



## **MUTUAL CONFIDENTIALITY AGREEMENT**

This Mutual Confidentiality Agreement ("**Agreement**") is entered into between **PetSmart, Inc.**, a Delaware corporation having a business address at 19601 North 27<sup>th</sup> Avenue, Phoenix, AZ 85027 ("**PetSmart**") and a/an corporation, having a business address at ("**Company**"), as of the date last written below and on the following terms and conditions:

### **BACKGROUND**

The parties believe they would mutually benefit by having PetSmart or Company provide the other with Confidential Information (as defined herein) and further believe it is in their mutual interest to ensure that all Confidential Information provided by PetSmart or Company will be safeguarded and protected by the recipient.

### **AGREEMENT**

In consideration of the foregoing, the parties agree as follows:

1. **Acknowledgement of Confidentiality.** "**Confidential Information**" means the confidential or proprietary information or material of either party, regardless of form or medium, including, but not limited to, some or all of the following, that are labeled or disclosed in the manner hereafter provided: (a) trade secrets; (b) technical information, including functional and technical specifications, algorithms, formulas, codes, designs, drawings, analysis, research, processes, computer programs, methods, ideas, know-how, and the like; (c) business information, including sales and marketing research, materials, plans, strategies, accounting and financial information, pricing, product, customers, vendors, suppliers, and distributors information, personnel records, and the like; (d) third-party confidential information that PetSmart or Company has a duty to maintain as confidential; or (e) information concerning the existence and progress of the parties' dealings.

Notwithstanding the foregoing, in order to be regarded as Confidential Information under this Agreement, the information or material must be: (i) clearly and conspicuously marked as "confidential," "proprietary" or similar designation; (ii) identified by the disclosing party as confidential or proprietary before, during or promptly after presentation or communication; or (iii) disclosed in a manner in which the disclosing party reasonably communicated, or the recipient party should reasonably have understood under the circumstances (including consideration of whether the type of information or material is the same or similar to that described in the preceding clauses [a] through [e]), that the information or material should be treated as confidential or proprietary whether or not the specific designation "confidential," "proprietary" or similar designation was used. Further notwithstanding the foregoing, Confidential Information does not include: (x) publicly available information or materials (obtained through no wrongful act of the recipient party); (y) information already known or independently developed by the recipient party; or (z) information received by the recipient party from a third party who was free to disclose it.

2. **Covenant Not to Use or Disclose.** Either party receiving Confidential Information will use it only for purposes of evaluating or undertaking a possible transaction or business dealing between the parties. Neither party will commercialize the other's Confidential Information or disclose such Confidential Information to any person or entity, except to its own employees, legal and financial advisors, accountants and other agents or representatives having a bona fide need to know (and who are themselves bound by similar nondisclosure restrictions), and to such other recipients as the parties hereto may approve in writing. The parties will use at least the same degree of care in safeguarding the other party's Confidential Information as it uses in safeguarding its own Confidential Information (provided such degree of care must, at minimum, be commercially reasonable). Either PetSmart or Company, when

requested by the other party, will promptly return all copies of the Confidential Information, and destroy all notes, memoranda, summaries, analyses, compilations, and other writings related thereto prepared by PetSmart or Company. Such destruction must be certified in writing by an authorized officer supervising such destruction. The requirements of this section will not apply to any information that is required to be disclosed under applicable federal or state law, rule, regulation, or judicial order, except that prior to making such required disclosure, the party that believes it is compelled by law or legal process to make such disclosure must first give notice to the other party (unless prohibited by law from so doing) and make a reasonable effort to obtain appropriate redaction or a protective order at the other party's expense.

3. **Proprietary Rights Legend.** Neither party will alter or remove from any Confidential Information the proprietary rights legend, copyright notice, trademark or trade secret legend, or any other mark identifying the material as Confidential Information.

4. **Remedies for Breach.** The parties acknowledge that a violation of this Agreement may cause irreparable harm and that remedies at law may be inadequate to redress any actual or threatened violation of this Agreement. Therefore, the parties agree that, in addition to other relief, this Agreement may be enforced by seeking temporary and permanent injunctive relief. In addition, the parties will have the right to pursue any other available remedies, including, but not limited to, damages. All rights and remedies under this Agreement are cumulative and are in addition to those conferred by law or equity. Failure by either party to enforce any provision under this Agreement will not be deemed a waiver of future enforcement of that or any other provision. Any award of relief for PetSmart or Company in an action in which it substantially prevails will include recovery of such party's costs and expenses of enforcement (including attorneys' fees through all appeals).

5. **Term, Termination.** This Agreement will be effective on the date last written below and will remain in effect until terminated in writing by either party upon at least 30 days prior written notice. Unless otherwise agreed in writing, this Agreement will govern Confidential Information disclosed by either party prior to (as well as after) the effective date hereof. The obligations regarding Confidential Information set forth in Section 2 of this Agreement will expire two years after the Confidential Information was disclosed, except with respect to trade secrets, which each party is obligated to protect until such information becomes generally known or otherwise ceases to be a trade secret.

6. **Choice of Law.** This Agreement is governed by and will be construed in accordance with the substantive laws of the State of Arizona without regard to principles of conflicts of law.

7. **Warranties.** Each party represents that it has the right to disclose its Confidential Information. No other representations or warranties are made. All Confidential Information is furnished strictly AS-IS.

8. **General Provisions.** This Agreement (a) constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all other communications, whether written or oral, (b) may be modified or amended only by a writing signed by an authorized representative of the party against whom enforcement is sought, and (c) does not create any special relationship between the parties, including fiduciary, franchise, partnership, agency or employment. Neither this Agreement nor any rights or obligations hereunder may be transferred or assigned without the other party's prior written consent, and any attempt to the contrary will be void. Notwithstanding the foregoing, either party may freely transfer or assign its interest hereunder to a parent, subsidiary, or affiliated entity or in a merger, consolidation, or sale of substantially all of its assets or stock. Any provision hereof held to be illegal or unenforceable will be automatically conformed to the minimum requirements of law, and the balance of this Agreement will remain in full force and effect. Waiver of any provision hereof in one

instance will not preclude enforcement thereof on future occasions. Headings are for reference purposes only and have no substantive effect.

9. **No Obligation to Contract; Non-Binding Discussions.** This Agreement imposes no obligation on a party to exchange Confidential Information, proceed with any business opportunity, or to purchase, sell, license, lease, transfer or otherwise make use of any property, products or services. Moreover, any and all dealings or communications between the parties or their representatives will be non-binding and for discussion purposes only (except for the terms of this Agreement, which are binding), it being understood and agreed that, unless and until the parties sign a final, written agreement regarding a transaction or some other business purpose, each party will have the absolute right to terminate or withdraw from such dealings or communications at any time, for any or no reason in its sole and absolute discretion, without any liability to the other party for so doing.

10. **Intellectual Property.** No party acquires any intellectual property rights under this Agreement (including, without limitation, patent, copyright or trademark rights). Notwithstanding the confidentiality obligations contained in section 2 hereof, the recipient party may, during and after the term hereof, use in its business any Residual Information (as herein defined). **"Residual Information"** means the ideas, concepts, know-how and techniques that would be retained in the unaided memory of an ordinary person skilled in the art, not intent on appropriating the proprietary information of the disclosing party, as a result of such person's access to, use, review, evaluation, or testing of the Confidential Information of the disclosing party for the purposes described herein. An employee's memory is unaided if the employee has not intentionally memorized the Confidential Information for the purpose of retaining and subsequently using or disclosing it. Nothing in this paragraph, however, is intended or will be deemed to grant to the receiving party a license under the disclosing party's intellectual property rights.

11. **Execution.** This Agreement, which may be executed in one or more counterparts, may be executed or delivered electronically, including use of facsimile, e-mail or uploading.

Intending to be legally bound, the parties hereto have caused this Agreement to be executed, sealed and delivered by their duly authorized representatives.

**PetSmart, Inc. ("PetSmart")**

**("Company")**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_