

SECTION FOUR

Exclusivity Agreement



Product Exclusivity Agreement
(Global)

This Exclusivity Agreement (the “*Agreement*”) is made on the “Effective Date” specified below between Destination Maternity Corporation (the “*Buyer*”) and the party identified as “Vendor” (including any third party controlling, controlled by, under common control with or otherwise affiliated with Vendor) (individually and collectively, “*Vendor*”). The terms of this Agreement are in addition to, and not in limitation of, the Company’s standard Purchase Order Terms and Conditions in effect and as modified from time to time by the Buyer at its sole discretion and without notice to Vendor.

Buyer has placed and/or will place orders with Vendor for the purchase of maternity and/or nursing apparel and/or related accessories (“*Maternity and Nursing Product*”) via Purchase Orders (each a “*Purchase Order*”). As an inducement to Buyer commencing or continuing its purchase of goods from Vendor, and in consideration of such purchase(s), Vendor has agreed to the restrictions set forth in this Agreement.

In consideration of the mutual promises contained in this Agreement and any Purchase Order, and for other good and valuable consideration, the adequacy and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Exclusivity; Non-Solicitation; Non-Hire.** For so long as Vendor sells goods to Buyer and for one year after Buyer’s last receipt of goods from Vendor, Vendor covenants and agrees that Vendor shall not do any of the following, directly or indirectly, anywhere in the world:

(a) except with respect to Purchase Orders between Buyer and Vendor, Vendor will not engage or participate in the business of designing, manufacturing, marketing, selling, or offering for sale Maternity and Nursing Product, or become interested in (as owner, stockholder, lender, partner, co-venturer, director, officer, employee, agent, consultant or otherwise) any third party engaged in the business of designing, manufacturing, marketing, selling, or offering for sale Maternity or Nursing Product (other than through ownership of not more than 2% of any class of securities of any corporation that has a class of securities registered pursuant to the Securities Exchange Act of 1934);

(b) Vendor will not influence or attempt to influence any vendor of goods or services to Buyer or any other third party with which Buyer has a business relationship to terminate or modify any written or oral agreement or course of dealing with Buyer; or

(c) Vendor will not (1) influence or attempt to influence any third party to either terminate or modify his or her employment, consulting, agency, distributorship or any other arrangement with Buyer, or (2) employ or retain, or arrange to have any other third party employ or retain, any third party who has been employed or retained by Buyer at any time within the two-year period preceding such proposed employment or retention.

2. **Right to Market Vendor Product as Exclusive.** Vendor understands that Buyer may, from time to time (in Buyer’s sole discretion) advertise and/or otherwise market that the Maternity and Nursing Product provided by Vendor to Buyer pursuant to any Purchase Orders are “exclusive” to Buyer and/or are “exclusively” available to Buyer’s customers (such as, for example only, by advertising in-store, online or otherwise that such Maternity and Nursing Product is “Exclusively Available at Motherhood®!” or “Only Available at Destination Maternity®!”). Vendor hereby represents and warrants that such Maternity and Nursing Product will be exclusive to Buyer and hereby authorizes Buyer to advertise and/or market Maternity and Nursing Product provided by Vendor to Buyer as “exclusive” in any manner and in any form that Buyer determines in Buyer’s sole discretion. Vendor hereby provides Buyer a worldwide, royalty free license to use any of Vendor’s trademarks and/or tradenames associated with Maternity and Nursing Product provided by Vendor in such advertising and/or marketing activities.

3. **Indemnification.** Vendor agrees to indemnify, defend (at Buyer's option) and hold harmless Buyer, its affiliates and their respective successors, assigns, customers and users of its products against all suits at law or in equity and from all damages, claims, demands and/or liability, including those arising out of the death of or injury to any person, or damage to any property, alleged to have resulted from a breach of this Agreement, and, upon the tendering of any suit or claim to Vendor, to defend the same at Vendor's expense, and be responsible for all costs, losses, expenses, damages claims, suits, or any liability whatsoever, including attorneys' fees. The provisions of this Section shall survive any termination, cancellation, execution, delivery, and/or performance of this Agreement.

4. **Remedies.** The Vendor agrees that money damages would not be a sufficient remedy for any breach of this Agreement and that the Buyer, or any successor or assign of the Buyer, shall be entitled to equitable relief, including, without limitation, injunctive relief and specific performance, in the event of any breach of the provisions of this Agreement by the Vendor, in addition to other remedies available to the Buyer, whether at law, in equity or otherwise, and the Vendor further agrees to waive and to use its best efforts to cause its representatives to waive any requirement for the securing or posting of any bond in connection with such remedy. Vendor further agrees that if Vendor breaches any of the covenants or agreements contained in this Agreement, Buyer shall be entitled to an accounting and repayment of all profits, compensation, commissions, remuneration, or other benefits that Vendor, directly or indirectly, has realized and/or may realize as a result of, or in connection with, any such breach. The provisions of this Section shall survive any termination, cancellation, execution, delivery, and/or performance of this Agreement.

5. **Choice of Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania (excluding conflicts of laws principles). Any dispute arising under this Agreement shall be adjudicated in the courts of the Commonwealth of Pennsylvania.

6. **Assignment; Successors; Franchisees.** This Agreement may not be assigned by Vendor without the Buyer's prior written consent. Any assignment by Vendor of its right to payment under this Purchase Order shall be subject to all claims and defenses of Buyer. This Agreement may be assigned at any time and from time to time by the Buyer at its sole discretion. Vendor recognizes that Buyer's product may sometimes be offered to customers through franchisee, licensing, joint venture or other like arrangements with third parties, and Vendor agrees that such third parties are intended third party beneficiaries of this Agreement and will be considered "Buyer" under this Agreement as permitted by Buyer in Buyer's sole discretion from time to time. This Agreement shall be binding upon the Vendor and its successors and assigns, and shall inure to the benefit of the Buyer and its successors and assigns.

7. **Amendment; Entire Agreement.** This Agreement may not be amended, modified, altered or waived except by an agreement in writing signed by both parties. This Agreement together with any Purchase Order and documents incorporated by reference therein will constitute the complete and exclusive statement of the terms of agreement between the parties hereto, are intended as a final expression of the terms of such agreement and will supersede all prior and contemporaneous agreements, inducements or conditions, express or implied, oral or written. No course of prior dealings between the parties and no usage of trade shall be relevant to supplement or explain any term herein. Buyer's acceptance or acquiescence in a course of performance rendered by Vendor hereunder shall not be relevant to determine the meaning of this Agreement, even though Buyer has knowledge of the nature of the performance and opportunity for objection. The provisions of this Section shall survive any termination, cancellation, execution, delivery, and/or performance of this Agreement.

8. **Modification.** In the event that any provision of this Agreement is determined by any court of competent jurisdiction to be unenforceable for any reason (for example, by reason of its extending for too long a period of time or over too large a geographical area or by reason of its being too extensive in any other respect or for any other reason), the parties agree that such provision shall be interpreted to extend only over the longest period of time for which it may be enforceable, and/or over the largest geographical area as to which it may be enforceable and/or to the maximum extent in all other aspects as to which it may be enforceable, all as determined by such court in such action.

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: _____

Effective Date: _____

Rev. 10/22/10