MASTER FORMULATION DEVELOPMENT AND OWNERSHIP AGREEMENT

THIS AGREEMENT is entered into on this [_____] day of [_____] 2005

BETWEEN

I. THE BODY SHOP INTERNATIONAL PLC, whose registered address is Watersmead, Littlehampton, West Sussex, BN17 6LS, registration number 1284170, a corporation existing under the laws of England and Wales, ("BSI");

AND

II. [_____] of [_____] ("Manufacturer")

in order for the parties to collaborate in the development of the formulation(s) ("Formulation(s)") for the product(s) listed in Statements of Work ("SOW") from time to time entered into between the parties, for various new product developments, each forming an integral part of this Agreement.

IT IS AGREED as follows:

1. Term

This Agreement commences on the date hereof and shall (subject to earlier termination in accordance with clause 7) continue in force until terminated under its terms, provided however that this Agreement will not terminate prior to termination or expiration of all Statements of Work made under and with reference to it.

2. Development of Formulation and Commercial Exploitation

2.1 The parties have agreed that the Formulation(s) will be developed as a collaborative effort between the parties pursuant to this Agreement, unless otherwise agreed in any SOW;

2.2 The Manufacturer acknowledges and agrees that BSI is the sole owner of all rights, title and interest in or to the Formulation(s) (the "Rights" as defined further in clause 2.3) in consideration for which BSI agrees, subject to clauses 2.5 and 2.7 to place purchase orders for products incorporating the Formulation(s) with the Manufacturer for a specified in the SOW minimum period from the date of Completion of the Development Process ("Restricted Period"). For the avoidance of doubt, BSI will not be under an obligation to place any minimum number of purchase orders with Manufacturer, and the meaning of this clause is that BSI will not be entitled to purchase products incorporating the Formulations from any other source (other than the Manufacturer), during the Restricted Period.

2.3 For the avoidance of doubt the Rights in the Formulations of the products listed in the SOW shall include all rights in the Formulations, whether related to the creation, development or production process or the end or interim results, (i.e. any rights created throughout the creation or development process and irrespective of completion of the same) including trade marks (registered and unregistered), copyright (including associated and subsidiary rights), design rights, registered design, confidential information and know-how (including proprietary
technical, industrial and commercial information and techniques in whatever form held), trade secrets, patents and any other intellectual property rights or other forms of protection having an equivalent or similar nature or effect anywhere in the world, as well as any other rights stipulated in this Agreement, in or relating to such products or their production method or process.

2.4 BSI may at its sole option pay the Manufacturer a sum referred to in the SOW ("the Buy-out Sum") as an alternative to the commitment of clause 2.2. Upon payment of the Buy-out Sum BSI shall be discharged of its obligation to place purchase orders with the Manufacturer during the Restricted Period for products incorporating the Formulation.

2.5 The Manufacturer agrees that the restriction in relation to purchase orders (Restricted Period) referred to in clause 2.2, or the Buy-out Sum referred to in clause 2.4 above (as both detailed in the SOW) is a full and adequate consideration for the development of the Formulation(s) for BSI and for Manufacturer's acknowledgement apropos ownership thereof contained in clause 2.2 above.

2.6 **Performance Level Agreement:**

2.6.1 Manufacturer agrees to achieve set targets in relation to: (i) the development process; and (ii) the supply of the finished product during the Restricted Period. The Manufacturer's obligations under this clause are in addition to and independent of any obligations that Manufacturer may undertake by signing a separate Manufacturer and Trademark User Agreement, regulating the manufacture and supply of finished product following Completion of the Development Process. Manufacturer's performance in this regard will be measured with reference to 3 levels, as defined in the SOW, respectively for the Development Process, and supply thereafter, whereby Level A describes top performance; Level B describes poor performance, and Level C describes failed performance.

2.6.2 It is agreed that the Restricted Period and the Buy-Out Sum (as defined above), apply only for Level A (top performance). For Level B (low) performance (either apropos Development or apropos supply) the applicable Restricted Period and the Buy-out Sum will be half of the above defined figures for Level A. In the event of Level C (failed) performance, BSI will have the option to terminate the agreement with immediate effect or to insist on the Manufacturer fulfilling its obligations, in which case the applicable (for Level C) Restricted Period and the Buy-Out Sum will be reduced to one quarter of the above defined figures for Level A.

3. **Manufacturer Obligations**

The Manufacturer warrants and undertakes that:

3.1 The development of the Formulation shall be performed in a diligent, timely and professional manner and to acceptable industry standards and to those standards specified by BSI, and in accordance with the Development Timeframe annexed in Schedule 2, and Manufacturer shall deliver or disclose to BSI all relevant documents detailing either the development process or the specifications of the finished Formulations (on completion of the development);

3.2 The development of the Formulation will not in any way, to the best of the Manufacturer’s reasonable knowledge or belief, infringe the rights of third parties and shall comply with all applicable rules, laws, regulations and codes of practice in the countries in which BSI specifies to Manufacturer that the Formulation will be sold;

3.3 The Manufacturer shall obtain and maintain in force throughout the term of this Agreement adequate and appropriate insurance cover with BSI named as joint insured for business interruption and product liability level and such other insurance costs at such levels as may be reasonably requested by BSI from time to time.
3.4 Manufacturer agrees that the proprietary nature of the Formulations and all associated Rights in them, means that the use of the Formulation(s) in any way and for any purpose and particularly for the purpose of manufacturing of products made in accordance with, or by applying the Formulation(s) is exclusively reserved for the sole benefit of BSI, as the proprietor of the Formulations. The Manufacturer may not – without the express written consent of BSI – copy, adapt, disclose or utilise the Formulations in any way whatsoever, other than for the purpose of this Agreement, and in particular may not use the Formulation(s) to manufacture, sell, distribute or generally deal with products made in accordance with, or by applying the Formulation(s) in any other way or for any other customer, other than BSI.

4. **Confidential Information**

The Manufacturer undertakes that it shall respect and preserve the confidentiality of the Formulation(s) and any Confidential Information, which is supplied by BSI, during the Term of this Agreement and for a period of ten (10) years after its termination or expiration. For the purpose of this Agreement, Confidential Information means any information in any form whatsoever relating to the Formulation(s) or emanating directly or indirectly from BSI or any of its officers, employees or agents or any of its associated companies, including without limitation, know how, the existence of the terms of this agreement and any compilation of otherwise public information in a form not formerly known. Such Confidential Information shall not be disclosed to any third party and shall not be used by the Manufacturer for any purpose other than to enable the Manufacturer to carry out the development of the Formulation and manufacture of respective products thereafter.

The confidentiality obligations contained in the clause 4 shall not apply or shall cease to apply, without prejudice to Manufacturer's other obligations, to such of the Confidential Information as:

(a) is publicly known at the time of disclosure or after disclosure becomes publicly known other than through a breach of this agreement;

(b) the Manufacturer can show was:

   (i) made available to it by a third party who had a right to do so and who has not imposed any subsisting obligation of confidentiality or restricted use in respect thereof;

   (ii) developed independently by officers or employees of the Manufacturer who were not aware of the content of the Confidential Information disclosed by BSI.

5. **Testing**

Before the Formulation is Commercially Exploited, or before the Completion of the Development Process indicated in the SOW, the Manufacturer shall ensure that the Formulation has undergone all necessary testing commensurate with the development of the Formulation in a diligent, timely and professional manner and including test parameters and testing protocols as may be agreed with BSI at the commencement of the Agreement.

6. **Indemnity**

The Manufacturer shall indemnify and hold harmless BSI from and against any loss, damage, claims and expenses suffered or incurred by BSI as a consequence of or which arise directly or indirectly from a breach by the Manufacturer of the terms of this Agreement or the unauthorised use or disclosure of the Confidential Information by it or any of its officers or employees.

7. **Termination**
7.1 Subject to clause 7.2 BSI may terminate this Agreement or any SOW without notice in the eventuality referred to in clause 2.6.2 or on 1 month’s written notice to the Manufacturer without compensation to the Manufacturer.

7.2 Either party shall be entitled to terminate this Agreement or any SOW immediately on written notice to the other party if:

(a) the other party is in breach of this agreement (and where the breach is capable of remedy) fails to remedy the breach within 7 days of a written request to do so; or

(b) the other party enters into a composition with its creditors or goes into liquidation or is dissolved or adjudged insolvent or is adjudged bankrupt or is otherwise rendered incapable of performing its obligations under the Agreement.

7.3 Termination hereunder shall be without prejudice to any existing rights and/or claims that the terminating party may have against the other, and shall not relieve such other party from fulfilling the obligations accrued prior to such termination. All provisions of this Agreement, which in order to give effect to their meaning need to survive its termination shall remain in full force and effect after termination, and it is clarified that Manufacturer’s obligations stipulated in clauses 3.4 and 4 apropos any Formulations shall remain in force throughout the term of this Agreement, (or for such longer period provided herein), irrespective of termination or expiration of a SOW to which such Formulations relate. For the avoidance of doubt, the acknowledgement of clause 2.2 apropos ownership of all rights, title and interest in or to the Formulation(s) shall have immediate and irrevocable effect, notwithstanding early termination of this Agreement or any SOW (i.e. prior to the Completion of the Development Process). BSI shall be relieved of its obligation under clause 2.2 or 2.5 in the event of such early termination. Further, Manufacturer’s obligation pursuant to clause 3.1 (to deliver relevant documents and specifications) shall take effect notwithstanding the non-completion of the development process (in the event of early termination), in which case the scope of said obligation will extend to documents and material detailing the development process and interim achievements, up to the stage reached at the time of termination.

8. General

8.1 Assignment

The Manufacturer may not assign, transfer and subcontract in whole or in part any of the obligations or rights under this Agreement without the prior written consent of BSI. Any assignment or attempted assignment by Manufacturer shall constitute a material breach of this Agreement by Manufacturer. BSI may assign or transfer all or any part of this Agreement to any of its associated companies.

8.2 Force Majeure

Neither party shall be subject to any liability to the other party for failure to meet any of its obligations under this Agreement if such failure results from causes or circumstances beyond the reasonable control of the defaulting party including any act of God, fire, explosion, perils of the sea, flood, drought, war, riot, sabotage, accident, embargo, interruption of or delay in transportation, breakdowns, labour trouble from whatever cause or compliance with any order, direction or request from any governmental agency or office.

8.3 Third party rights

Any person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of this Agreement.

8.4 Notice

Any notice or communication given or required to be given to BSI or Manufacturer shall be in
writing and may be delivered by pre-paid recorded delivery post or personally or sent by facsimile or similar telecommunication device to the addresses and numbers set out below and shall be deemed to have been received:

8.4.1 in the case of pre-paid postal delivery, two days after posting exclusive of the day of posting;

8.4.2 in the case of personal delivery, on the day of delivery;

8.4.3 in the case of dispatch by facsimile or similar telecommunication device, one (1) hour from the time of transmission and in proving service it shall be sufficient to prove that such facsimile was duly despatched;

Manufacturer:  
Attention: Managing Director
Fax No.:  

BSI at:  Watersmead, Littlehampton West Sussex, BN17 6LS
Attention:  Legal Department
Fax No.:  00 44 1903 731275

8.5 Entire Agreement.

This Agreement (together with any relevant SOW or any other document referred to herein) constitutes the entire Agreement between the parties relating to the subject matter hereof and cancels and supersedes all prior agreements and understandings, whether written or oral, between the parties with respect to such subject matter, save as expressly specified in this Agreement. This Agreement may not be modified orally and no modifications or any claimed waiver of any of the provisions hereof shall be binding unless in writing and signed by the other party against whom enforcement of such modification or waiver is sought. In the event of any conflict between the terms and conditions of this Agreement and the terms of any purchase order relating to the Products the terms and conditions of this Agreement shall prevail.

8.6 Illegality

If any provision or term of this Agreement shall become or be declared illegal, invalid or unenforceable for any reason whatsoever, such term or provision shall be divisible from this Agreement and shall be deemed to be deleted from this Agreement provided always that if such deletion substantially affects or alters the commercial basis of this Agreement the parties shall negotiate in good faith to amend and modify the provisions and terms of this Agreement so as to achieve so far as possible the same economic effect without rendering the Agreement so amended or modified illegal, invalid or unenforceable.

8.7 Governing Laws and Jurisdiction.

8.7.1 This Agreement shall be governed by the laws of England

8.7.2 The parties agree that the English Courts located in London shall have exclusive jurisdiction to settle any claim, dispute, and matter of difference which may arise out of or in relation to this Agreement or the legal relationships established by this Agreement save that BSI shall retain the right to bring proceedings against the Manufacturer in the Courts of [[Manufacturer’s Country] or] any other competent jurisdiction whether or not proceedings in the English Courts are pending or have been prosecuted to judgment.
8.8 Authority.

Each individual signing on behalf of a party hereto represents and warrants that he or she is authorised by the Board of Directors of such party to execute this Agreement on behalf of such party.

8.9 Counterparts

This Agreement may be executed in two counterparts each of which shall be an original but which shall together constitute one and the same agreement.

8.10 Disclaimer of Agency

Nothing in this Agreement shall create a joint venture or establish the relationship of principal and agent, partnership, employment or any other relationship of a similar nature between the parties hereto.

IN WITNESS WHEREOF, the parties have executed this Agreement by their duly authorised representatives.

Signed for and on behalf of
THE BODY SHOP INTERNATIONAL PLC

By: __________________________________________
Name in capitals: ____________________________________
Title/Position: _______________________________________

Signed for and on behalf of
[ ]

By: __________________________________________
Name in capitals: ________________________________
Title/Position: ___________________________________