

## SCHEDULE "A"



Ontario  
Securities  
Commission

Commission des  
valeurs mobilières  
de l'Ontario

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### IN THE MATTER OF THE *SECURITIES ACT*, R.S.O. 1990, c. S.5, AS AMENDED

- AND -

### IN THE MATTER OF INNOVATIVE GIFTING INC., TERENCE LUSHINGTON, Z2A CORP., and CHRISTINE HEWITT

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### SETTLEMENT AGREEMENT BETWEEN STAFF AND INNOVATIVE GIFTING INC. AND TERENCE LUSHINGTON

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#### PART I - INTRODUCTION

1. By Notice of Hearing dated February 23, 2009, the Ontario Securities Commission (the "Commission") announced that it proposed to hold a hearing, commencing on March 6, 2009, to consider whether it is in the public interest for the Commission to extend a temporary cease trade order (the "Temporary Order"), issued on February 20, 2009, pursuant to subsections 127(7) and (8) of the Ontario Securities Act, R.S.O. 1990, c.S.5, as amended (the "Act"), until the conclusion of the hearing or until such further time as considered necessary by the Commission.
2. The Temporary Order was issued against, *inter alia*, Innovative Gifting Inc. ("IGI"). The Commission has ordered that the Temporary Order be extended against IGI on several occasions.
3. By Notice of Hearing dated March 2, 2010, the Commission announced that it proposed to hold a hearing, commencing on March 5, 2010, pursuant to sections 127 and 127.1 of the Act

to consider whether it is in the public interest to make orders, as specified therein, against IGI, Terence Lushington (“Lushington”), Z2A Corp. (“Z2A”), and Christine Hewitt (“Hewitt”). The Notice of Hearing was issued in connection with the Statement of Allegations, dated March 2, 2010, of Staff of the Ontario Securities Commission (“Staff”). On December 6, 2010, the Commission ordered that the hearing on the merits of this matter commence on May 2, 2011 and that Temporary Order as against IGI be extended until the conclusion of the hearing on the merits.

4. The Commission will issue a Notice of Hearing to announce that it will hold a hearing to consider whether, pursuant to section 127 of the Act, it is in the public interest for the Commission to approve this Settlement Agreement and to make certain orders in respect of IGI and Lushington.

## **PART II - JOINT SETTLEMENT RECOMMENDATION**

5. Staff agree to recommend settlement of the proceeding initiated by the Notice of Hearing dated March 2, 2010 against IGI and Lushington (the "Proceeding") in accordance with the terms and conditions set out below. IGI and Lushington consent to the making of an order in the form attached as Schedule "A", based on the facts set out below.

## **PART III - AGREED FACTS**

### **Background**

6. Strategic Gifting Inc. was incorporated in Ontario on September 8, 2008.

7. Peter Robinson (“Robinson”) was listed as the sole Director at the time of incorporation of Strategic Gifting Inc. On September 10, 2008, the name of Strategic Gifting Inc. was changed, by Articles of Amendment, to IGI.

8. On September 17, 2008, Lushington became the sole Director of IGI and the registered address of the corporation was changed to an address in Markham, Ontario. Lushington is not an officer or director of any other issuer, registrant or investment fund manager.

9. IGI and Lushington have never been registered with the Commission in any capacity.

## Trading in Securities by IGI and Lushington

10. IGI was conceived as a “charity gifting program” whereby securities would be granted to participants in the program (the “Participants”) in exchange for the Participants making cash donations to certain specified charities (the “IGI Program”). The specified and eligible charities (the “Charities”) were charities that had contracted with IGI for IGI to provide its services.

11. The IGI Program operated between and including September, 2008 and January, 2009 (the “Material Time”).

12. Participation in the IGI Program was solicited by agents, financial planners, representatives and consultants/employees of IGI from within Ontario and from other Canadian provinces.

13. George Schwartz (“Schwartz”) designed and structured the IGI Program and advised IGI and Lushington that the IGI Program was not subject to Ontario securities laws as the gifting of shares was exempt from securities laws as contemplated in subsection 3.2 (1) of *National Policy 12-202*.

14. Subsection 3.2 (1) of *National Policy 12-202* provides, in part, as follows:

Issuers may wish to consult their legal counsel to determine whether a particular transaction constitutes a trade and therefore requires an application for a partial revocation order. **For example, in most jurisdictions, a disposition of securities by way of a bona fide gift, made in good faith and not as part of a plan or scheme to evade requirements of securities legislation, would generally not be considered a “trade” under provincial and territorial securities legislation.** As such, where applicable, a partial revocation order would not typically be required in these circumstances. However, after the gift, the securities may remain subject to the CTO depending on the terms of the CTO.

15. IGI and Lushington relied on Schwartz’s opinion that subsection 3.2(1) of *National Policy 12-202* would exempt the IGI Program from the applicability of Ontario securities laws. There was no valid basis for IGI and Lushington to rely on Schwartz’s opinion. Lushington acknowledges that he should not have relied on Schwartz’s opinion as he now understands

Schwartz was not an expert in Ontario securities laws. Lushington also now knows that Schwartz had had legal problems in the past that resulted in Schwartz not wanting to be publicly connected to the IGI program.

16. As set out below, the IGI Program was not a disposition of securities by way of a bona fide gift, made in good faith and not as part of a plan or scheme to evade requirements of securities legislation.

17. The “IGI Program” was described on the company’s website (the “IGI Website”) as follows:

- A non-resident Swiss philanthropist initiates a gifting program by which he would match a Canadian donor’s gift of cash to one of seven or so recommended registered Canadian charities. The philanthropist’s matching property is a gift of minority, non-control shares trading on the Frankfurt Stock Exchange. The fair market value of these gifted shares would be approximately 6 to 8 times the cash donated by the donor;
- The gifted shares to the donor may be dealt with in any manner he chooses, but there is a compulsory hold-period of 5 years should he choose not to donate the shares to a recommended charity in 2008; and
- Should the donor gift the shares to the Charity, he will receive a tax credit on the aggregate amount of cash and fair market value (that is the quoted value) of the donated shares.

18. What was not stated on the IGI Website was that IGI charged a fund-raising fee to the Charities that was equal to 90% of the cash donations received by the Charities. In some cases, 50% of this fund-raising fee was paid to agents and representatives of IGI that were promoting participation in the IGI Program.

19. As set out below, even if the IGI Program had operated as set out on the IGI Website and in IGI promotional materials, the IGI Program would still have constituted trading in securities. IGI and Lushington did not realize this during the Material Time, but now understand that the IGI Program involved the trading of securities and their actions were acts in furtherance of such trades.

20. In order for a Participant to receive the promised shares, the Participant had to first provide a cash donation to one of the Charities specified by IGI. However, from the cash donation made to the charity in question, IGI would receive 90% of the cash donation in the form of a fund-raising fee. The 90% would then be divided up approximately as follows:

- 50% commission to agents of the IGI Program who secured the participation of the Participants;
- 10% for office management of IGI;
- 5% for IGI office salaries;
- 10% to Z2A; and
- 25% profit to IGI.

21. Accordingly, IGI and Lushington now admit that the IGI Program, as set out on the IGI Website, constituted a trade. “Trade” or “trading” is defined in section 1(1) of the Act as follows:

“trade” or “trading” includes,

- (a) any sale or **disposition of a security for valuable consideration**, whether the terms of payment be on margin, instalment or otherwise, but does not include a purchase of a security or, except as provided in clause (d), a transfer, pledge or encumbrance of securities for the purpose of giving collateral for a debt made in good faith,
- (b) any participation as a trader in any transaction in a security through the facilities of any stock exchange or quotation and trade reporting system,
- (c) any receipt by a registrant of an order to buy or sell a security,
- (d) any transfer, pledge or encumbrancing of securities of an issuer from the holdings of any person or company or combination of persons or companies described in clause (c) of the definition of “distribution” for the purpose of giving collateral for a debt made in good faith, and
- (e) **any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of any of the foregoing;**

(emphasis added)

22. Had the IGI Program operated as described on the IGI Website and in IGI promotional materials then the IGI Program involved an “act, advertisement, solicitation, conduct or negotiation directly or in directly in furtherance of” the “disposition of a security for valuable

consideration”. As such, IGI was trading in securities without registration. Lushington, as the sole Director of IGI, was acting in furtherance of this trading in securities.

23. IGI and Lushington admit, however, that the IGI Program did not operate as set out on the IGI Website and in IGI promotional materials. The information on the IGI Website with respect to the philanthropist was incorrect in the following respects, which were not known to Lushington at the time the website was created and posted on the internet, but which he now admits were incorrect:

- There was no non-resident Swiss philanthropist;
- The shares originated from 8 million share options that were issued by RCT Global Networks Inc. (“RCT”) to Mobiliare Argenti Ltd. (“Mobiliare”) in November 2008; and,
- The shares of RCT were not in fact “gifted” but sold to IGI, via Z2A, which purchased the shares from Mobiliare.

24. Lushington was introduced to Hewitt by Carlos Da Silva. Hewitt was introduced to Lushington as a person who could facilitate the provision of shares from another philanthropist to the Participants. Hewitt advised Lushington that she knew of a potential philanthropist, Bob Tummonds the President of RCT (“Tummonds”), who she could possibly persuade to provide shares of RCT to the Participants.

25. Hewitt procured a letter, dated October 10, 2008, to IGI and Lushington that was purportedly signed by Tummonds wherein Tummonds purportedly advised that “I am the major shareholder, who wishes to make shares available for gifting to your charities forthwith.” (the “Tummonds Letter”).

26. IGI and Lushington are now aware that Tummonds and/or RCT were never philanthropists for the IGI Program and that Tummonds has stated that he never wrote the Tummonds Letter.

27. The IGI Program also stipulated that the shares gifted to the Participant were subject to a compulsory five year hold period if the shares were not subsequently gifted to one of the Charities in 2008. IGI and Lushington acknowledge that there was no such compulsory hold period applicable to the shares.

28. Mobiliare acquired, for valuable consideration, options to purchase eight million shares of RCT.

29. Mobiliare exercised these options at the direction of Z2A and Hewitt and caused share certificates to be issued, at the direction of Z2A and Hewitt, in the names of the Participants.

30. Mobiliare was compensated by Z2A for exercising the options and having the shares issued in the names of the Participants.

31. Z2A was compensated by IGI for arranging for the issuance of the RCT shares in the names of the Participants.

32. Neither Z2A or Hewitt advised Lushington that Z2A or Hewitt had previously performed work for RCT. On or about August of 2008, Z2A or Hewitt had performed work for RCT in relation to a possible public listing of RCT shares.

33. The Participants were not informed by IGI or its' representatives that IGI charged a fund-raising fee to the Charities equal to 90% of the cash donation made by the Participant.

34. Accordingly, the shares of RCT were being traded to IGI and to the Participants that believed they were receiving these shares as a "gift" from a philanthropist, which was not the case.

35. IGI and Lushington were, as a result, acting in furtherance of the trades of the RCT shares.

36. During the Material Time, Lushington estimates that approximately \$2.1 million was collected from Participants in the IGI Program. This resulted in more than 10 million RCT shares being issued to approximately 537 known Participants.

37. IGI opened a bank account (the “IGI Bank Account”) at the Royal Bank of Canada in October 2008. Lushington was the sole signatory on the IGI Bank Account.

38. The table below summarizes the activity in the IGI Bank Account from October 2008 until July 2010 (the “IGI Bank Summary”):

Description	Total (\$)
<b><u>Account Inflows:</u></b>	
Received from Participating Charities	1,323,054.99
Investments by IGI Business Partners	40,000.00
Other	7,571.24
	1,370,626.23
<b><u>Account Outflows:</u></b>	
Commissions to Sales Agents	892,073.98
Office Management (rent, etc.)	13,034.99
Payments to IGI Consultants/Employees	106,150.00
Terence Lushington	71,550.00
Repayments to IGI Business Partners	30,000.00
Payments to Z2A	229,453.10
Cash Withdrawals	11,400.00
Other	6,000.00
	1,359,662.07

39. Based on Lushington's estimate that approximately \$2.1 million was collected from Participants in the IGI Program, one would expect 90% of this amount (i.e., \$1,890,000) to be the fund-raising fee shown in the IGI Bank Summary as an Account Inflow "Received from Participating Charities". The amounts do not correspond because payments of approximately \$600,000 were withheld by six of the Charities.<sup>1</sup> For the same reason, the percentages detailed in paragraph 20 regarding the breakdown of how the 90% fund-raising fee is allocated between commissions, office expenses, etc. will not be reflected in the Account Outflows shown in the IGI Bank Summary.

40. During the Material Time, residents of Ontario and elsewhere in Canada received solicited and unsolicited phone calls from salespersons, financial planners, agents and representatives of IGI and were solicited to participate in the IGI Program. Numerous Ontario residents ended up becoming Participants in the IGI Program during the Material Time.

41. IGI and Lushington participated in acts, solicitations, conduct, or negotiations directly or indirectly in furtherance of the sale or disposition of securities for valuable consideration, in circumstances where there were no exemptions available to IGI and Lushington under the *Act*.

#### **PART IV - CONDUCT CONTRARY TO THE PUBLIC INTEREST**

42. By engaging in the conduct described above, IGI and Lushington admit and acknowledge that both IGI and Lushington contravened Ontario securities law during the Material Time in the following ways:

- (a.) During the Material Time, IGI and Lushington traded in securities without being registered to trade in securities, contrary to section 25(1)(a) of the *Act* and contrary to the public interest; and
- (b.) During the Material Time, Lushington, being a director and officer of IGI, did authorize, permit or acquiesce in the commission of the violations of section 25 of the

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<sup>1</sup> The Charities have taken the position, in an on-going civil action, that these monies were withheld because the RCT shares received by these Charities were essentially worthless and there was no market in which the Charities could sell these shares.

Act, as set out above, by IGI or by the employees, agents or representatives of IGI, contrary to section 129.2 of the Act and contrary to the public interest.

43. Lushington admits and acknowledges that he acted contrary to the public interest by contravening Ontario securities law as set out in sub-paragraphs 42. (a) and (b).

44. IGI admits and acknowledges that it acted contrary to the public interest by contravening Ontario securities law as set out in sub-paragraphs 42. (a).

#### **PART V - TERMS OF SETTLEMENT**

45. IGI and Lushington agree to the terms of settlement listed below.

46. The Commission will make an order, pursuant to section 127(1) of the Act, that:

- (a.) the Settlement Agreement is approved;
- (b.) trading in any securities by IGI cease permanently from the date of the approval of the Settlement Agreement;
- (c.) trading in any securities by Lushington cease for a period of five years from the date of the approval of the Settlement Agreement;
- (d.) the acquisition of any securities by IGI is prohibited permanently from the date of the approval of the Settlement Agreement,
- (e.) the acquisition of any securities by Lushington is prohibited for a period of five years from the date of the approval of the Settlement Agreement;
- (f.) any exemptions contained in Ontario securities law do not apply to IGI permanently from the date of the approval of the Settlement Agreement;
- (g.) any exemptions contained in Ontario securities law do not apply to Lushington for a period of 5 years from the date of the approval of the Settlement Agreement;
- (h.) Lushington and IGI are reprimanded;

- (i.) Lushington is prohibited for a period of five years from the date of this Order from becoming or acting as a director or officer of any issuer, registrant, or investment fund manager;
- (j.) Lushington is prohibited for a period of five years from the date of this Order from becoming or acting as a registrant, as an investment fund manager or as a promoter; and,
- (k.) IGI and Lushington shall each pay administrative penalties of \$15,000 for their failure to comply with Ontario securities law. These \$15,000 administrative penalties shall be for allocation to or for the benefit of third parties in accordance with s. 3.4(2) of the Act.

47. IGI and Lushington undertake to consent to a regulatory Order made by any provincial or territorial securities regulatory authority in Canada containing any or all of the prohibitions set out in sub-paragraphs 46. (a.) to (k.) above.

#### **PART VI - STAFF COMMITMENT**

48. If this Settlement Agreement is approved by the Commission, Staff will not initiate any other proceeding under the Act against IGI and Lushington in relation to the facts set out in Part III herein, subject to the provisions of paragraph 49 below.

49. If this Settlement Agreement is approved by the Commission, and at any subsequent time IGI and Lushington fail to honour the terms of the Settlement Agreement, Staff reserve the right to bring proceedings under Ontario securities law against IGI and Lushington based on, but not limited to, the facts set out in Part III herein as well as the breach of the Settlement Agreement.

#### **PART VII - PROCEDURE FOR APPROVAL OF SETTLEMENT**

50. Approval of this Settlement Agreement will be sought at a hearing of the Commission scheduled on a date to be determined by the Secretary to the Commission, or such other date as

may be agreed to by Staff and IGI and Lushington for the scheduling of the hearing to consider the Settlement Agreement.

51. Staff, IGI and Lushington agree that this Settlement Agreement will constitute the entirety of the agreed facts to be submitted at the settlement hearing regarding IGI and Lushington's conduct, unless the parties agree that further facts should be submitted at the settlement hearing.

52. If this Settlement Agreement is approved by the Commission, IGI and Lushington agree to waive all rights to a full hearing, judicial review or appeal of this matter under the Act.

53. If this Settlement Agreement is approved by the Commission, neither party will make any public statement that is inconsistent with this Settlement Agreement or inconsistent with any additional agreed facts submitted at the settlement hearing.

54. Whether or not this Settlement Agreement is approved by the Commission, IGI and Lushington agree that they will not, in any proceeding, refer to or rely upon this Settlement Agreement or the settlement negotiations as the basis of any attack on the Commission's jurisdiction, alleged bias or appearance of bias, alleged unfairness or any other remedies or challenges that may otherwise be available.

#### **PART VIII - DISCLOSURE OF SETTLEMENT AGREEMENT**

55. If, for any reason whatsoever, this Settlement Agreement is not approved by the Commission or the order attached as Schedule "A" is not made by the Commission:

(a) this Settlement Agreement and its terms, including all settlement negotiations between Staff, IGI and Lushington and leading up to its presentation at the settlement hearing, shall be without prejudice to Staff, IGI and Lushington; and

(b) Staff, IGI and Lushington shall be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing on the merits of the allegations in the Notice of Hearing and Statement of Allegations of Staff, unaffected by the Settlement Agreement or the settlement discussions/negotiations.



## SCHEDULE "A"



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**IN THE MATTER OF THE *SECURITIES ACT*  
R.S.O. 1990, c.S.5, AS AMENDED**

**- AND -**

**IN THE MATTER OF INNOVATIVE GIFTING INC., TERENCE LUSHINGTON, Z2A  
CORP., and CHRISTINE HEWITT**

**ORDER  
(Sections 37 and 127(1))**

**WHEREAS** on March 2, 2010, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c.S.5, as amended (the "Act") in respect of Innovative Gifting Inc. ("IGI"), Terence Lushington ("Lushington"), Z2A Corp. ("Z2A"), and Christine Hewitt ("Hewitt");

**AND WHEREAS** IGI and Lushington entered into a Settlement Agreement with Staff of the Commission dated March 24, 2011 (the "Settlement Agreement") in which IGI and Lushington agreed to a proposed settlement of the proceeding commenced by the Notice of Hearing, subject to the approval of the Commission;

**AND UPON** reviewing the Settlement Agreement, the Notice of Hearing, and the Statement of Allegations of Staff of the Commission, and upon hearing submissions from counsel for IGI and Lushington and from Staff of the Commission;

**AND WHEREAS** the Commission is of the opinion that it is in the public interest to make this Order;

## **SCHEDULE “A”**

### **IT IS HEREBY ORDERED THAT:**

- (a) the Settlement Agreement is approved;
- (b) pursuant to clause 2 of subsection 127(1) of the Act, trading in any securities by IGI cease permanently from the date of this Order;
- (c) pursuant to clause 2 of subsection 127(1) of the Act, trading in any securities by Lushington cease for a period of five years from the date of this Order;
- (d) pursuant to clause 2.1 of section 127(1) of the Act, IGI is prohibited permanently from the acquisition of any securities from the date of this Order;
- (e) pursuant to clause 2.1 of section 127(1) of the Act, the acquisition of securities by Lushington is prohibited for a period of five years from the date of this Order;
- (f) pursuant to clause 3 of section 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to IGI permanently from the date of this Order;
- (g) pursuant to clause 3 of section 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Lushington for a period of five years from the date of this Order;
- (h) pursuant to clause 6 of subsection 127(1) of the Act, IGI and Lushington are reprimanded;
- (i) pursuant to clauses 8, 8.2, and 8.4 of subsection 127(1) of the Act, Lushington is prohibited for a period of five years from the date of this Order from becoming or acting as a director or officer of any issuer, registrant, or investment fund manager;

- (j) pursuant to clause 8.5 of subsection 127(1) of the Act, Lushington is prohibited for a period of five years from the date of this Order from becoming or acting as a registrant, as an investment fund manager or as a promoter; and
  
- (k) pursuant to clause 9 of subsection 127(1) of the Act, IGI and Lushington shall each pay an administrative penalty of \$15,000 for their failure to comply with Ontario securities laws. The \$15,000 administrative penalties shall be for allocation to or for the benefit of third parties, in accordance with subsection 3.4(2) of the Act.

**DATED AT TORONTO** this            day of            , 2011.

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