



Ethiopian
Investment
Holdings

NON-DISCLOSURE AGREEMENT

between

ETHIOPIAN INVESTMENT HOLDINGS

(as the Disclosing Party)

and

.....

(as the Receiving Party)

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This **NON-DISCLOSURE AGREEMENT** (“Agreement”) is made this.....day of2022 or the date that any Confidential Information of a Disclosing Party is first made available to the Receiving Party whichever is the earlier (“Effective Date”).

BETWEEN

- (1) **ETHIOPIAN INVESTMENT HOLDINGS**, a holding company of the Federal Government of Ethiopia established under the Definitions of Powers and Duties of the Executive Organs of the Federal Democratic Republic of Ethiopia Proclamation No. 1263/2021 and the Definition of Objectives and Functions of the Ethiopian Investment Holdings Council of Ministers Regulation No. 487/2022, with its registered business address at *Arada* Sub-city, *Wereda* 09, Hilcoe Bldg., 5th Floor, Addis Ababa, Ethiopia (the “**Disclosing Party**” or “**EIH**”)
- (2) [FULL COMPANY NAME], incorporated and registered in [Country of incorporation] with company registration number [NUMBER] and whose registered office is at [REGISTERED OFFICE ADDRESS] (the “**Receiving Party**” or the “**Interested Party**”)

(hereinafter together referred to as the “**Parties**” and individually as a “**Party**”).

BACKGROUND

- (A) The Federal Democratic Republic of Ethiopia wishes to invite both international and domestic investors to participate in the tendering of 8 state-owned sugar enterprises. These enterprises are Omo Kuraz 1, Omo Kuraz 2, Omo Kuraz 3, Omo Kuraz 5, Arjo Dedessa, Kessem, Tana Beles and Tendaho.
- (B) The Government of Ethiopia (GoE) has issued an Invitation for Expression of Interest (IEOI) inviting sealed applications from Interested Parties to indicate their interest in playing a part in the tendering of the Sugar Enterprises.
- (C) The Receiving Party has expressed interest in participating in the Proposed Transaction.
- (D) The Parties intend to enter into discussions relating to the state and operations of the Sugar Enterprises which will involve the disclosure of Confidential Information by the GoE to the Interested Party.
- (E) The GoE wishes to ensure that any Confidential Information disclosed to the Interested Party in connection with the Proposed Transaction remains confidential and is not used by the Interested Party for any purpose other than the Permitted Purpose.
- (F) The Parties have agreed to comply with this Agreement in connection with the use and disclosure of the Confidential Information.

Agreed terms

1. Interpretation

1.1 The definitions and rules of interpretation in this Clause apply in this Agreement.

Business: the business and undertaking of the Sugar Enterprises.

Business Day: a day other than a Saturday, Sunday or public holiday in the Federal Democratic Republic of Ethiopia when banks in the Federal Democratic Republic of Ethiopia are open for business.

Confidential Information: has the meaning given to it in clause 2.1.

Copies: copies of Confidential Information including any document, electronic file, note, extract, analysis, study, plan, compilation or any other way of representing, recording or recalling information which contains, reflects or is derived or generated from, any Confidential Information.

Permitted Purpose: considering, evaluating, negotiating or advancing the Proposed Transaction.

Permitted Recipient: any person referred to in clause 4.1 to whom Confidential Information is disclosed by, or at the request of, the Interested Party.

Proposed Transaction: the invitation of both international and domestic investors to participate in the tendering of the Sugar Enterprises.

Representatives: in relation to the Parties, their employees, officers, representatives and advisers.

Sugar Enterprises: means Omo Kuraz 1, Omo Kuraz 2, Omo Kuraz 3, Omo Kuraz 5, Arjo Dedessa, Kessem, Tana Beles and Tendaho.

1.2 Clause headings do not affect the interpretation of this Agreement.

1.3 References to clauses are to the clauses of this Agreement.

1.4 A reference to **this Agreement** or any other agreement or document referred to in this Agreement, is a reference to this Agreement or such other agreement or document, in each case as varied from time to time.

1.5 A **person** includes a natural person, corporate or unincorporated body (whether or not having a separate legal personality).

1.6 This Agreement shall be binding on, and ensure to the benefit of, the Parties to this Agreement and their respective successors and permitted assigns, and references to any Party shall include that Party's successors and permitted assigns.

2. Confidential Information

2.1 In this Agreement, **Confidential Information** means all non-public, confidential and/or proprietary information (however recorded or preserved) disclosed to the Interested party or its Representatives by the Disclosing Party or its Representatives, whether before, on or after the date of this Agreement, in connection with the Proposed Transaction, including but not limited to:

- (a) the existence and terms of the agreement contained in this Agreement.
- (b) any information that would be regarded as confidential by a reasonable business person relating to:
 - (i) information concerning business activities, products, specifications, data, know-how, and compositions of the Sugar Enterprises;
 - (ii) designs, sketches, photographs, graphs, drawings, systems, structures and architectural plans of the Sugar Enterprises;
 - (iii) research and development, marketing or distribution methods of process of the Sugar Enterprises;
 - (iv) customers list, customer requirements, price list, product information, market studies, intentions and opportunities of the Sugar Enterprises;
 - (v) computer software and programs, database technologies trade secrets of the Sugar Enterprises;
 - (vi) historical financials and budgets, future projections of the Sugar Enterprises;
 - (vii) names and background of the personnel, and personnel training techniques of the Sugar Enterprises;
 - (viii) documents delivered in connection with the tendering process for the Sugar Enterprises and the information packets thereto;
- (c) information about the Sugar Enterprises; and
- (d) any information developed jointly by the Parties during the course of the tendering for the Sugar Enterprises.

but excluding any information referred to in clause 2.2.

2.2 Information is not Confidential Information if:

- (a) it is, or becomes, generally available to the public other than as a direct or indirect result of the information being disclosed by the Receiving Party or any other person in breach of this Agreement;

- (b) the Interested Party can prove that it received the information from a source that is not connected with the Disclosing Party or its Representatives and that such source was not under any obligation of confidence in respect of that information;
- (c) the Interested Party can prove that the information was lawfully in its possession before it was disclosed by the Disclosing Party and the Interested Party was not under any obligation of confidence in respect of that information; or
- (d) the Parties agree in writing that the information is not confidential.

3. Confidentiality obligations

3.1 The Interested Party has the duty and to cause its Representatives to perform the following obligations in respect of maintaining the Confidential Information received and use reasonable care not to disclose the Confidential Information to any third party, such care to be at least commensurate with the care exercised by the Interested Party with respect to preserving its own Confidential Information, namely:

- (a) keep the Confidential Information secret and confidential;
- (b) not use or exploit the Confidential Information in any way, except for the Permitted Purpose;
- (c) not, directly or indirectly disclose or make available any Confidential Information in whole or in part to any person, except as expressly permitted by, and in accordance with, the terms of this Agreement;
- (d) not make any Copies, except as expressly permitted by, and in accordance with, the terms of this Agreement;
- (e) not use, reproduce, transform or store the Confidential Information in an externally accessible computer or electronic information retrieval system, or transmit it in any form or by any means outside its usual place of business;
- (f) ensure that no person gets access to or obtains any Confidential Information from the Interested Party or its Representatives; and
- (g) inform the Disclosing Party or its Representatives immediately on becoming aware, or suspecting, that Confidential Information has been disclosed to, or otherwise obtained by, an unauthorized third party.

3.2 The Interested Party shall only make such Copies as are strictly necessary for the Permitted Purpose and shall:

- (a) clearly mark all Copies as confidential;
- (b) ensure that all Copies can be separately identified from their own information; and
- (c) ensure that all Copies within its control are protected against theft or unauthorized access.

- 3.3 Nothing in this Agreement shall be construed as:
- (a) creating any obligation on the part of the Disclosing party to disclose any Confidential Information to the Interested Party; and
 - (a) creating any obligation or an expectation on the part of either Party to enter into a business relationship with the other Party, or an obligation to refrain from entering into a business relationship with any third party or an obligation on the GoE to award the tender for the Proposed Transaction to the Interested Party.

4. Permitted disclosure

- 4.1 Provided it complies with its obligations under clause 4.2, the Interested Party may disclose Confidential Information to its Representatives or a Permitted Recipient.
- 4.2 Where Confidential Information is disclosed to a Representative or Permitted Recipient, the Interested Party shall:
- (a) inform such a Representative or the Permitted Recipient of the confidential nature of the Confidential Information before it is disclosed; and
 - (b) procure that the Representative or the Permitted Recipient shall, in relation to any Confidential Information disclosed to it, comply with this Agreement as if it were the Interested Party.
- 4.3 The Interested Party shall be liable for the actions or omissions of its Representatives in relation to the Confidential Information as if they were the actions or omissions of the Interested Party.
- 4.4 The Interested Party may disclose Confidential Information to the extent required by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, the Interested Party shall give the Disclosing Party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this Clause, the Interested Party shall take into account the Disclosing Party's reasonable requests in relation to the content of such disclosure.

5. Return or destruction of Confidential Information

- 5.1 If so requested by the Disclosing Party at any time in writing, the Interested Party shall promptly:
- (a) destroy or return all documents and materials containing, reflecting, incorporating, or based on any Confidential Information, that have been supplied to or generated by the Interested Party or its Representatives, including all Copies;
 - (b) erase all Confidential Information from its computer and communications systems and devices used by it, or which are stored in electronic form;

- (c) procure that its Representatives take the steps referred to in clause 5.1(a) and Clause 5.1(b) herein in relation to all Confidential Information in their possession; and
- (d) certify in writing to the Disclosing Party that it has complied with its obligations under clause 5.1 herein.

6. Indemnity

The Interested Party shall indemnify the GoE and its Representatives against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Receiving Party or its Representatives arising out of or in connection with any breach of this Agreement by the Interested Party or its Representative.

7. Reservation of rights and exclusion of warranties

- 7.1 Nothing in this Agreement shall impose an obligation on either Party to continue discussions or negotiations in connection with the Proposed Transaction, or an obligation on the GoE to disclose any information to the Interested Party (whether Confidential Information or otherwise).
- 7.2 All rights in the Confidential Information are reserved and none of the Confidential Information shall be the property of the Interested Party. The disclosure of Confidential Information to the Interested Party shall not give the Interested Party or any other person any licence or other right whatsoever in respect of any Confidential Information beyond the rights expressly set out in this Agreement.
- 7.3 The Interested Party acknowledges that the Confidential Information may not be accurate or complete and neither the GoE nor its Representatives make any warranty or representation (whether express or implied) concerning the Confidential Information, or its accuracy or completeness.

8. Inadequacy of damages

Without prejudice to any other rights or remedies that the Disclosing Party may have, the Interested Party acknowledges and agrees that damages alone would not be an adequate remedy for any breach of the terms of this Agreement by the Interested Party. Accordingly, the GoE shall be entitled to the remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of the terms of this Agreement.

9. Duration

- 9.1 The provisions of the Agreement shall continue in full force without limit.

9.2 Termination of this Agreement shall not affect any accrued rights or remedies to which a Party is entitled.

10. Entire agreement

10.1 This Agreement constitutes the entire agreement between the Parties and supersedes and extinguishes all previous and contemporaneous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

10.2 Each Party acknowledges that in entering into this Agreement it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement. Each Party agrees that it shall have no claim for innocent or negligent misrepresentation [or negligent misstatement] based on any statement in this Agreement.

11. Variation and waiver

11.1 No variation of this Agreement shall be effective unless it is in writing and signed by all the Parties (or their authorized representatives).

11.2 A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.

11.3 A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

12. Severance

If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement.

13. Counterparts

This Agreement may be executed in any number of counterparts, each of which, when executed, shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

14. Rights and remedies

Except as expressly provided in this Agreement, the rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

15. Governing law and jurisdiction

15.1 This Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of the Federal Democratic Republic of Ethiopia.

15.2 Each Party irrevocably agrees that the courts of the Federal Democratic Republic of Ethiopia shall have jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Agreement or its subject matter or formation.

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be executed by its duly authorized officer as of the date first written above.

For and on Behalf of Ethiopian Investment Holdings

For and on Behalf of
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