

AGREEMENT BETWEEN

**AUTHORITY FOR ELECTRICITY REGULATION, OMAN
OF THE SULTANATE OF OMAN**

AND

CONTRACT CONDITIONS

FOR

CONSULTANCY SERVICES FOR -----

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Appendix A – Terms of Reference – Request for Proposal -----

Appendix B – Time Schedule

Appendix C – Remuneration

Appendix D – Project Team

THIS AGREEMENT together with all Appendices attached hereto and made a part hereof, (the “**Agreement**”) is made and entered into in the city of Muscat in the Sultanate of Oman on the ----- day of ----- Two Thousand and Seven by/and

BETWEEN

- (1) The Authority for Electricity Regulation, Oman (the “Authority”) having its postal address at PO Box 954, Postal Code 133, Al Khuwair of the one part; and,
- (2) .
 (“the Advisors” of the other part)

Now it is agreed as follows:

1: DEFINITIONS AND INTERPRETATION

In construing this Agreement the following expressions shall have the meanings hereby assigned to them except where the context otherwise requires:

“**Advisors**” – means (name of Company) engaged by the Authority to provide Advisory services to -----
-----.

“**Assignment**” - means the scope of the Consultancy Services as provided under this Agreement.

“**Change in Law**” – means a new law, decree or regulation (or amendment to or new officially approved interpretation of the existing Laws of the Sultanate of Oman) promulgated by the Government from the date hereof;

“**Authority**” - means the Authority for Electricity Regulation, Oman.

“**Completion of Services**” – means the confirmation by the Authority of the achievement of completion of the tasks as per this Agreement by the Advisors.

“**Consultancy Services**” - means the Advisory services for which the Authority has engaged the Advisors to provide in connection with the Assignment and which are defined in the Terms of Reference of this Agreement.

“**Parties**” – means the Authority for Electricity Regulation, Oman one part, and the Advisors on the other part.

“**Terms of Reference**” – means the terms of reference defining the scope of work of the Advisors specific to this Assignment.

2: GENERAL PROVISIONS

2.1 SINGULAR AND PLURAL

Words importing the singular only also include the plural and vice versa without in either case altering the meaning of this Agreement.

2.2 HEADINGS

The headings shall not limit, alter or affect the meaning of this Agreement.

2.3 VALIDITY OF AGREEMENT

This Agreement shall come into force upon the Parties authorised signature of the Agreement. Provision of Consultancy Services shall commence on ----- and be completed within 3 months, and the Agreement shall continue to be valid until the payment of the final account, without prejudice to the liability of the Advisors as stated in Article 19 hereof.

2.4 NOTICES

Any notice required under this Agreement should be given in writing and will be deemed to have been given if delivered by one of the following means:

- personal delivery to the designated representative of each of the Parties when so delivered;
- by fax upon sending, subject to confirmation of uninterrupted transmission as set out in the transmission report, confirmation by telephone by an employee of the recipient that fax was received and provided that a hard copy is promptly dispatched to the recipients in the manner provided below ;
- by post or courier seven (7) Omani business days after posting or courier but subject to proof of posting or courier.

3: LANGUAGE

The ruling language of this Agreement is the English language. All reports, minutes, correspondence, etc. shall be in the English language.

4: SCOPE OF CONSULTANCY SERVICES

The Scope of Consultancy Services shall be in accordance with the Terms of Reference given in Appendix A to this Agreement.

5: OTHER ADVISORS APPOINTED BY THE AUTHORITY

The Authority may appoint other Advisors for matters relating to any other matters of a specialist nature. The remuneration for such Advisors will be agreed separately between the Authority and the separate Advisors, and shall not form part of the overall fee of the Advisors. The Advisors should work with such other Advisors appointed by the Authority in line with the requirements of the Terms of Reference.

6: TIME SCHEDULE

The Time Schedule for the Consultancy Services shall be as set out in Appendix B, with any modifications to the Time Schedule agreed to by the Advisor and the Authority, but under no circumstances should it exceed 180 days from the time the Scope of Work commences.

7: REMUNERATION OF THE ADVISORS

7.1 CONSULTANCY SERVICES

Subject to Clauses 7.2 and 7.5, the remuneration for Consultancy Services shall be the Fixed Lump Sum as set out in Appendix C to this Agreement.

7.2 REMUNERATION FOR MODIFIED TERMS OF REFERENCE

Where additional Consultancy Services are required due to a change in the Terms of Reference requested by the Authority in writing then the Advisors shall calculate the cost of such additional Consultancy Services as shall be necessary on the basis of the man-day rates as per Appendix C to this Agreement. The Advisors shall propose a lump sum fee for such additional work in line with the man-day rates and after agreement with the Authority this shall be the subject of a written Amendment to the Agreement.

7.3 INCLUSIVE REMUNERATION

Subject to the provisions of Clause 7.2 and 7.5 of this Agreement the Fixed Fee (inclusive of the cap regarding Expenses) shall be the total remuneration for the Advisors as herein defined and shall be deemed to include all costs, overheads, profits, taxes, duties, charges and all things whatsoever necessary for the performance of the Consultancy Services under the Agreement. No claim will be accepted by the Authority due to the Advisors' lack of knowledge in respect of any matter affecting the level of remuneration in this Agreement or the Consultancy Services to be performed. The effect of any future change of law on the above, which increases the cost of performance of the Assignment will only be considered on presentation of supporting documents by the Advisors.

7.4 LIMIT OF REMUNERATION

The total remuneration for the Advisors for Consultancy Service shall constitute their only remuneration in connection with the Agreement and neither they nor their personnel shall accept or benefit from, whether directly or indirectly, any gratuity or commission in respect of any service or article used, or any commission, discount, allowance or indirect payment or other consideration in connection with or in relation to the Agreement or to the discharge of their obligations there under.

7.5 REIMBURSEMENT

Provided that the Authority has given the prior written approval for the travel requests submitted by the Advisors then the Authority shall reimburse the cost of agreed expenses as detailed in Appendix C.

8: MODE OF PAYMENT

8.1 INVOICES

The Authority shall pay to the Advisors against presentation of invoices the portions of the remuneration for Consultancy Services as stated in Appendix C to this Agreement.

8.2 PAYMENT

Remuneration shall be paid to the Advisors within 60 days after submission of the invoices unless the Authority disputes the invoices for material variations/inconsistencies.

9: CURRENCY AND ACCOUNT DETAILS

The remuneration of the Advisors shall be paid in Omani Riyals either by a cheque drawn on a bank in Oman or directly to the account of the Advisors. There shall be no adjustment to remuneration due to fluctuations and variations in the rates of exchange between the Omani Riyals and any foreign currencies.

10: ADVISOR'S FACILITIES AND EQUIPMENT

All facilities, equipment and materials required by the Advisors shall be provided by themselves in Muscat and elsewhere as required.

11: COPYRIGHT

The Copyright (if any) of all documents and all material prepared by the Advisors in connection with this Agreement rests with the Authority.

12: SUB – ADVISORS

The Advisors may engage the services of sub-Advisors only in extreme cases of requirement and with the prior approval of the Authority. Such approval must be in writing.

13: FORCE MAJEURE

13.1 REMUNERATION

If at any time before the completion of the Consultancy Services under this Agreement the viability of the Assignment shall be affected as a consequence of Force Majeure, as defined in Clause 13.2 hereof, occurring within the Sultanate of Oman beyond the control of the Advisors and from unforeseen cause, the Advisors will receive the proportionate remuneration for any additional Consultancy Services which may be required to be provided by them as a result of such Force Majeure.

13.2 DEFAULT

Notwithstanding Clauses 2.3 and 6, neither party shall be considered in default in the performance of its obligations hereunder as the result of Force Majeure, which shall include Acts of God, war (declared and undeclared), riots, civil commotion, revolution, hostilities, strikes, epidemics, blockades, nuclear hazards, extreme weather conditions, acts of any Government causing a political embargo or other political restraint adversely affecting the freedom to transact business with or in the Sultanate of Oman, and any other cause similar

to the kind herein mentioned or of equivalent force occurring within the Sultanate of Oman which is beyond the control of the parties, unavoidable and which could not reasonably be foreseen and which renders impossible the fulfilment of a particular term of this Agreement.

13.3 CIRCUMSTANCES BEYOND CONTROL

The Advisors or the Authority shall as soon as is reasonably practical promptly notify the other in writing of any situation or event occurring within the Sultanate of Oman or elsewhere arising from any circumstance beyond their control, which is unavoidable and which could not reasonably be foreseen and which makes it impossible or illegal for the party to carry out in whole or in part its obligations under this Agreement.

13.4 DELAY IN PERFORMANCE

If the performance of any obligations or responsibilities of any party is delayed due to Force Majeure for more than sixty (60) days, the terms of this Agreement shall either be extended for such period or this Agreement may be terminated at the Authority's choice. In the event that the performance of the Consultancy Services is prevented in whole or in part due to an occurrence contained in Clause 13.2 hereof, then the Authority shall have the option at any time after the commencement of such occurrence to terminate this Agreement by giving written notice to the Advisors.

13.5 NOTICE OF TERMINATION

If a termination notice is given due to Force Majeure under Clause 13.4 hereof, the termination shall become effective upon seven (7) days following the receipt by either Party of the other Party's notice to terminate.

14: TERMINATION OF THE AGREEMENT

14.1 NOTICE OF INTENT

The Authority shall have the right to terminate this Agreement in whole or in part at any time upon the giving of thirty (30) days prior written notice of intent. In the event of a termination and upon the giving or the receipt of such notice the Advisors shall take immediate steps if requested to do so by the Authority to bring the Consultancy Services to a close and to reduce expenditure to a minimum. Upon the expiration of the said period of notice, the Advisors shall stop work, terminate all orders relating to the performance of work and deliver to the Authority all Documents relating to their Consultancy Services. Payment by the Authority for termination will be made in accordance with Clause 14.3 hereof.

14.2 NOTICE OF DISSATISFACTION

The Authority shall promptly notify the Advisors in writing, if the Authority considers that the Advisor is not satisfactorily discharging its obligations under this Agreement. The notification shall state the reasons for the Authority's dissatisfaction and set forth the proposed actions of the Advisors necessary to cure the failure. In the event that the Advisors does not respond to such notice or take effective action to rectify such failure within fifteen (15) days, the Authority may terminate this Agreement by written notice to the Advisors.

14.3 PAYMENT FOR CANCELLATION

In the event of the whole or any part of the Consultancy Services being cancelled in accordance with Clauses 14.1, and 14.2 hereof, the Authority shall pay to the Advisors all fees and expenses, whether billed or unbilled, relating to Consultancy Services performed by the Advisors up to the effective day of termination of the Consultancy Services.

15: LAW OF THE AGREEMENT

This Agreement shall be governed by and construed in accordance with the Laws and Regulations for the time being in force in the Sultanate of Oman.

16: SETTLEMENT OF DISPUTES

Any dispute or difference arising out of the contents of this Agreement, including those considered as such by only one of the parties, shall be settled by amicable settlement, failing which shall be settled by an arbitrator appointed by both the Parties or failing agreement on the appointment, by a professional arbitrator appointed by the Chairman of the Commercial Court of the Sultanate of Oman. Such arbitration shall be governed by the rules of conciliation and arbitration of the International Chamber of Commerce. The Arbitration shall be conducted in the City of Muscat in English. The place of Arbitration shall be the Sultanate of Oman. The Arbitrator's decision shall be final and binding on both parties. The resulting award shall be in lieu of any other remedy.

17: DUTIES AND RIGHTS OF THE ADVISORS

17.1 CARE AND DILIGENCE

The Advisors shall exercise all reasonable skill, care and diligence in the performance of the Consultancy Services under this Agreement; it being understood that the Advisors shall not be responsible for delays, errors or other adverse results directly attributable to the Authority's failure to comply with its obligations under this Agreement, including without limitation of Clauses 18.1, 18.2 and 19.1, provided that the Advisors has brought such failure to comply to the attention of the Authority.

The Advisors are required to work diligently and honestly and use their professional knowledge and skill as a faithful agent of the Authority in the performance of their professional duties in compliance with the applicable laws, including the Laws of the Sultanate of Oman. They shall act in a manner to afford and enhance the honour, integrity and dignity of the Advisory profession, and they shall respect the Laws, Regulations and customs of the Sultanate of Oman.

17.2 CONFIDENTIALITY

All documents are to be kept as follows:-

- a) The Advisors shall treat the details of this Agreement and all Documents prepared hereunder as private and confidential (save in so far as may be necessary for the performance of his duties hereunder) and shall not publish or disclose the same or any particulars thereof in any trade or commercial media or elsewhere without the previous consent in writing of the Authority.
- b) All Documents prepared by the Advisors for the Assignment or supplied to them by the Authority shall be confidential.

17.3 INFORMATION REQUIREMENTS

Written information is to be submitted or copied to the Authority upon prior request at such intervals as are appropriate.

17.4 PROJECT TEAM

The Advisors shall identify and nominate a team leader. The Team Leader shall be responsible for the co-ordination of all activities relating to the Assignment. The project team shall consist of the personnel as detailed in

Appendix D of this Agreement. Other personnel as are required to perform the duties of the Advisors will be nominated by the Advisors in consultation with the Authority as the need arises subject to the approval of the Authority in writing. All inter communications between the Authority and the Project Team will be co-ordinated by the Team Leader who will also be the primary point of contact with the Authority.

17.5 ASSIGNMENT

The Advisors shall not assign or transfer the benefit or obligations of this Agreement or any part thereof without the prior written approval of the Authority. However, the Advisors shall be entitled at any time to take into partnership another partner or partners (or directors) and he or they shall be deemed to be included in the expression "the Advisors".

17.6 TAXES

The Advisors shall be responsible for the payment of all taxes including income tax, customs or import duties, and all other levies that are enforced within the Sultanate of Oman for the time being. Any effect of a Change in Law promulgated after the signing of this Agreement on the above will only be considered by the Authority on presentation of supporting documents by the Advisors and verification of the same by the Authority.

17.7 VISAS AND PERMITS

The Advisors shall be responsible for obtaining all visas and permits required in the performance of this Agreement. The Authority may assist in obtaining such visas and permits. The cost of such arrangement of visas and permits shall be borne by the Advisors.

18: DUTIES AND RIGHTS OF THE AUTHORITY

18.1 INFORMATION TO ADVISORS

The Authority shall furnish all pertinent data and information available to them and shall give such assistance as shall reasonably be required by the Advisors for the carrying out of their duties and obligations under this Agreement. The Authority will handle all arrangements for liaison with concerned Government parties. Target dates are based on receipt by the Advisors of necessary information from the Authority in a timely manner.

18.2 DECISIONS

The Authority shall give its decision in writing on all relevant reports, recommendation and documents properly referred to it in writing by the Advisors and in such reasonable time as agreed so as not to delay the performance by the Advisors of their Consultancy Services under this Agreement.

18.3 INCOMPATIBILITY OF AGREEMENT

The Authority shall safeguard the Advisors against the consequences of any incompatibility between the provisions of this Agreement and such Laws of the Sultanate of Oman as may be issued after signature of the Agreement and have a retrospective effect, unless such provisions had been accepted in writing by the Advisors.

18.4 REPLACEMENT OF PERSONNEL

Should the Authority request, the Advisors shall arrange to suspend the employment of, or repatriate any of the staff employed by the Advisors under the provisions of this Agreement, if in the opinion of the Authority such suspension or repatriation is desirable for any reason whatsoever. All such costs, charges, expenses, financial consequences or liability arising from such suspension or repatriation shall be the responsibility of the Advisors.

18.5 AUTHORITY'S APPROVAL

The Authorities' approval in writing is required prior to any increase in the scope of the Terms of Reference for Consultancy Services or disbursements which the Advisors believe will create a liability for the Authority to pay over and above the remuneration agreed, or to incur any liability to pay.

19: SCOPE OF LIABILITY OF THE ADVISORS

19.1 ERRORS AND OMISSIONS

The Advisors are liable for all the consequences of negligent acts, errors and omissions on their part or on the part of their employees, agents, Sub – Advisors or assignees. The Advisors disclaims any liability for errors or omissions in information provided to them by the Authority or their employees, representatives or agents. The Authority confirms that in no circumstances will any proceedings be taken by the Authority against any director, supervisory board member, officer, and employee, shareholder, controlling person or agent of the Advisors in respect of the Consultancy Services.

19.2 INSURANCE COVER

The Advisors shall provide to the Authority a Certificate of insurance relating to Professional Indemnity to cover the Advisor’s Liability as defined hereinbefore in the minimum amount of one million Omani Riyals and such certificate shall be issued in accordance with the Laws of Sultanate of Oman. The provision of such certificate shall not lessen or reduce the liability of the Advisors as contained hereunder. The Advisors shall also provide to the Authority a bank guarantee in the amount of RO----- (Riyals Omani -----) as insurance to guarantee proper execution of the contract.

19.3 INDEMNITY

The Authority hereby indemnifies the Advisors against any claims by Bidders or other third parties in connection with the bidding process except where the Advisors have acted with wilful misconduct or gross negligence.

IN WITNESS WHEREOF parties have executed this Agreement on the day and year first above written.

Signed:

For and on behalf of the AUTHORITY FOR ELECTRICITY REGULATION, OMAN:

_____ **Witness:** _____

For and on behalf of -----

_____ **Witness:** _____

Appendix A

Terms of Reference

The Scope of Work shall be as set out in the attached request for proposal dated July 2008

Appendix B

Time Schedule

The following Time Schedule shall be adjusted to reflect the actual Contract Award and commencement date of the Advisory Services. The Advisory Services are assumed to commence ----- 2008.

The Advisory Services is expected to be completed within 3 months with the key activities and milestones as follows:

No.	Activity or Milestone	Elapsed Time (days)
1.		
2		
3		

Given the above schedule, the Advisory Services is expected to be completed within 3 months of commencement or ----- 2008 given the commencement date stated above.

Appendix C

Remuneration

Financial Proposal

Fee rates and expenses shall be as follows and includes all travel and miscellaneous charges and payable upon completion of the Advisory Services.

- a) Fixed fee for time charges: RO -----
- b) Expenses (capped): RO -----
- c) Total fixed fee RO -----

For avoidance of doubt, the expenses portion of the Total Fixed Fee in (c) above shall be paid based on actual but will be capped at RO-----. All fees shall be in Omani Riyals and there shall be no variations as a result of exchange rate fluctuations and variations between the Omani Riyals and any foreign currency.

The Advisor should evaluate the applicability of taxes for their remuneration. The Authority will not provide any tax exemption.

The Schedule of Rates for daily professional services are as shown below. Return Flights and Air Travel Expenses in and the Daily Living Expenses Whilst Working Away From Home Office, and Printing and Publishing Costs all contained in this Appendix will be applied for any additional work requested and agreed between the Authority and the Advisor.

A per diem rate of RO----- (per 8 hour day) will apply for any additional work requested and agreed to by the Authority and the Advisor. Hotel rates will be paid based on actual but will not exceed RO 120/- per night and will be inclusive of all meals. Local Transportation will be provided by the Authority. Air fare will be paid at actual but will be limited to RO700 per return flight.

Personnel	RO per day

Appendix D

Project Team

The Project Team will consist of: