

INTELLECTUAL PROPERTY, NON-DISCLOSURE AND NON-SOLICITATION AGREEMENT

This Intellectual Property, Non-Disclosure and Non-Solicitation Agreement (the “**Agreement**”) dated _____, is made by and between [COMPANY NAME] (hereinafter referred to collectively with its subsidiaries as the “**Company**”), and [ADVISOR NAME] (the “**Advisor**”).

In consideration of the Service or the continued Service of the Advisor by the Company and in consideration paid by the Company, the Company and the Advisor agree as follows:

1. Condition of Service.

The Advisor acknowledges that Advisor’s Service or continuance of Service is contingent upon the Advisor’s agreement to sign and adhere to the provisions of this Agreement. The Advisor further acknowledges that the nature of the Company’s business is such that protection of its proprietary and confidential information is critical to the survival and success of the Company’s business. For purposes of this Agreement, “**Service**” shall mean (i) employment by the Company or a parent or subsidiary thereof and/or (ii) the provision of services to the Company or a parent or subsidiary thereof as an advisor, officer, consultant or member of the Board of Directors.

2. Proprietary and Confidential Information.

(a) The Advisor agrees that all information and know-how, whether or not in writing, of a private, secret or confidential nature concerning the Company’s business or financial affairs (collectively, “**Proprietary Information**”) is and shall be the exclusive property of the Company. By way of illustration, but not limitation, Proprietary Information may include discoveries, ideas, inventions, products, product improvements, product enhancements, processes, methods, techniques, formulas, compositions, compounds, negotiation strategies and positions, projects, developments, plans (including business and marketing plans), research data, clinical data, financial data (including sales costs, profits, pricing methods), personnel data, computer programs (including software used pursuant to a license agreement), customer, prospect and supplier lists, and contacts at or knowledge of customers or prospective customers of the Company. The Advisor will not disclose any Proprietary Information to any person or entity other than employees of the Company or use the same for any purposes (other than in the performance of the Advisor’s duties in providing Service) without written approval by an officer of the Company, either during or after Advisor’s Service, unless and until such Proprietary Information has become public knowledge without fault by the Advisor. While providing Service, the Advisor will use the Advisor’s best efforts to prevent unauthorized publication or

disclosure of any of the Company's Proprietary Information.

(b) The Advisor agrees that all files, documents, letters, memoranda, reports, records, data, sketches, drawings, models, laboratory notebooks, program listings, computer equipment or devices, computer programs or other written, photographic, or other tangible or intangible material containing Proprietary Information, whether created by the Advisor or others, which come into the Advisor's custody or possession, shall be and are the exclusive property of the Company to be used by the Advisor only in the performance of the Advisor's duties for the Company and shall not be copied or removed from the Company premises except in the pursuit of the business of the Company. All such materials or copies thereof and all tangible property of the Company in the custody or possession of the Advisor shall be delivered to the Company, upon the earlier of (i) a request by the Company or (ii) termination of the Advisor's Service for any reason. After such delivery, the Advisor shall not retain any such materials or copies thereof or any such tangible property.

(c) The Advisor agrees that the Advisor's obligation not to disclose or to use information and materials of the types set forth in paragraphs 2(a) and 2(b) above, and the Advisor's obligation to return materials and tangible property, set forth in paragraph 2(b) above, also extends to such types of information, materials and tangible property of customers of the Company or suppliers to the Company or other third parties who may have disclosed or entrusted the same to the Company or to the Advisor in the course of the Company's business.

3. Developments.

(a) The Advisor has attached hereto, as Exhibit A, a list describing all discoveries, ideas, inventions, improvements, enhancements, processes, methods, techniques, developments, software, and works of authorship, whether patentable or not, which were created, made, conceived or reduced to practice by the Advisor prior to the Advisor's Service and which are owned by Advisor, which relate directly or indirectly to the current or anticipated future business of the Company, and which are not assigned to the Company hereunder (collectively, "**Prior Developments**"); or, if no such list is attached, Advisor represents that there are no Prior Developments. Advisor agrees not to incorporate any Prior Developments into any Company product, material, process or service without prior written consent of an officer of the Company. If Advisor does incorporate any Prior Development into any Company product, material, process or service, Advisor hereby grants to the Company a non-exclusive, worldwide, perpetual, transferable, irrevocable, royalty-free, fully-paid right and license to make, have made, use, offer for sale, sell, import, reproduce, modify, prepare derivative works, display, perform, transmit, distribute and otherwise exploit such Prior Development and to practice any method related thereto.

(b) The Advisor will make full and prompt disclosure to the Company of all discoveries, ideas, inventions, improvements, enhancements, processes, methods, techniques, developments, software, and works of authorship, whether patentable or not, (i) which have been created, made, conceived or reduced to practice by the Advisor or under Advisor's direction or

jointly with others prior to the date hereof and which relate directly or indirectly to the business of the Company, including the business of Designs, develops and markets lifestyle-enhancing technology products, or (ii) which are created, made, conceived or reduced to practice by the Advisor or under the Advisor's direction or jointly with others during the Advisor's Service, whether or not during normal working hours or on the premises of the Company (all of which are collectively referred to in this Agreement as "**Developments**"). The Advisor acknowledges that each original work of authorship which is made by the Advisor (solely or jointly with others) within the scope of and during the period of Advisor's Service and which is protectable by copyright is a "work made for hire," as that term is defined in the United States Copyright Act. The Advisor agrees to assign and does hereby assign to the Company (or any person or entity designated by the Company) all the Advisor's right, title and interest in and to all Developments (other than Prior Developments listed on Exhibit A, if any) and all related patents, patent applications, copyrights and copyright applications to the maximum extent permitted by the California Labor Code.

(c) The Advisor agrees to cooperate fully with the Company, both during and after the Advisor's Service, with respect to the procurement, maintenance and enforcement of copyrights, patents and other intellectual property rights (both in the United States and foreign countries) relating to Developments. The Advisor shall sign all papers, including, without limitation, copyright applications, patent applications, declarations, oaths, formal assignments, assignments of priority rights, and powers of attorney, which the Company may deem necessary or desirable in order to protect its rights and interests in any Development. The Advisor further agrees that if the Company is unable, after reasonable effort, to secure the signature of the Advisor on any such papers, any executive officer of the Company shall be entitled to execute any such papers as the agent and the attorney-in-fact of the Advisor, and the Advisor hereby irrevocably designates and appoints each executive officer of the Company as the Advisor's agent and attorney-in-fact to execute any such papers on the Advisor's behalf, and to take any and all actions as the Company may deem necessary or desirable in order to protect its rights and interests in any Development, under the conditions described in this sentence.

4. Non-Solicitation.

While the Advisor provides Service and for a period of one year after the termination or cessation of such Service for any reason, the Advisor will not directly or indirectly, either alone or in association with others (i) solicit, induce or attempt to induce, any employee or independent contractor of the Company to terminate such individual's employment with or other engagement with the Company, or (ii) recruit or attempt to recruit any person who is employed or otherwise engaged by the Company. If the Advisor violates this Section 4, the Advisor shall continue to be bound by the restrictions set forth in this Section 4 until a period of one year has expired without any violation of such provisions.

5. Obligations to Third Parties.

The Advisor represents that, except as the Advisor has disclosed in writing to the

Company on Exhibit A attached hereto, the Advisor is not bound by the terms of any agreement with any previous employer or other party to refrain from using or disclosing any trade secret or confidential or proprietary information in the course of the Advisor's Service, to refrain from competing, directly or indirectly, with the business of such previous employer or any other party or to refrain from soliciting employees, customers or suppliers of such previous employer or other party. The Advisor further represents that the Advisor's performance of all the terms of this Agreement and the performance of the Advisor's duties as an employee of the Company do not and will not conflict with or breach any agreement with any prior employer or other party (including, without limitation, any nondisclosure or non-competition agreement), and that the Advisor will not disclose to the Company or induce the Company to use any confidential or proprietary information or material belonging to any previous employer or others.

6. United States Government Obligations.

The Advisor acknowledges that the Company from time to time may have agreements with other persons or with the United States Government, or agencies thereof, which impose obligations or restrictions on the Company regarding inventions made during the course of work under such agreements or regarding the confidential nature of such work. The Advisor agrees to be bound by all such obligations and restrictions which are made known to the Advisor and to take all action necessary to discharge the obligations of the Company under such agreements.

7. Miscellaneous.

(a) Equitable Remedies. The Advisor acknowledges that the restrictions contained in this Agreement are necessary for the protection of the business and goodwill of the Company and are considered by the Advisor to be reasonable for such purpose. The Advisor agrees that any breach or threatened breach of this Agreement is likely to cause the Company substantial and irrevocable damage which is difficult to measure. Therefore, in the event of any such breach or threatened breach, the Advisor agrees that the Company, in addition to such other remedies which may be available, shall have the right to obtain an injunction from a court restraining such a breach or threatened breach without posting a bond and the right to specific performance of the provisions of this Agreement and the Advisor hereby waives the adequacy of a remedy at law as a defense to such relief.

(b) Disclosure of this Agreement. For a period of one year after the termination or cessation of the Advisor's Service for any reason, the Advisor agrees to notify any potential employer or prospective business associate of the terms and existence of this Agreement and the Advisor's continuing obligations to the Company hereunder. The Advisor hereby authorizes the Company to notify others, including but not limited to customers of the Company and any of the Advisor's future employers or prospective business associates, of the terms and existence of this Agreement and the Advisor's continuing obligations to the Company hereunder.

(c) Not Employment Contract. The Advisor acknowledges that this

Agreement does not constitute a contract of employment, does not imply that the Company will continue the Advisor's Service for any period of time and does not change the at-will nature of the Advisor's Service to the Company.

(d) Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of both parties and their respective successors and assigns, including any corporation with which, or into which, the Company may be merged or which may succeed to the Company's assets or business, provided, however, that the obligations of the Advisor are personal and shall not be assigned by the Advisor. The Advisor expressly consents to be bound by the provisions of this Agreement for the benefit of the Company or any subsidiary or affiliate thereof to whose employ the Advisor may be transferred without the necessity that this Agreement be re-signed at the time of such transfer.

(e) Interpretation. If any restriction set forth in Section 4 is found by any court of competent jurisdiction to be unenforceable because it extends for too long a period of time or over too great a range of activities or in too broad a geographic area, it shall be interpreted to extend only over the maximum period of time, range of activities or geographic area as to which it may be enforceable.

(f) Severability. In case any provision of this Agreement shall be invalid, illegal or otherwise unenforceable, the validity, legality and enforceability of the remaining provisions shall in no way be affected or impaired thereby.

(g) Waivers. No delay or omission by the Company in exercising any right under this Agreement will operate as a waiver of that or any other right. A waiver or consent given by the Company on any one occasion is effective only in that instance and will not be construed as a bar to or waiver of any right on any other occasion.

(h) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the [STATE] (without reference to the conflicts of laws provisions thereof). Any action, suit, or other legal proceeding which is commenced to resolve any matter arising under or relating to any provision of this Agreement shall be commenced only in a court of the State of [STATE] (or, if appropriate, a federal court located within [STATE]), and the Company and the Advisor each consents to the jurisdiction of such a court.

(i) Entire Agreement; Amendment. This Agreement supersedes all prior agreements, written or oral, between the Advisor and the Company relating to the subject matter of this Agreement. This Agreement may not be modified, changed or discharged in whole or in part, except by an agreement in writing signed by the Advisor and the Company. The Advisor agrees that any change or changes in the Advisor's duties, salary or compensation after the signing of this Agreement shall not affect the validity or scope of this Agreement.

(j) Captions. The captions of the sections of this Agreement are for convenience of reference only and in no way define, limit or affect the scope or substance of any

section of this Agreement.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties hereto have executed the Intellectual Property, Non-Disclosure and Non-Solicitation Agreement as of the date and year first above written.

COMPANY:

[COMPANY NAME]

By: _____
[SIGNATORY NAME]
[COMPANY ADDRESS]
[COMPANY ADDRESS]

ADVISOR:

[ADVISOR NAME]
[ADVISOR ADDRESS]
[ADVISOR ADDRESS]

EXHIBIT A

**LIST OF PRIOR INVENTIONS AND ORIGINAL WORKS OF AUTHORSHIP EXCLUDED UNDER SECTION 3(A)
OR CONFLICTING AGREEMENTS DISCLOSED UNDER SECTION 5**

NAME	TITLE	DISCRIPTION OR REGISTRATION NUMBER

Except as indicated above on this Exhibit A, I have no Prior Developments to disclose pursuant to Section 2(a) of this Agreement and no agreements to disclose pursuant to Section 5 of this Agreement.

ADVISOR:
