

Sultanate of Oman



هيئة تنظيم الخدمات العامة
Authority for Public Services Regulation

Application Form for Desalination Licence of a Special Nature

1 Manner of Application

1.1 The Application shall be:

- (a) made in English, in writing, addressed to the Authority and delivered ~~or sent by prepaid post to the Authority~~ at its principal office; and
- (b) signed and dated by or on behalf of the proposed Licensee, stating, where signed on behalf of the proposed Licensee, the capacity of the signatory.

1.2 Unless the context otherwise requires, reference to the “Applicant” is reference to the proposed Licensee.

2 Form of Application

2.1 The Application shall:

- (a) be in the form specified in Schedule 1 and shall contain the information there specified and the declaration provided for without qualification;
- (b) be accompanied by the relevant information and documents as specified in Parts I and II of Schedule 1 and in Schedule 2; and
- (c) be accompanied by the Licence Application Fee of 10,000 RO/- (ten thousand Omani Riyals).

3 Additional information

3.1 In addition to the information which an Applicant is required to provide, as specified in Schedule 1, Part II, an Applicant shall provide to the Authority such information and documentation as the Authority may request to enable it to process the associated Application.

4 Application Fees

4.1 The Application shall be accompanied by the Fee specified in this Application Form. The Fee shall be submitted in the form of a cheque in the name of the “Authority for Public Services Regulation”, or by an alternative method of payment approved by the Authority (a copy of proof of payment ~~should~~must be attached to the Application Form). The Application will be processed only after the payment of the applicable Fee.

SCHEDULE 1

FORM OF APPLICATION IN RESPECT OF A DESALINATION LICENCE OF A SPECIAL NATURE

PART I

General Particulars

1. Full name of the Applicant.
2. If the Applicant is not the proposed Licensee, name of the proposed Licensee together with an explanation of why the Applicant is applying on behalf of the proposed Licensee.
3. Name, address (including e-mail address) and telephone number of person to whom correspondence or enquiries concerning the Application should be directed.
4. Address of the Applicant and the proposed Licensee or, in the case of a body corporate, the registered or principal offices.
5. Where the proposed Licensee is a company, the full names of the current Directors and the Company's registered name and number.
6. Where a holding of 3 per cent or more of the shares (see Note 1 below) of the proposed Licensee is held, or intended upon grant of Licence to be held, by a body corporate or partnership or an unincorporated association carrying on a trade or business with or without a view to profit, the name(s) and address(es) of the holder(s) of such shares shall be provided together with their respective shareholding. Additionally, please provide details of the shareholding structure of the proposed Licensee illustrating the direct and indirect shareholders.

7. If the proposed Licensee is a new venture, the proposed Licensee's sponsors or shareholders must demonstrate both that the proposed Licensee has full legal power to undertake the regulated activity of water Desalination from a Desalination Facility of a Special Nature and that its sponsors or shareholders all have full legal power to invest in the proposed Licensee. If the sponsors or shareholders in the proposed Licensee are, or are to be, entities established outside the Sultanate of Oman, the opinion of an independent firm of lawyers of international repute (approved by the Authority) confirming this may be required (see Note 5 below).
8. If a key shareholder or sponsor of the proposed Licensee is investing or holding shares in the Licensee through a subsidiary or a Special Purpose Vehicle, a Letter of Undertaking signed by an authorised signatory on behalf of the shareholder or sponsor (the parent company), undertaking that the shareholder or sponsor will provide the required financial and technical support to its subsidiary, in the form attached in Annex A of this Application Form shall be provided. The Authority may require such letter of undertaking in a different form or may add further requirements to the form shown in Annex A of this Application Form.
9. Date from which the Applicant requires the Licence to take effect.
10. Details of whether the Applicant or its sponsors or shareholders, have previously applied for and been granted or refused a Licence or Exemption, in the Sultanate of Oman or in any other legal jurisdiction.
11. Details of whether the directors of the Applicant, or the directors of its sponsors or shareholders, are subject to criminal proceedings, have been convicted of any criminal offence, or are or have been disqualified from standing as directors in any company or generally in any legal jurisdiction.
12. Details of whether any key personnel proposed by the Applicant to be involved in its business are subject to criminal proceedings, have been convicted of any criminal offence, or are or have been disqualified from standing as directors in any company or generally in any legal jurisdiction.
13. Details of whether the Applicant, or its sponsors or shareholders, have ever been the holder of a Licence or Exemption or analogous legal instrument in any legal jurisdiction which has been revoked.

14. Details of whether the Applicant, or any sponsors or shareholders, in the Applicant or any of their respective directors, or any key personnel proposed by the Applicant to be involved in its business, have ever been the subject of any insolvency or bankruptcy or analogous proceedings in any legal jurisdiction.
15. Details of whether the Applicant, or any sponsors or shareholders in the Applicant, are the subject of any current or pending litigation against them of a material nature.
16. Details of whether the Applicant, or any of its sponsors or shareholders, have been the subject of any material prosecutions or enforcement orders made by any environmental agencies, local authorities, safety authorities, economic or technical regulator or any analogous body in any legal jurisdiction.
17. Details of any economic interest (direct or by shareholding or otherwise in any manner whatsoever) of the proposed Licensee or any of its shareholders or Affiliates in any Licensee or Exemption Holder.
18. Details of:
 - (a) any modification requested to any of the general and mandatory conditions referred to in the Sector Law required to be included in the type of Licence applied for; and
 - (b) the grounds on which the Applicant believes that:
 - (i) any such modification is requisite to meet the circumstances of the particular case; and
 - (ii) any such modification is such that:
 - (aa) the Licensee would not be unduly disadvantaged in competing with other Licensees of that type; and
 - (bb) no other Licensee of the same type would be unduly disadvantaged in competing with such Licensees (including the Applicant).

19. Details of any Event of Default which has arisen in relation to the proposed Licensee or any Affiliate of the proposed Licensee under any material contract or loan agreement or any Licence or similar or analogous instrument, including any termination or revocation thereof, in any legal jurisdiction.

20. Details of any proposals made by the proposed Licensee, or any Affiliate of the proposed Licensee, to acquire the business or any part of the business of any other Licensee.

Declaration by Applicant (see also Note 3 below)

I confirm that the information contained in this Application is, to the best of my knowledge, accurate, comprehensive and not misleading. I am aware that under Article (132)(b) of the Sector Law it is an offence in giving any information or making an Application to make a statement known to be false in a material way or calculated to mislead. I am not aware of any additional information likely to be relevant to this Application.

I hereby enclose the Licence Application Fee of 10,000 RO/- (ten thousand Omani Riyals) only.

Signature of Applicant

Where the Applicant is a body corporate, position held by person signing

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Date

PART II

DOCUMENTS AND PARTICULARS TO ACCOMPANY AN APPLICATION FOR A LICENCE

- 1 Where applicable, current statements of the accounts kept by the proposed Licensee in respect of any undertaking carried on by him or his group; showing the financial state of affairs of that undertaking and its profit or loss and the statements for the most recent period, together with copies of the latest audited annual accounts for the three preceding years.
- 2 A certified (where applicable) copy of constitutional documents of the proposed Licensee, including Memorandum and Articles of Association, copy of the Shareholders Agreement and any other document or agreement relating to the corporate governance of the proposed Licensee, identifying in particular any special rights of any shareholder or other person in relation to such matters as voting and appointment of directors.
- 3 Details of the person(s) proposed to have overall operational responsibility for each of the Regulated Activities covered in the Licence and details of their experience in undertaking the Regulated Activities sufficient to demonstrate their technical and managerial competence.
- 4 An outline statement of the business proposals, for the businesses of the proposed Licensee to which the Application relates, for the next five years. The statement shall provide:
 - (a) annual forecast of costs, revenues, and net cash flows stating the assumptions underlying the figures provided including assumptions made regarding how the licensed activities will be financed; and
 - (b) details of any expected subsequent substantial capital outflows.
- 5 Where any of the documents described in 1 and 4 above is not supplied, an explanation of why they have not been supplied together with such financial information to the like effect as can be reasonably provided. If the proposed Licensee is a new venture and the documents described in 1 above are not be available, a letter from an authorised signatory on behalf of the proposed Licensee confirming that the company is operating as a going concern shall be provided.

Notes

1. Reference to shares:

- (a) in relation to a proposed Licensee with a share capital, references to shares shall be deemed to be references to the allotted shares of the proposed Licensee;
- (b) in relation to a proposed Licensee with capital but no share capital, references to shares shall be deemed to be references to rights to share in the capital of the proposed Licensee;
- (c) in relation to a proposed Licensee without capital, references to shares shall be deemed to be references to interests:
 - (i) conferring any right to share in the profit or liability to contribute to the losses of the proposed Licensee; or
 - (ii) giving rise to an obligation to contribute to the debts or expenses of the proposed Licensee in the event of a winding up.

2. Change in circumstances

If at any time prior to the grant of the Licence, there is a change in circumstances such that any of the information in this Application is no longer accurate or comprehensive or becomes misleading, then the Applicant must immediately advise the Authority. Any change to the information provided in this Application could affect the outcome of this Application and the timetable for grant of a Licence.

3. Confirmation by proposed Licensee

A supporting document stating the authorisation of the signatory shall be attached to this Application. Where the proposed Licensee is not the Applicant, before grant of the Licence the proposed Licensee must provide a certificate in the form below confirming the accuracy and completeness of the information in this Application and any changes to that information.

4. key documents issued outside the Sultanate of Oman needs to be notarised, legalised and attested (or Apostille).

5. The legal opinion must confirm key matters including confirmation that:

- (a) The issuer of the legal opinion has reviewed and examined the original or true copies of the constitutional documents of the company(ies);
- (b) The company is duly registered and validly existing under the relevant laws and regulation of the country of establishment;

- (c) The company is not declared bankrupt or insolvent and is not in the process of bankruptcy or insolvency;
- (d) The company has the authority and full legal power to enter into the transactions relating to its investment or shareholding in the proposed Licensee;
- (e) The company has taken all corporate actions and resolutions required to authorise its investment or shareholding in the proposed Licensee who will be undertaking the Regulated Activity;

The legal opinion shall not be subject to assumptions, qualifications or conditions which may lead to uncertainty in relation to the content of the opinion, or limits the Authority's ability to rely on it. The Authority may ask for further specific requirements to be included in the legal opinion.

Declaration by proposed Licensee where Application submitted on proposed Licensee's behalf

I confirm that the information contained in the Application submitted by [●] on my behalf is, to the best of my knowledge, accurate, comprehensive and not misleading. I am aware that under Article (132)(b) of the Sector Law it is an offence in giving any information or making an Application for a Licence to make a statement known to be false in a material way or calculated to mislead. I am not aware of any additional information likely to be relevant to this Application.

Signature of proposed Licensee

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Where the Applicant is a body corporate, position held by person signing

.....

Date

SCHEDULE 2

ADDITIONAL DOCUMENTS AND PARTICULARS

The Application shall include an attachment which provides the relevant information as specified below.

1. The number, capacity and type of each Desalination unit within the Production Facilities (m³/day) to be operated under the Licence (if granted).

Reference/ ID of each Desalination unit	Capacity of each Desalination unit (m ³ /day)	Type of each Desalination unit (e.g. technology and make)
Total Capacity of Desalination units (m³/day)		

2. A sufficient description, including maps, adequately specifying the actual or proposed locations of those units. Any description of proposed locations must be sufficient to make clear the nature and extent of any proposed (or actual) development.
3. A description of the proposed water intake and discharge arrangements of those units.

4. The dates when any proposed Desalination units are expected to be commissioned and the expected life of each Desalination unit.
5. Details of any storage to be operated by the proposed Licensee together with an explanation of why this storage is considered to be ancillary to the activity to which this Application relates.
6. Details of the extent to which the Production Facilities and their Output will be under contract to PWP and from when they will be under such contract.
7. Details of the proposed or existing arrangements for Connection of the Production Facilities to the System of any Licence Holder.
8. Details of the Production Capacity of any Production Facilities in which the proposed Licensee or any Affiliate of the proposed Licensee is economically interested:
 - (a) in Oman, together with the proposed Licensee's estimate of the percentages of the market shares of the Production Capacity which are held by those persons or in which they are interested;
 - (b) outside Oman, but which sell Production Capacity or Output to the PWP under contract, or which are proposed to do so, for Import.

ANNEX A

LETTER OF UNDERTAKING

From: **[Parent Company Name and Address]**

Date: []

To: **[APSR Address]**

Dear Sirs,

Letter of Undertaking

In reference to the Application for a Desalination Licence of a Special Nature submitted to the Authority by **[Name of Applicant]**, whereby the **[Parent Company]** holds shares of the **[Licensee Name]** (the "Licensee") through **[Subsidiary Name]**, a **[%]** subsidiary of **[Parent Company]**¹.

1. **[Parent Company]** hereby undertakes, to the extent that the overall liability of **[Parent Company]** under this Letter of Undertaking shall be the same as if **[Parent Company]** (and not the Subsidiary) was a direct shareholder in the Licensee, to take all measures and actions required to ensure that **[Subsidiary Name]** has the financial and technical support they require for ensuring the due and punctual performance of all obligations of the Licensee under:
 - i. The Sector Law (the Law promulgated by Royal decree 78/2004 as amended from time to time);
 - ii. The Desalination Licence of a Special Nature;
 - iii. The Water Purchase Agreement between the Licensee and Oman Power and Water Procurement Company S.A.O.C dated **[Date]** (as amended from time to time);
 - iv. All other Project Agreements entered into by Licensee; and
 - v. Any other obligations arising under Omani Laws or under any court or arbitral proceeding or any obligations of the Licensee arising thereunder.

¹ This paragraph may be modified on case by case basis to provide sufficient description of the direct and indirect shareholding of the Licensee.

2. **[Parent Company]** hereby undertakes, to the extent that the overall liability of **[Parent Company]** under this Letter of Undertaking shall be the same as if **[Parent Company]** (and not the Subsidiary) is a direct shareholder in the Licensee on a several basis and in proportion to **(Subsidiary)** actual shareholding in the Licensee, that if at any time there should be a breach of any obligation or any other failure on the part of the Licensee to perform an obligation or discharge a liability under the documents listed in paragraph 1(i)-(v) above, at the time(s) and in the manner required in the written demand by the Authority, the **[Parent Company]** shall immediately undertake to, either themselves perform or discharge, or procure to be performed or discharged such obligations or liabilities.
3. **[Parent Company]** hereby undertakes, to the extent that the overall liability of **[Parent Company]** under this Letter of Undertaking shall be the same as if **[Parent Company]** (and not the Subsidiary) is a direct shareholder in the Licensee on a several basis and in proportion to **(Subsidiary)** actual shareholding in the Licensee, that in the case of financial obligations or liabilities on the part of the Licensee, within the period and in respect of such person as may be specified in the written demand of the Authority, the **[Parent Company]** shall unconditionally undertake to procure to be paid to such person the amounts due and owed by the Licensee under the respective documents listed in paragraph 1(i)-(v) above.
4. This Undertaking is a continuing undertaking and accordingly shall remain in full force and effect until all Licensee's obligations and liabilities shall have been duly performed or discharged.
5. This letter of undertaking is issued solely to the Authority for Public Service Regulation and cannot be used or relied on by any other Person.
6. This Letter shall be governed by and construed in accordance with Omani Laws.
7. Any disputes arising under or in connection with this Letter (including any non-contractual obligations arising in connection with this Letter) will be subject to the exclusive jurisdiction of the Omani courts.

Yours faithfully,

For and on behalf of
[Parent Company Name]

[Name of sender]
[Position]