b/a Auricle Clip, Inc., corporations; and Michael B. Metzger, individually and as an officer and director of said corporations, hereinafter sometimes referred to as proposed respondents, and it now is appearing that proposed respondents are willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It Is Hereby Agreed by and between Ninzu, Inc., Davish Merchandising, Inc. d/b/a Davish Enterprises and Davish Health Products, and Order By Phone, Inc. d/b/a Auricle Clip, Inc., by their duly authorized officer; and Michael B. Metzger, individually and as an officer and director of said corporations, and counsel for the Federal Trade Commission that:

1. Proposed respondent Ninzu, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland, with its office and principal place of business located at 1 East Chase Street, Suite 200, in the City of Baltimore, State of Maryland.

Proposed respondent Davish Merchandising, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland, with its office and principal place of business located at 1 East Chase Street, Suite 200, in the City of Baltimore, State of Maryland.

Proposed respondent Order By Phone, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland, with its office and principal place of business located at 1 East Chase Street, Suite 200, in the City of Baltimore, State of Maryland.

Proposed respondent Michael B. Metzger is an officer and director of said corporations. He formulates, directs and controls the policies, acts and practices of said corporations. He resides at 12135 Heneson Garth, Owings Mills, Maryland.

2. Proposed respondents admit all the jurisdictional facts set forth in the draft of complaint.

3. Proposed respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. The agreement is for settlement purposes only and does not constitute an admission by proposed respondents of facts, other than jurisdictional facts, or of violations of law as alleged in the draft of complaint.

6. The agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of §2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondents' addresses as stated in this agreement shall constitute service. Proposed respondents waive any right they might have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondents have read the proposed complaint and order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

## Order

For the purposes of this Order: 1. "Competent and reliable scientific evidence" shall mean tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by personal qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

2. "Acupressure device" shall mean any product, program, or service that is intended to function by means of the principles of acupressure.

## Ι

It Is Ordered that respondents, Ninzu, Inc., Davish Merchandising, Inc. d/b/a Davish Enterprises and Davish Health Products, and Order By Phone, Inc. d/ b/a Auricle Clip, Inc., corporations, their successors and assigns, and their officers; Michael B. Metzger, individually and as an officer and director of said corporations; and respondents' agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale or distribution of the Ninzu, Auricle Clip, B-Trim or any other acupressure device in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, that

A. Such product causes significant weight loss;

B. Such product causes significant weight loss without the need to diet or exercise;

C. Such product controls appetite, eliminates a person's craving for food, or causes weight loss without the user feeling hungry; or

D. Such product is scientifically proven to cause significant weight loss and control appetite.

## Π

It Is Further Ordered that respondents, Ninzu, Inc., Davish Merchandising, Inc. d/b/a Davish Enterprises and Davish Health Products, and Order By Phone, Inc. d/b/a Auricle Clip, Inc., corporations, their successors and assigns, and their officers; Michael B. Metzger, individually and as an officer and director of said corporations; and respondents' agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection