**MUTUAL NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENT**

**This Mutual Non-disclosure and Confidentiality Agreement** (hereinafter referred as "**NDA**”) is made and entered into on **<Date>**, 2023 (“Effective Date”), by and between:

**BRAC BANK PLC,** a banking company licensed under the Bank Companies Act, 1991 and incorporated as a public limited company by shares on May 20, 1999 under the Companies Act, 1994, of the People’s Republic of Bangladesh, having its registered office at Anik Tower, 220/B Tejgaon Gulshan Link Road, Tejgaon, Dhaka-1208, Bangladesh.

**AND**

**<Company name>**, <address>

**Background**

WHEREAS, BRAC Bank Limited and **<Company name>** (collectively, the “Parties” or individually a “Party”) desire to analyze and evaluate a possible transaction between them (the “Proposed Transaction”);

AND WHEREAS, each Party (“Disclosing Party”) contemplates furnishing certain business, technical, financial and other confidential information concerning the business and affairs of such Party to the other Party (“Receiving Party”) during the course of such analysis and evaluation; and

AND WHEREAS, each Disclosing Party desires to protect its business, technical, financial and other confidential information that is disclosed to each Receiving Party in accordance with the provisions of this NDA.

**NOW, THEREFORE**, in consideration for the promises and covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Definitions**:

In this NDA the following terms shall have the following meanings:

“**Confidential Information**” means all information, not generally known to the public, that relates to the business, technology, subscribers, customers, finances, plans, proposals or practices of the parties, market strategy and it includes (without limitation) the identities of subscribers, customers and prospective customers, budgets and projections, promotion and pricing strategies, all non- public financial information, and all information the Parties designate as “confidential” including the written communications between the Parties.

“**Disclosing Party**” means the party to this NDA disclosing the Confidential Information.

“**Receiving Party**” means the party to this NDA to whom the Confidential Information is disclosed.

**“Ownership of Confidential Information”** as between the Disclosing Party and the Receiving Party, the Disclosing Party shall be the sole and exclusive owner of all of its Confidential Information and any Derivatives thereof, whether created by the Disclosing Party, the Receiving Party or any third party, and no license or other rights to the Confidential Information or Derivatives are granted or implied hereby.

1. **SUPPLY AND USE OF INFORMATION**

In consideration of the disclosures contemplated by, and of the respective obligations set out in, this NDA, the Receiving Party agrees, save as otherwise expressly permitted by this NDA:

* 1. to keep the Disclosing Party’s Confidential Information, confidential;
  2. not to use the Disclosing Party’s Confidential Information except in connection with the Purpose; and
  3. not to disclose the Disclosing Party’s Confidential Information to any third party.

1. **CONFIDENTIALITY**
   1. It is hereby agreed that the discretion applied at the time of disclosure would provide the best protection of Confidential Information of either party. Accordingly, the Disclosing Party shall ensure that only such Confidential Information which serves the Purpose shall be disclosed to the Receiving Party.
   2. The Receiving Party shall protect the Confidential Information of the Disclosing Party through the exercise of the precautions set out in this NDA and with no less protection and care than it customarily uses in preserving and safeguarding its own confidential information.
   3. The Receiving Party agrees that it shall keep the Confidential Information of the Disclosing Party confidential in accordance with the terms of this Agreement subject to the exceptions in Clause 3.4 below, and the permitted disclosures in clause 3.5 below.
   4. This NDA shall not apply to Confidential Information which:
      1. is in or enters the public domain other than as a result of a breach of an obligation by the Receiving Party under this Agreement; or
      2. is or has been acquired from a third party who owes no obligation of confidence in respect of the information; or
      3. is or has been independently developed by the Receiving Party or was known to it prior to receipt; or
      4. the Disclosing Party discloses to any person or entity without confidentiality restrictions.
   5. Notwithstanding Clause 2 above, the Receiving Party may disclose any Confidential Information of the Disclosing Party in the following circumstances:
      1. with the prior written consent of the Disclosing Party; or
      2. on a need-to-know basis, internally within the Receiving Party’s organization or its auditors, legal and other advisers, but in such instance, the Receiving Party shall ensure that the persons to whom disclosure is made shall be agree in writing to be bound by the confidentiality obligation under this NDA; or
      3. to its insurers or legal advisers in relation to any actual, potential or threatened dispute in connection with this NDA; or
      4. to the extent such disclosure is required by any court of competent jurisdiction, or by a governmental or regulatory authority, or where there is a legal duty, requirement to disclose provided that, without breaching any legal, regulatory or professional requirement, the Receiving Party gives prior prompt notice in writing, where practicable and lawful, to the Disclosing Party of such disclosure.
   6. The Receiving Party shall return to the Disclosing Party any and all records, notes and other materials in whatever form in its possession relating to Confidential Information, immediately upon demand in writing by the latter. The Receiving Party shall nevertheless be entitled to retain copies of the Confidential Information for back up purposes or for its records in compliance with law; in which case the obligation of confidentiality shall remain valid and binding for a period of 06 years from expiration of this NDA.
2. **TERM AND TERMINATION**

The term of this NDA shall commence on the Effective Date and continue until and unless terminated by either Party. Either Party may terminate this NDA upon 30 (Thirty) days’ written notice of such termination to the other Party without assigning any reason. The Receiving Party’s obligation with respect to confidentiality shall survive for a period of 06 years from termination of this NDA.

1. **NO WARRANTY**

All Confidential Information is provided on an “as is” basis and without any warranty, express, implied or otherwise, regarding its accuracy, completeness or performance. Disclosing Party makes no representation or warranty as to the accuracy or completeness of the Confidential Information and the Receiver agrees that the Discloser and its employees and agents shall have no liability to the Receiver resulting from any use of the Confidential Information.

1. **DAMAGES**

The Parties agree that money damages will not be a sufficient remedy for any breach of the terms of this NDA and, without prejudice to any other remedies which may be available to Disclosing Party or rights to judicial relief it may otherwise have at law or in equity, Disclosing Party shall be entitled to seek specific performance and injunctive or other equitable relief in the event of a breach or threatened breach of any provisions of this NDA. The Parties further agree that neither Party shall be liable to the other for any indirect or consequential losses or damages, including (without limitation) loss of profit and punitive damages.

1. **GENERAL**
   1. No delay by either party in enforcing any of the terms or conditions of this NDA shall affect or restrict that party’s rights and powers arising under this NDA.
   2. This NDA constitutes the entire understanding of the Parties and shall not be amended or modified except by written instrument duly executed by each of the Parties hereto.
   3. If any provision of this NDA is determined to be invalid in whole or in part, the remaining provisions shall continue in full force and effect as if this NDA had been executed without the invalid provision.
   4. Neither Party may assign its rights or obligations under this NDA.
   5. All notices under this NDA shall be in writing and either delivered personally, sent by first class mail, express carrier or by confirmed facsimile transmission to the address of the Parties as set forth above. In the case of first class mail, notices shall be deemed given on the second business day after posting and in the case of express carrier or by confirmed facsimile transmission, on the date of delivery or transmission, as the case may be.
   6. This NDA shall be governed by and construed in accordance with Bangladesh laws without reference to the conflicts of laws principles and any dispute arising from it shall be subject to the exclusive jurisdiction of the Courts of Bangladesh.
   7. This NDA may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute the same NDA.

IN WITNESS WHEREOF, the Parties have authorized this NDA to be signed by their respective representatives, effective as of the date first set forth above.

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| SIGNED for and on behalf of:  **BRAC Bank PLC**  **Signature:**  Name:  Title:    **Witness:**  Signature:  Name:  Title: | SIGNED for and on behalf of:  **<Company name>**  **Signature:**  Name:  Title:    **Witness:**  Signature:  Name:  Title: |