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UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

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**FORM 10-K/A**  
(Amendment No. 1)

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Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934  
For the Fiscal Year ended December 31, 2016  
Commission File Number – 000-53166

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**MusclePharm Corporation**  
(Exact name of registrant as specified in its charter)

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Nevada  
(State or other jurisdiction of  
incorporation or organization)

77-0664193  
(I.R.S. Employer  
Identification No.)

4721 Ironton Street, Building A  
Denver, Colorado  
(Address of principal executive offices)

80239  
(Zip code)

(303) 396-6100

(Registrant's telephone number, including area code)

**Securities registered pursuant to Section 12(g) of the Act:**

Title of each class

**Common Stock, Par Value \$0.001 Per Share**

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Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act.  Yes  No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act.  Yes  No

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.  Yes  No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate website, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files) Yes  No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of the registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. (Check one):

Large accelerated filer  Accelerated filer  Emerging Growth Company   
Non-accelerated filer  Smaller reporting company

If an emerging growth company, indicate by a check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act).  Yes  No

Aggregate market value of the voting common stock held by non-affiliates of the registrant at June 30, 2016: \$36.0 million.

Number of shares of the registrant's common stock outstanding at March 31, 2017: 14,461,609 (excludes 875,621 shares of common stock held in treasury).

**DOCUMENTS INCORPORATED BY REFERENCE:**

None.

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## EXPLANATORY NOTE

MusclePharm Corporation (“MusclePharm”, the “Company”, “we”, “us”, or “our”) is filing this Amendment No. 1 on Form 10-K/A (this “Amendment”) to amend our Annual Report on Form 10-K for the year ended December 31, 2016, originally filed with the Securities and Exchange Commission (the “SEC”) on March 15, 2017 (the “Original 10-K Filing”), solely for the purpose of including the information required by Part III of Form 10-K. Such information was previously omitted from the Original 10-K Filing in reliance on General Instruction G(3) to Form 10-K, which permits the information in the above referenced items to be incorporated in the Form 10-K by reference to our definitive proxy statement for the 2017 Annual Meeting of Stockholders if such proxy statement is filed no later than 120 days after our fiscal year end. We are filing this Amendment to include Part III information in our Form 10-K. The reference on the cover of the Original 10-K Filing to the incorporation by reference to portions of our definitive proxy statement into Part III of the Original 10-K Filing is hereby deleted.

In accordance with Rule 12b-15 under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), Part III, Items 10 through 14 of the Original 10-K Filing are hereby amended and restated in their entirety, and Part IV, Item 15 has also been amended to include certain exhibits required to be filed as part of this Amendment. This Amendment does not amend or otherwise update any other information in the Original 10-K Filing. Accordingly, this Amendment should be read in conjunction with the Original 10-K Filing and with our filings with the SEC subsequent to the Original 10-K Filing.

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**MusclePharm Corporation**

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## PART III

### Item 10. Directors, Executive Officers and Corporate Governance

#### EXECUTIVE OFFICERS AND DIRECTORS

Information required under this Item with respect to our Executive Officers and members of our Board of Directors is included as a supplemental item at the end of Part I of the Original 10-K Filing. The names of our directors and executive officers, their ages as of March 31, 2017 and certain other information about them are set forth below. There are no family relationships among any of our directors or executive officers.

Name	Age	Position
Ryan Drexler	46	Chief Executive Officer, President and Chairman of the Board of Directors
Brian Casutto	46	Executive Vice President of Sales & Operations
Douglas West	55	Vice President of Finance and Administration, Interim Principal Financial Officer and Interim Principal Accounting Officer
Michael Doron	55	Director
William Bush	52	Director

#### RYAN DREXLER

##### CHIEF EXECUTIVE OFFICER, PRESIDENT, AND CHAIRMAN OF THE BOARD OF DIRECTORS

Ryan Drexler was appointed to serve as our Chief Executive Officer and President on November 18, 2016. Prior to that, Mr. Drexler was appointed to serve as our Interim Chief Executive Officer, President and Chairman of the Board of Directors on March 15, 2016 and was designated as our Interim Principal Executive Officer. Mr. Drexler has served as Chairman of our Board of Directors since August 26, 2015. Mr. Drexler is currently the Chief Executive Officer of Consac, LLC (“Consac”), a privately-held firm that invests in the securities of publicly traded and venture-stage companies. Previously, Mr. Drexler served as President of Country Life Vitamins, a family-owned nutritional supplements and natural products company that he joined in 1993. In addition to developing strategic objectives and overseeing acquisitions for Country Life, Mr. Drexler created new brands that include the BioChem family of sports and fitness nutrition products. Mr. Drexler negotiated and led the process which resulted in the sale of Country Life in 2007 to the Japanese conglomerate Kikkoman Corp. Mr. Drexler graduated from Northeastern University, where he earned a B.A. in political science. Because of his experience in running and developing nutritional supplement companies, we believe that Mr. Drexler is well qualified to serve on our Board of Directors.

#### BRIAN CASUTTO

##### EXECUTIVE VICE PRESIDENT OF SALES AND OPERATIONS

Brian Casutto was appointed to the role of Executive Vice President of Sales & Operations in July of 2015. Prior to that, Mr. Casutto joined MusclePharm in June of 2014 to lead product development and brand positioning of the recently announced Natural Series. From 1997 to 2014, Mr. Casutto served as Executive Vice President, Sales for Country Life, LLC.

**DOUGLAS WEST**

**VICE PRESIDENT OF FINANCE AND ADMINISTRATION, INTERIM PRINCIPAL FINANCIAL OFFICER AND INTERIM PRINCIPAL ACCOUNTING OFFICER**

Douglas West joined the Company in September 2016 as Vice President as Finance and Administration and was appointed as the Company's Interim Principal Financial Officer and Interim Principal Accounting Officer in March 2017. Mr. West has over twenty-five years of experience in international accounting and finance. Mr. West has diversified background with both domestic and multinational companies. From 2010 to 2016, Mr. West owned his own accounting consulting business, where he provided accounting and financial services to a variety of large companies and start up organizations. Previously, Mr. West served as Chief Financial Officer for a small public company and served as controller for a number of organizations including A&E products (a division of Tyco International), Danka Business Systems and BlueSun Biodiesel. Mr. West held a variety of financial positions with Wyeth Pharmaceuticals and began his career with Ernst & Young LLP. He is a Certified Public Accountant and holds a Bachelor of Science degree from Montclair State University.

**MICHAEL DORON**

**DIRECTOR**

Michael Doron has served on our Board of Directors as an independent director since November 5, 2012, and currently serves as the Lead Director of the Board of Directors, responsible for leading the independent director and providing direct input to management. Mr. Doron also serves as the Chair of the Compensation Committee and member of both the Audit Committee and the Nominating & Corporate Governance Committee. He has extensive corporate finance and business development experiences in both executive and board level positions with private and public companies. Mr. Doron currently is a partner at Alpha Nordic Ventures, a full-service boutique firm specializing in financing and advisory services for growth companies. Previously, from 2009 through 2013, when he relocated to Sweden, Mr. Doron was co-founder and a partner in DDR & Associates, a business development firm specializing in pre-IPO companies, and Evolution Capital, a private firm working in conjunction with DDR, and specializing in providing capital to publicly held companies using various debt instruments. Mr. Doron currently serves on the board of directors of Next Graphite, Inc. (OTCBB: GPNE), a company owning graphite-producing properties located in Namibia, and formerly the chairman of the board of directors of GASE Energy, Inc. (OTCBB: GASE), an independent energy company focusing on the exploration, development and production of natural gas in Ukraine. Mr. Doron earned a BA from the University of Maryland. Because of his significant experience in corporate finance and business development, we believe that Mr. Doron is well qualified to serve on our Board of Directors.

**WILLIAM BUSH**

**DIRECTOR**

William Bush has served on our Board of Directors as an independent director since May 2015 and serves as the chair of the Audit Committee and a member of the Compensation Committee. Since November 2016, Mr. Bush as served as chief financial officer of Stem, Inc., a leading software-driven energy storage provider. From January 2010 until November 2016, Mr. Bush served as the chief financial officer of Borrego Solar Systems, Inc., which is one of the nation's leading financiers, designers and installers of commercial and industrial grid-connected solar systems. From October 2008 to December 2009, Mr. Bush served as the chief financial officer of Solar Semiconductor, Ltd., a private vertically integrated manufacturer and distributor of photovoltaic modules and systems targeted for use in industrial, commercial and residential applications, with operations in India, helping it reach \$100 million in sales in its first 15 months of operation. Prior to that, Mr. Bush served as chief financial officer and corporate controller for a number of high growth software and online media companies as well as being one of the founding members of Buzzsaw.com, Inc., a spinoff of Autodesk, Inc. Prior to his work at Buzzsaw.com, Mr. Bush served as corporate controller for Autodesk, Inc. (NasdaqGM: ADSK), the fourth largest software applications company in the world.

Mr. Bush's prior experience includes seven years in public accounting with Ernst & Young LLP and PricewaterhouseCoopers. Mr. Bush holds a B.S. degree in Business Administration from U.C. Berkeley and is a certified public accountant (currently inactive). Mr. Bush currently serves on the board of directors of Towerstream Corporation (NASDAQ: TWER), a fixed wireless provider, and has been a director since 2007. Because of his significant experience in finance, we believe that Mr. Bush is well qualified to serve on our Board of Directors.

#### SECTION 16(a) BENEFICIAL OWNERSHIP REPORTING COMPLIANCE

Section 16(a) of the Exchange Act, requires our directors and named executive officers, and persons who beneficially own more than 10% of our common stock, to file initial reports of ownership and reports of changes in ownership of our common stock and our other equity securities with the SEC. As a practical matter, we assist our directors and officers by monitoring transactions and completing and filing Section 16 reports on their behalf. Based solely on a review of the copies of such forms in our possession and on written representations from reporting persons, we believe that during 2016, all of our named executive officers and directors filed the required reports on a timely basis under Section 16(a) of the Exchange Act, except for as follows:

<b>Name</b>	<b>Date of Award</b>	<b>Date Filed</b>	<b>Stock Awards</b>
Michael Doron	1/22/2016	2/1/2016	9,049
William J. Bush	1/22/2016	2/1/2016	9,049
Stacey Y. Jenkins	1/22/2016	2/1/2016	9,049
Noel Thompson	1/22/2016	2/1/2016	9,049
Richard Estalella	1/22/2016	2/1/2016	9,049
Michael Doron	4/20/2016	9/2/2016	6,779
William J. Bush	4/20/2016	9/2/2016	6,779
Stacey Y. Jenkins	4/20/2016	9/2/2016	6,779
Noel Thompson	4/20/2016	—	6,779
Richard Estalella	4/20/2016	—	6,779
Michael Doron	7/16/2016	9/2/2016	64,338
William J. Bush	7/16/2016	9/2/2016	64,338
Stacey Y. Jenkins	7/16/2016	9/2/2016	64,338

#### CODE OF CONDUCT

Our Board of Directors established a Code of Conduct applicable to our officers and employees. The Code of Conduct is accessible on our website at [www.musclepharmcorp.com](http://www.musclepharmcorp.com). If we make any substantive amendments to the Code of Conduct or grant any waiver, including any implicit waiver, from a provision of the Code of Conduct to our officers, we will disclose the nature of such amendment or waiver on our website or in a report on Form 8-K.

#### CORPORATE GOVERNANCE OVERVIEW

Our business, assets and operations are managed under the direction of our Board of Directors. Members of our Board of Directors are kept informed of our business through discussions with our Chief Executive Officer, our external counsel, members of management and other Company employees as well as our independent auditors, and by reviewing materials provided to them and participating in meetings of the Board of Directors and its committees.

In addition to its management oversight function, our Board of Directors remains committed to strong and effective corporate governance, and, as a result, it regularly monitors our corporate governance policies and practices to ensure we meet or exceed the requirements of applicable laws, regulations and rules, the NASDAQ listing standards (even though we are not subject to them), as well as the best practices of other public companies.

Our corporate governance program features the following:

- a Board of Directors that is nominated for election annually;
- all of our directors, other than our Chief Executive Officer, President and Chairman of the Board of Directors, are independent;
- we have no stockholder rights plan in place;
- periodically updated charters for each of the Boards committees, which clearly establish the roles and responsibilities of each such committee;
- regular executive sessions among our non-employee and independent directors;
- a Board of Directors that enjoys unrestricted access to our management, employees and professional advisers;
- in 2016, each director attended at least 75% of the aggregate of the total number of Board meetings and total number of meetings of Board committees on which such director served during the time he served on the Board of Directors or committees;
- a clear Code of Conduct that is reviewed regularly for best practices;
- a clear Insider Trading Policy that is reviewed regularly;
- a Corporate Communications Policy that is reviewed with employees and the Board periodically;
- a clear set of Corporate Governance Guidelines that is reviewed regularly for best practices;
- our Compensation Committee or Board of Directors may require the forfeiture, recovery or reimbursement of incentive compensation from an executive officer as required under applicable United States laws;
- no board member is serving on an excessive number of public company boards; and
- the Compensation Committee's engagement of an independent compensation consultant.

#### **Board of Directors Role in Risk Management**

The Board of Directors oversees an enterprise-wide approach to risk management, designed to support the achievement of organizational objectives, including strategic objectives, to improve long-term organizational performance and enhance shareholder value. Risk management includes not only understanding company specific risks and the steps management implements to manage those risks, but also the level of risk acceptable and appropriate for us. Management is responsible for establishing our business strategy, identifying and assessing the related risks and implementing appropriate risk management practices. Our Board of Directors reviews our business strategy and management's assessment of the related risk, and discusses with management the appropriate level of risk for us. For example, the Board of Directors meets with management at least quarterly to review, advise and direct management with respect to, among other potential risks, strategic business risks, risks related to our new product development, and financial risks. The Board of Directors also delegates oversight to Board committees to oversee selected elements of risk.

The Audit Committee oversees financial risk exposures, including monitoring the integrity of our financial statements, internal controls over financial reporting, and the independence of our Independent Registered Public Accounting Firm. The Audit Committee reviews periodic internal controls and related assessments from our finance department. The Audit Committee also assists the Board of Directors in fulfilling its oversight responsibility with respect to compliance matters and meets at least quarterly with our finance department, Independent Registered Public Accounting Firm and internal or external legal counsel to discuss risks related to our financial reporting function. In addition, the Audit Committee ensures that our business is conducted with the highest standards of ethical conduct in compliance with applicable laws and regulations by monitoring our Code of Business Conduct and our Corporate Compliance Hotline, and the Audit Committee discusses other risk assessment and our risk management policies periodically with management.

The Compensation Committee is responsible for the design and monitoring of compensation programs that create incentives that encourage a level of risk-taking behavior consistent with our business strategy, as is further described in the Executive Compensation section below.

The Nominating & Corporate Governance Committee oversees governance-related risks by working with management to establish corporate governance guidelines applicable to us, and making recommendations regarding director nominees, the determination of director independence, Board of Directors leadership structure and membership on Board committees.

## AUDIT COMMITTEE

The Audit Committee reviews the work of our internal accounting and audit processes and the Independent Registered Public Accounting Firm. The Audit Committee has sole authority for the appointment, and oversight of our Independent Registered Public Accounting Firm and to approve any significant non-audit relationship with the Independent Registered Public Accounting Firm. The Audit Committee is also responsible for preparing the report required by the rules of the SEC to be included in our annual proxy statement. The Audit Committee is currently comprised of Mr. Bush and Mr. Doron. The Company's Board of Directors has determined that Mr. Bush is an "Audit Committee financial expert" within the meaning of Item 407 of Regulation S-K. Additionally, Mr. Bush serves as chair of the Audit Committee. Each of Messrs. Bush and Doron is independent for Audit Committee purposes, as determined under Exchange Act rules. Mr. Bush joined the Audit Committee in May 2015, Mr. Doron joined the Audit Committee in October 2012. During 2016, the Audit Committee held two meetings.

### Item 11. Executive Compensation

#### Overview

We became eligible to take advantage of the rules applicable to a "smaller reporting company," as defined in the Exchange Act, effective as of December 31, 2016. As a "smaller reporting company" we are permitted, and have opted, to comply with the scaled back executive compensation disclosure rules applicable to a "smaller reporting company" under the Exchange Act. The following discussion relates to the compensation of our named executive officers ("NEOs"). For the fiscal year ended December 31, 2016, our NEOs were:

- Ryan Drexler—Chief Executive Officer, President and Chairman of the Board of Directors;
- Brian Casutto – Executive Vice President of Sales and Operations;
- Brad Pyatt—Former Chief Executive Officer;<sup>(1)</sup> and
- Brent Baker – Former Executive Vice President of International Business.<sup>(2)</sup>

<sup>(1)</sup> Mr. Pyatt served as our Chief Executive Officer until his resignation on March 15, 2016.

<sup>(2)</sup> Mr. Baker's employment with the Company ended on March 23, 2017.



Our executive compensation program is designed to attract, motivate and retain talented executives that will drive Company growth and create long-term shareholder value. The Compensation Committee oversees and administers our executive compensation program, with input and recommendations from our Chief Executive Officer.

### **Elements of Executive Compensation**

Our executive compensation program has three main components: base salary, cash bonuses and incentive equity awards. Our named executive officers are also entitled to employee benefits that are made available to our salaried employees generally, certain compensation and benefits in connection with a change in control or termination of employment, and certain perquisites, as described below.

### ***Independent Compensation Consultant***

The Compensation Committee has retained Longnecker Associates (Longnecker), an independent executive compensation consulting firm, since 2013, to assist it in providing advice and data with respect to executive compensation matters. Longnecker reports to the Compensation Committee, and may not conduct any other work for the Company without the authorization of the Compensation Committee. Longnecker did not provide any additional services to MusclePharm in 2016 beyond its engagement as an advisor to the Compensation Committee on executive and director compensation matters. After review and consultation with Longnecker, the Compensation Committee has determined that Longnecker is independent and there is no conflict of interest resulting from the engagement of Longnecker. In reaching these conclusions, the Compensation Committee considered the factors set forth under SEC rules.

In 2016, Longnecker worked with the Compensation Committee and management to provide advice related to the non-employee director compensation program described below. Additionally, Longnecker provided advice regarding the separation payments made in connection with resignation of the Company's former Chief Executive Officer.

### ***Base Salary***

The Compensation Committee determined the initial base salary for each of our named executive officers and each year determines whether to approve any base salary adjustments based upon the Company's performance, the named executive officer's individual performance, changes in duties and responsibilities of the named executive officer and the recommendations of our Chief Executive Officer (other than with respect to his own base salary). For 2016, our named executive officers' base salaries were as follows:

<b>Name</b>	<b>2016 Base Salary</b>
Ryan Drexler	\$ 550,000
Brian Casutto	\$ 400,000
Brad Pyatt	\$ 425,000
Brent Baker	\$ 300,000

### ***Cash Bonuses***

Pursuant to their employment agreements, each of our named executive officers is eligible to earn a cash bonus, with a target amount established by the Compensation Committee, based on the achievement of specified performance goals. For 2016, the target bonus amounts were \$300,000 for Mr. Casutto, \$250,000 for Mr. Pyatt, and \$400,000 for Mr. Baker. For 2016, Messrs. Casutto and Baker earned cash bonuses in the amounts set forth in the "Summary Compensation Table" below. Mr. Pyatt forfeited any entitlement to a bonus for 2016 when he resigned as our Chief Executive Officer in March 2016. Pursuant to his amended and restated employment agreement, Mr. Drexler is eligible to, and did, receive cash bonuses based on the achievement of specified performance goals, as described under "Narrative Disclosure to Summary Compensation Table" below.

### ***Incentive Equity Awards***

Incentive equity awards granted by the Company have historically been in the form of restricted stock awards. The Company also grants stock options from time to time. The Compensation Committee believes that equity based awards are an effective retention tool that also align our executives' interests with those of our stockholders. In 2016, we granted Mr. Drexler a stock option to purchase 137,362 shares of our common stock, which vests in equal quarterly installments over the two-year period following the grant date, and 200,000 shares of restricted stock, which vest in full on the first anniversary of the grant date. Mr. Drexler's equity awards vest in full upon termination of his employment or upon change in control. Mr. Drexler is eligible to receive additional equity-based awards upon the achievement of specified performance goals, as described under "Narrative Disclosure to Summary Compensation Table" below. In 2016, Mr. Casutto was granted 50,000 shares of restricted stock, which vest in accordance with the schedule listed under "Outstanding Equity Awards at Fiscal Year-End Table" below. Mr. Casutto's restricted stock vests in full upon certain terminations of his employment or a change in control, as described under "Narrative Disclosure to Summary Compensation Table" below.

### ***Employment Agreements***

We have entered into employment agreements with each of Mr. Drexler and Mr. Casutto that include certain severance and change in control payments and entered into separation agreements with each of Mr. Pyatt and Mr. Baker that provide for severance benefits. For details, including with respect to the severance paid to Mr. Pyatt and Mr. Baker in connection with their employment terminations, see "Narrative Disclosure to Summary Compensation Table" below.

### ***Employee Benefit Plans and Perquisites***

We maintain a Section 401(k) Savings/Retirement Plan (the 401(k) Plan) to cover eligible employees of the Company and any designated affiliate in the United States, including our named executive officers. The 401(k) Plan permits eligible employees to defer up to the maximum dollar amount allowed by law. The employee's elective deferrals are immediately vested upon contribution to the 401(k) Plan. We currently make discretionary matching contributions to the 401(k) Plan in an amount equal to 100% of each eligible employee's deferrals up to 4% of his or her qualifying compensation, subject to a total employer contribution maximum of \$10,600 and limits imposed by applicable law.

We do not maintain any other defined benefit, defined contribution or deferred compensation plans for our employees.

Our executive officers are eligible to participate in all of our employee benefit plans, such as medical, dental, vision, group life and disability insurance, in each case on the same basis as other employees, subject to applicable law. We also provide vacation and other paid holidays to all employees, including our executive officers. In addition, we provide certain highly-compensated employees, including our named executive officers, with life insurance and supplemental long-term disability coverage. Certain of our executive are also entitled to certain perquisites, as described and quantified in the Summary Compensation Table below under "All Other Compensation."

**Summary Compensation Table**

The following summary compensation tables sets forth all compensation awarded to, earned by, or paid to our named executive officers for 2016 and, where applicable, 2015, in respect of their employment with the Company.

<u>Name and Principal Position</u>	<u>Year</u>	<u>Salary (\$)</u>	<u>Bonus (\$)</u>	<u>Stock Awards (\$)</u>	<u>Option Awards (\$)</u>	<u>Non-Equity Incentive Plan Compensation (\$)</u>	<u>All Other Compensation (\$)</u>	<u>Total (\$)</u>
Ryan Drexler <sup>(1)</sup>								
Chief Executive Officer,	2016	466,667	750,000	454,000 <sup>(2)</sup>	236,263 <sup>(3)</sup>	—	76,155 <sup>(8)</sup>	1,983,085
President	2015	250,000 <sup>(1)</sup>	—	—	—	—	77,876	327,876
Brian Casutto <sup>(4)</sup>								
Executive Vice President of Sales and Operations	2016	395,833	233,750	94,500 <sup>(5)</sup>	—	—	28,176 <sup>(8)</sup>	752,259
Brent Baker <sup>(6)</sup>								
Former Executive Vice President of International Business	2016	300,000	210,000	—	—	—	30,179 <sup>(8)</sup>	540,179
Brad Pyatt <sup>(7)</sup>								
Former Chief Executive Officer	2016	233,858	—	—	—	—	1,329,727 <sup>(8)</sup>	1,563,585
	2015	420,833	—	—	—	244,375	133,278	798,486

(1) On August 26, 2015, our Board of Directors appointed Mr. Drexler as the Company’s Executive Chairman. On February 11, 2016, Mr. Drexler entered into an employment agreement with the Company, pursuant to which the Company agreed to pay him a lump sum cash payment of \$250,000 in respect of his service to the Company, in lieu of any base salary for 2015. On March 15, 2016, Mr. Drexler was appointed as our Interim Chief Executive Officer, Interim President and Chairman of the Board of Directors. On November 18, 2016, Mr. Drexler agreed to continue to serve as the Chairman of the Board of Directors and to serve as our Chief Executive Officer and President. Mr. Drexler earned cash bonuses of \$750,000 in respect of this 2016 performance. For information regarding restricted stock granted to Mr. Drexler in connection with his individual guaranty of Company debt, and loans to the Company in the form of convertible debt, see “Related Party Transactions” below.

(2) Reflects the full grant date fair value of restricted stock award granted in 2016 calculated in accordance with FASB ASC Topic 718, disregarding the effects of estimated forfeitures, based on the closing price of the common stock of \$2.27 on the date of the grant.

(3) The fair value of the option awards of \$1.72 was determined using the Black-Sholes option-pricing model, with the following assumptions:

	For the Year Ended December 31, 2016
Expected term of options	6.5 years
Expected stock price volatility	131.0%
Expected dividend yield	0%
Risk-free interest rate	1.71%

(4) Mr. Casutto joined the Company July 15, 2015 as our Executive Vice President of Sales and Operations. Because Mr. Casutto was not a named executive officer for 2015, his compensation for 2015 is not included in the Summary Compensation Table.

- (5) Reflects the grant date fair value of the restricted stock granted to Mr. Casutto in 2016, calculated in accordance with FASB ASC Topic 718, disregarding the effects of estimated forfeitures, based on the closing price of our common stock of \$1.89 on the date of the grant multiplied by the number of shares of restricted stock granted.
- (6) Mr. Baker joined the Company in 2012 to spearhead all aspects of our international business. Mr. Baker’s employment with the Company was terminated on March 23, 2017. Because Mr. Baker was not a named executive officer for 2015, his compensation for 2015 is not included in the Summary Compensation Table.
- (7) Mr. Pyatt resigned from his position as the Company’s Chief Executive Officer on March 15, 2016. Mr. Pyatt had also previously served as our President until he resigned from that position in April 2014.
- (8) Amounts under All Other Compensation for 2016 include Company 401(k) matching contributions, insurance premiums paid by the Company on behalf of our named executive officers, perquisites and severance payments, as follows:

	Drexler	Casutto	Baker	Pyatt
Company 401(k) Matching Contributions	\$ —	\$ —	\$ 10,600	\$ 10,500
Severance <sup>(a)</sup>	—	—	—	1,312,000
Miscellaneous <sup>(b)</sup>	10,843	900	900	1,250
Automobile Expenses <sup>(c)</sup>	8,809	20,809	12,000	—
Attorney Fees <sup>(d)</sup>	56,503	—	—	—
Insurance Premiums	—	6,467	6,679	5,977
<b>TOTAL</b>	<b>\$ 76,155</b>	<b>\$ 28,176</b>	<b>\$ 30,179</b>	<b>\$ 1,329,727</b>

- (a) Represents the amount of severance paid or accrued in 2016 relating to Mr. Pyatt’s termination of employment under his separation agreement. For details relating to Mr. Pyatt’s separation agreement, see “Narrative Disclosure to Summary Compensation Table” below.
- (b) These amounts include amounts paid by the Company for miscellaneous expenses, including Company-provided matching contributions to health savings accounts for our named executive officer and amounts paid for expenses incurred by our named executive officers that were not adequately substantiated or did not qualify as a reimbursable business expense under our expense reimbursement policy.
- (c) We provided an automobile allowance for Mr. Casutto and Mr. Baker, and the use of a Company car by Mr. Drexler and Mr. Casutto while they are in Colorado. For the Company car provided to Mr. Drexler and Mr. Casutto, the Company insures the car under its insurance programs, pays all registration, license, taxes and other fees on the car, pays for all repairs and reimburses for all gas and maintenance costs on the car. The amount disclosed in the table above for each of Mr. Drexler and Mr. Casutto represents one-half of the total annual cost to the Company for the Company car.
- (d) Represents legal fees in relation to the convertible note that the Company entered into with Mr. Drexler and execution of the amended employment agreement with Mr. Drexler, as described under “Related Party Transactions” below.

## **Narrative Disclosure to Summary Compensation Table**

We have entered into employment agreements with each of Mr. Drexler and Mr. Casutto that include certain severance and change in control payments and entered into separation agreements with each of Mr. Pyatt and Mr. Baker that provide for severance benefits, as described below, and the negotiation of Mr. Drexler's amended and restated employment agreement. As used below, the terms "without cause," "good reason," "qualifying sale of the Company," and "change in control" are defined in the applicable agreements.

*Mr. Drexler.* Mr. Drexler is party to an employment agreement with the Company, which was entered into as of February 11, 2016 and was amended and restated as of November 18, 2016. The term of his agreement is for three years from February 11, 2016 and is subject to automatic one-year renewals upon the expiration of the initial term or subsequent term, unless either party provides at least three months' written notice of its or his intention not to renew. Under his employment agreement, Mr. Drexler is entitled to a base salary of \$550,000 per year, subject to adjustment. In connection with the execution of the employment agreement on February 11, 2016, Mr. Drexler was granted a stock option to purchase 137,362 shares of our common stock, with the option vesting in equal quarterly installments during the two-year period following the grant date, and 200,000 shares of restricted stock that will vest in full upon the first anniversary of the grant date under his amended and restated employment agreement dated November 18, 2016. He was also granted a \$750,000 cash bonus in respect of 2016 performance. In addition, Mr. Drexler is eligible to receive cash- and equity-based incentive bonuses of up to \$600,000 in cash (in addition to the \$750,000 cash bonus described above) and 350,000 shares of additional restricted stock, respectively, based upon the achievement of specified performance goals and a transaction bonus equal to between 5% and 10% of the aggregate purchase price received upon a qualifying sale of the Company for \$150 million or more that is consummated on or prior to February 10, 2019 (or February 10, 2021 as provided for below). Mr. Drexler is also eligible for grants of equity awards available to other senior executives of the Company as may be determined by the Board of Directors or the Compensation Committee.

If Mr. Drexler's employment is terminated for any reason, each equity award granted to him will fully vest and he will be entitled to any unpaid transaction bonus and cash- and equity-based performance bonuses, to the extent earned as of the date of such termination, in addition to any amounts required by law or Company policy. In addition, if Mr. Drexler's employment is terminated for any reason other than by the Company for cause or by Mr. Drexler without good reason, Mr. Drexler will remain eligible to receive the transaction bonus described above if a qualifying sale of the Company occurs prior to February 10, 2021, subject, in certain cases, to his execution of a release of claims in favor of the Company and its affiliates.

Under the employment agreement, Mr. Drexler has agreed to certain restrictions on competition and solicitation, which continue for 12 months following the termination of his employment, if his employment is terminated due to disability, by him for good reason or by the Company with or without cause. The employment agreement also contains restrictions with respect to disclosure of the Company's confidential information.

*Mr. Casutto.* Mr. Casutto is party to an employment agreement with the Company, which was entered into as of July 15, 2015. The term of the employment agreement ends on December 31, 2017, and may be extended. Under his employment agreement, Mr. Casutto is entitled to a base salary of \$300,000 per year, which may be increased at the discretion of the Compensation Committee. In addition, Mr. Casutto is eligible to receive cash bonuses based on performance criteria to be adopted by the Compensation Committee, with a potential bonus pool of up to \$300,000 per year, which may be adjusted at the discretion of the Compensation Committee. Under his employment agreement he is entitled to a monthly vehicle allowance of \$1,000 and a miscellaneous expense allowance of up to \$5,000.

If Mr. Casutto's employment is terminated without cause or he resigns for good reason, he will be entitled to receive (i) base salary continuation for the lesser of 12 months and the remainder of the term of the employment agreement, (ii) a bonus equal to the greater of 25% of his target bonus for the year (or 50%, if the termination of employment occurs between July 1 and December 31 of the year) and the bonus for the year of termination of employment, as determined by the Compensation Committee at its discretion, and (iii) reimbursement of COBRA premiums for up to 12 months. In addition, unless otherwise provided in an equity award agreement, all equity awards held by Mr. Casutto will vest in full. If Mr. Casutto's employment is terminated without cause or he resigns for good reason within six months prior to (under certain circumstances) or two years following a change in control (or the end of the term of the employment agreement, if earlier), then Mr. Casutto will be entitled to receive, in lieu of the amounts described above, (i) base salary continuation for 12 months, (ii) a bonus equal to the greater of 100% of his target bonus and the bonus for the year of termination of employment as determined by the Compensation Committee, (iii) a lump sum cash payment of \$500,000, (iv) reimbursement of COBRA premiums for up to 12 months and (v) all equity and other incentive awards held by Mr. Casutto will fully vest. If Mr. Casutto's employment is terminated due to his death or disability, he will be entitled to receive (i) the greater of 100% of his target bonus for the year of termination or the bonus for such year as determined by the Compensation Committee, (ii) reimbursement of COBRA premiums for up to 12 months and (iii) if such termination is due to his disability, base salary continuation for 6 months. All severance payable to Mr. Casutto under his employment agreement is subject to his execution (and non-revocation) of a release of claims in favor of the Company.

Under the employment agreement, Mr. Casutto has agreed to certain restrictions on competition and solicitation, which continue for 12 months following the termination of his employment. The employment agreement also contains restrictions with respect to disclosure of the Company's confidential information.

*Mr. Baker.* Mr. Baker was party to an employment agreement with the Company, which was entered into as of January 1, 2016. Under his employment agreement, Mr. Baker was entitled to a base salary of \$300,000 for 2016 and \$350,000 for 2017, subject to increase at the discretion of the Compensation Committee. In addition, Mr. Baker was eligible to receive cash bonuses based on performance criteria to be adopted by the Compensation Committee, with a potential bonus pool of up to \$400,000 per year, payable quarterly.

Under the employment agreement, Mr. Baker agreed to certain restrictions on competition and solicitation, which continue for 12 months following the termination of his employment. The employment agreement also contained restrictions with respect to disclosure of the Company's confidential information.

Mr. Baker's employment terminated on March 23, 2017. In connection with his termination of employment, subject to his execution (and non-revocation) of a release of claims in favor of the Company, Mr. Baker became entitled to receive (i) severance in the amount of \$350,000, payable over a 12-month period, a lump sum payment of \$39,378, representing Mr. Baker's accrued and unused vacation time, and a first quarter bonus of \$80,311, and 10,000 shares of unvested restricted stock held by Mr. Baker became fully vested. In addition, the restrictions on competition contained in his employment agreement were reduced to 6 months following his termination of employment.

*Mr. Pyatt.* We had been party to an employment agreement with Mr. Pyatt, which terminated in connection with his termination of employment. In connection with his employment termination in March 2016, we entered into a separation agreement with Mr. Pyatt. Under the separation agreement, in exchange for a release of claims, the Company agreed to pay Mr. Pyatt severance in the amount of \$1,062,000, payable over a 12-month period, a lump sum payment of \$250,000 and to reimburse COBRA premiums for him and his eligible dependents for up to 12 months. In addition, all outstanding equity awards held by Mr. Pyatt vested in full upon his termination of employment. Under the separation agreement, Mr. Pyatt agreed to certain restrictions on competition and solicitation, which continue for 12 months and 24 months, respectively, following the termination of his employment. The agreement also contained restrictions with respect to disclosure of the Company's confidential information.

**Outstanding Equity Awards at Year End**

The following table provides information concerning restricted stock and options to purchase shares of our common stock held by our named executive officers as of December 31, 2016.

Outstanding Equity Awards at Year End							
Name	Grant Date	Option Awards				Stock Awards	
		Number of Securities Underlying Unexercised Options (#) Exercisable	Number of Securities Underlying Unexercised Options (#) Unexercisable	Option Exercise Price (\$)	Option Expiration Date	Number of Shares of Stock that Have Not Vested <sup>(1)</sup> (#)	Market Value of Shares or Units of Stock that Have Not Vested <sup>(2)</sup> (\$)
Ryan Drexler <sup>(3)</sup>	12/8/2016					200,000	\$ 350,000
	2/22/2016	51,510	85,852	\$ 1.89	2/22/2026		
Brian Casutto	10/1/2014	—	—	—	—	30,000	52,500
	2/23/2016	—	—	—	—	50,000	87,500
Brent Baker <sup>(4)</sup>	4/28/2015	—	—	—	—	10,000	17,500
Brad Pyatt		—	—	—	—	—	—

- (1) The table below shows the vesting dates for the unvested shares of restricted stock listed in the above Outstanding Equity Awards at Year-End for 2016 Table, generally subject to the named executive officer’s continued employment through such date. The restricted stock granted to Mr. Drexler in 2016 would vest in full upon a termination of his employment or a change in control and the restricted stock granted to Mr. Baker vested in full in connection with his termination of employment on March 23, 2017. The restricted stock granted to Mr. Casutto would vest in connection with a termination of Mr. Casutto’s employment under certain circumstances, as described under “Narrative Disclosure to Summary Compensation Table” above.

Vesting Date	Drexler	Casutto	Baker
12/8/2017	200,000	—	—
5/23/2017	—	30,000	—
12/31/2017	—	15,000	5,000
5/23/2018	—	10,000	—
12/31/2018	—	15,000	5,000
5/23/2019	—	10,000	—

- (2) The market value of the restricted stock represents the product of the closing price of a share of our common stock as of December 30, 2016 (the last trading day of the year), which was \$1.75, and the number of shares of restricted stock held by the named executive officer on December 31, 2016.
- (3) The stock options granted to Mr. Drexler vest in equal quarterly installments over the two-year period commencing on from the date of grant, subject to Mr. Drexler’s continued employment. The stock options granted to Mr. Drexler would vest in full upon a termination of his employment or upon change in control.
- (4) The restricted stock granted to Mr. Baker vested in full with his termination of employment on March 23, 2017.

**DIRECTOR COMPENSATION**

***Non-Employee Director Compensation Arrangements***

The Board of Directors has adopted a non-employee director compensation policy that provides annual retainer fees to each of our non-employee directors. The annual retainer fee was at a rate of \$42,500 for the first and second quarter of 2016, and at a rate of \$55,000 for the third and fourth quarter of 2016. The Lead Director receives an additional \$25,000 annual retainer. Additionally, Committee members receive annual retainers as follows:

Committee	Q1 & Q2		Q3 & Q4	
	Chairman	Member	Chairman	Member
Audit Committee	\$ 20,000	\$ 8,500	\$ 25,000	\$ 8,500
Compensation Committee	15,000	6,500	20,000	6,500
Nominating & Governance Committee	7,500	5,000	—	5,000
Strategic Initiative Committee	7,500	5,000	—	—

We pay fees to the Board of Directors quarterly. We also reimburse our non-employee directors for their travel and out of pocket expenses. Members of the Board of Directors who also are our employees do not receive any compensation for their service as directors. Our directors do not receive Board meeting fees. During the first six months of 2016, each of our non-employee directors received restricted common stock having an annual grant date value of \$80,000, which was distributed quarterly. The number of shares for each quarterly award is determined by dividing \$20,000 by the average closing price of MusclePharm’s common stock for the first fifteen business days of the first month of each quarter. These quarterly common stock awards are vested upon grant. During the second six months of 2016, each of our non-employee directors received restricted common stock having an annual grant date value of \$175,000. The number of shares for this annual award is determined by dividing the annual grant value by the average closing price of MusclePharm’s common stock for the first fifteen business days in the third quarter. This annual common stock award is vested quarterly.

*2016 Director Compensation.* The table below sets forth the compensation paid to each non-employee member of the Board of Directors during the fiscal year ended December 31, 2016. Mr. Drexler receives no additional compensation for his service as a director, and, consequently, is not included in this table. The compensation received by Mr. Drexler as our Chief Executive Officer and President is set forth in the “Summary Compensation Table” above.

Name	Total Fees Earned or Paid in Cash	Stock Option Awards <sup>(1)</sup>	Stock Awards <sup>(2)</sup>	Total
Michael Doron <sup>(3)</sup>	\$ 108,750	\$ 94,505	\$ 233,632	\$ 436,887
William J. Bush	81,750	—	214,996	296,746
Stacey Y. Jenkins <sup>(4)</sup>	69,750	—	214,996	284,746
Noel Thompson <sup>(5)</sup>	30,750	—	39,996	70,746
Richard Estalella <sup>(5)</sup>	21,250	—	39,996	61,246

(1) The amount listed in the Option Awards column reflects the grant date fair value of the stock option granted to Mr. Doron in 2016, calculated in accordance with FASB ASC Topic 718, disregarding the effects of estimated forfeitures. The grant date fair value of the stock option was determined using the Black-Sholes option-pricing model, with the following assumptions:

	For the Year Ended December 31, 2016
Expected term of options	6.5 years
Expected stock price volatility	131.0%
Expected dividend yield	0%
Risk-free interest rate	1.71%

As of December 31, 2016, Mr. Doran held stock options to purchase an aggregate of 54,945 shares of our common stock, of which 20,604 were vested. As of December 31, 2016, no other non-employee director held stock options.



- (2) The grant date fair value of stock awards was calculated in accordance with FASB ASC Topic 718, disregarding the effects of estimated forfeitures, based upon the 15-day average closing price of a share of our common stock on the date of grant. As of December 31, 2016, the aggregate number of stock awards held by our non-employee directors was as follows:

<b>Name</b>	<b>Number of Stock Awards Outstanding as of December 31, 2016</b>
Michael Doron	97,142
William J. Bush	90,529

- (3) Mr. Doron did not receive his first quarter 2015 stock grant due to a recordkeeping oversight. Mr. Doron was issued 2,167 shares in 2016, the same number of shares other non-employee board members received in the first quarter 2015. The grant date fair value of this stock grant \$18,636 is included for 2016 in the Stock Awards column. The grant date fair value was calculated in accordance with FASB ASC Topic 718, disregarding the effects of estimated forfeitures, based upon the 15-day average closing price of the common stock of \$8.60.
- (4) Stacey Jenkins resigned as a director on December 15, 2016, which resulted in the forfeiture of 16,085 shares of unvested restricted stock held by him.
- (5) The Company's 2016 Annual Meeting of Stockholders of MusclePharm Corporation was held on June 27, 2016. Mr. Richard Estalella and Mr. Noel Thompson did not stand for re-election at this meeting.

**Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters**

**SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT**

The following table sets forth information with respect to the beneficial ownership of shares of our common stock by (i) each current director, (ii) each named executive officer, and (iii) each person who we know beneficially owns more than 5% of our common stock as of March 31, 2017.

We have determined beneficial ownership in accordance with the rules of the SEC. Except as indicated by the footnotes below, we believe, based on the information furnished to us, that the persons and entities named in the table below have sole voting and investment power with respect to all shares of common stock that they beneficially own, subject to applicable community property laws. Unless otherwise indicated below, the address for each beneficial owner listed is c/o MusclePharm Corporation, 4721 Ironton Street, Building A, Denver, Colorado 80239.

Name of Beneficial Owner	Shares Beneficially Owned	
	Common Stock <sup>(1)</sup>	
	Shares	% <sup>(2)</sup>
Named Executive Officers:		
Ryan Drexler <sup>(3)</sup>	10,786,808	47%
Brian Casutto	125,000	*
Non-Employee Directors:		
Michael Doron	184,654	1%
William Bush	90,529	*
Officers and Directors as a Group (four persons):	11,186,992	48%

\*Represents less than one percent.

- (1) This column lists beneficial ownership of voting securities as calculated under SEC rules. Otherwise, except to the extent noted below, each director, named executive officer or entity has sole voting and investment power over the shares reported. Standard brokerage accounts may include nonnegotiable provisions regarding set-offs or similar rights.
- (2) Percent of total voting power represents voting power with respect to 14,461,609 shares of common stock outstanding as of March 31, 2017. To compute the percentage of outstanding shares of common stock held by each person and unless otherwise noted, any share of common stock which such person has the right to acquire pursuant to the exercise of stock options exercisable within 60 days of March 31, 2017 or upon conversion of convertible debt is deemed to be outstanding, but is not deemed to be outstanding for the purpose of computing the percentage ownership of any other person.
- (3) Ryan Drexler, the Company's Chief Executive Officer, President and Chairman of the Board of Directors is the sole member of Consac, LLC, and as such has voting and investment power over the securities owned by the stockholder. These shares are also included in the beneficial owners of more than five percent table below.

**Beneficial Owners of More than Five Percent**

The following table shows the number of shares of our common stock, as of March 31, 2017, held by persons known to us to beneficially own more than five percent of our outstanding common stock.

Name of Beneficial Owner	Shares Beneficially Owned	
	Common Stock <sup>(1)</sup>	
	Shares	% <sup>(2)</sup>
Wynnefield Capital <sup>(3)</sup>	1,187,470	8.2%
Consac, LLC <sup>(4)</sup>	10,786,808	46.6%
Amerop Holdings, Inc. <sup>(5)</sup>	2,029,881	14.0%

- (1) This column lists beneficial ownership of voting securities as calculated under SEC rules. Otherwise, except to the extent noted below, each director, named executive officer or entity has sole voting and investment power over the shares reported. Standard brokerage accounts may include nonnegotiable provisions regarding set-offs or similar rights.
- (2) Percent of total voting power represents voting power with respect to 14,461,609 shares of common stock outstanding as of March 31, 2017. To compute the percentage of outstanding shares of common stock held by each person and unless otherwise noted, any share of common stock which such person has the right to acquire pursuant to the exercise of stock options exercisable within 60 days of March 31, 2017 or upon conversion of convertible debt is deemed to be outstanding, but is not deemed to be outstanding for the purpose of computing the percentage ownership of any other person.
- (3) Joshua Landes and Nelson Obus may be deemed to hold an indirect beneficial interest in these shares, which are directly beneficially owned by Wynnefield Partners Small Cap Value, L.P., Wynnefield Partners Small Cap Value, L.P. I, Wynnefield Small Cap Value Offshore Fund and Wynnefield Capital, Inc. Profit Sharing Plan because they are a co-managing members of Wynnefield Capital Management, LLC and principal executive officers of Wynnefield Capital, Inc. The principal place of business for Wynnefield Capital is 450 Seventh Avenue, Suite 509, New York, New York 10123.
- (4) Ryan Drexler, the Company's Chief Executive Officer, President and Chairman of the Board of Directors is the sole member of Consac, LLC, and as such has voting and investment power over the securities owned by the stockholder. These shares are also included in the Named Executive Officers portion of the Management Beneficial Ownership table above. Mr. Drexler disclaims such beneficial ownership except to the extent of his pecuniary interests therein.
- (5) Information regarding Amerop Holdings, Inc. is based solely upon a Form 3 filed by Amerop Holdings, Inc. with the SEC on March 14, 2017. Amerop Holdings, Inc. reported sole voting power with respect to 2,029,881 shares. The address of Amerop Holdings, Inc. is 1800 Broadway, Suite 100, Boulder, CO 80302.

**EQUITY COMPENSATION PLAN INFORMATION**

In 2015, we adopted the MusclePharm Corporation 2015 Incentive Compensation Plan (the “2015 Plan”). The 2015 Equity Incentive Plan was approved by our stockholders and replaced our 2010 Equity Incentive Plan. The following table sets forth the number and weighted-average exercise price of securities to be issued upon exercise of outstanding options, warrants and rights, and the number of securities remaining available for future issuance under all of our equity compensation plans, at December 31, 2016:

<u>PLAN CATEGORY</u>	<u>Number of securities to be issued upon exercise of outstanding options, warrants and rights (a)</u>	<u>Weighted average exercise price of outstanding options, warrants and rights (b)</u>	<u>Number of securities remaining available for future issuance under equity compensation plans (excluding securities reflected in column a) (c)</u>
Equity compensation plans approved by security holders:			
2015 Equity Incentive Purchase Plan	331,584	\$2.10	1,374,519
Total	331,584	\$2.10	1,374,519

**Item 13. Certain Relationships and Related Transactions, and Director Independence****RELATED PARTY TRANSACTIONS***Related-Party Convertible Notes*

In November 2016, the Company entered into a convertible secured promissory note agreement (the “2016 Convertible Note”) with Mr. Ryan Drexler, the Company’s Chief Executive Officer, President and Chairman of the Board, pursuant to which Mr. Drexler loaned the Company \$11.0 million. Proceeds from the 2016 Convertible Note were used to fund settlement of litigation. The 2016 Convertible Note is secured by all assets and properties of the Company and its subsidiaries, whether tangible or intangible. The 2016 Convertible Note carries interest at a rate of 10% per annum, or 12% if there is an event of default. Both the principal and the interest under the 2016 Convertible Note are due on November 8, 2017, unless converted earlier. Mr. Drexler may convert the outstanding principal and accrued interest into 6,010,929 shares of the Company’s common stock for \$1.83 per share at any time. The Company may prepay the 2016 Convertible Note at the aggregate principal amount therein, plus accrued interest, by giving Mr. Drexler between 15 and 60 day-notice depending upon the specific circumstances, provided that Mr. Drexler may convert the 2016 Convertible Note during the applicable notice period. The Company recorded the 2016 Convertible Note as a liability in the balance sheet and also recorded a beneficial conversion feature of \$601,000 as a debt discount upon issuance of the convertible note, which is being amortized over the term of the debt using the effective interest method. The beneficial conversion feature was calculated based on the difference between the fair value of common stock on the transaction date and the effective conversion price of the convertible note. As of December 31, 2016, the 2016 Convertible Note had an outstanding principal balance of \$11.0 million and a carrying value of \$10.5 million.

In December 2015, the Company entered into a convertible secured promissory note agreement (the “2015 Convertible Note”) with Mr. Drexler, pursuant to which he loaned the Company \$6.0 million. Proceeds from the 2015 Convertible Note were used to fund working capital requirements. The 2015 Convertible Note is secured by all assets and properties of the Company and its subsidiaries whether tangible or intangible. The 2015 Convertible Note originally carried an interest at a rate of 8% per annum, or 10% in the event of default. Both the principal and the interest under the 2015 Convertible Note were originally due in January 2017, unless converted earlier. The due date of the 2015 Convertible note was extended to November 8, 2017 and the interest rates were raised to 10% per annum, or 12% in the event of default. See Note 19 for further information. Mr. Drexler may convert the outstanding principal and accrued interest into 2,608,695 shares of common stock for \$2.30 per share at any time. The Company may prepay the convertible note at the aggregate principal amount therein plus accrued interest by giving the holder between 15 and 60 day-notice, depending upon the specific circumstances, provided that Mr. Drexler may convert the 2016 Convertible Note during the applicable notice period. The Company recorded the 2015 Convertible Note as a liability in the balance sheet and also recorded a beneficial conversion feature of \$52,000 as a debt discount upon issuance of the 2015 Convertible Note, which is being amortized over the term of the debt using the effective interest method. The beneficial conversion feature was calculated based on the difference between the fair value of common stock on the transaction date and the effective conversion price of the convertible note. As of December 31, 2016 and 2015, the convertible note had an outstanding principal balance of \$6.0 million. In connection with the Company entering into the 2015 Convertible Note with Mr. Drexler, the Company granted Mr. Drexler the right to designate two directors to the Board.

For the years ended December 31, 2016 and 2015, interest expense related to the related party convertible secured promissory notes was \$0.7 million and \$33,000, respectively. During the year ended December 31, 2016, \$0.5 million in interest was paid in cash to Mr. Drexler. No interest was paid during the year ended December 31, 2015.

#### *Debt Guaranty*

In October 2015, the Company entered into loan modification agreements with the banking institution under its line of credit and term loan to: (i) change the maturity date of the loans to January 15, 2016, (ii) prohibit the loans to be declared in default prior to December 10, 2015, except for defaults resulting from failure to make timely payments, and (iii) delete certain financial covenants from the line of credit. In consideration for these modifications, Ryan Drexler, and a family member, provided their individual guaranty for the remaining balance of the loans of \$6.2 million. In consideration for executing his guaranty, the Company issued to Mr. Drexler 28,571 shares of common stock with a grant date fair value of \$80,000, based upon the closing price of the Company’s common stock on the date of issuance.

#### *Key Executive Life Insurance*

The Company had purchased split dollar life insurance policies on certain key executives. These policies provide a split of 50% of the death benefit proceeds to the Company and 50% to the officer’s designated beneficiaries. All policies were terminated or transferred to the former employees as of December 31, 2016.

#### **Indemnification Agreements**

We have entered into indemnification agreements with each of our directors and named executive officers. The indemnification agreements and our bylaws require us to indemnify our directors to the fullest extent permitted by Nevada law.

## **Review, Approval or Ratification of Transactions with Related Parties**

We intend to adopt a written related person transactions policy that our executive officers, directors, nominees for election as a director, beneficial owners of more than 5% of our common stock, and any members of the immediate family of and any entity affiliated with any of the foregoing persons, are not permitted to enter into a material related person transaction with us without the review and approval of our Audit Committee, or a committee composed solely of independent directors in the event it is inappropriate for our Audit Committee to review such transaction due to a conflict of interest. We expect the policy to provide that any request for us to enter into a transaction with an executive officer, director, nominee for election as a director, beneficial owner of more than 5% of our common stock or with any of their immediate family members or affiliates, in which the amount involved exceeds \$120,000 will be presented to our Audit Committee for review, consideration and approval. In approving or rejecting any such proposal, we expect that our Audit Committee will consider the relevant facts and circumstances available and deemed relevant to the Audit Committee, including, but not limited to, whether the transaction is on terms no less favorable than terms generally available to an unaffiliated third party under the same or similar circumstances and the extent of the related persons interest in the transaction.

Although we have not had a written policy for the review and approval of transactions with related persons, our Board of Directors has historically reviewed and approved any transaction where a director or officer had a financial interest, including all of the transactions described above. Prior to approving such a transaction, the material facts as to a director's or officer's relationship or interest as to the agreement or transaction were disclosed to our Board of Directors. Our Board of Directors would take this information into account when evaluating the transaction and in determining whether such transaction was fair to us and in the best interest of all of our stockholders.

## **BOARD COMMITTEES**

Our Board of Directors has established an Audit Committee, a Compensation Committee, and a Nominating and Corporate Governance Committee, each of which have the composition and responsibilities described below. Members serve on these committees until their resignations or until otherwise determined by our Board of Directors. The Board of Directors has further determined that Mr. William Bush, a member of the Audit Committee of the Board of Directors, is an Audit Committee Financial Expert, as such term is defined in Item 407(d)(5) of Regulation S-K promulgated by the SEC, by virtue of his relevant experience listed in his biographical summary provided above in the section entitled Executive Officers and Directors. Each of these committees has a written charter. Current copies of the charters of the Audit Committee, Compensation Committee, and Nominating & Corporate Governance Committee are available on our website at [musclepharmcorp.com](http://musclepharmcorp.com).

*Audit Committee.* The Audit Committee reviews the work of our internal accounting and audit processes and the Independent Registered Public Accounting Firm. The Audit Committee has sole authority for the appointment, compensation and oversight of our Independent Registered Public Accounting Firm and to approve any significant non-audit relationship with the Independent Registered Public Accounting Firm. The Audit Committee is also responsible for preparing the report required by the rules of the SEC to be included in our annual proxy statement. The Audit Committee is currently comprised of Mr. Bush as the Chair and Mr. Doron. Mr. Bush joined the Audit Committee as chairman in May 2015, Mr. Doron joined the Audit Committee in October 2012. During 2016, the Audit Committee held two meetings.

*Compensation Committee.* The Compensation Committee approves our goals and objectives relevant to compensation, stays informed as to market levels of compensation and, based on evaluations submitted by management, recommends to our Board of Directors compensation levels and systems for the Board of Directors and our officers that correspond to our goals and objectives. The Compensation Committee, with the assistance of Longnecker, also produces an annual report on executive compensation for inclusion in our proxy statement. The Compensation Committee is currently comprised of Mr. Doron as the Chair and Mr. Bush. Mr. Doron joined the Compensation Committee as chairman in May 2015 and Mr. Bush joined as a member in May 2015. During 2016, the Compensation Committee held four meetings.

*Nominating & Corporate Governance Committee.* The Nominating & Corporate Governance Committee is responsible for recommending to our Board of Directors individuals to be nominated as directors and committee members. This includes evaluation of new candidates as well as evaluation of current directors. In evaluating the current directors, the Nominating & Corporate Governance Committee conducted a thorough self-evaluation process, which included the use of questionnaires and a third-party expert that interviewed each of the directors and provided an analysis of the results of the interviews to the committee. This committee is also responsible for developing and recommending to the Board of Directors our corporate governance guidelines, as well as reviewing and recommending revisions to the guidelines on a regular basis. The Nominating & Corporate Governance Committee is currently comprised of Mr. Doron as the Chair. During 2016, the Nominating & Corporate Governance Committee held no meetings.

## **DIRECTOR INDEPENDENCE**

The rules of NASDAQ generally require that a majority of the members of a listed company's Board of Directors be independent. In addition, the listing rules generally require that, subject to specified exceptions, each member of a listed company's audit, compensation, and governance committees be independent. Although we are an over-the-counter listed company we have nevertheless opted under our Corporate Governance Guidelines to comply with certain NASDAQ corporate governance rules requiring director independence. The Board of Directors has determined that all of the Company's directors nominated for election, other than Mr. Drexler, are each independent directors as such term is defined in NASDAQ Marketplace Rule 5605(a)(2). Additionally, we have Compensation, Nominating and Corporate Governance, and Audit committees comprised solely of independent directors.

Audit Committee members must also satisfy the independence criteria set forth in Rule 10A-3 under the Exchange Act. In order to be considered independent for purposes of Rule 10A-3, a member of an audit committee of a listed company may not, other than in his or her capacity as a member of the audit committee, the Board of Directors, or any other board committee: accept, directly or indirectly, any consulting, advisory, or other compensatory fee from the listed company or any of its subsidiaries; or be an affiliated person of the listed company or any of its subsidiaries.

Our Board of Directors has determined that none of our non-employee directors has a relationship that would interfere with the exercise of independent judgment in carrying out the responsibilities of a director and that each of these directors is independent as that term is defined under the rules of NASDAQ. Our Board of Directors has also determined that past and present Directors, who comprise our Audit Committee, Compensation Committee, and our Nominating and Corporate Governance Committee, satisfied and satisfy the independence standards for those committees established by applicable SEC rules, NASDAQ rules and applicable rules of the Internal Revenue Code of 1986, as amended.

**Item 14. Principal Accounting Fees and Services****Fees Paid to Independent Registered Public Accounting Firm <sup>(1)</sup>**

The following table shows fees and expenses that we paid (or accrued) for professional services rendered by EKS&H LLLP for the years ended December 31, 2016 and 2015:

	<u>2016</u>	<u>2015</u>
Audit fees <sup>(1)</sup>	\$ 239,000	\$ 305,000
Audit-related fees <sup>(2)</sup>	60,000	55,000
All other fees <sup>(3)</sup>	24,959	20,000
Total	<u>\$ 323,959</u>	<u>\$ 380,000</u>

(1) Represents the aggregate fees billed for the audit of the Company's financial statements, review of the financial statements included in the Company's quarterly reports and services in connection with the statutory and regulatory filings or engagements for those fiscal years.

(2) Represents the aggregate fees billed for assurance and related services that are reasonably related to the performance of the audit or review of the Company's financial statements and are not reported under audit fees.

(3) Represents the aggregate fees billed for all products and services provided that are not included under audit fees, audit-related fees or tax fees. These services included a review of a Registration Statement on Form S-8 and related consent procedures, review of the agreement to sell our wholly-owned subsidiary, BioZone Laboratories, Inc. and various Forms 8-K.

**Audit Committee Pre-Approval Policies**

Before an Independent Registered Public Accounting Firm is engaged by us or our subsidiaries to render audit or non-audit services, the Audit Committee shall pre-approve the engagement. Audit Committee pre-approval of audit and non-audit services will not be required if the engagement for the services is entered into pursuant to pre-approval policies and procedures established by the Audit Committee regarding our engagement of the Independent Registered Public Accounting Firm, provided the policies and procedures are detailed as to the particular service, the Audit Committee is informed of each service provided and such policies and procedures do not include delegation of the Audit Committee's responsibilities under the Exchange Act to our management. The Audit Committee may delegate to one or more designated members of the Audit Committee the authority to grant pre-approvals, provided such approvals are presented to the Audit Committee at a subsequent meeting. If the Audit Committee elects to establish pre-approval policies and procedures regarding non-audit services, the Audit Committee must be informed of each non-audit service provided by the Independent Registered Public Accounting Firm. Audit Committee pre-approval of non-audit services (other than review and attest services) also will not be required if such services fall within available exceptions established by the SEC. All non-audit services provided by EKS&H LLLP during fiscal years 2016 and 2015 were pre-approved by the Audit Committee in accordance with the pre-approval policy described above.



**PART IV**

**Item 15. Exhibits and Financial Statement Schedules**

(a) The following documents were filed as part of the Original 10-K Filing:

1. *Financial Statements*. The consolidated financial statements of MusclePharm Corporation included in Part II, Item 8 of the Original 10-K Filing.
2. *Financial Statement Schedule*. The schedules to the financial statements included in Part II, Item 8 of the Original 10-K Filing.
3. *Exhibits*. The exhibits listed on the Index to Exhibits of the Original 10-K Filing.

The exhibits listed on the Index to Exhibits of this Amendment are being filed as part of this Amendment.

**Signatures**

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

MUSCLEPHARM CORPORATION (the "Registrant")

Dated: May 1, 2017

By: /s/ Ryan Drexler

Chief Executive Officer and President  
(Principal Executive Officer)

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the Registrant and in the capacities and on the dates indicated.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Ryan Drexler</u> Ryan Drexler	Chief Executive Officer, President and Chairman (Principal Executive Officer)	May 1, 2017
<u>/s/ Douglas West</u> Douglas West	Vice President of Finance and Administration (Interim Principal Financial Officer and Interim Principal Accounting Officer)	May 1, 2017
<u>/s/ Michael J. Doron</u> Michael J. Doron	Director	May 1, 2017
<u>/s/ William Bush</u> William Bush	Director	May 1, 2017

Exhibit Index

Exhibit No.	Description	Incorporated by Reference		
		Form	SEC File Number	Exhibit Filing Date
10.1*	Executive Employment Agreement, dated July 15, 2015 between MusclePharm Corporation and Brian Casutto			
10.2*	Executive Employment Agreement, dated January 1, 2016 between MusclePharm Corporation and Brent Baker			
10.3*	Separation Agreement, dated March 23, 2017, between MusclePharm Corporation and Brent Baker			
31.1*	Certification of the Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.			
31.2*	Certification of the interim Principal Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.			
32.1**	Certification of the Chief Executive Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.			
32.2**	Certification of the interim Principal Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.			

\* Filed herewith

\*\* Furnished herewith

## EXECUTIVE EMPLOYMENT AGREEMENT

THIS EXECUTIVE EMPLOYMENT AGREEMENT ("**Agreement**") is made and entered into as of July 15, 2015 (the "**Effective Date**"), by and between MusclePharm Corporation, a Nevada Corporation (the "**Company**"), and Brian Casutto, an individual ("**Executive**"). The Company and Executive are sometimes referred to herein as a "party" or collectively as the "parties."

### RECITALS

WHEREAS, Executive is willing to continue to be employed by the Company and provide services to the Company under the terms and conditions stated herein, as of July 15, 2015 (the "**Start Date**"); and

WHEREAS, the Company and Executive now mutually desire to enter into this Agreement as approved by the Board.

NOW, THEREFORE, in consideration of the foregoing, of the mutual covenants and agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, agree as follows:

#### 1. Employment and Duties

1.1 Employment. The Company hereby agrees to employ Executive as Executive Vice President - Sales & Operations of the Company and Executive hereby accepts such employment as of the Start Date pursuant to the terms, covenants and conditions set forth herein. Executive shall report directly to a person to be determined by the Chairman of the Board of Directors of the Company. In accordance with Section 5.2 (Termination by the Company Without Cause), and subject to the severance provisions set forth in Section 6.3, to the extent applicable, the Executive shall be an employee at will of the Company.

1.2 Duties. Executive shall have the overall responsibility as the Executive Vice President - Sales & Operations of the Company and its operations, and shall perform all duties and responsibilities and have such powers which are commonly incident to the offices and positions held by him, as well as any additional responsibilities and authority as may be from time to time assigned or delegated to him by the Chief Executive Officer of the Company or the President and the Board. Executive shall perform the duties assigned to him to the best of his ability and in a manner, satisfactory to the Company.

1.3 Time and Efforts. Executive will devote his full business time, efforts, attention, and energies to the business of the Company and to the performance of Executive's duties hereunder during the Term (as defined below), and will not engage in any other business, profession or occupation for compensation or otherwise which would conflict or interfere with the performance of such services, either directly or indirectly, without the prior written consent of the Company; provided that, nothing herein shall preclude Executive from (i) continuing to serve on any board of directors or trustees of any "not for profit" organization, (ii) being involved in charitable activities, or (iii) managing his personal and family passive investments; provided, further that, in each case, and in the aggregate, such activities shall not materially conflict with or interfere with the performance of Executive's duties hereunder or conflict with his duty of loyalty and/or fiduciary duties owed to the Company.

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## 2. Term

Unless earlier terminated as provided in Section 5, the Company shall employ Executive in the capacity set forth herein for a term commencing on the Start Date and ending on December 31, 2017 (the "**Expiration Date**"). Such period, as may be terminated earlier or extended, to be referred to herein as the "**Term**".

## 3. Compensation

As compensation for the services to be rendered by Executive for and on behalf of the Company hereunder, Executive shall be entitled to the following:

3.1 Base Salary. Executive shall receive an annual base salary of \$300,000. Salary payments shall be subject to all applicable federal and state withholding, payroll, and other taxes, and all applicable deductions for benefits as may be required by law or Executive's authorization. Executive's Base Salary will be reviewed at least annually by the Compensation Committee (the "**Committee**") of the Board and may be increased at the discretion of the Committee.

3.2 Bonus. In addition to Base Salary, Executive shall be eligible to receive one or more cash bonuses to be determined by the Committee in its sole discretion based on performance criteria to be adopted by the Committee, with a potential bonus pool of up to \$300,000 per year (to be adjusted prorated for calendar year 2015), which may be adjusted at the discretion of the Committee. Any such bonus or bonuses shall be subject to all applicable federal and state withholding, payroll and other taxes, and all applicable deductions for benefits as may be required by law, and shall be paid to Executive no later than the 15th day of the third calendar month following the end of the fiscal year (or other performance period) with respect to which the bonus relates.

3.3 Equity Compensation. Executive shall be entitled to receive 50,000 shares of the company's common stock within thirty (30) days of the Effective Date. The restricted stock agreement pertaining to such grant of restricted shares shall contain a three (3) year vesting schedule and other customary terms and conditions in accordance with the Company's prior practices. In addition to the grant provided in this Section 3.3, Executive may, as determined by the Committee in its discretion, periodically receive grants of stock options, restricted stock or other equity-related awards from the Company's various equity compensation plans, subject to the terms and conditions thereof.

3.4 Compensation Committee. Any bonus and any equity consideration to be provided to Executive shall be reviewed and determined by the Committee on an annual basis to set performance criteria for purposes of compliance with the requirements of Section 162(m) of the Internal Revenue Code of 1986, as amended (the "**Code**").

3.5 Expenses. The Company shall reimburse Executive for all reasonable business expenses incurred by Executive in the performance of his duties, if Executive provides adequate documentation required by law and by the policies and procedures of the Company, as adopted and amended from time to time, if in no event shall Executive submit any required documentation later than sixty (60) days after the end of the calendar year in which such expense was incurred. Any such reimbursement shall be made as soon as reasonably practicable but in no event, later than the 15th day of the third month following the calendar year in which the applicable expense was incurred. Executive acknowledges and agrees that all such expenses will be subject to the oversight of

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the Audit Committee of the Board. The Company shall also provide Executive with a laptop computer and cell phone for his business use during the Term.

3.6 Vacation. Executive shall be entitled to accrue four (4) weeks of paid vacation each year pursuant to the terms and provisions of the Company's vacation leave policies as in effect from time to time. Although unused vacation may be carried over from year to year, the maximum cap on accrual shall be equal to one hundred fifty percent (150%) of the annual accrual.

3.7 Benefits. Executive shall be entitled to participate in and receive all benefits made available by the Company to its executive officers, subject to and on a consistent basis with the terms, conditions and overall administration of such plans and arrangements, including without limitation, medical, dental, vision, life and disability insurance plans and coverage, and defined benefit, defined contribution or other 401 (k) program, including all Company matching provisions. Executive shall be entitled to a taxable monthly vehicle allowance of \$1,000, and a miscellaneous expense allowance of up to \$ 5 , 0

#### 4. Confidential Information; Non-Compete; Non-Solicitation

4.1 Confidential Information. Executive acknowledges that, during his employment, he will have access to and will receive information which constitutes trade secrets, is of a confidential nature, is of significant value to the Company and/or is a foundation on which the business of the Company is predicated. With respect to all such Confidential Information (as defined hereafter), Executive agrees, during the Term and thereafter, not to disclose such Confidential Information to any person other than an employee, counsel, or advisor of the Company or a person to whom disclosure is reasonably necessary or appropriate about the performance by Executive of his duties hereunder nor to use such Confidential Information for any purpose other than the performance of his duties hereunder. For purposes of this Agreement, the term "**Confidential Information**" includes all data or material (regardless of form) with respect to the Company or any of its assets, prospects, business activities, officers, directors, employees, borrowers, or clients which is: (a) a trade secret, as defined by the Uniform Trade Secrets Act; (b) provided, disclosed, or delivered to Executive by the Company, any officer, director, employee, agent, attorney, accountant, consultant, or other person or entity employed by the Company in any capacity, any client, borrower, advisor, or business associate of the Company, or any public authority having jurisdiction over the Company or any business activity conducted by the Company; or (c) produced, developed, obtained or prepared by or on behalf of Executive or the Company (whether or not such information was developed in the performance of this Agreement). Notwithstanding the foregoing, the term "Confidential Information" shall not include any information, data, or material which, at the time of disclosure or use, was generally available to the public other than by a breach of this Agreement, was available to the party to whom disclosed on a non-confidential basis by disclosure or access provided by the Company or a third party without breaching any obligations of the Company or such third party, or was otherwise developed or obtained legally and independently by the person to whom disclosed without a breach of this Agreement. This Section 4.1 shall not preclude Executive from disclosing Confidential Information if compelled to do so by law or valid legal process, provided that if Executive believes Executive is so compelled by law or valid legal process, Executive will notify the Company in writing sufficiently in advance of any such disclosure to allow the Company the opportunity to defend, limit, or otherwise protect its interests against such disclosure unless such notice is prohibited by law. The rights and obligations of the parties under this paragraph shall survive the expiration or termination of this Agreement for any reason.

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4.2 Non-Competition. As part of the consideration for the compensation and benefits to be paid to Executive hereunder, and in order to protect the Confidential Information, business goodwill, and business opportunities of the Company, Executive agrees that, during the Term and for a period of twelve (12) months after the termination of Executive's employment and this Agreement, he will not, directly or indirectly, engage in or become interested financially in, as a principal, employee, partner, contractor, shareholder, agent, manager, owner, advisor, lender, guarantor, officer, or director, any business (other than the Company) that is engaged in the nutritional supplement industry and /or related products; provided, however, that Executive shall be entitled to continue to invest in stocks, bonds, or other securities in any such business (without otherwise participating in such business) if: (a) such stocks, bonds, or other securities are listed on any United States securities exchange or are publicly traded in an over the counter market; and such investment does not exceed, in the case of any capital stock of any one issuer, five percent of the issued and outstanding capital stock, or in the case of bonds or other securities, five percent of the aggregate principal amount thereof issued and outstanding; or (b) such investment is completely passive and no control or influence over the management or policies of such business is exercised. The Executive here by agrees that in addition to any other remedies available to the Company at law or in equity, in the event of a breach of this Section 4.2 by the executive, the Company shall no longer be obligated to make any severance payments to the Executive.

4.3 Non-Solicitation. Executive agrees that he will not, at any time during the Term, or at any time within twelve (12) months after the termination of his employment, for his own account or benefit or for the account or benefit of any other person, firm or entity, directly or indirectly, solicit for employment any employee of the Company (or any person who was an employee of the Company in the 90-day period before such solicitation) or induce any employee of the Company (or any person who was an employee of the Company in the 90-day period before such inducement) to terminate his employment with the Company. Notwithstanding the above, the restrictions relating to persons employed in the 90-day period referenced in the parentheticals in the immediately preceding sentence shall not apply to a person who was a party to an employment agreement with the Company and who terminates his employment for Good Reason or is terminated by the Company without Cause. The rights and obligations of the parties under this Section 4.3 shall survive the expiration or termination of this Agreement for any reason.

4.4 Proprietary Material. Executive expressly agrees that all improvements, inventions, discoveries, processes, or know-how that are generated or conceived by Executive during the Term, whether conceived during Executive's regular working hours or otherwise, will be the sole and exclusive property of the Company. Whenever requested by the Company (either during the Term or thereafter), Executive will assign or execute any and all applications, assignments and/or other documents, and do all things which the Company reasonably deems necessary or appropriate, in order to permit the Company to: (a) assign and convey, or otherwise make available to the Company, the sole and exclusive right, title, and interest in and to said improvements, inventions, discoveries, processes or know-how; or (b) apply for, obtain, maintain, enforce and defend patents, copyrights, trade names, or trademarks of the United States or of foreign countries for said improvements, inventions, discoveries, processes, or know-how. However, the improvements, inventions, discoveries, processes, or know-how generated or conceived by Executive and referred to in this Section 4.4 (except those which may be included in the patents, copyrights, or registered trade names or trademarks of the Company) will not be exclusive property of the Company at any time after having been disclosed or revealed or have otherwise become available to the public or to a third party on a non-confidential basis other than by a breach of this Agreement, or after they have been independently developed or discussed without a breach of this Agreement by a third party who has no obligation to the Company.

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The rights and obligations of the parties under this Section 4.4 shall survive the expiration or termination of this Agreement for any reason.

4.5 Injunctive Relief. Executive acknowledges and agrees that any violation of Sections 4.1, 4.2, 4.3 or 4.4 of this Agreement would result in irreparable harm to the Company and, therefore, agrees that, in the event of an actual, suspected, or threatened breach of Sections 4.1, 4.2, 4.3 or 4.4 of this Agreement, the Company shall be entitled to an injunction restraining Executive from committing or continuing such actual, suspected or threatened breach. The parties acknowledge and agree that the right to such injunctive relief shall be cumulative and shall not be in lieu of, or be construed as a waiver of the Company's right to pursue, any other remedies to which it may be entitled in law or equity. The parties agree that for purposes of Sections 4.1, 4.2, 4.3 and 4.4 of this Agreement, the term "Company" shall include the Company and its affiliates.

## 5. Termination

Executive's employment by the Company and this Agreement may be terminated before the expiration of the Term, without breach of this Agreement, in accordance with the provisions set forth below:

5.1 Termination by the Company for Cause. The Company may terminate Executive's employment and this Agreement for Cause (as defined below), but only after: (i) giving Executive written notice of the failure or conduct which the Company believes to constitute Cause; and (ii) with respect to elements (a) through (e) below, providing Executive a reasonable opportunity, and in no event more than twenty (20) days, to cure such failure or conduct, unless the Board determines in its good faith judgment that such failure or conduct is not reasonably capable of being cured. In the event Executive does not cure the alleged failure or conduct within the time frame provided for such cure by the Company, the Company shall send him written notice specifying the effective date of termination. The failure by the Company to set forth in the notice referenced in this Section 5.1 any fact or circumstance which contributes to a showing of Cause shall not waive any right of the Company to assert, or preclude the Company from asserting, such fact or circumstance in enforcing its rights hereunder. For purposes of this Agreement, the term "**Cause**" means:

- (a) conviction of a felony or a crime involving fraud or moral turpitude; or
  - (b) theft, material act of dishonesty or fraud, intentional falsification of any employment or Corporation records, or commission of any criminal act which impairs participant's ability to perform appropriate employment duties for the Corporation; or
  - (c) intentional or reckless conduct or gross negligence materially harmful to the Corporation or the successor to the Corporation after a Change in Control, including violation of a non-competition or confidentiality agreement; or
  - (d) willful failure to follow lawful instructions of the person or body to which participant reports; or
  - (e) gross negligence or willful misconduct in the performance of participant's assigned duties. Cause shall not include mere unsatisfactory performance in the achievement of participant's job objectives.
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If the Company terminates Executive's employment for Cause, then Executive shall be entitled to receive the payments and benefits set forth in Section 6.1 below.

The Company may suspend Executive with pay pending an investigation authorized by the Company or a governmental authority or a determination whether Executive has engaged in acts or omissions constituting Cause, and such paid suspension shall not constitute Good Reason or a termination of Executive's employment.

## 5.2 Termination by the Company Without Cause.

(a) The Company may terminate the employment of Executive and this Agreement at any time during the Term of this Agreement without Cause by giving Executive written notice of such termination, to the extent permitted by law, to be immediately effective following the giving of such written notice, in which case Executive shall receive the compensation, severance, and benefit continuation required by Section 6.3 below; provided however, that if Company terminates Executive's employment without Cause during the Protection Period (as defined below), then Executive shall be entitled to receive the payments and benefits set forth in Section 6.4 below.

(b) For purposes of this Agreement, the term "**Protection Period**" means the period of time commencing on the date of the first occurrence of a Change in Control (as defined below in Section 5.2(c)) and continuing until the earlier of the (i) the second anniversary of the first occurrence of the Change in Control and (ii) the Term of this Agreement; and the six (6) month period prior to such Change in Control date if the Executive is terminated without Cause or terminates for Good Reason and in either case such termination (x) was requested by the third party that effectuates the Change in Control, or (y) occurs in connection with or in anticipation of a Change in Control, it being agreed that any such action taken following stockholder approval of a transaction which if consummated would constitute a Change in Control shall be deemed to be in anticipation of a Change in Control provided such transaction is actually consummated.

(c) For purposes of this Agreement, the term "**Change in Control**" means the happening of any of the following events:

i. a tender offer (or series of related offers) shall be made and consummated for the ownership of 50% or more of the outstanding voting securities of the Company, unless as a result of such tender offer more than 50% of the outstanding voting securities of the surviving or resulting corporation shall be owned in the aggregate by the stockholders of the Company (as of the time immediately prior to the commencement of such offer), any employee benefit plan of the Company or its subsidiaries, and their affiliates;

ii. the Company shall be merged or consolidated with another corporation, unless as a result of such merger or consolidation more than 50% of the outstanding voting securities of the surviving or resulting corporation shall be owned in the aggregate by the stockholders of the Company (as of the time immediately prior to such transaction), any employee benefit plan of the Company or its subsidiaries, and their affiliates;

(iii) the Company shall sell substantially all of its assets to another corporation that is not wholly owned by the Company, unless as a result of such sale more than 50% of such assets shall be owned in the aggregate by the stockholders of the Company (as of the time

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immediately prior to such transaction), any employee benefit plan of the Company or its subsidiaries and their affiliates; or

(iv) a person (as defined below) shall acquire 50% or more of the outstanding voting securities of the Company (whether directly, indirectly, beneficially or of record), unless as a result of such acquisition more than 50% of the outstanding voting securities of the surviving or resulting corporation shall be owned in the aggregate by the stockholders of the Company (as of the time immediately prior to the first acquisition of such securities by such person), any employee benefit plan of the Corporation or its subsidiaries, and their affiliates.

5.3 Termination by the Company Due to Inability to Perform or Death of Executive and this Agreement may be terminated by the Company as follows:

(a) To the extent permitted by law, upon notice to Executive in the event of Executive's Inability to Perform. For this Purpose, the term "**Inability to Perform**" means and shall be deemed to have occurred if Executive has been determined under the Company's long-term disability plan to be eligible for long-term disability benefits or, in the event the Company does not maintain such a plan or in the absence of Executive's participation in or application for benefits under such a plan, such term shall mean the inability of Executive, despite any reasonable accommodation required by law, due to bodily injury or disease or any other physical or mental incapacity, to perform the services required hereunder for a period of ninety (90) consecutive days; or

(b) Immediately upon the death of Executive.

5.4 Termination by Executive for Good Reason. Executive may terminate his employment and this Agreement at any time for Good Reason (as defined below). A termination of employment and this Agreement by Executive for Good Reason shall entitle Executive to payments and other benefits as specified in Section 6.3, unless such termination occurs during the Protection Period in which case the payments and benefits in Section 6.4 shall apply. For purposes of this Agreement, the term "**Good Reason**" means, subject to the notice and cure provisions herein, any of the following actions if taken without Executive's prior written consent: (a) the assignment to the Executive of any duties inconsistent with the position in the Corporation that Executive held immediately prior to the assignment; (b) a Change of Control resulting in a significant adverse alteration in the status or conditions of Executive's participation with the Corporation or other nature of Executive's responsibilities from those in effect prior to such Change of Control, including any significant alteration in Holder's responsibilities immediately prior to such Change in Control; (c) the failure by the Company to continue to provide the Executive with benefits substantially similar to those enjoyed by the Executive prior to such failure; or (d) any other action or inaction that constitutes a material breach by the Company of this Agreement. To exercise the option to terminate employment for Good Reason, Executive must provide written notice to the Company of Executive's belief that Good Reason exists within sixty (60) days of the initial existence of the Good Reason condition, and that notice shall describe in reasonable detail the condition(s) believed to constitute Good Reason. The Company then shall have thirty (30) days to remedy the Good Reason condition(s). If not remedied within that 30-day period or if the Company notifies Executive that it does not intend to cure such condition(s) before the end of that 30-day period, Executive may submit a notice of termination to the Company; provided, however, that the notice of termination invoking Executive's option to terminate employment for Good Reason must be given no later than one hundred (100) days after the date the Good Reason condition first arose; otherwise, Executive shall be deemed to have accepted the condition(s), or the Company's correction of such condition(s), that may have given rise to the existence of Good Reason.

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5.5 Termination by Executive Without Good Reason. Executive may also terminate his employment and this Agreement without Good Reason by providing at least ninety (90) days' written notice of such termination to the Company. In the event of a termination pursuant to this Section 5.5, Executive shall be entitled to payments and other benefits as specified in Section 6.1 below. At the Company's option, the Company may accelerate the date of Executive's termination of employment by paying to Executive the Base Salary and value of the benefits that Executive would have received during the period by which the date of termination is so accelerated and such acceleration shall not change the characterization of the termination by Executive as a termination without Good Reason.

5.6 Return of Confidential Information and Company Property. Upon termination of Executive's employment for any reason, Executive shall immediately return all Confidential Information and other Company property to the Company.

## 6. Effect of Termination

6.1 Termination by the Company for Cause or Termination by Executive Without Good Reason. In the event Executive's employment and this Agreement are terminated pursuant to Sections 5.1 or 5.5 above:

(a) The Company shall pay to Executive, or his representatives, on the date of termination of employment only that portion of the Base Salary provided in Section 3.1 that has been accrued through the date of termination, any accrued but unpaid vacation pay provided in Section 3.6, any accrued benefits provided in Section 3.7, and any expense reimbursements due and owing to Executive as of the date of termination; and

(b) Executive shall not be entitled to: (i) any other salary or compensation; (ii) any bonus pursuant to Section 3.2; (iii) any equity consideration pursuant to Section 3.3; nor (iv) any additional benefits pursuant to Section 3.7; and

(c) Executive shall return the laptop computer and cellular telephone within five (5) business days of the date of termination.

6.2 Termination by the Company Due to Executive's Inability to Perform or Death. In the event Executive's employment and this Agreement are terminated pursuant to Section 5.3 above, the Company shall pay to Executive, or his representatives, all of the following:

(a) The payments, if any, referred to in Section 6.1(a) above as of the date of termination; and

(b) Subject to compliance with Section 409A of the Code, an amount equal to the greater of (i) one hundred percent (100%) of Executive's target bonus for the year in which the date of termination occurs or (ii) a bonus for such year as may be determined by the Committee in its sole discretion. This amount shall be paid in the form of a lump sum, less applicable statutory deductions and withholdings, as soon as practicable after the date of termination, but no later than March 15 of the year immediately following the year in which the date of termination occurs; and

(c) For a termination due to Inability to Perform only, and provided that Executive

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or his representative signs a Release (as defined in Section 17), then the Company shall pay Executive a severance equal to six (6) months of Executive's Base Salary at the time of termination. This severance amount shall be paid to Executive in equal regular installments over the six (6) month period pursuant to the Company's regular payroll periods, less applicable statutory deductions and tax withholdings. The first installment shall be paid to Executive on the first payroll period after the date of termination and after the effective date of the Release; and

(d) Should Executive or his representatives timely elect to continue coverage under a group health insurance plan sponsored by the Company or one of its affiliates and timely make the premium payments, reimburse Executive on a monthly basis for the cost of continued coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA") or other applicable law for Executive and any eligible dependents until the earlier of (i) the date Executive is no longer entitled to continuation coverage under COBRA or (ii) for twelve (12) months after the date of termination.

6.3 Termination by the Company Without Cause and Without a Change in Control or by Executive for Good Reason Without a Change in Control. In the event Executive's employment is terminated pursuant to Sections 5.2 or 5.4 above at any time in which there has not been a qualifying Change in Control termination, the Company shall pay Executive on the date of termination the payments referred to in Section 6.1 (a) above, and provided that Executive signs a Release (as defined in Section 17), Executive shall also receive all of the following:

(a) A severance package equal to the lesser of (i) twelve (12) months of Executive's Base Salary at the time of termination and (ii) the Base Salary remaining under the Term of this Agreement. This severance amount shall be paid to Executive in equal regular installments over the twelve (12) month period pursuant to the Company's regular payroll periods, less applicable statutory deductions and tax withholdings. The first installment shall be paid to Executive on the first payroll period after the date of termination and after the effective date of the Release; and

(b) Subject to compliance with Section 409A of the Code, an amount equal to the greater of (i) (A) if the date of termination occurs between January 1 and June 30, then twenty-five percent (25%) of Executive's target bonus for the year in which the date of termination occurs or (B) if the date of termination occurs between July 1 and December 31, then fifty percent (50%) of Executive's target bonus for the year in which the date of termination occurs; and (ii) a bonus for such year as may be determined by the Committee in its sole discretion. This amount shall be paid in the form of a lump sum, less applicable statutory deductions and withholdings, as soon as practicable after the date of termination, but no later than March 15 of the year immediately following the year in which the date of termination occurs;

(c) Should Executive or his representatives timely elect to continue coverage under a group health insurance plan sponsored by the Company or one of its affiliates and timely make the premium payments, reimburse Executive on a monthly basis for the cost of continued coverage under the COBRA for Executive and any eligible dependents until the earlier of (i) the date Executive is no longer entitled to continuation coverage under COBRA or (ii) for twelve (12) months after the date of termination; and

(d) Unless otherwise provided in the equity award agreement, all stock options and other stock incentive awards held by Executive will become fully vested and immediately exercisable and all restrictions on any restricted stock held by Executive will be removed; provided, however, Executive shall not be released from the black-out periods for the next financial reporting quarter

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following the date of termination or Securities Exchange Act of 1934, as amended (the "**Exchange Act**"), trading obligations typically required for an executive in this position.

6.4 Termination by the Company Without Cause After a Change in Control or by Executive for Good Reason After a Change in Control. In the event Executive's employment is terminated pursuant to Sections 5.2 or 5.4 above during the Protection Period, the Company shall pay Executive on the date of termination the payments referred to in Section 6.1 (a) above, and provided that Executive signs a Release (as defined in Section 17), Executive shall also receive all of the following:

(a) Subject to compliance with Section 409A of the Code, a severance package equal to one year of Executive's Base Salary immediately prior to the Change in Control. This severance amount shall be paid to Executive in equal regular installments over a 12-month period pursuant to the Company's regular payroll periods, less applicable statutory deductions and tax withholdings. The first installment shall be paid to Executive on the first payroll period after the date of termination and after the effective date of the Release; and

(b) Subject to compliance with Section 409A of the Code, an amount equal to the greater of (i) one hundred percent (100%) of Executive's target bonus for the year in which the date of termination occurs or (ii) a bonus for such year as may be determined by the Committee in its sole discretion. This amount shall be paid in the form of a lump sum, less applicable statutory deductions and withholdings, as soon as practicable after the date of termination, but no later than March 15 of the year immediately following the year in which the date of termination occurs; and

(c) A one-time cash payment of five hundred thousand dollars (\$500,000.00), less applicable statutory deductions and tax withholdings, to be paid within thirty (30) days of the date of termination; and

(d) Should Executive or his representatives timely elect to continue coverage under a group health insurance plan sponsored by the Company or one of its affiliates and timely make the premium payments, reimburse Executive on a monthly basis for the cost of continued coverage under the COBRA for Executive and any eligible dependents until the earlier of (i) the date Executive is no longer entitled to continuation coverage under COBRA or (ii) for twelve (12) months after the date of termination; and

(e) All stock options and other incentive awards held by Executive will become fully vested and immediately exercisable and all restrictions on any restricted stock held by Executive will be removed; provided, however, Executive shall not be released from the black-out periods for the next financial quarter following the date of termination or Exchange Act, trading obligations typically required for an executive in this position.

## **7. Successors and Assigns**

This Agreement is personal in nature, and neither this Agreement nor any part of any obligation herein shall be assignable by Executive. The Company shall be entitled to assign this Agreement to any affiliate of the Company or any person or entity that assumes the ownership and control of the business of the Company. This Agreement shall inure to the benefit of and shall be binding upon the parties and their successors and assigns.

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## **8. Severability**

Should any term, provision, covenant or condition of this Agreement be held to be void or invalid, the same shall not affect any other term, provision, covenant or condition of this Agreement, but such remainder shall continue in full force and effect as though each such voided term, provision, covenant, or condition is not contained herein.

## **9. Governing Law and Venue**

This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado, excluding its choice-of-law principles. Subject to Sections 4.5 and 10, and without in any way limiting the applicability of binding arbitration, each of the parties submits to the exclusive jurisdiction of any state or federal court sitting in Denver, Colorado in any action or proceeding arising out of or relating to this Agreement and further agrees that all claims in respect of the action or proceeding may be heard and determined in any such court to the extent that any court proceeding is necessary in connection with Sections 4.5 and 10, and further agrees not to bring any action or proceeding arising out of or relating to this Agreement in any other court. Each of the parties agrees that a final judgment in any action or proceeding so brought shall be conclusive and may be enforced by suit on the judgment or in any other manner so provided by law.

## **10. Binding Arbitration**

Except as provided in Section 4.5, any and all disputes which involve or relate in any way to this Agreement and/or to Executive's employment, Executive's termination of employment with the Company or termination of this Executive's, whether initiated by Executive or by the Company and whether based on contract, tort, statute, or common law, shall be submitted to and resolved by final and binding arbitration as the exclusive method for resolving all such disputes. The arbitration shall be private and confidential and conducted in Denver, Colorado pursuant to the Federal Arbitration Act and applicable Colorado law, and pursuant to the applicable rules of the American Arbitration Association ("AAA") relating to employment disputes, unless the parties otherwise mutually agree to modify the AAA Rules.

The party demanding arbitration shall submit a written claim to the other party, setting out the basis of the claim or claims, within the time period of any applicable statute of limitations relating to such claim(s). If the parties cannot mutually agree upon an arbitrator, then the parties shall select a neutral arbitrator through the procedures established by the AAA. The arbitrator shall have the powers provided under the Colorado Code of Civil Procedure relating to the arbitration of disputes, except as expressly limited or otherwise provided in this Agreement. The parties shall have the right to reasonable discovery as mutually agreed or as determined by the arbitrator, including at least one deposition each, it being the goal of the parties to resolve any disputes as expeditiously and economically as reasonably practicable. The parties agree to share equally in the payment of the administration costs of the AAA arbitration, including payment of the fees for the arbitrator, and any other costs directly related to the administration of the arbitration. The parties shall otherwise be responsible for their own respective costs and attorneys' fees relating to the dispute, such as deposition costs, expert witnesses and similar expenses, except as otherwise provided in this Agreement to the prevailing party.

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The arbitrator may award, if properly proven, any damages or remedy that a party could recover in a civil litigation, and shall award costs and reasonable attorneys' fees to the prevailing party. The award of the arbitrator shall be issued in writing, setting forth the basis for the decision, and shall be binding on the parties to the fullest extent permitted by law, subject to any limited statutory right to appeal as provided by law. Judgment upon the award of the arbitrator may be entered in any court having proper jurisdiction and enforced as provided by law.

This agreement to arbitrate is freely negotiated between Executive and the Company and is mutually entered into between the parties. Each party understands and agrees that it is giving up certain rights otherwise afforded to it by civil court actions, including but not limited to the right to a jury trial; provided, however, that either party may seek provisional remedies in a court of competent jurisdiction as provided pursuant to applicable law.

#### **11. Section Headings**

The section headings herein are inserted only as a matter of convenience and reference and in no way define, limit or describe the scope of this Agreement or the intent of any provisions hereof.

#### **12. Compliance with Section 409A of the Code**

Notwithstanding anything herein to the contrary, (a) if at the time of Executive's termination of employment with the Company Executive is a "specified employee" as such term is defined in Section 409A of the Code and the regulations thereunder, and the deferral of the commencement of any payments or benefits otherwise payable hereunder as a result of such termination of employment is necessary in order to prevent any accelerated or additional tax under Section 409A of the Code, then the Company will defer the commencement of the payment of any such payments or benefits hereunder (without any reduction in such payments or benefits ultimately paid or provided to Executive) until the date that is six (6) months following Executive's termination of employment with the Company (or the earliest date as is permitted under Section 409A of the Code) and (b) if any other payments of money or other benefits due to Executive hereunder could cause the application of an accelerated or additional tax under Section 409A of the Code, such payments or other benefits shall be deferred if deferral will make such payment or other benefits compliant under Section 409A of the Code, or otherwise such payment or other benefits shall be restructured, to the extent possible, in a manner, determined by the Board, that does not cause such an accelerated or additional tax. In the event that payments under this Agreement are deferred pursuant to this Section 12 in order to prevent any accelerated tax or additional tax under Section 409A of the Code, then such payments shall be paid at the time specified under this Section 12 without any interest thereon. The Company shall consult with Executive in good faith regarding the implementation of this Section 12; provided that neither the Company nor any of its employees or representatives shall have any liability to Executive with respect thereto. Notwithstanding anything to the contrary herein, a termination of employment shall not be deemed to have occurred for purposes of any provision of this Agreement providing for the payment of amounts or benefits upon or following a termination of employment unless such termination is also a "Separation from Service" as such term is defined in Section 409A of the Code and the regulations and guidance promulgated thereunder and, for purposes of any such provision of this Agreement, references to a "resignation," "termination," "termination of employment," or like terms shall mean Separation from Service. For purposes of Section 409A of the Code, each payment made under this Agreement shall be designated as a "separate payment" within the meaning of the Section 409A of the

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Code. Notwithstanding anything to the contrary herein, except to the extent any expense, reimbursement or in-kind benefit provided pursuant to this Agreement does not constitute a "deferral of compensation" within the meaning of Section 409A of the Code: (x) the amount of expenses eligible for reimbursement or in-kind benefits provided to Executive during any calendar year will not affect the amount of expenses eligible for reimbursement or in-kind benefits provided to Executive in any other calendar year, (y) the reimbursements for expenses for which Executive is entitled to be reimbursed shall be made on or before the last day of the calendar year following the calendar year in which the applicable expense is incurred, and (z) the right to payment or reimbursement or in-kind benefits hereunder may not be liquidated or exchanged for any other benefit.

### **13. Entire Agreement**

This Agreement contains the entire agreement of the parties relating to the subject matter hereof, and this Agreement supersedes and replaces in all respects the Original Agreement. Further, the parties hereto have made no agreements, representations, or warranties relating to the subject matter of this Agreement that are not set forth otherwise herein. In this regard, each of the parties represents and warrants to the other party that such party is not relying on any promises or representations that do not appear in writing herein. Each of the parties further agrees and understands that this Agreement can be amended or modified only by a written agreement signed by all parties.

### **14. Notice**

All notices required or permitted under this Agreement shall be in writing and shall be deemed effective: (a) upon delivery, if delivered in person; (b) upon delivery to Federal Express or other similar courier service, marked for next day delivery, addressed as set forth below; (c) upon deposit in United States Mail if sent by registered or certified mail, return receipt requested, addressed as set forth below; or (d) upon being sent by facsimile transmission, provided an original is mailed the same day by registered or certified mail, return receipt requested:

#### **If to the Company: MusclePharm Corporation**

Attn: Chief Executive Officer  
4721 Ironton Street, Building A  
Denver, Colorado 80239  
Facsimile (800) 490-7165

#### **If to Executive:**

Brian Casutto

### **15. Attorneys' Fees**

In the event that any party shall bring an action or proceeding in connection with the performance, breach or interpretation of this Agreement, then the prevailing party in any such action or proceeding, as determined by the arbitrator, court, or other body having jurisdiction, shall be entitled to recover from the losing party all reasonable costs and expenses of such action or proceeding, including

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reasonable attorneys' fees, court costs, costs of investigation, expert witness fees, and other costs reasonably related to such action or proceeding.

#### **16. Assistance with Claims**

Executive agrees that, for the period beginning on the Start Date, and continuing for a reasonable period after the termination or expiration of this Agreement for any reason, Executive will assist the Company in the defense of any claims that may be made against the Company and will assist the Company in the prosecution of any claims that may be made by the Company, to the extent such claims may relate to services performed by Executive for the Company. Executive agrees to promptly inform the Company if Executive becomes aware of any lawsuits or potential claims that may be filed against the Company. For all assistance occurring after termination of Executive's employment by the Company, the Company agrees to provide reasonable compensation to Executive for such assistance. Executive also agrees to promptly inform the Company if asked to assist in any investigation of the Company (or its actions) that may relate to services performed by Executive for the Company, regardless of whether a lawsuit has been filed against the Company with respect to such investigation.

#### **17. Release of Claims**

Executive shall not be entitled to receive the severance pay and benefits under Sections 6.2, 6.3, and 6.4, as applicable, unless (a) Executive executes and returns to the Company a Release (as defined below) on or before the 50th day following the date of termination or such shorter time as may be prescribed in the Release, (b) such Release shall not have been timely revoked by Executive, and (c) the date of termination constitutes a Separation from Service, and provided further, however, that if Executive violates his continuing obligations under Sections 4.1, 4.2, 4.3, or 4.4, Executive shall not be entitled to receive such severance pay or benefits and Executive shall immediately repay to the Company upon written demand any severance pay or benefits that already have been paid to Executive. For purposes of this Agreement, the term "**Release**" means a waiver and release of claims by Executive in the form prescribed by the Company, which form may include, without limitation, an agreement by Executive not to disparage the Company, its affiliates, and other related persons or entities, but which form shall not include a release and waiver of claims for (i) indemnification or for coverage under officer and director liability policies, if applicable, (ii) claims with respect to the reimbursement of business expenses or with respect to benefits which are in each case to continue in effect after termination or expiration of this Agreement in accordance with the terms of this Agreement, (iii) claims he may have as a holder of options to acquire equity securities of the Company (which shall be governed by the documents by which Executive was granted such options) and (iv) claims he may have as a stockholder of the Company.

#### **18. Dodd-Frank Act and Other Applicable Legal Requirements**

Executive agrees (i) to abide by any compensation recovery, recoupment, anti-hedging, or other policy applicable to executives of the Company and its affiliates, as may be in effect from time to time, as approved by the Board or a duly authorized committee thereof or as required by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the "**Dodd-Frank Act**") or other applicable law, and (ii) that the terms and conditions of this Agreement shall be deemed automatically amended as may be necessary from time to time to ensure compliance by Executive and this Agreement with such policies, the Dodd-Frank Act, or other applicable law.

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**19. Counterparts**

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute but one and the same instrument.

EXECUTIVE HAS BEEN ADVISED THAT HE SHOULD SEEK INDEPENDENT REVIEW AND ADVICE FROM LEGAL COUNSEL AND TAX ADVISORS AS TO THE SCOPE AND POTENTIAL TAXES WHICH COULD ARISE FROM THE AGREEMENT.

(Signature Page Follows)

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IN WITNESS WHEREOF, this Agreement is executed as of the day and year first above written.

MusclePharm Corporation

By: /s/ Richard Estalella  
Name: Richard Estalella  
Title: President

Executive

By: /s/ Brian Casutto  
Name: Brian Casutto

**EXECUTIVE EMPLOYMENT AGREEMENT**

THIS EXECUTIVE EMPLOYMENT AGREEMENT ("**Agreement**") is made and entered into as of January 1, 2016 (the "**Effective Date**"), by and between MusclePharm Corporation, a Nevada Corporation (the "**Company**"), and Brent Baker, an individual ("**Executive**"). The Company and Executive are sometimes referred to herein as a "party" or collectively as the "parties."

**RECITALS**

WHEREAS, Executive is willing to continue to be employed by the Company and provide services to the Company under the terms and conditions stated herein, as of January 1, 2016 (the "**Start Date**"); and

WHEREAS, the Company and Executive now mutually desire to enter into this Agreement as approved by the Board.

NOW, THEREFORE, in consideration of the foregoing, of the mutual covenants and agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, agree as follows:

**1. Employment and Duties**

1.1 Employment. The Company hereby agrees to employ Executive as Executive Vice President – International of the Company and Executive hereby accepts such employment as of the Start Date pursuant to the terms, covenants and conditions set forth herein. Executive shall report directly to a person to be determined by the Chairman of the Board of Directors of the Company. In accordance with Section 5.2 (Termination by the Company Without Cause), and subject to the severance provisions set forth in Section 6.3, to the extent applicable, the Executive shall be an employee at will of the Company.

1.2 Duties. Executive shall have the overall responsibility as the Executive Vice President – International of the Company and its operations, and shall perform all duties and responsibilities and have such powers which are commonly incident to the offices and positions held by him, as well as any additional responsibilities and authority as may be from time to time assigned or delegated to him by the Chief Executive Officer of the Company or the President and the Board. Executive shall perform the duties assigned to him to the best of his ability and in a manner satisfactory to the Company.

1.3 Time and Efforts. Executive will devote his full business time, efforts, attention, and energies to the business of the Company and to the performance of Executive's duties hereunder during the Term (as defined below), and will not engage in any other business, profession or occupation for compensation or otherwise which would conflict or interfere with the performance of such services, either directly or indirectly, without the prior written consent of the Company; provided that, nothing herein shall preclude Executive from (i) continuing to serve on any board of directors or trustees of any "not for profit" organization, (ii) being involved in charitable activities, or (iii) managing his personal and family passive investments; provided, further that, in each case, and in the aggregate, such activities shall not materially conflict with or interfere with the performance of Executive's duties hereunder or conflict with his duty of loyalty and/or fiduciary duties owed to the Company.

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## 2. Term

Unless earlier terminated as provided in Section 5, the Company shall employ Executive in the capacity set forth herein for a term commencing on the Start Date and ending on December 31, 2018 (the "**Expiration Date**"). Such period, as may be terminated earlier or extended, to be referred to herein as the "**Term**". **However, the parties agree that Executive is employed at will.**

## 3. Compensation

As compensation for the services to be rendered by Executive for and on behalf of the Company hereunder, Executive shall be entitled to the following:

3.1 Base Salary. Executive shall receive an annual base salary of \$300,000 for 2016; \$350,000 for 2017; and \$363,000 for 2018. Salary payments shall be subject to all applicable federal and state withholding, payroll, and other taxes, and all applicable deductions for benefits as may be required by law or Executive's authorization. Executive's Base Salary will be reviewed at least annually by the Compensation Committee (the "**Committee**") of the Board and may be increased at the discretion of the Committee.

3.2 Bonus. In addition to Base Salary, Executive shall be eligible to receive one or more cash bonuses to be determined by the Committee in its sole discretion based on performance criteria to be adopted by the Committee. Executive will receive an annual bonus potential bonus pool of \$400,000 per year divided into four (4) quarters equally at \$100,000 per quarter. The bonus will be paid out each quarter based on achievement of two Key Performance Indicators (KPIs) namely the company's net sales goal for each quarter and the gross margin goal for each quarter. Both the KPIs may be adjusted at the discretion of the Committee from quarter to quarter. The earned quarterly bonus shall be paid out no later than the 15<sup>th</sup> day of the second month following the end of the fiscal quarter. Executive shall be eligible to participate in the annual discretionary executive bonus pool, if any. Any such bonus or bonuses shall be subject to all applicable federal and state withholding, payroll and other taxes, and all applicable deductions for benefits as may be required by law, and shall be paid to Executive no later than the 15th day of the third calendar month following the end of the fiscal year (or other performance period) with respect to which the bonus relates.

The parties agree that the Company may hold back a portion of such quarterly payments, pending the Company's financial success as determined after the financial accounting for the Company is completed. Any portions held back pending the Company's financial success shall be paid no later than 15<sup>th</sup> day of the third month following the end of the fiscal year. The parties further agree that no bonus is earned unless and until Executive meets the established performance criteria.

3.3 Compensation Committee. Any bonus and any equity consideration to be provided to Executive shall be reviewed and determined by the Committee on an annual basis to set performance criteria for purposes of compliance with the requirements of Section 162(m) of the Internal Revenue Code of 1986, as amended (the "**Code**").

3 Expenses and Car Allowance. The Company shall pay a monthly car allowance of up to \$500, effective immediately. The car allowance shall be paid in addition to Executive's compensation payment, on the \_\_\_\_ pay period of the month. The Company shall reimburse Executive for all reasonable

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business expenses incurred by Executive in the performance of his duties, provided that Executive provides adequate documentation required by law and by the policies and procedures of the Company, as adopted and amended from time to time, provided that in no event shall Executive submit any required documentation later than sixty (60) days after the end of the calendar year in which such expense was incurred. Any such reimbursement shall be made as soon as reasonably practicable but in no event later than the 15th day of the third month following the calendar year in which the applicable expense was incurred. Executive acknowledges and agrees that all such expenses will be subject to the oversight of the Audit Committee of the Board. The Company shall also provide Executive with a laptop computer and cell phone for his business use during the Term.

3.5 Vacation. Executive shall be entitled to accrue four (4) weeks of paid vacation each year pursuant to the terms and provisions of the Company's vacation leave policies as in effect from time to time. Although unused vacation may be carried over from year to year, the maximum cap on accrual shall be equal to one hundred fifty percent (150%) of the annual accrual.

3.6 Benefits. Executive shall be entitled to participate in and receive all benefits made available by the Company to its executive officers, subject to and on a consistent basis with the terms, conditions and overall administration of such plans and arrangements, including without limitation, medical, dental, vision, life and disability insurance plans and coverage, and defined benefit, defined contribution or other 401 (k) program, including all Company matching provisions. Executive shall be entitled to a taxable monthly vehicle allowance of \$500.

#### **4. Confidential Information; Non-Compete; Non-Solicitation**

4.1 Confidential Information. Executive acknowledges that, during the course of his employment, he will have access to and will receive information which constitutes trade secrets, is of a confidential nature, is of significant value to the Company and/or is a foundation on which the business of the Company is predicated. With respect to all such Confidential Information (as defined hereafter), Executive agrees, during the Term and thereafter, not to disclose such Confidential Information to any person other than an employee, counsel, or advisor of the Company or a person to whom disclosure is reasonably necessary or appropriate in connection with the performance by Executive of his duties hereunder nor to use such Confidential Information for any purpose other than the performance of his duties hereunder. For purposes of this Agreement, the term "**Confidential Information**" includes all data or material (regardless of form) with respect to the Company or any of its assets, prospects, business activities, officers, directors, employees, borrowers, or clients which is: (a) a trade secret, as defined by the Uniform Trade Secrets Act; (b) provided, disclosed, or delivered to Executive by the Company, any officer, director, employee, agent, attorney, accountant, consultant, or other person or entity employed by the Company in any capacity, any client, borrower, advisor, or business associate of the Company, or any public authority having jurisdiction over the Company or any business activity conducted by the Company; or (c) produced, developed, obtained or prepared by or on behalf of Executive or the Company (whether or not such information was developed in the performance of this Agreement). Notwithstanding the foregoing, the term "Confidential Information" shall not include any information, data, or material which, at the time of disclosure or use, was generally available to the public other than by a breach of this Agreement, was available to the party to whom disclosed on a non-confidential basis by disclosure or access provided by the Company or a third party without breaching any obligations of the Company or such third party, or was otherwise developed or obtained legally and independently by the person to whom disclosed without a breach of this Agreement. This Section 4.1 shall not preclude Executive from disclosing Confidential Information if compelled to do so by law or valid legal process,

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provided that if Executive believes Executive is so compelled by law or valid legal process, Executive will notify the Company in writing sufficiently in advance of any such disclosure to allow the Company the opportunity to defend, limit, or otherwise protect its interests against such disclosure unless such notice is prohibited by law. The rights and obligations of the parties under this paragraph shall survive the expiration or termination of this Agreement for any reason.

4.2 Non-Competition. As part of the consideration for the compensation and benefits to be paid to Executive hereunder, and in order to protect the Confidential Information, business goodwill, and business opportunities of the Company, Executive agrees that, during the Term and for a period of twelve (12) months after the termination of Executive's employment and this Agreement, he will not, directly or indirectly, engage in or become interested financially in, as a principal, employee, partner, contractor, shareholder, agent, manager, owner, advisor, lender, guarantor, officer, or director, any business (other than the Company) that is engaged in the nutritional supplement industry and/or related products; provided, however, that Executive shall be entitled to continue to invest in stocks, bonds, or other securities in any such business (without otherwise participating in such business) if: (a) such stocks, bonds, or other securities are listed on any United States securities exchange or are publicly traded in an over the counter market; and such investment does not exceed, in the case of any capital stock of any one issuer, five percent of the issued and outstanding capital stock, or in the case of bonds or other securities, five percent of the aggregate principal amount thereof issued and outstanding; or (b) such investment is completely passive and no control or influence over the management or policies of such business is exercised. The Executive hereby agrees that in addition to any other remedies available to the Company at law or in equity, in the event of a breach of this Section 4.2 by the executive, the Company shall no longer be obligated to make any severance payments to the Executive.

4.3 Non-Solicitation. Executive agrees that he will not, at any time during the Term, or at any time within twelve (12) months after the termination of his employment, for his own account or benefit or for the account or benefit of any other person, firm or entity, directly or indirectly, solicit for employment any employee of the Company (or any person who was an employee of the Company in the 90-day period before such solicitation) or induce any employee of the Company (or any person who was an employee of the Company in the 90-day period before such inducement) to terminate his employment with the Company. Notwithstanding the above, the restrictions relating to persons employed in the 90-day period referenced in the parentheses in the immediately preceding sentence shall not apply to a person who was a party to an employment agreement with the Company and who terminates his employment for Good Reason or is terminated by the Company without Cause. The rights and obligations of the parties under this Section 4.3 shall survive the expiration or termination of this Agreement for any reason.

4.4 Proprietary Matters. Executive expressly agrees that any and all improvements, inventions, discoveries, processes, or know-how that are generated or conceived by Executive during the Term, whether conceived during Executive's regular working hours or otherwise, will be the sole and exclusive property of the Company. Whenever requested by the Company (either during the Term or thereafter), Executive will assign or execute any and all applications, assignments and/or other documents, and do all things which the Company reasonably deems necessary or appropriate, in order to permit the Company to: (a) assign and convey, or otherwise make available to the Company, the sole and exclusive right, title, and interest in and to said improvements, inventions, discoveries, processes or know-how; or (b) apply for, obtain, maintain, enforce and defend patents, copyrights, trade names, or trademarks of the United States or of foreign countries for said improvements, inventions, discoveries, processes, or know-how. However, the improvements, inventions, discoveries, processes, or know-how

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generated or conceived by Executive and referred to in this Section 4.4 (except those which may be included in the patents, copyrights, or registered trade names or trademarks of the Company) will not be exclusive property of the Company at any time after having been disclosed or revealed or have otherwise become available to the public or to a third party on a non-confidential basis other than by a breach of this Agreement, or after they have been independently developed or discussed without a breach of this Agreement by a third party who has no obligation to the Company.

The rights and obligations of the parties under this Section 4.4 shall survive the expiration or termination of this Agreement for any reason.

4.5 Injunctive Relief. Executive acknowledges and agrees that any violation of Sections 4.1, 4.2, 4.3 or 4.4 of this Agreement would result in irreparable harm to the Company and, therefore, agrees that, in the event of an actual, suspected, or threatened breach of Sections 4.1, 4.2, 4.3 or 4.4 of this Agreement, the Company shall be entitled to an injunction restraining Executive from committing or continuing such actual, suspected or threatened breach. The parties acknowledge and agree that the right to such injunctive relief shall be cumulative and shall not be in lieu of, or be construed as a waiver of the Company's right to pursue, any other remedies to which it may be entitled in law or in equity. The parties agree that for purposes of Sections 4.1, 4.2, 4.3 and 4.4 of this Agreement, the term "Company" shall include the Company and its affiliates.

## 5. Termination

Executive's employment by the Company and this Agreement may be terminated before the expiration of the Term, without breach of this Agreement, in accordance with the provisions set forth below:

5.1 Termination by the Company for Cause. The Company may terminate Executive's employment and this Agreement for Cause (as defined below), but only after: (i) giving Executive written notice of the failure or conduct which the Company believes to constitute Cause; and (ii) with respect to elements (a) through (e) below, providing Executive a reasonable opportunity, and in no event more than twenty (20) days, to cure such failure or conduct, unless the Board determines in its good faith judgment that such failure or conduct is not reasonably capable of being cured. In the event Executive does not cure the alleged failure or conduct within the time frame provided for such cure by the Company, the Company shall send him written notice specifying the effective date of termination. The failure by the Company to set forth in the notice referenced in this Section 5.1 any fact or circumstance which contributes to a showing of Cause shall not waive any right of the Company to assert, or preclude the Company from asserting, such fact or circumstance in enforcing its rights hereunder. For purposes of this Agreement, the term "Cause" means:

- (a) conviction of a felony or a crime involving fraud or moral turpitude; or
  - (b) theft, material act of dishonesty or fraud, intentional falsification of any employment or Corporation records, or commission of any criminal act which impairs participant's ability to perform appropriate employment duties for the Corporation; or
  - (c) intentional or reckless conduct or gross negligence materially harmful to the Corporation or the successor to the Corporation after a Change in Control, including violation of a non-competition or confidentiality agreement; or
  - (d) willful failure to follow lawful instructions of the person or body to which participant reports;  
or
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- (e) gross negligence or willful misconduct in the performance of participant's assigned duties. Cause shall not include mere unsatisfactory performance in the achievement of participant's job objectives.

If the Company terminates Executive's employment for Cause, then Executive shall be entitled to receive the payments and benefits set forth in Section 6.1 below.

The Company may suspend Executive with pay pending an investigation authorized by the Company or a governmental authority or a determination whether Executive has engaged in acts or omissions constituting Cause, and such paid suspension shall not constitute Good Reason or a termination of Executive's employment.

## 5.2 Termination by the Company Without Cause.

(a) The Company may terminate the employment of Executive and this Agreement at any time during the Term of this Agreement without Cause by giving Executive written notice of such termination, to the extent permitted by law, to be immediately effective following the giving of such written notice, in which case Executive shall receive the compensation, severance, and benefit continuation required by Section 6.3 below; provided, however, that if Company terminates Executive's employment without Cause during the Protection Period (as defined below), then Executive shall be entitled to receive the payments and benefits set forth in Section 6.4 below.

(b) For purposes of this Agreement, the term "**Protection Period**" means the period of time commencing on the date of the first occurrence of a Change in Control (as defined below in Section 5.2(c)) and continuing until the earlier of the (i) the second anniversary of the first occurrence of the Change in Control and (ii) the Term of this Agreement; and the six (6) month period prior to such Change in Control date if the Executive is terminated without Cause or terminates for Good Reason and in either case such termination (x) was requested by the third party that effectuates the Change in Control, or (y) occurs in connection with or in anticipation of a Change in Control, it being agreed that any such action taken following stockholder approval of a transaction which if consummated would constitute a Change in Control shall be deemed to be in anticipation of a Change in Control provided such transaction is actually consummated.

(c) For purposes of this Agreement, the term "**Change in Control**" means the happening of any of the following events:

- (i) a tender offer (or series of related offers) shall be made and consummated for the ownership of 50% or more of the outstanding voting securities of the Company, unless as a result of such tender offer more than 50% of the outstanding voting securities of the surviving or resulting corporation shall be owned in the aggregate by the stockholders of the Company (as of the time immediately prior to the commencement of such offer), any employee benefit plan of the Company or its subsidiaries, and their affiliates;
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(ii) the Company shall be merged or consolidated with another corporation, unless as a result of such merger or consolidation more than 50% of the outstanding voting securities of the surviving or resulting corporation shall be owned in the aggregate by the stockholders of the Company (as of the time immediately prior to such transaction), any employee benefit plan of the Company or its subsidiaries, and their affiliates;

(iii) the Company shall sell substantially all of its assets to another corporation that is not wholly owned by the Company, unless as a result of such sale more than 50% of such assets shall be owned in the aggregate by the stockholders of the Company (as of the time immediately prior to such transaction), any employee benefit plan of the Company or its subsidiaries and their affiliates; or

(iv) a person (as defined below) shall acquire 50% or more of the outstanding voting securities of the Company (whether directly, indirectly, beneficially or of record), unless as a result of such acquisition more than 50% of the outstanding voting securities of the surviving or resulting corporation shall be owned in the aggregate by the stockholders of the Company (as of the time immediately prior to the first acquisition of such securities by such person), any employee benefit plan of the Corporation or its subsidiaries, and their affiliates.

5.3 Termination by the Company Due to Inability to Perform or Death. Executive's employment and this Agreement may be terminated by the Company as follows:

(a) To the extent permitted by law, upon notice to Executive in the event of Executive's Inability to Perform. For this purpose, the term "**Inability to Perform**" means and shall be deemed to have occurred if Executive has been determined under the Company's long term disability plan to be eligible for long-term disability benefits or, in the event the Company does not maintain such a plan or in the absence of Executive's participation in or application for benefits under such a plan, such term shall mean the inability of Executive, despite any reasonable accommodation required by law, due to bodily injury or disease or any other physical or mental incapacity, to perform the services required hereunder for a period of ninety (90) consecutive days; or

(b) Immediately upon the death of Executive.

5.4 Termination by Executive for Good Reason. Executive may terminate his employment and this Agreement at any time for Good Reason (as defined below). A termination of employment and this Agreement by Executive for Good Reason shall entitle Executive to payments and other benefits as specified in Section 6.3, unless such termination occurs during the Protection Period in which case the payments and benefits in Section 6.4 shall apply. For purposes of this Agreement, the term "Good Reason" means, subject to the notice and cure provisions herein, any of the following actions if taken without Executive's prior written consent: (a) the assignment to the Executive of any duties inconsistent with the position in the Corporation that Executive held immediately prior to the assignment; (b) a Change of Control resulting in a significant adverse alteration in the status or conditions of Executive's participation with the Corporation or other nature of Executive's responsibilities from those in effect prior to such Change of Control, including any significant alteration in Holder's responsibilities immediately prior to such Change in Control; (c) the failure by the Company to continue to provide the Executive with benefits substantially similar to those enjoyed by the Executive prior to such failure; or (d) any other action or inaction that constitutes a material breach by the Company of this Agreement. To exercise the option to terminate employment for Good Reason, Executive must provide written notice to the Company of Executive's belief that Good Reason exists within sixty (60) days of the initial existence of the Good Reason condition, and that notice shall describe in reasonable detail the condition(s) believed to constitute Good Reason.

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The Company then shall have thirty (30) days to remedy the Good Reason condition(s). If not remedied within that 30-day period or if the Company notifies Executive that it does not intend to cure such condition(s) before the end of that 30-day period, Executive may submit a notice of termination to the Company; provided, however, that the notice of termination invoking Executive's option to terminate employment for Good Reason must be given no later than one hundred (100) days after the date the Good Reason condition first arose; otherwise, Executive shall be deemed to have accepted the condition(s), or the Company's correction of such condition(s), that may have given rise to the existence of Good Reason.

5.5 Termination by Executive Without Good Reason. Executive may also terminate his employment and this Agreement without Good Reason by providing at least ninety (90) days' written notice of such termination to the Company. In the event of a termination pursuant to this Section 5.5, Executive shall be entitled to payments and other benefits as specified in Section 6.1 below. At the Company's option, the Company may accelerate the date of Executive's termination of employment by paying to Executive the Base Salary and value of the benefits that Executive would have received during the period by which the date of termination is so accelerated and such acceleration shall not change the characterization of the termination by Executive as a termination without Good Reason.

5.6 Return of Confidential Information and Company Property. Upon termination of Executive's employment for any reason, Executive shall immediately return all Confidential Information and other Company property to the Company.

## 6. Effect of Termination

6.1 Termination by the Company for Cause or Termination by Executive Without Good Reason. In the event Executive's employment and this Agreement are terminated pursuant to Sections 5.1 or 5.5 above:

(a) The Company shall pay to Executive, or his representatives, on the date of termination of employment only that portion of the Base Salary provided in Section 3.1 that has been accrued through the date of termination, any accrued but unpaid vacation pay provided in Section 3.6, any accrued benefits provided in Section 3.7, and any expense reimbursements due and owing to Executive as of the date of termination; and

(b) Executive shall not be entitled to: (i) any other salary or compensation; (ii) any bonus pursuant to Section 3.2; (iii) any equity consideration pursuant to Section 3.3; nor (iv) any additional benefits pursuant to Section 3.7; the parties specifically agree all bonus earned and due pursuant to the section 3.2 will be paid out immediately; and

(c) Executive shall return the laptop computer and cellular telephone within five (5) business days of the date of termination.

6.2 Termination by the Company Due to Executive's Inability to Perform or Death. In the event Executive's employment and this Agreement are terminated pursuant to Section 5.3 above, the Company shall pay to Executive, or his representatives, all of the following:

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(a) The payments, if any, referred to in Section 6.1(a) above as of the date of termination; and

(b) Subject to compliance with Section 409A of the Code, an amount equal to the greater of (i) one hundred percent (100%) of Executive's target bonus for the year in which the date of termination occurs or (ii) a bonus for such year as may be determined by the Committee in its sole discretion. This amount shall be paid in the form of a lump sum, less applicable statutory deductions and withholdings, as soon as practicable after the date of termination, but no later than March 15 of the year immediately following the year in which the date of termination occurs; and

(c) For a termination due to Inability to Perform only, and provided that Executive or his representative signs a Release (as defined in Section 17), then the Company shall pay Executive a severance equal to six (6) months of Executive's Base Salary at the time of termination. This severance amount shall be paid to Executive in equal regular installments over the six (6) month period pursuant to the Company's regular payroll periods, less applicable statutory deductions and tax withholdings. The first installment shall be paid to Executive on the first payroll period after the date of termination and after the effective date of the Release; and

(d) Should Executive or his representatives timely elect to continue coverage under a group health insurance plan sponsored by the Company or one of its affiliates and timely make the premium payments, reimburse Executive on a monthly basis for the cost of continued coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA") or other applicable law for Executive and any eligible dependents until the earlier of (i) the date Executive is no longer entitled to continuation coverage under COBRA or (ii) for twelve (12) months after the date of termination.

6.3 Termination by the Company Without Cause and Without a Change in Control or by Executive for Good Reason Without a Change in Control. In the event Executive's employment is terminated pursuant to Sections 5.2 or 5.4 above at any time in which there has not been a qualifying Change in Control termination, the Company shall pay Executive on the date of termination the payments referred to in Section 6.1(a) above, and provided that Executive signs a Release (as defined in Section 17), Executive shall also receive all of the following:

(a) A severance package equal to the lesser of (i) twelve (12) months of Executive's Base Salary at the time of termination and (ii) the Base Salary remaining under the Term of this Agreement. This severance amount shall be paid to Executive in equal regular installments over the twelve (12) month period pursuant to the Company's regular payroll periods, less applicable statutory deductions and tax withholdings. The first installment shall be paid to Executive on the first payroll period after the date of termination and after the effective date of the Release; and

(b) Subject to compliance with Section 409A of the Code, an amount equal to the greater of (i) (A) if the date of termination occurs between January 1 and June 30, then twenty-five percent (25%) of Executive's target bonus for the year in which the date of termination occurs or (B) if the date of termination occurs between July 1 and December 31, then fifty percent (50%) of Executive's target bonus for the year in which the date of termination occurs; and (ii) a bonus for such year as may be determined by the Committee in its sole discretion. This amount shall be paid in the form of a lump sum, less applicable statutory deductions and withholdings, as soon as practicable after the date of termination, but no later than March 15 of the year immediately following the year in which the date of termination occurs;

(c) Should Executive or his representatives timely elect to continue coverage under a group health insurance plan sponsored by the Company or one of its affiliates and timely make the premium payments, reimburse Executive on a monthly basis for the cost of continued coverage under the COBRA for Executive and any eligible dependents until the earlier of (i) the date Executive is no longer entitled to continuation coverage under COBRA or (ii) for twelve (12) months after the date of termination; and

(d) Unless otherwise provided in the equity award agreement, all stock options and other stock incentive awards held by Executive will become fully vested and immediately exercisable and all restrictions on any restricted stock held by Executive will be removed; provided, however, Executive shall not be released from the black-out periods for the next financial reporting quarter following the date of termination or Securities Exchange Act of 1934, as amended (the "**Exchange Act**"), trading obligations typically required for an executive in this position.

6.4 Termination by the Company Without Cause After a Change in Control or by Executive for Good Reason After a Change in Control. In the event Executive's employment is terminated pursuant to Sections 5.2 or 5.4 above during the Protection Period, the Company shall pay Executive on the date of termination the payments referred to in Section 6.1 (a) above, and provided that Executive signs a Release (as defined in Section 17), Executive shall also receive all of the following:

(a) Subject to compliance with Section 409A of the Code, a severance package equal to one year of Executive's Base Salary immediately prior to the Change in Control. This severance amount shall be paid to Executive in equal regular installments over a 12-month period pursuant to the Company's regular payroll periods,

less applicable statutory deductions and tax withholdings. The first installment shall be paid to Executive on the first payroll period after the date of termination and after the effective date of the Release; and

(b) Subject to compliance with Section 409A of the Code, an amount equal to the greater of (i) one hundred percent (100%) of Executive's target bonus for the year in which the date of termination occurs or (ii) a bonus for such year as may be determined by the Committee in its sole discretion. This amount shall be paid in the form of a lump sum, less applicable statutory deductions and withholdings, as soon as practicable after the date of termination, but no later than March 15 of the year immediately following the year in which the date of termination occurs; and

(c) A one-time cash payment of five hundred thousand dollars (\$500,000.00), less applicable statutory deductions and tax withholdings, to be paid within thirty (30) days of the date of termination; and

(d) Should Executive or his representatives timely elect to continue coverage under a group health insurance plan sponsored by the Company or one of its affiliates and timely make the premium payments, reimburse Executive on a monthly basis for the cost of continued coverage under the COBRA for Executive and any eligible dependents until the earlier of (i) the date Executive is no longer entitled to continuation coverage under COBRA or (ii) for twelve (12) months after the date of termination; and

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(e) All stock options and other incentive awards held by Executive will become fully vested and immediately exercisable and all restrictions on any restricted stock held by Executive will be removed; provided, however, Executive shall not be released from the black-out periods for the next financial quarter following the date of termination or Exchange Act, trading obligations typically required for an executive in this position.

**7. Successors and Assigns**

This Agreement is personal in nature, and neither this Agreement nor any part of any obligation herein shall be assignable by Executive. The Company shall be entitled to assign this Agreement to any affiliate of the Company or any person or entity that assumes the ownership and control of the business of the Company. This Agreement shall inure to the benefit of and shall be binding upon the parties and their successors and assigns.

**8. Severability**

Should any term, provision, covenant or condition of this Agreement be held to be void or invalid, the same shall not affect any other term, provision, covenant or condition of this Agreement, but such remainder shall continue in full force and effect as though each such voided term, provision, covenant, or condition is not contained herein.

**9. Governing Law and Venue**

This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado, excluding its choice-of-law principles. Subject to Sections 4.5 and 10, and without in any way limiting the applicability of binding arbitration, each of the parties submits to the exclusive jurisdiction of any state or federal court sitting in Denver, Colorado in any action or proceeding arising out of or relating to this Agreement and further agrees that all claims in respect of the action or proceeding may be heard and determined in any such court to the extent that any court proceeding is necessary in connection with Sections 4.5 and 10, and further agrees not to bring any action or proceeding arising out of or relating to this Agreement in any other court. Each of the parties agrees that a final judgment in any action or proceeding so brought shall be conclusive and may be enforced by suit on the judgment or in any other manner so provided by law.

**10. Binding Arbitration**

Except as provided in Section 4.5, any and all disputes which involve or relate in any way to this Agreement and/or to Executive's employment, Executive's termination of employment with the Company or termination of this Agreement, whether initiated by Executive or by the Company and whether based on contract, tort, statute, or common law, shall be submitted to and resolved by final and binding arbitration as the exclusive method for resolving all such disputes. The arbitration shall be private and confidential and conducted in Denver, Colorado pursuant to the Federal Arbitration Act and applicable Colorado law, and pursuant to the applicable rules of the American Arbitration Association ("AAA") relating to employment disputes, unless the parties otherwise mutually agree to modify the AAA Rules.

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The party demanding arbitration shall submit a written claim to the other party, setting out the basis of the claim or claims, within the time period of any applicable statute of limitations relating to such claim(s). If the parties cannot mutually agree upon an arbitrator, then the parties shall select a neutral arbitrator through the procedures established by the AAA. The arbitrator shall have the powers provided under the Colorado Code of Civil Procedure relating to the arbitration of disputes, except as expressly limited or otherwise provided in this Agreement. The parties shall have the right to reasonable discovery as mutually agreed or as determined by the arbitrator, including at least one deposition each, it being the goal of the parties to resolve any disputes as expeditiously and economically as reasonably practicable. The parties agree to share equally in the payment of the administration costs of the AAA arbitration, including payment of the fees for the arbitrator, and any other costs directly related to the administration of the arbitration. The parties shall otherwise be responsible for their own respective costs and attorneys' fees relating to the dispute, such as deposition costs, expert witnesses and similar expenses, except as otherwise provided in this Agreement to the prevailing party.

The arbitrator may award, if properly proven, any damages or remedy that a party could recover in a civil litigation, and shall award costs and reasonable attorneys' fees to the prevailing party. The award of the arbitrator shall be issued in writing, setting forth the basis for the decision, and shall be binding on the parties to the fullest extent permitted by law, subject to any limited statutory right to appeal as provided by law. Judgment upon the award of the arbitrator may be entered in any court having proper jurisdiction and enforced as provided by law.

This agreement to arbitrate is freely negotiated between Executive and the Company and is mutually entered into between the parties. Each party understands and agrees that it is giving up certain rights otherwise afforded to it by civil court actions, including but not limited to the right to a jury trial; provided, however, that either party may seek provisional remedies in a court of competent jurisdiction as provided pursuant to applicable law.

#### **11. Section Headings**

The section headings herein are inserted only as a matter of convenience and reference and in no way define, limit or describe the scope of this Agreement or the intent of any provisions hereof.

#### **12. Compliance with Section 409A of the Code**

Notwithstanding anything herein to the contrary, (a) if at the time of Executive's termination of employment with the Company Executive is a "specified employee" as such term is defined in Section 409A of the Code and the regulations thereunder, and the deferral of the commencement of any payments or benefits otherwise payable hereunder as a result of such termination of employment is necessary in order to prevent any accelerated or additional tax under Section 409A of the Code, then the Company will defer the commencement of the payment of any such payments or benefits hereunder (without any reduction in such payments or benefits ultimately paid or provided to Executive) until the date that is six (6) months following Executive's termination of employment with the Company (or the earliest date as is permitted under Section 409A of the Code) and (b) if any other payments of money or other benefits due to Executive hereunder could cause the application of an accelerated or additional tax under Section 409A of the Code, such payments or other benefits shall be deferred if deferral will make such payment or other benefits compliant under Section 409A of the Code, or otherwise such payment or other benefits shall be restructured, to the extent possible, in a manner, determined by the Board, that does not cause such an accelerated or additional tax. In the event that payments under this Agreement

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are deferred pursuant to this Section 12 in order to prevent any accelerated tax or additional tax under Section 409A of the Code, then such payments shall be paid at the time specified under this Section 12 without any interest thereon. The Company shall consult with Executive in good faith regarding the implementation of this Section 12; provided that neither the Company nor any of its employees or representatives shall have any liability to Executive with respect thereto. Notwithstanding anything to the contrary herein, a termination of employment shall not be deemed to have occurred for purposes of any provision of this Agreement providing for the payment of amounts or benefits upon or following a termination of employment unless such termination is also a "Separation from Service" as such term is defined in Section 409A of the Code and the regulations and guidance promulgated thereunder and, for purposes of any such provision of this Agreement, references to a "resignation," "termination," "termination of employment," or like terms shall mean Separation from Service. For purposes of Section 409A of the Code, each payment made under this Agreement shall be designated as a "separate payment" within the meaning of the Section 409A of the Code. Notwithstanding anything to the contrary herein, except to the extent any expense, reimbursement or in-kind benefit provided pursuant to this Agreement does not constitute a "deferral of compensation" within the meaning of Section 409A of the Code: (x) the amount of expenses eligible for reimbursement or in-kind benefits provided to Executive during any calendar year will not affect the amount of expenses eligible for reimbursement or in-kind benefits provided to Executive in any other calendar year, (y) the reimbursements for expenses for which Executive is entitled to be reimbursed shall be made on or before the last day of the calendar year following the calendar year in which the applicable expense is incurred, and (z) the right to payment or reimbursement or in-kind benefits hereunder may not be liquidated or exchanged for any other benefit.

### **13. Entire Agreement**

This Agreement contains the entire agreement of the parties relating to the subject matter hereof, and this Agreement supersedes and replaces in all respects the Original Agreement. Further, the parties hereto have made no agreements, representations, or warranties relating to the subject matter of this Agreement that are not set forth otherwise herein. In this regard, each of the parties represents and warrants to the other party that such party is not relying on any promises or representations that do not appear in writing herein. Each of the parties further agrees and understands that this Agreement can be amended or modified only by a written agreement signed by all parties.

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#### **14. Notice**

All notices required or permitted under this Agreement shall be in writing and shall be deemed effective: (a) upon delivery, if delivered in person; (b) upon delivery to Federal Express or other similar courier service, marked for next day delivery, addressed as set forth below; (c) upon deposit in United States Mail if sent by registered or certified mail, return receipt requested, addressed as set forth below; or (d) upon being sent by facsimile transmission, provided an original is mailed the same day by registered or certified mail, return receipt requested:

**If to the Company:** MusclePharm Corporation

Attn: Chief Executive Officer

4721 Ironton Street, Building A Denver, Colorado  
80239

Facsimile: (800) 490-7165

**If to Executive:** Brent Baker

#### **15. Attorneys' Fees**

In the event that any party shall bring an action or proceeding in connection with the performance, breach or interpretation of this Agreement, then the prevailing party in any such action or proceeding, as determined by the arbitrator, court, or other body having jurisdiction, shall be entitled to recover from the losing party all reasonable costs and expenses of such action or proceeding, including reasonable attorneys' fees, court costs, costs of investigation, expert witness fees, and other costs reasonably related to such action or proceeding.

#### **16. Assistance with Claims**

Executive agrees that, for the period beginning on the Start Date, and continuing for a reasonable period after the termination or expiration of this Agreement for any reason, Executive will assist the Company in the defense of any claims that may be made against the Company and will assist the Company in the prosecution of any claims that may be made by the Company, to the extent such claims may relate to services performed by Executive for the Company. Executive agrees to promptly inform the Company if Executive becomes aware of any lawsuits or potential claims that may be filed against the Company. For all assistance occurring after termination of Executive's employment by the Company, the Company agrees to provide reasonable compensation to Executive for such assistance. Executive also agrees to promptly inform the Company if asked to assist in any investigation of the Company (or its actions) that may relate to services performed by Executive for the Company, regardless of whether a lawsuit has been filed against the Company with respect to such investigation.

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## 17. Release of Claims

Executive shall not be entitled to receive the severance pay and benefits under Sections 6.2, 6.3, and 6.4, as applicable, unless (a) Executive executes and returns to the Company a Release (as defined below) on or before the 50th day following the date of termination or such shorter time as may be prescribed in the Release, (b) such Release shall not have been timely revoked by Executive, and (c) the date of termination constitutes a Separation from Service, and provided further, however, that if Executive violates his continuing obligations under Sections 4.1, 4.2, 4.3, or 4.4, Executive shall not be entitled to receive such severance pay or benefits and Executive shall immediately repay to the Company upon written demand any severance pay or benefits that already have been paid to Executive. For purposes of this Agreement, the term "**Release**" means a waiver and release of claims by Executive in the form prescribed by the Company, which form may include, without limitation, an agreement by Executive not to disparage the Company, its affiliates, and other related persons or entities, but which form shall not include a release and waiver of claims for (i) indemnification or for coverage under officer and director liability policies, if applicable, (ii) claims with respect to the reimbursement of business expenses or with respect to benefits which are in each case to continue in effect after termination or expiration of this Agreement in accordance with the terms of this Agreement, (iii) claims he may have as a holder of options to acquire equity securities of the Company (which shall be governed by the documents by which Executive was granted such options) and (iv) claims he may have as a stockholder of the Company.

## 18. Dodd-Frank Act and Other Applicable Legal Requirements

Executive agrees (i) to abide by any compensation recovery, recoupment, anti-hedging, or other policy applicable to executives of the Company and its affiliates, as may be in effect from time to time, as approved by the Board or a duly authorized committee thereof or as required by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the "**Dodd-Frank Act**") or other applicable law, and (ii) that the terms and conditions of this Agreement shall be deemed automatically amended as may be necessary from time to time to ensure compliance by Executive and this Agreement with such policies, the Dodd-Frank Act, or other applicable law.

## 19. Counterparts

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute but one and the same instrument.

EXECUTIVE HAS BEEN ADVISED THAT HE SHOULD SEEK INDEPENDENT REVIEW AND ADVICE FROM LEGAL COUNSEL AND TAX ADVISORS AS TO THE SCOPE AND POTENTIAL TAXES WHICH COULD ARISE FROM THE AGREEMENT.

(Signature Page Follows)

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IN WITNESS WHEREOF, this Agreement is executed as of the day and year first above written.

MusclePharm Corporation

By: /s/ Brian Casutto

Name: Brian Casutto

Title: EVP Sales & Operations

Executive

By: /s/ Brent Baker

Name: Brent Baker

## SEPARATION AGREEMENT AND GENERAL RELEASE

**THIS SEPARATION AGREEMENT AND GENERAL RELEASE** (the “Agreement”) is made and entered into as of March 23, 2017 (the “Effective Date”) by and between Brent Baker, an individual (“Executive”), and MusclePharm Corporation, a Nevada corporation (the “Company”). The Company and Executive are collectively referred to herein as the “parties.”

### **RECITALS**

**WHEREAS**, Executive and the Company are parties to a certain Executive Employment Agreement, dated as of January 1, 2016, pursuant to which Executive was employed as Executive Vice President - Sales of the Company (the “Employment Agreement”);

**WHEREAS**, the Company and Executive desire to enter into this Agreement providing for the terms and conditions of the voluntary termination by Executive of his employment; and

**WHEREAS**, in exchange for the good and valuable consideration described herein, the parties wish to resolve any and all disputes, claims, complaints, grievances, charges, actions, petitions, and demands that Executive may have against the Company, including, but not limited to, any and all claims arising out of or in any way related to his employment with or separation from the Company.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the parties hereby agree as follows:

1. Voluntary Separation from Employment. The parties hereby agree that Executive has been an employee at-will of the Company and that his employment Term (as defined in Paragraph 2 of the Employment Agreement) shall be deemed to have been voluntarily terminated by Executive without Good Reason, as of the Effective Date, pursuant to Paragraph 5.5 of the Employment Agreement. The parties hereby mutually agree to waive any written notice requirements, and Executive agrees to waive the right to any payment under Paragraph 5.5 of the Employment Agreement, whether for the value of the benefits in the notice period or otherwise. After the Effective Date, Executive will not represent himself as being an employee, officer, or attorney of the Company for any purpose. Executive agrees to execute any and all additional documents and take such further steps as may be required to effectuate the resignations described herein. The Effective Date will be the employment termination date for Executive for all purposes, meaning Executive will no longer be entitled to any further compensation, monies or other benefits from the Company, including a monthly car allowance or coverage under benefit plans or programs sponsored by the Company; provided, however, that Executive will be eligible pursuant to COBRA to continue any health insurance plan that he participated in as of the Effective Date, at his own expense, as required by law. Executive will be provided further information with respect to COBRA benefits and eligibility under separate cover.

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2. Consideration.

a. In consideration of Executive's execution and compliance with this Agreement, including his agreement to: (i) provide the general release in Section 4 below; (ii) abide fully by the restrictive covenants set forth in the Employment Agreement as modified by Section 7 below; and (iii) waive any and all rights and entitlements he has, or may have, under any agreements he has, or may have, with the Company, the Company agrees it will:

i. Pay Executive a total amount of Three Hundred Fifty Thousand Dollars and Zero Cents (\$350,000.00), less all applicable withholdings and legally required deductions, payable in twelve equal monthly installments, beginning on the first regular Company payroll date after the expiration of the revocation period set forth in Section 4(b)(v) below (the "Revocation Period"), and continuing for eleven months thereafter;

ii. Pay Executive a single lump sum payment of Thirty-Nine Thousand Three Hundred Seventy-Eight Dollars and Thirty-Seven Cents (\$39,378.37), less all applicable withholdings and legally required deductions, on the next regularly scheduled payroll date, representing Executive's accrued but unused vacation days as of the Effective Date;

iii. Vest Executive in 10,000 shares of Restricted Stock, pursuant to his April 28, 2015 Restricted Stock Agreement (the "Restricted Stock Agreement"), immediately upon the expiration of the Revocation Period; and

iv. Pay Executive a first quarter bonus equal to Eighty Thousand Three Hundred and Ten Dollars and Eighty One Cents (\$80,310.81), less all applicable withholdings and legally required deductions, on the later of April 15, 2017 or the third business day after the expiration of the Revocation Period.

b. Executive agrees and acknowledges that the payments set forth in Section 2(a) above include any unpaid base salary that has been accrued through the date of termination, any accrued but unpaid vacation pay, any accrued benefits and any expense reimbursements due and owing to Executive as of the date of termination, and constitute good and valuable consideration for this Agreement.

c. The Company and Executive acknowledge and agree that Executive previously vested in 65,000 shares of restricted stock and that those shares previously have been provided and delivered to Executive. Executive agrees and acknowledges that those shares shall continue to be subject to the terms and conditions of their respective restrictive stock awards or agreements, except as expressly modified herein. Executive further agrees and acknowledges that any shares of Restricted Stock that he vests in pursuant to Section 2(a) above shall continue to be subject to the terms and conditions of the Restricted Stock Agreement, except as expressly modified herein. Executive agrees and acknowledges that nothing contain herein shall be construed as an agreement by the Company to provide executive with, or deliver to him, any shares beyond those stated in Section 2(a) above and that any such claims are waived pursuant to the General Release set forth in Section 4 below.

d. Notwithstanding Section 2(a) above, Executive agrees that if Executive revokes this Agreement pursuant to Section 4(b)(v) below or violates any of his obligation under Sections 7 through 10 of this Agreement, Executive shall not be entitled to any amounts under this Section 2 and agrees he shall immediately repay and/or forfeit to the Company, upon written demand, any payments, Restricted Stock and benefits that already have been paid to Executive.

3. No Further Consideration. With respect to the consideration set forth in Section 2(a) above, Executive understands and agrees that: (i) such consideration represents the sole and exclusive payments and benefits to be provided to him by the Company and he is not entitled to, and will not receive, any payment or benefits of any kind, including severance or separation payments or benefits, from the Company other than as expressly set forth hereinabove; (ii) the Company has satisfied any and all obligations it may have to Executive under the terms of any agreements he has, or may have, with the Company, including, without limitation, any obligations under Paragraph 4.4 and 6 of the Employment Agreement and under any restricted stock agreement; (iii) said payments include and far exceed any and all outstanding and accrued compensation, wages, bonuses, car allowances, severance, benefits, incentive compensation, stock options, stock grants, commissions, capital accounts, equitable interest, accrued paid time off, and amounts of any kind that may be due and owing to Executive; (iv) the Company has no further obligation to provide Executive with any compensation of any kind, or any non-monetary or monetary benefits; (v) Executive shall not vest in, earn or accrue any additional equity or compensation, wages, bonuses, car allowances, severance, benefits, incentive compensation, stock options, stock grants, commissions, capital accounts, equitable interest or accrued paid time off; and (vi) but for his execution of this Agreement, Executive would not be entitled to the consideration set forth in Section 2(a) above.

4. General Release.

a. Executive, for himself, his marital community and children, and his heirs, beneficiaries, devisees, executors, administrators, attorneys, personal representatives, successors and assigns, and anyone claiming through them (collectively, the "Executive Releasers"), forever releases and discharges the Company, and any of its divisions, affiliates, subsidiaries, parents, predecessors, successors and assigns, and, with respect to such entities, their officers, directors, managers, members, employees, agents, stockholders, administrators, general or limited partners, representatives, attorneys, insurers and fiduciaries, past, present and future (collectively, the "Company Releasees"), from any and all charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts and expenses (including attorneys' fees and costs actually incurred) of any nature whatsoever, in law or equity, known or unknown, suspected or unsuspected, that the Executive Releasers ever had, now have or hereafter can, shall or may have, for, upon, or by reason of any matter, cause or thing whatsoever, up to and including the date the parties execute this Agreement, whether known or unknown to Executive, and whether vicarious, derivative, or direct (the "General Release"). For the avoidance of doubt, such released claims include, without limitation, any and all claims arising out of Executive's employment by the Company and the termination of such employment, including any claims for unpaid wages, commissions, bonuses, incentive pay, vacation pay, legal fees, severance or other compensation, or any claims arising under or for alleged violation or

breach of any contract, express or implied, including, without limitation, the Employment Agreement, any benefit or stock or equity plan, or any covenant of good faith and fair dealing, express or implied, or any tort, whether intentional or unintentional, including, without limitation, defamation, intentional infliction of emotional distress, fraud and breach of duty, or any legal restriction on the Company's right to terminate employees, and any federal, state or other governmental statute, regulation, or ordinance, including, without limitation, Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section 2000e et seq., the Age Discrimination in Employment Act, 29 U.S.C. 621 et seq. ("ADEA"), the Older Workers Benefit Protection Act, the Fair Labor Standards Act, 29 U.S.C. Section 201 et seq. ("OWBPA"), the Americans with Disabilities Act, 42 U.S.C. Section 12101 et seq., the Reconstruction Era Civil Rights Act, as amended, 42 U.S.C. Section 1981 et seq., the Rehabilitation Act of 1973, 29 U.S.C. Section 701 et seq., the Family and Medical Leave Act of 1992, 29 U.S.C. Section 2601 et seq., the Colorado Anti-Discrimination Act, the Colorado Minimum Wage Order, the Colorado Labor Relations Act, the Colorado Labor Peace Act, the Nevada Fair Employment Practices Act, the Nevada Equal Pay Act, the Nevada Wage and Hour Laws, the Nevada Minimum Wage Law and the Colorado and Nevada constitutions, each as amended. Notwithstanding anything else herein to the contrary, this Section 4 shall not affect and does not release: (i) any claims indemnification or for coverage under office and director liability policies, if applicable; (ii) any claims that cannot be waived by applicable law; and (iii) any right by Executive to file an administrative charge with the Equal Employment Opportunity Commission ("EEOC"), subject to the restriction that if any such charge is filed, Executive agrees not to violate the confidentiality provisions of the Agreement and further agrees and covenants that should Executive or any other person, organization, or other entity file, charge, claim, sue or cause to permit to be field any charge with the EEOC, or any civil action, suit or legal proceeding, against any Company Releasee involving any matter occurring at any time in the past, Executive will not seek or accept any personal relief (including, but not limited to, a monetary award, recovery, relief or settlement) in such charge, civil action, suit or proceeding. Executive agrees that this Section 4 supersedes and amends the definition of the term "Release" under Paragraph 17 of the Employment Agreement.

b. Executive acknowledges and agrees that in accordance with the terms of the Age Discrimination in Employment Act ("ADEA"), as amended by the Older Workers Benefit Protection Act:

i. Executive has read and understands this Agreement and knowingly and voluntarily entered into this Agreement without fraud, duress, or any undue influence.

ii. Executive acknowledges that by this Agreement, the Company has advised Executive in writing to consult with an attorney before signing this Agreement.

iii. Executive understands the language of this Agreement and its meaning, particularly with respect to Executive's waiver and release of any claims against the Company under the ADEA.

iv. Executive has been afforded twenty one (21) calendar days to consider the terms of this Agreement, but may voluntarily elect to sign the Agreement in a shorter period of time.

v. Executive has seven (7) calendar days following his execution of this Agreement to revoke the Agreement, and the Agreement will not become effective or enforceable until the seven (7) day period has expired. Executive may revoke the Agreement by ensuring written notice of revocation is received by the Company by 5:00 p.m. on the seventh (7<sup>th</sup>) calendar day following the execution of this Agreement. Following any such revocation, this Agreement shall be deemed null and void and of no legal force.

vi. Executive is not waiving any rights or claims that may arise after the date this Agreement is executed.

c. For the purpose of implementing a full and complete release and discharge of the Company Releasees, the parties expressly acknowledge that the General Release is intended to include in its effect, without limitation, all claims or other matters described in this Section 4 that the Executive Releasers do not know or suspect to exist in their favor at the time of execution hereof, and that the releases contained in this Section 4 contemplate the extinguishment of any and all such claims or other such matters. The Company Releasees that are not parties to this Agreement are third-party beneficiaries of the release and are entitled to enforce its provisions.

5. No Actions Covenants. Executive, for himself and the Executive Releasers, hereby covenants and represents that he has not instituted or pursued, and will not institute or pursue, any causes of action, claims, defenses, requests for relief, contributions, indemnities, lawsuits, controversies or the like that have been released by this Agreement, with any court or other tribunal, against the Company Releasees. Executive further agrees not to aid or participate in any manner in any private third-party complaint, suit, action, charge, claim, investigation or other proceeding whatsoever against any of the Company Releasees, except to the extent required to do so by any governmental, legal or administrative process. In the event Executive is required to so participate, Executive agrees, unless prohibited to do so by law, to notify the Company promptly, in writing, and to provide a copy of any such legal process or other government communication to the Company so that the Company may seek a protective order or other appropriate remedy. For the avoidance of doubt, this covenant shall not apply to actions for breach of this Agreement and does not affect any right of the Executive Releasers to file an administrative charge with the Equal Employment Opportunity Commission (“EEOC”), as set forth in Section 4(a) above.

6. General Disclaimer of Liability: This Agreement shall not in any way be construed as an admission by the Company of any unlawful or wrongful acts whatsoever toward or against Executive or any other person or entities. The Company specifically disclaims any liability to, or wrongful acts against, Executive and the Executive Releasers.

7. Restrictive Covenants. Executive’s post-employment obligations under the Employment Agreement, including, without limitation, those set forth in Paragraph 4 of the Employment Agreement, shall continue in full force and effect; provided, however, that: (i) the Company agrees to reduce the non-competition period set forth in Paragraph 4.2 of the Employment Agreement from a period of twelve (12) months to a period of six (6) months following the Effective Date; and (ii) Executive agrees that the non-solicitation restrictions set forth in Paragraph 4.3 of the Employment Agreement shall apply to any employee or consultant of the Company (or any person who was an employee or consultant of the Company in the 90-day

period before such inducement), irrespective of the circumstances of their termination, and that in addition to such restrictions, Executive shall be restricted from hiring, engaging or seeking to hire or engage (whether on his behalf or on behalf of some other person or entity), any employee or contractor of the Company (or any person who was an employee or contractor of the Company in the 90-day period before such inducement) for a period of twelve (12) months following the Effective Date. Executive reaffirms his agreement to the restrictive covenants set forth in the Employment Agreement, as modified herein, and reaffirms his acknowledgements and agreements set forth in Paragraph 4.5 of the Employment Agreement. Should Executive violate any of the terms of the restrictive covenant obligations articulated herein, the obligation at issue will run from the first date on which Executive ceases to be in violation of such obligation.

8. Non-Disparagement. Executive agrees he will not make or publish any statement (orally or in writing) that becomes or reasonably could be expected to become publicly known, or instigate, assist or participate in the making or publication of any such statement, which would libel, slander, disparage (whether or not such disparagement legally constitutes libel or slander) or otherwise reflect negatively on Ryan Drexler, the Company, and any of their respective or affiliated businesses, affairs, operations or reputations, or the reputations of any of their past or present owners, officers, partners, investors, members, agents, representatives and employees. Nothing in this Agreement, however, shall prohibit or restrict Executive from: (i) making any disclosure of information required by law or (ii) providing information to, testifying truthfully before, or otherwise assisting in any investigation or proceeding brought by, any federal regulatory or law enforcement agency or legislative body.

9. Post-Termination Cooperation. Following his Effective Date, Executive agrees to cooperate fully with the Company concerning: (i) all reasonable requests for information relating to the business affairs of the Company; (ii) the orderly transition of his job duties and responsibilities; (iii) the defense or prosecution of any claims or actions now in existence or which may be brought in the future against or on behalf of the Company that relate to events or occurrences that transpired while Executive was employed by or engaged by the Company; and (iv) any investigation or review by any federal, state or local regulatory, quasi-regulatory or self-governing authority, as any such investigation or review relates to events or occurrences that transpired while Executive was an employee of the Company. Executive's full cooperation shall include, but not be limited to, being available to meet and speak with members or employees of the Company and/or its and their counsel at reasonable times and locations, executing accurate and truthful documents at reasonable times and locations and taking such other actions as may be requested by the Company and/or its counsel to effectuate the foregoing.

10. Return of Company Property. Executive agrees to promptly return to the Company in good and working condition all property of the Company in his possession, custody, or control, including without limitation: (i) physical property, such as Company-provided equipment, computer and related equipment, credit card(s), key(s), or identification or access card(s) or badge(s); (ii) access codes or passwords to the Company's information or security systems; and (iii) all confidential information and other physical or electronic documents concerning the business or operations of the Company; provided, however, that Executive may keep the iPhone and iPad he received from the Company.



11. Public Disclosure. The parties hereby agree that the existence, terms and provisions of this Agreement are confidential. As such, any public disclosure related in any way to this Agreement and the terms hereof may only be disclosed: (i) as required by law, rule or regulation; or (ii) for purposes of a Form 8-K/press release or other public disclosure or reporting filing.

12. Successors and Assigns. The Company may assign this Agreement to any subsidiary or corporate affiliate, or to any successor or assign (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of the business or assets of the Company. This Agreement shall inure to the benefit of the Company and permitted successors and assigns. Executive may not assign this Agreement or any part hereof. Any purported assignment by Executive shall be null and void from the initial date of purported assignment.

13. Applicable Law and Dispute Resolution. This Agreement, for all purposes, shall be construed in accordance with the laws of the State of Colorado without regard to conflicts-of-law principles. Subject to Paragraph 4.5 of the Employment Agreement and Section 14 below, and without in any way limiting the applicability of binding arbitration, each of the parties submits to the exclusive jurisdiction of any state or federal court sitting in Denver, Colorado in any action or proceeding arising out of or relating to this Agreement and the Employment Agreement and further agrees that all claims in respect of the action or proceeding may be heard and determined in any such court to the extent that any court proceeding is necessary in connection with Paragraph 4.5 of the Employment Agreement and Section 14 below, and further agrees not to bring any action or proceeding arising out of or relating to this Agreement or the Employment Agreement in any other court. Each of the parties agrees that a final judgment in any action or proceeding so brought shall be conclusive and may be enforced by suit on the judgment or in any other manner so provided by law.

14. Binding Arbitration. Except as provided in Paragraph 4.5 of the Employment Agreement, any and all disputes which involve or relate in any way to this Agreement, the Employment Agreement and/or to Executive's employment, Executive's termination of employment with the Company or termination of the Employment Agreement, whether initiated by Executive or by the Company and whether based on contract, tort, statute, or common law, shall be submitted to and resolved by final and binding arbitration as the exclusive method for resolving all such disputes. The arbitration shall be private and confidential and conducted in Denver, Colorado pursuant to the Federal Arbitration Act and applicable Colorado law, and pursuant to the applicable rules of the American Arbitration Association ("AAA") relating to employment disputes, unless the parties otherwise mutually agree to modify the AAA Rules.

The party demanding arbitration shall submit a written claim to the other party, setting out the basis of the claim or claims, within the time period of any applicable statute of limitations relating to such claim(s). If the parties cannot mutually agree upon an arbitrator, then the parties shall select a neutral arbitrator through the procedures established by the AAA. The arbitrator shall have the powers provided under the Colorado Code of Civil Procedure relating to the arbitration of disputes, except as expressly limited or otherwise provided in this Agreement. The parties shall have the right to reasonable discovery as mutually agreed or as determined by the arbitrator, including at least one deposition each, it being the goal of the parties to resolve any disputes as expeditiously and economically as reasonably practicable. The parties agree to share equally in the payment of the administration costs of the AAA arbitration, including payment of the fees for the

arbitrator, and any other costs directly related to the administration of the arbitration. The parties shall otherwise be responsible for their own respective costs and attorneys' fees relating to the dispute, such as deposition costs, expert witnesses and similar expenses.

The arbitrator may award, if properly proven, any damages or remedy that a party could recover in a civil litigation. The award of the arbitrator shall be issued in writing, setting forth the basis for the decision, and shall be binding on the parties to the fullest extent permitted by law, subject to any limited statutory right to appeal as provided by law. Judgment upon the award of the arbitrator may be entered pursuant to Section 13 above and enforced as provided by law.

This agreement to arbitrate is freely negotiated between Executive and the Company and is mutually entered into between the parties. Each party understands and agrees that it is giving up certain rights otherwise afforded to it by civil court actions, including but not limited to the right to a jury trial; provided, however, that either party may seek provisional remedies in a court of competent jurisdiction as provided pursuant to applicable law.

15. Dodd-Frank Act and Other Applicable Legal Requirements. The parties hereby incorporate Paragraph 18 of the Employment Agreement into the Agreement.

16. Entire Agreement. Unless specifically provided herein, this Agreement contains all the understandings and representations between the Parties pertaining to the subject matter hereof and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter. This Agreement may not be changed or altered, except by a writing signed by both parties.

17. Rule of Ambiguities: It is agreed and understood that the general rule that ambiguities are to be construed against the drafter shall not apply to this Agreement. In the event that any language in this Agreement is found or claimed to be ambiguous, each party shall have the same opportunity to present evidence as to the actual intent of the parties with respect to any such ambiguous language without any inference or presumption being drawn against the drafter.

18. Cooperation. The parties agree to cooperate fully with one another in effecting and carrying out the terms and conditions of this Agreement. The parties and their associated entities shall execute and deliver such other instruments and take such other action as they may require to more effectively complete any matter provided for herein.

19. Notice. All notices required or permitted under this Agreement shall be in writing and shall be deemed effective: (a) upon delivery, if delivered in person; (b) upon delivery to Federal Express or other similar courier service, marked for next day delivery, addressed as set forth below; or (c) upon deposit in United States Mail if sent by registered or certified mail, return receipt requested, addressed as set forth below:

**If to the Company:**

MusclePharm Corporation  
Attn: Chief Executive Officer  
4721 Ironton Street, Building A  
Denver, Colorado 80239

**If to Executive:**

Brent Baker

20. Severability. Should any provision of this Agreement be held by a court of competent jurisdiction to be enforceable only if modified, or if any portion of this Agreement shall be held as unenforceable and thus stricken, such holding shall not affect the validity of the remainder of this Agreement, the balance of which shall continue to be binding upon the parties with any such modification to become a part hereof and treated as though originally set forth in this Agreement. The parties further agree that any such court is expressly authorized to modify any such unenforceable provision of this Agreement in lieu of severing such unenforceable provision from this Agreement in its entirety, whether by rewriting the offending provision, deleting any or all of the offending provision, adding additional language to this Agreement or by making such other modifications as it deems warranted to carry out the intent and agreement of the parties as embodied herein to the maximum extent permitted by law. The parties expressly agree that this Agreement as so modified by the court shall be binding upon and enforceable against each of them. In any event, should one or more of the provisions of this Agreement be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions hereof, and if such provision or provisions are not modified as provided above, this Agreement shall be construed as if such invalid, illegal or unenforceable provisions had not been set forth herein.

21. Captions. Captions and headings of the sections and paragraphs of this Agreement are intended solely for convenience and no provision of this Agreement is to be construed by reference to the caption or heading of any section or paragraph.

22. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

23. Section 409A. This Agreement is intended to comply with Section 409A (“Section 409A”) of the Internal Revenue Code of 1986, as amended (the “Code”), or an exemption thereunder and shall be construed and administered in accordance with Section 409A. Notwithstanding any other provision of this Agreement, payments provided under this Agreement may only be made upon an event and in a manner that complies with Section 409A or an applicable exemption. Any payments under this Agreement that may be excluded from Section 409A either as separation pay due to an involuntary separation from service or as a short-term deferral shall be excluded from Section 409A to the maximum extent possible.

For purposes of Section 409A, each installment payment provided under this Agreement shall be treated as a separate payment. Any payments to be made under this Agreement upon a termination of employment shall only be made upon a "separation from service" under Section 409A. Notwithstanding the foregoing, the Company makes no representations that the payments and benefits provided under this Agreement comply with Section 409A and in no event shall the Company be liable for all or any portion of any taxes, penalties, interest or other expenses that may be incurred by Executive on account of non-compliance with Section 409A.

24. Knowing and Voluntary Acknowledgement. Executive specifically agrees and acknowledges that: (a) he has read this Agreement in its entirety and understands all of its terms; (b) he has been advised of and has availed himself of his right to consult with his attorney prior to executing this Agreement; (c) he knowingly, freely and voluntarily assents to all of its terms and conditions including, without limitation, the waiver, release and covenants contained herein; and (d) he is executing this Agreement, including the waiver and release, in exchange for good and valuable consideration in addition to anything of value to which he is otherwise entitled.

**IN WITNESS HEREOF**, the parties hereby enter into this Agreement and affix their signatures as of the date first above written.

**MUSCLEPHARM CORPORATION**

**EXECUTIVE**

By: /s/ Ryan Drexler

By: /s/ Brent Baker

Ryan Drexler  
Printed Name

Brent Baker

Printed Name

CEO

Title

3/24/2017

Date Signed

3/23/2017

Date Signed

**Certification Pursuant to Exchange Act Rule 13a-14(a)/15d-14(a) as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002**

I, Ryan Drexler, certify that:

1. I have reviewed this Annual Report on Form 10-K of MusclePharm Corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods present in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's fourth fiscal quarter that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on my most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: May 1, 2017

By: /s/Ryan Drexler  
Ryan Drexler  
Chief Executive Officer and President  
(Principal Executive Officer)



**Certification Pursuant to Exchange Act Rule 13a-14(a)/15d-14(a) as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002**

I, Douglas West, certify that:

1. I have reviewed this Annual Report on Form 10-K of MusclePharm Corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods present in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's fourth fiscal quarter that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on my most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: May 1, 2017

By: /s/Douglas West

Douglas West

V.P. of Finance and Administration

(Interim Principal Financial Officer and Interim Principal Accounting Officer)





**CERTIFICATION PURSUANT TO  
18 U.S.C. SECTION 1350  
AS ADOPTED PURSUANT TO SECTION 906  
OF THE SARBANES-OXLEY ACT OF 2002**

In connection with this Annual Report of MusclePharm Corporation (the “Company”), on Form 10-K for the year ended December 31, 2016, as filed with the U.S. Securities and Exchange Commission on the date hereof (the “Report”), I, Ryan Drexler, Principal Executive Officer of the Company, certify pursuant to 18 U.S.C. Section. 1350, as adopted pursuant to Section. 906 of the Sarbanes-Oxley Act of 2002, that to the best of my knowledge:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and
- (2) The information contained in the Report, fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: May 1, 2017

By: /s/ Ryan Drexler

Ryan Drexler  
Chief Executive Officer and President  
(Principal Executive Officer)

**CERTIFICATION PURSUANT TO  
18 U.S.C. SECTION 1350  
AS ADOPTED PURSUANT TO SECTION 906  
OF THE SARBANES-OXLEY ACT OF 2002**

In connection with this Annual Report of MusclePharm Corporation (the "Company"), on Form 10-K for the year ended December 31, 2016, as filed with the U.S. Securities and Exchange Commission on the date hereof (the "Report"), I, Douglas West, interim Principal Financial Officer of the Company, certify pursuant to 18 U.S.C. Section. 1350, as adopted pursuant to Section. 906 of the Sarbanes-Oxley Act of 2002, that to the best of my knowledge:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and
- (2) The information contained in the Report, fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: May 1, 2017

By: /s/Douglas West

Douglas West  
V.P of Finance and Administration  
(Interim Principal Financial Officer and Principal Accounting  
Officer)