

**AGENCY AGREEMENT**

**Between**

**ABC L.L.C.**

**and**

**XYZ, LTD**

**Dated as of  
October 1, 2004**

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## AGENCY AGREEMENT

**THIS AGREEMENT** is made effective as of October 1, 2004 between **ABC**, a Delaware limited liability company (the “Principal”), and **XYZ CO LTD**, a \_\_\_\_\_ corporation (the “Agent”).

### RECITALS

WHEREAS, Principal manufactures and distributes make-up and cosmetics under the registered brand name “ABC” which are sold in the Territory through exclusive retail outlets; and

WHEREAAS, Agent has marketing and sales skills and experience in the cosmetics sector in the Territory and Principal has agreed to appoint Agent as its exclusive agent in the Territory to carry out marketing and sales services, distribution management and other related activities upon and subject to the terms and conditions set out in this Agreement.

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants herein set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

### ARTICLE 1 – DEFINITIONS

The following definitions shall apply for purpose of the Agreement:

“**Affiliate**” shall mean, with respect to any specified person, any other person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or under common control with, such specified person.

“**Authorized Distributor**” has the meaning set forth in Section 2.2.

“**Commencement Date**” means October 1, 2004.

“**Commissions**” has the meaning set forth in Section 6.1.

“**Confidential Information**” shall mean any and all information that is unique, proprietary or competitively sensitive to the business of Principal and/or any Affiliate of Principal, which Agent may obtain knowledge of or access to in connection with its relationship with Principal and its Affiliates, including, but not limited to, information relating to Products, Authorized Distributors, Principal’s compensation or commission systems or schemes, pricing methods, historical, current and projected financial information, marketing information, and any and all information, technical data or know-how related to any aspect of Principal’s, or any of its Affiliates’, business or technology including data, know-how, formulae, designs, drawings, proposals, specifications, and the terms of this Agreement.

“**Contact Period**” means a period of two (2) years for the Initial Period, with subsequent Contract Periods commencing on each anniversary of the Commencement Date thereafter.

“**GAAP**” means generally accepted accounting principles in the United States set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or such other principles as may be approved by a significant segment of the accounting profession in the United States, that are applicable to the circumstances as of the date of determination, consistently applied.

“**Initial Period**” means the period commencing on the Commencement Date and ending on September 30, 2006 (unless terminated earlier as provided below).

“**Intellectual Property**” shall mean all of the patents, trademarks, trade names, service marks, other marks and devices, formulas, technologies, and other proprietary and confidential information relating to the design, specifications, manufacture, use or services of, or otherwise associated with, the Products, including the trademark “ABC” registered in the United Kingdom.

“**Lost Sales**” has the meaning set forth in Section 6.2.

“**Minimum Net Sales Target**” has the meaning set forth in Section 6.4.

“**Net Income**” means, as applied to Principal, the net income of Principal for the period in question after giving effect to deduction of or provision for all operating expenses, all taxes and reserves (including reserves for deferred taxes) and all other proper deductions, all determined in accordance with GAAP, provided that there shall be excluded: (a) any restoration of any contingency reserve, except to the extent that provision for such reserve was made out of income during such period, (b) any net gains or losses on the sale or other disposition, not in the ordinary course of business, of investments, business units and other capital assets, provided that there shall also be excluded any related charges for taxes thereon, (c) any net gain arising from the collection of the proceeds of any insurance policy, (d) any write-up of any assets, and (e) any other extraordinary item.

“**Net Sales**” means the amounts received by Principal for the sale of Products in the Territory to bona fide independent third parties, less: (i) normal and customary rebates, and cash, trade and quantity discounts; (ii) sales, use and/or other excise taxes or duties; (iii) the actual cost of any packaging and shipping, including insurance; and (iv) amounts actually allowed or credited due to defects, returns, rejections, wholesale chargebacks or retroactive price reductions. Notwithstanding anything contained herein to the contrary, Net Sales shall not include any online sales, catalog sales or any sales to ABC franchisees or Affiliates.

“**Products**” are the products listed in **Exhibit A**.

“**Retailers**” means those duty-free store operators in the Territory to which Principal sells the Products, being initially those retailers listed in **Exhibit B**.

“**Services**” has the meaning set forth in Section 2.1.

“**Terms and Conditions**” means the standard terms and conditions of sale of Principal as notified from time to time by Principal to Agent.

“**Territory**” means South Korea.

## ARTICLE II – APPOINTMENT

**2.1 Scope of Services.** Subject to all terms and conditions of this Agreement, Principal agrees to engage Agent on an exclusive basis, and Agent agrees to provide marketing, sales support and distribution management services (the “**Services**”) to Principal in connection with the sale by Principal of the Products in the Territory. Principal may, from time to time, within sixty (60) days advance written notice to Agent, add items, delete or withdraw items from the list of Products included from time to time in **Exhibit A**, or add additional areas to or withdraw any areas from the Territory, in its sole discretion without any obligation to Agent.

**2.2 Access to Information** In order to provide the Services and thereby facilitate sales by Principal to Retailers or, with Principals prior written consent, to authorized distributors resident in the Territory (the “**Authorized Distributors**”), Agent shall have the right to access information from Principal to the extent Principal is permitted to disclose it regarding the Authorized Distributors.

**2.3 Sales by Principal in the Territory.** Notwithstanding anything contained herein to the contrary, Principal shall be entitled to sell Products to any person within the Territory or to a person outside the Territory for delivery to any person within the Territory. Principal, on behalf of itself and its Affiliates, retains the right to enter into a distribution agreement for distribution of the Products and other products. In addition, Principal and its Affiliates may sell Products to Authorized Distributors resident in the Territory.

**2.4 Sales Outside the Territory.** Agent agrees that it will neither sell nor assist in any way, directly or indirectly, any person to sell Products to persons outside the Territory or to any person within the Territory for resale or delivery outside the Territory. Further, Agent shall not promote or solicit customers for Product sales outside the Territory. Agent shall not establish any facility outside the Territory through which orders are solicited or in which inventories of Products are stored without Principal's prior written consent, which consent may be withheld or granted with or without conditions in the sole and absolute discretion of Principal.

**2.5 Territory Orders and Inquires.** If Agent receives any order or inquiry concerning the sale of Products outside the Territory, Agent agrees to deliver to Principal prompt notice of such inquiry or order, such notice to include the name and address of the person making the order or inquiry, as well as any other relevant details regarding such order or inquiry that Principal shall reasonably request.

### **ARTICLE III – GOVERNMENTAL APPROVALS AND REGISTRATIONS**

Agent agrees to obtain, or cause to be obtained, at Principal's cost and expense, any governmental approval and make, or cause to be made, any filings or notifications required under all applicable laws, regulations and ordinances of the Territory to enable this Agreement to become effective, to enable the Products to be imported into the Territory (except as otherwise provided herein) or to enable any payment pursuant to the provisions of this Agreement to be made. Agent shall keep Principal informed of the progress in obtaining all such government approvals.

### **ARTICLE IV – PRINCIPAL'S RIGHTS AND OBLIGATIONS**

Principal shall have the following obligations, to be discharged at its own cost and expense:

**4.1 Supplies.** Principal shall supply Agent with a sufficient quantity of sales literature, samples and other promotional material, Terms and Conditions and other information necessary for Agent to perform under this Agreement. Principal shall supply Agent from time to time with the prevailing price list for the Products and inform Agent of any price changes and where appropriate any changes to the Products or specifications of particular Products.

**4.2 Invoices; Correspondence.** Retailers and Authorized Distributors shall be invoiced directly by Principal for Product purchases at the prices set forth on **Exhibit A**. Any payments made in connection with the Products and delivered to Agent (in error or otherwise) shall be held for Principal's benefit and shall be deposited by Agent in a bank depository designated by Principal. Agent shall provide Principal with copies of any relevant correspondence with Retailers or Authorized Distributors.

**4.3 Orders.** Principal shall be entitled to accept or reject any order for the Products in the Territory.

**4.4 Product Formulation.** Agent shall have no rights whatsoever to any formula, technology or other intangible property developed for use or in any way related to the Products.

**4.5 Warranty.**

(a) With respect to Products procured by Principal from manufacturers who are not Affiliates of Principal, Principal, to the extent possible, shall pass on and assign to Agent the warranty provided by such manufacturers and Principal shall assist Agent in making any claims against such manufacturers. NEITHER PRINCIPAL NOR ANY OF ITS AFFILIATES MAKES ANY WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OF FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO PRODUCTS PROCURED FROM MANUFACTURERS WHO ARE NOT AFFILIATES OR PRINCIPAL. Subject to the provisions of Section 5.11 of Article V hereof, Principal shall be responsible for any shipping charges associated with the return of Products that do not meet the manufacturer's warranty. With respect to any Products that are manufactured by Principal or its Affiliates, Principal warrants that such Products shall conform to the specifications established by Principal and Agent and that such Products shall be merchantable and free from defects. Provided that the Products manufactured by Principal or its Affiliates are stored in appropriate conditions, Principal warrants that such Products shall have the shelf life specified in the specifications agreed to by the Parties.

(b) In no event shall Principal's liability for any breach of such warranties exceed in amount the price of the Products in respect of which any breach is claimed. PRINCIPAL'S WARRANTY STATED HEREIN IS EXPRESSLY IN LIEU OF ANY OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

(c) Principal does not assume nor authorize any person or entity to assume for it any other liability in connection with the Products supplied hereunder, and there are no oral contracts or warranties collateral to or affecting this Agreement. Principal shall not be liable to Agent or any other persons for consequential, special or incidental damages.

## ARTICLE V – AGENT'S DUTIES

**5.1 Marketing and Distribution.** Agent acknowledges that the strict performance of its obligations under this Agreement is essential to the continuation of its acting as the exclusive sales and marketing agent for the Products in the Territory. In the course of providing the Services to Principal, Agent shall have the following obligations, to be discharged at its own cost and expense.

(a) To act at all times towards Principal in good faith and not allow its personal interest to conflict with the duties owed to Principal pursuant to the terms and conditions of this Agreement or under the general law;

(b) To use its best efforts to sell and actively promote and market, in accordance with all applicable laws and regulations and to the maximum extent possible, the Products in the Territory;

(c) To diligently investigate or cause to be investigated all leads with potential customers referred to it by Principal or its Affiliates;

(d) To identify and present Products to potential new retailers or distributors in the Territory and, subject to Principal's prior written consent to such retailers or distributors to resell or distribute the Products;

(e) To assist in the merchandising and/or the design of the relevant sales outlet (to be given or withheld in Principal's absolute discretion), and thereafter, to oversee implementation and conformity of the sales outlet design;

(f) To manage and oversee the commercial relationship with the Retailers and Authorized Distributors including:

(i) reviewing and liaising with Retailers and Authorized Distributors in connection with the marketing plans and activities;

(ii) recruiting, training and supervising staff and beauty advisors;

(iii) ensuring that all orders are processed and all shipments of Products are made within the Territory in a timely fashion; and

(iv) sales recording and reporting, and supervising and managing sales order invoicing, debt collection and facilitating and liaising with Principal's accountants for submitting all relevant import duty returns to the appropriate customs authority.

(g) To manage public relations and advertising in and out of the Territory;

(h) To plan, prepare and implement seasonal promotions;

(i) To carry out such customer and end-user training programs as Principal may from time to time specify;

(j) To provide such liaison and support services to Retailers and Authorized Distributors as Principal may reasonably request;

(k) To provide, at the request of Principal, reports of its activities and sales respecting the Products in the Territory in a form and in such detail and for such time period as Principal may reasonably require;

(l) To inform Principal promptly of any matters which may assist it in assessing the market for Products and similar products to the Products in the Territory and provide such other information relevant to the Products and the Territory Principal may from time to time request;

(m) To prepare annual marketing budgets for the promotion of the Products in the Territory within guidelines and budget determined by Principal upon receipt of global marketing plans from Principal; upon approval and subject to such changes as Principal may consider appropriate to implement such plans which shall be at Principal's expense upon production of relevant receipts or other proof of payment by Agent;

(n) To promptly refer to Principal all enquiries concerning the Products from customers and prospective customers (both within and outside the Territory) who are not Retailers or Authorized Distributors under this Agreement, together with such details of such customers and prospective customers as Principal shall reasonably require.

(o) To promptly inform Principal of any complaint or after-sales enquiry concerning the Products which is received by Agent, or any matters likely to be relevant in relation to the manufacture, sale, use or development of the products within or outside the Territory;

(p) If applicable, to promptly remit all monies received by it on behalf of Principal into an account (details of which Principal shall notify in writing) and notify Principal of any sums paid into such account from time to time;

(q) To comply with all reasonable and lawful instructions from Principal concerning the sale and promotion of the Products;

(r) To assist Principal in achieving sales in the Territory equal to or exceeding the Minimum Net Sales Target unless otherwise previously agreed in writing by Principal;

(s) To comply forthwith with any product recall arrangements requested by Principal whether the same are required during any product recall or in anticipation thereof; and

(t) To provide Principal with monthly activity reports detailing all sales orders received, deliveries made, marketing and sales activities, prospective retailers and distributors approached and such other information or reports as Principal may reasonably request from time to time.

**5.2 Agent Operations** Agent agrees to maintain or cause to be maintained, such facilities and other places of business within the Territory as may be necessary to effect the purposes and intentions of this Agreement. Agent further agrees to bear all fees and expenses it incurs in connection with the maintenance of such facilities and other places of business, including, without limitation, all leases, rental, equipment, salaries, taxes, licenses, insurance, permits, telephone, telegraph, promotional, advertising, travel, accounting and legal expenses.

**5.3 Pricing Information** Agent shall, upon Principal's request, recommend to Principal the distribution or wholesale prices at which the Products may be sold from time to time by Principal to Authorized Distributors within the Territory.

**5.4 Forecasts.** To help Principal meet orders for the Products in the Territory, Agent shall provide Principal, no less often than quarterly, with a forecast of the Territory Product requirements, showing the quantities of prospective orders for Products by Retailers and Authorized Distributors in the Territory, the estimated respective dates of such orders and the estimated shipment dates for such orders.

**5.5 Agent Claims and Representations.** Agent shall not make any promises representations, warranties or guarantees respecting the Products, sales of Products by Authorized Distributors or Principal's sale compensation plan, except in accordance with those representations, warranties or guarantees as provided by Principal with respect thereto and in accordance and compliance with the applicable laws of the Territory. Agent shall not make any claims concerning the Products that have not been approved in advance in writing by Principal. Agent shall not hold itself out or permit any person to hold itself out as being authorized to bind Principal in any way and shall not do any act which might reasonably create the impression that it is so authorized.

**5.6 Capitalization.** Agent agrees to capitalized itself adequately and maintain its operations both on a financially sound basis and in compliance with all applicable laws, regulations or ordinances covering the operations of such a business in the Territory.

**5.7 Compliance with Laws.** Agent shall at all times conduct its efforts hereunder and its business in strict accordance with all applicable laws and regulations and with the highest commercial standards.

**5.8 Storage of Products.** Agent shall supervise and manage warehousing and storage of the Products and ensure that all inventories are stored at proper temperatures and environmental conditions to maintain the quality of the Products upon importation to the Territory and delivery to the Retailers and Authorized Distributors. In the event of damage to any of the Products for any reason rendering the contents unfit for use or consumption or otherwise unsaleable, Agent shall promptly notify Principal of the facts and shall not distribute or transfer such Products to any other person or otherwise dispose of such Products except as instructed in writing by Principal.

**5.9 Customer Support.** Agent shall be responsible for dealing with any questions or complaints from Retailers, Authorized Distributors or other customer concerning the Products and to take prompt action to solve such questions or complaints. In fulfilling its customer service responsibilities, Agent shall maintain sufficient staff and resources in order to provide a high level of customer service promptly and in a professional manner. Agent shall report regularly to Principal concerning its customer recommended by Principal to correct any deficiencies. In the event of any

product liability claim that Principal in dealing with such claim. No such claim shall be settled without the consent of Principal or the Affiliate if either of them has potential liability.

#### **5.10 Allocation of Expenses.**

(a) **Import Licenses.** To the extent import licenses are required for the importation of the Products into the Territory, Agent hereby agrees that it will be responsible for securing and maintaining such import licenses. Payment of all fees and expenses associated therewith shall be the responsibility of Principal.

(b) **Import Expenses.** Principal agrees that it will be responsible for payment of all customs duties, excise taxes, similar governmental charges and levies, and any other charges or expenses related to any Products imported into the Territory.

(c) **Other Expenses.** In addition to the expenses and fees described in Sections (a) and (b) above, Principal shall be responsible for the payment of all fees and expenses related to the development and maintenance of its business in the Territory, including, without limitation, the following:

(i) All fees and expenses incurred in drafting and producing required promotional documentation and other literature such as product catalogues as well as contracts such as local product purchase agreements;

(ii) All fees and expenses incurred in determining the requirements for registering Products, including ascertaining and complying with labeling and custom/import requirements;

(d) **Agent Expenses.** Agent shall be responsible for the payment of all fees and expense related to the development and maintenance of its business in the Territory, including without limitation, the following:

(i) All fees and expenses to incorporate operating entities;

(ii) All fees and expenses for obtaining business licenses and permits;

(iii) All fees and expenses related to locating and establishing office, warehouse and other physical facilities, including build out, furnishings and equipment, as well as negotiation and securing of necessary leases and permits;

(iv) All fees and expenses related to hiring a general manager and staff, and compliance with local labor laws and requirements; and

(v) All other fees and expenses associated with the business other than those fees and expenses expressly allocated to Principal. To the extent Principal incurs any of the foregoing fees or expenses on behalf of Agent, Agent shall promptly reimburse Principal the amount of such fees and expenses upon the receipt of an invoice from Principal.



**ARTICLE VI – COMMISSIONS**

**6.1 Commissions and Other Compensation**

**(a) Commissions.** In consideration of the Services to be provided by Agent in accordance with this Agreement, Agent shall be entitled to receive the amount set forth below (the “Commissions”):

<u>Annual Net Sales</u>	<u>Commission%</u>
\$0 up to \$1 Million USD	8% of Net Sales
Over \$1 Million up to \$2 Million USD	\$80,000 (for the first 1,000.000 of net sales net) plus 7% of Net Sales for the part of Net sales in excess of 1,000.00 and less or equal to 2,000.000
Over \$2 Million USD	\$150,000 (for the first 2,000.000 of net sales net) plus 6% of Net Sales for the part of Net sales in excess of 2,000.000

**(b) Commissions Report.** A Commissions Report will be provided to Agent with each communication payment and will reflect (i) all Retailers and Authorized Distributors procured by Agent for Principal during the term of this Agreement and (ii) reflect Net Sales received by Principal from such Retailers or Authorized Distributors for the applicable quarterly period.

**(c) Payment.** The Commissions shall be payable to Agent by Principal on a quarterly basis commencing on the 20th day of January 2005 for the quarter ended December 31, 2004, and the 20th day of the month following all subsequent quarters during the period.

**6.2 Withdrawal or Deletion of Products.** Agent shall not be entitled to receive any compensation upon Principal’s deletion of one or more Products nor shall Agent be entitled to receive any compensation if Principal should, for any reason, withdraw any given Product from the market, even for orders already received.

**6.3 Minimum Net Sales Target.** The Minimum Net Sales Targets for Agent shall be as follows:

<u>Year of Initial Period</u>	<i>Annual Minimum Net Sales Targets for <u>ABC</u></i>
First Year	<i>\$43,000</i>
Second Year	<i>\$1,000,000</i>
Third Year	<i>\$1,250,000</i>
<i>Thereafter</i>	<i>TBD</i>

And for each subsequent Contract Period such amount as is specified by Principal to Agent in writing not less than one (1) month before the start of the relevant Contract Period or as otherwise agreed in writing between the parties, and if none is so specified or agreed in respect of a Contract Period, the sum shall be the same as applied for the Contract Period last preceding such Contract Period.

**6.4 Expiration or Termination.** The parties agree that upon expiration or termination of this Agreement, Agent’s sole compensation shall be to receive full commissions in that amount and to that extent it would otherwise have been entitled to receive such commissions pursuant to this Section 6 as of the effective date of termination and resulting from Agent’s activities under this Agreement. In the event of termination pursuant to Section 8.3 or other breach by Agent, Principal shall cease to pay

commissions to Agent as of the date of termination.

## **ARTICLE VII – INTELLECTUAL PROPERTY AND CONFIDENTIAL INFORMATION**

**7.1 Confidentiality.** Agent agrees that, during and after the term of this Agreement, Agent shall maintain in confidence all Confidential Information and shall not disclose any Confidential Information to any third party or use any Confidential Information for any purpose whatsoever except as contemplated by this Agreement. In maintaining the confidentiality of the Confidential Information, Agent shall exercise the same degree of care that it exercises with its own confidential information and in no event less than a reasonable degree of care. Agent shall, without limiting its obligation to maintain the Confidential Information in confidence, use commercially reasonable efforts to ensure that each of its employees and contractors holds in confidence and makes no use of any Confidential Information for any purpose other than those permitted by this Agreement. Agent shall use its best efforts to ensure that no person other than its employees shall have access to Confidential Information without the prior written consent of Principal, and shall restrict access to Confidential Information to those having a need for access thereto.

**7.2 Exceptions.** The obligation of confidentiality contained in this Agreement shall not apply to the extent that (i) either Party is required to disclose information by order or regulation of a governmental agency or a court of competent jurisdiction, provided, however, that such Party shall not, to the extent possible, make any such disclosure without first notifying the disclosing Party and allowing the disclosing Party a reasonable opportunity to seek injunctive relief from (or a protective order with respect to) the obligation to make such disclosure, or (ii) the Party receiving disclosed information can demonstrate that (A) the disclosed information was at the time of such disclosure already in, or subsequently becomes part of, the public domain other than as a result of actions of the receiving Party, its affiliates, employees, consultants, agents or subcontractors, in violation hereof; (B) the disclosed information was received by the receiving Party on an unrestricted basis from a source unrelated to the disclosing Party provided the receiving Party has no knowledge or reason to know that such Party is under a duty of confidentiality with respect to such information.

**7.3 Unauthorized Disclosure.** Each Party acknowledges and confirms that the Confidential Information of the other Party constitutes valuable proprietary information and trade secrets of the other Party and that the unauthorized use, loss or outside disclosure of such information shall cause irreparable injury to the other Party. Each Party shall notify the other Party immediately upon discovery of any unauthorized use or disclosure of Confidential Information of the other Party, and will cooperate with the other Party in every reasonable way to help regain possession of such information and to prevent its further unauthorized use. Each Party acknowledges that monetary damages may not be a sufficient remedy for unauthorized disclosure of the Confidential Information of the other Party and that the other Party shall be entitled, without waiving other rights or remedies, to such injunctive or equitable relief as may be deemed proper by a court of competent jurisdiction, and shall be entitled to recover reasonable attorneys' fees for any action arising out of or relating to a disclosure of such Confidential Information.

**7.4 Return of Confidential Information** Agent shall, upon the request of Principal, return to Principal all confidential Information, including any copies or reproductions thereof, in Agent's possessions or control.

**7.5 Property Rights.** Agent agrees that Principal owns all right, title and interest in, or has a valid license to use, Intellectual Property. This Agreement confers no rights with respect to the Intellectual Property except for the limited right to resell the Products during the term of this Agreement as set forth herein which right shall terminate upon termination of this Agreement. This Agreement confers no right or license to, expressly or by implication, and Agent shall not, manufacture, duplicate or otherwise copy or reproduce any of the Products or use the Intellectual Property for any other purpose. Any permissions, consents, technical application or import licenses and/or approvals obtained by Agent relating to the Products, their distribution and/or sale shall be the

property of Principal and, if the same are capable of being transferred, upon termination of this appointment Agent shall take all steps which Principal reasonably requires to transfer such licenses or approvals and related documentation to Principal or any other person nominated by it.

**7.6 Intellectual Property Covenants.** Agent shall not do any act that would or might invalidate or dilute Principal's registration of, or title to, the Intellectual Property. Agent shall not attempt to vary or cancel any registration of the Intellectual Property, shall not hold itself out as or represent it is the owner of the Intellectual Property, or assist any other person in any of the foregoing. Agent shall not alter in any way the Intellectual Property used in connection with the goods and shall not combine Intellectual Property with any intellectual property of Agent in a manner that could create joint rights in the Intellectual property.

**7.7 Market Information.** If required by Principal, Agent shall forthwith after termination send to Principal a list of all actual and prospective Retailers and Authorized Distributors for the Products in the Territory together with such other market information as Principal may reasonably require.

**7.8 Covenant Not To Compete.** Agent undertake that it shall provide thirty (30) days prior written notice if it intends to, directly or indirectly, by itself or through its agents, employees or otherwise during the term of this Agreement, solicit seek to solicit or enter into contracts with Retailers or Authorized Distributors in the Territory in respect of the Products or products of the same or similar kind from time to time included in this Agreement. Agent undertakes to not do anything that may prevent the sale or interfere with the development of sales of the Products in the Territory and, without limitation, not be involved directly or indirectly in the manufacture, sale, promotion, marketing or importation into the Territory or products which compete with the Products without the prior written consent of Principal.

## ARTICLE VIII – TERM AND TERMINATION

**8.1 Term.** This Agreement and the appointment hereunder shall run for a period of two (2) years from the Commencement date and shall automatically renew for consecutive one (1) year periods unless either party provides prior written notice to the other party of its intent to terminate this Agreement not less than ninety (90) days prior to the end of the Initial Period or any subsequent Contract Period, as applicable.

**8.2 Termination for Change in Control, Minimum Net Sales.** Except as set forth in Section 8.1, this Agreement may be terminated by Principal upon 120 days prior written notice to Agent after the occurrence of any of the following events: (i) a material change in the management, ownership or control of Agent; or (ii) the aggregate Net Invoice Price or the Products sold by Agent in the Territory in the relevant Contract Period is less than the Minimum Net Sales Target.

**8.3 Termination for Breach.**

(a) This Agreement may be terminated immediately by Principal if Agent fails to pay on the due date, any monies payable hereunder by Agent to Principal and such failure continues for a period of thirty (30) days from Agent's receipt of a written notice given by Principal requiring such payment.

(b) This Agreement may be terminated by Principal if Agent has breached or is in default in the performance of any material obligation under this Agreement (other than Agent's obligations referred to in Section 8.3(a)) and such default has not been cured within thirty (30) days after receipt of written notice of such default.

**8.4 Survival of Obligations.** The termination or expiration of this Agreement shall be without prejudice to the rights and remedies of a Party in respect of any antecedent breach of this Agreement.

The obligations of a Party to pay any sums that are due and payable as of the expiration or termination of this Agreement shall survive the expiration or termination of this Agreement.

## **ARTICLE IX – EFFECT OF TERMINATION**

**9.1 Termination of Rights.** Upon termination of this Agreement by Principal, all rights herein granted to Agent by or pursuant to this Agreement shall cease to be exercisable by Agent and shall revert to Principal, and Agent shall immediately cease to hold itself out to the public as Principal's exclusive sales agent or distributor in the Territory or other wise represent that it is associated in any manner with Principal. The provisions of this Section 9.1 shall not apply to sales by Agent of Products which Principal does not repossess pursuant to Section 9.3 of this Agreement.

**9.2 No Release of Payment obligations.** Upon termination of this Agreement, neither Party shall be released from its obligations to pay monies due or to become due to the other Party or to complete any unfulfilled obligations under this Agreement, and each Party shall immediately pay, perform and discharge all debts, obligations and liabilities hereunder.

**9.3 Limitation on Damages.** Upon termination of this Agreement for any reason, neither Party shall be liable for any special, indirect, incidental, punitive or consequential damages, regarding such termination, irrespective of whether such obligations or liabilities may be contemplated in any law applicable within the Territory and or elsewhere, and, except as other wise provided by applicable law, each Party hereby waives and relinquishes any rights, pursuant to law or otherwise, to any such damages. The remedies contained herein shall be exclusive. Agent acknowledges and agrees that any amounts spent by Agent in the performance of this Agreement shall be spent and incurred with the knowledge that this Agreement may be terminated as provided in this Agreement and Agent shall make no claim against Principal for, and Principal shall not be liable with respect to, Agent's investment or expenditures incurred in anticipation of the continuance of this Agreement and which were not approved in writing by Principal.

**9.4 Accrued Rights.** Termination for any reason will be without prejudice to any rights and obligations which have accrued prior thereto and to any provision of this Agreement intended to take effect upon or continue in effect after termination.

## **ARTICLE X – INDEMNIFICATION AND INSURANCE**

**10.1 Principal Indemnity.** Principal agrees during and after the term of this Agreement to indemnify and hold harmless Agent from liability, loss, cost or damage, (including reasonable attorneys' fees) which Agent may incur as a result of claims, demands or judgments, of any kind or nature, by anyone whomsoever, arising out of any breach of the representations and warranties set forth in Article IV; or any claim that the Products or Principal's Confidential Information infringes any patent, copyright, trade secret or other intellectual property right of a third party; provided that Agent provides Principal with prompt notice in writing of any such claim or demand, Principal is given the right to assume control of such defense and Agent shall cooperate with Principal in the defense or settlement of any such claim or action. Principal shall not have any obligation to indemnify Agent for any claim if such claim is settled without the consent of Principal.

Notwithstanding the foregoing, Principal shall have no obligation to indemnify Agent for any liabilities arising out of Agent's failure or the failure of the Authorized Distributors in the Territory to utilize, sell, market or promote the Products in the manner for which the Products are reasonably intended, or in compliance with Principal's policies and procedures.

**10.2 Agent Indemnity.** Agent agrees during and after the term of this Agreement to indemnify and hold harmless Principal from liability, loss, cost or damage (including reasonable attorney's fees), which Principal may incur as a result of claims, demands or judgments, or any kind or nature, by anyone whosoever, arising out of or resulting from the marketing of the Products by Agent (except to

the extent Principal has indemnified Agent against such claims, demands or judgments pursuant to Section 10.1 hereof).

Notwithstanding the foregoing, in the event Agent shall have requested Principal to take disciplinary actions against an Authorized Distributors operating in the Territory and Principal shall have failed to take such actions against such Authorized Distributors, Agent shall not be obligated to indemnify Principal for any loss that Principal might incur as a reasonable and proximate result of such failure.

**10.3 Insurance.** At all times during and following the terms of this Agreement, each of Principal and Agent shall maintain insurance (or cause the other Party to be added as an additional insured to any policy not maintained by such Party) with one or more reputable insurers reasonable in coverage and amount in direct proportion and corresponding to the business to be conducted by such Party pursuant to this Agreement.

## ARTICLE XI – GENERAL

**11.1 Assignment.** This Agreement shall be binding on and inure to the benefit of the respective successors, assigns and beneficiaries of the Parties; provided that this Agreement is personal to Agent who shall not assign this Agreement or any rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of Principal, which consent may be withheld or granted with or without conditions in its sole discretion. Any attempted assignment without requisite written consent shall be void and unenforceable. Notwithstanding the forgoing, Principal may assign this Agreement to any of its Affiliates.

**11.2 Notices.** A notice, request and other communication hereunder shall be in writing and shall be deemed to have been duly given, if delivered by hand, courier or registered airmail, or communicated by facsimile, cable or similar electronic means to the address, facsimile number or cable identification number provided below (or as changed in accordance with this Section 11.2) of the Party to whom it is addressed and shall be deemed to be given if delivered by hand or courier, at the time of delivery or if communicated by facsimile, cable or similar electronic means, at the time that receipt thereof has been confirmed by return electronic communication or signal that the message has been received, or if mailed, ten (10) days after dispatch by registered airmail, postage prepaid:

If to Principal: ABC L.L.C.

If to Agent: XYZ CO LTD

Either Party may change its facsimile number, cable identification number or address by a notice given to the other Party in the manner set forth above.

**11.3 Waiver and Delay.** No waiver by either Party of any breach or default in performance by the other Party, and no failure, refusal or neglect of either Party to exercise any right, power or option given to it hereunder or to insist upon strict compliance with or performance of the other Party's obligations under this Agreement, shall constitute a waiver of the provisions of this Agreement with respect to any subsequent breach thereof or a waiver by either Party of its right at any time thereafter to require exact and strict compliance with the provisions thereof.

**11.4 Force Majeure.** A Party shall not be responsible for failure to perform hereunder due to force majeure, which shall include, but not be limited to: fires, floods, riots, strikes, labor disputes, fright embargoes or transportation delays, shortage of labor, inability to secure fuel, material, supplies, equipment or power at reasonable prices or on account of shortage thereof, acts of God or of the public enemy, war, terrorist activities or civil disturbances, any existing or future laws, rules, regulations or acts of any government (including any orders, rules or regulations issued by any official or agency or such government) affecting a Party that would delay or prohibit performance hereunder,

or any cause beyond the reasonable control of a Party. If an event of force majeure should occur, the affected Party shall promptly give notice thereof to the other Party and such affected Party shall use its reasonable best efforts to cure or correct any such event of force majeure.

**11.5 Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. The parties irrevocably submit to the exclusive jurisdiction of the courts of Miami-Dade County, Florida.

**11.6 Integrated Contract.** This Agreement together with the document and agreements referred to herein constitutes the entire agreement between the Parties relating to the subject matter hereof and supersedes all prior or contemporaneous negotiations, representations, agreements and understandings (both oral and written) or the Parties.

**11.7 Modifications and Amendments.** No supplement, modification or amendment of this Agreement shall be binding unless it is in writing and executed by both of the Parties.

**11.8 Severability.** To the extent that any provision of this Agreement is (or, in the opinion of counsel mutually acceptable to both parties, would be) prohibited, judicially invalidated or otherwise rendered unenforceable in any jurisdiction, such provision shall be deemed ineffective only to the extent of such prohibition, invalidation or unenforceability in that jurisdiction, and only within that jurisdiction. Any prohibited, judicially invalidated or unenforceable provision of this Agreement will not invalidate or render unenforceable any other provision of this Agreement, nor will such provision of this Agreement be invalidated or rendered unenforceable in any other jurisdiction.

**11.9 Counterparts and Headings.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. All headings and captions are inserted for convenience of reference only and shall not affect the meaning or interpretation of any provision hereof.

**IN WITNESS WHEREOF**, the Parties have by their respective duly authorized representatives executed this Agreement as of the day and the year first above written.

**ABC L.L.C.**

By:  
Name: Nicolas Topiol  
Title: Authorized Representative

**XYZ CO., LTD**

By:  
Name: Mr. Wonik Park  
Title: President

**EXHIBIT A**  
**The Products**

All products listed on the ABC Order Form as published by Principal from time to time.

**EXHIBIT B**

**The Retailers**

1.