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Assignment and Assumption Agreement¹

Assignment and Assumption Agreement (this “**Assignment**”), dated September 10, 20XX, between Virginia Vendors, Inc., a Delaware corporation (the “**Assignor**”), and Complete Nutrition LLC, a Colorado limited liability company (the “**Assignee**”).²

Background³

1. The Assignor is a party to the agreements [more particularly]⁴ listed in Exhibit A to this Assignment (the “**Exhibit A Agreements**”⁵).
2. The Assignor and the Assignee have entered into the Asset Purchase Agreement, dated July 15, 20XX (the “**Asset Purchase Agreement**”⁶), which provides for, among other things,
 - (a) the Assignor to assign its rights [and delegate its performance]⁷ under the Exhibit A Agreements to the Assignee; and
 - (b) the Assignee to assume the Assignor’s performance under the Exhibit A Agreements [that arise and are payable after the date of this Assignment].⁸

The parties agree as follows:

1. **Assignment.** By executing and delivering this Assignment, the Assignor assigns to the Assignee, its successors and assigns, all of the Assignor’s rights under the Exhibit A Agreements.⁹
2. **Delegation.** By executing and delivering this Assignment, the Assignor delegates to the Assignee, its successors and assigns, all of the Assignor’s performance obligations under the Exhibit A Agreements.¹⁰
3. **Acceptance and Assumption.** By executing and delivering this Assignment, the Assignee
 - (a) accepts the assignment¹¹ from the Assignor of its rights under each of the Exhibit A Agreements;

1. This agreement could easily be properly named “Assignment, Delegation, and Assumption Agreement” as a delegation is included. In many assignments, the assignor only “assigns” the agreement. But both the *Restatement (Second) of Contracts* and the U.C.C. interpret a party’s assignment of a contract to include a delegation, unless there is evidence to the contrary. That evidence would exist, for example, in a borrower’s assignment of a contract to a bank as security for a loan.

2. Could use “Seller” and “Buyer” for ease of reading.

3. What is the purpose of these recitals?

4. Is this language necessary, helpful, or legalese?

5. Although the defined term could be *Agreements*, using *Exhibit A Agreements* is arguably easier for the reader because *Agreement* generally refers to the agreement being signed. One could reasonably disagree with this.

6. Does this agreement really need to be defined?

7. This language is not always included. See Comment 1.

8. What is the purpose of the bracketed language?

9. Is this a promise of performance or a self-executing provision, that is, the performance?

10. As noted in Annotation 1, many practitioners would not include a specific delegation. Including it avoids any need to interpret *assign* to include *delegate*.

11. Technically, an assignee must accept the rights assigned to it.

12. What provision does this echo? Why is the language repeated?

13. Why doesn't the language in subsection (b) make subsection (c) unnecessary?

(b) assumes all of the Assignor's performance obligations under the Exhibit A Agreements that arise and are payable after the date of this Assignment;¹² and

(c) agrees to be bound by all of the provisions in the Exhibit A Agreements.¹³

To evidence the parties' agreement to the provisions of this Assignment, they have executed and delivered it on the date stated in the preamble.

Virginia Vendors, Inc.

By: _____
Name and title

Complete Nutrition LLC

By: _____
Name and title

(b) **Contract Obligation/Payment Obligations/Right to Retain.**

[Assume for this exercise that neither party has a payment or performance obligation.]

(c) **Effective Date of Termination.** If the Buyer terminates this Agreement under Section 8.3(a), the termination is effective when

(d) **Consequences of Termination.**

- (i) **Termination under Section 8.3(a)(i), (ii), and (iii).** On termination of this Agreement under any one or more of Sections 8.3(a)(i), (ii), and (iii),

- (ii) **Termination under Section 8.3(a)(iv).** On termination of this Agreement under Section 8.3(a)(iv),

8.4 Survival of Confidentiality Provisions. Despite any termination of this Agreement under Section 8.2 or 8.3, the parties' obligations under Article 9 — Confidentiality survive to the extent stated in that Article.