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MUTUAL NONDISCLOSURE AGREEMENT

This Mutual Nondisclosure Agreement (this “**Agreement**”) is made as of _____ by and between Carol Cole Company, a California corporation, with principal offices at 1325 Sycamore Ave., Suite A, Vista, CA 92081 (“NuFACE”), and _____, a Corporation, with principal offices at _____ (the “**Company**”).

1. Purpose. NuFACE and the Company wish to explore a possible business opportunity of mutual interest regarding the development and sale of contemporary devices and beauty treatments that aid in facial rejuvenation and related products, including but not limited to, financial, strategic, technical and business information (the “**Purpose**”) in connection with which each party may disclose its Confidential Information (as defined below) to the other. This Agreement is intended to allow the parties to discuss and evaluate the Purpose while protecting each party’s Confidential Information (including Confidential Information previously disclosed to the other party) against unauthorized use or disclosure.

2. Definition of Confidential Information. “**Confidential Information**” means (i) information known by the parties to be considered confidential or proprietary, (ii) information which should be known or understood to be confidential or proprietary by a person exercising reasonable commercial judgment in the circumstances, (iii) any oral, written, graphic or machine-readable information that relates to patents, patent applications, research, product plans, products, developments, inventions, processes, know-how, designs, drawings, engineering, formulae, markets, software (including source and object code), hardware configuration, computer programs, algorithms, regulatory information, chemical formulas, research plans, business plans and strategy, business opportunities, agreements with third parties, services, customers, suppliers, marketing, operations, business, affairs or finances of a party, and (iv) any other information that is designated in writing by a party to be confidential or proprietary. In each case, Confidential Information refers to information given by or on behalf of NuFACE to the Company.

3. Nondisclosure of Confidential Information

(a) NuFACE and the Company each agree not to use any Confidential Information disclosed to it by the other party for its own use or for any purpose other than to carry out discussions concerning, and the undertaking of, the Purpose. Neither party shall disclose or permit disclosure of any Confidential Information of the other party to third parties or to employees of the party receiving Confidential Information, other than directors, officers, employees, affiliates, consultants and agents who are required to have the information in order to carry out the discussions regarding the Purpose. Each party has had or will have its directors, officers, employees, affiliates consultants and agents who have access to Confidential Information of the other party be bound by confidentiality obligations substantially similar to those in this Agreement. Each party agrees that it shall take all reasonable measures to protect the secrecy of and avoid disclosure or use of Confidential Information of the other party in order to prevent it from falling into the public domain or the possession of persons other than those persons authorized under this Agreement to have any such information. Such measures shall include, but not be limited to, the highest degree of care that the receiving party utilizes to

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protect its own Confidential Information of a similar nature, which shall be no less than reasonable care. Each party agrees to notify the other in writing of any actual or suspected misuse, misappropriation or unauthorized disclosure of Confidential Information of the disclosing party which may come to the receiving party's attention.

(b) **Exceptions.** Notwithstanding the above, neither party shall have liability to the other with regard to any Confidential Information of the other which the receiving party can prove:

(i) was in the public domain at the time it was disclosed or has entered the public domain through no fault of the receiving party;

(ii) was known to the receiving party, without restriction, at the time of disclosure, as demonstrated by files in existence at the time of disclosure;

(iii) is disclosed with the prior written approval of the disclosing party;

(iv) was independently developed by the receiving party without any use of the Confidential Information of the disclosing party and by employees of the receiving party who have not had access to the Confidential Information, as demonstrated by files created at the time of such independent development;

(v) becomes known to the receiving party, without restriction, from a source other than the disclosing party without breach of this Agreement by the receiving party and otherwise not in violation of the disclosing party's rights; or

(vi) is disclosed pursuant to the order or requirement of a court, administrative agency, or other governmental body; provided, however, that the receiving party shall provide prompt notice of such court order or requirement to the disclosing party to enable the disclosing party to seek a protective order or otherwise prevent or restrict such disclosure.

4. Return of Materials. Any materials or documents that have been furnished by one party to the other in connection with the Purpose shall be promptly returned by the receiving party or destroyed by the receiving party (at the receiving party's election), accompanied by all copies of such documentation upon the written request of the disclosing party; provided, that, receiving party may retain copies of the Confidential Information in accordance with (i) its document retention policy and any legal or regulatory requirements and (ii) its security, disaster recovery and/or internal procedures regarding retention of archival copies of the Confidential Information in archived computer system back-up so long as such retained copies of the Confidential Information remain subject to the terms of this Agreement.

5. No Rights Granted; No Warranty. Nothing in this Agreement shall be construed as granting any rights under any patent, copyright or other intellectual property right of either party, nor shall this Agreement grant either party any rights in or to the other party's Confidential Information other than the limited right to review such Confidential Information solely for the purpose of determining whether to enter into the Purpose. NuFACE and the Company agree that nothing in this Agreement (a) requires the disclosure of any Confidential Information, which shall be disclosed, if at all, solely at the option of the disclosing party, or (b) requires either party to proceed with the Purpose or any transaction in connection with which the Confidential Information may be disclosed. Neither party makes any representation or warranty as to the accuracy or completeness of its Confidential Information and will not be liable for any error or omissions concerning its Confidential Information.

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6. **No Modification.** NuFACE and the Company each agree that it shall not modify, reverse engineer, decompile, create other works from or disassemble any hardware or software programs contained in the Confidential Information of the other party unless permitted in writing by the disclosing party.

7. **Term.** The foregoing commitments of each party shall survive any termination of the Purpose between the parties, and shall continue for a period terminating five (5) years following the date of this Agreement. Thereafter, the parties' obligations hereunder survive and continue in effect with respect to any information that is a trade secret under applicable law.

8. **Successors and Assigns.** The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the parties, provided that Confidential Information of the disclosing party may not be assigned without the prior written consent of the disclosing party. Nothing in this Agreement, express or implied, is intended to confer upon any party other than the parties hereto or their respective successors and assigns any rights, remedies, obligations, or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement.

9. **Severability.** If one or more provisions of this Agreement are held to be unenforceable under applicable law, the parties agree to renegotiate such provision in good faith. In the event that the parties cannot reach a mutually agreeable and enforceable replacement for such provision, then (a) such provision shall be excluded from this Agreement, (b) the balance of the Agreement shall be interpreted as if such provision were so excluded and (c) the balance of the Agreement shall be enforceable in accordance with its terms.

10. **Independent Contractors.** NuFACE and the Company are independent contractors, and nothing contained in this Agreement shall be construed to constitute NuFACE and the Company as partners, joint ventures, co-owners or otherwise as participants in a joint or common undertaking.

11. **Governing Law; Jurisdiction.** This Agreement and all acts and transactions pursuant hereto and the rights and obligations of the parties hereto shall be governed, construed and interpreted in accordance with the laws of the State of California, without giving effect to principles of conflicts of law. Each of the parties hereto consents to the exclusive jurisdiction and venue of the courts of San Diego County, California.

12. **Remedies.** NuFACE and the Company each agree that its obligations set forth in this Agreement are necessary and reasonable in order to protect the disclosing party and its business. NuFACE and the Company each expressly agree that due to the unique nature of the disclosing party's Confidential Information, monetary damages may be inadequate to compensate the disclosing party for any breach by the receiving party of its covenants and agreements set forth in this Agreement. Accordingly, NuFACE and the Company each agree and acknowledge that any such violation or threatened violation may cause irreparable injury to the disclosing party and that, in addition to any other remedies that may be available, in law, in equity or otherwise, the disclosing party shall be entitled to seek injunctive relief against the threatened breach of this Agreement or the continuation of any such breach by the receiving party, without the necessity of proving actual damages.

13. **Amendment and Waiver.** Any term of this Agreement may be amended with the written consent of NuFACE and the Company. Any amendment or waiver effected in

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accordance with this Section shall be binding upon the parties and their respective successors and assigns. Failure to enforce any provision of this Agreement by a party shall not constitute a waiver of any term hereof by such party.

14. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument.

15. Entire Agreement. This Agreement is the product of both of the parties hereto, and constitutes the entire agreement between such parties pertaining to the subject matter hereof, and merges all prior negotiations and drafts of the parties with regard to the transactions contemplated herein.

IN WITNESS WHEREOF, the duly authorized representative of each party has executed this Mutual Nondisclosure Agreement as of the date first above written and the persons signing below represents and warrants that he or she is duly authorized to sign for and on behalf of the respective party.

**CAROL COLE COMPANY,
a California corporation**

By: _____

Name: _____
(print)

Title: _____

Company Name:

By: _____

Name: _____
(print)

Title: _____