



Mutual Non-Disclosure Terms

Recitals

WHEREAS, LS Retail (and "Affiliates") are in the development, marketing and sale of retail software products;

WHEREAS, in connection with these terms and/or incident hereto, or in connection with any other agreement between the parties or any incident thereto, LS Retail and you, the legal entity exercising permissions granted herein (the "Contracting Party") may communicate with Affiliates;

WHEREAS, an "Affiliate" shall mean an entity that owns, is owned by, or is under common ownership with an entity. Ownership means control of more than 50% of the equity interest of, or the right to direct the management of, an entity for so long as such control exists;

WHEREAS, representative of LS Retail has authority to and hereby accepts the terms of this Agreement on behalf of LS Retail and its Affiliates, and all of their employees, agents, officers, directors;

WHEREAS, representative of Contracting Party has authority to and hereby accepts the terms of this Agreement on behalf of Contracting Party and its Affiliates, its employees, agents, officers, directors; WHEREAS, LS Retail or its Affiliates, or Contracting Party or its Affiliates, may be a discloser (sometimes hereinafter referred to as a "Disclosing Party") or a receiver (sometimes hereinafter referred to as a "Receiving Party") of Confidential Information (as hereinafter defined), subject to the limitations set forth herein;

WHEREAS, the Parties desire to enter into an agreement to protect Confidential Information including, but not limited to, information about the functionality, technical architecture and future development of their software solutions and commercial aspects in relation to those solutions (the "Business Purpose"); and

WHEREAS, in order to pursue the mutual Business Purpose, the Parties recognize that there is a need for a Disclosing Party to disclose to a Receiving Party certain of its Confidential Information to be used only for the Business Purpose and a need for a Receiving Party to protect the Disclosing Party's Confidential Information from unauthorized use and disclosure.

NOW, THEREFORE, in consideration of the mutual covenants and conditions herein contained, the Parties hereto agree as follows:

Agreement

1. Confidential Information. As used in this Agreement, "Confidential Information" shall mean any facts, opinions, conclusions, labels, products, projections, data, information, trade secrets or know-how relating to any research project, work in progress, future development, engineering, manufacturing, marketing, financial or personnel matter relating to a Disclosing Party, its present or future products, technology, sales, customers, members, employees, Affiliates, investors, prospects, markets or business, whether communicated orally or in writing or obtained by a

- Receiving Party through observation or examination of the Disclosing Party's facilities or procedures.
2. Identification of Confidential Information. If the Confidential Information is disclosed in writing, it may be labeled as confidential. If the Confidential Information is disclosed orally, the Disclosing Party may inform the Receiving Party that the information is to be treated as confidential. In any event, if the facts and circumstances surrounding a disclosure of information indicate to the Receiving Party that it is Confidential Information, the Receiving Party shall treat it as Confidential Information.
 3. Exclusions. A Receiving Party, however, shall have no liability to any other party under this Agreement with respect to a disclosure and/or use of any such Confidential Information that it can establish:
 - a. has become generally known or available to the public without breach of this Agreement by the Receiving Party;
 - b. was known by the Receiving Party before receiving such information from the Disclosing Party;
 - c. has become known by or available to the Receiving Party from a source other than the Disclosing Party, without any breach of any obligation of confidentiality owed to the Disclosing Party, subsequent to disclosure of such information to it by the Disclosing Party;
 - d. has been independently developed by the Receiving Party without use of or reference to the Confidential Information or by persons who had no access to the Confidential Information.
 4. Obligations. The Receiving Party represents, warrants and covenants to the Disclosing Party, each of the following:
 - a. The Receiving Party shall hold any Confidential Information in the strictest confidence and will not disclose any Confidential Information to any person or entity whatsoever, except as provided in this Agreement, absent the prior express written instruction, signed by the president or chief executive officer of the Disclosing Party. The Receiving Party shall take all steps necessary to ensure that any Confidential Information is held in the strictest confidence and that the terms and conditions of this Agreement are strictly adhered to by the Receiving Party and its Affiliates, if applicable, and their respective employees and agents.
 - b. The standard of care to be utilized by the Receiving Party in the performance of its representations, warranties, covenants and obligations set forth in this Agreement relative to its treatment of the Confidential Information shall be the standard of care, but in no event less than a reasonable standard of care, utilized by Receiving Party in treating its own most proprietary, secret and Confidential Information, and such information shall not be subject to any right of waiver.
 5. Permitted Disclosures. Receiving Party may disclose the Confidential Information to its responsible employees, Affiliates, and professional advisers with a bona fide need to know such Confidential Information, but only to the extent necessary to carry out the Business Purpose and only if such employees, Affiliates, and professional advisers are advised of the confidential nature of such Confidential Information and the terms of this Agreement and are bound by a written agreement or by a legally enforceable code of professional responsibility to protect the confidentiality of such Confidential Information.
 6. Required Disclosures. A Receiving Party may disclose the Confidential Information if and to the extent that such disclosure is required by applicable law, provided that the Receiving Party uses

reasonable efforts to limit the disclosure by means of a protective order or a request for confidential treatment and provides the Disclosing Party a reasonable opportunity to review the disclosure before it is made and to interpose its own objection to the disclosure. Notwithstanding the foregoing, the Disclosing Party may have the right to interpose its own protective order to limit the disclosure.

7. **Copies and Abstracts.** A Receiving Party shall not make or use any copies, synopses or summaries of oral or written material, photographs or any other documentation or information made available or supplied by a Disclosing Party to the Receiving Party except such as are necessary for the Receiving Party's internal communications in connection with carrying out the Business Purpose. All such copies and abstracts must themselves be marked as confidential and the Receiving Party shall maintain a written record of the distribution of all such copies and abstracts.
8. **Return of Confidential Information.** Upon the Disclosing Party's request, the Receiving Party will promptly return to the Disclosing Party all copies of the Confidential Information, will destroy all notes, abstracts and other documents that contain Confidential Information, and will provide the Disclosing Party a written certification of an officer of the Receiving Party that it has done so.
9. **Warranty.** The Disclosing Party warrants that it has the right to make the disclosure of Confidential Information contemplated by this Agreement.
10. **Retention of Legal Rights.** The Disclosing Party retains all rights and remedies afforded it with respect to the Confidential Information under the intellectual property during and after the term of this Agreement, including without limitation any trade secret or other laws designed to protect proprietary or confidential information.
11. **No Creation of Ownership Rights.** Nothing in this Agreement, nor any action taken by a Receiving Party, including, without limitation, any payment of monies by the Receiving Party to the Disclosing Party, during any discussions prior to the consummation of the proposed Business Purpose shall be construed to convey to the Receiving Party any right, title or interest in the Confidential Information, or any license to use, sell, exploit, copy or further develop in any way any Confidential Information. No license is hereby granted or implied under any patent, copyright or trademark, any application for any of the foregoing, or any trade name, trade secret or other proprietary information, in which the Disclosing Party has any right, title or interest.
12. **Injunctive Relief.** Receiving Party acknowledges that the unauthorized use or disclosure of Confidential Information would cause irreparable harm to the Disclosing Party. Accordingly, the Receiving Party agrees that the Disclosing Party will have the right to obtain an immediate injunction against any breach or threatened breach of this Agreement, as well as the right to pursue any and all other rights and remedies available at law or in equity for such a breach.
13. **Term of Agreement.** This Agreement applies to all Confidential Information that is disclosed by the Disclosing Party to the Receiving Party during the period that begins on the date set forth below and will remain in effect until terminated by either Party by giving one month's written notice to the other. On termination, the Receiving Party shall return any Confidential Information, in accordance with Article 8 of this Agreement. Any terms of this Agreement which by their nature extend beyond its termination, including but not limited to Articles 5, 6, 7, 9, 10 and 11 of this Agreement, remain in effect, and apply to respective successors and assignees.
14. **Applicable Law.** This Agreement will be construed, interpreted and applied in accordance with the laws of the country where the Contracting Party is domiciled, without reference to the rules regarding conflicts of law and the Parties hereby submit to the jurisdiction of the Courts of the same country.
15. **Notice.** Any notice, communication, offer, acceptance, request, consent, reply, or advice (collectively referred to here as "Notice"), hereunder must be in writing, addressed to the party to be notified at the address set forth in this Agreement. Notice served via e-mail shall be effective

twenty-four (24) hours after being transmitted. Notice otherwise given is effective only when provable received.

16. Entire Agreement, Amendments, Prior Discussions. This Agreement constitutes the final, exclusive and complete statement of the Parties' agreement respecting the subject matter addressed herein. This Agreement may not subsequently be amended or modified except by a writing signed by the Parties hereto. Receiving Party hereby confirms that any information disclosed to it by a Disclosing Party, or any discussions held between the Parties, prior to the date of this Agreement shall be subject to the terms of this Agreement.
17. Successors and Assigns. This Agreement shall be binding on, and shall inure to the benefit of, the Parties to it and their respective legal representatives, successors and assigns.
18. Survival. This Agreement shall survive the cessation of any discussions between the Parties with regard to the Business Purpose.
19. Severability. If any provision of this Agreement is declared void or unenforceable, such provision shall be severed from this Agreement, which shall otherwise remain in full force and effect.
20. Attorneys' Fees to Prevailing Party in Any Legal Action Brought to Enforce or Interpret Agreement. In the event any suit or other action is commenced to construe or enforce any provision of this Agreement, the prevailing party, in addition to all other amounts such party shall be entitled to receive from the other party, shall be paid by the other party a reasonable sum for attorneys' fees and costs.
21. Relationship. Contracting Party is an independent contractor/party. Nothing contained in this Agreement shall be construed as creating or intending to create any partnership, joint venture, supplier-customer, principal-agent, employer-employee or similar business relationship, and any such relationship would be reflected by the Parties' execution of appropriate definitive agreements between them.