

NON-DISCLOSURE AGREEMENT

THIS AGREEMENT is dated _____ (the "Effective Date") between:

- (1) BOURSA KUWAIT SECURITIES COMPANY (K.P.S.C.), a company organized and existing under the laws of the State of Kuwait, having its address at P.O. Box 22235, Safat 13083, Sharq, Mubarak Al-Kabeer Street, Block 1, Boursa Kuwait Building, 8th Floor, State of Kuwait (the "Target"), and
- (2) [_____], a company duly incorporated in _____
[_____] having its registered office at [_____] (the "Investor").

each a "Party," and the Target and Investor collectively, the "**Parties**".

BACKGROUND

- (A) Pursuant to the relevant provisions of the Kuwait Capital Markets Authority Law (Law No. 7 of 2010, as amended), the Kuwait Capital Markets Authority (the "**CMA**") has been charged with establishing a securities exchange company with the capital structure of the same ultimately being held as follows, i) not less than 6% and no more than 24% allocated to public entities which have the right to own shares, ii) not less than 26% and no more than 44% allocated to companies (each a "**Local Investor**") which are listed on the Kuwait Stock Exchange (as it then was, now Boursa Kuwait) in conjunction with an international securities exchange operator (an "**International Operator**"), or an International Operator acting solely, and iii) 50% allocated to Kuwaiti citizens;
- (B) In achieving the above, the CMA has embarked on a bidding process and have invited various bidders (including the Investor) to submit an expression of interest and a bid to the CMA for the Sale Shares.
- (C) The Investor has now submitted an expression of interest and is preparing to submit a bid as announced on 30 April 2018 and amended on 28 June 2018 by the CMA for the Sale Shares in the Target (the "**Proposed Transaction**"). Dates disclosed in the amended public announcement are superseded by any public communication through the CMA thereafter.
- (D) The Selling Shareholder and the Target wishes to ensure that Confidential Information revealed to the Investor in the course of the bidding process remains confidential and is not disclosed to any third party nor be used by the Investor for any purpose other than for the purposes of the submission of the Investor's bid under the Proposed Transaction.

NOW IT IS HEREBY AGREED AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATIONS

1.1 In this Agreement, and unless otherwise highlighted to the contrary, the definitions and rules of interpretation in this Clause apply.

“Confidential Information” has the meaning provided in Clause 2 (Investor's obligations);

“Copies” means copies of Confidential Information including, but not limited to, any document, electronic file, note, extract, analysis or any other way of representing or recording and recalling information which contains, reflects or is derived from Confidential Information;

“Sale Shares” means the shares held by the Selling Shareholder in the Target.

“Selling Shareholder” means the CMA;

“Subsidiary” in relation to a company (the holding company), any other company in which the holding company (or a person acting on its behalf) directly or indirectly holds or controls either:

- (a) a majority of the voting rights exercisable at general meetings of the company; or
- (b) the right to appoint or remove directors having a majority of the voting rights exercisable at meetings of the board of directors of the company, and
- (c) any company which is a Subsidiary of another company is also a Subsidiary of that company's holding company.

1.2. In this Agreement, unless the context otherwise requires words denoting persons shall include natural persons, companies, corporations, firms, partnerships, limited liability partnerships, joint ventures, consortium, trusts, voluntary associations and other incorporated and/or unincorporated bodies and other entities (in each case, whether or not having separate legal personality and irrespective of the jurisdiction in or under the law of which it was incorporated or exists).

2. INVESTOR'S OBLIGATIONS

2.1 In consideration for the Target providing the Investor access to Confidential Information, the Investor is obligated to:

- (a) it shall keep all Confidential Information confidential and not disclose or reveal any Confidential Information, whether directly or indirectly, to any person, other than as permitted under this Agreement;
- (b) it shall prevent the use or disclosure of the Confidential Information and it shall ensure that the Confidential Information is protected by security measures and a degree commensurate to the security measures and degree of care applicable to its own confidential information and shall ensure that the Confidential Information is properly protected against theft, damage, loss and unauthorised access. Without prejudice to the foregoing, the Investor agrees to ensure a degree of care that would apply to its own confidential information.

- (c) it shall not use or utilize neither directly or indirectly any Confidential Information for any purpose other than the Proposed Transaction and, without limitation to the foregoing, shall not use any such Confidential Information so as to procure any commercial advantage over the Target;
- (d) it shall not without the express prior written consent of the Target disclose any Confidential Information neither directly or indirectly to any person other than to such of its (i) officers, employees, professional advisers, consultants and authorised representatives who are necessarily required in the course of their duties to receive and consider the same for the purpose of participating in and/or evaluating the Proposed Transaction, (ii) bankers and potential investors and their professional advisers or consultants for the purpose of securing financing on relation to the Proposed Transaction (the Parties in Clause 2.1(d)(i) and (ii) are referred to as the **"Receiving Party"**) and (iii) to the extent permitted by Clause 3 (Forced Disclosure).
- (e) it shall procure that those of its clients, employees, professional advisers and authorised representatives to whom Confidential Information is disclosed as permitted under Clause 2.1 (d) shall observe the terms of this Agreement in all respects as if they were Party to it and the Investor shall be liable for breach of any of the terms of this Agreement by such persons as if it were the Investor which had breached that term; and
- (f) inform the Target immediately upon becoming aware or suspecting that an unauthorised person has become aware of Confidential Information.

2.2 The Investor acknowledges that some or all of the Confidential Information is or may be sensitive information and that the use of such information may be regulated or prohibited by applicable legislation and the Investor undertakes not to use any Confidential Information for any unlawful purpose.

2.3 The Investor shall procure that each of its group companies shall observe the terms of this Agreement in all respects as if they were a party hereto.

2.4 **"Confidential Information"** means:

- (a) information in whatever form (including written, oral, visual or electronic (whether located and/or hosted on any electronic platform, including, any online virtual data room) or on tape or disk or recordable device of whatsoever nature) relating to the Target and the Proposed Transaction and as referred to in this Agreement including, but not limited to, the entire contents of any virtual data room to which the Investor may be granted access in relation to the Proposed Transaction, any agreements, records, data, reports, correspondence, specifications, materials, customer and technical data, computer programs, customer information (including bank account information) names and expertise of employees, consultants, service providers and suppliers, know-how, formulas, processes, ideas, inventions (whether patentable or not), schematics and other technical, business, financial, customer and product development plans, forecasts, strategies and information and trade secrets), which to the extent previously, presently, or subsequently disclosed to the Investor; and

(b) the fact that discussions or negotiations are taking place between the Parties concerning the Proposed Transaction, the terms, conditions or status of any such discussions or negotiations or any of the transaction documents and the existence and contents of this Agreement; but excludes the information in the next sub-clause.

2.5 Information shall not be considered Confidential Information if:

- (a) it is or becomes public knowledge other than as a direct or indirect result of the information being disclosed in breach of this Agreement; or
- (b) the Investor can establish to the satisfaction of the Target that it found out the information from a source not connected with the Target and that the source is not under any obligation of confidence in respect of the information; or
- (c) the Investor can establish to the satisfaction of the Target that the information was known to the Investor before the date of this Agreement and that it was not under any obligation of confidence in respect of the information; or
- (d) the Parties agree in writing that it is not confidential.

2.6 The Investor must:

- (a) inform any natural person or entity to whom it discloses the Confidential Information that the information is confidential; and

2.7 The Investor may make only such Copies as are strictly necessary for the Proposed Transaction and must:

- (a) clearly mark and identify all Copies as confidential;
- (b) ensure that any and all Copies supplied to it or made by it can be separately identified from its own information; and
- (c) ensure that Copies within its control are protected against theft or unauthorised access and that no person discovers Confidential Information from the Investor unless authorised.

2.8 The Investor must immediately upon the Target's written request supply the Target with a list showing to the extent reasonably practical:

- (a) the location of Copies supplied to the Investor by the Target;
- (b) Copies that have been made by the Investor or Receiving Parties (except where the Copies contain insignificant extracts from or references to Confidential Information) and where they are held; and
- (c) the names and addresses of Receiving Parties and a copy of any agreements signed by them complying with Clause 2.1(e).

2.9 A senior officer of the Investor must, immediately upon the Target's written request, confirm in writing that it has destroyed or permanently erased all Copies supplied to it or made by it or any Receiving Party, other than Copies:

- (a) that contain insignificant extracts from, or references to, Confidential Information; or
- (b) that are only Copies because they refer to the Proposed Transaction; or

- (c) that the Investor is, or any Receiving Party are, required to keep by law, or
- (d) that contain no Confidential Information other than information disclosed under Clause 3 (Forced Disclosure),

provided always that any Confidential Information retained by the Investor or any Receiving Parties remains subject to the terms of this Agreement while it is retained by the Investor or any Receiving Parties, including after termination of this Agreement.

2.10 In the event where the Investor is a Local Investor, then it hereby consents to the disclosure of its identity to the International Operator by either the Target and/or the CMA (as the case may be).

3. FORCED DISCLOSURE

3.1 The Investor agrees (to the extent permitted by law) to inform the Target of the full circumstances of any required disclosure or upon becoming aware that Confidential Information has been disclosed in breach of this Agreement.

3.2 The Investor may disclose Confidential Information to the minimum extent required by:

- (a) any order of any court of competent jurisdiction or any competent judicial, governmental or regulatory body, or
- (b) the rules of any stock exchange on which the shares of Investor is listed; or
- (c) the laws or regulations of any country with jurisdiction over the affairs of the Investor.

3.3 Before the Investor discloses any information under this Clause, the Investor must (to the extent permitted by law):

- (a) inform the Target of the full circumstances of the disclosure and the information that will be disclosed;
- (b) give the Target a copy of a legal opinion indicating that disclosure is necessary;
- (c) consult with the Target as to possible steps to avoid or limit disclosure and take those steps where they would not result in significant adverse consequences to the Investor;
- (d) gain assurances as to confidentiality from the body to whom the information is to be disclosed; and
- (e) where the disclosure is by way of stock exchange announcement, agree with the Target regarding the wording in advance.
- (f) Upon disclosure, inform the entity to which the confidential information is disclosed of its confidential status and seek to obtain confidential treatment of such confidential information by such entity.

3.4 The Investor must cooperate with the Target in bringing any legal or other proceedings to challenge the validity of the requirement to disclose (at the Target's cost and expense).

3.5 If the Investor is unable to inform the Target before Confidential Information is disclosed, the Investor will (to the extent permitted by law) inform the Target immediately after the disclosure of the full circumstances of the disclosure and the information that has been disclosed.

4. TIME

- 4.1 This Agreement will commence from the Effective Date and shall continue for 5 years regardless of whether or not Investor completes the Proposed Transaction.
- 4.2 If the Investor does not acquire the Sale Shares, then its liability for breach of this Agreement shall not be affected.

5. RESTRICTIONS ON INVESTOR

- 5.1 The Investor shall not for a period of 3 years after the date of this Agreement:
- (a) offer employment to, enter into a contract for the services of, or attempt to entice away from the Target, any individual who is at the time of the offer or attempt, and was at the time the discussions concerning the sale of the Target were taking place, an employee holding an executive or managerial position with, or an officer of, any member of the Target; or
 - (b) procure or facilitate the making of any such offer or attempt by any other person.
- 5.2 Each of the covenants in this Clause are considered fair and reasonable by the Parties.

6. NO REPRESENTATIONS OR WARRANTIES

- 6.1 No representation or warranty, express or implied, is or will be made, and no responsibility or liability is or will be accepted by the Target or the Selling Shareholder, or by any of their respective directors, employees or professional advisers, as to, or in relation to, the accuracy or completeness of any Confidential Information made available to the Investor or the Investor's professional advisers. The Investor is responsible for making its own evaluation of such Confidential Information provided by the Target.
- 6.2 The Target and the Selling Shareholder shall be under no obligation to update or correct any inaccuracy in the Confidential Information or any other information supplied to the Investor or be otherwise liable to the Investor, their authorized recipients or any other person in respect of any such information.

7. INDEMNITY

- 7.1 The Investor will indemnify and hold harmless the Selling Shareholder, the Target and any of their employees, consultants, legal advisors, agents, and/or representatives (as the case may be) against any and all costs, losses, expenses, claims, demands, or liabilities (including legal expenses) of any nature whatsoever and howsoever arising out of or resulting from any breach or non-performance by the Investor of any of its obligations under this Agreement.
- 7.2 The Selling Shareholder and the Target are not liable to the Investor or to any person to whom the Investor discloses any misleading or inaccurate Confidential Information, and the Investor will as a result indemnify and hold harmless the CMA, the Target and any of their employees, consultants, legal advisors, agents, and/or representatives (as the case may be) against any and all costs, losses, expenses, claims, demands, or liabilities (including legal expenses) of any nature whatsoever and howsoever arising.

7.3 The Investor agrees that because of the valuable nature of the Confidential Information, damages may not be an adequate remedy for a breach of any term of this Agreement and Investor therefore agrees that the Target and Selling Shareholder are entitled to the remedies of injunctive relief, specific performance and other equitable relief for any threatened or actual breach of any term of this Agreement without proof of actual damage.

8. WHOLE AGREEMENT

8.1 This Agreement is the whole Agreement between the Parties and supersedes any arrangement, understanding or previous agreement between them relating to the subject matter covered by the agreement.

8.2 The Selling Shareholder and the Target are not liable to the Investor or to any person to whom the Investor discloses any misleading or inaccurate Confidential Information.

9. ASSIGNMENT

9.1 Except as provided otherwise, no person may assign any of its rights under this Agreement or any document referred to in it.

9.2 The Target may assign its rights to a successful purchaser of the Target and those persons will be entitled to enforce this Agreement as if they were the Target.

10. THIRD PARTY RIGHTS

10.1 Except as provided in this Clause, this Agreement is made for the benefit of the Parties to it and their successors and permitted assigns and is not intended to benefit any other person.

10.2 This Agreement is also made for the benefit of the Selling Shareholder, and they may enforce this Agreement as if they were the Target and a Party to this Agreement.

10.3 A Party may not terminate, rescind or vary this Agreement without the consent of the other Party.

11. SEVERANCE

11.1 If any provision of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions of this Agreement will remain in force.

11.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision will apply with whatever modification is necessary to make it valid, enforceable or legal.

12. VARIATION AND WAIVER

12.1 A variation of this Agreement must be in writing, approved in writing by the Selling Shareholder and signed by or on behalf of all Parties.

- 12.2 A waiver of any right under this Agreement is only effective if it is in writing and it applies only to the Party to which the waiver is addressed and the circumstances for which it is given, any waiver of any right of the Target should be approved by the Selling Shareholder.
- 12.3 A Party that waives a right in relation to one Party or who takes or fails to take any action against that Party does not affect its rights against any other person.
- 12.4 Rights arising under this Agreement are cumulative and do not exclude rights provided by law.

13. RELATIONSHIP OF THE PARTIES

- 13.1 This Agreement shall not be construed to constitute either Party as an Agent or Legal Representative or Partner of the other Party, and neither Party shall have the authority to bind the other Party.

14. NOTICES

- 14.1 Any notice, request, consent, approval or other document, instrument or communication required or which may be given hereunder shall be in writing and deemed delivered upon receipt if delivered personally or by email, upon confirming advice of transmission and receipt if a facsimile copy is delivered by facsimile, upon receipt if delivered by courier, and upon receipt by the intended recipient in readable form if sent by electronic mail. Each such notice, request, consent, approval or other document shall be addressed as follows:

If to the Target:

Attention:

Title:

Address:

Email:

If to the Investor:

Attention:

Title:

Address:

Email:

14.2 The Parties may change the address to which such notices may be sent, by sending notice of such change in the manner set forth above.

15. GOVERNING LAW AND DISPUTE RESOLUTION

15.1 This Agreement and all disputes and claims arising out its subject matter shall be governed by and construed in accordance with the laws of the State of Kuwait.

15.2 The Parties agree that the courts of the State of Kuwait are the most appropriate and convenient courts to settle any dispute and, accordingly, that they will not argue to the contrary.

15.3 Clause 15.2 is for the benefit of the Target only. As a result, the Target may take proceedings relating to a dispute arising under this Agreement ("**Proceedings**") in any other courts outside of Kuwait. To the extent allowed by law, the Target may take concurrent Proceedings in any number of jurisdictions.

IN WITNESS WHEREOF the Parties hereto have caused their duly authorized representative to execute 2 original copies of this Agreement or a counterpart hereof, all as of the date first above written. We hereby confirm our consent to this agreement by countersigning on this page and initialling and putting our company seal on all pages.

Signature:

Designation:

for and on behalf of:

Boursa Kuwait Securities Company K.S.C.P.

Signature:

Designation:

for and on behalf of: