

Sultanate of Oman



هيئة تنظيم الخدمات العامة
Authority for Public Services Regulation

Application Form for Approval for Change of Control of a Licensee

January 2017

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 Applicant, stating, where signed on behalf of the Applicant, the capacity of the signatory.

2 Form of Application

2.1 The Application shall be:

- (a) in the form specified in Schedule 1 and 2 and shall contain the information there specified and the declaration provided for without qualification;
- (b) accompanied by the relevant information and documents as specified in Part III of Schedule 1;
- (c) submitted in the original as well as a copy with any supporting documentation; and
- (d) accompanied by the Change of Control Application Fee of 5,000 RO/- (five thousand Omani Riyals).

3 Additional information

3.1 Before applying for an approval for Change of Control, the Applicant should refer to the Guidance for Licence Applications in particular to Part 5 (Change of Control).

3.2 In addition to the information which an Applicant is required to provide, as specified in Schedules 1 and 2, 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 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 APPROVAL FOR CHANGE OF CONTROL

PART I

- 1 Full name of Applicant (including any trade name), address and telephone number.

- 2 Name, address (including e-mail address) and telephone number of the person to whom correspondence or enquiries concerning the Application should be directed.

- 3 The name of the Licensee which the Applicant propose to obtain Control of.

- 4 Nature of Applicant's principal activity now and if approval is granted to the proposed Change of Control.

- 5 The date on which the approval is required to be effective.

- 6 Please provide details of the proposed shareholding structure of the Licensee following the proposed Change of Control showing the Applicant's position in the structure and the shareholders of the Applicant.

PART II

INFORMATION ABOUT THE APPLICANT

- 1 Address of Applicant's registered office, date and place of incorporation and company's registration number.

- 2 Please list below details of each Person or company holding more than (3%) of the total issued share capital in the Applicant. In the case of nominee holdings, the name of the beneficial holder should also be given.

Full name of shareholder	No. of shares	Class of shares	% of total issued shares
Name of parent company (if any).			
Date and place of incorporation.			
Name of ultimate holding company (if any).			
Date and place of incorporation.			

- 3 If the Applicant is a subsidiary of another company, please list below details of each Person or company holding more than (3%) of the total issued share capital of the parent company. In the case of nominee holdings, the name of the beneficial holder should also be given.

Shares in ultimate holding company			
Full name of shareholder	No. of shares	Class of shares	% of total issued

- 4 Please list below details of the board of directors of the Applicant and of any ultimate holding company shown above.

Board of directors of the Applicant		
Full name of Directors	Position held	Nationality

Board of directors of ultimate holding company		
Full name of Director	Position held	Nationality

- 5 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.

- 6 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.

- 7 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.

- 8 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.

- 9 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.

- 10 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.

PART III

DOCUMENTS AND PARTICULARS

- 1 Please provide copies of the latest audited annual accounts for the three preceding financial years and an interim financial statement for any period from the end of most recent audited accounts to the date of the Application. If the Applicant is a part of a group of companies, the above financial information in respect of the group should be provided.

- 2 A certified copy of constitutional documents of the Applicant, including Memorandum and Articles of Association, copy of the Shareholders Agreement and any other document or agreement relating to the corporate governance of the Applicant, identifying in particular any special rights of any shareholder or other person in relation to such matters as voting and appointment of directors (see also Note 4 below).

- 3 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 has the right to 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.

- 4 The Person seeking approval for Change of Control must demonstrate that they have full legal power to invest in the Licensee. If the sponsors or shareholders are, or are to be entities established outside the Sultanate of Oman, the opinion of an independent firm of lawyers of internal repute (approved by the Authority) confirming this may be required (see also Note 5 below).

Application for Article (106) consent by the Applicant

Pursuant to Article (106) of the Sector Law, any financing arrangements (including securities) proposed for implementation following the Change of Control require a prior written consent of the Authority. This consent should be obtained before the approval for Change of Control is granted.

To secure such consent, the Authority needs to understand the entire financing structure which is proposed following the Change of Control and confirm the compliance with statutory requirements of the project's security arrangements.

The Authority will therefore require the Applicant to submit an Application for Article (106) Consent on the Form approved by the Authority in addition to a copy of all of the documents relating to the refinancing. This should include (without limitation) the Loan Agreement and all ancillary or related documents, such as mortgages, share pledges, charges and assignments, direct agreements, and other security documents any other modifications of the terms of the original financing documents.

In this regard, you should ensure that you provide the Authority with copies of any agreements with parties who could benefit from the security arrangements which would be in place once the refinancing is implemented (e.g. working capital banks, hedge providers) following the proposed Change of Control. In such cases refer to the guidance and Application Form for Article (106) consent, available upon request.

The Authority intends to process all Applications for Article (106) consent as quickly as possible. However, failure to provide full and comprehensive disclosure of related documents may result in a delay in the consideration of an Application.

The Authority would therefore advise Applicants to be as comprehensive as possible in their disclosure to avoid the need for further information requests and delays.

SCHEDULE 2

INFORMATION ABOUT THE PROPOSED LICENSEE (FOLLOWING THE CHANGE OF CONTROL)

- 1 Name of the Licensee.
- 2 Name, email address and telephone number of person to whom correspondence or enquiries concerning the Licence should be directed.
- 3 Address of the proposed Licensee or, in the case of a body corporate, the registered or principal offices.
- 4 Where the proposed Licensee is a company, the full names of the Directors (following the Change of Control) and the Company's registered name and number.
- 5 Details of all Persons holding shares in the Licensee other than shareholdings purchased through publicly traded shares the Muscat Securities Market (see also Note 1 below).
- 6 Details of whether the directors of the Licensee, 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.
- 7 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.

- 8 Details of the person(s) proposed to have overall operational responsibility (the Plant Manager) 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.

- 9 A certified copy of the most recent 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 (see also Note 4 below).

Declaration by Applicant (see also Note 3 below)

I am fully authorised to sign this Application and I confirm that the information contained in this Application is, to the best of my knowledge, accurate, comprehensive and not misleading. In addition, 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 5,000 RO/- (five Thousand Omani Rials) only.

Name of Applicant

Signature of Applicant

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

.....

Date

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 approval for Change of Control, there is a change in circumstances such that any of the information in this Application is no longer accurate or comprehensive or becomes misleading, 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 to grant the approval for Change of Control.

3. Confirmation by Applicant

A supporting document stating the authorisation of the signatory shall be attached to this Application. Where the Applicant is not the person seeking approval for Change of Control, the Applicant must provide a certificate 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.

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 Approval of Change of Control of **[Licensee Name]** (the "Licensee") through the acquisition of **[%]** of the shares of the Licensee by **[Parent Company]**.

[Parent Company] intends to hold shares of 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) is 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 **[type of Licence]** Licence granted to the Licensee on **[Date]**;
 - iii. All other Project Agreements entered into by Licensee; and
 - iv. Any other obligations arising under Omani Laws or under any court or arbitral proceeding or any obligations of the Licensee arising thereunder.
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

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

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)-(iv) 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 pay or procure to be paid to such person the amounts due and owed by the Licensee under the respective documents listed in paragraph 1(i)-(iv) 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 Services 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 Authorized Signatory]
[Position]