

**TRADEMARK ASSIGNMENT**

Electronic Version v1.1  
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SUBMISSION TYPE:	NEW ASSIGNMENT		
NATURE OF CONVEYANCE:	ASSIGNS THE ENTIRE INTEREST AND THE GOODWILL		
<b>CONVEYING PARTY DATA</b>			
<b>Name</b>	<b>Formerly</b>	<b>Execution Date</b>	<b>Entity Type</b>
Arizona Nutritional Sciences, LLC		05/15/2009	LIMITED LIABILITY COMPANY: ARIZONA
<b>RECEIVING PARTY DATA</b>			
<b>Name:</b>	Reliance Vitamin Company, Inc.		
<b>Street Address:</b>	500 Memorial Drive		
<b>City:</b>	Somerset		
<b>State/Country:</b>	NEW JERSEY		
<b>Postal Code:</b>	08873		
<b>Entity Type:</b>	CORPORATION: NEW JERSEY		
<b>PROPERTY NUMBERS Total: 2</b>			
<b>Property Type</b>	<b>Number</b>	<b>Word Mark</b>	
Registration Number:	3479356	NITROFUSION	
Serial Number:	77603815	PLANTFUSION	
<b>CORRESPONDENCE DATA</b>			
Fax Number:	(973)845-6176		
	<i>Correspondence will be sent via US Mail when the fax attempt is unsuccessful.</i>		
Phone:	(973) 285-3239		
Email:	rcc@chippersonlaw.com		
Correspondent Name:	Rita C. Chipperson, Esq.		
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Address Line 4:	Morristown, NEW JERSEY 07960		
ATTORNEY DOCKET NUMBER:	RR0009.001		
NAME OF SUBMITTER:	Rita C. Chipperson, Esq.		
Signature:	/Rita C. Chipperson/		

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**TRADEMARK**

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Date:

08/24/2010

**Total Attachments: 27**

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## ASSET PURCHASE AGREEMENT

This ASSET PURCHASE AGREEMENT ("Agreement") dated May 15, 2009, is entered into by and between **ARIZONA NUTRITIONAL SCIENCES, LLC**, a limited liability company organized and existing under the laws of the State of Arizona with a principal place of business located at 13803 N. 32<sup>nd</sup> St., Phoenix, Arizona 85032 (the "Seller"), **GREGORY W. COOPER**, an individual residing at 5012 E. Calle Del Sol, Cave Creek, Arizona 85331 ("Cooper"), and **RELIANCE VITAMIN COMPANY, INC.**, a corporation organized and existing under the laws of the State of New Jersey with principal business offices located at 500 Memorial Drive, Somerset, New Jersey 08873, or its assignee as provided herein (the "Purchaser"). In consideration of the mutual covenants herein, and intending to be legally bound hereby, the parties agree as follows:

**WHEREAS**, the Seller operates a nutritional supplement business (the "Business") based in the State of Arizona, of which Cooper is the principal member and officer of the Seller;

**WHEREAS**, the Purchaser is a producer of vitamins and nutritional supplements based in the State of New Jersey;

**WHEREAS**, the Purchaser currently owns an approximately thirty-five percent (35%) equity interest in Seller and is a principal supplier to Seller;

**WHEREAS**, the Seller is indebted to the Purchaser in connection with its purchase of certain vitamins and nutritional supplements from Purchaser as provided below; and

**WHEREAS**, in consideration of the Purchaser's forgiveness of the trade debt and for other good and valuable consideration set forth in this Agreement, the Seller desires to sell and, on the basis of the representations, warranties, covenants and agreements hereinafter made by the Seller and Cooper, the Purchaser desires to acquire substantially all of the assets of Seller in accordance with the terms hereof;

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

### SECTION 1. PURCHASE OF THE SELLER'S ASSETS BY THE PURCHASER

**1.1 Agreement to Sell.** At the Closing (hereinafter defined), the Seller shall sell, grant, convey, transfer, assign and deliver to the Purchaser, upon the terms and subject to the conditions of this Agreement, free and clear of all liens, encumbrances and charges, all of Seller's right, title and interest in and to substantially all of the assets of Seller used or usable, directly or indirectly, in whole or in part, in connection with its ownership, production, marketing and/or sale of nutritional supplement products under the brand names "NitroFusion" and "PlantFusion" (collectively, the "Brands"), or any related name or derivative thereof, including, but not limited to, the following:

(a) Any and all rights in the Brand names "NitroFusion®" and "PlantFusion™" and all related and similar names, logos and trade names, registered or unregistered, including, any of the Seller's corporate, copyright, trademark, trade name and service mark rights and interest in such names, logos and trade names (collectively, the "Intellectual Property"), including, but not limited to, those listed on **Schedule 1.1(a)**, attached hereto and incorporated herein;

(b) All customer lists, files, and information, marketing and promotional materials, manuals, marketing studies or analysis, or any other records or memorandum relating to either or both of the Brands;

(c) A comprehensive list and contact information for all vendors used by the Seller in connection with its production, marketing and/or sale of either or both Brands as of the date hereof, a copy of which is attached hereto as **Schedule 1.1(c)** and incorporated herein;

(d) All rights and privileges of the Seller under the contracts and open orders with suppliers and customers relating to the Brands and in existence on the Closing Date (hereinafter defined) as set forth in **Schedule 1.1(d)**, attached hereto and incorporated herein, subject to any changes as may occur in accordance with this Agreement between the date hereof and the Closing;

(e) All of the Seller's accounts receivable arising from its sale of products, including, but not limited to, the sale of its "NitroFusion®" and/or "PlantFusion™" Brand goods and services, invoiced on or after March 3, 2009;

(f) All of Seller's UPC Codes; and

(g) All of the Seller's goodwill, and all other assets used or useful in connection with the Brands.

The assets, properties and rights being assigned or transferred to the Purchaser and described in subparagraphs (a) through (g) above are herein collectively referred to as the "Assets."

**1.2 Excluded Assets.** Notwithstanding the foregoing, the Seller shall not assign or transfer to the Purchaser (i) any of its cash or cash equivalents, other than that representing customer deposits for orders related to the accounts receivable acquired by the Purchaser under Section 1.1(e) above; (ii) the Seller's Certificate of Formation, company seal, minute books, membership interest transfer ledger and other entity records containing the corporate organization and capitalization of the Seller; (iii) membership interests of the Seller, including membership interests held by the Seller as treasury interests; (iv) any causes of action (including, but not limited to, counterclaims, third-party claims and claims for contribution or indemnification) arising out of or relating to the proceedings, actions and claims as to which the Purchaser is not assuming any obligation or liability, including any causes of action arising out of or relating to the Assets prior to the Closing; (v) any insurance policies, except those specifically provided for herein; (vi) any security deposits, except those specifically provided for herein; (vii) any leases; and (viii) the other assets not specifically conveyed herein (collectively referred to herein as the "Excluded Assets").

**1.3 Agreement To Purchase.** At the Closing, the Purchaser shall purchase from the Seller, upon the terms and subject to the conditions of this Agreement and in reliance upon the representations and warranties of the Seller in this Agreement and the Schedules hereto, the Assets and, as consideration therefor, shall pay to the Seller the Purchase Price for the Assets as set forth in Section 2.1 below.

## **SECTION 2. PURCHASE PRICE; NO ASSUMPTION OF LIABILITIES**

**2.1 Purchase Price.** The aggregate purchase price for all of the Assets (the "Purchase Price") shall consist of the following:

(a) **Forgiveness of Trade Debt.** The purchase price for all of the Assets shall be equal to the outstanding sum of all trade payables due and owing to Purchaser by Seller for products shipped by Purchaser to Seller or its clients prior to March 3, 2009 (the "Trade Debt"). The parties acknowledge and agree that as of the date of this Agreement, the Trade Debt totals [REDACTED] as evidenced by the Statement of Account attached hereto as **Exhibit A** and incorporated herein. Upon closing, Purchaser will forgive Seller's payment of and waive all right, title and interest in and to the Trade Debt. The purchase price shall be allocated for purposes of this Agreement and for federal, state and local tax purposes as follows: [REDACTED] Seller and Purchaser shall each file IRS Form 8594 with the applicable federal and state taxing authorities accurately reflecting the foregoing allocation.

## **2.2 Intentionally Omitted.**

**2.3 Due on Sale.** The Purchaser acknowledges and agrees that in the event it undertakes, at any time, the sale or other disposition of all or substantially all of its assets or of the Brands, or in the event of a sale of a majority interest or change in control of the Purchaser, Seller shall be entitled to receive the following payments from Purchaser at the Closing or settlement of such transaction or, in the event all or a portion of the purchase funds are paid over time, upon Purchaser's receipt of the applicable funds:

- i. twenty (20%) percent of that portion of the sales price allocated to the Brands in the event of a transaction closing within five (5) years from the date of Closing;
- ii. fifteen (15%) percent of that portion of the sales price allocated to the Brands in the event of a transaction closing between five (5) and seven (7) years after the date of Closing;
- iii. ten (10%) percent of that portion of the sales price allocated to the Brands in the event of a transaction closing between seven (7) and ten (10) years after the date of Closing; or
- iv. no payment if the applicable transaction is consummated more than ten (10) years after the date of Closing.

**2.4 No Assumption of Obligations and Liabilities.** Except for its obligation to fill all approved orders placed by Seller and accepted by Purchaser as Seller's supplier, the Purchaser is neither assuming nor agreeing to pay or discharge any of the liabilities and obligations of the Seller and nothing in this Agreement or otherwise shall be construed to the contrary. All liabilities and obligations of the Seller, whether known or unknown, direct or contingent, in litigation or threatened or not yet asserted with respect to any aspect of the Business prior to the Closing, are and shall remain the sole responsibility of the Seller. Without limiting the generality of the foregoing, the Seller shall remain specifically responsible for (a) any liabilities of the Seller with respect to any federal, state, local or foreign income, franchise or other tax imposed upon the Seller for activity prior to the Closing, (b) any obligation of the Seller for any employee grievance pending at the Closing Date, and (c) any obligation of the Seller arising out of the litigation described in **Schedule 5**. Further, in no event shall the Purchaser assume or incur any liability or obligation with respect to any income or other tax payable by the Seller incident to or arising as a consequence of the consummation by the Seller of this Agreement, or any cost or expense incurred by the Seller incident to or arising as a consequence of such consummation of the negotiations in connection with this Agreement, including without limitation, any costs incident to the liquidation of the Seller.

**2.5 Commission Agreement.** The parties agree that, following Closing, an entity of which Cooper is a principal and sole owner (the "Cooper Entity") will be retained by Purchaser to provide various marketing, sales, and management services to Purchaser. On or before the Closing Date, the Purchaser shall enter into a mutually agreeable Commission Agreement (the "Commission Agreement") with the Cooper Entity, substantially in the form attached hereto as **Exhibit B** and incorporated herein.

**2.6 Supplemental Commission Agreement.** In addition to the Commission Agreement, the Cooper Entity and Purchaser shall enter into a mutually agreeable Supplemental Commission Agreement (the "Supplemental Agreement"), substantially in the form attached hereto as **Exhibit C** and incorporated herein, pursuant to which the Purchaser shall pay the Cooper Entity additional commissions on sales of "NitroFusion®" and/or "PlantFusion™" Brand name products made by Purchaser during a five (5) year term following Closing (the "Term").

### **SECTION 3. INTENTIONALLY OMITTED**

### **SECTION 4. THE CLOSING; TRANSFER PROCEDURES**

**4.1 Closing.** The closing of the sale and purchase of the Assets (the "Closing") shall be held as soon as possible upon the completion of the undertaking between counsel, expected to be on or around **May 11, 2009** (the "Closing Date"). The Closing will take place by way of overnight courier, through escrow held at the offices of the Seller's counsel, or on such other date and at such other time as the parties may agree.

**4.2 Transfer of the Assets.** At the Closing, the Seller shall deliver to the Purchaser such bills of sale, endorsements, assignments, documents of title, and other good and sufficient instruments of conveyance and transfer, in form and substance reasonably satisfactory to the Purchaser's counsel, as shall be effective to vest in the Purchaser all of the Seller's right, title and interest in and to the Assets.

**4.3 Purchase Price.** At the Closing, the Purchaser shall acknowledge in writing that the Trade Debt has been forgiven in its entirety and is no longer due and owing.

**4.4 Release of Liens.** At or prior to the Closing, the Seller shall deliver all necessary releases of liens including, but not limited to, Uniform Commercial Code termination statements in forms reasonably acceptable to the Purchaser's counsel so that the Seller's title to the Assets is free and clear of all liens and encumbrances, sales tax, workers compensation and personal property tax.

### **SECTION 5. REPRESENTATIONS AND WARRANTIES OF THE SELLER**

Except as otherwise disclosed in the Disclosure Schedule attached hereto as **Schedule 5** and incorporated herein, the Seller and Cooper each hereby represent, warrant and covenant to the Purchaser, intending for the Purchaser to rely hereon, as follows:

**5.1 Organization and Good Standing.** The Seller is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Arizona, and is duly qualified and in good standing as a foreign corporation in each jurisdiction in which the nature of the Seller's Business or the ownership of the Assets requires such

qualification.

**5.2 Title to Assets.** The Seller owns outright, and has good and marketable title to, all of the Assets free and clear of all liens, pledges, mortgages, security interests, conditional sales contracts or other encumbrances or conflicting claims of any nature whatsoever, all of which the Seller shall remove, at or prior to the Closing. To the best of the Seller's and Cooper's knowledge, the Assets are in good working condition and repair.

**5.3 Taxes.** Except as disclosed in Schedule 5, Seller has timely filed (timely being understood to include all properly granted extensions) all returns required to be filed by it with respect to all federal, state, local and foreign income, payroll, employment, unemployment, withholding, excise, sales, personal property, use, business and occupation, franchise and occupancy, real estate, or other taxes (all of the foregoing taxes including interest and penalties and estimated taxes, subsequently referred to as the "Taxes"), has paid all Taxes which are shown to have become due pursuant to such returns, and has paid all other Taxes for which it has received a notice of assessment or demand for payment or has otherwise been made aware of a deficiency. All such returns or reports are true and correct in all material respects. The Seller has withheld or collected and paid over to the appropriate governmental authorities or is properly holding for such payment all Taxes required by Law to be withheld or collected.

**5.4 Litigation.** Except as disclosed in Schedule 5:

(a) there is no dispute, claim, action, suit, proceeding, arbitration or governmental investigation, either administrative or judicial, pending, or to the knowledge of the Seller threatened, against the Seller, the Business or the Assets; and

(b) the Seller, to the best of its knowledge, is not in default with respect to any order, writ, injunction or decree of any court or governmental department, commission, board, bureau, agency or instrumentality, which involves the possibility of any judgment or liability which may result in any materially adverse change in the financial condition of the Seller, the Business or the Assets.

**5.5 Additional Information.** Seller neither owns, has in existence, has any rights or interest in or to, nor uses in connection with the Brands:

(a) any trademark, trade or fictitious name or registration or application therefor or any copyright, invention, letters patent or application for letters patent;

(b) any agreement or other arrangement under which the Seller has agreed or is obligated to sell or supply products or perform any services related to the Brands or the Assets at any time after the Closing Date;

(c) any contract or commitment for the future purchase of, or payment for, raw materials, supplies or products;

(d) any license agreements pursuant to which the Seller is authorized to use any third-party patents, trademarks, copyrights, trade secrets, likeness or other proprietary rights, including software, that is used in connection with the Brands; or

(e) any consulting, agency or representative contract to which the Seller is a party or is otherwise bound.

Complete and correct copies of the documents referred to in subparagraphs (a) through (e) above have been delivered to the Purchaser. The Seller has no knowledge of any default or claimed or alleged default, or state of facts which with notice or lapse of time or both, would constitute a default, in any obligation of the Seller or of any other party to be performed under any of the agreements described in subparagraphs (a) through (e) above.

**5.6 Compliance with Laws.** To the best knowledge of Seller and Cooper, Seller has complied with and is not in default under, or in violation of, any law, ordinance, rule, regulation or order (including, without limitation, any environmental, safety, employee benefit, health or price or wage control law, ordinance, rule, regulation or order) applicable to its operations, business or properties as presently constituted which materially adversely affect or, so far as the Seller can now foresee, may in the future materially adversely affect, the Business or the Assets.

**5.7 Authorization.** The Seller has full corporate power and authority to enter into this Agreement and consummate the transactions on its part contemplated hereby. The execution and delivery of this Agreement, and the sale, transfer and other actions contemplated hereby have been duly authorized by the manager, managing member and/or members of the Seller, as required, which are the only corporate approvals required of the Seller. Neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated herein by the Seller constitutes a violation or breach of applicable law or of the Seller's Articles of Organization, Operating Agreement or any provision of any contract or instrument to which the Seller is a party or by which it is bound, or any order, writ, injunction, decree or judgment applicable to it, or constitute a default (or would but for the giving of notice or lapse of time or both, constitute a default) under any contract or instrument to which the Seller is a party or by which it is bound. This Agreement constitutes the legal, valid and binding obligation of the Seller enforceable in accordance with its terms except as enforceability may be limited by bankruptcy laws and general equitable principles.

**5.8 Contracts.** To the best knowledge of the Seller and Cooper, except as provided in this Agreement, neither this Agreement nor anything required to be done hereunder including, but not limited to, the conveyance of the Assets, violates or shall violate any contract or agreement to which the Seller is a party.

**5.9 Business Relations.** Since April 1, 2009, there has been no cancellation by or modification in any material respect to the business relationship of any customer of Seller, and the Seller is not aware of any such pending cancellations or material modifications. Further, Seller and Cooper neither know nor have any reason to believe that any customer or vendor of Seller will cease to do business with Purchaser after the consummation of the transactions contemplated.

**5.10 Intellectual Property and Intangible Assets.** Schedule 1.1(a) lists all of Seller's registered trademarks and trade names. Seller owns all copyrights, trademarks, trade names, service marks, logos, and slogans used or useful in connection with the Seller's Business, including, but not limited to, the names of the Brands. At or prior to Closing, the Seller will execute any assignments or other documents necessary to transfer ownership of the Intellectual Property to Buyer. Except as provided in the Disclosure Schedule, to Seller's knowledge no party has made any claims against Seller or alleged that the Seller's use of any of the Intellectual Property will infringe upon the rights of any person or entity. To the best knowledge of Seller and Cooper, the Seller's use of the Intellectual Property is not infringing or violating the intellectual property rights of any person or entity.



**5.11 Financial Statements.** True and accurate copies of Seller's 2008 year-end financial statements, including a balance sheet and income statement for the period ending December 31, 2008 are attached as **Exhibit D** with financial statements for January 2009, February 2009 and March 2009 to be provided to Purchaser within thirty (30) days of the Closing Date (the "Financial Statements"). To the best of Seller's and Cooper's knowledge, the Financial Statements are complete and accurate and fairly present the financial condition of the Seller as of the applicable dates.

**5.12 Accounts Receivable and Payable.** True and accurate copies of Seller's current accounts receivable and accounts payable are attached as **Exhibit E** (respectively, the "Receivables" and "Payables"). To the best of Seller's and Cooper's knowledge, the Receivables and Payables are complete and accurate as of the date of this Agreement and shall be updated as of the Closing Date. All Receivables that are reflected on Exhibit E or on the accounting books and records of Seller as of the Closing Date and that are being assumed by Seller represent or will represent valid obligations arising from bona fide sales actually made or services actually performed by Seller in the ordinary course of its business. Except to the extent paid prior to the Closing Date, to Seller's knowledge, such Accounts Receivable being assumed by Purchaser are or will be as of the Closing Date, subject to no offset, deduction or counterclaim, and are accurately reflected in the invoices and statements rendered by the Seller. Except as provided in the Disclosure Schedule, Seller has received no notice of any claim, other than returns in the ordinary course of business of Seller, from any account debtor of a Receivable relating to the amount or validity of such Receivable.

**5.13 Employment Matters.** **Exhibit F** attached hereto and incorporated herein is a true and complete list of the names of all employees of the Seller, the stated annual or hourly compensation for each and the total remuneration received by each from the Seller in 2008, including salary, bonus, commissions and any other form of compensation or perquisites.

Seller has not received written notice that is in violation of applicable equal employment opportunity wage and hour or any other Laws of any Government or Governmental Agency relating to employment; there are no active, pending, administrative or judicial proceedings under any Laws of any Government or Governmental Agency; Seller has received no written notice of any claims, charges, and employment-related suits or controversies which have occurred within the last two (2) years or are presently pending under any employment-related Laws of any Government or Governmental Agency; and the Seller is not subject to any judgments, decrees, conciliation agreements and settlement agreements concerning employment-related matters.

Seller and Cooper have not received written notice of any pending or threatened claims by any current or former employee(s) of Seller against Seller and/or Cooper, including but not limited to workers' compensation, age discrimination, or other employment-related tort claims.

Seller has not entered into any employment agreements with any of its employees, and all employees may be terminated at will; there is no contractual obligation or special termination or severance arrangement in respect of any of Seller's employees; and there is no provision of any agreement or arrangement with any of the Seller's employees, or any other legal or contractual requirement, which would obligate the Seller to require the Purchaser to employ any of the Seller's employees.

As of the date of this Agreement, Seller has paid all wages, bonuses, commissions and other benefits and sums due (and all required taxes, insurance, social security, and withholding thereon), including all accrued vacation, accrued sick leave, accrued benefits and accrued payments (and pro rata accruals for a portion of a year), to its employees and agrees to pay all such sums through the Closing on or before the Closing Date.

**5.14 Compliance with Prior Agreements.** Seller has complied in all material respects with the terms and conditions of all prior agreements between Seller and Purchaser, including (i) that certain Membership Interest Purchase and Manufacturing Agreement dated July 15, 2008, (ii) a letter agreement dated March 3, 2009, and (iii) a supplemental letter agreement dated March 26, 2009.

**5.15 Disclosure.** No statement made by the Seller in any representation, warranty or covenant made by the Seller to the Purchaser in this Agreement or in any of the Seller's closing documents contains or will contain any untrue statement of material fact, or omits or will omit to state a material fact required to be stated to make such statement, in light of the circumstances in which such statement was made, not misleading.

**5.16 Material Change.** Should the Seller receive notice or knowledge of any information before the Closing which would result in a change to the warranties in this Agreement, the Seller shall immediately notify the Purchaser of same in writing.

**5.17 Survival.** The representations and warranties provided in this Agreement shall survive the Closing, for a period of twenty-four (24) months.

## **SECTION 6. REPRESENTATIONS AND WARRANTIES OF THE PURCHASER**

The Purchaser hereby represents and warrants to the Seller, intending for the Seller to rely hereon, as follows:

**6.1 Organization and Good Standing.** The Purchaser is a corporation duly organized, validly existing and in good standing under the laws of the State of New Jersey

**6.2 Authorization.** The Purchaser has full corporate power and authority to enter into this Agreement and consummate the transactions on its part contemplated hereby. The execution and delivery of this Agreement, and the purchase and other actions contemplated hereby have been duly authorized by the Board of Directors and, if required, the shareholders of the Purchaser, which are the only corporate approvals required of the Purchaser. Neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated herein by the Purchaser constitutes a violation or breach of applicable law or of the Purchaser's Articles of Incorporation, Bylaws or any provision of any contract or instrument to which the Purchaser is a party or by which it is bound, or any order, writ, injunction, decree or judgment applicable to it, or constitute a default (or would but for the giving of notice or lapse of time or both, constitute a default) under any contract or instrument to which the Purchaser is a party or by which it is bound. This Agreement constitutes the legal, valid and binding obligation of the Purchaser, enforceable in accordance with its terms except as enforceability may be limited by bankruptcy laws and general equitable principles.

**6.3 No Misrepresentation.** No statement made by the Purchaser in any representation, warranty or covenant made by the Purchaser to the Seller in this Agreement or in any of the Purchaser's closing documents contains or will contain any untrue statement of material

fact, or omits or will omit to state a material fact required to be stated to make such statement, in light of the circumstances in which such statement was made, not misleading.

**6.4 Financial Ability to Close.** The Purchaser hereby warrants that it has the financial ability to consummate and close on the transaction contemplated hereby.

**6.5 Material Change.** Should the Purchaser receive notice or knowledge of any information before the Closing which would result in a change to the warranties in this Agreement, the Purchaser shall immediately notify the Seller of same in writing.

**6.6 Compliance with Prior Agreements.** Purchaser has complied in all material respects with the terms and conditions of all prior agreements between Purchaser and Seller including (i) that certain Membership Interest Purchase and Manufacturing Agreement dated July 15, 2008; (ii) a letter agreement dated March 3, 2009; and (iii) a supplemental letter agreement dated March 26, 2009.

**6.7 Survival.** The representations and warranties provided in this Agreement shall survive Closing, for a period of twenty-four (24) months.

## **SECTION 7. FEES AND EXPENSES**

**7.1 Representations and Indemnity with Respect to Brokers.** Each party hereby represents and warrants to the other that it has not engaged or dealt with any broker or other person who may be entitled to any brokerage fee or commission in respect of the execution of this Agreement or the consummation of the transactions contemplated hereby. Without limiting the generality of the foregoing, each of the parties hereto shall indemnify and hold the other harmless against any and all claim, loss, liability or expense which may be asserted against such other party as a result of such first mentioned party's dealings, arrangements or agreements with any such broker or person.

**7.2 Expenses of the Transaction.** Each party hereto shall pay its own expenses incidental to the preparation of this Agreement and the consummation of the transactions contemplated hereby.

### **7.3 Costs of Transaction; Prorations; Utilities.**

(a) All state and local transfer taxes and sales and use taxes imposed by law with respect to the transfer of any of the Assets shall be paid by the Seller. Each party shall be responsible for its own attorneys' fees incurred in connection with the transactions hereunder.

(b) All real and personal property taxes and special assessments or charges assessed in connection with any tangible personal property, shall be paid by the Seller.

**7.4 Delivery of Assets.** The Purchaser shall, upon Closing, be responsible for arranging and paying for the delivery of the Assets from the Seller to the Purchaser. The Seller agrees to cooperate and assist the Purchaser as needed to facilitate the transfer of the Assets.

## **SECTION 8. INDEMNIFICATION**

**8.1 Survival of Representations, Warranties and Agreements.** Except as otherwise provided herein, all representations, warranties and agreements made by the Seller, Cooper and/or the Purchaser in this Agreement or in any certificate delivered pursuant hereto shall survive the Closing for a period of twenty-four (24) months.

**8.2 Indemnification by the Seller and Cooper.** The Seller and Cooper shall each, jointly and severally, defend, indemnify and hold the Purchaser harmless from and against all claims, demands, liabilities, damages, losses and out-of-pocket expenses, including but not limited to reasonable attorneys' fees, whether or not reduced to judgment, order or award, caused by or arising out of or relating to (a) any breach by Seller or Cooper of, or any failure of Seller or Cooper to comply with, any of the representations, warranties, covenants or agreements made by the Seller or Cooper in this Agreement or in any Schedule, Exhibit, list, certificate or document delivered hereunder; (b) any violation by Seller of any statute or law, or any judgment, decree, order, regulation or rule of any court of governmental authority to which Seller is subject or by which the Assets are bound; (c) any claim arising from or relating to any failure of Seller to comply with any Bulk Sales Law applicable to this transaction, or (d) the conduct of the Business of Seller prior to the Closing Date and any Excluded Assets or unassumed liabilities. In the event that the Purchaser seeks indemnification from Seller and/or Cooper for any claim arising under this Section 8.2, subject to Section 8.6, Purchaser shall have the right to directly set-off the amount of the claim and all costs and expenses incurred by Purchaser in connection therewith, including, but not limited to, reasonable attorneys' fees, whether or not litigation results, against amounts due Seller, Cooper, or the Cooper Entity hereunder or under any other agreement, including, but not limited to, the Royalty Agreement and/or the Commission Agreement.

**8.3 Indemnification by the Purchaser.** The Purchaser shall defend, indemnify and hold the Seller and Cooper harmless from and against all claims, demands, liabilities, damages, losses and out-of-pocket expenses, including but not limited to reasonable attorneys' fees, whether or not reduced to judgment, order or award, caused by or arising out of or relating to (a) any breach by Purchaser of, or any failure by Purchaser to comply with any representations, warranties, covenants or agreements made by the Purchaser in this Agreement or in any Schedule, Exhibit, list, certificate or document delivered hereunder; or (b) the use or ownership of the Assets, in which the event giving rise to the claim for indemnification occurred after the Closing through no fault of Seller.

**8.4 Limits on Seller's and Cooper's Indemnification.** Notwithstanding the foregoing, except as otherwise set forth below in Section 8.5, in no event shall the amount of indemnification for which Seller and/or Cooper may be responsible to Purchaser exceed the Purchase Price set forth in Section 2.1(a) of this Agreement, net of insurance. Moreover, in no event shall Purchaser seek indemnification from Seller and/or Cooper until the amount of the claims for matters set forth in Section 8.2 exceeds Five Thousand Dollars (\$5,000.00) net of insurance (the "Indemnification Basket") it being the intent of Seller, Cooper and Purchaser that the Indemnification Basket shall be intended as a deductible and shall not revert to Dollar One, if exceeded.

### **8.5 Survival of Terms; Exception for Certain Liabilities.**

(a) Except as otherwise expressly provided in subsection (b) of this Section, the provisions of this Section 8 shall survive the Closing and the consummation of the transactions contemplated hereby and continue in full force and effect for a period of twenty-four (24) months following the Closing Date.

(b) Notwithstanding subsection (a) of this Section or anything to the contrary herein, the obligations of Seller and Cooper to, jointly and severally, defend, indemnify and hold the Purchaser harmless from and against all third party claims, demands, liabilities, damages, losses and out-of-pocket expenses, including but not limited to reasonable attorneys' fees, whether or not reduced to judgment, order or award, caused by or arising out of or relating to those liabilities and obligations of Seller listed in **Schedule 8.5** attached hereto and incorporated herein (the "Schedule 8.5 Indemnification Obligations"), shall survive the Closing and the consummation of the transactions contemplated hereby.

(c) With respect to the Schedule 8.5 Indemnification Obligations, the amount of indemnification for which Seller and/or Cooper may be responsible to Purchaser shall not exceed the amount of the Purchase Price set forth in Section 2.1(a) of this Agreement, net of insurance, plus amounts paid or to be paid to Seller, Cooper, or the Cooper Entity hereunder or under any other agreement, including, but not limited to, the Royalty Agreement and/or the Commission Agreement. The Indemnification Basket shall apply to the Schedule 8.5 Indemnification Obligations.

(d) In the event that the Purchaser seeks indemnification from the Seller and/or Cooper for any Schedule 8.5 Indemnification Obligations, subject to Section 8.6, Purchaser shall have the right to directly set-off the amount of the claim and all costs and expenses incurred by Purchaser in connection therewith, including, but not limited to, reasonable attorneys' fees, whether or not litigation results, against amounts due Seller, Cooper, or the Cooper Entity hereunder or under any other agreement, including, but not limited to, the Royalty Agreement and/or the Commission Agreement.

#### **8.6 Notice of Claims and Potential Claims/Set-Off Procedure.**

(a) The party that is entitled to be indemnified by the other party pursuant to Section 8 of this Agreement (the "Indemnified Party") agrees to give prompt written notice to the party which is required to indemnify the Indemnified Party (the "Indemnifying Party") upon the receipt by the Indemnified Party of notice of any claim by a third party against the Indemnified Party which might give rise to a claim against the Indemnifying Party stating the nature and the basis of such claim and, if ascertainable, the amount thereof. In connection with any such third party claim, the Indemnifying Party may, at its election and expense, have the right to participate in the defense of such third party claim and no such third party claim shall be settled without the consent of the Indemnifying Party, which consent shall not be unreasonably withheld or delayed.

(b) If Purchaser is aware of any claim for which it may be entitled to set-off any amounts due to the Cooper Entity under the Royalty Agreement and/or the Commissions Agreement as the case may be (a "Set-Off Claim"), Purchaser shall notify Seller and Cooper in writing of the existence of such Set-Off Claim. After receipt of written notice of the Set-Off Claim, Seller or Cooper shall have ten (10) business days to object to the Set-Off Claim by notifying Purchaser in writing of its bona fide objection to the Set-Off Claim (the "Set-Off Objection Notice"). If Seller and Cooper both fail to provide the Set-Off Objection Notice to Purchaser within such ten (10) business day period, Seller and Cooper shall be deemed to have accepted the Set-Off Claim and Purchaser shall be entitled to reduce the amount due to the Cooper Entity under the Royalty Agreement or the Commission Agreement by the amount set forth in the Set-Off Claim. If, however, Seller delivers to Purchaser a Set-Off Objection Notice during the above mentioned ten (10) business day period, Purchaser and Seller shall endeavor to arrive at an agreement with respect to the dispute. If the parties are unable to reach an agreement within thirty (30) days from the delivery of the Set-Off

Objection Notice, the parties shall resolve the dispute in accordance with Section 10.2 of this Agreement; provided, however, that in any such arbitration the prevailing party shall be awarded and receive reimbursement of its attorneys' fees and costs incurred in connection with the arbitration from the non-prevailing party.

(c) The provisions of Section 8.6(b) of this Agreement shall not be deemed a limit on Seller's and Cooper's joint and several indemnification obligations to Purchaser specified in this Section and shall be without prejudice to any other right or remedy that Purchaser may have at law or in equity under this Agreement; provided, however, that Purchaser shall not have a right to a Set-Off Claim if the Set-Off Claim is made after the applicable survival periods set forth in this Section 8 of the Agreement.

## **SECTION 9. POST-CLOSING MATTERS**

**9.1 Further Assurances.** At the request of a party from time to time, the other party will execute and deliver such further reasonable instruments and both parties will take such other reasonable action more effectively to consummate the transactions contemplated by this Agreement and to put the Purchaser into ownership, possession and control of all the Assets to the exclusion of all others whose claims may have arisen prior to the Closing Date.

**9.2 Tax Matters.** The Seller shall, on a timely basis, prepare and file or cause to have prepared and filed all tax returns covering the Seller's federal, state and local income taxes for the Seller's taxable year which includes the Closing Date, and shall pay all taxes due for such period. The Seller shall also prepare and file or cause to be prepared and filed all federal, state and local income tax returns and all other (including without limitation, employee withholding and FICA) tax returns and all pension returns and ERISA filings required to be filed by the Seller through the Closing Date on a timely basis, and pay all taxes and expenses due for such period. Seller and Purchaser shall each file IRS Form 8594 with the applicable federal and state taxing authorities respecting the amounts set forth in Section 2.1(a) of this Agreement.

## **SECTION 10. MISCELLANEOUS**

### **10.1 Intentionally Omitted.**

**10.2 Governing Law; Arbitration.** This Agreement will be governed by the laws of the State of New Jersey, except for its conflicts-of-laws provisions. Any claim or dispute arising between or among the parties with respect to this Agreement, its interpretation or effect, or their respective duties or responsibilities hereunder, shall be submitted to arbitration, which shall be binding upon all parties having an interest in the dispute. Arbitration shall be conducted by a single arbitrator (the "Arbiter") chosen and acting in accordance with the Rules of the American Arbitration Association respecting commercial disputes ("AAA"). The Arbiter shall apply the substantive law of New Jersey, and may award injunctive relief or any other remedy available from a judge, including attorney fees and costs to the prevailing party. Unless the parties to the arbitration shall agree otherwise, the arbitration proceeding shall take place in Somerset County, New Jersey, or if the AAA shall have no arbitration facilities in Somerset County, in the county closest to Somerset County, New Jersey where the AAA has arbitration facilities. There shall be no substantive motions or discovery, except that the Arbiter shall authorize such discovery as may be necessary to insure a fair private hearing, which shall be held One Hundred Twenty (120) days of the demand for arbitration. There shall be no award of travel, meals or lodging expenses to any party,

attorney(s) or witness(es). Judicial review of the Arbiter's award may be sought only upon the grounds of fraud, corruption, misconduct or erroneous conclusions of law. Service of the Petition to Confirm Arbitration and the written notice of the time and place of hearing on the Petition to Confirm the award of the Arbiter shall be made in the manner provided in this Agreement with respect to all notices.

**10.3 Assignment.** This Agreement shall not be assignable by either party without the prior written approval of the other party, except that the Purchaser may assign its rights hereunder to an affiliated entity of which the Purchaser, or its principals, is (are) a principal provided that Purchaser shall agree to remain liable for the performance of all of its obligations hereunder. To the extent assignable, this Agreement shall be binding upon, and inure to the benefit of, the Purchaser and its successors and assigns, and the Seller and its successors and assigns.

**10.4 Headings for Reference Only.** The section and paragraph headings in this Agreement are for convenience of reference only and shall not be deemed to modify or limit the provisions of this Agreement.

**10.5 No Publicity.** No press releases or public disclosures, either written or oral, of the transactions contemplated by or concluded under this Agreement, shall be made without the prior knowledge and written consent of both parties.

**10.6 Notices.** Any notice, communication, demand or other writing (a "notice") required or permitted to be given, made or accepted by any party to this Agreement shall be given by personal delivery or by deposit with a nationally recognized overnight courier service for next day delivery. A notice given by personal delivery shall be effective upon delivery and a notice given by nationally recognized overnight courier service shall be deemed effective on the first day after such deposit. For purposes of notice, the addresses of the parties shall be, until changed by a notice given in accordance herewith, as follows:

If to the Seller and/or Cooper:

Arizona Nutritional Sciences, LLC  
13803 N. 32<sup>nd</sup> St.,  
Phoenix, Arizona 85032  
Attn: Gregory W. Cooper, President

with a required copy to:

Eric H. Melzer, Esq.  
Greenbaum Rowe Smith & Davis, LLP  
Metro Corporate Campus One  
P.O. Box 5600  
Woodbridge, New Jersey 07095-0988

If to the Purchaser:

Reliance Vitamin Company, Inc.  
500 Memorial Drive  
Somerset, New Jersey 08873  
Attn: Phil Vigeant, Vice President

with a required copy to:

Gaetano C. Lanciano, Esq.

Lanciano & Associates, L.L.C.  
2 North Highway 31  
Pennington, New Jersey 08534

**10.7 Non-Competition.**

(a) The Seller and Cooper acknowledge that the Purchaser has made a substantial investment to acquire the Assets and to market and sell the Brands in the United States ("U.S."), and that the Purchaser has legitimate business interests in protecting its U.S. market for the Assets and Brands. Additionally, the Purchaser has made a substantial investment in entering into this Agreement. The Seller and Cooper further acknowledge that a significant component to the value of the Assets and Brands is the goodwill, and that the Seller and/or Cooper competing with the Purchaser would diminish and cause harm to the Purchaser. In consideration of the foregoing, the protection of the goodwill in the Assets, the receipt of the purchase price under this Agreement, and the fact that the Purchaser would not have entered into this Agreement but for the Seller, and Cooper's agreement to the restrictions set forth herein, except as set forth in the Royalties Agreement and/or the Commission Agreement, the Seller and Cooper shall not, during the "Restricted Period," as defined below, engage or invest in, own, manage, operate, finance, control, or participate in the ownership, management, operation, financing, or control of, be employed by, associated with, or in any manner connected with, lend it or his name or any similar name to, lend it or his credit to or render services or advice to, either directly or indirectly, any business whose products or activities compete in whole or in part with the Brands and/or Products ("Competitive Services") during the Term and for a period of Thirty-Six (36) months thereafter (collectively, the "Non-Competition Period"). In addition to the foregoing restrictions, during the Non-Competition Period, except as set forth in the Royalties Agreement and/or the Commission Agreement, ANS and Cooper will not, directly or indirectly, either for itself/himself or for any other person or business entity, or by action in concert with others, (i) service or supervise or assist the servicing or supervision of, divert or take away or attempt to divert or take away, or directly or indirectly call on or solicit or attempt to call on or solicit any client of the Brands or Purchaser, or communicate, advise or consult with, write or respond to, or inform any such client for the purpose of soliciting, selling or recommending any Competitive Services, or otherwise attempt to induce any such client to terminate, modify or reduce such client's relationship with the Brands and/or Purchaser; or (ii) employ, hire, engage, solicit, recruit or otherwise induce or influence (or seek to induce or influence) any person who is or will be hereafter engaged as an employee, agent, independent contractor or otherwise by Purchaser to terminate his or her employment, engagement, or relationship with Purchaser, or employ, retain or engage, seek to employ, retain or engage, or cause any other person or business entity to employ, retain or engage or seek to employ, retain or engage, any such person.

(b) The Seller and Cooper agree and understand that any violation of this Section will be detrimental to the Purchaser, and shall entitle the Purchaser to any and all remedies available at law or equity including the right to enjoin the acts of the Seller and/or Cooper which constitute a violation of the foregoing restrictions by temporary restraining order, injunction pendente lite and permanent injunction and, where necessary to provide complete relief to the Purchaser, by mandatory injunction. Seller and Cooper shall also pay to the Purchaser all legal expenses and related costs reasonably incurred by the Purchaser in the event of such a violation, whether or not a lawsuit is filed.

(c) The Parties agree that the provisions of this Section are fair and reasonable in every respect; that the same are reasonable and necessary to protect the goodwill and legitimate business interest of the Purchaser, which goodwill and legitimate business interest has been



or will be developed at a substantial cost and expense to the Purchaser, while at the same time not constituting an unreasonable restriction on the rights of the Seller and Cooper. The provisions provided in this Section 10.7 shall survive the Closing.

(d) It is the intent of the Parties that the restrictions contained in this Section apply only to the extent necessary for the protection of legitimate business interests of the Purchaser. If said provisions shall be deemed too broad for that purpose by a court of competent jurisdiction in a proceeding in which the Purchaser is a party, said provisions shall nonetheless be valid and enforceable, but only to the extent necessary for such protection; and the provisions of this Section shall be deemed amended to such extent.

**10.8 Tax Clearance.** Seller shall prepare and timely file or cause to be filed with the applicable taxing authorities any required bulk sale notices and otherwise timely comply with the provisions of any bulk sales law or any other similar statute of the State of Arizona imposing successor liability on the Purchaser of a business or assets, and shall promptly provide Purchaser with copies of (at the time of) any and all filings in connection therewith. Seller shall cooperate with and assist Purchaser in obtaining all releases or certifications from taxing authorities which Purchaser deems reasonably necessary, in its sole discretion, to shield it from successor liability for Seller's tax obligations.

**10.9 Cross-Default.** As a material part of the consideration for the execution of this Agreement by Purchaser, it is agreed by the parties that any default by Seller or Cooper, or its or his assignee, under the terms and conditions of this Agreement or under any other agreement between Purchaser and Seller, Cooper, and/or its or his assignee, as the case may be, including, but not limited to, the Royalty Agreement and/or the Commission Agreement, shall be deemed to be a material default of each and every said agreement, in which event the Purchaser shall be entitled (but in no event required) to apply all rights and remedies of the Purchaser under the terms of one agreement to all such agreements including, but not limited to, the right to directly offset any costs incurred by the Purchaser by reason of a default against monies due Seller or Cooper.

**10.10 Entire Agreement and Amendment.** This document contains the entire agreement between the parties hereto with respect to the transactions contemplated hereby and supersedes all prior or contemporaneous agreements, understandings, representations and warranties between the parties, and may not be amended except by written instrument executed by the duly authorized officers of the parties hereto.

**10.11 Counterparts.** This Agreement may be executed in any numbers of counterparts, the delivery of which may be made via facsimile, each of which shall be deemed to be an original but such counterparts together shall constitute one and the same instrument.

**10.12 Recitals.** The Recitals are hereby incorporated herein by this reference.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed and delivered on the day and year first above written.

SELLER:

**ARIZONA NUTRITIONAL SCIENCES, LLC**

By:   
Gregory W. Cooper, President

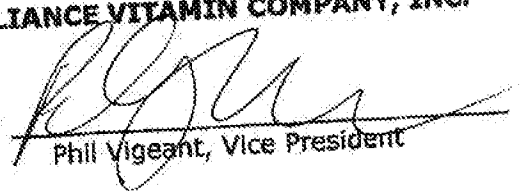
COOPER:

**GREGORY W. COOPER**

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PURCHASER:

**RELIANCE VITAMIN COMPANY, INC.**

By:   
Phil Vigeant, Vice President

**Schedule 1.1(a)**

**Names and Intellectual Property**

1. NitroFusion®, United States Registration Number 3,479,356, Registration Date: August 5, 2008.
2. PlantFusion™, United States Serial Number 77/603,815, Filing Date: October 30, 2008.
3. All formulas appurtenant to the above listed trademarks.

Seller's Initials: GC  
Purchaser's Initials: [Signature]

**Schedule 1.1(b)**

**Vendor List**

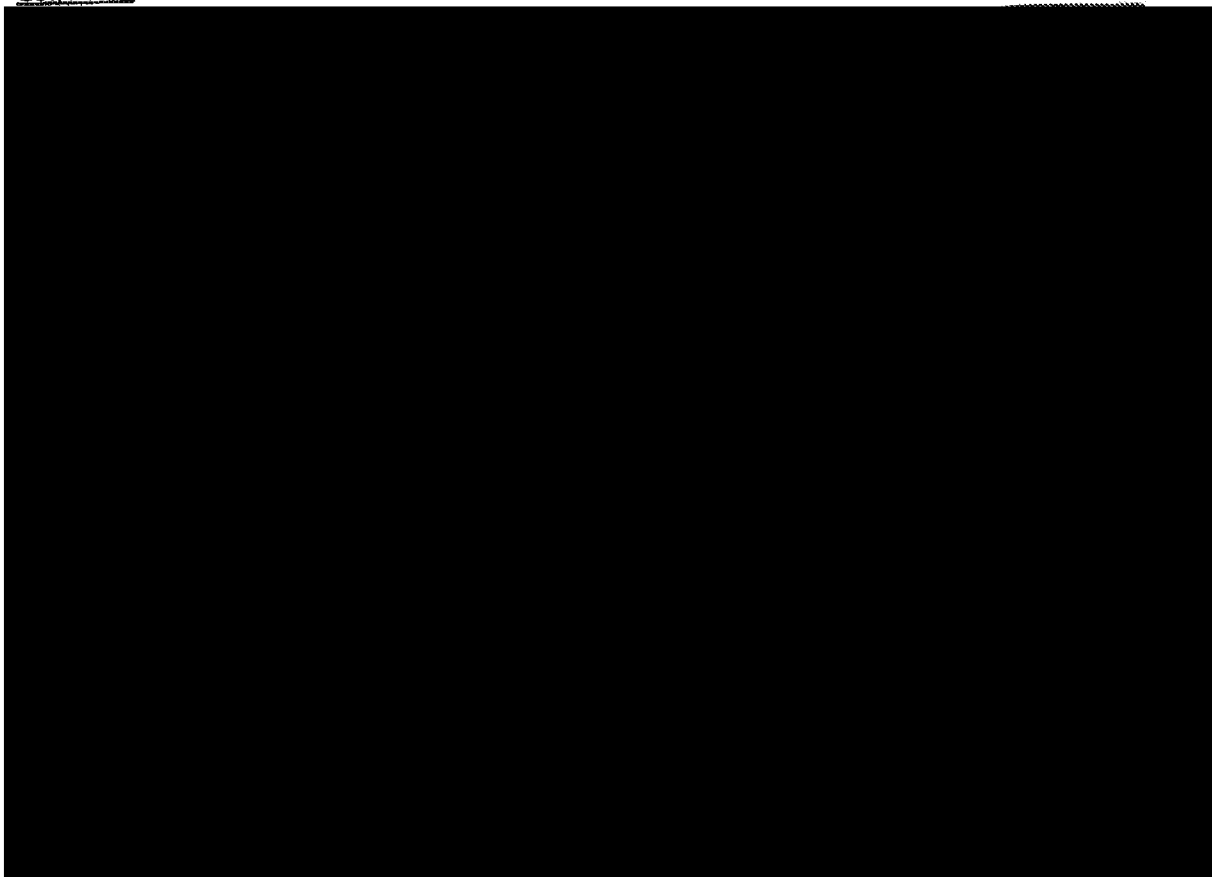
Seller's Initials: GC

Purchaser's Initials: \_\_\_\_\_

**Schedule 1.1(d)**

**Contracts: Open Orders**

Contracts

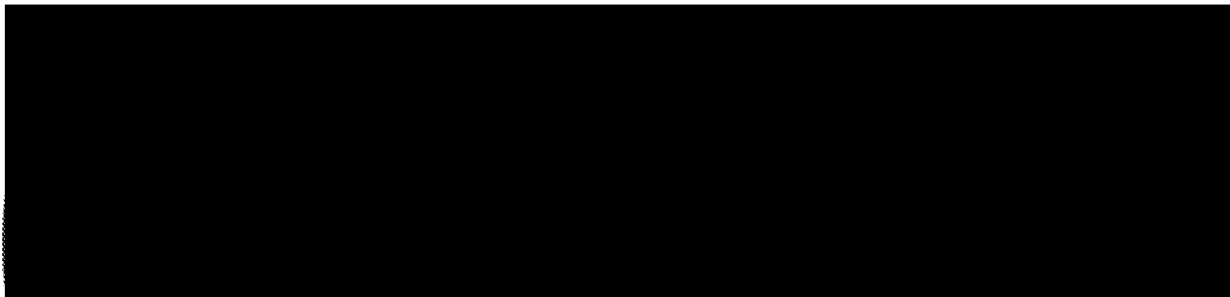


Open Orders

Seller's Initials: SC  
Purchaser's Initials: PK

**Schedule 5**  
**Disclosure Schedule**

1. Corresponding to Section 5.3 - Seller filed for an extension to file its applicable Federal and State taxes for the 2008 calendar year.
2. Corresponding to Section 5.5(a) - See Schedule 1.1(a)
3. Corresponding to Section 5.5(b) - See Schedule 1.1(d)



Seller's Initials:

GC

Purchaser's Initials:

TV

**Schedule 8.5**

**Certain Liabilities Subject to Additional Indemnity**

Seller's Initials: GC  
Purchaser's Initials: PC

**Exhibit A**

**Statement of Seller Account with Purchaser**



**Exhibit B**

**Form of Commission Agreement of the Cooper Entity**

***Exhibit C***

**Form of Supplemental Commission Agreement**

**Exhibit D**

**Financial Statements of Seller**

**Exhibit E**

**Receivables and Payables**

***Exhibit F***

**Employees**

[REDACTED] Director of Sales and Marketing. [REDACTED] compensation is [REDACTED]  
[REDACTED] per year and Seller pays [REDACTED]