

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, C.C-3, 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**

Applicants

SUPPLEMENTARY MOTION RECORD OF ISSI INC.

February 18, 2015

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Service List of February 18, 2015

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AFFIDAVIT OF SHELL BERN

I, Shell Bern, of the Town of Mount Royal, in the Province of Quebec, MAKE OATH
AND SAY:

1. I am the President of ISSI Inc. formerly ISIS Inc. ("ISSI"), a supplier of baby products to Target Canada. I am also President of 1092072 Ontario Inc., carrying on business as Elfe Juvenile Products, ("Elfe") which is an associated company. It too is a supplier of baby products to Target Canada Co. ("Target Canada") As such, I have knowledge, information and belief of the matters to which I hereinafter depose. Where I have set out information from others I have indicated the source and verily believe it to be true.
2. Neither ISSI nor Elfe have, nor will they, supply baby products to Target USA. They sell their products in Canada only.

3. ISSI was incorporated under the laws of the Province of Ontario on November 14, 1996, as ISIS Inc. For reasons that are obvious, ISIS Inc.'s name was changed to ISSI Inc. on October 16, 2014. Although Target Canada was notified of this name change, the name ISIS continued to appear in documents emanating from Target Canada.

4. EI Brand Management Group ("EI BRANDS"), is an identifier for communications only to and from either and/or both of ISSI and ELFE, and will appear in some of the Exhibits in this Affidavit.

5. I have read the Affidavit of Mark Wong, sworn January 14, 2015 in these proceedings.

The Commencement of the Relationship

6. On or about, March 29, 2012 ISSI and Elfe each signed a Vendor Online Agreement ("Agreement") with Target Canada Co. ("Target Canada"). Now shown to me and marked as **Exhibit "A"** to this my Affidavit is a copy of the Online Vendor Agreement for ISSI. Now shown to me and marked as **Exhibit "B"** to this my Affidavit is a copy of the Online Vendor Agreement for Elfe.

7. As Mr. Wong states in his Affidavit at Paragraph 58:

"TTC uses an online ordering system (the "POL System") to issue purchase orders to its vendors. The POL System establishes conditions of contract and other related agreements. Payment is typically required only after TCC receives the merchandise. These agreements provide that TCC may cancel any purchase order at any time prior to shipment of the goods. Upon commencement of this CCAA proceeding, to the extent possible, TCC intends to immediately cancel all purchase orders that have been placed but have not been shipped. For the remaining

purchase orders, TCC intends to receive the merchandise and sell it in the contemplated liquidation process."

8. Around that time, ISSI and Elfe personnel met with Natasha Emerson, Buyer - Baby Gear, Nursery Furniture, Infant & Toddler Feeding & Newborn Toy, to choose the products that would be carried in their stores.

9. The procedure by which goods were supplied was as follows: Target Canada sent Electronic Data Interchange (EDI) #850 Purchase Orders, which included the items ordered, with the Expected Delivery Dates. Now shown to me and marked as **Exhibit "C"** to this my Affidavit is a copy of EDI Purchase Order #1101382367 dated January 7, 2015 to ISSI.

10. I have not produced all the EDI Purchase Orders because they amount to hundreds of pages, but these pages are samples of what was sent to ISSI.

11. **Exhibit "C"** contains 40 lines of computer data. The following fields are highlighted:

Line 2: ORDER#: 1101382367 & ORDER DATE: 2015 01 07

Line 32: QUANTITY: 2 EACH, UPC CODE: 872318667240 and ITEM#: B57667CW

Line 36: TOTAL PRICE (without tax): \$551.90

12. I have instructed our personnel to prepare extensions of all the EDI Purchase Orders for ISSI in the months of November, December, 2014, and January 2015. Between November 1, 2014 and November 30, 2014 Target Canada sent 3 EDI Purchase Orders to ISSI in the amount of \$759,404.10, for delivery prior to February 2, 2015. Of these 3 orders, none were shipped prior to the bankruptcy, but were scheduled for delivery. None were cancelled by Target Canada.

13. Between December 1, 2014 and December 31, 2014, Target Canada issued 38 EDI Purchase Orders to ISSI in the amount of \$151,796.24, for delivery prior to January 5, 2015. Of these 38 orders all were shipped.

14. Between January 1, 2015 and January 15, 2015, Target Canada issued, 11 EDI Purchase Orders from Target Canada to ISSI in the amount of \$44,131.66, for delivery prior to January 28, 2015. Of the 11 orders, 6 EDI Purchase Orders were shipped to Target Canada, totalling \$14,221.53. None of the remaining orders were cancelled.

15. Now shown to me and marked as **Exhibit "D"** to this my Affidavit is an easy-to read summary prepared by our staff, indicating the status of the Purchase Orders to ISSI for those three months (PO # 1101382367 is highlighted).

16. Target Canada sent Electronic Data Information (EDI) #850 Purchase Orders, which included the items ordered, with the Expected Delivery Dates. Now shown to me and marked as **Exhibit "E"** to this my Affidavit is a copy of EDI Purchase Order #1101309009 dated December 9, 2014 to Elfe.

Line 2: ORDER#: 1101309009 & ORDER DATE: 2014 12 09

Line 32: QUANTITY: 3 EACH, UPC CODE: 654582146733 and ITEM#: 8665435

Line 36: TOTAL PRICE (without tax): \$296.61

17. I have instructed our personnel to prepare extensions of all the EDI Purchase Orders for Elfe in the months of November, December, 2014, and January 2015. Between November 1, 2014 and November 30, 2014 Target Canada sent 3 EDI Purchase Orders to Elfe in the amount of

\$309,066.78, for delivery prior to February 2, 2015. Of these 3 orders, none were shipped prior to the bankruptcy, but were scheduled for delivery. None were cancelled by Target Canada.

18. Between December 1, 2014 and December 31, 2014, Target Canada issued 16 EDI Purchase Orders to Elfe in the amount of \$117,839.06, for delivery prior to January 15, 2015. Of these 16 orders all were shipped.

19. Between January 1, 2015 and January 15, 2015, Target Canada issued 7 EDI Purchase Orders from Target Canada to Elfe in the amount of \$83,346.38, for delivery prior to January 31, 2015. Of these 7 orders, none were shipped prior to the bankruptcy, but were scheduled for delivery. None were cancelled by Target Canada.

20. Now shown to me and marked as **Exhibit "F"** to this my Affidavit is an easy-to read summary, which indicates the status of the Purchase Orders to Elfe for those three months (PO # 1101309009 is highlighted).

21. When EDI Purchase Orders were received, ISSI and Elfe validated the orders and Expected Delivery Dates. Once the data was validated it was authorized for processing.

22. The products were then picked from the ISSI and Elfe warehouses and prepared for shipping.

23. Once the orders were ready, ISSI or Elfe contacted Target Canada's shipper and arranged for pickup and delivery to Target Canada's Distribution Centre.

24. ISSI or Elfe then prepared #810 Electronic EDI invoices and transmitted the invoices electronically for payment. Now shown to me and marked as **Exhibit "G"** to this my Affidavit is a copy of a #810 Electronic EDI Invoice dated January 14, 2015 from ISSI.

25. **Exhibit G** contains 19 lines of computer data. The following fields are highlighted:

Line 2: INVOICE#: 0170879, FOR ORDER #1101382367 & INVOICE DATE: 2015 01 13

Line 9: QUANTITY SHIPPED: 2 EACH, PRICE: \$275.96, UPC CODE: 872318667240

Line 15: TOTAL PRICE (with tax): \$623.64

Line 16: TAX \$71.74

26. Now shown to me and marked as **Exhibit "H"** to this my Affidavit is a copy of a #810 Electronic EDI Invoice dated January 14, 2015 from Elfe.

Line 2: INVOICE#: 0290294, FOR ORDER #1101309009 & INVOICE DATE: 2014 12 24

Line 9: QUANTITY SHIPPED: 3 EACH, PRICE: \$98.87, UPC CODE: 654582146733

Line 15: TOTAL PRICE (with tax): \$311.44

Line 16: TAX \$14.83

27. On November 19, 2014, ISSI and Elfe received a mass vendor e-mail from Jonathan Shaw, the Merchandise Planning Manager for Household, Pet and Baby products, which was copied to Gregory Krikorian, Business Analyst for Target Canada, Nicole Tavares, Senior - Business Analyst at Target Canada, and Ruthann Rocco, Buyer - Baby Hard Goods at Target Canada. In the email, Target Canada warned that late shipments would be fined for late deliveries of 8 or more days. Now shown to me and marked as **Exhibit "I"** to this my Affidavit is a copy of the e-mail from Jonathan Shaw dated November 19, 2014.

28. On December 8, 2014, ISSI received an e-mail from Nicole Tavares, a Senior Business Analyst with Target Canada. In the e-mail, Target Canada forwarded a Forecast for items that would be ordered for the balance of December 2014 as well as probable orders for January and February 2015. In the e-mail it stated that:

"In the event that deliveries are not met as specified on the POs, we will be imposing fines depending on the infraction."

Now shown to me and marked as **Exhibit "J"** to this my Affidavit is a copy of the e-mail from Nicole Tavares dated December 8, 2014.

29. Elfe received the same e-mail on December 9, 2014 from Gregory Krikorian, Business Analyst for Target Canada. Now shown as **Exhibit "K"** is the e-mail from Gregory Krikorian dated December 9, 2014.

30. The forecast was reviewed by our analyst Aziz Abdel Malek and discussed with the account managers for Target Canada. After review, ISSI and Elfe set up a face to face meeting in Toronto with the buyer and one of the account managers. They flew to Toronto and had a face to face meeting with Nicole Tavares and Gregory Krikorian to discuss the numbers. From our extensive dealings with these individuals it was clear that they were in constant communication with senior personnel employed at Target Corporation in the United States.

31. On December 24, 2014, ISSI received an e-mail from Nicole Tavares which stated that ISSI would be penalized for short shipment of one item. This item should not have been ordered since it was verified as a discontinued item and would not be replenished. The penalty would have been 7 to 10% of the order. ISSI did not respond since this would be pointed out in a meeting in

January 2015. Prior to the December 24, 2014 e-mail, ISSI had never been told they would be penalized by Target Canada. Now shown to me and marked as **Exhibit "L"** to this my Affidavit is a copy of the e-mail from Nicole Tavares dated December 24, 2014.

32. The total amount of unpaid invoices for ISSI by Target Canada is \$184,346.81. Of this amount, \$150,934.84 is for goods shipped between December 15, 2014, and January 15, 2015. Now shown as **Exhibit "M"** is a summary, showing a list of unpaid invoices, and one column for "30-day goods" invoices, or invoices for goods received by Target Canada within the 30-day period December 15 to January 15, 2015.

33. The total amount of unpaid invoices for Elfe by Target Canada is \$147,758.44. Of this amount, \$118,475.17 is for goods shipped between December 15, 2014, and January 15, 2015. Now shown as **Exhibit "N"** is a summary, showing a list of unpaid invoices, and one column for "30-day goods" invoices, or invoices for goods received by Target Canada within the 30-day period December 15 to January 15, 2015.

34. Target Canada had advised ISSI and Elfe, and presumably other Vendors, that they had installed a sophisticated Information Technology System that permitted employees and analysts to disseminate important sales and inventory information to vendors. Now shown as **Exhibit "O"** is a copy of the presentation about this system.

35. The most important components of this system, shown on page 13, where the power of the system is described, showing real time data management, inventory movements and item pricing.

36. In order to analyze Target Canada's product requirements, each vendor was entitled to request a report from Target Canada showing their inventory levels of their product. ISSI asked for

such a report on November 06, 2014. The report, which is in the form of a simple excel spreadsheet, created for a specific vendor (namely ISSI) was sent by Nicole Tavares to our analyst, Aziz Abdel Malek on November 28, 2014. It showed total inventory in possession of Target at all store location and in their distribution centers. Now shown as **Exhibit "P"** is a copy of the e-mail and sample pages of the report. The full report is 425 pages.

37. Inventory Reports as at November 28, 2014, were prepared by ISSI and Elfe personnel from the raw data shown in **Exhibit "P"**. The total for ISSI was \$486,479. The total for Elfe was \$785,353. Now shown as **Exhibits "Q" and "R"** are the ISSI and ELFE reports respectively. As can be easily seen, the inventory is allocated between "DC INVENTORY", meaning distribution centres, and "STORES INVENTORY", based on data supplied by Target Canada.

38. On the first week of every month, daily Point of Sales (POS) data was sent to our analyst by the Target Canada Category Development Analyst, an individual employed by the Munchkin Group, or others, on behalf of Target Canada. It too is a simple excel spreadsheet created for a specific vendor. The last report was sent January 7, 2015, from Alex Ionita of Munchkin to ISSI personnel, which allowed us to again calculate the inventory in possession of Target Canada as at January 5, 2015. The report shows the total units sold each day at Target Canada stores during the period in question, usually one calendar month. The information is captured daily from the SAP computer system and sent to the vendors within one week after the end of every month. It takes only a few seconds to generate this report. Now shown as **Exhibit "S"** is a copy of the e-mail and sample page of the report. The entire report is approximately 200 pages.

39. For planning purposes, we then prepared an Inventory Report for ISSI product, at Target Canada as at January 5, 2015. The total value was \$1,056,301. Now shown as **Exhibit "T"** is a copy of the Inventory Report.

40. Elfe also prepared such a report. The inventory of Elfe at Target Canada as at January 5, 2015, was \$616,931. Now shown as **Exhibit "U"** is a copy of the Inventory Report for Elfe.

41. The total sales in 2014 by ISSI to Target Canada were approximately \$1.2 million dollars. The total sales in 2014 by Elfe to Target Canada were approximately \$1.7 million dollars. The total for both companies was approximately \$2.9 million dollars. Now shown as **Exhibit "V"** is the Sales Report.

42. Based on the purchase orders received, the required delivery dates, and the rate of sale, the estimated inventory for ISSI at the end of January 2015 would have ballooned to over \$1.2 million dollars, calculated as follows:

Inventory as at November 28, 2014 (Exhibit "Q")	\$486,476
Plus orders to be shipped by January 31, 2015 (Exhibit "D")	\$ 955,331
Minus estimated sales at wholesale cost (2 months) (Exhibit "V")	(\$200,000)
Equals	\$1,241,000

This means that Target would have had on hand, by the end of January, 2015, more than 100% as much inventory that it supposedly sold in 2014.

43. Based on the inventory received, the required deliver dates and the rate of sale, the estimated inventory for Elfe at the end of January 2015 would have ballooned to over \$1 million dollars, calculated as follows:

Inventory as at November 28, 2014 (Exhibit "R")	\$ 785,353
Plus orders to be shipped by January 31, 2015 (Exhibit "F")	\$ 510,212
Minus estimated sales at wholesale cost (2 months) (Exhibit "V")	(\$286,000)
Equals	\$1,009,565

44. To justify these orders and levels, ISSI and Elfe personnel were continuously being advised how great things were going, that 2015 was going to be a great year, and that late shipments would incur penalties. As an example, this was confirmed to ISSI and ELFE in an e-mail from Arlene Stratton a Senior Buyer for Target Canada dated December 12, 2014. Now shown as **Exhibit "W"** is a copy of the e-mail dated December 12, 2014.

45. Target Canada, according to our calculations, would have had in its stores and distribution centres, goods totalling approximately \$2,241,000, which is an amount far in excess of anything it could reasonably anticipate selling in the next 6 months, and certainly not the next quarter.

46. Target Canada had the ability, at any time, to cancel any purchase orders already issued, or send ISSI and Elfe revised forecasts. It did not do so. In the retail industry, this is common practice, because of inventory adjustment requirements. Target Canada did the exact opposite.

47. On February 1, 2015, Mr. Solmon, on ISSI's instructions, asked counsel for Target Canada to provide the following information:

1. What was the total value of all inventory that was shipped from all suppliers of Target... between December 15, 2014 and January 15th 2015, that is what was the total value of all purchase orders or invoices inclusive of tax

2. As of January 15, 2015 what was Target Canada's total inventory figure; that is the value of all of Targets inventory at cost - either purchase order or invoice amounts inclusive of tax no matter where the inventory was located.

48. Despite further requests, to my knowledge this request has never been answered, despite the professed and demonstrated ability of Target Canada to easily get us inventory related information quickly when asked for. In fact, the only material references in Mr. Wong's Affidavit, to inventory, are as follows:

Paragraph 64--- As of January 3, 2015, there was merchandise with a retail value of approximately CAD \$202 million in the distribution centres.

Paragraph 68 – TCC also must pay customs brokers, clearing houses, freight forwarders and other supply chain providers for costs incurred in transporting products from their source outside of Canada to the distribution centres and ultimately to the stores. As of January 3, 2015, TCC estimates that merchandise at cost of approximately CAD \$66 million was in transit to Canada or from Canadian ports to the distribution centres. TCC is seeking authority (but not the requirement) to pay, with the consent of the Monitor, transportation and logistics providers, custom brokers and other supply chain providers for amounts incurred before the commencement of these proceedings, if required, to ensure the continued flow of inventory through its supply chain during the contemplated wind down process and to maximize recoveries to the estate from the inventory liquidation process.

Paragraph 127---As at November 1, 2014, TCC's current assets consisted of the following:

(a)---Inventory: approximately CAD \$683,555,000

Paragraph 129 – It is estimated that, as of the filing of this Affidavit on January 15, 2015, TCC will have cash on hand of approximately CAD 1 million. As set out above, inventory comprises the vast majority of TCC's current assets. TCC and its affiliates routinely enter into arrangements with vendors – for example, with respect to greeting cards – whereby TCC does not purchase or pay for merchandise until the merchandise is sold. This merchandise is not included in inventory because of TCC's virtually simultaneous purchase and sale of this merchandise.

49. The amount referred to in Paragraph 64 is not supported by any Exhibit and is inconsistent with other information in Mr. Wong's Affidavit, for the following reasons:

(i) the \$202 million refers to retail value, not cost, in the distribution centres only.

As shown on page 305 of Mr. Wong's Affidavit, Target Canada had gross margins of 18%. That means that this number would be approximately \$165 million dollars at cost, only in the distribution centres;

(ii) historically approximately 80% of inventory was maintained at the distribution centres. 20% of the \$165 million would mean that only \$34 million was located in 133 stores, or approximately \$250,000 of inventory in each store, an amount that is impossibly low; and

(iii) Mr. Wong's Affidavit indicates that on November 1, 2014, the inventory at cost (presumably both the distribution centres and stores) was \$683 million. This means that between November 1, 2014 and January 3, 2015, Target sold \$518 million at cost, or \$664 million at retail in just two months. That translates to approximately \$4 billion in sales over a twelve-month period. Yet in the nine months ended November 1, 2014, as shown on page 305 of Mr. Wong's Affidavit, sales were approximately \$1.448 billion, or approximately \$2 billion for a twelve-month period. At paragraph 13 of his Affidavit, Mr. Wong states

"these efforts did not yield forecasted financial improvements during the 2014 holiday season."

50. It is clear from the communications from Target Canada personnel with whom ISSI and Elfe were dealing, that they continued to represent, either directly or indirectly, that Target Canada was financially sound, its future was bright and that 2015 would be a great year. The many representations, by word and conduct, induced ISSI and Elfe to grant credit to Target Canada, and then ship goods that were clearly, in my view, not intended to be paid for.

51. What is also missing, is how, when, and by whom, the decision was made to file the Application. The only reference I can find, about the way the decision was reached about then filing, is in Paragraph 15 of the Affidavit of Mr. Wong, where he states:


"I am informed by senior management of Target Corporation that the board of directors of Target Corporation has determined that, in its business judgement, it is in the best interest of its business and its shareholders to discontinue operations

in Canada and focus on driving growth and building further momentum in its omnichannel U.S. business.”

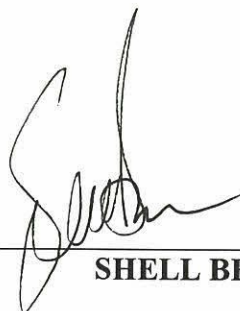
Neither the specific individuals involved nor the timing is disclosed. Mr. Solmon has asked for this information but has not yet received it from either the Monitor or Target Canada as of this date. Now shown to me **Exhibit “X”** is the e-mail from Mr. Solmon of February 15, 2015, in this regard.

52. I make this Affidavit to bring to the attention of this Honourable Court information that has as yet not been disclosed, and is relevant in the determination of the issues in this matter, and for no improper purpose.

SWORN BEFORE ME at the City of Montreal, in the Province of Quebec on February 17, 2015

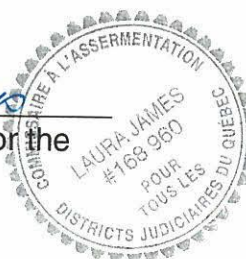

 Commissioner of Oaths




SHELL BERN

This is Exhibit "A" referred to in the
Affidavit of Shell Bern sworn
February 17, 2015


Commissioner of Oaths for the
Province of Quebec



**TARGET CANADA CO.
VENDOR ONLINE AGREEMENT**

The vendor ("Vendor") identified below is applying for access to online systems of Target Canada Co. ("Target") and/or any other online system used by Target, including Target's Partners Online system (or any successor system thereto), targetvendors.ca, and <https://projectpoint.buzzsaw.com/client/tgt-ca-vendor-reqs> (collectively, "Sites") and agrees as follows:

Legally Binding Agreement

- Vendor has reviewed the Rules of Use and Conditions of Contract (as found on Sites). Vendor agrees to the terms and conditions set forth in the Rules of Use and Conditions of Contract (including, without limitation, the indemnification, insurance, warranties, conditions, governing law, venue, limitations and exclusions of liability and arbitration provisions contained therein). Vendor acknowledges and agrees that the Contract (as such term is defined in the Conditions of Contract and which Vendor acknowledges includes all terms and conditions contained or made available through Sites) constitutes a legally binding agreement between Vendor and Target applicable to any business conducted with Target.

Administrator Designation

- Vendor appoints the Administrator(s) identified below.
- The Administrator(s) has the authority to legally bind and act on behalf of Vendor including, without limitation, viewing all information related to Vendor performance, entering into agreements, and engaging in product development and business planning activities through Sites. The Administrator(s) has the authority to designate a subsequent or additional Administrator(s), in which event any actions taken by such designated Administrator(s) shall also be binding upon Vendor.
- Notice to the Administrator(s) at his or her e-mail or postal address constitutes effective notice to Vendor.
- The Administrator(s) is responsible for monitoring all Sites' users associated with Vendor including, without limitation:
 - Removing user access immediately upon any user leaving employment or affiliation with Vendor.
 - Performing a semi-annual review of all user access associated to Vendor.
 - Monitoring user compliance, including updating contact information in a timely manner.

Vendor Administrator Name(s)

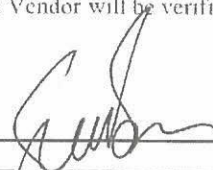
Vendor Administrator e-mail address(es)

SCOTT INKSTER	S.INKSTER@ELFE.CA
JEAN-PIERRE MICHARD	J.P. MICHARD@ELFE.CA

Vendor hereby represents and warrants that it has the consent of the designated Administrator(s) to provide Target with any personal information (e.g., email address) of Administrator.

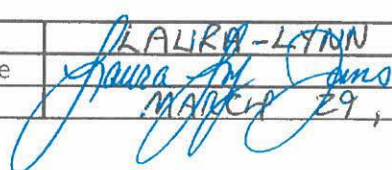
Authorized Signatory

- Vendor represents, warrants, and agrees that:
 - Vendor has the authority to legally bind all vendor types and any associated vendor numbers assigned to the Vendor including any child vendor numbers.
 - The individual signing below is authorized to sign this agreement on behalf of Vendor and understands that his or her employment with Vendor will be verified by Target through the Human Resources contact provided below.

Signature	
Authorized Signatory Name	SHELL BERN
Date	MARCH 29, 2012
Vendor Name	ISIS INC.
Vendor Headquarter Address	4500 THIMENS BOULEVARD SAINT-LAURENT, QC. CANADA H4R 2P2

HR Employment Verification - BELOW TO BE COMPLETED BY HUMAN RESOURCES CONTACT

By signing below, the Human Resources Contact Name verifies that the Authorized Signatory above is a current employee of the Vendor.

Human Resources Contact Name	LAURA-LYNN JAMES
Human Resources Contact Signature	
Date	MARCH 29, 2012

Email the completed form (in the form of a pdf scan) to sender

Language

The parties confirm that it is their wish that this agreement, as well as any other documents relating hereto, including notices, schedules and authorizations, have been and shall be drawn up in the English language only. In the event of any inconsistency between the French and the English versions of this agreement, the English version shall prevail. *Les parties confirment leur volonté que la présente convention, de même que tous autres documents s'y rapportant, y compris les avis, annexes et autorisations, soient rédigés en anglais seulement. En cas d'incompatibilité entre les versions française et anglaise de la présente convention, la version anglaise prévaudra.*



Rules of Use and Confidentiality Agreement (Target Canada Co.)

IMPORTANT: This website, and any other website or online system of Target or used by Target (including targetvendors.ca and <https://projectpoint.buzzsaw.com/client/tgt-ca-vendor-reqs>) establishes terms and conditions for doing business with Target. This agreement governs your use of this website and constitutes a legally binding agreement between you and Target.

1. DEFINITIONS

Capitalized terms used and not defined herein shall have the same meaning as in Target's Partners Online website (or any successor website thereto). For purposes of these Rules, the following terms used herein shall have the following definitions:

- "Partners Online" means the private Internet website operated by Target with an address of www.partneronline.com (or any successor to such website) or any other online system of Target or used by Target (including targetvendors.ca and <https://projectpoint.buzzsaw.com/client/tgt-ca-vendor-reqs>), including all terms, conditions, specifications, instructions, data and reporting contained on such website(s) and/or system(s).
- "Rules" means this Rules of Use and Confidentiality Agreement.
- "Target" means Target Canada Co.
- "User" means any company which is accessing Partners Online together with the parent, subsidiaries, and/or affiliates of such company.

2. RULES ARE LEGALLY BINDING

Use of this website constitutes your agreement to the Rules. If you do not agree to the Rules, do not use Partners Online.

If, at any time, you are no longer in agreement with the Rules, or any other terms or conditions set forth on Partners Online, you must cease use of Partners Online and, if you are a User, you must

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promptly notify Target. Target will then cancel any User's ID and password issued to User.

If you are a User, you may access additional portions of Partners Online using your ID and password. **User agrees to the Rules as well as all other terms, conditions, specifications, and instructions for doing business with Target as set forth on Partners Online including, without limitation, the Conditions of Contract.**

Neither Target nor User will contest the validity, enforceability or admissibility of hard copy printouts of these Rules, any term, condition, specification or instruction contained on Partners Online or any notice provided in accordance with these Rules and such hard copy printouts, if introduced as evidence in any judicial or administrative proceedings, will be admissible to the same extent and under the same conditions as other business records originated and maintained in documentary form.

Target recommends that Users print and/or download copies of these Rules as well as copies of all terms, conditions, instructions and specifications set forth on Partners Online.

3. CHANGES

Target may change the Rules or any term, condition, specification or instruction contained on Partners Online at any time by posting notice of any such change in the "Important Updates" section of Partners Online. All changes shall have an effective date of seven days after they have been posted in the "Important Updates" section, unless a later date is specified. Such changes shall apply to all Purchase Orders or agreements for the purchase of Goods issued or entered into after the effective date of the change. It is User's responsibility to review the "Important Updates" section regularly to obtain notice of such changes. Use of Partners Online following any such change, continuing to maintain an active User ID and password following any such change, or continuing to do business with Target following any such change constitutes your agreement to the changed Rules or changed term, condition, specification or instruction of Partners Online.

4. COPYRIGHT

Copyright © 2012 Target Brands, Inc. The Bullseye Design and Target are trade-marks of Target Brands, Inc.

The entire contents of Partners Online are copyrighted under Canadian law and are protected by worldwide copyright laws and treaty provisions. Materials from Partners Online may not be

copied, distributed or transmitted in any way without Target's prior written consent, except that Users may download, print and copy any of the materials to which they have been granted access by Target for User's internal use to further the business dealings between User and Target, provided the materials are not altered (in particular, copyright and trade-mark notices and notices of confidentiality may not be deleted) or modified.

Target Brands, Inc. reserves full right, title, and interest in and to all intellectual property rights in any and all materials on or downloaded from Partners Online. Target Brands, Inc. further reserves the right to revoke any of the foregoing privileges at any time.

5. CONFIDENTIALITY

User agrees to the following with respect to any information contained in Partners Online and any information relating to or used in Target's business, regardless of whether it is marked "confidential" or otherwise (collectively, "Confidential Information"):

Definition of "Confidential Information." Confidential Information includes, but is not limited to, all business processes and procedures, systems, methods of doing business, data, reports, specifications, formulae, proposals, strategies, business plans and analyses, financial information and projections, personnel information, including personally identifiable information about such personnel, information about merchandising, information about past, present or potential customers, including personally identifiable information about such customers, information about past, present or potential vendors, information about existing or future technology, future stores, and proprietary or third-party software. The foregoing notwithstanding, the term "Confidential Information" does not include and User shall have no obligation of confidentiality with respect to any information that, at any time or from time to time: (a) is or becomes known to the public through no fault of User; (b) User already lawfully possessed before Target disclosed it to User; (c) is subsequently disclosed to User by a third party who is not under an obligation of confidentiality to Target; or (d) User developed independently without using the Confidential Information. For the purposes of these Rules, "personally identifiable information" means any and all information about an identifiable individual and includes, but is not limited to, team member or guest name, social insurance number, driver's license number, medical information, financial account number (e.g. credit card number), personal identification number (PIN), address, email address, or phone number.

Obligation of Confidentiality. User shall not disclose Confidential Information to any of its officers, directors, employees, contractors, mandataries or agents or to any third-party without Target's written consent, except that User may disclose Confidential Information to its officers, directors, employees, contractors, mandataries and agents whose duties justify their need to know such Confidential Information, and who have been clearly informed of their obligation to maintain the confidentiality of Confidential Information. User may disclose Confidential Information to the extent required by applicable federal, provincial or local law, regulation, court order, or other legal process, provided User has given Target prior written notice of such required disclosure and, to the extent reasonably possible, has given Target an opportunity to contest such required disclosure at Target's expense.

Protection of Confidential Information. User shall use the same care to prevent the loss, theft, unauthorized use, disclosure, access, modification or copying of or to the Confidential Information as User uses with respect to its own confidential information of a similar nature, which shall not in any case be less than the care a reasonable business person would use under similar circumstances. Without limiting the foregoing, User's employees, or other persons permitted access to Confidential Information, will sign a written document acknowledging their obligation to maintain the confidentiality of Confidential Information and the obligation to adhere to the information security requirements as described in the Rules. In addition User shall take reasonable action by instruction or otherwise with respect to User's employees or other persons permitted access to Confidential Information to cause them to comply fully with User's obligations under the Rules.

Permitted Use of Confidential Information. User may not use the Confidential Information, or any information that it develops based on the Confidential Information, directly or indirectly for any purpose other than the purpose for which it was originally disclosed, or for any purposes which could be deemed to be adverse to or competitive with Target or its business.

Disclaimers. Target provides Confidential Information on an "AS IS" basis, without warranties or conditions of any kind. Without limiting the foregoing, Target does not represent or warrant that Confidential Information is accurate, complete or current. The disclosure of Confidential Information containing business plans is for planning purposes only. Target may change or cancel its plans at any time at its sole discretion. Disclosure of Confidential Information is not a representation, warranty or condition that any type of business relationship between the parties will be concluded.

Return of Confidential Information. Upon the request of Target, User shall cease using and, at Target's option, either promptly return to Target or arrange for the destruction of all copies of any Confidential Information then in User's possession or under User's control. If Target directs User to destroy Confidential Information, User shall dispose of the Confidential Information in such a manner that the information cannot be read or reconstructed after destruction. Upon the written request of Target, User shall certify in writing that User has complied with the obligations set forth in this paragraph.

Ownership of Confidential Information. Target shall retain all right, title and interest in and to Confidential Information. Neither the Rules nor any disclosure of Confidential Information shall be deemed to grant User any license or other intellectual property right.

Information Security. (a) User shall take appropriate measures designed to protect the security, confidentiality, and integrity of Confidential Information; (b) access to Confidential Information shall be restricted to those officers, directors, employees, contractors, agents, mandataries or other third parties whose duties justify their need to access Confidential Information and whose access Target deems appropriate; (c) User will contractually bind its agents, mandataries and Target-approved third parties working for User to adhere to the confidentiality and security requirements described in the Rules; (d) User shall immediately remove the access of any employee, contractor, agent, mandatory or other third party to Confidential Information or any Target system upon termination of employment or any change in role; (e) User will ensure its employees have acknowledged receipt of User's acceptable use policy on an annual basis and that such acknowledgement is maintained by User; (f) User shall have network security devices in place to prevent and detect loss, theft or unauthorized access, use, disclosure, modification, copying of or to such Confidential Information and Target systems. Such network devices shall log events completely, clearly and accurately; (g) User shall ensure that access to any Target system shall be protected by one of the following controls if any such system is unattended by User for 15 minutes of inactivity: (i) password protected screensaver; or (ii) session timeouts (forced logout); (h) User will have an Access Control policy that has been approved, published and implemented; (i) Confidential Information shall continue to be subject to the terms of the Rules indefinitely; and (j) Target shall have the right to review User's operations and procedures to ensure compliance with the foregoing requirements and if requested by Target, User shall make available audits, summaries of test results, or other evaluations to assist

Target in monitoring compliance with the Rules. Upon Target's request, User shall provide the name and/or title of the person within the User's organization who is responsible for all personally identifiable information forming part of Target Confidential Information in User's possession or under its control and for ensuring that the terms of these Rules as it relates to personally identifiable information are being followed. User shall notify Target immediately, and shall cooperate fully with Target, in the event of any loss, theft or unauthorized access, use, disclosure, modification or copying of or to any Confidential Information or to any Target system. User shall indemnify Target, its parent, affiliates and subsidiaries, and their respective directors, officers, shareholders, employees, contractors, mandataries and agents ("Target Parties") for all reasonable costs, charges, and expenses resulting from any unauthorized access to Confidential Information.

Additional Privacy Obligations. (a) User shall immediately refer to Target (i) any questions or complaints received by User regarding the privacy practices of Target, or of User with respect to the User's collection, use, disclosure, processing, accessing or storage of Target Confidential Information and (ii) any individuals looking for access to their personally identifiable information forming part of Target Confidential Information; (b) upon Target's request, User shall promptly inform Target of the jurisdiction(s) outside Canada in which User is or may be collecting, using, disclosing, processing, accessing, or storing Target Confidential Information; (c) User shall comply with all applicable laws and regulations, including all applicable privacy laws, in relation to its handling of Target Confidential Information.

Injunctive Relief. User acknowledges that the unauthorized use or disclosure by User of Confidential Information would be likely to cause immediate and irreparable damage that could not be fully remedied by monetary damages. User therefore agrees that Target may specifically enforce the Rules and may seek such injunctive or other equitable relief to prevent such unauthorized use or disclosure without the necessity of proving actual damage.

6. SECURITY OF IDS AND PASSWORDS AND SYSTEM PROTECTION

User is responsible for maintaining the security and confidentiality of IDs and passwords issued to User. User shall ensure that it uses strong passwords (for example, passwords that are at a minimum strength of 8 characters and use 3 of 4 ASCII character sets). User shall not permit unauthorized individuals to use User's IDs and/or passwords to access Partners Online, nor shall User permit any individuals to share User's IDs and/or passwords with other

individuals to access Partners Online unless expressly permitted as set forth in any terms of use for any Partners Online website or system. User is responsible for the actions of any individuals using User's IDs and passwords to access this site. User agrees to defend and indemnify the Target Parties against any claims for losses, damages, costs, expenses, fines and other liabilities arising out of User's failure to maintain the security and confidentiality of its IDs and/or passwords or arising out of the unlawful use of the site by User or any person who obtains access to the site using User's ID and password.

7. ANTI-VIRUS PROTECTION

User agrees to run anti-virus software before transmitting data to or through the site. User may use any commercially available, industry recognized anti-virus software of the type that detects and disinfects viruses automatically without the need for User to execute virus scanning for each file manually. User must update its anti-virus software on a regular basis and in no event less often than once each quarter. Target strongly recommends updating anti-virus software every month.

8. DISCLAIMERS

Target is providing this site and its contents on an "as is", "as available" basis and makes no representations, warranties or conditions of any kind with respect to this site or its contents. Target disclaims all representations, warranties and conditions, whether express, implied, collateral or statutory, including warranties and conditions of merchantability and fitness for a particular or general purpose.

Without limiting the foregoing, Target does not warrant that the operation of this site will be uninterrupted or error-free. User is responsible for taking appropriate precautions against damage to its operations that could be caused by defects, interruptions, or malfunctions of the site and assumes the risk of such occurrences.

Target reserves the right to make changes to or to discontinue operation of Partners Online at any time.

9. LIMITATIONS ON TARGET'S LIABILITY

By accessing this site, User agrees that none of the Target Parties will be liable for any direct or indirect loss or damages arising out of, resulting from, or connected with the operation of this site or User's use of this site by Target or any other Target Party, whether based on negligence, breach of contract or warranty, or otherwise. This is a comprehensive limitation of liability that applies to all damages of any kind, including general, special, consequential, incidental and exemplary damages and lost profits or saving (whether direct or indirect). If any part of this limitation on liability is found to be invalid or unenforceable for any reason, then a Target Party's maximum aggregate liability under such circumstances for liabilities that otherwise would have been limited shall not exceed \$1,000.00.

10. GENERAL

Modifications. No addition to or modifications of the Rules or waiver of any of the Rules shall be binding on Target or User unless made in accordance with Section 3 hereof or in writing and executed on behalf of Target and User.

Governing Law and Venue. These Rules shall be governed by the laws of Ontario and all laws of Canada applicable therein. Each party hereto submits to the exclusive jurisdiction of any Ontario courts sitting in Toronto in any action, application, reference or other proceeding arising out of or related to these Rules and agrees that all claims in respect of any such actions, application, reference or other proceeding shall be heard and determined in such Ontario 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 these Rules in the Ontario courts sitting in Toronto, including the objection that the proceedings have been brought in an inconvenient forum.

Waivers. No provision of the Rules may be waived, except pursuant to a writing executed by the party against whom the waiver is sought. No failure to exercise, partial exercise of, or delay in exercising any right or remedy or requiring the satisfaction of any condition under the Rules operates as a waiver or estoppel of any right, remedy, or condition.

Remedies. All remedies provided for in the Rules shall be cumulative and in addition to and not in lieu of any other remedies available at law, in equity or otherwise.

Severability. If any provision of the Rules is held invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will not be affected or impaired.

Survival. Notwithstanding anything to the contrary herein, (i) any duty or obligation that has been incurred under the Rules and that has not been fully observed, performed or discharged, and any right which has been created under the Rules and which has not been fully enjoyed, enforced or satisfied, shall survive the termination or expiration of the Rules until such duty or obligation has been fully observed, performed or discharged and such right has been fully enjoyed, enforced or satisfied, and (ii) all representations, warranties, conditions and indemnities shall survive the termination of or expiration of the Rules.

Entire Agreement. This site, the Rules and the Conditions of Contract, including all exhibits and other attachments thereto, as well as documents and other information specifically referenced in this site, the Rules and the Conditions of Contract, constitute the entire expression of the parties' agreement with regard to the subject matter hereof. All prior and contemporaneous negotiations and agreements between the parties with regard to the subject matter hereof are expressly merged into and superseded by the this site, the Rules and the Conditions of Contract.

Third Party Beneficiaries. The parties acknowledge and agree that while Purchaser's parent, affiliates, and subsidiaries (and each of their respective successors and assigns) and their respective directors, officers, shareholders, employees, contractors, mandataries and agents, and the directors, officers, shareholders, employees, contractors, mandataries and agents of Target (collectively the "Third Party Beneficiaries") are not parties to these Rules and have no obligations under these Rules, 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, reserved rights and limitations and exclusions of liability 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).

Language. The parties confirm that it is their wish that these Rules, as well as any other documents relating hereto, including notices, schedules and authorizations, have been and shall be drawn up in the English language only. In the event of any inconsistency between the French and the English versions of these Rules, the English version shall prevail. *Les parties confirment leur volonté que les présentes règles, de même que tous les*

- 10 -

documents s'y rattachant, y compris tous avis, annexe et autorisation, soient rédigés en anglais seulement. En cas d'incompatibilité entre les versions française et anglaise des présentes règles, la version anglaise prévaudra.

Rules of Use and Confidentiality Agreement
Partners Online © 2012 Target Brands, Inc.



Conditions of Contract (Target Canada Co.)

These Conditions of Contract are an integrated agreement between Purchaser and Vendor consisting of these Conditions of Contract, the terms contained in Purchaser's Partners Online system (or any successor system thereto) and/or any other online system of Purchaser or used by Purchaser (including targetvendors.ca and <https://projectpoint.buzzsaw.com/client/tgt-ca-vendor-reqs>) ("POL"), any agreement(s) entered into between Purchaser and Vendor (including any agreements entered into through Purchaser's online systems), any Purchase Order(s), and any attachments, instructions or requirements furnished to Vendor by Purchaser (all of the foregoing are part of this agreement and are referred to herein as the "Contract"). The Contract is binding with respect to all business conducted between Purchaser and Vendor and applies to and controls all agreements related to the purchase of Goods by Purchaser from Vendor (whether such purchase is made directly by Purchaser from Vendor or through a third party distributor or wholesaler) and all agreements related to samples or free Goods provided by Vendor to Purchaser or its customers.

Definitions

As used herein, the following terms will have the following meanings:

"Contract" has the meaning set forth in the introductory paragraph above.

"Goods" means the items of merchandise (including components, parts, accessories and related packaging, labelling, instructions, product descriptions, printed matter, and visual and digital information) that are the subject of the Contract.

"POL" has the meaning set forth in the introductory paragraph above.

"Purchase Order" means any order by Purchaser for the purchase of specified quantities of Goods at specified prices from Vendor whether issued through electronic data interchange (EDI) or otherwise.

"Purchaser" means Target Canada Co.

"Purchaser Parties" means Purchaser, its parent, affiliates and subsidiaries, and their respective directors, officers, shareholders, employees, contractors, mandataries and agents.

"Vendor" means the entity accessing POL or the recipient of the Contract, together with the parents, subsidiaries, and/or affiliates of such registering entity or recipient.

1. Purchase Orders

Purchaser's commitment to purchase Goods arises only upon Purchaser's issuance of a Purchase Order to Vendor. Any forecasts, commitments, projections, representation about quantities to be purchased or other estimates provided to Vendor are for planning purposes only and shall not be binding upon Purchaser, and Purchaser shall not be liable for any amounts incurred by Vendor in reliance on such estimates. Vendor acknowledges that Purchaser has a non-exclusive arrangement with Vendor and that Purchaser may have the same or other arrangements with other vendors or suppliers for the purchase of

Goods contemplated by this Contract or any Purchase Order. Vendor acknowledges that Purchaser has no obligation to issue any request for or enter into any contract or purchase order, and Purchaser may elect to procure Goods contemplated by this Contract or any Purchase Order through sole-source, negotiated, competitive, or other procurement processes to be determined by Purchaser in its sole and absolute discretion from time to time, and that Purchaser shall not owe any express or implied duties or obligations to Vendor whatsoever in respect of such procurement processes as a result of having entered into this Contract or any Purchase Order.

2. Acceptance, Validity, Terms

Without limiting the manner or method of Vendor's acceptance of a Purchase Order, a Purchase Order is deemed accepted by Vendor if (i) Vendor's written rejection of such Purchase Order is not received by Purchaser within five days after Vendor's receipt of such Purchase Order, or (ii) prior to the expiration of such five day period, Vendor commences work on or ships any portion of Goods identified in the Purchase Order. Acceptance is limited to the terms of the Contract. Any proposal for additional or different terms, or any attempt by Vendor to vary any of the terms of the Contract in Vendor's acceptance, invoice, or other document or activity, is hereby objected to and rejected. If Purchaser's issuance of a Purchase Order is for any reason deemed an acceptance of a prior offer by Vendor, such acceptance is limited to the terms of the Contract.

3. Shipment of Goods, Adequate Assurances

Time is of the essence with respect to Vendor's performance under any Purchase Order. Goods must be shipped within dates specified by Purchaser, not before or after. Vendor shall notify Purchaser in the event Goods cannot be shipped within the specified dates. If reasonable grounds for insecurity arise with respect to the performance of Vendor in connection with a Purchase Order, Purchaser may make a written demand to Vendor that Vendor provide Purchaser with adequate assurance of due performance. Until Purchaser receives such adequate assurance, Purchaser may suspend its performance under the relevant Purchase Order. After Vendor's receipt of such a demand, failure by Vendor to provide such adequate assurance of due performance within five days is a repudiation of the Purchase Order, and Purchaser, at its option, may resort to any and all remedies available to it for breach of the Contract.

4. Inspection

Goods are subject to Purchaser's inspection, but Purchaser is under no obligation to unpack or inspect Goods before resale thereof. Purchaser's inspection, testing, payment for or retention of Goods does not (i) constitute an acceptance of Goods not in compliance with the Contract, (ii) affect Purchaser's right to reject or return Goods, or (iii) constitute a waiver by Purchaser of any Vendor warranties or conditions or any rights or remedies of Purchaser under the Contract.

5. Breach

Any of the following is a breach of the Contract by Vendor:

- (i) Vendor's failure to ship Goods within the dates specified by Purchaser;
- (ii) Goods are defective in whole or in part, are not of merchantable quality or are otherwise not fit for the purposes sold;
- (iii) any breach of Vendor's representations, warranties or conditions;
- (iv) any delay in delivery or performance or departure from delivery, routing, hanging, ticketing, labelling or packaging instructions;
- (v) any deviation from or variation in quantities, assortments, prices, or other terms or conditions specified in the Contract;
- (vi) a claim is made (whether founded or unfounded) that the purchase, display, transport or sale of Goods by Purchaser violates or will violate any legal requirement relating to the manufacture, sale, labelling, safety or transportation of Goods, or infringes any alleged patent, design, industrial design, trade name, trade-mark, copyright, trade dress, right to privacy, or other similar proprietary or property right;
- (vii) insolvency, reorganization, arrangement, receivership or liquidation of Vendor, Vendor makes a general assignment for the benefit of its creditors, Vendor ceases to actively conduct its business, Vendor commits an act of bankruptcy under the *Bankruptcy and Insolvency Act* (Canada), Vendor 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), any filing is made or a proceeding is commenced (whether voluntary or involuntary) involving Vendor seeking any stay of proceedings, protection from creditors or any other relief under the Companies' Creditors Arrangement Act (Canada);
- (viii) Vendor's failure to timely pay all amounts owed by Vendor to its suppliers;
- (ix) Vendor's shipment of Goods for which there is not an outstanding Purchase Order;
- (x) Purchaser has reason to believe Goods are marked in violation of Canadian customs laws; or
- (xi) any other failure by Vendor to comply with any of the terms of the Contract.

Vendor hereby waives any right to cure a breach that might otherwise be available under law.

6. Cancellation, Remedies, Recalls

- a. **Cancellation Without Cause.** Purchaser may cancel any Purchase Order, in whole or in part, for its convenience, at any time prior to shipment of Goods. In the

event of such cancellation, (i) Vendor shall immediately stop all work under the relevant Purchase Order and shall immediately cause any and all of its suppliers or subcontractors to cease such work, and (ii) Purchaser's liability to Vendor shall be limited to the unit price of Goods completed prior to such cancellation, plus the actual amount of Vendor's costs reasonably incurred in contemplation of performance of the cancelled portion, less any amount saved by Vendor as a result of such cancellation and any amounts which could have reasonably been mitigated by Vendor, including, without limitation, work done after the receipt of the notice of cancellation, costs incurred by Vendor's suppliers or subcontractors that Vendor could reasonably have avoided, and amounts realized by Vendor from sale of Goods to third parties in accordance with the Contract.

- b. Purchaser Remedies For Breach. In the event of any breach of the Contract by Vendor and subject to the other terms of the Contract, Purchaser may at any time, as to any or all Goods, without authorization from Vendor and in addition to any other remedies Purchaser may have:
- (i) accept Goods;
 - (ii) cancel any Purchase Order;
 - (iii) reject and return Goods to Vendor at Vendor's expense;
 - (iv) refuse to receive Goods;
 - (v) revoke a prior acceptance of Goods and return Goods to Vendor at Vendor's expense; and/or
 - (vi) in the event the breach is an early shipment of Goods, reject and return the Goods to Vendor at Vendor's expense to be held by Vendor for Purchaser until the original date specified.

In the event of any of the foregoing, Purchaser shall not be liable to Vendor for any amount except to pay for any Goods accepted by Purchaser (based on the unit price of Goods ordered), subject to Purchaser's right to deduct existing and future amounts owed to Purchaser by Vendor pursuant to the Contract. Any cancellation, rejection, refusal to receive or revocation of prior acceptance by Purchaser with respect to any Goods shall not serve as a cancellation or rejection of any future shipments of Goods, unless Purchaser exercises its right to cancel future Purchase Orders. Acceptance of any Goods is not a waiver of any of Purchaser's rights or remedies under the Contract.

In the event of any breach of the Contract by Vendor, Vendor will be liable to Purchaser for (i) any direct and indirect damages, costs and expenses incurred or sustained by Purchaser in connection with the breach, including lost profits, legal fees (on a full indemnity basis) and costs incurred by Purchaser in obtaining substitute Goods elsewhere, (ii) any genuine pre-estimates of damages for non-compliance and similar amounts, handling charges and other amounts as set forth in the Contract, (iii) if previously paid by Purchaser, the full unit price of any Goods that Purchaser has rejected (or revoked its acceptance of), and (iv) the amount of any penalties or fines assessed

against or incurred by Purchaser in connection with the breach, including legal fees (on a full indemnity basis) incurred by Purchaser in defending against or responding to such penalties or fines.

- c. **Purchaser Remedies Cumulative.** Each of Purchaser's rights and remedies under the Contract is cumulative and in addition to any other remedies provided in law or equity, including under provincial sale of goods laws.
- d. **Limitation of Vendor Remedies.** In no instance will Purchaser be liable to Vendor in excess of the actual Purchase Order amount, less applicable discounts and other deductions. Furthermore, none of the Purchaser Parties will be liable to Vendor for any punitive, special, incidental or consequential damage of any kind. Vendor may not bring a claim, dispute, lawsuit, demand, application or other cause of action based upon the transactions under the Contract (including debit memorandums, chargebacks or any other genuine pre-estimates of damages and similar amounts assessed by Purchaser) more than two years after the cause of action has accrued, unless a different time period is set forth in the Contract.
- e. **Force Majeure.** Purchaser may delay delivery or acceptance of any or all Goods, or cancel any Purchase Order in the event that such delay or cancellation is due to causes beyond Purchaser's reasonable control. In such event, Purchaser will not be liable to Vendor for any amount except to pay for the unit cost of Goods accepted by Purchaser.
- f. **Product Safety/Recalls/Market Withdrawals.** Vendor shall comply with the Vendor Information on Product Safety Recalls and Market Withdrawals and the Food Product Recalls and Withdrawals sections of POL. In the event (i) Purchaser has reasonable cause at any time to believe that any Goods contain defects, including defects in design, construction or functioning, or contain hazards or other characteristics, including incorrect or insufficient information on a label or in instructions or the lack thereof ("Defects and Hazards"), existing or potential, that would reasonably be expected to create a substantial risk of injury or death to any person or property, or a serious or chronic adverse effect on the health of any person, or that the purchase, display, transport or sale of Goods by Purchaser violates or will violate any legal requirement relating to the manufacture, sale, distribution, labelling, safety, promotion or transportation of Goods, or (iii) Vendor or a government entity initiates or orders removal of Goods from the stream of commerce (any of the foregoing a "Recall"), without limiting any of Purchaser's other remedies, Vendor shall be responsible for all costs associated with any Recall including those costs set forth in the Vendor Information on Product Safety Recalls and Market Withdrawals and the Food Product Recalls and Withdrawals sections of POL.

7. Disposition of Rejected Goods

With respect to Goods that Purchaser has rejected (or revoked acceptance of), Purchaser will return Goods to Vendor, except Purchaser may elect not to return Goods in the following circumstances: (i) in the event Vendor and Purchaser have agreed that Goods will not be returned to Vendor, (ii) in the event Vendor fails to authorize the return of

Goods within 20 days after Purchaser's notice of rejection or revocation, (iii) in the event the return of Goods is precluded by an act of any government agency, regulatory authority or third party, (iv) in the event Purchaser has reasonable cause to believe that Goods contain Defects or Hazards, existing or potential, that could create a substantial risk of injury or death to any person or property, or a serious or chronic adverse effect on the health of any person, or that violate or will violate any legal requirement relating to the manufacture, sale, distribution, labelling, safety, promotion or transportation of Goods, or (v) in the event Purchaser has reasonable cause to believe that Vendor intends to dispose of Goods in contravention of the Brand Protection section of POL. Goods not returned by Purchaser may be disposed of by Purchaser in its sole discretion. With respect to any Goods disposed of or returned by Purchaser, Vendor will be liable for all costs and expenses related to the disposition or return, including any standard processing fees charged by Purchaser, any freight, storage, and disposal, recycling or destruction costs.

8. Disposal of Goods by Vendor

Vendor will only dispose of Goods in accordance with the Contract including the Brand Protection section of POL. Further, Vendor shall ensure that its suppliers and distributors will only dispose of Goods in accordance with the Contract including the Brand Protection section of POL.

9. Payment and Taxes

- a. **Payment.** Purchaser pays from invoice only and as set forth in the Contract, including the sections of POL regarding payment. Prices set forth in a Purchase Order are complete and include, unless otherwise specifically provided in the Contract, shipping, packaging, labelling, custom duties, taxes, storage, insurance, boxing and crating. No additional charges of any type may be added without Purchaser's express written consent. No interest or other charges shall be owed by Purchaser with respect to any Purchase Order or invoice, whether claimed by reason of late payment or otherwise. Payment of any invoice by Purchaser does not affect Purchaser's right to exercise any remedy for breach of the Contract.
- b. **Deductions.** Purchaser may deduct from any payments to Vendor any amounts owed by Vendor to Purchaser under the Contract including, without limitation, any damages for breach to which Purchaser is entitled, any pre-estimates of damages for non-compliance with Purchaser's requirements and similar fees, and any amounts otherwise owed to Purchaser under the Contract.
- c. **Holds.** Purchaser may withhold payments to Vendor (a "Hold") to satisfy Vendor's actual or anticipated obligations to Purchaser.
- d. **Balances Owed by Vendor.** In the event that Vendor owes Purchaser any amounts, Vendor agrees to pay immediately such amounts to Purchaser in immediately available funds.
- e. **Tax Considerations.**

(i) Sales Tax.

1. To the extent any sales, use, service, value added, goods and service, or harmonized sales taxes (collectively, "Sales Taxes") are payable by Purchaser to Vendor with respect to Goods or any Vendor Services (as defined below) provided by Vendor, (1) Vendor shall reflect such Sales Taxes separate from the Goods, Vendor Services or other fees stated on Vendor's invoices and Vendor 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) Purchaser shall pay Vendor the Sales Taxes that are legally payable by Purchaser as reflected on Vendor's invoice or Purchaser may contest such payment if Purchaser believes the payment of any such tax would be in error, and (3) Vendor shall pay and remit all applicable Sales Taxes to the appropriate taxing authority in a timely fashion and shall indemnify and hold the Purchaser Parties harmless from any failure by Vendor to collect, remit or pay such Sales Taxes.
2. Vendor and Purchaser may further agree to expend commercially reasonable efforts in cooperating with each other in minimizing the amount of Sales Taxes, customs duties and import charges that may be payable in relation to the sale of the Goods and Vendor Services including doing such acts which would reasonably allow for the recovery of any such Sales Taxes, customs duties or import charges that may be payable in relation to the sale and importation of the Goods and Vendor Services. In the absence of any such agreement, Purchaser and Vendor agree that Vendor will be responsible for paying any customs duties or taxes levied or imposed on the Goods and Vendor Services prior to the point of delivery.

- (ii) 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 Purchaser from any amount payable by Purchaser to or for the benefit of Vendor pursuant to the Contract, Purchaser (a) shall be entitled to withhold and deduct such amounts from any payments owing to Vendor under the Contract, (b) shall pay, or cause to be paid, to the relevant taxation authority the full amount of such withholdings in accordance with applicable law; and (c) shall pay to Vendor the amounts owing to Vendor under the Contract net of such withholdings. For greater certainty, any amount so withheld or deducted by Purchaser shall discharge Purchaser's obligation to pay such amount to Vendor provided that Purchaser has remitted, or caused to be remitted, such amount to the relevant taxation authority. Upon Vendor's written request, Purchaser shall make reasonable efforts to deliver to Vendor acceptable documentation evidencing the payment and remittance to the

relevant taxation authority of the amounts withheld by Purchaser. 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 Purchaser from any amount payable by Purchaser to Vendor under the Contract, including filing any documents with any relevant taxation authority, provided that Purchaser is satisfied, acting reasonably, that any such filing would not be adverse to Purchaser.

10. Warranties and Conditions

- a. Compliance. Vendor warrants that Goods, and the design, manufacture, labelling, packaging (including all warranties, conditions and disclaimers), sale, distribution, safety, testing, transportation and storage of Goods, and all representations, warranties, conditions and advertising made by Vendor, or authorized by Vendor to be made, in connection with Goods, shall be in accordance with, comply with, and where required, be registered under, all applicable laws, rules, regulations, standards, codes, orders, treaties, directives, protocols, guidelines, policies, notices, directions, instructions, decrees, judgments, awards, requirements, judicial and administrative decisions, by-laws and ordinances, whether now in force or hereinafter enacted of the country of origin, the country of transit, Canada, any province or other subdivision thereof, and any government or regulatory agency, entity or regulatory body of the foregoing ("Laws"). Vendor further warrants that all processes used or engaged in with respect to processing, manufacturing, packaging, labelling, storing and shipping Goods comply with all Laws. Vendor acknowledges and agrees that it shall be a breach of warranty if any Goods are in violation of any Laws at any time, including after the sale of such Goods by Vendor to Purchaser. In the event Goods fail to comply with the warranties set forth in this subsection 10(a) at any time, Vendor agrees that it will immediately notify Purchaser and take all measures to identify the Goods that are or may be affected. Vendor acknowledges that its obligations under this paragraph are an appropriate allocation of risk between Vendor and Purchaser.
- b. Continuing Food and Drug Guarantee. Vendor warrants and guarantees that any food, drug (including natural health product), medical device or cosmetic product delivered hereunder, and all ingredients, raw materials, parts, components and accessories thereof, including packaging:
 - (i) comply with all applicable Laws and industry standards and the sale of such products shall not:
 - 1. in respect of food products, violate Section 4 of the Canadian Food and Drugs Act (the "FDA") or the Food and Drug Regulations promulgated thereunder (the "FDRs");
 - 2. in respect of drug products, violate Section 8 of the FDA, the FDRs or the Natural Health Product Regulations promulgated thereunder (the "NHPRs");

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3. in respect of cosmetic products, violate Section 16 of the FDA or the Cosmetics Regulations promulgated thereunder (the "CRs"); and
 4. in respect of medical devices, violate Section 19 of the FDA or the Medical Device Regulations promulgated thereunder (the "MDRs");
- (ii) are labelled or packaged in accordance with the FDA and the sale of such products shall not
1. in respect of food products, violate Section 5 of the FDA or FDRs;
 2. in respect of drug products, violate Section 9 of the FDA, the FDRs or the NHPRs;
 3. in respect of cosmetic products, violate the CRs; and
 4. in respect of medical devices, violate Section 20 of the FDA or the MDRs; and
- (iii) are not and do not contain a banned or a hazardous substance (except as identified on the label).
- c. Merchantability, Fitness, Conformance. Vendor represents and warrants that Goods are (i) merchantable, (ii) of good quality and workmanship, (iii) free from defects, latent or patent, in material, design and workmanship, (iv) fit, sufficient and safe for their intended purpose and for the particular or general purpose for which purchased, if Vendor knows or reasonably should know of such purpose, (v) in conformity in all respects with all specifications, performance standards, drawings, samples or descriptions, furnished, specified or adopted by Purchaser, (vi) free of any claim of any third party, and (vii) genuine and in their original manufactured condition containing all original manuals and information.
- d. No Violation or Breach. Vendor represents and warrants that in obtaining, manufacturing, selling and delivering Goods neither Vendor nor anyone affiliated with or representing Vendor has or will breach any agreement with or commitment or representation to any third party and that there is no impediment or restriction, legal or otherwise, that limits, prohibits or prevents Purchaser from reselling Goods to its customers.
- e. Patent Marking. Vendor represents that the use of any patent numbers, "patent pending," "patent applied for," or any other form of patent marking on any product or packaging of a product supplied to Purchaser is valid and appropriate for the product so marked and that such marking will continue to be valid and appropriate for the duration of time the product is provided to Purchaser and likely to be stocked and sold by Purchaser.

- f. **Benefits and Allowances.** Vendor warrants that (i) all prices, benefits and allowances collected by or granted by Vendor in connection with Goods are consistently made available by Vendor, on a proportionately equal basis, to all persons or entities who are, or may reasonably be expected to be, in competition with Purchaser for the resale thereof, (ii) prices, benefits or allowances for Goods are not less favourable than those prices, benefits or allowances currently extended to any other customers for the same or similar goods in similar quantities, and (iii) in the event Vendor reduces its prices for Goods or similar goods during the term of the Contract, Vendor agrees to reduce the prices of Goods correspondingly. In the event of such a price reduction, price reductions may, in Purchaser's sole and absolute discretion, be deducted from outstanding Vendor invoices or offset against Vendor's account for any Goods on hand or in transit at the time of the reduction. Purchaser shall not be obligated to take a credit against future purchases at the time of the reduction.
- g. **Country of Origin.** Vendor warrants that Goods are manufactured in the country of origin stated on the commercial documents required for Canadian Customs entry. Vendor shall be liable for and indemnify the Purchaser Parties against any penalties, fines, costs or expenses, including legal fees on a full indemnity basis imposed by any governmental body or other third party for violation of transshipment regulations, and/or incurred by Purchaser as a result of any such violations.

The representations, warranties and conditions of Vendor hereunder are in addition to all other express, implied or collateral warranties and conditions and shall run to the benefit of and shall create direct rights of enforcement and remedy in Purchaser. The representations, warranties and conditions of Vendor hereunder are continuing in nature and shall not be affected or limited in any way by Purchaser's extension of express, implied or collateral warranties or conditions to its customers except to the extent that any such warranties and conditions expressly extend beyond the scope of the Vendor's warranties, representations or conditions, express, implied or collateral, to Purchaser. None of the remedies available to Purchaser for the breach of any of the foregoing warranties, representations or conditions may be limited except to the extent and in the manner agreed upon by Purchaser in a separate agreement specifically designating such limitation and signed by an authorized representative of Purchaser. Vendor is not relieved from any obligations or liability for any reason or because of any action by Purchaser or any third party including, but not limited to, any of the following: (a) Vendor has received a satisfactory lab test result, (b) Purchaser has conducted testing, (c) Purchaser has accepted or approved Goods, designs, claims, materials or packaging, (d) Purchaser has furnished, specified or adopted product specifications, performance standards, drawings, product claims, instructions, descriptions and/or other information related to the Goods, and/or (e) Purchaser has authorized an override of testing protocol or testing results.

11. Other Agreements

- a. **Resale Goods.** With respect to any Goods of which Vendor is not the original manufacturer (hereinafter referred to as "Resale Goods") Vendor represents and warrants that: (i) if Resale Goods are of a type that would normally be

accompanied by an express written manufacturer's warranty valid in Canada when distributed through the manufacturer's regular channels, the Resale Goods sold to Purchaser hereunder will contain such express written manufacturer's warranty applicable when the Resale Goods are sold by Purchaser; and (ii) Vendor will retain and, upon Purchaser's request, provide to Purchaser original, complete, unaltered and unredacted invoices from the manufacturer or entity authorized to possess the Resale Goods demonstrating Vendor's lawful possession of the Resale Goods.

- b. Third Party Representatives. Vendor may engage a third party as a manufacturer's representative to interact with Purchaser on Vendor's behalf (a "Third Party Representative"). Vendor agrees that any Third Party Representative engaged by it is acting on Vendor's behalf and Purchaser may rely upon any statements or representations made by the Third Party Representative. Vendor further agrees that it is solely responsible for all matters relating to the Third Party Representative's duties and compensation and Vendor will indemnify and hold harmless the Purchaser Parties with respect to any claims made by any Third Party Representative relating to Vendor's business.
- c. Anti-Bribery. Vendor's performance of a Purchase Order is subject to the United States Foreign Corrupt Practices Act and the Canadian Corruption of Foreign Public Officials Act as well as other applicable anti-bribery laws, including applicable provisions of the Criminal Code of Canada ("Anti-Bribery Laws"). Neither Vendor nor any one acting on its behalf will violate Anti-Bribery Laws for the benefit of or on behalf of Purchaser or Vendor. Vendor will not, directly or indirectly, pay, offer to pay, or authorize the payment of any money or transfer of anything else of value to:
 - (i) An officer, employee, agent, mandatory or representative of any government, including any department, agency or instrumentality of any government or any government-owned or government-controlled entity or any person acting in an official capacity on behalf thereof, or any political party, any official of a political party or public international organization, or any candidate for political office (each, a "Government or Political Official or Entity"); or
 - (ii) Any other person or entity while knowing or having reason to believe that some or all of the payment or thing of value will be offered, given or promised, directly or indirectly, to any Government or Political Official or Entity; for the purpose of improperly influencing any act or decision of such Government or Political Official or Entity in his, her or its official capacity. Relevant acts or decisions include a decision to do or not do any act in violation of the lawful duty of such person or entity, or inducing such person or entity to use his, her or its influence with the government or instrumentality thereof to affect or influence any act or decision, in order to obtain, retain or direct any business or to secure any other improper business advantage. Additionally, Vendor will not directly or indirectly make, provide, offer or authorize any payment or anything else of value to any Government or Political Official or Entity for the purpose

of expediting or securing the performance of a routine governmental action by such Government or Political Official or Entity. Vendor must immediately notify Purchaser of any actual or suspected breach of this Section (ii).

1. Questionnaire. If Vendor completes a third party due diligence questionnaire under applicable Anti-Bribery Laws, then Vendor's responses to any such third party due diligence questionnaire are incorporated by reference to the Contract and constitute Vendor representations and warranties under the Contract.
 2. Certifications. Vendor shall provide to Purchaser such information and further written certifications as Purchaser may request from time to time to assist Purchaser's efforts to assure compliance with Anti-Bribery Laws.
 3. Training. Upon request by Purchaser, Vendor shall institute an anti-bribery compliance training and reporting program that meets Purchaser's prescribed requirements. Additionally, Purchaser may designate which Vendor positions and personnel must receive such training.
- d. Financial Information. From time to time upon Purchaser's request, Vendor will provide Purchaser with reasonable information regarding Vendor's financial status including, without limitation, financial statements, credit reports and Dun & Bradstreet reports.

12. Records and Audits

For seven years following the issuance of a Purchase Order, Vendor shall keep full and accurate books of account and all documents and other materials relating to the subject matter of that Purchase Order and Vendor's fulfillment of that Purchase Order. During that same period Purchaser, or its duly authorized agent, mandatary or representative, shall have the right, upon reasonable notice, to audit and inspect such books, documents, and other material during Vendor's normal business hours, and may make copies of such books, documents and other materials in order to verify whether Vendor has complied with its obligations under the Contract. Vendor will promptly pay Purchaser for any overcharges made by Vendor that are disclosed by such audit. In addition, if any audit of Vendor's books and records reveals that Vendor has erroneously charged Purchaser \$1,000.00 or more, then Vendor shall reimburse Purchaser for Purchaser's direct out-of-pocket expenses incurred in conducting the audit.

13. No Variances

Regardless of industry standards, no variances with respect to quality, quantity, size, capacity, volume, content or other standard measure of Goods are allowed. Vendor shall assume responsibility for and indemnify the Purchaser Parties against any fines, costs or expenses, including legal fees on a full indemnity basis, (a) imposed by any federal,

provincial or local governmental or regulatory body, or other third party, for variances in Goods shipped hereunder, and/or (b) incurred by Purchaser as a result of the variances.

14. Indemnification and Defence of Purchaser

Vendor shall defend, indemnify and hold harmless the Purchaser Parties from and against investigations, inquiries, claims, suits, demands, applications or other proceedings for any liabilities, losses, damages, costs and expenses (including without limitation, reasonable legal fees and expenses on a full indemnity basis) (each a "Claim") arising out of or otherwise relating to the subject matter of the Contract, including any Claim of any kind or nature, which any buyer or user of Goods, or any other entity or person (including employees, agents or mandataries of Vendor), whether in privity to Purchaser or not, may make against any of the Purchaser Parties, based upon or arising out of the manufacture, delivery, ticketing, labelling, packaging, placement, promotion, sale, distribution, or use of Goods, Vendor's performance or failure to perform as required by the Contract, Vendor's acts or omissions, or any of Vendor's representations or warranties contained in the Contract. Vendor shall also defend, indemnify and hold harmless the Purchaser Parties, from and against any Claim arising out of or otherwise relating to any patent, design, industrial design, trade name, trade-mark, copyright, trade dress, right of privacy or other similar action, suit or proceeding now existing or hereafter commenced with respect to any or all Goods. Vendor shall also be liable to the Purchaser Parties for any and all costs and expenses (including, without limitation, reasonable legal fees and expenses on a full indemnity basis) arising out of or related to any Purchaser Party's response to any subpoena, discovery request or other request for information submitted to or served upon a Purchaser Party in connection with any lawsuit, claim or other proceeding to which Vendor is a party or any governmental or regulatory investigation being conducted with respect to Vendor or the Goods. It is the intent of the parties hereto that all indemnity obligations be without limit and without regard as to whether or not Purchaser furnishes specifications or inspects Goods.

15. Insurance

Vendor shall maintain in full force and effect minimum insurance of the following kinds and amounts and meeting such other requirements as set forth below.

- a. **Commercial General Liability Insurance.** Commercial general liability ("CGL") insurance with minimum limits of coverage of not less than \$5,000,000 per occurrence for bodily injury and property damage (unless another amount is required pursuant to the Insurance section of POL) which shall include the following coverages: products and completed operations, contractual liability for liabilities assumed by Vendor under the Contract, employers liability, non-owned automobile liability, and personal and advertising injury liability. Vendor's CGL insurance shall: (i) designate Target Corporation and Target Canada Co. and their subsidiaries and affiliates as additional insureds, including with respect to third party claims or actions brought directly against Purchaser, Target Corporation and/or their respective subsidiaries and affiliates or against Purchaser, Target Corporation and/or their respective subsidiaries and affiliates and Vendor as co-defendants and arising out of the Contract, (ii) provide for a severability of interests, and (iii) have an additional insured endorsement of CG2015, CG2026,

or equivalent. Vendor must provide insurance for the life of Goods covering claims occurring or brought by third parties, including after Purchaser discontinues sale of Goods.

- b. Workers Compensation. Vendor shall provide evidence of compliance with Workers' compensation legislation at the Vendor's workplace, including proper registration and payments due thereunder. At any time during the term of the Contract, when requested by Purchaser, Vendor shall provide such evidence of compliance.
- c. Automobile Liability Insurance. Automobile Liability insurance 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 Vendor is conducting business related to the Contract.
 - (iii) Occurrence Basis. All coverage required under this section shall be written on an occurrence basis.
 - (iv) Vendor Insurance is Primary. Vendor's insurance shall be primary and non-contributory, and required to respond to and pay prior to any other available coverage of Purchaser and/or its parent, subsidiaries and affiliates.

Certificate of Insurance. Vendor shall provide Purchaser with a certificate(s) of insurance evidencing the required coverage before shipping Goods and upon each renewal of such policies. The Certificates of Insurance shall include a clause that obligates the insurer(s) to give Purchaser at least 30 days prior written notice of any material change or cancellation of such policies. Vendor shall evidence to Purchaser the required insurance for a continuous period of not less than three years from the receipt of Goods.

- (v) Self-Insurance. Vendor shall not self-insure its coverage required under this section without the prior written consent of Purchaser.
- (vi) Territory. All such policies shall cover claims brought in the United States (including its territories and possessions), Puerto Rico and Canada.
- (vii) Miscellaneous. Vendor shall obtain such insurance prior to shipping any Goods. The insurance obligations of Vendor herein shall survive the

completion or termination of any Purchase Order under the Contract. The purchase of insurance and furnishing of any certificates shall not limit Vendor's obligations hereunder or in any way modify Vendor's agreement to indemnify Purchaser and the other Purchaser Parties as set forth hereunder. Vendor further agrees to insure, at its sole cost and expense, for their full and true retail value, any Goods which by the terms of the Contract, or any other agreement between Purchaser and Vendor, are to be stored at other than the Purchaser's facilities.

16. Vendor Equipment, Vendor Services

To the extent Vendor provides any equipment or fixtures in connection with the Goods ("Vendor Equipment") or to the extent Vendor's delivery, stocking, maintenance, promotion or removal of the Goods require Vendor to enter Purchaser's premises ("Vendor Services"), the following terms and provisions shall apply:

- (i) Vendor agrees that the warranties set forth herein apply to Vendor Equipment and Vendor Services. Vendor further warrants that Vendor Services will be provided in a good and workmanlike manner;
- (ii) Vendor shall, at its expense, obtain all licences and permits and shall pay all inspection fees necessary in connection with the performance of any Vendor Services or maintenance or installation of Vendor Equipment;
- (iii) Vendor agrees that the indemnification and defence provisions set forth in section 14 shall apply to any Claims which any person or entity may make against any of the Purchaser Parties arising out of or otherwise relating to the Vendor Equipment or Vendor Services, and further agrees that Vendor shall be liable to Purchaser for any Claims incurred or sustained by Purchaser in connection with any breach by Vendor of this section 16, including lost profits and legal fees;
- (iv) the insurance required to be obtained and maintained by Vendor pursuant to section 15 shall provide coverage with respect to the Vendor Equipment and Vendor Services;
- (v) Purchaser has no obligation to maintain any Vendor Equipment or to provide notice to Vendor of any failure of or damage to any Vendor Equipment; and
- (vi) all Vendor Services performed are be performed by Vendor as an independent contractor, and the persons performing such Vendor Services shall not be considered employees of Purchaser.

17. Confidentiality, Use of Names and Marks

- a. Confidentiality. Vendor is subject to and will comply with the confidentiality provisions set forth in the Rules of Use and Confidentiality Agreement. Unless otherwise agreed in writing, no information disclosed or supplied by Vendor to

Purchaser shall be deemed secret or confidential and Vendor shall have no rights against Purchaser with respect thereto.

- b. Use of Purchaser's Name. Vendor shall not use Purchaser's name, trade-marks, logos, any description that would reveal Purchaser's identity, or other form of identification of Purchaser, whether registered or not (the "Purchaser Identification") in any way, including, but not limited to, any advertisements, press releases, 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 the Contract or any other agreement between Vendor and Purchaser without first obtaining Purchaser's written consent, which may be withheld in Purchaser's sole discretion. In addition, Vendor agrees that it shall not negatively reference or disparage Purchaser or its parent, subsidiaries and affiliates.
- c. Use of Purchaser's Marks. Vendor may only use trade-marks, characters, designs, names, symbols or other materials owned, copyrighted or licensed by Purchaser or Purchaser's licensors in accordance with the Contract including the Brand Protection section of POL.
- d. Use of Vendor Marks. Vendor warrants that Goods, any images provided to Purchaser by Vendor (the "Images"), and the Vendor's name, logos and trade-marks ("Vendor Marks") do not infringe upon or violate any patent, design, industrial design, trade name, trade-mark, copyright, trade dress, right of privacy or other similar proprietary or property right of any third party and that any and all royalties owed by Vendor with respect to Goods have been paid to the appropriate licensor. Vendor hereby grants to Purchaser the right to advertise Goods using the Vendor Marks and Images in any medium. Vendor acknowledges and agrees that Purchaser will not use the "®," "™," "MC," "©" or other symbols or otherwise identify Vendor as the owner of the Vendor Marks or Images.

18. Assignment

- a. No Assignment. Vendor may not assign or transfer the Contract, in whole or in part (by assigning or transferring any right, obligation or interest or delegating any duty under the Contract), voluntarily or involuntarily, by operation of law, or a change of control, merger or amalgamation or in any other manner, without Purchaser's prior written consent, which may be withheld in Purchaser's sole discretion. Any purported assignment or delegation by Vendor without Purchaser's prior written consent is void. Purchaser will only accept invoices from Vendor.
- b. Assignment of Payments. Notwithstanding the foregoing, Purchaser will allow Vendor, upon not less than ten days prior written notice to Purchaser, to assign to not more than one person or entity, the right of Vendor to receive 100% of the payments under the Contract. Notice of any such assignment must be sent to the following address, or such substitute address as Purchaser may, from time to time, designate in writing:

Attn: Control Dept.
 Target Canada Co.
 c/o Target Corporation
 1000 Nicollet Mall
 Minneapolis, MN 55403

The notice must identify the rights assigned, the assignee, the effective date of such assignment (which in no event may be less than 10 days following Purchaser's receipt of notice) and any other information that Purchaser may reasonably require. Purchaser reserves the right to require reasonable proof that the assignment has been made. If such proof is not timely furnished or if Vendor otherwise fails to comply with this section, Purchaser may reject the assignment and continue to pay Vendor. Any such assignee shall take assignment of payment subject to any and all claims and rights of offset Purchaser has against Vendor. Any such assignment shall not (i) affect any payments made prior to the effective date of such assignment, (ii) affect any of Purchaser's rights under the Contract, including its right to take deductions from Vendor's account, or (iii) relieve Vendor of any of its obligations under the Contract. Any assignment in violation of this provision shall be void.

- c. Assignment by Purchaser. Purchaser may assign or transfer the Contract, in whole or in part (by assigning or transferring any right or delegating any duty under the Contract) to an affiliated entity or to any other party in Purchaser's sole discretion. In the event Purchaser assigns the entire Contract to another party, Purchaser shall have no further obligation to Vendor under the Contract and Vendor hereby consents that Purchaser's assignment or transfer shall constitute a novation.

19. Notice

Except as otherwise provided in the Contract, each party giving any notice required under the Contract shall be in writing and shall use 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. The proper notice address for Vendor is Vendor's address reflected in Purchaser's records. Notices sent to Target shall be sent to the following addresses:

Target Canada Co.
 c/o Target Corporation
 1000 Nicollet Mall
 Minneapolis, MN 55403
 Attn: Divisional Merchandising Manager
 Dept: [Enter Department number(s) for the area(s) to which the notice relates]

With a copy to:

Target Canada Co.
c/o Target Corporation
1000 Nicollet Mall
Minneapolis, MN 55403
Attn: General Counsel – Canada

20. Entire Agreement, Changes to Contract

- a. Entire Agreement. The Contract constitutes the entire expression of the parties' agreement with regard to the subject matter of the Contract. All prior and contemporaneous negotiations and agreements between the parties with regard to the subject matter of the Contract are expressly superseded by the Contract.
- b. Modification of the Contract. The Contract may not be modified by course of dealing, course of performance, or any oral communication between Purchaser and Vendor. The Contract may only be modified by (i) a separate written agreement signed by Vendor and an authorized agent, mandatary or officer of Purchaser, or (ii) Purchaser providing Vendor, with respect to future Purchase Orders, with advance written or electronic notice (including providing notice as set forth in the Rules of Use and Confidentiality Agreement).
- c. Modification of Purchase Orders. Purchaser reserves the right at any time to make changes to any Purchase Order, including, without limitation, changes to the method of shipment, packaging, hanging, ticketing, labelling or packing, the time, place and manner of delivery, the specifications, or the quantity of Goods. If any such change shall cause an increase or decrease in the cost or time required for performance of the Purchase Order, Vendor shall immediately advise Purchaser of any such increase or decrease, and an equitable adjustment shall be made to the Purchase Order, including without limitation an adjustment to the Purchase Order price and/or delivery schedule. Any claim by Vendor for such adjustment must be approved by Purchaser in writing prior to such adjustment being made.

21. Invalidity, Non-Waiver, Course of Dealing

If any provision of the Contract is held invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will not be affected or impaired. No provision of the Contract 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 for the specific instance in which it is given. Purchaser's failure to fully or timely exercise any right or remedy or Purchaser's failure to require the satisfaction of any condition under the Contract shall not operate as a waiver or estoppel of any right, remedy or condition. Purchaser's right to require strict observance of the terms of the Contract shall not be waived by course of dealing.

22. Governing Law, Venue

The Contract shall be governed by the laws of Ontario and all laws of Canada applicable therein. Each party hereto submits to the exclusive jurisdiction of any Ontario courts sitting in Toronto in any action, application, reference or other proceeding arising out of

or related to the Contract and agrees that all claims in respect of any such actions, application, reference or other proceeding shall be heard and determined in such Ontario 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 the Contract in the Ontario courts sitting in Toronto, including the objection that the proceedings have been brought in an inconvenient forum. Furthermore, the parties agree that the 1980 United Nations Convention on Contracts for the International Sale of Goods, and any subsequent revisions thereto, do not apply to the Contract.

23. Arbitration

Any controversies or disputes arising out of, or relating to the Contract or the interpretation or breach hereof, shall, in Purchaser's sole and absolute discretion, be settled by binding arbitration by an arbitration service of Purchaser's choice, in accordance with the Ontario Arbitration Act, 1991. The location of such arbitration shall be in Toronto, Ontario. Discovery shall be permitted as provided by the Ontario Arbitration Act, 1991 or as the parties may otherwise mutually agree. The parties may also mutually elect to seek mediation as an alternative or precursor to arbitration. If the Contract governs an international transaction, the Ontario International Commercial Arbitration Act regarding the arbitration of international disputes shall apply. The arbitrator shall agree to conduct proceedings under the laws relating to arbitration cited above, or such other rules to which the parties mutually agree.

24. Third Party Beneficiaries

The parties acknowledge and agree that while Purchaser's parent, affiliates, and subsidiaries (and each of their respective successors and assigns) and their respective directors, officers, shareholders, employees, contractors, agents and mandataries, and the directors, officers, shareholders, employees, contractors, agents and mandataries of Purchaser (collectively the "Third Party Beneficiaries") are not parties to the Contract and have no obligations or liabilities under the Contract, Purchaser 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 and exclusions of liability 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 Purchaser as a party to any proceedings for such enforcement).

25. Language

The parties confirm that it is their wish that the Contract, as well as any other documents relating to this agreement, including Purchase Orders, notices, schedules and authorizations, have been and shall be drawn up in the English language only. In the event of any inconsistency between the French and the English versions of the Contract, or any other documents relating to this agreement, including Purchase Orders, notices, schedules and authorizations, the English version shall prevail. *Les parties confirment leur volonté que le contrat, de même que tous les documents s'y rattachant, y compris tous bons de commande, avis, annexes et autorisations, soient rédigés en anglais seulement. En cas d'incompatibilité entre les versions française et anglaise du présent*

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contrat, y compris tous bons de commande, avis, annexes et autorisations, la version anglaise prévaudra.

0049
PART OF CONTRACT

Jean-Pierre Michaud

From: Scott Inkster
Sent: Wednesday, March 28, 2012 9:36 AM
To: Jean-Pierre Michaud
Subject: Fwd: Vendor Agreement questions for ISIS Inc. and Elf.

JP,

Can you get Shell to sign the contract and we can return. Attach this email thread.

Scott Inkster
Sent from my iPhone

Begin forwarded message:

From: Shaun.Lebo <Shaun.Lebo@target.com>
Date: 28 March, 2012 8:14:11 AM EDT
To: Scott Inkster <S.Inkster@elfe.ca>
Subject: RE: Vendor Agreement questions for ISIS Inc. and Elf,

Thanks Scott!

Shaun Lebo | Negotiation Leader - Target Canada | Business Partnerships & Negotiation | ☉Target | 50 South 10th
St. TP3-0946 Minneapolis, MN 55403 | 612-761-5313 (Office) | 612-558-0841 (Cell)

From: Scott Inkster [<mailto:S.Inkster@elfe.ca>]
Sent: Tuesday, March 27, 2012 7:55 AM
To: Shaun.Lebo; Pao.Thao
Cc: Jean-Pierre Michaud; Shell Bern; Ivan Vancouver; Laura-Lynn James; Marlène Marzouk
Subject: RE: Vendor Agreement questions for ISIS Inc. and Elf.

Shaun,

Thank you for taking the time to respond to our questions.

We will return the signed the contracts for Elfe Juvenile Products and ISIS Inc. with the understanding, as you outlined below that

- 1) Section 11 a) regarding "resale of goods" does not apply to either Elfe Juvenile Products or ISIS Inc.
- 2) Section 11 d) regarding the provision of financial information does not apply to either Elfe Juvenile Products or ISIS Inc.

Thank you and we look forward to working with Target Canada.

Best regards,

Scott Inkster

From: Shaun.Lebo [mailto:Shaun.Lebo@target.com]
Sent: March-14-12 9:39 AM
To: Pao.Thao
Cc: Scott Inkster; Jean-Pierre Michaud
Subject: RE: Vendor Agreement questions for ISIS Inc. and Elf.

Hi Scott –

My name is Shaun Lebo from the Business partnerships & negotiation team. As you can imagine, we're working incredibly fast and hard to prepare to enter the Canadian market in early 2013. The vendor agreement and setup process is an extremely integral part of our shared success. This entails Target working with thousands of potential vendors. Target does not have an interest in negotiating the particular details of the vendor agreement. Rest assured, the particulars of your operating/business relationship (costing, terms, assortment) with Target will not be held to the same rigidity.

I've done my best to answer your questions below.

Please let me know if you'll be able to submit the required documents to Pao. I really appreciate your partnership in helping us move forward on this, and look forward to working with you in the future (I'll be supporting negotiations for HPB).

Thanks again,
 Shaun

Shaun Lebo | Negotiation Leader - Target Canada | Business Partnerships & Negotiation | ©Target | 50 South 10th St. TP3-0946 Minneapolis, MN 55403 |

From: Pao.Thao
Sent: Friday, March 09, 2012 3:37 PM
To: Shaun.Lebo
Cc: S.Inkster@elfe.ca; Jean-Pierre Michaud
Subject: Vendor Agreement questions for ISIS Inc. and Elf.
Importance: High

Shaun,

Can you please assist Scott and Jean-Pierre on the following questions below.

There are two emails copied and pasted below.

Thank you!

Pao Thao | ©Target | Target Canada Master Data Collection Team | Email: Pao.Thao@Target.com | Phone: 1-763-405-0250 ext 05250 office

From: Scott Inkster [mailto:S.Inkster@elfe.ca]
Sent: Monday, February 20, 2012 3:22 PM
To: Pao.Thao; Jean-Pierre Michaud
Subject: RE: Target Canada Vendor Setup Form - Due 02/22/12 LUV N CARE LTD

Pao,

Our legal team has gone through the contract and we have a couple of points which require clarification please.

1) Terms Package – It is not detailed in the contract anywhere what your allowance package requirements are. Do you require marketing funds, damage allowance (this option is referred to in Section 7 of the Conditions of Contract), freight allowance, etc...? These, along with payment terms are usually detailed in other contracts we have signed.

As outlined above, the terms of our business agreement will be negotiated through the VIT and negotiation event process for specific categories. The trade funding you outline above will be discussed separately at that time.

2) Can the POL detail a change to the Vendor Payment and Terms Package, or does it only refer to changes to the Conditions of Contract?

Vendor payment and terms can be negotiated outside of this process.

3) What information is obtained and provided through the POL? Is it strictly informational or are there transactional items (do we get orders via the POL)?

You will receive orders (if selected as a vendor) through SAP.

4) Section 11 a) of the Conditions of Contract details "Resale of Goods." I read it to be in reference to a liquidator or other such reseller who has purchased/ received the goods other than directly from the manufacturer or factory. Am I understanding this correctly?

The reason I ask, is we are the sole Canadian distributor for our brands in Canada, so I believe we do NOT qualify as a reseller by this definition.

Not all conditions of contract will apply to every vendor.

5) In Section 11 d) Financial Information, it is indicated we may be asked to provide financial data. We are a privately held company and as such do not provide our financials. We can provide credit and trade references however.

Not all conditions of contract will apply to every vendor.

6) In Section 16 c) you require Automobile Liability Insurance of \$1,000,000. What is this in regards to? I can only guess it has to do with deliveries, but since we use 3rd party trucking it would be inapplicable. Please explain.

Not all conditions of contract will apply to every vendor.

If you can please review and explain the above it would be appreciated.

Best regards,
Scott

[Same company below]

From: Jean-Pierre Michaud [<mailto:J.Michaud@elfe.ca>]

Sent: Thursday, February 16, 2012 5:07 PM

To: Pao.Thao

Cc: Scott Inkster

Subject: information request

Dear Pao,

Can you please send me the "Vendor Information on Product Safety Recalls and Market Withdrawls and the Food Product Recalls and Withdrawls sections of POL" (Purchasers Partners On-Line system)?

We are required to comply with it in the Vendor Agreement but it is not outlined in the contract posted on line.

Regards
Jean-Pierre Michaud
Senior National Account and Vendor Manager

Pao Thao | ©Target | Target Canada Master Data Collection Team | Email: Pao.Thao@Target.com | Phone: 1-763-405-0250 ext 05250 office