

PROJECT FUNDING AGREEMENT

**Project Number:**

**Project Title:**

**Date:**

BETWEEN

**THE MIDDLE EAST  
DESALINATION RESEARCH CENTER**

P O Box 21, Al Khuwair

Postal Code 133

Sultanate of Oman

Way 2840, Villa 2985

Shatti Al Qurm

Muscat, Sultanate of Oman

and

**Name & Address of Contractor**

**THIS PROJECT FUNDING AGREEMENT** is made on the [Date] between **THE MIDDLE EAST DESALINATION RESEARCH CENTER**, an international research organization having its principal place of operations located at Way 2840, Villa 2985, Shati-Al-Qurm, Muscat in the Sultanate of Oman, of the one part and the Person named as the “Contractor” in Schedule One of the other part.

**WHEREAS:-**

- (A) The Center is a non-profit making international organization created with the aims of conducting, facilitating, promoting, coordinating and supporting basic and applied research into water desalination and related studies.
- (B) The Center has issued a Request for Proposals (RFP) for projects in furtherance of the Center’s primary goal with a view to providing 50% of the finance necessary to complete those projects that the Center selects in accordance with the criteria contained in the Request for Proposals.
- (C) The Contractor has submitted a proposal that meets the criteria contained in the RFP and which the Center considers is worthy of its support in accordance with the terms of this Agreement.

**THE CENTER AND THE CONTRACTOR HAVE AGREED AS FOLLOWS:-**

**1.0 Definitions and Interpretations**

1.1 For the purposes of the Contract, unless the context shall require otherwise, the following words and phrases shall have the meanings attributed to them in this Clause.

1.2 “Budget” shall mean the budget contained in Schedule Three as the same may be adjusted in accordance with the Contract;

“Business Confidential Information” shall have the meaning set out in Clause 10.0;

“Cash Flow Projection” shall mean the cash flow projection contained in Schedule Three as the same may be adjusted in accordance with the Contract;

“Center” shall mean the Middle East Desalination Research Center, its officers, directors, employees, volunteers, affiliates, agents and related entities and the Center’s lawful successors and assigns;

“Center’s Intellectual Property” shall mean any and all Intellectual Property owned by the Center prior to the Contract or acquired by the Center subsequent to the date of the Contract;

“Center Member” shall mean those Persons who are signatories to the agreement dated 22 December 1996 establishing the Center and such other Persons who may subsequently become members of the Center;

“Completion Certificate shall mean the certificate issued by the Center in accordance with Clause 9.0;

“Contract” shall mean those documents listed in Clause 2.0 and any amendments thereto which may be agreed between the Parties in accordance with this Agreement;

“Contract Programme” shall mean the programme set out in Schedule Four as the same may be adjusted in accordance with the Contract;

“Contractor” shall mean the Person or Persons named as such in Schedule One (including all Participating Partners) or such other Person or Persons as the Center may accept in substitution in accordance with the Contract, and their lawful successors and assigns;

“Contractor’s Intellectual Property” shall mean any and all Intellectual Property owned by the Contractor prior to the Contract or acquired by the Contractor subsequent to the Date of the Contract;

“Date of the Contract” shall mean the date first appearing in this Agreement.

“Effective Date” means the date on which all the preconditions in Clause 25.0 have been fulfilled to the satisfaction of the Center;

“Executive Summary” shall mean the short form of the Final Project Report, presented as part of the Final Project Report.

“Final Project Report” shall mean the complete and last official report of the Contractor’s research, which the Center may wish to publish, as described in Guidelines for Preparation of Research Proposals.

“Force Majeure” shall mean any act, circumstances, or event beyond the reasonable control of either of the Parties seeking to be excused from performance of the Contract in accordance with Sub Clause 17.2, including but not limited to earthquakes, hurricanes, fires, storms, tidal waves, or other acts of God, whether similar or dissimilar; riots, strikes, lockouts, picketing, boycott, insurrections, rebellions, civil disturbances and dispositions or orders of governmental authority, whether such authority be actual or assumed;

“In kind contributions” can include labor, materials, hiring or renting of facilities or equipment, or other similar services contributed at their realistic and fair market value.

“Intellectual Property” shall mean all Inventions, innovations, creations, works, reports, figures, tables, processes, designs, methods, formulae, drawings, plans, technical data, specifications, logos, computer programs, computer chips and circuits, whether or not protectable through patent, copyright, trademark or mask work and whether produced in any medium now known or hereafter produced or developed;

“Intellectual Property Rights” shall mean the rights in patents, trademarks, service-marks, trade names, registered designs, designs, copyrights and other forms of intellectual or industrial property (in each case in any part of the world and whether or not registered or registrable and for the full period thereof and all extensions and renewals thereof and applications for registration of or otherwise in connection with the foregoing), know-how, Inventions, formulae, confidential or secret processes and information (but excluding commonly known processes), computer programs and software, plans, drawings, specifications or devices or commercial monopoly rights of whatever nature, and any licenses and permissions in connection therewith (whether such rights exist at the Date of the Contract or are created thereafter);

“International Law” shall mean the general principles of law applicable to international organizations and such general principles of the law governing contractual relations, including relevant trade usages, as have been applied by national and international tribunals;

“Invention” shall mean something (including a product or process) not previously known or existing which is brought into existence by the process of independent investigation and/or experiment and which is patentable or potentially patentable under the laws of any country. Included in this definition shall be any addition to or modification of a previous Invention where the addition or modification is intended or claimed to increase the utility or value of the previous Invention; provided always that such addition or modification is:

- (a) not previously known or existing; and
- (b) brought into existence by the process of independent investigation and/or experiment; and
- (c) patentable or potentially patentable in any country

“Jointly Owned Intellectual Property” means Intellectual Property owned jointly by the Center and the Contractor pursuant to Clause 13.0;

“Key Personnel” shall mean those individuals listed in Schedule One or any individual appointed as a replacement or in addition from time to time in accordance with the Contract;

“Participating Partner” shall mean, where the Contractor consists of more than one Person, each Person constituting the Contractor as listed in Schedule One and their replacements in accordance with the Contract but such term shall not include any Sub Contractor;

“Periodic Reports” shall mean the reports described in the Guidelines for Preparation of Project Reports that forms part of this Agreement; which are submitted throughout the Project by the Contractor to the Center in accordance with the Contract Programme and shall include a budget report, work progress report and status report.

“Principal Investigator” shall mean the individual described as such in Schedule One or such other individual whom the Center may from time to time accept in substitution in accordance with the Contract, who shall have primary responsibility for ensuring that all terms and conditions of the Contract are met and to whom Notice of insufficiencies shall be given by the Center;

“Project” shall mean the project described in the final version of the Project Proposal.

“Project Advisory Committee” or “PAC” shall mean the group of volunteers gathered by the Center to provide technical review, assistance and/or expertise to the Center;

“Project Manager” shall mean the individual named as such in Schedule One who shall have the responsibility for reviewing all actions taken by the Contractor and having authority to communicate all Center decisions concerning the process, procedure, programming requirements, funding requirements, and outcome of the Project. The Center reserves the right to substitute or replace the said individual from time to time in accordance with the Contract;

“Project Profile” shall mean the short description of the Project to be presented in the form shown in the Guidelines For Preparation of Project Reports;

“Request for Proposals” (RFP) shall mean the Center’s request for proposals described in Schedule One;

“Scope of Work” shall mean the full scope of work incorporated within the final version of the project proposal and summary in Schedule Two;

“Sub Contractor” shall mean any of the Persons named as such in Schedule Five and any Person appointed as a replacement or in addition in accordance with the Contract with whom the Contractor shall separately contract to complete one or more specific tasks required by the Project; and

“TCP” or “Total Cost of the Project” shall mean the total cost of the Project shown in Schedule Three.

- 1.3 Headings in the Contract are for convenience only and shall not be relied upon in interpreting the Contract.
- 1.4 In the Contract, unless the context otherwise requires it:
- (i) references to the singular shall include the plural and vice-versa;
  - (ii) references to the male gender shall include the female and neuter and vice-versa;
  - (iii) references to Clauses, Sub Clauses, Paragraphs, Sub Paragraphs and Schedules are references to Clauses, Sub Clauses, Paragraphs, Sub Paragraphs and Schedules in the Contract;
  - (iv) references to Parties shall mean the Center and the Contractor;
  - (v) references to Persons includes natural and juridical persons;
  - (vi) references to Notices, Notifications, Notify, Notified, Approve, Approved and Approvals shall mean notices, notifications, notified, approve, approved and approvals in writing; and
  - (vii) references to years and months shall be to such periods of time with reference to the Gregorian calendar.

## **2.0 The Contract**

- 2.1 The following documents shall form the Contract:-
- (a) This Agreement
  - (b) Final Project Proposal [**and Date of final proposal**]
  - (c) The Schedules
  - (d) Guidelines for Preparation of Project Reports
  - (e) The Request For Proposals
- 2.2 In the event of any conflict or ambiguity between any of the documents forming the Contract, then each document will be given precedence over the other documents in accordance with the order in which they are listed in the immediately preceding Sub Clause.
- 2.3 If any ambiguity or conflict between the documents forming the Contract still exists, or there is ambiguity or conflict within one document or between documents of equal precedence, then such ambiguity or conflict shall be resolved by the Project Manager, who shall Notify the Principal Investigator in writing of his decision. Such decision shall be final and binding on both Parties.
- 2.4 All Notices, written communications and reports provided for in or arising out of the Contract shall be in English. Where any source material or other document in an original language other than English is to be incorporated into such a Notice, written communication or report, the Party producing the same shall be responsible for producing an accurate translation into English.
- 2.5 All monetary transactions arising from the Contract shall be in United States Dollars (“US\$”). Monetary values appearing in budgets, reports, accounts and financial records arising in connection with the Contract shall be expressed in United States Dollars (“US\$”).

### **3.0 Replacement and Removal of and Additions to the Contractor's Personnel and Sub Contractors**

- 3.1 Neither the Principal Investigator, nor any Participating Partner, nor any of the Key Personnel, nor any Sub Contractor shall be replaced in regard to the project save with the prior Approval of the Center.
- 3.2 If the Contractor desires to appoint any additional Key Personnel or Sub Contractors to the Project it shall Notify the Center accordingly, giving reasons for such appointment and the details of the Person it wishes to appoint. The Center shall Notify the Contractor in a timely fashion whether or not it Approves such an appointment. Any Approval by the Center shall not increase the TPC.
- 3.3 The Project Manager may by Notice require the removal of The Principal Investigator, any Key Personnel, employee, agent or Sub Contractor of the Contractor from the Project as a condition of continued funding by the Center. In such a case, the Contractor shall provide to the Project Manager within fourteen days of receipt of such Notice a list of replacements for the Approval of the Center.

### **4.0 Liabilities of the Contractor**

- 4.1 Each Participating Partner shall be jointly and severally liable to the Center in the performance of the Contract.
- 4.2 The Contractor shall be responsible for the acts, omissions and neglects of its agents, employees and Sub Contractors as if the same were the acts, omissions and neglects of the Contractor.
- 4.3 The Contractor shall require any and all Sub Contractors prior to working on the Project in any manner to enter into an agreement in the form shown in Schedule Five. Copies of all such agreements shall be forwarded to the Center within thirty days of execution.
- 4.4 Payment of any Sub Contractor, agent, employee or any other Person engaged by the Contractor in connection with the Project shall be the sole obligation, liability and responsibility of the Contractor.

### **5.0 The Principal Investigator and The Project Manager**

- 5.1 The Principal Investigator shall have overall responsibility on behalf of the Contractor for the direction and management of the Project and for monitoring the Contractor's compliance with the Contract. In particular, but without limitation, the Principal Investigator shall be responsible for:
  - (i) submitting reports, Notices, other documentation and written communications arising from the Contract to the Center;
  - (ii) ensuring the Contractor performs its obligations within the Budget, Cash Flow Projection and Contract Programme; and
  - (iii) regular liaison between the Contractor and the Center.
- 5.2 The Principal Investigator shall be the individual to whom all Notices and other written communications in connection with the Project shall be addressed.

- 5.3 The Principal Investigator may delegate such of his functions with regard to the Project and for such time as may be Approved by the Center.
- 5.4 The Project Manager shall as regards the Contractor be the principal means whereby shall be communicated to the Contractor all decisions and the exercise of any discretion in connection with the Project by the Center. All Notices and other written communications in connection with the Project from the Contractor to the Center shall be directed to the Project Manager.
- 5.5 Notwithstanding the provisions of the immediately preceding Sub Clause, the Project Manager may delegate such of his functions and for such time as he determines in his absolute discretion. The Project Manager shall immediately Notify the Contractor of the terms of any such delegation.

## **6.0 The Programme**

- 6.1 The Contract shall be performed by the Contractor in accordance with the Contract Programme.
- 6.2 Upon the request of the Contractor, the Center may in its absolute discretion agree to extend or to adjust the Contract Programme and shall Notify the Contractor immediately of the Center's decision.

## **7.0 Location of the Project**

- 7.1 The Project shall be conducted by the Contractor in such location or locations as shall be specified in the Scope of Work. The Contractor shall not amend or add to such locations without first Notifying the Center of the reasons for such a change and obtaining the Center's prior Approval.

## **8.0 Budget and Payments**

- 8.1 The Budget shows the Total Cost of the Project ("TCP"). The TCP shall not be adjusted without the prior Approval of the Center.
- 8.2 The Center shall reimburse the Contractor the sum shown in Schedule Three, which represents a maximum of fifty percent of the TCP. The Parties agree that the Contractor's contribution shall be the remaining percentage of the TCP. The Center shall not be liable to the Contractor for any additional sums in respect of the Project. The Contractor shall provide the financial contribution together with the in kind contribution shown in Schedule Three. The Contractor agrees and certifies that the in-kind contribution has been valued at a realistic and fair market value.
- 8.3 The Contractor shall apply the Center's contribution to the TCP solely to the Project in accordance with the Contract.
- 8.4 For the purposes of the Contract, the risk or benefit of any fluctuation in the exchange rate of the US\$ with any other currency shall rest with the Contractor. Provided that, in the event of any extreme fluctuation between the US\$ and any other currency by reference to the exchange rate pertaining at the Effective Date which has or is likely to have a significant effect on the Project funding, then if the Center requires it the Parties shall endeavor to negotiate in good faith an adjustment to the Budget.
- 8.5 All changes in Budget line items greater than the financial limits shown in Schedule Three shall require the prior Approval of the Center.

- 8.6 If Schedule Three refers to an advance payment by the Center to the Contractor that advance payment shall be paid to the Contractor upon the fulfillment of the pre-conditions listed in Clause 25.0.
- 8.7 Thereafter periodic payments shall be made to the Contractor in accordance with the payment schedule set out in Schedule Three. Where such payments are conditional on the successful accomplishment of milestones, then no payment will be made until that milestone has been achieved to the satisfaction of the Center.
- 8.8 The final payment of the Center contribution is detailed in Schedule Three. It shall be paid to the Contractor within 30 days of the issue by the Center of a Completion Certificate in accordance with Clause 9.0.
- 8.9 If Schedule Three provides for air travel in connection with the Project, the Center will reimburse the Contractor for economy class air travel only and lodging, meals and per diem costs shall be approved in advance by the Center.
- 8.10 The Contractor confirms that it is receiving no other funding for the Project other than the cost sharing contributions of subcontractors or funding committed by a third party as detailed in Schedule Three.

#### **9.0 Financial Records, Accounts and Audits**

- 9.1 The Contractor shall maintain accurate and complete accounting and financial records in respect of the Project. In particular
- (i) such accounts and records shall be maintained according to Generally Accepted Accounting Practice (GAAP);
  - (ii) all expense records and accounts must be supported by itemized invoices, reports and records; and
  - (iii) all such accounts and financial records shall withstand formal independent audit in compliance with the Contract and any requirements of State or local laws and regulations applicable to the Contractor.
- 9.2 The Center may at any time from the Effective Date until the issue of a Completion Certificate require an audit in whole or in part of the Contractor's or any of the Sub Contractors' accounts and financial records relating to the Project as a precondition to any further payment under the Contract.
- 9.3 The Center's representatives and agents shall have access to the Project accounts and records at any reasonable time during normal business hours.
- 9.4 The Contractor shall ensure that the terms of engagement of any Sub Contractor contain provisions to like effect of the three immediately preceding Sub Clauses and in particular afford the Center the same rights as regards the Sub Contractor's accounts and financial records as the Center enjoys with regard to the Contractor's accounts and financial records.
- 9.5 Subject to the provisions of Clause 17.0 within 30 days of the finalization of the Final Project Report for publication in accordance the Guidelines for Preparation of Reports the Contractor shall provide the Center with a final account. This shall be a complete and accurate account of all moneys received and expended on the Project by the Contractor.
- 9.6 Any funds provided by the Center in connection with the Project, excluding funds committed to non-cancelable obligations, which have not been expended shall be reimbursed to the Center at the same time the final account is submitted.

- 9.7 The Center shall review the final account submitted by the Contractor and, if satisfied as to the accuracy thereof, shall issue the Completion Certificate.
- 9.8 The Center shall have the right to require an independent audit of the final account as a precondition to the issue of the Completion Certificate.
- 9.9 The issue of a Completion Certificate shall in no way release the Contractor from any liability or obligation arising from the Contract whether such liability or obligation arises before or after the issue of the Certificate.

## **10.0 Confidentiality**

- 10.1 "Business Confidential Information" shall mean any and all information, know-how and/or data (including trade secrets) whether technical, commercial or financial belonging to one Party ("the Owner") and communicated to the other Party ("the Recipient") provided that at the date of its communication, such information, know-how and/or data fulfills all of the following conditions
- (i) is of a type held in confidence for reasons of actual or potential commercial value to its Owner; and
  - (ii) is not generally known or publicly available from other sources; and
  - (iii) has not been previously made available by its Owner to others without an obligation concerning its confidentiality; and
  - (iv) is not already in the possession of the Recipient without an obligation concerning its confidentiality; and
  - (v) at the time of its communication to the Recipient (or within a reasonable period thereafter), the information has been Notified as Business Confidential Information by its Owner to the Recipient, and such information, know-how or data shall only constitute Business Confidential Information from the date of such Notification.
- 10.2 Any Business Confidential Information shall cease to constitute the same from the time it ceases to be subject to all of conditions (i) to (iv) (inclusive) contained in Sub Clause 10.1, save by reason of any breach of the Contract.
- 10.3 The Recipient shall not publish, disclose or disseminate any Business Confidential Information to any other Person without the prior Approval of the Owner.
- 10.4 The Recipient shall protect the confidentiality of any Business Confidential Information in accordance with the applicable laws of the Recipient's country of residence, and those of any other country requested by the Owner.
- 10.5 The Recipient shall immediately Notify the Owner in the event that the Recipient has reason to believe that any Business Confidential Information has come into the possession of an unauthorized person.
- 10.6 The obligations and liabilities with respect to Business Confidential Information contained in or arising from this Clause shall continue until any such Information ceases to constitute Business Confidential Information in accordance with this Clause, and in particular shall survive the issue of the Completion Certificate or earlier termination of the Contract.

## **11.0 The Contractor's Intellectual Property**

- 11.1 Any and all Intellectual Property Rights in an Invention conceived or first reduced to practice by the Contractor deriving from the Project ("Contractor Invention") shall be the sole property of the Contractor.
- 11.2 The Contractor shall be entitled to file for patent registration or other protection with respect to the Contractor Invention in the Contractor's sole name in any territory.
- 11.3 The Contractor shall Notify the Center with respect to any Contractor's Invention promptly upon its conception or reduction to practice. The Contractor shall simultaneously Notify the Center whether or not and in respect of which territories the Contractor intends to obtain protection for such Contractor Invention.
- 11.4 Where the Contractor does not intend to seek protection for a Contractor Invention in one or more territories, the Center shall be entitled to seek protection in respect of such Contractor Invention in any of those territories on the basis of a royalty, which percentage should be agreed prior to the patent application, to be paid to the Contractor. The Contractor shall in such circumstances assign its Intellectual Property Rights in such Contractor Invention with respect to such territory or territories to the Center. Where the Contractor does not intend to seek protection in its country of residence it shall have the right to a non-exclusive royalty free license in its country of residence to use the Contractor Invention for non-commercial purposes.
- 11.5 In the event that neither the Contractor nor the Center wishes to seek protection in one or more territories with respect to a Contractor Invention, and a Center Member indicates that it wishes to do so, upon receipt of Notification thereof from the Center, the Contractor shall assign its Intellectual Property Rights hereunder in such Contractor Invention with respect to such territory or territories to the Center Member. Where neither the Contractor nor the Center intends to seek protection in the Contractor's country of residence, the Contractor shall have the right to a non-exclusive, royalty free license in its country of residence to use the Contractor Invention for non-commercial purposes.
- 11.6 Any Business Confidential Information provided by the Contractor to the Center in respect of a Contractor Invention shall remain Business Confidential Information until otherwise agreed between the Parties or until protected by registration or other recognized form of legal protection.
- 11.7 If the Contractor gives Notice that it intends to obtain protection of its Intellectual Property Rights in accordance with this Clause, the Contractor may by further Notice to the Center require the publication of the Final Project Report to be delayed. Upon receipt of such Notice, the Center shall delay publication for a period of six months, or such other period as the Parties may agree. If the Center decides to proceed in accordance with Sub Clause 11.4, then the Center may delay publication of the Final Project report for such period as may be reasonably necessary to protect its rights.
- 11.8 The Contractor shall ensure that all of its employees, agents and Sub Contractors engaged on the Project shall have signed a Contractor Invention disclosure and confidentiality agreement in a form acceptable to the Center. In the event of any breach of such agreement by an employee, agent or Sub Contractor, the Contractor undertakes at its own expense to take all reasonable steps to enforce such an agreement.

## **12.0 The Center's Intellectual Property**

- 12.1 Subject to the Parties' rights and obligations with respect to Business Confidential Information, all copyright in the documents forming the Contract, the Periodic Reports, the

Final Project Report, the Project Profile and any draft or revision thereof shall be the sole property of the Center and the Contractor hereby assigns absolutely to the Center any copyright which the Contractor might otherwise have had in the said documents.

- 12.2 The Center hereby confirms that the Contractor may use the information contained in the documents referred to in Sub Clause 12.1 in connection with the Project and for non-commercial purposes; provided that they do not publish or disseminate the Center's Intellectual Property without the prior Approval of the Center.
- 12.3 The Center may make available to the Contractor the Center's Intellectual Property other than that referred in Sub Clause 12.1 on such terms as may be agreed by the Parties.

### **13.0 Jointly Owned Intellectual Property**

- 13.1 Subject to Clause 11.0, in the event that any of the Center's personnel contributes jointly with the Contractor to the conception or reduction to practice of an Invention during the performance of the Project, then any and all Intellectual Property Rights in the resulting Invention shall be the joint property of the Parties ("Jointly Owned Intellectual Property") and shall be held by each Party in proportion to its contribution. The Parties agree to promptly execute such documents and do all things as may be necessary to give effect to this Sub Clause and to protect their rights in any Jointly Owned Intellectual Property.
- 13.2 The Contractor further agrees to provide user support to the Center in respect of such computer software and programmes which may become Jointly Owned Intellectual Property during the Project and to negotiate in good faith the continued provision of such support after the issue of the Completion Certificate or earlier termination of the Contract if so required by the Center.
- 13.3 Protection of Jointly Owned Intellectual Property shall be as agreed between the Parties, provided that each Party shall bear the costs of such protection in proportionate shares.
- 13.4 With respect to Jointly Owned Intellectual Property protected in accordance with Sub Clause 13.3, each Party shall be entitled to exploit its rights with respect to such Property for any purpose and to license such rights to third parties on a non-exclusive basis without the consent of the other Party, and without any obligation to account to the other Party for any royalties and other payments received from such utilization or licensing
- 13.5 If in contravention of Sub Clause 13.3, any Party fails to bear its share of the costs of protection of any Jointly Owned Intellectual Property in any territory, such Party shall with respect to such territory assign all of its rights in such Property to the other Party, subject always to a non-exclusive royalty free license on the part of the Contractor or the Center to use such Property for non-commercial purposes in its country of residence.
- 13.6 In the event that neither the Contractor nor the Center wish to seek protection in one or more territories with respect to any Jointly Owned Intellectual Property, and a Center Member indicates that it wishes to do so, upon receipt of Notification thereof from the Center, the Contractor shall assign its rights hereunder in such Property with respect to such territory or territories to the Center Member, subject always to a non-exclusive, royalty free license on the part of the Contractor to use such Property for non-commercial purposes in its country of residence and subject to a non-exclusive, royalty free license on the part of the Center to use such Property in Oman for non-commercial purposes.
- 13.7 If the Contractor gives Notice that it intends to protect its Jointly Owned Intellectual Property Rights in accordance with Sub Clause 13.3, the Contractor may by further Notice to the Center require the publication of the Final Project Report to be delayed. Upon receipt of such Notice, the Center shall delay publication for a period of six months, or such other period as the Parties may agree. If the Center decides to protect its Jointly Owned Intellectual Property

Rights in accordance with Sub Clause 13.3 or any Center Member exercises its rights in accordance with Sub Clause 13.6, then the Center may delay publication of the Final Project Report for such period as may be reasonably necessary to protect those Rights.

- 13.8 Any publication of Jointly Owned Intellectual Property by either Party must acknowledge the joint ownership of the other Party.
- 13.9 If the Contractor uses or licenses the use of any Jointly Owned Intellectual Property in any public presentation or publication, including student dissertations, theses and reports, the Contractor shall first obtain permission from the Center, and shall ensure the following or similar statement is included in the publication

*“This [publication][presentation] has been made possible through funding from The Middle East Desalination Research Center. The information contained herein is based upon Intellectual Property, which is jointly owned by the Center. The Center retains its right to publish or produce the Jointly Owned Intellectual Property in part or in its entirety.*

*The comments and views detailed herein may not necessarily reflect the views of The Middle East Desalination Research Center, its officers, directors, affiliates or agents.”*

- 13.10 The Contractor shall send to the Center in a timely fashion a copy of all such presentations and publications.
- 13.11 Each Party undertakes to the other that it will provide reasonable assistance if called upon in any action which may be required against third parties to protect any Jointly Owned Intellectual Property Rights arising out of the Contract.
- 13.12 The Center Members shall be entitled to a non-exclusive, irrevocable, royalty-free right in all countries to translate, reproduce, and publicly distribute scientific and technical journal articles, reports and books containing information directly arising from the contract. The Center will be responsible for notifying the Contractor in advance of any such publication. All publicly distributed copies of a copyrighted work prepared under this provision shall indicate the names of the authors of the work, unless an author explicitly declines to be named, as well as an acknowledgement that the project was carried out with financial support of the Center. Any Contractor shall have the right to review a translation of its work prior to public distribution by the Center or any Center Member.

#### **14.0 Contractor’s Warranties and Indemnities**

- 14.1 In addition to the specific warranties in respect of Intellectual Property, the Contractor hereby warrants:
- (i) that the Contractor will ensure that all data and test results produced or relied upon in connection with the Project, whether included in the Final Project Report or not, are accurate in accordance with generally recognized standards pertaining in the international scientific community;
  - (ii) that the Contractor will perform the Contract diligently and in accordance with the Contract Programme.
  - (iii) that the Contractor will perform all its obligations arising out of the Contract in a manner consistent with the highest professional standards; and

- (iv) that all data and other information in whatever form which is connected with the Project in the Participant's possession or control will be safely stored, copied and backed up to minimize the risk of its loss or destruction.
- 14.2 The Contractor warrants that, as the authorized agent, all matching funds and in-kind contributions represent substantive contributions to the TCP and that in-kind contributions have been valued at realistic and fair market value.
- 14.3 The Contractor further warrants that it will comply with all mandatory laws and regulations, which apply to any location where the Project is conducted during the performance of the Contract.
- 14.4 The Contractor shall indemnify and hold harmless the Center against all claims, actions, liabilities, demands, fees, costs or damages whatsoever of any kind or nature to which the Center may become liable as a result of any breach by the Contractor of any of its obligations arising from the Contract. The right of indemnification contained in this Sub Clause shall remain in full force and effect notwithstanding the issue of a Completion Certificate or earlier termination of the Contract.
- 14.5 Without prejudice to the generality of the immediately preceding Sub Clause the Contractor acknowledges that a breach of the Contract concerning the protection of the Center's Intellectual Property or of the Jointly Owned Intellectual Property may cause the Center irreparable damage for which damages cannot be calculated. Notwithstanding the provisions of Clause 21.0 the Contractor admits that the Center shall therefore be entitled to injunctive and/or other equitable relief, in addition to all other remedies available, to prevent such a violation or breach of the Contract and to secure its enforcement.

#### **15.0 Center's Access to Contractor's Facilities, Right of Technical Verification and Audit**

- 15.1 After giving reasonable Notice, the Center and its authorized representatives shall have
  - (i) access to any and all places where work on the Project is being carried out for the purposes of inspecting work in progress or such other reasonable cause as may be specified in the Notice;
  - (ii) access to documents concerning the Project's management, progress and results;
  - (iii) the right to call for an independent technical audit of all data and results produced or relied upon in connection with the Project; and
  - (iv) the right to meetings with any officer, employee, Sub Contractor or Agent of the Contractor.
- 15.2 Subject to any reasonable assurance required by the Contractor as to confidentiality and security, the Contractor shall fully co-operate and assist the Center and its authorized representatives in the operation of this Clause.

#### **16.0 Insurance**

- 16.1 The Contractor shall at its own sole expense maintain or produce evidence of the existence of an insurance (whether commercially purchased or self insured) that to the Center's reasonable satisfaction provides adequate comprehensive coverage against loss or destruction of any of the premises where the Contractor will work on the Project; loss or destruction in whole or in part of any of the data or other information used in connection with the Project; unfair competition claims; and reckless, intentional or negligent acts and omissions of the Contractor.

- 16.2 The level of coverage in respect of the risks to be insured in accordance with this Clause shall be Approved by the Center, but in any event shall not be less than a sum equal to the TCP.
- 16.3 The Center shall wherever possible be noted on such insurance as a third party insured, or a similar Notice of the Center's interest made.
- 16.4 The Contractor shall forthwith upon receipt of any moneys paid under the insurance effected in accordance with this Clause account to the Center for such moneys and pay to the Center such sum as represents the Center's loss covered by such insurance.
- 16.5 The Center shall have the right at any time to require the Contractor to produce satisfactory evidence that the said insurance is still in full force and effect.
- 16.6 The Contractor shall immediately Notify the Center if the said Insurance is amended or altered in any material way, or if the coverage has for any reason ceased to be in full force and effect.
- 16.7 If the Contractor Notifies the Center that the insurance required by this Clause cannot be obtained or renewed in whole or in part, or that such insurance can only be obtained or renewed at an excessive cost, then the Center may in its absolute discretion agree to waive all or part of the requirements of this Clause. The Center shall Notify the Contractor in a timely fashion of its decision.

#### **17.0 Termination and Suspension**

- 17.1 The Center may immediately terminate the Contract by written Notice to the Contractor if
- (i) the Contractor is in breach of any of its obligations arising from the Contract and fails to remedy such breach (if remediable) within 30 days of receipt of a Notice from the Center requiring such remedy; or
  - (ii) the Contractor fails to find within the period Notified by the Center a replacement satisfactory to the Center of the Principal Investigator, a Participating Partner, any Sub Contractor or any Key Personnel; or
  - (iii) the Contractor or any Participating Partner becomes in accordance with the laws and regulations of their domicile or residence insolvent or bankrupt, or is the subject of a winding up or other process of dissolution unless a voluntary one for the purposes of reorganization; or
  - (iv) the Center has reasonable cause to believe that, after reasonable notice to the Contractor a Final Project Report which meets the expressed or implied requirements of the Center arising from the Contract will not be produced by the Contractor in accordance with the Budget and/or Contract Programme (otherwise than by reason of any delay on the part of the Center or agreement between the Parties);or
  - (v) the Parties are unable to agree a revised Budget in the event of the extreme currency fluctuations referred to Sub Clause 8.4.
- 17.2 If either Party is prevented from performing any obligation arising from the Contract by reason of Force Majeure, then it shall immediately give Notice to the other Party, specifying the circumstances that it is believed constitute Force Majeure and estimating the likely duration of such circumstances. Both Parties shall be excused further performance of the Contract for so long as such circumstances endure; always provided that should such circumstances endure for longer than six months, then either Party may by Notice to the other terminate the Contract.

- 17.3 If the Contract is terminated pursuant to Sub Clause 17.1 then without prejudice to such other remedies as may be available to the Center expressed or implied in the Contract or arising otherwise:
- (i) all Jointly Owned Intellectual Property shall become the Center's Intellectual Property and the Contractor hereby irrevocably appoints the Project Manager as its authorized representative and attorney to take all necessary steps and to execute all necessary documents to effect such a transfer; and
  - (ii) the Center shall have no further liability to the Contractor arising from the Contract and in particular shall have no liability to make any further payment to the Contractor whether in respect of a period arising before or after the date of termination stated in the Notice served in accordance with Sub Clause 17.1.
- 17.4 If the Contract is terminated pursuant to Sub Clause 17.2 then the Contractor shall as soon as reasonably possible send to the Center a final account as provided for in Clause 9.0. The Contractor shall at the same time return any funds not committed to non-cancelable obligations. If, following the review by the Center and any independent audit the Center may require, it is found that sums are due to the Contractor in respect of payments accruing before the Force Majeure arose then such sums shall be paid immediately to the Contractor. Upon the satisfactory conclusion of the review or audit, the Center shall issue a Completion Certificate. The issue of the Completion Certificate under this Clause shall have the same effect as the issue of the Certificate in accordance with Clause 9.0.

#### **18.0 Contractor's Employment and Environmental Policy**

- 18.1 The Contractor shall not in any of its dealings with regard to the Project discriminate against any Person by reason of age; sex, race; religion; color; ethnic or national origin; sexual orientation; or physical disability.
- 18.2 The Contractor shall undertake the Project having due regard to the necessity to adhere to practices and procedures in conformity with the aim of protecting and non-interference with the environment of any location where the Project is conducted.

#### **19.0 Relationship of the Parties**

- 19.1 The Parties agree that the Contractor is an independent contractor with respect to the Center. Nothing in the Contract shall be construed to make the Parties partners or joint ventures or to create an employment or agency relationship between the Parties. Any and all relationships created relating to Subcontractors shall be between the Contractor and such Subcontractors only and shall not create any relationship between such Subcontractors and the Center.

#### **20.0 Waiver**

- 20.1 Waiver by the Center of any provision of the Contract must be in writing to be effective. Such waiver of any breach by the Contractor of any provision of the Contract on any occasion shall not constitute or operate as a waiver of breach of such provision on any other occasion nor a waiver of any breach of other provisions, nor shall any failure to enforce any provision operate as a waiver of such provision hereof by the Center.

#### **21.0 Governing Law and Resolution of Disputes**

- 21.1 Subject to any mandatory provisions of law in any territory where work in connection with the Project is carried out, the Contract shall be governed construed and interpreted in accordance with the principles of International Law.

- 21.2 The Parties shall endeavor in good faith to resolve any dispute or difference between them arising out the Contract.
- 21.3 If, notwithstanding the Parties' efforts to resolve a dispute or difference, no resolution is arrived at satisfactory to both Parties, then any dispute, controversy or claim arising out of or relating to the Contract, or the breach, termination or invalidity thereof shall be settled by binding arbitration in accordance with the UNCITRAL Arbitration Rules at present in force.
- 21.4 In the event that either Party gives to the other Notice that it wishes to refer a matter to arbitration pursuant to this Clause, each Party shall within thirty days of the receipt of the Notice appoint an arbitrator and Notify the other Party accordingly. The two arbitrators shall within thirty days of their appointment constitute an arbitral tribunal by appointing a third arbitrator. In the event a Party fails to appoint an arbitrator then the appointment shall be made on the application of either Party by a nominating authority appointed in accordance with Article 6 of the UNCITRAL rules. Similarly, should the two arbitrators appointed by or on behalf of the Parties fail to agree on the choice of a third arbitrator, then such appointment shall be made on the application of either Party by a nominating authority appointed in accordance with Article 6 of the UNCITRAL rules.
- 21.5 The place of the arbitration shall be decided by the arbitrators appointed in accordance with this Clause.
- 21.6 The language of the arbitration shall be English.

## **22.0 Modifications and Severability**

- 22.1 The Contract may not be modified or amended, nor may any term or provision be waived or discharged, including this particular Sub Clause, except in writing, signed by the Party or Parties against whom such amendment, modification, waiver, or discharge is sought to be enforced. Any modification must be executed by the Parties to be effective.
- 22.2 The provisions of the Contract shall be deemed severable, and the invalidity, illegality or unenforceability of any provision of the Contract shall not affect the validity or enforceability of any other provisions. In the event any provision of the Contract is found to be invalid, illegal, or unenforceable, the Parties shall endeavor to modify that provision in a manner that gives effect to the intent of the Parties in entering into the Contract.

## **23.0 Assignment**

- 23.1 The Contract shall be binding upon and inure to the benefit of the respective successors and assigns of the Center but shall not be assignable by the Contractor without the prior written authorization of the Center.
- 23.2 Where a provision of the Contract provides for the assignment of Intellectual Property to the Center, that provision shall be read as if the reference to the Center included such other Person as the Center may nominate as assignee of the Intellectual Property.

#### **24.0 Service of Notices and other Written Communications**

- 24.1 All Notices and other written communications arising out of The Contract shall be sent to the address for the Party shown in Schedule One, or such other address as one Party may Notify to the other.
- 24.2 Notices and written communications sent by post or courier shall be considered, in the absence of proof to the contrary, to have been delivered at the Party's address referred to in the preceding Sub Clause in the usual course of post. Notices and written communications sent by fax shall be considered, in the absence of proof to the contrary, to have been received at the address of the Party referred to in the preceding Sub Clause at the same time as their transmission; provided that all Notices and written communications delivered or transmitted outside the normal business hours of the Party to whom such Notice or written communication is addressed shall be considered to have been received on the business day next following actual delivery.

#### **25.0 Pre-Conditions to the Center Assuming Liability Under the Contract**

- 25.1 Notwithstanding any other provision of the Contract, it shall be an absolute pre-condition to the Center assuming any liability or obligation towards the Contractor in respect of the Project that the following events have occurred
- (i) all insurance arrangements required by the Contract have been put in place to the Center's satisfaction; and
  - (ii) all sub contracts shown in Schedule Five have been entered into; and
  - (iii) copies of all agreements referred to in Sub Clause 4.3 executed by the sub contractors listed in Schedule Five have been received by the Center; and
  - (iv) the Center has received satisfactory evidence that all Participating Partners are bound by the Contract; and
  - (v) the Center has received satisfactory verification as to the value of the in kind contribution (if any) of the Contractor shown in Schedule Three.
- 25.2 If the events listed in Sub Clause 25.1 have not occurred within thirty days of the Date of the Contract, or such longer period as the Center may Approve, then the Center may by Notice to the Contractor forthwith terminate the Contract.

#### **26.0 Authority to Enter into Contract**

- 26.1 The individuals executing this Agreement on behalf of their respective Parties hereby represent and warrant that they have the right, power, legal capacity, and appropriate authority to enter into The Contract on behalf of the entity for which they sign below.

IN WITNESS WHEREOF, the Parties have caused This Agreement to be duly executed as of the day and year first above written.

Middle East Desalination Research Center

By: Eng. Koussai Quteishat  
Title: Center Director

**Name of Contractor (organization)**

**By: Name of Signatory**  
**Title: (Title of Signatory)**

**SCHEDULE ONE**  
**CONTRACT DETAILS**

**Details of the Contractor**

Name of the Contractor: Insert Details

Names of Participating Partners: Insert Details

Name of Principal Investigator:

Contractor's address for service of Notices  
and other written communications  
under the Contract:

Names of Key Personnel & Contact Details:

**Details of The Center**

Name of Project Manager:

Center's address for service of Notices  
and other written communications under the  
Contract :

Middle East Desalination Research Center  
Building Number 2985  
Way Number 2840  
Shatti Al Qurm  
Muscat  
Sultanate of Oman

**Request For Proposals**

Terms of Tender [ **Insert Series** ]

## **SCHEDULE TWO**

### **SCOPE OF WORK -SUMMARY**

**Insert 1 to 2 page Summary comprising:**

**Project Title**  
**Research Objectives**  
**Key Tasks**  
**Deliverables**  
**Anticipated Results**

**SCHEDULE THREE**  
**FINANCIAL DETAILS**

**A. Budget Estimate Form**

(Insert final agreed budget in US\$)

COSTS			TOTAL US\$	CONTRIBUTIONS		
				MEDRC US\$	Contractor US\$	Sub-Contractor / Other US\$
<b>Direct Labor Costs</b>	<b>Hours</b>	<b>Rate \$</b>				
Name	Principle Invest.					
Name	Co-Investigator					
Name(s)	Research Asst.					
Name(s)	Technicians					
Name(s)	Secretary					
<b>Subtotal Direct Labor</b>						
Fringe benefits (@ ____ Direct Labor)						
Travel (* delineate)						
Materials and Rented Equipment						
Capital Equipment (**delineate)						
Computing & Consumables						
Other (***)						
<b>Total Direct Cost</b>						
<b>Indirect Cost (@ ____ of direct costs )</b>						
<b>TOTAL PROJECT COST</b>						

- \* -Delineate purpose of travel costs
- \*\* -Delineate capital equipment
- \*\*\* -Delineate other costs

**SCHEDULE THREE (Cont'd).**

Insert Cash Flow projection for Project

<b>B. Cash Flow Projection (US\$)</b>				
<b>Month from Project Start Up</b>	<b>Center Contribution</b>	<b>In-kind Contribution</b>	<b>Other</b>	<b>Total</b>
<b>Month 0</b>				
<b>Month 6</b>				
<b>Month 12</b>				
<b>Month 18</b>				

Insert Payment Schedule including any milestones or other events to which payment is linked

<b>C. Payment schedule (US\$)</b>			
<b>Payment</b>	<b>Month</b>	<b>Project Milestone</b>	<b>Total</b>
<b>Advance</b>			
<b>Final</b>			

## **SCHEDULE FOUR**

### **THE CONTRACT PROGRAM**

**Insert Agreed Contract Program**

**The contract program is defined by the description of key tasks, by their time schedule and duration of the project**

**SCHEDULE FIVE**  
**SUBCONTRACTORS**

(Insert names of subcontractors and a brief description of tasks to be undertaken)

**SCHEDULE FIVE**  
**SUB-CONTRACTOR’S AGREEMENT**

**As Required by Sub Clause 4.3**

This Agreement is made the [ ] of [ ] 2001 BETWEEN [Contractor] (“The Contractor”) of the one part and [Sub Contractor] (“The Sub Contractor”) of the other part.

The Contractor and Sub Contractor agree as follows:-

1. That the Sub Contractor has been provided with a copy of the Contract between The Contractor and the Middle East Desalination Research Center (“The Center”) dated the [insert date], save for those parts of the Contract dealing with his part of contract program budget and payment.
2. The Sub Contractor has read and understood the said contract and in particular the obligations and the liabilities of the Contractor to the Center. The obligations and liabilities apply in the same way to the Sub Contractor, in particular those according to Sub-Clauses 9.2,9.3,9.6 and 15.1.
3. The Sub Contractor undertakes that it will not by reason of any act neglect or omissions on its part neither put the Contractor in breach of any of the Contractor’s obligations nor make the Contractor liable to the Center under the said contract.
4. The Contractor undertakes to notify the Sub Contractor forthwith in writing of any change or amendment to the said contract.
5. The Contractor undertakes that within 14 days of the finalization of the Final Project Report to provide the Contractor with a final account on its project part according to Sub-Clause 9.5.

Signed \_\_\_\_\_ (The Contractor)

Signed \_\_\_\_\_ (The Sub Contractor)