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Saudi Center for Commercial Arbitration



منافسة التحكيم التجاري الطلابية
SCCA Arabic Moot
النسخة الدولية International Edition

The Problem

Version (2.0)

7th December 2021



920003625



ArabicMoot3.sadr.org



events@sadr.org



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Note: For ease of reading, minor corrections have been underlined compared to Version (1.0)





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INITIATION LETTER MEDIATION

In the Matter of Mediation Number: SCCA21MA10

Claimant: Grand Magellan Co. LLC

Respondent: Darb AlTabana Co. LLC

Via [[Email –OR– Fax –OR–Mail]

Date submitted: 2021 August 17

Dear Counsel: Ms. Sarah Parker, Respondent Representative.

Dear Counsel: Talal AbdulHakem, Claimant Representative, Darb AlTabana Co. LLC

The Saudi Center for Commercial Arbitration (SCCA) acknowledges receipt of a Request for Mediation dated 15 August 2021 for a dispute arising out of a contract between the above-captioned parties. A copy should have been sent to Respondent(s). The Mediation procedure marked the date of commencement on the day the center received the mediation request.

Please be advised that the above-captioned parties are receiving this communication in accordance with the representative information provided to us by the Applicant(s). If you are receiving this communication and do not represent any of the parties in this matter, please contact the SCCA immediately.

Your case will receive full administrative coverage by a Case Counsel and a Head of ADR. Your case has been assigned to [Mr. Ahmad Fahad] who will be your primary contact at SCCA and can be reached by e-mail at [Ahmad.fahd@sadr.org]. Please direct all future communications to your Case Counsel's attention with a copy to the other part(ies).

This matter is currently being administered under the SCCA Mediation Rules as in effect as of July 31, 2016, unless the parties agree otherwise. a copy of the Mediation Rules can be found at the following link: [Mediation Rules- SCCA \(sadr.org\)](https://www.sadr.org/Mediation-Rules-SCCA)

Please note that an Administrative Conference Call has been scheduled for [Thursday, 2021 August 22] beginning at [2:00 PM] Riyadh time. The parties are requested to dial in to this call at one of the following number(s): [966553355500] 5 minutes before the scheduled time. If the parties are unable to participate on the scheduled date of the call, we kindly request that the parties mutually agree on an alternate date and advise the SCCA so that the call may be rescheduled accordingly.

Please note that this matter will be conducted in accordance with the attached SCCA Code of Conduct for Parties and Representative, which parties are expected to read and upheld and sign a statement of commitment to that effect.

We also have enclosed a Checklist for Conflicts form. Please list all the witnesses you expect to present, as well as any persons or entities with an interest in these proceedings. This checklist will assist the mediator to disclose any and all potential conflicts. The checklist is confidential and should only be sent to the SCCA. The checklist is due within 5 days from the date of this letter.



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We look forward to work with you and to provide you with assistance during the mediation process.

Sincerely,

**Case Counsel
Ahmad Fahad**

Encl.:

- Checklist for Conflicts. (Not attached)
- Undertake to respect Code of Ethics for Parties and Representatives. (Not attached)
- Copy of the Request for Mediation. (Not attached)
- SCCA Mediation Rules. (Not attached)



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INVITATION TO MEDIATOR

In the Matter of Mediation Number: SCCA21MA10

Between:

Claimant: Grand Magellan Co. LLC

Respondent: Darb AlTabana Co. LLC

Date submitted: 23 August 21

Mediator: Ms. Salama Omar,

As previously discussed, we are inviting you to serve as the Mediator in this matter with the understanding that you have sufficient time to devote to this appointment.

This matter is being administered under the current SCCA Mediation Rules effective as of July 2016. Please find attached a copy of these Rules.

Please note that mediators acting under these Rules are required to abide by the SCCA Code of Ethics for Mediators in effect at the time a mediator is appointed. As such, please disclose to the SCCA any circumstance likely to affect impartiality or independence. This obligation to disclose any such circumstance is ongoing. Should you become aware of a new or additional disclosure, please notify the SCCA immediately.

Claimant(s) is/are represented by:

[[Counsel, Sara Parker, Parker Advocates and Legal Consultants

Respondent(s) is/are represented by:

[[Counsel Talal Abdulhakem, Talal Abdel Hakim Law firm in cooperation with Frank & Smith LLP]]

Please also find enclosed the Notice of Compensation Arrangements. We kindly ask that you sign and return this Notice to the SCCA. We direct your attention to the enclosed SCCA's Billing Guidelines for Mediators for additional information. (Not attached)

Should you accept this appointment please execute and return the enclosed Notice of Appointment including any disclosures, the Mediator's Acknowledgement, and the Notice of Compensation Arrangements to the SCCA **within five business days**.

If you are unable to return these Notices, the Mediator's Acknowledgement and any additional documents within five business days and still wish to accept this appointment, please advise



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the SCCA when you will be able to do so. Please do not act on any issue until such time as these Notices have been executed and returned to the SCCA. We will notify the parties of your acceptance of this appointment upon receipt of your Notices, which will mark the official date of your appointment.

Finally, we have enclosed Request for Mediation including any exhibits as well as any relevant documents the SCCA has received from the parties to date. Please treat these documents and any information you receive in this matter as confidential at all times. Should you not accept this appointment, please dispose of any and all documents in a secure way.

Thank you again for your willingness to serve in this matter. If you have any questions or concerns, please do not hesitate to contact the SCCA via phone or email

Sincerely

Case Counsel
Ahmad Fahad

Signature: *Ahmad Fahad*

Enclosure:

- Notice of Appointment and Disclosure Guidelines. (Not attached)
- SCCA Mediation Rules. (Not attached)
- SCCA Code of Ethics for Mediators. (Not attached)
- Parties Checklist for Conflict. (Not attached)
- Notice of Compensation Arrangements with Billing Guidelines. (Not attached)
- Parties Documents. (Not attached)



NOTICE OF APPOINTMENT

In the Matter of Mediation Number: SCCA21MA10

Between:

Claimant: Grand Magellan Co. LLC

Respondent: Darb AlTabana Co. LLC

It is most important that the parties have complete confidence in the mediator's impartiality. Therefore, please disclose any past or present relationship with the parties or their counsel, direct or indirect, whether financial, professional, and social or of any other kind. This is a continuing obligation throughout your service on the case and should any additional direct or indirect contact arise during the course of the mediation or if there is any change at any time in your Resume that you have provided to the SCCA, it must also be disclosed. Any doubts should be resolved in favor of disclosure. If you are aware of direct or indirect contact with such individuals, please describe it below. Failure to make timely disclosures may forfeit your ability to collect compensation. The SCCA will call the disclosure to the attention of the parties.

You will not be able to serve until a duly executed Notice of Appointment is received and on file with the SCCA. Please review the attached Disclosure Guidelines and, after conducting a conflicts check, answer the following questions and complete the remainder of this Notice of Appointment:

	Yes	No
1. Do you or your law firm presently represent any person in a proceeding involving any party to the mediation?	<input type="radio"/>	<input checked="" type="radio"/>
2. Have you represented any person against any party to the mediation?	<input type="radio"/>	<input checked="" type="radio"/>
3. Have you had any professional or social relationship with counsel for any party in this proceeding or the firms for which they work?	<input type="radio"/>	<input checked="" type="radio"/>
4. Have you had any professional or social relationship with any parties or witnesses identified to date in this proceeding or the entities for which they work?	<input type="radio"/>	<input checked="" type="radio"/>
5. Have you had any professional or social relationship of which you are aware with any relative of any of the parties to this proceeding, or any	<input type="radio"/>	<input checked="" type="radio"/>



relative of counsel to this proceeding, or any of the witnesses identified to date in the proceeding?

6. Have you, any member of your family, or any close social or business associate ever served as a mediator or arbitrator in a proceeding in which any of the identified witnesses or named individual parties gave testimony?
7. Have you, any member of your family, or any close social or business associate been involved in the last five years in a dispute involving the subject matter contained in the case, which you are assigned?
8. Have you ever served as an expert witness or consultant to any party, attorney, witness, arbitrator, or other mediator identified in this case?
9. Have any of the party representatives, law firms or parties appeared before you in past cases?
10. Are you a member of any organization that is not listed on your Resume that may be relevant to this mediation?
11. Have you ever sued or been sued by either party or its representative?
12. Do you or your spouse own stock in any of the companies involved in this mediation?
13. Are there any connections, direct or indirect, with any of the case participants that have not been covered by the above questions?

Should the answer to any question be “Yes”, or if you are aware of any other information that may lead to a justifiable doubt as to your impartiality or independence or create an appearance of partiality, then describe the nature of the potential conflict(s) on an attached page.

Please indicate one of the following:

- I have conducted a check for conflicts and have **nothing to disclose**.
- I have conducted a check for conflicts and have **made disclosures on an attached sheet**.

Dated: 2021 August 28_____

Signed: *Salama Omar*



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THE MEDIATOR'S ACCEPTANCE

MEDIATOR NAME: Salama Omar

I hereby affirm that the above information is true and accurate to the best of my knowledge, information and belief, and further attest that I have reviewed my SCCA Resume which the SCCA provided to the parties on this case and confirm it is current, accurate and complete.

I attest that I have diligently conducted a conflict check, including a thorough review of the information provided to me about this case to date, and that I have performed my obligations and duties to disclose in accordance with SCCA Mediation Rules and SCCA Code of Ethics for Mediators.

I understand that my obligation to check for conflicts and make disclosures is ongoing for the length of my service as Mediator in this matter, and that failing to make appropriate and timely disclosures may result in my removal as Mediator from the case and/or, where applicable, my removal from the SCCA's Roster of Neutrals.

- I, hereby accept this appointment. I will faithfully and fairly serve as the mediator in this matter in accordance with the parties' agreement, SCCA Mediation Rules and SCCA Code of Ethics for Mediators. I commit to devote sufficient time to work on the case. I accept the Mediator fee as described in the SCCA appendix to Mediation Rules.
- I apologize from accepting the appointment (in this case, no need to fill any part of the form except name and signature).

Dated: 2021 August 28

Signed: *Salama Omar*



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September 14, 2021

Dear Case Counsel
Saudi Center for Commercial Arbitration
8th floor, Saudi Chambers Council Building
7982 King Fahd Sub-Road - AlMutamarat
Riyadh 12711 - 4183
Saudi Arabia

Subject: The termination of mediation procedures between Grand Magellan Co. LLC and Darb AlTabana Co. LLC

Dear Case Counsel, Saudi Center for Commercial Arbitration

Greeting,

Referring to the supply contract between Grand Magellan Co. LLC ("Claimant") and Darb AlTabana Co. LLC on June 18, 2020 (the "contract"), under which the Claimant, Grand Magellan Co. LLC, applied for mediation on August 15, 2021, according to Article 13 of the The Mediation Rules of the Saudi Commercial Arbitration Center effective from July 31, 2016 ("Mediation Rules"), and due to Magellan's intransigence in reaching a settlement of the dispute, The Respondent would like to inform you to that the mediation sessions have not been useful and the dispute has not been resolved to date, and declare that the mediation proceedings are over.

Kind regards,

On behalf of Darb AlTabana Co. LLC





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Saudi Center for Commercial Arbitration

8th Floor, 7982 King Fahd Branch Road - Almutamarat

Postal code: 12711-4183

Riyadh, Saudi Arabia

Telephone: +966 920003625

15 September 2021

Dear Mr. Ahmad Abdulaziz,

On behalf of my client, Darb AlTabana Co. LLC, we are requesting arbitration under Article 4 of the Saudi Center for Commercial Arbitration's arbitration rules. Enclosed with this letter is a copy of the power of attorney from Darb AlTabana Co. LLC to represent the company in arbitration proceedings.

A copy of the request for arbitration has been sent to SCCA and to the Respondent, and the required registration fees have been paid.

Sincerely,

Claimant's representative:

Office of Counsellor Talal Abdulhakim in association with Frank & Smith LLP

cc:

Grand Magellan Ltd.

Enclosures:

Request for Arbitration with exhibits

Power of attorney (not attached)

Proof that RFA was sent to the Respondent – expedited delivery (not attached)

Copy of receipt for payment of registration fees (not attached)





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Request for Arbitration

(Under Article 4 of the Saudi Center for Commercial Arbitration
arbitration rules effective as of 31 July 2016)

Darb AlTabana Co. LLC

(“Claimant”)

v.

Grand Magellan Ltd.

(“Respondent”)





I. Introduction

1. Darb AlTabana Co. LLC (“**Claimant**”) submits this request for arbitration (“**Arbitration Request**”) in accordance with Article 4 of the Saudi Center for Commercial Arbitration’s arbitration rules of July 2016 (“**Arbitration Rules**”) against Grand Magellan Company (“**Respondent**”).
2. The Arbitration Request concerns the Claimant’s claim for compensation in the amount of SAR 59,280,000 for its failure to deliver 15 spacesuits agreed to be manufactured and supplied pursuant to the 18 June 2020 supply contract (“**Contract**”).
3. The Arbitration Request is divided into nine sections as follows:
 - I. Names of the Parties and Their Representatives
 - II. Facts of the Dispute
 - III. Legal Analysis of the Facts
 - IV. The Arbitration Agreement
 - V. Applicable Law
 - VI. Procedural Matters
 - VII. Formation of the Arbitral Tribunal
 - VIII. Claimant’s Requests





I. The Parties and Their Representatives

1. Claimant:

1.1 Darb AlTabana Co. LLC

Postal address

19 Farouk El-Baz Street, Space City 67389, Middle East States

(00925) 389355622

info@milkway.og

1.2 Claimant's representative

Office of Counsellor Talal Abdulhakim in association with Frank & Smith LLP

Postal address

Al-Khwarizmi Tower, 24th floor, P.O. Box 28376, Space City, Middle East States

Talal Abdulhakim

Talal.Abdulhakim@franksmith.com

John Smith

John.Smith@franksmith.com

2 Respondent:

2.1 Grand Magellan Ltd.

12 Ibn Al-Shatir Street, P.O. Box 567582, Arab City, Kingdom of North Africa

2.2 Respondent's Director

Mariam Al-Asturlabiyya

Managing Director of Grand Magellan Ltd.

Postal address

12 Ibn Al-Shatir Street, P.O. Box 567582, Arab City, Kingdom of North Africa





II. Facts of the Dispute

1. Darb AlTabana Co. LLC (“**Claimant**”), a midsize company registered in the Middle East States, was established in 2002. The first company of its kind in the Arab region, it specializes in space products and technology, and provides space tourism services. The company has yet to launch any space flights, but it announced in late 2018 that the dream of space tourism would become a reality, and that the company would announce publicly available space tourism flights, at a cost of approximately 1 million Saudi riyals per ticket, by the end of 2020.
2. Grand Magellan Company (“**Respondent**”), a midsize company registered in the Kingdom of North Africa, was established in 2003. The company specializes in providing space flight equipment such as spacesuits, oxygen, safety equipment, eating utensils, bathing supplies, and more.
3. In late 2019, the Claimant launched an advertising campaign throughout the Middle East to promote its space tourism flights. The advertising included footage of successful experimental flights that the Claimant made to space without any difficulty.
4. The Claimant announced that the first scheduled flight would be on 1 October 2021, that tickets would become available to the public by the end of January 2020, and that the cost per ticket would be 1 million Saudi riyals.
5. The number of scheduled flights was four per year, or one every three months. After the first flight, the second would be on 1 January 2022, the third on 1 April 2022, and the fourth on 1 July 2022. Flights in subsequent years would be on the same dates. There would be eight tickets available for each flight. All the tickets for 2021 and 2022 were sold in January 2020.
6. As these flights were the Claimant’s first products, the top priorities of the Claimant’s Board of Directors included that the company should appear professional to the public, and that the flights should take place as planned on the announced dates. Seeking to rebut rumors that the Claimant would not carry out the flights because such flights were unrealistic and had never happened before, and that the project was a fraud with promotional and financial aims, seeking to collect and employ the funds, then refund





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the money after the flight dates arrive – given that the money collected from the Claimant’s customers totaled approximately SAR 63,000,000 (sixty-three million Saudi riyals) – the Board of Directors agreed to the addition of a penalty clause in the company’s contracts with customers. In the event of the cancellation or delay of any flight, a penalty would be assessed against the company, to be computed as 8% of the amount paid annually and calculated on a daily basis from the payment date of the ticket price plus a refund if the customer chooses not to transfer their ticket to a later date.

7. On 22–28 March 2020, a Claimant delegation attended an annual exhibition in the Kingdom of North Africa at which international space companies exhibit their products. Among those companies was one of the largest space companies in the world, Spiral, as well as the Respondent, Grand Magellan. One of the Respondent’s unique products was a new extravehicular spacesuit, the Exploration Extravehicular Mobility Unit (xEMU) 2020. This type of suit boasts compliance with the highest safety and security standards for space. It has unique technical specifications and can be reused for multiple flights, and is safe enough to allow amateurs to travel to space without having to undergo lengthy trials. These suits also belong to the new generation of smart spacesuits that do not need constant human interaction in order to function. All these advantages explain the demand for the suits and the fact that they cost more than 13% more than other commercial spacesuits.
8. During negotiations and discussions between representatives of the Claimant and the Respondent for the purchase of 15 suits, which lasted several days during the exhibition, the Claimant’s greatest concern was that the suits would be delivered within one year of the Contract signature date at the latest. It was confirmed that this would be possible, and in fact, the Respondent’s representatives stated during the exhibition that they had at least six suits nearly ready for delivery, as they had been manufactured in advance. The encounter ended with scheduling of a meeting and signature of the Contract on 1 June 2020.
9. A meeting was indeed held on 1 June 2020 between delegations from the two companies to negotiate the details. During the meeting, the Respondent indicated that it was ready to supply 15 spacesuits in accordance with the Claimant’s specifications,





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to be delivered sufficiently in advance of the flight date. The Claimant insisted that the goods be delivered within one year, prior to June 2021. The Respondent stated that it would send 10 suits prior to June 2021, with the possibility that the 10 suits would be sent before then – depending on the arrival of the helmets from the Black Helmet Company – and the rest would be sent prior to October 2021. The contract was based on a template provided by the Respondent, and there was no lengthy discussion on the content of the Contract. The Claimant insisted, however, that the goods be delivered within one year, prior to 17 June 2021. It was agreed that the phrase “*as soon as possible following the Contract signature date*” would be added in reference to the delivery of 10 suits within a year, specifically prior to June 2021, with the rest of the suits to be delivered within a maximum of 17 months. This was in exchange for the Respondent’s request to add a dispute resolution clause providing for negotiations and mediation, then arbitration under the supervision of the Saudi Center for Commercial Arbitration in the event of a dispute. The Respondent made this request after the company’s Executive Director read about the international regard for the SCCA’s mediation program (**Claimant Exhibit 1**).

10. On 18 June 2020, the Contract was signed between the two parties and the first payment of 25,000,000 Saudi riyals was transferred (**Claimant Exhibit 2**).
11. On 2 August 2020, the Respondent contacted the Claimant and informed it that the Respondent had begun manufacturing the rest of the suits and was awaiting the second payment (**Claimant Exhibit 3**).
12. On 3 August 2020, the Claimant replied that it was encountering technical problems with the second payment but would transfer it within three months. The remainder was indeed transferred on 12 May 2021. The Claimant asked about the delivery date of some or all of the suits, as one of the Respondent’s representatives at the exhibition had stated that a number of suits had been manufactured before signature of the Contract and were ready to ship, and that its team was awaiting arrival of the suits in order to test them and do training on them (**Claimant Exhibit 4**).
13. On 4 October 2020, the Claimant’s representative called the Respondent’s representative and asked about the delivery date of the suits. The Deputy Director





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replied that the Director would email the Claimant's representative within a matter of days.

14. On 28 January 2021, the Respondent's representative called the Claimant's representative and apologized for the fact that the Covid-19 pandemic had forced them to make some changes. He said that the manufacturing process was proceeding as planned, and that they would like to send 10 suits in a single shipment, especially as the cost of shipping had risen due to Covid-19 restrictions. The Claimant's representative asked for an approximate date, and the Respondent's representative confirmed that it would be in about six months or less.
15. On 10 July 2021, the Respondent emailed the Claimant to ask if the delivery date could be changed to 1 November 2021. Black Helmet Company, which supplies it with the helmets used for the spacesuits, had failed to deliver the spacesuit helmets because its factory is near the forest fires that occurred in the State of North Africa. The factory had assured them that the fire was expected to be extinguished within days, the factory would return to normal operation within a month, and helmets would be sent before October. The Respondent confirmed that the goods would be sent whether the helmets were obtained from Black Helmet Company or another company, as the Respondent planned to use another helmet provider in case Black Helmet Company did not fulfill its obligation. And because of this delay, any future contract would be discounted 3% to compensate the Claimant for the delay (**Claimant Exhibit 5**).
16. On 29 July 2021, the Claimant called the Respondent and asked about the email on the delay. It stated that the 10 agreed suits had not yet been sent, and that the Respondent was putting the Contract at risk of avoidance, as no suits had been received despite the passage of one year since signature of the Contract. The Respondent's representative said they had sent five suits the previous week, which should arrive within days, and they wanted additional time for the remaining suits. Five suits were indeed received on 10 August 2021. The Claimant's representative refused to extend the deadline and told the Respondent's representative that the Claimant was in the process of avoiding the Contract in case the remaining suits were not delivered before October. The Respondent told the Claimant that it would make every effort to deliver





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before the deadline, and that it would provide them with any information received from Black Helmet Company if they could send the helmets before that time.

17. On 14 August 2021, the Claimant emailed the defendant stating that the Contract was void, that it would cancel its first flight because of the delay in sending the spacesuits, and that it would send the five suits that had been sent to the Respondent. Convinced that the Respondent would not send the goods by the specified date because of its prior procrastination in delivering goods in June 2021, and because it had failed to send the goods by that date, the Claimant also demanded a full refund of the amount paid (SAR 50,000,000) plus interest for the past two years, giving the arbitral tribunal the authority to choose the applicable law for determination of the interest rate; as well as compensation of SAR 9,280,000 for the trip that would be canceled on 1 October 2021, including the value of ticket refunds to customers and the 8% interest specified in the contracts with customers, to cover the Claimant's financial losses and future lost profits (**Claimant Exhibit 6**).

18. On 15 August 2021, the Respondent filed a request for mediation with the Saudi Center for Commercial Arbitration ("SCCA") pursuant to the arbitration clause and Article 3 of the SCCA Mediation Rules in force on that date (**Claimant Exhibit 7**).

19. **On 14 September 2021, the Claimant sent a letter to the SCCA to inform the latter that the mediation proceedings had ended, as the correspondence between it and the parties showed the Respondent's intransigence toward reaching a settlement.**

20. On 15 September 2021, the Claimant filed the Arbitration Request for resolution of this dispute following mediation sessions that had been held within the preceding 30 days and had been unsuccessful because of the Respondent's illogical remedies.

III. The Arbitration Agreement

1. The Claimant refers this dispute on the basis of an arbitration agreement under Clause 9 of the supply contract with the Respondent, as follows:

9.1 If a dispute arises between the parties regarding any matter related or linked to the interpretation or execution of this Contract, or to the breach, termination, or invalidity thereof, the parties shall seek amicable resolution of the dispute.





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9.2 In the event that the Parties are unable to reach an amicable resolution within 15 days of occurrence of the dispute, either Party may submit a request to refer the dispute to mediation in an attempt to settle it in accordance with the Saudi Center for Commercial Arbitration mediation rules.

9.3 In the event that the dispute is not settled within 30 days of the submission of the mediation request, the dispute shall be settled by arbitration administered by the Saudi Center for Commercial Arbitration in accordance with its rules.

9.4 There shall be three arbitrators. Each Party shall nominate an arbitrator, and the SCCA shall appoint the chairman of the tribunal, who shall have experience in and knowledge of industrial supply contracts and space industry disputes. The seat of arbitration shall be Stone City in the Arabian Peninsula State, and the language of arbitration shall be Arabic.

2. Based on the above multi-step clause, attempts to end the dispute amicably took place between 19 July and 14 August 2021. They ended in failure after we received no reply from the Respondent with regard to the Claimant's requests. Mediation sessions were also conducted under the supervision of the Saudi Center for Commercial Arbitration at the Respondent's request between 29 August and 14 September 2021, and they ended in failure after the Respondent presented a number of proposals that were not agreeable to the Claimant. Accordingly, the arbitral tribunal now has the authority to hear the dispute.
3. Pursuant to Clause 4 of the Contract and the pre-contract negotiations (**Claimant's Exhibits 1 and 2**), it was agreed that the suits would be shipped "*as soon as possible.*" During the pre-contract negotiations, the agreement was that at least 10 suits would be sent on a date prior to 17 June 2021, i.e. within one year of signature of the Contract. This means that the Respondent should have sent at least 10 suits prior to 17 June 2021 and the rest of the suits on 1 October 2021, but the Respondent did not adhere to either date, jeopardizing the Claimant's credibility.
4. Under Article 49 of the Convention on Contracts for the International Sale of Goods (CISG), the buyer may avoid the contract if the seller fails to perform his obligations. The Respondent's failure to deliver by the deadline of 17 June 2021, and its notification





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to the Claimant that it would not send the remaining suits by 1 October 2021, give the Claimant the right to avoid the Contract.

5. Under the Clause 7 of the Contract and CISG Article 74, the Respondent must compensate the Claimant for the real loss suffered and the value of future loss of profit resulting from the Respondent's failure to execute the Contract. As a result of the Respondent's failure to send the suits by the deadline, the Claimant was forced to cancel the first flight, which was scheduled for 1 October 2021. This cancellation forced it to refund all payments to the customers and pay them the penalty of 8% of the value of each ticket due to cancellation of the flights. Thus, the Claimant's total loss is SAR 8,000,000 for the tickets and SAR 1,280,000 as a penalty for cancellation of the flights.
6. The fires in North Africa are not a reason for delay in execution of the Contract, as the Respondent could have used another helmet supplier in order to comply with the Contract. The Respondent indicated that it would send helmets whether using Black Helmet Company or another company. This shows that the reason for the delay in performance of the obligation was unrelated to the third party. Therefore, the Respondent is not exempt under CISG Article 79.
7. In addition to compensation for the real loss suffered and actual loss of profit, the Claimant seeks reimbursement of the funds paid to the Respondent in the amount of SAR 50,000,000 plus interest, to be calculated on a daily basis pursuant to CISG Article 84.

IV. Applicable Law

1. Pursuant to Article 8 of the Contract, the law applicable to the subject of the dispute is the United Nations Convention on Contracts for the International Sale of Goods (CISG).

V. Procedural Matters

- a. **Seat of arbitration and law applicable to arbitration proceedings**





1. Pursuant to Article 9 of the Contract, the seat of arbitration is Stone City, Arabian Peninsula State. Therefore, the law applicable to the arbitration proceedings is that country's arbitration law, which adopted, in full, the 1985 UNCITRAL Model Law on International Commercial Arbitration and the amendments adopted in 2006.

b. Arbitration rules

2. Pursuant to Article 9 of the Contract, the Arbitration Rules shall be the SCCA arbitration rules in effect upon the commencement of arbitration proceedings. Thus, the Arbitration Rules are the SCCA arbitration rules that took effect on 31 July 2016.

c. Language of arbitration

3. Pursuant to Article 9 of the Contract, arbitration shall be conducted in Arabic.

VI. Formation of the Arbitral Tribunal

4. Pursuant to Article 9 of the Contract and Article 11 of the Arbitration Rules, the arbitral tribunal shall consist of three arbitrators. Each party shall nominate one arbitrator whom SCCA shall appoint, while the SCCA shall select the third arbitrator.
5. The Claimant nominates as an arbitrator in these arbitral proceedings:

Ms. Jumana Ahmad

Ahmad & Partners Law Firm and Legal Consultancy

Address: 958 Suits Avenue, New York, NY

Telephone: +1 236 852-8989

Fax: +1 236 852-8900

Email: Jumana.ahmad@ahmadandpartners.com

VII. Claimant's Requests

1. The Claimant petitions the arbitral tribunal to:





- a) Oblige the Respondent to return the full amount paid, a sum of SAR 50,000,000, with interest.
- b) Oblige the Respondent to compensate the Claimant for the losses it has suffered and future loss of profit due to breach of the Contract and delay in shipment of the suits, a total of SAR 9,280,000.
- c) Oblige the Respondent to pay the entirety of the arbitration expenses in addition to the Claimant's lawyers' fees.
- d) The Claimant retains its right to amend its pleas and/or requests during later hearings.

Attorney for the Claimant

Office of Counsellor Talal Abdulhakim in association with Frank & Smith LLP

15 September 2021





Claimant Exhibit (1)

Statement of witness Ali Mahfouz

1. I was born on 24 July 1971. I have a Masters of Science in International Business Negotiation. I am currently the head of the Contracts Department at Darb AlTabana Co. LLC. Until 1 April 2019, I served as a manager in the Commercial Department, where I was responsible for advertising our products, preparing for international exhibitions, and dealing with clients and suppliers.
2. Because of that, I was present at the annual exhibition in the Kingdom of North Africa where international space companies are showcase their products. During the exhibition, the team's attention was drawn to a new spacesuit, the Exploration Extravehicular Mobility Unit (xEMU) 2020. This type of suit boasts compliance with the highest safety and security standards for space, and it has unique technical specifications. It is a product offered by Grand Magellan Ltd.
3. From the start of the negotiations, we stressed the importance of respecting the delivery deadlines for the suits. The company's director insisted on a June 2021 delivery deadline for all the suits. Representatives of Grand Magellan Ltd. confirmed that the company had all the necessary components to deliver the product on time, and they even showed us images of six prototypes that they said were almost ready. This was reassuring to the team, because there was a penalty clause in the company's customer contracts that would be activated if any flights were canceled or delayed. Given that the Claimant was determined to avoid any delay in delivery, the evidence of the images had a significant impact on the decision to sign with the Respondent despite the high price of the suits, which posed a risk to the company.
4. A meeting was indeed held on 1 June 2020 between delegations from the two companies to negotiate the details. An agreement was made to acquire 15 spacesuits, provided that they would be delivered sufficiently in advance of the





- flight date. Representatives of Grand Magellan Ltd. indicated that they could send 10 suits prior to June 2021 or possibly sooner, as six suits were nearly ready. They also confirmed that the rest would be delivered prior to October 2021 at the latest.
5. The parties made an agreement to that effect. Grand Magellan insisted on using a contract template that its team had drafted. Because a specific delivery date was not set, just a deadline of one year from signature of the contract, the phrase “as soon as possible” was added to the contract in reference to delivery of 10 suits within a year and the rest prior to October 2021 at the latest. The importance of avoiding any delay in delivery was emphasized.
 6. Despite my reservations that all the suits would be delivered by the agreed deadline, the evidence of the images had a significant impact on the decision to sign with Grand Magellan and not another company, in spite of its high prices. That is why the company’s director suggested adding a clause to the contract providing for mediation prior to arbitration.
 7. On 18 June 2020, the final version of the contract was signed between the two parties.

-- End --





Claimant Exhibit (2)

Space Supply Contract

On Monday, 18 June 2020, this contract was signed between:

1. **Darb AlTabana Co. LLC Limited**, a holding company with its headquarters at 19 Farouk El-Baz Street, Space City 67389, Middle East States, represented in the signing of this Contract by Mr. Omar Al-Khayyat in his capacity as CEO of the company.

(First Party)

and

2. **Magellan Grand Limited**, a limited liability company with its headquarters at 12 Ibn Al-Shatir Street, P.O. Box 567582, Arab City, Kingdom of North Africa, represented in the signing of this Contract by Engineer Mariam Mariam Al-Asturlabiyya in her capacity as the Managing Director of the company.

(Second Party)

(Collectively referred to as “the Parties”)

Preamble

- a. Whereas there has been an increased demand for space tourism from individuals throughout the country with a view to discovery and adventure in space;
- b. Whereas First Party specializes in space tourism;
- c. Whereas First Party plans to launch four space tourism flights annually, with one flight every four months, intended for individuals desiring to explore space;
- d. Whereas First Party needs materials and equipment for flights into outer space;
- e. Whereas Second Party specializes in providing security and safety equipment for space missions and flights;
- f. Accordingly, the Parties agree that Second Party shall manufacture and supply spacesuits for tourist purposes to First Party in accordance with the conditions and specifications set out below.

For all the reasons stated above in this preamble, the Parties declared that they are competent and acting in the proper capacity, and they agreed to the following:





Clause 1:

The above preamble is an integral part of the terms of this Contract.

Clause 2: Technical Specifications for the Spacesuits

2.1 The Parties agree that Second Party will design and supply 15 of the 2020 model of the Extravehicular Mobility Unit (xEMU) spacesuit in accordance with the highest safety and security standards for space. These suits feature unique technical specifications, including but not limited to survivability in outer space for up to 14 days, with the possibility of suit reuse for multiple flights, and they are safe enough to allow amateurs to travel in space. Second Party also commits to supplying the helmets for the above-mentioned spacesuits, which are an integral part of the spacesuits. These suits are referred to hereinafter as “**the Spacesuits.**”

2.2 The Spacesuits must conform to the agreed technical standards and be delivered as follows:

- a) A representative of First Party shall examine the Spacesuits to determine their conformity with the technical standards;
- b) Second Party shall provide the technical guide for the Spacesuits;
- c) The Spacesuits shall be warrantied for a period of one year from the date of receipt against any damage except as a result of misuse.

Clause 3: Contract Value

3.1 Second Party shall design and supply 15 Spacesuits in exchange for SAR 5,000,000 (five million Saudi riyals) per suit. Thus, the total value of the contract is SAR 75,000,000 (“**Contract Value**”), to be paid by First Party as follows:

- a) SAR 25,000,000 upon signature of this contract (“**First Installment**”).
- b) SAR 25,000,000 after the purchase of raw materials and the start of manufacturing (“**Second Installment**”).
- c) SAR 25,000,000 upon delivery of the Spacesuits with the warranty certificate (“**Third Installment**”).

Clause 4: Delivery Date

Second Party must supply 15 Spacesuits as soon as possible following the contract signature date and/or prior to 17 June 2021 (“**Delivery Date**”), sufficiently in advance of the launch of the first space tourism flight on 1 October 2021.

Clause 5: Notices

5.1 Notices between the parties and claims and data relating to this Contract shall be written in Arabic and sent via email to the listed addresses and to each party’s representative authorized for that purpose.





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5.2 For notices, the below individuals shall represent the parties:

• First Party:

Mr. Omar Al-Khayyat
CEO
omarkh@milkyway.org

• Second Party:

Eng. Mariam Al-Asturlabiyya
Managing Director
mariams@magellan.mo

Clause 6: Force Majeure

6.1 Failure by one of the Parties to fulfill its obligation is not a breach of the contract or its contractual obligations if such failure is the result of force majeure, on the condition that it takes all reasonable precautions and care necessary to fulfill its obligations. It shall inform the other party as soon as possible of such an event. For the purpose of this Contract, force majeure means circumstances beyond the control of the parties, including wars, revolutions, or natural disasters such as an earthquake or flood.

6.2 The following are not considered force majeure: delay the performance of contractual obligations due to the fault of either party to the Contract or a subcontractor, the lack of resources or materials on the party of the contracting party, or inefficient operations unless such deficiency is a direct result of force majeure.

Clause 7: Penalty Clause

In the event that Second Party delays the delivery of the Spacesuits past the date agreed between the parties as per Clause 4 of this Contract, Second Party must compensate First Party by paying the value of the financial loss suffered by First Party and the value of future loss of profit as a result of its delay in delivery, in accordance with the provisions of Article 74 of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

Clause 8: Applicable Law

The parties agree that the law applicable to this Contract is the United Nations Convention on Contracts for the International Sale of Goods (CISG).

Clause 9: Dispute Resolution

9.1 If a dispute arises between the parties regarding any matter related or linked to the interpretation or execution of this Contract, or to the breach, termination, or invalidity thereof, the parties shall seek amicable resolution of the dispute.





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9.2 In the event that the Parties are unable to reach an amicable resolution within 15 days of occurrence of the dispute, either Party may submit a request to refer the dispute to mediation in an attempt to settle it in accordance with the Saudi Center for Commercial Arbitration mediation rules.

9.3 In the event that the dispute is not settled within 30 days of the submission of the mediation request, the dispute shall be settled by arbitration administered by the Saudi Center for Commercial Arbitration in accordance with its rules.

9.4 There shall be three arbitrators. Each Party shall nominate an arbitrator, and the SCCA shall appoint the chairman of the tribunal, who shall have experience in and knowledge of industrial supply contracts and space industry disputes. The seat of arbitration shall be Stone City in the Arabian Peninsula State, and the language of arbitration shall be Arabic.

Clause 10: Copies of Contract

This Contract has been prepared in duplicate and signed by each party. Each copy is an original of the Contract and shall be enforceable with regard to the parties.

First Party

Darb AlTabana Co. LLC

Signature: Omar Al-Khayyat

Omar

Date: 18 June 2020

Second Party

Grand Magellan Company

Signature: Mariam Al-
Asturlabiyya

mariams

Date: 18 June 2020

-- End --





Claimant Exhibit (3)

From: hn@magellan.com
Date: 2 August 2020, 11:00 a.m.
To: ahmedb@milkway.com
Re: Questions about the second payment for the contract!

Dear Ahmad,

Greetings,

In accordance with our agreement, I am pleased to inform you that the preparation of the spacesuits is going well, and we have obtained the raw materials needed to start the production of the spacesuits.

Pursuant to the terms of the contract signed on 18 June 2020, we are still waiting for payment of the second installment of the purchase price of 25,000,000 Saudi riyals. We sent the invoices last month.

Can you explain the reasons for the delay?

Thanks for a timely answer.

Sincerely,

Omar Hajj Salem
Director of Finance
Grand Magellan Ltd.
+964 567 492 5674

Grand Magellan Limited

-- End --





Claimant Exhibit (4)

From: omarkh@milkyway.og
Date: 3 August 2020, 23:27 a.m.
To: mariams@magellan.mo
Re: Second payment

Dear Ms. Mariam Al-Asturlabiyya,

Greetings,

Without further ado, I am writing you today to inform you that some technical problems have occurred with our bank accounts, especially those that transfer to other foreign accounts.

But we have received assurances from our bank, which is telling us that the second payment we owe will be transferred no later than three months from today's date.

Know that I have assigned an employee in our Finance Department to follow up with the bank on a daily basis, given the importance of this matter and its impact on our relationships with our customers and partners.

I will inform you as soon as I learn of any further details.

Sincerely,
Omar Al-Khayyat





From: mariams@magellan.mo
Date: 5 February 2021, 3:18 p.m.
To: omarkh@milkyway.org
Re: RE: Second payment

Dear Mr. Omar Al-Khayyat,

Greetings,

Thank you for notifying us of this technical problem. We hope that the desired solutions will be found as soon as possible.

The delay in payment will not affect our contract. We will proceed normally with the manufacture and delivery of the required suits, especially given that a good number of suits have been manufactured and are ready for sale.

My colleague Ms. Qamar will check whether these suits are currently ready to ship, and I will ask her to confirm with you the delivery date of the first batch of suits.

Regards,

Sincerely,
Mariam Al-Asturlabiyya





From: omarkh@milkyway.og

Date: 12 May 2021, 2:10 p.m.

To: mariams@magellan.mo

Re: Second payment

Dear Ms. Mariam Al-Asturlabiyya,

Greetings,

We were informed today by the bank that the second payment was successfully transferred.

I'm sending you this message to ask you to confirm that the transfer has been received in your bank account.

I'll also take the opportunity to ask you about Ms. Qamar, specifically about your promise to deliver the suits to us despite the explained delay in our payment. Can you confirm how many suits were manufactured before signature of the contract and are ready to ship?

Receiving the first batch of suits is of the essence for us, so that the technical team can test them and do some training on them before the flight date.

Waiting for your answer,

Sincerely,
Omar Al-Khayyat

— End —





Claimant Exhibit (5)

From: mariams@magellan.mo
Date: 10 July 2021, 8:50 p.m.
To: omarkh@milkyway.org
Re: Report on Black Helmet Company

Dear Mr. Omar Al-Khayyat,

Greetings,

The factories belonging to the company that supplies us with helmets (Black Helmet Company) was impacted by a severe forest fire in the State of North Africa. The company informed us that it will likely return to normal manufacturing within a month and will be able to deliver the helmets by October at the latest.

And so, we send this message to discuss with you the possibility of changing the delivery date to 1 November 2021. This extra time will allow us to secure helmets from Black Helmet Company. Otherwise, they will be secured from another company.

We want to stress the importance of our relationship. We hope that you will understand this extraordinary situation which is outside our control, and that it will not affect our contract.

As an indication of our position and our commitment to fulfill the contract, we would like to offer you a 3% discount on any future contract to compensate you for the delay if we are forced to resort to another helmet manufacturer.

We look forward to receiving an answer from your concerning our request.

Sincerely,
Mariam Al-Asturlabiyya

— End —





المركز السعودي للتحكيم التجاري
Saudi Center for Commercial Arbitration

In the Matter of Arbitration Number: SCCA21MA10

Claimant: Grand Magellan Co. LLC

Respondent: Darb AlTabana Co. LLC

Via [[Email –OR– Fax –OR–Mail]

Date submitted: 2021 September 24

Dear Mr. Talal AbdulHakem,

We are writing this letter to inform the parties that Saudi Center for Commercial Arbitration (The “SCCA”) has appointed Ms. Jumana (the “Arbitrator”) to hear the above-captioned matter as one of three arbitrators panel. Enclosed please find copy of the Arbitrator’s duly executed Notice of Appointment and NOCA.

Per our rules, all arbitrators are impartial and independent. The Arbitrator has made a disclosure¹, as detailed on the enclosed Notice of Appointment and attachment. Please advise SCCA of any challenge to the appointment of the Arbitrator by close of business [[2021 September 26 based on (SCCA Rules article 14/3, must be 15 days from the date of the receipt letter)], copying the other party. The notice of challenge shall state in writing the reasons for the challenge. If any challenges to the Arbitrator’s appointment are raised, the other party may respond within seven days. SCCA will decide regarding the Arbitrator’s continued service in its sole discretion in accordance with the Rules. The Arbitrator shall not be copied on the notice of challenge, the response of the other party or any comments related to the disclosure.

There shall be no direct telephone or any other type of contact with the Tribunal. Please note that any challenges, administrative or financial matters must be exclusively submitted to the undersigned.

Sincerely,

**Case Counsel:
Ahmad Fahad**

Encl.

- **Notice of Appointment (Not attached)**
- **Arbitrator’s disclosure statement**

¹ Disclosure does not necessarily indicate belief by the arbitrator that the disclosed information gives rise to justifiable doubts as to the arbitrator’s impartiality or independence.



المركز السعودي للتحكيم التجاري
Saudi Center for Commercial Arbitration

THE ARBITRATOR'S ACCEPTANCE

ARBITRATOR NAME: Jumana Ahmad

I attest that I have reviewed my SCCA Resume which the SCCA provided to the parties on this case and confirm it is current, accurate and complete.

I attest that I have diligently conducted a conflict check, including a thorough review of the information provided to me about this case to date, and that I have performed my obligations and duties to disclose in accordance with the Rules of the SCCA, Code of Ethics for Arbitrators.

I understand that my obligation to check for conflicts and make disclosures is ongoing for the length of my service as an arbitrator in this matter, and that failing to make appropriate and timely disclosures may result in my removal as arbitrator from the case and/or, where applicable, my removal from the SCCA's Roster of Neutrals.

✍ I, hereby accept this appointment, and will faithfully and fairly hear and decide the matters in controversy between the parties in accordance with their arbitration agreement, the SCCA Code of Ethics for Arbitrators, and the Arbitration Rules of the SCCA will make an Award according to the best of my understanding. I commit to devote sufficient to time to work on the case. I accept the arbitrator fee as described in the SCCA appendix to Arbitration Rules and that I do not have a separate fee arrangement with parties.

- I apologize from accepting the appointment (in this case, no need to fill any part of the form except name and signature).

Dated: 25 September 2021

Signed: *Jumana Ahmad*



المركز السعودي للتحكيم التجاري
Saudi Center for Commercial Arbitration

Initiation Letter Arbitration

SCCA Case Number: SCCA21MA10

Grand Magellan Co. LLC

v.

Darb AlTabana Co. LLC

2021 September 2021

Dear Ms. Mariam Al-Asturlabiyya, General Manager of Grand Magellan Co. LLC

The Saudi Center for Commercial Arbitration (SCCA) acknowledges receipt of a Notice of Arbitration dated 2021 September 15] for a dispute arising out of a contract between the above-captioned parties. A copy should have been sent to Respondent(s). The Arbitration procedure which will be marked as the date of commencement of on the day the center received the arbitration request.

Please be advised that the above-captioned parties are receiving this communication in accordance with the representative information provided to us by Claimant. If you are receiving this communication and do not represent any of the parties in this matter, please contact the SCCA immediately.

Your case will receive full administrative coverage by a Case Counsel and a Head of Arbitration. Your case has been assigned to Ahmad Abdulaziz, who will be your primary contact at SCCA and can be reached by e-mail at a.abdulaziz@sadr.org . Please direct all future communications to your Case Counsel's attention with a copy to the other part(ies).

This matter is currently being administered under the SCCA Arbitration Rules as in effect as of July 31, 2016, unless the parties agree otherwise. a copy of the Mediation Rules can be found at the following:

<https://www.sadr.org/ADRservices-arbitration-arbitration-rules?lang=ar>.

Pursuant to Articles (5)1 Respondent(s) shall file a written Answer to the Notice of Arbitration with Claimant(s) and the SCCA within 30 days after the commencement of this matter (or 12 October 2020). If Respondent(s) wish(es) to file a Counterclaim, please file a copy, along with the supporting documents and the appropriate filing fee, with the SCCA. Please also send a copy directly to Claimant(s).

We have enclosed a Checklist for Conflicts form. Please list all the witnesses you expect to present, as well as any persons or entities with an interest in these proceedings. This checklist



المركز السعودي للتحكيم التجاري
Saudi Center for Commercial Arbitration

will assist the tribunal to disclose any and all potential conflicts. The checklist is confidential and should only be sent to SCCA. The checklist is due within 14 days from the date of this letter.

Please note that this matter will be conducted in accordance with the attached SCCA Code of Conduct for Parties and Representative, which parties are expected to read and upheld and sign a statement of commitment to that effect.

Finally, we also have enclosed our Arbitration Information Sheet, which will serve to provide you with some basic information about the SCCA arbitration process. The SCCA will continue to provide you with information regarding the various stages of the process as the case proceeds. We also encourage you to contact the SCCA at any time for further procedural information or to discuss how we can best serve your needs in resolving your dispute.

We look forward to work with you and to provide you with assistance during the arbitral process.

Sincerely,
Case Counsel
Ahmad AbdulAziz

Encl.:

- Checklist for Conflicts (Not attached)
- Arbitration Information Sheet (Not attached)
- Undertake to respect Code of Ethics for Parties and Representatives. (Not attached)
- Copy of the Notice of Arbitration. (Not attached)
- SCCA Arbitration Rules. (Not attached)



Saudi Center for Commercial Arbitration
Arbitration Case No.: SCCA21MA10

Answer to Request for Arbitration

(Under Article 5 of the Saudi Center for Commercial Arbitration
arbitration rules effective as of 31 July 2016)

Darb AlTabana Co. LLC
("Claimant")

v.

Grand Magellan Ltd.
("Respondent")





I. Introduction

1. On 1 October 2021, Magellan Grand Limited (“**Respondent**”) received the request for arbitration submitted by Darb AlTabana Co. LLC (“**Claimant**”) on the basis of the arbitration clause in the 18 June 2020 contract between the Parties (“**Contract**”).
2. In the request for arbitration, the Claimant demanded that the contract be avoided and the Respondent required to fully refund the amount paid Claimant (SAR 50,000,000) plus interest, and to pay compensation in the amount of SAR 9,280,000 for the financial loss suffered by the Claimant and the value of future loss of profit as a result of what it alleges is failure to perform the obligation of delivering spacesuits as agreed in the Contract, in addition to the arbitration expenses and the Claimant’s lawyers’ fees.
3. The Respondent rejects the admissibility of the claim before the arbitral tribunal because the Claimant did not comply with the arbitration agreement, which requires negotiations and mediation before arbitration. The Respondent also rejects all of the Claimant’s allegations, which it based on an incomplete presentation of the facts and omission of important details, as well as erroneous legal analysis of the facts. The Respondent answers the Claimant’s allegations and demands as detailed below.

II. Respondent’s representative

1. In this dispute, the Respondent is represented by Parker Law Firm and Legal Consultancy, at the following address:
22 Ibrahim Al-Fazari Street, P.O. Box 52967, Arab City, Kingdom of North Africa

Ms. Sarah Parker

Sarah.parker@Sarahparkerlaw.com

III. Facts of the Dispute

1. The Claimant described the pre-contract negotiations through the testimony of Ali Mahfouz which was marred by many inaccuracies and gaps, providing an inconsistent portrayal of the case that renders the Claimant’s allegations groundless. During talks with the Claimant company on the sidelines of the annual international space exhibition in March 2020, it was agreed that the Claimant would contract for the 2020 Extravehicular Mobility Unit (xEMU) spacesuit because of its unique technical specifications. These include the possibility of suit reuse for several consecutive flights.
2. The Claimant also stated in the request for arbitration that during the above-mentioned exhibition, it was explained to the Claimant that there were six suits nearly ready for delivery. What it failed to mention, however, is that our representative also referenced a shortage of the space helmets for this distinctive type of spacesuit because of the non-performance of Black Helmet Company. The company does not manufacture the helmets,





- but imports them from a company that manufactures them specifically for the Respondent.
3. On 1 June 1 2020, after the above-mentioned exhibition, a wide-ranging meeting was held between the Parties, culminating in an agreement to draft the final contract and then sign a supply contract for 15 extravehicular spacesuits. The Claimant's representatives said they wanted to receive the suits within one year of signing the contract, and the Respondent's representatives confirmed that this would be possible if Black Helmet Company adhered to its agreement with the Respondent to deliver the helmets during that period. They had held lengthy negotiations with Black Helmet Company, and it had said it would be ready to send the helmets within a year of their meeting a week earlier. The Respondent's representatives also confirmed during the negotiations that the helmets made by Black Helmet Company had not yet been sent to the Respondent. After lengthy negotiations, an agreement was reached that the Respondent would try to send the suits as soon as possible after signing the contract, but no binding timeframe for the Respondent was set. It was emphasized that the suits would be sent as soon as possible, meaning as soon as Black Helmet Company had sent the helmets used with the spacesuits, and this was stressed on many time by our Contracting Manager Mr Khalil AlWati (**Respondent Exhibit 1**).
 4. The Respondent was not remiss in contracting with Black Helmet Company; after the negotiations between it and Black Helmet Company on 8 June 2020 and after signing the Contract with the Claimant on 18 June 2020, the Respondent contracted with Black Helmet Company to supply 15 helmets for the above-mentioned spacesuits, with the agreement that the helmets would be delivered on 27 June 2021.
 5. On 25 January 2021, Black Helmet Company informed the Respondent that the company was unable to deliver the 15 agreed helmets because of the second wave of the Covid-19 pandemic that forced it to shut down its factories after the virus spread among the company's employees, and the resulting complete shutdown and closure of the company's factory since November 2020. As it was unknown when this wave of the pandemic would end or when restrictions in the State of North Africa would be eased, the Claimant was informed that Black Helmet Company would be late in producing the helmets. This was explained in a phone call on 28 January 2021, followed by an email at the Claimant's request to document what had been said. It was emphasized that the Respondent would do its best to deliver the suits within the specified period, even if it were forced to use other suppliers (**Respondent Exhibit 2**).
 6. On 5 February 2021, news was published in *The New Space Journal* that our competitor, Spiral Ltd., launched a spacesuit similar to the Respondent's, but according to Spiral, their spacesuit looks better and makes our company's spacesuit "look like a normal suit." In addition, it weighs 30% less than the spacesuits the Respondent makes and costs 7% less. This product increased Spiral's market value, making it an acquisition target for a number of space companies. One of the most important competitors that could acquire the company is the Claimant. The report added that the Claimant would finance this





- acquisition by drawing on a number of investors in the company, and it wants to use the company to make its spacesuits instead of an outside company (**Respondent Exhibit 3**).
7. The Respondent was not worried about this report because it had received the agreed payments, and there was no concerning news from the Claimant during that period.
 8. On 22 July 2021, the Respondent sent five spacesuits, which the Claimant received on 10 August 2021.
 9. On 10 July 2021, the Respondent contacted the Claimant by email (**Claimant Exhibit 5**) to ask whether the delivery date could be changed to 1 November 2021, with suggestions to avoid any damages that might occur from the delay, because the forest fires in North African wildfires had disrupted Black Helmet's factories. The Claimant did not respond to the email but contacted the Respondent by phone on 29 July 2021. Omitting any attempt to change the delivery date or discuss an alternative date, the Claimant's representative stated that the Claimant was in the process of avoiding the Contract because the Respondent had failed to deliver the suits by the agreed date of June 2021. They would not tolerate any further delay for the remaining suits, as only five suits had been sent – and those had been late, sent after the specified date of June 2021 – and they wanted the remaining suits within 10 days. He further stated that damage to the Claimant's reputation because of the delay would be inevitable, regardless of whether some or all of the suits were delayed, and that if the trip is to proceed, it must accommodate all the tickets booked. In addition, there would not be enough time to test the suits in the time remaining. The Respondent's representative told the Claimant's representative that they would make every effort to send some or all of the remaining suits before 1 October 2021, but that would depend heavily on Black Helmet Company, and they would also make every effort to search for another helmet provider.
 10. On 14 August 2021, the Claimant sent an email to the Respondent informing it of the avoidance of the Contract.
 11. On 15 August 2021, the Respondent filed a request for mediation pursuant to the arbitration agreement. At the first mediation session, the Respondent demanded that everyone return to negotiations for 15 days. The Claimant refused, saying that negotiations had already taken place. The Claimant's lawyer was uncooperative throughout the mediation sessions. He was absent from several meetings, and all the Respondent's proposals were met with rejection.
 12. On 14 September, the Claimant sent a letter to the SCCA to inform the SCCA that the mediation proceedings had ended. Note that the appointed mediator had not declared the mediation proceedings ended and could have convened additional sessions to reach a settlement in the dispute. From the start of mediation, however, it was clear that the Claimant had no intention of settling, demonstrating its bad faith and non-compliance with the mediation procedures provided for in the Contract and the SCCA Mediation Rules. After the Claimant filed the request for arbitration on 15 September 2021, the Respondent received credible reports that the arbitrator had obtained third-party funding to finance the arbitration. For purposes of transparency and clarity, the Claimant must





disclose the fact of its third-party funding, the funder's identity, and the funding agreement to ensure that nothing about the funding would affect the arbitration case.

IV. IV. 4. Response to the Analysis of the Facts

1. The arbitral tribunal cannot hear this claim. Under Clause 8 of the Contract, which contains an arbitration agreement with a multi-step clause, the Claimant should have gone to negotiations first in order to resolve the dispute amicably. The Claimant's allegation that the period between 29 July and 14 August 2021 was a negotiation period between the Parties is untrue. There were no negotiations between the Parties during that period, and neither Party informed the other that the call or email constituted negotiations to resolve the dispute. Accordingly, the arbitral tribunal cannot hear the dispute.
2. In addition to not respecting the requirement for negotiations, the Claimant also ignored attempts to mediate under Saudi Center for Commercial Arbitration supervision. The Claimant's lawyer was absent from several hearings, and was so uncooperative during the mediation sessions he did attend that it was as if the sessions had not taken place. The repeated response from the Claimant's lawyer was, "This proposal is rejected," in clear violation of Article 9 of the Mediation Rules and the principle of good faith. Furthermore, the Claimant's lawyer ignored the 30-day mediation period defined in Clause 8 of the Contract, ending the mediation sessions two weeks before the end of the 30 days. Accordingly, this arbitration must be halted, and the Claimant must return to the table for negotiations and mediation in good faith.
3. The Claimant's contention that the phrase "as soon as possible" refers to the delivery of 10 suits by 17 June 2021 is incorrect. During pre-contract negotiations, the Claimant was informed that the Respondent would try its hardest to send 10 suits before 17 June 2021, but neither during the negotiations nor in the Contract did the Respondent commit to deliver 10 suits before 17 June 2021.
4. The Claimant therefore is not entitled to exercise its right to avoid the contract. The Respondent's delay in sending the remaining suits from 1 October 2021 to 1 November 2021 is not a fundamental breach of contract that would give the Claimant the right to avoid the Contract under Article 51 of the CISG. The Respondent tried to find solutions to avoid delaying the Claimant's first flight, by offering to send an additional suit on 1 October 2021, thus bringing the total number sent to six. Thus, the Claimant could have sent the first flight just two passengers short of full capacity, thereby performing its obligation in accordance with Article 77 of the CISG. But for its own unstated reasons, the Claimant declared the Contract void and demanded that the Respondent bear the consequences and even refund the money paid with interest.
5. Even assuming that the delay was a fundamental breach of contract, the delay was due to force majeure beyond the Respondent's control because of Black Helmet Company's delay in sending the helmets for the spacesuits because of the Covid-19 pandemic and





- the forest fires in North Africa. The exemption in CISG Article 79 thus applies to the Respondent.
6. Based on the foregoing, the Claimant is not entitled to any compensation for the delay because it has suffered no real loss nor a future loss of profit. The Claimant must receive the remaining suits and pay the remaining price after receiving the suits before 1 November 2021.
 7. If the arbitral tribunal finds that the Claimant is entitled to compensation, the compensation the Claimant is demanding is not in conformity with the Contract or CISG Article 74, as the compensation demanded exceeds the purported loss and lost profit. In addition, those purported losses could not have been anticipated as a result of the breach of the Contract.

V. Formation of the Arbitral Tribunal

1. In accordance with Article 9 of the Contract and Article 11 of the Arbitration Rules, the Respondent nominates as an arbitrator in this arbitration claim:

Mr. Eissa Hamad
Independent International Arbitrator
Address: 2 Macquarie Street, Sydney, Australia
Telephone: +61 2 6953 2250
Fax: +61 2 6953 2255
Email: Eissa@EissaHarbitration.com

VI. Requests

The Respondent petitions the arbitral tribunal to:

1. Halt the arbitration proceedings until the parties negotiate amicably for 15 days and then seek mediation for 30 days.
2. Require the Claimant to disclose the fact of its third-party funding, the funder's identity, and the funding agreement.
3. Dismiss the Claimant's demand for a refund of the full SAR 50,000,000 paid by the buyer plus interest.
4. Dismiss the Claimant's demand for payment of the losses it has suffered and future loss of profit due to breach of the Contract and delay in shipment of the suits, a total of SAR 9,280,000.
5. Oblige the Claimant to pay the entirety of the arbitration expenses in addition to the Respondent's lawyers' fees.
6. The Respondent retains its right to amend its pleas and/or requests during later hearings.





Attorney for the Respondent

**Sarah Parker
Parker Law Firm and Legal Consultancy**

19 September 2021





Respondent Exhibit (1)

Statement of witness Khalil Al-Wati

1. I was born on 12 February 1979. I have a Masters of Science in International Business Negotiation. I am currently the head of the Contracts Department at Grand Magellan Limited. On 30 March 2015, I served as head of the Commercial Department at Black Helmet Company, where I was responsible for marketing and advertising our new products, as well as working with customers and suppliers. So, when the company proposed to us that we contract with it to provide helmets, I trusted that they would honor deadlines. I participated in all stages of the negotiations.
2. Because of my relationship with Black Helmet Company, I attended the meeting held on 8 June 2020. We had lengthy negotiations with Black Helmet Company, and the company's representatives confirmed that they would be ready to send the helmets within a year of our meeting. Thus, it is agreed that the helmets would be delivered on 27 June 2020.
3. I was present at the annual exhibition in the Kingdom of North Africa where Grand Magellan Ltd. showcased its products. During the exhibition, we introduced our one-of-a-kind product, a modern spacesuit called the Exploration Extravehicular Mobility Unit (xEMU) 2020. This type of suit boasts compliance with the highest safety and security standards for space, and it has unique technical specifications.
4. During the exhibition, we talked with representatives of Darb AlTabana Co. LLC, who indicated their interest in our products. We talked about the possibility of providing them 15 spacesuits in a period not to exceed one year from the contract signature date. During negotiations, the team made it clear that observance of the suit delivery date was linked to the extent to which suppliers such as Black Helmet Company honored their deadlines. This led a Darb AlTabana Co. LLC representative to propose a change in the delivery date clause to underline that delivery must be sufficiently in advance of the launch of the first space tourism flight, which was scheduled for 1 October 2021.





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5. On 1 June 2020, after the above-mentioned exhibition, a wide-ranging meeting was held between the Parties, culminating in an agreement to draft the final contract and then sign a supply contract for 15 extravehicular spacesuits.
6. On 18 June 2020, the final version of the contract was signed between the two parties.

Kingdom of North Africa,
Khalil Al-Wati

– End –





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Respondent Exhibit (2)

25 January 2021

Eng. Mariam Al-Asturlabiyya
Grand Magellan Ltd.
12 Ibn Al-Shatir Street, P.O. Box 567582, Arab City, Kingdom of North Africa

Re: Delivery of helmets

Dear Ms. Mariam Al-Asturlabiyya,

Greetings,

Following up on our recent call, the forest fires in the State of North Africa have forced us to shut down our factories for safety and security reasons. Civil defense and firefighting authorities have requested several days to extinguish these fires. This is on top of the impact of a complete shutdown and closure of the company's factory since November 2020, and we have no way of knowing when the fires will be extinguished and we can decide to securely resume operations at the factory while keeping our employees safe. As a result, we report that, unfortunately, we will not be able to deliver the 15 helmets on the agreed date.

We hope you are understanding of this emergency situation, and we apologize that we are unable to meet your expectations.

With regards,
On behalf of Black Helmet Company LLC

— End —





Respondent Exhibit (3)

The New Space Journal

International News

North Africa, 5 February 2021

In a significant development in spaceflight, Spiral Ltd. announced the launch of a number of new specialized spaceflight products, in particular modified spacesuits, the central product at this year's product launch today at the company's headquarters in the City of North Africa.

"We are excited to offer this modified spacesuit because it weighs 30% less than the spacesuits some of our competitors are making, and it costs 7% less than the market price," Spiral CEO Jack Miller said.

The announcement comes amid increasing interest in space tourism, a market that has begun to witness increasing demand and an increasing number of companies working to operate space tourism flights.

Spiral's CEO said the modified spacesuits reflect the company's commitment to offer its customers the best options and equipment for spaceflights.

He said the company, unlike many others, has a specialized production line to manufacture the helmets for the spacesuits.

Miller confirmed that the modified spacesuits will be available for order and purchase from Spiral Ltd. starting on 5 February 2021.

These modified spacesuits have been highly anticipated because of recent controversial statements by Miller, who compared the modified spacesuits with those of Spiral's competitor Grand Magellan.

Spiral's share price is expected to rise by at least 20% following the announcement of this product, making it an acquisition target. There are reliable reports from our exclusive source that Darb AlTabana Co. LLC is in negotiations to acquire Spiral. The source, who declined to be identified, confirmed that the acquisition is in its final stages.

-- End --





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Respondent Exhibit (4)

1

From: A.aljasim@aljasim.com

Date: 20/09/2021, 11:20 a.m.

To: Talal.Abdulhakim@franksmith.com, Sarah.parker@Sarahparkerlaw.com

cc: Jumana.ahmad@ahmadandpartners.com, Eissa@EissaHarbitration.com, a.abdulaziz@sadr.org

Re: Scheduling a preliminary hearing for the arbitration case between Darb AlTabana Co. LCC (Claimant) and Grand Magellan (Respondent)

Mr. Talal Abdulhakim Representing Darb AlTabana Co. LCC (Claimant)

Ms. Sarah Parker Representing Grand Magellan Company (Respondent)

Greetings,

To start, I would like to thank you for accepting my appointment by the Saudi Center for Commercial Arbitration as Chairman of the arbitral tribunal. I look forward to working with you to resolve this dispute. With reference to the arbitration case filed with the SCCA between Darb AlTabana Co. LLC as Claimant and Grand Magellan Company as Respondent, No. SCCA21MA10 pending before the arbitral tribunal consisting of me as Chairman, Ms. Jumana Ahmad as the arbitrator selected by the Claimant, and Mr. Eissa Hamad as the arbitrator selected by the Respondent:

The arbitral tribunal would like to inform you of a preliminary meeting to be held remotely, prior to the arbitration hearings, to agree on the procedures for the conduct of the arbitral proceedings and to discuss the case timeline and hearing dates. This preliminary meeting will be on 22/9/21 at 8:00 a.m. The arbitral tribunal would also like to assure the parties that, due to the importance of the matter, the tribunal is ready for a discussion at the preliminary meeting about the disclosure request submitted by the Respondent in connection with third-party funding.

The meeting link will be sent to the parties via their addresses on file with the SCCA.

Sincerely,

Arbitral Tribunal Chairman Abeer Al-Jasim





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2

From: A.aljasim@aljasim.com

Date: 22/09/2021, 7:22 p.m.

To: Talal.Abdulhakim@franksmith.com, Sarah.parker@Sarahparkerlaw.com

cc: Jumana.ahmad@ahmadandpartners.com, Eissa@EissaHarbitration.com, a.abdulaziz@sadr.org

Mr. Talal Abdulhakim Representing Darb AlTabana Co. LCC (Claimant)

Ms. Sarah Parker Representing Grand Magellan Company (Respondent)

Greetings,

With reference to the preliminary meeting for the arbitration case between the Claimant, Darb AlTabana Co. LLC, and the Respondent, Grand Magellan Ltd., which was held remotely this morning to discuss the arbitration procedures, the timeline, and hearing dates, as well as the fact of the Claimant's third-party funding, the arbitral tribunal has decided:

Decisions:

1. The Claimant must disclose to the Respondent and to the arbitral tribunal the fact of its third-party funding and the identity of the funder and the funder's major shareholders and investors, board of directors members, and clients before 25/09/2021.
2. At the present time, the arbitral tribunal sees no need to request disclosure of the funding agreement. It may request the agreement or part thereof during future hearings if necessary.

Sincerely,
Abeer Al-Jasim
Arbitral Tribunal Chairman





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3

From: Talal.Abdulhakim@franksmith.com

Date: 23/09/2021, 3:10 p.m.

To: Jumana.ahmad@ahmadandpartners.com , Eissa@EissaHarbitration.com , A.aljasim@aljasim.com
Sarah.parker@Sarahparkerlaw.com

cc: a.abdulaziz@sadr.org

Re: Claimant's disclosure of third-party funding

Dear Chairman and Members of the arbitral tribunal,
Ms. Sarah Parker Respondent's representative

Greetings,

With reference to the 22/09/2021 email from the arbitral tribunal, which includes the arbitral tribunal's request for the Claimant the fact of its third-party funding and the identity of the funder and the funder's major shareholders and investors, board of directors members, and clients:

The Claimant wishes to respond to the arbitral tribunal's request to disclose that it is funded by a third party, the company **Bright Star Finance Services**. The largest shareholder is **Al-Sudus Holding Company**, which owns 95% of the Bright Star Finance Services. The remaining 5% is **owned by Smart Finance Holding Company**. **Al-Sudus Holding Company** owns several traditional finance companies and financial technology (fintech) companies in a number of countries. Most significantly, in addition to those mentioned above, it owns the company **Mumawwilun**, which focuses on small and medium cases and was acquired at the beginning of 2021. No board of directors member for any of the above-mentioned companies has a direct relationship with any of the parties to this arbitration.

Furthermore, the Claimant asserts that it makes this disclosure of its funder solely to cooperate with the arbitral tribunal and out of a desire to expedite the proceedings. It maintains that the tribunal is not entitled to request disclosure of the fact of the Claimant's third-party funding, the identity of the funder, or the funding agreement.

Sincerely,
Claimant's Representative
Talal Abdulhakim





4

From: Jumana.ahmad@ahmadandpartners.com

Date: 24/09/2021, 2:45 p.m.

To: Talal.Abdulhakim@franksmith.com, Eissa@EissaHarbitration.com, A.aljasim@aljasim.com,
Sarah.parker@Sarahparkerlaw.com

cc: a.abdulaziz@sadr.org

**Dear fellow Members of the arbitral tribunal,
Mr. Talal Abdulhakim
Ms. Sarah Parker**

With reference to the Claimant's 23/09/2021 email, in which it disclosed, at the request of the arbitral tribunal in its message dated 22/09/2021, that it is using third-party funding from Bright Star Finance Services in this case: On the basis of the information disclosed by the Claimant, I would like to inform you that I worked as arbitrator in three cases funded by the Arab Finance Company, a wholly owned subsidiary of Sudus Holding Company. The funding in the first and second cases financed the full costs of the arbitration case from the beginning to the end of the arbitration. The funding in the third case, meanwhile, was obtained after the arbitral award was rendered, and it also seemed that it financed enforcement of the arbitral award, rather than the full cost of arbitration. I learned of this by chance during a conference that I attended in the State of North Africa. The funder had no role in my selection as arbitrator in any of these cases, as the funding in each case was obtained after I was appointed.

None of the above-referenced cases involved any entity, person, or law firm participating in the current arbitration. Additionally, the dispute in each case was quite different; two were investment cases and the third was an arbitration concerning insurance contracts. I have no direct relationship with the funding companies, and none of these companies has ever contacted me directly or indirectly, as far as I know. The proceedings in the first and third arbitrations were completed prior to the date of my appointment to this arbitral tribunal: The first arbitration was completed on 19 August 2021, and the third arbitration was completed on 20 August 2021. The proceedings are still ongoing in the second arbitration.

In addition, as of 1 May 2020, a number of the partners of the law firm at which I am a partner, Al-Arabi Jamaan Rashid, left to form Al-Mizan Al-Adel, an independent law firm. One of the partners in Al-Mizan Al-Adel, when he was a partner with me at Al-Arabi Jamaan Rashid, represented one of the parties in an arbitration case funded by Al-Sudus Holding Company. In addition to being a former partner in Al-Mizan Al-Adel, he is a founder and board member of Smart Finance Holding Company, which owns 5% of Bright Star. He resigned from his job at Al-Mizan Al-Adel Law Firm in December 2020.

Finally, after my firm conducted a review of conflicts of interest within the firm, it became clear that our firm provided legal services to Mumawwilun for six years in the cases funded by that company. Our services consisted of providing legal advice to ensure the effectiveness of investments in those cases, but Mumawwilun is a wholly independent company with no administrative or financial relationship to Bright Star or to Al-Sudus Holding Company, as it is wholly independent of its parent company and its parent





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company's subsidiaries. In addition, our firm informed Mumawwilun that our contract with the company was suspended at the beginning of 2021 after the company was acquired by Al-Sudus Holding Company, but it would be discussed later.

In conclusion, I would like to make it clear to you that the above has no relevance to my independence and neutrality as an arbitrator in this case. Rather, the purpose of this disclosure was to demonstrate my good faith and transparency and to emphasize that I will be completely neutral and independent as an arbitrator in this case.

Sincerely,
Jumana Ahmad, Arbitral Tribunal Member





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Saudi Center for Commercial Arbitration
8th Floor, 7982 King Fahd Branch Road - Almutamarat
Postal code: 12711-4183
Riyadh, Saudi Arabia
Telephone: +966 920003625
25 September 2021
Dear Mr. Ahmad Abdulaziz,

On behalf of my client, Grand Magellan Company, we submit the attached application to challenge an arbitrator in accordance with Article 14 of the Saudi Center for Commercial Arbitration's arbitration rules.

A copy of the arbitrator challenge application has been sent to the SCCA and another copy to the Claimant.

Sincerely,

Respondent's representative:
Parker Law Firm and Legal Consultancy

cc:
Darb AlTabana Co. LLC (Claimant)

Attachments:
Challenge Application with exhibits
Power of attorney (not attached)
Proof that the challenge application was sent to the Claimant – expedited delivery (not attached)





Mr. Ahmad Abdulaziz
Mr. Talal Abdulhakim

Greetings,

In my capacity as a representative of the Respondent company in the arbitration case filed with the SCCA between Darb AlTabana Co. LLC as Claimant and Grand Magellan Company as Respondent, No. SCCA21MA10 to be considered by an arbitral tribunal consisting of Mr. Abeer Al-Jasim as chairman, Ms. Jumana Ahmad as the arbitrator selected by the Claimant, and Mr. Eissa Hamad as the arbitrator selected by the Respondent:

In accordance with Article 14 of the Arbitration Rules of the Saudi Center for Commercial Arbitration, I submit to you an application to challenge Ms. Jumana Ahmad, the arbitrator selected by the Claimant, based on the following:

The Respondent learned of the Claimant's third-party funding by chance, when the chief of legal affairs for the Respondent company learned that a number of the Claimant's email addresses were hacked by amateurs after the press attack on the Claimant called "The company swindling its customers." This hack resulted in a leak of most of the Claimant's email messages and certain documents. The Respondent saw a 14 August 2021 email between the Claimant's director of legal affairs, Mr. Tareq Farouq, and the CEO, Mr. Omar Al-Khayyat, that was among the leaked messages. The legal director stated that it would be appropriate to nominate Ms. Jumana Ahmad as arbitrator to resolve the dispute because Ms. Jumana Ahmad's views and stances were clear regarding mediation and it not being binding if one of the parties does not agree. The attachments to the email included a number of opinions by Ms. Jumana Ahmad which clearly supported the Claimant's position in this case.

This included a comment Ms. Jumana Ahmed wrote on a post published on the blog "Business" on 3 July 2016, responding to an article titled "Is mediation before resorting to arbitration the right choice?" She wrote:

"I believe that if one of the parties does not go to mediation or negotiations, or the parties go but one or both of them does not take the proceedings seriously despite the existence of a prior agreement, this is not sufficient cause to challenge the jurisdiction of the arbitral tribunal. The arbitral tribunal should not decide that it lacks jurisdiction, nor should it stop the proceedings until the parties go to negotiations and/or mediation. Instead, it should continue with consideration of the dispute before it and decide the dispute. The majority of academic writings and court judgments affirm that a party's failure to seek negotiations or mediation prior to arbitration does not abrogate the arbitral tribunal's jurisdiction. The decision of whether to continue the arbitration is one that belongs to the tribunal. This is confirmed if one of the parties chooses not to cooperate during mediation or negotiations, as the case is deemed ready for adjudication, and inviting the parties to negotiations or





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mediation would be a waste of time and effort. It is pointless to prolong the proceedings with no benefit.

Comment by: Jumana Ahmad, International Arbitrator

In response to the email sent by the legal director, Mr. Tareq Farouq, CEO Omar Al-Khayyat said:

“Can you check whether there’s any relationship between the funding company we’re using and the arbitrator, Ms. Ahmad? If you can do so, and you find a relationship between them, we should try to conceal the third-party funding so we don’t lose Ms. Ahmad as an arbitrator in this case. If we find no substitute for her, and if there is any connection, the disclosure request should be rejected on the grounds that the fact of our third-party funding may impact our case strategy, and we consider it confidential business information that may impact the company’s financial position in front of the public.”

In a subsequent reply to the legal director, it was stated that from the information on the arbitrator’s website and the funding company’s website, there is no clear link between the funding company and the arbitrator.

It is unambiguously clear from this comment why the Claimant selected Ms. Jumana Ahmad, as her opinion on the claim can be known before it is even heard. Furthermore, it is clear why the Respondent did not object to the disclosure of the third-party funder, as it did not know that the parent company of the funding company had funded two cases in which Ms. Ahmad was an arbitrator.

The Respondent challenges Ms. Jumana Ahmad, the arbitrator selected by the Claimant, because of the serious doubts about her impartiality and independence which arise from her relationship with the third-party funding company, Bright Star Finance Services Company, through her work on three arbitration cases funded by a subsidiary of Bright Star’s parent company. This means that the same arbitrator has been appointed repeatedly by these companies, raising doubts about the arbitrator’s neutrality and independence. In addition, Ms. Ahmad’s firm provided legal services to Mumawwilun before it was acquired by Al-Sudus Holding Company.

As the arbitral tribunal makes its decision on the challenge to the arbitrator Ms. Jumana Ahmad, the Respondent calls upon the arbitral tribunal to take into consideration the IBA Guidelines on Conflicts of Interest in International Arbitration, specifically Standard 7(a), which requires disclosure of third-party funding. In addition, item 1.4 of the Non-Waivable Red List deems that if the arbitrator’s firm provides legal services to one of the parties or an affiliate of one of the parties, that is a non-waivable situation which necessitates dismissal of the arbitrator. The tribunal can also look at the ICCA-Queen Mary Task Force Report on Third-Party Funding in International Arbitration, as well as the American Bar Association Best Practices for Third-Party Litigation Funding. All of these sources mention best practices for third-party funding, and they all require the funded party to automatically disclose the third-party funding and the funder’s identity without a request by the arbitral tribunal. The Claimant, however, acting in bad faith, did not disclose this fact until we and the arbitral tribunal asked it to do so. The IBA guidelines also mention





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that the repeated appointment of an arbitrator might be a cause for concern about the arbitrator's neutrality, especially if the appointment was in the last three years. All of these circumstances must be taken into account when assessing Ms. Jumana Ahmad's independence and neutrality, and all the facts indicate that there was a purpose in the selection of Ms. Ahmad.

The third-party funder could have a role in arbitrator selection and could have a role in guiding the funded company's representatives during the hearings. If the case is won, the funder benefits directly from the financial proceeds of the case it funded. The repeated appointment of Ms. Ahmad by the same subsidiaries of the parent finance company indicates that Ms. Ahmad receives a financial benefit in the form of the arbitration fees that she collects. There is also the fact that one of the arbitrator's former partners worked on a case funded by Al-Sudus Holding Company, which owns the lion's share of Bright Star, the company funding this arbitration. One of the former partners in Al-Mizan Al-Adel, which split from the arbitrator's firm, is a founder and board of directors member of Smart Finance Holding Company. All of these are sufficient reasons to doubt the neutrality and independence of the arbitrator Ms. Jumana Ahmad according to the IBA guidelines, as all these circumstances cannot be a coincidence.

Because the Respondent wants the arbitral proceedings to be conducted with integrity and transparency, and to ensure that it receives a fair hearing in the dispute, the Respondent hopes for approval of the application to challenge Ms. Jumana Ahmad as an arbitrator, so that the Parties' dispute can be resolved with independence and neutrality on the part of the arbitrators, and without any influence from any of them.

We are all certain that Ms. Ahmad, who is fair and transparent, will recuse herself from consideration of this dispute. In the event that she does not agree to recuse herself, the Respondent demands that the SCCA case manager exercise his power to present this request to the arbitral tribunal and that the tribunal decide to dismiss Ms. Jumana Ahmad.

Sincerely,

Attorney for the Respondent
Lawyer Sarah Parker





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Saudi Center for Commercial Arbitration
8th Floor, 7982 King Fahd Branch Road - Almutamarat
Postal code: 12711-4183
Riyadh, Saudi Arabia
Telephone: +966 920003625
28 September 2021
Dear Mr. Ahmad Abdulaziz,

On behalf of my client, Darb AlTabana Co. LLC, we submit this response to the application to challenge the arbitrator Ms. Jumana Ahmad as sent by the Respondent on 25 September 2021 in accordance with Article 14 of the Arbitration Rules of the Saudi Center for Commercial Arbitration.

A copy of the response to the arbitrator challenge application has been sent to the SCCA and another copy to the Respondent.

Sincerely,

Claimant's representative

Office of Counsellor Talal Abdulhakim in association with Frank & Smith LLP

cc:

Magellan Grand Ltd. (Respondent)

Enclosures:

Challenge Application with exhibits

Power of attorney (not attached)

Proof that the response to the challenge application was sent to the Claimant – expedited delivery (not attached)





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**Dear Mr. Ahmad Abdulaziz,
Lawyer Sarah Parker,**

Greetings,

With reference to the application to challenge Ms. Jumana Ahmad, the arbitrator selected by the Claimant, which was sent on 25 September 2021: The Claimant requests rejection of the challenge application, deeming it groundless.

It is clear that this application is an attempt by the Respondent to delay the arbitral proceedings and to delay payment of the money required of it. This application confirms the discontinuance of mediation and negotiation proceedings in another attempt to delay proceedings. We call upon the arbitral tribunal to ignore all such attempts and to conduct the proceedings as quickly as possible in application of Article 20(2) of the Arbitration Rules.

To start, the Respondent's reliance on the content of the hacked email is unacceptable and unlawful, and we do not acknowledge the information mentioned in it. It confirms that the Claimant's representatives knew nothing about Ms. Jumana Ahmad's comment on the "Business" blog until it was cited in the challenge application attached above.

With regard to the Claimant not disclosing the third-party funding and the funder's identity before the arbitral tribunal asked it to do so, there is no reference in either law applicable to this dispute that either third-party funding or the funder's identity must be disclosed. Nor is there is any legal provision in the arbitration law of Arabian Peninsula State or in the arbitration rules of the Saudi Center for Commercial Arbitration which requires parties to disclose third-party funding or the funder's identity. In fact, the Claimant acted in good faith and did not wish to prolong the proceedings, and so it responded immediately to the arbitral tribunal's request to disclose the fact of its third-party funding and the funder's identity. With the Claimant desirous of expediting the proceedings, the reply took less than a day.

The Respondent's failed attempt to rely on the IBA Guidelines on Conflicts of Interest in International Arbitration, the ICCA-Queen Mary Task Force Report on Third-Party Funding in International Arbitration, and the American Bar Association Best Practices for Third-Party Litigation Funding is worthless because these rules do not apply to the current arbitration. In addition, these rules, with the exception of the IBA guidelines, require only disclosure of third-party funding. They have nothing to do with conflicts of interest, and have no effect on the criteria used to determine arbitrator independence and neutrality.

As to the arbitrator's repeated appointments by related companies, it was pure coincidence. The Claimant is not funded by the same company that funded arbitration cases in which Ms. Jumana Ahmad was an arbitrator. This arbitration is financed by the Bright Star Finance Company, and the previous arbitration cases were financed by a separate company called the Arab Finance Company. Yes, the Arab Finance Company is wholly owned by the parent company that owns the lion's share in Bright Star, but this in no way means there is a conflict of interest. On top of the fact that the two companies are separate, Bright Star never funded any arbitration in which Ms. Ahmad previously served as an arbitrator. Were we to





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grant that this is a repeat appointment by the same party, that would not in itself justify the application to challenge the arbitrator.

The Respondent's reliance on the fact that the arbitrator's firm used to provide legal services to Mumawwilun is a further desperate attempt to challenge the arbitrator Ms. Jumana Ahmad. Mumawwilun has nothing to do with this arbitration, and the service contract was suspended after Al-Sudus Holding Company acquired Mumawwilun. Thus, Ms. Ahmad's law firm has no current relationship with Mumawwilun, nor with Bright Star, nor with Al-Sudus Holding Company.

This confirms that the application to challenge the arbitrator is groundless on both a legal and a factual level. It relies on the fact that some partners in the claimant's firm left and founded the firm Al-Mizan Al-Adel. It then relied on the fact that one of the partners in Al-Mizan Al-Adel acted as arbitrator in a case financed by Al-Sudus, and that another partner is a founder and board member of Smart Finance Holding Company, which owns 5% of Bright Star. That partner resigned from his job at Al-Mizan Al-Adel Law Firm in December 2020. Although these facts have nothing to do with Ms. Jumana Ahmad's neutrality, this is an attempt to use all the information that Ms. Ahmad provided even though the facts have nothing to do with each other. This is an attempt to create a perception among the arbitral tribunal that the arbitrator is not independent, with a view to prolonging the proceedings and delaying an award against it.

We would additionally like to emphasize that the third-party funding agreement was signed after we appointed Ms. Jumana Ahmad, and therefore the third-party funder has nothing to do with this appointment.

Due to the Claimant's desire that the proceedings take place as quickly as possible, in keeping with the arbitral tribunal's duty to ensure that the arbitration is expeditious, we request that the challenge application be rejected and that the hearings take place as soon as possible. We are all convinced that Ms. Jumana Ahmad, is fair and transparent. We also agree to the Respondent's request that the SCCA case consultant exercise his power to present this application to the arbitral tribunal, and we ask that the tribunal make a decision not to dismiss Ms. Ahmad while she is present with the other tribunal members so that she can defend her neutrality and independence before the tribunal.

Attorney for the Claimant

Counsellor Talal Abdulhakim





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From: a.abdulaziz@sadr.org

Date: 29/09/2021, 4:47 p.m.

To: A.aljasim@aljasim.com, Jumana.ahmad@ahmadandpartners.com, Eissa@EissaHarbitration.com

cc: Sarah.parker@Sarahparkerlaw.com, Talal.Abdulhakim@franksmith.com

Re: Application to challenge the arbitrator Ms. Jumana Ahmad

Dear members of the arbitral tribunal,

With reference to the application to challenge the arbitrator Ms. Jumana Ahmad, which the Respondent submitted on 25 September 2021, and to the response to this application, which the Claimant submitted on 28 September 2021, both of which included the parties' request for presentation of the challenge application to the arbitral tribunal for its decision on the challenge: Whereas the parties agreed to apply the rules of the Saudi Center for Commercial Arbitration, which give case consultant the power to decide challenge applications, and then changed their minds and requested that the application be presented to the arbitral tribunal; and whereas the arbitration is based on the agreement of the parties and on the free will affirmed in Article 19(1) of the Arabian Peninsula State arbitration law, you will find attached to the above email an arbitrator challenge application submitted by the Respondent and a response submitted by the Claimant, for your decision.

Sincerely,

Case Counsel

Ahmad Abdul Aziz





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From: Jumana.ahmad@ahmadandpartners.com

Date: 30/09/2021, 9:00 a.m.

To: A.aljasim@aljasim.com, Eissa@EissaHarbitration.com

cc: Sarah.parker@Sarahparkerlaw.com, Talal.Abdulhakim@franksmith.com, a.abdulaziz@sadr.org

With reference to the arbitrator challenge application filed by the lawyer Sarah Parker, the Respondent's representative in the arbitration case between Darb AlTabana Co. LLC as Claimant and Grand Magellan Company as Respondent, which Mr. Ahmad Abdul Aziz sent to the arbitral tribunal yesterday for consideration: Whereas the Respondent raised doubts in its letter about the my neutrality and independence as an arbitrator and therefore challenges me as unfit to continue acting as an arbitrator in this case; and whereas the Claimant's representative stated that the doubts arise from my indirect relationship with the Claimant's funder in this case, Bright Star, I would like to assert that these allegations are untrue, and there is nothing to justify those doubts. I made my disclosure immediately following the disclosure letter that the Claimant filed on 23/09/2021 about the fact of its third-party funding and the funder's identity (Bright Star Finance Services Company) even though I have no direct connection to the funder. I have never communicated with anyone who represents the funder or has any connection to the funder. What I did was in the spirit of demonstrating good faith, and in application of Article 13(3) of the SCCA Arbitration Rules, on disclosure, as well as to avert the raising of doubts about my neutrality and independence, even though I am convinced there is no reason for the Respondent to doubt my neutrality and independence. I therefore reject the request for me to recuse myself from consideration of this claim.

I would also like to emphasize that the funding of other arbitration cases by subsidiaries of a company that is a major shareholder in the funding company in the current case does not constitute a direct relationship to the funder that would lead to a conflict of interest that I must disclose as a member of the arbitral tribunal. There is no provision in the Arbitration Rules, the arbitration law of the Arabian Peninsula State, or even in the IBA guidelines that requires such a disclosure. As for my repeated appointments by subsidiaries of the same parent company, this is an indication of the proliferation of third-party funding. In addition, I am one of the most in-demand arbitrators in the region, as I was appointed in about 100 arbitration cases in the last year alone. These three cases are too few to warrant questioning my neutrality and independence.

In addition to the clarification about the absence of a direct relationship between me and the funder, the funding agreement that the Claimant has signed with Bright Star Finance Services Company came after I was appointed to consider this dispute. Thus, such an appointment would not raise doubts about my neutrality and independence even if a relationship between me and the funder's subsidiaries were considered equivalent to a relationship between me and the funder itself.

As for the independence of some of my partners in a separate law firm, Al-Mizan Al-Adel, it should not raise doubts about my independence. My former partner was an arbitrator in just one of the cases funded by Bright Star's parent company. That has nothing to do with me, and in my view, a single case is not so important. I mentioned it out of an abundance of caution. The same applies to the fact that a former partner in Al-Mizan Al-Adel is a founder and board member of Smart Finance Holding Company, which





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owns only 5% of the Bright Star Company. This is entirely unconnected to me, and it involves no direct financial benefit for me.

As for the legal services that were provided to Mumawwilun, this happened before the company was acquired by the parent company of the funder in this arbitration. I would have agreed to recuse myself if our firm still provided legal services to Mumawwilun, but our relationship with it ended when it became owned by the parent company of Bright Star, which is funding this arbitration. I therefore see no justification for calling into question my neutrality and independence.

It is also generally recognized that personal and academic opinions on a general legal issue, summarized in a manner unrelated to the case in question, do not justify challenging an arbitrator. In my situation, I wrote a response to an article published on the "Business" blog referenced in the Respondent's challenge application. That was in 2016, long before the commencement of these arbitral proceedings, and the opinion expressed in the response will in no way affect the case or the award in the case. In the response, I expressed my opinion in a particular context and based on particular information provided by the article's author. Regardless of my conviction given those particulars, it may be that I find it appropriate to apply the exact opposite in this claim because of circumstances that differ between this case and the context provided by the article's author.

Based on the above, and in the interest of every party's right to select its arbitrator, I reject the challenge application submitted by the Respondent's representative.

Sincerely,
Jumana Ahmad
Arbitral Tribunal Member

-- End --





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Saudi Center for Commercial Arbitration

In the Matter of Arbitration Number: SCCA21MA10

Claimant: Grand Magellan Co. LLC

Respondent: Darb AlTabana Co. LLC

Via [[Email –OR– Fax –OR–Mail]

Date submitted: 2021 October 25

Dear Ms. Sarah Parker,

We are writing this letter to inform the parties that Saudi Center for Commercial Arbitration (The “SCCA”) has appointed Mr. Essa Ahmad (the “Arbitrator”) to hear the above-captioned matter as one of three arbitrators panel]]. Enclosed please find copy of the Arbitrator’s duly executed Notice of Appointment and NOCA.

Per our rules, all arbitrators are impartial and independent. The Arbitrator has made a disclosure¹, as detailed on the enclosed Notice of Appointment and attachment. Please advise SCCA of any challenge to the appointment of the Arbitrator by close of business [[2021 November 21, based on (SCCA Rules article 14/3, must be 15 days from the date of the receipt letter]], copying the other party. The notice of challenge shall state in writing the reasons for the challenge. If any challenges to the Arbitrator’s appointment are raised, the other party may respond within seven days. SCCA will decide regarding the Arbitrator’s continued service in its sole discretion in accordance with the Rules. The Arbitrator shall not be copied on the notice of challenge, the response of the other party or any comments related to the disclosure.

There shall be no direct telephone or any other type of contact with the Tribunal. Please note that any challenges, administrative or financial matters must be exclusively submitted to the undersigned.

Sincerely,

Case Counsel:
Ahmad Abdulaziz

Encl.

- **Notice of Appointment (Not attached)**
- **Arbitrator’s disclosure statement**

¹ Disclosure does not necessarily indicate belief by the arbitrator that the disclosed information gives rise to justifiable doubts as to the arbitrator’s impartiality or independence.



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THE ARBITRATOR'S ACCEPTANCE

ARBITRATOR NAME: Jumana Ahmad

I attest that I have reviewed my SCCA Resume which the SCCA provided to the parties on this case and confirm it is current, accurate and complete.

I attest that I have diligently conducted a conflict check, including a thorough review of the information provided to me about this case to date, and that I have performed my obligations and duties to disclose in accordance with the Rules of the SCCA, Code of Ethics for Arbitrators.

I understand that my obligation to check for conflicts and make disclosures is ongoing for the length of my service as an arbitrator in this matter, and that failing to make appropriate and timely disclosures may result in my removal as arbitrator from the case and/or, where applicable, my removal from the SCCA's Roster of Neutrals.

- ✓ I hereby accept this appointment and will faithfully and fairly hear and decide the matters in controversy between the parties in accordance with their arbitration agreement, the SCCA Code of Ethics for Arbitrators, and the Arbitration Rules of the SCCA will make an Award according to the best of my understanding. I commit to devote sufficient to time to work on the case. I accept the arbitrator fee as described in the SCCA appendix to Arbitration Rules and that I do not have a separate fee arrangements with parties.
- I apologize from accepting the appointment (in this case, no need to fill any part of the form except name and signature).

Dated: 24 October 2021

Signed: *Eissa Hamad*



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Saudi Center for Commercial Arbitration

NOTICE OF APPOINTMENT

In the Matter of Arbitration Number: SCCA21MA10

Between:

Claimant: Grand Magellan Co. LLC

Respondent: Darb AlTabana Co. LLC

Date submitted: 2021 November 1

Arbitrator: Ms. Abeer AlJasem

As previously discussed, we are inviting you to serve as a Chair Arbitrator in this matter (within a tribunal of three arbitrators) with the understanding that you have sufficient time to devote to this appointment.

This matter is currently being administered under the SCCA Arbitration Rules in effect as of July 2016, and the Code of Ethics for Arbitrators. They can be found on the SCCA website at www.sadr.org.

It is most important that the parties have complete confidence in the arbitrator's impartiality. Please note that, pursuant to Article 13 of SCCA Rules, arbitrators acting under these Rules shall be impartial and independent. As such, please disclose to the SCCA any circumstance likely to give rise to justifiable doubts as to your impartiality or independence. This would include any past or present relationship with the parties, their counsel, or potential witnesses, direct or indirect, whether financial, professional, social or of any other kind. This is a continuing obligation throughout your service on the case and should any additional direct or indirect contact arise during the course of the arbitration or if there is any change at any time in the SCCA Résumé that you have provided to the SCCA, it must also be disclosed. Any doubts should be resolved in favor of disclosure. If you are aware of direct or indirect contact with such individuals, please describe it below. Failure to make timely disclosures may forfeit your ability to collect compensation. The SCCA will call the disclosure to the attention of the parties.

Please be advised that:

Claimant(s) is/are represented by:

Counsel, Sara Parker, Parker Advocates and Legal Consultants



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Respondent(s) is/are represented by:

[[Counsel Talal Abdulhakem, Talal Abdel Hakim Law firm in cooperation with Frank & Smith LLP]]

It should be noted that the disclosure of the arbitrator or the party does not necessarily mean that the information disclosed raises doubts about the arbitrator's impartiality or independence.

In case of hesitation whether an order should be disclosed, disclosure shall be made. In the case of direct or indirect contact with some parties to the case, we hope to describe the type of communication at the end of this template. It should also be pointed out that failure to disclose in due time may result in the arbitrator being declined to pay his fees in the case.

Your neutral co-arbitrators appointed to this matter to date are: [[Ms. Jumana Ahmad and Mr. Essa Hamad Further enclosed are copies of your fellow arbitrators' Resume.

Enclosure:

Parties Checklist for Conflict. (Not attached)

Co-Arbitrators Resumes. (Not attached)

**DISCLOSURE GUIDELINES
FOR ARBITRATORS SERVING ON SCCA CASES**

General

- 1 The Rules of the SCCA and the Code of Ethics for Commercial Arbitrators require you to make full disclosure.
- 2 Your duty to make disclosures is ongoing throughout all stages of the arbitration. The Case counsel may prompt you to conduct a subsequent conflict check during key points of the case, but you should conduct such checks and make disclosures on your own initiative whenever new information about the case participants comes to light.
- 3 Any doubt as to whether or not disclosure needs to be made should be resolved in favor of disclosure. You should not judge the significance of the potential conflict but rather you should make the disclosure and let the parties determine its significance.
- 4 As a guiding principle, if a relationship or interest crosses your mind – disclose it.



5 You must disclose:

- a) Any circumstance likely to give rise to justifiable doubt as to your impartiality or independence (per Article 13/2 of SCCA Arbitration Rules).
- b) Any interest or relationship that might create an appearance of partiality (per Canon II of SCCA Code of Ethics for Arbitrators).

Financial

As to any party, attorney, witness and other arbitrator involved in this case, you must disclose any:

- Financial interest that is direct (existing or past) or indirect (existing or past).

Relational

You must disclose any relationships you have with any party, attorney, witness and other arbitrator involved in this case – this includes relationships with their:

- Families or household members
- Current employers
- Partners and business associates

How to Disclose?

You are requested to disclose any conflict or any circumstances that may give rise to justifiable doubts as to impartiality or independence no matter how insignificant it may appear – and let the parties judge what is relevant and what not.

When disclosing, specificity is extremely important. Provide enough detail in your disclosure so that the parties are fully informed of the potential conflict. Tell us: who, what, when, where, how and with whom.

The burden to make full disclosures falls on the arbitrators and they should make every reasonable effort to provide SCCA with the needed information. SCCA must ensure that any disclosure is not vague, incomplete, or is otherwise dismissive of the duty to investigate any records available.

SCCA has the right to dig the disclosure by making further inquiries to gather pertinent facts in writing from the arbitrator. Please be advised that failing to provide a sufficient level of



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detail will delay the confirmation of your appointment, as well as the progress of the case overall, since the Case Counsel will need to contact you for additional information.

All disclosures must be provided in writing. In the rare situation where a disclosure comes to light at a hearing, you are obligated to excuse yourself from the proceeding and immediately contact the SCCA who will facilitate the process for communicating the disclosure to the parties and obtaining their response. Pursuant to SCCA Rules, SCCA will affirm the appointment and shall determine whether or not a challenge raised by a party to an arbitrator's continued service shall be granted or denied.



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Talal Abdulhakem,

Talal Abdel Hakim Law firm in cooperation with
Frank & Smith LLP]]

AlKhawarizmi Tower
Floor 24
PO Box 28376
Space City
Middle Eastern States

Talal.Abdulhakim@franksmith.com

Sara Parker,

Parker Advocates and Legal Consultants

22 Ibrahim AlQazazi St.
PO Box 52967
Arabian City
Kingdom of North Africa

Sarah.parker@Sarahparkerlaw.com

SCCA Case Number: SCCA21MA10

Claimant: Grand Magellan Co. LLC

v.

Respondent: Darb AlTabana Co. LLC

3 November 2021

Via [[Email –OR– Fax –OR–Mail]

We refer to our letter dated 18 September 2021 concerning the above case.

Pursuant to the Request for Arbitration dated 15 September 2021, the Claimant has nominated Jumana Ahmad from Ahmad & Partners Law Firm and Legal Consultancy, located at 958 Suits Avenue, New York, NY, as an arbitrator in the current arbitration case.

Pursuant to the answer to the RFA dated 19 September 2021, the Respondent has nominated Mr. Eissa Hamad, an independent international arbitrator with an address of 2 Macquarie Street, Sydney, Australia, as an arbitrator in the current arbitration case.

After both arbitrator candidates submitted the disclosure detailed in the appointment notice, and pursuant to Article 12(2) of the Arbitration Rules, the SCCA appointed the two candidates nominated by the Parties. Pursuant to the same article, and following her acceptance, the SCCA nominated Mr. Abir Al-Jasim, Professor of Arbitration in the Oxford University Faculty of Law, as chair of the arbitral tribunal. The address of the tribunal is Office 20, Dubai World Trade Centre, Dubai, United Arab Emirates. After Mr. Al-Jasim submitted his disclosure, the Saudi Center for Commercial Arbitration appointed her as chair of the arbitral tribunal to consider the above case. Attached you will find the arbitrator appointment notice and his disclosure.

Sincerely,

Case Consultant

Ahmad Abdul Aziz

Signature:

Ahmad Abdul Aziz

Enclosures:

- **Notice of arbitrator appointment (not attached)**
- **Arbitrator's disclosure**



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Acceptance of Appointment

Arbitrator's Name: Abeer Al-Jasim

I affirm that the curriculum vitae that I provided to the Saudi Center for Commercial Arbitration, which SCCA submitted to the Parties in this case, is valid, current, accurate, and complete.

I affirm that I have conducted a thorough and careful investigation and examination of any possible conflict of interest, including a comprehensive review of the information I have obtained on the case up to the date of this declaration. I have then made any necessary disclosure as stipulated in the Saudi Center for Commercial Arbitration's rules and in accordance with the code of ethics for arbitrators or any applicable law.

I affirm that I am fully aware that examining any conflict of interest is an obligation that continues throughout my term as an arbitrator in this case. If any circumstances arise at any stage of the arbitration that would prompt doubts of the sort mentioned, I will disclose them immediately. Failure to disclose conflicts of interest in a timely manner may result in my dismissal as an arbitrator or in my removal from the SCCA roster of arbitrators.

1- Acceptance of Appointment:

I accept my appointment as an arbitrator in this case under the Saudi Center for Commercial Arbitration's rules. I pledge to hear this case and decide on it justly and fairly and in accordance with SCCA's arbitration rules, the code of ethics for arbitrators, and the Parties' agreement. I pledge to devote sufficient time to working as an arbitrator in this case. I accept the fees in this case based on the arbitration costs and fees addendum. I affirm that there are no separate arrangements regarding fees between me and the parties to the case.

2- Rejection of Appointment:

I decline to accept appointment as an arbitrator in this case. (In the event of a refusal, it is not necessary to fill out this form except for name and signature.)

Date: 2 November 2021

Signature:

عبيير الجاسم



Procedural Order No. 1

1 October 2021

**In the arbitration case filed by Darb AITabana Co. LLC.
vs. Grand Magellan Ltd.**

1. The arbitral tribunal has received and reviewed the file on the current arbitration case and met with the Parties - remotely - this morning to discuss the proceedings and the timetable for the case until arbitral procedures are agreed upon. The arbitral tribunal would like to emphasize the following points:
 - The arbitration rules applicable to this dispute the Saudi Center for Commercial Arbitration 2018 rules, without prejudice to the Respondent's objection to the arbitral tribunal's jurisdiction to hear this dispute.
 - The Parties do not dispute that the laws on international commercial arbitration in the Arabian Peninsula State, the Middle Eastern States, and the Kingdom of North Africa fully conform to the UNCITRAL Model Law on International Commercial Arbitration with the amendments adopted in 2006 (adopting Option I under Article 7).
 - The Parties do not dispute that all of the above-mentioned countries have ratified the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1959 (the New York Convention).
 - The Parties recognize that the space supply contract signed between the Parties on 18 June 2020, hereinafter referred to as the "Supply Contract," is subject to the United Nations Convention on Contracts for the International Sale of Goods, hereinafter referred to as CISG.
 - The Parties have agreed to apply CISG to the arbitration clause and the interpretation thereof.
 - The Parties recognize that all the above-mentioned countries have a legal system of civil law, not common law.
 - The Parties do not dispute that all of the above-mentioned countries apply the 1988 United Nations Convention on Contracts for the International Sale of Goods without any reservations.
 - The Parties agree that the arbitral tribunal will divide the issues it will address, so the upcoming submissions should focus only on the questions listed below. The remaining issues, such as the interest on the money paid and other issues, will be addressed in subsequent hearings and submissions.
2. Accordingly, after reviewing the case file, the arbitral tribunal asks the Parties to submit memoranda that address the following issues **only**:
 - a. The extent to which the Parties are bound by the dispute resolution clause in the Supply Contract with respect to pre-arbitration procedures.





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- b. Should the arbitral tribunal dismiss the arbitrator Jumana Ahmad from consideration of this dispute because of her repeated appointments by parties affiliated with the funding company, and because the law firm where she works previously provided legal services to one of those parties?
- c. Does the Supply Contract require the delivery of 10 spacesuits on or before 17 June 2021? Or is 1 October 2021 the delivery date for all the suits?
- d. Issue four is divided into two parts:
 1. Is the Respondent company exempt from liability for the delay under Article 79 of the Convention on the International Sale of Goods?
 2. If the Respondent company is liable for the delay, what compensation must be paid in accordance with Articles 74 and 77 of the Convention on the International Sale of Goods?
3. For the purposes of memoranda and oral arguments, the Parties may not address any matter other than the four above-mentioned issues and related matters.
4. The Parties are free to determine how these issues are to be presented and arranged in their written and oral pleadings. No particular arrangement is required for the presentation of these issues.
5. In the submission of their oral and written pleadings, all Parties must comply with the (updated) moot competition rules agreed to in the call this morning.
6. The Parties have agreed that the hearings for oral arguments to be held on the agreed date below will be held through the use of modern videoconferencing technology.
7. Any representative of the Parties (i.e. the participating universities) may send any questions concerning the subject of the case and its proceedings via the team" registered account at www.ArabicMoot3.sadr.org no later than 11:59 p.m. Saudi time on 28 October 2021.
8. The Claimant must submit its memorandum no later than 11:59 p.m. Saudi time on 23 December 2021.
9. The Respondent must submit its memorandum no later than 11:59 p.m. Saudi time on 17 February 2022.
10. Hearings for oral arguments in the current case will be held on 14-19 May 2022. The procedure for holding these arguments will be determined at a later date.

1 October 2021

On behalf of the arbitral tribunal:

Mr. Abeer Jasim

Arbitral Tribunal Chairman

عبيد الجاسم

cc: Saudi Center for Commercial Arbitration





Procedural Order No. 2

7 December 2021

In the arbitration case filed by Darb AlTabana Co. LLC. vs. Grand Magellan Ltd.

1. **Was there any communication between the two parties between 29 July 2021 and the request for mediation? Please detail any communication that occurred.**

In the period between the 29 July 2021 phone call between the two parties, regarding the delay in the delivery of the suits, and the filing of the mediation request, the two parties met several times to reach an amicable resolution, but it was not clear whether the suits would be delivered on the required date. The Respondent used noncommittal language and did not confirm that it would deliver the suits before October. Note that the Claimant had expressed its intention to avoid the contract if the Respondent did not confirm the delivery.

2. **Do the parties agree that a dispute, within the meaning contained the contract and the applicable laws, has indeed arisen?**

Yes, the parties agree that the Respondent's failure to confirm its ability to deliver the suits on time is cause for a "dispute" under the contract signed by the parties and the applicable laws.

3. **By what mechanism were the mediators appointed and selected? There is no reference in the exhibits to procedures relating to Article 5 of the Mediation Rules, nor is there any mention of such procedures in pages 5–10 of the case. And what is the mechanism for the selection of arbitrators? There is no reference to compliance with the provisions of Section II concerning the appointment of arbitrators and prior agreement on arbitrators.**

The mediators were selected and appointed in accordance with the Saudi Center for Commercial Arbitration Mediation Rules.

4. **Page 60, as per the arbitrator Jumana Ahmad: What conference did the arbitrator attend in the State of North Africa? And on what date did she come to learn by chance that the three arbitration cases in which she served as an arbitrator were funded by the Arab Finance Company?**

The conference was about the effective use of artificial intelligence in third-party funding, and the official sponsor of the conference was the Arab Finance Company. One lecture at the conference presented examples of cases in which artificial intelligence was used for third-party funding, and the arbitrator Jumana Ahmad learned that the examples included cases in which she served as an arbitrator.

5. **Page 60: In the previous arbitration cases in which Jumana Ahmad served as an arbitrator, were the awards in favor of the party funded by the Arab Finance Company?**





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The arbitrator Jumana Ahmad worked with other arbitrators in these cases. An award was rendered in favor of the funded party in two of the cases, and a consensual settlement was reached in one case prior to the rendering of an award.

6. **On page 60 of the case, in a 24/9/2021 message from Ms. Jumana Ahmad to the members of the arbitral tribunal and to the Claimant's and Respondent's representatives, it is stated that as of 1 May 2021, a number of the partners at the law firm where she is a partner left to establish the firm Al-Mizan Al-Adel. Then, she states that one of the former partners in Al-Mizan Al-Adel resigned from the firm in December 2020. Is 2020 correct, or is that a typo that should read 2021?**

It should read September 2021.

7. **Why did the Respondent, in detailing the facts, state that it emailed Darb AITabana Co. LLC. about the Covid-19 wave that hit Black Helmet Company, while the email in Exhibit 2 on page 55 talks about forest fires in North Africa?**

The paragraphs in the Answer to RFA that mentioned the Covid-19 pandemic were drafting errors by the Respondent's lawyer in preparing the Answer to RFA. Those passages were intended to refer to the fires that had broken out in the State of North Africa. To clarify, there was no second wave of the pandemic in the State of North Africa, and the only reason for the disruption of manufacturing was the spread of fires, as mentioned in Respondent Exhibit 2 and Claimant Exhibit 5. The said fires broke out on 15 November 2020, and the factories were reopened on 20 May 2021.

8. **Page 48, paragraph 9: Darb AITabana Co. LLC. ("Claimant") refused to receive the suits sent by Magellan ("Respondent") on the grounds that "there would not be enough time to test the suits in the time remaining." How far in advance of the flight would Milky Way need the suits in order to have enough time to test them?**

The Claimant needs about 40 days to test all the suits for each flight, as the safety procedures issued by the Middle East States Space Agency require extensive inspections of suits during varying time periods to ensure that no accidents occur. The Claimant would then conduct a 14-day passenger training program on space travel and the safe use of the suits. The Respondent was aware of the training program prior to making the contract, as all of its customers conduct similar training programs for space travelers, most of them 15 days long. The Respondent was not aware, however, of the heightened inspection procedures in the Middle East States. The Respondent conducts its own inspections of its suits using an apparatus intended for the purpose, but this apparatus is not recognized in the Middle East States, which require more stringent inspections to ensure that accidents are avoided.

9. **Page 48, paragraph 9: The Respondent sent 5 suits on 22 July 2021, but the suits did not reach the Claimant until 10 August 2021. Why this delay?**

The delay was due Customs Department procedures of the customs service in the Middle East States, as the Customs Department carries out a lengthy security check of all space goods. In most cases, this security check takes 7 days. In general terms, the parties believe it is not out of the question that the Customs Department caused the delay. During the pre-contract negotiation, Mr. Ali Mahfouz was one





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of the Claimant's representatives, and he told the Respondent that the Middle East States Customs Department has lengthy procedures in general. He did not give detailed information on the delay that those procedures might entail. The security check took longer in this instance, but the reason is unknown.

10. In Respondent Exhibit 1 on page 53, it is stated in the affidavit that there was a contract between the Respondent and Black Helmet Company. What is the date of that contract?

The Respondent contracted with Black Helmet Company on 27 June 2020 following lengthy negotiations about several provisions, including the clause on the delivery deadline for the helmets. The Respondent insisted on the inclusion of a clause in the contract obliging Black Helmet Company to deliver all the helmets on 27 June 2021 "without any delay." In return, the Respondent was forced to approve a force majeure clause as part of the contract.

11. Why didn't the Respondent contract with another supplier despite being aware, as of 25 January 2021, of the impact of the fires on its delivery obligation (page 55; page 47, paragraph 5)?

Ms. Mariam Al-Asturlabiyya asked the company's lawyer whether the Respondent could terminate the contract with Black Helmet Company, and the lawyer replied that termination would be difficult given the force majeure clause in the contract. The Respondent had made the first payment to Black Helmet Company pursuant to their contract, and it did not have enough liquidity remaining to secure new helmets from other suppliers because a rush order of helmets would cost more. At the same time, the Speaker of the Parliament in the Kingdom of North Africa told news channels that the Parliament had signed an urgent law that would disburse the equivalent of 25 million riyals for the purchase of firefighting equipment, and that the law was to take effect within two weeks. Later, on 2 February 2021, Ms. Mariam Al-Asturlabiyya called the director of Black Helmet Company to ask whether the new firefighting equipment would affect the delivery date. He replied that it might be possible to deliver the helmets on the date stated in the contract, but he could not confirm the delivery date until the factory had been reopened, and he would do his utmost to accelerate the manufacturing process once the factory had been reopened. Ms. Mariam Al-Asturlabiyya therefore decided to wait for Black Helmet Company, hoping that the fires would be handled as soon as possible.

12. Did the Claimant actually return the five suits to the Respondent, or is it still in possession of those suits?

Yes, the Respondent returned the five suits on 21 August 2021.

13. Was there any media coverage of the Claimant's project, particularly the rumors circulating against the Claimant's project about it being a fraud or a publicity stunt?

The Claimant's plans were covered extensively on several television channels, including a channel in the Kingdom of North Africa. The rumors were mentioned as part of that coverage.





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14. Have any of the ticket-holders for flights following the first flight canceled their tickets?

Yes, on 1 February 2021, three ticket-holders for the second flight demanded the cancellation of their tickets, in accordance with their contracts with the Claimant, because the first flight had been canceled and the rumors of the Claimant's project being a scam intensified.

15. The first flight on 1 October 2021 was canceled. On page 17, paragraph 5, the number of tickets available for each flight is said to be eight, and the penalty is 8% of 1 million riyals, or 80,000 riyals per ticket. Thus, the total penalties to be paid by the Claimant to the eight passengers is 80,000 riyals multiplied by 8 tickets, for a product of 640,000 riyals. As such, how was the sum of 1,280,000 riyals reached (page 23, paragraph 5)?

Despite the statement on page 23, paragraph 5, the SAR 1,280,000 being claimed by the Claimant has two parts. The first is SAR 640,000 for the penalties payable to eight passengers, as mentioned in the question. The second is SAR 640,000 riyals for the lost profit from the three tickets for the second flight that the ticket-holders canceled following the cancellation of the first flight. The Respondent does not object to the value of the Claimant's profit being SAR 213,000 per ticket.

16. Why did the Claimant not send the first flight using the five suits it had?

The Claimant tried to split up the flight and compensate the three other passengers with two free tickets per person on the 2023 flights, but the passengers were opposed because they did not want to wait that long. In addition, the first eight passengers are friends and all want to travel together. As a result, the Claimant decided to cancel the flight as a whole because the rest of the suits were delayed and it was unable to find another solution that would satisfy the ticket-holders for the first flight.

17. Procedural Order No. 1, page 81, noted that "all the above-mentioned countries have a legal system of civil law, not common law." What is meant by this?

This was meant only to indicate that the countries' legal systems are based on legislation, not case law.

18. What does "not attached" mean? Does it mean that the Claimant did not submit or complete the required documents?

The Claimant submitted all the required documents. The phrase "not attached" means that the documents were duly submitted but are not attached to the case file because they do not affect the parties' arguments.

19. Have the parties agreed to apply a particular law to the arbitration clause?

Yes, the parties agreed to apply the Vienna Convention on the International Sale of Goods (CISG) to the interpretation of the entire arbitration clause.





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20. Are the UNIDROIT Principles applicable in the absence of a provision in the Vienna Convention on the International Sale of Goods (CISG)?

Yes, the parties agree that the UNIDROIT Principles apply to any gaps in the Vienna Convention on the International Sale of Goods only.

7 December 2021

On behalf of the arbitral tribunal

Mr. Abeer Jasim

Arbitral Tribunal Chairman

عبيد الجاسم

cc: Saudi Center for Commercial Arbitration

