**SECTION FOUR**

**Exclusivity Agreement**

employment, consulting, agency, distributorship or any other arrangement with Buyer, or (2) employ or retain, or arrange to

Vendor will not (1) influence or attempt to influence any third party to either terminate or modify his or her

(c)

with Buyer; or

party with which Buyer has a business relationship to terminate or modify any written or oral agreement or course of dealing

Vendor will not influence or attempt to influence any vendor of goods or services to Buyer or any other third

(b)

have any other third party employ or retain, any third party who has been employed or retained by Buyer at any time within the

securities registered pursuant to the Securities Exchange Act of 1934);

Product (other than through ownership of not more than 2% of any class of securities of any corporation that has a class of

third party engaged in the business of designing, manufacturing, marketing, selling, or offering for sale Maternity or Nursing

interested in (as owner, stockholder, lender, partner, co-venturer, director, officer, employee, agent, consultant or otherwise) any

the business of designing, manufacturing, marketing, selling, or offering for sale Maternity and Nursing Product, or become

except with respect to Purchase Orders between Buyer and Vendor, Vendor will not engage or participate in

(a)

example only, by advertising in-store, online or otherwise that such Maternity and Nursing Product is “Exclusively Available at

- 2 -

tradenames associated with Maternity and Nursing Product provided by Vendor in such advertising and/or marketing activities.

discretion. Vendor hereby provides Buyer a worldwide, royalty free license to use any of Vendor’s trademarks and/or

Product provided by Vendor to Buyer as “exclusive” in any manner and in any form that Buyer determines in Buyer’s sole

and Nursing Product will be exclusive to Buyer and hereby authorizes Buyer to advertise and/or market Maternity and Nursing

Motherhood®!” or “Only Available at Destination Maternity®!)”). Vendor hereby represents and warrants that such Maternity

pursuant to any Purchase Orders are “exclusive” to Buyer and/or are “exclusively” available to Buyer’s customers (such as, for

Buyer’s sole discretion) advertise and/or otherwise market that the Maternity and Nursing Product provided by Vendor to Buyer

**Right to Market Vendor Product as Exclusive**. Vendor understands that Buyer may, from time to time (in

2.

two-year period preceding such proposed employment or retention.

and as modified from time to time by the Buyer at its sole discretion and without notice to Vendor.

Agreement are in addition to, and not in limitation of, the Company’s standard Purchase Order Terms and Conditions in effect

under common control with or otherwise affiliated with Vendor) (individually and collectively, “***Vendor***”). The terms of this

Maternity Corporation (the “***Buyer***”) and the party identified as “Vendor” (including any third party controlling, controlled by,

This Exclusivity Agreement (the “***Agreement***”) is made on the “Effective Date” specified below between Destination

(Global)

Product Exclusivity Agreement



valuable consideration, the adequacy and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

or indirectly, anywhere in the world:

Buyer’s last receipt of goods from Vendor, Vendor covenants and agrees that Vendor shall not do any of the following, directly

**Exclusivity; Non-Solicitation; Non-Hire**. For so long as Vendor sells goods to Buyer and for one year after

1.

In consideration of the mutual promises contained in this Agreement and any Purchase Order, and for other good and

agreed to the restrictions set forth in this Agreement.

Buyer commencing or continuing its purchase of goods from Vendor, and in consideration of such purchase(s), Vendor has

related accessories (“***Maternity and Nursing Product***”) via Purchase Orders (each a “***Purchase Order***”). As an inducement to

Buyer has placed and/or will place orders with Vendor for the purchase of maternity and/or nursing apparel and/or

terms

acquiescence in a course of performance rendered by Vendor hereunder shall not be relevant to determine the meaning of this

between the parties and no usage of trade shall be relevant to supplement or explain any term herein. Buyer’s acceptance or

contemporaneous agreements, inducements or conditions, express or implied, oral or written. No course of prior dealings

and

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Agreement, even though Buyer has knowledge of the nature of the performance and opportunity for objection. The provisions

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hereto,

parties

incorporated be reference therein will constitute the complete and exclusive statement of the terms of agreement between the

- 3 -

by an agreement in writing signed by both parties. This Agreement together with any Purchase Order and documents

which it may be enforceable, all as determined by such court in such action.

over the largest geographical area as to which it may be enforceable and/or to the maximum extent in all other aspects as to

that such provision shall be interpreted to extend only over the longest period of time for which it may be enforceable, and/or

large a geographical area or by reason of its being too extensive in any other respect or for any other reason), the parties agree

jurisdiction to be unenforceable for any reason (for example, by reason of its extending for too long a period of time or over too

**Modification**. In the event that any provision of this Agreement is determined by any court of competent

8.

of this Section shall survive any termination, cancellation, execution, delivery, and/or performance of this Agreement.

4.

performance of this Agreement.

with, any such breach. The provisions of this Section shall survive any termination, cancellation, execution, delivery, and/or

remuneration, or other benefits that Vendor, directly or indirectly, has realized and/or may realize as a result of, or in connection

contained in this Agreement, Buyer shall be entitled to an accounting and repayment of all profits, compensation, commissions,

bond in connection with such remedy. Vendor further agrees that if Vendor breaches any of the covenants or agreements

agrees to waive and to use its best efforts to cause its representatives to waive any requirement for the securing or posting of any

Vendor, in addition to other remedies available to the Buyer, whether at law, in equity or otherwise, and the Vendor further

limitation, injunctive relief and specific performance, in the event of any breach of the provisions of this Agreement by the

Agreement and that the Buyer, or any successor or assign of the Buyer, shall be entitled to equitable relief, including, without

**Remedies**. The Vendor agrees that money damages would not be a sufficient remedy for any breach of this

execution, delivery, and/or performance of this Agreement.

any liability whatsoever, including attorneys’ fees. The provisions of this Section shall survive any termination, cancellation,

to Vendor, to defend the same at Vendor’s expense, and be responsible for all costs, losses, expenses, damages claims, suits, or

damage to any property, alleged to have resulted from a breach of this Agreement, and, upon the tendering of any suit or claim

from all damages, claims, demands and/or liability, including those arising out of the death of or injury to any person, or

affiliates and their respective successors, assigns, customers and users of its products against all suits at law or in equity and

**Indemnification**. Vendor agrees to indemnify, defend (at Buyer’s option) and hold harmless Buyer, its

3.

prior written consent. Any assignment by Vendor of its right to payment under this Purchase Order shall be subject to all claims

**Amendment; Entire Agreement**. This Agreement may not be amended, modified, altered or waived except

7.

Buyer and its successors and assigns.

time. This Agreement shall be binding upon the Vendor and its successors and assigns, and shall inure to the benefit of the

Agreement and will be considered “Buyer” under this Agreement as permitted by Buyer in Buyer’s sole discretion from time to

other like arrangements with third parties, and Vendor agrees that such third parties are intended third party beneficiaries of this

Vendor recognizes that Buyer’s product may sometimes be offered to customers through franchisee, licensing, joint venture or

and defenses of Buyer. This Agreement may be assigned at any time and from time to time by the Buyer at its sole discretion.

**Assignment; Successors; Franchisees**. This Agreement may not be assigned by Vendor without the Buyer’s

6.

be adjudicated in the courts of the Commonwealth of Pennsylvania.

of the Commonwealth of Pennsylvania (excluding conflicts of laws principles). Any dispute arising under this Agreement shall

**Choice of Law and Venue**. This Agreement shall be governed by and construed in accordance with the laws

5.

**Effective Date**: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

***Rev. 10/22/10***

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\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**IN WITNESS WHEREOF**, each of the parties have caused this Exclusivity Agreement to be executed by a duly

authorized representative as of the date specified below.

**VENDOR**

**BUYER**

Name of Vendor: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DESTINATION MATERNITY CORPORATION

By:

By:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

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

Title:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_