

# Ortus Expert White Sdn Bhd Authorised Dealership Agreement

THIS AGREEMENT is made on this \_\_\_\_\_ day of the month of \_\_\_\_\_ in the year 2018.

Between

**Ortus Expert White Sdn Bhd (951378-H)**, a company incorporated in Malaysia and having its registered office at No. 4B, 1<sup>st</sup> Floor, Jalan USJ 10/1J, Taipan Business Centre, 47620 Subang Jaya, Selangor Darul Ehsan (hereinafter referred to as "**Company**") of the one part;

And

[**Individual Name**..... (NRIC No.....)] trading under the name of [**Business Name**.....] [**Business Registration No**.....] (Hereinafter referred to as the "**Dealer**"), with business address at \_\_\_\_\_ of the other part.

## **WHEREAS:**

The Company holds exclusive distribution and/or manufacturing rights for Malaysia (the "Territory") for the products as described in Appendix 1 (the "Products").

The Dealer has considerable marketing experience in the Territory and wishes to act as one of the Company's dealers for the Products in the Territory.

## **NOW IT IS AGREED as follows:**

### **1. DEFINITIONS AND INTERPRETATION**

1.1. The following expressions, which are frequently used in this agreement, shall have the meanings attributed to them below. Other less frequently used expressions are defined in the body of this agreement.

Products	:	means the products as described in Appendix 1 manufactured and/or distributed by the Company
Term	:	means life time in accordance with the terms of this Agreement
Territory	:	means Malaysia

1.2. The headings in this agreement are for convenience only and do not affect its interpretation.

1.3. In this agreement, the words 'include', 'includes', 'including' and 'such as' are to be construed as if they were immediately followed by the words 'without limitation'.

1.4. In this agreement, unless the context clearly indicates another intention:

1.4.1. Reference to one gender includes all other genders,

1.4.2. Reference to the singular includes the plural and vice versa,

1.4.3. Reference to a clause, schedule or party is a reference to a clause of or a schedule or party to this agreement,

1.4.4. Obligations undertaken by more than a single person or company are joint and several obligations,

1.4.5. Reference to a document is a reference to that document as from time to time supplemented or varied,

1.4.6. Reference to writing includes fax, e-mail and similar means of communication,

1.4.7. A number of days shall be reckoned exclusively of the first day and inclusively of the last day unless the last day falls on a day that is not a normal working day in the Territory in which case the last day shall be the next succeeding day that is a normal working day in the Territory, and

1.4.8. Any reference to a person includes natural persons and partnerships, firms and other such incorporated bodies, corporate bodies and all other legal persons of whatever kind and however constituted.

1.5. The schedules and recitals form part of this agreement and any reference to 'this Agreement' includes any schedules, appendices and recitals.

### **2. RIGHTS GRANTED**

2.1. Subject to the terms and upon the conditions hereinafter contained and the non-refundable Dealership Fee of RM100.00 payable by the Dealer, the Company hereby grants the Dealer the non-exclusive right to sell and distribute the Products in the Territory for the Term and the Dealer agrees to act in that capacity subject to the terms and conditions of this Agreement and provided always that nothing in this Agreement shall preclude the Company from selling the Products directly to the customers and/or appointing any other parties to distribute the Products.

2.2. The Dealer is not an agent of the Company and shall not at any time represent itself as such, nor shall Dealer incur, assume or create any debt, obligation, contract or release any kind in the name of or on behalf of the Company.

- 2.3. Indemnity. Dealer shall be solely responsible for, and shall indemnify and hold the Company free and harmless from, any and all claims, damages or lawsuits (including attorneys' fees) arising out of the acts or omissions of Dealer, its employees or agents and from any claims or liabilities arising out of, or connected to, any breach by Dealer of its obligations under this Agreement, including, without limitation, any penalties, interest, attorneys' fees and disbursements incurred by the Company or any person relying upon Dealer's obligations under this Agreement.
- 2.4. Nothing in this Agreement shall entitle the Dealer to any priority of supply in relation to the Products as against the Company's other dealers or customers.

### 3. RESTRICTIONS ON THE DEALER

- 3.1. The Dealer shall not sell or distribute the Product outside the Territory and if the Dealer intends to do so, the Dealer shall seek prior written approval from the Company.
- 3.2. Unless prior written consent is obtained from the Company, the Dealer must not obtain the Products or any goods (whether original or imitation) that compete with them, for resale from any person, firm or company other than the Company.
- 3.3. The Dealer shall not in any way misrepresent the Company and/or its Products.
- 3.4. The Dealer shall ensure that all advertised or promoted prices for the Products shall be the same or higher than the Company's Published Price Schedule in Appendix 1 of this Agreement. This policy does not restrict the actual price Dealer may sell the Products for to its customers.
- 3.5. The Dealer shall purchase the minimum required Products commensurate with the pricing status extended to the Dealer. Dealer's pricing status is calculated at the end of each calendar quarter and is subject to adjustment at the Company's discretion.
- 3.6. The Dealer shall not offer for sale or sell any Products to any person or entity for the purposes of resale, other than the Dealer's direct customers.
- 3.7. Marketing Activities: Except as otherwise set forth herein, the Dealer shall be solely responsible for all costs and expenses related to advertising, marketing, promoting and selling the Products. Dealer shall use its best efforts to promote honestly and vigorously the marketing and sale of the Products to realize the maximum sales potential for the Products. If the Company so elects, Dealer agrees to sell to the Company all rights to the marketing materials, designs or publicity developed by or for Dealer at a price equal to Dealer's actual cost. If Dealer wishes to create its own marketing materials, Dealer shall, prior to its use of such materials, submit such materials to the Company for approval, which shall not be unreasonably withheld. The Company will review such materials promptly. Dealer warrants that all documentation, collateral material and/or verbal descriptions related to Products made by or for Dealer shall be accurate and made in a professional manner. Dealer shall not modify the written warranties of the Company relating to the Products.
- 3.8. Trademarks and Trade Names. During the term of this Agreement, the Dealer shall have the right to indicate to the public that it is an authorized Dealer of the Company's Products and to advertise such Products under the Trademarks and Trade Names that the Company may adopt from time to time ("Trademarks and Trade Names"), provided that all representations of the Trademarks and Trade Names that Dealer intends to use shall first be submitted to the Company for approval (which shall not be unreasonably withheld). Nothing herein shall grant to Dealer any right, title or interest in or to the Trademarks and Trade Names. Upon termination of this Agreement, Dealer shall immediately cease to use same.
- 3.9. That any and all use of the Company's Trademark and logo shall be used in accordance with the Company's published Logo Standards.
- 3.10. To conduct its business operations in compliance with all applicable Malaysian local, state and national laws, rules and regulations and refrain from unethical false or misleading advertising, promotions and sales efforts.
- 3.11. Internet Advertisement/Sales. If Dealer proposes to sell, promote or advertise the Company Products on the Internet (such as their own Facebook page), Dealer specifically agrees to the following conditions:
  - 3.11.1. If Dealer proposes to create an Internet page or pages containing any reference to the Company's name or Products, Dealer must submit the proposed Internet page(s) via e-mail to (RERC email Address) for the Company's specific written approval prior to the page or its content being posted on the Internet. This protocol will also apply to the following Internet activities, where the Company name, logo or its Products are featured:
    - 3.11.1.1. Any page(s) on a website(s) featuring Products.
    - 3.11.1.2. In addition to page(s) about The Company, any general information page on any website(s) including, but not limited to: (i). "About Us" pages (ii). "Contact Us" pages
    - 3.11.1.3. FAQ (frequently asked questions) pages
    - 3.11.1.4. Any additional website(s) owned, controlled or effected by the Dealer, other than the primary domain name, where the Company's name, logo or its Products are featured.
    - 3.11.1.5. Advertising on the Internet, including, but not limited to:
      - 3.11.1.5.1. Banners, includes the banner's content and where the banner will be placed.

- 3.11.1.5.2. Portal sites (search engines, yahoo, etc.) All content describing the Dealer's website(s), including the web pages' meta-tags are subject to review.
  - 3.11.1.5.3. Click-through search engines. This includes sites which do not sell Products from their site, but display an advertisement or link for any Product with the opportunity to either purchase or display Products on the Dealer's website.
  - 3.11.1.5.4. Acquiring or using domain names incorporating the words Company and or the Company or the Company's product names belonging to the Company is strictly prohibited.
  - 3.11.1.5.5. Selling Products via auction is prohibited.
- 3.12. Both parties agree to ensure that sale of Products over the Internet may only be made through authorized Dealers having authorized Internet pages as provided in this Agreement. Dealer specifically agrees not to sell the Company's Products through a non-authorized Internet web site(s), or through any non-authorized affiliate Internet page. An affiliated Internet page will also be deemed to exist if a non-authorized Internet site receives a percentage, commission, or any kind of benefit, direct or indirect, on a transaction by way of the Internet from an authorized Company Dealer.
- 3.13. Both parties agree that at its sole discretion, the Company may institute new Internet policies at any time during the duration of this Agreement and Dealer specifically agrees to comply with any such revised policies within the time frame imposed by the Company.
- 3.14. Dealer agrees that any Internet advertising of Products must show the price Dealer is selling for. This pricing must be the same or higher than the Company's Published Price Schedule as it may be amended from time to time.

#### **4. CREDIT STATUS**

If Dealer becomes more than thirty (30) days past due on any the Company invoice, then the Company may immediately terminate this agreement upon giving notice and there upon this agreement shall become void, but without prejudice to the rights of either party to monies due or to become due under this Agreement. Notices hereunder shall be delivered to the addresses for the parties listed herein.

#### **5. ADHERENCE**

The Dealer acknowledges that any violation of this Agreement will lead to an immediate suspension or cancellation of this Dealer Agreement. Reinstatement of the Agreement following any such violation will be solely at the discretion of the Company.

#### **6. COMPANY'S OBLIGATIONS AND DEALER'S DUTIES AND OBLIGATIONS**

- 6.1. The Company shall:
- 6.1.1. Furnish to the Dealer an initial quantity of marketing brochures, user instructions and after-sales service pamphlets and other material to assist the Dealer in the promotion and sale of the Products. Additional material will be made available to the Dealer at a reasonable price;
  - 6.1.2. Furnish to the Dealer technical assistance and information concerning the Products and keep the Dealer informed of new information concerning the Products; and
  - 6.1.3. Train the Dealer in sales and after-sales services.
- 6.2. Throughout the term of this Agreement, the Dealer shall maintain appropriate premises for the promotion of sales of the Products.
- 6.3. The Dealer will use its best efforts to promote, advertise and sell the Products. It shall, in particular:
- 6.3.1. Train and maintain a sufficient qualified and competent staff to promote and sell the Products, carry out the after-sales service of such products and, in general, fulfill its obligations arising from this Agreement. The Company envisages organizing training sessions for Dealers and the Dealer shall at all times have at least one employee at each of its premises who has been trained in each of these sessions. The cost of such training, such as travel, accommodation, food, etc., will be borne by the Dealer. The Company reserves the right to bill the Dealer a reasonable amount in respect of such training sessions;
  - 6.3.2. Display the Products in an appropriate and attractive environment;
  - 6.3.3. Maintain both the interior and exterior of the Dealer's premises in a manner which encourages the purchase of the Products;
  - 6.3.4. Furnish to customers, prior to and after the sale, technical assistance with regard to the Products and inform customers regarding the use of the Products;
  - 6.3.5. Permit one (1) representative of the Company at any time (during normal business hours of 9am to 5pm on Weekdays and 9am to 1pm on Saturday) to examine Dealer's premises and its Product inventory;

- 6.3.6. Demonstrate the Products to customers who so request and instruct customers as to their use;
  - 6.3.7. not remove from the Products any material included in each Product; and
  - 6.3.8. promptly notify the Company of all defective products or any safety problems encountered and keep the Company informed of all customer complaints.
- 6.4. The Dealer shall at all times conduct its business in such a manner as to enhance the reputation and credibility of the Company and Products. It shall, in particular:
- 6.4.1. refrain from participating in any unlawful, unfair, deceitful or immoral practices and refrain from selling the Products to any other dealer or organization, which has recourse to such practices; and
  - 6.4.2. present the Products in a fair and appropriate manner. For such purpose, the Dealer shall not disparage the Company and the Products and shall not make statements concerning the characteristics or capabilities of the Products which may not be in accordance with those described in this documentation; nor shall the Dealer market the Products by correspondence.
- 6.5. In the event of a merger or reorganization of the Dealer, or any change in the control of the Dealer or any transfer of a substantial part of the business thereof, the Dealer shall notify the Company in writing thereof no later than seven (7) days prior to the occurrence of such an event.

## **7. PRICES AND PAYMENT**

- 7.1. The current prices of the Products are listed in Appendix 1. The Company shall supply to the Dealer up-to-date copies of all price lists for the Products from time to time and shall give the Dealer not less than two (2) months notice in writing of any changes in such price list. The new price shall apply to all products delivered on and after the applicable date of the changes in the price list. Unless informed in writing by the Company, the Dealer shall sell the Products based on the Recommended Retail Price (RRP) as per Appendix 1 or any amended price lists thereafter.
- 7.2. The Company reserves the right to review, alter and append both the Products offered in Appendix 1, in addition to the associated Dealer Prices and Recommended Retail Prices. Any alterations or appendix changes will be communicated via numerous channels and methods for the convenience of the Dealer, such as electronic Dealer newsletters, blast emails, SMS messages and any special and secure Dealer portal that the Company may have in place today or in the future.
- 7.3. The price of the Products shall be expressed in Ringgit Malaysia and shall be inclusive of all government duties and taxes.
- 7.4. Payments by Dealer to the Company will be effected in cash terms only. Credit terms will only be offered to select dealers depending on their sales target achievements and all payments should be cleared by or before 30 days from the date of purchase.
  - 7.4.1. Credit Terms. If the Company offers Credit Terms to Dealer, the Company shall submit an invoice to Dealer upon each shipment of Product ordered by Dealer. The invoice shall cover Dealer's cost for the Products in a given shipment plus any freight, taxes and other applicable costs initially paid by the Company but to be borne by Dealer. Credit terms, when approved by the Company in writing, require payment within thirty (30) days of the date of invoice plus a late payment fee of 1.5% per month, or lesser amount required by law, on amounts not paid within such thirty (30) days. Dealer shall pay all of the Company's costs and expenses (including reasonable attorneys' fees) to enforce and preserve the Company's collection rights under this Agreement. For Dealer's telephone orders using a credit card, this Agreement constitutes Dealer's signature (or its ordering party's signature) on file with the Company.

## **8. CERTIFICATION OF PRODUCTS**

The Dealer has to certify that all Products collected conform to their requirements and if any dissatisfaction with the Products, the Dealer shall with receipt of purchase, report to the Company within forty eight (48) hours after purchase and refund shall be made within forty eight (48) hours of receipt by the Company of the original sale receipt issued by the Dealer to the customer.

## **9. PERFORMANCE REQUIREMENTS**

- 9.1. The minimum monthly average Product Purchase Value (PPV), the average of which is re-calculated each calendar quarter, shall be at least RM1,500 of any or all the Royal Expert™ Products listed on Appendix 1 and all such order minimums are subject to revision during or at the end of the Term, at the sole discretion of the Company.
- 9.2. The Dealer shall supply the Company with detailed monthly sales statistics and other relevant market information as the Company reasonably requires. The Dealer shall strictly observe all directions, guidelines, policies and instructions given by the Company and will at all times act in such manner as to protect and further the Company's interest.

## 10. ADVERTISING AND MEDIA MARKETING

- 10.1. The Dealer shall consult and seek prior approval from the Company before doing any advertising and media marketing within the Territory and upon approval from the Company, any costs and/or expenses incurred for advertising and media marketing shall be borne solely by the Dealer.
- 10.2. In connection with the promotion and marketing of the Products, the Dealer must make clear, in all dealings with customers and prospective customers that the Dealer is acting as a dealer of the Products and not as agent of the Company.

## 11. TERMINATION

- 11.1. The Company may terminate this Agreement at any time by giving to the Dealer thirty (30) day notice in writing sent to the Dealer's address. The Dealer may terminate this Agreement at any time by giving the Company sixty (60) days notice in writing sent to the Company's address.
- 11.2. The Company reserves the right to terminate this Agreement at any time:
  - (a) upon three (3) days advance written notice in the event that any payment owing to the Company for purchase of Products by the Dealer is not received within seven (7) days after the date on which such payment is due; and
  - (b) Immediately upon written notice of termination by the Company in the event that Dealer is in breach of Clause 8.1.
- 11.3. Upon such termination Dealer shall forthwith settle all outstanding accounts due to the Company within fourteen (14) days from the notice of termination date.
- 11.4. Upon the expiry of the Term or termination of this Agreement (irrespective of reason or cause), the parties hereto agree that save for such clauses of this Agreement whose effect expressly or impliedly survive the expiry or termination, this Agreement shall be null and void and of no further effect and neither party shall be entitled to damages for special, incidental or consequential damages or damages for loss of profits.
- 11.5. Upon the termination of this Agreement pursuant Clauses 10.1 or 10.2, the Company shall allow Dealer to sell all Products under its possession until depletion of all of the Products within two (2) months from the notice of termination date.
- 11.6. Upon expiry or termination of this Agreement (irrespective of reason or cause), all designs, drawings, photographs, samples, literature, sales aids and social media pages (Facebook etc.) of every kind relating to the Company Products shall remain the property of the Company. Within ten (10) days after the termination of this Agreement, Dealer shall ship such items to the Company as the Company may direct, at the Company's expense. Dealer shall not make or retain any copies of any "Confidential Information," which may have been entrusted to it.

## 12. FORCE MAJEURE

Except with respect to Dealer's payment obligations hereunder, neither party shall be liable to the other for loss or damage resulting from delay or failure to perform this Agreement, either in whole or in part, when the same is due to causes beyond its reasonable control, including but not limited to civil war, insurrections, strikes, riots, fires, floods, explosions, earthquakes, serious accidents or any acts of God, government regulations, epidemics, quarantine or labour trouble resulting in cessation, slowdown or interruption of work.

## 13. INTELLECTUAL PROPERTY

- 13.1. The Dealer is authorized to use the Trade Mark in the Territory on or in relation to the Products for the purposes only of exercising his rights and performing Dealer's obligations under this Agreement.
- 13.2. Dealer agrees to use the Trade Marks or trade names only in the form and manner approved in writing by the Company and further agree to comply with any marking instructions issued to it by the Company to ensure the proper protection of the Manufacturer's proprietary interest in the said Trade Marks or trade names under the laws of Malaysia. Dealer further agrees that Dealer's use of the Trade Mark or trade names shall not convey to Dealer any right, title or interest in the Trade Mark or affect in any way the Manufacturer's exclusive ownership thereof.
- 13.3. The Dealer must not:
  - 13.3.1. make any modifications to the Products or their packaging;
  - 13.3.2. alter, remove or tamper with any trade marks, numbers or other means of identification used on or in relation to the Products;
  - 13.3.3. use any of the Trade Marks in any way that might prejudice their distinctiveness or validity or the goodwill of the Company in them;
  - 13.3.4. use in relation to the Products any Trade Marks other than the Trade Marks without obtaining the prior written consent of the Company;
  - 13.3.5. use in the Territory any trademarks or trade names so resembling any trade mark or trade names of the Company as to be likely to cause confusion or deception; or
  - 13.3.6. sell or distribute any products similar with the Products with trademarks or trade names so resembling any trade mark or trade names of the Manufacturer as to be likely to cause confusion or deception.

- 13.4. The Dealer must promptly and fully notify the Company of any actual, threatened or suspected infringement in the Territory of any intellectual property of the Company that comes to the Dealer's notice, and of any claim by any third party coming to his notice that the importation of the Products into the Territory or their sale in it infringes any rights of any other person.

#### **14. CONFIDENTIALITY**

- 14.1. During and after the duration of this Agreement, the Dealer agrees that they shall keep confidential the terms, conditions and provisions of this Agreement as well as business information of the Company which inter alia includes information about products, technology, marketing, pricing and such information shall not be made available directly/indirectly to customers or public. The Dealer shall cause their employees, advisers or consultants to adhere to this obligation. Any documentation containing such business information remains the property of the Company and will be returned to the Company upon termination of this Agreement.
- 14.2. Upon termination of this Agreement, the Dealer shall within seven (7) days of the said termination hand over to the Company a complete list of customers for any of the Products together with the detailed sales statistics and other relevant market information.

#### **15. WARRANTIES, UNDERTAKING AND DISCLOSURE**

The Dealer must not make any statements, representations or claims and must not give any warranties to any customer or potential customer in respect of the Products, save such as may have been authorized by the Company, such authority to be given in writing at the relevant time. The Dealer undertakes with the Company to keep the Company fully and effectively indemnified against all claims, demands, losses, expenses and costs the Company may incur as a result of any breach by the Dealer of this provision or of any other provision contained in this Agreement.

#### **16. SEVERABILITY**

Each provisions of this Agreement is severable and distinct from the others and if at any time one or more of such provisions is or becomes invalid illegal or unenforceable, the validity legality or enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby.

#### **17. ASSIGNMENT**

- 17.1. Neither this Agreement nor any rights granted hereby may be assigned voluntarily or by operation of law by either party without the other party's written consent and any such attempted assignment shall be null and void.
- 17.2. Notwithstanding the foregoing the Company may, without the prior written consent of Dealer, assign the Agreement and all its rights hereunder to any company within its group of companies.
- 17.3. This Agreement shall be binding on the respective parties' successors in title and permitted assigns.

#### **18. WAIVER**

Neither the Company's failure to exercise any power given under this Agreement or to insist upon strict compliance by the Dealer with any obligation under it, nor any custom or practice of the Dealer or the Company shall constitute any waiver or any of the Company's rights under this Agreement. Waiver of any default by the Dealer must be in writing and shall not affect or impair the Company's rights in respect of any subsequent default of any kind by the Dealer. Delay by the Company in exercising any rights arising from any of the Dealer's defaults or omission to exercise them shall not affect or impair the Company's rights in respect of those defaults or any default of any kind.

#### **19. ENTIRE AGREEMENT**

This Agreement constitute the entire agreement of the Parties about the subject matter detailed herein and supersede all previous and contemporaneous negotiations, representations, promises, undertakings, agreements, understandings and representations on the subject, all of which have been finally integrated into this Agreement.

#### **20. Notices.**

Except as set forth specifically in any section of this Agreement, any notice required or permitted by this Agreement shall be in writing and shall be sent by mail, addressed to the other party at the address shown at the beginning of this Agreement. Such notice shall be deemed, to have been given five (5) days after deposit in the mail, except that notice of change of address shall be effective only upon receipt.

**21. GOVERNING LAWS**

This Agreement shall be governed by the laws of Malaysia and the parties hereto agree to submit to the exclusive jurisdiction of the Malaysian courts.

**IN WITNESS WHEREOF** the parties hereto have hereunto set their hands hereunder on \_\_\_\_\_ day of the month of \_\_\_\_\_ in the year 2018.

SIGNED by  
For and on behalf of the Company

SIGNED by the Dealer

.....  
Name:

Designation:

Company's Seal:

.....  
Name:

NRIC:

**APPENDIX 1:** To the RERC Authorized Dealership Agreement

**LIST OF PRODUCTS AND APPLICABLE PRICES:**

As of the date of this Agreement and Appendix 1, the applicable prices are specified below:

Product Name	Minimum Order	Dealer Price	Recommended Retail Price (RRP)
Royal Expert™ Smooth & Clear Skin Lightening Cream	10	84.80	125.00
Royal Expert™ Face Cleanser	10	12.72	18.00
Royal Expert™ Neem Soap	10	7.31	11.00
Royal Expert™ Papaya Soap	10	8.37	12.00
Royal Expert™ Facial Scrub	10	14.84	20.00
Royal Expert™ Moisturizing Lotion	10	12.72	18.00
Royal Expert™ SPF35 Day Cream	10	58.30	83.00
Royal Expert™ White Advance Formula Whitening Cream	10	84.80	135.00
Non Woven Bag (Small)	1	4.24	4.24
Non Woven Bag (Medium)	1	6.36	6.36
Non Woven Bag (Large)	1	10.60	10.60

- Price include GST 6%