**Mutual Non-disclosure and Confidentiality Agreement**

**THIS AGREEMENT** on mutual non-disclosure and confidentiality (the “**Agreement**”) is made this XX XX 2024.

**Between:**

**XX [⬤][⬤]** (the “**Company**”), a company organised and existing under XX law, having its registered seat at **[⬤][⬤]**, registered under the identification code: **[⬤] [⬤]**, represented by its XX, **[⬤][⬤]**;

JSC PASHA Bank Georgia (the ‘’Bank’’), the Bank organised and existing under Georgian law, having its registered seat at 37M Chavchavadze Avenue, Tbilisi 0179, Georgia registered under the identification code: 404433671, represented by its Chairman of the Board of Directors, Chief Executive Officer, Ramil Imamov;

Each of the Company and the Bank referred to as a “Party”, and, collectively, the “Parties”.

Whereas, each of the Party wishes and intends to disclose to the other Party Confidential Information in relation to the Purpose and each of the Party wishes to ensure that the other Party maintains the confidentiality of its Confidential Information,

**Now, therefore**, in consideration of the benefits to the Parties of the disclosure of the Confidential Information, the Parties hereby agree to comply with the following terms in connection with the use and disclosure of Confidential Information.

# Definitions and interpretation

## Terms and definitions used in the Agreement, its appendices and in other documents drawn up by the Parties in connection with performance of this Agreement shall have the following meaning, unless it expressly follows otherwise from the context of the document:

* + 1. Business Day means a day (other than a Saturday, Sunday or public holiday) when the Company and the Bank in Tbilisi are open for business.
    2. Confidential Information means all confidential information (however recorded, preserved or disclosed) disclosed by a party or its employees, officers, representatives or advisers (together, its Representatives) to the other party and that party's Representatives before or after the date of this Agreement including but not limited to:

### The fact that discussions and negotiations are taking place concerning the Purpose and the status of those discussions and negotiations;

### The existence and terms of this Agreement;

### Any information that would be regarded as confidential by a reasonable business person relating to:

#### The business, affairs, Personal Data, customers, clients, employees, suppliers, plans, intentions, or market opportunities of the Disclosing Party or any of the Disclosing Party's Affiliates; and

#### The operations, processes, product information, know-how, designs, trade secrets, or software of the Disclosing Party or any of the Disclosing Party's Affiliates;

#### any information (however recorded, preserved or disclosed) owned and disclosed by the Disclosing Party or its Representative to the Recipient or the Recipient’s Representatives;

### Any information or analysis derived from Confidential Information;

but not including any information that:

### Is or becomes generally available to the public other than as a result of its disclosure by the Recipient or its Representatives in breach of this Agreement; or

### Was available to the Recipient on a non-confidential basis prior to disclosure by the Disclosing Party; or

### Was lawfully in the possession of the Recipient before the information was disclosed to it by the Disclosing Party; or

### The parties agree in writing is not confidential or may be disclosed; or

### Is developed by or for the Recipient independently of the information disclosed by the Disclosing Party.

* + 1. Disclosing Partymeans the Person which is a Party to this Agreement which discloses or makes available directly or indirectly Confidential Information.
    2. Affiliate means with the respect to any Person, any Person directly or indirectly controlling, controlled by or under common control with that Person.
    3. Control means the power to direct the activities, decisions, management or policies of a Person, directly or indirectly, whether through the ownership of shares or other securities, by contract or otherwise.
    4. Personal Data – any information which is related to an identified or identifiable natural person.
    5. Purpose means the Company will render services to the Bank which is described under the engagement letter which is signed between the parties separately.
    6. Recipient means a Party to this Agreement which receives or obtains directly or indirectly Confidential Information.
    7. Representativemeans any directors, officers, employees, agents, advisers and other representatives (including without limitation attorneys, accountants, consultants, financial advisors and auditors) of the Recipient.

## Clause, schedule and paragraph headings shall not affect the interpretation of this Agreement.

## A **Person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors and permitted assignees.

## The schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the schedules.

## Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.

## A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment, and includes any subordinate legislation for the time being in force made under it.

## Any obligation in this Agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.

## References to clauses and schedules are to the clauses and schedules of this Agreement; references to paragraphs are to paragraphs of the relevant schedule.

# Representations and Warranties

## By signing this Agreement the Parties represent and warrant that:

* + 1. The Parties are fully authorised to sign or execute this Agreement and perform any and all obligations hereunder;
    2. The information submitted to the other Party is true, accurate and complete in all material respects;
    3. The Parties have and will maintain during the Term (as defined below) all licenses and authorizations necessary to perform their obligations foreseen hereunder;
    4. The Parties are legally capable to sign the present Agreement and there is no restriction or obligation binding on the Party which prohibits or limits the Party’s performance under this Agreement.
    5. Performing any action(s) under the Agreement shall not violate any provision of other agreement(s) or commitment(s), if any, undertaken by the Parties, nor any statute, regulation, rule, injunction, judgment, order, decree, ruling, or other restriction of any state, state agency or other regulatory body, or any court or arbitrary body, to which the Parties are subject, or conflict with, result in breach of, constitute a default under any agreement, contract, license, instrument or other arrangement to which the Company and the Company are a party;
    6. The Parties are not engaged in or threatened by any litigation and/or legal proceeding, the outcome of which might adversely affect their financial position;
    7. The Parties are not involved, directly or indirectly, in any illegal activity (including, without limitation, money laundering, weapons trade, drug trafficking and terrorism) under the laws of any jurisdiction.

## These Representations and Warranties shall be deemed to be in effect during the entire term of this Agreement.

## The Parties acknowledge and agree that they conclude the present Agreement based on the above statements, guarantees and commitments and regard them as terms of the Agreement. Therefore, any material violation of the present statements, guarantees and commitments shall represent sufficient basis for the non-breaching Party to refuse or suspend the performance of the Agreement.

# Obligations of confidentiality

## The Recipient shall keep the Disclosing Party's Confidential Information confidential and, except with the prior written consent of the Disclosing Party, shall, and shall procure that he/she/it and/or his/her/its Representatives shall:

* + 1. Not use or exploit the Confidential Information in any way except for the Purpose;
    2. Not disclose or make available the Confidential Information in whole or in part to any third Party, except as expressly permitted by this Agreement;
    3. Not copy, reduce to writing or otherwise record the Confidential Information except as strictly necessary for the Purpose (and any such copies, reductions to writing and records shall be the property of the Disclosing Party);
    4. 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 whatsoever outside of its usual place of business;
    5. Keep separate the Confidential Information from all documents and other records of the Recipient;
    6. Apply the same security measures and degree of care to the Confidential Information as the Recipient applies to its own confidential information, which the Recipient warrants as providing adequate protection from accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, copying or use;
    7. Keep a written record of: any document or other Confidential Information received from the other in tangible form; any copy made of the Confidential Information; record logins to Confidential Information, including the information such as login ID, date, time; and
    8. Ensure that any document or other records containing Confidential Information shall be kept at its premises and shall not remove or allow to be removed such document or records from its premises.

## The Recipient may only disclose the Disclosing Party's Confidential Information to those of its Representatives who need to know this Confidential Information for the Purpose, provided that:

### It informs such Representatives of the confidential nature of the Confidential Information before disclosure and obtains from them enforceable undertakings to keep the Confidential Information confidential in terms at least as extensive and binding upon the Representatives as the terms of this Agreement are upon the Parties; and

### At all times, it is responsible for these Representatives' compliance with the obligations set out in this Agreement.

## A Party may disclose Confidential Information to the extent that such Confidential Information is required to be disclosed 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, it gives the other Party as much notice of this disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 3.3, it takes into account the reasonable requests of the other Party in relation to the content of this disclosure.

## The Recipient shall establish and maintain adequate security measures (including any reasonable security measures proposed by the Disclosing Party from time to time) to safeguard the Confidential Information from unauthorised access or use.

## No Party shall make, or permit any person to make, any public announcement concerning this Agreement, the Purpose or its prospective interest in the Purpose without the prior written consent of the other Party (such consent not to be unreasonably withheld or delayed) except as required by law or any governmental or regulatory authority or by any court or other authority of competent jurisdiction. No Party shall make use of the other Party's name or any information acquired through its dealings with the other Party for publicity or marketing purposes without the prior written consent of the other Party.

## The duty of confidentiality shall remain in force after termination of this Agreement.

## The Recipient shall notify the Disclosing Party via email without unnecessary delay no later than within 24 hours upon having received knowledge of any Confidential Information security breach including the nature and type of the breach, the data affected or likely to be affected, the date or period of the breach, the likely consequences of the breach, and, where appropriate, measures to reduce potential negative consequences.

## The Recipient shall make available to Disclosing Party all information necessary to demonstrate compliance with the obligations laid down in this Agreement and allow for and contribute to audits, including inspections, conducted by the Disclosing Party.

# Return of information

## If either Party decides not to become, or continue to be involved in the Purpose with the other Party and/or at the request of the Disclosing Party, the Recipient shall:

* + 1. Immediately destroy or return to the Disclosing Party all documents and materials (and any copies) containing, reflecting, incorporating, or based on the Disclosing Party's Confidential Information;
    2. Erase all the Disclosing Party's Confidential Information from its computer systems or which is stored in electronic form (to the extent possible); and
    3. Certify in writing to the Disclosing Party that it has complied with the requirements of this clause, provided that a Recipient may retain documents and materials containing, reflecting, incorporating, or based on the Disclosing Party's Confidential Information (except personal data) to the extent required by law or any applicable governmental or regulatory authority and to the extent reasonable to permit the Recipient to keep evidence that it has performed its obligations under this Agreement. The provisions of this clause 4 shall continue to apply to any such documents and materials retained by the Recipient, subject to clause 7.1.
    4. Assist the Disclosing Party to monitor the compliance of the Recipient with the requirements of this clause.

## If the Recipient develops or uses a product or a process which, in the reasonable opinion of the Disclosing Party, might have involved the use of any of the Disclosing Party's Confidential Information, the Recipient shall, at the request of the Disclosing Party, supply to the Disclosing Party information reasonably necessary to establish that the Disclosing Party's Confidential Information has not been used or disclosed.

# Reservation of rights and acknowledgement

## All Confidential Information shall remain the property of the Disclosing Party. Each Party reserves all rights in its Confidential Information. No rights, including, but not limited to, intellectual property rights, in respect of a Party's Confidential Information are granted to the other Party and no obligations are imposed on the Disclosing Party other than those expressly stated in this Agreement.

## Except as expressly stated in this Agreement, no Party makes any express or implied warranty or representation concerning its Confidential Information, or the accuracy or completeness of the Confidential Information.

## The disclosure of Confidential Information by the Disclosing Party shall not form any offer by, or representation or warranty on the part of, the Disclosing Party to enter into any further agreement in relation to the Purpose, or the development or supply of any product or service to which the Confidential Information relates.

## The Recipient acknowledges that damages alone would not be an adequate remedy for the breach of any of the provisions of this Agreement. Accordingly, without prejudice to any other rights and remedies it may have, the Disclosing Party shall be entitled to the granting of equitable relief (including without limitation injunctive relief) concerning any threatened or actual breach of any of the provisions of this Agreement.

## The Recipient shall be liable to the Disclosing Party for the actions or omissions of his/her/its Representatives under this Agreement, as if they were the actions or omissions of the Recipient.

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# Warranty and indemnity

## Each Disclosing Party warrants that it has the right to disclose its Confidential Information to the Recipient and to authorise the Recipient to use such Confidential Information for the Purpose.

## Each Recipient shall indemnify and keep fully indemnified the Disclosing Party and any and all of its Affiliates at all times against all liabilities, costs (including legal costs on an indemnity basis), expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and other reasonable costs and expenses suffered or incurred by the Disclosing Party and/or any and all of its Affiliates) arising from any breach of this Agreement by the Recipient and from the actions or omissions of any Representative of the Recipient.

# Term and termination

## This Agreement shall come into force and effect upon its signing by both Parties and shall have a term of 1 year. Either Party may terminate this Agreement at any time by giving thirty (30) days' prior written notice to the other Party; the notice period shall start on the day following the delivery of the notice to the other Party.

## If either Party decides to continue to be involved in the Purpose with the other Party it shall notify the other Party in writing immediately but no later than 2 (two) weeks before the maturity term of the Agreement. The obligations of each Party shall, notwithstanding any earlier termination of negotiations or discussions between the Parties in relation to the Purpose, continue for an indefinite period of time.

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

# damages

## In the event of a breach of the confidentiality obligations as outlined in this Agreement by the Recipient, the Recipient shall be liable for and shall indemnify the Disclosing Party against all losses, damages, costs, and expenses incurred by the Disclosing Party as a result of such breach. This includes, but is not limited to, direct, indirect, consequential, and punitive damages, as well as, penalties, sanctions, loss of profit, reputation, and business opportunities arising from the unauthorized use or disclosure of the Confidential Information.

## The Recipient acknowledges that the unauthorized disclosure or misuse of Confidential Information may cause irreparable harm to the Disclosing Party for which monetary damages alone may not be a sufficient remedy. Therefore, in addition to monetary damages, the Disclosing Party shall have the right to seek injunctive relief or other equitable remedies to prevent or mitigate the effects of such breach.

## In the event of a breach of the confidentiality obligations under this Agreement by the Recipient, the Recipient shall, in addition to the damages given in clause 8.1, also be liable to pay a penalty to the Disclosing Party. This penalty is set at a fixed amount of 100,000 (hundred thousand) GEL for any breach of the confidentiality provisions. The penalty shall be payable within thirty (30) days following the Recipient’s receipt of a written demand from the Disclosing Party. The payment of this penalty is in addition to, and not in lieu of, any other rights or remedies that may be available to the Disclosing Party under this Agreement or under applicable law, including but not limited to seeking compensatory damages, injunctive relief, or specific performance.

# Entire agreement and variation

## This Agreement constitutes the entire agreement between the Parties and supersedes and extinguishes all previous drafts, agreements, arrangements and understandings between them, whether written or oral, relating to its subject matter.

## Each Party agrees that it shall have no remedies in respect of any representation or warranty (whether made innocently or negligently) that is not set out in this Agreement. Each Party agrees that its only liability in respect of those representations and warranties that are set out in this Agreement (whether made innocently or negligently) shall be for breach of contract.

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

## 

# No waiver

## Failure to exercise, or any delay in exercising, any right or remedy provided under this Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict any further exercise of that or any other right or remedy.

## No single or partial exercise of any right or remedy provided under this Agreement or by law shall preclude or restrict the further exercise of that or any other right or remedy.

## A Party that waives a right or remedy provided under this Agreement or by law in relation to another Party, or takes or fails to take any action against that Party, does not affect its rights in relation to any other Party.

# Assignment

## Each Party shall be entitled to assign, transfer and/or sub-license its rights (but not its obligations) under this Agreement to any of its Affiliates without the other Party’s consent.

# Notices

## Any notice or other communication in connection with this Agreement shall be in writing in Georgian and/or in English and delivered to the other Party at the contact data specified below:

## **To the Company**:

## Attention: **[⬤][⬤]**

## E-mail: **[⬤][⬤]**

## Adress: **[⬤][⬤]**

## **To the Bank:**

## Attention: Parvin Mammadov, Levan Aladashvili

## E-mail: [P.Mammadov@pashabank.ge](mailto:P.Mammadov@pashabank.ge) ; [Levan.Aladashvili@pashabank.ge](mailto:Levan.Aladashvili@pashabank.ge)

## Adress: 37M Chavchavadze Avenue, Tbilisi 0179, Georgia

## A notification sent by either Party to another by a courier (including the registered post and/or court courier) shall be deemed endorsed on the day of delivery to the recipient Party and if such delivery is not confirmed, on the following calendar day of the delivery of notification to any person at the recipient Party’s legal address.

## A notification sent by the either Party to another via electronic mail shall be deemed delivered on the day of receiving confirmation from the recipient Party’s electronic mail server (notification about the addressee’s registration in the electronic mail) and if such delivery is not confirmed, on the following calendar day.

# Severability

# If any term or provision of this Agreement, or the application thereof to any person or circumstances shall, to any extent be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

# No partnership

Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the Parties, constitute any Party the agent of another Party, nor authorise any Party to make or enter into any commitments for or on behalf of any other Party.

# Governing law and jurisdiction

## This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with Georgian law.

## The Parties irrevocably agree that the courts of Georgia shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

# Signature of the Parties

**IN WITNESS WHEREOF**, the Parties have executed and delivered this Agreement by their respective authorised representatives:

|  |  |  |
| --- | --- | --- |
| **The Company** |  | **The Bank** |
| Signed by **[⬤]**  for and on behalf **[⬤]** |  | Signed by Ramil Imamov  for and on behalf of **JSC PASHA Bank Georgia** |
|  |  |  |