

## TRADEMARK ASSIGNMENT COVER SHEET

Electronic Version v1.1  
Stylesheet Version v1.2

ETAS ID: TM355262

<b>SUBMISSION TYPE:</b>	NEW ASSIGNMENT		
<b>NATURE OF CONVEYANCE:</b>	ASSIGNMENT OF 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>
Premier Nutrition Corporation		05/11/2015	CORPORATION: DELAWARE
<b>RECEIVING PARTY DATA</b>			
<b>Name:</b>	Flush Fitness Pty Ltd.		
<b>Street Address:</b>	11-16 South Terrace		
<b>City:</b>	Adelaide SA 5000		
<b>State/Country:</b>	AUSTRALIA		
<b>Entity Type:</b>	CORPORATION: AUSTRALIA		
<b>PROPERTY NUMBERS Total: 1</b>			
<b>Property Type</b>	<b>Number</b>	<b>Word Mark</b>	
<b>Registration Number:</b>	3591085	TITAN	
<b>CORRESPONDENCE DATA</b>			
<b>Fax Number:</b>	6172613175		
<i>Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent using a fax number, if provided; if that is unsuccessful, it will be sent via US Mail.</i>			
<b>Phone:</b>	617-261-3100		
<b>Email:</b>	austrademarks@klgates.com, botrademarks@klgates.com, alice.schermer@klgates.com, kathleen.burch@klgates.com		
<b>Correspondent Name:</b>	David J. Byer, K&L Gates LLP		
<b>Address Line 1:</b>	One Lincoln Street		
<b>Address Line 2:</b>	State Street Financial Center		
<b>Address Line 4:</b>	Boston, MASSACHUSETTS 02111		
<b>NAME OF SUBMITTER:</b>	David J. Byer		
<b>SIGNATURE:</b>	/David J. Byer/		
<b>DATE SIGNED:</b>	09/16/2015		
<b>Total Attachments: 14</b>			
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## ASSET SALE AGREEMENT

THIS ASSET SALE AGREEMENT (the "Agreement") is entered into on this 11th day of May, 2015 (the "Closing Date"), by and between Premier Nutrition Corporation, a corporation organized and existing under the laws of Delaware ("Seller"), and Flush Fitness Pty Ltd (ACN 119 435 504), an entity organized and existing under the laws of Australia ("Buyer").

### BACKGROUND

The Seller desires to sell and Buyer desires to buy certain assets of the Seller relating to the Products (as defined below), upon the terms and conditions set forth herein.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, Buyer and the Seller agree as follows:

### AGREEMENT

#### **ARTICLE 1. DEFINITIONS.**

Certain terms are used in this Agreement as specifically defined herein.

1.1. CERTAIN DEFINITIONS. In this Agreement the following terms have the following meanings:

1.1.1. "Action" means any and all civil, criminal or administrative actions, causes of action, litigation, suits, arbitrations, investigations, proceedings, hearings, charges, complaints, citations, notices, requests, demands, assessments, audits, judgments and claims, regardless of whether a proceeding or lawsuit has been initiated, relating to or alleged or asserted by a Person.

1.1.2. "Affiliate" means as to any specific Person, as of the date of determination, any Person directly or indirectly controlling, controlled by or under direct or indirect common control with the specified Person.

1.1.3. "Applicable Law" means, for any Person at the time of determination, each provision of any then existing federal, state, local or foreign law, statute, standard, ordinance, code, rule, regulation, writ, requirement, constitution, treaty, order, ordinance, judgment, decree, or injunction promulgated, issued, posted, adopted, entered or otherwise made effective by a Governmental Authority to which such Person or any of its properties or assets is subject at such time.

1.1.4. "Contractual Obligation" means, as to any specified Person, all contracts, agreements, arrangements, options, leases or licenses, written or oral, to which such Person is a party or otherwise subject, or by which such Person or any of such Person's assets or properties are legally bound.

1.1.5. "Encumbrance" means, as to any specified property or asset, any Contractual Obligation or any Applicable Law as a result of which there (A) exists any encumbrance, mortgage, pledge, lien, equity, claim, charge (floating or fixed), restriction on transfer or other security interest of any kind upon such property or assets, or upon the income or profits therefrom; (B) exists any arrangement or agreement which prohibits the creation of such encumbrances, mortgages, pledges, liens, claims, charges, restrictions on transfer or other security interests on such property or assets; (C) may occur a transfer (absolute or contingent) of any of such property or assets for the purposes of subjecting the same to the payment of indebtedness or performance of any other obligation in priority to payments to general creditors; (D) exists an agreement or option, right of first refusal or preferential purchase right to acquire, such property or assets upon conditional sale or other title retention device or Contractual Obligation (including a capitalized lease); or (E) exists any right, interest or easement of any other Person in or to such property or asset.

1.1.6. "Excluded Assets" means all of the assets of the Seller and its Affiliates other than the Acquired Assets.

1.1.7. "Excluded Liabilities" means the following Liabilities and any and all other Liabilities of the Seller or any of its Affiliates, the Acquired Assets or the Products that are not expressly defined as Assumed Liabilities, whether or not arising out of or related to the Acquired Assets or the Products:

(A) all Liabilities for damages, spoils, unsaleables and any charges associated therewith, in each case relating to Products manufactured prior to the Closing Date that are returned, destroyed, or sent to reclamation centers;

(B) all Liabilities for Taxes of the Seller;

(C) all Liabilities related to any compensation or employee benefit plans or arrangements of Seller or any of its Affiliates, as well as the employment, termination of employment or potential employment or severance (including statutory severance) or separation pay or benefits of any Person by the Seller or any of its Affiliates whenever such Liabilities may arise;

(D) other Liabilities of the Seller or any of its Affiliates under any Applicable Laws relating to pollution, the protection of human health, natural resources, the storage, handling, disposal, treatment, transportation, release or threatened release of any hazardous substances or otherwise relating to the protection of the environment.

1.1.8. "Governmental Authority" means any nation or government, any state or other political subdivision thereof, and any entity, department, commission, bureau, agency, authority, board, court, official or officer, domestic or foreign, exercising executive, judicial, regulatory or administrative functions of or pertaining to government.

1.1.9. "Liability" means (A) any liability, indebtedness or obligation, including for Taxes; (B) all claims against a Person for loss, damage, deficiency, costs or expenses that are contingent, fixed, unfixed, matured, unmatured, known, unknown, asserted, unasserted, liquidated or unliquidated; and (C) all losses arising from, or related to, any of the foregoing.

1.1.10. "Ordinary Course" means, with respect to any Person, in the ordinary course of that Person's business consistent with past practice, including as to the quantity, quality and frequency.

1.1.11. "Organizational Documents" means the bylaws and certificate of incorporation (or other similar documents) and all amendments thereto adopted by the specified Person, each as from time to time in effect.

1.1.12. "Permitted Encumbrances" means (i) Encumbrances for Taxes, assessments or other governmental charges not yet due and payable (or being contested in good faith), (ii) workers', carriers', mechanics' and similar statutory Encumbrances arising or incurred in the Ordinary Course, and (iii) other Encumbrances that arise in the ordinary course of business and that are not material and not incurred in connection with the borrowing of money.

1.1.13. "Person" means an individual, partnership, limited partnership, limited liability partnership, corporation, limited liability company, association, trust, joint venture, unincorporated organization, and any Governmental Authority or other legal entity of any kind.

1.1.14. "Products" means the Titan branded products manufactured, marketed, distributed and/or sold by the Seller prior to the Closing Date under any of the Trademarks listed on Schedule 2.1.3.

1.1.15. "Tax" or "Taxes" means all foreign, federal, state, provincial, local and other taxes, fees, levies, duties and other assessments or charges of whatever kind (including income, sales, use, excise, stamp, transfer, property, value added, recording, registration, intangible, documentary, goods and services, real estate, sales, payroll, gains, gross receipts, withholding and franchise taxes) and including any Tax liability incurred or borne as a transferee or successor under Treasury Regulation Section 1.1502-6 (or any corresponding provision of state, local or foreign Tax law), or by contract, or otherwise, together with any interest, penalties, or additions payable in connection with such taxes, fees, levies, duties or other assessments or charges.

## ARTICLE 2. PURCHASE AND SALE OF ASSETS

2.1. ACQUIRED ASSETS. Subject to the terms and conditions of this Agreement, on the Closing Date, Buyer will purchase and acquire from the Seller, and the Seller will sell, assign, transfer and deliver, or cause to be sold, assigned, transferred and delivered, to Buyer, free and clear of all Encumbrances except Permitted Encumbrances, all of the Seller's and its Affiliates' right, title and interest in, to and under the assets described in Sections 2.1.1 through 2.1.4 (collectively, the "Acquired Assets").

2.1.1. Goodwill. The goodwill relating to the Products.

2.1.2. Intellectual Property. All of the Seller's and its Affiliates' right, title and interest in, to and under (i) the "Titan" trademarks, including all standard character or stylized variations thereof, and all design, composite or other trademarks that incorporate

any such variations, and all applications and registrations therefor as set forth on Schedule 2.1.3(i) together with all goodwill and trade dress associated therewith (collectively, the "Trademarks"), (ii) internet domain names listed on Schedule 2.1.3(ii), (iii) copies and tangible embodiments of any of the foregoing, and (iv) licenses and sublicenses granted or obtained with respect to any of the foregoing, goodwill associated with any of the foregoing and rights under any of the foregoing, including all rights to sue at law or in equity and all remedies against infringement of the foregoing (items (i) through (iv) being referred to collectively as the "Intellectual Property").

2.1.3. Inventory. Subject to the terms and conditions of this Agreement, on the Closing Date, Buyer will purchase and acquire from the Seller, and the Seller will sell, assign and transfer and deliver, or cause to be sold, assigned, transferred and delivered, to Buyer, free and clear of all Encumbrances except Permitted Encumbrances, all of the packaging inventory of the Products owned by the Seller and listed on Schedule 2.1.4 (the "Inventory").

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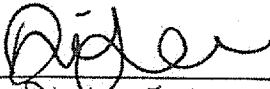
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IN WITNESS WHEREOF, the parties hereto, intending to be legally bound by the terms hereof, have hereunto set their hands, as of the date first above written.

PREMIER NUTRITION CORPORATION

FLUSH FITNESS PTY LTD

By:   
Name: Diederik J. Gray  
Title: Secretary

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

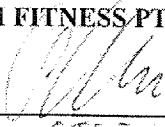
[Asset Purchase Agreement Signature Page]

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound by the terms hereof, have hereunto set their hands, as of the date first above written.

**PREMIER NUTRITION CORPORATION**

**FLUSH FITNESS PTY LTD**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By:   
Name: STEVEN HAVEL  
Title: MANAGING DIRECTOR.

[Asset Purchase Agreement Signature Page]

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**TRADEMARK**  
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Schedules to Asset Purchase Agreement

**Schedule 2.1.3(i) – Trademarks**

Australian Trademark Reg. No. 1462826 for the mark TITAN in Class 5, granted July 10, 2013. The application was filed December 1, 2011 and was identified as App. No. 1462826. The registration covers “Meal replacement food products in this class, including ready to eat nutritional food bars containing protein; food supplements; muscle-building supplements; energy-giving supplements; food supplements in the nature of nutrient-dense, protein based powders; protein-fortified meal replacement food products in this class; food, muscle-building and energy-giving supplements being protein supplements, dietary supplements and nutritional supplements; food supplements containing protein for medicinal use” in Class 5.

U.S. Reg. No. 3591085 for TITAN in Class 29. This registration was due for a Declaration of Use by March 17, 2015, but no Declaration of Use was filed.

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