

THE FOLLOWING IS EXHIBIT "U" REFERRED  
TO IN THE AFFIDAVIT OF MARK J. WONG  
SWORN JANUARY 14, 2015



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Commissioner for Taking Affidavits

**TARGET CORPORATION**

**- and -**

**ALVAREZ & MARSAL CANADA INC.**

**(in its capacity as Court appointed Monitor of Target Canada and certain of its subsidiaries (the "Monitor") and not in its personal capacity**

**- and -**

**HON. JOHN D. GROUND**

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**TRUST AGREEMENT**

Dated January 14, 2015

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# TRUST AGREEMENT

THIS AGREEMENT dated the 14th day of JANUARY, 2015.

BETWEEN:

**TARGET CORPORATION ("Settlor")**

**ALVAREZ & MARSAL CANADA INC. solely in its capacities as Court appointed Monitor of Target Canada and the Administrator of the Target Canada Employee Trust, and not in its personal capacity ("Administrator")**

- and -

**Hon. John D. Ground ("Trustee")**

## WHEREAS:

- A. It is intended that on or about a date in January, 2015 (the "**Filing Date**"), Target Canada Co., an unlimited liability corporation organized under the Laws of the Province of Nova Scotia ("**Target Canada**"), and certain of Target Canada's affiliates (collectively with Target Canada, the "**Target Canada Entities**" as specified below) will commence creditor protection proceedings before the Ontario Superior Court of Justice (Commercial List) (the "**Court**") under the *Companies' Creditors Arrangement Act* (Canada) (the "**CCAA Proceedings**").
- B. In connection with the CCAA Proceedings, Target Canada is seeking the appointment of Alvarez & Marsal Canada Inc. as monitor (the "**Monitor**");
- C. In connection with the CCAA Proceedings, Target Canada anticipates winding down its operations and ceasing to carry on business (the "**Wind-down Process**").
- D. Target Canada is the employer of approximately 17,500 employees (the "**Target Canada Employees**"), who will be impacted by the Wind-down Process.
- E. Under the Laws of Canada, the contractual, statutory and common law termination entitlements (if any) of the Target Canada Employees to be terminated without cause and without sufficient notice or payment in lieu thereof in the CCAA Proceedings will constitute unsecured claims in the CCAA Proceedings, to be reviewed in accordance with the claims process once established in the CCAA Proceedings, and ultimately subject to compromise in any plan of arrangement presented by Target Canada to its creditors.

- F. Under the various provincial employment standards statutes, certain Target Canada Employees may be entitled to receive their Regular Wages (as hereinafter defined) for a Regular Work Week (as hereinafter defined) during their statutory notice period, even if their hours of work vary or are reduced such that they do not earn such amounts through actual service.
- G. Target Corporation is the indirect parent of Target Canada, incorporated under the Laws of Minnesota.
- H. Target Canada and Target Corporation with the support of the Monitor desire to have Target Canada Employees treated in a fair and equitable manner in the CCAA Proceedings in order to assist with their transition to alternative employment.
- I. In order that the Eligible Employees (as defined below) have a measure of financial security during the Wind-down Process and the CCAA Proceedings and to diminish the financial hardship the Eligible Employees may suffer as a result thereof, the Settlor (as defined below) has agreed to provide certain financial support on a gratuitous, without prejudice basis through the creation of this Trust and subject to the limitations set forth in and in accordance with the terms and conditions of this Agreement. As a result, Eligible Employee Claims (as defined below) will be eligible for protection and satisfaction through this Trust, and shall not constitute unsecured claims against the estate of Target Canada;
- J. In order to further benefit Eligible Employees and all other unsecured creditors of Target Canada, the Settlor has agreed not to seek any right of subrogation against Target Canada in respect of amounts paid to Eligible Employees pursuant to this Trust.
- K. Target Canada with the support of the Monitor is also seeking the appointment of Koskie, Minsky LLP as Representative Counsel of Target Canada Employees, save and except its officers and directors, in connection with the CCAA Proceedings, with Susan Philpott acting as senior counsel (the “**Representative Counsel**”).
- L. Target Canada, Representative Counsel and the Monitor have each agreed to support the entry by the Settlor into this Agreement on and subject to the terms and conditions hereof; and
- M. Target Canada will be seeking as part of its initial relief, an order authorizing and approving the terms and conditions of this Agreement.

**NOW THEREFORE** in consideration of the foregoing and the mutual agreements contained herein (the receipt and adequacy of which are acknowledged), it is agreed and declared as follows:

## ARTICLE 1 INTERPRETATION

### 1.1 Definitions

Where used in this Agreement, including in the Recitals, the following terms shall have the following meanings:

**“Administrator”** means the Monitor solely in its capacity as Monitor and administrator hereunder and not in its personal capacity;

**“Administrator Expenses”** has the meaning ascribed to such term in Section 6.1(b);

**“Administrator Fees”** has the meaning ascribed to such term in Section 6.1(a);

**“Administrator Payments”** has the meaning ascribed to such term in Section 6.1(b);

**“Agreement”** means this Trust Agreement, as amended or supplemented from time to time pursuant to the terms hereof;

**“Applicants”** means 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;

**“Benefit Claims”** means in respect of an Eligible Employee, (i) during any portion of the Notice Period during which the Eligible Employee remains actively employed but is eligible for a Top-Up Claim, a pro-rated amount of Target Canada’s portion of the cost of premium contributions required to continue such Eligible Employee’s benefit coverage, and (ii) during any portion of the Notice Period during which such Eligible Employee has ceased to be actively employed, Target Canada’s portion of the cost of premium contributions required to continue such Eligible Employee’s benefit coverage;

**“Beneficiary”** means each: (i) active Target Canada Employee as of the Filing Date, who has not given notice to, or received notice of termination from, Target Canada and who is terminated without cause by Target Canada following the Filing Date; (ii) inactive Target Canada Employee on approved disability leave, statutory leave, or authorized personal and educational leave as of the Filing Date who has not given notice to, or received notice of termination from, Target Canada and who is terminated without cause by Target Canada following the Filing Date; and (iii) such other inactive Target Canada Employee on authorized leave of absence that Target Canada and the Monitor may expressly agree. For the avoidance of doubt, a Beneficiary shall not include any Target Canada Employee who voluntarily resigns and/or abandons his or her employment at any time prior to the effective date of the termination without cause by Target Canada, whether or not such individual has received notice of termination at the time of such resignation and/or abandonment;

**“Business Day”** means a day on which the banks are open for business (Saturdays, Sundays, statutory and civic holidays excluded) in Toronto, Ontario, Canada;

**“CCAA Proceedings”** has the meaning ascribed to such term in the Recitals to this Agreement;

**“Claim”** means all and any claims, actions, suits, applications, litigation, charges, complaints, prosecutions, assessments, reassessments, investigations, inquiries, hearings and other proceedings, whether civil, criminal, administrative or otherwise;

**“Claims Process”** means the claims process to be approved by an order of the Court governing the identification and quantification of certain claims against the Target Canada Entities and the directors and officers of the Applicants in connection with the CCAA Proceedings;

**“Confirmation Date”** means the date of termination of the CCAA Proceedings;

**“Court”** has the meaning ascribed to such term in the Recitals to this Agreement;

**“Deemed Release Terms”** means

(i) during each Pay Period (as hereinafter defined) during the Notice Period, a deemed release of the Releasees (as hereinafter defined) by an Eligible Employee for an amount equal to the distribution from the Trust to Target Canada in respect of such individual’s Eligible Employee Claim, which distribution has been processed and paid by Target Canada; and

(ii) a deemed full and final release of the Releasees by an Eligible Employee in respect of such individual’s total Eligible Employee Claim pursuant to the terms hereof, effective 60 days after the final payment to such Eligible Employee, or such later date as the Monitor in its discretion may designate, provided that the Eligible Employee has not, on or before such date, provided notice of dispute to the Monitor and Representative Counsel in the manner and form set out in the Initial Order;

provided however that in the event of any insufficiency of Trust funds to cover an individual’s total Eligible Employee Claim, only paragraph (i) hereof shall be effective and there shall be no deemed full and final release of the full Eligible Employee Claim.

**“Effective Date of Notice”** means the effective date of the notice of termination of employment without cause given by Target Canada to an Eligible Employee, or as otherwise agreed among Target Canada, the Administrator and Representative Counsel;

**“Eligible Employees”** mean the Beneficiaries;

**“Eligible Employee Claim”** means in respect of an Eligible Employee, an amount equal to A – B where:

A is the greatest of:



(i) such Eligible Employee's statutory minimum termination entitlement under ESA, including any statutorily required post-termination vacation pay;

(ii) beginning from the Effective Date of Notice, 16 weeks' Regular Wages for a Regular Work Week as well as the cost of Target Canada's portion of premium contributions required to continue such Eligible Employee's benefit coverage for such 16 week period to the extent permitted by the insurance carrier, but not less than minimum ESA entitlement; or

(iii) contractual notice of termination or pay in lieu of notice required to be provided or paid to such Eligible Employee pursuant to the terms of any applicable written employment agreement between Target Canada and the Eligible Employee, including the cost of Target Canada's portion of premium contributions required to continue such Eligible Employee's benefit coverage as required by such written employment agreement to the extent permitted by the insurance carrier, but not less than minimum ESA entitlements; and

B is:

all amounts earned by such Eligible Employee up to their Regular Wages (which for the avoidance of doubt shall include benefits and vacation pay) for a Regular Work Week in respect of actual post-filing services provided following the Effective Date of Notice; provided however that B shall be deemed to be zero (0) for any such Eligible Employee whose written employment agreement specifically provides that the contractual termination entitlements cannot be reduced through working notice.

For the avoidance of doubt, an Eligible Employee Claim includes Top Up Claims and Benefit Claims, and excludes Excluded Employee Claims;

**"Eligible Employee Claims Estimate"** has the meaning ascribed to such term in Section 2.1(a);

**"ESA"** means applicable employment standards legislation (as amended and replaced), including the *Alberta Employment Standards Code* for Beneficiaries employed in Alberta, the *British Columbia Employment Standards Act* for Beneficiaries employed in British Columbia, the *Manitoba Employment Standards Code* for Beneficiaries employed in Manitoba, the *New Brunswick Employment Standards Act* for Beneficiaries employed in New Brunswick, the *Newfoundland Labour Standards Act* for Beneficiaries employed in Newfoundland, the *Nova Scotia Labour Standards Code* for Beneficiaries employed in Nova Scotia, the *Ontario Employment Standards Act, 2000* for Beneficiaries employed in Ontario, the *Prince Edward Island Employment Standards Act* for Beneficiaries employed in Prince Edward Island, the *Quebec Act Respecting Labour Standards* for Beneficiaries employed in Quebec, the *Saskatchewan Employment Act* for Beneficiaries employed in Saskatchewan;

**"Excluded Employee Claims"** means any and all actual or potential actions, causes of action, applications, suits, complaints, liabilities, debts, demands, damages, costs, torts (both intentional

and unintentional), dues, bonds, accounts, covenants, contracts, statutory rights, rights to expense reimbursement and all or any claims whatsoever against Target Canada, Target Corporation or their affiliates by any present or former employees or contractors of Target Canada that exist or may exist by reason of any cause, matter or thing whatsoever, save and except for the Eligible Employee Claims;

**“Filing Date”** has the meaning ascribed to such term in the Recitals to this Agreement;

**“Final Order”** means an Order of the Court, the implementation, operation or effect of which shall not have been stayed, varied, vacated or subject to pending appeal and as to which Order any appeal periods relating thereto shall have expired;

**“First Contribution”** means the amount of CDN \$52,500,000 to be paid by the Settlor in accordance with the terms hereof;

**“Governmental Authority”** means governments, regulatory authorities, governmental departments, agencies, commissions, bureaus, officials, ministers, Crown corporations, courts, bodies, boards, tribunals, or dispute settlement panels or other law, rule or regulation-making organizations or entities:

- (a) having or purporting to have jurisdiction on behalf of any nation, province, territory, state or other geographic or political subdivision of any of them; or
- (b) exercising or entitled or purporting to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power;

**“Initial Order”** means an Order of the Court granting relief to the Applicants in the CCAA Proceedings which, *inter alia*

- (i) approves and authorizes the creation of the Target Canada Employee Trust on the terms and conditions set out in this Agreement;
- (ii) provides for a deemed release of claims by Eligible Employees no less favourable to Target Canada, Target Corporation and their affiliates than the Deemed Release Terms;
- (iii) appoints the Monitor to act in such capacity, and in addition to the other powers granted to the Monitor therein, authorizes and directs the Monitor to act as Administrator of the Target Canada Employee Trust;
- (iv) declares that Target Corporation shall not be, and shall not be deemed to be, an employer or a common, related or successor employer with respect to any Target Canada Employee by virtue of settling the Trust; and
- (v) establishes a stay of proceedings on substantially the terms and conditions requested by Target Canada;

**“Initial Settlement Amount”** means the amount of CDN five (\$5) dollars to be paid by the Settlor to settle this Trust;

**“Law”** or **“Laws”** means applicable laws (including, without limitation, common law, civil law and laws or regulations prohibiting indemnification of directors of a company under certain circumstances), statutes, by-laws, rules, regulations, Orders, ordinances, protocols, codes, guidelines, treaties, policies, notices, directions, decrees, judgments, awards or requirements, in each case of any Governmental Authority;

**“Maximum Required Trust Contribution”** means the amount of CDN \$70,000,000 payable by the Settlor in accordance with the terms hereof;

**“Monitor”** has the meaning ascribed to such term in the Recitals to this Agreement;

**“Notice Period”** means for an Eligible Employee the period starting with the Effective Date of Notice and ending on the separation date set out in writing in such Eligible Employee’s notice of termination;

**“Orders”** means orders, injunctions, judgments, administrative complaints, decrees, rulings, awards, assessments, directions, instructions, settlements, penalties or sanctions issued, filed or imposed by any Governmental Authority or arbitrator and includes remedial orders;

**“Party”** or **“Parties”** means individually or collectively, as the case may be, the Settlor, the Administrator and the Trustee;

**“Pay Period”** means the biweekly period starting on January 25, 2015 and ending on February 7, 2015, and each subsequent biweekly period thereafter during the currency of this Agreement;

**“Pay Period Reconciliation”** has the meaning ascribed to such term in Section 2.1(b);

**“Person”** includes any individual, partnership, limited partnership, limited liability company, joint venture, syndicate, sole proprietorship, company or corporation with or without share capital, unincorporated association, trust, trustee, executor, administrator or other legal personal representative, Governmental Authority or organization or entity however designated or constituted;

**“Qualified Investments”** means an interest bearing account or accounts in a Scheduled Canadian Bank (as defined below).

**“Reconciliation”** has the meaning ascribed to such term in Section 2.1;

**“Regular Wages”** means an Eligible Employee’s regular wages as determined under applicable ESA;

**“Regular Work Week”** means an Eligible Employee’s regular work week as determined under applicable ESA;

**"Releasees"** means Target Canada Co., Target Corporation and all their respective affiliates (collectively the "Released Entities") and the present and former officers, directors, employees, representatives and agents of the Released Entities;

**"Representative Counsel"** has the meaning ascribed to such term in the Recitals of this Agreement;

**"Scheduled Canadian Bank"** means a bank listed on Schedule I of the Bank Act (Canada);

**"Settlor"** means Target Corporation;

**"Termination Date"** has the meaning ascribed to such term in Section 9.2;

**"Top Up Claim"** means for an Eligible Employee a claim for an amount required to provide such Eligible Employee her or his Regular Wages for a Regular Work Week during the Notice Period, even if such Eligible Employee's hours of work vary or are reduced so that such Eligible Employee does not receive such amounts through actual services performed;

**"Trust"** means the trust created pursuant to this Agreement;

**"Trust Conditions"** has the meaning ascribed to such term in Section 3.3;

**"Trustee"** at any time means the Person serving as trustee hereunder at such time and at the date hereof means Hon. John D. Ground;

**"Trustee Expenses"** has the meaning ascribed to such term in Section 5.1(b);

**"Trustee Fees"** has the meaning ascribed to such term in Section 5.1(a);

**"Trustee Payments"** has the meaning ascribed to such term in Section 4.1;

**"Trust Property"** means the aggregate amount contributed by the Settlor including without limitation the First Contribution to the Trustee in accordance with Section 3.2 of this Agreement (as set forth in Exhibit A attached hereto) and any further deposits or amounts received by the Trustee to be held under the terms of this Agreement together with interest and other revenues generated thereby and any property into which all of the foregoing may be converted less amounts which have been paid or distributed pursuant to the terms of this Agreement (including Trustee Fees);

**"Wind-down Process"** has the meaning ascribed to such term in the Recitals to this Agreement;

**"Target Canada"** has the meaning ascribed to such term in the Recitals of this Agreement;

**"Target Canada Employees"** has the meaning ascribed to such term in the Recitals of this Agreement;

**“Target Canada Entities”** means the Applicants, together with Target Canada Pharmacy Franchising LP, Target Canada Mobile LP and Target Canada Property LP;

**“Target Corporation”** means the meaning ascribed to such terms in the Recitals of this Agreement;

## **1.2 Headings, etc.**

The provision of a table of contents, the division of this Agreement into articles and sections and the insertion of headings are for convenient reference only and are not to affect the interpretation of this Agreement.

## **1.3 Articles; Sections; etc.**

Reference to articles, sections or other parts of this Agreement are to the specified article, section or part.

## **1.4 Gender; Singular/Plural**

References to gender include all genders and, except where the context otherwise requires, the singular includes the plural and vice versa.

## **1.5 Certain Phrases, etc.**

In this Agreement (i) the words “including” and “includes” mean “including (or includes) without limitation”, (ii) in the computation of periods of time from a specified date to a later specified date, unless otherwise expressly stated, the word “from” means “from and including” and the words “to” and “until” each mean “to but excluding”, and (iii) the words “hereafter”, “hereby”, “herein”, “hereof”, “hereunder” and “herewith” refer to the entire Agreement, not just a particular article or section.

## **1.6 Business Day**

Any action or payment required or permitted to be taken or made hereunder on a day which is not a Business Day may be taken or made on the next succeeding Business Day.

## **1.7 Recitals**

The Recitals to this Agreement are true and correct.

# **ARTICLE 2 PAYMENT OF ELIGIBLE EMPLOYEE CLAIMS**

## **2.1 Procedure for Funding of Eligible Employee Claims and Reconciliation**

- (a) Not later than 3 days prior to each pay date for a Pay Period, or as soon as practicable thereafter, Target Canada and the Administrator shall consult and

collaborate to estimate the Eligible Employee Claims, including any Top Up Claims and Benefit Claims, that would be paid to Eligible Employees in respect of such Pay Period but for the CCAA Proceedings (the “**Eligible Employee Claims Estimate**”).

- (b) Not later than 3 days prior to each pay date for a Pay Period, or as soon as practicable thereafter, and from time to time as deemed appropriate by the Administrator, Target Canada and the Administrator shall consult and collaborate to assess the amount of any difference between (i) payments made to Target Canada from the Trust pursuant to Section 2.1(c) in respect of prior Pay Periods minus (ii) the actual amount of Eligible Employee Claims payable from the Trust in respect of such Pay Periods (each such assessment, a “**Pay Period Reconciliation**”).
  - (i) If the amount of a Reconciliation is greater than zero, the following Eligible Employee Claims Estimate shall be reduced by such amount.
  - (ii) If the amount of a Reconciliation is less than zero, the following Eligible Employee Claims Estimate shall be increased by such amount.
- (c) For each Pay Period, the Trust shall make a payment to Target Canada in an amount equal to the lesser of (x) the Eligible Employee Claim Estimate for such Pay Period pursuant to Section 2.1(a) as adjusted by any applicable Reconciliation pursuant to Section 2.1(b), and (y) the Trust Property then remaining less the aggregate amount of any reserves established under Section 4.1.
- (d) Prior to the Termination Date, the Administrator and Target Canada will perform a final reconciliation and any payments owing to or from the Trust shall be made, if and as applicable, subject to the terms and conditions hereof, including the Maximum Required Trust Contribution.

## **2.2 Payment by Target Canada to Employee Beneficiaries**

Target Canada, as the employer of the Eligible Employees, shall be solely responsible for processing, or causing to be processed, all amounts received from the Trust, including (i) withholding, deducting and remitting any authorized or required withholdings and deductions to Government Authorities or other third-parties, (ii) arranging for payment of applicable benefit premiums, and (iii) paying net amounts to applicable Beneficiaries.

## **2.3 Enurement**

This Article 2 and the benefit of the obligations of the undersigned hereunder shall enure to the benefit of the applicable Beneficiaries, and her or his heirs, estate, executors, legal representatives, assigns and administrators and shall be binding upon the Trust.

## **2.4 No Subrogation**

The Settlor shall not seek and hereby releases and relinquishes any right of subrogation against Target Canada in respect of amounts paid by the Trust pursuant to this Agreement, and the Settlor hereby voluntarily and irrevocably waives any such rights.

## **2.5 Contractual Termination Entitlements**

No amounts will be distributed from the Trust in respect of entitlements under an Eligible Employee's written employment agreement unless and until such Eligible Employee has satisfied all terms and conditions required to receive such entitlements under the agreement, including, if applicable, executing and delivering a full and final release.

# **ARTICLE 3 THE TRUST**

## **3.1 Creation of Trust**

The Settlor hereby settles and deposits the Initial Settlement Amount with the Trustee on the trusts provided for in this Agreement. The Trustee accepts and agrees to hold such amount together with any other amounts or property that may from time to time constitute Trust Property upon the trusts provided for in, and subject to and in accordance with the terms of, this Agreement. The Trustee agrees to distribute and deal with the Trust Property, and at all times agrees to keep the Trust Property segregated from the property and assets of the Trustee, the Settlor and any other trust in which the Trustee may serve as a trustee, and in one or more segregated accounts, on the terms and subject to the conditions hereof.

## **3.2 Payment of First Contribution**

The Settlor shall pay the First Contribution to the Trustee to hold in the trusts provided for in this Agreement, upon the making of the Initial Order.

## **3.3 Trust Conditions**

Notwithstanding anything to the contrary in this Agreement, the Trust will be fully revocable by the Settlor in its sole discretion until each of the following terms and conditions (the "**Trust Conditions**") are fully and completely satisfied:

- (a) the Court grants the Initial Order;
- (b) the Initial Order becomes a Final Order; and
- (c) notices of termination of employment by Target Canada have been sent to Eligible Employees.

Provided however that in no event will the Settlor revoke or seek to revoke the Trust until the date that is 21 days after the making of the Initial Order. On and following the date

that is 21 days after the making of the Initial Order, if the Trust Conditions are not yet fully and completely satisfied, the Settlor may revoke the Trust upon notice to the Trustee. Upon notice of revocation pursuant to this Section 3.3, the Trustee shall pay to the Settlor the Trust Property which, for the avoidance of doubt, shall not include any Trustee Payments incurred to the date of such notice.

The Settlor, in its sole discretion, may waive one or more of the Trust Conditions.

### **3.4 Irrevocable Once Trust Conditions Fully and Completely Satisfied**

Subject to the full and complete satisfaction of the Trust Conditions contained in Section 3.3, and except as provided for in Article 9 of this Agreement, the Trust is intended and is hereby declared to be irrevocable. Upon the full and complete satisfaction of the Trust Conditions contained in Section 3.3, and except as provided for in Section 9.1, the Trust Property shall not, prior to the Termination Date, revert to or be applied for the benefit of the Settlor but shall be applied for the exclusive benefit of the Beneficiaries in accordance with the terms hereof.

### **3.5 Name**

The name of the Trust shall be the “**Target Canada Employee Trust**”. Wherever lawful and convenient, the affairs of the Trust shall be conducted under such name, or any other name the Trustee deems appropriate.

### **3.6 Objects**

The objects of the Trust are, subject to and in accordance with the terms hereof, to provide financial support for the Beneficiaries in respect of Eligible Employee Claims, and to provide for the payment of the Trustee Fees and Trustee Expenses.

### **3.7 Beneficiaries**

Following the full and complete satisfaction of the Trust Conditions contained in Section 3.3 but prior to the Termination Date, the beneficiaries of the Trust Property are the Beneficiaries and, under certain circumstances as expressly set forth in this Agreement, the Settlor. On the Termination Date, the Settlor is the residuary beneficiary of the Trust Property.

### **3.8 No Right to Corpus of the Trust**

Other than expressly provided in this Agreement, no Person shall have any right to the corpus of the Trust.

### **3.9 Qualified Investments**

Pending disbursement of the Trust Property, the Trustee shall hold, invest and reinvest the Trust Property in Qualified Investments. All Qualified Investments shall be held in trust by the Trustee subject to and in accordance with the terms hereof and the trust nature of such account or accounts shall be clearly identified.



### **3.10 Residence**

The residence of the Trust is the Province of Ontario, Canada.

## **ARTICLE 4 TRUSTEES FEES**

### **4.1 Reserve for Trustee Fees and Expenses**

The Trustee may reserve from the Trust Property, prior to paying any amounts in respect of Eligible Employee Claims, amounts sufficient to fully pay and satisfy all of the Trustee Fees and the Trustee Expenses and other payments to the Trustee to be met from the Trust Property under this Agreement, including, without limitation, any indemnification payments under Section 5.7 of this Agreement (collectively, the “**Trustee Payments**”), and is authorized to pay all of the Trustee Fees and the Trustee Expenses from the Trust Property in accordance with the terms of this Agreement. To the extent that the Trustee determines at any time that the remaining Trust Property at such time is insufficient to cover all payments to be met from the Trust Property under this Agreement, the Trustee Payments shall have priority over any payments to the Beneficiaries under this Agreement.

### **4.2 Receipt and Analysis of Eligible Employee Claims**

The Trustee may receive a request for payment in respect of Eligible Employee Claims from the Administrator, in accordance with Section 2. The Trustee may require, in support of any such claim or request, any supporting information the Trustee considers relevant.

The Trustee is authorized to obtain from such advisors as the Trustee in its discretion may require in accordance with Section 5.10 such additional advice and analysis as the Trustee considers to be desirable in making a determination as to any of the matters set out above. Receipt by the Trustee of information as to a claim or potential claim or a request in accordance with this Section in no way commits the Trustee to pay or satisfy the claim or potential claim.

### **4.3 No Trustee Liability for Insufficient Funds**

The Trustee shall not be liable to any Person (including any Beneficiary or the Settlor) in the event that the Trust Property (taking into account any reserves established under Section 4.1 of this Agreement) is insufficient to pay in full or in part any Eligible Employee Claim.

### **4.4 Additional Contributions from the Settlor**

In the event of any anticipated insufficiency of funds in the Trust Property (taking into account any reserves established under Section 4.1 of this Agreement), the Administrator shall give written notice to the Settlor of such additional contribution or contributions as the Administrator considers appropriate, and the Settlor shall pay such additional contribution or contributions to the Trust as required in such notice to fund Eligible Employee Claims, Administrator Payments, and Trustee Payments; provided however that, notwithstanding anything to the contrary in this Agreement or otherwise, in no event shall the Settlor be required to contribute a cumulative

amount, inclusive of the First Contribution, that exceeds the Maximum Required Trust Contribution. For the avoidance of doubt, notwithstanding any other provision of this Agreement to the contrary, except for the First Contribution and as set forth in this Section 4.4, the Settlor shall not, under any circumstance, be under any obligation to provide or contribute any money, property or value to the Trust, the Trustee, any Beneficiary or any other Person in respect of any Eligible Employee Claim or otherwise, and for greater certainty no Beneficiary shall be entitled to assert any Claim against the Settlor with respect to such amount.

Nothing herein prevents the Settlor from making such additional contributions in excess of the Maximum Required Trust Contribution as it may deem desirable, in its sole and absolute discretion. Any such additional contributions shall be on a purely gratuitous, without prejudice basis.

#### **4.5 Directions**

Subject to Section 5.2, the Trustee shall be protected in acting on any written direction of the Administrator as provided in this Agreement if signed on behalf of the Administrator by an individual purporting to be a duly authorized representative of the Administrator without the Trustee having to confirm the correctness of such direction.

### **ARTICLE 5 THE TRUSTEE**

#### **5.1 Fees and Expenses**

- (a) Any Person shall be entitled to fees for acting as Trustee in such amounts as are agreed among the Settlor and such Trustee (the **"Trustee Fees"**); provided that a Beneficiary shall not act as a Trustee under this Trust Agreement. The Trustee Fees shall be reimbursed in accordance with Section 5.1(c) of this Agreement.
- (b) The Trustee shall be reimbursed all expenses (including taxes, except for any taxes payable with respect to any fees paid to the Trustee) and disbursements, including, without limitation, any expenses incurred pursuant to Section 5.10 of this Agreement and the cost and expense of any Claim of any character (including, without limitation, any Claims before any Governmental Authority), reasonably incurred in connection with its duties hereunder, but excluding expenses and disbursements paid, incurred or suffered by the Trustee in any Claim in which the Trustee is determined to have acted dishonestly, fraudulently or to have been guilty of wilful misconduct (such reimbursable expenses collectively, the **"Trustee Expenses"**). The Trustee Expenses shall be reimbursed in accordance with Section 5.1(c) of this Agreement.
- (c) The Trustee shall provide the Settlor and the Administrator from time to time, or as agreed among the Settlor, the Administrator and the Trustee, with invoices of any Trustee Fees or Trustee Expenses that may be owing. If within thirty (30) days from the date of the invoice thereof such Trustee Fees or Trustee Expenses

are otherwise uncontested, the Trustee may satisfy such invoices from the Trust Property.

## **5.2 Termination and Replacement**

In the event that:

- (a) any Trustee that is not an individual:
  - (i) resigns as a Trustee;
  - (ii) enters into liquidation, whether compulsory or voluntary (not being merely a voluntary liquidation for the purposes of amalgamation or reconstruction);
  - (iii) has a receiver or a receiver-manager appointed with respect to its affairs;
  - (iv) ceases to be a resident of Canada within the meaning of the Income Tax Act (Canada);
  - (v) becomes subject to any bankruptcy laws; or
- (b) any Trustee, being an individual:
  - (i) dies;
  - (ii) refuses or becomes unable to act or to continue to act or becomes incapable of managing property. For the purposes of this Section 5.2(b)(ii), a Trustee shall be deemed to be unable to act or to continue to act as a Trustee of the Trust if such Trustee is under a legal disability or if two (2) medical doctors licensed to practice in Canada notify the Settlor and the successor Trustee of the Trust, then acting, that illness or physical or mental disability have rendered such a Trustee unable to give prompt and intelligent consideration to financial affairs;
  - (iii) resigns as Trustee;
  - (iv) is declared bankrupt, insolvent, or mentally incompetent;
  - (v) ceases to be a resident of Canada within the meaning of the Income Tax Act (Canada); or
  - (vi) becomes a citizen of the United States of America or becomes a resident of the United States of America within the meaning of the U.S. Internal Revenue Code;

such Trustee shall, immediately upon the happening of any such event other than a resignation, cease to be a Trustee hereof. A resignation by a Trustee shall be made by an instrument in writing and shall be effective from the date, which is seven (7) days after the notice of such resignation has been delivered to the Settlor; provided that no resignation shall be effective until the earlier of (x) the appointment of a replacement Trustee, and (y) ninety (90) days after notice of such resignation has been delivered to the Settlor. The Trustee and the former Trustee shall co-operate reasonably in effecting the transition to any replacement Trustee.

### 5.3 Replacement Trustee

- (a) The Trustee may at any time, by an instrument in writing, appoint a replacement Trustee with the prior written consent of the Settlor and the Administrator. In the event that the Settlor and Administrator fail to agree with respect to a suitable replacement Trustee, the replacement Trustee shall be appointed by the Court.
- (b) Where a Trustee's appointment is terminated pursuant to Section 5.2, the Settlor may appoint a replacement Trustee; provided that such appointment is approved by the Administrator. In the event that the Settlor and Administrator fail to agree with respect to a suitable replacement Trustee, the replacement Trustee shall be appointed by the Court.
- (c) Any Person appointed pursuant to Section 5.3 shall, upon acceptance of such appointment, be vested with the Trust Property and with all the trusts, powers, authorities, duties and obligations herein contained, without further assignment, transfer or conveyance of any kind or any order of any court or tribunal whatsoever as if such Person were an original party to this Agreement.
- (d) All instruments in writing relating to the appointment of replacement Trustees shall be attached to this Agreement and shall be sufficient evidence of the facts to which such instruments relate.

### 5.4 Accounting

The Trustee shall maintain accurate books, records and accounts of the transactions effected or controlled by the Trustee hereunder and the receipt, investment, reinvestment and disbursement of the Trust Property, and shall provide to the Settlor and the Administrator records and written statements thereof periodically upon request of the Settlor or an order of the Court.

### 5.5 Liability of Trustee

- (a) The Trustee shall exercise the powers and discretions given to the Trustee in good faith in what it deems to be the best interests, whether monetary or otherwise, of the Beneficiaries, whether or not such exercise may have the effect of conferring an advantage on any one or more of the Beneficiaries at the expense of any other Beneficiary or would otherwise, but for the foregoing, be considered as being other than an impartial exercise of its duties hereunder or as not being the maintenance of an even hand between the Beneficiaries, and all such exercise of

its powers and discretions made in good faith shall be binding upon the Beneficiaries and shall not be subject to any question by any Person whatsoever or whomsoever. In performing the trusts hereof and in exercising its powers hereunder the Trustee may act in its discretion and, provided the Trustee has acted honestly, the Trustee shall not be liable, answerable or accountable for any claims resulting from the exercise of a discretion or the refusal to exercise a discretion. The Trustee shall only be liable, answerable and accountable for its own dishonesty, fraud or wilful misconduct. The Trustee is liable, answerable and accountable only for money and securities for money actually received by such Trustee, even though the Trustee has signed a receipt or other instrument for the sake of conformity. A Trustee is not liable, answerable or accountable for the acts, receipts, negligence, defaults, dishonesty, fraud or wilful misconduct of any other Trustee, or of any other Person having custody of any part of the Trust Property and is not liable, answerable or accountable for any loss of money or security for money unless the same happens through the Trustee's own dishonesty, fraud or wilful misconduct. Honesty and good faith shall be presumed in favour of the Trustee unless such presumption is rebutted.

- (b) Subject to its obligations hereunder to the Settlor, the Administrator and to the Beneficiaries with respect to the Trust Property, the Trustee shall have no personal liability to any other Person arising from commitments in this Agreement or contractual relationships arising out of its position as Trustee. The Trustee is authorized to require any such commitment or contractual relationship to include a provision confirming the foregoing sentence to the Trustee, the Beneficiaries or any other Person with respect to the performance of the responsibilities of the Trustee hereunder, except for damages that may be caused by the dishonesty, fraud or wilful misconduct of the Trustee.

## **5.6 Acceptance of Trusts**

The Trustee hereby accepts the covenants, trusts and obligations in this Agreement declared and provided for and agrees to perform the same upon the terms and conditions herein set forth, and to hold and exercise the rights, privileges and benefits conferred upon the Trustee hereby in trust for the benefit of the Persons having an interest in the Trust Property.

## **5.7 Indemnification**

Subject to Section 6.1, the Trustee (and its directors, officers and employees, if any) shall be indemnified and held harmless out of the Trust Property and, if the Trust Property is insufficient, by the Settlor, from and against all Claims and costs arising in any manner out of or in connection with this Agreement and the Trust (including, without limitation, legal costs, any investments made, retained or disposed of on the direction of the Settlor, Trustee Fees and Trustee Expenses) except (x) to the extent that the same is attributable to the dishonesty, fraud or wilful misconduct of the Trustee and (y) any income taxes payable by the Trustee with respect to the Trustee Fees and the Trustee Expenses paid to the Trustee in accordance with Section 5.1 of this Agreement and any HST collected by the Trustee from the Trust which the Trustee fails to

remit. Subject to the foregoing, this entitlement to indemnification includes Costs incurred by the Trustee in enforcing its rights to indemnification hereunder. So long as a Trustee resigns, or is replaced, in accordance with the terms of this Agreement, such former Trustee shall continue to be entitled to indemnification under this Section 5.7 with respect to any Claims that relate to, arise from or are based on such former Trustee's service as a Trustee.

## **5.8 Tax Filings and Payments**

The Trustee shall, to the extent required by Law and subject to Section 10.12, prepare and file tax returns or other applicable filings or reports in connection with the Trust Property, and pay any taxes owing by the Trust from the Trust Property.

## **5.9 Accumulation of Income**

- (a) Any payments from the Trust Property made by the Trustee under the terms of this Agreement shall be deemed to be made first from capital of the Trust Property, and to the extent capital of the Trust Property is insufficient to make such payment, from the income of the Trust. Any income not so paid in any year shall be added to and dealt with as part of the capital of the Trust Property. All taxes payable on such income shall be paid from the Trust Property and, to the maximum extent permitted by applicable Laws, the Settlor shall be under no obligation to pay such taxes.

## **5.10 Professional Advisors**

The Trustee shall be entitled to take legal, accounting, tax or other advice and employ such assistance as in its judgment, acting reasonably, may be necessary for the proper discharge of its duties (including advice or assistance from any Person who provides advice or assistance to the Settlor, Target Canada or the Administrator) and, if acting in good faith, may rely upon the opinion, information or advice of any counsellor or any other independent expert or advisor retained by the Trustee and shall not be responsible for any loss resulting from any action or inaction taken in good faith in reliance upon such opinion, information or advice. Notwithstanding anything to the contrary herein, the reasonable payment for such legal, accounting, tax or other advice may be made from the Trust Property and paid directly to such third party advisor by the Trustee. Without prejudice to the generality of Section 4.4, under no circumstances shall the Settlor be liable to the Trustee or any other Person for any amounts due under this Section 5.10.

## **5.11 Application to Court**

The Settlor, the Administrator, Target Canada, any Beneficiary or the Trustee may apply to the Court at any time and from time to time for advice and direction in connection with any aspect of this Agreement and the administration of the Trust, and, in the case of the Trustee, the performance of any of its duties and responsibilities hereunder, including, without limitation, the appointment of a replacement Trustee in accordance with the terms of Section 5.3 of this Agreement.

### 5.12 Certificates of Incumbency

- (a) The Settlor shall deliver to the Trustee a certificate of incumbency, which certifies the incumbency and signatures of the directors, officers or other agents of the Settlor who have the authority to execute documents contemplated under this Agreement on behalf of the Settlor;
- (b) The Administrator shall deliver to the Trustee a certificate of incumbency, which certifies the incumbency and signatures of the directors, officers or other agents of the Administrator who have the authority to execute documents contemplated under this Agreement on behalf of the Administrator; and
- (c) The Trustee shall be entitled to rely on such certificates referred to in (a) and (b) above as to the matters certified therein and absent manifest irregularity in the manner of execution of any document deliverable under this Agreement, the Trustee shall have no obligation to verify the authenticity of any signatures on any document.

### 5.13 Incidental Rights; Actions; Defences; etc.

In addition to all other powers conferred upon it by the other provisions hereof or by any Law, the Trustee, subject to the obligation to invest in Qualified Investments, shall have the following powers, authorities and discretion:

- (a) to exercise all rights incidental to the ownership of investments and property held as part of the Trust Property, and without limiting the generality of the foregoing, the right to vote upon and issue proxies respecting any investments held in the Trust Property, the right to sell, the right to consent to and join in any plan, reorganization, readjustment, amalgamation, merger or consolidation with respect to any Person whose securities at any time form part of the Trust Property, and the right to authorize the sale of the assets or undertaking of any Person whose securities at any time form part of the Trust Property;
- (b) to join or take any action in connection with any investment or asset held by the Trustee as part of the Trust Property or to which the Trustee may be entitled in connection herewith and to exercise any rights, powers and privileges that at any time may exist or arise in connection with such investment or asset;
- (c) to take, institute, maintain or defend any action or other proceeding that may be necessary or advisable in the opinion of the Trustee for the preservation or protection of or realization upon any property forming part of the Trust Property; and
- (d) any other power granted to the Trustee pursuant to a written authorization executed by the Settlor and the Administrator.

## ARTICLE 6 ADMINISTRATOR

### 6.1 Fees and Expenses

- (a) The Administrator shall be entitled its reasonable fees and disbursements, in each case at its standard rates and charges for acting in such capacity, in such amounts as are agreed among the Settlor and the Administrator (the “**Administrator Fees**”). The Administrator Fees shall be reimbursed in accordance with Section 6.1(c) of this Agreement.
- (b) The Administrator shall be reimbursed all expenses (including taxes, except for any taxes payable with respect to any fees paid to the Administrator) and disbursements, including, without limitation, any expenses incurred pursuant to Section 6.2 of this Agreement and the cost and expense of any Claim of any character (including, without limitation, any Claims before any Governmental Authority), reasonably incurred in connection with its duties hereunder, but excluding expenses and disbursements paid, incurred or suffered by the Administrator in any Claim in which the Administrator is determined to have acted dishonestly, fraudulently or to have been guilty of wilful misconduct (such reimbursable expenses collectively, the “**Administrator Expenses**” and together with the Administrator Fees, the “**Administrator Payments**”). The Administrator Expenses shall be reimbursed in accordance with Section 6.1(c) of this Agreement.
- (c) The Administrator shall provide the Settlor and the Trustee from time to time, or as agreed among the Settlor, the Administrator and the Trustee, with invoices of any Administrator Fees or Administrator Expenses that may be owing. If within thirty (30) days from the date of the invoice thereof such Administrator Fees or Administrator Expenses are otherwise uncontested, the Trustee may satisfy such invoices from the Trust Property.
- (d) For the avoidance of doubt, the fees and expenses of the Representative Counsel shall not be the responsibility of the Trust.

### 6.2 Professional Advisors

The Administrator shall be entitled to take legal, accounting, tax or other advice and employ such assistance as in its judgment, acting reasonably, may be necessary for the proper discharge of its duties (including advice or assistance from any Person who provides advice or assistance to the Settlor, Target Canada or the Trustee) and, if acting in good faith, may rely upon the opinion, information or advice of any counsellor or any other independent expert or advisor retained by the Administrator and shall not be responsible for any loss resulting from any action or inaction taken in good faith in reliance upon such opinion, information or advice. Notwithstanding anything to the contrary herein, the reasonable payment for such legal, accounting, tax or other advice may be made from the Trust Property and paid directly to such third party advisor by the



Trustee. Without prejudice to the obligations of the Settlor under Section 4.4, under no circumstances shall the Settlor be liable to the Administrator or any other Person for any amounts due under this Section 6.2.

## **ARTICLE 7 BANKING**

### **7.1 Bank Selection**

The banking activities of the Trust in respect of the Trust Property, or any part thereof, shall be transacted with such Scheduled Canadian Bank as the Trustee may designate, appoint or authorize, in writing, from time to time.

### **7.2 Banking Activities**

All banking activities, or any part thereof, shall be transacted on behalf of the Trust as follows:

- (a) Any disbursements of Trust Property shall be authorized, in writing, by the Trustee and the Administrator, acting together; and
- (b) The Trustee may:
  - (i) subject to Section 7.2(a):
    - (A) open, operate and maintain any one or more account(s) at such Scheduled Canadian Bank, as designated. The Trustee shall endeavor to open and maintain any such accounts as joint authority accounts under which any disbursements must be authorized by both the Trustee and the Administrator; and
    - (B) execute any services or account operation agreements relating to any such account(s) as may be required; and
  - (ii) deposit or transfer any cash, cheques, drafts, or other bills of exchange to the credit of any such account(s).

## **ARTICLE 8 AMENDMENT**

### **8.1 Amendment Restrictions**

This Agreement may be amended, varied or supplemented only by written agreement executed by the Trustee, the Administrator and the Settlor, and, subject to Section 10.5, only:

- (a) to add to the provisions hereof additional covenants or provisions for the benefit of the Settlor, the Beneficiaries and/or the Trustee; or
- (b) for the purpose of correcting or rectifying ambiguities, defects, errors or omissions contained herein;

provided that any such amendment is not, in the opinion of the Trustee, the Administrator and the Settlor, based on the advice of legal counsel, inconsistent with the purposes hereof or prejudicial in any material respect to the interests of the Beneficiaries.

## **ARTICLE 9 ADJUSTMENT; TERMINATION**

### **9.1 Adjustment of Trust Corpus**

In the event the Administrator considers that there are funds in the Trust in excess of those that will be needed to make distributions in respect of any remaining Eligible Employee Claims, Trustee Payments and Administrator Payments, the Trustee, on the direction of the Administrator, may refund such excess funds to the Settlor.

### **9.2 Termination Date**

The Trust shall terminate upon the date on which the Settlor, Administrator and Trustee agree the Trust should terminate, or in the event that such parties cannot reach agreement on the appropriate date for the Trust to terminate, the date on which the Court has determined the Trust should terminate (such date, the “**Termination Date**”).

### **9.3 Consequence of Termination**

Upon the termination of the Trust in accordance with Section 9.2, the Trustee shall, as soon as reasonably practicable, satisfy any commitments to pay Eligible Employee Claims made under Article 2 and any outstanding Administrator Payments and Trustee Payments, and deliver the Trust Property then remaining, if any, to the Settlor or any designee of the Settlor (as designated in a written direction of the Settlor).

### **9.4 Survival**

Sections 5.5 and 5.7 shall survive the termination of the Trust and this Agreement and shall continue for the benefit of the Parties.

## **ARTICLE 10 OTHER MATTERS**

### **10.1 Governing Law**

- (a) This Agreement shall be governed and construed in accordance with the Laws of the Province of Ontario and the Laws of Canada applicable therein.
- (b) To the fullest extent permitted by applicable Law, each Party: (i) agrees that any claim, action or proceeding by such Party (including any Beneficiary) seeking any relief whatsoever arising out of, or in connection with, this Agreement, or the matters contemplated hereby shall be brought only before the Court; (ii) agrees to submit to the jurisdiction of the Court pursuant to the preceding clause (a) for

purposes of all legal proceedings arising out of, or in connection with, this Agreement or the matters contemplated hereby; (iii) waives and agrees not to assert any objection that it may now or hereafter have to the laying of the venue of such action brought in any such court or any claim that any such action brought in such court has been brought in an inconvenient forum; (iv) agrees that the mailing of process or other papers in connection with any such action or proceeding in the manner provided in Section 10.11 or any other manner as may be permitted by Law shall be valid and sufficient service thereof; and (v) agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in any other jurisdictions by suit on the judgment or in any other manner provided by applicable Law.

## **10.2 Assignment**

Subject to Sections 5.2 and 5.3, the rights and obligations under this Agreement may not be assigned by the Trustee without the prior consent in writing of the Settlor and the Administrator. The Settlor may assign its rights and obligations under this Agreement with the prior written consent of the Administrator. Under no circumstances may the Beneficiaries transfer their rights and obligations under this Agreement. This Agreement shall be binding upon and enure to the benefit of the Parties and their respective heirs, estates, administrators, executors, legal personal representatives, successors and assigns.

## **10.3 No Waiver, etc.**

- (a) No waiver of any of the provisions of this Agreement shall be deemed to constitute a waiver of any other provision (whether or not similar), nor shall such waiver be binding unless executed in writing by the Party to be bound by the waiver.
- (b) No failure on the part of any Party to exercise, and no delay in exercising any right under this Agreement shall operate as a waiver of such right, nor shall any single or partial exercise of any such right preclude any other or further exercise of such right or the exercise of any other right.

## **10.4 Entire Agreement**

This Agreement constitutes the entire agreement among the Parties with respect to the issues contemplated herein and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of such parties. There are no conditions or other agreements, express or implied, collateral, statutory or otherwise, among the Parties in connection with the subject matter of this Agreement, except as specifically set forth herein, and the Parties have not relied and are not relying on any other information, discussion or understanding in entering into and completing the transactions contemplated by this Agreement.

### **10.5 Severability**

If any provision of this Agreement shall be determined by an arbitrator or any court of competent jurisdiction to be illegal, invalid or unenforceable, that provision will be severed from this Agreement and the remaining provisions shall remain in full force and effect. The Parties shall endeavour in good faith negotiations to replace the illegal, invalid or unenforceable provision with a valid provision which comes closest to the intention of the Settlor underlying the illegal, invalid or unenforceable provision.

### **10.6 Time of the Essence**

Time is of the essence of this Agreement.

### **10.7 Further Assurances**

The Settlor, the Administrator and the Trustee shall do or cause to be done all such acts and things and shall execute or cause to be executed all such documents, agreements and other instruments as may be reasonably necessary or desirable for the purpose of carrying out the provisions and intent of this Agreement.

### **10.8 Counterpart Execution**

This Agreement may be executed in any number of counterparts and may be delivered by facsimile or other electronic transmission and all such counterparts taken together shall be deemed to constitute one and the same instrument.

### **10.9 Third Party Beneficiaries**

Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than the Settlor, the Beneficiaries, the Trustee and their respective heirs, estates, administrators, executors, legal representatives, successors and permitted assigns, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third party to the Settlor, the Trustee or the Beneficiaries, nor shall any provision give any third party any right of subrogation or action against any Party to this Agreement, nor shall any provision estop or otherwise limit the rights of the Settlor, the Trustee or the Beneficiaries to assert any claims, counterclaims or defences against any third party.

### **10.10 No Obligation to Pay Indemnities Prohibited by Law**

Notwithstanding anything contained herein, the Trust shall not pay any Eligible Employee Claim hereunder if the payment of such amount would be prohibited under the applicable Laws.

**10.11 Notice**

Any notice, direction or other communication given under this Agreement shall be in writing and given by delivering it or sending it via facsimile, or other similar form of recorded communication, during normal business hours, addressed:

(a) to, as applicable:

Target Corporation  
1000 Nicollet Mall, TPS-3155  
Minneapolis, MN 55403  
Attention: Jeff McGuire  
E-mail: [jeff.mcguire@target.com](mailto:jeff.mcguire@target.com)

With a copy to:

Davies, Ward, Philips & Vineberg LLP  
155 Wellington Street West  
Toronto ON M5V 3J7  
Attention: Jay A. Swartz  
Fax No.: 416.863.0871  
E-mail: [jswartz@dwvpv.com](mailto:jswartz@dwvpv.com)

Alvarez & Marsal Canada Inc.  
Royal Bank Plaza, South Tower  
200 Bay Street, Suite 2900  
P.O. Box 22  
Toronto, ON M5J 2J1  
Attention: Doug McIntosh  
Email: [dmcintosh@alvarezandmarsal.com](mailto:dmcintosh@alvarezandmarsal.com)

With a copy to:  
Goodmans LLP  
Bay Adelaide Centre  
333 Bay Street, Suite 3400  
Toronto, ON M5H 2S7  
Attention: Gale Rubenstein  
Fax No. : 416-979-1234  
E-mail: [grubenstein@goodmans.ca](mailto:grubenstein@goodmans.ca)

Hon. John D. Ground  
Amicus Chambers  
141 Adelaide Street West  
11<sup>th</sup> Floor  
Toronto, ON M5H 3L5

E-mail: [jground@NeesonChambers.com](mailto:jground@NeesonChambers.com)

With a copy to:  
 Lax O'Sullivan Scott Lisus LLP  
 145 King Street West, Suite 2750  
 Toronto, ON M5H 1J8  
 Attention: Terrence O'Sullivan  
 Email: [tosullivan@counsel-toronto.com](mailto:tosullivan@counsel-toronto.com)

Target Canada Co.  
 5570 Explorer Drive  
 Mississauga ON L4W 0C4  
 Attention: Mark Wong  
 E-mail: [mark.wong@target.com](mailto:mark.wong@target.com)

With a copy to:  
 Osler, Hoskin & Harcourt LLP  
 100 King Street West, 1 First Canadian Place, Suite 6200, P.O. Box 50  
 Toronto ON M5X 1B8  
 Attention: Tracy Sandler  
 Fax No.: 416.862.6666  
 E-mail: [tsandler@osler.com](mailto:tsandler@osler.com)

Koskie Minsky LLP  
 20 Queen Street West  
 Suite 900, Box 52  
 Toronto, ON M5H 3R3  
 Attention: Susan Philpott  
 Fax No.: 416.595.2104  
 E-mail: [sphilpott@kmlaw.ca](mailto:sphilpott@kmlaw.ca)

Any such communication shall be deemed to have been validly and effectively given (i) if personally delivered, on the date of such delivery if such date is a Business Day and such delivery was made prior to 4:00 p.m. (Toronto time) and otherwise on the next Business Day, or (ii) if transmitted via facsimile or by electronic mail, on the Business Day following the date of transmission. Any of the above parties may change his or its address for service from time to time by notice given in accordance with the foregoing and any subsequent notice shall be sent to such Party at its changed address.

#### **10.12 U.S. Federal Income Tax Treatment**

The Parties intend that the Trust shall be treated merely as a custodial arrangement that is not recognized as an entity for U.S. federal income tax purposes, and shall interpret the provisions of

this Trust Agreement in accordance with such treatment. If such treatment is not available, the Parties agree to cooperate to ensure that each of the Parties properly and consistently prepare and timely file any tax returns, information returns, and other applicable filings or reports that such Party is responsible for preparing under applicable Law in connection with the Trust Property for U.S. federal income tax purposes.

*[SIGNATURE PAGE FOLLOWS]*

IN WITNESS WHEREOF this Agreement has been executed as of the date first written above.

**TARGET CORPORATION**

By: \_\_\_\_\_  
Name:  
Title:

**ALVAREZ & MARSAL CANADA INC.**

By: \_\_\_\_\_  
Name:  
Title:

**TRUSTEE**

\_\_\_\_\_  
Name: Hon. John D. Ground