

MUTUAL CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

THIS MUTUAL CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT (“Agreement”) is made and entered into by and between my Company (“**Company**”), and WALMART INC., a Delaware corporation with its principal place of business at 702 Southwest Eighth Street, Bentonville, Arkansas, 72716 (“**Walmart**”). The Company and Walmart shall be referred to herein individually as a “**Party**” and collectively referred to herein as the “**Parties**”.

WHEREAS, in connection with a proposed business relationship that requires that a Party (the “Disclosing Party”) first deliver to the other Party (the “Recipient”) certain Confidential Information (defined below) before entering into a business relationship (the “Transaction”); and

WHEREAS, the Recipient agrees to receive such Confidential Information subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the above-stated premises as well as other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **Definitions:**

“**Confidential Information**” shall mean information, whether written or oral, received by the Recipient or its Representatives (defined below) that relates to the Disclosing Party and is not generally available to the public, or which would reasonably be considered confidential and/or proprietary, or which is marked “Confidential” or “Proprietary” by Disclosing Party. Without limiting the generality of the foregoing, Confidential Information includes, without limitation, (i) information relating to research, development, inventions, information systems, software code, software applications, pricing, customer lists, financial or other economic information, accounting, engineering, personnel relations, marketing, merchandising, and selling; customer or employee data or statistics, (ii) potential sources of financing; and (iii) all analyses, compilations, forecasts, studies or other documents prepared in connection with the review and possible consummation of the Transaction. In the event Confidential Information is the basis of, is incorporated into, or is reflected in other documents, whether separately or jointly generated by the Parties, such other documents shall be deemed Confidential Information subject to the terms of this Agreement. If the information is orally disclosed, the Disclosing Party shall within thirty (30) days of such disclosure, submit a letter to the Recipient detailing what oral disclosure is the Disclosing Party’s Confidential Information in order for such information to be deemed Confidential Information.

“**Representatives**” shall mean the respective directors, officers, employees, affiliates, representatives (including, without limitation, financial advisors, brokers, attorneys and accountants) or agents of the Recipient.

2. **Non-Disclosure Obligations.**

a. The Recipient, for a period beginning with the Effective Date, and continuing for three (3) years from the cessation of unsuccessful negotiations or the consummation of the Transaction (by execution of the relevant document(s)), whichever occurs first, shall maintain and protect the confidentiality of the Confidential Information with the same degree of care as is normally used in the protection of its own confidential and proprietary information but in no event with less than a reasonable standard of care; provided, however, the Recipient shall keep (i) any personally identifiable information (“PII”) confidential in perpetuity; and (ii) any trade secrets of the Disclosing Party confidential as long as such information is deemed a trade secret. The Recipient further agrees not to use Confidential Information for any purpose, except for the purposes of the Transaction.

b. Without the prior consent of the Disclosing Party, the Recipient will not allow its Representatives to disclose to any unauthorized third party, including but not limited to the press: (i) the fact that any evaluation, investigation, discussions or negotiations are taking place concerning a possible transaction involving the Parties, (ii) the fact that the Parties have requested or received Confidential Information from each other; or (iii) any of the terms, conditions or other facts with respect to the possible Transaction, including the status of the Transaction, the substance of any negotiations or any of the terms of this Agreement or its existence.

c. The Recipient shall limit access to the Confidential Information to those Representatives (i) who need to know such information solely for the purpose of developing or evaluating the Transaction; (ii) who have been informed of the confidential nature of such information; and (iii) who agree to act in accordance with the terms of this Agreement. The Recipient shall cause its Representatives to observe the terms of this Agreement and shall be responsible for any breach of this Agreement by any of its Representatives. The Recipient shall take all reasonable measures, including without limitations court proceedings, to restrain their Representatives from unauthorized disclosure of the Confidential Information.

d. The restrictions set forth in this Section 2 shall not apply with respect to Confidential Information which the Recipient can clearly demonstrate (i) is already available to the public; provided, however, PII remains subject to confidentiality obligations regardless of its availability to the public or availability through unauthorized disclosure; (ii) becomes available to the public through no fault of the Recipient or its Representatives; provided, however, PII remains subject to confidentiality obligations regardless of its availability to the public or availability through unauthorized disclosure; (iii) is already known to the Recipient on a non-confidential basis, as shown by written records in its possession at the time that the Confidential Information was received; (iv) becomes available on a non-confidential basis from a source that, to the best of the knowledge of the Recipient, is not under an obligation to the Disclosing Party; or (v) is independently developed by the Recipient without regard to the Confidential Information of the Disclosing Party.

3. **Proprietary Interest.** Nothing in this Agreement shall be construed to grant to Recipient a license to any Confidential Information disclosed or to any patents, trademarks, copyrights or any other intellectual property derived from the Confidential Information disclosed.

4. **Disclosures Required By Law.** In the event the Recipient is required by law, regulation, stock exchange requirement or legal process to disclose any of the Confidential Information, the Recipient agrees to (i) give Disclosing Party, to the extent possible, advance notice prior to disclosure so the Disclosing Party may contest the disclosure or seek a protective order, and (ii) limit the disclosure to minimum amount that is legally required to be disclosed.

5. **Return or Destruction of Confidential Information.** If requested by the Disclosing Party, Recipient will promptly deliver to the Disclosing Party all documents and other materials comprising Confidential Information, in the possession or under its control or its Representatives, together with all copies and summaries thereof or providing the Disclosing Party provides its prior written consent, the Recipient will destroy all documents and other materials constituting Confidential Information in its possession or under the control of its Representatives. The Recipient agrees that if requested by the Disclosing Party, an authorized officer will certify to the Disclosing Party in writing that all such information and materials have been delivered or destroyed in accordance with the terms of this Agreement. Notwithstanding the delivery or destruction of Confidential Information and related materials required by this Section 5, any and all duties or obligations existing under this Agreement will remain in full force and effect.

6. **Accuracy of Information.** All Confidential Information disclosed hereunder is provided "AS IS". Disclosing Party makes no implied or express representations or warranties as to the accuracy or completeness of the Confidential Information.

7. **Remedies.** Recipient acknowledges that remedies at law may be inadequate to protect the Disclosing Party against any actual or threatened breach of this Agreement, and without prejudice to any other rights and remedies otherwise available, the Recipient agrees that the Disclosing Party shall be entitled to seek injunctive or other equitable relief as a remedy for any such breach in a court of competent jurisdiction. Such a remedy shall not be deemed to be the exclusive remedy for a breach of this Agreement but shall be in addition to all other remedies available at law or equity.

8. **No Waiver.** The Parties agree that no failure or delay by a Party in exercising any right, power or privilege hereunder will operate as a waiver thereof; nor will any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder.

9. **Choice Of Law.** The Parties mutually acknowledge and agree that this Agreement shall be construed and enforced in accordance with the laws of the State of Arkansas, excluding any choice of law provisions. The Parties agree to consent to the exclusive jurisdiction of the state and federal courts of Arkansas to resolve any dispute arising from this Agreement and waive any defense of inconvenient or improper forum. The Parties acknowledge that this Section 9 is subject to the jurisdiction of the court of competent jurisdiction for injunctive relief specified in Section 7.

10. **Compliance with Anti-Corruption Laws.** Company represents, warrants and covenants that Company, and its independent contractors, agents, and subcontractors performing or involved in this Agreement, are fully aware of and will comply with, and in the performance of its obligations to Walmart will not take any action or omit to take any action that would cause either Party to be in violation of, (i) U.S. Foreign Corrupt Practices Act, (ii) any other applicable anti-corruption laws, or (iii) any regulations promulgated under any such laws.

11. **Entire Agreement.** This Agreement represents the entire agreement between the Parties concerning the subject matter hereof. All prior and contemporaneous agreements, understandings, negotiations or representations, whether oral or in writing, relating to the subject matter of this Agreement are superseded and canceled in their entirety. No modifications of this Agreement or waiver of the terms and conditions hereof will be binding upon a Party unless approved in writing by the Parties.

12. **Titles.** The titles used herein are for convenience only and shall not be considered in construing or interpreting any of the provisions of this Agreement.

13. **Assignment.** The Parties shall not have the right to assign or transfer this Agreement or any rights or obligations hereunder to any other party without prior written consent of the other Party; provided, however, Walmart may assign to any of Walmart's subsidiaries and/or affiliates. Any non-consented assignment shall be null and void. Subject to the foregoing, this Agreement shall be binding upon each Party, its permitted transferees, successors and assigns.

14. **Counterpart Signatures.** This Agreement may be executed in counterparts or duplicate originals, all of which shall be regarded as one and the same instrument. The Parties consent to use of facsimile, electronic and/or digital signatures in the execution of this Agreement and the same shall be binding upon the Parties as if they were an original signature. Facsimile, electronic and digital copies of the Agreement, including properly executed PDF versions of the Agreement, shall be regarded as an original instrument by the Parties.

15. **Notice.** No notice or other communication shall be deemed given unless sent in any of the manners, and to the persons, as specified in this paragraph. All notices and other communications hereunder shall be in writing and shall be deemed given: (a) upon receipt if delivered personally (unless subject to clause (b) or if mailed by registered or certified mail return receipt requested; (b) at noon on the business day after dispatch if sent by a nationally recognized overnight courier for next morning delivery; or (c) upon the completion of transmission (which is confirmed by telephone or by a statement generated by the transmitting machine) if transmitted by telecopy or other means of facsimile which provides immediate or near immediate transmission to compatible equipment in the possession of the Recipient.

16. **Severability.** The terms and provisions of this Agreement shall be deemed severable, and in the event that any term or provision hereof or portion thereof is deemed or held to be invalid, illegal or unenforceable, such provision shall be conformed to prevailing law rather than voided, if possible, in order to achieve the intent of the Parties and, in any event, the remaining terms and provisions of this Agreement shall nevertheless continue and be deemed to be in full force and effect and binding upon the Parties.

17. **No Other Business Relationship.** This Agreement does not represent or imply any agreement or commitment to enter into any further business relationship. This Agreement does not create any agency or partnership relationship between the Parties or authorize a Party to use the other Party's name or trademarks. Neither Party is precluded from independently pursuing any activities similar to or in competition with the Transaction contemplated herein. Neither Party will be liable to the other for any of the costs associated with the other's efforts in connection with this Agreement (other than breach and all actions associated therewith).

18. **Signature Authority.** The individuals completing this application on behalf of each Party do each hereby represent and warrant that they respectively have been duly authorized to execute this Agreement on behalf of their respective principals.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the Effective Date.

Company Name: _____

WALMART INC.

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Company Address:
