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12
13 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
14 **IN AND FOR THE COUNTY OF MARICOPA**

15 In the Matter of:

16 THE HOME DEPOT, Inc.; HOME DEPOT
17 U.S.A., Inc.

18 Respondents.

19 Case No.:

20 **ASSURANCE OF DISCONTINUANCE**

21 A.R.S. § 44-1530

22 This Assurance of Voluntary Compliance¹ is entered into by the Attorneys General of
23 Alaska, Arizona, Arkansas, California,² Colorado, Connecticut, Delaware, District of Columbia,
24 Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine,

25 ¹ This Assurance of Voluntary Compliance shall, for all necessary purposes, also be considered
26 an Assurance of Discontinuance.

27 ² The State of California is simultaneously entering into a settlement in a form consistent with
28 the requirements of California law. That settlement incorporates the substantive terms of this
Assurance and any differences between California's settlement and this Assurance arise from
the differences as to form.

1 Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska,
2 Nevada, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma,
3 Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, Vermont,
4 Virginia, Washington, West Virginia, and Wisconsin (the “Attorneys General”) and The Home
5 Depot U.S.A., Inc. and The Home Depot, Inc. to resolve the Attorneys General’s investigation
6 into the data breach announced by The Home Depot on September 8, 2014. The Attorneys
7 General and The Home Depot are referred to collectively as “the Parties.”

9 In consideration of their mutual agreements to the terms of this Assurance, and such other
10 consideration as described herein, the sufficiency of which is hereby acknowledged, the Parties
11 hereby agree as follows:
12

13 **I. INTRODUCTION AND THE PARTIES**

14 1. This Assurance constitutes a good faith settlement and release between The Home
15 Depot and the Attorneys General of claims related to the data breach, publicly announced by
16 The Home Depot on September 8, 2014 (such data breach referred to herein as the “Data
17 Breach”).

18 2. The Attorneys General have defined jurisdiction under the laws, or assert
19 jurisdiction under the common law, of their respective States for the enforcement of state
20 Consumer Protection Acts, Personal Information Protection Acts, and Security Breach
21 Notification Acts, as defined below.
22

23 3. Home Depot U.S.A., Inc. is a Delaware corporation with a principal place of
24 business located at 2455 Paces Ferry Road, Atlanta, GA 30339. The Home Depot, Inc. is a
25 Delaware corporation with a principal place of business located at 2455 Paces Ferry Road,
26 Atlanta, GA 30339.
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1 **II. DEFINITIONS**

2 4. For the purposes of this Assurance, the following definitions shall apply:

3 A. “Cardholder Data Environment” shall mean The Home Depot’s
4 technologies that store, process, or transmit payment card authentication
5 data for U.S. consumers, consistent with the phrase as used in the Payment
6 Card Industry Data Security Standard (“PCI DSS”).³

7
8 B. “Company Network” shall mean The Home Depot’s Cardholder Data
9 Environment and any The Home Depot network component, the
10 compromise of which The Home Depot reasonably believes would also
11 impact the security of the Cardholder Data Environment.

12
13 C. “Consumer” shall mean any individual who initiates a purchase of or
14 purchases goods or services from a Home Depot store in the U.S.; any
15 individual who returns merchandise to a Home Depot store in the U.S.; or
16 any individual who otherwise provides Personal Information to The Home
17 Depot in connection with any other retail transaction at a Home Depot store
18 in the U.S.

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20 D. “Consumer Protection Acts” shall mean the State citation(s) listed in
21 Appendix A.

22 E. “Effective Date” shall be December 21, 2020

23
24 F. “The Home Depot,” or the “Company” shall mean Home Depot U.S.A.,
25 Inc. and The Home Depot, Inc., and their affiliates, subsidiaries, divisions,
26 successors, and assigns doing business in the U.S. that maintain, process, or
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28 ³ In this document, PCI-DSS (as used here and throughout) refers to the standard in place as of the Effective Date of this Assurance and to subsequent versions as adopted.

1 transmit payment card authentication data in connection with transactions
2 at retail locations in the U.S.

3 G. "Personal Information" shall include the data elements in the definitions set
4 forth in the Consumer Protection Acts, Personal Information Protection
5 Acts, and Security Breach Notification Acts. For purposes of Paragraph 13,
6 Personal Information shall include the first name or first initial and last
7 name of a Consumer who is a resident of a State that is a Party to this
8 Assurance in combination with any one or more of the following data
9 elements that relate to such individual: (a) Social Security number; (b)
10 driver's license number; (c) state-issued identification card number; or (d)
11 financial account number, credit or debit card number, in combination with
12 any required security code, access code or password that would permit
13 access to the Consumer's financial account.

14 H. "Personal Information Protection Acts" shall mean the State citation(s)
15 listed in Appendix B.

16 I. "Security Breach Notification Acts" shall mean the State citation(s) listed
17 in Appendix B.

18 J. "Security Event" shall mean any potential compromise to the
19 confidentiality, integrity, or availability of a Company information asset
20 that includes Personal Information.

21 **III. INJUNCTIVE RELIEF**

22 **A. INFORMATION SECURITY PROGRAM REQUIRED**

23 5. The Home Depot shall, within one hundred and eighty (180) days after the
24 Effective Date of this Assurance, further develop, implement, and maintain a comprehensive
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1 information security program (“Information Security Program”) that is reasonably designed to
2 protect the security, integrity, and confidentiality of Personal Information The Home Depot
3 collects or obtains from Consumers.

4
5 6. The Home Depot’s Information Security Program shall be written and shall
6 contain administrative, technical, and physical safeguards appropriate to: (i) the size and
7 complexity of The Home Depot’s operations; (ii) the nature and scope of The Home Depot’s
8 activities; and (iii) the sensitivity of the Personal Information that The Home Depot maintains.

9
10 7. The Home Depot may satisfy the requirement to implement and maintain the
11 Information Security Program, through review, maintenance, and, as necessary, updating of an
12 existing information security program or existing safeguards, provided that such existing
13 information security program and safeguards meet the requirements set forth in this Assurance.

14
15 8. The Home Depot shall employ an executive or officer (hereinafter referred to as
16 Chief Information Security Officer (“CISO”)) with appropriate credentials, background, and
17 expertise in information security who shall be responsible for overseeing the Company’s
18 implementation and maintenance of the Information Security Program. The Home Depot shall
19 document the duties and responsibilities of the executive or officer and ensure that the executive
20 or officer’s responsibilities include advising the Chief Executive Officer and the Board of
21 Directors of The Home Depot’s security posture, security risks faced by The Home Depot, and
22 the security implications of The Home Depot’s decisions.

23
24 9. The Home Depot shall provide the resources and support reasonably necessary to
25 allow the Information Security Program to be fully implemented and to function as required and
26 intended by this Assurance.

27
28 10. The Home Depot must provide security awareness and privacy training to all
personnel whose job involves access to the Company Network or responsibility for U.S.

1 Consumers' Personal Information appropriate to their job responsibilities and functions. Within
2 one hundred and eighty (180) days of the Effective Date, The Home Depot shall either provide
3 such training or confirm that such training has been provided within the past twelve months, and
4 thereafter, shall provide it to all such personnel on at least an annual basis. The Home Depot
5 also shall provide training to personnel with key responsibilities for implementation and
6 oversight of the Information Security Program including but not limited to the executive or
7 officer described in Paragraph 8, regarding the requirements of this Assurance.

9 B. SPECIFIC SAFEGUARDS

10 11. The Home Depot's Information Security Program shall be reasonably designed
11 and implemented for the appropriate handling and investigation of Security Events involving
12 Personal Information collected from Consumers.

14 12. The Home Depot shall make reasonable efforts to maintain and support the
15 software on its networks taking into consideration the impact an update will have on data
16 security in the context of the Company Network and the scope of the resources required to
17 address an end-of-life software issue.

19 13. The Home Depot shall maintain encryption protocols and related policies that are
20 reasonably designed to encrypt Personal Information stored on laptops or other portable devices
21 or when transmitted across public networks or wirelessly, and as The Home Depot determines is
22 reasonably necessary, any other sensitive consumer information that is collected and stored by
23 The Home Depot.

24 14. The Home Depot shall comply with Payment Card Industry Data Security
25 Standards ("PCI DSS") with respect to its Cardholder Data Environment and any Home Depot
26 system component the breach of which Home Depot should reasonably believe would impact
27 the security of the Cardholder Data Environment.
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1 15. **Segmentation:** The Home Depot shall implement and maintain policies and
2 procedures reasonably designed to segment its network, and to permit systems to communicate
3 as necessary to perform their business and/or operational functions. At a minimum these
4 policies and procedures include:

- 5 A. The Home Depot shall take reasonable, risk-based steps to scan and map
6 the connections between its Cardholder Data Environment and the rest of
7 the Company Network in order to determine avenues of traffic to the
8 Cardholder Data Environment and to identify and assess potential
9 penetration vulnerabilities to the Cardholder Data Environment;
- 10 B. The Home Depot shall segment its Cardholder Data Environment
11 consistent with PCI DSS; and
- 12 C. The Home Depot shall take steps reasonably designed to appropriately
13 maintain the separation of its development and production environments.

14 16. **Logging and Monitoring:** The Home Depot shall, to the extent technically
15 feasible, implement reasonable controls to manage the access of any device attempting to
16 connect to the Cardholder Data Environment, through hardware or software tools such as
17 firewalls, authentication credentials, or other such access-restricting mechanism. The Home
18 Depot shall maintain an appropriate system to collect logs and monitor network activity, such as
19 through the use of a security information and event management tool (“SIEM tool”). The Home
20 Depot shall ensure that the SIEM tool is properly configured, regularly updated and maintained
21 to ensure that Security Events are reviewed and that appropriate follow-up and remediation is
22 taken with respect to Security Events.

23 17. **Access Control and Account Audits:** The Home Depot shall implement and
24 maintain appropriate policies, procedures, and controls reasonably designed to manage and audit
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1 the use of The Home Depot's individual accounts, system administrator accounts, service
2 accounts, and vendor accounts. These policies, procedures, and controls shall include
3 appropriate measures to manage administrative privileges and accounts, including local
4 administrative accounts which shall be configured with unique user names and passwords. The
5 Home Depot shall continue to monitor such for anomalous behavior indicative of a Security
6 Event.
7

8 18. **Password Management:** The Home Depot shall implement and maintain
9 password policies and procedures requiring risk-based controls to manage access to, and use of,
10 The Home Depot's individual accounts, service accounts, and vendor accounts, including strong
11 and complex passwords and password rotation, and prohibit the use of default, group, shared, or
12 generic passwords.
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14 19. **Two-Factor Authentication:** The Home Depot shall adopt a reasonable and risk-
15 based approach requiring two-factor authentication both for the Company's system
16 administrator accounts and for remote access into the Company Network.
17

18 20. **File Integrity Monitoring:** The Home Depot shall implement and maintain
19 reasonable controls designed to prevent and detect unauthorized modifications to critical
20 applications or operating system files within the Cardholder Data Environment, or the
21 unauthorized modification or creation of objects within critical system folders.
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23 21. **Firewalls:** The Home Depot shall implement and maintain firewall policies and
24 procedures to restrict connections between internal networks to the Cardholder Data
25 Environment through appropriately configured hardware and software tools as part of its
26 defense-in-depth architecture.

27 22. **Payment Card Security:** The Home Depot shall implement, where appropriate,
28 steps designed to reasonably manage the review, and where reasonable and appropriate, adopt

1 improved, industry-accepted payment card security technologies relevant to The Home Depot's
2 business and Cardholder Data Environment.

3 23. **Devalue Payment Card Information:** The Home Depot shall make reasonable
4 efforts to devalue payment card information, such as by implementing encryption of payment
5 card information throughout the course of a retail transaction at a Home Depot store.
6

7 24. **Risk Assessment Program:** Home Depot shall conduct an annual risk assessment
8 which includes:

- 9 A. The identification of internal and external risks to the security,
10 confidentiality, or integrity of Personal Information that could result in the
11 unauthorized disclosure, misuse, loss, alteration, destruction, or other
12 compromise of such information;
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14 B. An assessment of safeguards in place to control these risks;
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16 C. The evaluation and adjustment of the Information Security Program in light
17 of the results of such testing and monitoring;
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19 D. The implementation of reasonable safeguards to control these risks; and
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21 E. Documentation of safeguards implemented in response to such annual risk
22 assessments.

23 25. **Penetration Testing:** The Home Depot shall implement and maintain a risk-based
24 penetration testing program reasonably designed to identify, assess, and remediate potential
25 security vulnerabilities within The Home Depot's environment. Such testing shall occur on at
26 least an annual basis, shall include penetration testing of The Home Depot's internal and
27 external network defenses, and shall include appropriate remediation of vulnerabilities revealed
28 by such testing, as well as documentation of such remediation.

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- 1 C. Explain the extent to which the safeguards that have been implemented
2 meet the requirements of the Information Security Program; and
3 D. Identify the Home Depot's Qualified Security Assessor for purposes of PCI
4 DSS compliance.
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6 29. The Home Depot's Third-Party Assessor shall (a) be a Certified Information
7 Systems Security Professional ("CISSP") or a Certified Information Systems Auditor ("CISA"),
8 or a similarly qualified person or organization; and (b) have at least five (5) years of experience
9 evaluating the effectiveness of computer systems or information system security.
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11 **V. SUBMISSION TO ATTORNEYS GENERAL**

12 30. The Home Depot shall provide the Third-Party Assessor's report to the
13 Connecticut Attorney General's Office within one hundred and eighty (180) days of the
14 completion of the report.

15 A. Confidentiality: The Connecticut Attorney General's Office shall, to the
16 extent permissible under state law, treat the Third-Party Assessment report
17 as exempt from disclosure under the relevant public records laws or, as
18 necessary, by employing other means to ensure confidentiality.
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20 B. Attorneys General Access to Report: The Home Depot shall provide access
21 to the Third-Party Assessment report to any of the Attorneys General (as
22 that term is defined on page 1 of this Assurance) which may request it.
23

24 **VI. PAYMENT TO THE STATES**

25 31. Within thirty (30) days of the Effective Date of this Assurance, Home Depot shall
26 pay the total sum of Seventeen Million and Five Hundred Thousand Dollars (\$17,500,000.00) to
27 the Attorneys General, which sum shall be divided among the states in amounts agreed to by
28 them and communicated to The Home Depot by the Texas Attorney General, along with

1 **VIII. MEET AND CONFER**

2 35. If any of the Attorneys General determine that The Home Depot has failed to
3 comply with any of the terms of this Assurance, and if in the Attorney General's sole discretion
4 the failure to comply does not threaten the health or safety of the citizens of the Attorney
5 General's State and/or does not create an emergency requiring immediate action, the Attorney
6 General will notify The Home Depot in writing of such failure to comply and The Home Depot
7 shall have thirty (30) days from receipt of such written notice to provide a good faith written
8 response to the Attorney General's determination. The response shall include: (A) a statement
9 explaining why The Home Depot believes it is in full compliance with this Assurance; or (B) a
10 detailed explanation of how the alleged violation(s) occurred, and (i) a statement that the alleged
11 violation has been addressed and how, or (ii) a statement that the alleged violation cannot be
12 reasonably addressed within thirty (30) days from the receipt of the notice, but (a) The Home
13 Depot has begun to take corrective action(s) to address the alleged violation, (b) The Home
14 Depot is pursuing such corrective action(s) with reasonable diligence, and (c) The Home Depot
15 has provided the Attorney General with a reasonable timetable for addressing the alleged
16 violation.
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20 36. Nothing herein shall prevent an Attorney General from agreeing in writing to
21 provide The Home Depot with additional time beyond the thirty (30) day period to respond to
22 the notice provided under Paragraph 35. Nothing herein shall be construed to exonerate any
23 failure to comply with any provision of this Assurance after the Effective Date, or to
24 compromise the authority of the Attorney General to initiate a proceeding for any failure to
25 comply with this Assurance.
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1 **IX. PRESERVATION OF AUTHORITY**

2 37. Nothing in this Assurance shall be construed to limit the authority or ability of the
3 Attorneys General to protect the interests of his/her State or the people of his/her State. This
4 Assurance shall not bar the Attorneys General or any other governmental entity from enforcing
5 laws, regulations, or rules against The Home Depot for conduct subsequent to or otherwise not
6 covered by the Release. Further, nothing in this Assurance shall be construed to limit the ability
7 of the Attorneys General to enforce the obligations that The Home Depot has under this
8 Assurance.
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10 **X. GENERAL PROVISIONS**

11 38. The Parties understand and agree that this Assurance shall not be construed as an
12 approval or sanction by the Attorneys General of The Home Depot's business practices, nor
13 shall The Home Depot represent that this Assurance constitutes an approval or sanction of its
14 business practices. The Parties further understand and agree that any failure by the Attorneys
15 General to take any action in response to information submitted pursuant to this Assurance shall
16 not be construed as an approval or sanction of any representations, acts, or practices indicated by
17 such information, nor shall it preclude action thereon at a later date.
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19 39. Nothing contained in this Assurance is intended to be and shall not in any event be
20 construed or deemed to be, an admission or concession or evidence of any liability or
21 wrongdoing whatsoever on the part of The Home Depot or of any fact or violation of any law,
22 rule, or regulation. This Assurance is made without trial or adjudication of any alleged issue of
23 fact or law and without any finding of liability of any kind. The Home Depot enters into this
24 Assurance for settlement purposes only.
25

26 40. Nothing in this Assurance shall be construed as relieving The Home Depot of the
27 obligation to comply with all state and federal laws, regulations, and rules, nor shall any of the
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1 provisions of this Assurance be deemed to be permission to engage in any acts or practices
2 prohibited by such laws, regulations, and rules.

3 41. The Home Depot shall deliver a copy of this Assurance to, or otherwise fully
4 apprise, its Chief Executive Officer, Chief Information Officer, Chief Information Security
5 Officer, the executive or officer described in paragraph 8 hereto, its General Counsel or Senior
6 Legal Officer, and each member of its Board of Directors within ninety (90) days of the
7 Effective Date. The Home Depot shall deliver a copy of this Assurance to, or otherwise fully
8 apprise, any new Chief Executive Officer, Chief Information Officer, Chief Information
9 Security Officer, the executive or officer described in paragraph 8 hereto, its General Counsel or
10 Senior Legal Officer, and each new member of its Board of Directors, within ninety (90) days
11 from which such person assumes his/her position with The Home Depot.
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14 42. To the extent that there are any, The Home Depot agrees to pay all court costs
15 associated with the filing (if legally required) of this Assurance. No court costs, if any, shall be
16 taxed against the Attorneys General.
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18 43. This Assurance may be executed by any number of counterparts and by different
19 signatories on separate counterparts, each of which shall constitute an original counterpart
20 thereof and all of which together shall constitute one and the same document. One or more
21 counterparts of this Assurance may be delivered by facsimile or electronic transmission with the
22 intent that it or they shall constitute an original counterpart thereof.
23

24 44. The Home Depot agrees that this Assurance does not entitle it to seek or to obtain
25 attorneys' fees as a prevailing party under any statute, regulation, or rule, and The Home Depot
26 further waives any right to attorneys' fees that may arise under such statute, regulation, or rule.

27 45. This Assurance shall not be construed to waive any claims of Sovereign Immunity
28 the States may have in any action or proceeding.

1 Any notices or other documents sent to The Home Depot pursuant to this Assurance shall
2 be sent to the following address:

3 Jocelyn J. Hunter (email provided to the Attorneys General)
4 Assistant Secretary, The Home Depot, Inc.
5 Vice-President, Deputy General Counsel, Assistant Secretary, Home Depot USA, Inc.
6 2455 Paces Ferry Road
7 Atlanta, GA 30339

8 Copy To:

9 Michelle Kisloff, Partner (michelle.kisloff@hoganlovells.com)
10 Deen Kaplan, Partner (deen.kaplan@hoganlovells.com)
11 Hogan Lovells US LLP
12 555 Thirteenth Street NW
13 Washington, DC 20004

14 All notices or other documents to be provided under this Assurance shall be sent by U.S.
15 mail, certified mail return receipt requested, or other nationally recognized courier service that
16 provides for tracking services and identification of the person signing for the notice or
17 document, and shall have been deemed to be sent upon mailing. Additionally, any notices or
18 documents to be provided under this Assurance shall also be sent by electronic mail if an email
19 address has been provided for Notice. Any party may update its address by sending written
20 notice to the other party.

1 ATTORNEY GENERAL, THE STATE OF ARIZONA

2 MARK BRNOVICH
3 Attorney General

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5 By: Mark Ciafullo Date: 11/20/2020
6 Mark James Ciafullo
7 Assistant Attorney General
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1 HOME DEPOT U.S.A., INC.

2 By: 

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4 Jocelyn J. Hunter

5 Assistant Secretary, The Home Depot, Inc.

6 Vice-President, Deputy General Counsel, Assistant Secretary, Home Depot U.S.A., Inc.

7 2455 Paces Ferry Road

8 Atlanta, GA 30339

9 THE HOME DEPOT, INC.

10 By: 

11
12 Jocelyn J. Hunter

13 Assistant Secretary, The Home Depot, Inc.

14 Vice-President, Deputy General Counsel, Assistant Secretary, Home Depot U.S.A., Inc.

15 2455 Paces Ferry Road

16 Atlanta, GA 30339

17 COUNSEL FOR HOME DEPOT U.S.A., INC. and THE HOME DEPOT, INC.

18 By: 

19 Date: November 20, 2020

20 Michelle Kisloff

21 Hogan Lovells US LLP

22 555 Thirteenth Street NW

23 Washington, DC 20004