30 includes a maximum of ten (10) man days on site. Additional Training Programme support requested by the Employer will be provided by the Vendor at the Vendor's standard rates.
- 30.2 The Vendor shall observe all requirements of the Employer during the carrying out of the testing and commissioning, to:
- (a) preserve health and safety;
  - (b) protect the Works against damage; and
  - (c) avoid unnecessary disruption to the Operator's operations.
- 30.3 The Vendor shall make available throughout the testing and commissioning, qualified staff to:
- (a) conduct, supervise and record the results of all testing and commissioning; and
  - (b) respond to all enquiries about the condition or performance of the Works and the major systems, sections, apparatus, equipment, components, internal seating, fixtures and fittings and devices, system configuration, modification status and software version control including all structural, electrical, hydraulic and other major components and assemblies and to rectify any failures of the same;
- 30.4 The Employer shall advise the Vendor what level of training is required for its staff and shall make such staff available for the training at agreed times, preferably during the period of installation and commissioning of the Works. It is the responsibility of the Employer to identify such staff and the level of training required. The Vendor shall provide such training as is agreed with the Employer as being required to maintain and operate the Works correctly.
- 30.5 In the event that Employer or Operator can demonstrate to the Vendor that the Equipment is not ready for testing and commissioning, the Vendor shall rectify any deficiency which is preventing the commencement of testing and commissioning.
- 30.6 The Works shall be taken over by the Employer when the Works have been completed in accordance with the Agreement and a Taking Over Certificate for the Works has been issued in accordance with this Clause 30.
- 30.7 The Vendor may apply by notice to the Employer for a Taking Over Certificate not earlier than 4 days before the Works will, in the Vendor's opinion, be complete and ready for taking over.
- 30.8 The Employer shall, within 10 days after receiving the Vendor's application either:
- (a) issue the Taking Over Certificate to the Vendor, in the form set out in Schedule 7 (Certificates) stating the date on which the Works were completed in accordance with the Agreement, except for any minor outstanding work and defects which will not substantially affect the use of the Works for their intended purpose (either until or whilst this work is completed and these defects are remedied); or
  - (b) if the Works do not meet Clause 30.5 to the satisfaction of Employer then Employer may issue a rejection notice, identifying the failures and the Vendor shall propose a rectification plan and period for rectification for agreement by Employer. Once the Vendor has (at its own cost) rectified the failures identified in the rejection notice in accordance with the rectification plan and within the rectification period, the Vendor shall resubmit the Works to be tested and commissioned and the process set out in this Clause 30 shall be repeated until Employer issues a Taking Over Certificate.

30.9 The Employer may (but shall not be obliged to) issue a Taking-Over Certificate notwithstanding that there remain minor outstanding works to be completed. A list of these outstanding works to be completed by the Vendor so as to comply with the Vendor's obligations under the Agreement together with a timetable for the completion of the outstanding works and an open book estimate of the value of such outstanding works satisfactory to the Employer (the "Punch List") shall be delivered to the Employer who shall either agree or reject such list and/or its pricing. If such list is rejected the Vendor shall make such changes as the Employer shall require and shall submit such revised list for approval with the Employer. In no circumstances may any of the outstanding works be treated as a Punch List item if, in the opinion of the Employer, the works outstanding are likely to have an effect upon the ability of the Equipment to operate safely within the design parameters set out in the Agreement or would prejudice the ability of the Employer to take possession of the Equipment or operate and use the Equipment for their intended purpose. In such circumstances the Employer shall be entitled to withhold the issue of the Taking-Over Certificate until such outstanding works have been completed.

30.10 The Vendor shall not be responsible for any damage occurring to the Works prior to the issue of the Taking Over Certificate which arises solely out of the Employer's use and/or operation of the Equipment for any purpose other than commissioning and testing.

30.11 The Taking Over Certificate shall not be issued before:

- (a) all of the testing and commissioning has been satisfactorily completed;
- (b) the Employer is satisfied that the Works have been completed in accordance with the terms of this Agreement; and
- (c) all Spare Parts have been delivered.

## 31. Risk and Title

31.1 The Vendor shall provide the Equipment and the Works free from all Security Interests and third party rights of any nature and the Vendor shall not create or agree to create any Security Interest over any of the Works, the Equipment or this Agreement, and risk and title to the Equipment and Works shall pass to the Employer on an ex works basis, subject to the Vendor loading the Equipment on to the transportation as per clause 28.1(a) above.

31.2 The Vendor shall permit Employer at any time to inspect the Works and shall grant Employer access for such purposes to the Vendor's premises or any other premises where the Works may be located.

31.3 Notwithstanding the foregoing, the Employer will be liable, as prescribed by this Agreement, for the care of, safekeeping of and the risk of any loss, damage or theft of the Works and the Equipment.

31.4 The Vendor shall promptly replace the Works or any part, component or material incorporated in or to be used in connection with the Works, which are lost, damaged or destroyed by whatever cause by Vendor, prior to risk passing to the Employer.

31.5 In the event that delivery is delayed at the request of the Employer risk shall pass to the Employer at the date of delivery as originally detailed herein. As from this date the Works shall be stored and insured in accordance with the sole instructions of, and at the cost and risk of, the Employer.

## 32. Warranty Regime & Defects Liability



- 32.1 Subject to the provisions of this Clause 32, the Vendor warrants that the Works and the Equipment shall be free from defects.
- 32.2 If Employer claims that there is a defect during the Defects Notification Period, then the Employer shall send to the Vendor a notice ("**Defect Notice**") detailing and identifying the defect.
- 32.3 Upon the delivery of the Defect Notice, the Vendor shall:
- (a) promptly, diligently and carefully investigate and search for the cause of the defect;
  - (b) if appropriate promptly propose a rectification plan ("**Rectification Plan**") and a rectification period ("**Rectification Period**") in which to remedy such defect (which may be extended by the Employer) to be approved by Employer;
  - (c) in accordance with the approved Rectification Plan remedy the defect; and
  - (d) execute all elements of the work required to remedy defects or damage (save in relation to reasonable wear and tear of the Equipment during normal operation of the Project, faulty operation, incorrect storage or handling, failure to observe the operating instructions, excessive operation, or use of parts beyond their normal life, use of unsuitable lubricants or parts, chemical or electrolytic influences, and/or faulty maintenance), as may be notified by (or on behalf of) the Employer on or before the expiry date of the Defects Notification Period for the Works. The cost of removal and reinstallation of such defective and/or damaged parts is to be borne by the Employer.
- 32.4 In the event that the Vendor disagrees with any notice issued under this Clause 32, the Parties mutually shall appoint a local contractor qualified to review the relevant part of the Works, and to advise both the Vendor and Employer as to its defective nature or otherwise. Thereafter the remainder of this Clause 32 shall apply or not as the case may be. If the Parties continue to Dispute the issue, Clause 49 (**Dispute Resolution**) shall apply. All work referred to in Clause 32 shall be executed at the risk and cost of the Vendor, if and to the extent that the work is attributable to:-
- (a) The design of the Works, other than a part of the design for which the Customer is responsible (if any);
  - (b) Equipment or workmanship not being in accordance with the Contract;
  - (c) Improper operation or maintenance instruction which was attributable to matters for which the Vendor is responsible; or
  - (d) Failure by the Vendor to comply with any of its obligations under this Contract.
- If and to the extent that such work is attributable to any other cause, the Vendor shall be notified promptly by (or on behalf of) the Employer and Clause 25 (**Vendor Changes**) shall apply.
- 32.5 Any parts found to be defective during commissioning and testing will be replaced by the Vendor free of charge provided the Employer has the spare parts previously recommended by the Vendor available in stock at that time.
- 32.6 For replaced or repaired components the Defects Notification Period commences from the date of installation of the replaced or repaired component, and in every case expires six (6) months after the last business day of the Defects Notification Period which applies to the replaced or repaired component.

- 32.7 Any guarantee for a specific component shall be invalidated in the event that the Employer or a third party other than one authorized by the Vendor proceeds to modify, alter or repair the Works, or if the Employer, in the case of a defect, fails to take proper and immediate steps to mitigate the damage and to grant the Vendor the opportunity to remedy the defect.
- 32.8 The Vendor shall not be obliged to remedy a defect in the Works or parts or components of the Equipment to the extent that such defect arises wholly and directly as a result of Employer using any parts or components which are either not specifically listed in Vendor's documentation or are not approved by, or on behalf of Vendor.
- 32.9 If the Vendor fails to rectify a defect in accordance with this Clause 32, Employer may itself carry out the rectification work or appoint a third party to carry out the rectification work and without prejudice to its other rights and remedies under this Agreement, it will be entitled to set off any costs incurred in doing so against any amounts due to the Vendor under this Agreement or recover any such costs from the Vendor as a debt.
- 32.10 If any part, component or system of Equipment is repaired, rebuilt or replaced by the Vendor in accordance with this Clause 32 then it shall have applied to it the appropriate full Defects Notification Period
- 32.11 Performance of the Vendor's obligations shall not be considered to have been completed until the Employer has issued the Performance Certificate to the Vendor, stating the date on which the Vendor completed his obligations under the Agreement.
- 32.12 The Employer shall issue the Performance Certificate in the form as set out in Schedule 7 (Certificates) within 7 days after the expiry of the Defects Notification Period, or as soon thereafter as the Vendor has completed and tested all the Works, including remedying any defects. A copy of the Performance Certificate shall be issued to the Operator.
- 32.13 Only the Performance Certificate shall be deemed to constitute acceptance of the Works, subject to any latent defects and ongoing obligations of the Vendor.

### 33. Price and Payment

#### 33.1 Milestone Achievement

- (a) Subject to and in accordance with the remaining provisions of this Clause 33 and the Employer's rights of set-off in this Agreement, Employer shall pay the Vendor each Milestone Payment following the completion of the Milestone to which it relates, such payment to be made on the basis that the Works are being completed to the Employer's reasonable satisfaction.
- (b) Any application for payments of sums due under this Agreement and any payment to be made shall be made in accordance with the procedure set out in this Clause 33.

#### 33.2 Milestone Payments

- (a) The Vendor shall submit each application for payment in respect of Milestone Payments, any other fees, costs and/or expenses in respect of a Permitted Change or as otherwise agreed in accordance with this Agreement which are being claimed by the Vendor for the previous Reporting Period, to Employer's Representative within 3 Calendar Days following each Reporting Period End last day of each month.
- (b) Each application for payment shall:
- (i) set out the Milestones completed in that Reporting Period and the Milestone Payment due in respect of the same, with evidence of satisfaction of such



**Milestones;**

- (ii) set out any other agreed adjustments pursuant to a Permitted Change; and
  - (iii) set out any other sums due to or from the Vendor under and/or arising out of this Agreement in accordance with its terms, together with supporting documentation establishing the basis of such sums being claimed.
- 33.3 Employer shall procure that Employer's Representative shall, subject to any clarifications as are in Employer's opinion necessary, certify by notice in writing (a "Payment Certificate") to the Vendor that part of the sum claimed in the application for payment which is approved by Employer and give reasons why any part of the sum claimed has not been certified and the value of the sums involved no later than 10 Calendar Days after the date on which application for payment was received by Employer.
- 33.4 The Vendor shall submit an invoice in respect of the amount set out in the Payment Certificate to Employer within seven days of the date of the Payment Certificate. Payment to the Vendor shall be made by the Employer within 30 days from the date of receipt of the invoice by Employer.
- 33.5 Employer may recover as a debt or deduct any amount payable by the Vendor to Employer whether by way of damages or in respect of any loss or expense sustained by Employer by reason of the Vendor's breach of this Agreement from any other payment or payments due to be made to Employer by the Vendor under this Agreement or any other Agreement between the Parties.
- 33.6 The Vendor and Employer acknowledge that the amount to be specified for payment in any Payment Certificate in respect of a Milestone shall not exceed the amount specified in the Milestone Payment Schedule in relation to the achievement of the Milestone to which such Payment Certificate relates.
- 33.7 No payment made by Employer to the Vendor under this Agreement shall prevent the Employer from recovering any amount overpaid or wrongfully paid by it under this Agreement (however that payment may have arisen) including those paid by mistake of law or of fact.
- 33.8 The Vendor shall not suspend the performance of its obligations under this Agreement if any payment is overdue, unless the reason for such overdue payment relates to either a technical or administrative error that continues for longer than 5 Calendar Days from the date of due payment; or if a Dispute arises and continues for longer than 10 Calendar Days in relation to any Payment Certificate given under this clause 33 in which Employer Disputes the amount to be paid.
- 33.9 When submitting the final application for payment, the Vendor shall submit a written discharge in the form as set out in Schedule 7 (**Certificates**) which confirms that the total of the final payment represents full and final settlement of all monies due to the Vendor Performance in connection with this Agreement.
- 34. Performance Security & Parent Company Guarantee**
- 34.1 The Vendor shall on the date of execution of this Agreement provide to the Employer, the Parent Company Guarantee duly executed by its parent company, Empire Industries Limited.
- 34.2 Such Parent Company Guarantee shall be in the form already agreed between the Parties, and attached to this Agreement as Appendix 3.
- 34.3 The Vendor shall, no later than the 1<sup>st</sup> April 2014, or, earlier if possible, provide a Performance Bond to the Employer in an amount as stated in Appendix 1 which will be issued by a surety approved in advance in writing by the Employer, in the form attached in Schedule 6.



34.4 The Performance Bond shall be an unconditional and irrevocable bank guarantee, payable on demand, issued either by a local bank located in Abu Dhabi, or an international first class bank whose credit standing is acceptable to the Employer and which acceptance shall not be unreasonably be withheld. The amount of the Performance Bond shall be increased within 14 days of the written request of the Employer, so that it corresponds to any increase in the amount of the Total Fee and adjusted pursuant to the Agreement and in such circumstances the Vendor shall provide an amended Performance Bond in the correct amount within such period. The cost of the bank guarantee shall be borne by the Vendor, including any extensions to the period of validity of the guarantee, and increases in the amount of the guarantee. The Performance Bond shall have an expiry date five (5) months after the last business day of the Scheduled Opening Date.

34.5 For those payments which are due from the Employer to the Vendor prior to the receipt of the Performance Bond, (and in addition to the Parent Company Guarantee referred to above), as certain Equipment/material purchases are made by the Vendor on behalf of the Employer, the Vendor will provide legal documentation transferring legal title in those items to the Employer (including all audio/visual items purchased). Notwithstanding such transfer of legal ownership to the Employer, these items will continue to be insured by the Vendor against loss or damage prior to shipment to the Employer in accordance with clause 28.1 above. The Employer shall continue to make payments for the Equipment/material and the audio visual equipment in accordance with the Milestone Payments set out in Schedule 4, and upon receipt of all valid documents transferring legal title to such materials, components and all Equipment forming part of the Works (including any design documentation, drawings, plans etc), in the process inventory to the Employer which will act as security for such payments.

### 35. Required Insurances

#### 35.1 General Requirements for Insurances

- (a) The Vendor shall, at its sole expense, pay 100% of all insurance premiums necessary to procure and maintain all insurance policies, for which it is the Insuring Party, required under this Agreement. The Vendor's compliance with the provisions of this Clause 35 is a condition precedent to it receiving any payment due under this Agreement. The Employer retains the rights in the exercise of its sole discretion, acting reasonably, to approve or reject any insurance form and/or specific terms therein procured by the Vendor.
- (b) The Vendor shall procure and maintain insurance equal to the full replacement value of all equipment, systems, and assemblies associated with the completion of the Works during fabrication, packing/crating and shipping. The Vendor shall deliver to the Employer copies of policy forms for all insurance required by this Agreement for which the Vendor is the Insuring Party on or before 14 days of the agreement effective date.
- (c) The Vendor shall purchase and maintain the following types and limits of insurance:
- (i) **Comprehensive General Liability**  
Bodily Injury & Property Damage: CAN\$ 1,000,000 each occurrence  
CAN\$ 2,000,000 general aggregate
  - (ii) **Comprehensive Automobile Liability**  
Bodily Injury & Property Damage: CAN\$ 1,000,000 each occurrence
  - (iii) **Product Liability**  
CAN\$10,000,000 each occurrence  
CAN\$20,000,000 general aggregate
  - (iv) **Workers' Compensation/Employer's Liability for activities within the United Arab Emirates:**  
Statutory Benefits (in accordance with the UAE Labor Employers Liability): the



- (v) equivalent of AED1, 000,000 each occurrence  
**Professional Indemnity:**  
CAN\$ 5,000,000 with a discovery period of two years from the conclusion of the Agreement.

- 35.2 The Vendor shall provide written confirmation from the Insurer that all coverage is valid in the UAE/.
- 35.3 The Vendor shall furnish evidence of insurance to the Employer. The evidence shall be in the form of a certificate of insurance, which shall, to the extent that the Employer so requires, name the Employer as an additional insured. The insurance policies shall include an endorsement of the waiver of subrogation of any and all rights the Vendor may be able to exercise against the Employer, its officers, directors, employees, agents and appointed representatives. All insurance shall be in effect prior to commencing the Works and thereafter be maintained for the value of the Works (plus 15%). The certificate of insurance will include a clause indicating that a 30 day notice of cancellation or material change will be provided. The Vendor shall keep such insurance in effect for at least one year after the date of first public operation of the Equipment, or, through other any period required by Employer at extra costs.
- 35.4 As a condition precedent to the payment by the Employer of any amounts under any provision of this Agreement, the Vendor shall satisfy the applicable deductible amount through its payment of damages and/or claim expenses in respect to each claim arising under the Employer's OCIP. The Employer shall be liable only for amounts in excess of such deductible, subject always to the Employer's total liability not exceeding the relevant limit of liability. The Vendor shall make direct payments within the Deductible to appropriate other parties designated by the Employer.
- 35.6 Worker's Compensation/ Employer's Liability insurance shall be issued by insurers that comply with all of the UAE insurance laws, including that such insurers are duly registered by the Ministry of Economy in the UAE and certificates of currency must be issued to the Employer by such registered insurer(s).
- 35.7 Wherever the Employer is the Insuring Party, each insurance shall be effected with insurers and in terms consistent with the details in the Appendix.
- 35.8 Each policy insuring against loss or damage shall provide for payments to be made in the currencies required to rectify the loss or damage. Payments received from insurers shall be used for the rectification of the loss or damage.
- 35.9 Each Party shall comply with the conditions stipulated in each of the insurance policies. The insuring Party shall keep the insurers informed of any relevant changes to the execution of the Works and ensure that insurance is maintained in accordance with this Clause.
- 35.10 Neither Party shall make any material alteration to the terms of any insurance without the prior approval of the other Party. If an insurer makes (or attempts to make) any alteration, the Party first notified by the insurer shall promptly give notice to the other Party.
- 35.11 If the insuring Party fails to effect and keep in force any of the insurances it is required to effect and maintain under the Agreement, or fails to provide satisfactory evidence and copies of policies in accordance with this Clause, the other Party may (at its option and without prejudice to any other right or remedy) effect insurance for the relevant coverage and pay the premiums due. The insuring Party shall pay the amount of these premiums to the other Party, and the Contract Price shall be adjusted accordingly.

**36. Liability, Indemnities and Liquidated Damages**

36.1 The Vendor shall indemnify and hold harmless the Employer and its employees, agents and officers ("**Indemnified Parties**"), from and against any and all actions, claims (including third party claims), demands, proceedings, liabilities, damages, penalties, fines, forfeitures and the costs and expenses incidental thereto (including any legal costs of defense) which any of the Indemnified Parties may hereafter incur, become responsible for, or pay out as a result of or in connection with:

- (a) any of the Vendor's, or its employees' or any Vendor Party's acts, omissions, breaches or defaults in the performance of the Works;
- (b) breach of any term or provision of this Agreement; and/or
- (c) breach of any directly applicable Law; and/or

such actions, claims, demands, proceedings, suits, Losses, penalties, fines, forfeitures, and costs and expenses shall include such actions, claims, demands, proceedings, suits, Losses, penalties, fines, forfeitures, and the costs and expenses, in respect of:

- (a) death or injury to any person;
- (b) loss of or damage to any property;
- (c) loss of or damage to any part of the Works;
- (d) causing Employer to be in breach of any Law; or
- (e) infringement or alleged infringement of a third party's Intellectual Property Rights.

36.2 Subject to Clauses 36.1 and 36.3, and as otherwise expressly provided for, nothing in this Agreement shall expose either Party to the application of Indirect Loss.

36.3 Nothing in this Agreement shall exclude or limit the liability of either Party for:

- (a) death or personal injury caused by that Party's negligence or the negligence of anyone for whom that Party is vicariously liable;
- (b) fraud or fraudulent misrepresentation;
- (c) any breach of any warranties given under this Agreement.

36.4 The Vendor shall not be relieved or excused of any responsibility, liability or obligation under this Agreement by the appointment of any Vendor Party. The Vendor shall, as between itself and the Employer, be responsible for the selection, pricing, performance, acts, defaults, omissions, breaches, negligence and offences of any Vendor Party. All references in this agreement to any act, default, omission, breach, negligence or offence of the Vendor shall be construed to include any such act, default, omission, negligence of any Vendor Party.

36.5 An Indemnified Party shall promptly give notice in reasonable detail to the party obligated to provide indemnification (the "**Indemnitor**") of its receipt or knowledge of a claim, demand or suit for which it asserts it is entitled to indemnification hereunder. The indemnitor shall at its expense promptly conduct the defense of such claims, demands or causes of action, including any litigation or other proceeding related thereto; provided, however, that Indemnitor shall not settle any such litigation without the consent of the Indemnified Party unless the settlement involves only the payment of money to be made by Indemnitor or the settlement will not adversely impact on Indemnified Party's operations or in the case of Buyer, its ability to commercially use the Equipment. Indemnified Party may be represented by and actively participate through its own counsel (at its own expense) in any such litigation if it so desires. The Indemnified Party shall cooperate with the Indemnitor in its defense by providing access to its records and employees as

may reasonably be requested by the Indemnitor. In the event that Buyer conducts the defense of any claim, demand or cause of action, it shall have the sole decision regarding defense strategy, settlement authority, and choice of counsel (provided the respective parties' interests are not so adverse as to create a conflict of interest for legal counsel chosen by the indemnifying party).

### 36.6 Liquidated Damages for Delay

Subject to Clause 38 (**Vendor Delays**), if the Vendor fails to complete on time, (after giving any period of extension granted thereto), the Works or a Milestone, attributable to the Vendor and for the portion which the Vendor is responsible for, by the Time for Completion, it shall pay Liquidated Damages to the Employer at the rate as stated in Appendix 1 for the period of delay in completing the Works or the Milestone.

36.7 The aggregate amount of Liquidated Damages that the Vendor shall be obliged to pay pursuant to this Clause 36 shall be capped at the amount as stated in Appendix 1 to this Agreement.

36.8 The Parties hereby acknowledge and confirm that the Liquidated Damages payable pursuant to this Agreement at the rate pre-agreed in this Clause 36 represent a genuine pre-estimate of the loss that is anticipated to be suffered by the Employer due to a failure by the Vendor to comply with its obligations under this Agreement.

### 37. Mitigation

37.1 The Vendor shall take all steps to minimize the adverse effects of any Force Majeure and any claim made by the Vendor as a result of such event shall:

- (a) exclude any amounts incurred or to be incurred as a result of any failure of the Vendor to comply with this Clause 37; and
- (b) be reduced by any amount which the Vendor will recover or has recovered under any insurance policy (or would have recovered, if it had complied with the terms of this Agreement or if it and the insurer had complied with the terms of any policy required under this Agreement).

### 38. Vendor Delays

38.1 If, at any time, the Vendor becomes aware that it will not (or is unlikely to) complete the Works or any Milestone by the relevant Time for Completion for any reason which is not a Relief Event ("Delay") it shall notify Employer's Representative in writing. The Vendor shall detail in the notice:

- (a) the reasons for the Delay;
- (b) the consequences of the Delay; and
- (c) how the Vendor proposes to mitigate the Delay.

38.2 If the Vendor fails to complete the Works or a Milestone within the Time for Completion it shall:

- (a) take and/or procure the taking of all remedial action necessary to correct the failure and complete the Works or Milestone as soon as practicable
- (b) if relevant, pay liquidated damages in accordance with Clause 36; and
- (c) take all action necessary to mitigate the Delay and the effects of the Delay.

### 39. Relief Events

39.1 To obtain an extension to Time for Completion, the Vendor must, as soon as practicable, and in any event within 10 Calendar Days after it first became aware that a Relief Event had caused or is likely to cause delay:

- (a) give to Employer a notice of its claim for an extension of time and full details of the nature of the Relief Event, the date of occurrence and its likely duration;
- (b) include in any notice given under Clause 39.1 (a) full details of the extension of time claimed including:
- (c) the Vendor's estimate of the likely effect of such delay upon the Programme;
- (d) mitigation measures adopted and why unsuccessful; and
- (e) any mitigation measures which the Vendor could take to mitigate the effects of such delay and, where applicable, an estimate of the costs thereof.

39.2 The Vendor must:-

- (a) demonstrate to the satisfaction of Employer that:
  - (i) the Vendor and the Vendor Parties could not have foreseen the occurrence or consequences of the relevant Relief Event and could not have avoided such occurrence or consequences by steps which they might reasonably be expected to have taken;
  - (ii) the Relief Event is the direct cause of the delay and that the delay lies on the critical path to completing the Works by the Time for Completion; and
  - (iii) the Vendor is using best endeavours to perform its obligations under this Agreement.

39.3 In the event that the Vendor has complied with its obligations under Clause 39.1 and Employer is satisfied as to the matters specified in Clause 39.1, then (as applicable in the circumstances) the Works or the Milestone shall be postponed by such time as Employer considers for such a Relief Event, taking into account the likely effect of delay and the Programme shall be revised accordingly. For the avoidance of doubt, the Vendor shall be deemed to have waived any entitlement to an extension of time unless the Vendor has submitted a notice under Clause 39.1 within 10 Calendar Days.

39.4 If Employer decides that the Vendor is not entitled to an extension of time, Employer shall notify the Vendor accordingly as soon as reasonably practicable in writing.

39.5 If the Works are delayed in circumstances other than those entitling the Vendor to an extension of time as set out in this Clause 39, the Vendor shall inform Employer at the earliest opportunity and shall give an estimate of the likely effect upon the Programme. In such circumstances, the Vendor at its own expense shall take such mitigation measures as are necessary to achieve the requirements of the Programme.

39.6 If there are two or more concurrent causes of delay and at least one of those delays would not entitle the Vendor to an extension of time under this Agreement then, to the extent of that concurrency, the Vendor is not entitled to an extension of time.

39.6 The Employer may at any time and in its absolute discretion make a fair and reasonable extension of the Time for Completion.

39.7 For the avoidance of doubt, the Vendor shall not be entitled to any payment of costs, Losses or expenses in relation to Relief Events.

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#### 40. Intellectual Property and Copyright

40.1 All Vendor IPR shall continue to be owned by the Vendor and the Employer shall not acquire any rights to manufacture or have manufactured any parts or components or reproduce the Works in any manner which directly infringes the Vendor IPR without the prior written consent of the Vendor.

40.2 The Vendor hereby:

- (a) assigns by way of future assignment to Employer with full title guarantee the Project IPR which is created by it and shall procure that Project IPR created by any Vendor Party is also so assigned, for all of the residue of the term of such rights and all renewals or extensions thereof and together with all accrued causes of action in respect thereof. The Vendor will execute all documentation necessary to give effect to this Clause;
- (b) grants to Employer a non-exclusive perpetual irrevocable royalty free licence to use such Vendor IPR as may be necessary for Employer to use in relation to the Vendor's scope of supply and having regard to the operating, maintaining and repairing of the Project, and including any and all Intellectual Property Rights which subsist at any time in any documentation, Equipment and Works.
- (c) grants to Employer with the prior written consent of the Vendor (such consent not to be unreasonably withheld or delayed) the right to grant non-exclusive non-assignable sub-licences to third parties for such lengths of time as Employer may require and otherwise on the same terms as the licence granted to Employer pursuant to Clause 41.2 (b) above, to use the Vendor IPR referred to in that Clause.

40.3 The Vendor shall at any time and from time to time hereafter at the request of Employer execute all such documents and do all such further acts as may be required in order to vest the rights referred to in Clause 40.2 (c) in the Employer.

40.4 The Vendor agrees that all rights in the Project IPR shall remain the property of Employer and the Vendor shall retain no rights in the Project IPR. The Vendor shall be entitled to use such Project IPR only on the terms set out herein and solely for the purpose of the performance of the Works. In particular, otherwise as permitted in this Agreement herein, the Vendor shall not disclose, assign, sub-license, lease, rent or otherwise dispose of the Project IPR.

40.5 The Vendor:

- (a) hereby grants to Employer, free of charge, an irrevocable, perpetual, non-exclusive and transferable (but only to any assignee or transferee of any rights or benefits under this Agreement or upon or at any time following termination or expiry of this Agreement) a licence to use the Intellectual Property Rights which are or become at any time vested in the Vendor to the same extent as the Vendor has acquired such rights or to the extent any Project IPR incorporates any Vendor IPR or any intellectual property materials developed by the Vendor outside the scope of its engagement hereunder an irrevocable, perpetual, non-exclusive and transferable licence in respect of the same; and
- (b) shall in respect of any of the Intellectual Property Rights which the Vendor is not entitled to license to Employer pursuant to Clause 40.2, use its best endeavours to procure the grant of a licence from the owners of such Intellectual Property Rights in favour of Employer in substantially the same terms as the licence set forth in Clause 40.2.
- (c) Where a claim or proceeding is made or brought against Employer or their permitted licensees which arises out of the infringement of any Intellectual Property Rights in any materials provided by the Vendor or any Vendor Party to Employer then the Vendor shall

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indemnify and keep Employer indemnified on demand at all times from and against all Indemnified Liabilities arising in connection with such claim or proceedings.

40.6 The Vendor shall not reproduce or publish any confidential document or matter relating to the Works or this Agreement, either alone or in association with any other body or person, without the prior written consent of Employer.

#### 41. Confidential Information

41.1 Each Party:

- (a) shall treat all Confidential Information belonging to the other Party as confidential and safeguard it accordingly; and
- (b) shall not disclose any Confidential Information belonging to the other Party to any other person without the prior written consent of the other Party or except to such persons and to such extent as may be necessary for the performance of this Agreement or except where disclosure is otherwise expressly permitted by the provisions of this Agreement.

41.2 Each Party shall take all necessary precautions to ensure that all Confidential Information obtained from the other Party under or in connection with this Agreement:

- (a) is given only to such of the staff professional advisors and/or Employer Parties, Vendor Parties or Employer in connection with this Agreement as is strictly necessary for the performance by the Vendor of the Works and its other obligations under this Agreement; and
- (b) is treated as confidential and not disclosed (without prior approval from the owner of the Confidential Information) or used by such staff or professional advisors and/or the Vendor Parties otherwise than for the purposes of this Agreement.

41.2 Neither Party shall use any Confidential Information it receives from the other Party other than for the purposes of this Agreement.

41.3 The provisions of Clauses 41.1 to 41.3 shall not apply to:

- (a) any information which is or becomes public knowledge (otherwise than by breach of this Clause 41);
- (b) any information which was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
- (c) any information which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
- (d) any information which is independently developed without access to the Confidential Information;
- (e) any disclosure pursuant to a statutory, legal or parliamentary obligation placed upon the Party making the disclosure;
- (f) any disclosure by Employer of this Agreement and any related information to Employer Party or the Operator.

41.4 In the event that the Vendor fails to comply with this Clause 41, Employer reserves the right to terminate the Agreement by notice in writing in accordance with Clause 43.

41.5 Any public relations material, press releases, public presentations or conference engagements in relation to this Agreement planned by the Vendor requires Employer's prior written approval.

#### 42. Suspension of Work

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42.1 Employer may suspend the progress of the Works or any part thereof for such time or times and in such manner as Employer may consider necessary. The Vendor shall, during such suspension, properly protect and secure the Works so far as is necessary in the opinion of Employer, at Employers costs, except to the extent that such suspension is:

- (a) otherwise provided for in this Agreement;
- (b) necessary by reason of some act, omission, breach or default on the part of the Vendor; or
- (c) necessary for the proper completion or for the safety of the Works or any part thereof, then if compliance with Employer's Representative's instructions under this Clause 42 involves the Vendor in delay Employer's Representative shall take such delay into account in determining any extension of time to which the Vendor is entitled.

42.2 If the progress of the Works or any part thereof is suspended on the written order of Employer and if permission to resume work is not given by Employer within a period of six months from the date of suspension then the Vendor may unless such suspension is otherwise provided for in this Agreement or continues to be necessary by reason of some default on the part of the Vendor serve a written notice on Employer requiring permission within 30 Calendar Days from the receipt of such notice to proceed with the Works or that part thereof in regard to which progress is suspended. If within the said 30 Calendar Days Employer does not grant such permission, the Vendor by a further written notice so served may (but it is not bound to) elect to treat the suspension where it affects part only of the works as an omission of such part under Clause 24 or where it affects the whole Works as an abandonment of this Agreement by Employer.

42.3 Within 45 Calendar Days of service of notice by the Vendor in accordance with Clause 42.2 to treat any suspension as an abandonment of this Agreement, this Agreement shall be terminated in whole and the provisions of Clause 47 and 48 shall apply.

#### 43. Vendor Default Termination

43.1 Without prejudice to any of Employer's other rights or remedies, Employer may after giving 7 days' notice in writing to the Vendor, terminating this Agreement in whole or in part on any of the following grounds (each a "Vendor Default"):-

- (a) breach of any provision or requirement of this Agreement;
- (b) any failure to pay any Liquidated Damages within a period of 21 days from the date of request from the Employer pursuant to Clause 36;
- (c) any failure to complete the Works or a Milestone within 45 days of the relevant Time for Completion;
- (d) the occurrence of any Insolvency Event in relation to the Vendor or any Affiliate of the Vendor;
- (e) any abandonment of the Works by the Vendor without due cause;
- (f) the aggregate amount of Liquidated Damages payable by the Vendor would be in excess of the amount as stated in the Appendix.

43.2 If Employer terminates this Agreement pursuant to this Clause 43, the provisions of Clauses 47 and 48 shall apply.

#### 44. Employer Default Termination

44.1 The Vendor may by notice in writing to Employer terminate this Agreement if the Employer fails to pay an undisputed sum or sums due to the Vendor under this Agreement which, either singly or in



aggregate, exceeds ten percent (10%) of the Total Fee and such failure continues for forty five (45) days from receipt by Employer of a notice of non-payment from the Vendor (an "Employer Default"), and this Agreement shall terminate on the day falling forty five (45) days after the day on which Employer receives the termination notice from the Vendor unless Employer rectifies Employer Default within the said forty five (45) day period.

44.2 The Vendor shall not exercise, or purport to exercise, any right to terminate this Agreement (or accept any repudiation of this Agreement) except as expressly set out in this Agreement.

44.3 If the Vendor terminates this Agreement pursuant to this Clause 44 then the provisions of Clauses 47 and 48 shall apply.

#### 45. No Fault Termination

45.1 Employer may at any time in its sole and absolute discretion and without the need for a court order give 30 days' written notice to the Vendor to terminate this Agreement in whole or in part at any time for whatever reason.

45.2 If Employer terminates this Agreement pursuant to this Clause 45 then the provisions of Clauses 47 and 48 shall apply.

#### 46. Force Majeure

46.1 If a Party is or will be prevented from performing any of its obligations under this Agreement by Force Majeure, then it shall give notice to the other Party of the event or circumstances constituting the Force Majeure and shall specify the obligations, the performance of which is or will be prevented. The notice shall be given within 10 Calendar Days after the Party became aware, or should have become aware, of the relevant event or circumstance constituting Force Majeure.

46.2 The Party shall, having given notice, be excused performance of such obligations for so long as such Force Majeure prevents it from performing them.

46.3 Each Party shall at all times use all reasonable endeavours to minimise any delay in the performance of the Agreement as a result of Force Majeure

46.4 A Party shall give notice to the other Party when it ceases to be affected by the Force Majeure.

46.5 If the Vendor is prevented from performing any of his obligations under the Agreement by Force Majeure of which notice has been given under this Clause, and suffers delay and/or incurs costs by reason of such Force Majeure, the Vendor shall be entitled subject to Clause 39 to an extension of time for any such delay, if completion is or will be delayed.

46.6 After receiving this notice, the Employer shall proceed to determine these matters.

46.7 If any Sub-Contractor is entitled under any contract or agreement relating to the Works to relief from force majeure on terms additional to or broader than those specified in this Clause, such additional or broader force majeure events or circumstances shall not excuse the Vendor's non-performance or entitle him to relief under this Clause.

46.8 If the execution of substantially all the Works in progress is prevented for a continuous period of 100 days by reason of Force Majeure of which notice has been given under this Clause 46, or for multiple periods which total more than 160 days due to the same notified Force Majeure, then either Party may give to the other Party a notice of termination of the Agreement. In this event, the termination shall take effect 14 days after the notice is given, and the provisions of Clause 47

shall apply.

- 46.9 Upon such termination, the Employer's Representative shall determine the value of the work done and issue a Payment Certificate which shall include:
- (a) the amounts payable for any work carried out for which a price is stated in the Agreement; and
  - (b) the cost of plant and materials ordered for the Works which have been delivered to the Vendor, or of which the Vendor is liable to accept delivery: this plant and materials shall become the property of (and be at the risk of) the Employer when paid for by the Employer, and the Vendor shall place the same at the Employer's disposal.
  - (c) Notwithstanding any other provision of this Clause 46, if any event or circumstance outside the control of the Parties (including, but not limited to, Force Majeure) arises which makes it impossible or unlawful for either or both Parties to fulfil its or their contractual obligations or which, under the law governing the Agreement, entitles the Parties to be released from further performance of the Agreement, then upon notice by either Party to the other Party of such event or circumstance:
    - (i) the Parties shall be discharged from further performance, without prejudice to the rights of either Party in respect of any previous breach of the Agreement, and
    - (ii) the sum payable by the Employer to the Vendor shall be the same as would have been payable if the Agreement had been terminated under Clause 45.

#### 47. Payment on Termination

- 47.1 Where Employer terminates this Agreement pursuant to Clause 43 (**Vendor Default Termination**) the Vendor agrees to reimburse Employer all of Employer's costs up to the price of any Equipment for which Employer has already paid. The remedies set forth in this Clause 47 are in addition to any other rights or remedies at law or in equity which may exist on account of the Vendor's default.
- 47.2 Within 45 Calendar Days of termination of this Agreement and following receipt of a valid invoice, Employer shall pay to the Vendor:
- (a) any undisputed sums due from Employer to the Vendor pursuant to Clause 33.2 (**Milestone payments**); and
  - (b) where this Agreement is terminated pursuant to Clause 42 (**Suspension of Work**), Clause 44 (**Employer Default Termination**) or Clause 45 (**No Fault Termination**), Vendor shall deliver any Equipment or Works, including parts thereof and works in progress, which Employer has paid for up and until the date of termination and unconditionally agrees and acknowledges that it shall have no further claim against Employer for any other payment, including, but not limited to, any expenditure incurred in anticipation of completion of the Works.
- 47.3 Employer shall, subject to any clarifications as are in Employer's opinion necessary, certify by notice in writing to the Vendor that part of the work in progress which is approved by Employer and give reasons why any part of the work in progress has not been certified and the value of the sums involved no later than 21 Calendar Days after the date on which such valuation was received.
- 47.4 Employer shall make payment to the Vendor of any demobilisation costs which have been demonstrably and reasonably incurred by the Vendor in respect of:

- (a) termination for Employer Default pursuant to Clause 44; or
- (b) termination for No Fault Termination pursuant to Clause 45; or
- (c) termination pursuant to Clause 43.

47.5 The Employer shall be entitled to set-off against any amounts owed to the Vendor pursuant to Clause 47.4, any amounts which are due to it from the Vendor pursuant to this Agreement.

47.6 The Vendor shall take all reasonable efforts to minimise and mitigate any demobilisation costs payable pursuant to Clause 47.4 and Employer shall not be liable to pay the Vendor for such demobilisation costs to the extent that:

- (a) The Vendor has failed to minimise or mitigate such demobilisation costs; or
- (b) such demobilisation costs have arisen out of the Vendor's breach of this Agreement or any act or omission by the Vendor;

47.7 If the Employer is obliged by this Agreement to pay to Vendor any payment in respect of termination of this Agreement under this Clause 47, the Employer shall pay the amount due thereunder to Vendor within 15 Calendar Days of the Termination Date.

#### **48 Effect of Termination or Expiry**

48.1 On termination for Vendor Default of this Agreement, Employer shall be entitled in its sole and absolute discretion to:

- (a) take possession of all work-in-progress (including all Equipment allocated to this Agreement and parts therefor) and for that purpose to enter on to any premises of the Vendor (and of any Sub-Contractor or agent of the Vendor) to take possession of such work-in-progress with a view to Employer being able to re-contract with a third party for the completion of the Works;
- (b) be assigned all agreements relating to the Works entered into between the Vendor and its Sub-Contractors;
- (c) be assigned any assignable Product Warranties which have been given to the Vendor by any Sub-Contractor to the Vendor by any manufacturer of any part of the Equipment and to give notice to any such other party of any such assignment (in respect of which the Vendor undertakes to assist in enforcing any rights thus arising); and
- (d) continue to use all relevant Intellectual Property Rights in accordance with Clause 40.

48.2 On termination of this Agreement, Employer shall be relieved from any obligation to accept delivery of any Equipment as at the date of such notice.

48.3 On termination of this Agreement, the Vendor shall make available to Employer all documentation and information relating to the Equipment as may be requested by the Employer.

48.4 On termination or expiry of this Agreement, the obligations of the Parties shall cease except for:

- (a) any obligations arising as a result of any antecedent breach of this Agreement; and
- (b) Clauses 1, 32, 33, 36, 37, 41, 42, 48, 49 and 62 and under any other provision of this Agreement which is expressed to survive termination or which is required to give effect to such termination or the consequences of termination.

#### **49. Dispute Resolution**

49.1 It shall be a pre-condition to a Party referring a Dispute to arbitration under Clause 49.2 that the

Parties must attempt to settle the Dispute amicably. The referring Party must issue a notice to the responding Party: (i) stating that a Dispute, in the opinion of the referring Party, exists, (ii) setting out the broad details of the Dispute, including a summary of the factual and legal grounds on which the referring Party intends to rely and (iii) requesting the other Party to attempt amicable settlement. Amicable settlement shall include (but not be limited to) a meeting between a board level director of each party without legal representatives being present to try to resolve the Dispute in good faith.

- 49.2 In the event that amicable settlement fails within one month of its referral to the other Party, or such longer period as the Parties agree, the Dispute shall be finally settled by arbitration in the accordance with the London Court of International Arbitration ("LCIA") and shall be conducted pursuant to the LCIA Rules of Arbitration (the "Rules") in force when the arbitration begins. The language of the arbitration shall be English, and the seat of arbitration shall be England. The arbitration shall be before a sole arbitrator in accordance with the Rules, unless the Parties agree, or the LICA directs that the arbitration shall be before three (3) arbitrators. The arbitration decision shall be final and binding on both Parties and judgment upon the award of the arbitrators shall be entered into any court having jurisdiction thereof. If a Dispute, claim or difference is referred to arbitration the Parties shall nevertheless continue to perform their respective obligations under this Agreement. Each Party to the arbitration shall bear their own individual costs of the arbitration.

#### 50. Audits

During the Term and for a period of 36 months from its expiration or termination date (or any longer period as may be required by applicable law):

- (a) Vendor shall keep and cause relevant written books and records relating to its activities under this Agreement, including, if applicable, but not limited to, any and all licenses or other authorizations required to fulfil its obligations under this Agreement; and
- (b) Employer and/or its duly authorised representatives shall have the right (but not the obligation), upon reasonable notice and during normal business hours at Vendor's offices, to (a) audit such books and records and (b) conduct periodic on-site audits or inspections in connection with relevant activities related to this Agreement to verify the performance of Vendor's obligations under this Agreement.

#### 51. Variations to be in Writing

No variation or alteration of any of the provisions of this Agreement shall be effective unless it is in writing and signed by both Parties

#### 52. Waiver and Cumulative Remedies

- 52.1 Save where expressly stated, no failure or delay by Employer to exercise any right or remedy in connection with this Agreement will operate as a waiver of it or of any other right or remedy nor will any single or partial exercise preclude any further exercise of the same, or of some other right or remedy. A waiver of any breach of this Agreement shall not be deemed to be a waiver of any subsequent breach.

- 52.2 The Vendor agrees that no waiver shall occur or be deemed to have occurred unless or until a clear and unequivocal express waiver of a clearly identified default is contained in a written notice by Employer to the Vendor expressly for the purpose of effecting such waiver.

#### 53. Notices

- 53.1 Any notice or notification required or authorised to be given under this Agreement by one Party to the other shall be:

- (a) in writing;
- (b) sent by one of the following methods:
  - (i) prepaid special or recorded delivery post or facsimile transmission addressed to the Party to which it is given at;
  - (ii) in the case of notices given to Employer: at the address as stated in the Appendix or such other address or fax number as Employer may notify the Vendor from time to time for that purpose; or
  - (iii) in the case of notices given to the Vendor: at the address as stated in the Appendix or such other address or fax number as the Vendor may notify Employer from time to time for that purpose; or
  - (iv) facsimile transmission addressed to Employer's Representative or the Vendor's Representative (as appropriate) at a facsimile number notified to the giving Party by the receiving Party for the service of notices under this Agreement from time to time; or
  - (v) personal delivery into the hands of:
    - (i) in the case of notices given to Employer, Employer's Representative and the Employer; or
    - (ii) in the case of notices given to the Vendor, the Vendor's Representative.
- (c) be deemed duly served:
  - (i) if sent by pre-paid special or recorded delivery post, on proof of delivery; or
  - (ii) if sent via facsimile transmission or personal delivery, on the day of issue of the relevant fax confirmation receipt or such personal delivery (as appropriate), unless that day is not a Calendar Days or such delivery or transmission is made after 5.00 pm on a Calendar Days in which case it shall be deemed duly served on the next Calendar Days thereafter.

### 53.2 Aconex Platform

The Vendor shall:

- (a) send all relevant correspondence related to the Works via the Aconex Platform;
- (b) record and register all drawings and other documents, including amendments and drafts related to the Works, on the Aconex Platform; and
- (c) include terms in any contract relating to the Works which the Vendor enters into with any third parties requiring:
  - (i) the use of the Aconex Platform by the third parties in the same manner as required of the Vendor by this Clause;
  - (ii) the inclusion of a provision requiring the third parties to require their relevant Vendors to observe the same terms as this Clause.

53.3 The Vendor shall not challenge the admissibility to any proceedings (including any arbitration, mediation or Dispute resolution procedure under the Agreement or otherwise), or the reliability or veracity, of any Record stored on the Aconex Platform. The Vendor shall have at all times access to Aconex to all Vendors' sections of the Project.

53.4 Any notice to be given pursuant to the Agreement shall also be given by delivering the notice via

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the Aconex Platform to the account of the nominated representative of the other Party as it is recorded in the Aconex Platform address. Any notice given according to the procedure contained in this paragraph shall be deemed to have been given by 5:00pm (local time at the place of receipt) on the day recorded as the day delivered by the Aconex Platform if a business day in the place of receipt or the first business day thereafter in the place of receipt if not a business day in the place of receipt.

53.5 The Employer shall be responsible for the payment of any licence fees payable to the service provider for the use of the Aconex Platform. However, each Party shall be responsible for its own costs and expenses of compliance with its obligations under this Clause 53.

#### 54. Assignment and Sub-Contracting

54.1 The Vendor shall not assign, novate or otherwise transfer the whole or any part of this Agreement without the prior written agreement of Employer.

54.2 Employer shall be entitled to assign, novate or otherwise transfer the whole or any part of this Agreement to any third party provided the terms and conditions of this Agreement are not changed in any way to the detriment of the Vendor rights.

54.3 The Vendor shall not sub-contract the whole of the Works and shall not without the prior written consent of Employer sub-contract any part of the Works if this exceeds thirty percent (30%) of the Contract Price, such consent not to be unreasonably withheld.

54.4 The Vendor shall procure that any Sub-Contractor employed by the Vendor shall, provide and employ in connection with the execution of the Works only such technical assistants as are skilled, experienced and assessed as competent for undertaking a specified range of activities in their respective occupations and, as appropriate, such sub-agents, foremen and leading hands as are competent to give proper supervision to the work they are required to supervise and such skilled, semi-skilled and un-skilled labour as is necessary for the proper and timely execution of the Works.

54.5 The Vendor shall, and shall procure that its Sub-Contractors shall, maintain a true and correct set of records as required by the Design Standard of all transactions relating to the design, manufacture and shipping of the Equipment and make such records available at all times for inspection by Employer, provided the Employer has given the Vendor at least ten (10) days' notice of its intention to inspect such records.

54.6 Employer's Representative shall have the right, after due warning in writing to require the Vendor to remove from the Project any Sub-Contractor or employee of such Sub-Contractor who misconducts itself or is incompetent or negligent in the performance of its duties or fails to conform with any particular provisions with regard to safety which may be set out in this Agreement or persists in any conduct which is prejudicial to health and safety and such Sub-Contractor and/or employee of such Sub-Contractor shall not be again employed upon the Works without permission of Employer's Representative.

54.7 The appointment or authorisation by the Vendor of any Sub-Contractor, agent, officer or employee and/or any consent given by Employer to any Sub-Contractor, agent, officer or employee, shall not relieve the Vendor of any obligation under this Agreement, and the acts of and omissions of any such Sub-Contractor, agent, officer or employee shall, for the purposes of this Agreement, be deemed to be the acts or omissions of the Vendor.

54.8 The Vendor shall provide sufficient superintendence to ensure that the work to be carried out by Sub-Contractors will comply with the requirements of this Agreement and applicable Laws.

#### 55. Novation



The Vendor shall within 7 days of a request by the Employer enter into, execute and deliver to the Employer a Novation Agreement in the form set out in Schedule 6 (**Performance Security and Novation Agreement**) novating this Agreement to any person as may be specified by the Employer.

**56. Conflict of Interest**

The Vendor shall (and shall procure that the Vendor Parties shall:

- (a) be responsible for ensuring that no conflict of interest arises in respect of its duties under this Agreement;
- (b) make all possible enquiries to ensure that there is no conflict of interest prior to its assuming the duties required of it under the terms of this Agreement; and
- (c) consult and advise Employer if the Vendor considers that a conflict of interest arises or if he considers that a conflict of interest may exist or may arise or may be foreseeable and shall furnish Employer with such information as shall enable Employer to determine whether or not a conflict of interest has arisen.

**57. Entire Agreement**

57.1 Except where expressly provided otherwise in this Agreement, this Agreement constitutes the entire agreement between the Parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings concerning the subject matter of this Agreement.

57.2 Each of the Parties confirms to the other that it has neither been induced to enter into this Agreement in reliance on, nor has it made, any representation or warranty except those contained or referred to in this Agreement.

57.3 Any representations or warranties other than those contained or referred to in this Agreement are superseded and extinguished by this Agreement.

57.4 Each Party irrevocably and unconditionally waives all rights and remedies which it might otherwise have had in relation to any representations or warranties other than those contained or referred to in this Agreement save in respect of any fraudulent misrepresentation.

57.5 Indirect Damages: Neither Party shall be liable for any claim for indirect, incidental or consequential damages, including without limitation lost revenues, lost profit or loss of prospective advantage, resulting from the performance or failure to perform this Agreement.

**58. Consent and Approval**

58.1 The giving of any consent or approval by or on behalf of Employer shall not in any way relieve the Vendor of any of its obligations under this Agreement or of its duty to ensure the correctness, accuracy or suitability of the matter or thing which is the subject of the consent or approval.

58.2 Failure by Employer to disapprove or object to any matter or thing shall not prejudice its power subsequently to take action under this Agreement in connection therewith.

**59. Further Assurance**

Each Party shall at the reasonable request and cost of the other (save where it is expressly provided that the cost of such act or execution shall be for that Party's account) do any act or execute any document that may be necessary to give full effect to this Agreement.

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*[Handwritten initials]*



60. **Applicable Law**

This Agreement, any document completed or to be completed in accordance with its provisions and any matter arising from this Agreement or any such document shall be governed by and construed in accordance with UK law.

61. **No Partnership or Agency**

61.1 Nothing in this Agreement shall be construed as creating a partnership between Employer and the Vendor.

61.2 The Vendor shall not (and shall procure that the Vendor Parties shall not) act or purport to act as agent for Employer in relation to any matter unless specifically authorised in writing under this Agreement by Employer. The Vendor shall not be entitled to bind Employer in any way or to create any liability or cause of action against Employer and shall not hold itself out (and shall procure that no Vendor Party shall hold itself out) as having any such authority or power.

62. **Invalid Terms**

62.1 If any term of this Agreement shall be held to any extent to be invalid, unlawful or unenforceable:

- (a) that term shall to that extent be deemed not to form part of this Agreement; and
- (b) the validity and enforceability of the remainder of this Agreement shall not be affected.

62.2 Without prejudice to any other terms of this Agreement, the Parties shall promptly consult in good faith with a view to agreeing as soon as reasonably practicable one or more provisions in lieu of the invalid provision such as will, so far as is possible under any applicable Law, have the same commercial effect as the invalid provision would have had if it had not been invalid, unlawful or unenforceable.

63. **Third Party Rights**

Subject to any express provision of this Agreement, a person who is not party to this Agreement shall have no right to enforce any term of this Agreement.

IN WITNESS WHEREOF the Parties have executed this Agreement the day and year, first above written.

.....  
For and on behalf of  
**THEME PARKS L.L.C.**

Title: *Ziad Homami - GM*  
Date:



.....  
For and on behalf of  
**DYNAMIC ATTRACTIONS LIMITED**

Title: *CEO*  
Date: *January 13, 2014*

## SCHEDULE 1 SCOPE OF WORKS

### Indoor Coaster

#### 1. SCOPE OF WORK:

1.1. The scope of work shall include design, engineering, supply and installation, supervision commissioning and training of the Indoor Coaster attraction. In addition the scope shall include documentation, a list of recommended spare parts, freight estimate, insurance estimate, TUV certification for the design and fabrication.

#### 1.2. Description

The indoor Roller Coaster integrates the best features of a dark ride and a high-speed launch coaster with the best features of a high thrill looping coaster.

#### 1.3. Scope of Supply

The scope of supply shall include, but not limited to, the following items:

1.3.1. One (1) Complete Roller Coaster with:

- 1.3.1.1. Ride Engineering based on EN13814 and all other standards related thereto for structural, mechanical and electrical.
- 1.3.1.2. Main Track of 560m (1837ft) including storage track (in accordance with approved layout)
- 1.3.1.3. Two (2) Storage Tracks for six (6) vehicles, to include motorized drive system for vehicle positioning
- 1.3.1.4. One automatic (1) Switch Track for maintenance transfer (incorporated into Slide Drop element)
- 1.3.1.5. Six (6) Vehicles with Nine (9) riders each
- 1.3.1.6. One (1) Vehicle "Test" Seat for queue including seat belt and lapbar
- 1.3.1.7. Automatic Restraint Release Mechanism in load/unload positions and individual manual release for evacuation.
- 1.3.1.8. Columns & Hardware
- 1.3.1.9. Paint to meet marine standards with standing highly corrosive environment Class C4 in accordance with ISO 12944 Classification.
- 1.3.1.10. Linear Synchronous Motor (LSM) slow propulsion system in dark ride
- 1.3.1.11. One (1) High Speed LSM launch system
- 1.3.1.12. One (1) 3 m/s boost LSM system
- 1.3.1.13. One (1) 14 m/s boost LSM system
- 1.3.1.14. One (1) Drive Tire Systems or LSM system for vehicle positioning
- 1.3.1.15. One (1) Pneumatic System for pneumatic systems and holding brakes as needed
- 1.3.1.16. One (1) Braking System (System includes holding brakes at various locations as needed)
- 1.3.1.17. One (1) Tilt and Drop Element

- 1.3.1.18. One (1) Track Slide Drop Element
- 1.3.1.19. Evacuation Platform, Stairs or evacuation system as required at anticipated stopping points connecting to the Facility.
- 1.3.1.20. Block Brake Platform and Stairs as required (Part of 1.3.1.20)
- 1.3.1.21. Station Equipment to move trains through the station (Unload and Loading)
- 1.3.1.22. Two (2) Shotgun Gates for loading.
- 1.3.1.23. Solid State Energy Storage Management System for Launch 0-80 kmh
- 1.3.1.24. Track Rail Fill for noise reduction
- 1.3.1.25. Fasteners as required
- 1.3.1.26. Anchor Bolts and Imbeds as required for provide anchor points
- 1.3.1.27. Safety Block Sections (part of Safety Ride Control System)
- 1.3.1.28. Vehicle Theming in FRP as per Design consultant including, one (1) Mockup
- 1.3.1.29. Control System based on VDE/DIN Standards and all other standards related thereto

- 1.3.1.29.1. Operator Panel(s)
- 1.3.1.29.2. Motor Control Center (MCC)
- 1.3.1.29.3. Ride Control Center (RCC) – Allen Bradley
- 1.3.1.29.4. Wiring and Cabling
- 1.3.1.29.5. Cable Management System
- 1.3.1.29.6. UPS on Critical Control System
- 1.3.1.29.7. Software installed on PC including Ride Control system Software
- 1.3.1.29.8. One (1) Ride diagnostic computer with online support capability

- 1.3.1.30. Special Tools
- 1.3.1.31. All items mentioned in the latest proposal submitted by the Vendor and agreed to by both parties.

### 1.3.2. AV Equipment Breakdown

- 1.3.2.1. Includes onsite installation supervision of projectors, alignment and commissioning

### 1.3.3. Documentation

- 1.3.3.1. Operator Manuals (English)
  - 1.3.3.1.1. Start-up procedures
  - 1.3.3.1.2. Shutdown procedures
  - 1.3.3.1.3. Emergency and safety operating procedures
  - 1.3.3.1.4. Normal Operating Procedures
  - 1.3.3.1.5. Operating procedures during equipment breakdown
  - 1.3.3.1.6. Operator responsibilities
  - 1.3.3.1.7. Operating Specifications (facts and figures, THRC, cycle time, etc.)
  - 1.3.3.1.8. Guest Evacuation Procedures

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- 1.3.3.1.9. Operator Pre-Opening Inspection Procedure
- 1.3.3.2. Maintenance Manuals and Requirements (English)
  - 1.3.3.2.1. Functional descriptions of each subsystem
  - 1.3.3.2.2. Specifications of all equipment with manufacturer's name and address, year of manufacture, model and serial number (when appropriate), rated capacity, quantities, loads, drive arrangement and size, and electrical requirements.
  - 1.3.3.2.3. Photo documentation of all Vendor-supplied elements
  - 1.3.3.2.4. Control System Theory of Operation including logic
  - 1.3.3.2.5. Recommended preventive maintenance procedures and schedules of recommended service intervals, cycle based where applicable
  - 1.3.3.2.6. Criteria for testing all critical components
  - 1.3.3.2.7. Lubrication requirements
  - 1.3.3.2.8. Corrosion protection program
  - 1.3.3.2.9. Locations and torques of critical fasteners
  - 1.3.3.2.10. Manufacturers and Suppliers contract list, including any manufacturers or suppliers of equipment included as part of the recommended spare parts and consumables list
  - 1.3.3.2.11. Warranty cards and registration for all equipment (including equipment provided to Vendor by second parties) where applicable
  - 1.3.3.2.12. Paint and finish specifications, formulas, descriptions, and special finish instructions for all painted elements
  - 1.3.3.2.13. A listing of the disciplines required by maintenance technicians and any special training required for said technicians
- 1.3.3.3. Capacity Verification
- 1.3.3.4. Code Compliance
- 1.3.3.5. Facility Interface Drawings
- 1.3.3.6. Analysis Report
  - 1.3.3.6.1. A list of weights and center of gravity locations for all ride equipment.
  - 1.3.3.6.2. Moments of inertia for all moving equipment.
  - 1.3.3.6.3. A complete structural and dynamic analysis of all load bearing components.
  - 1.3.3.6.4. A failure modes and effects analysis of the ride and control system.
  - 1.3.3.6.5. Sizing calculations for all pneumatic, hydraulic, and electrical equipment.
  - 1.3.3.6.6. Requirements for developing the station and filling systems.
  - 1.3.3.6.7. Ride Dynamics including X, Y, Z g-forces
- 1.3.4. Final Drawing Package and Parts List
  - 1.3.4.1. Drawing Tree
  - 1.3.4.2. Block Diagrams
  - 1.3.4.3. Outline drawings showing overall dimensions, motion, and reach envelopes, clearance requirements, and electrical, structural, and utility interfaces.

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- 1.3.4.4. General Arrangement drawings
- 1.3.4.5. Schematic diagrams of all electrical and pneumatic components.
- 1.3.4.6. Equipment plans and elevations indicating all dimensions and weights, including required clearances for installation and operation of all equipment and components.
- 1.3.4.7. Installation drawings
- 1.3.4.8. Detailed general arrangement drawings
- 1.3.4.9. Control System Theory of Operation
- 1.3.4.10. Control Panel Layouts, including all button , switch, and readout locations and functions
- 1.3.4.11. Complete Control System Program (PLC, Displays, etc.) in both printed and electronic form (able to view online comments on ladder diagrams)
- 1.3.4.12. Wire lists
- 1.3.4.13. Control System I/O list
- 1.3.4.14. Cut Sheets of any third party components
- 1.3.5.Theory of Operation
- 1.3.6.Acceptance Test Plans for Factory Acceptance (FAT) and installation (SAT)
- 1.3.7.All required NDT and other applicable testing with all supporting documents on metal part assemblies and welding work.
- 1.3.8.Spares and Consumables Lists (including lead time and recommended priorities)
- 1.3.9.Safety Risk Assessment
- 1.3.10. Hazard Classification
- 1.3.11. Method Statements
- 1.3.12. TUV (Munich) Site Approval Assistance
- 1.3.13. Installation and Commissioning
- 1.3.14. Training
- 1.3.15. Two (2) Design Review Meetings
- 1.3.16. Two (2) On-Site Meetings
- 1.3.17. One (1) Production Review

## 2. SPECIFICATIONS AND DESIGN REQUIREMENTS

Specifications included with RFP including Addendums are to be included. In case of any conflicts, the specifications in this document are to take precedence.

### 2.1. Regulations and Construction Permit Approvals

The ride system shall be designed and installed to conform to all requirements of:

- 2.1.1. The IBC 2009, and all other state health, building and safety codes, regulations and guidelines.

- 2.1.2. The Department of Public Health, and all other state and local health and building codes.
- 2.1.3. Electric Code; Regulation and Supervision Bureau (RSB) of Abu Dhabi UAE Electrical & Wiring Regulations 2007, Rev. 1 January 2009.
- 2.1.4. Safety Assessment; or risk assessment shall be performed conforming to ISO 14121.
- 2.1.5. TUV Certification; a third party inspection conforming to EN 13814
- 2.1.6. The Employer or his authorized representatives will have, at all times, the right to make inquiries concerning the ride.
- 2.1.7. EN 13814 Standard Practice for Design of Amusement Rides and Devices

## 2.2. Environment

The ride shall be designed to operate Indoors. The Ride should be able to operate in Indoor temperature conditions with humidity and be suitable for human occupation. The site is located within Ferrari World Abu Dhabi.

## 2.3. Durability

The ride shall have a minimum useful life of 10 years. The ride shall be designed to maintain availability of not less than 95% when maintained per the Vendor's recommendations and operated 12 hours per day, seven days per week, and fifty two weeks per year.

## 2.4. Fail Safe Design

The ride shall be designed in accordance with all applicable EN specifications for fail safe design. Specifically, a failure of the ride or any of its components shall not directly or indirectly cause injury to personnel or collateral damage to the ride or adjacent equipment. Removal of electrical power to the ride shall cause the ride to assume a safe state.

## 2.5. Structural Design

The ride shall be designed and fabricated in accordance with EN 13814 Standard Practice for Design of Amusement Rides and Devices and its referenced specifications.

## 2.6. Evacuation

The ride shall be designed to provide for emergency and non-emergency evacuation.

## 2.7. Noise

The acoustic noise generated by the ride shall not exceed 80 dbA within one meter of any passenger position. Measures being taken by Vendor include filling running rail and polyurethane wheels.

## 2.8. Restraint System

The ride shall be equipped with passenger restraint systems that comply with EN 13814 Standard Practice for Design of Amusement Rides and Devices and its referenced specifications. Specifically, these systems are to be designed with the intent of maintaining the patrons in the seats during normal operation; in the event of attempts at unauthorized egress; after an emergency stop; or in the event of a failure in the ride system.

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## 2.9. Ridership Limits

The Vendor shall identify the limitations on ridership with respect to height, or other relevant factors, as well as the basis for the limitation

## 2.10. Patron Seating

Seats shall be designed to minimize patron injury during the ride. The seats shall be durable, colorfast, and designed for indoor operation. If the patrons use the seat for entering or exiting the vehicle, then the seat shall include a non-skid surface.

## 2.11. Lock out/Tag Out

The ride shall include a lock out/tag out capability. Operations and Maintenance personnel will be able to disable the ride prior to entering the ride mechanical space.

## 2.12. Control System

The ride control system shall be designed to control ride devices and vehicles such that patron and personnel safety is addressed in accordance with the ride analysis and to ensure that the ride will achieve the required capacity as long as operated in within the specification provided by the Vendor.

## 2.13. Performance

- 2.13.1 The ride shall be capable of performing a minimum of 90% of its THRC the day the park is scheduled to open to the general public. (It is understood that the efficiency of operating personnel greatly affects THRC.) It will then reach the following operational readiness milestones:
- 2.13.2 100% THRC within 30 days of operation to the general public as long as operated in within the specification provided by the Vendor. (It is understood that the efficiency of operating personnel greatly affects THRC.)

## 2.14. Language

All project work, documentation, engineering, programming, etc. to be in the English Language

## 3. PERFORMANCE REQUIREMENTS

Minimum Theoretical Ride Capacity (THRC)	Approximately 810 riders per hour
Number of vehicles	6
Minimum number of Seats per vehicle	9
Vehicle Configuration	Two Rows Staggered Seating; Row-1 = 4 passengers Row-2 = 5 passengers
Passenger Restrictions	<ul style="list-style-type: none"><li>Passengers smaller than 1.3 m are not allowed to ride.</li></ul>
Track Length	Approx. 560m including storage track
Ride Duration	Approximately 153 seconds (40 seconds dispatch interval)

Passenger Load/Unload Time	45 to 50 secs
Daily Operational Availability	12 hours
Yearly Operational Availability	365 days
Ride Type	Stunt Coaster
Environment	Indoor
Station	Linear Unload and Load
Disabled Rider Load Plan	Transfer seat in one vehicle
Evacuation	Platforms as required for all lift section and at brake sections with connections to evacuation routes in facility
Seat Type	Bucket Seats with Lapbar restraint system
Propulsion	LSM drive system
Max. Speed	72.5 km/h

#### 4. SCOPE RESPONSIBILITY MATRIX

Where multiple check marks are made on a single line, then each party is responsible within their own scope of work

Interfaces	Vendor	Employer	Creative Consultant	Lead Consultant	Contractor
<b>DESIGN</b>					
Ride Path	X	Input	Input	Input	
Ride Systems, equipment and structure	X				
Ride Communications Equipment		X			
Water Piping and Pumps if required	X				
Utility Requirements (Electrical, Water, Hydraulic, Air, HVAC etc.)	X				
Utility Supply		X			
Point Loads	X				
Theming	Input	Input	X		
Foundations	Locations/Loads			X	
Anchor Bolts/Inbed Design	X				
Geo Tech				X	
Control System Design	X	Input			
Cable/Wiring Design and Routing	X			X	
TUEV Approval	X(Desig	Commi			

Interfaces	Vendor	Employer	Creative Consultant	Lead Consultant	Contractor
	n & Fabrication)	Commissioning & final approval			
Audio/Video, Special Effects and Show Control Design	X				
Approval of all Specifications, Programs, Designs, and Drawings				X	
<b>SUPPLY &amp; INSTALLATION</b>					
Delivery Storage Control	X (Specifications)				
Setting out Foundations					X
Foundations					X
Structural Steel	X				
Structural Concrete					X
Site survey				X	
Steel Erection	X (Supervision)				X
Ride System	X				
Theming					X
Crainage/Scaffolding					X
Protection of installed ride track/columns during construction works by Main Contractor					X
Freight & Insurance	(Arrange)	X			
All Duties, Taxes, Customs	(Arrange)	X			

Interfaces	Vendor	Employer	Creative Consultant	Lead Consultant	Contractor
Grouting					X
Control systems	X				
Site piping					X
Pumps if required	X				
Anchor Bolts/Vendor Required imbeds supply	X				
Anchor Bolt Templates	X				
Anchor Bolt /Vendor Required imbeds installation					X
Commissioning and training	X				
Sensors and actuators	X				
Motor Control Centers (MCC), Distribution Boards (DB)	X				
Ride Control Center (RCC) Operator Panels (OP), and Stainless Steel Junction Boxes (JB)	X				
Wiring between MCC/RCC and DB/JB	X				
Wiring between MCC and RCC	X				
Wiring between DB and OP	X				
Wiring and conduits between MCC/DB/RCC/OP/JB and Vendor Supplied Equipment	X				
Supply of Special Communication cable between LSM motor to LSM Cabinets	X				
Installation of Special Communication cable and conduit (and supply of conduit)					X
Termination of Special Communication Cable between LSM Motors and Equipment and Cabinets	X				
Termination of all wiring within vendor supplied equipment	X				
Termination of wiring from Substation to					X

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Interfaces	Vendor	Employer	Creative Consultant	Lead Consultant	Contractor
MCC/RCC					
Pneumatic panels, equipment connections, as required	X				
Pneumatic piping and compressor supply and delivery					X
Hydraulic equipment and piping, as required	X				
Galvanized Cable trays					X
Final Plumbing connections	X				
Installation of Vendor Supplied Equipment	Advisory Services				X
TUEV Site Approval (3 <sup>rd</sup> party Inspection)	Input	X			
Ride Cooling systems, as required	X				
Area Development HVAC					X
Drains and Exhaust Systems					X
Touch-up paint	X				
Field Labeling of all cables, sensors and actuators					X
Internal Lightning Protection	X				
<b>Audio/Visual Media and SFX</b>					
Supply of A/V Media and SFX Equipment for Ride Scenes	X				
Installation Supervision of A/V SFX for Ride Scenes	X				
Installation of A/V SFX for Ride Scenes	X				Support
Programming of Added Media Channels	X				

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## SCHEDULE 2 EMPLOYER'S REQUIREMENTS

### OVERVIEW

The organizing principle of Ferrari World Abu Dhabi (FWAD) consists of three zones of activation:

"Performance," "Playful" and "Vintage."

Each of these zones is anchored by the major rides, shows and attractions contained within them, but they are also activated by a variety of Area Development efforts which visually define each of the zones in their own way. These efforts are designed to create an immersive sense of place and include simple themed elements like benches, trash cans, and vending carts, interactive installations, street shows, and rich, immersive environments that are clear, consistent and instantly "gettable."

- That are to:-engage guests at a pedestrian level;
- offer interstitial value, entertainment and engagement between rides, shows and attractions;
- provide place making, immersive and fantastical environments that take guests out of the common world and into a special place;
- provides photo opportunities; and
- offers unique activities, engagements, interactives and revenue generating opportunities

### 1. THE PROJECT

#### 1.1 The Works

The Works comprise the final design, procurement, construction, start-up commissioning and completion of all elements of the Indoor Coaster at FWAD. The scope of the work along with the drawings, specifications and other attachments comprising this Contract scope shall be the basis for the Works.

#### 1.2 General

These Employer Requirements set out the scope of work for the design and construction of the Phase 2 Project Development. The rides and attractions that the Park is required to provide together with all geometrical requirements, design codes, materials, durability, inspection and maintenance requirements are specified in this document.

The rides and attractions will be procured directly by Employer in conjunction with Employers Representative. The appointed vendors for rides and attractions will be on a Design, Fabrication, Shipping, Installation, Testing and Commissioning basis and will be novated following completion of the shipping elements to the appointed Main Contractor, who will be contracted directly to Employer.

The Vendor shall perform its Services in a manner consistent with applicable laws, ordinances, rules and regulations, including without limitation of the building codes (collectively "Government Requirements").

The formal process for the issue and transmission of drawings and documentation will be the Aconex document control system. Aconex provides easy to use on-line information management/collaboration solutions for all project participants to manage information. The use of the Aconex system and all the training on Aconex will be provided free to all consultants.

Aconex must be used for all drawing issues throughout the design development process and



through the entire course of the project.

The Aconex system shall utilize a pre-determined drawing and document numbering system the principles of which are define below:

XXX	-	Z	-	CPN	-	1122	-	DC	-	A	-	00000	-	000	-	CPN EXT
Project		Zone		Originator		Discipline (CSI Code)		Type		Sub Zone		Unique ID		Sheet No Optional		Commentor or None std file Optional

The above numbering system shall be adopted on all drawings and documents submitted via Aconex. All such drawings and documents must also display the respective numbering on the front page or other suitable location. A more detailed description of all such procedures will be made available upon appointment of the Vendor.

In addition:-

- Drawings shall be uploaded in PDF and DWG (e-transmit) format. Documents shall generally be uploaded as PDF only.
- AutoCAD 2008 drawing file standard shall be used to exchange electronic drawing information or compatible and importable software.
- Microsoft Office 2007 compatible standard is required for e-mail, word processing and spreadsheet software.
- Adobe Acrobat PDF files shall be version 8 compatible.
- Graphic images shall be in JPEG format or PDF as appropriate.
- A dimensions and standard units shall be in metric. Paper sizes for transmitted documents and drawings shall follow the A4, A3, A3, A1 and A0 format. Scales shall be recognized and range from 1:1, 1:2, 1:4, 1:10, 1:20, 1:50, 1:100, 1:200, 1:500, 1:1000, 1:1250 and 1:2500. No other scales should be used and a scale bar must be visible on all drawings for information only.
- The Vendor shall become familiar with the Facility through frequent site visits, research, and examination of any record drawings, as applicable and shall notify The Employers Representative of any field conditions not shown or incorrectly shown on the records drawings, as may have been reasonably discovered. Frequent visits shall continue until the Vendor is thoroughly familiar with the existing conditions, problem areas, and existing hazardous conditions.
- Provide schedule detailing all deliverables (documents and drawings, equipment and installation, etc.) to be produced for each stage of the process – updated monthly.
- Environmental, health, safety and security issues are of paramount importance and the Vendor shall comply with all requirements in this regard. The Vendor shall adopt the environmental, health, safety and security policy, practices and procedures as agreed with the Employer in accordance with Employer's HSSE policy (as may be amended).
- The Vendor shall at all times comply with lawful discretions of the Employer Head of HSSE as well as established facility rules, regulations, practices and approved procedures for the Project.
- Where calculations are a part of Vendor's Services, particularly with regards to all types of engineering, such calculations shall be assembled, reproduced and submitted to The Employers Representative prior to Consultant's final payment.

### 1.3 Objectives

The primary objectives of the FWAD Phase 2 Project Development shall be to provide a robust structure of minimum whole life cost that satisfies and complies with the functional requirements set out in these Employer's Requirements. In addition, the design shall meet the following requirements:

- Safety and reliability shall be of paramount importance and the Rides and Attractions shall be designed to be safe, both structurally and operationally for all occupants in and around all FWAD structures.
- All Rides and Attractions will have a high level of durability. This shall be provided through design detailing, materials used and construction methods implemented.
- The Rides and Attractions shall have good access for the provision of inspection and maintenance.
- The design shall recognize the need for ease of replacement of critical components.
- The design, materials used and construction methods implemented shall reflect a high level of quality, matching or exceeding that of other Rides and Attractions in the world.

## 2. REGULATIONS & CONSTRUCTION PERMIT APPROVALS

2.1 Full securing and payments of permits will be obtained by the Employers Representative with the assistance of the General Contractor and the Vendor. The Vendor shall have all assigned documents required for permitting sealed by a Registered Professional Engineer in the location of the Project.

2.2 The Attraction and related systems related to each shall be designed and installed to conform to all requirements of:

- All applicable regulations and planning guidelines of Abu Dhabi Distribution Company (ADDC), Abu Dhabi Sewerage Services, Civil Defense Authority and any other applicable local requirements and guidelines of ASHRAE, NFPA
- Americans with Disabilities Act (ADA) - accessibility Guidelines from Building and Facilities (Appendix A to Part 1191) or BS 8300; 2009
- American Society of Testing and Measurements: F2291-09B Standard Practice for the
- BSEN 13814 Standard Practice for Design of Amusement Rides and Devices
- BS 310, Specification for Steel Casting for General Engineering Purposes
- BS 4395-1 Specification for High Strength Friction Grip Bolts and Associated Nuts and Washers for Structural Engineering- Part 1: General Grade
- BS 4395-2 Specification for High Strength Friction Grip Bolts and Associated Nuts and Washers for Structural Engineering- Part 2 Higher Grade Bolts and Nuts and General Grade Washers
- BS 4604-1 Specification for High Strength Friction Grip Bolts in structural Steelwork Metric Series- Part 1 General Grade
- BS 4604-2 Specification for High Strength Friction Grip Bolts in structural Steelwork Metric Series – Part 2 Higher Grade (Parallel Shank)
- BS 5950-2 Structural use of Steelwork in Building- Part 2 Specification for Materials Fabrication and Erection- Rolled and welded sections
- BS 6399-1 Loading for Buildings- Part 1 Code Of Practice for Dead And Imposed Loads
- BS 6399-2 Loading for Buildings- Part 2 Code of Practice for wind loads
- BS 7419 Specification for holding down bolts
- BS 7608 Code of practice for fatigue design and assessment of steel structures
- BS 7644-1 Direct Tension Indicators- Part 1 Specification for compressible washers
- BS 7644-2 Direct tension Indicators- Part 2 Specification for nut face and bolt face washers
- BS 7668 Specification for weldable structural Steel- Hot finished Structural Hollow

#### Sections in Weather Resistant Steels

- BS EN 100002-1 Tensile Testing of Metallic Materials- Part 1 Method of Test at Ambient temperatures
- BS EN 10025 Hot Rolled Products of Non-Alloy Structural Steel- Technical Delivery Conditions
- BS EN 10113-2 Hot Rolled Products in Weldable Fine Grain Structural Steel – Part 2 Delivery Conditions for Normalized/non- normalized rolled steel
- BS EN 10113-3 Hot Rolled Products in Weldable Fine Grain Structural Steel – Part 3 Delivery conditions for Thermo- mechanical Rolled Steel
- BS EN 10137-2 Plates and wide Flats Made of High Yield Strength Structural Steels in the Quenched and Tempered or Precipitation Hardened Conditions-Part 2 Delivery Conditions for Quenched and Tempered
- BS EN 1993-1-4:2006 Eurocode 3. Design of Steel Structures General Rules. Supplementary Rules for Stainless Steels
- BS ISO 9444 Continuously Hot-Rolled Stainless Steel. Tolerances on Dimensions and Form
- BS EN ISO 9445 Continuously Cold- Rolled Stainless Steel. Tolerances on Dimensions and form
- BS EN ISO 3506 Mechanical Properties of Corrosion- Resistant Stainless Steel Fasteners
- American Society of Testing and Measurements A 36/A 36M-05 Specification for Carbon Structural Steel
- American Society of Testing and Measurements A 153/A 153M Specification for Zinc Coating (Hot-Dip) on Iron and Steel Hardware
- American Society of Testing and Measurements A 240/A 240M-07 Standard Specification for Chromium and Chromium- Nickel Stainless Steel Plate, Sheet and Strip for Pressure Vessels and for General Application
- American Society of Testing and Measurements A 283/A 283-03 Specification for Low and Intermediate Tensile Strength Carbon Steel Plates
- American Society of Testing and Measurements A 307-04e01 Specification for Carbon Steel Bolts and Studs, 60,000 psi Tensile Strength
- American Society of Testing and Measurements A 568/A 588M-5 Specification for High-Strength Low-Alloy Structural Steel with 50 ksi (345 MPa) Minimum Yield Point to 100mm Thick.
- American Society of Testing and Measurements A 653/A 653M-07 Specification for Steel Sheet, Zinc-Coated Galvanized or Zinc-Iron Alloy-Coated Galvannealed by the Hot-Dip Process
- American Society of Testing and Measurements A 755/A 755M- 07 Specification for Steel Sheet, Metallic-Coated by the Hot- Dip Process and Preprinted by the Coil-Coated Process for Exterior Exposed Building Products
- American Society of Testing and Measurements A 792/A 792M-6a Specification for Steel Sheet, 55% Aluminum-Zinc Alloy-Coated by the Hot-Dip Process
- American Society of Testing and Measurements A 913/A 913M-04 Specification for High-Strength Low-Alloy Steel Shapes of Structural Quality, Produced by Quenching and Self Tempering Process (QST)
- American Society of Testing and Measurements A 924/A 924M-07 Standard Specification for General Requirements for Steel Sheet, Metallic-Coated by the Hot-Dip Process
- American Society of Testing and Measurements B 695-04 Standard Specification for Coatings of Zinc Mechanically Deposited on Iron and Steel
- American Society of Testing and Measurements C 645-07 Specification for Non-Structural Steel Framing Member
- BS EN ISO 5817 Welding Quality
- BS EN 287 Welders Qualification
- BS EN 288 Welding Process

- BS EN 14231 Determination of the Slip Resistance by Means of the Pendulum
- IEC 60364 Electrical
- BS 7671 Requirements for Electrical Installations (IEE Wiring Regulation, UK)
- All Electrical Requirements Shall Conform to Regulation and Supervision Bureau (RSB) of Abu Dhabi UAE Electricity Wiring Regulations 2007, Revision 1 January 2009
- IBC 2009
- BS EN 1069- 1&2:2000
- The ride shall be subject to TUV Certification by a third party certification company. The TUV Certification shall be provided by Vendor. The Employer or authorized representative(s) shall at all times have the right to make enquiries from Vendor and/or third parties concerning the ride certification. The certification company shall be accredited conforming to IS 17025 or EN 4501 and EN 45004
- Safety and Risk Assessment Shall Conform to ISO 14121) before EN 1050)
- All Structural Steel to be Hot-Dip Galvanized to ASTM A 123/A 123M or ISO 1461. Minimum Coating Thickness of 5 mil or 900g/square meter. Prior to any Painting, all Hot-Dip Galvanizing Surfaces Shall Conform to ASTM A 780

The Vendor has to follow the above, but in the event of any conflict, the DIN/BS standards will prevail.

### 2.3 Industry Standard

In addition to compliance with all applicable codes and regulations, all equipment and material related to the provision and installation of equipment described in this Agreement shall comply with current industry standards and practices per the European Committee for Standardization (EN).

### 2.4 Engineering Standards

In addition to minimum code compliance described above, all mechanical, structural, and electrical engineering practices performed in the execution of the Works must be of the highest contemporary standards. Any outside engineering must be performed by a Professional Engineer ("P.E.") licensed to provide services in Abu Dhabi, UAE, and in possession of all required professional bonds and insurance. The Employer reserves the option of requiring specific limits and coverage for any insurance above and beyond the minimum requirements.

## 3. INSTALLATION

- 3.1 Vendor shall provide packing, crating and shipping, advisory service for uncrating and staging and installation of all equipment described in the Scope of Work and related attachments.
- 3.2 Vendor shall cooperate and conform to all site health and safety requirements/programs for the project as required by the Employer and/or Governing Agencies. The Vendor shall keep a clean worksite at all times.
- 3.3 Vendor shall cooperate with scheduling determined for the complete job as not to create any delays or slowdown of other Vendors.
- 3.4 Qualification of Workmen: At least one (1) person who is thoroughly familiar with the materials, methods and equipment being utilized shall be present at all times during the installation, testing and commissioning to direct the work where required. All workers brought into UAE for the installation or supervision of the rides needed to comply with the UAE Immigration and labor laws.

3.5 Employer will provide final clean up and paint touch-up.

3.6 Vendor shall provide certification, start-up and training of Employer and any applicable operation and maintenance (O&M) manuals.

#### 4. STORAGE OF MATERIALS

4.1 The Vendor shall deliver manufactured materials in the original packages, containers or bundles and bearing the name of the manufacturer and the brand if existing when appropriate.

4.2 Any equipment, materials and supplies that require storage in a conditioned space prior to installation must be identified before shipment. Exact needs and amounts of such storage should be stated by the Vendor to aid in installation planning.

#### 5. AS CONSTRUCTED DRAWINGS

Where the Contract requires "as constructed" or "as built" drawings to be submitted to the Employer's Representative via Aconex in an electronic form with one (1) hard copy on sheet size to match Contract drawings. Such drawings shall be suitably identified and submitted to the Employer's Representative within thirty (30) days of the Date of Practical Completion.

#### 6. OPERATIONAL AND MAINTENANCE INSTRUCTIONS

6.1 The Vendor shall furnish two (2) complete Hard copy sets of manuals and electronic sets via Aconex for each ride or attraction containing the manufacturer's instructions for maintenance and operation of each item of equipment and apparatus furnished under the Contract and any additional data specifically required under the Contract within ten (10) days of the Date of Issue of Taking Over Certificate. A draft of the manuals is to be provided a minimum of 90 days before Practical Completion.

6.2 As a minimum standard the Operating and Maintenance Manuals described above shall include the following general sections of information as applicable:

- Index
- Introduction and General Description
- Description of Operations
- Maintenance Instructions
- Schedule of Installed Equipment and Equipment's Suppliers
- Manufacturer's Literature
- Schedule of Spare Parts and/or Special Tools
- Commissioning and Capacity Test Results
- Contact Personnel
- The manual shall be arranged in proper order, indexed and marked for each division of the work and suitably bound.
- The Vendor must certify by endorsement thereon, that each of the manuals is complete and accurate.
- Prior to the Vendor's application for the final payment and as a condition for the issue of the Final Certificate, the Vendor must deliver the manuals, arranged in proper order, indexed and endorsed. The Vendor shall assemble these manuals for all divisions of the work and review them for completeness before submittal.



**7. PRODUCT WARRANTIES**

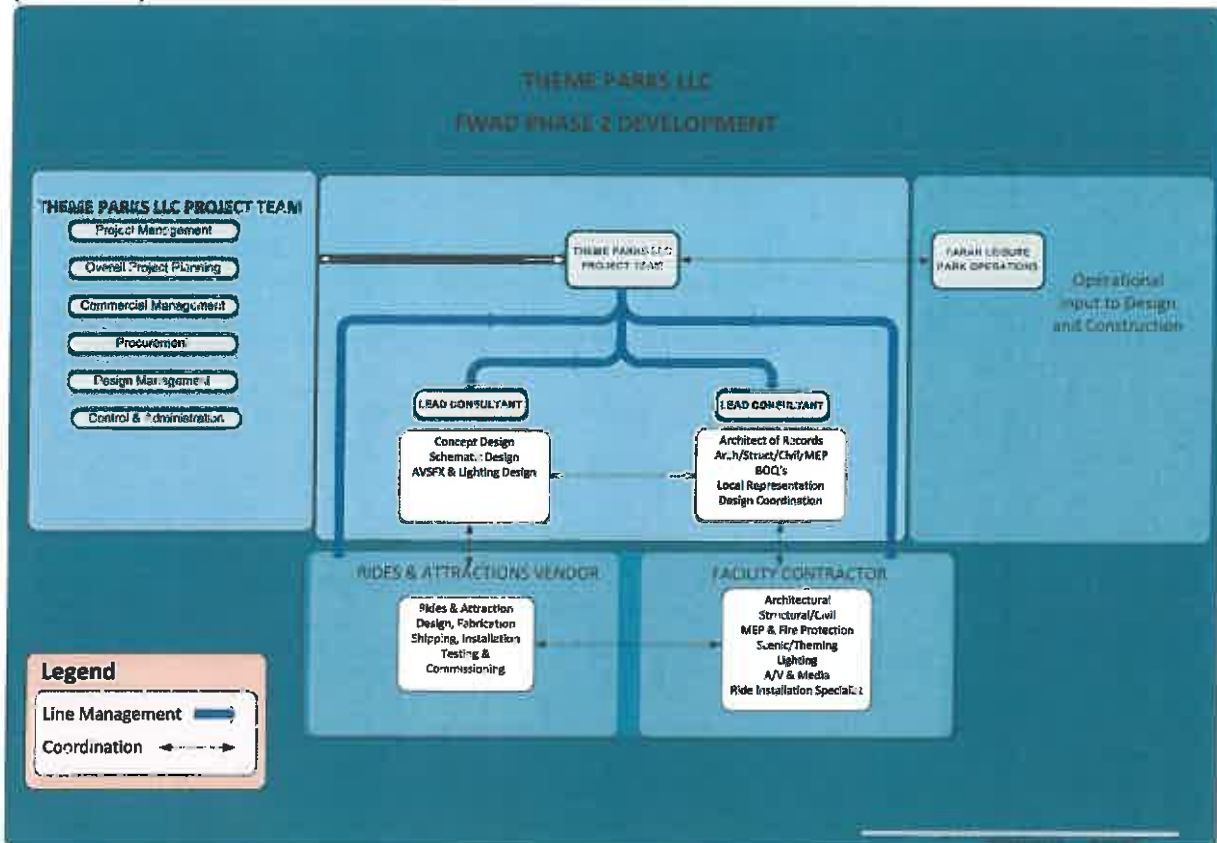
The Vendor must obtain and ensure that the Employer will have the benefit of any and all Product Warranties (if any) over and above the Dynamic Attractions Warranty, and will enter into all necessary documentation to ensure that the benefit of all Product Warranties are properly assigned to the Employer.

**8. TESTING & COMMISSIONING**

- 8.1 The Vendor shall submit a detailed test plan (Test and Adjustment Plan) to The Employer's Representative prior to scheduled Testing and Commissioning.
- 8.2 All inspection and testing such as x-ray, NDT, etc. will be executed as per the requirements of the DIN/EN standards in close collaboration with TUV if required.
- 8.3 The Vendor shall provide an installation advisor, mechanical advisor(s), electrical advisor(s) and a controls advisor to supervise the Specialty Ride Installation Contractor and their personnel and other Contractors to erect and commission the ride. Vendor's Mechanical Advisor(s) will assist the Employer for verifying all mechanical and electrical connections and the documentation of that verification.

**Organization Chart**

(see below)



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**SCHEDULE 3  
PROGRAMME**

**RIDE EQUIPMENT MILESTONES:**

Item	Description	DATES
1	LOA – Signing	June 17 <sup>th</sup> , 2013
2	Contract Execution	TBD
3	Detailed Ride and Facility input drawings	February 20 <sup>th</sup> , 2014
4	Start Procurement of materials	December 2013
5	TUV (third Party approval) on design	March 30 <sup>th</sup> , 2014
6	Start of Shipping of materials (Bill of Lading, Certificate of Origin), partial shipments and payments allowed	February 24 <sup>th</sup> , 2014 Start of Partial Shipping
7	Installation substantially complete and start of testing and commissioning	October 10 <sup>th</sup> , 2014
8	Final TUV inspection and report, Training, O&M manuals, Product warranties and liabilities and spare parts for 2 years	October 30 <sup>th</sup> , 2014
9	Opening to Public	October 30 <sup>th</sup> , 2014

Test procedure to be established during the engineering phase of the Project

**AUDIO/VISUAL EQUIPMENT MILESTONES:**

Item	Description	DATES
1	Signing of Coaster Project Contract	September 20 <sup>th</sup> , 2013
2	Completion of DDR	February 20 <sup>th</sup> ,

		2014
3	Major Elements – Placement of Orders (Screens, Projectors, etc.)	October 7 <sup>th</sup> , 2013
4	Fabrication Start Up	October 15 <sup>th</sup> , 2013
5	Fabrication 50% Complete	January 15 <sup>th</sup> , 2014
6	Primary Elements – Start Shipping (Screens, Projectors, etc.)	March 15 <sup>th</sup> , 2014
7	Complete Shipping of all Elements	August 1 <sup>st</sup> , 2014
8	A/V Installation Complete & Commissioning Start (Supervision)	August 31 <sup>st</sup> , 2014
9	Final TUV inspection and report, Training, O&M manuals, Product warranties and liabilities and spare parts for 2 years	October 30 <sup>th</sup> , 2014
10	Opening to Public	October 30 <sup>th</sup> , 2014

**SCHEDULE 4**

**PRICE, PAYMENT AND MILESTONE PAYMENT SCHEDULE**

**Payment Schedule for Ride Equipment:**

Item	Description	%	Value (USD)
1	Contract Execution	15%	1,998,824 – (1,680,000) 318,824
2	Detailed Ride and Facility input drawings	10%	1,332,550
3	Procurement of materials	15%	1,998,824
4	TUV (third Party approval) on design	10%	1,332,550
5	At Shipment of materials (Bill of Lading, Certificate of Origin), partial shipments (and payments) allowed	35%	4,663,924
6	Installation and substantial completion of the works and completion of final testing and commissioning	10%	1,332,550
7	Final TUV inspection and report, Training, O&M manuals, Product warranties and liabilities and spare parts for 2 years	5%	666,274
	<b>TOTAL</b>	100%	13,325,496

Transportation (Pack & Ship) <ul style="list-style-type: none"> <li>• 40' Container</li> <li>• 40' Flat Racks</li> </ul>	Custom Clearance By Others	-
	Packing, 40' Container and flat rack loading	\$ 93,700 (est.)
	Ocean Freight	\$ 589,045 (est.)
	<u>DA/DS policy is to bill packing and freight at cost- this is an estimate. Actual will be billed as a reimbursable expense</u>	Plus \$55,000 A/V (est.)

For the avoidance of doubt, the Employer has already paid the sum of US Dollars One Million Six Hundred and Eighty Thousand (US\$1,680,000) to the Vendor towards the Total Sum payable for the Ride Equipment pursuant to the LOA, and the LOA Extension ("Interim Payment"). The Interim Payment will be deducted from Item number 1 of the above Payment Schedule.

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**Payment Schedule for Audio/Visual Equipment:**

Item	Description	%	Value (USD)
1	Signing of Coaster Project Contract	15%	531,834 – (531,834) = 0
2	Completion of DDR	10%	354,556
3	Major Elements – Placement of Orders (Screens, Projectors, etc.)	15%	531,834 – (368,166)= 163,668
4	Fabrication Start Up	10%	354,556
5	Fabrication 50% Complete	10%	354,556
6	Primary Elements – Start Shipping (Screens, Projectors, etc.)	10%	354,556
7	Complete Shipping of all Elements	10%	354,556
8	AV Installation Complete & Commissioning Start (Supervision)	5%	177,278
9	AV Testing & Commissioning Complete and SAT signed	10%	354,556
10	Opening to Public or 1 month from date of SAT commissioning (whichever is the former)"	5%	177,278
	<b>TOTAL</b>	100%	3,545,560

Payments can be due independent on the completion of the others.

Employer will be reimburse all costs for shipping, marine insurance, taxes outside Canada, custom clearance, levies, duties, charges, fees, deductions or withholdings of any nature whatsoever and by whomsoever imposed to Vendor (door to door, CIF delivery).

For the avoidance of doubt, the Employer has already paid the sum of US Dollars Nine Hundred Thousand (US\$900,000) towards the Total Sum payable for the Audio/Visual Equipment pursuant to the LOA Extension ("Interim Payment"). This Interim Payment will be deducted from items 1 and 3 of the above Payment Schedule.

As stated above, the audio visual equipment equates to a provisional sum of United States Dollars Three Million, Five Hundred and Forty Five, Five Hundred and Sixty Dirhams (US\$ 3,545,560) ("Provisional Sum"). All the audio visual equipment is subject to the Employer and the Vendor agreeing to exchange or swap out some of the audio visual equipment as required by the final design, provided that the provisional sum remains the same unless agreed otherwise by the Parties.

**SCHEDULE 5  
KEY PERSONNEL**

<b>Key Position</b>	<b>Name</b>	<b>Specific Function</b>
To Be Provided By DA		
President	Peter Schnabel	Contractual Obligations
VP of Technology	Harold Hudson	Technology Review and Customer Contact
Senior Project Director	Cynthia Emerick Whitson	Oversee Project and Customer Contact
Project Manager	Mehdi Jalayer	Project Engineering and Management
Project Engineer	David Rupp	Lead Project Engineer
Control Engineer	Kerby Walden	Control Systems
LSM Manager	Domenic Marzano	LSM Specialist
A/V Principal	Stuart Hetherington	A/V Contractual Obligations
A/V Engineer	Mike Ross	A/V Specialist
A/V Project Manager	Andrew Zadarnowski	A/V Project Manager
FEA Engineer Manager	Joe Brown	Oversee FEA Reporting
Scheduler	Paul Bagshaw	Maintain Project Schedule

Point of Contact  
Cynthia Emerick Whitson, Project Director  
Phone: 937-787-1589 E-mail: [cindy.emerick@dynamicattractions.com](mailto:cindy.emerick@dynamicattractions.com)

**Major Key Personnel Bio**

**President, Dynamic Attractions– Peter R. Schnabel**

Peter is an industry veteran with more than 30 years of experience in an executive position leading two major providers of attractions to their current status in our industry. He was involved in the engineering and building of approx. 300 + major attractions, including such well known ones as "Back to the Future", "ET", and many signature Roller Coasters worldwide. He introduced many firsts in way of technologies, ride systems and new ride elements.

**Vice President Technology – T. Harold Hudson**

Harold has been involved in many areas of Theme Park operation and development since his first introduction to the industry in November 1978. His professional experience includes in depth experience in safety, ride engineering, operations, maintenance and capital management. He also has working experience in finance, marketing, and retail.

**Project Director - Cynthia Emerick Whitson**, a materials science engineer with two decades of experience in the amusement industry, is our senior project leader. With the creation and installation of multiple roller coasters under her project management belt, she manages our large-scale engineering projects from beginning to end.

**Mechanical Engineer – David Rupp**

David is our roller coaster systems engineer. He is responsible for roller wayside equipment design. David

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will model the vehicle and oversee the design and manufacturing. He has strong skills in 3D computer modeling of both the structure and the vehicles.

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## SCHEDULE 6

### PERFORMANCE SECURITY AND NOVATION AGREEMENT

1. Form of Performance Security
2. Novation Agreement

*GN*  
*IN*



## PERFORMANCE SECURITY

THEME PARKS LLC  
P.O. Box No. 128717  
Abu Dhabi  
United Arab Emirates

Subject: Performance Security No.                      Date:  
Amount (AED):  
Agreement No.:

Dear Sirs,

THEME PARKS LLC (the "Employer") has entered into an agreement (the "Agreement") with ..... (the "Vendor") for ....., and the Vendor is required under the Agreement to procure a Performance Security issued by a bank in favor of the Employer in support of the due and proper performance of the obligations of the Vendor in accordance with the Agreement.

Therefore, in consideration of the above, we [Name of the Bank] established in Abu Dhabi and having our address at P.O. Box ....., Abu Dhabi, U.A.E. hereby irrevocably and unconditionally guarantee and undertake to the Employer, without any right of defense set off or counterclaim whether on our behalf or on behalf of the Vendor, to pay to the Employer a sum not exceeding [(Words) (Figures)] or any lesser sum specified by the Employer upon receipt of the Employer's written request addressed to us in the event that the Vendor fails to perform or fulfill any of his obligations set out in the Agreement (and for the avoidance of doubt, the Vendor suffering an Insolvency Event as defined under the Agreement shall constitute such failure), by transfer to an account in the Employer's name at such bank in Abu Dhabi as the Employer shall stipulate or in such other manner as shall be acceptable to the Employer. Such written request shall be conclusively binding on us for all purposes under this Performance Security.

We agree that any changes, modifications, additions or amendments which may be made to the Agreement, or in the work to be performed under the Agreement, or in the payments to be made on account of the Agreement, or any extensions of the time for performance or other forbearance on the part of either the Employer or the Vendor to the other or to any other guarantor of the obligations of either of them, shall not in any way release us from our continuing liability hereunder, and we hereby expressly waive notice to us of any such changes, modifications, additions, amendments, extensions or forbearance.

We agree that no event of insolvency suffered by the Vendor shall in any way affect our obligations under this Performance Security.

We further agree that any payment made under this Performance Security shall be made free and clear of and without deductions for or on account of any present or future taxes, levies, imposts, duties, charges, fees, deductions or withholdings of any nature whatsoever and by whomsoever imposed.

We also agree that the Employer (and its permitted assigns) shall be entitled to assign the benefit of this Performance Security to any person to whom it assigns the benefit of the Agreement, without our consent or the consent of the Vendor being required.

This Performance Security shall come into force on the date of this Performance Security and shall continue until the issue of the Performance Certificate under the Agreement.

This Performance Security shall be governed by and interpreted under the laws of the Emirate of Abu Dhabi and the federal laws of the United Arab Emirates as applied in the Emirate of Abu

Dhabi.

Yours faithfully,

Authorized Signature and Stamp of Bank

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Handwritten signature and initials

فرع لإدارة العلاقات  
التشريعية ذ.م.م.  
Legal Dept. - LB  
Farah Leisure Parks  
Management L.L.C.

## NOVATION AGREEMENT

THIS NOVATION AGREEMENT is made on [ ] day of [ ]

### BETWEEN

- (1) **THEME PARKS LLC** of P.O. Box , Abu Dhabi, United Arab Emirates, a public joint Stock company incorporated in the United Arab Emirates ("**THEME PARKS LLC**");
- (2) [ ], (the "**Vendor**"); and
- (3) [ ], (the "**Contractor**");

### WHEREAS:-

- (A) **THEME PARKS LLC** and the Vendor have entered into a contract number [ ] on [date] (the "**Contract**"), under which the Vendor has agreed to carry out and complete the [insert description of subcontractor works] in respect of the [insert details of the project] (the "**Project**").
- (B) The parties have agreed to novate the Contract from **THEME PARKS LLC** and the Vendor to the Contractor and the Vendor on the terms set out below.

### The Parties hereby agree as follows:

#### 1. **Novation of Agreement**

**THEME PARKS LLC** is substituted and replaced under the Contract with the Contractor and the appointment will take effect as if the same had been entered into originally between the Contractor and the Vendor.

#### 2. **Release of THEME PARKS LLC**

The Vendor hereby releases and discharges **THEME PARKS LLC** from the liabilities which **THEME PARKS LLC** may have or have had under the Contract to the Vendor. The Vendor warrants that **THEME PARKS LLC** has paid to the Vendor all amounts due to the Vendor to date under the Contract.

#### 3. **Release of Vendor**

Upon execution of this Agreement, the Vendor shall enter into a collateral warranty to be given by it in favour of **THEME PARKS LLC** in the form included in the Contract whereupon the Vendor shall no longer owe any duty or obligation to **THEME PARKS LLC** under the Contract.

#### 4. **Binding of Vendor to Contractor**

- 4.1 The Vendor binds itself to the Contractor in the terms of the Contract as if the Contractor was and always had been named in the Contract in place of **THEME PARKS LLC**.
- 4.2 The Vendor warrants to the Contractor that it has performed and will continue to perform its duties and obligations as required under the Contract.
- 4.3 The Vendor acknowledges that the Contractor has relied upon, and will rely upon, the Vendor's performance of such terms and obligations prior to, on, and following the date of this Agreement. It is agreed that the Vendor shall be liable for all loss or damage suffered or incurred by the Contractor as a result of any breaches of such terms or obligations, irrespective of whether such Losses were also (or were capable of being) suffered or incurred by **THEME PARKS LLC**

*For*  
*IL*

(whether solely, or jointly with the Contractor, or otherwise) and irrespective of whether such loss or damage was suffered or incurred prior to the date of this Agreement.

**5. Binding of Contractor to Vendor**

5.1 The Contractor binds itself to the Vendor in the terms of the Contract as if the Contractor was and always had been named in the Contract in place of THEME PARKS LLC.

**6. Vesting of remedies in Contractor**

6.1 For the avoidance of doubt THEME PARKS LLC confirms that it hereby assigns to the Contractor all rights of action arising from the Contract including any which have already arisen.

**7. Vesting of remedies against Contractor**

All rights of action and remedies vested in the Vendor against THEME PARKS LLC under and in respect of the Contract shall hereinafter lie against the Contractor.

**8. Affirmation of Agreement**

Subject to the terms of this Agreement, the Contract shall remain in full force and effect.

**9. Collateral warranties**

Nothing in this Agreement shall affect or derogate from any collateral warranty given or to be given by the Vendor in accordance with the terms of the Contract or any third party rights created thereunder.

**10. Governing law and Jurisdiction**

The law of this Agreement is the law of the Emirate of Abu Dhabi and the federal laws of the United Arab Emirates as applicable to the Emirate of Abu Dhabi. Any Dispute arising from this Agreement shall be finally resolved by arbitration to be held at the Abu Dhabi Commercial Conciliation and Arbitration Centre in Abu Dhabi (the "Centre") and conducted in English in accordance with the Centre's Procedural Regulations. The proceedings will be conducted by a single arbitrator nominated and summoned in accordance with the said Procedural Regulations.

11. The preamble is part of this Agreement.

12. Clause headings in this Agreement are for the convenience of the Parties only and do not effect its interpretation.

**IN WITNESS WHEREOF** the Parties have executed this Agreement the day and year, first above written.

**SIGNED BY AND ON BEHALF OF THE PARTIES**  
For and on behalf of THEME PARKS LLC

\_\_\_\_\_  
Company Stamp

\_\_\_\_\_  
Signature of Authorised Signatory

\_\_\_\_\_  
Signature of Witness

Name of Authorised Signatory

Name of Witness

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**For and on behalf of [insert name of Contractor]**

\_\_\_\_\_  
Company Stamp

\_\_\_\_\_  
Signature of Authorised Signatory

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Name of Authorised Signatory

\_\_\_\_\_  
Name of Witness

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**For and on behalf of [insert name of Vendor]**

\_\_\_\_\_  
Company Stamp

\_\_\_\_\_  
Signature of Authorised Signatory

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Name of Authorised Signatory

\_\_\_\_\_  
Name of Witness

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

## SCHEDULE 7

### CERTIFICATES

- Form of Taking-Over Certificate
- Form of Performance Certificate
- Form of Discharge Letter

**FORM OF TAKING-OVER CERTIFICATE**

*(To Be Printed in Two Original Sets on Engineer's Headed Paper)*

**THEME PARKS LLC**

**TAKING-OVER CERTIFICATE [No. n]**

Project Name: .....

Contract Title: .....

Contract No.: .....

Vendor Name: .....

Date: .....

**PART - I**

Description of [the Works] or [Section of the Works] or [Part of the Permanent Works]

.....  
.....  
.....

**PART - II**

We hereby certify that the above works have been completed in apparent good order and are ready for taking over in accordance with the provisions of the Contract with effect from:

**[dd-mm-yyyy]**

except for those items referred to in **Appendix 1** to this Certificate. We certify that the above works are now handed over to the Employer, subject to the defects liability conditions and other provisions contained in the Contract.

For and on behalf of the Engineer, M/s. [insert consultant name]

\_\_\_\_\_  
Signed By:

.....

Title: .....

Date: .....

**PART - III**

The works referred to above have been provisionally accepted with effect from the date stated in Part II of this Certificate on behalf of the Employer in apparent good order with the exceptions as described in Appendix 1 to this Certificate, subject to the defects liability conditions and other provisions contained in the Contract.

For and on behalf of the Employer, THEME PARKS LLC

\_\_\_\_\_  
Signed By:

.....

Title: .....

Date: .....

*Handwritten initials/signature*





**THEME PARKS LLC**  
**TAKING-OVER CERTIFICATE [No. n]**  
**Appendix 1**

Project Name: .....

Contract Title: .....

Vendor Name: .....

Contract No.: .....

Date: .....

Exceptions to Completion

Completion  
Required By

- 1.
- 2.

The Engineer/Employer to detail above any and all exceptions to the completion of the Works described in this TAKING-OVER CERTIFICATE.

Distribution List:

Employer: Original

Vendor: Original

Engineer/Project Manager/Cost Consultant: Copies

**FORM OF PERFORMANCE CERTIFICATE**  
*(To Be Printed in Two Original Sets on Engineer's Headed Paper)*

**THEME PARKS LLC**  
**PERFORMANCE CERTIFICATE**

Project Name: .....

Contract Title: .....

Contract No.: .....

Vendor Name: .....

Date: .....

**PART - I**

**Description of the Works**

.....  
.....  
.....

**PART - II**

We hereby certify that we consider that the Vendor has completed the performance of all his obligations required to date under the provisions of the Contract with effect from [dd-mm-yyyy].

For and on behalf of the Engineer, M/s. [insert consultant name]

\_\_\_\_\_  
Signed By: .....

Title: .....

Date: .....

**PART - III**

The above Works have been finally accepted on behalf of the Employer in apparent good order, with effect from [dd-mm-yyyy]

For and on behalf of the Employer, **THEME PARKS LLC**

\_\_\_\_\_  
Signed By: .....

Title: .....

Date: .....

**Distribution List:**

*Employer: Original*

*Vendor: Original*

*Engineer/Project Manager/Cost Consultant: Copies*

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*It*



**FORM OF DISCHARGE LETTER**

*(To Be Printed in Original on Vendor's headed paper)*

Date: [insert]

Ref.: [insert]

**THEME PARKS LLC**  
P.O. Box  
Abu Dhabi, United Arab Emirates

Attention: [insert THEME PARKS LLC Representative's name]

Project: [insert]

Contract No: [insert]

Subject: **Letter of Discharge**

We, [insert full name of Vendor] of P.O. Box [insert box number/city/country] (the "Vendor") and THEME PARKS LLC ("THEME PARKS LLC") entered into an agreement dated [insert date] with reference number [insert agreement number] (the "Contract") in respect of [insert full description of works](the "Works").

The Vendor, for and in consideration of the receipt by the Vendor from THEME PARKS LLC of the sum of AED ..... (U.A.E. Dirhams ..... ) being the total of the agreed Final Statement under the Contract, and representing full and final settlement of all moneys due to the Vendor under or in connection with the Contract, hereby releases and forever discharges THEME PARKS LLC and its agents and employees, and their successors-in-interest and assigns and their property from all claims and demands whatsoever in any manner arising out of, or related to the Contract or labour performed or materials and equipment furnished by the Vendor in connection with, or incidental to, the execution and completion of the Works.

In consideration of, and for the purpose of inducing THEME PARKS LLC to settle this outstanding amount and to make the final payment, the Vendor hereby represents, undertakes and warrants to THEME PARKS LLC that:

- 1) all sums due or to become due and all debts, accounts damages, obligations, claims and demands of every nature and kind whatsoever in any manner arising out of, or related to, labour performed or materials and equipment furnished in connection with, or incidental to the Contract have been paid and satisfied;
- 2) there are no unsettled claims for injuries to, or death of any persons or damage to, or destruction of, property in any manner arising out of, or related to the Contract;

- 3) the Vendor is not entitled to bring any claim, suits or actions whatsoever against THEME PARKS LLC in relation to the Contract or the including but not limited to claims for any costs, Losses, liabilities, expenses and damages, and the Vendor hereby forever discharges THEME PARKS LLC in respect of all such claims, suits or actions; and
- 4) in accordance with the provisions of the Contract, the Vendor shall indemnify and hold harmless THEME PARKS LLC and its successors and assigns from and against any claims, demands, damages, Losses, liens, judgements, attachments, and costs related hereto in any manner, arising out of, or related to, the Contract.

**EXECUTED BY AND ON BEHALF OF THE VENDOR**

\_\_\_\_\_  
Company Stamp

\_\_\_\_\_  
Signature of Authorised Signatory

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Name of Authorised Signatory

\_\_\_\_\_  
Name of Witness

\_\_\_\_\_  
Date                      Date

\_\_\_\_\_

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**SCHEDULE 8**  
**EMPLOYER POLICIES**

- Cooperation Protocol
- Code of Business Conduct
- Statement of Compliance

## CO-OPERATION PROTOCOL

### 1. Recitals

- 1.1 Clause 2 of this document ("the Protocol") sets out the definitions used in this Protocol;
- 1.2 The Employer intends to, or is in the process of, procuring the Development of the Property;
- 1.3 The Employer acknowledges that the successful implementation of the Development requires that all those contractors, sub-contractors, key sub-sub-contractors and key Vendors as well as other parties involved in the Development co-operate effectively with each other and co-ordinate their activities fully each with the other to the limits and interfaces of their respective, designated workspaces and for that purpose requires that such parties comply with the requirements of a co-operation protocol.
- 1.4 The Procurer has entered into the Agreement with the Provider to provide goods, works and/or services in connection with the Development, and requires that the Provider complies with this Protocol.
- 1.5 Note that where the Agreement is a main construction contract, the Employer and the Procurer will be the same party.

### 2. Definitions

In this Protocol, the following words shall have the following meanings:

"**Agreement**" means the contract to which this Protocol is annexed;

"**Development**" means the Employer's development at the Property;

"**Employer**" means THEME PARKS LLC;

"**Procurer**" means the party to the Agreement who is under an obligation to pay the Provider for his goods, works and/or services;

"**Project Manager**" means [*insert Name of PM*], or such other party as the Employer shall appoint as project manager for the Development from time to time;

"**Property**" means the site known as [*insert Name and location*], where the Development is to be carried out on behalf of the Employer;

"**Provider**" means the party to the Agreement who is providing the goods, works and/or services to the Procurer.

"**Stakeholders**" means all parties other than the Provider involved in providing goods, works and/or services in relation to the Development, including without limitation, the Employer, all contractors, subcontractors, professional consultants and Vendors of goods or services;

### 3. Undertakings



3.1 The Provider shall at all times:

- (a) co-operate with all Stakeholders in good faith to achieve the safe, efficient, harmonious and profitable execution and delivery of the Development to the benefit of all Stakeholders;
- (b) organise and integrate his activities and relationships with all Stakeholders so as to work as a collaborative team;
- (c) identify solutions for the mutual benefit of the Development and all Stakeholders as a whole and not just for himself;
- (d) behave with respect towards all Stakeholders and their cultural values;
  - (i) act fairly and transparently at all times and in a spirit of mutual trust and co-operation;
  - (ii) work to reduce or eliminate waste and inefficiencies in the Development;
  - (iii) continually improve his systems and processes in relation to communication and co-operation with all Stakeholders;
- (e) notify relevant Stakeholders, the Procurer and the Project Manager as soon as he is aware of any matters that may adversely impact on the efficient delivery of the Development or the activities of any Stakeholders or which is, or is likely to constitute, a breach of this Protocol by the Provider or any Stakeholders;
- (f) where requested, allow reasonable access through or to the Provider's designated works areas where and when necessary to enable Stakeholders to undertake their works and activities, and provide advance notice of any closure of access on the Provider's designated works area which may affect any Stakeholders and take reasonable steps to accommodate the requirements of such Stakeholders;
- (g) take reasonable steps to stay up to date with the scope of works, programme and obligations of Stakeholders where such matters impact the Provider's works, goods or services;
- (h) take all reasonable steps to carry out his works or services or supply his goods in such a manner so as not to put the Employer in breach of any contract with any other Stakeholders;
- (i) take all reasonable steps to carry out his works or services or supply his goods in such a manner so as not to give rise to a claim by any Stakeholders against the Employer;
- (j) avoid setting precedents which may lead to greater cost to the Development or to any Stakeholders;
- (k) work diligently to mitigate any loss or delay caused by a breach of this Protocol by any Stakeholders or the Provider;
- (l) not entice, headhunt or solicit the employees of any Stakeholders;
- (m) co-ordinate his approach to industrial relations with all relevant Stakeholders;

- (n) participate in partnering and co-ordination workshops arranged by the Project Manager, the Procurer or other Stakeholders;
- (o) arrange his own co-ordination meetings with relevant Stakeholders as and when required to carry out his duties under this Protocol; co-ordinate general site logistics with relevant Stakeholders, including (without limitation) changes of shift, canteen arrangements, use of tower cranes and general logistics plans; not delay or stop work as a result of a Dispute with any Stakeholders other than as permitted by the terms and conditions of the contract;
- (p) insofar as a practicable, carry out his works or services or supply his goods in consideration of the environment, the local transport system and proximity of the Property to citizens' residences;
- (q) organise his works or services or supply his goods in such a manner as to avoid disruption to the works of any Stakeholders;
- (r) ensure that he is properly represented at every meeting by personnel who are sufficiently experienced, who have the authority to make decisions on his behalf and who have the temperament necessary to resolve issues through reasoned discussion;
- (s) plan ahead to identify and request information required from Stakeholders in order for him to carry out his duties in the spirit of this Protocol and seek out such information from all Stakeholders in good time;
- (t) keep all Stakeholders fully informed as to matters within his domain which affect his and any Stakeholders' ability to carry out the Development;
- (u) take all reasonable steps to see that relevant information which may affect other Stakeholders' activities is agreed, kept up to date and exchanged in a timely manner with other Stakeholders, including without limitation co-ordination plans, method statements and interface information;
- (v) provide Stakeholders with any information reasonably requested;
- (w) not bring the name of the Employer or the Development into disrepute or bring about unwanted attention;
- (x) not act independently or selfishly for his own benefit to the detriment of any Stakeholders;
- (y) not knowingly or willingly inconvenience or obstruct any Stakeholders to his own advantage;
- (z) co-operate with other Stakeholders in providing any information or documents reasonably necessary or attending any meetings for the purposes of expeditiously and economically resolving any Dispute that may arise in connection with the Development;
- (aa) not behave in an adversarial, aggressive or obstructive manner to any Stakeholders or their respective employees or agents; and
- (bb) not criticise, belittle or act rudely to any Stakeholders at Development meetings or

functions.

**4. Contact Details**

Within seven days of the date of the Agreement, the Provider shall provide the Procurer and the Project Manager with the name, address and telephone number of a sponsor and co-sponsor (such persons being either chief executives or senior directors of the Provider). The Employer or the Procurer shall be entitled to contact either of the sponsors (or, if they are not available, the co-sponsors) in the event that the Employer or the Procurer considers that the Provider is not complying fully with this Protocol. The respective sponsors or co-sponsors will use their best endeavours to resolve any issues under this Protocol forthwith including, if appropriate and if required by the Employer or the Procurer, replacement of any of the Provider's personnel whose actions breached this Protocol.

**5. Contractual Arrangement**

Nothing in this Protocol is intended to absolve the Provider of his obligations under the Agreement or his contractual liabilities for the acts or omissions of his employees, agents, subcontractors or Vendors.



## CODE OF BUSINESS CONDUCT (CBC)

### CODE OF BUSINESS CONDUCT (2006)

#### 1. PURPOSE

- 1.1 To outline THEME PARKS LLC and all subsidiaries (collectively, "THEME PARKS LLC" or the "Company") policy concerning ethical business conduct.
- 1.2 To prevent improper payments, gifts and gratuities, kickbacks and bribes to or from any employee and any person with whom THEME PARKS LLC conducts business.
- 1.3 To provide guidelines for the implementation and enforcement of THEME PARKS LLC's Code of Business Conduct ("CBC").
- 1.4 The Board of Directors will approve this policy and any future amendments/deletions/ additions to it.

#### 2. APPLIES TO

- 2.1 THEME PARKS LLC, its Board of Directors (collectively, the "Directors"), as well as the Company's officers and employees (collectively, "Employees").
- 2.2 Compliance with the Code of Business Conduct is required of all Directors and Employees. The Code of Business Conduct should also be followed by the Company's agents and representatives, including consultants and contractors/Vendors/ vendors.
- 2.3 The Company's senior management is charged by the Board of Directors with ensuring that this Code of Business Conduct and the Company's policies will govern, without exception, all business activities of the Company. The Audit Committee is responsible for ensuring that appropriate ethics and compliance policies and procedures are maintained.

#### 3. POLICY STATEMENT

- 3.1 THEME PARKS LLC follows world-class standards in all areas of its operations and considers professionalism and integrity as part of its core values.
- 3.2 The success of THEME PARKS LLC depends on its reputation for enterprise, fair dealing and professionalism.
- 3.3 THEME PARKS LLC is committed to the highest standards of legal and ethical conduct in its business dealings and complies with all applicable laws, regulations and codes wherever it conducts business.
- 3.4 The Company's assets, such as office equipment, production equipment, and products, must not be used for personal reasons, except as may be specifically authorized by Company policies. These assets should not be taken out of Company facilities unless necessary and authorized in connection with Company work. THEME PARKS LLC will not utilize anyone's intellectual property (e.g. copyright, patent or software) without the prior agreement of the owner.

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#### 4. POLICY IMPLEMENTATION

- 4.1 The Compliance Officer assumes responsibility for THEME PARKS LLC's Code of Business Conduct.
- 4.2 The Compliance Officer will monitor implementation and adherence to the Code of Business Conduct which include staff training and communications.
- 4.3 The Company will take all reasonable steps to keep confidential the identity of any Employee reporting a suspected violation. No Employee shall be subject to retaliation because of any report made in good faith.
- 4.4 Each Director and Employee is responsible for supporting fully the Company's policy of compliance with applicable laws, rules, regulations, and Company policies regarding health, safety, process risk management, and environmental protection.

#### 5. CONFLICT OF INTEREST

- 5.1 In performing his/her duties and responsibilities for THEME PARKS LLC, each Employee, Company's agents and representatives, including consultants and contractors/Vendors/ vendors will avoid any Conflict of Interest.
- 5.2 In the context of this policy, "Conflict of Interest" or "Conflict" means, with respect to the Employee involved, any activity, agreement, business investment, interest, role or other situation that could be construed as divergent to or in competition with the company's business or as an interference with such Employee's primary duty to serve THEME PARKS LLC at all times to the best of their ability.
- 5.3 No Employee will for personal or other person's gain, deprive the Company of any opportunity or benefit that could be construed as related to any existing or reasonably anticipated future activity of the Company, including without limitation:
  - Taking for personal gain opportunities that are discovered through the use of company property
  - Using company property, information or position for personal gain
  - Competing with the Company
- 5.4 An Employee must not knowingly conduct business on behalf of the Company with, or provide an improper personal benefit for their spouse, children, parents, grandparents, grandchildren, siblings or in-laws (collectively, "relative") or an organization which they or any relative has an interest or is associated with.
- 5.5 No Employee may serve as an advisor or agent to, or as a director, officer, or part-time officer or Employee of a business enterprise that is a competitor or has current or known business dealings with the Company where such relationship constitutes a Conflict of Interest.
- 5.6 Any waivers of the provisions of this policy can be made to the Compliance Officer by the Employee in writing. Waivers related to the Compliance Officer will be made to the Audit

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Committee.

## 6. INTEGRITY & INSIDER TRADING

- 6.1 THEME PARKS LLC selects its Vendors based on the price, quality and performance of products or services provided. In order to avoid any conflict of interest, the Company will not conduct business with vendors or Vendors in which company Employees or close family members have vested interests.
- 6.2 Employees may only trade in the Company's securities as permitted by the Company's established insider trading policies.
- 6.3 Generally, it is both illegal and against Company policy for any individual to profit from undisclosed information relating to the Company or any other company. Anyone who is aware of material non-public information relating to the Company may not purchase or sell any of the Company's securities.
- 6.4 It is against Company policy for any employee, who may have inside or unpublished knowledge about any of our clients or any other company, to purchase or sell the securities of those companies.
- 6.5 Anyone who is uncertain about the legal rules involving a purchase or sale of any Company securities or any securities in companies that they are familiar with by virtue of their work for the Company should consult with Legal department before making any such purchase or sale.

## 7. GIFTS

- 7.1 The offering, giving, soliciting or receiving of any form of bribe or kickback or offering or giving anything of value to any person is prohibited. To ensure that business is conducted in accordance with all applicable laws and high ethical standards, prior written approvals are required for certain contracts, agreements, arrangements, payments, gifts and entertainment as set forth below.
- 7.2 Under no circumstances should any gift or entertainment be offered, given, provided or accepted by any Employee, immediate family member of an Employee or agent of THEME PARKS LLC unless such gift or entertainment:
- Is not a cash gift
  - Is consistent with customary business practices
  - Is not excessive in value (less than AED 500 per year)
  - Cannot be construed as a bribe or payoff
  - Does not violate any applicable laws or regulations
  - Does not represent unusual Discounts given in an arm length transaction
- 7.3 Gifts offered or received by Employees that do not meet the criteria set forth in Section 7.2 must be returned, or if return is not practical or appropriate under the circumstances, given to the Compliance Officer who will donate the gift to a charitable organization, obtain appropriate receipts,



inform the giver of its disposition (if appropriate) and maintain a written record of such donations.

## **8. BUSINESS ENTERTAINMENT**

8.1 Reasonable business related entertainment expenses (less than AED 500 per person / per event) that are infrequent and arise out of the usual course of doing business are permissible. Entertainment would be in the context of conducting business discussions or advancing business relationships. Entertainment expenses must be documented and approved by the appropriate Line Manager.

## **9. APPLICABLE LAWS**

9.1 No contract, agreement, arrangement, payment, gift or entertainment will be entered into, offered, promised, agreed, paid or received which would violate any applicable law wherever THEMES PARK LLC conducts business.

## **10. CONFIDENTIALITY**

10.1 Employees must consider all information (oral and written), documents and reports obtained in conducting company business as strictly confidential and not to disclose such information to any other parties unless previously authorized or required in the performance of their duties. This obligation will extend beyond the Employee's end of employment with THEMES PARK LLC.

## **11. GENERAL CONDITIONS**

- 11.1 All vendors and contractors with single or cumulative commitments or potential yearly business with THEME PARKS LLC exceeding AED 100,000 will receive a copy of THEME PARKS LLC's Code of Business Conduct Policy and acknowledge compliance in writing. They will be notified when policy updates occur.
- 11.2 Full compliance with this policy is a condition of entering into business with THEME PARKS LLC. Violations, depending on the case and severity, will be regarded as a material breach of agreement.
- 11.3 Employees have an obligation to report any breaches or suspected breaches of this policy to the Compliance Officer.
- 11.4 When ending employment, Employees must return all property belonging to THEME PARKS LLC.
- 11.5 Employees will be asked to sign on an annual basis a Professional Conduct Declaration confirming understanding of their responsibilities.

## **12. RESPONSIBILITIES**

### **12.1 Employee**

- Comply with THEME PARKS LLC's Code of Business Conduct.
- Practice high standards of professional conduct and integrity when conducting business on behalf

of THEME PARKS LLC.

- Consider all information, documents and reports obtained in conducting company business as strictly confidential and not to disclose such information to any other parties unless previously authorized or required in the performance of their duties.
- Notify the Compliance Officer when a violation of this policy is suspected. Neither the Line Manager nor Employees will investigate or adjudicate an alleged violation of this policy as such involvement could compromise the investigation.

#### 12.2 Line Manager

- Ensures Employees practice good business standards and practices in the performance of their duties and responsibilities.
- Discusses this policy with Employees and ensures awareness of its content and intent.

#### 12.3 Human Resources Department

- Ensure that new Employees are aware of THEME PARKS LLC's Code of Business Conduct policy upon joining the Company.
- Request Employees to complete on an annual basis their Professional Conduct Declaration confirming understanding of their responsibilities.
- Establish and conduct CBC staff training.

#### 12.4 Contract & Procurements Department

- Ensure that all vendors and contractors with single or cumulative commitments or potential yearly business with THEME PARKS LLC exceeding AED 100,000 will receive a copy of THEME PARKS LLC's Code of Business Conduct Policy and acknowledge compliance in writing. They will be notified when policy updates occur.

#### 12.5 Compliance Officer

- Act as the Company focal point for CBC issues.
- Provide advice and assistance in interpreting and complying with the Code of Business Conduct.
- Approve and document all deviations from policy and refer significant deviations to the CEO and/or the Audit Committee.
- Investigate alleged violations of this policy.
- Report to the CEO, Audit Committee and Board of Directors on issues concerning CBC compliance, including without limitation a written report summarizing all grants of waivers or approvals under this policy and any allegations or investigations of any Conflict of Interest or other violation.

**STATEMENT OF COMPLIANCE FORM**

*[Tenderer to Respond on Company Letterhead Paper]*

..... [Date]

To:  
THEME PARKS LLC  
P.O. Box  
Abu Dhabi, UAE

Fax +971 2

TENDER NO: .....

TENDER TITLE: .....

SUBJECT: **CBC Statement of Compliance**

Dear Sirs,

We acknowledge the receipt of THEME PARKS LLC Code of Business Conduct (CBC) as part of the Request for Proposals Documents dated .....and confirm the following:

- having reviewed the CBC;
- having understood the CBC;
- we would comply with the CBC;
- if appointed by THEME PARKS LLC for the Works/Services being tendered, such appointment would not result in any conflicts of interest as defined within the CBC;

OR

*if appointed by THEME PARKS LLC for the Works/Services being tendered, we would declare any potential conflicts of interest as defined within the CBC;*

- and no immediate family member of our company works within THEME PARKS LLC or has a vested interest with THEME PARKS LLC.

OR

*and we would declare any immediate family members working within THEME PARKS LLC detailing names and titles held.*

Regards,

SIGNED.....

TITLE .....

TENDERER.....

DATE.....

*Handwritten signature*



## SCHEDULE 9

### HEALTH AND SAFETY GUIDELINES

#### 1. Introduction

Ferrari World Abu Dhabi aims to provide and maintain the highest standards of health & safety in order to protect its Colleagues and Guests whilst on site. To this effect, we have a duty to ensure, so far as reasonably practicable, that any work carried out by contractors or subcontractors is conducted safely, without risk to health or damage to the environment. It is therefore necessary to establish a set of rules, as explained in this document, which must be followed by all contractors/ subcontractors working on site.

It is a condition of contract that any contractor/ subcontractor is required to comply with these rules outlined in this document and with all relevant local laws. Any instance of non-compliance shall constitute a breach of contract.

Where at any point during the works, a representative of Ferrari World has cause to draw the contractor's attention to an unsafe condition or method of work, then the contractor shall undertake to remedy without delay any such risks. Failure to do so may result in the termination of the contract in question and/ or non-renewal of contracts. The contractor or any employees thereof may also be removed from site.

This document should be read in conjunction with the Contractor's Health, Safety & Environment Declaration, a completed copy of which must be submitted, along with any required documentation for approval prior to any works being undertaken.

#### 2. Statutory Duties

Contractors, subcontractors, their employees or the self-employed have a duty to acquaint themselves, understand and comply with health and safety legislation which applies to their work. This shall include, but is not limited to, the Abu Dhabi Environment Health & Safety Management System - <http://www.adehsms.ae>

#### 3. Information to Contractors

At the time of inviting to tender or in any event prior to the commencement of any works, the Ferrari World 'Representative' will inform the contractor of any known hazards associated with the works/ working area and of any specific site safety procedures. A permit to work system is in place which will be arranged by the Representative. This will not however, absolve the contractor from completing suitable and sufficient assessments of foreseeable risks and ensuring that such risks are adequately controlled.

#### 4. Contractors Indemnity

The contractor shall be liable for and shall indemnify Ferrari World against any expense, liability, loss or claim which may arise in respect of any personal injury or damage to any property arising out of, or in connection with the work of the contractor unless due to the neglect of another party.

#### 5. Insurance

The contractor must obtain, and maintain for the duration of the work undertaken, suitable Public Liability, Workman's Compensation/ Employers Liability, and Contractors All Risk & Professional Indemnity insurance (as appropriate) for such amounts as shall be reasonable in all circumstances (usually a minimum of AED 2 million for Public Liability, AED 500,000 for Workman's Compensation, AED 7 million for Professional Indemnity and AED 15 million for Contractor's All Risk) (or as otherwise agreed in the insurance requirements of this Agreement).

#### 6. **Competence of Employees and Training**

Contractors will be requested to provide statements of competence, particularly where their working activity involves significant risks and competence is critical to safety. This will be a requirement of the tendering process and will be at the contractors cost.

Such statements are likely to include:

- Summaries of employee training;
- References to ensure that previous contracts have been carried out in a professional and safe manner;
- Specific authorization documents e.g. licenses.

#### 7. **Risk Assessments and Method Statements**

Written risk assessments and method statements (where necessary) relevant to the work in question must be provided before any work commences. Failure to do so may result in contractors being prohibited from starting work, with subsequent cost being at the contractors risk.

The risk assessment must be activity and/ or site specific and give a sufficient account of the work. It should consider all foreseeable hazards and evaluate the risk of injury to employees of the contractor and Ferrari World as well as affected third parties.

#### 8. **Security**

The contractor must comply with all on site security procedures. Random searches may be conducted by security personnel in accordance with the company policy.

Ferrari World will not be responsible for any loss or damage to contractor's equipment or materials whilst on site.

#### 9. **Fire & Emergency Procedures**

Contractors must ensure they are familiar with emergency procedures e.g. fire alarms, escape routes, assembly points, locations of fire-fighting equipment in relation to their working area and as indicated to them.

No interference with, or obstruction of any part of the fire alarm system, fire fighting appliances, escape routes or fire information/ signage shall be made unless with the express consent of the relevant permit issued.

In the event of a fire or similar, Communications Control must be contacted immediately on:

8222 (from any internal phone)  
02 496 8222 (from any mobile phone)

#### 10. Work at Height

No contractor shall work at height unless suitable measures have been taken to control the risk of falling (of both objects and people). Such measures may include, but not be limited to:

- Use of a safe working platform e.g. scaffold mobile access equipment.
- Unprotected edges should be fitted with suitable handrails and toe-boards.
- Use of fall arrest systems e.g. safety harnesses and safety netting.
- Where access platforms can't be used due to space or similar limitations, ladders should be considered as a means of access and not a working platform. When working from a ladder is required it must be performed within the confines of the ladder and the operative be attached.

Ladders must be in good condition, not extended to an excessive length and be effectively secured to prevent movement during use.

#### 11. Scaffolding

Scaffolding must only be erected by a competent person(s). The contractor by or for whom the scaffold was erected shall be responsible for ensuring that the scaffold is inspected by a competent person and suitable records of the inspection are kept on site, in line with local requirements.

#### 12. Excavations

Excavations must have substantial and secure barriers fitted to open sides and be illuminated if left uncovered during hours of darkness so as to prevent any person, vehicle, plant/ equipment or any other materials from falling in to the excavation.

Suitable and sufficient steps must be taken to ensure that where necessary the sides of any excavation are suitably supported to prevent collapse.

The contractor by or for whom the excavation was made shall be responsible for ensuring that the excavation is inspected by a competent person and suitable records of such inspections are made and kept on site.

#### 13. Work Equipment

All plant and equipment brought on to site by any contractor must be in good condition, suitable for the purposes for which it is intended and operated by a competent person.

The contractor shall ensure that plant and equipment is subject to any required statutory examinations and provide documentary evidence of such examinations when requested to do so.

#### 14. Electrical Safety

Only suitably trained and competent individuals are permitted to undertake electrical works on site.

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Live working is strictly prohibited.

All portable electrical tools must be maintained in a safe condition.

All electrical equipment must be suitable for the purpose for which it is being used

**15. Hazardous Substances**

No hazardous substances shall be brought on to site without an up to date Material Safety Data Sheet (MSDS) for that specific substance. Substances must be stored, handled and disposed of in line with the MSDS. The use of any such substances must be covered in the risk assessment for the work activity.

**16. Personal Protective Equipment (PPE)**

Contractors must select, provide and ensure that their employees wear the appropriate PPE e.g. safety footwear, gloves, safety harnesses, hearing protection.

Hard hats must be worn for all building operations, works of engineering construction & any other work where there is a foreseeable risk of head injury. Hard hats must be worn in the correct manner.

**17. Confined Space Working**

Work in any confined space where there may be risks from hazardous gases/ fumes, oxygen deficiency/ enrichment, flooding etc. must be conducted in accordance with the requirements of ADEHSMS CoP 27.0 Confined Spaces.

**18. Vehicles**

All contractors vehicles brought on to site must comply with all necessary legislation and relevant standards, be licensed, insured and driven/ operated by suitably qualified and competent persons.

Site speed limits must be observed at all times.

Ignition keys must not be left in any unattended vehicle.

Seat belts must be worn (where fitted) at all times when in the vehicle and passengers must only be carried in/ on vehicles designed to do so (i.e. fitted with appropriate seating).

Fuel must be stored in an appropriate container. Refuelling must be undertaken on suitable hard standing ground using pumps and funnels as necessary to prevent spillage.

**19. Housekeeping**

It is the responsibility of the person(s) undertaking work on site to ensure that the work area is maintained in a safe and tidy condition and that all waste materials are disposed of correctly and in accordance with local requirements.



Storage of materials on site must be arranged in a safe manner and not present any obstructions to vehicular/ pedestrian traffic.

**20. Signs and Barriers**

All contractors must display appropriate warning signs and erect secure barriers where appropriate to prevent non-authorized persons entering areas that may be unsafe by the nature of the work being undertaken.

**21. Drugs, Alcohol and Smoking**

Drugs and alcohol are not permitted on site. Any contractor found to be under the influence of drugs/ and or alcohol will be removed from site.

Smoking is only permitted in designated smoking areas.

**22. Fitness for Work**

All contractor employees must be physically and mentally fit for the tasks that they are to undertake and the environment in which they are to work.

**23. First Aid Facility**

First aid facilities are available on site, manned during normal operating hours and available for use by contractors in the event of any emergency.

In the event of an emergency, Communications Control should be contacted on 02 496 8222.

Contractors should however arrange for suitable first aid provision to be available for their employees whilst on site and particularly when working outside of normal park opening times when the First Aid Facility may be closed.

**24. Accident/ Incident Reporting**

All accidents/ incidents whether involving injury or not must be reported to the Representative, HSE Manager or First Aid Facility in order to ensure that the appropriate enforcing authority is notified if necessary, an investigation completed immediately and corrective action taken if appropriate.

**25. Welfare Arrangements**

The Cafeteria and staff rest rooms may be available for contractor employees to take refreshments or meals away from the work activity.

These arrangements should be clarified with the Representative before commencement of work.

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**SCHEDULE 10**  
**AMENDMENTS TO CONDITIONS OF CONTRACT**

[to be inserted (if any)]

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## APPENDIX 1 TO THE AGREEMENT

This Appendix shall form part of the Agreement.

[Note: With the exception of the items for which the Employer's requirements have been inserted, the Bidder shall complete any missing information before submitting with his offer]

Particulars	Conditions of Contract Clause No.	Data
Employer's name and address	Page 2 of the Agreement – Parties Section	THEME PARKS LLC P.O. Box 128717 Abu Dhabi, U. A. E.
Vendor's name and address	Page 2 of the Agreement – Parties Section	Dynamic Attractions, Ltd. 1932B Oak Bay Ave. Victoria B.C. Canada V8R 1C9
Employer's Representative's name and address		Mr Mohammed Younus, Director of Projects P.O. Box 128717, Abu Dhabi, U.A.E.
Operator's name and address	As per Definition in the Agreement	Farah Leisure Parks Management LLC P.O. Box 128717 Abu Dhabi, U. A. E.
Time for Completion of the Works includes Schedule 3 – "Programme" of the Agreement, and the Definitions of Milestones appearing at the end of this Appendix 1		Time for Completion of the Works shall be agreed when this Agreement is novated but shall be no later than 30th October 2014, or such other date as agreed between the Parties upon novation of this Agreement. Time for Completion of each Milestone from the Commencement Date shall be as per the separate Table above appearing in Schedule 3, or as agreed between the Parties upon novation of this Agreement.
Defects Notification Period and Dynamic Attractions Warranty Period		A period of two (2) calendar years, ending on the earlier of two (2) calendar years from (and excluding) the date of issuance of the Taking-Over Certificate or 30 months after the Scheduled Opening Date.
Amount of Performance Bond	34.1	10% of the Total Fee as stated in this Agreement to be provided as soon as possible, but no later than the 1 <sup>st</sup> April 2014.
List of Product Warranties	9	As referred to in Clause 9 of this Agreement and as stated in Schedule 2 (Employer's Requirements).
Total Fee	Page 7 of the Agreement – Definitions Section	US Dollars Sixteen Million, Eight Hundred and Seventy One and Fifty Six (US\$16,871,056)

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Normal working hours	5.3 (m)	To be decided on a case by case basis, but the Vendor shall ensure a minimum of eight (8) hours per day or as agreed between the Parties based on the Client's requirements.
Commencement Date		June 17, 2013 – When the LOA was awarded to DYNAMIC ATTRACTIONS LIMITED
Liquidated damages for the Works	36.6	US Dollars Two Thousand Five Hundred (US\$2,500) per day
Maximum amount of liquidated damages	36.7	Five Percent (5%) of the Total Fee of this Agreement.
Currency of Payment	33	US Dollars (USD)
Periods for submission of insurance: evidence of insurance relevant policies	35	30 calendar days 30 calendar days
Insurance Policies to be procured by the Insuring Party	35	As required by the Conditions of Contract and applicable Laws See Insurance Table below.
Minimum amount of third party insurance for on-site activities	35	AED 50,000,000
Minimum amount of third party insurance for off-site activities	35	CAN \$2,127,120
Minimum amount of Professional Indemnity insurance	35	CAN \$5,000,000
Minimum amount of Product Liability insurance	35	CAN \$10,000,000 with an annual aggregate of CAN \$ 20,000,000

#### Definition of Milestones

Description of Milestone	Time for Completion	Delay Damages
1. Concept Design	September 16, 2013	None
2. Preliminary Facility Input	October 30, 2013	None
3. Submittal of full design details inclusive of drawings and specifications required by the Scope of Works	February 20 <sup>th</sup> , 2014	US\$ 2,500/day
4. Arrival at Project of Columns and Track	June 15, 2014	US\$ 2,500/day
5. Arrival at Project of all other Ride Equipment	July 15, 2014	US\$ 2,500/day
6. Arrival at Project of A/V	Aug 1, 2014	US\$ 2,500/day
7. Installation & Substantial completion of the Works	October 10 <sup>th</sup> , 2014	US\$ 2,500/day

which would allow final testing and commissioning, including draft O&M Manuals		
8. Commissioning Completion, Testing and Commissioning including O&M Manuals, Product Liabilities and Training completed	October 30 <sup>th</sup> , 2014	US\$2,500/day

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**APPENDIX 2 TO THE AGREEMENT  
INSURANCES**

*The Table below summarises insurance requirements relating to Contracts for Supply and Installation of Equipment*

Type	Minimum Amount	Name(s) of Insured	Period	Insuring Party
<b>A. Construction All Risks Insurance Policy – CAR</b>				
A.1) Loss or damage to the Works, Equipment, Materials, Plant, vendor's documents, free issue items and fees and professional indemnity insurance (if covered by CAR policy)	Provide under Employer's Owner Controlled Insurance Program ("OCIP") for the project.	In the joint names of the Vendor and the Employer.	From the Commencement Date until issue of the Performance Certificate.	Employer
A.2) Loss or damage to Vendor's Equipment.	For not less than full replacement value until delivery to Site and to include a "Waiver of Subrogation" Clause and a "Principal's Interest" Clause in favour of the Employer.	The Vendor	For each item effective while it is being transported to the Site.	Vendor
<b>B. Transit Insurance of all Ocean Marine Cargo Shipments, Air Freight Movement and Land or Rail Transportation</b>				
B.1) Loss or damage to Material and Plant originating outside the UAE while they are in transit to the Site.	For not less than 115% of the Cost, Insurance and Freight ("CIF") replacement value including delivery to Site.	In the joint names of the Vendor and the Employer.	From ex-factory to the Premises.	Vendor
<b>C. 3rd Party Liability Insurance for On-Site (as the term "Site" is defined under the Agreement) Activities</b>				

Type	Minimum Amount	Name(s) of Insured	Period	Insuring Party
C.1) Death or injury to any party other than the Vendor and the Vendor's Personnel, to include the Employer and their personnel (except for negligence of the Employer and their personnel).	Provided under Employer's OCIP arrangements for the project in the amount as agreed between the Parties and stated in the Appendix.	In the joint names of the Vendor and the Employer.	From the Commencement Date until issue of the Performance Certificate.	Employer
C.2) Damage to any property (including but not limited to existing and surrounding property) other than the Vendor's Equipment, Plant, Materials and the Works.	Provided under Employer's OCIP arrangements for the project in the amount as agreed between the Parties and stated in the Appendix.	In the joint names of the Vendor and the Employer.	From the Commencement Date until issue of the Performance Certificate.	Employer
<b>D. 3rd Party Liability Insurance for Off-Site (as the term "Site" is defined under the Agreement) Activities</b>				
D.1) Death or injury to any party other than the Vendor and the Vendor's Personnel, to include the Employer and their personnel (except for negligence of the Employer and their personnel).	To be agreed between the Parties.	The Vendor.	From the Commencement Date until the earlier of the issuance of the Performance Certificate and the Scheduled Opening Date.	Vendor
D.2) Damage to any property (including but not limited to existing and surrounding property) other than the Vendor's Equipment, Plant, Materials and the Works.	A "Waiver of Subrogation" Clause in favour of the Employer.	The Vendor.	From the Commencement Date until issue of the Performance Certificate.	Vendor
<b>E. Workmen's Compensation Employer's Liability Insurance</b>				



Type	Minimum Amount	Name(s) of Insured	Period	Insuring Party
E.1) Insurance against claims, damages, Losses and expenses (including legal fees and expenses) arising from injury, sickness, disease or death of any person employed by the Vendor or any other of the Vendor's Personnel.	Shall cover and or be in accordance with Workman's Compensation in line with UAE Labour Law and Shariah Law together with an Employer's Liability extension for not less than a sum of USD 1.0million for each and every incident. To include a "Waiver of Subrogation" Clause and a "Principal's Interest" Clause in favour of the Employer.	The Vendor.	From the Commencement Date until issue of the Performance Certificate.	Vendor
<b>F. Motor Vehicle Third Party and Passenger Liability Insurance</b>				
F.1) Motor vehicle third party and passenger liability insurance.	To the extent that Vendor shall be driving on the Site, it must procure unlimited indemnity for death of or injury to persons and not less than AED 1.0million for loss or damage to property which shall be extended as may be necessary as required by statutory requirements in the UAE.	The Vendor.	For each vehicle effective while it is being transported to the Site and until it is no longer required as the Vendor's vehicle.  (Alternatively where applicable:  From the Commencement Date until issue of the Performance Certificate.)	Vendor
<b>G. Professional Indemnity Insurance</b> (Only required if the Scope of Work includes a Design Element)				
<b>H. Product Liability Insurance</b>				

Type	Minimum Amount	Name(s) of Insured	Period	Insuring Party
G.1) Death or injury to any third party or damage to any property caused by the Works and/or the Equipment.	For each and every incident, for the sum stated in the Appendix, to include a "Waiver of Subrogation" Clause in favour of the Employer.	The Vendor.	Shall be maintained in the full amount during the performance of the Works and until the date 10 years from the date of issue of the last Taking Over or Acceptance Certificate.	Vendor

The following specific wordings, or wording, agreed by Parties, that is substantially similar to the following, shall be included in the above insurance policies to be provided by the Vendor:

- **"Waiver of Subrogation In Favour of the Employer"**

The Insurer hereby agrees to hold harmless and to waive any rights and remedies or relief to which it may become entitled by subrogation against the Employer and/or its subsidiaries and/or associated firms and/or parent companies and/or sister companies and/or their directors and/or their officers and/or their employees and/or their agents and/or their representatives and/or their contractors, consultants, sub-contractors and sub-consultants."

- **"Principal's Interest Clause"**

The Insurer hereby agrees to notify:

- THEME PARKS LLC,
- Legal and Insurance Department,
- P O Box, 128717
- Abu Dhabi, UAE

at least 30 days prior to any material alteration in the coverage afforded under this policy including but not limited to a change in the limit of indemnity, non-renewal and/or cancellation."

The following additional condition applies to all claims made under Employer's OCIP insurance:

- **"Policy Excess/Deductible"**

In the event of any claim being made under Employer's OCIP arrangements by the Vendor, any settlement will be subject to a deductible of AED 300,000 for each and every claim, subject to the following:

- incidents resulting from erection, in which case the deductible will be AED 300,000 for each and every claim;
- incidents resulting from design defects, in which case the deductible will be AED 900,000 for each and every

claim;

- incidents resulting from testing and/or commissioning, in which case the deductible will be AED 300,000 for each and every claim; and
- incidents occurring during the Defects Notification Period, in which case the deductible will be AED 300,000 for each and every claim."

The Employer will not take any responsibility for such deductibles, which the Vendor is liable for and must make its own provisions for."



**APPENDIX 3**  
**FORM OF PARENT COMPANY GUARANTEE**

*[Handwritten signature]*  
*[Handwritten signature]*

فرح لادارة الحدائق  
الشرعية ذ.م.م.  
Legal Dept. - LCB  
Farah Leisure Park  
Management L.L.C.

**(A) FORM OF PARENT COMPANY GUARANTEE**

*[On the letterhead of the Parent Company]*

Date: *[insert]*

To: *[Name and address of the Employer]*

Dear *[Insert]*

*[insert title]* Ride Agreement - Parent Company Guarantee

You entered into a contract dated *[insert date]* with *[insert]* ("Vendor") titled *[insert title]* for the *[insert name of project]* for certain works and services ("Services") to be undertaken by the Vendor ("Contract").

The Vendor has agreed to procure the provision of a parent company guarantee ("Guarantee") from *[insert]* ("Guarantor").

The Guarantor guarantees to the Employer that the Vendor will perform, carry out, execute and discharge the duties, responsibilities and obligations (including contingent obligations and obligations to pay money) of the Vendor in connection with the Contract.

In the event that the Vendor fails to perform, carry out, execute and discharge any of the duties, responsibilities, obligations (including any contingent obligations and any obligations to pay money) and liabilities of the Vendor in connection with the Contract ("Default/s"), the Guarantor must, on demand from the Employer:

- (a) perform, carry out and discharge in accordance with the Contract, the duties, responsibilities and obligations (including contingent obligations and obligations to pay money) the subject of the Default/s; and
- (b) indemnify the Employer with respect to all damages, losses, costs, charges and expenses suffered by the Employer with respect to the Default/s to the extent to which the Vendor is liable to the Employer and the Employer has a right of recovery against the Vendor pursuant to the Contract.

Notwithstanding any provision in this Guarantee to the contrary, the Guarantor will have the full benefit of all defences, set-offs, counterclaims, reduction, diminution or limitations of liability available to the Vendor pursuant to or arising from the Contract.

If a law requires the Guarantor to deduct:

- (a) an amount in respect of any taxes, levies, imposts, charges and duties imposed by any authority (including stamp and transaction duties) ("Taxes"); or
- (b) any interest, penalties, fines and expenses in connection with the Taxes from a payment due under this Guarantee with the result that the Employer would not actually receive on the due date the full amount provided for under the Contract, the Guarantor must pay an additional amount so that the Employer receives from the Guarantor the full amount the Employer would have received on the due date if no deductions had been required.

The provisions of this Guarantee will remain in full force and effect, and the Guarantor shall not be discharged or released from this Guarantee, even if:

- (a) the Contract is varied, modified, changed or prematurely terminated; or
- (b) the Consultant and/or the Employer is or may be in breach of the Contract.

*[Handwritten signature]*  
*[Handwritten initials]*



(c) the Vendor goes into liquidated bankruptcy administration, absent of legal personality dissolution, incapacity or any change in the name of the Vendor, composition or constitution of the Vendor or the Guarantor; or

(d) the Vendor is granted any concession, tolerance, or indulgence, or any other compromise or settlement of any dispute between the employees of the Vendor.

This Guarantee will expire on the later of 10 years after the completion of the Services pursuant to the Contract or when all obligations and liabilities of the Vendor under the Contract have been carried out, completed and discharged in accordance with the Contract.

This Guarantee is governed by and construed in accordance with the laws of the United Kingdom. Any dispute arising out of or in connection with this Guarantee will be exclusively settled by the courts of England and Wales.

This Guarantee neither forms part of the Contract nor affects the provisions of the Contract.

The Guarantor acknowledges that the Employer is acting in reliance on the Guarantor incurring obligations and giving rights under this Guarantee.

Each person executing this Guarantee states that he or she has authority to represent and bind the Guarantor.

IN WITNESS of which the [Insert] has duly executed this Guarantee on the date stated above.

SIGNED by [Insert] )  
as attorney for [Insert] )  
under power of attorney dated )  
[Insert] )  
in the presence of )  
 )  
..... )  
Signature of witness )  
 )  
..... )  
Name of witness (block letters) )  
 )  
..... )  
Address of witness )  
 )  
..... )  
Occupation of witness )

By executing this agreement the attorney states that the attorney has received no notice of revocation of the power of attorney

Address for notices  
[Insert address]

*Handwritten signature*  
*Handwritten initials*  


DATED 22, AUGUST 2019

**DEED of VARIATION**

Between

**THEME PARKS LLC**

and

**DYNAMIC ATTRACTIONS LIMITED**

and

**EMPIRE INDUSTRIES LTD**



**THIS DEED** is dated the 22 day of August 2019.

**BETWEEN:**

**Theme Parks LLC** a company registered and incorporated in Abu Dhabi, and whose registered office address is situated at PO Box 128717, Abu Dhabi, United Arab Emirates ("**Employer**")

AND

**Dynamic Attractions Limited** a company registered and incorporated in Canada, whose registered offices address is situated at 101-1530 Kingsway Ave, Port Coquitlam, British Columbia, Canada V3C 6N6 ("**Vendor**")

(together, the "**Parties**")

AND

**Empire Industries** a company registered and incorporated in Canada, whose registered office is situated at 717 Jarvis Avenue, Winnipeg, MB, Canada R2W 3B4 ("**Guarantor**").

**WHEREAS:**

- (a) The Parties entered into an agreement entitled "Equipment Supply and Installation Agreement relating to the "Indoor Roller Coaster" – F10" on 13 January 2014 (the "**Agreement**").
- (b) The Time for Completion for the overall Works is 25 October 2017 (as amended by Variation Order No.4).
- (c) The Works are in substantial delay. The Vendor does not claim an extension to the Time for Completion for the overall Works or to any of the Milestones set out at Appendix 1 of the Agreement.
- (d) The Works are not yet complete, and no Taking Over Certificate has been issued, for reasons including, but not limited to:
  - (i) the track gauge and wheel carrier design;
  - (ii) the linear motor system;
  - (iii) the brake system;
  - (iv) the ride control system;
  - (v) the launch system;
  - (vi) the Tilt & Drop; and
  - (vii) the Sideways Switch.
- (e) The Vendor proposed a completion plan to address the issues with the ride system and to complete the Works. The proposed steps of the completion plan, and consequences for not meeting those steps, are set out in this Deed of Variation.



- (f) In presenting the completion plan, the Vendor has made the Employer aware of its limited resources. For this reason, the Parties deem it prudent to reaffirm the Guarantor's commitment to guarantee the Vendor's underlying obligations (including as amended by this Agreement).

**IN CONSIDERATION** of the mutual promises contained in this Deed of Variation, the Parties have reached agreement on the terms set out below:

**1 INTERPRETATION**

1.1 Unless the contrary intention appears:

- (a) a term defined in the Agreement has the same meaning in this Deed of Variation; and
- (b) this Deed of Variation is supplemental to and is intended to amend the Agreement.

1.2 Clause 1.2 (the interpretation provisions) of the Agreement applies to this Deed of Variation.

**2 MILESTONE PAYMENTS**

2.1 As at the date of this Deed of Variation, the Total Fee of the Agreement is US\$18,232,913.

2.2 The Vendor has been paid US\$17,201,079, pursuant to the terms of the Agreement.

2.3 Schedule 4 (Price, Payment and Milestones Payment Schedule) is amended such that the difference between the Total Fee and amount paid (i.e. US\$1,031,834) is only due once the Works are certified as complete in the Taking Over Certificate.

**3 COMPLETION PLAN**

3.1 The Vendor shall achieve Soft Opening on or before 31 December 2019.

3.2 "Soft Opening" means:

- (a) Site Acceptance Testing complete for 6 vehicles (based on the agreed SAT plan);
- (b) Site Acceptance Testing complete on the full ride system (based on the agreed SAT plan);
- (c) receipt of TUV approval. Clause 26 of the Agreement sets out the Parties' respective obligations in respect to the obtainment of TUV approval;
- (d) completion of show integration (including, but not limited to demonstrating that the AV, show lighting, SFX etc operates and is synchronised with the approved vehicle movement profile);
- (e) completion of training for the Operations and Maintenance teams; and
- (f) public ridership during the first two weeks of opening limited to 4hrs per day and 4 vehicles.

- 3.3 The Vendor shall complete the Works, as certified in the Taking Over Certificate, on or before 14 January 2020.
- 3.4 The dates for completion of the Works and Soft Opening do not constitute an extension to the Time for Completion for the overall Works or any Milestone. The Time for Completion for the overall Works and Milestones remains as stated in the Agreement (as amended by Variation Order No. 4).
- 3.5 If the Vendor fails to:
- (a) achieve Soft Opening by 31 December 2019; and/or
  - (b) complete the Works, as certified in the Taking Over Certificate, by 14 January 2020,

the Vendor shall pay the Employer US\$911,645 which represents the amount of Liquidated Damages payable under the Agreement. Payment is to be made within seven calendar days of the relevant notice from the Employer, to the following bank account:

<b>Account Title</b>	THEME PARKS LLC
<b>Currency</b>	AED
<b>Account Number</b>	11150002920001
<b>IBAN</b>	AE400030011150002920001
<b>Bank Name</b>	Abu Dhabi Commercial Bank
<b>Branch Address</b>	Salam Street, Abu Dhabi, UAE

- 3.6 If the Vendor fails to:
- (a) achieve Soft Opening by 29 February 2020; and/or
  - (b) complete the Works, as certified in the Taking Over Certificate, by 14 March 2020,

the Employer is relieved from any obligation to make any payment to the Vendor due under the Agreement including, but not limited to, any outstanding payments due under clause 33 of the Agreement.

- 3.7 If the Vendor fails to:
- (a) achieve Soft Opening by 30 April 2020; and/or
  - (b) complete the Works, as certified in the Taking Over Certificate, by 14 May 2020,

and the Employer elects to terminate the Agreement, the Vendor shall pay to the Employer either:



- (a) all additional costs that would be reasonably incurred by the Employer in completing the Works; or
- (b) the costs that would be reasonably incurred in demolishing the ride system and reinstating the site.

3.8 The above listed remedies are in addition to and without prejudice to the Employer's accrued rights and entitlements under the Agreement and in law and equity, save that the Employer shall not terminate the Agreement unless the Vendor fails to achieve Soft Opening by 30 April 2020 and/or complete the Works by 14 May 2020.

#### 4 LIQUIDATED DAMAGES

4.1 The Employer will not enforce its entitlement to claim accrued Liquidated Damages under the Agreement unless and until the Vendor fails to:

- (a) achieve Soft Opening by 31 December 2019; and/or
- (b) complete the Works, as certified in the Taking Over Certificate, by 14 January 2020.

4.2 The Parties agree and understand that the level of Liquidated Damages set out in the Agreement does not adequately compensate the Employer for the delay-related losses incurred by reason of delay to completion of the Works.

4.3 Accordingly, in addition to the Liquidated Damages set out in the Agreement, the Vendor shall also pay US\$2,500 per calendar day from 13 May 2019 until either:

- (a) the Works are complete, as certified in the Taking Over Certificate; or
- (b) the Employer terminates the Agreement,

(the "Additional Liquidated Damages").

4.4 The Parties hereby acknowledge and confirm that the Additional Liquidated Damages represent a genuine pre-estimate of the loss that is anticipated to be suffered by the Employer due to a failure by the Vendor to comply with its obligations under the Agreement, as amended.

#### 5 EXTENDED WARRANTIES

5.1 In addition to the Employer's rights and entitlements under the Agreement and in law and equity, the Vendor shall, at its expense:

- (a) replace all guide wheels for a period of seven years after the date of the Taking Over Certificate where such wheels reach end-of-life within ten months of first being used. End-of-life in this context shall mean the tyre tread is less than specified in the approved Operation and Maintenance Manual; or where the wheel has failed, via failure modes including but not limited to:
  - (i) tyre or wheel delamination;
  - (ii) tyre or wheel cracking; or
  - (iii) bearing failure.



- (b) replace all road and up-stop wheels for a period of seven years after the date of the Taking Over Certificate where such wheel reach end-of-life within 12 months of first being used. End-of-life in this context shall mean the tyre tread is less than specified in the approved Operation and Maintenance Manual; or where the wheel has failed, via failure modes including but not limited to:
  - (i) tyre or wheel delamination;
  - (ii) tyre or wheel cracking; or
  - (iii) bearing failure.
- (c) seek and implement design improvements to extend the end-of-life periods for guide, road and up-stop wheels where paragraphs 5.1 (a) or (b) are triggered;
- (d) replace or repair defective LSM drives, stators and related electrical components for a period of five years after the date of the Taking Over Certificate;
- (e) seek and implement design improvements to extend the end-of-life period(s) for any electrical components relating to LSM drives and stators if paragraph 5.1 (d) is triggered;
- (f) replace or repair the vehicle suspension systems if they are defective for a period of five years after the date of the Taking Over Certificate;
- (g) seek and implement design improvements to extend the end-of-life period(s) for the vehicle suspension systems if paragraph 5.1(f) is triggered;
- (h) replace or repair the vehicle braking system if it is defective for a period of five years after the date of the Taking Over Certificate; and
- (i) seek and implement design improvements to extend the end-of-life period(s) for the vehicle braking system if paragraph 5.1(h) is triggered.

## 6 SERVICE AND SITE SUPPORT

- 6.1 In addition to the Employer's rights and entitlements under the Agreement and in law and equity, the Vender shall, at its expense for a period of three years after the date of the Taking Over Certificate, provide on-site technical support including, on-site training, maintenance, repair and vehicle alignment.
- 6.2 The Vendor's technical team shall be on-site, following the date of the Taking Over Certificate, for as long as necessary, to ensure the ride meets the following parameters:
  - (a) the ride operates on an average daily uptime of 97% and an annual average uptime of 95%. The measurement of ride related downtime is to include automatic E-stops/E-stops due to technical failures of the ride system only. Downtime measurements found to be related to the operator, guest or incorrect maintenance will be removed from the calculation;
  - (b) no more than 3 guest evacuations per week due to ride system non-performance for the first 6 months following the date of the Taking Over Certificate;

- (c) no more than 2 guest evacuations per week due to ride system non-performance from 6 to 12 months following the date of the Taking Over Certificate;
- (d) no more than 1 guest evacuation per week due to ride system non-performance after 12 months following the date of the Taking Over Certificate; and
- (e) no more than 1 guest evacuation every 2 weeks due to ride system non-performance after 18 months following the date of the Taking Over Certificate.

6.3 Provided that the above parameters are met, the frequency of the on-site technical support may be reduced as follows:

- (a) monthly during the first year following the date of the Taking Over Certificate;
- (b) bi-monthly during the second year; and
- (c) quarterly during the third year.

6.4 The Vendor shall, at its expense, for a period of three years after the date of the Taking Over Certificate, also provide on-line and phone technical support.

## 7 PERFORMANCE SECURITY

7.1 Letter of Credit No. SBGV755000 expires on 24 March 2020 (the "**Letter of Credit**").

7.2 The Letter of Credit shall be extended such that it expires on the first anniversary of the date of the Taking Over Certificate. The date of the Taking Over Certificate is not yet known and so the Vendor shall ensure that the Letter of Credit is valid and, when necessary, adequately extended so that the Letter of Credit does not lapse before the date of the Taking Over Certificate is established.

## 8 CHOICE OF LAW

8.1 Clause 60 of the Agreement is amended such that "UK law" is deleted and replaced with "the laws of England & Wales".

## 9 CONTINUATION OF AGREEMENT

9.1 The remaining provisions of the Agreement shall, save as amended by this Deed of Variation, continue in full force and effect, and from the date of this Deed of Variation will be read and construed as one document.

9.2 Any disputes arising out of this Deed of Variation are to be resolved under clause 49 of the Agreement.

## 10 GUARANTOR

10.1 The Guarantor signed a Parent Company Guarantee, dated 11 December 2013, which guaranteed the Vendor's performance of the Agreement (the "**Parent Company Guarantee**").



10.2 By signing this Deed of Variation, the Guarantor reaffirms that it guarantees the Vendor's obligations under the Agreement, as amended by this Deed of Variation.

Signed as a deed by Theme Parks LLC in the presence of )

*[Signature]*  
MOHAMED AL ZATAI  
CEO



Name of witness: H.E. MOHAMED KHALIFA AL MUBARAK

Signature of witness:

Address: P.O. Box 147774, ALDAR HQ BLDG., ABU DHABI, UAE

Occupation: CHAIRMAN

Signed as a deed by Dynamic Attractions Limited in the presence of )

*[Signature]*  
DYNAMIC ATTRACTIONS LTD.  
CORPORATE SEAL

Name of witness: Kelli Forster

Signature of witness: *[Signature]*

Address: 1530 Kingsway Ave, Port Coquitlam BC V3C 6N6

Occupation: VP, HR

Signed as a deed by Empire Industries Ltd in the presence of )

*[Signature]*  
EMPIRE INDUSTRIES LTD.  
CORPORATE SEAL

Name of witness: TANIA WOODFIELD

Signature of witness: *[Signature]* Allan Francis Corporate Secretary

Address: 717 JARVIS AVE, WINNIPEG MB R2W 3B4

Occupation: CORPORATE ASSISTANT





THIS IS EXHIBIT "2" TO THE  
AFFIDAVIT OF ALLAN FRANCIS  
SWORN BEFORE ME AT CALGARY, ALBERTA  
This 16<sup>th</sup> day of March, 2023



---

A Notary Public in and for the Province of Alberta

**Christopher A. Nyberg**  
Barrister & Solicitor



**From:** Mohammed Younus (Miral) <mohammed.younus@miral.ae>  
**Sent:** March 4, 2023 8:56 AM  
**To:** Guy Nelson  
**Subject:** FWAD: F10 - Dynamic Commercial Close-out  
**Attachments:** Mission Ferrari Weekly Performance Report - Feb 22 - Feb 28, 2023.pdf

Dear Guy,

Further to our discussion late last week below is an update with regards the status of Dynamic's outstanding liabilities to Miral and the latest weekly Ride performance report for reference for you to see some of the issues we are currently having:

### Outstanding Liabilities

- The table below shows the list of outstanding liabilities for Dynamic:

Ref.	Description	Amount [AED]
<b>1</b>	<b>Contract</b>	
2	Revised Contract Value	18,232,913
3	Paid to Date	17,201,079
<b>4</b>	<b>Balance [Not Due to Dynamic]</b>	<b>1,031,834</b>
<b>5</b>	<b>Liabilities - Deed of Variation #3</b>	
6	Agreement - Imposing Delay Damages - Failure to Complete by 14 Jan 2020	911,645
7	Agreement - Additional Delays Cost \$2,500 x 632 Days - 13 May 2019 till TOC 3 Feb 21	1,580,000
8	<i>Sub-Total Penalties/Damages</i>	<i>2,491,645</i>
<b>9</b>	<b>Direct Payment (To be Recovered)</b>	
10	Holovis (email 8 December 2022)	260,000
11	Prism (Account Ledger + Accruals)	464,273
12	<i>Sub-Total Direct Payments</i>	<i>724,273</i>
<b>13 = 8 + 12</b>	<b>Total Liabilities - Of Dynamic Attractions</b>	<b>3,215,918</b>

The following is noted:

- As per the Contract/ Deed of Variation there are no further monies due to Dynamic at-this-time.
- The Penalties/ Damages calculation is as per the Contract/ Deed of Variation and amounts to USD \$2,491,645.
- To date the actuals/ accruals for direct payments made by Miral are USD 724,273 however we are still awaiting the final invoicing verification with Prism.

## Current Ride Performance

- Attached for reference is the weekly performance update for the ride.
- As per this report we are still having a high no of breakdowns/ evacuations which are closing the ride and we need Dynamics help to resolve these issues.
- Furthermore, the Operator has advised us that they are having major issues with the LCS and are looking for external support to address this issue. There appears to be fundamental faults with the LCS model which we believe is from 2013/2014. Again, we will need your help to resolve this issue.

Once you have had the chance to look through the information, we can arrange our next call to discuss the above.

Kind Regards  
MY

Mohammed Younus

**Mohammed Younus**  
Chief Projects Officer  
Projects Delivery Department

محمد يونس  
الرئيس التنفيذي لإدارة المشاريع  
إدارة المشاريع

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Visit us [here](#).



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# MISSION FERRARI WEEKLY PERFORMANCE REPORT (FEB 22 – FEB 28, 2023)

TOTAL UPTIME

65.6%

TOTAL CYCLES

937

TOTAL GUESTS

5,902

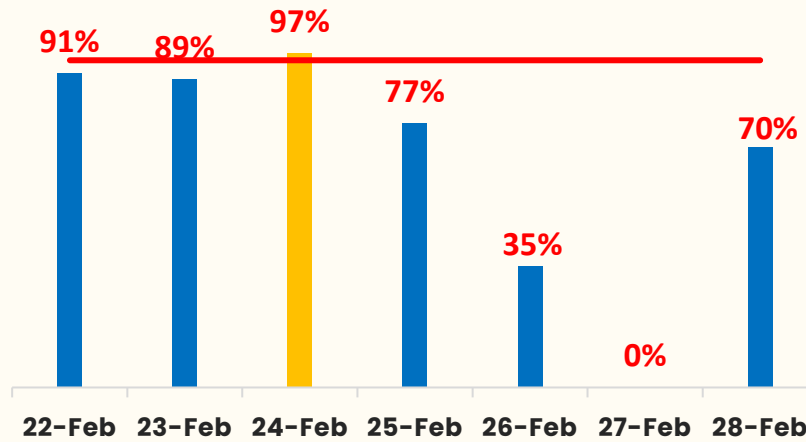
TOTAL FAULTS

22

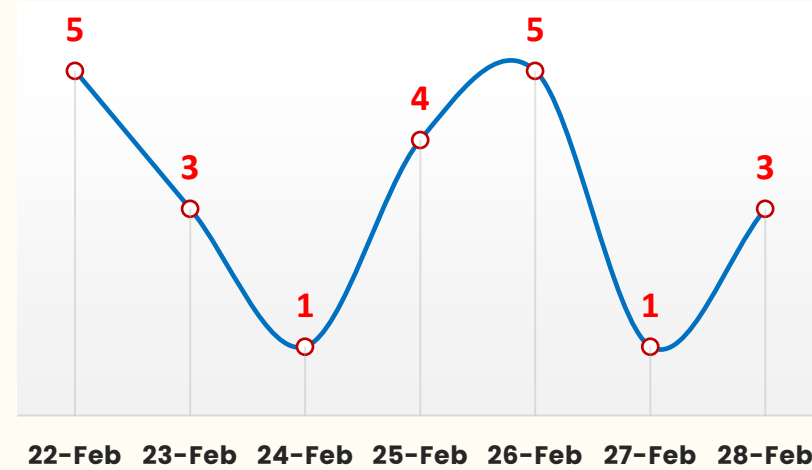
TOTAL EVACUATIONS

07

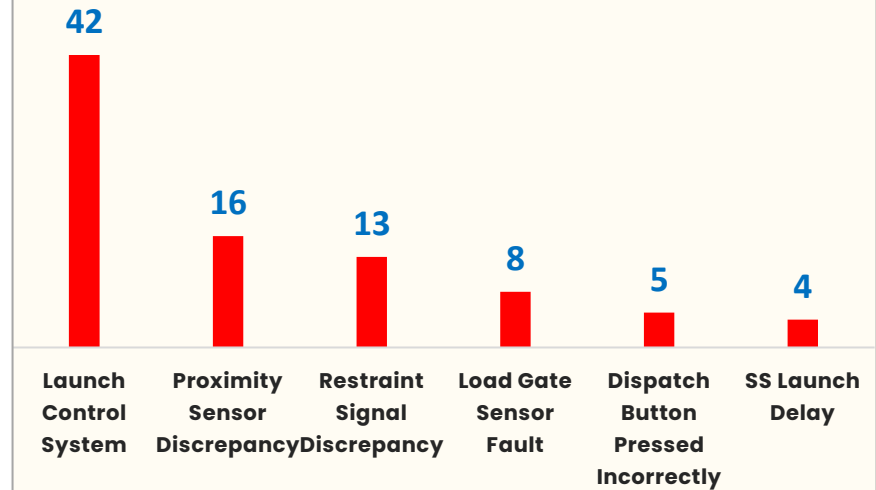
## WEEKLY RIDE UPTIME



## NO. OF FAULTS PER DAY



## FREQUENTLY OCCURRING FAULTS



### COMMON FAULTS

### STATUS

### FAULT DESCRIPTION

### UPDATE

Launch Control System (LCS) Fault	Work in Progress	LCS faults cause the vehicles to stop unexpectedly at different locations.	DA updated code (v2): implementation requires TUV approval; will be implemented as part of broader software update; site acceptance test targeted for completion by Feb 15; will then need TUV review and approval before code changes could be implemented. SAT Testing ongoing, expect TUV in April for code review and functional testing.
Load Gate Sensor Fault	To be Monitored	Load gate was not sensed locked when commanded to lock.	Fault identified as guest leaning on gate during operation. Ops team informed to monitor and keep the guest away from the gate when closing. Sensor setting adjusted, fault to be monitored.
Pinch Brake Proximity Sensor Discrepancy	Fixed	Pinch Brake (PB22) Sensor unable to detect the vehicle on the pinch brake.	Caused by the vehicle alignment issue. Vehicle was test cycled after conducting vehicle re-alignment.
Restraint Signal Discrepancy	Fixed	Restraint LED for open and close indicator was not working.	Secured the loose wiring for the LED signal wire on the VRM.
SS Launch Delay	Fixed	Sideway Switch did not complete launch up within the allowed time.	Resistance Temperature Detector was found out to be faulty and it was replaced.

OTHER FAULTS ENCOUNTERED	FAULT COUNT
Under-Speed Fault	4
Reverse Travel Fault	4
Dispatch Block Travel Delay	3
ML Overtravel Fault	3
Air Leakage	2
SWS Block Travel Delay	2
Dispatch Front Overtravel	2

### Additional Actions Being Taken:

- Testing time increased to 2 hours to minimize risk of issues before opening the ride to guests. Testing time will be gradually reduced based on improved ride reliability.
- DA is doing daily Site Acceptance Testing to satisfy TUV requirement for code v2. DA are working towards the deadline of 15th Feb, additional 1 hour of testing time provided since 22/01/23 (total 4 hours, 5 days a week). Primary points that code update will cover:
  - Updated launch control system; primary focus is to prevent ride vehicle valleys which currently requires significant recover time.
  - Accelerated Ride Vehicle recovery following faults.

### Future considerations:

**New Wheels:** New wheels were received and installed. Vehicle on testing. Minor vehicle alignment needed to continue test cycles.

**Ride rehab : Ride Vehicles :** Timeline to complete all operational Ride Vehicles by October 1st  
Drawings and spare parts lists not yet available from DA; needed for ordering required spares.

**Track Elements :** Execution monthly PMs planned in Feb.