



## **Initial Company Information and Disclosure Statement**

### **Exhibit Binder**

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## Exhibit 1

### EMPLOYMENT AGREEMENT

Employment Agreement, executed this 15<sup>th</sup> day of June, 2010 between NuVim Inc., a Delaware corporation (the “Company”), and Richard Kundrat (“Employee”).

Whereas, the Employee has served the Company well during the term of his current contract; and

Whereas, the Company desires retain the Employee’s services by entering into a new employment agreement with Employee as Chairman and Chief Executive Officer for term of ending June 30, 2013; and

Whereas, Employee is willing to accept such employment on the terms set forth herein.

Now, therefore, the Company and Employee hereby agree as follows:

1. Employment.

1.1 General. The Company hereby agrees to employ Employee in the capacity of Chairman and Chief Executive Officer and Employee hereby accepts such employment, upon the terms and subject to the conditions herein contained.

1.2 Duties and Authority. During the term of Employee’s employment hereunder, Employee shall direct business of the Company and have such responsibilities, duties and authority as may, from time to time, be assigned to Employee by the Company’s Board of Directors (the “Board”). During the term of the Agreement, Employee shall serve the Company, faithfully and to the best of the Employee’s ability, and shall devote substantially all of the Employee’s business time and efforts to the business and affairs of the Company (including its subsidiaries and affiliates) and the promotion of its interests. Employee shall be available to the Company at such times and places as the Company shall reasonably request during the term hereof. If Employee wishes to serve as a Director of any company other than Company, Employee shall first obtain approval from the Company’s Board of Director, which approval shall not be unreasonably withheld.

2. Term of Employment. The term of this Agreement shall commence on the date hereof and shall continue until June 30, 2013. Thereafter, the term of this Agreement shall be automatically extended for successive and additional one-year periods, unless Employee or the Company shall provide a written notice of termination at least one hundred eighty (180) days prior to the end of the initial term or any extended term. The term of this Agreement is subject to early termination in accordance with the provisions set forth herein. The election of the Company or Employee to terminate this Agreement as of the expiration of the initial term, or as of the end of any one-year renewal period, as provided in this Section 2 shall not be deemed to be termination by the Company hereof or by Employee without Cause (as defined below), and in such event Employee shall only be entitled to the compensation set forth hereafter.

### 3. Compensation and Benefits

3.1 Salary. The Company shall pay to Employee a base salary at the annual rate of \$225,000.00 or at such increased rate as the Board, in its sole discretion, may hereafter from time to time determine ("Base Salary"), payable in accordance with the regular payroll practices of the Company.

3.2 Expenses. Employee shall be entitled to receive proper reimbursement from the Company for all reasonable out-of-pocket expenses incurred by Employee in performing services under this Agreement, according to the Company's expense account and reimbursement policies and provided that Employee shall submit reasonable documentation with respect to such expenses. Company will reimburse Employee for financial advisory services up to a maximum of \$10,000.00 per year or such other number as is authorized by the board of directors.

3.3 Bonus and SOP. During the term of this Agreement, Employee shall be entitled to participate in the Company's Employee Stock Option Plans (to the extent the same is provided for after the issuance of the IPO), and Employee shall be entitled to receive a cash bonus payment ("Bonus") not to exceed a maximum of 100% of Employee's Base Salary unless otherwise approved by the board of directors. The employee, in his/her sole discretion, may elect to receive stock options or warrants instead of cash, provided the value of said options or warrants does not exceed the value of the cash bonus. Such bonus and option grants shall be related to the achievement of the Company's revenues and profits goals and shall be approved by the Board. Any Bonus payable hereunder shall be paid within 60 days following the completion of the bonus period. Bonus guidelines shall be established by the company at or after the issuance of the IPO.

3.4 Bonus in the Event of Sale. In the event of the sale of the Company, Employee will be entitled to a special bonus equal to 5% of the gross selling price.

3.5 No Other Benefits. During the term of this Agreement or upon any termination hereof, the Company shall have no obligation to pay or provide, any compensation or benefits other than as set forth herein, provided, however, that Employee shall be entitled to all benefits generally available under the employee benefit plans, and the policies and practices, of the Company, determined in accordance with the applicable terms and provisions of such plans, policies and practices, in each case, as accrued to the date of termination of employment.

### 4.0 Termination of Employment.

4.1 Events of Termination. Employee's employment hereunder shall terminate prior to the expiration of the terms set forth in Section 2 hereof upon the occurrence of any one or more of the following events:

4.1.1 Death by employee or complete bankruptcy of the company.

4.1.2 Termination by the Company for Cause. The Company may, as its option, terminate the Employee's employment for Cause (as defined herein) upon giving notice of termination to

Employee. Employee's employment shall terminate on the date on which such notice shall be given. For purposes hereof, "Cause" shall mean Employee's (i) conviction of, guilty plea to or confession of guilt of a felony, (ii) commission of fraudulent, illegal or dishonest acts, (iii) willful misconduct or gross negligence which reasonably could be expected to be materially injurious to the business, operations or reputation of the Company (monetarily or otherwise), (iv) failure to perform Employee's duties as assigned to Employee from time to time or (v) other material breach of this agreement.

4.1.3 Termination By Employee. Employee may terminate Employee's employment for any reason whatsoever by giving one hundred eighty (180) days prior notice of termination to the Company.

4.1.4 Disability. In the event of Employee's Disability (as defined below), the Company will have the option to terminate Employee's employment by giving a written notice of termination to Employee. Such notice shall specify the date of termination, which date shall not be earlier than sixty (60) days after such notice is given. For purposes of the Agreement, "Disability" means the inability of Employee to substantially perform Employee's duties hereunder for 90 days out of 180 consecutive days as a result of a physical or mental illness, all as determined in good faith by the Board.

4.2 Company's Obligation upon Termination without Cause. In the event that Employee's employment shall be terminated, the Company shall pay Employee (a) all Base Salary earned but unpaid through the date of termination, (b) any Bonus earned on or prior to the date of termination, but not yet paid, and (c) (c) Base Salary in accordance with the Company's regular payroll practices then in effect and a Bonus, paid quarterly, equal to the amount of Bonus awarded for the most recently completed calendar year for the greater of (x) the balance of the term of this Agreement or (y) one (1) year from the termination of the Agreement. In addition, the Company shall reimburse Employee for any expenses incurred through the date of such termination in accordance with Section 3.2 hereof.

4.2.1 Termination by Employee by the Company for Cause. In the event that Employee's employment shall be terminated by Employee pursuant to Section 4.1.2 hereof (or if Employee voluntarily resigns otherwise than in accordance with such Section prior to the expiration of the then current term of this Agreement), Employee shall be entitled to no further compensation or other benefits under this Agreement other than any Base Salary and any Bonus earned on or prior to the date of such termination, but not yet paid. In addition, the Company shall reimburse Employee for any expenses incurred through the date of such termination in accordance with Section 3.2 hereof.

4.2.2 Termination upon Expiration of the Employee Term. Upon expiration of the term of this Agreement, Employee shall be entitled to no further compensation or other benefits under this Agreement other than Base Salary earned, but unpaid, through the date of termination and Bonus earned on or prior to the end of such term, but not yet paid. In addition, the Company shall reimburse Employee for any expenses incurred through the date of such termination in accordance with Section 3.2 hereof.

4.2.3 Termination Due to Death or Disability. In the event that Employee's employment shall be terminated by the Company pursuant to Section 4.1.1 or 4.1.4 hereof, the Company shall pay Employee (a) all Base Salary earned but unpaid through the date of termination, and (b) any Bonus earned on or prior to the date of termination, but not yet paid. In addition, the Company shall reimburse Employee for any expenses incurred through the date of termination in accordance with Section 3.2 hereof. In further addition, the Employee shall receive his Base Salary in accordance with the Company's regular payroll practices then in effect and a Bonus, paid quarterly, equal to the amount of Bonus awarded for the most recently completed calendar year for the greater of (x) the balance of the term of this Agreement or (y) one (1) year from the termination of the Agreement.

4.3 Nature of Payments. All amounts to be paid by the Company to Employee pursuant to this Section 4 (other than Base Salary or reimbursement of expenses or amounts paid) shall be considered by the parties to be severance payments. In the event that such payments shall be treated as damages, it is expressly acknowledged by the parties that damages to Employee for termination of employment would be difficult to ascertain and the above amounts are reasonable estimates thereof and are not a penalty.

5. Non-Solicitation; Noncompetition. During the term of this Agreement, and for a period of six (6) months thereafter (following termination for any reason), Employee shall not:

(a) induce or attempt to induce, directly or indirectly, any then current customer or client of the Company to cease doing business, in whole or in part, with the Company or solicit or divert, directly or indirectly, the business of any such customer or client, or any identified potential customer or client, for Employee's own account or for the account of any other person or entity;

(b) solicit or induce, directly or indirectly, any person or entity, including any third-party service provider, distributor or supplier of the Company, to terminate its relationship with the Company or otherwise interfere with such relationship;

(c) for Employee's own account or for the account of any other person or entity, solicit, interfere with or endeavor to cause, directly or indirectly, any employee or agent of the Company or induce or attempt to induce, directly or indirectly, any employee or agent of the Company to leave employment or terminate its agency with the Company or induce attempt to its agency with the Company or induce or attempt to induce, directly or indirectly, any such employee or agent to breach an employment or agency agreement or arrangement with the Company; or

(d) either for Employee or on behalf of any person or entity, directly or indirectly own, control or participate in the ownership or control of, or be employed by or on behalf of, any business which is directly competitive with the business of the Company, within the United States of America or any country in which the Company then conducts or proposes to conduct business, without the express written consent of the Company.

6. Property Rights. With respect to information, inventions and discoveries developed, made or conceived of by Employee, either along or with others, at any time during Employee's employment by the Company and whether or not within working hours, arising out of such

employment or pertinent to any field of business or research in which, during such employment, the Company is engaged or (if such is known to or ascertainable by Employee) is considered engaging, Employee agrees:

(a) that all such information, inventions and discoveries, whether or not patented or patentable, shall be and remain the exclusive property of the Company.

(b) to disclose promptly to an authorized representative of the Company all such information in Employee's possession as to possible application and uses thereof;

(c) not to file any patent application relating to any such invention or discovery except with the prior written consent or an authorized officer of the Company;

(d) that Employee hereby waives and releases any and all rights Employee may have in and to such information, inventions and discoveries' and hereby assigns to the Company and/or its nominees all of Employee's right, title and interest in them, and all Employee's right, title and interest in any patent, patent application, copyright or other property right based thereon. Employee hereby irrevocably designates and appoints the Company and each of its duly authorized officers and agents as Employee's agent and attorney-in-fact to act for Employee and in Employee's behalf and stead to execute and file Any document and to do all other lawfully permitted acts to further the prosecution, issuance and enforcement of any such patent, patent application, copyright or other property right with the same force and effect as if executed and delivered by Employee; and

(e) at the request of the Company and without expense to Employee, to execute such documents and perform such other acts as the Company deems necessary or appropriate for the Company to obtain patents on such inventions in a jurisdiction or jurisdictions designated by the Company, and to assign to the Company or its designee such inventions and any patent applications and patents relating thereto.

7. Confidentiality. With respect to the information, inventions and discoveries referred to in Section 6 hereof, and also with respect to all other information, whatever its nature and form and whether obtained orally, by observation, from graphic materials or otherwise (except such as is generally available through publication), obtained by Employee during or as a result of Employee's employment by the Company and relating to any invention, improvement, enhancement, product, know-how, formula, software, process, apparatus, design, concept or other creation, or to any use of any of them, or to materials, tolerances, specifications, costs, (including, without limitation, manufacturing costs), prices, or to any plans of the Company, or to any other trade secret or proprietary information of the company, Employee agrees:

(a) to hold all such information, inventions and discoveries in strict confidence and not to publish or otherwise disclose any thereof to any person or entity other than the Company, except with the prior written consent of an authorized officer of the Company;

(b) to take all reasonable precautions to assurance that all such information, inventions and discoveries are properly protected from access by unauthorized persons;

(c) to make no use of nor exploit in any way any such information, invention or discovery except as required in the performance of Employee's employment duties for the Company; and

(d) upon termination of Employee's employment by the Company, or at any time upon request of the Company, to deliver to it all graphic materials and all substances, models, software, prototypes and the like containing or relating to any such information, invention or discovery, all of which graphic materials and other things shall be and remain the exclusive property of the Company.

For purposes of this Agreement, the term "graphic materials" includes, without limitation, letters, memoranda, reports, notes, notebooks, books of account, prints, specifications, formulae software, data print-outs, microfilms, magnetic tapes and disks and other documents and recordings, together with all copies, excerpts and summaries thereof.

8. Post-Termination Period. Any discovery relating to the business of the Company made by Employee within one year after the termination of Employee's employment with the Company for any reason shall be deemed to have been made or conceived during Employee's employment by the Company.

9. No Conflicts. Employee agrees and acknowledges that Employee's employment by the Company and compliance with this Agreement do not and will not breach any agreement made by Employee to keep in confidence information acquired by Employee prior to or outside of Employee's employment with the Company. Employee will comply with any and all valid obligations which Employee may now have to prior employers or to others relating to confidential information, inventions or discoveries which are the property of those prior employers or others, as the case may be. Employee has supplied or shall promptly supply to the Company upon its request a copy of each written agreement setting forth any such obligation. Employee hereby agrees and acknowledges that Employee has not brought and will not bring with Employee for use in the performance of duties at the Company any materials, documents or information of a former employer or any third party that are not generally available to the public, unless Employee has express written authorization from the owner thereof for possession and use or Employee otherwise has undisputed proprietary rights to such material documents or information.

10. Specific Performance. Without intending to limit the remedies available to the Company, Employee agrees that damages at law would be an inadequate remedy to the Company in the event that Employee shall breach or attempt to breach any of the provisions of Sections 5, 6, 7, or 8, hereof and that the Company may apply for and, without the posting of any bond or other security, have injunctive relief in any court of competent jurisdiction to restrain the breach or threatened breach of, or otherwise to enforce specifically, any of the covenants contained in such Sections. Such injunctive relief in such court shall be available to the Company in lieu of any arbitration proceeding pursuant to Section 12 hereof.

11. Survival. The provisions of Sections 4, 5, 6, 7, 8, 10, 12, 13.1 and 13.4 shall survive any termination of this Agreement. In furtherance and not in limitation of the preceding sentence,

Employee's obligations under Sections 5, 6 and 7 hereof shall remain in effect throughout Employee's employment by the Company and ever thereafter, unaffected by any transfer to a subsidiary or affiliate of the Company and without regard to the reason for termination of Employee's employment.

12. Arbitration. Any controversy or claim based on, arising out of or relating to the interpretation and performance of this Agreement or any termination hereof shall be solely and finally settled by arbitration under the rules of the American Arbitration Association, and judgment on the award rendered in the arbitration may be entered in any court having jurisdiction thereof. Any such arbitration shall be in Bergen County, NJ, and shall be submitted to a single arbitrator appointed by the mutual consent of the parties or, in the absence of such consent, by application of any party to the American Arbitration Association. A decision of the arbitrator shall be final and binding upon the parties, and the arbitrator shall be authorized to apportion fees and expenses (including counsel fees and expenses) as the arbitrator shall deem appropriate. In the absence of any such apportionment, the fees and expenses of the arbitrator shall be borne by the Company, and each party will bear the fee and expenses of its own attorney. The parties agree that this clause has been included to rapidly and inexpensively resolve any disputes between them with respect to this Agreement and that this clause shall be grounds for dismissal of any court action commenced by either party with respect to this Agreement, other than (i) post-arbitration actions seeking to enforce an arbitration award and (ii) actions seeking appropriate equitable or injunctive relief pursuant to Section 10 hereof.

13. Miscellaneous.

13.1 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New Jersey without regard to principles of conflicts of laws.

13.2 Entire Agreement; Amendment. This Agreement and the Shareholder and Equity Agreement between the Company and employee contain the complete understanding and agreement between the parties hereto with respect to the subject matter hereof, and supersedes all prior understandings and agreements, written or oral, between the parties hereto relating to the subject matter hereof. This Agreement may not be amended or modified except in a writing signed by the parties hereto.

13.3 Assignment. This Agreement, and the rights and obligations hereunder, shall not be assigned or delegated by any party hereto without the prior written consent to the other party, except (a) with respect to an assignment by the Company, to any affiliate of the Company or (b) pursuant to a merger or consolidation involving the Company or pursuant to the sale of all or substantially all of the assets of the Company.

13.4 Severability. In the event that any provision or portion of this Agreement shall be determined to be invalid or unenforceable for any reason, in whole or in part, (i) the remaining provision of this Agreement shall be unaffected thereby and shall remain in full force and effect to the fullest extent permitted by law and (ii) any such invalidity or unenforceability shall be deemed replaced by a term or provision determined by the parties as coming closest to expressing the intention of the invalid or unenforceable term or provision.



13.5 Notice. Any notice to be given hereunder shall be in writing and either delivered in person, by nationally recognized overnight courier, by facsimile or by registered or certified first class mail, postage prepaid with return receipt requested, addressed (a) if to the Company at 12 Route 17 North-Suite 212, Paramus, NJ 07652 with a further copy to Mark Alan Siegel, Esq., Suite 100, 6627 Northwest 25<sup>th</sup> Way, Boca Raton, Florida 33496 and (b) if to Richard P. Kundrat, at 39 Flaming Arrow Road, Mahwah, NJ 07430. Notices delivered personally shall be deemed given as of actual receipt: notices sent via facsimile transmission shall be deemed given as one business day following sender's receipt from sender's facsimile machine or written confirmation of transmission thereof: notices sent by overnight courier shall be deemed given as of the one business day following sending; and notices mailed shall be deemed given as of five business days after proper mailing. Any party may change its address in a notice given to the other party in accordance with this Section 13.5

13.6 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors (including without limitation, any successor by merger or sale of all or substantially all assets) and permitted assigns.

13.7 Further Assurance. Employee shall execute and deliver all instruments and other documents which, in the opinion of the Company, may be necessary or appropriate to carry out the terms of this Agreement.

13.8 Headings. The Section headings in this Agreement are for convenience of reference only and shall not affect its interpretation.

13.9 Interpretation. For purposes of Sections 5, 6, 7, 8 and 9 the "Company" shall include any subsidiary or affiliate of the Company for which Employee renders services (even if Employee's entire compensation shall have been paid by NuVim, Inc.).

13.10 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 agreement.

IN ORDER TO EVIDENCE THEIR INTENTION TO BE LEGALLY BOUND HEREBY, the parties have either executed this Amendment or caused it to be executed by their duly authorized representatives.

The Company:

NuVim, Inc.

By: /s/ Mark Alan Siegel.

Mark Alan Siegel, Secretary

The Employee:

/s/ Richard P. Kundrat.

Richard Kundrat

## NuVim, Inc.

### 2007 STOCK OPTION PLAN

#### **Section 1 PURPOSE**

The purpose of this Plan is to promote the interests of NuVim, Inc. (the "Company") by granting Options to purchase Stock to Key Employees, Independent Advisors, and Key Consultants in order to (a) attract and retain Key Employees, Independent Advisors, and Key Consultants; (b) provide an additional incentive to each Key Employee and Key Consultant to work to increase the value of the Stock; and (c) provide each Key Employee, Independent Advisor, and Key Consultant with a stake in the future of the Company which corresponds to the stake of the Company's stockholders.

#### **Section 2 DEFINITIONS**

Each term set forth in this Section 2 shall have the meaning set forth opposite such term for purposes of this Plan and for any Option granted under this Plan. For purposes of such definitions, the singular shall include the plural and the plural shall include the singular. Unless otherwise expressly indicated, all Section references herein shall be construed to mean references to a particular Section of this Plan.

2.1 Board means the Board of Directors of the Company.

2.2 Change of Control means any of the following:

(i) the acquisition, other than from the Company, by any individual, entity or group (within the meaning of Section 13(d) or 14(d)(2) of the Securities Exchange Act of 1934, as amended from time to time) (the "Exchange Act"), of beneficial ownership (within the meaning of Rule 13d-3 promulgated under the Exchange Act) of 15% or more of either (A) the then outstanding shares of Stock (the "Outstanding Company Common Stock") or (B) the combined voting power of the then outstanding voting securities of the Company entitled to vote generally in the election of directors (the "Company Voting Securities"); provided, however, that any acquisition by (x) the Company or any of its subsidiaries, or any employee benefit plan (or related trust) sponsored or maintained by the Company or any of its

subsidiaries or (y) any corporation with respect to which, following such acquisition, more than 50% of, respectively, the then outstanding shares of common stock of such corporation and the combined voting power of the then outstanding voting securities of such corporation entitled to vote generally in the election of directors is then beneficially owned, directly or indirectly, by all or substantially all of the individuals and entities who were the beneficial owners, respectively, of the Outstanding Company Common Stock and Company Voting Securities immediately prior to such acquisition in substantially the same portion as their ownership, immediately prior to such acquisition of the Outstanding Company Common Stock and Company Voting Securities, as the case may be, shall not constitute a change in control of the Company; or

(ii) individuals who, as of January 31, 2006, constitute the Board of Directors of the Company (the "Incumbent Board") cease for any reason to constitute at least a majority of the Board, provided that any individual becoming a director subsequent to January 31, 2006, whose election or nomination for election by the Company's shareholders was approved by a vote of at least a majority of the directors then comprising the incumbent Board shall be considered as though such individual was elected prior to January 31, 2006, even if his initial assumption of office is in connection with an actual or threatened election contest relating to the election of the Directors of the Company (as such terms are used in Rule 14a-11 of Regulation 14A promulgated under the Exchange Act); or

(iii) approval by the shareholders of the Company of a reorganization, merger or consolidation (a "Business Combination"), in each case, with respect to which all or substantially all of the individuals and entities who were the respective beneficial owners of the Outstanding Company Common Stock and Company Voting Securities immediately prior to such Business Combination do not, following such Business Combination, beneficially own, directly or indirectly, more than 50% of, respectively, the then outstanding shares of common stock and the combined voting power of the then outstanding voting securities entitled to vote generally in the election of directors, as the case may be, of the corporation resulting from such Business Combination in substantially the same proportion as their ownership immediately prior to such Business Combination or the Outstanding Company Common Stock and Company Voting Securities, as the case may be; or

(iv) (A) a complete liquidation or dissolution of the Company or a (B) sale or other disposition of all or substantially all of the assets of

the Company other than to a corporation with respect to which, following such sale or disposition, more than 50% of, respectively, the then outstanding shares of common stock and the combined voting power of the then outstanding voting securities entitled to vote generally in the election of directors is then owned beneficially, directly or indirectly, by all or substantially all of the individuals and entities who were the beneficial owners, respectively, of the Outstanding Company Common Stock and Company Voting Securities immediately prior to such sale or disposition in substantially the same proportion as their ownership of the Outstanding Company Common Stock and Company Voting Securities, as the case may be, immediately prior to such sale or disposition.

2.3 Code means the Internal Revenue Code of 1986, as amended.

2.4 Committee means the committee of Non-Employee Directors appointed by the Board to administer this Plan as contemplated by Section 5.

2.5 Company means NuVim, Inc., a Delaware corporation, and any successor to this corporation.

2.6 Exchange Act means the Securities Exchange Act of 1934, as amended.

2.7 Fair Market Value in respect of the Stock on any day means (a) if the principal market for the Stock is a national securities exchange, the average between the high and low sales prices of the Stock on such day as reported by such exchange or on a consolidated tape reflecting transactions on such exchange; (b) if the principal market for the Stock is not a national securities exchange and the Stock is quoted on The NASDAQ Stock Market ("NASDAQ"), and (i) if actual sales price information is available with respect to the Stock, then the average between the high and low sales prices of the Stock on such day on NASDAQ, or (ii) if such information is not available, then the average between the highest bid and lowest asked prices for the Stock on such day on NASDAQ; or (c) if the principal market for the Stock is not a national securities exchange and the Stock is not quoted on NASDAQ, then the average between the highest bid and lowest asked prices for the Stock on such day as reported by The Nasdaq Bulletin Board, or a comparable service; provided that if clauses (a), (b) and (c) of this Paragraph are all inapplicable, or if no trades have been made or no quotes are available for such day, then the fair market value of the Stock shall be determined by the Committee by any method consistent with applicable regulations adopted by the Treasury Department relating to stock options. The determination of the Committee shall be conclusive in determining the

fair market value of the stock.

2.8 For cause, when used in connection with termination of a grantee's employment, shall have the meaning set forth in any then-effective employment agreement between the grantee and the Company or Subsidiary. In the absence of such an employment agreement, "for cause" means: (a) charge or conviction of a felony or any other crime (whether or not involving the Company or a Subsidiary); (b) engaging in any substantiated act involving moral turpitude; (c) the continual or frequent possession by grantee of an illegal substance or abuse by the grantee of a controlled substance or alcohol resulting in a pattern of behavior disruptive to the business operations of the Company or a Subsidiary; (d) engaging in any act which, in each case, subjects, or if generally known would subject, the Company or a Subsidiary to public ridicule or embarrassment; (e) any action by the grantee which constitutes dishonesty relating to the Company or a Subsidiary, a willful violation of law (other than traffic and similar minor offenses) or a fraud against the Company or a Subsidiary; (f) material violation of the Company's or a Subsidiary's written policies, including, without limitation, those relating to sexual harassment or the disclosure or misuse of confidential information; (g) misappropriation of the Company's or a Subsidiary's funds or assets by the grantee for personal gain; or (h) serious neglect or misconduct in the performance of the grantee's duties for the Company or a Subsidiary or willful or repeated failure or refusal to perform such duties; in each case determined by the Committee, which determination shall be final, binding and conclusive.

2.9 Independent Advisor shall mean any person appointed to the Company's Advisory Committee by the Board.

2.10 Insider shall mean an employee who is, at the time of an award made under this Plan, an insider pursuant to § 16 of the Exchange Act.

2.11 ISO means any option granted under this Plan to purchase Stock which satisfies the requirements of Section 422 of the Code. Any Option that is not specifically designated as an ISO shall under no circumstances be considered an ISO.

2.12 Key Consultant means any consultant or independent contractor of the Company or a Subsidiary (other than a Non-Employee Director) or any such consultant or contractor who is a Non-Employee Director and who serves as such a consultant or contractor pursuant to a written agreement with the Company which has been approved by the Board, in either case who, in the

judgment of the Committee, acting in its absolute discretion, is a key to the success of the Company or a Subsidiary.

2.13 Key Employee means any employee of the Company or a Subsidiary, who, in the judgment of the Committee acting in its absolute discretion, is a key to the success of the Company or a Subsidiary.

2.14 Non-Employee Director means any member of the Board of Directors of the Company qualified as such under SEC Rule 16b-3(b)(3)(i) under the Exchange Act, or any successor rule.

2.15 Non-ISO means any option granted under this Plan to purchase stock that fails to satisfy the requirements of Section 422 of the Code or has been specifically denominated as a non-ISO by the Committee as of the time the option is granted.

2.16 Option means an ISO or a Non-ISO.

2.17 Option Certificate means the written agreement or instrument which sets forth the terms of an Option granted to a Key Employee, Independent Advisor, Key Consultant, or Outside Director under this Plan.

2.18 Option Price means the price which shall be paid to purchase one share of stock upon the exercise of an Option granted under this Plan.

2.19 Outside Director means any member of the Board of Directors of the Company who is not employed by the Company, regardless of whether such person qualifies as a Non-Employee Director.

2.20 Parent Corporation means any corporation which is a parent corporation of the Company within the meaning of Section 424(e) of the Code.

2.21 Plan means this NuVim, Inc. 2007 Employee Stock Option Plan, as amended from time to time.

2.22 Principal Officer means the Chairman of the Board (if the Chairman of the Board is a payroll employee), the Chief Executive Officer, the President, any Executive Vice President, any Senior Vice President, any Vice President, the Chief Financial Officer, and the Treasurer of the Company and any other person who is an "officer" of the Company as that term is defined in SEC Rule 16a-1(f) under the Exchange Act or any successor rule there under.

2.23 Securities Act means the Securities Act of 1933, as amended.

2.24 SEC means the Securities Exchange Commission.

2.25 Stock means the Common Stock, \$.00001 par value per share, of the Company.

2.26 Subsidiary means any corporation that is a subsidiary corporation of the Company within the meaning of Section 424(f) of the Code.

2.27 Ten Percent Shareholder means a person who owns after taking into account the attribution rules of Section 424(d) of the Code more than ten percent (10%) of the total combined voting power of all classes of stock of the Company, a Subsidiary or a Parent Corporation.

### **Section 3. SHARES SUBJECT TO OPTIONS**

There shall be 2,000,000 shares of Stock reserved for issuance in connection with ISOs and Non-ISOs granted under this Plan. Shares of Stock shall be reserved to the extent that the Company deems appropriate from authorized but unissued shares of Stock and from shares of Stock which have been reacquired by the Company. Any shares of Stock subject to an Option which remain after the cancellation, expiration, or exchange of that Option for another Option thereafter shall again become available for use under this Plan.

### **Section 4. EFFECTIVE DATE**

The effective date of this Plan shall be March 8, 2007, subject to approval by the stockholders of the Company acting at a duly called meeting of stockholders or acting by unanimous written consent in lieu of a meeting, provided the stockholder approval occurs within twelve (12) months after the date the Board approves and adopts this Plan.

### **Section 5. COMMITTEE**

(a) The Compensation Committee, consisting solely of not less than two (2) Non-Employee Directors, shall administer this Plan. The members of the Committee shall be appointed by, and serve at, the pleasure of the Board. To the extent required for transactions under the Plan to qualify for the exemptions available under Rule 16b-3 promulgated under the Exchange Act, all actions relating to awards to persons subject to Section 16 of the Exchange Act shall be taken by the Committee (as defined below). In addition, to the extent required for compensation realized from awards under the Plan to be

deductible by the Company pursuant to Section 162(m) of the Code, all actions relating to awards to persons subject to Section 162(m) of the Code shall be taken by the Committee (as defined below).

(b) The Committee acting in its absolute discretion shall exercise all powers and take any action as expressly called for under this Plan. Furthermore, the Committee shall have the power to interpret this Plan and to take any other action in the administration and operation of this Plan as the Committee deems equitable under the circumstances, which action shall be binding on the Company, on each affected Key Employee, Key Consultant, Independent Advisor and on each other person directly or indirectly affected by that action.

## **Section 6. ELIGIBILITY**

Only Key Employees, Key Consultants, Independent Advisors, and Non-Employee Directors shall be eligible for the grant of Options under this Plan.

## **Section 7. GRANT OF OPTIONS**

**7.1 Committee Action.** The Committee, acting in its absolute discretion, shall grant Options to Key Employees and Key Consultants under this Plan from time to time to purchase shares of Stock. The Committee shall determine the number of shares subject to Options granted to each Independent Advisor. In addition, the Committee shall have the right to grant new Options in exchange for outstanding Options. Options shall be granted to Outside Directors as provided in Section 7.3 of this Plan. Each grant of an Option shall be evidenced by an Option Certificate, and each Option Certificate shall:

(a) specify whether the Option is an ISO or Non-ISO; and

(b) incorporate such other terms and conditions as the Committee, acting in its absolute discretion deems consistent with the terms of this Plan, including, without limitation, a limitation on the number of shares subject to the Option which first became exercisable or subject to surrender during any particular period.

If the Committee grants an ISO and a Non-ISO to a Key Employee on the same date, the right of the Key Employee to exercise or surrender one of these Options shall not be conditioned on his or her failure to exercise or surrender the other Option. In connection with the termination for any reason of employment by or service to the Company or any Subsidiary of any particular holder of any Option, the Committee may, in its discretion,



determine to accelerate the time that Option first becomes exercisable during any particular period as provided in the related Option Certificate; provided, however, that the Committee may not extend any period with respect to any shares of Stock subject to that Option. The Committee may also, in its discretion, condition the grant of an ISO or a Non-ISO upon the acceptance by a Key Employee, Independent Advisor, or Key Consultant of one or more modifications to outstanding options, including but not limited to, forfeiture of all profits if the Key Employee provides services to a competitor within a reasonable time as determined in the discretion of the Committee or the improper disclosure of the Company's confidential or proprietary information.

**7.2 \$100,000 Limitation.** To the extent that the aggregate Fair Market Value of the stock with respect to which ISOs and other incentive stock options satisfying the requirements of Section 422 of the Code granted to a Key Employee under this Plan and under any other stock option plan adopted by the Company, a Subsidiary, or a Parent Corporation first become exercisable in any calendar year exceeds \$100,000 (based upon the Fair Market Value on the date of the grant), such Options shall be treated as Non-ISOs.

## **Section 8. OPTION PRICE**

The Option Price for each share of Stock subject to an ISO shall not be less than the Fair Market Value of a share of Stock on the date the Option is granted. If the Option is an ISO and the Key Employee is a Ten Percent Shareholder, the Option Price for each share of Stock subject to that Option shall not be less than 110% of the Fair Market Value of a share of Stock on the date the Option is granted. The Option Price shall be payable in full upon the exercise of any Option, and an Option Certificate at the discretion of the Committee (except for an Option granted to a Non-Employee Director) may provide for the payment of the Option Price either in cash or in Stock acceptable to the Committee or in any combination of cash and Stock acceptable to the Committee. Any payment made in Stock shall be treated as equal to the Fair Market Value of that Stock on the date the properly endorsed certificate for such Stock is delivered to the Committee.

## **Section 9. EXERCISE PERIOD**

(a) Each Option granted under this Plan shall be exercisable in whole or in part at such time or times as set forth in the related Option Certificate, but no Option Certificate shall provide that:

(1) an Option is exercisable before the date such Option is granted, or

(2) an Option is exercisable after the date which is the tenth anniversary of the date such Option is granted.

If an option that is an ISO is granted to a Key Employee who is a Ten Percent Shareholder, the Option Certificate shall provide that the Option is not exercisable after the expiration of five years from the date the Option is granted. An Option Certificate may provide for the exercise of an Option after the employment of a Key Employee or service by an Independent Advisor or Key Consultant has terminated for any reason whatsoever, including death or disability. In connection with the termination for any reason of employment by or service to the Company or any Subsidiary of any particular holder of any Option, the Committee may, in its discretion, determine to extend the period during which that Option may be exercised as provided in the related Option Certificate; provided, however, that no extension shall permit an Option to be exercised beyond the date specified in paragraph (b) of this Section or the date applicable to Options granted to a Ten Percent Shareholder, as the case may be.

(b) Notwithstanding any other provision of this Section, upon a Change of Control each Option granted under this Plan prior to that Change of Control shall immediately become exercisable to the full extent of the original grant and, in the case an Option held by a Key Employee shall remain exercisable for three months (or such longer period as specified in the particular Option with regard to all or any shares of Stock covered by such Option) after any termination of employment of that Key Employee.

## **Section 10. TRANSFERABILITY**

The Committee shall impose any restrictions on the transfer of options granted under the Plan as it may deem advisable, including, without limitation, restrictions deemed necessary or advisable under applicable federal securities laws, under the requirements of any stock exchange or market upon which Stock is then listed in or traded, and under any Blue Sky or state securities laws applicable to such Stock. Upon request of any person receiving an award of an Option under the Plan, the Committee may, in its sole and absolute discretion, determine to remove any transfer restriction originally imposed and may, in connection with the removal of such transfer restriction, impose such conditions (including restrictions on further transfers of the Option or upon transfers of the Stock upon exercise of the Option) as the Committee, in its discretion, may deem advisable, including, without limitation, restrictions deemed by the Committee to be necessary or advisable in order to comply with applicable federal and state securities laws or the requirements of any stock exchange or market upon which the Stock is then

listed or traded. Subject to its authority to impose any conditions on further transfers, the Committee shall authorize the transfer of Options for bona fide estate planning purposes or for contributions to qualified charities or charitable trusts.

## **Section 11. SECURITIES REGISTRATION AND RESTRICTIONS**

Each Option Certificate shall provide that, upon the receipt of shares of Stock as a result of the exercise or surrender of an Option, the Key Employee, Key Consultant, Independent Advisor shall, if so requested by the Company, hold those shares of Stock for investment and not with a view toward resale or distribution to the public and, if so requested by the Company, shall deliver to the Company a written statement to that effect satisfactory to the Company. Each Option Certificate shall also provide that, if so requested by the Company, the Key Employee, Key Consultant, Independent Advisor shall represent in writing to the Company that he or she will not sell or offer to sell any of these shares of Stock unless a registration statement shall be in effect with respect to that Stock under the Securities Act and any applicable state securities law or unless he or she shall have furnished to the Company an opinion, in form and substance satisfactory to the Company, of legal counsel acceptable to the Company, that registration is not required. Certificates representing the Stock transferred upon the exercise or surrender of an Option granted under this Plan may, at the discretion of the Company, bear a legend to the effect that this Stock has not been registered under the Securities Act or any applicable state securities law and that this Stock may not be sold or offered for sale in the absence of (i) an effective registration statement as to this Stock under the Securities Act and any applicable state securities law or (ii) an opinion, in form and substance satisfactory to the Company, of legal counsel acceptable to the Company, that registration is not required. Furthermore, the Company shall have the right to require a Key Employee, Key Consultant, Independent Advisor to enter into any stockholder or other related agreements as the Company deems necessary or appropriate under the circumstances as a condition to the issuance of any Stock under this Plan to a Key Employee, Key Consultant, Independent Advisor.

## **Section 12. LIFE OF PLAN**

No Option shall be granted under this Plan on or after the earlier of

(a) the tenth anniversary of the original effective date of this Plan as determined under Section 4; *provided, however*, that after that anniversary this Plan otherwise shall continue in effect until all outstanding Options have been exercised in full or no longer are exercisable, or

(b) the date on which all of the Stock reserved under Section 3 of this Plan has, as a result of the exercise of Options granted under this Plan, been issued or no longer is available for use under this Plan, in which event this Plan also shall terminate on that date.

### **Section 13. ADJUSTMENT**

The number of shares of Stock reserved under Section 3 of this Plan, the number of shares of Stock to be granted from time to time pursuant to Section 7.3 of this Plan (if permitted by the exemption in Rule 16b-3 under the Exchange Act or any successor rule), the number of shares of Stock that may be granted pursuant to Section 5 of this Plan by the Committee to any single Key Employee or Key Consultant, and the number of shares of Stock subject to Options granted under this Plan and the Option Price of such Options shall be adjusted by the Board in an equitable manner to reflect any change in the capitalization of the Company, including, but not limited to, stock dividends, stock consolidations, or stock splits. Furthermore, the Board shall have the right to adjust in a manner which satisfies the requirements of Section 424(a) of the Code the number of shares of Stock reserved under Section 3 of this Plan and the number of shares subject to Options granted under this Plan and the Option Price of such Options in the event of any corporate transaction described in Section 424(a) of the Code that provides for the substitution or assumption of these Options. If any adjustment under this Section 13 would create a fractional share of Stock or a right to acquire a fractional share of Stock, any fractional share shall be disregarded and the number of shares of Stock reserved under this Plan and the number subject to any Options granted under this Plan shall be the next lower number of shares of Stock, rounding all fractions downward. An adjustment made under this Section 13 by the Board shall be conclusive and binding on all affected persons and, further, shall not constitute an increase in "the number of shares reserved under Section 3" within the meaning of Section 15(a) of this Plan.

### **Section 14. SALE OR MERGER OF THE COMPANY**

If the Company agrees to sell all or substantially all of its assets for cash or property or for a combination of cash and property or agrees to any merger, consolidation, reorganization, division, or other corporate transaction in which Stock is converted into another security or into the right to receive securities or property and the agreement governing the transaction does not provide for the assumption or substitution of the Options granted under this Plan, each then outstanding Option, at the direction of the Board, may be canceled unilaterally by the Company as of the effective date of that transaction in exchange for a payment in cash or Stock, or in a combination of

cash and Stock, equal in amount to the excess of the Fair Market Value on that date of the shares represented by the canceled Options over the Option Price for such shares.

## **Section 15. AMENDMENT OR TERMINATION**

This Plan may be amended by the Board from time to time to the extent that the Board deems necessary or appropriate; provided, however, that no such amendment shall be made absent the approval of the stockholders of the Company (a) to increase the aggregate number of shares reserved under Section 3, (b) to change the class of persons eligible for Options under Section 6 or (c) to materially modify the requirements as to eligibility for participation in this Plan, (d) to otherwise materially increase the benefits accruing under this Plan to Plan participants if such approval would be required in order for the Company to comply with applicable law or the rules or regulations of any stock exchange or market on which the Stock is traded or listed. The Board also may suspend the granting of Options under this Plan at any time and may terminate this Plan at any time; *provided, however*, that the Company shall not have the right to unilaterally cancel or, in a manner which would materially adversely affect the holder, amend or modify any Option granted before such suspension or termination unless (i) the Key Employee, Key Consultant, Independent Advisor previously consents in writing to that modification, amendment, or cancellation or (ii) there is a dissolution or liquidation of the Company or a transaction described in Section 13 or Section 14 of this Plan.

It is the intention of the Company that the Plan shall comply with the conditions of Rule 16b-3 of the Exchange Act, as that Rule may from time to time be amended. The Board shall have the authority, without the approval of the stockholders, to amend the Plan from time to time to include any conditions, terms or other provisions which may be required to be set forth in a plan in order for transactions by directors or officers to be exempt under Rule 16b-3 of the Exchange Act or any successor exemption.

## **Section 16. CHANGE OF CONTROL**

Notwithstanding any other provision of the Plan, upon a Change of Control each Option granted under this Plan prior to that Change of Control shall immediately become exercisable to the full extent of the original grant and shall remain exercisable for three months (or such longer period as specified in the particular Option with regard to all or any shares of Stock covered by such Option) after (i) any termination of employment of any Key Employee; or (ii) resignation or removal of any Outside Director from the Company's Board of Directors.

## **Section 17. MISCELLANEOUS**

**17.1 No Stockholder Rights.** No Key Employee, Key Consultant, or Independent Advisor shall have any rights as a stockholder of the Company as a result of the grant of an Option to him or to her under this Plan or his or her exercise or surrender of that Option pending the actual delivery of Stock subject to that Option to any Key Employee, Key Consultant, or Independent Advisor.

**17.2 No Contract of Employment.** The grant of an Option to a Key Employee, Key Consultant, Independent Advisor under this Plan shall not constitute a contract of employment or consulting or right to continue to serve on the Company's Board of Directors and shall not confer on a Key Employee, Key Consultant, Independent Advisor any rights upon his or her termination of employment or service in addition to those rights, if any, expressly set forth in the Option Certificate which evidences his or her Option.

**17.3 Withholding.** The exercise or surrender of any Option granted under this Plan shall constitute a Key Employee's full and complete consent to whatever action the Committee elects to satisfy the federal and state tax withholding requirements, if any, which the Committee in its discretion deems applicable to that exercise or surrender.

**17.4 Governing Law and Construction.** All rights and obligations under this Plan and the Option Certificates shall be construed and interpreted with the laws of the State of New York, without giving effect to the principles of conflict of laws.

**17.5 Indemnification.** In addition to any other rights of indemnification as they may have as directors or as members of the Committee, the members of the Committee shall be indemnified by the Company against all reasonable expenses, including attorneys' fees, actually and reasonably incurred in connection with the defense of any action, suit or proceeding, or in connection with any appeal therein, to which they or any of them may be a party by reason of any action taken by them as directors or members of the Committee and against all amounts paid by them in settlement thereof (provided such settlement is approved by the Board) or paid by them in satisfaction of a judgment in any action, suit or proceeding, except in relation to matters as to which it shall be adjudged in such action, suit or proceeding that the director or Committee member is liable for gross negligence or willful misconduct in the performance of his or her duties. To receive this indemnification, a director or Committee member must first offer

in writing to the Company the opportunity, at its own expense, to defend that action, suit or proceeding.

The Company, the Board, and the Committee shall not be required to give any security or bond for the performance of any obligation that may be created by the Plan.

Exhibit 3

NuVim, Inc.

2008 OUTSIDE DIRECTOR STOCK OPTION PLAN

**Section 1 PURPOSE**

The purpose of this Plan is to promote the interests of NuVim, Inc. (the "Company") by granting Options to purchase Stock to Outside Directors and Board Committee Members in order to (a) attract and retain Quality Outside Directors and Board Committee Members; (b) provide an additional incentive to each Outside Director and Board Committee Member to work to increase the value of the Stock; and (c) provide each Outside Directors and Board Committee Members with a stake in the future of the Company which corresponds to the stake of the Company's stockholders.

**Section 2 DEFINITIONS**

Each term set forth in this Section 2 shall have the meaning set forth opposite such term for purposes of this Plan and for any Option granted under this Plan. For purposes of such definitions, the singular shall include the plural and the plural shall include the singular. Unless otherwise expressly indicated, all Section references herein shall be construed to mean references to a particular Section of this Plan.

2.1 Board means the Board of Directors of the Company.

2.2 Change of Control means any of the following:

(i) the acquisition, other than from the Company, by any individual, entity or group (within the meaning of Section 13(d) or 14(d)(2) of the Securities Exchange Act of 1934, as amended from time to time) (the "Exchange Act"), of beneficial ownership (within the meaning of Rule 13d-3 promulgated under the Exchange Act) of 15% or more of either (A) the then outstanding shares of Stock (the "Outstanding Company Common Stock") or (B) the combined voting power of the then outstanding voting securities of the Company entitled to vote generally in the election of directors (the "Company Voting Securities"); provided, however, that any acquisition by (x) the Company or any of its subsidiaries, or any employee benefit plan (or related trust) sponsored or maintained by the Company or any of its subsidiaries or (y) any corporation with respect to which, following such acquisition, more than 50% of, respectively, the then outstanding



shares of common stock of such corporation and the combined voting power of the then outstanding voting securities of such corporation entitled to vote generally in the election of directors is then beneficially owned, directly or indirectly, by all or substantially all of the individuals and entities who were the beneficial owners, respectively, of the Outstanding Company Common Stock and Company Voting Securities immediately prior to such acquisition in substantially the same portion as their ownership, immediately prior to such acquisition of the Outstanding Company Common Stock and Company Voting Securities, as the case may be, shall not constitute a change in control of the Company; or

(ii) individuals who, as of January 31, 2008, constitute the Board of Directors of the Company (the "Incumbent Board") cease for any reason to constitute at least a majority of the Board, provided that any individual becoming a director subsequent to January 31, 2008, whose election or nomination for election by the Company's shareholders was approved by a vote of at least a majority of the directors then comprising the incumbent Board shall be considered as though such individual was elected prior to January 31, 2008, even if his initial assumption of office is in connection with an actual or threatened election contest relating to the election of the Directors of the Company (as such terms are used in Rule 14a-11 of Regulation 14A promulgated under the Exchange Act); or

(iii) approval by the shareholders of the Company of a reorganization, merger or consolidation (a "Business Combination"), in each case, with respect to which all or substantially all of the individuals and entities who were the respective beneficial owners of the Outstanding Company Common Stock and Company Voting Securities immediately prior to such Business Combination do not, following such Business Combination, beneficially own, directly or indirectly, more than 50% of, respectively, the then outstanding shares of common stock and the combined voting power of the then outstanding voting securities entitled to vote generally in the election of directors, as the case may be, of the corporation resulting from such Business Combination in substantially the same proportion as their ownership immediately prior to such Business Combination or the Outstanding Company Common Stock and Company Voting Securities, as the case may be; or

(iv) (A) a complete liquidation or dissolution of the Company or a (B) sale or other disposition of all or substantially all of the assets of the Company other than to a corporation with respect to which, following such sale or disposition, more than 50% of, respectively, the

then outstanding shares of common stock and the combined voting power of the then outstanding voting securities entitled to vote generally in the election of directors is then owned beneficially, directly or indirectly, by all or substantially all of the individuals and entities who were the beneficial owners, respectively, of the Outstanding Company Common Stock and Company Voting Securities immediately prior to such sale or disposition in substantially the same proportion as their ownership of the Outstanding Company Common Stock and Company Voting Securities, as the case may be, immediately prior to such sale or disposition.

2.3 Code means the Internal Revenue Code of 1986, as amended.

2.4 Committee means the committee of Non-Employee Directors appointed by the Board to administer this Plan as contemplated by Section 5.

2.5 Company means NuVim, Inc., a Delaware corporation, and any successor to this corporation.

2.6 Exchange Act means the Securities Exchange Act of 1934, as amended.

2.7 Fair Market Value in respect of the Stock on any day means (a) if the principal market for the Stock is a national securities exchange, the average between the high and low sales prices of the Stock on such day as reported by such exchange or on a consolidated tape reflecting transactions on such exchange; (b) if the principal market for the Stock is not a national securities exchange and the Stock is quoted on The NASDAQ Stock Market ("NASDAQ"), and (i) if actual sales price information is available with respect to the Stock, then the average between the high and low sales prices of the Stock on such day on NASDAQ, or (ii) if such information is not available, then the average between the highest bid and lowest asked prices for the Stock on such day on NASDAQ; or (c) if the principal market for the Stock is not a national securities exchange and the Stock is not quoted on NASDAQ, then the average between the highest bid and lowest asked prices for the Stock on such day as reported by The Nasdaq Bulletin Board, or a comparable service; provided that if clauses (a), (b) and (c) of this Paragraph are all inapplicable, or if no trades have been made or no quotes are available for such day, then the fair market value of the Stock shall be determined by the Committee by any method consistent with applicable regulations adopted by the Treasury Department relating to stock options. The determination of the Committee shall be conclusive in determining the fair market value of the stock.

2.8 For cause, when used in connection with termination of a grantee's employment, shall have the meaning set forth in any then-effective employment agreement between the grantee and the Company or Subsidiary. In the absence of such an employment agreement, "for cause" means: (a) charge or conviction of a felony or any other crime (whether or not involving the Company or a Subsidiary); (b) engaging in any substantiated act involving moral turpitude; (c) the continual or frequent possession by grantee of an illegal substance or abuse by the grantee of a controlled substance or alcohol resulting in a pattern of behavior disruptive to the business operations of the Company or a Subsidiary; (d) engaging in any act which, in each case, subjects, or if generally known would subject, the Company or a Subsidiary to public ridicule or embarrassment; (e) any action by the grantee which constitutes dishonesty relating to the Company or a Subsidiary, a willful violation of law (other than traffic and similar minor offenses) or a fraud against the Company or a Subsidiary; (f) material violation of the Company's or a Subsidiary's written policies, including, without limitation, those relating to sexual harassment or the disclosure or misuse of confidential information; (g) misappropriation of the Company's or a Subsidiary's funds or assets by the grantee for personal gain; or (h) serious neglect or misconduct in the performance of the grantee's duties for the Company or a Subsidiary or willful or repeated failure or refusal to perform such duties; in each case determined by the Committee, which determination shall be final, binding and conclusive.

2.9 Insider shall mean an employee who is, at the time of an award made under this Plan, an insider pursuant to § 16 of the Exchange Act.

2.10 ISO means any option granted under this Plan to purchase Stock which satisfies the requirements of Section 422 of the Code. Any Option that is not specifically designated as an ISO shall under no circumstances be considered an ISO.

2.11 Non-Employee Director means any member of the Board of Directors of the Company qualified as such under SEC Rule 16b-3(b)(3)(i) under the Exchange Act, or any successor rule.

2.12 Non-ISO means any option granted under this Plan to purchase stock that fails to satisfy the requirements of Section 422 of the Code or has been specifically designated as a non-ISO by the Committee as of the time the option is granted.

2.13 Option means an ISO or a Non-ISO.

2.14 Option Certificate means the written agreement or instrument which sets forth the terms of an Option granted to a Key Employee, Independent Advisor, Key Consultant, or Outside Director under this Plan.

2.15 Option Price means the price which shall be paid to purchase one share of stock upon the exercise of an Option granted under this Plan.

2.16 Outside Director means any member of the Board of Directors of the Company who is not employed by the Company, regardless of whether such person qualifies as a Non-Employee Director.

2.17 Parent Corporation means any corporation which is a parent corporation of the Company within the meaning of Section 424(e) of the Code.

2.18 Plan means this NuVim, Inc. 2008 Outside Director Stock Option Plan, as amended from time to time.

2.19 Principal Officer means the Chairman of the Board (if the Chairman of the Board is a payroll employee), the Chief Executive Officer, the President, any Executive Vice President, any Senior Vice President, any Vice President, the Chief Financial Officer, and the Treasurer of the Company and any other person who is an "officer" of the Company as that term is defined in SEC Rule 16a-1(f) under the Exchange Act or any successor rule there under.

2.20 Securities Act means the Securities Act of 1933, as amended.

2.21 SEC means the Securities Exchange Commission.

2.22 Stock means the Common Stock, \$.00001 par value per share, of the Company.

2.23 Subsidiary means any corporation that is a subsidiary corporation of the Company within the meaning of Section 424(f) of the Code.

2.24 Ten Percent Shareholder means a person who owns after taking into account the attribution rules of Section 424(d) of the Code more than ten percent (10%) of the total combined voting power of all classes of stock of the Company, a Subsidiary or a Parent Corporation.

### **Section 3. SHARES SUBJECT TO OPTIONS**

There shall be 1,000,000 shares of Stock reserved for issuance in connection with ISOs and Non-ISOs granted under this Plan. Shares of Stock shall be reserved to the extent that the Company deems appropriate from authorized but unissued shares of Stock and from shares of Stock which have been reacquired by the Company. Any shares of Stock subject to an Option which remain after the cancellation, expiration, or exchange of that Option for another Option thereafter shall again become available for use under this Plan.

### **Section 4. EFFECTIVE DATE**

The effective date of this Plan shall be March 20, 2008, subject to approval by the stockholders of the Company acting at a duly called meeting of stockholders or acting by unanimous written consent in lieu of a meeting, provided the stockholder approval occurs within twelve (12) months after the date the Board approves and adopts this Plan.

### **Section 5. COMMITTEE**

(a) The Compensation Committee, consisting solely of not less than two (2) Non-Employee Directors, shall administer this Plan. The members of the Committee shall be appointed by, and serve at, the pleasure of the Board. To the extent required for transactions under the Plan to qualify for the exemptions available under Rule 16b-3 promulgated under the Exchange Act, all actions relating to awards to persons subject to Section 16 of the Exchange Act shall be taken by the Committee (as defined below). In addition, to the extent required for compensation realized from awards under the Plan to be deductible by the Company pursuant to Section 162(m) of the Code, all actions relating to awards to persons subject to Section 162(m) of the Code shall be taken by the Committee (as defined below).

(b) The Committee acting in its absolute discretion shall exercise all powers and take any action as expressly called for under this Plan. Furthermore, the Committee shall have the power to interpret this Plan and to take any other action in the administration and operation of this Plan as the Committee deems equitable under the circumstances, which action shall be binding on the Company, on each affected Outside Director or Committee Member and on each other person directly or indirectly affected by that action.

## **Section 6. ELIGIBILITY**

Only Outside Directors and Board Committee Members shall be eligible for the grant of Options under this Plan.

## **Section 7. ANNUAL GRANT OF OPTIONS TO OUTSIDE DIRECTORS AND COMMITTEE CHAIRS**

(a) Each Outside Director shall, effective upon election or appointment at the annual meeting any time on or after May 1, 2008, but not more often than once a calendar year, shall be granted an option to purchase 50,000 shares.

(b) In addition to the foregoing, each Chair of a Regular Board Committee shall, effective on election or appointment at the annual meeting in each year commencing in 2008, but not more often than once a calendar year, shall be granted an option to purchase 10,000 shares.

(c) In addition to both of the foregoing, each member of a Regular Board Committee shall, effective on election or appointment at the annual meeting in each year commencing in 2008, but not more often than once a calendar year, shall be granted an option to purchase 10,000 shares.

(d) If a person becomes an Outside Director, Regular Committee Chair, or Regular Committee Member, after the annual meeting in any year, they shall immediately, but not more often than once in a calendar year be granted the applicable options described in 7.3 (a), (b), and (c).

(e) All of the Option granted to each individual shall be exercisable immediately.

(f) The Option Price for each share of stock subject to an option granted under this section shall be the Fair Market Value of a share of Stock on the date the Option is granted.

(g) Each Option granted pursuant to this section shall be an ISO to the maximum extent possible.

## **Section 8. OPTION PRICE**

The Option Price for each share of Stock subject to an ISO shall not be less than the Fair Market Value of a share of Stock on the date the Option is

granted. If the Option is an ISO and the Outside Director or Committee Member is a Ten Percent Shareholder, the Option Price for each share of Stock subject to that Option shall not be less than 110% of the Fair Market Value of a share of Stock on the date the Option is granted. The Option Price shall be payable in full upon the exercise of any Option, and an Option Certificate at the discretion of the Committee (except for an Option granted to a Non-Employee Director) may provide for the payment of the Option Price either in cash or in Stock acceptable to the Committee or in any combination of cash and Stock acceptable to the Committee. Any payment made in Stock shall be treated as equal to the Fair Market Value of that Stock on the date the properly endorsed certificate for such Stock is delivered to the Committee.

## **Section 9. EXERCISE PERIOD**

(a) Each Option granted under this Plan shall be exercisable in whole or in part at such time or times as set forth in the related Option Certificate, but no Option Certificate shall provide that:

(1) an Option is exercisable before the date such Option is granted, or

(2) an Option is exercisable after the date which is the tenth anniversary of the date such Option is granted.

If an option that is an ISO is granted to a Key Employee who is a Ten Percent Shareholder, the Option Certificate shall provide that the Option is not exercisable after the expiration of five years from the date the Option is granted. An Option Certificate may provide for the exercise of an Option after the employment of a Key Employee or service by an Independent Advisor or Key Consultant has terminated for any reason whatsoever, including death or disability. In connection with the termination for any reason of employment by or service to the Company or any Subsidiary of any particular holder of any Option, the Committee may, in its discretion, determine to extend the period during which that Option may be exercised as provided in the related Option Certificate; provided, however, that no extension shall permit an Option to be exercised beyond the date specified in paragraph (b) of this Section or the date applicable to Options granted to a Ten Percent Shareholder, as the case may be.

(b) Notwithstanding any other provision of this Section, upon a Change of Control each Option granted under this Plan prior to that Change of Control shall immediately become exercisable to the full extent of the original grant and, in the case an Option held by a Key Employee shall remain exercisable for three months (or such longer period as specified in the

particular Option with regard to all or any shares of Stock covered by such Option) after any termination of employment of that Key Employee.

## **Section 10. TRANSFERABILITY**

The Committee shall impose any restrictions on the transfer of options granted under the Plan as it may deem advisable, including, without limitation, restrictions deemed necessary or advisable under applicable federal securities laws, under the requirements of any stock exchange or market upon which Stock is then listed in or traded, and under any Blue Sky or state securities laws applicable to such Stock. Upon request of any person receiving an award of an Option under the Plan, the Committee may, in its sole and absolute discretion, determine to remove any transfer restriction originally imposed and may, in connection with the removal of such transfer restriction, impose such conditions (including restrictions on further transfers of the Option or upon transfers of the Stock upon exercise of the Option) as the Committee, in its discretion, may deem advisable, including, without limitation, restrictions deemed by the Committee to be necessary or advisable in order to comply with applicable federal and state securities laws or the requirements of any stock exchange or market upon which the Stock is then listed or traded. Subject to its authority to impose any conditions on further transfers, the Committee shall authorize the transfer of Options for bona fide estate planning purposes or for contributions to qualified charities or charitable trusts.

## **Section 11. SECURITIES REGISTRATION AND RESTRICTIONS**

Each Option Certificate shall provide that, upon the receipt of shares of Stock as a result of the exercise or surrender of an Option, the Outside Director shall, if so requested by the Company, hold those shares of Stock for investment and not with a view toward resale or distribution to the public and, if so requested by the Company, shall deliver to the Company a written statement to that effect satisfactory to the Company. Each Option Certificate shall also provide that, if so requested by the Company, the Outside Director shall represent in writing to the Company that he or she will not sell or offer to sell any of these shares of Stock unless a registration statement shall be in effect with respect to that Stock under the Securities Act and any applicable state securities law or unless he or she shall have furnished to the Company an opinion, in form and substance satisfactory to the Company, of legal counsel acceptable to the Company, that registration is not required. Certificates representing the Stock transferred upon the exercise or surrender of an Option granted under this Plan may, at the discretion of the Company, bear a legend to the effect that this Stock has not been registered under the Securities Act or any applicable state securities law and that this Stock may



not be sold or offered for sale in the absence of (i) an effective registration statement as to this Stock under the Securities Act and any applicable state securities law or (ii) an opinion, in form and substance satisfactory to the Company, of legal counsel acceptable to the Company, that registration is not required. Furthermore, the Company shall have the right to require a Key Employee, Key Consultant, Independent Advisor, or Outside Director to enter into any stockholder or other related agreements as the Company deems necessary or appropriate under the circumstances as a condition to the issuance of any Stock under this Plan to an Outside Director.

## **Section 12. LIFE OF PLAN**

No Option shall be granted under this Plan on or after the earlier of

(a) the tenth anniversary of the original effective date of this Plan as determined under Section 4; *provided, however*, that after that anniversary this Plan otherwise shall continue in effect until all outstanding Options have been exercised in full or no longer are exercisable, or

(b) the date on which all of the Stock reserved under Section 3 of this Plan has, as a result of the exercise of Options granted under this Plan, been issued or no longer is available for use under this Plan, in which event this Plan also shall terminate on that date.

## **Section 13. ADJUSTMENT**

The number of shares of Stock reserved under Section 3 of this Plan, the number of shares of Stock to be granted from time to time pursuant to Section 7.3 of this Plan (if permitted by the exemption in Rule 16b-3 under the Exchange Act or any successor rule), the number of shares of Stock that may be granted pursuant to Section 5 of this Plan by the Committee to any single Key Employee or Key Consultant, and the number of shares of Stock subject to Options granted under this Plan and the Option Price of such Options shall be adjusted by the Board in an equitable manner to reflect any change in the capitalization of the Company, including, but not limited to, stock dividends, stock consolidations, or stock splits. Furthermore, the Board shall have the right to adjust in a manner which satisfies the requirements of Section 424(a) of the Code the number of shares of Stock reserved under Section 3 of this Plan and the number of shares subject to Options granted under this Plan and the Option Price of such Options in the event of any corporate transaction described in Section 424(a) of the Code that provides for the substitution or assumption of these Options. If any adjustment under this Section 13 would create a fractional share of Stock or a right to acquire a fractional share of Stock, any fractional share shall be disregarded and the

number of shares of Stock reserved under this Plan and the number subject to any Options granted under this Plan shall be the next lower number of shares of Stock, rounding all fractions downward. An adjustment made under this Section 13 by the Board shall be conclusive and binding on all affected persons and, further, shall not constitute an increase in "the number of shares reserved under Section 3" within the meaning of Section 15(a) of this Plan.

#### **Section 14. SALE OR MERGER OF THE COMPANY**

If the Company agrees to sell all or substantially all of its assets for cash or property or for a combination of cash and property or agrees to any merger, consolidation, reorganization, division, or other corporate transaction in which Stock is converted into another security or into the right to receive securities or property and the agreement governing the transaction does not provide for the assumption or substitution of the Options granted under this Plan, each then outstanding Option, at the direction of the Board, may be canceled unilaterally by the Company as of the effective date of that transaction in exchange for a payment in cash or Stock, or in a combination of cash and Stock, equal in amount to the excess of the Fair Market Value on that date of the shares represented by the canceled Options over the Option Price for such shares.

#### **Section 15. AMENDMENT OR TERMINATION**

This Plan may be amended by the Board from time to time to the extent that the Board deems necessary or appropriate; provided, however, that no such amendment shall be made absent the approval of the stockholders of the Company (a) to increase the aggregate number of shares reserved under Section 3, (b) to change the class of persons eligible for Options under Section 6 or (c) to materially modify the requirements as to eligibility for participation in this Plan, (d) to otherwise materially increase the benefits accruing under this Plan to Plan participants if such approval would be required in order for the Company to comply with applicable law or the rules or regulations of any stock exchange or market on which the Stock is traded or listed. The Board also may suspend the granting of Options under this Plan at any time and may terminate this Plan at any time; *provided, however*, that the Company shall not have the right to unilaterally cancel or, in a manner which would materially adversely affect the holder, amend or modify any Option granted before such suspension or termination unless (i) the Key Employee, Key Consultant, Independent Advisor, or Outside Director previously consents in writing to that modification, amendment, or cancellation or (ii) there is a dissolution or liquidation of the Company or a transaction described in Section 13 or Section 14 of this Plan.

It is the intention of the Company that the Plan shall comply with the conditions of Rule 16b-3 of the Exchange Act, as that Rule may from time to time be amended. The Board shall have the authority, without the approval of the stockholders, to amend the Plan from time to time to include any conditions, terms or other provisions which may be required to be set forth in a plan in order for transactions by directors or officers to be exempt under Rule 16b-3 of the Exchange Act or any successor exemption.

## **Section 16. CHANGE OF CONTROL**

Notwithstanding any other provision of the Plan, upon a Change of Control each Option granted under this Plan prior to that Change of Control shall immediately become exercisable to the full extent of the original grant and shall remain exercisable for three months (or such longer period as specified in the particular Option with regard to all or any shares of Stock covered by such Option) after any resignation or removal of any Outside Director from the Company's Board of Directors.

## **Section 17. MISCELLANEOUS**

**17.1 No Stockholder Rights.** No Outside Director or Board Committee Member shall have any rights as a stockholder of the Company as a result of the grant of an Option to him or to her under this Plan or his or her exercise or surrender of that Option pending the actual delivery of Stock subject to that Option to any Non-Employee Director or Board Committee Member.

**17.2 No Contract of Employment.** The grant of an Option to an Outside Director or Board Committee Member under this Plan shall not constitute a contract of employment or consulting or right to continue to serve on the Company's Board of Directors and shall not confer on an Outside Director or Board Committee Member any rights upon his or her termination of employment or service in addition to those rights, if any, expressly set forth in the Option Certificate which evidences his or her Option.

**17.3 Withholding.** The exercise or surrender of any Option granted under this Plan shall constitute a Outside Director's or Board Committee Member's full and complete consent to whatever action the Committee elects to satisfy the federal and state tax withholding requirements, if any, which the Committee in its discretion deems applicable to that exercise or surrender.

**17.4 Governing Law and Construction.** All rights and obligations under this Plan and the Option Certificates shall be construed and interpreted

with the laws of the State of New Jersey, without giving effect to the principles of conflict of laws.

**17.5. Indemnification.** In addition to any other rights of indemnification as they may have as directors or as members of the Committee, the members of the Committee shall be indemnified by the Company against all reasonable expenses, including attorneys' fees, actually and reasonably incurred in connection with the defense of any action, suit or proceeding, or in connection with any appeal therein, to which they or any of them may be a party by reason of any action taken by them as directors or members of the Committee and against all amounts paid by them in settlement thereof (provided such settlement is approved by the Board) or paid by them in satisfaction of a judgment in any action, suit or proceeding, except in relation to matters as to which it shall be adjudged in such action, suit or proceeding that the director or Committee member is liable for gross negligence or willful misconduct in the performance of his or her duties. To receive this indemnification, a director or Committee member must first offer in writing to the Company the opportunity, at its own expense, to defend that action, suit or proceeding.

The Company, the Board, and the Committee shall not be required to give any security or bond for the performance of any obligation that may be created by the Plan.