

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**IN THE MATTER OF THE *COMPANIES' CREDITORS  
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE  
OR ARRANGEMENT OF TARGET CANADA CO.,  
TARGET CANADA HEALTH CO., TARGET CANADA  
MOBILE GP CO., TARGET CANADA PHARMACY (BC)  
CORP., TARGET CANADA PHARMACY (ONTARIO) CORP.,  
TARGET CANADA PHARMACY CORP., TARGET CANADA  
PHARMACY (SK) CORP. and TARGET CANADA  
PROPERTY LLC (the "**Applicants**")**

**AFFIDAVIT OF JOYCE REESE**

February 18, 2015

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CCAA Proceedings of Target Canada Co. et al, Court File No. CV-15-10832-00CL

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| <p><b>FARMER BROS. CO.</b><br/> 20333 S. Normandie Avenue<br/> Torrance, CA<br/> USA, 90502</p>  | <p><b>Colleen A. Brooks</b><br/> Tel: 1.310.787.5393<br/> Fax: 1.310.787.5376<br/> Email: <a href="mailto:cbrooks@farmerbros.com">cbrooks@farmerbros.com</a></p>  |
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- H. E-mail correspondence between Roberts and Rees re: Reprocessing of invoices, dated January 22, 2015 - February 10, 2015

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- K. Statement of amount owing, dated January 19, 2015

# **TAB 1**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
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**IN THE MATTER OF THE COMPANIES' CREDITORS  
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PHARMACY (SK) CORP. and TARGET CANADA  
PROPERTY LLC (the "**Applicants**")**

**AFFIDAVIT OF JOYCE E. REES**

I, **JOYCE E. REES**, of the City of Toronto, in the Province of Ontario, **MAKE OATH  
AND SAY:**

1. I am the co-founder and President of Advitek Inc. ("**Advitek**"), a creditor of the Applicants and of Target Corporation ("**Target USA**"), and as such have knowledge of the matters to which I hereinafter depose.
2. Where the information in this affidavit is based upon information and belief, I have indicated the source of my information and belief and do verily believe it to be true.
3. To the extent that any of the information set out in this affidavit is based on my review of documents, I verily believe the information in such documents to be true, unless otherwise stated.



## **Background**

4. Advitek is a corporation incorporated pursuant to the laws of Ontario, which provides marketing research data collection services to clients across North America. Advitek is a small business with seven (7) employees at its head office in Toronto, Ontario.

5. Advitek entered into a Master Research Services Agreement (the “**Master Agreement**”) with Target Canada Co. (“**Target Canada**”), effective August 22, 2014, for the supply of research services on a project-by-project basis. Attached hereto and marked as **Exhibit “A”** to this affidavit is a copy of the Master Agreement.

6. My direct client contact at Target Canada was Kathrin Menge (“**Ms. Menge**”), who, at all relevant times, held the title of “Manager, Shopper Insights”.

## **The US Project and Invoices**

7. On or about October 21, 2014, Ms. Menge informed myself and Steve Yudin (“**Mr. Yudin**”), Vice President - Client Services for Advitek, that Target USA required Advitek to commence work on a four-phase market research, data collection and data processing project (the “**Project**”). The Project entailed conducting customer interviews, and compiling and summarizing the data. I was specifically instructed to direct all invoices for the Project to the attention of Chris Von Dohlen with Target USA. Attached hereto and marked as **Exhibit “B”** to this affidavit are copies of correspondence between myself, Mr. Yudin and Ms. Menge, which establish the parameters and deliverables of the Project.

8. I issued four invoices with respect to the Project to the attention of Chris Von Dohlen, Enterprise Strategy for Target USA, as follows:

| Invoice Number | Date              | Amount (Canadian Dollars) |
|----------------|-------------------|---------------------------|
| 8862           | October 31, 2014  | \$20,000.00               |
| 8873           | November 17, 2014 | \$13,500.00               |
| 8875           | November 28, 2014 | \$12,250.00               |
| 8881           | December 10, 2014 | \$8,500.00                |
| <b>Total</b>   |                   | <b>\$54,250.00</b>        |

Attached hereto and marked as **Exhibit "C"** to this affidavit are copies of invoice numbers 8862, 8873, 8875 and 8881 (collectively, the "**Invoices**") directed to Target USA.

9. The total amount owing to Advitek from Target USA is, therefore, \$54,250.00.

10. On November 18, 2014, I was, once again, specifically instructed by Ms. Menge to address the Invoices to Chris Von Dohlen and the Enterprise Strategy team for Target USA. Attached hereto and marked as **Exhibit "D"** to this affidavit is a copy of Ms. Menge's e-mail, dated November 18, 2014.

11. On January 8, 2015, I received an e-mail from Rachel Roberts ("**Ms. Roberts**"), Director Assistant with Target USA, instructing me to direct the Invoices to the attention of Target Canada.

12. I replied to Ms. Roberts' e-mail on January 9, 2015, asking for further clarification and copying Ms. Menge. Ms. Menge subsequently wrote to Ms. Roberts informing her that she was initially instructed by the Enterprise Strategy team to make the Invoices payable to Target USA. Attached hereto and marked as **Exhibit "E"** to this affidavit is a copy of the e-mail

correspondence between myself, Ms. Roberts and Ms. Menge, between January 8, 2015 and January 9, 2015.

13. On or about January 12, 2015, I sent Ms. Roberts revised copies of the Invoices, addressed to Target Canada, as opposed to Target USA. Attached hereto and marked as **Exhibit "F"** to this affidavit is a copy of the e-mail correspondence with respect to the revised Invoices.

14. I learned that Target Canada had filed for insolvency protection on January 15, 2015.

15. On January 22, 2015, Ms. Menge wrote to Ms. Roberts, Chris Von Dohlen and Bethany Schellhorn, a Strategist with Target USA, to request payment for the four outstanding Invoices. Ms. Menge stated:

From May 2014 onwards I was asked to send the invoices to Enterprise Strategy in the US, which we did. Then 2 days before the Canadian closure announced you asked Advitek to change the invoices to Canada instead. I find this very suspicious, and I feel absolutely terrible for Advitek who is now out around \$250,000...

Attached hereto and marked as **Exhibit "G"** to this affidavit is a copy of Ms. Menge's e-mail, dated January 22, 2015.

16. On the same day, Ms. Roberts suggested that Advitek could be set up to be a U.S. vendor for the purposes of processing the Invoices, and requested additional information. I provided the requested information to Ms. Roberts, and she re-submitted the Invoices to Target USA for processing and payment. Attached hereto and marked as **Exhibit "H"** to this affidavit is a copy of the e-mail correspondence with respect to the re-submitted Invoices.

17. Up to and including the date of this affidavit, Advitek has not received any payment from either Target USA or the Applicants with regards to the amount outstanding pursuant to the Invoices.

### **The Dishonoured Cheque**

18. On December 8, 2014, Advitek issued Invoice Number 8880 to Target Canada in the amount of \$39,267.50 for market research services provided to Target Canada.

19. Target Canada issued a cheque for the total amount, being \$39,267.50, dated January 13, 2015 (the "**Cheque**"). Attached hereto and marked as **Exhibit "I"** to this affidavit is a copy of the Cheque.

20. I received the Cheque on January 26, 2015, and attempted to deposit it on the same day, at which time I was informed that the Cheque was dishonoured. The Cheque was returned to me by reason of insufficient funds. Attached hereto and marked as **Exhibit "J"** to this affidavit is a copy of the Returned Item Advice from TD Canada Trust.

21. Up to and including the date of this affidavit, Target Canada has not honoured the Cheque made payable to Advitek in the amount of \$39,267.50, and dated January 13, 2015.

### **Impact of Loss**

22. Since the fall of 2014, Advitek has completed work for Target Canada and Target USA on numerous occasions. The total amount owed to Advitek by both Target Canada and Target USA is \$232,328.00. Attached hereto and marked as **Exhibit "K"** to this affidavit is a copy of the statement setting out the outstanding balance as of January 19, 2015.

23. Advitek is a small business employing seven (7) full-time employees at the head office in Toronto.

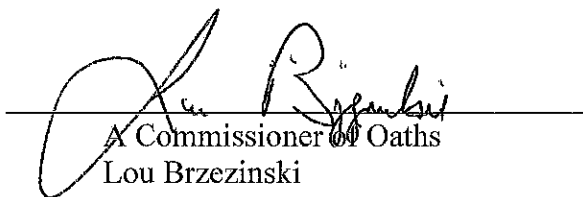
24. To complete the work commissioned by Target Canada and Target USA, Advitek employed approximately 50 part-time individuals across Canada to conduct customer interviews as needed. I have already paid these part-time workers in full on a bi-weekly basis, which represents out-of-pocket losses of approximately half (50%) of the total amount owing to Advitek by Target Canada and Target USA, being \$232,328.00.

25. Moreover, the work conducted for Target Canada and Target USA represented approximately 35% of Advitek's revenue for the fall of 2014. Given the out-of-pocket expenses I have already incurred with respect to the Project and the work completed for Target Canada, the loss of this revenue and the loss of Target Canada and Target USA as clients has had a significant financial impact on Advitek.

26. I make this affidavit in support of the motion brought by ISSI Inc., and for no improper purpose.

SWORN BEFORE ME at the City )  
of Toronto, in the Province of )  
Ontario, this 18th day of February, 2015. )  
)

  
JOYCE REES

  
A Commissioner of Oaths  
Lou Brzezinski

# **TAB A**

**THIS EXHIBIT "A" REFERRED TO IN  
THE AFFIDAVIT OF JOYCE E. REES  
SWORN BEFORE ME THIS 18TH DAY  
OF FEBRUARY, 2015.**

  
A Commissioner of Oaths

## MASTER RESEARCH SERVICES AGREEMENT

THIS AGREEMENT ("Agreement"), effective as of August 22, 2014 ("Effective Date") is made by and between Target Canada Co., a Nova Scotia unlimited company, with its headquarters at 5570 Explorer Drive, Mississauga, ON, L4W 0C4 ("Target"), and Advitek Inc., with its principal place of business at 235 Yorkland Blvd., Suite 301, Toronto, ON, M2J 4Y8 ("Agency").

For and in consideration of the mutual promises and covenants set forth herein, Target and Agency agree as follows:

1. **Services, Deliverables and Payment** During the Term of this Agreement, Agency agrees to perform research services ("Services") as may be approved in writing on a project-by-project basis in a signed scope of work ("Scope of Work"), a sample of which is attached hereto as Exhibit A; and to provide the deliverables as defined in that Scope of Work ("Deliverables"). Target will pay for the Services and Deliverables as defined in that Scope of Work. The Scope of Work can take the form of a signed "Statement of Work", "Proposal" or an email which both parties have affirmatively accepted which contains the Scope of Work, Deliverable and payment clearly detailed. In the event of any conflict between this Agreement and a Scope of Work, the terms of the Scope of Work shall govern. For the avoidance of doubt, a Scope of Work may only describe the Services, Deliverables and payment terms for the Services provided hereunder and shall not modify any other term or condition of this Agreement. For the purposes of this Agreement, all references to dollar amounts shall be interpreted to refer to Canadian dollars.

## 2. **Term and Termination**

- a. Unless sooner terminated in accordance with the terms of this Agreement, this Agreement shall begin on the Effective Date and unless sooner terminated as provided herein, shall have an initial term of one (1) year (the "Initial Term"). The Term of this Agreement shall automatically renew for successive one (1) year periods (each, a "Renewal Term"). Subject to Section 2.b below, either party may terminate this Agreement on sixty (60) days' written notice at any time during the Term; however, Agency may not terminate it if there is any outstanding Scope of Work. "Term" as used herein includes the Initial Term and any Renewal Terms. Target may terminate this Agreement immediately on written notice to the Agency if the Agency breaches any provision of this Agreement.
- b. Target may, in its sole discretion, terminate any or all outstanding Scopes of Work or any portion thereof by verbal or written notice (e-mail acceptable) to Agency. Any verbal notice must be promptly followed by written confirmation (e-mail acceptable). Upon receipt of notice of such termination, Agency shall a) inform Target of the extent to which performance has been completed through such date, b) collect and deliver to Target whatever work product then exists, and c) invoice Target for unpaid Services performed up to the date of termination and for non-cancellable, documented fees or expenses, if any, incurred by Agency in the provision of Services hereunder prior to the date of termination. Agency may not terminate any Scope of Work once Agency and Target have agreed to such Scope of Work.
- c. Either party may terminate this Agreement immediately on written notice to the other party, if the other party (i) is insolvent or undergoing reorganization, arrangement, receivership or liquidation, (ii) makes a general assignment for the benefit of its creditors, (iii) ceases to actively conduct its business, (iv) commits an act of bankruptcy under the Bankruptcy and Insolvency Act (Canada), (v) commences the filing of a proposal or a notice of intention to enforce security is issued in respect of the other party under the Bankruptcy and Insolvency Act (Canada), (vi) commences any filing or proceeding (whether voluntary or involuntary) seeking any stay of proceedings, protection from creditors or any other relief under the Companies' Creditors Arrangement Act (Canada). Target can terminate this agreement immediately upon written notice if Target's financial obligations to Agency are the subject of a garnishment.



- d. Target's sole obligation to Agency upon termination of this Agreement shall be to pay Agency for such Services and Deliverables as Agency can document, to the reasonable satisfaction of Target, which were actually provided prior to the date of termination in accordance with this Agreement, less any amounts due and payable by Agency to Target hereunder. Such amount may not exceed the total fees and expenses set forth in the Scope of Work.
3. **Compensation.** Amounts and method of payment for all Services and Deliverables, including any expenses, shall be set forth in each Scope of Work. Target pays from invoice only. Target shall pay proper invoices within sixty (60) days after receipt of invoice. In the event that Target, in good faith, disputes an invoice or an amount stated on an invoice, Target has no obligation to pay such disputed amounts until the dispute is resolved.
4. **Travel and Related Expenses.** Target shall reimburse Agency for reasonable travel and related expenses incurred by Agency that are specified in the Scope of Work. All such travel expenses must comply with Target's Third Party Reimbursement Policy, which includes, among other things, coach class airfare and standard hotel accommodations at Target-preferred hotels for certain levels of employees and a specified per diem for food. It shall be Agency's responsibility to ensure that any such expenses do not exceed Target's guidelines. Target may, in its sole discretion, decline to reimburse Agency for the amount of any such expenses which exceed Target's guidelines and Agency shall indemnify and hold Target harmless with respect to such excess amount. Expenses which comply with the foregoing will be paid within sixty (60) days after receipt of receipts and such other supporting documentation as Target may reasonably request.
5. **Independent Contractor.**
  - a. Agency and Target are independent contractors. Nothing in this Agreement creates a relationship of agent and principal, partners, joint venturers or employer-employee between the parties, and no act or obligation of either party will in any way bind the other.
  - b. Workers employed or utilized by Agency providing Services and Deliverables are not employees (whether common law or otherwise) of Target. Agency is solely responsible for compensating such workers and for complying with all Laws relating to the workers. Agency acknowledges such workers are not eligible to participate in any Target benefits, whether offered pursuant to a plan or otherwise, including welfare or pension benefits, retirement or incentives.
  - c. Agency shall be solely responsible for the hiring, termination, direction, control and conduct of its workers, and for ensuring that its workers are eligible and qualified to perform under this Agreement. Agency represents and warrants that it has in place a process for interviewing and screening prospective workers that is consistent with industry standards and applicable Laws, including immigration and, when required, Target security requirements. Agency shall conduct background checks on workers appropriate to their role and the sensitivity of Confidential Information that will be handled.
6. **Representations and Warranties.** Agency represents and warrants to Target that the following statements are true and will be true throughout the duration of the Agreement:
  - a. **Organization of Agency.** Agency is duly organized, validly existing, and in good standing under the laws of the jurisdiction of its formation.
  - b. **Authorization/Freedom to Enter into Agreement.** Agency has the full capacity, right, power and authority to execute and perform this Agreement.
  - c. **Compliance with Laws.** Agency shall comply with all laws (including common law), ordinances, by-laws, codes, rules and regulations (collectively, "Laws") regarding the Services and Deliverables, and Agency's obligations and performance under this

Agreement. Agency shall obtain and maintain any and all permits, licenses, bonds, certificates and other similar approvals required in connection with this Agreement.

- d. Merchantability, Fitness, Conformance. The Services and Deliverables provided by Agency shall (i) be provided in a professional and workman-like manner; (ii) be performed by properly-trained and competent personnel who hold current licenses or certifications if required to be so licensed or certified by applicable Law or industry standard; (iii) meet or exceed all industry standards applicable to the Services; and (iv) be in compliance in all respects with all specifications, performance standards, or descriptions furnished, specified or adopted by Target.
- e. Proprietary Rights. The Services and Deliverables do not infringe upon or violate any patent, trademark, copyright or other proprietary rights of any third party.
- f. Events. Agency (i) is not insolvent or undergoing reorganization, arrangement, receivership or liquidation, (ii) has not made a general assignment for the benefit of its creditors, (iii) has not ceased to actively conduct its business, (iv) has not committed an act of bankruptcy under the Bankruptcy and Insolvency Act (Canada), (v) has not commenced the filing of a proposal or a notice of intention to enforce security has not been issued in respect of the other party under the Bankruptcy and Insolvency Act (Canada), (vi) has not commenced any filing or proceeding (whether voluntary or involuntary) seeking any stay of proceedings, protection from creditors or any other relief under the Companies' Creditors Arrangement Act (Canada), and (vii) does not have its receivables subject to garnishment.
- g. Target Records. Agency (i) shall use any records, materials, data, and/or other information provided or made available by Target or collected while providing the Services in connection with this Agreement (collectively, the "Target Records"), including any records, materials, data and/or information derived from the Target Records and any aggregated information contained within Target Records, solely for the purpose(s) set forth in this Agreement or as agreed upon by the parties in writing; (ii) shall not authorize or permit any disclosure of Target Records by Agency except as set forth in this Agreement or as agreed upon by the parties in writing; (iii) shall securely return or destroy, as determined by Target, the applicable Target Records, including any copies, immediately upon the termination or expiration of this Agreement, and shall not retain any information from the Target Records; and (iv) shall not copy, duplicate or otherwise reproduce in any manner the Target Records or any portion of the information contained in or derived from the Target Records except as set forth in this Agreement or as agreed upon by the parties in writing. As between Agency and Target, Target owns all right, title and interest in and to the Target Records. Target Records shall be deemed the Confidential Information (as defined in the Non-Disclosure Agreement) of Target. Other than for purposes of performing under this Agreement, Agency shall not aggregate, reverse-compile or reverse engineer any Target Records, even if such aggregation, collection or data manipulation is anonymous or shall be used for statistical purposes or otherwise.

## 7. Ownership of Deliverables

- a. Scope of Work. Agency's work for Target is as set forth in Target's Scope of Work, other communication from Target or elsewhere in this Agreement ("Target's Instructions"). The terms of this Agreement shall be applicable to the Target's Instructions (and any subsequent project or work for Target performed or bid on by Agency) unless Target and Agency specifically agree otherwise in writing.
- b. Deliverables. As used herein, the term "Deliverables" means the information defined in Section 1 and all research, work product, consent forms, discoveries, improvements, ideas, processes, techniques, specifications, diagrams, artwork, data files, formulae, code, programs, documents, manuals, sound or video recordings, designs, fixtures, equipment, inventions (whether or not patentable), created, conceived, authored or invented by

Agency (either solely or jointly with others), in connection with performing any project for Target, or based on or derived from Target's Instructions. Agency agrees to make full and prompt disclosure to Target in writing of any and all Deliverables.

- c. Preexisting Materials. The Parties acknowledge that the Deliverables may include discoveries, improvements, ideas, works of authorship, inventions, know-how, and other technology that is (a) created prior to the Effective Date of this Agreement or independently of performing any work for Target and (b) is owned by Agency or others who consent to such use by Agency and Agency's clients (hereinafter "Preexisting Materials"). Target acknowledges and agrees that the Preexisting Materials are owned by Agency and ownership thereof is not assigned to Target. Agency hereby grants to Target an irrevocable, perpetual, transferable, non-exclusive, fully paid-up, royalty free, worldwide license to make, use, sell and import, (and to have others make, use, sell and import), modify, reproduce and publish any such Preexisting Materials in connection with Deliverables, for all purposes related to Target's business.
- d. Deliverables Owned By Target: Agency acknowledges and agrees that all rights in and to the Deliverables shall be the sole and exclusive property of Target or its designee. Agency does hereby assign, and agrees to assign, to Target or its designee the entire worldwide right, title, interest and any goodwill appurtenant thereto, including without limitation, all copyrights, copyright renewals or reversions, trademarks, trade names, trade dress rights, inventions, patent rights, priority rights, patents, design patents and any other rights or protections in connection therewith or related thereto, for exploitation in any form or medium, of any kind or nature whatsoever, whether now known or hereafter devised, regardless of whether such Deliverables are selected or used by Target. Target may add to, subtract from, arrange, rearrange, change and adapt the Deliverables in Target's sole discretion, and Agency hereby waives and shall obtain from its employees and contractors waivers of any rights of attribution and integrity or any other "moral rights of authors" with respect to the Deliverables and any uses thereof to the full extent now or hereafter permitted by the laws of any other country.
- e. Agency Assistance. Agency agrees to execute and deliver promptly to Target (without charge to Target) all written instruments, and to do all other legal acts which Target deems necessary or desirable, to enable Target to obtain, defend, enforce, maintain or commercialize, any rights or protections for the Deliverables and to vest the entire right and title in and to the Deliverables in Target.

## 8. Indemnification.

- a. Agency shall defend, indemnify and hold harmless Target, its affiliates, and their respective directors, officers, shareholders, employees, contractors and agents (collectively, the "Target Parties") from and against any liabilities, losses, investigations or inquiries, claims, suits, damages, costs and expenses (including without limitation, reasonable legal fees and expenses) (each, a "Claim") arising out of or otherwise relating to Agency's performance or failure to perform as required by this Agreement, Agency's acts or omissions, or any of Agency's representations or warranties contained in this Agreement.
- b. Target shall defend, indemnify and hold harmless Agency from and against any liabilities, losses, claims, suits, damages, costs and expenses (including without limitation, reasonable legal fees and expenses) (each, a "Claim") arising out of or otherwise relating to (a) material or information supplied by Target pursuant to this Agreement when such material or information is used as directed by Target; (b) Target trademarks, trade dress or other intellectual property (except patents) provided by Target (the "Intellectual Property") infringing any intellectual property rights of a third party when such Intellectual Property is used as directed by Target, or (c) Target's breach or alleged breach of this Agreement.

9. **Insurance.** Agency shall maintain in full force and effect insurance of the following kinds and amounts and meeting such other requirements as set forth below.

- a. **Workers Compensation.** Agency shall provide evidence of compliance with Workers' compensation legislation at the places where Services are provided (including the Agency's workplace), including proper registration and payments due thereunder. At any time during the Term of the Agreement, when requested by Target, Agency shall provide such evidence of compliance.
- b. **Commercial General Liability Insurance.** Commercial general liability ("CGL") insurance with minimum limits of coverage of not less than \$1,000,000 per occurrence for bodily injury and property damage which shall include the following coverages: products and completed operations, contractual liability for liabilities assumed by Agency under this Agreement, personal and advertising injury liability, and property in the care, custody or control of Agency. Agency's CGL insurance shall: (i) designate Target as an additional insured, including with respect to third party claims or actions brought directly against Target or against Target and Agency as co-defendants and arising out of this Agreement, and (ii) provide for a severability of interests.
- c. **Automobile Liability Insurance.** Automobile Liability insurance (including coverage for owned, hired and non-owned vehicles) with minimum limits of not less than \$1,000,000 per occurrence combined single limit for personal injury, including bodily injury, death and property damage.
- d. **General Insurance Requirements.**
  - (i) **Insurer Stability and Size.** All coverage required under this Section shall be procured from a company or companies possessing an A.M. Best rating of A-VII or better.
  - (ii) **Insurer Qualification.** All coverage required under this Section shall be obtained from a company or companies that are authorized to do business under the laws of the province(s) in which Agency is conducting business related to this Agreement.
  - (iii) **Occurrence Basis.** All coverage required under this Section shall be written on an occurrence basis.
  - (iv) **Agency Insurance is Primary.** Agency's insurance shall be primary and required to respond to and pay prior to any other available coverage of Target.
  - (v) **Certificate of Insurance.** Agency shall provide Target with a certificate(s) of insurance evidencing the required coverage concurrently with the execution of this Agreement and upon each renewal of such policies. Agency shall give Target at least thirty (30) days prior written notice of any material change or cancellation of such policies.
  - (vi) **Self-Insurance.** Agency shall not self-insure its coverage required under this Section without the prior written consent of Target.

10. **Taxes**

- a. **Sales Taxes.** To the extent any sales, use, service, value added, goods and service, or harmonized sales taxes (collectively, "Sales Taxes") are payable by Target to the Agency with respect to the Services provided by Agency hereunder (1) Agency shall reflect such Sales Taxes separate from the Services or other fees stated on Agency's invoices and Agency shall comply with all invoicing disclosure requirements including those prescribed by the *Input Tax Credit Information (GST/HST) Regulations under the Excise Tax Act (Canada)*, and any other applicable law, (2) Target shall pay Agency the Sales Taxes that are legally payable by Target as reflected on Agency's invoice or Target may contest such amount if Target believes the payment of any such tax would be in error, and (3) Agency shall pay and remit all applicable Sales Taxes to the appropriate taxing authority in a timely

fashion and shall indemnify, defend and hold Target harmless from any failure by the Agency to collect, remit or pay such Sales Taxes.

- b. Withholding. Notwithstanding anything else contained herein, if any amounts (including without limitation any taxes) are required by applicable Laws to be deducted or withheld by Target from any amount payable by Target to or for the benefit of Agency pursuant to this Agreement, Target (1) shall be entitled to withhold and deduct such amounts from any payments owing to Agency under the Agreement, (2) shall pay, or cause to be paid, to the relevant taxation authority the full amount of such withholdings in accordance with applicable Law; and (3) shall pay to Agency the amounts owing to Agency under the Agreement net of such withholdings. For greater certainty, any amount so withheld or deducted by Target shall discharge Target's obligation to pay such amount to Agency provided that Target has remitted, or caused to be remitted, such amount to the relevant taxation authority. Upon Agency's written request, Target shall make reasonable efforts to deliver to Agency acceptable documentation evidencing the payment and remittance to the relevant taxation authority of the amounts withheld by Target. Subject to applicable Law (including any applicable income tax conventions or treaties), the parties may agree to cooperate to reduce any amounts required to be withheld by Target from any amount payable by Target to Agency under this Agreement, including filing any documents with any relevant taxation authority, provided that Target is satisfied, acting reasonably, that any such filing would not be adverse to Target.

11. Exclusivity.

- a. During the term of any Scope of Work, and for a period of six (6) months thereafter, Agency personnel who perform Services for Target as identified in such Scope of Work will not directly (such as through the retailer) or indirectly (such as through a manufacturer), provide services to any national or regional retailer (including, but not limited to, Amazon, Sears, Toys "R" Us/Babies "R" Us, Walmart/Sam's Club, Canadian Tire and Shoppers Drug Mart) involving the same product category or subject matter for which Agency is providing or has provided Services to Target. The product category or subject matter shall be defined in the Scope of Work. Agency shall ensure that Target's Confidential Information (as defined in the Non-Disclosure Agreement) and any information related to the Services is disclosed solely to those Agency personnel providing Services.
- b. Target does not agree to use Agency exclusively or to provide any minimum amount of work.

12. Confidentiality and Use of Target Name.

- a. Agency has executed the Non-Disclosure Agreement dated August 11, 2014 (the "NDA") Agency acknowledges and agrees that the NDA is in full force and effect and shall apply to this Agreement and the parties' dealings under this Agreement.
- b. Agency shall not use Target's name, trademarks, services marks, logos, any description that would reveal Target's identity or other forms of identification, whether registered or not (the "Target Identification") in any way, including, but not limited to, any advertisements, press release, announcements, customer lists (including customer lists on any website) or materials of a public or promotional nature or in soliciting other clients nor make any direct or indirect public reference to this Agreement or any other contract between Agency and Target without first obtaining Target's written permission which may be withheld in Target's sole discretion. In addition, Agency agrees that it shall not negatively reference or disparage Target.
- c. In order to protect and secure Target's Confidential Information and any information related to the Services performed hereunder, Agency shall use practices no less strict and secure than best practices in the industry including without limitation password protection of

computer systems and files, secure data storage facilities and procedures) Notwithstanding the foregoing, to the extent that the terms and requirements of the NDA or other writing between the parties require more secure and/or stricter practices than the foregoing, such more secure and/or stricter terms and requirements shall apply.

13. **Notices.** Except as otherwise provided in the Agreement, all notices required hereunder shall be in writing and shall be delivered using one of the following methods of delivery: (a) nationally-recognized overnight courier, with such notice effective at the time delivery is shown in the courier's records; (b) postage prepaid by registered or certified mail, return receipt requested, with such notice effective upon receipt or upon the date that delivery is attempted and refused; or (c) delivered personally, with such notice effective upon delivery. Either party may designate another notice address in a notice given pursuant to this section. Notices shall be delivered to the following addresses:

**To Target**

Target Canada Co.  
5570 Explorer Drive  
Mississauga, ON L4W 0C4  
ATTN: Kathrin Menge, Manager  
Fax Number: N/A

**To Agency:**

Advitek Inc.  
235 Yorkland Blvd., Suite 301  
Toronto, ON M2J 4Y8  
ATTN: Joyce Rees, President  
Fax Number: (647) 258-3761

**cc: Target Canada Co. Law Department**

5570 Explorer Drive  
Mississauga, ON L4W 0C4  
ATTN: General Counsel  
Fax: 289.261.2087  
Email: Canada.Law@Target.com

14. **Subcontracting**

- a. **Target Approval Required.** Agency shall not subcontract for Services or Deliverables without Target's prior written approval, which Target can withhold in its sole discretion. Agency shall provide such information as Target may request regarding its subcontractors.
- b. **Agreement with Subcontractor.** Nothing in this Agreement creates any contractual relationship between Target and any subcontractor. If Agency subcontracts for Services and Deliverables, Agency remains fully responsible and liable to Target for the performance of all duties and obligations under this Agreement. Agency shall have a written contract with each subcontractor that obligates the subcontractor (to the extent of the Services and Deliverables to be performed by the subcontractor) to assume toward Agency all duties and obligations which Agency by this Agreement assumes toward Target.
- c. **Payment.** Target's payment to Agency constitutes payment for any Services and Deliverables provided by any subcontractor.

15. **Audit Rights.** During the Term of this Agreement and for a period of seven (7) years after its termination or expiration, Agency shall allow Target and Target's designated representatives to audit, review and copy ("Audit") Agreement Records during Agency's regular business hours. Agency shall provide Target with access to Agreement Records to conduct an Audit within one week after Agency's receipt of a written request from Target. Agency shall provide such assistance as is reasonably requested by Target in connection with an Audit. For purposes of the Agreement, "Agreement Records" means all information, including Agency systems, arising out of or relating to the Agreement, including Agency's (1) performance of this Agreement; (2) representations, warranties or conditions; (3) other obligations or responsibilities; or (4) fees charged and compensation received under the Agreement. In the event that an Audit reveals that Agency overbilled Target by more than eight percent (8.00%) the total amounts paid and/or payable by Target for the Scope of Work(s) that are the subject of the Audit, or identifies that

Agency is knowingly and willfully breaching the Agreement, then Agency shall reimburse Target for Target's costs in conducting the Audit.

16. Governing Law and Venue

The laws of Ontario and all laws of Canada applicable therein, without regard to choice of law principles, govern all matters arising out of or related to this Agreement. The parties agree that the exclusive forum and venue for any legal action arising out of or related to this Agreement shall be the Ontario courts sitting in Toronto, and the parties submit to the personal jurisdiction of such courts. The parties shall not raise any objection to the venue of any action, application, reference or other proceeding arising out of or related to this Agreement in the Ontario courts sitting in Toronto, including the objection that the proceedings have been brought in an inconvenient forum.

17. Miscellaneous

- a. Amendments. The parties may not amend this Agreement except in a writing that each party signs. The terms of such an amendment shall apply as of the effective date of the amendment, unless the amendment specifies otherwise.
- b. Severability. If any provision of this Agreement is held invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will not be affected or impaired.
- c. Assignment. Agency shall not assign this Agreement, in whole or in part (by assigning any right or delegating any duty under this Agreement), voluntarily or involuntarily, by operation of law, or in any other manner, without Target's prior written consent which may be withheld in Target's sole discretion. Any purported assignment or delegation by Agency without Target's prior written consent is void. Target may assign this Agreement, in whole or in part (by assigning any right or delegating any duty under this Agreement) to any: (1) party (i) by operation of law, (ii) by merger or (iii) in connection with the sale of any line of business; or (2) affiliated entity.
- d. No Waiver. No provision of this Agreement shall be waived except pursuant to a writing executed by the party against whom the waiver is sought. No waiver will be applicable other than in the specific instance in which it is given. No failure to exercise, partial exercise of, or delay in exercising any right or remedy or failure to require the satisfaction of any condition under this Agreement shall operate as a waiver or estoppel of any right, remedy or condition.
- e. Third Party Beneficiaries. The parties acknowledge and agree that while Target's affiliates (and each of their respective successors and assigns) and their respective directors, officers, shareholders, employees, contractors and agents, and the directors, officers, shareholders, employees, contractors and agents of Target (collectively the "Third Party Beneficiaries") are not parties to this Agreement and have no obligations under this Agreement, Target is a trustee of each of the Third Party Beneficiaries for the limited purpose of holding in trust for each of the Third Party Beneficiaries the covenants expressed to be in favour of one or more of the Third Party Beneficiaries. Accordingly, the parties agree that each of the Third Party Beneficiaries may enforce such rights and promises in their own right (and will not be required to add Target as a party to any proceedings for such enforcement).
- f. Compliance with Anti-Corruption Laws. Agency agrees to comply with all United States export control and economic sanction Laws, the United States Foreign Corrupt Practices Act ("FCPA"), the Corruption of Foreign Public Officials Act (Canada) ("CFPOA") and all other applicable anti-bribery Laws. Agency represents, warrants, conditions and agrees that neither Agency nor anyone acting on Agency's behalf has committed or will commit any act in connection with activities undertaken for Target or its affiliates that would result in a violation of the FCPA, CFPOA or any other anti-bribery Law. Furthermore, in

connection with activities undertaken for Target or its affiliates. Agency and anyone acting on Agency's behalf shall not, directly or indirectly, give, offer to give, or authorize the giving of any money or anything else of value to any person for the purpose of obtaining, retaining, or directing business by (a) improperly influencing any act or decision, (b) improperly inducing the recipient to act or refrain from acting in violation of a legal duty, (c) securing any other improper advantage, or (d) expediting or securing the performance of any routine governmental action. Agency shall immediately notify Target of any actual or suspected breach of this section.

- g. Language. The parties confirm that it is their wish that this Agreement, as well as any other documents relating to this Agreement, including notices, schedules and authorizations, have been and shall be drawn up in the English language only. *Les signataires confirment leur volonté que la présente convention, de même que tous les documents s'y rattachant, y compris tout avis, annexe et autorisation, soient rédigés en anglais seulement.*
- h. Survival. All warranties, indemnities and confidentiality obligations survive the termination or expiration of this Agreement. In addition, every other provision that by its terms is intended to survive termination or expiration of this Agreement will do so.

18. Entire Agreement.

- a. This Agreement, including all exhibits, schedules, and other attachments to this Agreement as well as documents specifically referenced in this Agreement, constitute the entire expression of the parties' agreement with regard to the subject matter of this Agreement. All prior and contemporaneous negotiations and agreements between the parties with regard to the subject matter of this Agreement are expressly superseded by this Agreement.
- b. This Agreement is effective as of the Effective Date set forth in the first paragraph above. In the event the Effective Date is left blank, the Effective Date of this Agreement will be deemed to be the earlier of the date this Agreement is signed by both parties or the first date on which Services contemplated by this Agreement are performed and/or provided by Agency.
- c. In signing this Agreement below, each party agrees to the terms and conditions of this Agreement and acknowledges the existence of consideration to make this Agreement a valid and binding legal obligation.

[Remainder of page intentionally left blank.]



IN WITNESS OF WHICH the parties have duly executed this Agreement.

TARGET CANADA CO.

BY:

Paul Livermore

Name: PAUL LIVERMORE

Title: SR. MGR. GUEST INSIGHTS

ADVITEK INC.

BY:

J.E. Rees

Name: J.E. REES

Title: President

**TARGET CANADA CO.  
CANADA'S ANTI-SPAM LEGISLATION ADDENDUM**

This Canada's Anti-Spam Legislation Addendum ("CASL Addendum") is made by party named below ("Agency"), in favor of Target Canada Co. ("Target") as a part of the Marketing Research Services Agreement executed by Agency on August 22, 2014 ("Agreement"). In case of any conflict between the Agreement and this Addendum, the terms and conditions of this Addendum shall control. Except as modified herein, all terms and conditions of the Agreement shall remain in full force and effect.

To the extent Agency sends commercial electronic messages ("CEMs"), as such term is defined under Canada's Anti-Spam Legislation (Statutes of Canada 2010, c 23) and its associated regulations (collectively, "CASL"), on behalf of Target, or causes or permits the sending of CEMs on behalf of Target, Agency represents, warrants and agrees that it fully complies with all applicable consent, notice, unsubscribe and other requirements under CASL including, without limitation,

- a) the requirements relating to express consent, implied consent, exceptions to the consent requirement, and/or exemptions from CASL, as applicable;
- b) the form, content and unsubscribe requirements for each commercial electronic message;
- c) the requirement to give effect to the unsubscribe mechanism within the time period required by CASL;
- d) in circumstances where Agency is sending (or causing or permitting to be sent) a CEM in reliance upon an express consent obtained by a third party (where Agency was not specifically named in such consent), the additional notice, unsubscribe and other requirements applicable to Agency in these circumstances; and
- e) ensuring that the sender information, subject matter information or locator of an electronic message, or content within an electronic message, sent (or caused or permitted to be sent by) Agency is not false or misleading in any respect.

Without limiting the foregoing, Agency represents, warrants and agrees that it has established, and will continue to maintain, policies, protocols and procedures to ensure it complies with all applicable requirements under CASL, and shall comply with any written instruction and/or protocol provided by Target to Agency from time to time in connection with the sending of CEMs or any other matter related to CASL.

ADVITEK INC.  
on behalf of itself, its subsidiaries and affiliated entities

Signature: \_\_\_\_\_

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

Please Print

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

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

Address: \_\_\_\_\_

*J.E. Rees*  
*J.E. REES*  
*PRESIDENT*  
*Sept 2, 2014*  
*233 Yorkland Blvd, Suite 301*  
*Toronto ON*  
*M2J 4Y8*



# TAB B