

MUTUAL NON DISCLOSURE AND CONFIDENTIALITY AGREEMENT

This MUTUAL NON DISCLOSURE AND CONFIDENTIALITY AGREEMENT (hereinafter referred to as "this Agreement")

WHEREAS:

The Parties foresee that each of them would disclose certain Confidential Information (as defined herein) to the other in the course of the negotiations, discussions and transactions envisaged between them.

NOW THEREFORE IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES AND THIS AGREEMENT WITNESSETH AS UNDER

1. Definitions

The following terms shall, unless expressed otherwise in this Agreement, have the following meanings-

- (a)** "Confidential Information" means, with respect to a Party, any and all information in written, representational, electronic, verbal or other form relating directly or indirectly to the present or potential business, operations or financial condition of or relating to the Party (including, but not limited to, information identified as being proprietary and/or confidential or pertaining to technology, training methodologies, production techniques, operations, assets, lenders, joint ventures, associates, regulatory matters, litigation, pricing, marketing plans or strategy, volumes, customers and suppliers lists, wholesaler and retailers, distributors and agents, employees, accounts, financial matters or data, intellectual property including mock-ups, specifications and designs, computer software, hardware, maintenance and any information which might reasonably be presumed to be proprietary or confidential in nature) excluding any such information which (i) is known to the public (through no act or omission of the Receiving Party in violation of this Agreement); (ii) is lawfully acquired by the Receiving Party from an independent source having no obligation to maintain the confidentiality of such information; (iii) was legitimately known to the Receiving Party prior to its disclosure under this Agreement; (iv) was or is independently developed by the Receiving Party without breach of this Agreement; or (v) is required to be disclosed by governmental or judicial order, in which case the Party so required shall give the other Party prompt written notice and use reasonable efforts to ensure that such disclosure is accorded confidential treatment and also to enable such other Party to seek a protective order or other appropriate remedy at such other Party's sole cost and endeavour.
- (b)** "Disclosing Party" means the Party which gives Confidential Information to the Receiving Party under this Agreement.
- (c)** "Intellectual Property" means all intellectual property and/or rights owned by a Party including but not limited to patents, trademarks, service marks, logos, trade names, corporate names, brand names, computer software, designs, specifications, mock-ups, applications, know how, techniques, methodologies, processes, information, drawings, plans, copyrights, trade descriptions, slogans, symbols, emblems, insigne and other identifying marks, whether registered or not, and rights to apply for any of the foregoing, and all pending applications thereof in any part of the world.
- (d)** "Party" shall mean bKash or Second Party and "Parties" shall mean bKash and Second Party collectively.

- (e) "Purpose" shall mean to ensure confidentiality of Confidential Information of the respective Party disclosed during the negotiations, discussions and transactions between the Parties with the possibility of them entering into a formal agreement.
- (f) "Receiving Party" means the Party which receives Confidential Information from the Disclosing Party under this Agreement.

2. Interpretations

Unless specified otherwise in this Agreement:

- (a) Words importing persons or parties shall include natural persons, firms and corporations and any organization having legal capacity, as applicable.
- (b) Words importing the singular include the plural and vice versa where the context so requires.
- (c) References to any law shall include such law as are from time to time enacted, amended, supplemented or re-enacted.
- (d) Reference to any gender includes a reference to all other genders.
- (e) References to the words "include" or "including" shall be construed without limitation.
- (f) References to this Agreement or any other agreement, deed or other instrument or document shall be construed as a reference to such agreement, deed or other instrument or document as the same may from time to time be amended, varied supplemented or novated.
- (g) The Headings and Titles in this Agreement are indicative and shall not be deemed parts thereof or be taken into consideration in the interpretation or construction of this Agreement.
- (h) The recitals contained herein shall constitute an integral and operative part of this Agreement.

3. Confidentiality

3.1 The Parties recognize that in the course of negotiations, discussions and/or transactions envisaged between them, each of them shall be privy to certain Confidential Information relating or belonging to the other Party. In consideration of the mutual benefits accruing to the Parties from their association, each Party hereto agrees:

- (a) that it shall not, without the prior written permission of the other Party, directly or indirectly disclose or cause to be disclosed any Confidential Information of such other Party to any third party;
- (b) that it shall take all steps as may be reasonably necessary to protect the integrity of the Confidential Information of the other Party and to ensure against any unauthorized disclosure thereof;
- (c) that it shall promptly inform the other Party of any potential or accidental disclosure of Confidential Information of the other Party and shall take all steps, together with the other Party, to retrieve and protect the said Confidential Information;
- (d) that it shall ensure that all its employees and/or representatives or other persons who are given access to the Confidential Information of the other Party shall at all times be bound by legally valid and direct written non-disclosure obligations on the same terms as those contained in this Agreement, if necessary;

- (e) that it shall use the Confidential Information of the other Party only for the Purpose for which it was provided and shall not profit from the same in an unauthorized manner to the exclusion of the other Party; and
- (f) that it shall treat all Confidential Information of the Disclosing Party with at least the same degree of care as Receiving Party accords its own Confidential Information.

3.2 If at any time demanded by the other Party in writing, each Party shall return to the other Party (to an authorized representative as intimated by the requiring Party) all Confidential Information of the other Party and destroy all copies thereof in the possession or under the control of the Party within 3 (three) business days and provide written confirmation of the same.

3.3 Each Party agrees not to make any press release or otherwise publicize the existence, or any of the terms, of this Agreement, any memorandum of understanding, agreement or other writing executed between the Parties without the prior written consent of the other Party.

3.4 The Receiving Party undertakes that it shall exercise at least such reasonable care to protect the Confidential Information of the Disclosing Party as it exercises for its own Confidential Information.

4. Duration

This Agreement shall remain valid in perpetuity from the date of execution of this Agreement, unless terminated earlier pursuant to clause 8 of this Agreement by either of the Parties.

5. Intellectual Property

5.1 Nothing herein shall in any manner grant a Party any right, title, assignment, license or interest in respect of any Intellectual Property belonging to or devised by the other Party.

5.2 All the Intellectual Property rights of the respective Parties shall remain the property of such Parties. The Parties shall obtain written approval of the other Party for all advertisements, publications and communications including or referring to the Intellectual Property rights.

6. Non Solicit

During the period of this Agreement or any business arrangements or other agreements between the Parties, whichever is longer, and for 12 (twelve) months thereafter, neither Party shall, without the prior written consent of the other Party, employ or recruit or utilise the services of or solicit in any manner whatsoever, directly or indirectly, any person that is employed by the other Party, whether on a freelance, temporary or permanent basis. For the purposes hereof, general advertisements seeking employees to fill positions shall not be considered solicitation.

7. Representations and Warranties

7.1 Each Party warrants and represents that it has full power and authority to enter into and fully perform its/his obligations under this Agreement.

7.2 Except for the above, no other warranties have been made by either Party under this Agreement and all information exchanged under this Agreement is provided "as is". The Disclosing Party shall not be in any way responsible for any decisions or commitments made by Receiving Party on the basis of the Disclosing Party's Confidential Information.

8. Termination

8.1 This Agreement may be terminated by either Party:

- i. at any time by giving 30 (thirty) days' prior written notice to the other Party without assigning any reason thereof; or
- ii. by giving 7 (seven) days' written notice to the other Party, if any Party breaches a performance, representation, warranty or material obligation of this Agreement and fails to cure the breach within 7 (seven) days from the receipt of a written request to cure from the non-breaching Party; or

8.2 Notwithstanding any other rights and remedies provided elsewhere in this Agreement, on termination of this Agreement:

- i. Neither Party shall represent the other Party in any of its dealings.
- ii. Neither Party shall intentionally or otherwise commit any act that would make a third party believe that the other Party is still associated with the former Party in terms of this Agreement.

9. Indemnification

Each Party ("Breaching Party") shall at all times hereafter indemnify and keep the other Party ("Non-Breaching Party") fully indemnified against all losses, damages, costs, charges, expenses, interests and disbursements of any nature whatsoever arising out of third party claims, demands, actions or proceedings, which the Non-Breaching Party may pay, incur, suffer or sustain or be liable to pay, incur, suffer or sustain as a result or consequence, direct or indirect, of any breach or failure to perform any of the provisions of this Agreement by the Breaching Party or by its employees and/or representatives.

10. Dispute Resolution

In the event of any dispute arising out of or in connection with this Agreement, the Parties hereto shall consult and negotiate with each other in good faith to settle the dispute. If the Parties are unable to reach an amicable settlement within 30 (thirty) days after the dispatch of dispute notice by the aggrieved or either Party, each Party hereby irrevocably and unconditionally consent to submit to the exclusive jurisdiction of the courts of Dhaka, Bangladesh for any actions, suits or proceedings arising out of or relating to this Agreement.

11. Miscellaneous

11.1 As the damages may be difficult to ascertain in case of any breach of confidentiality, intellectual property and/or non-solicit provisions stated above, the Parties agree that, without limiting any other rights and remedies lawfully available to the Parties, an injunction and/or specific performance and/or such other relief as may be proper (including monetary damages if appropriate) may be sought against a Party if it breaches or fails to perform or threatens to breach or threatens non-performance of this Agreement.

11.2 This Agreement shall be governed exclusively by the laws of Bangladesh.

11.3 If any term or provision of this Agreement is determined to be illegal, unenforceable, or invalid in whole or in part for any reason, such illegal, unenforceable, or invalid provision(s) or part(s) thereof shall be stricken from this Agreement and such stricken provision or part shall not affect the legality, enforceability, or validity of the remaining provisions or part(s) thereof of this Agreement.

11.4 No failure or delay by either Party in exercising or enforcing any right, remedy or power herein shall operate as a waiver thereof, nor shall any single or partial exercise or enforcement of any right, remedy or power preclude any further exercise or enforcement of any other right, remedy or power.

11.5 The obligations of the Parties under this Agreement shall survive after the termination of the relationship between the Parties for a period of 03 (three) years. Upon termination of any relationship between the Parties, the Receiving Party will promptly deliver to the Disclosing Party, without retaining any copies (whether in soft copy or in hard copy), all documents and other materials furnished by the Disclosing Party and the Receiving Party shall also destroy or delete the Disclosing Party's Confidential Information and certify to the Disclosing Party in writing that it has done so.

11.6 No amendment hereof shall be considered to be validly made unless the same are in writing and duly executed by both Parties.

11.7 Any notice and other communications required to be sent under this Agreement shall be in writing in English and shall be sent by prepaid registered post, to the addresses as specified below:

(a) In case of notices to bKash:

Attention: Legal Department

Address: Shadhinata Tower, Bir Sreshtha Shaheed Jahangir Gate, 546, Dhaka Cantonment, Dhaka-1206, Bangladesh

Telephone: +88 02 44870087

Email: legal@bkash.com

Notices shall be deemed to be effectively delivered on the 5th (fifth) day from the date of registered post. A copy of the notice shall also be sent to the designated email address of the other Party along with the registered post. The addresses and names of persons at which such notices are to be delivered/dispached to may be changed from time to time by similar notice in writing.

11.8 This Agreement constitutes the entire Agreement with respect to the Confidential Information disclosed herein and supersedes all prior or contemporaneous oral or written Agreements concerning such Confidential Information. This Agreement may only be changed/amended/modified by mutual agreement of the Parties in writing.