

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, DC 20549**

**FORM 10-Q**

(Mark One)

QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934 FOR THE QUARTERLY PERIOD ENDED JUNE 30, 2002

OR

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934 FOR THE TRANSITION PERIOD FROM \_\_\_\_\_ TO \_\_\_\_\_

**NU SKIN ENTERPRISES, INC.**

(Exact name of registrant as specified in its charter)

**Delaware**

**011-12421**

**87-0565309**

(State or other  
jurisdiction  
of incorporation)

(Commission File No.)

(IRS Employer  
Identification No.)

**75 West Center Street  
Provo, UT 84601**

(Address of registrant as specified in its charter)

Registrant's telephone number, including area code:  
(801) 345-6100

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

As of August 6, 2002, 35,460,335 shares of the Company's Class A Common Stock, \$.001 par value per share, and 46,068,084 shares of the Company's Class B Common stock, \$.001 par value per share, were outstanding.

**NU SKIN ENTERPRISES, INC.**

**2002 FORM 10-Q QUARTERLY REPORT – SECOND QUARTER**

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Nu Skin, Pharmanex and Big Planet are trademarks of Nu Skin Enterprises, Inc. or its subsidiaries.

## PART I. FINANCIAL INFORMATION

### ITEM 1. FINANCIAL STATEMENTS

#### NU SKIN ENTERPRISES, INC.

#### Consolidated Balance Sheets

(in thousands, except share amounts)

	<u>June 30, 2002</u>	<u>December 31, 2001</u>
	(Unaudited)	
<b>ASSETS</b>		
Current assets		
Cash and cash equivalents	\$ 95,058	\$ 75,923
Accounts receivable	24,579	19,318
Related parties receivable	5,065	12,961
Inventories, net	90,287	84,255
Prepaid expenses and other	27,752	45,404
	<u>242,741</u>	<u>237,861</u>
Property and equipment, net	55,942	57,355
Goodwill and other intangible assets, net (Note 7)	181,106	173,573
Other assets	115,644	113,563
	<u>595,433</u>	<u>582,352</u>
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
Current liabilities		
Accounts payable	\$ 19,982	\$ 14,733
Accrued expenses	71,117	63,493
Related parties payable	6,524	7,122
	<u>97,623</u>	<u>85,348</u>
Long-term debt	81,178	73,718
Other liabilities	43,442	43,396
	<u>222,243</u>	<u>202,462</u>
Stockholders' equity		
Class A common stock - 500,000,000 shares authorized, \$.001 par value, 33,958,387 and 33,615,230 shares issued and outstanding	34	33
Class B common stock - 100,000,000 shares authorized, \$.001 par value, 47,612,574 and 48,849,040 shares issued and outstanding	48	49
Additional paid-in capital	77,019	88,953
Accumulated other comprehensive loss	(65,347)	(49,485)
Retained earnings	361,436	340,340
	<u>373,190</u>	<u>379,890</u>

Total liabilities and stockholders' equity

\$ 595,433

\$ 582,352

The accompanying notes are an integral part of these consolidated financial statements.

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**NU SKIN ENTERPRISES, INC.**  
**Consolidated Statements of Income (Unaudited)**  
(in thousands, except per share amounts)

	Three Months Ended June 30, 2002	Three Months Ended June 30, 2001	Six Months Ended June 30, 2002	Six Months Ended June 30, 2001
Revenue	\$ 244,924	\$ 218,617	\$ 461,003	\$428,876
Cost of sales	48,629	43,312	92,713	85,827
Gross profit	196,295	175,305	368,290	343,049
Operating expenses:				
Distributor incentives	96,567	86,542	179,400	168,376
Selling, general and administrative	69,303	68,569	137,992	141,467
Total operating expenses	165,870	155,111	317,392	309,843
Operating income	30,425	20,194	50,898	33,206
Other income (expense), net	(1,800)	(1,805)	(1,809)	5,154
Income before provision for income taxes	28,625	18,389	49,089	38,360
Provision for income taxes	10,591	6,804	18,163	14,193
Net income	\$ 18,034	\$ 11,585	\$ 30,926	\$ 24,167
Net income per share (Note 2):				
Basic	\$ .22	\$ .14	\$ .38	\$ .29
Diluted	\$ .22	\$ .14	\$ .37	\$ .29
Weighted average common shares outstanding:				
Basic	81,785	83,403	82,085	83,773
Diluted	83,568	84,231	83,439	84,596

The accompanying notes are an integral part of these consolidated financial statements.

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**NU SKIN ENTERPRISES, INC.**  
**Consolidated Statements of Cash Flows (Unaudited)**  
(in thousands)

	Six Months Ended June 30, 2002	Six Months Ended June 30, 2001
Cash flows from operating activities:		
Net income	\$ 30,926	\$ 24,167
Adjustments to reconcile net income to net cash provided by		

operating activities:		
Depreciation and amortization	10,772	15,491
Amortization of deferred compensation	--	669
Gain on sale	(1,328)	--
Changes in operating assets and liabilities:		
Accounts receivable	(5,261)	(3,091)
Related parties receivable	1,468	796
Inventories, net	(6,032)	(1,837)
Prepaid expenses and other	7,052	(2,626)
Other assets	(3,166)	2,632
Accounts payable	5,249	48
Accrued expenses	7,624	(5,311)
Related parties payable	(598)	(2,133)
Other liabilities	46	1,311
	<hr/>	<hr/>
Net cash provided by operating activities	46,752	30,116
	<hr/>	<hr/>
Cash flows from investing activities:		
Purchase of property and equipment	(8,537)	(7,725)
Purchase of long-term assets (Note 10)	(6,473)	--
	<hr/>	<hr/>
Net cash used in investing activities	(15,010)	(7,725)
	<hr/>	<hr/>
Cash flows from financing activities:		
Exercise of distributor and employee stock options	532	24
Payments of cash dividends	(9,830)	(8,151)
Repurchase of shares of common stock (Note 5)	(6,974)	(10,736)
	<hr/>	<hr/>
Net cash used in financing activities	(16,272)	(18,863)
	<hr/>	<hr/>
Effect of exchange rate changes on cash	3,665	(6,210)
	<hr/>	<hr/>
Net increase (decrease) in cash and cash equivalents	19,135	(2,682)
Cash and cash equivalents, beginning of period	75,923	63,996
	<hr/>	<hr/>
Cash and cash equivalents, end of period	\$ 95,058	\$ 61,314
	<hr/>	<hr/>

The accompanying notes are an integral part of these consolidated financial statements.

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## NU SKIN ENTERPRISES, INC. Notes to Consolidated Financial Statements

### 1. THE COMPANY

Nu Skin Enterprises, Inc. (the "Company") is a leading, global direct selling company that develops and distributes premium-quality, innovative personal care products and nutritional supplements through a large network of independent distributors. The Company also distributes technology and telecommunications products and services through its distributors. The Company reports revenue from four geographic regions: North Asia, which consists of Japan and South Korea; Southeast Asia, which consists of Australia, Hong Kong (including Macau), Malaysia, New Zealand, China, the Philippines, Singapore, Taiwan and Thailand; North America, which consists of the United States and Canada; and Other Markets, which consists of the Company's markets in Brazil, Europe, Guatemala and Mexico (the Company's subsidiaries operating in these countries are collectively referred to as the "Subsidiaries").

The accompanying unaudited consolidated financial statements have been prepared in accordance with generally accepted accounting principles for interim financial information and with the instructions to Form 10-Q and Rule 10-01 of Regulation S-X. Accordingly, they do not include all of the information and footnotes required by generally accepted accounting principles for complete financial statements. The unaudited consolidated financial statements include the accounts of the Company and the Subsidiaries. All significant intercompany accounts and transactions are eliminated in consolidation. In the opinion of management, the accompanying unaudited consolidated financial statements contain all adjustments, consisting of normal recurring adjustments, considered necessary for a fair statement of the Company's financial information as of June 30, 2002, and for the three and six-month periods ended June 30, 2002 and 2001. The results of operations of any interim period are

not necessarily indicative of the results of operations to be expected for the fiscal year. For further information, refer to the consolidated financial statements and accompanying footnotes included in the Company's Annual Report on Form 10-K for the year ended December 31, 2001.

## 2. NET INCOME PER SHARE

Net income per share is computed based on the weighted average number of common shares outstanding during the periods presented. Additionally, diluted earnings per share data give effect to all potentially dilutive common shares that were outstanding during the periods presented.

## 3. DIVIDENDS PER SHARE

In May 2002, the board of directors declared a quarterly cash dividend of \$0.06 per share for all classes of common stock. This quarterly cash dividend of approximately \$4.9 million was paid on June 26, 2002, to stockholders of record on June 7, 2002.

## 4. DERIVATIVE FINANCIAL INSTRUMENTS

The Company recognizes all derivatives as either assets or liabilities, with the instruments measured at fair value. Changes in the fair value of derivatives are recorded each period in current earnings or other comprehensive income, depending on the intended use of the derivative and its resulting designation.

The Company's Subsidiaries enter into significant transactions with each other and with third parties which may not be denominated in the respective Subsidiary's functional currency. The Company seeks to reduce its exposure to fluctuations in foreign exchange rates through the use of foreign currency exchange contracts and through certain intercompany loans of foreign currency. The Company does not use such derivative financial instruments for trading or

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## NU SKIN ENTERPRISES, INC. Notes to Consolidated Financial Statements

speculative purposes. The Company regularly monitors its foreign currency risks and periodically takes measures to reduce the impact of foreign exchange fluctuations on the Company's operating results. Gains and losses on certain intercompany loans of foreign currency are recorded as other income or expense in the consolidated statements of income.

At June 30, 2002 and December 31, 2001, the Company held forward contracts designated as foreign currency cash flow hedges with notional amounts totaling approximately \$105.4 million and \$55.0 million, respectively, to hedge foreign currency intercompany transactions. All such contracts were denominated in Japanese yen. The net gains on foreign currency cash flow hedges recorded in current earnings were \$1.5 million and \$3.8 million for the three and six-month periods ended June 30, 2002, respectively, and were \$2.0 million and \$3.6 million for the three and six-month periods ended June 30, 2001, respectively. Those contracts held at June 30, 2002 have maturities through June 2003 and, accordingly, all unrealized gains on foreign currency cash flow hedges included in other comprehensive income at June 30, 2002 will be recognized in current earnings over the next twelve-month period.

## 5. REPURCHASE OF COMMON STOCK

During the three-month periods ended June 30, 2002 and 2001, the Company repurchased approximately 429,000 and 650,000 shares of Class A common stock, respectively, for approximately \$5.6 million and \$4.9 million, respectively. During the six-month periods ended June 30, 2002 and 2001, the Company repurchased approximately 602,000 and 1,497,000 shares of Class A common stock, respectively, for approximately \$7.0 million and \$10.7 million, respectively.

## 6. COMPREHENSIVE INCOME

The components of comprehensive income, net of related tax, for the three and six-month periods ended June 30, 2002 and 2001, were as follows (in thousands):

	<b>Three Months Ended June 30, 2002</b>	<b>Three Months Ended June 30, 2001</b>	<b>Six Months Ended June 30, 2002</b>	<b>Six Months Ended June 30, 2001</b>
Net income	\$ 18,034	\$ 11,585	\$ 30,926	\$ 24,167

Other comprehensive loss, net of tax:				
Foreign currency translation adjustments	(5,849)	(2,188)	(7,574)	(9,718)
Net unrealized gains (losses) on foreign currency cash flow hedges	(5,968)	458	(5,933)	4,450
Net gain (loss) reclassified into current earning	(788)	(1,271)	(2,355)	(2,290)
Comprehensive income	\$ 5,429	\$ 8,584	\$ 15,064	\$ 16,609

## 7. GOODWILL AND OTHER INTANGIBLE ASSETS

The Company adopted Statement of Financial Accounting Standards No. 142 *Goodwill and Other Intangible Assets* ("SFAS 142") effective January 1, 2002. Under the new standard, goodwill and indefinite life intangible assets are no longer amortized but are subject to annual impairment

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### NU SKIN ENTERPRISES, INC. Notes to Consolidated Financial Statements

tests. Other intangible assets with finite lives, such as developed technology, will continue to be amortized over their useful lives. The transitional impairment tests were completed and did not result in an impairment charge.

In accordance with SFAS 142, prior period amounts were not restated. A reconciliation of the previously reported net income and earnings per share for the three and six-month periods ended June 30, 2001, to the amounts adjusted for the reduction of amortization expense, net of the related income tax effect, is as follows:

	<b>Three Months Ended June 30, 2001</b>		
	<b>Net income (in thousands)</b>	<b>Basic EPS</b>	<b>Diluted</b>
Reported	\$ 11,585	\$ .14	\$ .14
Add: amortization adjustment	1,751	.02	.02
Adjusted	\$ 13,336	\$ .16	\$ .16

  

	<b>Six Months Ended June 30, 2001</b>		
	<b>Net income (in thousands)</b>	<b>Basic EPS</b>	<b>Diluted EPS</b>
Reported	\$ 24,167	\$ .29	\$ .29
Add: amortization adjustment	3,502	.04	.04
Adjusted	\$ 27,669	\$ .33	\$ .33

Goodwill and other intangible assets as of June 30, 2002, consists of the following (in thousands):

	<b>Carrying Amount</b>
Goodwill and other indefinite life intangible assets:	
Goodwill	\$ 116,791
Trademarks and tradenames	22,350
Marketing rights	

Other	12,266
	4,081
	<u>\$ 155,488</u>

	<u>Gross Carrying Amount</u>	<u>Accumulated Amortization</u>
Other finite life intangible assets:		
Developed technology	\$ 22,500	\$ 6,429
Other	16,814	7,267
	<u>\$ 39,314</u>	<u>\$ 13,696</u>

Amortization expense for developed technology and other finite life intangible assets was approximately \$0.9 million and \$1.7 million for the three and six months ended June 30, 2002, respectively. Annual estimated amortization expense is expected to approximate \$2.3 million for each of the five succeeding fiscal years.

## 8. SEGMENT INFORMATION

The Company operates by selling products to a global network of independent distributors that operates in a seamless manner from market to market. The Company's largest expense is the commissions paid on product sales through this distributor network. The Company manages its business primarily by managing this global distribution network. Accordingly, pursuant to SFAS

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### NU SKIN ENTERPRISES, INC. Notes to Consolidated Financial Statements

131, the Company believes that it operates a single operating segment. However, the Company recognizes revenue from sales to distributors in four geographic regions: North Asia, Southeast Asia, North America and Other Markets. Revenue generated in each of these regions is set forth below (in thousands):

<b>Region:</b>	<b>Three Months Ended June 30, 2002</b>	<b>Three Months Ended June 30, 2001</b>	<b>Six Months Ended June 30, 2002</b>	<b>Six Months Ended June 30, 2001</b>
North Asia	\$ 154,242	\$ 137,210	\$ 285,487	\$ 267,169
Southeast Asia	48,951	36,522	92,108	67,307
North America	34,550	38,631	69,573	82,071
Other Markets	7,181	6,254	13,835	12,329
Totals	<u>\$ 244,924</u>	<u>\$ 218,617</u>	<u>\$ 461,003</u>	<u>\$ 428,876</u>

Additional information as to the Company's operations in different geographical areas is set forth below (in thousands):

#### Revenue

Revenue from the Company's operations in Japan totaled \$136,579 and \$126,717 for the three-month periods ended June 30, 2002 and 2001, respectively, and totaled \$253,637 and \$248,558 for the six-month periods ended June 30, 2002 and 2001, respectively. Revenue from the Company's operations in the United States totaled \$32,487 and \$36,808 for the three-month periods ended June 30, 2002 and 2001, respectively, and totaled \$65,704 and \$78,619 for the six-month periods ended June 30, 2002 and 2001, respectively.

#### Long-lived assets

Long-lived assets in Japan were \$21,776 and \$18,863 as of June 30, 2002 and December 31, 2001, respectively. Long-lived assets in the United States were \$298,522 and \$293,854 as of June 30, 2002 and December 31, 2001, respectively.

## 9. NEW PRONOUNCEMENTS

In September 2001, the Emerging Issues Task Force ("EITF") issued EITF 01-09, "Accounting for Consideration Given by a Vendor to a Customer or Reseller of the Vendor's Products," which addresses the accounting for consideration given by a vendor to a customer or a reseller of the vendor's products. The Company adopted EITF 01-09 effective January 1, 2002 and such adoption did not have a significant impact on its financial statements.

In August 2001, the Financial Accounting Standards Board ("FASB") issued SFAS No. 143, "Accounting for Asset Retirement Obligations," which addresses the accounting and reporting for obligations associated with the retirement of tangible long-lived assets and the associated retirement costs. SFAS 143 is effective January 1, 2003. The Company has evaluated the impact of this standard and does not believe its adoption will have a significant effect on its financial statements.

In October 2001, the FASB issued SFAS No. 144, "Accounting for the Impairment or Disposal of Long-Lived Assets," which addresses the accounting and reporting for the impairment and disposal of long-lived assets. The Company has adopted SFAS 144 effective January 1, 2002 and such adoption did not have a significant effect on its financial statements.

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## NU SKIN ENTERPRISES, INC. Notes to Consolidated Financial Statements

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In May 2002, the FASB issued SFAS No. 145, "Rescission of SFAS Nos. 4, 44, and 64, Amendment of SFAS 13, and Technical Corrections as of April 2002." The Company is currently evaluating the impact of this new guidance.

## 10. PURCHASE OF LONG-TERM ASSETS

On March 6, 2002, the Company acquired the exclusive rights to a new diagnostic technology relating to daily nutritional supplementation. The acquisition consisted of cash payments of \$4.8 million (including acquisition costs) and the issuance of 106,667 shares of the Company's Class A common stock valued at approximately \$900,000. In addition, the acquisition includes contingent payments approximating \$8.5 million and up to 1.2 million shares of the Company's Class A common stock if certain development and revenue targets are met.

On April 19, 2002, the Company acquired First Harvest International, LLC, a small dehydrated food manufacturer. The acquisition agreement provides for a purchase price of up to \$3.5 million. As of June 30, 2002, the Company had made cash payments of approximately \$1.6 million, which includes the assumption of certain liabilities.

## 11. RELATED PARTY TRANSACTIONS

On May 3, 2002, a \$5.0 million loan to a non-management stockholder was repaid, together with accrued interest, with approximately 440,000 shares of the Company's Class A common stock.

## 12. SUBSEQUENT EVENTS

On July 26, 2002, the board of directors declared a quarterly cash dividend of \$0.06 per share for all classes of common stock to be paid in September 2002.

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## ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATION

The following Management's Discussion and Analysis should be read in conjunction with the Company's Management's Discussion and Analysis included in the Company's Annual Report on Form 10-K for the year ended December 31, 2001, filed with the Securities and Exchange Commission ("SEC") on April 1, 2002, and all other Company filings, including Current Reports on Form 8-K, filed with the SEC through the date of this Report.

### 2002 compared to 2001



**Revenue** increased 12% and 8% to \$244.9 million and \$461.0 million for the three- and six-month periods ended June 30, 2002 from \$218.6 million and \$428.9 million for the same periods in 2001. This increase was due primarily to local revenue growth throughout the North and Southeast Asia regions. The Company experienced constant currency revenue growth in each of its operating regions other than North America, which resulted in overall constant currency revenue growth of 13% and 12% for the second quarter and first half of 2002 compared to the same prior-year periods. Revenue during the quarter was positively impacted by distributor interest surrounding the announcement of the Company's plans to expand operations in China, the requirement that distributors qualify as executives in order to participate in the expansion in China, planned product introductions and strategic initiatives.

Revenue in North Asia increased 12% and 7% to \$154.2 million and \$285.5 million for the three- and six-month periods ended June 30, 2002, from \$137.2 million and \$267.2 million for the same periods in 2001. Revenue increased in 2002 in both Japan and South Korea. In Japan, revenue increased 8% and 2% to \$136.6 million and \$253.6 million for the three- and six-month periods ended June 30, 2002 from \$126.7 million and \$248.6 million for the same periods in 2001. In local currency, revenue in Japan increased 12% and 10% for the second quarter and first half of 2002 compared to the same prior-year periods. Revenue growth in Japan was driven by a 12% increase in executive distributors in Japan, continued leveraging of technology tools for distributors, as well as by successful product introductions and growth in automated orders. Reported U.S. dollar results reflect the impact of currency fluctuations. The weakening of the Japanese yen during the first half of 2002 compared to the same prior-year period negatively impacted first quarter 2002 revenue results in Japan by 12% and second quarter 2002 revenue results in Japan by approximately 4% when compared to the same quarters in the prior year. In South Korea, revenue increased 69% and 72% to \$17.7 million and \$31.9 million for the three- and six-month periods ended June 30, 2002 from \$10.5 million and \$18.6 million for the same periods in 2001. Revenue growth in South Korea was driven by a 59% increase in executive distributors as well as successful product introductions. In local currency, revenue in South Korea increased 63% and 70% for the second quarter and first half of 2002 compared to the same prior-year periods.

Revenue in Southeast Asia increased 34% and 37% to \$49.0 million and \$92.1 million for the three- and six-month periods ended June 30, 2002 from \$36.5 million and \$67.3 million for the same periods in 2001. This increase in revenue was due to revenue growth of Singapore and Malaysia to \$16.8 million and \$32.4 million for the three- and six-month periods ended June 30, 2002 from \$8.6 million and \$13.3 million for the same prior-year periods, respectively, following the opening of operations in Singapore in December 2000 and the opening of operations in Malaysia in November 2001. In addition, revenue in Taiwan increased 11% and 3% to \$19.9 million and \$36.6 million for the three- and six-month periods ended June 30, 2002 from \$18.0 million and \$35.5 million for the same periods in 2001. Revenue growth in Taiwan was driven by a 13% increase in executive distributors as well as distributor enthusiasm throughout the Southeast Asia region resulting from the opening of Malaysia and planned expansion of operations in China.

Revenue in North America, consisting of the United States and Canada, decreased 10% and 15% to \$34.6 million and \$69.6 million for the three- and six-month periods ended June 30, 2002 from \$38.6 million and \$82.1 million for the same periods in 2001. Revenue in the United States decreased 12% and 16% to \$32.5 million and \$65.7 million for the three- and six-month periods ended June 30,

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2002 from \$36.8 million and \$78.6 million for the same prior-year periods. This decrease in revenue is due in part to a convention held in the United States in February 2001, which generated approximately \$5.0 million in revenue for the first quarter of 2001 from sales to international distributors attending the convention, which was not repeated during the first half of 2002. Additionally, this decrease in the second quarter is due to reduced sales of low margin Big Planet products and services, which include the Company's Internet service and telecommunications products, during the first half of 2002 compared to the same prior-year period. The decrease reflects the Company's strategy of de-emphasizing low margin products to increase overall Company profitability.

Revenue in the Company's other markets, which include its European and Latin American operations, increased 14% and 12% to \$7.2 million and \$13.8 million for the three- and six-month periods ended June 30, 2002 from \$6.3 million and \$12.3 million for the same periods in 2001. This increase in revenue is due to an 18% and 15% increase in revenue in Europe for the second quarter and first half of 2002 compared with the same prior-year periods.

**Gross profit** as a percentage of revenue remained constant at 80.2% for the three-month periods ended June 30, 2002 and 2001 and slightly decreased to 79.9% for the six-month period ended June 30, 2002 from 80.0% for the same prior-year period. The negative impact of fluctuations in foreign currencies and the positive impact of decreases of revenue related to low margin Big Planet products and services combined to hold gross margins constant. The Company purchases a significant majority of goods in U.S. dollars and recognizes revenue in local currencies. Consequently, the Company is subject to exchange rate risks in its gross margins.

**Distributor incentives** as a percentage of revenue decreased to 39.4% and 38.9% for the three and six-month periods ended June 30, 2002 compared to 39.6% and 39.3% for the same prior-year periods, respectively. This decrease in distributor incentives as a percentage of revenue is a result of the Company's minor compensation plan enhancements intended to focus commission dollars on programs benefiting the distributors and distributor leaders who are most active in generating revenue for the Company.

**Selling, general and administrative** expenses as a percentage of revenue decreased to 28.3% and 29.9% for the three- and six-month periods ended June 30, 2002 compared to 31.4% and 33.0% for the same prior-year periods. In U.S. dollar terms, selling, general and administrative expenses slightly increased to \$69.3 million for the three-month period ended June 30, 2002, compared to \$68.6 million for the same period in the prior year. For the six-month periods, selling, general and administrative expenses decreased to \$138.0 million in 2002 from \$141.5 million in 2001. The decreases in percentage terms as well as in U.S. dollar amounts for the six-month periods were due primarily to the additional \$5.0 million of expenses recorded in the first quarter of 2001 in connection with an international distributor convention, a reduction of \$2.7 million and \$5.5 million in amortization of intangibles relating to the implementation of SFAS 142 in the first and second quarters of 2002, and the Company's cost-saving technology and automated reordering initiatives resulting in reduced labor costs. These decreases were partially offset by the \$2.5 million of expenditures related to the Company's sponsorship of the 2002 Winter Olympic Games in Salt Lake City in the first quarter of 2002. The Company also expects to incur approximately \$5 million in expenses in the third quarter of 2002 related to its international distributor convention to be held in September.

**Other income (expense), net** remained constant at \$1.8 million for the three-month periods ended June 30, 2002 and 2001. This net expense related primarily to losses of approximately \$4.1 million in 2002 that resulted from the exchange of intercompany payables and receivables as well as the exchange of yen-based bank debt into U.S. dollars for financial reporting purposes, which was partially offset by a \$1.3 million gain from the sale of an interest in the Company's Malaysian subsidiary as required by Malaysian regulations. Other income (expense), net decreased \$7.0 million for the six-month period ended June 30, 2002, resulting in net other expense of \$1.8 million compared to the same period in the prior year. This decrease related primarily to foreign currency losses resulting from the weakening of the U.S. dollar in 2002 as well as the foreign currency gains recorded in the first quarter of 2001.

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**Provision for income taxes** increased to \$10.6 million and \$18.2 million for the three and six-month periods ended June 30, 2002 from \$6.8 million and \$14.2 million for the same prior-year periods. This increase was largely due to the increases in operating income as compared to the same prior-year periods, as the effective tax rate remained at 37.0% of pre-tax income.

**Net income** increased to \$18.0 million and \$30.9 million for the three- and six-month periods ended June 30, 2002 from \$11.6 million and \$24.2 million for the same prior-year periods. Net income increased primarily because of the factors noted above in "revenue", "gross profit", "distributor incentives" and "selling, general and administrative" and was somewhat offset by the factors noted in "other income (expense), net" and "provision for income taxes" above.

### **Liquidity and Capital Resources**

Historically, the Company's principal needs for funds have been for operating expenses including distributor incentives, working capital (principally inventory purchases), capital expenditures and the development of operations in new markets. The Company has generally relied on cash flow from operations to meet its cash needs and business objectives without incurring long-term debt to fund operating activities.

The Company typically generates positive cash flow from operations due to favorable gross margins, the variable nature of distributor incentives, which comprise a significant percentage of operating expenses, and minimal capital requirements. The Company generated \$46.8 million in cash from operations during the six-month period ended June 30, 2002 compared to \$30.1 million during the six months ended June 30, 2001. This increase in cash generated from operations in 2002 compared to the same prior-year period is primarily related to increased operating profits as well as reduced taxes paid in 2002 versus 2001, in part due to the utilization of foreign tax credits, and was somewhat offset by purchases of inventory for operations in Japan, the Company's largest market.

As of June 30, 2002, working capital was \$145.1 million compared to \$152.5 million as of December 31, 2001. Cash and cash equivalents at June 30, 2002 and December 31, 2001, were \$95.1 million and \$75.9 million, respectively. This increase in cash was due to the profitability of operations, which more than offset share repurchases and dividend payments during the second quarter of 2002.

On March 6, 2002, the Company paid \$4.8 million, including transaction costs, to acquire a portable laser-based tool that measures specific physical impacts of taking dietary supplements. In addition to the cash payment, the purchase price also included the issuance of 106,667 shares of the Company's Class A common stock valued at approximately \$900,000, and includes contingent payments approximating \$8.5 million and up to 1.2 million additional shares of the Company's Class A common stock if specific development and revenue targets are met. On April 19, 2002, the Company acquired First Harvest International, LLC, a small dehydrated food manufacturer. The acquisition agreement provides for a purchase price of up to \$3.5 million. As of June 30, 2002, the Company had made cash payments of approximately \$1.6 million, which includes the assumption of certain liabilities. Products manufactured by First Harvest will be sold by the Company and will also be used in implementing a new humanitarian initiative for distributors.

Capital expenditures, primarily for equipment, computer systems and software, office furniture and leasehold improvements, were \$8.5 million for the six-month period ended June 30, 2002. In addition, the Company anticipates additional capital expenditures in 2002 of approximately \$14 million to further enhance its infrastructure, including

enhancements to computer systems and Internet-related software in order to extend its Internet capabilities and further expansion of the Company's retail stores and related infrastructure in China.

The Company's long-term debt consists of 9.7 billion Japanese yen-denominated ten-year senior notes, referred to as the notes, issued to The Prudential Insurance Company of America. The notes bear interest at an effective rate of 3.03% per annum and are due October 2010, with annual principal

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payments beginning October 2004. As of June 30, 2002, the outstanding balance on the notes was 9.7 billion Japanese yen, or \$81.2 million.

On May 10, 2001, the Company entered into a \$60.0 million revolving credit agreement (the "Revolving Credit Facility") with Bank of America, N.A. and Bank One, Utah N.A. for which Bank of America, N.A. acted as agent. The proceeds may be used for working capital, capital expenditures and other purposes including repurchases of the Company's outstanding shares of Class A common stock. There were no significant outstanding balances relating to the Revolving Credit Facility as of June 30, 2002. The Revolving Credit Facility was reduced to \$45.0 million on May 10, 2002, and will be further reduced to \$30.0 million on May 10, 2003. The Revolving Credit Facility is set to expire on May 10, 2004. The Japanese notes and the Revolving Credit Facility are both secured by a guaranty of the Company's material Subsidiaries and by a pledge of 66% of the outstanding stock of Nu Skin Japan.

Since August 1998, the board of directors has authorized the Company to repurchase up to \$90.0 million of the Company's outstanding shares of Class A common stock. The repurchases are used primarily to fund the Company's equity incentive plans. During the three and six months ended June 30, 2002, the Company repurchased 429,000 and 602,000 shares of its Class A common stock for an aggregate price of approximately \$5.6 million and \$7.0 million, respectively. As of June 30, 2002, the Company had repurchased a total of approximately 7.3 million shares of its Class A common stock for an aggregate price of approximately \$65.8 million.

In May 2002, the board of directors declared a quarterly cash dividend of \$0.06 per share for all classes of common stock. This quarterly cash dividend of \$4.9 million was paid on June 26, 2002, to stockholders of record on June 7, 2002. Additionally, on July 26, 2002, the board of directors declared a quarterly cash dividend of \$0.06 per share for all classes of common stock to be paid in September 2002. Management believes that cash flow from operations will be sufficient to fund its future dividend payments. However, the declaration of dividends is subject to the discretion of the Company's board of directors and will depend upon various factors, including the Company's net earnings, financial condition, cash requirements, future prospects and other factors deemed relevant by the Company's board of directors.

The Company had related party payables of \$6.5 million and \$7.1 million at June 30, 2002 and December 31, 2001, respectively. In addition, the Company had related party receivables of \$5.1 million and \$13.0 million, respectively, on those dates. These balances are largely related to the Company's acquisition of Big Planet, Inc. and the acquisition of certain assets of Nu Skin USA, which were completed during 1999. The decrease in related party receivables was due to the repayment of a \$6.4 million shareholder loan. This loan was repaid with shares of the Company's stock on May 3, 2002. In addition, the Company leases corporate warehouse and office space from certain related parties and also provides services to certain executive officers.

Management believes the Company has sufficient liquidity to meet its obligations on both a short- and long-term basis. Management currently believes that existing cash balances together with future cash flows from operations will be adequate to fund the cash needs relating to the implementation of the Company's strategic plans. The majority of the Company's expenses are variable in nature and as such, a potential reduction in the level of revenue would reduce the Company's cash flow needs. However, in the event that the Company's current cash balances, future cash flow from operations and current lines of credit are not sufficient to meet its obligations or strategic needs, the Company would consider raising additional funds in the debt or equity markets or restructuring its current debt obligations. Additionally, the Company would consider realigning its strategic plans including a reduction in capital spending and a reduction in the level of stock repurchases or dividend payments.

### **Critical Accounting Policies**

The following critical accounting policies and estimates should be read in conjunction with the Company's significant accounting policies and new accounting pronouncements in the Company's Annual

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Report on Form 10-K for the year ended December 31, 2001. Management considers the most critical accounting policies to be recognition of revenue, accounting for the impact of foreign currencies and accounting for income taxes. In each of these areas, management makes estimates based on historical results, current trends and future projections. The Company operates in 34 countries and generates the majority of its revenue and income in foreign currencies in international markets. Consequently, fluctuations in foreign currencies, particularly the Japanese yen, will have a significant impact on reported results. The Company believes that it applies appropriate financial standards in its consolidation process to properly account for these types of fluctuations. In addition, the Company pays income taxes in many foreign jurisdictions based on the profits realized in those jurisdictions, which can be significantly impacted by

terms of intercompany transactions between its foreign affiliates and the Company. Deferred tax assets and liabilities are created in this process and the Company records these tax obligations in accordance with appropriate accounting standards as explained in the notes to its consolidated financial statements.

The Company adopted the provisions of SFAS 142, "Goodwill and Other Intangible Assets" effective January 1, 2002. As a result of a review of all such assets, operating results for the three- and six-month periods ended June 30, 2002, were impacted by a \$2.7 million and \$5.5 million reduction of amortization of goodwill and other indefinite-life intangibles, respectively. As of June 30, 2002, the Company had approximately \$155 million of unamortized goodwill and other indefinite-life intangible assets. SFAS 142 requires that these assets be tested for impairment at least annually in accordance with its provisions. The transitional impairment tests were complete and did not result in an impairment charge. To the extent an impairment is identified, the Company will record the amount of the impairment as an operating expense in the period in which it is identified.

As of January 1, 2002, the Company adopted EITF 01-09, which relates to revenue recognition principles as well as the classifications of certain promotional items as cost of goods sold rather than operating expenses. The impact of the adoption of EITF 01-09 did not have a material impact on its financial statements. In the event certain of the Company's expenses, including distributor incentives, were deemed to be reductions of revenue rather than operating expenses, its reported revenue would be reduced as would its operating expenses. However, since the Company's global distributor compensation plan does not provide rebates or selling discounts to distributors who purchase its products and services, management believes that no adjustment to reported revenue and operating expenses is necessary.

### Seasonality

In addition to general economic factors, the direct selling industry is impacted by seasonal factors and trends such as major cultural events and vacation patterns. For example, most Asian markets celebrate their respective local New Year in the first quarter, which generally has a negative impact on that quarter. Management believes that direct selling in Japan, the United States and Europe is also generally negatively impacted during the month of August, which is in the Company's third quarter, when many individuals, including the Company's distributors, traditionally take vacations.

### Distributor Information

The following table provides information concerning the number of active and executive distributors as of the dates indicated. Active distributors are those distributors who were resident in the countries in which the Company operated and purchased products during the three months ended as of the date indicated. An executive distributor is an active distributor who has achieved required monthly personal and group sales volumes.

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	As of June 30, 2002		As of June 30, 2001	
	Active	Executive	Active	Executive
North Asia	324,000	18,451	299,000	15,997
Southeast Asia	146,000	5,422	113,000	3,593
North America	73,000	2,350	75,000	2,434
Other	27,000	970	23,000	880
Total	570,000	27,193	510,000	22,904

### Currency Risk and Exchange Rate Information

A majority of the Company's revenue and many of the Company's expenses are recognized primarily outside of the United States, except for inventory purchases which are primarily transacted in U.S. dollars from vendors in the United States. Each subsidiary's local currency is considered the functional currency. All revenue and expenses are translated at weighted average exchange rates for the periods reported. Therefore, the Company's reported revenue and earnings will be positively impacted by a weakening of the U.S. dollar and will be negatively impacted by a strengthening of the U.S. dollar. For example, in 2001, the Japanese yen significantly weakened, which reduced the Company's operating results on a U.S. dollar reported basis. The Company's 2002 operating results could be similarly harmed if the Japanese yen weakens from current levels. Given the uncertainty of exchange rate fluctuations, the Company cannot estimate the effect of these fluctuations on the Company's future business, product pricing, results of operations or financial condition.

The Company seeks to reduce its exposure to fluctuations in foreign exchange rates through the use of foreign currency exchange contracts, through intercompany loans of foreign currency and through its Japanese yen denominated debt. The Company does not use derivative financial instruments for trading or speculative purposes. The

Company regularly monitors its foreign currency risks and periodically takes measures to reduce the impact of foreign exchange fluctuations on its operating results.

The Company's foreign currency derivatives are comprised of over-the-counter forward contracts with major international financial institutions. As of June 30, 2002, the Company had \$105.4 million of these contracts with expiration dates through June 2003. All of these contracts were denominated in Japanese yen. For the three months and six months ended June 30, 2002, the Company recorded \$1.5 million and \$3.8 million, respectively, of gains on operating income, and \$6.0 million of losses in other comprehensive income for the three and six-months ended June 30, 2002, related to its forward contracts. Based on the Company's foreign exchange contracts at June 30, 2002, the impact of a 10% appreciation or 10% depreciation of the U.S. dollar against the Japanese yen would not represent a material potential loss in fair value, earnings or cash flows against these contracts. This potential loss does not consider the underlying foreign currency transaction or translation exposures to which the Company is subject.

### **Note Regarding Forward-Looking Statements**

With the exception of historical facts, the statements contained in Management's Discussion and Analysis of Financial Condition and Results of Operations, are "forward-looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995 (the "Reform Act") which reflect the Company's current expectations and beliefs regarding the future results of operations, performance and achievements of the Company. These statements are subject to risks and uncertainties and are based upon assumptions and beliefs that may not materialize. These forward-looking statements include, but are not limited to, statements concerning:

- the Company's belief that existing cash and cash flow from operations will be adequate to fund cash needs;
- the Company's expectation that the Company will spend \$14 million for capital expenditures during the remainder of 2002; and
- the anticipation that cash will be sufficient to pay future dividends.

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In addition, when used in this report, the words or phrases, "will likely result," "expects," "anticipates," "will continue," "intends," "plans," "believes," "the Company or management believes," and similar expressions are intended to help identify forward-looking statements.

The Company wishes to caution readers that various risk and uncertainties could cause the Company's actual results and outcomes to differ materially from those discussed or anticipated, including the risks and uncertainties described in Exhibit 99.1 and incorporated herein by reference. The Company also wishes to advise readers not to place undue reliance on these forward-looking statements, which reflect the Company's beliefs and expectations only as of the date of this Report. The Company assumes no obligation to update or revise these forward-looking statements to reflect new events or circumstances or any changes in its beliefs or expectations.

### **ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK**

The information required by Item 3 of Part I of Form 10-Q is incorporated herein by reference from the section entitled "Currency Risk and Exchange Rate Information" in "Item 2 Management's Discussion and Analysis of Financial Condition and Results of Operations" of Part I and also in Note 4 to the Financial Statements contained in Item 1 of Part I.

## **PART II. OTHER INFORMATION**

### **ITEM 1. LEGAL PROCEEDINGS**

Reference is made to the Company's Annual Report on Form 10-K for the year ended December 31, 2001.

### **ITEM 2. CHANGES IN SECURITIES**

None.

### **ITEM 3. DEFAULTS UPON SENIOR SECURITIES**

None.

### **ITEM 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS**

The Company's Annual Meeting of Stockholders was held on May 9, 2002. At the Annual Meeting, Blake M. Roney, Steven J. Lund, Sandra N. Tillotson, Brooke B. Roney, Max L. Pinegar, E.J. "Jake" Garn, Paula F. Hawkins, Daniel W. Campbell, Andrew D. Lipman, and Takashi Bamba were elected to serve as directors of the Company until the next annual meeting of stockholders or until their successors are duly elected. Each director was elected by a plurality of

votes in accordance with the Delaware General Corporation Law. There was no solicitation in opposition to management's director nominees. The following chart reflects the vote tabulation with respect to each direct nominee. The figures reported reflect votes cast by holders of the Company's Class A common stock and Class B common stock. Each share of Class A common stock entitles its holder to one vote, and each share of Class B common stock entitles its holder to ten votes.

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<u>Name of Director Nominee</u>	<u>Votes For</u>	<u>Votes Withheld</u>
Blake M. Roney	467,961,198	1,672,482
Steven J. Lund	467,961,198	1,672,482
Sandra N. Tillotson	467,961,198	1,672,482
Brooke B. Roney	467,961,198	1,672,482
Max L. Pinegar	467,961,198	1,672,482
E.J. "Jake" Garn	469,184,398	449,282
Paula F. Hawkins	469,184,398	449,282
Daniel W. Campbell	469,184,398	449,282
Andrew D. Lipman	469,184,398	449,282
Takashi Bamba	467,961,198	1,672,482

The stockholders also ratified the appointment of PricewaterhouseCoopers LLP as the Company's independent public accountants, with 496,243,861 votes being cast for, 384,141 votes being cast against, and 5,678 abstentions.

#### **ITEM 5. OTHER INFORMATION**

Risk factors set forth in Exhibit 99.1 are incorporated herein by reference.

#### **ITEM 6. EXHIBITS AND REPORTS ON FORM 8-K**

<u>(a) Exhibits Regulation S-K Number</u>	<u>Description</u>
10.1	Addendum to Distributor Agreement dated as of March 18, 1986 by and among Nu Skin International, Inc., Clara and James McDermott, Craig Tillotson and Craig Bryson (incorporated by reference to Exhibit No. 10.50 to Amendment No. 2 to the Company's Registration Statement on Form S-3 filed July 22, 2002).
10.2	Deferred Compensation Plan dated as of October 16, 2000 between Nu Skin International, Inc. and Max L. Pinegar (Incorporated by reference to Exhibit No. 10.51 to Amendment No. 2 to the Company's Registration Statement on Form S-3 filed July 22, 2002).
10.3	First Amendment to Note Purchase Agreement between Nu Skin Enterprises, Inc. and The Prudential Insurance Company of America dated May 1, 2002
10.4	Stock Purchase Agreement between Nedra Roney and Nu Skin Enterprises, Inc. dated May 3, 2002
10.5	Sale & Purchase Agreement between Nu Skin Enterprises, Inc. and Datuk Mohd Nadzmi Bin Mohd Salleh entered into the 25th day of June, 2002 to be effective September 28, 2001.
10.6	Supplemental Agreement to the Sale and Purchase of Shares Agreement dated August 17, 2001 between Nu Skin Enterprises, Inc. and Mr. Kiow Kim Yoon
10.7	Management Services Agreement dated June 20, 2002 between Nu Skin International Management Group, Inc. and Nu Skin (Malaysia) Sdn Bhd
10.8	Distribution Agreement dated June 20, 2002 between Nu Skin Enterprises Hong Kong, Inc. and Nu Skin (Malaysia) Sdn Bhd
10.9	Trademark Licensing Agreement dated June 20, 2002 between Nu Skin International, Inc. and Nu Skin (Malaysia) Sdn Bhd
10.10	License Agreement dated June 20, 2002 between Nu Skin International, Inc. and Nu Skin (Malaysia) Sdn Bhd

- 10.11 Supplemental Agreement to the Sale and Purchase of Shares Agreement between Nu Skin Enterprises, Inc and Dato' Mohd Nadzmi Bin Mohd Salleh
- 10.12 Form of Memorandum of Charge entered into by Nu Skin Enterprises, Inc and Dato' Mohd Nadzmi Bin Kohd Salleh and Nu Skin Enterprises, Inc. and Kiow Kim Yoon, Frankie
- 99.1 Risk Factors

- (b) Reports on Form 8-K. The Company filed Current Reports on Form 8-K on April 19, 2002 relating to the Company's proposed expansion in China.

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### SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

August 14, 2002

### NU SKIN ENTERPRISES, INC

By: /s/ Corey B. Lindley  
 Corey B. Lindley  
 Its: Chief Financial Officer  
 (Principal Financial and Accounting Officer)

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### EXHIBIT INDEX

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- 99.1 Risk Factors



May 1, 2002

**NU SKIN ENTERPRISES, INC.**

1 Nu Skin Plaza  
75 West Centre Street  
Provo, Utah 84601

Re: First Amendment to Note Purchase Agreement

Ladies and Gentlemen:

Reference is made to the Note Purchase Agreement (the "Agreement") dated October 12, 2000 between Nu Skin Enterprises, Inc. (the "Company") and The Prudential Insurance Company of America ("Prudential"). Capitalized terms used and not otherwise delivered herein shall have the meanings provided in the Agreement.

Pursuant to the request of the Company and Section 17 of the Agreement, Prudential and the Company hereby agree that the defined term "Material Subsidiaries" appearing in Schedule B of the Agreement shall be amended by deleting the existing text of clause (b) thereof in its entirety and substituting therefor the following:

"(b) each other Subsidiary of the Company which (i) had revenues during the four most recently ended fiscal quarters equal to or greater than 5.0% of the consolidated total revenues of the Company and its Subsidiaries during such period (provided that if the Company and Subsidiaries collectively own not more than 30% of the outstanding equity, by value, of Nu Skin Malaysia Holdings, then Nu Skin Malaysia Holdings and its subsidiaries shall not be deemed Material Subsidiaries by reason of this clause (i) unless their consolidated revenues during the four most recently ended fiscal quarters equaled or exceeded 15.0% of the consolidated total revenues of the Company and its Subsidiaries during such period), or (ii) is an Obligor under any Guarantee with respect to the Indebtedness of the Company under any Significant Credit Facility."

**NU SKIN ENTERPRISES, INC.**

May 1, 2002  
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In order to induce Prudential to enter into this amendment, the Company has represented and warranted that no Default or Event of Default exists under the Agreement as of the date hereof. This amendment shall be effective when executed on behalf of the Company and each Subsidiary Guarantor and an original counterpart hereof has been delivered to Prudential.

**THE PRUDENTIAL INSURANCE  
COMPANY OF AMERICA**

By: /s/ Stephen J. DeMartini  
Stephen J. DeMartini  
Its: Vice President

Confirmed and agreed:

**NU SKIN ENTERPRISES, INC.**

By: /s/ Truman Hunt  
Truman Hunt  
Its: Executive Vice President and Chief Legal  
Counsel

The undersigned Subsidiary Guarantors  
hereby consent to the foregoing.

**NU SKIN HONG KONG, INC.  
NU SKIN INTERNATIONAL, INC.  
NU SKIN TAIWAN, INC.  
NU SKIN UNITED STATES, INC.**

By: /s/ Corey B. Lindley

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Name: Corey B. Lindley

Title: Executive Vice President and Chief Financial  
Officer

# STOCK PURCHASE AGREEMENT

This Stock Purchase Agreement (the "Agreement") is entered into as of May 3, 2002 by and between Nedra Roney (the "Seller") and Nu Skin Enterprises, Inc., a Delaware corporation (the "Purchaser").

WHEREAS, the Seller is indebted to Purchaser under that certain Demand Promissory Note dated December 10, 1997 in the original principal amount of \$5 million;

WHEREAS, the terms of the Promissory Note allow Seller, with the consent of Purchaser, to repay the accrued interest and principal balance with shares of the Class A Common Stock, par value \$.001 per share, of the Purchaser (the "Class A Common Stock");

WHEREAS, the Seller desires to repay in full the outstanding balance of the Demand Promissory Note, together with all accrued interest thereon upon the terms and conditions set forth below;

NOW THEREFORE, in consideration of the premises and the mutual covenants and undertakings contained herein, and subject to and on the terms and conditions herein set forth, the parties hereto hereby agree as follows:

## 1. PURCHASE AND SALE OF SHARES.

- 1.1 **Purchase and Sale.** Subject to the terms and conditions set forth herein, the Seller hereby delivers, transfers and sells to the Purchaser, and the Purchaser hereby accepts as payment in full of the Demand Promissory Note and all interest accrued thereon, 441,841 shares of Class A Common Stock (the "Purchase Shares").
- 1.2 **Closing.** The Closing shall take place promptly following the execution of this Agreement.
- 1.3 **Delivery and Payment.** At the Closing, Seller shall deliver to the Purchaser a certificate or certificates representing the Purchase Shares, properly endorsed or accompanied by stock powers properly endorsed for transfer, accompanied by payment of any applicable stock transfer taxes with respect to such Purchase Shares together with a Substitute Form W-9 in the form attached hereto as Schedule I.

## 2. REPRESENTATIONS AND WARRANTIES OF THE SELLERS. The Seller hereby represents and warrants to the Purchaser as of the date hereof as follows:

- 2.1 **Existence and Authority.** The Seller has the capacity and authority (without the joinder of any other individual or entity), to execute and deliver, and to perform her obligations under, this Agreement and all other agreements, certificates and documents executed or delivered, or to be executed or delivered, by the Seller in connection herewith (individually, with this Agreement, the "Seller's Documents").
- 2.2 **No Conflict.** The execution and delivery of the Seller's Documents do not, and the consummation of the transactions contemplated hereby and thereby, will not, violate, conflict with, result in a breach of, constitute a default under or require any notice, consent, approval or order under (i) any agreement, certificate, indenture or other instrument to which the Seller is a party, or by which the Seller or any of her assets may be bound, or (ii) any statute, rule, regulation or other provision of law, any order, judgment, decree, arbitration award or other direction of or stipulation with a court or other tribunal, or any governmental permits, registration, license or authorization applicable to the Seller or any of her assets; nor will such execution, delivery and consummation result in the creation of any liens, pledges, security interests, encumbrances, charges or claims of any kind whatsoever upon any asset of the Seller.
- 2.3 **Validity.** This Agreement has been duly executed and delivered by the Seller, and the Seller's Documents are (or when executed and delivered will be) legal, valid and binding obligations of the Seller who is a party hereto and thereto, enforceable against the Seller in accordance with their respective terms, except as the enforceability thereof may be limited by any applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance or other laws affecting the enforcement of creditors' rights generally, and by general principles of equity.
- 2.4 **Title and Conveyance.** The Seller has the full right, power and authority to sell, assign, transfer and deliver the Purchase Shares to be transferred by the Seller as provided herein, and such delivery will convey to the Purchaser lawful, valid, good and marketable title to such Purchase Shares, free and clear of any and all liens, pledges, security interests, options, encumbrances, charges, agreements or claims of any kind whatsoever.
- 2.5 **Informed Decision.** The Seller is in possession of all reports and documents filed by the Purchaser with the Securities and Exchange Commission and has reviewed such filings and such other information regarding the Purchaser and its business and business plan as the Seller deems relevant to make an informed decision to sell the Purchase Shares to the Purchaser. The Seller with her legal, tax and financial advisors has investigated the Purchaser and its business and has negotiated the transaction contemplated herein and has independently determined to sell the Purchase Shares to the Purchaser on the terms described herein. The Seller alone or with the assistance of her legal, tax and financial advisors is knowledgeable and experienced in financial and business matters and is capable of making an informed decision to sell the Purchase Shares to the Purchaser. No representation is being or has been made by the Purchaser or its advisors

to the Seller regarding the tax or other effects to the Seller of the transactions contemplated herein. The transactions contemplated herein are not being effected through a broker or dealer or on or through any exchange.

2.6 **Litigation.** There are no actions, suits, proceedings, claims or governmental investigations pending or, to the best knowledge of the Seller, threatened against the Seller which could impact Seller's ability to enter into this Agreement, perform her obligations hereunder, or interfere with Purchaser's rights to the Purchase Shares. The Seller is not subject or a party to any order, judgment, decree, arbitration award or other direction of or stipulation with any court or other tribunal, or in violation of any statute, rule, regulation or other provision of law, or any governmental permit, registration, license or authorization, and the Seller knows of no reasonable basis for a claim that such a violation exists, which in any of the foregoing events could impact Seller's ability to enter into this Agreement, perform her obligations hereunder, or interfere with Purchaser's rights to the Purchase Shares.

3. **REPRESENTATIONS AND WARRANTIES OF THE PURCHASER.** The Purchaser hereby represents and warrants as follows:

3.1 **Existence and Authority.** The Purchaser (i) is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware, (ii) has all requisite corporate power to execute and deliver, and to perform its obligations under, this Agreement; and (iii) has taken all necessary corporate action to authorize the execution and delivery, and performance of its obligations under, this Agreement.

3.2 **No Conflict.** The execution and delivery of this Agreement do not, and the consummation of the transactions contemplated hereby will not, violate, conflict with, result in a breach of, constitute a default under or require any notice, consent, approval or order under (i) any provision of the Purchaser's Certificate of Incorporation or Bylaws, (ii) any agreement, indenture or other instrument to which the Purchaser is a party or by which the Purchaser or its assets may be bound or (iii) any statute, rule, regulation or other provision of law, any order, judgment, decree, arbitration award or other direction of or stipulation with a court or other tribunal, or any governmental permit, registration, license or authorization applicable to the Purchaser.

3.3 **Validity.** This Agreement has been duly executed and delivered by the Purchaser and is a legal, valid and binding obligation of the Purchaser, enforceable against the Purchaser in accordance with its terms, except as the enforceability thereof may be limited by any applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance or other laws affecting the enforcement of creditors' rights generally, and by general principles of equity.

4. **INDEMNIFICATION.** The Seller agrees (i) to indemnify and hold harmless the Purchaser and its affiliates and their respective directors, officers, employees, agents and controlling persons (the Purchaser and each such person being an "Indemnified Party") from and against any and all losses, claims, damages and liabilities, joint or several, to which such Indemnified Party may become subject under any applicable federal or state law or otherwise, relating to or arising out of any breach of the representations and warranties of the Seller set forth in Section 2 hereof as of the date hereof and as of the date of the Closing, and (ii) to reimburse any Indemnified party for all expenses (including but not limited to counsel fees and expenses) as they are incurred in connection with the investigation of, preparation for or defense of any pending or threatened claim or any action or proceeding arising therefrom, whether or not such Indemnified Party is a party and whether or not such claim, action or proceeding is initiated or brought by or on behalf of the Seller. The Seller will not be liable under the foregoing indemnification provision to the extent that any loss, claim, damage, liability or expense is found in a final judgment by a court to have resulted from the Purchaser's bad faith or gross negligence.

5. **MISCELLANEOUS.**

5.1 **Specific Performance.** The parties acknowledge that money damages are not an adequate remedy for violations of this Agreement and that any party may, in its sole discretion, apply to a court of competent jurisdiction for specific performance or injunctive or such other relief as such court may deem just and proper in order to enforce this Agreement or prevent any violation hereof and, to the extent permitted by applicable law, each party waives any objection to the imposition of such relief.

5.2 **Successors and Assigns.** The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns; provided, that no party may assign, delegate or otherwise transfer any of its rights or obligations under this Agreement without the consent of each other party hereto.

5.3 **No Third-Party Beneficiaries.** No provision of this Agreement is intended to confer upon any person or entity other than the parties hereto any rights or remedies hereunder, except for the indemnification provisions contained in Section 4, which provisions may be enforced by the parties to be indemnified thereunder.

5.4 **Survival.** The provisions of Section 4 and the representations and warranties of the Sellers set forth in Section 2 hereof shall survive the closing. Except as provided in the immediately preceding sentence, the covenants, agreements, representations and warranties of the parties hereto contained in this Agreement shall not survive the Closing; provided, that the covenants and agreements that, by their terms, are to have effect or be performed after the Closing date shall survive in accordance with their terms.

- 5.5 **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Utah without regard to the laws that might otherwise govern under applicable principles of conflicts of laws.
- 5.6 **Counterparts.** This Agreement may be signed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument. Each counterpart may consist of a number of copies each signed by less than all, but together signed by all, the parties hereto.
- 5.7 **Further Assurances.** The Sellers agree to execute and deliver to the Company all documents and instructions necessary to effect the transaction contemplated herein.

IN WITNESS WHEREOF, the undersigned have duly executed this Agreement as of the date first above written.

NU SKIN ENTERPRISES, INC

By: /s/ M. Truman Hunt  
Its: Executive Vice President

/s/ Nedra Roney  
Nedra Roney

**DATED JUNE 25, 2002**

**BETWEEN**

**NU SKIN ENTERPRISES, INC.**

**(as Vendor)**

**AND**

**DATUK MOHD NADZMI BIN MOHD SALLEH**

**(as Purchaser)**

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**SALE & PURCHASE AGREEMENT**  
**(in respect of 500,001 ordinary shares of RM1.00 each**  
**in NU SKIN MALAYSIA HOLDINGS SDN. BHD.)**

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**KHAW & PARTNERS**

**ADVOCATES & SOLICITORS**

**KUALA LUMPUR**

**THIS AGREEMENT** is entered into this 25th day of June 2002 to be effective as of 28th day of September 2001

**BETWEEN**

**NU SKIN ENTERPRISES, INC.** (Registration No. 2659781), a company incorporated in the State of Delaware, United States of America and having its principal place of business at 75 West Center Street, Provo, Utah 84601, United States of America of the one part

**AND**

**DATUK MOHD NADZMI BIN MOHD SALLEH** (NRIC No. 540501-03-5293) of No. 36-1, Jalan PJU8/5B, Perdana Business Centre, Bandar Damansara Perdana, 47820 Petaling Jaya, Selangor Darul Ehsan of the other part.

**WHEREAS:-**

- I. By a Sale and Purchase Agreement dated 17th August 2001 as varied by the Supplemental Agreement dated 28th September 2001 between the VENDOR and the PURCHASER, the VENDOR has agreed to sell and the PURCHASER has agreed to purchase an aggregate of **500,001** (Five Hundred Thousand and One) Ordinary NSMH Shares upon the terms and subject to the conditions contained therein the 2(Two) agreements.
- II. The sale and purchase of the Ordinary NSMH Shares pursuant to the 2(Two) agreements referred to in Recital I has been completed on 28th September 2001 and the PURCHASER is currently the registered and beneficial owner of an aggregate of **500,001** (Five Hundred Thousand and One) Ordinary NSMH Shares.
- III. As stated in the Supplemental Agreement referred to in Recital I above, the VENDOR was in discussions with LEMBAGA TABUNG ANGKATAN TENTERA with a view of its being a Malaysian Bumiputera investor in NSMH for **20%**(Twenty percent) of NSMH's enlarged issued share capital.
- IV. LEMBAGA TABUNG ANGKATAN TENTERA has subsequently informed the VENDOR that it is unable, due to its commitments, to invest in NSMH. Accordingly, so as to ensure NSMY's compliance of the conditions imposed by the Controller of Direct Sales of the MDTCA vide its letter dated 12th September 2001 bearing reference KPND(DN)(JL)8/6/1-935Jld5(3) to NSMY, the VENDOR is willing to convert **500,001**(Five Hundred Thousand and One) ICPS into **500,001**(Five Hundred Thousand and One) Ordinary NSMH Shares for divestment to the PURCHASER.
- VI. The PURCHASER wishes to complete the purchase and the VENDOR is willing to complete the sale to the PURCHASER, the Sale Shares on a willing buyer and willing seller basis at the Purchase Price upon the terms and subject to the conditions hereinafter appearing.

**NOW IT IS HEREBY AGREED** as follows:-

1. **DEFINITIONS & INTERPRETATION**

1.1 **Definitions**

In this Agreement, unless the context otherwise requires, the following expressions shall have the meanings set forth opposite such expressions:-

**"Completion"** the completion in accordance with the provisions of this Agreement of the sale by the VENDOR and the purchase by the PURCHASER of the Sale Shares

**"Effective Date"** 28th September 2001

**"ICPS"** an irredeemable convertible non voting preference share having a par value of **RM1.00** (Ringgit One) each in NSMH

**"Indebtedness"** the Purchase Price and all interest accrued thereon or any part thereof remaining unpaid by the PURCHASER from time to time to the VENDOR

**"MDTCA"** Ministry of Domestic Trade & Consumer Affairs

**"NSMY"** NU SKIN (MALAYSIA) SDN. BHD. (Company No. 402787-V), a company incorporated in Malaysia under the Companies Act 1965 and having its registered address at c/o 6th Floor, Menara Boustead, No. 69,

**"NSMH"** NU SKIN MALAYSIA HOLDINGS SDN. BHD. (Company No. 552189-P), a company incorporated in Malaysia under the Companies Act 1965 and having its registered address at c/o 6th Floor, Menara Boustead, No. 69, Jalan Raja Chulan, 50200 Kuala Lumpur

**"Ordinary NSMY Share"** an ordinary share having a par value of **RM1.00** (Ringgit One) in NSMY

**"Ordinary NSMH Share"** an ordinary share having a par value of **RM1.00** (Ringgit One) in NSMH

**"Parties"** : the VENDOR and the PURCHASER

**"Party"** either of the Parties

**"PURCHASER"** DATUK MOHD NADZMI BIN MOHD SALLEH (NRIC No. 540501-03-5293) above described

**"Purchase Price"** **RM9,366,000.00** (Ringgit Nine Million Three Hundred and Sixty Six Thousand)

**"Sales Shares"** **500,001** (Five Hundred Thousand and One) Ordinary NSMH Shares to be held by the VENDOR as the beneficial owner thereof following the conversion of ICPS referred to in Recital IV (A)

**"VENDOR"**: NU SKIN ENTERPRISES, INC. (Registration No. 2659781) above described

1.2 **Interpretation**

1.2.1 The Annexures hereto shall be taken, read and construed as essential parts of this Agreement. The headings in this Agreement are inserted for convenience of reference only and shall not be taken, read and construed as essential parts of this Agreement.

1.2.2 All references to Annexures, Recitals and Clauses are to be construed as references to the annexures, recitals and clauses of this Agreement. All references to provisions of statutes include such provisions as modified, re-certified or re-enacted. All references to this Agreement include this Agreement as amended or modified from time to time by written agreement between the Parties. All references to a natural person shall include such person's heirs, personal representatives, successors-in-title and permitted assigns. All references to a company shall include such company's successors-in-title and permitted assigns.

1.2.3 Except where the context otherwise requires, words applicable to natural persons include any body of persons, company, corporation, firm or partnership corporate or incorporate and vice versa; words importing the

masculine gender shall include the feminine and neuter genders and vice versa; words importing the singular number shall include the plural number and vice versa.

- 1.2.4 Where two or more persons or parties are included or comprised in any expression, agreements, covenants, terms, stipulations and undertakings expressed to be made by or on the part of such persons shall, unless otherwise provided herein, be deemed to be made by and be binding upon such persons jointly and severally.
- 1.2.5 In computing time for the purposes of this Agreement, unless the contrary intention appears, a period of days from the happening of an event or the doing of any act or thing shall be deemed to be exclusive of the day on which the event happens or the act or thing is done and if the last day of the period is a weekly or public holiday, the period shall include the next following day which is not a weekly or public holiday.

## **2. AGREEMENT FOR SALE & PURCHASE OF THE SALE SHARES**

The VENDOR (as the beneficial owner of the Sale Shares) confirms its sale to the PURCHASER and the PURCHASER confirms his purchase from the VENDOR with effect from the Effective Date and on a willing buyer and willing seller basis, the Sale Shares at the Purchase Price and upon the terms and conditions herein set forth:-

- 2.1 free from all charges, liens, equities, third party interest or other encumbrances whatsoever; and
- 2.2 with all rights, benefits and advantages attached thereto including all dividends and other distributions which may be declared, made or paid in respect of the Sale Shares subsequent to the Completion Date.

## **3. COMPLETION OF THE SALE & PURCHASE OF SALE SHARES**

### **3.1 Completion Date**

Completion of the sale and purchase hereunder of the Sale Shares shall take place on a date stipulated by the VENDOR and occurring within **30** (Thirty) days from the date of the execution of this Agreement at Khaw & Partners' office at 6th Floor, Menara Boustead, No. 69, Jalan Raja Chulan, 50200 Kuala Lumpur (or such other place acceptable to the PURCHASER as the VENDOR may nominate).

### **3.2 VENDOR's obligations on Completion**

Unless the Parties otherwise agree in writing, the VENDOR shall, at Completion:-

- 3.2.1 convert **500,001** (Five Hundred Thousand and One) ICPS in NSMH held by the VENDOR into **500,001** (Five Hundred Thousand and One) Ordinary NSMH Shares; and
- 3.2.2 cause NSMH to issue directly to the PURCHASER, such number of Ordinary NSMH Shares (as converted) as is equivalent to the Sale Shares.

### **3.3 Other acts & things**

The VENDOR shall also execute and do, all such other documents, acts and things (if

any) as the PURCHASER may reasonably require of the VENDOR to perfect the right, title and interest of the PURCHASER in and to the Sale Shares.

### **3.4 No Partial Completion**

Unless the VENDOR otherwise agrees in writing:-

- 3.4.1 the PURCHASER shall not be entitled to complete the purchase of some only of the Sale Shares and the failure by the PURCHASER to complete the purchase hereunder of any number of the Sale Shares shall accordingly be construed as a failure to complete in respect of all of the Sale Shares; and
- 3.4.2 the VENDOR shall be entitled, notwithstanding any provisions to the contrary herein, to terminate this Agreement if the PURCHASER fails to complete the purchase of all of the Sale Shares.

## **4. PURCHASE PRICE**

### **4.1 Deferred Payment of the Purchase Price**

4.1.1 At the request of the PURCHASER, the VENDOR agrees:-

- i) to defer payment by the PURCHASER of the Purchase Price so long as the PURCHASER holds the Sale Shares as



the registered holder and beneficial owner thereof following Completion; and

- ii) to the application by the PURCHASER of all dividends and other cash distributions (if any) made by NSMH from time to time towards payment of the Indebtedness.

4.1.2 The PURCHASER agrees and undertakes with the VENDOR that the PURCHASER shall:-

- i) pay the Indebtedness to the VENDOR upon demand by the VENDOR in the event that following Completion, the PURCHASER ceases to hold, as the registered holder and beneficial owner thereof, any of the Sale Shares; and
- ii) until the Indebtedness shall be paid in full by the PURCHASER to the VENDOR, direct and authorise NSMH to pay directly to the VENDOR, all such dividends and other cash distributions (if any) as are payable by NSMH to the PURCHASER.

4.1.3 If on the date of the 4<sup>th</sup>(Forth) anniversary of the Effective Date, all of the Indebtedness shall not have been paid by the PURCHASER to the VENDOR, then subject to the application prior thereto by the PURCHASER of all dividends and other cash distributions paid by NSMH to the PURCHASER, the VENDOR shall waive its right to payment by the PURCHASER of all such balance of the Indebtedness as may then remain unpaid by the PURCHASER to VENDOR.

#### 4.2 **Interest**

4.2.1 The PURCHASER shall pay to the VENDOR, interest on such part of the Purchase Price remaining unpaid from time to time at the rate of 2%(Two Percent) per annum above the prevailing Base Lending Rate of MALAYAN BANKING BERHAD calculated from the due date for payment of the Purchase Price and until the date of full payment thereof.

4.2.2 The PURCHASER agrees that any payment made by or on behalf of the PURCHASER towards payment of the Indebtedness shall firstly be utilised towards settlement of the interest charged pursuant to Clause 4.2.1.

#### 4.3 **Indebtedness as debt**

The PURCHASER acknowledges that such part of the Indebtedness as remains unpaid from time to time by the PURCHASER to the VENDOR shall constitute a valid debt payable by the PURCHASER to the VENDOR in accordance with the provisions hereof and all such other documents as may be agreed upon by the Parties with or without others.

#### 4.4 **Security**

Until the full payment of Indebtedness to the VENDOR, the PURCHASER shall create in favour of and grant to the VENDOR and/or the VENDOR's nominee, such security interest (including a charge) and powers and rights over inter alia the Sale Shares and execute and perfect such security documentation (including a memorandum of charge in such terms and conditions acceptable to the VENDOR) as the VENDOR may require to secure the payment of the Indebtedness.

#### 4.5 **Certificate**

A certificate duly signed by the VENDOR stating the amount of the Indebtedness payable by the PURCHASER to the VENDOR from time to time and at any time shall be final, conclusive and binding on the PURCHASER and shall not, in the absence of manifest error, be questioned on any account.

### 5. **PARTIES'RESPECTIVE WARRANTIES**

#### 5.1 **VENDOR's Warranties**

The VENDOR hereby represents and warrants to the PURCHASER that the Sale Shares are free from all charges, liens, equities, third party interest or other encumbrances whatsoever.

#### 5.2 **PURCHASER's Warranties**

The PURCHASER hereby represents and warrants to the PURCHASER that:-

- 5.2.1 he is not a bankrupt and has not committed any act of bankruptcy;
- 5.2.2 he has not committed any criminal offence;
- 5.2.3 the PURCHASER and his legal, financial and other advisors (if any) have the financial and business experience to make an informed decision for an investment and acquisition of the Sale Shares and the PURCHASER together with such advisors has evaluated the feasibility and associated risks of an acquisition of or investment in the Sale Shares;

- 5.2.4 the PURCHASER and his legal, financial and other advisors (if any) have had ample opportunity to investigate the proposed business of NSMH and NSMY and to review all relevant documents and to ask all such questions of such persons and representatives of the VENDOR as the PURCHASER and its advisors consider necessary for purposes of making an informed decision for an investment in and acquisition of the Sale Shares;
- 5.2.5 the PURCHASER has determined on the basis of his own investigation that the Purchase Price is fair and a reasonable valuation of the Sale Shares; and
- 5.2.6 except for the representations and warranties contained in this Agreement, the PURCHASER is not relying on any representation or warranty (whether given by the VENDOR or otherwise) in making his decision to invest in and to acquire the Sale Shares.
- 5.2.7 that the PURCHASER is purchasing the Sale Share for his own account, for investment purposes only, not for the account of any other person and not with a view to the distributions, assignment or resale thereof to others.

### 5.3 **Subsistence of warranties**

The representations, warranties and agreements given or made by the respective Parties under this Agreement shall remain in full force and effect and shall continue to subsist hereafter notwithstanding Completion which will take place on the basis of the statements made herein.

### 5.4 **Breach of warranty before Completion**

If prior to Completion, any of the representations and warranties on the part of a Party have not been carried out or complied with or are in any material respects untrue or incorrect (and in respect of any breach which is capable of remedy, such Party have failed to remedy such breach within **14**(Fourteen) days after the other Party's written notice to the first mentioned Party requiring the same to be remedied) the second mentioned Party shall be entitled by notice in writing to the first mentioned Party to terminate this Agreement (without prejudice to the second mentioned Party's rights and remedies at law and hereunder in respect of the first Party's misrepresentation and/or breach of warranty).

## 6. **NOTICES**

### 6.1 **Written notices**

Any notice or request with reference to this Agreement shall be in writing signed by the Party by whom it is served or by its solicitors and shall be deemed to be sufficiently served or given for all purposes herein on the Party to whom it is served if it is left by hand at or sent by commercial courier, registered post or facsimile (with copy by hand or commercial courier or ordinary or registered post) to (as applicable) the address of the Party to whom it is sent as set out below or the registered office for the time being of such Party or such other address as one Party may from time to time notify to the other Party in writing.

#### 6.1.1 **to the VENDOR**

**NU SKIN ENTERPRISES , INC.**  
75 West Center Street  
Provo, Utah 84601,  
United States of America  
Attn: General Counsel  
Facsimile Number: (801) 345 5999

#### 6.1.2 **to the PURCHASER**

**DATUK MOHD NADZMI BIN MOHD SALLEH**  
c/o Trisilco Folec Sdn Bhd  
No. 36-1, Jalan PJU8/5B  
Perdana Business Centre  
Bandar Damansara Perdana  
47820 Petaling Jaya  
Selangor Darul Ehsan  
Facsimile Number: (603) 7722 2826

### 6.2 **Time of service**

A notice sent:-

- 6.2.1 by facsimile (and confirmed by the delivery of a copy thereof by hand or commercial courier or ordinary or registered post) shall be deemed to have been served and received upon completion of the effective transmission of such notice and a written record of the transmission is printed out from the sender's facsimile machine;

- 6.2.2 by ordinary or registered post within Malaysia shall be deemed to have been served and received on the **3rd**(Third) day occurring after the date on which it is posted;
- 6.2.3 by an ordinary or registered post outside Malaysia shall be deemed to have been served and received on the **10th**(Tenth) day occurring after the date on which it is posted; and
- 6.2.4 by hand or commercial courier shall be deemed to have been served at the time of delivery of the notice.

## 7. **COSTS**

### 7.1 **Solicitors costs**

Each Party shall bear its own solicitors' costs of and incidental to this Agreement.

### 7.2 **Stamp duty on purchase of Sale Shares**

As the intended purchaser hereunder of the Sale Shares, the PURCHASER shall bear the stamp duty chargeable on this Agreement and his acquisition of the Sale Shares (if any) and all other relevant documents incidental to this Agreement and, if relevant, any penalties for late stamping.

## 8. **TIME**

Time wherever mentioned shall be of the essence of this Agreement.

## 9. **AUTHORITY TO EXECUTE AGREEMENT**

Each of the Parties warrants to the other Party:-

- 9.1 that it/he has the power, authority and capacity to enter into and to execute and deliver this Agreement and to carry the terms hereof into effect; and
- 9.2 that its/his agreements and undertakings as contained in this Agreement constitute legal, valid and binding obligations on it/him in accordance with the provisions herein.

## 10. **GOVERNING LAW & JURISDICTION**

This Agreement is governed by the laws of Malaysia and subject to Clause 11, the Parties submit themselves and their assets to the non-exclusive jurisdiction of the courts in Malaysia.

## 11. **ARBITRATION**

### 11.1 **Reference to Arbitration**

Any dispute or difference which may arise between the Parties at any time hereafter whether during the continuance in force of this Agreement or upon or after its termination, touching any matter or thing herein contained or the operation or construction of this Agreement or any matter or thing in any way connected with, arising from or in relation to this Agreement or the rights, duties, liabilities of the Parties hereunder shall be finally settled by arbitration in accordance with the United Nations Commission on International Trade Law Arbitration Rules 1976.

### 11.2 **Arbitral Proceedings**

A reference to arbitration shall be to **3** (Three) arbitrators. The arbitration shall be held in Provo, Utah, United States of America and the language to be used in the arbitral proceedings shall be English.

### 11.3 **Interim remedies**

Pending the establishment of the arbitral tribunal, the Parties may apply to the courts in Malaysia (which shall be a non-exclusive jurisdiction) for the grant of interim injunctions and orders for the protection and preservation of property subject of or relating to this Agreement.

## 12. **NO WAIVER**

Knowledge or acquiescence by any Party of or in any breach of any of the terms, conditions or covenants herein contained shall not operate as or be deemed to be a waiver of such terms, conditions or covenants or any of them and notwithstanding such

knowledge or acquiescence, such Party shall be entitled to exercise such Party's rights under this Agreement and to require strict performance by the other Parties of the terms, conditions and covenants herein.

13. **AMENDMENTS**

Any amendment or alteration to or modification of any part of this Agreement shall be conferred upon and determined in writing by mutual consultation between the Parties.

14. **SEVERABILITY**

Any Any term, condition, stipulation, provision, covenant or undertaking in this Agreement which is illegal, void, prohibited or unenforceable shall be ineffective to the extent of such illegality, voidness, prohibitions or unenforceability without invalidating the

remaining provisions hereof, and any such illegality, voidness, prohibition or unenforceability shall not invalidate or render illegal, void or unenforceable any other term, condition stipulation, provision, covenant or undertaking herein contained.

15. **ENTIRETY OF AGREEMENT**

This Agreement constitutes the sole and entire agreement between the Parties with respect to the subject matter hereof and supersedes all previous proposals, negotiations and understandings whether written or oral between the Parties with respect to the subject matter hereof.

16. **NON-ASSIGNABILITY**

No Party shall be entitled to assign such Party's rights and/or obligations hereunder without the prior written consent of the other Party.

17. **SUCCESSORS-IN-TITLE**

This Agreement shall be binding on the successors-in-title and permitted assigns of the VENDOR and the heirs, personal representatives and permitted assigns of the PURCHASER.

18. **COUNTERPARTS**

This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument and any of the Parties may execute this Agreement by signing any such counterpart.

**IN WITNESS WHEREOF** the Parties (by their respective representative duly authorised) have hereunto executed this Agreement the day and year first above written to be effective as of 28th day of September 2001.

SIGNED BY )

for and on behalf of )

**NU SKIN ENTERPRISES, INC** )

the VENDOR aforesaid )

in the presence of:- )

/s/ Corey B. Lindley  
Corey B. Lindley

\_\_\_\_\_  
Signature of witness

Name:

Passport No:

SIGNED BY )

**DATUK MOHD NADZMI** )

**BIN MOHD SALLEH** )

the PURCHASER aforesaid )

in the presence of:- )

/s/Datuk Mohd Nadzmi Bin

Mohd Salleh

Mohd Salleh

---

Signature of witness

Name:

Passport No:

**DATED THIS 28TH DAY OF SEPTEMBER 2001**

**BETWEEN**

**NU SKIN ENTERPRISES, INC.  
(as VENDOR)**

**AND**

**KIOW KIM YOON  
(as PURCHASER)**

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**SUPPLEMENTAL AGREEMENT  
(to the Sale and Purchase of Shares  
Agreement dated 17 August 2001)**

---

**KHAW & PARTNERSADVOCATES  
& SOLICITORS**

**KUALA LUMPUR**

**THIS SUPPLEMENTAL AGREEMENT** made this 28th day of September 2001

**BETWEEN**

**NU SKIN ENTERPRISES, INC.**, a company incorporated in the State of Delaware, United States of America and having its principal place of business at 75 West Center Street, Provo, Utah 84601, United States of America of the one part

**AND**

**KIOW KIM YOON, FRANKIE** (NRIC No. 570723-08-6077) (Former NRIC No. 5276427) of 27, Jalan Keruing, Kebun-Teh Park, Johor Baru of the other part.

**WHEREAS:-**

**I. SPA**

- A) By the SPA, the VENDOR has agreed to sell to the PURCHASER and the PURCHASER has agreed to purchase from the VENDOR, upon the terms and subject to the conditions contained in the SPA, an aggregate of **600,000**(Six Hundred Thousand) Ordinary NSMH Shares.
- B) The completion of the SPA is conditional upon inter alia the grant by the MDTCA of its approval for the issue of a DS Licence upon such terms and conditions acceptable to NSM and the VENDOR.

**II. DS LICENCE GRANTED TO NSM**

- A) Following MDTCA's request that NSM increases its issued and paid up share capital to not less than **RM2,500,000.00**(Ringgit Two Million and Five Hundred Thousand):-
  - i) NSMH has on 29 August 2001 increased its issued and paid up share capital to **RM2,500,002.00** (Ringgit Two Million Five Hundred Thousand and Two) divided into 2 (Two) Ordinary NSMH Shares and **2,500,000**(Two Million and Five Hundred Thousand) ICPS; and
  - ii) NSM has on 29 August 2001 increased its issued and paid up share capital to **RM2,500,002.00** (Ringgit Two Million Five Hundred Thousand and Two) divided into **2,500,002**(Two Million Five Hundred Thousand and Two) Ordinary NSM Shares.
- B) By its letter dated 12th September 2001 bearing reference KPDN (DN) (JL) 8/6/1-935 Jld 5(3) to NSM, the Controller of Direct Sales of the MDTCA approved NSM's application for a DS Licence for a duration of **1** (One) year subject, among others, to the condition that it ensures that at least **40%**(Forty Percent) of the shares in NSM are held by Bumiputra.
- C) The DS Licence was issued by the MDTCA to NSM on 18th September 2001.

### III. RESTRUCTURE OF NSMH

- A) To fulfil, among others, the equity condition in the DS Approval:-
- i) the PURCHASER is willing to purchase from the VENDOR only **30%**(Thirty Percent) of the enlarged share capital of NSMH and not **40%**(Forty Percent) as envisaged in the SPA; and
  - ii) the VENDOR is willing to restructure NSMH (as the holding company of NSM) and to divest, in the manner described in Recitals III(B) to III(D), its right to **70%** (Seventy percent) of its effective equity shareholdings in NSM to Malaysians, including **40%**(Forty percent) thereof to Bumiputera Malaysians.
- B) The VENDOR is currently still in discussions with LEMBAGA TABUNG ANGKATAN TENTERA with a view to its being the Malaysian Bumiputera investor to whom the VENDOR will divest its rights to the 20% Block.
- C) The PURCHASER has agreed that following NSE's divestment of its rights to the 20% Block to LEMBAGA TABUNG ANGKATAN TENTERA and/or the Other Bumiputera Investor, the equity interests of the PURCHASER in the enlarged share capital of NSMH will be diluted accordingly.
- D) As currently envisaged, NSMH's equity restructuring exercise require the VENDOR:-
- i) to convert 1,999,999 (One Million Nine Hundred Ninety Nine Thousand Nine Hundred ----- and Ninety Nine) ICPS into 1,999,999 (One Million Nine Hundred Ninety Nine Thousand Nine Hundred and Ninety Nine) Ordinary NSMH Shares;
  - ii) to complete in accordance with the provisions of this Agreement and SPA(Nadzmi), the sale by the VENDOR to the PURCHASER and Dato'Nadzmi respectively of the Sale Shares and **500,001**(Five Hundred Thousand and One) Ordinary NSMH Shares.
  - iii) following the fulfilment of all of the conditions precedent under the SPA(OBI) for the sale of the 20% Block to the Other Bumiputera Investor:-
    - a) to convertthe remaining **500,001** (Five Hundred and One) ICPS held by the VENDOR in NSMH into **500,001** (Five Hundred and One) NSMH Shares; and
    - b) to complete in accordance with the provisions of the SPA(OBI), the sale by the VENDOR to the Other Bumiputera Investor of the 20% Block.

### IV. VARIATIONS TO THE SPA

The Parties wish to vary the SPA to effect such amendments to the provisions of the SPA as are necessary to carry the Parties' intention described in Recital III into effect.

#### NOW IT IS HEREBY AGREED as follows:-

#### 1. DEFINITIONS & INTERPRETATION

##### 1.1 Definitions

In this Supplemental Agreement, unless the context otherwise requires:-

1.1.1 subject to Clause 1.1.2, all expressions used herein and defined in the SPA shall have the meanings given to them by the SPA; and

1.1.2 the following expressions shall have the meanings set forth opposite such expressions:-

“**SPA**” the Sale and Purchase Agreement dated 17 August 2001 and made between the VENDOR and the PURCHASER in respect of the Sale Shares

“**20% Block**” **500,001**(Five Hundred Thousand and One) Ordinary NSMH Shares as is equivalent to **20%**(Twenty Percent) of NSMH's enlarged issued share capital following the shares conversion referred to in Recital III(D)(iii)(a)

##### 1.2 Interpretation

1.2.1 The provisions of Clause 1.2 of the SPA shall apply mutadis mutandis to this Supplemental Agreement.

1.2.2 Subject only to the variations herein contained and such modifications to the SPA as may be necessary for the construction thereof as a result of the variations thereto effected by this Supplemental Agreement, the provisions of

the SPA shall remain in full force and effect.

1.2.3 In construing the SPA, such reference as may be necessary may be made to such agreement.

1.2.4 In the event of a conflict between the provisions of this Supplemental Agreement and the SPA, the provisions of this Supplemental Agreement shall prevail.

## 2. AGREEMENT FOR THE VARIATION OF THE SPA

The Parties hereby agrees that the agreement under the SPA shall be revised as follows:-

- 2.1 that the PURCHASER will purchase from the VENDOR an aggregate of **30%** (Thirty Percent) of the enlarged issued share capital of NSMH following upon the conversion of the ICPS described in Recital III(D)(iii)(a) and not **40%** (Forty Percent) as provided for in the SPA;
- 2.2 that the aggregate number of NSMH Ordinary Shares to be sold by the VENDOR and purchased by the PURCHASER shall be **750,000** (Seven Hundred and Fifty Thousand) only and not **600,000** (Six Hundred Thousand) NSMH Ordinary Shares under the SPA and another **300,000** (Three Hundred Thousand) Ordinary NSMH Shares subsequently following the fulfilment of conditions precedent under the SPA(OBI) as provided for under the SPA; and
- 2.3 that the Purchase Price payable by the PURCHASER for the Sale Shares (as varied) is reduced to **RM13,380,000** (Ringgit Thirteen Million Three Hundred and Eighty Thousand).

## 3. VARIATIONS TO THE SPA

### 3.1 Variations to the definitions provisions contained in the SPA

3.1.1 The expression "10% Block" and the meaning assigned thereto in the SPA shall be deemed to be deleted;

3.1.2 The respective meanings assigned to the expressions stated in column (1) below and contained in Clause 1.1 of the SPA shall be deemed to be deleted and in place thereof, the meanings stated in column (2) below opposite the respective expressions stated in column (1) below shall be deemed to be inserted:-

<b>"Other Bumiputra Investor"</b>	such prospective Malaysian Bumiputera investor(s) (other than Dato'Nadzmi) as is identified by and as is acceptable to the VENDOR to acquire the 20% Block
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<b>"Purchase Price"</b>	RM13,380,000 (Ringgit Thirteen Million Three Hundred and Eighty Thousand)
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<b>"Sale Shares"</b>	<b>750,000</b> (Seven Hundred and Fifty Thousand) Ordinary NSMH Shares to be held by the VENDOR as the registered holder and beneficial owner thereof following the conversion of ICPS referred to in Recital III(D)(i)
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**"SPA(Nadzmi)"** the sale and purchase agreement for the sale by the VENDOR and the purchase by Dato'Nadzmi of **500,001**(Five Hundred Thousand and One) Ordinary NSMH Shares and includes such variations and modifications as may be agreed between the parties thereto

**"SPA(OBI)"** the sale and purchase agreement for the sale by the VENDOR and the purchase by the Other Bumiputera Investor of the 20% Block and includes such variations and modifications as may be agreed between the parties thereto

3.1.3 The following expressions in and the respective meanings assigned to them below shall be deemed to be inserted in Clause 1.1 of the SPA:-

<b>"20% Block"</b>	<b>500,001</b> (Five Hundred Thousand and One) Ordinary NSMH Shares as is equivalent to <b>20%</b> (Twenty Percent) of NSMH's enlarged issued share capital following the shares conversion referred to in Recital III(D)(iii)(a)
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### 3.2 Variations to Clause 4.2 of the SPA

3.2.1 The provisions of Clause 4.2.1 of the SPA shall be deleted in their entirety and in place thereof, the following provisions shall be deemed substituted.

4.2.1 *convert **1,999,999**(One Million Nine Hundred and Ninety Nine Thousand Nine Hundred Ninety Nine) ICPS in NSMH held by the VENDOR into **1,999,999**(One Million Nine Hundred and Ninety Nine Thousand Nine Hundred Ninety Nine) Ordinary NSMH Shares";*

3.2.2 The provisions of Clause 4.2.2 of the SPA shall be amended by inserting after the semicolon ";" the word "and";



3.2.3 The provisions of Clause 4.2.3 of the SPA shall be amended by deleting the word “; and” and in place thereof, a full stop “.” shall be inserted; and

3.2.4 The provisions of Clause 4.2.4 of the SPA shall be deleted in its entirety.

3.3 **Variations to Annexure 1 to the SPA**

The provisions of paragraph 2 of “Annexure 1” to the SPA shall be deemed to be deleted in their entirety and in place thereof, the following provisions shall be deemed to be substituted.

"2. *The PURCHASER CONFIRMS its receipt from the VENDOR of the original share certificate(s) to the Sale Shares issued in the name of the PURCHASER*".

4. **COUNTERPARTS**

This Supplemental Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument and any of the Parties may execute this Supplemental Agreement by signing any such counterpart.

**IN WITNESS WHEREOF** the Parties have hereunto executed this Supplemental Agreement the day and year first above written.

SIGNED BY )  
for and on behalf of )  
**NU SKIN ENTERPRISES, INC** )  
the VENDOR aforesaid )  
in the presence of:- )

/s/ Truman

Hunt

Truman

Hunt

\_\_\_\_\_  
signature of witness

Name:

Passport No:

SIGNED BY )  
**KIOW KIM YOON** )  
the PURCHASER aforesaid ) \_\_\_\_\_  
in the presence of:- )

/s/ Kiow

Kim Yoon

Kiow Kim

Yoon

\_\_\_\_\_  
signature of witness

Name:

NRIC/Passport No:

This is the execution page of the Supplemental Agreement dated the 28th day of September 2001 between NU SKIN ENTERPRISES, INC. and KIW KIM YOON, FRANKIE in respect of the sale and purchase of shares in NU SKIN MALAYSIA HOLDINGS SDN. BHD.

# MANAGEMENT SERVICES AGREEMENT

between

**NU SKIN INTERNATIONAL MANAGEMENT GROUP, INC.**

**(Company No. 1195205-0142)**

and

**NU SKIN (MALAYSIA) SDN. BHD.**

**(Company No. 402787-V)**

THIS **MANAGEMENT SERVICES AGREEMENT** (hereinafter, this "Agreement") is entered into this 20th day of June 2002 to be effective as of September 28, 2001 between **NU SKIN INTERNATIONAL MANAGEMENT GROUP, INC.** (Company No. 1195205-0142), a company organized under the laws of the State of Utah, United States of America and having its principal place of business at 75, West Center Street, Provo, Utah 84601, United States of America ("NSIMG"), and **NU SKIN (MALAYSIA) SDN. BHD.** (Company No. 402787-V), a company incorporated in Malaysia and having its registered office at 6th Floor, Menara Boustead, 69, Jalan Raja Chulan, 50200 Kuala Lumpur, Malaysia and a place of business at Office Lot 04-01, Level 4, PNB Darby Park Retail, No. 10, Jalan Binjai, 50450 Kuala Lumpur ("NSMY"). Hereinafter NSIMG and NSMY shall be collectively referred to as the "Parties" and each shall be individually referred to as a "Party."

## WITNESSETH

**WHEREAS**, NSMY has licensed from Nu Skin International, Inc. (Company No. 880564-0142) ("NSI") the right to utilize NSI's network of independent distributors to market products and services and has also acquired the right to distribute various products procured from or through NSI;

**WHEREAS**, NSIMG provides various services to licensees and distributors of NSI to assist in the development of the business of such licensees and distributors;

**WHEREAS**, NSMY desires to engage the services of NSIMG, and NSIMG desires to provide such services, all on the terms and conditions set forth in this Agreement.

## AGREEMENT

**NOW, THEREFORE**, in consideration of the premises, the mutual promises and covenants hereinafter set forth and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

### ARTICLE 1 DEFINITIONS

For purposes of this Agreement, unless the context otherwise requires or the Parties otherwise agree within the terms of this Agreement, the following words, terms and phrases shall have the meanings assigned to them respectively by this Article 1:

- 1.1 **"Affiliate"** shall mean, with respect to any specified person, any other person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, such specified person.
- 1.2 **"Agreement"** shall mean this Management Services Agreement between NSIMG and NSMY, as the same may be modified, amended or supplemented from time to time.
- 1.3 **"Compensation Expense"** shall mean all expenses and costs associated with compensation and benefits provided to Consulting Personnel, including, without limitation, salary, bonus, housing reimbursements, retirement benefits, insurance costs, and any other benefits, perquisites or other compensation provided to Consulting Personnel.
- 1.4 **"Consulting Personnel"** shall mean employees of NSIMG or, with the consent of NSMY, such other persons or entities as NSIMG may retain, hire, or otherwise contract with for the provision of Management and Consulting Services on behalf of, or in conjunction with, NSIMG, including employees and contractors of NSI and its Affiliates.
- 1.5 **"Consulting Rate"** shall mean the consulting rate established for each Consulting Personnel by NSIMG. Such consulting rate may be a daily rate, an hourly rate, a monthly rate, or such other rate as NSIMG determines to be appropriate based on the Management and Consulting Services to be provided by NSIMG.
- 1.6 **"Direct Expenses"** shall mean all expenses incurred in the provision of Management and Consulting Services for NSMY, which expenses are incurred solely for the benefit of NSMY, including, without limitation, business expenses,

convention expenses and travel expenses, but specifically excluding Compensation Expense.

- 1.7 **“Expatriate Personnel”** shall mean Consulting Personnel who reside in Malaysia and are seconded to NSMY for a definite or indefinite period of time to perform Management and Consulting Services.
- 1.8 **“Intercompany Agreements”** shall mean the License Agreement and the Trademark Licensing Agreement between NSMY and Nu Skin International, Inc., the Distribution Agreement between NSMY and Nu Skin Enterprises Hong Kong, Inc., and this Agreement.
- 1.9 **“Management and Consulting Services”** shall mean the following services: management, financial, marketing and distribution support/training, public relations, international expansion, human resources, strategic planning, product development and operations administration and such other services as the Parties may agree to from time to time.
- 1.10 **“NSI”** shall mean Nu Skin International, Inc., a corporation duly organized and existing under the laws of the State of Utah, United States of America.
- 1.11 **“NSIMG Confidential Information”** shall mean any and all information that is unique, proprietary or competitively sensitive to the business of NSIMG and/or any Affiliate of NSIMG, including NSI, which NSMY may obtain knowledge of or access to in connection with its relationship with NSIMG and the transactions contemplated by the Intercompany Agreements information relating to products, NSI’s independent distributors, compensation or commission systems or schemes, pricing methods, historical, current and projected financial information, marketing information, and any and all information, technical data or know-how related to any aspect of NSIMG or any of its Affiliate’s business or technology including data, know-how, formulae, designs, drawings, proposals, specifications, and the terms of this Agreement.
- 1.12 **“NSMY Confidential Information”** shall mean any and all information that is unique, proprietary or competitively sensitive to the business of NSMY which NSIMG may gain knowledge of or access to in connection with the transaction contemplated hereunder, but specifically excluding the NSIMG Confidential Information.

## **ARTICLE 2**

### **MANAGEMENT AND CONSULTING SERVICES**

#### **2.1 Request for Services**

NSMY may request NSIMG to provide Management and Consulting Services from time to time, either for specific projects, or for regular, recurring duties and assignments (e.g. legal, financial, and marketing) that are not tied to a specific project as follows:

- 2.1(a) If NSMY requests Management and Consulting Services for a specific project that does not fall within the scope of regular, recurring Management and Consulting Services, then NSMY and NSI shall work together to define the scope of the services to be provided and set forth their agreement in writing, either in the form of a statement of work or a purchase order agreed to and signed by both parties.
- 2.2(B) If NSMY requests NSIMG to provide regular, recurring Management and Consulting Services, NSI and NSIMG shall meet initially and establish the areas of responsibilities and services that NSMY would like to secure and receive from NSIMG. Details of such services need not be in writing, and NSIMG and the Consulting Personnel shall be authorized to undertake and perform such services as they determine in good faith are in the best interests of NSMY. NSMY and NSIMG thereafter shall meet on a quarterly basis to review the Management and Consulting Services provided by NSIMG, including the scope of such services, the quality of such services, the time being spent to perform such services, the Consulting Personnel performing such services, the benefits to NSMY and the Consulting Rates being charged. Based on such review, NSMY and NSIMG, may make such changes to the Management Consulting Services as may be agreed to by both Parties.

#### **2.2 Fees**

Unless otherwise agreed in writing, all Management Consulting Services shall be provided on a time and materials basis as more fully described in this Agreement. NSMY agrees to reimburse and compensate NSIMG for Management and Consulting Services rendered pursuant to this Agreement in accordance with the applicable compensation and invoicing provisions hereof.

#### **2.3 Performance of Services**

Subject to the terms and conditions of this Agreement, NSIMG will act in good faith and provide the services in a professional and workmanlike manner. NSIMG will retain sole control over the manner and means by which the Management and Consulting Services are to be performed and may engage third parties in the performance of its obligations under this Agreement.

## **2.4 Assistance**

NSMY shall provide, in a timely manner and at no cost to NSIMG, such assistance, cooperation, equipment and information as NSIMG may request in connection with the performance of the Management and Consulting Services.

## **2.5 Ownership of Developed Intangibles**

NSIMG or its Affiliates and contractors shall retain ownership of all intellectual property rights developed pursuant to this Management and Consulting Services provided under this Agreement. For so long as the Intercompany Agreements remain in full force and effect, NSMY shall have a limited license to use for and in the conduct of NSMY's business, any intellectual property rights developed pursuant to the services performed NSIMG and paid for in full by NSMY under the terms of this Agreement. NSMY shall not take any action that would negatively impact NSIMG's ownership of such intellectual property rights and shall not represent or hold itself out as the owner of such rights.

## **2.6 Expatriate Employees**

- (a) The Parties shall agree to the terms and circumstances pursuant to which a Consulting Personnel may be assigned and seconded by NSIMG as an Expatriate Personnel to work at and as an employee of NSMY; provided that nothing in this Agreement shall be interpreted to mean that NSIMG must make available any Consulting Personnel to work at NSMY as an Expatriate Personnel.
- (b) During the term of an Expatriate Personnel's secondment to NSMY, NSMY will assume the sole and direct responsibility for supervising and managing such individual with respect to the services and activities of such individual for and on behalf of NSMY. In this regard, the Parties agree that the Expatriate Personnel shall perform no services for NSIMG during the time of the secondment and NSIMG shall have no control of the day-to-day activities of the Expatriate Personnel.
- (c) During the term of secondment, the Expatriate Personnel will be subject to the working conditions and schedules in effect at NSMY and shall be provided by NSMY with the facilities and the equipment and supplies that such individual requires to perform his or her services for and on behalf of NSMY.

## **2.7 Approval of Services**

In the event that NSMY disputes the amount of any invoice or the amount of services provided, or has any disputes or complaints concerning the Management and Consulting Services provided by NSIMG (such as any failure to perform such services in accordance with this Agreement), NSMY shall provide written notice of such dispute or complaint within sixty (60) days of the date of the invoice for such services. If NSMY fails to provide such written notice with such sixty (60) day period, it shall be deemed to have:

- (a) accepted the performance of the services in full and confirmed all of such services were performed in accordance with the requirements of any specific agreement therefor established pursuant to Clause 2.1 and also of this Agreement, including any warranty set forth herein,
- (b) accepted the accuracy of such invoice and the validity of all charges on such invoice, and
- (c) waived any claim relating to such Management and Consulting Services.

# **ARTICLE 3** **COMPENSATION OF SERVICE PROVIDER**

## **3.1 Compensation for Services by Consulting Personnel**

NSMY agrees to compensate NSIMG for Management and Consulting Services that it provides to NSMY through Consulting Personnel (other than Expatriate Personnel) in the form of a fee equal to the Consulting Rate for such Consulting Personnel as established by NSMIG from time to time multiplied by the number of hours, months or days or other time period, as the case may be, that such Consulting Personnel provided Management and Consulting Services.

## **3.2 Reimbursement of Cost of Expatriate Personnel**

NSMY agrees to be responsible for any Compensation Expense of Expatriate Personnel seconded to NSMY. NSMY also shall be responsible for all Direct Expenses associated with the services of such Expatriate Personnel.

## **3.3 Reimbursement of Direct Expenses**

NSMY agrees to reimburse NSMY for all Direct Expenses incurred by Consulting Personnel in connection with the

Management and Consulting Services.

### **3.4 Currency**

Any compensation to be paid to NSIMG for Management and Consulting Services rendered pursuant to this Agreement shall be billed and paid in United States Dollars.

### **3.5 Consulting Rates**

NSIMG shall provide NSMY on a periodic basis the Consulting Rates for the Consulting Personnel who are to provide services to NSMY. In the event NSMY objects to the Consulting Rate for any Consulting Personnel, NSMY shall provide NSIMG with notice and the parties shall meet to discuss and agree upon the applicable Consulting Rate prior to the provision of the services of the Consulting Personnel concerned.

### **3.6 Payment and Invoicing**

- 3.6(a)** Within thirty (30) days after the end of each month, NSIMG shall prepare and deliver to NSMY, invoice(s) setting forth the fees and/or the Compensation Expense and/or the Direct Expenses payable hereunder for or in relation to the provision of Management and Consulting Services rendered pursuant to this Agreement during such month.
- 3.6(b)** Payments due under this Agreement shall be due and payable within thirty (30) days after the date of dispatch of the invoice for such payments. Payments shall be made either directly to NSIMG in immediately available funds by wire transfer to an account designated by NSIMG or by such other means of payment acceptable to NSIMG from time to time.
- 3.6(c)** Without limiting any of Parties' other rights and remedies under this Agreement, amounts outstanding under the terms of this Agreement not paid within sixty (60) days from the date due and payable, and as set forth in the payment provisions herein, shall bear interest (both before and after judgment) at the rate of ten percent (10%) per annum. NSIMG may (but shall not be obligated to) waive, whether with conditions or otherwise, its right to the payment of interest payable hereunder, whether in respect of all or some of the monies due and payable from time-to-time by NSMY to NSIMG and for such period as NSIMG deems appropriate in its absolute discretion.
- 3.6(d)** If NSMY shall be prevented by exchange regulation or restraint from making payment of any sum due to NSIMG in US Dollars then NSMY shall make payment in such other currency as may be selected by NSIMG and be permitted by exchange regulations.
- 3.6(e)** NSMY shall make due payments to the Inland Revenue Board, Malaysia, of such withholding tax (if any) as may be chargeable on and deducted from any amounts payable hereunder and shall furnish to NSIMG within fourteen (14) days of each payment, a copy of the prescribed form for such payment and NSMY's letter to the Inland Revenue Board accompanying such payment. A copy of the receipt issued to NSMY for each payment made as aforesaid shall be delivered by NSMY to NSIMG within fourteen (14) days from NSMY's receipt thereof.
- 3.6(f)** All sums payable by NSMY to NSIMG under this Agreement shall be paid without any set-off, counter-claim, qualification, or condition whatsoever.

## **ARTICLE 4**

### **PREPARATION AND SHARING OF REPORTS AND INFORMATION**

#### **4.1 Periodic Reports on Management and Consulting Services**

NSMY may, upon thirty (30) days' written notice, request operations reports of NSIMG setting forth such information regarding the Management and Consulting Services provided under this Agreement and for such time periods as NSMY shall reasonably request.

#### **4.2 Billing Information**

NSIMG shall provide to NSMY, no less often than quarterly, a billing summary indicating the number of hours or days or other time periods, as the case may be, each Consulting Personnel has provided Management and Consulting Services to NSMY.

#### **4.3 Sharing of Information and Access to Witnesses**

At all times during the term of this Agreement and for a period of three (3) years thereafter, each of the Parties shall maintain

at its principal place of business full, complete and accurate books of account and records with regard to its activities under this Agreement. In addition to the books and records pursuant to this Section 4.3 of Article 4, NSIMG and NSMY may from time to time have in their possession or under their control (or the control of persons or entities which have rendered services to time) additional books, records, contracts, instruments, data and other information (together with the books and records referred to in the first sentence of this Section 4.3, the "Information") which may prove necessary or desirable to the other in connection with the other's business. Accordingly,

- (i) NSIMG shall provide to NSMY, and NSMY shall provide to NSIMG upon the other's request, at all reasonable times, full and complete access to (persons with respect to, and all Information as the other may reasonably request and require in the conduct of its business, and
- (ii) NSIMG shall make available to NSMY and NSMY shall make available to NSIMG, upon the other's request, such persons as may reasonably be required to assist with any legal, administrative or other proceedings in which NSMY or NSIMG, as the case may be, may from time to time be involved. The Information shall include, without limitation, information sought for audit, accounting, claims, litigation and tax purposes as well as for, in the case of NSMY, purposes of fulfilling disclosure and reporting obligations under the United States securities laws. The Party providing Information or making available witnesses shall be entitled to receive from the other Party, upon the presentation of invoices therefor, payment for its reasonable out-of-pocket expenses incurred in connection therewith (but not the labor costs thereof), but shall not be entitled to receive any other payment with respect thereto. Nothing in this Agreement shall require either Party to reveal to the other any information if to do so would violate such Party's written and enforceable duty of confidence to a third party from whom such information was obtained; under such circumstances, however, the Parties shall work together to obtain a release of such information without violation of such duty of confidence.

## **ARTICLE 5**

### **NON-DISCLOSURE OF CONFIDENTIAL INFORMATION**

#### **5.1 NSMY Confidentiality**

NSMY agrees that, during and after the term of this Agreement, NSMY shall maintain in confidence all NSIMG Confidential Information and shall not disclose any NSIMG Confidential Information to any third party or use any NSIMG Confidential Information for any purpose whatsoever except as contemplated by this Agreement. In maintaining the confidentiality of NSIMG Confidential Information, NSMY shall exercise the same degree of care that it exercises with its own confidential information, and in no event less than a reasonable degree of care. NSMY shall, without limiting its obligation to maintain the NSIMG Confidential Information in confidence, use commercially reasonable efforts to ensure that each of its employees and contractors holds in confidence and makes no use of any NSIMG Confidential Information for any purpose other than those permitted by this Agreement. NSMY shall use its best efforts to ensure that no person other than its employees shall have access to NSIMG Confidential Information without the prior written consent of NSIMG, and shall restrict access to NSIMG Confidential Information to those having a need for access thereto.

#### **5.2 NSIMG Confidentiality**

NSIMG agrees that, during and after the term of this Agreement, NSIMG shall maintain in confidence all NSMY Confidential Information and shall not disclose any NSMY Confidential Information to any third party or use any NSMY Confidential Information for any purpose whatsoever except as contemplated by this Agreement. In maintaining the confidentiality of NSMY Confidential Information, NSI shall exercise the same degree of care that it exercises with its own confidential information, and in no event less than a reasonable degree of care. Without limiting its obligation to maintain the NSMY Confidential Information in confidence, NSIMG shall use commercially reasonable efforts to ensure that each of its employees and contractors holds in confidence and makes no use of any NSMY Confidential Information for any purpose other than those permitted by this Agreement. NSI shall use its best efforts to ensure that no person other than its employees and contractors shall have access to NSMY Confidential Information without the prior written consent of NSMY, and shall restrict access to NSMY Confidential Information to those employees and contractors having a need for access thereto.

#### **5.3 Exceptions**

The obligation of confidentiality contained in this Agreement shall not apply to the extent that (i) either Party is required to disclose information by order or regulation of a governmental agency or a court of competent jurisdiction; provided, however, that such Party shall not, to the extent possible, make any such disclosure without first notifying the disclosing Party and allowing the disclosing Party a reasonable opportunity to seek injunctive relief from (or a protective order with respect to) the obligation to make such disclosure, or (ii) the Party receiving disclosed information can demonstrate that (A) the disclosed information was at the time of such disclosure already in, or subsequently becomes part of, the public domain other than as a result of actions of the receiving Party, its Affiliates, employees, consultants, agents or subcontractors in violation hereof; (B) the disclosed information was received by the receiving Party on an unrestricted basis from a source unrelated to the disclosing party provided the receiving Party has no knowledge or reason to know that such Party is under a duty of confidentiality with respect to such information.

## **5.4 Unauthorized Disclosure**

Each Party acknowledges and confirms that the Confidential Information of the other Party constitutes valuable proprietary information and trade secrets of the other Party and that the unauthorized use, loss or outside disclosure of such information shall cause irreparable injury to the other Party. Each Party shall notify the other Party immediately upon discovery of any unauthorized use or disclosure of Confidential Information of the other Party, and will cooperate with the other Party in every reasonable way to help regain possession of such information and to prevent its further unauthorized use. Each Party acknowledges that monetary damages may not be a sufficient remedy for unauthorized disclosure of the Confidential Information of the other Party and that the other Party shall be entitled, without waiving other rights or remedies, to such injunctive or equitable relief as may be deemed proper by a court of competent jurisdiction, and shall be entitled to recover reasonable attorneys' fees for any action arising out of or relating to a disclosure of such Confidential Information.

## **5.5 Return of Confidential Information**

NSMY shall, upon the request of NSIMG, return to NSIMG all NSIMG Confidential Information, including any copies or reproductions thereof, in NSMY's possession or control.

## **ARTICLE 6** **TERM**

### **6.1 Term**

This Agreement shall commence and take effect on September 28, 2001, and the initial term shall end on December 31, 2004 unless earlier terminated pursuant to the provisions of this Article 6. This Agreement, however, shall automatically renew for successive one (1) year terms unless either (i) terminated by either Party by written notice given not less than ninety (90) prior to the end of the current term of this Agreement, or (ii) terminated in accordance with Article 6 hereof.

### **6.2 Termination for Insolvency/Receivership**

This Agreement may be terminated by either Party immediately or at any time after the occurrence of any of the following events:

6.2(a) the other Party shall commence any case, proceeding or other action:

- (i) under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization or relief of debtors, seeking to have an order for relief entered with respect to it, or seeking to adjudicate it a bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, compensation or other relief with respect to it or its debts, or
- (ii) seeking appointment of a receiver, trustee, custodian or other similar action;

6.2(b) there shall be commenced against the other Party any case, proceeding or other action of a nature referred to in Section 6.2(a) of Article 6 hereof which either results in the entry of an order for relief or any such adjudication or appointment or remains undismissed, undischarged or unbonded for a period of ninety (90) days; or

6.2(c) if the other Party causes or allows a judgment in excess of ten percent (10%) of its total assets as reflected on its most recent balance sheet to be entered against it or involuntarily allows a lien, security interest, or other encumbrance to attach to its assets to secure an amount in excess of ten percent (10%) of its total assets.

### **6.3 Termination for Breach of this Agreement**

6.3(a) This Agreement may be terminated immediately by NSIMG if NSMY fails to pay on due date, any monies payable hereunder by NSMY to NSIMG and such failure continues for a period of thirty (30) days from NSMY's receipt of a written notice given by NSIMG requiring such payment.

6.3(b) This Agreement may be terminated by either Party, if the other Party is in default in the performance of any material obligation hereunder, other than NSMY's obligation to pay the monies referred to in Section 6.2(a) of Article 6 hereof and such default has not been cured within forty-five (45) days after receipt by the defaulting Party of written notice of such default served by the defaulting party requiring such cure.

### **6.4 Termination for Breach of Shareholders Agreement/ Upon Termination of Other Intercompany Agreements**

This Agreement may be terminated by NSIMG if:

6.4(a) any of the parties (other than Nu Skin Enterprises, Inc.) to the Shareholders' Agreement by and between Nu

Skin Enterprises, Inc. and the other shareholders of NSMY's parent/holding company, Nu Skin Holdings Sdn Bhd (Company 552189-P) ("NSMH"), breaches such party's obligations thereunder and fails to cure such breach within thirty (30) days after its receipt of a written notice of such breach is given by Nu Skin Enterprises, Inc., requiring such cure;

- 6.4(b) the aforesaid Shareholders Agreement or any other(s) of the Intercompany Agreements is/are terminated for any reason whatsoever;
- 6.4(c) by agreement between the parties to the aforesaid Shareholders Agreement, all of the issued shares in NSMY are sold by NSMH to a third party or NSMY's business and assets are sold by NSMY to a third party;
- 6.4(d) Nu Skin Enterprises, Inc., NSI or other Affiliate of NSI ceases to hold at least thirty percent (30%) of the total issued equity capital of NSMY; or
- 6.4(e) persons representing from time-to-time such of Nu Skin Enterprises, Inc., NSI or other Affiliate of NSI as is the holder of an indirect thirty percent (30%) equity interest in NSMY, cease (for any reason other than their removal by such holder of an indirect thirty percent (30%) equity interest in NSMY) to hold office as such number of directors of NSMY as constitute at least thirty percent (30%) of the total number of NSMY's Board of Directors.

## 6.5 Obligations of NSMY Upon Termination

If this Agreement is terminated by either Party, NSMY shall, notwithstanding any other provision to the contrary herein, immediately pay all monies then remaining unpaid and payable by NSMY to NSIMG and whether or not such monies shall then have become due for payment.

## 6.6 Survival of Obligations

The termination or expiration of this Agreement shall be without prejudice to the rights and remedies of a Party in respect of any antecedent breach of this Agreement. The obligations of a Party to pay any sums which are due and payable as of the expiration or termination of this Agreement and its obligation under Article 5 and under Article 8 hereof shall survive the expiration or termination of this Agreement.

## 6.7 Termination of Specific Services

NSMY may terminate any specific Management and Consulting Service provided pursuant to this Agreement by providing written notice thereof to NSIMG not less than sixty (60) days prior to the desired termination date. NSIMG may discontinue providing any specific Management and Consulting Service provided pursuant to this Agreement by providing written notice thereof to the NSMY not less than sixty (60) days prior to the desired termination date.

## ARTICLE 7 WARRANTY

### 7.1 Warranties

NSIMG makes no warranties of any type with respect to the Management and Consulting Services other than the limited warranty that the Management and Consulting Services shall be performed in a professional and workmanlike manner and consistent with industry standards. NSIMG expressly disclaims any warranty that the work product will be free of any defects or errors. THE WARRANTIES IN THIS SECTION 7.1 OF ARTICLE 7 ARE EXCLUSIVE AND ARE IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, AND NON-INFRINGEMENT.

### 7.2 Exclusive Remedies

NSMY must report any breach of the foregoing warranty within sixty (60) days of the date of the invoice for such services. NSMY's sole and exclusive remedy, and NSIMG's entire liability, shall be: (a) to reperform such services at NSIMG's own cost or expense, or (b) if NSIMG is unable or elects not to perform such services, it shall refund the fees paid with respect to the disputed service. In no event shall NSIMG's liability exceed the amount of fees paid to NSIMG for such disputed Management and Consulting Services. NSIMG shall in no event be liable for any consequential, indirect, punitive or special damages.

## ARTICLE 8 EFFECT OF TERMINATION



## **8.1 Cessation of Rights**

Upon expiration or termination (collectively, the "Termination") of this Agreement for any reason whatsoever, all rights and obligations of the Parties hereunder shall cease; provided however, that upon Termination of this Agreement, no Party shall be released from its obligations to pay monies due or to become due or to complete any unfulfilled obligations under this Agreement, and the provisions of Article 5 shall survive such Termination.

## **8.2 Damages**

Upon the Termination of this Agreement for any reason, no Party shall be liable or obligated to the other Party with respect to any payments, future profits, exemplary, special or consequential damages, indemnifications or other compensation regarding such Termination, and, except as otherwise required by applicable law, each Party hereby waives and relinquishes any rights, pursuant to law or otherwise, to any such payments, indemnifications or compensation.

# **ARTICLE 9** **COMPLIANCE WITH APPLICABLE LAWS**

## **9.1 Compliance Generally**

In the performance of its obligations under this Agreement, the Parties shall, at all times, strictly comply with all applicable laws, regulations and orders of the countries and jurisdictions in which they operate and such United States laws as outlined in Section 9.3 of Article 9 hereof.

## **9.2 Immigration Passes**

The assignment and secondment of the Consulting Personnel as Expatriate Personnel pursuant to Section 2.6(a) of Article 2 hereof and the provision by NSIMG of such Management Consulting Services as require the performance by the Consulting Personnel of work in Malaysia shall be subject to the grant by all relevant authorities in Malaysia (including the Ministry of Domestic Trade and Consumer Affairs and the Director-General of Immigration) of all requisite approvals, immigration passes and work permits therefor and, in the case of the secondment of Consulting Personnel as Expatriate Personnel, of immigration passes to enable their accompanying families, where applicable, to enter into and reside in Malaysia, NSMY shall sponsor all applicable immigration passes and work permits, provide every assistance (including complying with all terms and conditions imposed on NSMY) for the issue and, if applicable, renewal of all approvals, immigration passes and work permits, notify NSIMG promptly thereof and pay all fees, costs and expenses in relation thereto.

## **9.3 Authorizations**

Subject to the provisions of Section 9.2 of Article 9 hereof, each Party shall, at its own expense, make, obtain and maintain in force at all times during the term of this Agreement, all filings, registrations, reports, licenses, permits and authorizations required under applicable law, regulations or orders in order for it to perform its obligations under this Agreement.

## **9.4 Business Practices**

In conformity with the United States Foreign Corrupt Practice Act and with the Parties' established corporate policies regarding business practices, the Parties and their respective employees shall not directly or indirectly make an offer, payment, promise to pay, or authorize payment, or offer a gift, promise to give, or authorize the giving of anything of value for the purpose of influencing an act or decision (including a decision not to act) of an official of any Government or of an employee or any company or including such a person to use his influence to effect any such act or decision in order to assist any of the Parties in obtaining, retaining or directing any business.

# **ARTICLE 10** **GENERAL PROVISIONS**

## **10.1 Assignment**

This Agreement shall be binding on and inure to the benefit of the successors, assigns and beneficiaries of the Parties; provided that no Party may assign this Agreement or any rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of each of the other Party's authorized representatives (which consent may be withheld or granted with or without conditions at the sole discretion of such other Party). Any attempted assignment by any Party without the prior written consent of the other Party shall be void and unenforceable. Notwithstanding the foregoing, NSIMG may assign this Agreement to any of its Affiliates.

## **10.2 Notices**

A notice, request and other communication hereunder shall be in writing and shall be deemed to have been duly given, if

delivered by hand, courier or registered airmail, or communicated by facsimile, cable or similar electronic means to the address, facsimile number or cable identification number provided below (or as changed in accordance with this Section 10.2) of the Party to whom it is addressed and shall be deemed to be given if delivered by hand or courier, at the time of delivery or if communicated by facsimile, cable or similar electronic means, at the time that receipt thereof has been confirmed by return electronic communication or signal that the message has been received, or if mailed, ten (10) days after dispatch by registered airmail, postage prepaid:-

If to NSIMG: Nu Skin International Management Group, Inc.  
75 West Center, Provo, Utah 84601  
United States of America  
Attn: General Counsel  
(801) 345-5500

Facsimile No.: (801)345-5999

If to NSMY: Nu Skin (Malaysia) Sdn. Bhd.  
Office Lot 04-01, Level 4, PNB Darby Park Retail  
No. 10, Jalan Binjai  
50450 Kuala Lumpur  
Malaysia  
Attn: Managing Director  
Facsimile No.: 603-2170 7799

### **10.3 Waiver and Delay**

No waiver by any Party of any breach or default in performance by any other Party, and no failure, refusal or neglect of any Party to exercise any right, power or option given to it hereunder or to insist upon strict compliance with or performance of the other Party's obligations under this Agreement, shall constitute a waiver of the provisions of this Agreement with respect to any subsequent breach thereof or a waiver by any Party of its right at any time thereafter to require exact and strict compliance with the provisions thereof.

### **10.4 Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of the State of Utah, applicable to contracts made and to be wholly performed within such State.

### **10.5 Dispute Resolution**

Any dispute or difference which may arise between the Parties at any time hereafter whether during the continuance in force of this Agreement or upon or after its termination, touching any matter or thing herein contained or the operation or construction of this Agreement or any matter or thing in any way connection with, arising from or in relation to this Agreement or the rights, duties or liabilities of the Parties hereunder shall be finally settled by arbitration in accordance with the International Arbitration Rules of the American Arbitration ("AAA").

**10.5(a)** A reference to arbitration shall be to three (3) arbitrators.

**10.5(b)** The arbitration shall be held in Provo, State of Utah, United States of America and the language to be used in the arbitral proceedings shall be English.

**10.5(c)** Pending the commencement of the arbitral proceedings, either Party may apply, to the courts in Utah and/or Malaysia (which shall have non-exclusive jurisdiction) for the grant of interim injunctions and orders for the protection and preservation of property subject of or relating to this Agreement. For the purposes of this Section 10.5(c) and as provided in Arbitration Rules of the AAA, arbitral proceedings shall be deemed to commence on the date when the administrator of the AAA receives notice of arbitration from the Party initiation the arbitration.

### **10.6 Force Majeure**

The Parties shall not be responsible for failure to perform hereunder due to force majeure, which shall include, but not be limited to: fires, floods, riots, strikes, labour disputes, freight embargoes or transportation delays, shortage of labour, inability to secure fuel, material, supplies, equipment or power at reasonable prices or on account of shortage thereof, acts of God or of the public enemy, war, acts of terrorism or civil disturbances, any existing or future laws, rules, regulations or acts of any government (including any orders, rules or regulations issued by any official or agency or such government) affecting a Party that would delay or prohibit performance hereunder, or any cause beyond the reasonable control of a Party. If an event of force majeure should occur, the affected Party shall promptly give notice thereof to the other Party and such affected Party shall use its reasonable best efforts to cure or correct any such event of force majeure.

### **10.7 Applicability of Post-Effective Laws**

The Parties agree that neither the Vienna Convention on the International Sale of Goods nor any such similar law, treaty or act that becomes effective during the term of this Agreement shall be applicable to this Agreement or the transactions contemplated hereunder.

#### **10.8 Integrated Contract**

This Agreement constitutes the entire agreement between the Parties relating to the subject matter hereof and supersedes all prior or contemporaneous negotiations, representations, agreements and understanding (both oral and written) of the Parties.

#### **10.9 Modifications and Amendments**

No supplement, modification or amendment of this Agreement shall be binding unless it is in writing and executed by all Parties.

#### **10.10 Severability**

To the extent that any provision of this Agreement is (or, in the opinion of counsel mutually acceptable to all Parties, would be) prohibited, judicially invalidated or otherwise rendered unenforceable in any jurisdiction relevant to the Parties, such provision shall be deemed ineffective only to the extent of such prohibition, invalidation or unenforceability in that jurisdiction, and only within that jurisdiction. Any prohibited, judicially invalidated or unenforceable provision of this Agreement will not invalidate or render unenforceable any other provision of this Agreement, nor will such provision of this Agreement be invalidated or rendered unenforceable in any other jurisdiction.

#### **10.11 Counterparts and Headings**

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. All headings and captions are inserted for convenience of reference only and shall not affect the meaning or interpretation of any provision hereof.

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**IN WITNESS WHEREOF**, the Parties have, by their respective duly authorized representatives executed this Agreement as of the day and year first above written.

**NU SKIN INTERNATIONAL MANAGEMENT GROUP, INC.**

By: /s/ Steven J. Lund

Name: **Steven J. Lund**

Title: **President**

**NU SKIN (MALAYSIA) SDN. BHD.**

By: /s/ Datuk Mohd Nadzmi Bin Mohd Salleh

Name: Datuk Mohd Nadzmi Bin Mohd Salleh

Title: Director

# DISTRIBUTION AGREEMENT

## BETWEEN

**NU SKIN ENTERPRISES HONG KONG, INC.**

**(Company No. 1107053-0142)**

## AND

**NU SKIN (MALAYSIA) SDN. BHD.**

**(Company No. 402787-V)**

**THIS DISTRIBUTION AGREEMENT** (hereinafter, this "Agreement") is entered into this 20th day of June 2002 to be effective as of September 28, 2001, between **NU SKIN ENTERPRISES HONG KONG, INC.** (Company No. 1107053-0142), a company organized under the laws of the State of Utah, United States of America and having its principal place of business at 75, West Center Street, Provo, Utah 84601, United States of America and a registered branch office at 26th Floor, Windsor House, 311 Gloucester Road, Causeway Bay, Hong Kong ("NSEHK"), and **NU SKIN (MALAYSIA) SDN. BHD.** (Company No. 402787-V), a company incorporated in Malaysia and having its registered office at 6th Floor, Menara Boustead, 69, Jalan Raja Chulan, 50200 Kuala Lumpur, Malaysia and a place of business at Office Lot 04-01, Level 4, PNB Darby Park Retail, No. 10, Jalan Binjai, 50450 Kuala Lumpur ("NSMY"). Hereinafter NSMY and NSEHK shall be collectively referred to as the "Parties" and each shall be individually referred to as a "Party".

## RECITALS

**WHEREAS**, Nu Skin International, Inc. ("NSI") and its Affiliates are engaged in the development, marketing and distribution of various products through a network of independent distributors;

**WHEREAS**, NSI has granted to NSEHK, exclusive rights to distribute products in countries including the Federation of Malaysia, in South East Asia, developed by or procured through NSI and its Affiliates;

**WHEREAS**, NSI has granted to NSMY a license to use NSI's network of independent distributors to market and distribute products in the Federation of Malaysia;

**WHEREAS**, NSMY desires, on the terms and conditions hereinafter set forth, to act as the exclusive distributor in the Federation of Malaysia of products procured from or through NSI and its Affiliates including NSEHK and subject to NSI's approval to such appointment, NSEHK is willing to appoint NSMY as the exclusive distributor in the Federation of Malaysia of such products; and

**WHEREAS**, the Parties desire to enter into this Agreement to establish the terms and conditions on which NSMY shall have the right to act as a distributor of products procured from or through NSEHK and NSI.

## AGREEMENT

**NOW, THEREFORE**, in consideration of the premises, the mutual covenants contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

### ARTICLE I DEFINITIONS

For the purposes of this Agreement, unless the context otherwise requires or the parties otherwise agree within the terms of this Agreement, the following words, terms and phrases shall have the meanings assigned to them respectively by this Article I:

- 1.1 "**Affiliate**" shall mean, with respect to any specified person, any other person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or under common control with, such specified person.
- 1.2 "**Agreement**" shall mean this Agreement (together with any exhibits and schedules hereto), as the same may be modified, amended or supplemented from time to time.
- 1.3 "**Independent Distributor Network**" shall mean the network of all NSI Independent Distributors.
- 1.4 "**Intercompany Agreements**" shall mean the License Agreement and the Trademark Licensing Agreement between NSMY and NSI, the Management Services Agreement between NSMY and Nu Skin International Management Group, Inc., and this Agreement.

- 1.5 **“Intellectual Property”** shall mean all of the patents, trademarks, trade names, service marks, other marks and devices, formulas, technologies, and other proprietary and confidential information relating to the design, specifications, manufacture, use or services of, or otherwise associated with, the Products.
- 1.6 **“Nu Skin Confidential Information”** shall mean any and all information that is unique, proprietary or competitively sensitive to the business of NSEHK and/or any Affiliate of NSEHK, including NSI, which NSMY may obtain knowledge of or access to in connection with its relationship with NSEHK and its Affiliates, including NSI, and the transactions contemplated by the Intercompany Agreements, including, but not limited to, information relating to Products, the NSI Independent Distributors, NSI’s compensation or commission systems or schemes, pricing methods, historical, current and projected financial information, marketing information, and any and all information, technical data or know-how related to any aspect of NSEHK’s, or any of its Affiliates’, business or technology including data, know-how, formulae, designs, drawings, proposals, specifications, and the terms of this Agreement.
- 1.7 **“NSI Independent Distributor”** shall mean a person authorized by contract with NSI to distribute, as an independent contractor, the Products in accordance with the terms of such distributor contract.
- 1.8 **“NSMY Confidential Information”** shall mean any and all information that is unique, proprietary or competitively sensitive to the business of NSMY which NSEHK may gain knowledge of or access to in connection with the transactions contemplated hereunder, but specifically excluding the Nu Skin Confidential Information.
- 1.9 **“person”** shall mean an individual, partnership, firm, joint venture, corporation, limited liability company, association, trust, unincorporated organization or other entity.
- 1.10 **“Products”** shall mean those products identified on Schedule A to this Agreement, as such Schedule A may be amended from time to time by NSEHK, in writing in its sole discretion, by its addition to or deletion from such schedule of products in the manner more fully described in Section 2.1 of Article II.
- 1.11 **“Territory”** shall mean the Federation of Malaysia.

## **ARTICLE II APPOINTMENT EXCLUSIVE WHOLESALE DISTRIBUTOR**

### **2.1 Scope**

Subject to all terms and conditions of this Agreement, NSEHK hereby appoints NSMY as its exclusive wholesale distributor of the Products in the Territory under the names, logos and trademarks of the Products and, subject to availability, agrees to sell Products to NSMY for wholesale distribution within the Territory during the term of this Agreement. NSEHK may, from time to time, by thirty (30) days advance written notice to NSMY, add items to the list of Products and delete or withdraw items from the list of Products, in its sole discretion without any obligation to NSMY. NSMY accepts its appointment as the exclusive wholesale distributor of Products in the Territory for the term of this Agreement.

### **2.2 Sub-distributors**

Except for the sale of Products to NSI Independent Distributors, NSMY shall not appoint sub-distributors or agents to promote or distribute Products inside or outside the Territory without the prior written consent of NSEHK, which consent may be withheld or granted with or without conditions in the sole and absolute discretion of NSEHK.

### **2.3 Sales by NSMY of Products**

- 2.3(a) NSMY agrees that any distribution and sale of Products in the Territory shall be made only by NSMY to NSI Independent Distributors, or, if NSEHK approves in writing the method and manner of NSMY’s conduct of such sales, directly to the retail customers of NSI Independent Distributors. NSEHK may, at its sole and absolute discretion, withhold or grant, with or without conditions, an approval pursuant to this Section 2.3(a).
- 2.3(b) To facilitate sales to NSI Independent Distributors, NSMY shall have the right to access information regarding such NSI Independent Distributors resident in the Territory as provided by NSI to NSEHK pursuant to the Regional Distribution Agreement.

### **2.4 Sales by NSEHK in the Territory**

Except to NSMY pursuant to this Agreement or as otherwise provided in this Section 2.4 or with NSMY’s written consent, NSEHK shall not sell, and shall use its commercially reasonable efforts to prohibit any other Party from selling Products to any person within the Territory or to any person outside the Territory for delivery to any person within the Territory. Notwithstanding the foregoing, NSEHK, on behalf of itself and its Affiliates including NSI, retains the right to enter into a distribution agreement for distribution of products other than the Products included from time to time in Schedule A so long as the products do not compete with the Products and the products are not distributed through the Independent Distributor

Network. In addition, NSEHK and its Affiliates, including NSI, may sell Products to NSI Independent Distributors resident in the Territory provided such Products are shipped only to an address in a market outside the Territory and limited in quantity to such amounts as NSI establishes from time to time as its personal consumption limitations in accordance with the NSI International Order Policy as it may be amended from time to time. None of NSI, NSEHK and their Affiliates, however, will actively market to or solicit purchases of Products outside the Territory from NSI Independent Distributors whose country of residence, as shown in NSI's records, is in the Territory.

## **2.5 Sales Outside the Territory**

NSMY agrees that it will neither sell nor enable any person to sell Products to persons outside the Territory or to any person within the Territory for resale or delivery outside the Territory. Further, NSMY shall not promote or solicit customers for Product sales outside the Territory. NSMY shall not establish any facility outside the Territory through which orders are solicited or in which inventories of Products are stored without NSEHK's written consent, which consent may be withheld or granted with or without conditions in the sole and absolute discretion of NSEHK.

## **2.6 Territory Orders and Inquiries**

If NSMY receives any order or inquiry concerning the sale of Products outside the Territory, NSMY agrees to give NSEHK prompt notice of such inquiry or order, such notice to include the name and address of the person making the order or inquiry, as well as any other relevant details regarding such order or inquiry that NSEHK shall reasonably request.

# **ARTICLE III GOVERNMENTAL APPROVALS AND REGISTRATIONS**

NSMY agrees to obtain, or cause to be obtained, at its sole cost and expense, any governmental approval and make, or cause to be made, any filings or notifications required under all applicable laws, regulations and ordinances of the Territory to enable this Agreement to become effective, to enable the Products to be imported into the Territory (except as otherwise provided herein) or to enable any payment pursuant to the provisions of this Agreement to be made. NSMY agrees to keep NSEHK informed of the progress in obtaining all such government approvals.

# **ARTICLE IV OBLIGATIONS OF NSMY AS EXCLUSIVE WHOLESALE DISTRIBUTOR IN THE TERRITORY**

## **4.1 Marketing and Distribution**

NSMY acknowledges that its strict performance of the obligations of this Agreement is essential to the continuation of the privilege of acting as the exclusive wholesale distributor of the Products in the Territory. NSMY shall have the following obligations, to be discharged at its own cost and expense, with respect to marketing and distribution of the Products:

- 4.1(a)** To use its best efforts to sell and actively promote and market, in accordance with all applicable laws and regulations and to the maximum extent possible, the Products in the Territory.
- 4.1(b)** To purchase from NSEHK such quantities of the Products as are required to maintain a balanced supply of the Products necessary to promote, market, sell and distribute the Products within the Territory in an efficient and timely manner.
- 4.1(c)** To ensure that all inquiries by NSI Independent Distributors and customers, including complaints, are responded to promptly and in a professional and courteous manner.
- 4.1(d)** ensure that all orders are processed and all shipments of Products are made within the Territory in a timely fashion.
- 4.1(e)** To diligently investigate or cause to be investigated all leads with potential customers referred to it by NSEHK or its Affiliates, including NSI.
- 4.1(f)** To permit NSEHK or its representatives to visit NSMY's place of business and inspect its inventories, service records, financial records and other relevant documents.
- 4.1(g)** To maintain, cause to be maintained, or contract to maintain, adequate personnel, distribution and laboratory facilities dedicated on a full-time or part-time basis to the quality control and sale of Products, in compliance with and to the extent required by all laws, ordinances and regulations applicable within the Territory.
- 4.1(h)** To provide, at the request of NSEHK, a business plan for the term specified by NSEHK and in such form and detail as may be reasonably requested by NSEHK and to update such business plan as reasonably requested by

NSEHK.

- 4.1(i)** To provide, at the request of NSEHK, reports of its activities and sales respecting the Products in the Territory in a form and in such detail and for such time period as NSEHK may reasonably require.

## **4.2 NSMY Operations**

NSMY agrees to maintain, or cause to be maintained, such facilities and other places of business within the Territory as may be necessary to effect the purposes and intentions of this Agreement. NSMY further agrees to bear all fees and expenses it incurs in connection with the maintenance of such facilities and other places of business, including, without limitation, all leases, rentals, equipment, salaries, taxes, licenses, insurance, permits, telephone, telegraph, promotional, advertising, travel, accounting and legal expenses.

## **4.3 Pricing Information**

NSMY shall, upon NSEHK's request, advise NSEHK of the distribution or wholesale prices at which the Products are to be sold from time to time by NSMY to NSI Independent Distributors within the Territory.

## **4.4 Forecasts**

To help NSEHK meet orders by NSMY for the Products, NSMY shall provide NSEHK, or NSI if NSEHK requests the forecasts be sent directly to NSI, no less often than quarterly, with a forecast of NSMY's Product requirements, showing the quantities of prospective orders by NSMY for Products, the estimated respective dates of such orders and the estimated shipment dates for such orders.

## **4.5 NSMY Claims and Representations**

NSMY shall not make any promises, representations, warranties or guarantees respecting the Products, sales of Products by NSI Independent Distributors or NSI's sale compensation plan, except in accordance with those representations, warranties or guarantees as provided by NSEHK or NSI with respect thereto and in accordance and compliance with the applicable laws of the Territory. NSMY shall not make any claims concerning the Products that have not been approved in advance in writing by NSEHK.

## **4.6 Capitalization**

NSMY agrees to capitalize itself adequately and maintain its operations both on a financially sound basis and in compliance with all applicable laws, regulations or ordinances covering the operations of such a business in the Territory.

## **4.7 Compliance with Laws**

NSMY shall at all times conduct its efforts hereunder and its business in strict accordance with all applicable laws and regulations and with the highest commercial standards.

## **4.8 Storage of Products**

NSMY shall store all inventories of Products at proper temperatures and environmental conditions to maintain the quality of the Products. In the event of damage to any of the Products for any reason rendering the contents unfit for use or consumption or otherwise unsaleable, NSMY shall promptly notify NSEHK of the facts and shall not distribute or transfer such Products to any other person or otherwise dispose of such Products except as instructed in writing by NSEHK.

## **4.9 Customer Support**

NSMY shall be responsible for dealing with any NSI Independent Distributor or customer questions or complaints concerning the Products and to take prompt action to solve such questions or complaints. In fulfilling its customer service responsibilities, NSMY shall maintain sufficient staff and resources in order to provide a high level of customer service promptly and in a professional manner. NSMY shall report regularly to NSEHK concerning its customer service activities and shall take such commercially reasonable corrective measures as may be recommended by NSEHK to correct any deficiencies. In the event of any product liability claim that could result in liability to NSEHK or NSI, NSMY shall notify NSEHK and NSI and shall cooperate with NSEHK and NSI in dealing with such claim. No such claim shall be settled without the consent of NSEHK and NSI if either of them has potential liability.

## **4.10 Allocation of Expenses**

### **4.10(a) Import Licenses**

To the extent import licenses are required for the importation of the Products into the Territory, NSMY hereby agrees that it will be responsible for securing and maintaining such import licenses and payment of all fees and

expenses associated therewith.

#### **4.10(b) Import Expenses**

NSMY agrees that it will be responsible for payment of all customs duties, excise taxes, similar governmental charges and levies, and any other charges or expenses related to any Products imported into the Territory.

#### **4.10(c) Other Expenses**

In addition to the fees and expenses described in Articles 4.10 (a) and (b) above of Article 4 hereof, NSMY shall be responsible for the payment of all fees and expenses related to the development and maintenance of its business in the Territory, including, without limitation, the following:

- (a) fees and expenses to incorporate operating entities;
- (b) fees and expenses for obtaining business licenses and permits;
- (c) fees and expenses incurred in drafting and producing required promotional documentation and other literature such as product catalogues as well as contracts such as local product purchase agreements;
- (d) fees and expenses incurred in determining the requirements for registering Products, including ascertaining and complying with labelling and custom\import requirements;
- (e) fees and expenses related to locating and establishing office, warehouse and other physical facilities, including build out, furnishings and equipment, as well as negotiation and securing of necessary leases and permits;
- (f) all fees and expenses related to hiring a general manager and staff, and compliance with local labor laws and requirements; and
- (g) all other fees and expenses associated with the business other than those fees and expenses expressly allocated to NSI or NSEHK pursuant to the terms of any of the Intercompany Agreements. To the extent NSEHK incurs any of the foregoing fees or expenses on behalf of NSMY, NSMY shall promptly reimburse NSEHK the amount of such fees and expenses upon the receipt of an invoice from NSEHK.

#### **4.11 Endorsement by NSI**

At NSMY's request, NSEHK shall procure NSI's confirmation on the Endorsement to this Agreement of NSI's approval of the appointment under this Agreement by NSEHK of NSMY as NSEHK's exclusive wholesale distributor of the Products in the Territory upon the terms and subject to the conditions set forth in this Agreement and upon terms that NSI shall be entitled to exercise and enforce in its own name, all rights reserved to NSI and conferred upon NSI by this Agreement and in the same manner as if NSI were joined as a party to this Agreement. The Parties shall countersign the Endorsement to this Agreement.

## **ARTICLE V PURCHASE OF PRODUCTS**

#### **5.1 Purchase of Products**

NSMY agrees to purchase from NSEHK such quantities of Products as shall be necessary to meet the sales demands within the Territory and to maintain an adequate supply of inventory in order to avoid and minimize any Product shortages.

#### **5.2 Exclusive Supplier**

NSMY shall source the Products exclusively from or through NSEHK.

#### **5.3 Pricing**

The prices payable by NSMY for the Products shall be as determined by NSEHK from time to time and stipulated on a Pricing List for Malaysia to be established by NSEHK. NSEHK shall be free to change and modify the pricing for the Products at any time for any reason without any obligation to NSMY. Such revised pricing shall become effective thirty (30) days from the date written notice of such price changes is delivered to NSMY. The revised pricing shall apply to any purchase order received prior to the effective date if the Products are to be delivered more than 30 days after acceptance of the purchase order. All prices are exclusive of freight, packaging costs, taxes, import duty and fees, and insurance charges, all of which are the responsibility of NSMY.



## 5.4 Ordering

All orders for Products submitted by NSMY shall be initiated by written purchase orders sent to NSEHK (or NSI if so directed by NSEHK) or via electronic submissions or other means approved by NSEHK; provided, however, that an order may initially be placed orally or by e-mail if a confirmation written or electronic purchase order is received by NSEHK within ten (10) days after said oral or e-mail order. Each purchase order shall identify the Products to be purchased, the country to which such Products shall be distributed to ensure shipment and receipt of Products which comply with such country's laws and regulations, the quantities thereof, and the requested shipment dates thereof. All purchase orders for the Products received by NSEHK are subject to its acceptance in its sole and absolute discretion and NSEHK shall have no liability if it elects not to supply the Products for any reason. NSEHK, however, shall use its good faith efforts to fill the order of NSMY for any non-discontinued Products with due regard to availability, demand of other distributors of NSI in other Territories, inventory on hand at NSEHK and NSI, and capacity of manufacturers. NSMY understands that NSEHK sources most of the Products from or through NSI who in turn sources most of the Products from contract manufacturers. As a result, availability shall similarly be conditioned upon the ability of NSI and such contract manufacturers to fulfil their manufacturing requirements and NSEHK shall have no liability for any failure of NSI or the contract manufacturer to fulfil their obligations in a timely and accurate manner. Following receipt of a purchase order, NSEHK shall promptly notify NSMY whether it accepts such purchase order and an estimate as to when the Products are to be delivered. NSEHK shall use its good faith efforts to fulfill the order by the estimated shipping date. NSEHK, however, shall have no liability of any kind for any delay in fulfillment of an order for any reason. The terms and conditions for the sale of any Products shall be governed by the terms of this Agreement and the standard terms and conditions of sale established by NSEHK from time to time as provided to NSMY in written form. NSEHK shall not be subject to any terms or conditions set forth in a purchase order from NSMY. Nothing contained in any such purchase order shall in anyway modify the terms of this Agreement or NSEHK's then existing standard terms and conditions of sale or any additional terms or conditions thereto agreed to by NSEHK in writing. In the event of a conflict between the terms of this Agreement and NSEHK's standard terms and conditions of sale from time to time and/or additional terms or conditions thereto agreed to by NSEHK, the terms of this Agreement shall prevail.

## 5.5 Shipping Terms

Title to and risk of loss for any Product(s) ordered and shipped pursuant to the terms of this Article shall remain with NSEHK until their actual delivery to NSMY or its designated agent at the port designated in the Purchase Order or at such other time as the parties may agree to in writing, for title and risk of loss to pass to NSMY. Shipment shall be made in a commercially reasonable manner in accordance with standards applicable in the trade and industry. Unless NSEHK notifies NSMY to the contrary, NSEHK shall ship all Products CIP to the shipping destinations designated by NSMY. In the event shipments of products are made to a bonded facility in Malaysia for the benefit of NSEHK, the title to and risk of loss for any Product(s) ordered and shipped to such bonded facility shall remain with NSEHK until their actual delivery to NSMY or its designated agent or shipper at or near the bonded facility in Malaysia.

## 5.6 Payment Due Date

NSMY shall pay for each delivery of Products within thirty (30) days after the date of arrival of the Products at the destination specified in the Purchase Order or the date of dispatch of a commercial shipping invoice, whichever is later.

## 5.7 Payment Terms

Invoices and prices shall be denominated in Ringgit, and payments made by NSMY to NSEHK under this Agreement shall be payable in U.S. Dollars. For the purposes of such payment, amounts stated in Ringgit shall be converted on the date payment is initiated at the selling rate for U.S. Dollars published on such date by such financial institution as is approved by NSEHK in writing from time to time. Payments shall be made either directly to NSEHK in immediately available funds by wire transfer to an account designated by NSEHK, or by such other means of payment acceptable to NSEHK from time to time.

## 5.8 Exchange Regulations

If NSMY shall be prevented by exchange regulation or restraint from making payment of any sum due to NSEHK in U.S. Dollars, then NSMY shall make payment in such other currency as may be selected by NSEHK and be permitted by exchange regulations.

## 5.9 Default Rate

Without limiting or prejudice to any of NSEHK's other rights and remedies under this Agreement:

- 5.9(a)** An amount due and outstanding under the terms of this Agreement and not paid within sixty (60) days from the date on which such amount is due and payable in accordance with the payment provisions herein, shall bear interest (both before and after judgment) at the rate of ten percent (10%) from the due date and until the date of actual payment; and

**5.9(b)** NSEHK may (but shall not be obligated to) waive, whether with conditions or otherwise, its right to the payment of interest payable pursuant to Section 5.9(a) of Article V hereof, whether in respect of all or some of the monies due and payable from time-to-time by NSMY to NSEHK and for such period as NSEHK deems appropriate in its sole and absolute discretion.

**5.9(c)** Interest shall accrue daily and be calculated on the basis of a three hundred sixty (360) day year and the actual number of days elapsed in any partial calendar month.

## **5.10 No Set-Off**

All sums payable by NSMY to NSEHK under this Agreement shall be paid without any set-off, counter-claim, qualification or condition whatsoever.

## **5.11 Product Returns/Exchanges Inspection**

NSMY shall thoroughly inspect all Products within fifteen (15) days of the arrival of the Products at the destination designated by NSMY in the Purchase Order. NSMY shall promptly notify NSEHK of any defect in the Products or any non-conformance with the specifications agreed upon by the Parties with respect to such Products and the order. If any Products are to be returned by NSMY because of defect or non-conformity, NSMY shall within forty-five (45) days following actual receipt, return such Products to NSEHK or to NSI if so designated by NSEHK. In the event of such a return, NSEHK shall make appropriate arrangements, acceptable to NSMY, to replace any such defective Products at NSEHK's sole cost and expense. Failing such replacement, NSEHK shall, at the option of NSEHK, either credit the purchase price of the defective Products plus any customs or duties paid with respect to such defective Products to NSMY's account or promptly grant NSMY a cash refund for the purchase price paid by NSMY for such Products. If NSEHK is not notified in writing of any defective Products within forty-five (45) days after the arrival of the Products at the shipping destination designated by NSMY, then NSMY shall be deemed to have accepted the Products concerned and waived its right to return any such Products. After this forty-five (45) day period, NSMY may not return a Product for any reason without NSEHK's prior written consent, which may be withheld or granted with or without conditions in the sole and absolute discretion of NSEHK. NSMY shall be responsible for all shipping charges for Products returned after the forty-five (45) day period.

## **5.12 Creation of Security Interest**

Simultaneously with the execution of this Agreement (or such later date as may be acceptable to NSEHK), NSMY shall execute a Deed of Debenture in terms reasonably required by NSEHK and thereby create a fixed charge over NSMY's fixed assets and a floating charge in favour of NSEHK, NSI and Nu Skin International Management Group, Inc. over NSMY's undertaking, current and future inventory of Products purchased pursuant to this Agreement, NSMY's receivables and other properties and assets to secure full and prompt payment by NSMY of all amounts which NSMY is obligated to pay to NSI, NSEHK and their Affiliates under the terms of this Agreement and the other Intercompany Agreements. NSMY shall take such actions, and execute such documents, as may be necessary to establish and perfect such security interest under applicable law.

# **ARTICLE VI**

## **OBLIGATIONS OF NSEHK AS SUPPLIER OF PRODUCTS**

### **6.1 Product Formulation**

NSEHK and NSMY agree to cooperate and work with NSI to mutually determine the formulae or ingredients to be used for Products in the Territory based on local market regulations and consumer preferences. NSI shall own all right, title and interest to any formula, technology or other intangible property developed for Products and shall compensate NSMY for any services provided by NSMY.

### **6.2 Warranty**

With respect to Products procured by NSEHK from manufacturers who are not Affiliates of NSEHK or NSI, NSEHK, to the extent possible, shall pass on and assign to NSMY the warranty provided by such manufacturers and NSEHK shall assist NSMY in making any claims against such manufacturers. NEITHER NSI NOR NSEHK MAKES ANY WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO PRODUCTS PROCURED FROM MANUFACTURERS WHO ARE NOT AFFILIATES OF NSEHK OR NSI. Subject to the provisions of Section 5.11 of Article V hereof, NSEHK shall be responsible for any shipping charges associated with the return of Products that do not meet the manufacturer's warranty. With respect to any Products that are manufactured by NSI, NSEHK or their Affiliates, NSEHK warrants that such Products shall conform to the specifications established by NSI, NSEHK and NSMY and that such Products shall be merchantable and free from defects. Provided that the Products manufactured by NSI, NSEHK or their Affiliates are stored in appropriate conditions, NSEHK warrants that such Products shall have the shelf life specified in the specifications agreed to by the Parties. NSMY assumes responsibility for ensuring that the specifications agreed upon by the Parties comply with all applicable laws and regulations of the Territory and neither NSEHK nor NSI assumes any obligation with respect to such

compliance. NSEHK further warrants that it will deliver good title to the Products and that the Products will be delivered free from any lawful security interest or other lien or encumbrance except as provided by this Agreement.

- 6.2(a)** In no event shall NSEHK's or NSI's liability for any breach of such warranties exceed in amount the price of the Products in respect of which any breach is claimed. NSEHK'S AND NSI'S WARRANTY STATED HEREIN ARE EXPRESSLY IN LIEU OF ANY OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
- 6.2(b)** NSI and NSEHK neither assume nor authorize any person or entity to assume for it any other liability in connection with the Products supplied hereunder, and there are no oral contracts or warranties collateral to or affecting this Agreement. Neither NSEHK nor NSI shall be liable to NSMY or any other persons for consequential, special or incidental damages.

## **ARTICLE VII SALE AND MANUFACTURE OF PRODUCTS**

### **7.1 Non-Competing Products**

Nothing contained herein, shall restrict or prohibit NSMY from selling, distributing, manufacturing or causing to be manufactured products or materials which do not compete directly or indirectly with the Products, provided that such other products do not infringe upon any patent, name, trademark, emblem, trade name, design right, model, formula, Nu Skin Confidential Information or other commercial or industrial property rights of NSEHK or NSI or any of their Affiliates. Notwithstanding the foregoing, in the event NSMY desires to sell or distribute a product or service that is not currently available through NSEHK or NSI, NSMY shall work with NSEHK and NSI and allow NSEHK the opportunity to develop and manufacture, or cause to be developed or manufactured, such product or service. In the event that NSMY and NSEHK are unable to agree upon terms acting in good faith, NSMY may acquire from another person, such product or service if it does not compete directly or indirectly with the Products or any other products or services NSEHK or NSI sells outside the Territory and which NSEHK has agreed to provide to NSMY on terms consistent with those upon which NSEHK provides such products or services to its other Affiliates.

### **7.2 Competing Products**

During the term of this Agreement, NSMY shall not, and shall not authorize another party to, manufacture, cause to be manufactured, distribute or sell (i) any products or materials which directly or indirectly compete with the Products or (ii) copies of the Products or other products that might reasonably be deemed under U.S. or foreign law to be confusingly similar to the Products, in each case without the prior written consent of NSI and NSEHK, which may be withheld or granted with or without conditions in the sole and absolute discretion of NSEHK and NSI.

### **7.3 Discontinued Products**

Notwithstanding the foregoing, in the event NSMY receives notice from NSEHK of the discontinuance of the sale of any Product, NSMY may elect to manufacture or cause to be manufactured such Product; provided that, if such discontinued Product competes directly or indirectly with any other Product, the prior written consent of NSEHK shall be required, which may be withheld or granted with or without conditions in the sole and absolute discretion of NSEHK. If NSMY elects to so manufacture or cause to be manufactured such discontinued Product, NSEHK shall, to the extent NSEHK or NSI retains any rights to such formula, license the formula or cause NSI to license the formula to such discontinued Product to NSMY on substantially the same terms as set forth in the Trademark Licensing Agreement, dated as of the date hereof, by and between NSI and NSMY. In the event NSI and NSEHK no longer owns or has any further rights to such Product or formula, NSMY shall not have the right to market such Product unless it obtains the right to market such Product from the person holding the rights to such Product or formula.

## **ARTICLE VIII NATURE OF RELATIONSHIP**

The relationship of NSMY and NSEHK shall be and at all times remain, respectively, that of independent contractor and contracting party. Nothing contained or implied in this Agreement shall be construed to constitute either party as the legal representative or agent of the other or to constitute or construe the Parties as partners, joint venturers, co-owners or otherwise as participants in a joint or common undertaking. Neither Party is authorized to conclude any contract or agreement or make any commitment, representation or warranty that binds the other or otherwise act in the name of or on behalf of the other.

## **ARTICLE IX TERM AND TERMINATION**

## **9.1 Term**

This Agreement shall commence and take effect on September 28, 2001 and the initial term shall end on December 31, 2004, unless terminated earlier pursuant to the provisions of this Article IX. This Agreement automatically shall renew for successive one (1) year terms unless terminated by either Party by written notice given not less than (90) days prior to the end of the current term of this Agreement or in accordance with Sections 9.2, 9.3 or 9.4 of Article IX hereof.

## **9.2 Termination for Insolvency/Receivership**

This Agreement may be terminated by either Party immediately or at any time after the occurrence of any of the following events:

- 9.2 (a)** the other Party shall commence any case, proceeding or other action: (i) under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization or relief of debtors, seeking to have an order for relief entered with respect to it, or seeking to adjudicate it a bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, compensation or other relief with respect to it or its debts, or (ii) seeking appointment of a receiver, trustee, custodian or other similar action; or
- 9.2(b)** there shall be commenced against the other Party any case, proceeding or other action of a nature referred to in Section 9.2(a) of Article IX hereof which either results in the entry of an order for relief or any such adjudication or appointment or remains undismissed, undischarged or unbonded for a period of 90 days.
- 9.2(c)** if the other Party causes or allows a judgment in excess of ten percent (10%) of its assets as reflected on its most recent balance sheet to be entered against it or involuntarily allows a lien, security interest, or other encumbrance to attach to its assets which secures an amount in excess of ten percent (10%) of its assets.

## **9.3 Termination for Breach of this Agreement**

- 9.3(a)** This Agreement may be terminated immediately by NSEHK if NSMY fails to pay on the due date, any monies payable hereunder by NSMY to NSEHK and such failure continues for a period of thirty (30) days from NSMY's receipt of a written notice given by NSEHK requiring such payment.
- 9.3(b)** This Agreement may be terminated by either Party, if the other Party is in default in the performance of any material obligation under this Agreement (other than NSMY's obligation to pay monies referred to in Section 9.3(a) of this Article IX) and such default has not been cured within thirty (30) days after receipt of written notice of such default by the defaulting Party.

## **9.4 Termination for Breach of Shareholders Agreement/ Upon Termination of Other Intercompany Agreements/ Unenforceability of Deed of Debenture**

This Agreement may be terminated by NSEHK if:

- 9.4(a)** any of the parties (other than Nu Skin Enterprises, Inc.) to the Shareholders Agreement by and between Nu Skin Enterprises, Inc. and the other shareholders of Nu Skin Malaysia Holdings Sdn. Bhd. (Company No. 552189-P) ("NSMH"), the parent/holding company of NSMY, breaches such party's obligations thereunder and fails to cure such breach within thirty (30) days after its receipt of a written notice of such breach given by Nu Skin Enterprises, Inc. requiring such cure;
- 9.4(b)** the aforesaid Shareholders Agreement or any other(s) of the Intercompany Agreements is/are terminated for any reason whatsoever or the Deed of Debenture referred to in Section 5.12 of Article 5 hereof and/or either of the charges created thereunder is/are void for any reason whatsoever;
- 9.4(c)** by agreement between the parties to the aforesaid Shareholders Agreement, all of the issued shares in NSMY are sold by NSMH to a third party or NSMY's business and assets are sold by NSMY to a third party;
- 9.4(d)** Nu Skin Enterprises, Inc., NSI, NSEHK or other Affiliate of NSI ceases to hold, directly or indirectly, an equity interest of at least thirty percent (30%) in NSMY; or
- 9.4(d)** persons representing from time to time such of Nu Skin Enterprises, Inc., NSI and other Affiliate of NSI as is/are the holder(s) of an indirect thirty percent (30%) equity interest in NSMY, cease (for any reason other than their removal by such holder of an indirect thirty percent (30%) equity interest in NSMY) to hold office as such number of directors of NSMY as constitute less than thirty percent (30%) of the total number of NSMY's Board of Directors.

## **9.5 Termination for Loss of License**

NSEHK shall have the right to terminate this Agreement if any license, regulatory approval, or corporate authority necessary to conduct the business in the manner contemplated by the Parties and the Intercompany Agreements, is terminated, is not obtained or renewed, or expires.

## **9.6 Survival of Obligations**

The termination or expiration of this Agreement shall be without prejudice to the rights and remedies of a Party in respect of any antecedent breach of this Agreement. The obligations of a Party to pay any sums that are due and payable as of the expiration or termination of this Agreement shall survive the expiration or termination of this Agreement.

# **ARTICLE X EFFECT OF TERMINATION**

## **10.1 Termination of Rights**

Upon termination of this Agreement by NSEHK, all rights herein granted to NSMY by or pursuant to this Agreement shall cease to be exercisable by NSMY and shall revert to NSEHK, and NSMY shall immediately cease to hold itself out to the public as NSEHK's exclusive wholesale distributor in the Territory or otherwise represent that it is associated in any manner with NSEHK or NSI. The provisions of this Section 10.1 shall not apply to sales by NSMY of Products which NSEHK does not repurchase pursuant to Section 10.3 of Article X hereof.

## **10.2 Ordered Products**

Upon termination of this Agreement, NSEHK may either (a) deliver, and NSMY shall pay for, all Products ordered by NSMY prior to such termination or (b) cancel, without cost or liability, NSMY's orders for such Products.

## **10.3 Inventory Repurchase**

Upon the expiration or termination of this Agreement, NSEHK shall have the option, but not the obligation, to repurchase for cash all or any portion of NSMY's inventory of Products at the original purchase price paid by NSMY to NSEHK for such Products as determined by NSEHK's sales records. NSEHK may exercise this right by providing written notice of its election to exercise this option to purchase all or a portion of the inventory. Following the termination of this Agreement, NSEHK shall have the right to enter NSMY's premises to inspect NSMY's inventory of Products. NSEHK shall be responsible for making transportation arrangements for any Products repurchased after NSMY has prepared them for shipping. NSMY agrees to promptly prepare the Products for shipping upon receipt of written notice of NSEHK's election to repurchase the inventory. NSMY shall be responsible for the shipping charges. If the Products are not repurchased by NSEHK, NSMY is solely responsible for their disposal, and NSMY undertakes to dispose of such Products in such a manner as will not infringe the intellectual property rights of NSEHK or NSI, or interfere with NSI's or NSEHK's goodwill. NSMY will destroy or return all material that NSMY possesses on which NSEHK's or NSI's Intellectual Property appears.

## **10.4 No Release of Payment obligations**

Upon termination of this Agreement, neither Party shall be released from its obligations to pay monies due or to become due to the other Party or to complete any unfulfilled obligations under this Agreement, and each Party shall immediately pay, perform and discharge all debts, obligations and liabilities hereunder.

## **10.5 Limitation on Damages**

Upon termination of this Agreement for any reason, neither Party shall be liable for any special, indirect, incidental, punitive or consequential damages, regarding such termination, irrespective of whether such obligations or liabilities may be contemplated in any law applicable within the Territory and or elsewhere, and, except as otherwise provided by applicable law, each Party hereby waives and relinquishes any rights, pursuant to law or otherwise, to any such damages. The remedies contained herein shall be exclusive. NSMY acknowledges and agrees that any amounts spent by NSMY in the performance of this Agreement shall be spent and incurred with the knowledge that this Agreement may be terminated as provided in this Agreement and NSMY shall make no claim against NSEHK or NSI for, and NSEHK and NSI shall not be liable with respect to, NSMY's investment or expenditures incurred in anticipation of the continuance of this Agreement.

## **10.6 Survival**

The provisions of Article XI, Article XII and Article XIII, as well as any other provisions that by their terms so provide, shall survive termination of this Agreement and continue in full force and effect thereafter.

# **ARTICLE XI CONFIDENTIALITY**

### **11.1 NSMY Confidentiality**

NSMY agrees that, during and after the term of this Agreement, NSMY shall maintain in confidence all Nu Skin Confidential Information and shall not disclose any Nu Skin Confidential Information to any third party or use any Nu Skin Confidential Information for any purpose whatsoever except as contemplated by this Agreement. In maintaining the confidentiality of Nu Skin Confidential Information, NSMY shall exercise the same degree of care that it exercises with its own confidential information, and in no event less than a reasonable degree of care. NSMY shall, without limiting its obligation to maintain the Nu Skin Confidential Information in confidence, use commercially reasonable efforts to ensure that each of its employees and contractors holds in confidence and makes no use of any Nu Skin Confidential Information for any purpose other than those permitted by this Agreement. NSMY shall use its best efforts to ensure that no person other than its employees shall have access to Nu Skin Confidential Information without the prior written consent of Nu Skin, and shall restrict access to Nu Skin Confidential Information to those having a need for access thereto.

### **11.2 NSEHK Confidentiality**

NSEHK agrees that, during and after the term of this Agreement, NSEHK shall maintain in confidence all NSMY Confidential Information and shall not disclose any NSMY Confidential Information to any third party or use any NSMY Confidential Information for any purpose whatsoever except as contemplated by this Agreement. In maintaining the confidentiality of NSMY Confidential Information, NSEHK shall exercise the same degree of care that it exercises with its own confidential information, and in no event less than a reasonable degree of care. Without limiting its obligation to maintain the NSMY Confidential Information in confidence, NSEHK shall use commercially reasonable efforts to ensure that each of its employees and contractors holds in confidence and makes no use of any NSMY Confidential Information for any purpose other than those permitted by this Agreement. NSEHK shall use its best efforts to ensure that no person other than its employees and contractors shall have access to NSMY Confidential Information without the prior written consent of NSMY, and shall restrict access to NSMY Confidential Information to those employees and contractors having a need for access thereto.

### **11.3 Exceptions**

The obligation of confidentiality contained in this Agreement shall not apply to the extent that (i) either Party is required to disclose information by order or regulation of a governmental agency or a court of competent jurisdiction, provided, however, that such Party shall not, to the extent possible, make any such disclosure without first notifying the disclosing Party and allowing the disclosing Party a reasonable opportunity to seek injunctive relief from (or a protective order with respect to) the obligation to make such disclosure, or (ii) the Party receiving disclosed information can demonstrate that (A) the disclosed information was at the time of such disclosure already in, or subsequently becomes part of, the public domain other than as a result of actions of the receiving Party, its affiliates, employees, consultants, agents or subcontractors in violation hereof; (B) the disclosed information was received by the receiving Party on an unrestricted basis from a source unrelated to the disclosing Party provided the receiving Party has no knowledge or reason to know that such Party is under a duty of confidentiality with respect to such information.

### **11.4 Unauthorized Disclosure**

Each Party acknowledges and confirms that the Confidential Information of the other Party constitutes valuable proprietary information and trade secrets of the other Party and that the unauthorized use, loss or outside disclosure of such information shall cause irreparable injury to the other Party. Each Party shall notify the other Party immediately upon discovery of any unauthorized use or disclosure of Confidential Information of the other Party, and will cooperate with the other Party in every reasonable way to help regain possession of such information and to prevent its further unauthorized use. Each Party acknowledges that monetary damages may not be a sufficient remedy for unauthorized disclosure of the Confidential Information of the other Party and that the other Party shall be entitled, without waiving other rights or remedies, to such injunctive or equitable relief as may be deemed proper by a court of competent jurisdiction, and shall be entitled to recover reasonable attorneys' fees for any action arising out of or relating to a disclosure of such Confidential Information.

### **11.5 Return of Confidential Information**

NSMY shall, upon the request of NSEHK, return to NSEHK all Nu Skin Confidential Information, including any copies or reproductions thereof, in NSMY's possession or control.

### **11.6 Property Rights**

NSMY agrees that NSI or NSEHK owns all right, title and interest in, or has a valid license to use, the Intellectual Property. This Agreement confers no rights with respect to the Intellectual Property except for the limited right to resell the Products during the term of this Agreement as set forth herein, which right shall terminate upon termination of this Agreement. This Agreement confers no right or license to, expressly or by implication, and NSMY shall not, manufacture, duplicate or otherwise copy or reproduce any of the Products or use the Intellectual Property for any other purpose.

### **11.7 Intellectual Property Covenants**

NSMY shall not do any act that would or might invalidate or dilute NSI's registration of, or title to, the Intellectual Property.

NSMY shall not attempt to vary or cancel any registration of the Intellectual Property, shall not hold itself out as or represent it is the owner of the Intellectual Property, or assist any other person in any of the foregoing. NSMY shall not alter in any way the Intellectual Property used in connection with the goods and shall not combine Intellectual Property with any intellectual property of NSMY in a manner that could create joint rights in the Intellectual Property.

## **11.8 Trademarks**

During the term of this Agreement, NSMY shall have the right to indicate to the public that it is the authorized distributor of the Products and to utilize the trademarks associated with the Products or the packaging of the Products in all respects in accordance with the terms and conditions of this Agreement. NSMY's use of trademarks other than on the packaging of the Products procured through NSEHK, shall be governed by the Trademark Licensing Agreement entered into simultaneously with this Agreement. Any use of trademarks on any packaging to be produced by NSMY shall first be submitted to NSEHK for approval of the design, color and other details of the use of the trademark, which approval may be withheld or granted with or without conditions in the sole and absolute discretion of NSEHK. Any use of the trademarks of NSI must state that NSI is the owner of the trademark.

## **ARTICLE XII INDEMNIFICATION AND INSURANCE**

### **12.1 NSEHK Indemnity**

NSEHK agrees during and after the term of this Agreement to indemnify and hold harmless NSMY from liability, loss, cost or damage, (including reasonable attorneys' fees) which NSMY may incur as a result of claims, demands or judgements, of any kind or nature, by anyone whomsoever, arising out of:

- (i) any breach of the representations and warranties set forth in Article VI; or
- (ii) a claim that the Products or NSI's Confidential Information infringes any patent, copyright, trade secret or other intellectual property right of a third party; provided that NSMY provides NSEHK with prompt notice in writing of any such claim or demand, NSEHK is given the right to assume control of such defense and NSMY shall cooperate with NSEHK in the defense or settlement of any such claim or action. NSEHK shall not have any obligation to indemnify NSMY for any claim if such claim is settled without the consent of NSEHK.

Notwithstanding the foregoing, NSEHK shall have no obligation to indemnify NSMY for any liabilities arising out of NSMY's failure or the failure of the NSI Independent Distributors in the Territory to utilize, sell, market or promote the Products:

- (i) in the manner for which the Products are reasonably intended;
  - (ii) in compliance with NSEHK's or NSI's policies and procedures; or
- (iii) as contemplated by the Intercompany Agreements, including, but not limited to, liabilities arising out of false or misleading claims made by the NSI Independent Distributors. In addition, neither NSEHK nor NSI shall have any liability with respect to any alleged infringement to the extent such alleged infringement relates to information or specifications provided by NSMY, or alteration of the Product by NSMY.

### **12.2 NSMY Indemnity**

NSMY agrees during and after the term of this Agreement to indemnify and hold harmless NSEHK and NSI from liability, loss, cost or damage (including reasonable attorney's fees), which NSEHK or NSI may incur as a result of claims, demands or judgements, of any kind or nature, by anyone whosoever, arising out of or resulting from the possession, use or sale of the Products by NSMY or any of the NSI Independent Distributors (except to the extent NSEHK has indemnified NSMY against such claims, demands, or judgements pursuant to Section 14.1 hereof); By way of elaboration, but not limitation, NSMY shall indemnify NSEHK and NSI for any liabilities arising out of NSMY's failure or the failure of the NSI Independent Distributors to utilize, sell, sell, market or promote the Products;

- (i) in the manner for which the Products are reasonably intended;
- (ii) in compliance with Nu Skin policies and procedures; or
- (iii) as contemplated by the Intercompany Agreements, including but not limited to, liabilities arising out of false or misleading claims made by NSI Independent Distributors. Notwithstanding the foregoing, in the event NSMY shall have requested NSI to take disciplinary actions against an NSI Independent Distributors operating in the Territory and NSI shall have, in breach of its obligations under its License Agreement with NSMY, failed to take such actions against such NSI Independent Distributor, NSMY shall not be obligated to indemnify NSEHK or NSI for any loss that NSI NSEHK might incur as a reasonable and proximate result of such failure.

### **12.3 Insurance**

At all times during and following the terms of this Agreement, each of NSEHK and NSMY shall maintain insurance (or cause the other Party to be added as an additional insured to any policy not maintained by such Party) with one or more reputable insurers reasonable in coverage and amount in direct proportion and corresponding to the business to be conducted by such Party pursuant to this Agreement.

### **12.4 Infringement Remedy**

In the event a claim of infringement by a third party covered by the indemnity set forth in Section 12.1 of this Article XII, NSEHK shall have the right to elect, at its option and expense, to either replace or modify the Products so that they become non-infringing, or accept return of the Products and refund to NSMY an amount equal to the aggregate purchase price paid by NSMY for such Products.

## **ARTICLE XIII MISCELLANEOUS**

### **13.1 Assignment**

This Agreement shall be binding on and inure to the benefit of the respective successors, assigns and beneficiaries of the Parties; provided that neither Party may assign this Agreement or any rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other Party, which consent may be withheld or granted with or without conditions at the sole discretion of such other Party. Any attempted assignment without requisite written consent shall be void and unenforceable. Notwithstanding the foregoing, NSEHK may assign this Agreement to any of its Affiliates.

### **13.2 Notices**

A notice, request and other communication hereunder shall be in writing and shall be deemed to have been duly given, if delivered by hand, courier or registered airmail, or communicated by facsimile, cable or similar electronic means to the address, facsimile number or cable identification number provided below (or as changed in accordance with this Section 13.2) of the Party to whom it is addressed and shall be deemed to be given if delivered by hand or courier, at the time of delivery or if communicated by facsimile, cable or similar electronic means, at the time that receipt thereof has been confirmed by return electronic communication or signal that the message has been received, or if mailed, ten (10) days after dispatch by registered airmail, postage prepaid:-

If to Nu Skin Enterprises Hong Kong, Inc  
NSEHK: 26th Floor, Windsor House, 311 Gloucester Road  
Causeway Bay, Hong Kong  
Attn: Regional Controller  
Facsimile No.: 852-882-7809

If to NSMY: Nu Skin (Malaysia) Sdn. Bhd.  
Office Lot 04-01, Level 4, PNB Darby Park Retail  
No. 10, Jalan Binjai, 50450 Kuala Lumpur  
Malaysia  
Attn: Managing Director  
Facsimile: 603-2170 7799

Either Party may change its facsimile number, cable identification number or address by a notice given to the other Party in the manner set forth above.

### **13.3 Waiver and Delay**

No waiver by either Party of any breach or default in performance by the other Party, and no failure, refusal or neglect of either Party to exercise any right, power or option given to it hereunder or to insist upon strict compliance with or performance of the other Party's obligations under this Agreement, shall constitute a waiver of the provisions of this Agreement with respect to any subsequent breach thereof or a waiver by either Party of its right at any time thereafter to require exact and strict compliance with the provisions thereof.

### **13.4 Force Majeure**

A Party shall not be responsible for failure to perform hereunder due to force majeure, which shall include, but not be limited to: fires, floods, riots, strikes, labor disputes, freight embargoes or transportation delays, shortage of labor, inability to secure fuel, material, supplies, equipment or power at reasonable prices or on account of shortage thereof, acts of God or of the public enemy, war, terrorist activities or civil disturbances, any existing or future laws, rules, regulations or acts of any



government (including any orders, rules or regulations issued by any official or agency or such government) affecting a Party that would delay or prohibit performance hereunder, or any cause beyond the reasonable control of a Party. If an event of force majeure should occur, the affected Party shall promptly give notice thereof to the other Party and such affected Party shall use its reasonable best efforts to cure or correct any such event of force majeure.

### **13.5 Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of the State of Utah, applicable to contracts made and to be wholly performed within such State.

### **13.6 Dispute Resolution**

Any dispute or difference which may arise between the Parties at any time hereafter, whether during the continuance in force of this Agreement or upon or after its termination, touching any matter or thing herein contained or the operation or construction of this Agreement or any matter or thing in any way connected with, arising from or in relation to this Agreement or the rights, duties or liabilities of the Parties hereunder shall be finally settled by arbitration in accordance with International Arbitration Rules of the American Arbitration (“L/Authority”).

**13.6(a)** A reference to arbitration shall be to three (3) arbitrators.

**13.6(b)** The arbitration shall be held in Provo, State of Utah, United States of America, at the Regional Center and the language to be used in the arbitral proceedings shall be English.

**13.6(c)** Pending the commencement of the arbitral proceedings, either Party may apply, to the courts in Utah and/or Malaysia (which shall have non-exclusive jurisdiction) for the grant of interim injunctions and orders for the protection and preservation of property subject of or relating to this Agreement. For the purposes of this Section 13.4(c) and as provided in the Arbitration Rules of the AAA, arbitral proceedings shall be deemed to commence on the date when the administrator of the AAA receives notice of arbitration from the Party initiating the arbitration.

### **13.7 Integrated Contract**

This Agreement together with the document and agreements referred to herein constitutes the entire agreement between the Parties relating to the subject matter hereof and supersedes all prior or contemporaneous negotiations, representations, agreements and understandings (both oral and written) of the Parties.

### **13.8 Modifications and Amendments**

No supplement, modification or amendment of this Agreement shall be binding unless it is in writing and executed by both of the Parties.

### **13.9 Severability**

To the extent that any provision of this Agreement is (or, in the opinion of counsel mutually acceptable to both parties, would be) prohibited, judicially invalidated or otherwise rendered unenforceable in any jurisdiction, such provision shall be deemed ineffective only to the extent of such prohibition, invalidation or unenforceability in that jurisdiction, and only within that jurisdiction. Any prohibited, judicially invalidated or unenforceable provision of this Agreement will not invalidate or render unenforceable any other provision of this Agreement, nor will such provision of this Agreement be invalidated or rendered unenforceable in any other jurisdiction.

### **13.10 Counterparts and Headings**

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. All headings and captions are inserted for convenience of reference only and shall not affect the meaning or interpretation of any provision hereof.

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**IN WITNESS WHEREOF**, the Parties have by their respective duly authorized representatives executed this Agreement as of the day and the year first above written.

**NU SKIN ENTERPRISES HONG KONG, INC.**

By: /s/ Truman Hunt

**Name: Truman Hunt**

Its: Vice President

**NU SKIN (MALAYSIA) SDN. BHD.**

By: /s/ Datuk Mohd Nadzmi Bin Mohd Bin Mohd Salleh

Name: Datuk Mohd Nadzmi Bin Mohd Bin Mohd Salleh

Its: Director

**ENDORSEMENT**

WE, **NU SKIN INTERNATIONAL, INC.** (Company No. 880564-0142), a corporation organized under the laws of the State of Utah, United States of America and having its principal place of business at 75, West Center Street, Provo, Utah 84601, United States of America confirm our approval of the appointment under the Distribution Agreement (to which this Endorsement is attached) by **NU SKIN ENTERPRISES HONG KONG, INC.** (Company No. 1107053-0142), a company organized under the laws of the State of Utah, United States of America and having its principal place of business at 75, West Center Street, Provo, Utah 84601, United States of America and a registered branch office at 26th Floor, Windsor House, 311 Gloucester Road, Causeway Bay, Hong Kong (“NSEHK”) of **NU SKIN (MALAYSIA) SDN. BHD.** (Company No. 402787-V), a company incorporated in Malaysia and having its registered office at 6th Floor, Menara Boustead, 69, Jalan Raja Chulan, 50200 Kuala Lumpur, Malaysia and a place of business at Office Lot 04-01, Level 4, PNB Darby Park Retail, No. 10, Jalan Binjai, 50450 Kuala Lumpur (“NSMY”) as NSEHK’s exclusive wholesale distributor of the Products in the Territory upon the terms and subject to the conditions set forth in the Distribution Agreement and upon terms that we shall be entitled to exercise and enforce in our name and in the same manner as if we were joined as a party to the Distribution Agreement, all rights reserved to us and conferred upon us by the Distribution Agreement.

The expressions “Products” and “Territory” as used in this Endorsement shall have the meanings given to them by the Distribution Agreement.

**NU SKIN INTERNATIONAL, INC.**

By: /s/ Steven J. Lund

**Steven J. Lund**

**Its: President**

Date:

**ENDORSEMENT**

WE, **NU SKIN ENTERPRISES HONG KONG, INC.** (Company No. 1107053-0142) and **NU SKIN (MALAYSIA) SDN. BHD.** (Company No. 402787-V) confirm that **NU SKIN INTERNATIONAL, INC.** (Company No. 880564-0142) (“NSI”) is entitled to exercise and enforce in its own name and as if NSI were joined as a party to the Distribution Agreement, all rights reserved to NSI and conferred upon NSI by the Distribution Agreement.

**NU SKIN ENTERPRISES  
HONG KONG, INC**

By: /s/ Truman Hunt  
Truman Hunt

Its: Vice President  
Date:

**NU SKIN (MALAYSIA) SDN.  
BHD.**

By: /s/ Datuk Mohd Nadzmi Bin  
Mohd Bin Mohd Salleh

Its: Director  
Date:

# TRADEMARK LICENSING AGREEMENT

## BETWEEN

**NU SKIN INTERNATIONAL, INC.**

**(Company No. 880564-0142)**

## AND

**NU SKIN (MALAYSIA) SDN. BHD.**

**(Company No. 402787-V)**

**THIS TRADEMARK LICENSING AGREEMENT** (hereinafter, this "Agreement") is entered into this 20th day of June 2002 to be effective as of September 28, 2001, between **NU SKIN INTERNATIONAL, INC.** (Company No. 880564-0142), a company organized under the laws of the State of Utah, United States of America and having its principal place of business at 75, West Center Street, Provo, Utah 84601, United States of America ("NSI"), and **NU SKIN (MALAYSIA) SDN. BHD.** (Company No. 402787-V), a company incorporated in Malaysia and having its registered office at 6<sup>th</sup> Floor, Menara Boustead, 69 Jalan Raja Chulan, 50200 Kuala Lumpur, Malaysia and a place of business at Office Lot 04-01, Level 4, PNB Darby Park Retail, No. 10, Jalan Binjai, 50450 Kuala Lumpur, Malaysia ("NSMY"). Hereinafter, NSI and NSMY shall collectively be referred to as the "Parties" and each shall be individually referred to as "Party."

## RECITALS

**WHEREAS**, NSI develops and markets various products for distribution in worldwide markets through a network of independent distributors;

**WHEREAS**, NSMY desires to continue to use in its corporate name, the NSI trademark "Nu Skin," and to affix other trademarks, service marks and trade names of NSI to products and services and to use such marks and names in advertising and promotional activities and thereby derive benefit from the goodwill, value and reputation such marks and names will lend when used to identify NSMY and such products and other materials; and

**WHEREAS**, the Parties desire to enter into this Agreement as set forth herein.

## AGREEMENT

**NOW THEREFORE**, in consideration of the premises, the mutual promises, covenants, and warranties hereinafter set forth and for other valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

## ARTICLE I DEFINITIONS

For the purposes of this Agreement, unless the context otherwise requires or the Parties otherwise agree within the terms of the Agreement, the following words, terms and phrases shall have the meaning assigned to them respectively by this Article I:

- 1.1** "**Affiliate**" shall mean, with respect to any specified person, any other person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or under common control with, such specified person.
- 1.2** "**Agreement**" shall mean this Agreement (together with any exhibits and schedules hereto), as the same may be modified, amended or supplemented from time to time.
- 1.3** "**Business Portfolios**" shall mean those materials approved by NSI for supply by NSMY in conjunction with the execution of a distributor contract to NSI Independent Distributors in the Territory explaining the NSI independent business opportunity associated with retailing Products, the contractual relationship with NSI and the marketing support programs for the Territory.
- 1.4** "**GAAP**" shall mean general accepted accounting principles in the Federation of Malaysia.
- 1.5** "**Independent Distributor Network**" shall mean the network of all NSI Independent Distributors.
- 1.6** "**Intercompany Agreements**" shall mean the License Agreement between the Parties, the Distribution Agreement between NSMY and Nu Skin Enterprises Hong Kong, Inc. ("NSEHK"), the Management Services Agreement between NSMY and Nu Skin International Management Group, Inc. and this Agreement.

- 1.7 **“Know-How”** shall mean any information, including, without limitation, any commercial or business information, lists, marketing methods, marketing surveys, processes, specifications, quality control reports, drawings, photographs, or any other information owned by NSI, relating to the Independent Distributor Network, NSI Independent Distributors, the NSI distributor lists, and the NSI sales compensation plan.
- 1.8 **“Licensed Marks and Names”** shall mean those trademarks, service marks, tradenames, logos, marks or devices identified in Schedule A to this Agreement, as it may be modified and supplemented from time-to-time, whether or not such marks, names or devices are registered or unregistered.
- 1.9 **“Net Sales”** shall mean, for any period, the aggregate gross sales of NSMY Products and NSMY Commercial Materials (excluding applicable sales and other consumption taxes and freight charges) less returns or refunds related to NSMY Products and NSMY Commercial Materials reasonably accepted and credited by NSMY during such period, all as determined in accordance with GAAP.
- 1.10 **“NSI Confidential Information”** shall mean any and all information that is unique, proprietary or competitively sensitive to the business of NSI and/or any Affiliate of NSI which NSMY may obtain knowledge of or access to in connection with its relationship with NSI and the transactions contemplated by the Intercompany Agreements, including, but not limited to, information relating to Products, the NSI Independent Distributors, NSI’s compensation or commission systems or schemes, pricing methods, historical, current and projected financial information, marketing information, and any and all information, technical data or Know-How related to any aspect of NSI’s business or technology including data, know-how, formulae, designs, drawings, proposals, specifications, and the terms of this Agreement.
- 1.11 **“NSI Independent Distributor”** shall mean a person or business entity authorized by contract with NSI to distribute, as an independent contractor, products of NSI and its Affiliates.
- 1.12 **“NSMY Confidential Information”** shall mean any and all information that is unique, proprietary or competitively sensitive to the business of NSMY which NSI may gain knowledge of or access to in connection with the transaction contemplated hereunder but specifically excluding the NSI Confidential Information.
- 1.13 **“NSMY Commercial Materials”** shall mean, without limitation, any of the following bearing a Licensed Mark and Name: any business marquis, sign, letterhead, business card, pamphlet, brochure, magazine, flyer, newsletter, sales aid, advertisement or other associated tangible materials which NSMY uses in its activities with the Independent Distributor Network or the public to enhance its image and competitiveness in the Territory and which NSMY has not purchased from or procured through NSI or NSEHK. NSMY Commercial Materials shall not, for the purposes of this Agreement, include Business Portfolios.
- 1.14 **“NSMY Product”** shall mean any product or services bearing a Licensed Mark and Name in accordance with the terms of this Agreement that NSMY has not purchased or procured from or through NSI or its Affiliates including NSEHK. Products shall not, for the purposes of this Agreement, include Business Portfolios.
- 1.15 **“Royalty”** shall mean the royalty payable under this Agreement as set forth in Section 2.5 of Article II
- 1.16 **“Territory”** shall mean the Federation of Malaysia.

## **ARTICLE II GRANT OF NON EXCLUSIVE LICENSE; ROYALTIES**

### **2.1 Grant of Exclusive License**

NSI hereby grants to NSMY a license and right to use, in accordance with this Agreement and in the Territory, the Licensed Marks and Names on the NSMY Products approved in advance in writing by NSI, on Business Portfolios and NSMY Commercial Materials and also, in the case of the trademark, “Nu Skin”, in the corporate name of NSMY.

### **2.2 NSI’s Interest in Licensed Marks and Names**

Except for the limited rights granted by this Agreement for the term of this Agreement, NSI hereby retains legal title to and beneficial ownership of and all rights to the Licensed Marks and Names and all intellectual property rights related thereto for all purposes, including but not limited to, the bringing or defending of any legal action in the Territory which NSI deems reasonable to protect its rights therein. NSMY agrees to assist NSI in any manner to protect NSI’s rights in the Licensed Marks and Names which NSI may reasonably request. NSI shall reimburse NSMY for any third party costs incurred by NSMY in providing such assistance.

### **2.3 NSMY’s Acknowledgment of Value of Licensed Marks and Names**

NSMY recognizes and agrees that NSI has expended considerable time, effort and resources to develop, register, apply for

registrations, maintain and enhance the value and reputation of, or to obtain licenses to use and to grant sub-licenses to use, the Licensed Marks and Names.

NSMY further recognizes and agrees that it will derive considerable benefit from its use of the Licensed Marks and Names in the Territory and from NSI's efforts and expenditures in respect of the Licensed Marks and Names.

## **2.4 Warranty of Title & Rights**

NSI hereby represents and warrants that it is the sole and exclusive owner of the Licensed Marks and Names, or has a valid license to use the Licensed Marks and Names in the Territory, and that to the best of its knowledge and information, no claim exists or has been made contesting NSI's ownership of and title to, or right to use, the Licensed Marks and Names.

## **2.5 Royalty**

As compensation for the exclusive licenses granted pursuant to the terms of this Agreement, NSMY shall pay to NSI a royalty equal to fourteen percent (14%) (or as otherwise mutually agreed upon in writing by the Parties) of the Net Sales during the entire term of this Agreement. If any of the NSMY Products or NSMY Commercial Materials are based on or contain NSI proprietary information, formulas or ingredients of NSI, the applicable royalty shall be eighteen percent (18%) of Net Sales for such NSMY Products or NSMY Commercial Materials, or as otherwise mutually agreed upon in writing by the Parties.

# **ARTICLE III COMPUTATION AND PAYMENT TERMS**

## **3.1 Royalty Payments**

**3.1(a)** Within thirty (30) days from the close of each month, NSMY shall deliver to NSI, by electronic transmission or such other medium as the Parties shall agree upon from time to time, a statement of its Net Sales and a computation of the Royalty payable hereunder on such Net Sales. Concurrently with the delivery of such statement, NSMY shall make payment, in accordance with Section 3.3 of Article III hereof, of such Royalty less such withholding tax as may be chargeable on such Royalty.

**3.1(b)** For purposes of computing the Royalty payable hereunder, NSMY Products and NSMY Commercial Materials shall be considered sold when recognized for accounting purposes as a sale by NSMY in accordance with GAAP.

## **3.2 Records**

NSMY shall keep complete and accurate records of its activities under this Agreement and permit NSI and its authorized representatives (including auditors) to inspect and, if required by NSI, to audit such records at all reasonable times.

## **3.3 Payment Terms**

All amounts payable by NSMY to NSI under this Agreement shall be calculated and invoiced in Ringgit but shall be paid in U.S. Dollars. For the purposes of such payment, amounts stated in Ringgit shall be converted on the date payment is initiated at the selling rate for US Dollars published on such date by such financial institution as is approved by NSI in writing from time to time. Payments shall be made either directly to NSI in immediately available funds by wire transfer to an account designated by NSI, or by such other means of payment acceptable to NSI from time to time.

## **3.4 Exchange Regulations**

If NSMY shall be prevented by exchange regulation or restraint from making payment of any sum due to NSI in U.S. Dollars then NSMY shall make payment in such other currency as may be selected by NSI and be permitted by exchange regulations.

## **3.5 Default Rate**

Without limiting or prejudice to any of NSI's other rights and remedies under this Agreement:

**3.5(a)** an amount due and outstanding under the terms of this Agreement and not paid within sixty (60) days from the date on which such amount is due and payable in accordance with the payment provisions herein, shall bear interest (both before and after judgment) at the rate of ten percent (10%) per annum from the due date and until the date of actual payment; and

**3.5(b)** NSI may (but shall not be obligated to) waive, whether with conditions or otherwise, its right to the payment of interest payable pursuant to Section 3.5(a) of Article III hereof, whether in respect of all or some of the monies

due and payable from time-to-time by NSMY to NSI and for such period as NSI deems appropriate in its absolute discretion.

- 3.5(c)** Interest shall accrue daily and be calculated on the basis of a three hundred sixty (360) day year and the actual number of days elapsed in any partial calendar month.

### **3.6 Withholding Tax**

NSMY shall make due payments to the Inland Revenue Board, Malaysia, of such withholding tax (if any) as may be chargeable on and deducted from the royalty and any interest thereon payable hereunder. NSMY shall furnish to NSI within fourteen (14) days of each payment, a copy of the prescribed form for such payment and NSMY's letter to the Inland Revenue Board accompanying such payment.

### **3.7 No Set-Off**

Subject to the provisions of Section 3.6 of Article III hereof, all sums payable by NSMY to NSI under this Agreement shall be paid without any set-off, counter-claim, qualification or condition whatsoever.

## **ARTICLE IV CERTAIN COVENANTS**

### **4.1 Use of Licensed Marks and Names**

NSMY may use the Licensed Marks and Names only in accordance with the terms of this Agreement.

- 4.1(a)** The use of the NSI Trademark, "Nu Skin", in NSMY's corporate name in any manner other than that in which it is used as at the date of this Agreement shall be subject to NSI's prior written consent which may be withheld or granted with or without conditions at NSI's absolute discretion.
- 4.1(b)** All NSMY Products and NSMY Commercial Materials shall be approved by NSI and shall be manufactured and produced in accordance with standards, specifications and instructions approved by NSI;
- 4.1(c)** NSI shall have the right to inspect the premises of NSMY and those of any of NSMY's subcontractors at which NSMY Product(s) are being manufactured, at reasonable times, and also to receive samples of such NSMY Product(s), in accordance with a reasonable schedule to be established promptly between NSI and NSMY;
- 4.1(d)** NSMY shall correct, as promptly as possible, any defects in the NSMY Product(s) and/or the manufacturing processes therefor brought to NSMY's attention by NSI or otherwise; and,
- 4.1(e)** NSMY shall submit to NSI for prior approval, which approval will not be unreasonably withheld, labels, packaging, advertising and promotional materials, in relation to which any of the Licensed Marks and Names are proposed to be used, including the marking legends intended to be used in relation thereto.
- 4.1(f)** NSMY accepts full liability in every respect for all such NSMY Products and NSMY Commercial Materials as are manufactured or produced and sold and/or distributed by NSMY. Except where such claims are attributable to NSI's wrongful act, willful default or gross negligence, NSMY shall indemnify and hold NSI harmless against any and all claims for damages, costs and interests arising directly or indirectly from the manufacture, production, sale and/or distribution of the NSMY Products and NSMY Commercial Materials.

### **4.2 Modifications**

NSMY shall make no modification to the Licensed Marks and Names without the express, prior written consent of NSI, which consent may be withheld or granted with or without conditions as NSI deems appropriate at its absolute discretion.

### **4.3 Prejudicial Use**

NSMY shall not use the Licensed Marks and Names in any way that will prejudice NSI's rights therein. Without limiting the foregoing, NSMY shall not attempt to vary or cancel any registration of the Licensed Marks and Names, shall not hold itself out as or represent it is the owner of the Licensed Marks and Names, or assist any other person in any of the foregoing. NSMY shall not alter in any way the Licensed Marks and Names and shall not combine the Licensed Marks and Names with any intellectual property of NSMY in a manner that could create joint rights in the Licensed Marks and Names.

### **4.4 Labels**

At the request of NSI, NSMY Products or NSMY Commercial Materials that bear any of the Licensed Marks and Names shall also clearly indicate NSI's ownership of the Licensed Marks and Names in such manner as shall be approved by NSI.

#### **4.5 Goodwill**

All goodwill generated by use of the Licensed Marks and Names shall inure to NSI, and, upon termination of this Agreement, NSMY shall not have any claim against NSI for compensation for loss of distribution rights, loss of goodwill or any similar loss or in respect of any benefit (if any) derived by NSI from the use of the Licensed Marks and Names.

#### **4.6 Export of Products**

NSMY shall not export any NSMY Products to any country outside the Territory without the prior written consent of NSI, which consent may be withheld or granted with or without conditions as NSI deems appropriate at its absolute discretion.

#### **4.7 Prohibited Uses**

Except for the Licensed Marks and Names, NSMY shall not have the right to use, and expressly agrees not to use, any trademarks, service marks, trade names, logos, marks or devices owned, used or licensed by NSI or an Affiliate of NSI, or which NSI or an Affiliate of NSI has the bona fide intent to use, whether or not such marks, names or devices are registered or unregistered.

### **ARTICLE V TERM**

This Agreement shall commence and take effect on September 28, 2001, and the initial term shall end on December 31, 2004 unless earlier terminated pursuant to the provisions of Article VI of this Agreement. This Agreement shall renew automatically for successive one (1) year terms upon expiration of the initial term or any renewal term unless terminated by either Party by written notice given not less than (90) days prior to the end of the then current term of this Agreement or in accordance with the provisions of Article VI hereof.

### **ARTICLE VI TERMINATION**

#### **6.1 Termination for Insolvency/Receivership**

This Agreement may be terminated by either Party immediately or at any time after the occurrence of any of the following events:

- 6.1(a)** the other Party shall commence any case, proceeding or other action:
- (i) under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization or relief of debtors, seeking to have an order for relief entered with respect to it, or seeking to adjudicate it a bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, compensation or other relief with respect to it or its debts, or
  - (ii) seeking appointment of a receiver, trustee, custodian or other similar action; or
- 6.1(b)** there shall be commenced against the other Party any case, proceeding or other action of a nature referred to in Section 6.1(a) of Article VI hereof which either results in the entry of an order for relief or any such adjudication or appointment or remains undismissed, undischarged or unbonded for a period of ninety (90) days.
- 6.1(c)** if the other Party causes or allows a judgment in excess of ten percent (10%) of its assets as reflected on its most recent balance sheet to be entered against it or involuntarily allows a lien, security interest, or other encumbrance to attach to its assets which secures an amount in excess of ten percent (10%) of its assets.

#### **6.2 Termination for Breach of this Agreement**

- 6.2(a)** This Agreement may be terminated immediately by NSI if NSMY fails to pay on any due date any monies payable hereunder by NSMY to NSI, and such failure continues for a period of thirty (30) days from NSMY's receipt of a written notice given by NSI requiring such payment.
- 6.2(b)** This Agreement may be terminated by either Party, if the other Party is in default in the performance of any material obligation hereunder (other than NSMY's obligation to pay the monies referred to in Section 6.2(a)), and such default has not been cured within sixty (60) days after receipt by the defaulting Party of written notice of such default served by the other Party requiring such cure.

#### **6.3 Termination for Breach of Shareholders Agreement/ Upon Termination of Other Intercompany Agreements**

This Agreement may be terminated by NSI if:

- 6.3(a)** any of the parties (other than Nu Skin Enterprises, Inc.) to the Shareholders Agreement by and between Nu Skin Enterprises, Inc. and the other shareholders of Nu Skin Malaysia Holdings Sdn. Bhd (Company No. 552189-P) ("NSMH"), the parent/holding company of NSMY, breaches such party's obligations thereunder and fails to cure such breach within thirty (30) days after its receipt of a written notice of such breach is given by Nu Skin Enterprises, Inc. requiring such cure;
- 6.3(b)** the aforesaid Shareholders Agreement or any other(s) of the Intercompany Agreements is/are terminated for any reason whatsoever;
- 6.3(c)** by agreement between the parties to the aforesaid Shareholders Agreement, all of the issued shares in NSMY are sold by NSMH to a third party or NSMY's business and assets are sold by NSMY to a third party;
- 6.3(d)** Nu Skin Enterprises, Inc., NSI or other Affiliate of NSI ceases to hold directly or indirectly, an equity interest of at least thirty percent (30%) in NSMY; or
- 6.3(e)** persons representing from time-to-time such of Nu Skin Enterprises, Inc., NSI or other Affiliates of NSI as is/are the holder(s) of an indirect thirty percent (30%) equity interest in NSMY, cease (for any reason other than their removal by such holder of an indirect thirty percent (30%) equity interest in NSMY) to hold office such that the number of directors of NSMY representing Nu Skin Enterprises, Inc., NSI or other Affiliates constitute less than thirty percent (30%) of the total number of NSMY's Board of Directors.

#### **6.4 Termination for Loss of NSMY's Direct Sales License**

NSI shall have the right to terminate this Agreement in the event any license, government approval, or corporate authorization necessary to conduct the business in the Territory as contemplated by the Parties and the Intercompany Agreements is terminated, not obtained or renewed, or otherwise expires.

## **ARTICLE VII EFFECT OF TERMINATION**

### **7.1 Obligation of NSMY Upon Termination**

If this Agreement is terminated by either Party, NSMY shall:

- 7.1(a)** change its corporate name to one which does not include NSI's Trademark "Nu Skin" within ninety (90) days from the date of termination;
- 7.1(b)** notwithstanding any other provision to the contrary herein, immediately pay all monies then remaining unpaid and payable by NSMY to NSI and whether or not such monies shall then have become due for payment;
- 7.1(c)** destroy all NSMY Products and NSMY Commercial Materials bearing the Licensed Marks and Names within forty-five (45) days from the date of termination, or repackage or modify such NSMY Materials so that the Licensed Marks and Names are no longer contained on or in such NSMY Products or NSMY Commercial Materials;
- 7.1(d)** immediately discontinue use of the Licensed Marks and Name in any form and not adopt in place thereof any word or design that is identical therewith or confusingly similar thereto; and
- 7.1(e)** immediately return to NSI, without retaining copies, all manuals, drawings, and standards and any other documents and materials provided by NSI to NSMY relating to the use of the Licensed Marks and Names.

### **7.2 Survival of Obligations**

The termination or expiration of this Agreement shall be without prejudice to the rights and remedies of a Party in respect of any antecedent breach of this Agreement. The obligations of a Party to pay any sums which are due and payable as of the expiration or termination of this Agreement and its obligations under Article IX and under Article X hereof shall survive the expiration or termination of this Agreement.

### **7.3 Reversion of Rights**

Upon termination of this Agreement by NSI, all rights and licenses herein granted to NSMY shall immediately cease and shall revert to NSI, and NSMY shall cease representing to any third party that it has any right to use the Licensed Marks and



## **ARTICLE VIII GOVERNMENTAL APPROVALS, LAWS AND REGULATIONS**

### **8.1 Regulatory Approvals and Filings**

NSMY agrees to obtain, or cause to be obtained, at its sole cost and expense, any governmental approval and make, or cause to be made, any filings or notifications required under all applicable laws, regulations and ordinances of the Territory to enable this Agreement to become effective or to enable any payment pursuant to the provisions of this Agreement to be made. NSMY agrees to keep NSI informed of the progress in obtaining all such government approvals. NSMY agrees to cooperate with NSI and to take such actions as NSI shall reasonably request in order to obtain such approvals.

### **8.2 Compliance with Law**

Each Party agrees to refrain from any action that will cause the other party to be in violation of any applicable law, regulation, or ordinance of the Territory or the United States or elsewhere or any international convention or bilateral or multilateral treaty to which the Territory or the United States is a signatory, including, without limitation, the U.S. Foreign Corrupt Practices Act of 1977, the U.S. Export Control Laws, and the U.S. Anti-Boycott laws.

## **ARTICLE IX INFRINGEMENT; INDEMNIFICATION**

### **9.1 No Known Claims**

NSI hereby represents and warrants that to the best of its knowledge, as of the date hereof, there are no infringement or misappropriation suits pending or filed or threatened against NSI within the Territory that relate to the Licensed Marks and Names and NSI is not presently aware of any such infringement or misappropriation.

### **9.2 Infringement Indemnity**

NSI shall indemnify and hold NSMY harmless from and against all claims, actions, suits, proceedings, losses, liabilities, costs, damages and attorneys' fees in respect of a third party claim alleging infringement or misappropriation by NSMY in respect of its use of the Licensed Marks and Names in the Territory; provided that NSMY shall give NSI prompt written notice of any such claim, action, suit or proceeding and, without limiting the generality of Section 2.2 of Article II hereof, shall cooperate with NSI in the defense of any such claim, action, suit or proceeding. Notwithstanding the foregoing, NSI shall have no obligation to indemnify NSMY for any liabilities arising out of NSMY's failure or the failure of the NSI Independent Distributors in the Territory to utilize the Licensed Marks and Names

**9.2(a)** in the manner for which the Licensed Marks and Names are reasonably intended,

**9.2(b)** in compliance with NSI's policies and procedures or

**9.2(c)** as contemplated by the Intercompany Agreements.

### **9.3 Right to Select Counsel**

NSI shall have the right to select counsel in any such claim, action, suit or proceeding.

### **9.4 Modification by NSI to Licensed Marks and Names**

In the event that any such claim, action, suit or proceeding is successful, NSI shall use reasonable efforts to make such changes in the Licensed Marks and Names to permit NSMY to continue to use of the Licensed Marks and Names free and clear of all infringement and misappropriation.

### **9.5 Notice by NSMY**

NSMY shall give NSI prompt written notice of any infringement or misappropriation of the Licensed Marks and Names by any third party.

### **9.6 Control of Actions**

NSI shall have the sole right to initiate any and all legal proceedings against any such third party and, without limiting the generality of Section 2.2 of Article II hereof, NSMY shall cooperate with NSI in the pursuit of any such proceeding. NSI shall retain any damage award obtained from such third party.

## **ARTICLE X CONFIDENTIALITY**

### **10.1 NSMY Confidentiality**

NSMY agrees that, during and after the term of this Agreement, NSMY shall maintain in confidence all NSI Confidential Information and shall not disclose any NSI Confidential Information to any third party or use any NSI Confidential Information for any purpose whatsoever except as contemplated by this Agreement. In maintaining the confidentiality of NSI Confidential Information, NSMY shall exercise the same degree of care that it exercises with its own confidential information, and in no event less than a reasonable degree of care. NSMY shall, without limiting its obligation to maintain the NSI Confidential Information in confidence, use commercially reasonable efforts to ensure that each of its employees and contractors holds in confidence and makes no use of any NSI Confidential Information for any purpose other than those permitted by this Agreement. NSMY shall use its best efforts to ensure that no person other than its employees shall have access to NSI Confidential Information without the prior written consent of Nu Skin, and shall restrict access to NSI Confidential Information to those having a need for access thereto.

### **10.2 NSI Confidentiality**

NSI agrees that, during and after the term of this Agreement, NSI shall maintain in confidence all NSMY Confidential Information and shall not disclose any NSMY Confidential Information to any third party or use any NSMY Confidential Information for any purpose whatsoever except as contemplated by this Agreement. In maintaining the confidentiality of NSMY Confidential Information, NSI shall exercise the same degree of care that it exercises with its own confidential information, and in no event less than a reasonable degree of care. Without limiting its obligation to maintain the NSMY Confidential Information in confidence, NSI shall use commercially reasonable efforts to ensure that each of its employees and contractors holds in confidence and makes no use of any NSMY Confidential Information for any purpose other than those permitted by this Agreement. NSI shall use its best efforts to ensure that no person other than its employees and contractors shall have access to NSMY Confidential Information without the prior written consent of NSMY, and shall restrict access to NSMY Confidential Information to those employees and contractors having a need for access thereto.

### **10.3 Exceptions**

The obligation of confidentiality contained in this Agreement shall not apply to the extent that (i) either party is required to disclose information by order or regulation of a governmental agency or a court of competent jurisdiction, provided, however, that such party shall not, to the extent possible, make any such disclosure without first notifying the disclosing party and allowing the disclosing party a reasonable opportunity to seek injunctive relief from (or a protective order with respect to) the obligation to make such disclosure, or (ii) the party receiving disclosed information can demonstrate that (A) the disclosed information was at the time of such disclosure already in, or subsequently becomes part of, the public domain other than as a result of actions of the receiving party, its affiliates, employees, consultants, agents or subcontractors in violation hereof; (B) the disclosed information was received by the receiving party on an unrestricted basis from a source unrelated to the disclosing party provided the receiving party has no knowledge or reason to know that such party is under a duty of confidentiality with respect to such information.

### **10.4 Unauthorized Disclosure**

Each Party acknowledges and confirms that the Confidential Information of the other Party constitutes valuable proprietary information and trade secrets of the other Party and that the unauthorized use, loss or outside disclosure of such information shall cause irreparable injury to the other Party. Each Party shall notify the other Party immediately upon discovery of any unauthorized use or disclosure of Confidential Information of the other Party, and will cooperate with the other Party in every reasonable way to help regain possession of such information and to prevent its further unauthorized use. Each Party acknowledges that monetary damages may not be a sufficient remedy for unauthorized disclosure of the Confidential Information of the other Party and that the other Party shall be entitled, without waiving other rights or remedies, to such injunctive or equitable relief as may be deemed proper by a court of competent jurisdiction, and shall be entitled to recover reasonable attorneys' fees for any action arising out of or relating to a disclosure of such Confidential Information.

### **10.5 Return of Confidential Information**

NSMY shall, upon the request of NSI, return to NSI all NSI Confidential Information, including any copies or reproductions thereof, in NSMY's possession or control.

## **ARTICLE XI NATURE OF RELATIONSHIP**

The relationship of NSMY and NSI shall be and at all times remain, respectively, that of Licensee and Licensor. Nothing contained or implied in this Agreement shall be construed to constitute either Party as the legal representative or agent of the other or to

constitute or construe the Parties as partners, joint ventures, co-owners or otherwise as participants in a joint or common undertaking. Neither Party is authorized to conclude any contract or agreement or make any commitment, representation or warranty that binds the other or otherwise act in the name of or on behalf of the other Party.

## **ARTICLE XII MAINTENANCE OF TRADEMARKS; RECORDING; REGISTRATION OF TRADEMARK**

### **12.1 Registration**

NSI shall use its best efforts to maintain the registrations of the Licensed Marks and Names currently registered in the Territory as set forth in Schedule A hereto. NSI, in its sole discretion, shall have the right to record this Agreement or proof thereof, and to enter NSMY as a registered user in the Territory. NSMY agrees to cooperate, as reasonably requested by NSI, in arranging for such recordings or entries, or in or canceling such recordings or entries in the event of amendments to or termination of this Agreement for any reason.

### **12.2 Cancellation**

Upon the expiration or the termination for any reason of this Agreement, the Parties shall do everything necessary to effect cancellation of the record of NSMY as a registered user of the NSI Trademarks in the Territory.

### **12.3 No Adverse Claims**

NSMY shall not dispute NSI's rights, title or interest in or the validity of NSI's rights to the Licensed Marks and Names or use, register or apply for the registration of any tradenames, words, marks, get ups or designs which are identical with or similar to the Licensed Marks and Names.

### **12.4 Applications**

At the request of NSMY, NSI shall file applications in the Territory for the registration of all new NSI Trademarks that NSMY intends to use in the Territory that have been approved by NSI and included as a Licensed Mark through amendment to the Schedule of Licensed Marks and Names. If any mark used by NSI in the United States of America with respect to certain Products is used by NSMY in the Territory in relation to similar Products, then, whether or not the mark is registered in the Territory, NSMY shall not claim any proprietary interest in any such NSI marks. If any of such marks are immediately registrable in the Territory, NSMY will cooperate with NSI in filing an application for registration of the marks in the name of NSI. If any such marks are not immediately capable of registration because they lack distinctiveness, then at any time when in the opinion of legal counsel for NSI the use of the marks by NSMY has conferred on them sufficient distinctiveness to permit registration in the Territory, NSMY shall, when requested by NSI, do all things necessary and execute all documents required to register such marks in the Territory and assign the eventual registrations to NSI who shall reimburse NSMY for the cost of registration and assignment, but shall not be obligated to make any other payment in consideration for the assignment.

## **ARTICLE XIII MISCELLANEOUS**

### **13.1 Assignment**

This Agreement shall be binding on and inure to the benefit of the respective successors, assigns and beneficiaries of the Parties; provided that neither Party may assign this Agreement or any rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other Party, which consent may be withheld or granted with or without conditions at the sole discretion of such other Party. Any attempted assignment without requisite written consent shall be void and unenforceable. Notwithstanding the foregoing, NSI may assign this Agreement to any of its Affiliates.

### **13.2 Force Majeure**

A Party shall not be responsible for failure to perform hereunder due to force majeure, which shall include, but not be limited to: fires, floods, riots, strikes, labor disputes, freight embargoes or transportation delays, shortage of labor, inability to secure fuel, material, supplies, equipment or power at reasonable prices or on account of shortage thereof, acts of God or of the public enemy, war, terrorist activities or civil disturbances, any existing or future laws, rules, regulations or acts of any government (including any orders, rules or regulations issued by any official or agency or such government) affecting such Party that would delay or prohibit performance hereunder, or any cause beyond the reasonable control of a party. If an event of force majeure should occur, the affected Party shall promptly give notice thereof to the other Party and such affected Party shall use its reasonable best efforts to cure or correct any such event of force majeure.

### **13.3 Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of the State of Utah, applicable to contracts made and to be wholly performed within such State.

#### **13.4 Dispute Resolution**

Any dispute or difference which may arise between the Parties at any time hereafter, whether during the continuance in force of this Agreement or upon or after its termination, touching any matter or thing herein contained or the operation or construction of this Agreement or any matter or thing in any way connected with, arising from or in relation to this Agreement or the rights, duties or liabilities of the Parties hereunder shall be finally settled by arbitration in accordance with International Arbitration Rules of the American Arbitration (“AAA”).

**13.4(a)** A reference to arbitration shall be to three (3) arbitrators.

**13.4(b)** The arbitration shall be held in Provo, State of Utah, United States of America, at the Regional Center and the language to be used in the arbitral proceedings shall be English.

**13.4(c)** Pending the commencement of the arbitral proceedings, either Party may apply, to the courts in Utah and/or Malaysia (which shall have non-exclusive jurisdiction) for the grant of interim injunctions and orders for the protection and preservation of property subject of or relating to this Agreement. For the purposes of this Section 13.4(c) and as provided in the Arbitration Rules of the AAA, arbitral proceedings shall be deemed to commence on the date when the administrator of the AAA receives notice of arbitration from the Party initiating the arbitration.

#### **13.5 Waiver and Delay**

No waiver by either party of any breach or default in performance by the other party, and no failure, refusal or neglect of either party to exercise any right, power or option given to it hereunder or to insist upon strict compliance with or performance of the other party’s obligations under this Agreement, shall constitute a waiver of the provisions of this Agreement with respect to any subsequent breach thereof or a waiver by either party of its right at any time thereafter to require exact and strict compliance with the provisions thereof.

#### **13.6 Notices**

A notice, request and other communication hereunder shall be in writing and shall be deemed to have been duly given, if delivered by hand, courier or registered airmail, or communicated by facsimile, cable or similar electronic means to the address, facsimile number or cable identification number provided below (or as changed in accordance with this Section 13.6) of the Party to whom it is addressed and shall be deemed to be given if delivered by hand or courier, at the time of delivery or if communicated by facsimile, cable or similar electronic means, at the time that receipt thereof has been confirmed by return electronic communication or signal that the message has been received, or if mailed, ten (10) days after dispatch by registered airmail, postage prepaid:-

If to MSMY: Nu Skin (Malaysia) Sdn. Bhd.  
Office Lot 04-01, Level 4  
PNB Darby Park Retail  
No. 10, Jalan Binjai  
50450 Kuala Lumpur  
Malaysia  
Attn: Managing Director  
Facsimile: 603-2170 7799

If to NSI: Nu Skin International, Inc.  
75 West Center Street  
Provo, Utah 84601  
United States of America  
Attn: General Counsel  
Facsimile Number: (801)345-5999

Either Party may change its facsimile number, cable identification number or address by a notice given to the other Party in the manner set forth above.

#### **13.7 Integrated Contract**

This Agreement constitutes the entire agreement between the Parties relating to the subject matter hereof and supersedes all prior or contemporaneous negotiations, representations, agreements and understandings (both oral and written) of the Parties.

#### **13.8 Modification and Amendment**

No supplement, modification or amendment of this Agreement shall be binding unless it is in writing and executed by both of the Parties.

### **13.9 Severability**

To the extent that any provision of this Agreement is (or in the opinion of counsel mutually acceptable to both Parties would be) prohibited, judicially invalidated or otherwise rendered unenforceable in any jurisdiction, such provision shall be deemed ineffective only to the extent of such prohibition, invalidation or unenforceability in that jurisdiction, and only within that jurisdiction. Any prohibited, judicially invalidated or unenforceable provision of this Agreement will not invalidate or render unenforceable any other provision of this Agreement, nor will such provision of this Agreement be invalidated or rendered unenforceable in any other jurisdiction.

### **13.10 Counterparts and Headings**

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. All headings and captions are inserted for convenience of reference only and shall not affect the meaning or interpretation of any provision hereof.

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**IN WITNESS WHEREOF**, the Parties have by their respective duly authorized representatives executed this Agreement as of the day and year first-above written.

**NU SKIN INTERNATIONAL, INC.**

By: /s/ Truman Hunt

Name: Truman Hunt

Its: Executive Vice President

**NU SKIN (MALAYSIA) SDN. BHD.**

By: /s/ Datuk Mohd Nadzmi Bin Mohd Salleh

Name: Datuk Mohd Nadzmi Bin Mohd Salleh

Its: Director

# LICENSE AGREEMENT

## BETWEEN

NU SKIN INTERNATIONAL, INC.

(Company No. 880564-0142)

## AND

NU SKIN (MALAYSIA) SDN. BHD.

(Company No. 402787-V)

**THIS LICENSE AGREEMENT** (hereinafter, this "Agreement") is entered into this 20th day of June 2002 to be effective as of September 28, 2001 between **NU SKIN INTERNATIONAL, INC.** (Company No. 880564-0142), a company organized under the laws of the State of Utah, United States of America and having its principal place of business at 75, West Center Street, Provo, Utah 84601, United States of America ("NSI"), and **NU SKIN (MALAYSIA) SDN. BHD.** (Company No. 402787-V), a corporation organized under the laws of Malaysia and having its registered office at 6th Floor, Menara Boustead, 69, Jalan Raja Chulan, 50200 Kuala Lumpur, Malaysia and a place of business at Office Lot 04-01, Level 4, PNB Darby Park Retail, No. 10, Jalan Binjai, 50450 Kuala Lumpur ("NSMY"). Hereinafter NSI and NSMY shall collectively be referred to as the "Parties" in this Agreement.

## RECITALS

**WHEREAS**, NSI is engaged in the international distribution of various products and related sales aids through a network of independent distributors and has developed a sales compensation plan and related know-how and technology for the distribution of such products and sales aids;

**WHEREAS**, NSMY desires to have the license and right to utilize NSI's network of independent distributors and NSI's sales compensation system and related know-how and technology to market and distribute products in Malaysia as more fully described in this Agreement;

## AGREEMENT

**NOW THEREFORE**, in consideration of the premises, the mutual promises, covenants, and warranties hereinafter set forth and for other valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

## ARTICLE I DEFINITIONS

For the purposes of this Agreement, unless the context otherwise requires or the Parties otherwise agree within the terms of this Agreement, the following words, terms and phrases shall have the meaning assigned to them respectively by this Article I:

- 1.1 **"Affiliate"** shall mean, with respect to any specified person, any other person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, such specified person.
- 1.2 **"Agreement"** shall mean this License Agreement (together with any exhibits and schedules), as the same may be modified, amended or supplemented from time to time.
- 1.3 **"Starter Kit"** shall mean those materials purchased by a NSI Independent Distributor upon the execution of a Distributor Contract which explains the Sales Compensation Plan and other NSI policies, procedures and programs, the contractual relationship with NSI and the marketing support programs for the Territory.
- 1.4 **"Commission Expense Percentage"** shall mean the percentage determined and used by NSI from time to time to calculate the Fixed Commission Expense as more fully described in Article III.
- 1.5 **"Commission Payments"** shall mean any and all monetary obligations due to any NSI Independent Distributor accrued or payable under the terms of the Sales Compensation Plan or any Distributor Contract, but specifically excluding any Special Commission Payments.
- 1.6 **"Copyrights"** shall mean the copyright in any and all protectable software, programs, databases, source codes, applications, literature, marketing materials, product information, and any other copyrightable material owned by NSI or which NSI has a right to use, license or sub-license, relating directly or indirectly to the Independent Distributor Network, Distributor Lists or the Sales Compensation Plan.

- 1.7 **"Derivative Works and Work Product"** shall mean:
- (i) any and all derivative works and work product that is developed from or with the Licensed Property or contains in any manner any portion of the Licensed Property;
  - (ii) any changes, enhancements, or improvements to the Licensed Property; and
  - (iii) any other work product, information, research, trade secrets or intellectual or intangible property, including all copyrights and patents related thereto, created or developed by NSI or NSMY in connection with this Agreement or the distribution of the Products relating to the Independent Distributor Network, the Distributor Lists, the Sales Compensation Plan, Copyrights, and the associated Know How, or the Products.
- 1.8 **"Distributor Contract"** shall mean any contract with NSI pursuant to which NSI authorizes a person to act as a distributor of Products.
- 1.9 **"Distributor Lists"** shall mean any and all lists of present or future NSI Independent Distributors (including those operating in Malaysia) expressed in any medium or format, including any listing of individual or accumulated names, addresses, identification numbers, telephone numbers, gender, sponsor name or other personal information.
- 1.10 **"Fixed Commission Expense"** shall mean, for any period, an amount equal to the product of the Net Commissionable Sales multiplied by the Commission Expense Percentage.
- 1.11 **"GAAP"** shall mean general accepted accounting principles in the Federation of Malaysia.
- 1.12 **"Global Commission Expense"** shall mean all expenses of NSI incurred in operating, managing, and executing the Sales Compensation Plan. These expenses include, but are not limited to, amounts paid to NSI Independent Distributors as Commission Payments as well as NSI's operational costs associated with the calculation of these monthly payments, but specifically exclude Special Commission Payments.
- 1.13 **"Intercompany Agreements"** shall mean the Trademark License Agreement between the Parties, the Distribution Agreement between NSMY and Nu Skin Enterprises Hong Kong, Inc. ("NSEHK"), the Management Services Agreement between NSMY and Nu Skin International Management Group, Inc., and this Agreement.
- 1.14 **"Independent Distributor Network"** shall mean the network of all NSI Independent Distributors.
- 1.15 **"Know-How"** shall mean any information, including, without limitation, any commercial or business information, lists, marketing methods, marketing surveys, processes, specifications, quality control reports, drawings, photographs, or any other information owned by, leased or licensed to NSI, whether or not considered proprietary, relating to the Independent Distributor Network, the Distributor Lists, and the Sales Compensation Plan, which NSI makes available to NSMY pursuant to this Agreement.
- 1.16 **"License Fee"** shall mean the license fee determined in accordance with Section 2.6 of Article II.
- 1.17 **"License Fee Percentage"** shall mean the percentage used to calculate the License Fee as determined in accordance with Section 2.6 of Article II from time to time.
- 1.18 **"Licensed Property"** shall mean the Independent Distributor Network, the Distributor Lists, the Sales Compensation Plan, the Copyrights, and the associated Know-How, and all Derivative Works thereof.
- 1.19 **"Net Commissionable Sales"** shall mean, for any period, the sum of:
- (A) the product of the number of Products sold by NSMY to NSI Independent Distributors during such period multiplied by the applicable commissionable portion of the price to NSI Independent Distributors for each such Product less applicable sales and consumption taxes and returns or refunds reasonably accepted and credited by NSMY during such period, and
  - (B) the commissionable portion of any commissions received by NSMY with respect to sales of third party products by NSI Independent Distributors in Malaysia, less any returns, refunds or credits.

For purposes of the foregoing, "commissionable portion" shall mean that portion of the price or commission on which a commission may be earned as determined under the Sales Compensation Plan and the currency conversion methodology used by NSI in connection with the calculation of Commission Payments for NSI Independent Distributors on a global basis, as modified from time to time in NSI's sole discretion. The commissionable portion of such price or commission shall be determined by NSI in its sole discretion from time-to-time.

- 1.20 **"NSI Confidential Information"** shall mean any and all information that is unique, proprietary or competitively

sensitive to the business of NSI and/or any Affiliate of NSI which NSMY may obtain knowledge of or access to in connection with its relationship with NSI and the transactions contemplated by the Intercompany Agreements, including, but not limited to, information relating to Products, the NSI Independent Distributors, NSI's compensation or commission systems or schemes, pricing methods, historical, current and projected financial information, marketing information, and any and all information, technical data or know-how related to any aspect of NSI's business or technology including data, know-how, formulae, designs, drawings, proposals, specifications, and the terms of this Agreement.

- 1.21 **"NSI Independent Distributor"** shall mean a person who has entered into a Distributor Contract.
- 1.22 **"NSMY Confidential Information"** shall mean any and all information that is unique, proprietary or competitively sensitive to the business of NSMY which NSI may obtain knowledge of or access to in connection with its relationship with NSMY and the transactions contemplated by the Intercompany Agreements, but specifically excluding the NSI Confidential Information.
- 1.23 **"NSMY Revenue"** shall mean the gross revenue of NSMY (excluding applicable sales and other consumption taxes and freight and revenue generated from the sale of Business Portfolio) less any returns or refunds reasonably accepted and credited by NSMY during such period, all as determined in accordance with GAAP.
- 1.24 **"Person"** shall mean any individual, partnership, firm, corporation, joint venture, limited liability company, association, trust, unincorporated organization or other entity,
- 1.25 **"Products"** shall mean any and all goods and services sold by NSI, NSEHK, NSMY or any Affiliate of NSI, NSEHK or NSMY.
- 1.26 **"Resident NSI Independent Distributor"** shall mean any NSI Independent Distributor whose country of residence as shown on the records of NSI is in the Territory.
- 1.27 **"Ringgit"** or "RM" shall mean the lawful currency of the Territory.
- 1.28 **"Sales Compensation Plan"** shall mean the method employed by NSI to calculate Commission Payments paid to the Independent Distributor Network upon the sale of Products, as it may be amended from time to time.
- 1.29 **"Special Commission Payments"** shall mean commission and other incentive payments paid to NSI Independent Distributors in connection with special promotions, incentives and other programs adopted by NSI and/or NSMY which payments are separate from the standard Commission Payments under the Sales Compensation Plan.
- 1.30 **"Territory"** shall mean the Federation of Malaysia.

## **ARTICLE II**

### **GRANT OF LICENSE AND PARTIAL ASSIGNMENT OF OBLIGATIONS; LICENSE FEES**

#### **2.1 Grant of License**

Subject to the terms and conditions of this Agreement, NSI hereby grants to NSMY a limited license to use, in accordance with this Agreement, the Licensed Property in the Territory in connection with the promotion and sale of Products procured from or through NSI or NSEHK or such other Products as may be approved by NSI in writing. NSMY shall not have the right to grant any right, title, use or sublicense for the Licensed Property, or otherwise assign its rights hereunder without the prior written consent of NSI, which may be withheld or granted with or without conditions in the sole discretion of NSI. NSMY is prohibited from using the Licensed Property in connection with any Products that are not procured from or through NSI or NSEHK or otherwise approved in advance and in writing by NSI, in its sole and absolute discretion. NSMY's right to use or access the information or data-base relating to NSI Independent Distributors comprised in the Licensed Property shall not include the right to access commission information relating to NSI Independent Distributors whose current residence, as indicated in the records of NSI, is outside the Territory. Except to the extent permitted by NSI in its sole discretion, NSMY shall have no right to use any information or data-base relating to any distributor who is not a Resident NSI Independent Distributor.

#### **2.2 NSI's Interest in Licensed Property and Derivative Works and Work Product**

Except for the limited rights granted herein for the term of this Agreement, NSI hereby retains all rights and legal title to the Licensed Property and all intellectual property rights related thereto for all purposes, including but not limited to, the bringing or defending of any legal action in the Territory which it deems reasonable to protect its rights therein. NSMY agrees to assist NSI in any manner to protect NSI's rights in the Licensed Property which NSI may reasonably request. NSI shall reimburse NSMY for any third party costs incurred by NSMY in providing such assistance. NSI shall also be the sole owner of all Derivative Works and Work Product and NSMY shall execute such documents and take such action as NSI may



reasonably request to confirm such ownership. NSMY shall not do any act that would or might invalidate or dilute NSI's registration of, or title to, the Licensed Property. NSMY shall not attempt to vary or cancel any registration of the Licensed Property, shall not hold itself out as or represent it is the owner of the Licensed Property, or assist any other person in any of the foregoing. NSMY shall not combine the Licensed Property with any intellectual property of NSMY in a manner that could create joint rights in the Licensed Property.

### 2.3 NSMY's Acknowledgment of Value of Licensed Property

NSMY recognizes and agrees that NSI has expended considerable time, effort and financial resources to develop, maintain, and enhance the Licensed Property for more than 15 years. NSMY further agrees it will derive a considerable benefit from its use of the Licensed Property in the Territory and from NSI's efforts and expenditure in respect of the Licensed Property.

### 2.4 Warranty of Title

NSI hereby warrants and represents that it is the owner of, or has a valid license to use or sublicense the Licensed Property, and to the best of its knowledge and information no claim exists or has been made contesting NSI's ownership, title or right to use said Licensed Property.

### 2.5 Modifications

NSMY shall make no modification to the Licensed Property without the express, prior written consent of NSI, which consent may be withheld or granted, with or without conditions, at NSI's sole and absolute discretion.

### 2.6 License Fee

As compensation for the exclusive license granted by this Agreement, NSMY shall pay to NSI a License Fee equal to the product of the License Fee Percentage multiplied by NSMY Revenue during the applicable measurement period. The initial License Fee Percentage shall be established at four percent (4%) for the period commencing on the date of this Agreement and ending on 31<sup>st</sup> December 2002. The License Fee Percentage will be set for each subsequent calendar year commencing year 2003 as set forth in this Section 2.6 of Article II. On or before November 1st following the end of the third quarter, NSMY shall prepare a report showing an estimate of NSMY Revenue for the year ("Estimated NSMY Revenue") setting forth actual NSMY Revenue for the nine (9) month period ending on September 30 as determined in accordance with GAAP and projected NSMY Revenue for the last three (3) months of the year as forecasted by NSMY. A preliminary License Fee Percentage for the succeeding year (the "New Year") shall be established at a rate equal to the percentage in the table below corresponding to the total amount of Estimated NSMY Revenue as determined above:

License Fee Percentage	NSMY Revenue
4%	< 192,500,000 (Ringgit)
5%	192,500,000 to \$1,925,000,000
6%	\$1,925,000,000 to \$3,850,000,000
7%	\$3,850,000,000 to \$5,775,000,000
8%	> \$5,775,000,000

The new preliminary License Fee Percentage will take effect as of January 1st of the New Year. On or before March 31 of the New Year, NSMY shall submit to NSI an audited income statement for the preceding year. A final License Fee Percentage for the New Year shall be established at a rate equal to the percentage set forth in the table above corresponding to the total amount of actual NSMY Revenue for the previous year. In the event the final License Fee Percentage for the New Year is different from the preliminary License Fee Percentage, the License Fee for the first two months of the New Year shall be recalculated using the final License Fee Percentage. If such recalculation results in a License Fee for such two month period that is less than the License Fee that was calculated using the preliminary License Fee Percentage, NSMY may apply such difference as an offset against future License Fees billed by NSI. In the event such recalculation results in a License Fee for such two month period that is greater than the License Fee calculated using the preliminary License Fee Percentage, NSMY shall pay the difference to NSI on or before April 30th. The final License Fee Percentage for the New Year shall be used to calculate the License Fee for all the remaining months in the New Year. Either Party also may request a review of the License Fee Percentage at any time it determines that a change in actual NSMY Revenue warrants a review and an accompanying change in the License Fee Percentage effective prior to the annual change described above. In the event of such a request a procedure similar to that described above shall be used utilizing actual revenue through the date of the request plus projected revenue through the remainder of the year as forecasted by NSMY. The change shall be effective as of the 1st day of the month following the month in which the review takes place. Both parties agree to complete the review within 30 days following the date of the request.

### 2.7 Payment of License Fee

The procedures for payment of the License Fee payable hereunder are as follows:

2.7(a) Within thirty (30) days following the close of each month, NSMY shall deliver to NSI, by electronic

transmission or such other medium as the Parties shall agree to from time to time, a statement of the NSMY Revenue during such month in the Territory and a computation of the License Fee payable under Section 2.6 of Article II hereof. Concurrently with delivery of such statement, NSMY shall make payment, in accordance with Section 4.1 of Article IV hereof, of such License Fee less such withholding tax as may be chargeable on such License Fee.

- 2.7(b)** For purposes of computing the License Fee, Products shall be considered sold when recognized for accounting purposes as a sale by NSMY as per GAAP.

### **ARTICLE III COMMISSION PAYMENTS**

#### **3.1 Commission Payments**

NSMY confirms its knowledge of the provisions of the Distributor Contracts and the Sales Compensation Plan and that NSI is obligated to make Commission Payments to each NSI Independent Distributor based on the aggregate Commissionable Sales by such NSI Independent Distributor and its downline distributors globally (both in and outside the country of residence of such NSI Independent Distributor). NSMY agrees to be responsible for and pay an amount equal to the Fixed Commission Expense to NSI.

#### **3.2 Payment Procedure**

NSMY agrees to pay on behalf of NSI to NSI Resident Independent Distributors the total Commission Payments to which they are entitled pursuant to their Distributor Contracts (for sales both within and outside the Territory), whether such Commission Payments are greater or less than the Fixed Commission Expense for such month. The Parties further agree to settle the difference between the amount of such Commission Payments paid by NSMY in each month and the Fixed Commission Expense in such month. The procedures for such payment and settlement are as follows:

- 3.2(a)** Within eight (8) days following the close of each month, NSMY shall deliver to NSI, by electronic transmission or such other medium as the Parties shall agree to from time to time, a statement of NSMY's Net Commissionable Sales during such month (including details of the sales made to each NSI Independent Distributor during such month) and of such other items as NSI shall reasonably request from time to time (the "Detailed Sales Report").
- 3.2(b)** NSI shall use its commercially reasonable best efforts to deliver to NSMY, by electronic transmission or such other medium as the Parties shall agree to from time to time, by the later of twelve (12) days after receipt of the Detailed Sales Report or twenty (20) days after the end of such month, a calculation of the Commission Payments due to Resident NSI Independent Distributors under their Distributor Contracts for such month (the "Monthly Commission Amount"), a calculation of the Fixed Commission Expense for such month and such other items as NSMY shall reasonably request from time to time (the "Commission Statement").
- 3.2(c)** By the later of thirty (30) days after receipt of the Commission Statement or thirty (30) days after the end of such month, NSMY shall pay Commission Payments due to the Resident NSI Independent Distributors. Concurrently with or promptly after such payment NSMY shall:
- (i) if the aggregate Monthly Commission Amounts paid to all Resident NSI Independent Distributors is less than the Fixed Commission Expense for such month, pay to NSI the deficiency in accordance with the procedures set forth in Section 4.1 of Article IV hereof, or
  - (ii) if the aggregate Monthly Commission Amounts paid to all Resident NSI Independent Distributors exceeds the Fixed Commission Expense for such month, issue an invoice to NSI for reimbursement of such excess amount.

In the event NSMY shall have given NSI an invoice for reimbursement of excess Commission Payments as set forth in Section 3.2(c)(ii) of Article III hereof, NSI shall pay the amount so invoiced to NSMY pursuant to the procedures set forth in this Section 4.1 of Article IV hereof within thirty (30) days after receipt thereof. In lieu of making payment of the amount of excess Commission Payments pursuant to the foregoing provisions, NSI shall be entitled to set off of such amount against any License Fees or other monies payable by NSMY to NSI.

- 3.2(d)** The Parties acknowledge that the initial Commission Expense Percentage to be used in calculating the Fixed Commission Expense has been set on the basis of NSI's historical experience. The initial Commission Expense Percentage shall be forty-three and one-half percent (43.5%). The Parties agree that the Commission Expense Percentage used in calculating the Fixed Commission Expense shall remain consistent with actual commission expense as a percentage of commissionable sales of Products to NSI Independent Distributors globally plus the costs incurred by NSI in calculating and administering the Commission Payments. The initial Commission Expense Percentage may be changed by NSI at anytime to reflect changes in the amount of actual Commission

Expenses as a percentage of total commissionable sales globally by providing thirty (30) days advance written notice of any such change. Such change shall take effect on the date set forth in such notice. NSMY shall have the right to request back-up to support any such change in the percentage.

## **ARTICLE IV PAYMENT TERMS**

### **4.1 Payments to NSI**

All amounts payable by NSMY to NSI under this Agreement shall be invoiced in Ringgit and paid in US Dollars. For purposes of determining the US Dollar amount thereof due and payable by NSMY to NSI, the License Fees and all other monies computed in Ringgit payable by NSMY to NSI under this Agreement shall be converted to US Dollars on the date payment is initiated at the selling rate for US Dollars published on such date by such financial institution as is approved by NSI in writing from time to time. NSMY shall cooperate in good faith with NSI in timing payments so as to minimize any foreign exchange risks. Payments shall be made either directly to NSI in immediately available funds by wire transfer to an account designated by NSI or by such other means of payment acceptable to NSI from time to time.

### **4.2 Payments to NSMY**

All amounts payable by NSI to NSMY under this Agreement shall be paid in U.S. Dollars. For the purposes of such payment, amounts stated in Ringgit shall be converted at the buying rate for US Dollars published by ABN-AMRO Bank Berhad, Kuala Lumpur on the date NSI initiates such payment. Payments shall be made either directly to NSMY in immediately available funds by wire transfer to an account designated by NSMY or by such other means of payment acceptable to NSMY from time to time. NSMY shall work with and cooperate with NSI with respect to the timing of payments in order to assist NSI in managing foreign currency fluctuation risks.

### **4.3 Exchange Regulations**

If NSMY shall be prevented by exchange regulation or restraint from making payment of any sum due to NSI in US Dollars then NSMY shall make payment in such other currency as may be selected by NSI and be permitted by exchange regulations.

### **4.4 Default Rate**

Without limiting or prejudice to any of NSI's other rights and remedies under this Agreement:

**4.4(a)** amounts due and outstanding under the terms of this Agreement and not paid within sixty (60) days from the date on which such amount is due and payable in accordance with the payment provisions herein, shall bear interest (both before and after judgment) at the rate of ten percent (10%) per annum.

**4.4(b)** NSI may (but shall not be obligated to) waive, whether with conditions or otherwise, its right to the payment of interest payable pursuant to Section 4.4(a) of Article IV hereof, whether in respect of all or some of the monies due and payable from time-to-time by NSMY to NSI and for such period as NSI deems appropriate in its absolute discretion.

### **4.5 Withholding Tax**

NSMY shall make due payments to the Inland Revenue Board, Malaysia, of such withholding tax (if any) as may be chargeable on and deducted from the License Fee and any interest thereon payable hereunder and any other payments which may be subject to withholding tax (if any) and shall furnish to NSI within fourteen (14) days of each payment, a copy of the prescribed form for such payment and NSMY's letter to the Inland Revenue Board accompanying such payment. A copy of the receipt issued to NSMY for each payment made as aforesaid shall be delivered by NSMY to NSI within fourteen (14) days from NSMY's receipt thereof.

### **4.6 No Set-Off**

Subject to the provisions of Section 4.5 of Article IV hereof, all sums payable by NSMY to NSI under this Agreement shall be paid without any set-off, counter-claim, qualification, or condition whatsoever.

### **4.7 Records**

Each Party shall keep complete and accurate records of its compliance with its obligations under this Agreement and permit the other Party and its authorized representatives (including auditors) to inspect and, if such other Party so requires, to audit such records at all reasonable times.

**ARTICLE V**  
**CERTAIN OBLIGATIONS OF THE PARTIES**  
**UNDER THE AGREEMENT**

**5.1 Certain Obligations, Rights and Duties of NSI**

NSI agrees that, in addition to its other obligations under this Agreement, NSI will maintain and provide support for the Sales Compensation Plan. NSI agrees, among other things:

- 5.1(a)** to maintain a computer system, including hardware, software, data links, computer peripherals, printers, etc. to adequately fulfill NSI's obligations under the Sales Compensation Plan;
- 5.1(b)** to receive and approve or reject all distributor agreements submitted by Resident NSI Independent Distributors;
- 5.1(c)** to provide necessary training and support to NSMY relating to the Resident NSI Independent Distributors, including information relating to training methods, motivational strategies, convention and event planning, technical policies and procedure knowledge, etc;
- 5.1(d)** to receive and use NSMY's sales information to compute the correct and appropriate payments to the Resident NSI Independent Distributors as set forth in Section 3.2(b) of Article III hereof;
- 5.1(e)** to enforce its policy and procedures and, in consultation with NSMY, to discipline NSI Independent Distributors as it deems necessary to help ensure that the reputation of NSI is not damaged;
- 5.1(f)** to maintain a record of the Distributor Contracts and, save for information concerning Commission Payments and special Commission Payments by NSI to NSI Independent Distributors whose country of residence, as shown in NSI's records, is not in the Territory, provide to NSMY, such information relating thereto as NSMY may reasonably request; and
- 5.1(g)** to perform any other function or provide the necessary support to comply with the terms of this Agreement and to otherwise support and maintain the Independent Distributor Network within the Territory.

**5.2 Certain Obligations, Rights and Duties of NSMY**

In addition to its other obligations under this Agreement NSMY agrees, among other things:

- 5.2(a)** to maintain, at its sole cost and expense, such facilities and other places of business within the Territory necessary to effect the purposes and intentions of this Agreement and to bear all costs and expenses it incurs in the negotiation, memorialization, execution and performance of all leases, rentals, equipment, salaries, taxes, licenses, insurance, permits, telephone, telegraph, promotional, advertising, travel, accounting, legal and such similar expenses, relating to the business of NSMY under the terms and conditions of this Agreement, unless otherwise agreed in writing by the Parties;
- 5.2(b)** to manage its business affairs in such a manner that the reputation of NSI is not damaged;
- 5.2(c)** to sell Business Portfolio to potential NSI Independent Distributors in accordance with all applicable laws and industry standards;
- 5.2(d)** to collect requests for Distributor Contracts from potential NSI Independent Distributors and forward these contracts to NSI in a timely manner (provided that all such requests for Distributor Contracts shall be reviewed for acceptance or rejection by NSI in the United States and in no instance shall NSMY accept or reject such requests for Distributor Contracts,);
- 5.2(e)** to lend assistance to NSI Independent Distributors in the Territory;
- 5.2(f)** to transmit information regarding Net Sales to NSI Independent Distributors and such other information as NSI may reasonably request;
- 5.2(g)** to pay Commission Payments to Resident NSI Independent Distributors as set forth in Article III hereof;
- 5.2(h)** to use its best efforts to monitor the activities of Resident NSI Independent Distributors;
- 5.2(i)** to take any action against Resident NSI Independent Distributors for violation of the terms and conditions of a Distributor Contract, NSI's policies and procedures, or any other rules and regulations of NSI or NSMY as NSI shall reasonably request; and
- 5.2(j)** to perform any other function or provide support as NSI shall reasonably request to enable NSI to fully perform

its obligations to NSI Independent Distributors under the Sales Compensation Plan and their Distributor Contracts.

### **5.3 Board Representation**

NSI shall be entitled to appoint a person selected by NSI to hold office as a Director of NSMY and to remove such appointee at any time and to appoint another in his stead. By its execution of this Agreement, NSMY confirms that its shareholders have knowledge of NSI's right of appointment described in this Section 5.3 and that the shareholders of NSMY have entered into a shareholders agreement whereby they have acknowledged and agreed to NSI's right of appointment aforesaid.

## **ARTICLE VI BUSINESS PORTFOLIO SALES**

### **6.1 Agreement to Purchase Business Portfolio**

The Parties acknowledge that by this Agreement, NSMY is granted a license to use the Licensed Property, including the Independent Distributor Network, in the Territory. NSMY shall use its best efforts to support the development of the Independent Distributor Network in the Territory by selling to potential NSI Independent Distributors in the Territory, Business Portfolio which NSMY has either:

**6.1(a)** purchased from NSI, or

**6.1(b)** has sourced and priced locally, or any part thereof, subject to NSI's review, approval and general supervision and in accordance with instructions and specifications given by NSI.

### **6.2 Pricing**

The Parties agree that the price of Business Portfolio shall be sold at such prices as the Parties shall agree and as may be adjusted from time to time by agreement between the Parties in writing.

### **6.3 Payment Method**

NSMY shall pay in the manner set forth in Article III hereof, the prices stated in the commercial invoices for Business Portfolio shipped under this Agreement and all import and other duties and taxes chargeable thereon.

### **6.4 Quantities**

NSMY agrees to purchase sufficient quantities of the Business Portfolio from NSI to fill, in a timely manner, orders received from potential NSI Independent Distributors in the Territory.

### **6.5 Quality of Business Portfolio**

NSI shall use its best efforts to maintain and augment the quality, image and value of the Business Portfolio such that Business Portfolio sold in the Territory are consistent with the quality of those sold in the United States of America.

### **6.6 Limited Warranty**

NSMY shall work with NSI in connection with the development of the Business Portfolio.

**6.6(a)** NSI shall have the right to grant final approval over each form of the Business Portfolio proposed by NSMY.

**6.6(b)** NSI warrants that Business Portfolio sold to NSMY pursuant to this Agreement will be consistent with the form of Business Portfolio most recently approved by NSI and shall be free from defects subject to NSMY making a claim within the time period described below.

**6.6(c)** If NSMY determines that any Business Portfolio supplied under this Agreement are not consistent with the form of Business Portfolio most recently approved by NSI or are materially defective in any manner, a claim for a refund of the price paid must be made within forty-five (45) days from the day such Business Portfolio are received in the Territory.

**6.6(d)** NSI agrees to refund, or credit the account of NSMY, for the purchase price of such non-merchantable Business Portfolio provided that NSMY either returns the non-conforming or defective Business Portfolio or destroys them as instructed by NSI.

**6.6(e)** In the event no claim is made within such forty-five (45) days, NSI shall have no obligation to provide a refund of the price paid.

**6.6(f)** Except as expressly provided in this Section 6.6 of Article VI hereof, no representations or warranties by NSI may be implied or are given by NSI regarding the Business Portfolio whether as to quality, merchantability, fitness for a particular purpose or otherwise.

## **ARTICLE VII GOVERNMENTAL APPROVALS, LAWS AND REGULATIONS**

### **7.1 Government Approvals**

NSMY agrees to obtain, or cause to be obtained, at its sole cost and expense, any governmental approval and make, or cause to be made, any filings or notifications required under all applicable laws, regulations and ordinances in the Territory to enable this Agreement to become effective or to enable any payment pursuant to the provisions of this Agreement to be made. NSMY agrees to keep NSI informed of its progress in obtaining all such government approvals.

### **7.2 Compliance with Laws**

Each Party agrees to refrain from any action that will cause the other Party to be in violation of any applicable law, regulation, or ordinance of any jurisdiction in the Territory or the United States or elsewhere or any international convention or bilateral or multilateral treaty to which any jurisdiction in the Territory or the United States is a signatory, including, without limitation, the U.S. Foreign Corrupt Practices Act of 1977, the U.S. Export Control Laws, and the U.S. Anti-Boycott laws.

### **7.3 Compliance of Licensed Property**

NSI agrees to take, or cause to be taken, at its sole cost and expense, all actions necessary to ensure the compliance of the Licensed Property with applicable laws, regulations and ordinances in the Territory (including, without limitation, direct selling laws). NSI agrees to keep NSMY informed of its progress in obtaining all such government approvals.

## **ARTICLE VIII TERM AND TERMINATION**

### **8.1 Term**

Subject to Section 8.2 hereof, this Agreement shall commence and take effect on September 28, 2001, and the initial term shall end on December 31, 2004 unless terminated earlier pursuant to the provisions of this Article VIII. This Agreement, however, shall automatically renew for successive one (1) year terms unless either (i) terminated by either Party by written notice given not less than ninety (90) prior to the end of the current term of this Agreement, or (ii) terminated in accordance with Sections 8.2 to 8.3 or 8.4 of Article VIII hereof.

### **8.2 Termination for Insolvency/Receivership**

This Agreement may be terminated by either Party immediately or at any time after the occurrence of any of the following events:

**8.2(a)** the other Party shall commence any case, proceeding or other action:

- (i) under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization or relief of debtors, seeking to have an order for relief entered with respect to it, or seeking to adjudicate it a bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, compensation or other relief with respect to it or its debts, or
- (ii) seeking the appointment of a receiver, trustee, custodian or other similar action;

**8.2(b)** there shall be commenced against the other Party any case, proceeding or other action of a nature referred to in Section 8.2(a) of Article VIII hereof which either results in the entry of an order for relief or any such adjudication or appointment or remains undismissed, undischarged or unbonded for a period of ninety (90) days; or

**8.2(c)** if the other Party causes or allows a judgment in excess of ten percent (10%) of its total assets as reflected on its most recent balance sheet to be entered against it or involuntarily allows a lien, security interest, or other encumbrance to attach to its assets to secure an amount in excess of ten percent (10%) of its total assets.

### **8.3 Termination for Breach of this Agreement**

**8.3(a)** This Agreement may be terminated immediately by NSI if NSMY fails to pay on due date, any monies payable hereunder by NSMY to NSI and such failure continues for a period of thirty (30) days from NSMY's receipt of a written notice given by NSI requiring such payment.

**8.3(b)** This Agreement may be terminated by either Party, if the other Party is in default in the performance of any material obligation hereunder, other than NSMY's obligation to pay the monies referred to in Section 8.2(a), and such default has not been cured within forty-five (45) days after receipt by the defaulting Party of written notice of such default served by the defaulting Party requiring such cure.

#### **8.4 Termination for Breach of Shareholders Agreement/ Upon Termination of Other Intercompany Agreements**

This Agreement may be terminated by NSI if:

**8.4(a)** any of the parties (other than Nu Skin Enterprises, Inc.) to the Shareholders' Agreement by and between Nu Skin Enterprises, Inc. and the other shareholders of NSMY's parent/holding company Nu Skin Malaysia Holdings Sdn Bhd (Company No. 552189-P) ("NSMH"), breaches such party's obligations thereunder and fails to cure such breach within thirty (30) days after its receipt of a written notice of such breach is given by Nu Skin Enterprises, Inc., requiring such cure;

**8.4(b)** the aforesaid Shareholders Agreement or any other(s) of the Intercompany Agreements is/are terminated for any reason whatsoever;

**8.4(c)** by agreement between the parties to the aforesaid Shareholders Agreement, all of the issued shares in NSMY are sold by NSMH to a third party or NSMY's business and assets are sold by NSMY to a third party;

**8.4(d)** Nu Skin Enterprises, Inc., NSI or other Affiliate of NSI ceases to hold, directly or indirectly, an equity interest of at least thirty percent (30%) in NSMY;

**8.4(d)** persons representing from time-to-time such of Nu Skin Enterprises, Inc., NSI or other Affiliate of NSI as is the holder of an indirect thirty percent (30%) equity interest in NSMY, cease (for any reason other than their removal by such holder of an indirect thirty percent (30%) equity interest in NSMY) to hold office as such number of directors of NSMY as constitute at least thirty percent (30%) of the total number of NSMY's Board of Directors.

#### **8.5 Termination for Loss of NSMY's Direct Sales License**

NSI may terminate this Agreement if any license, government approval or corporate authority necessary for NSMY to conduct business in the Territory as contemplated by the Parties or the Intercompany Agreements is terminated, not obtained or renewed, or otherwise expires.

#### **8.6 Obligations of NSMY Upon Termination**

If this Agreement is terminated by either Party, NSMY shall, notwithstanding any other provision to the contrary herein, immediately pay all monies then remaining unpaid and payable by NSMY to NSI whether or not such monies shall then have become due for payment.

#### **8.7 Survival of Obligations**

The termination or expiration of this Agreement shall be without prejudice to the rights and remedies of a Party in respect of any antecedent breach of this Agreement. The obligations of a Party to pay any sums which are due and payable as of the expiration or termination of this Agreement and its obligations under Section 2.2 of Article II, under Article IX and under Article XI hereof shall survive the expiration or termination of this Agreement.

#### **8.8 Reversion of Rights**

Upon termination of this Agreement, all rights and licenses herein granted to NSMY shall immediately cease and shall revert to NSI, and NSMY shall cease representing to any third party that it has any right to use the Licensed Property.

## **ARTICLE IX INFRINGEMENT; INDEMNIFICATION**

#### **9.1 No Known Claims**

NSI hereby represents and warrants that, as of the date hereof and to the best of its knowledge, there are no infringement or misappropriation suits pending or filed or, to its knowledge, threatened against NSI within the Territory that relate to the

Licensed Property and NSI is not presently aware of any such infringement or misappropriation.

## **9.2 Infringement Indemnity**

NSI shall indemnify and hold NSMY harmless from and against all claims, actions, suits, proceedings, losses, liabilities, costs, damages and attorneys' fees in respect of a third party claim alleging infringement or misappropriation by NSMY in respect of its use of the Licensed Property in the Territory; provided that NSMY shall give NSI prompt written notice of any claim, action, suit or proceeding and without limiting the generality of Section 2.2 hereof of Article II, shall cooperate with NSI in the defense of any such claim, action, suit or proceeding.

## **9.3 Right to Select Counsel**

NSI shall have the right to select counsel in any such claim, action, suit or proceeding.

## **9.4 Modification by NSI to Licensed Property**

In the event that any such claim, action or proceeding is successful, NSI shall use reasonable efforts to make such changes in the Licensed Property to permit NSMY to continue to make use of the Licensed Property free and clear of all infringement and misappropriation.

## **9.5 Notice by NSMY**

NSMY shall give NSI prompt written notice of any infringement or misappropriation of the Licensed Property by any third party.

## **9.6 Control of Actions**

NSI shall have the sole right to initiate any and all legal proceedings against any such third party and, without limiting the generality of Section 2.2 of Article II hereof, NSMY shall cooperate with NSI in the pursuit of any such proceeding. NSI shall retain any damage award obtained from such third party. If NSI elects not to pursue any infringement, NSMY shall have the right to do so at its own expense and shall retain any damage award obtained from any third party.

# **ARTICLE X NATURE OF RELATIONSHIP**

The relationship of NSMY and NSI shall be and at all times remain, respectively, that of Licensee and Licensor. Nothing contained or implied in this Agreement shall be construed to constitute either Party as the legal representative or agent of the other or to constitute or construe the Parties as partners, joint venturers, co-owners or otherwise as participants in a joint or common undertaking. Neither Party is authorized to conclude any contract or agreement or make any commitment, representation or warranty that binds the other or otherwise act in the name of or on behalf of the other Party.

# **ARTICLE XI CONFIDENTIALITY**

## **11.1 NSMY Confidentiality**

NSMY agrees that, during and after the term of this Agreement, NSMY shall maintain in confidence all NSI Confidential Information and shall not disclose any NSI Confidential Information to any third party or use any NSI Confidential Information for any purpose whatsoever except as contemplated by this Agreement. In maintaining the confidentiality of NSI Confidential Information, NSMY shall exercise the same degree of care that it exercises with its own confidential information, and in no event less than a reasonable degree of care. NSMY shall, without limiting its obligation to maintain the NSI Confidential Information in confidence, use commercially reasonable efforts to ensure that each of its employees and contractors holds in confidence and makes no use of any NSI Confidential Information for any purpose other than those permitted by this Agreement. NSMY shall use its best efforts to ensure that no person other than its employees shall have access to NSI Confidential Information without the prior written consent of Nu Skin, and shall restrict access to NSI Confidential Information to those having a need for access thereto.

## **11.2 NSI Confidentiality**

NSI agrees that, during and after the term of this Agreement, NSI shall maintain in confidence all NSMY Confidential Information and shall not disclose any NSMY Confidential Information to any third party or use any NSMY Confidential Information for any purpose whatsoever except as contemplated by this Agreement. In maintaining the confidentiality of NSMY Confidential Information, NSI shall exercise the same degree of care that it exercises with its own confidential information, and in no event less than a reasonable degree of care. Without limiting its obligation to maintain the NSMY Confidential Information in confidence, NSI shall use commercially reasonable efforts to ensure that each of its employees and contractors holds in confidence and makes no use of any NSMY Confidential Information for any purpose other than



those permitted by this Agreement. NSI shall use its best efforts to ensure that no person other than its employees and contractors shall have access to NSMY Confidential Information without the prior written consent of NSMY, and shall restrict access to NSMY Confidential Information to those employees and contractors having a need for access thereto.

### **11.3 Exceptions**

The obligation of confidentiality contained in this Agreement shall not apply to the extent that (i) either Party is required to disclose information by order or regulation of a governmental agency or a court of competent jurisdiction, provided, however, that such Party shall not, to the extent possible, make any such disclosure without first notifying the disclosing Party and allowing the disclosing Party a reasonable opportunity to seek injunctive relief from (or a protective order with respect to) the obligation to make such disclosure, or (ii) the Party receiving disclosed information can demonstrate that (A) the disclosed information was at the time of such disclosure already in, or subsequently becomes part of, the public domain other than as a result of actions of the receiving Party, its Affiliates, employees, consultants, agents or subcontractors in violation hereof; (B) the disclosed information was received by the receiving Party on an unrestricted basis from a source unrelated to the disclosing Party provided the receiving Party has no knowledge or reason to know that such Party is under a duty of confidentiality with respect to such information.

### **11.4 Unauthorized Disclosure**

Each Party acknowledges and confirms that the Confidential Information of the other Party constitutes valuable proprietary information and trade secrets of the other Party and that the unauthorized use, loss or outside disclosure of such information shall cause irreparable injury to the other Party. Each Party shall notify the other Party immediately upon discovery of any unauthorized use or disclosure of Confidential Information of the other Party, and will cooperate with the other Party in every reasonable way to help regain possession of such information and to prevent its further unauthorized use. Each Party acknowledges that monetary damages may not be a sufficient remedy for unauthorized disclosure of the Confidential Information of the other Party and that the other Party shall be entitled, without waiving other rights or remedies, to such injunctive or equitable relief as may be deemed proper by a court of competent jurisdiction, and shall be entitled to recover reasonable attorneys' fees for any action arising out of or relating to a disclosure of such Confidential Information.

### **11.5 Return of Confidential Information**

NSMY shall, upon the request of NSI, return to NSI all NSI Confidential Information, including any copies or reproductions thereof, in NSMY's possession or control.

## **ARTICLE XII RESTRICTIONS ON NSMY'S ACTIVITIES**

### **12.1 Acknowledgments by NSMY**

NSMY acknowledges and agrees:

- 12.1(a)** that the availability to NSMY pursuant to this Agreement of the NSI Confidential Information and the Know How enables NSMY to commence, undertake and continue to conduct a multi-level or direct sales business;
- 12.1(b)** that NSI and its Affiliates including those who are co-party to NSMY to others of the Intercompany Agreements, conduct their respective businesses synergistically on a worldwide basis and as an integrated business;
- 12.1(c)** that the Products are promoted and sold by NSI and its Affiliates on a worldwide basis through NSI's Independent Distributors;
- 12.1(d)** that each of NSI's Independent Distributors is entitled to market and sell, whether by himself/herself/itself or by others of NSI's Independent Distributors in his/her/its downline organisation, the Products in any country in which NSI or any of its Affiliates carries on business;
- 12.1(e)** that accordingly the provisions of Section 12.2 of Article XII hereof are necessary and reasonable to enable NSI and its Affiliates to protect:-
  - i) the NSI Confidential Information and the Know-How which are made available to NSMY pursuant to the Agreement and which NSMY as a user is required to safeguard; and
  - ii) the intellectual and other property which are owned by NSI and/or its Affiliates and which NSMY is permitted to use as a licensee pursuant to this Agreement and the others of the Intercompany Agreements;
- 12.1(f)** that in conducting any multi-level business or direct sales business, NSMY or its Affiliate will necessarily use

the NSI Confidential Information and the Know-How made available to NSMY pursuant to this Agreement;

- 12.1.(g)** that damages alone would not constitute an adequate remedy for a breach by NSMY of its obligation under Section 12.2 of Article XII.

## **12.2 Restricted activities**

Subject to the provisions of Section 12.4 of Article XII hereof:

- 12.2(a)** for so long as this Agreement is in force, NSMY shall not and shall ensure that its Affiliate will not establish, develop, carry on or assist in carrying on or be engaged, concerned or interested in or provide technical, commercial or professional advice to any business, enterprise or venture or hold, directly or indirectly, any beneficial interest in a company carrying on in Malaysia a multi-level or direct sales business in competition with NSI or any of its Affiliates;
- 12.2(b)** for so long as this Agreement is in force, NSMY shall not and shall ensure that its Affiliate will not establish, develop, carry on or assist in carrying on or be engaged, concerned or interested in or provide technical, commercial or professional advice to any business, enterprise or venture or hold, directly or indirectly, any beneficial interest in a company carrying on, in a country other than Malaysia where NSI and/or any of its Affiliates carries on business, any multi-level or direct sales business in competition with NSI or any of its Affiliates;
- 12.2(c)** NSMY shall not and shall ensure that its Affiliate will not, for a period of two (2) years from the date of expiry or termination of this Agreement, establish, develop, carry on or assist in carrying on or be engaged, concerned or interested in or provide technical, commercial or professional advice to any business, enterprise or venture or hold, directly or indirectly, any beneficial interest in a company carrying on in Malaysia any multi-level or direct sales business in competition with NSI or any of its Affiliates;
- 12.2(d)** NSMY shall not and shall ensure that its Affiliate will not, for a period of three (3) years from the date of expiry or termination of this Agreement, establish, develop, carry on or assist in carrying on or be engaged, concerned or interested in or provide technical, commercial or professional advice to any business, enterprise or venture or hold, directly or indirectly, any beneficial interest in a company carrying on in a country other than Malaysia, where NSI and/or any of its Affiliates carries on business, any multi-level or direct sales business in competition with NSI or any of its Affiliates;
- 12.2(e)** for a period of two (2) years from the date of expiry or termination of this Agreement, NSMY shall not and shall ensure that its Affiliate will not, for the purpose of offering to such client or customer or obtaining from such supplier, goods or services similar to or materially competing with those of NSI or any of its Affiliates or the Products, solicit, canvass or entice away or endeavour to solicit, canvass or entice away from the business of NSI or any of its Affiliates, the custom of any person, firm or company who (as applicable) is or was at any time during the period of twelve (12) months immediately preceding the date of expiry or termination of this Agreement:
- (i) following its negotiations with NSI or any of its Affiliates for the supply of goods or services, a potential supplier of goods or services to NSI or any of its Affiliates in relation to the business of NSI or that of any of its Affiliates;
  - ii) a customer of or supplier to the business of NSI or that of any of its Affiliates; or
  - iii) in the habit of otherwise dealing with NSI or any of its Affiliates in relation to the business of NSI or that of any of its Affiliates; and
- 12.2(f)** for so long as this Agreement is in force and effect and for a period of two (2) years thereafter, NSMY shall not and shall ensure that its Affiliate will not solicit or entice away from NSI or any of its Affiliates, any person who is an officer, manager or employee of NSI or any of its Affiliates or who is seconded or whose services are otherwise made available to NSMY or NSI or any of its Affiliates.

## **12.3 Construction of restrictions**

- 12.3(a)** The obligations contained in Section 12.2 of Article XII hereof shall be construed as separate obligations and if one or more of such obligation is/are held to be against the public interest or unlawful or in any way an unreasonable restraint of trade, the remaining obligations shall continue to bind NSMY.
- 12.3(b)** If any obligation contained in Section 12.2 of Article XII hereof would be void as drawn in any jurisdiction but would be valid if the period or territory of application were reduced or if some part of the obligation were deleted, the obligation in question shall apply in such jurisdiction with such modification as may be necessary to make it valid and effective.

## **12.4 Limits on restriction**

The provisions of Section 12.2 of Article XII hereof shall not apply to:-

- 12.4(a)** the sale, marketing or distribution of products which are not personal care, nutritional products or other products marketed by NSI or any of its Affiliates from time to time; or
- 12.4(b)** the holding by NSMY or its holding company of not more than two percent (2%) of the ordinary shares of a company carrying on any multi-level or direct sales business which is the same as or similar to that of NSI or any of its Affiliates if such company is listed on the Kuala Lumpur Stock Exchange or other recognised stock exchange and the ordinary shares of such company are quoted on (as applicable) the Kuala Lumpur Stock Exchange or other recognised stock exchange.

## **ARTICLE XIII MAINTENANCE OF LICENSED PROPERTY; RECORDING**

### **13.1 Maintenance**

NSI shall use its best efforts and take all reasonable steps consistent with its existing internal policies and procedures and with this Agreement to maintain the Licensed Property in the Territory. In no event shall the provisions of this Article XIII be construed to require NSI to establish or maintain a branch office, subsidiary corporation or fixed place of business or similar permanent establishment in the Territory. NSI, in its sole discretion, shall have the right to record this Agreement or proof thereof, or to enter NSMY as a registered user in the Territory. NSMY agrees to cooperate, as reasonably requested by NSI, in arranging for such recordings or entries, or in canceling such recordings or entries in the event of amendments to or termination of this Agreement for any reason.

### **13.2 Cancellation**

Upon the expiration or the termination of any reason of this Agreement, the Parties shall do everything necessary to effect the cancellation of the record of NSMY as a registered user of the Licensed Property in the Territory.

## **ARTICLE XIV MISCELLANEOUS**

### **14.1 Assignment**

This Agreement shall be binding on and inure to the benefit of the respective successors, assigns and beneficiaries of the Parties; provided that neither party may assign this Agreement or any rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other Party, which consent may be withheld or granted with or without conditions at the sole discretion of such other Party. Any such attempted assignment, without the requisite written consent, shall be void and unenforceable. Notwithstanding the foregoing, NSI may assign this Agreement to any of its Affiliates.

### **14.2 Force Majeure**

A Party shall not be responsible for failure to perform hereunder due to force majeure, which shall include, but not be limited to: fires, floods, riots, strikes, labor disputes, freight embargoes or transportation delays, shortage of labor, inability to secure fuel, material, supplies, equipment or power at reasonable prices or on account of shortage thereof, acts of God or of the public enemy, war, terrorist activities or civil disturbances, any existing or future laws, rules, regulations or acts of any government (including any orders, rules or regulations issued by any official or agency or such government) affecting a Party that would delay or prohibit performance hereunder, or any cause beyond the reasonable control such Party. If an event of force majeure should occur, the affected Party shall promptly give notice thereof to the other Party and such affected Party shall use its reasonable best efforts to cure or correct any such event of force majeure.

### **14.3 Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of the State of Utah, applicable to contracts made and to be wholly performed within such State.

### **14.4 Dispute Resolution**

Any dispute or difference which may arise between the Parties at any time hereafter whether during the continuance in force of this Agreement or upon or after its termination, touching any matter or thing herein contained or the operation or construction of this Agreement or any matter or thing in any way connection with, arising from or in relation to this

Agreement or the rights, duties or liabilities of the Parties hereunder shall be finally settled by arbitration in accordance with the International Arbitration Rules of the American Arbitration (“AAA”).

**14.4(a)** A reference to arbitration shall be to three (3) arbitrators.

**14.4(b)** The arbitration shall be held in Provo, State of Utah, United States of America and the language to be used in the arbitral proceedings shall be English.

**14.4(c)** Pending the commencement of the arbitral proceedings, either Party may apply, to the courts in Utah and/or Malaysia (which shall have non-exclusive jurisdiction) for the grant of interim injunctions and orders for the protection and preservation of property subject of or relating to this Agreement. For the purposes of this Section 14.4(c) and as provided in the Arbitration Rules of the AAA, arbitral proceedings shall be deemed to commence on the date when the administrator of the AAA receives notice of arbitration from the Party initiating the arbitration.

#### **14.5 Applicability of Post-Effective Law**

The parties agree that neither the Vienna Convention on the International Sale of Goods nor any such similar law, treaty or act that becomes effective during the term of this Agreement shall be applicable to this Agreement or the transactions contemplated hereunder.

#### **14.6 Waiver and Delay**

No waiver by either Party of any breach or default in performance by the other Party, and no failure, refusal or neglect of either party to exercise any right, power or option given to it hereunder or to insist upon strict compliance with or performance of the other Party’s obligations under this Agreement, shall constitute a waiver of the provisions of this Agreement with respect to any subsequent breach thereof or a waiver by either Party of its right at any time thereafter to require exact and strict compliance with the provisions thereof.

#### **14.7 Notices**

A notice, request and other communication hereunder shall be in writing and shall be deemed to have been duly given, if delivered by hand, courier or registered airmail, or communicated by facsimile, cable or similar electronic means to the address, facsimile number or cable identification number provided below (or as changed in accordance with this Section 14.7) of the Party to whom it is addressed and shall be deemed to be given if delivered by hand or courier, at the time of delivery or if communicated by facsimile, cable or similar electronic means, at the time that receipt thereof has been confirmed by return electronic communication or signal that the message has been received, or if mailed, ten (10) days after dispatch by registered airmail, postage prepaid:-

If to NSMY: Nu Skin (Malaysia) Sdn. Bhd.  
Office Lot 04-01, Level 4  
PNB Darby Park Retail  
No. 10, Jalan Binjai  
50450 Kuala Lumpur  
Malaysia  
Attn: Managing Director  
Facsimile No.: 603-2170 7799

If to NSI: Nu Skin International, Inc.  
75 West Center Street,  
Provo, Utah 84601  
United States of America  
Attn: General Counsel  
Facsimile No: (801) 345-5999

Either Party may change its facsimile number, cable identification number or address by a notice given to the other Party in the manner set forth above.

#### **14.8 Integrated Contract**

This Agreement constitutes the entire agreement between the Parties relating to the subject matter hereof and supersedes all prior or contemporaneous negotiations, representations, agreements and understandings (both oral and written) of the Parties.

#### **14.9 Modifications and Amendments**

No supplement, modification or amendment of this Agreement shall be binding unless it is in writing and executed by both of the Parties.

#### **14.10 Severability**

To the extent that any provision of this Agreement is (or in the opinion of counsel mutually acceptable to both Parties would be) prohibited, judicially invalidated or otherwise rendered unenforceable in any jurisdiction, such provision shall be deemed ineffective only to the extent of such prohibition, invalidation or unenforceability in that jurisdiction, and only within that jurisdiction. Any prohibited, judicially invalidated or unenforceable provision of this Agreement will not invalidate or render unenforceable any other provision of this Agreement, nor will such provision of this Agreement be invalidated or rendered unenforceable in any other jurisdiction.

#### **14.11 Counterparts and Headings**

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. All headings and captions are inserted for convenience of reference only and shall not affect the meaning or interpretation of any provision hereof.

**IN WITNESS WHEREOF**, the Parties have, by their respective duly authorized representatives, executed this Agreement as of the day and year first above written.

**NU SKIN INTERNATIONAL, INC.**

By: /s/ Steven J. Lund

**Name: Steven J. Lund**

**Its: President**

**NU SKIN (MALAYSIA) SDN. BHD.**

By: Datuk Mohd Nadzmi Bin Mohd Salleh

Name: Datuk Mohd Nadzmi Bin Mohd Salleh

Its: Director

BETWEEN

NU SKIN ENTERPRISES, INC.

(as VENDOR)

AND

DATO' MOHD NADZMI BIN MOHD SALLEH

(as PURCHASER)

---

SUPPLEMENTAL AGREEMENT

(to the Sale and Purchase of Shares

Agreement dated 17 August 2001)

---

KHAW & PARTNERS

ADVOCATES & SOLICITORS

KUALA LUMPUR

THIS SUPPLEMENTAL AGREEMENT made this 28th day of September 2001

BETWEEN

NU SKIN ENTERPRISES, INC., a company incorporated in the State of Delaware, United States of America and having its principal place of business at 75 West Center Street, Provo, Utah 84601, United States of America of the one part

AND

DATO' MOHD NADZMI BIN MOHD SALLEH (NRIC No. 540501-03-5293) of No. 36-1, Jalan PJU8/5B, Perdana Business Centre, Bandar Damansara Perdana, 47820 Petaling Jaya, Selangor Darul Ehsan of the other part.

WHEREAS:-

I. SPA

- A) By the SPA, the VENDOR has agreed to sell to the PURCHASER and the PURCHASER has agreed to purchase from the VENDOR, upon the terms and subject to the conditions contained in the SPA, an aggregate of **450,000**(Four Hundred and Fifty Thousand) Ordinary NSMH Shares.
- B) The completion of the SPA is conditional upon inter alia the grant by the MDTCA of its approval for the issue of a DS Licence upon such terms and conditions acceptable to NSM and the VENDOR.

II. DS LICENCE GRANTED TO NSM

- A) Following MDTCA's request that NSM increases its issued and paid up share capital to not less than **RM2,500,000.00**(Ringgit Two Million and Five Hundred Thousand):-
  - i) NSMH has on 29 August 2001 increased its issued and paid up share capital to **RM2,500,002.00** (Ringgit Two Million Five Hundred Thousand and Two) divided into 2 (Two) Ordinary NSMH Shares and **2,500,000** (Two Million and Five Hundred Thousand) ICPS; and
  - ii) NSM has on 29 August 2001 increased its issued and paid up share capital to **RM2,500,002.00** (Ringgit Two Million Five Hundred Thousand and Two) divided into **2,500,002** (Two Million Five Hundred Thousand and Two) Ordinary NSM Shares.
- B) By its letter dated 12th September 2001 bearing reference KPDN (DN) (JL) 8/6/1-935 Jld 5(3) to NSM, the Controller of Direct Sales of the MDTCA approved NSM's application for a DS Licence for a duration of **1** (One) year subject, among others, to the condition that it ensures that at least **40%**(Forty Percent) of the shares in NSM are held by Bumiputera.

C) The DS Licence was issued by the MDTCA to NSM on 18th September 2001.

### III. RESTRUCTURE OF NSMH

A) To fulfil, among others, the equity condition in the DS Approval:-

- i) FRANKIE is willing to purchase from the VENDOR only **30%** (Thirty Percent) of the enlarged share capital of NSMH and not **40%** (Forty Percent) as envisaged in the SPA(FK); and
- ii) the VENDOR is willing to restructure NSMH (as the holding company of NSM) and to divest, in the manner described in Recitals III(B) to III(D), its right to **70%** (Seventy percent) of its effective equity shareholdings in NSM to Malaysians, including **40%** (Forty percent) thereof to Bumiputera Malaysians.

B) The VENDOR is currently still in discussions with LEMBAGA TABUNG ANGKATAN TENTERA with a view to its being the Malaysian Bumiputera investor to whom the VENDOR will divest its rights to the 20% Block.

C) The PURCHASER has agreed that following NSE's divestment of its rights to the 20% Block to LEMBAGA TABUNG ANGKATAN TENTERA and/or the Other Bumiputera Investor, the equity interests of the PURCHASER in the enlarged share capital of NSMH will be diluted accordingly.

D) As currently envisaged, NSMH's equity restructuring exercise require the VENDOR:-

- i) to convert 1,999,999 (One Million Nine Hundred Ninety Nine Thousand Nine Hundred ----- and Ninety Nine) ICPS into 1,999,999 (One Million Nine Hundred Ninety Nine Thousand Nine Hundred and Ninety Nine) Ordinary NSMH Shares;
- ii) to complete in accordance with the provisions of this Agreement and SPA(FK), the sale by the VENDOR to the PURCHASER and FRANKIE respectively of the Sale Shares and **750,000** (Seven Hundred and Fifty Thousand) Ordinary NSMH Shares.
- iii) following the fulfilment of all of the conditions precedent under the SPA(OBI) for the sale of the 20% Block to the Other Bumiputera Investor:-
  - a) to convert the remaining **500,001** (Five Hundred and One ICPS held by the VENDOR in NSMH into **500,001** (Five Hundred and ONE) NSMH Shares; and
  - b) to complete in accordance with the provisions of the SPA(OBI), the sale by the VENDOR to the Other Bumiputera Investor of the 20% Block.

### IV. VARIATIONS TO THE SPA

The Parties wish to vary the SPA to effect such amendments to the provisions of the SPA as are necessary to carry the Parties' intention described in Recital III into effect.

**NOW IT IS HEREBY AGREED** as follows:-

#### 1. DEFINITIONS & INTERPRETATION

##### 1.1 Definitions

In this Supplemental Agreement, unless the context otherwise requires:-

1.1.1 subject to Clause 1.1.2, all expressions used herein and defined in the SPA shall have the meanings given to them by the SPA; and

1.1.2 the following expressions shall have the meanings set forth opposite such expressions:-

“SPA” the Sale and Purchase Agreement dated 17 August 2001 and made between the VENDOR and the PURCHASER in respect of the Sale Shares

“20% Block” **500,001**(Five Hundred Thousand and One) Ordinary NSMH Shares as is equivalent to **20%**(Twenty Percent) of NSMH's enlarged issued share capital following the shares conversion referred to in Recital III(D)(iii)(a)

##### 1.2 Interpretation

1.2.1 The provisions of Clause 1.2 of the SPA shall apply mutadis mutandis to this Supplemental Agreement.

1.2.2 Subject only to the variations herein contained and such modifications to the SPA as may be necessary for the construction thereof as a result of the variations thereto effected by this Supplemental Agreement, the provisions of the SPA shall remain in full force and effect.

1.2.3 In construing the SPA, such reference as may be necessary may be made to such agreement.

1.2.4 In the event of a conflict between the provisions of this Supplemental Agreement and the SPA, the provisions of this Supplemental Agreement shall prevail.

## 2. AGREEMENT FOR THE VARIATION OF THE SPA

The Parties hereby agrees that the agreement under the SPA shall be revised such that the aggregate number of NSMH Ordinary Shares to be sold by the VENDOR and purchased by the PURCHASER shall be **500,001** (Five Hundred Thousand and One) and not **450,000** (Four Hundred and Fifty Thousand) NSMH Ordinary Shares as provided for under the SPA.

## 3. VARIATIONS TO THE SPA

### 3.1 Variations to the definitions provisions contained in the SPA

3.1.1 The expression "10% Block" and the meaning assigned thereto in the SPA shall be deemed to be deleted;

3.1.2 The respective meanings assigned to the expressions stated in column (1) below and contained in Clause 1.1 of the SPA shall be deemed to be deleted and in place thereof, the meanings stated in column (2) below opposite the respective expressions stated in column (1) below shall be deemed to be inserted:-

"Other Bumiputera Investor"	such prospective Malaysian Bumiputera investor(s) (other than the PURCHASER) as is identified by and as is acceptable to the VENDOR to acquire the 20% Block
"Sale Shares"	<b>500,001</b> (Five Hundred Thousand and One) Ordinary NSMH Shares to be held by the VENDOR as the registered holder and beneficial owner thereof following the conversion of ICPS referred to in Recital III(D)(i)
"SPA(FK)"	the sale and purchase agreement for the sale by the VENDOR and the purchase by FRANKIE of <b>750,000</b> (Seven Hundred and Fifty Thousand) Ordinary NSMH Shares and includes such variations and modifications as may be agreed between the parties thereto
"SPA(OBI)"	the sale and purchase agreement for the sale by the VENDOR and the purchase by the Other Bumiputera Investor of the 20% Block and includes such variations and modifications as may be agreed between the parties thereto

3.1.3 The following expressions in and the respective meanings assigned to them below shall be deemed to be inserted in Clause 1.1 of the SPA:-

"20% Block"	<b>500,001</b> (Five Hundred Thousand and One) Ordinary NSMH Shares as is equivalent to <b>20%</b> (Twenty Percent) of NSMH's enlarged issued share capital following the shares conversion referred to in Recital III(D)(iii)(a)
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### 3.2 Variations to Clause 4.2 of the SPA

3.2.1 The provisions of Clause 4.2.1 of the SPA shall be deleted in their entirety and in place thereof, the following provisions shall be deemed substituted.

*"4.2.1 convert **1,999,999** (One Million Nine Hundred and Ninety Nine Thousand Nine Hundred and Ninety Nine) ICPS in NSMH held by the VENDOR into **1,999,999** (One Million Nine Hundred and Ninety Nine Thousand Nine Hundred and Ninety Nine) Ordinary NSMH Shares";*

3.2.2 The provisions of Clause 4.2.2 of the SPA shall be amended by inserting after the semicolon ";" the word "and";

3.2.3 The provisions of Clause 4.2.3 of the SPA shall be amended by deleting the word "; and" and in place thereof, a full stop "." shall be inserted; and

3.2.4 The provisions of Clause 4.2.4 of the SPA shall be deleted in its entirety.

### 3.3 Variations to Annexure 1 to the SPA

The provisions of paragraph 2 of "Annexure 1" to the SPA shall be deemed to be deleted in their entirety and in place thereof, the following provisions shall be deemed to be substituted.

"2. The PURCHASER CONFIRMS its receipt from the VENDOR of the original share certificate(s) to the Sale Shares issued in the name of the PURCHASER".

## 4. COUNTERPARTS



This Supplemental Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument and any of the Parties may execute this Supplemental Agreement by signing any such counterpart.

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**IN WITNESS WHEREOF** the Parties have hereunto executed this Supplemental Agreement the day and year first above written.

SIGNED BY

for and on behalf of  
NU SKIN ENTERPRISES, INC.  
the VENDOR aforesaid  
in the presence of:-

.....  
signature of witness

Name:  
Passport No:

SIGNED BY  
DATO' MOHD NADZMI  
BIN MOHD SALLEH  
the PURCHASER aforesaid  
in the presence of:-

.....  
Dato' Mohd Nadzmi Bin Mohd Salleh

.....  
signature of witness

Name:  
NRIC/Passport No:

DATED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_

GIVEN BY

(as Chargor)

TO

NU SKIN ENTERPRISES, INC

(as Chargee)

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MEMORANDUM OF CHARGE

(of shares in NU SKIN MALAYSIA HOLDINGS SDN. BHD)

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KHAW & PARTNERS

ADVOCATES & SOLICITORS

KUALA LUMPUR

MEMORANDUM OF CHARGE OF SECURITIES

TO

NU SKIN ENTERPRISES, INC. (Registration No. 2659781), a company incorporated in the State of Delaware, United States of America and having its principal place of business at 75 West Center Street, Provo, Utah 84601, United States of America

WHEREAS

- I. By a Sale and Purchase Agreement dated 17th August 2001 as varied by a Supplemental Agreement dated 28 September 2001, I have purchased from you, the Subject Shares the purchase price in the sum of (Ringgit) whereof remained unpaid by me to you as at the date of this Memorandum of Charge.
- II. At my request, you agreed inter alia to withhold the issue of a demand to me for immediate payment of the entire sum agreed to be paid by me to you under the SPA.
- III. In consideration of your agreement in Recital II, I agreed to execute this Memorandum of Charge in respect of the Subject Shares in your favour as security for the payment by me of the Indebtedness.

1. DEFINITIONS & INTERPRETATION

1.1 Definitions

In this Memorandum of Charge, unless the context otherwise requires, the following expressions shall have the meanings set forth opposite such expressions:-

**"Advances"** all payment made by you on my behalf under Clauses 10.2 and 26 in respect of the Charged Securities and remains unpaid and owing by me to you from time to time

**"Call Option"** the call option granted by me to you pursuant to the Shareholders Agreement

**"Charged Securities"** (a) the Subject Shares;

(b) all stocks, shares, securities, rights, money and property which may at any time after the date of this Memorandum of Charge derived from, accrued on or be offered at any time by way of redemption, bonus, preference, option or otherwise to or in respect of any of the Charged Securities; and

(c) all dividends or interest paid or payable after the date of this Memorandum of Charge on the Charged Securities.

**"Event Default"** of any of the events referred to in Clause 7.1

**"Indebtedness"** all monies including the Advance, if any (together with the interest accrued thereon) and liabilities whether certain or contingent which are now are or at any time after the date of the Memorandum of Charge may be due, owing or incurred from or by me to you or in relation to or arising out of or in consequence of any failure on my part to pay, perform and observe the sums of money, terms, provisions, covenants and agreements on my part to be paid, performed and observed and contained herein including all legal and other costs, charges and expenses arising out of or incidental to the preparation, enforcement, taking or realisation of your security hereunder for the payment of the Indebtedness

**"Notice of Further Encumbrances"** your actual or constructive notice (referred to in Clause 14.1) of my creation of any further charge, mortgage or other encumbrance over the Charged Securities or any part of it in favour of any third party

**"NSMH"** : NU SKIN MALAYSIA HOLDINGS SDN. BHD. (Company No. 552189-P), a company incorporated in Malaysia under the Companies Act 1965 and having its registered address at c/o 6th Floor, Menara Boustead, No. 69, Jalan Raja Chulan, 50200 Kuala Lumpur

**"NSMH Share"** an ordinary share having a nominal value of RM1.00 (Ringgit One) in NSMH

**"Security Interest"** any mortgage, charge, pledge, lien, right or set-off or any other security interest whatsoever

**"Share Certificates"** the certificates and other documents of title to the Charged Securities

**"Shareholders Agreement"** the Shareholders Agreement dated 28 September 2001 and made between you, me and \_\_\_\_\_ and includes such variations and modifications as may be agreed between the parties thereto and any new shareholders agreement executed by inter alia the parties thereto to substitute/replace the aforesaid agreement

**"SPA"** the sale and purchase agreement dated 17th August 2001 and the Supplemental Agreement dated 28 September 2001 made between you and me (and referred to in Recital I) and includes such variations and modifications as may be agreed between the parties thereto

**"Subject Shares"** \_\_\_\_\_ (\_\_\_\_\_) NSMH Shares held by me (as the registered and beneficial owner thereof)

**"Suspense Account"** : the account referred to in Clause 15.1

## 1.2 Interpretation

1.2.1 The Appendices to this Memorandum of Charge form integral parts of this Memorandum of Charge. The headings in this Memorandum of Charge are inserted for convenience of reference only and shall not be taken, read and construed as essential parts of this Memorandum of Charge.

1.2.2 All references to Appendices and Clauses shall be references to the appendices and clauses of this Memorandum of Charge. All references to provisions of statutes include such provisions as modified, re-certified or re-enacted. All references to this Memorandum of Charge shall include all amendments and modifications to this Memorandum of Charge as shall from time to time be in force. All references to a natural person shall include such person's heirs, personal representatives, successors-in-title and permitted assigns. All references to a company shall include such company's successors-in-title and permitted assigns.

1.2.3 Words applicable to natural persons include any body of persons, company, corporation, firm or partnership corporate or incorporate and vice versa. Words importing the masculine gender shall include the feminine and neuter genders and vice versa. Words importing the singular number shall include the plural number and vice versa.

1.2.4 Where two or more persons are included or comprised in any expression, agreements, covenants, terms, stipulations and undertakings expressed to be made by or on the part of such persons shall, unless otherwise provided in this Memorandum of Charge, be deemed to be made by and be binding upon such persons jointly and severally.

1.2.5 In computing time for the purposes of this Memorandum of Charge, unless the contrary intention appears, a period of days from the happening of an event or the doing of any act or thing shall be deemed to be exclusive of the day on which the event happens or the act or thing is done and if the last day of the period is a weekly or public holiday, the period shall include the next following day which is not a inter alia weekly or public holiday.

## 2. CHARGE

### 2.1 Charge

IN CONSIDERATION of:-

2.1.1 your withholding at my request the issue of a demand to me for payment of the Indebtedness under the SPA; and

2.1.2 your agreement to my application of all dividends and other cash distributions (if any) from time to time towards payment of the Indebtedness,

I being the registered and/or beneficial owner of the Subject Shares HEREBY CHARGE to you as a continuing security for the payment, discharge and satisfaction to you on demand of the Indebtedness and the performance by me of my obligations under this Memorandum of Charge:-

- i) the Charged Securities;
- ii) all dividends, interest and other payment referred to in Clause 9.1; and
- iii) all proceeds from the sale of the Charged Securities referred to in Clause 9.2.

## 2.2 Delivery of Share Certificates

I hereby irrevocably authorise you to take delivery from NSMH of the Share Certificates upon issue thereof in my name. If the Share Certificates are delivered by NSMH to me, I will immediately deliver or cause to be delivered the Share Certificates to you.

## 2.3 Delivery of Instruments of Transfer

I will execute and deliver to you as an escrow upon the issue of the Share Certificates, and from time to time, such number of instruments of transfer (in Form 32A of the Companies Regulation 1966) of the Charged Securities as you may require.

## 2.4 Other Obligations

I will do, execute and deliver all other acts, documents and things necessary to deposit and charge the Charged Securities to you.

## 2.5 Extend of Security

The security created by this Memorandum of Charge is to be available for such aggregate amount as the ad valorem stamp duty paid and endorsed from time to time on the original of this Memorandum of Charge in your possession extends to secure, interest, costs, charges, expenses and other monies owing and remaining unpaid by me to you from time to time.

## 3. REPRESENTATION AND WARRANTIES

- 3.1 that I am or will be the registered holder and beneficial owner of the Charged Securities;
- 3.2 that there is no prior mortgage, pledge, lien, charge, assignment, hypothecation, encumbrance or other security interest of any kind upon the Charged Securities or any of them;
- 3.3 that I have no knowledge of any fact which would or might invalidate the creation of the charge over the Charged Securities in your favour under this Memorandum of Charge;
- 3.4 that this Memorandum of Charge when duly executed will constitute legal, valid and binding obligations on my part in accordance with the provisions of this Memorandum of Charge;
- 3.5 that I have not committed any act of bankruptcy and no bankruptcy notice has been issued against me; and
- 3.6 that no Event of Default has accrued and no event has occurred which, with the giving of notice and/or the lapse of time and/or the fulfilment of any other condition, might constitute an Event of Default.

## 4. COVENANTS

So long as the Indebtedness remains unpaid by me to you, I hereby covenant with you as follows:-

4.1 that I will duly perform and observe the covenants, undertakings, stipulations and obligations on our part to be performed and observed by me and contained in this Memorandum of Charge;

4.2 that I will notify you in writing as soon as I become aware of the occurrence of any Event of Default or of any event which, with the giving of notice and/or the lapse of time and/or the fulfilment of any condition would constitute an Event of Default;

4.3 that as soon as practicable, I will notify you in writing of any litigation, arbitration or administrative proceedings or claim which is brought or made against me or to my knowledge is threatened against me and if determined adversely to me would materially and adversely affect my

financial position;

4.4 that I will notify you immediately of any notices or documents issued to or received by me as the registered holder of the Charged Securities and immediately deliver a copy of such notices or documents to you; and

4.5 that I will notify you immediately of the creation of any further charge, mortgage or other encumbrance over the Charged Securities or any part of it.

## **5. TRANSFERS**

So long as the Indebtedness or any part of it remains owing and unpaid by me to you:-

5.1 I will:-

5.1.1 execute and deliver to you, all such instrument of transfers as you may require of the Charged Securities or any of them to you or your nominees or any purchaser of the Charged Securities; and

5.1.2 deposit with you together with the aforesaid instrument of transfers, the certificates or other documents of title to the Charged Securities; and

5.2 you may:-

5.2.1 transfer or cause to be transferred (at your cost and expense) all or any of the Charged Securities into the name(s) of your nominee(s) who shall hold the Charged Securities transferred subject to the charge under this Memorandum of Charge; and

5.2.2 transfer or cause to be transferred (at your cost and expense) the Charged Securities or any of them from one nominee to another subject to the provisions of this Memorandum of Charge.

## **6. PAYMENT OF INDEBTEDNESS**

6.1 I will apply all dividends and other cash distributions (if any) made by NSMH from time to time towards payment of the Indebtedness.

6.2 Unless and until the Indebtedness shall be paid in full by me to you, I irrevocably direct and authorise NSMH to pay directly to you, all such dividends and other cash distributions (if any) as are payable by NSMH from time to time to me.

## **7. DEFAULT**

### **7.1 Events of Default**

Each of the following events is an Event of Default:-

7.1.1 if I fail to pay the Indebtedness or any part thereof in accordance with the provisions of this Memorandum of Charge; or

7.1.2 if I commit any breach or fail to observe any of my covenant and obligation under this Memorandum of Charge and, in the case of a breach capable of remedy, fails to remedy the same within 7 (Seven) days after receipt of a written notice requiring such remedy; or

7.1.3 if I die, become of unsound mind, commits an act of bankruptcy or is adjudicated a bankrupt or;

7.1.4 if I allow any judgment against me to remain unsatisfied for a period of 21 (Twenty One) days; or

7.1.5 if distress or execution or other process of a court of competent jurisdiction be levied upon or issued against any of my property and such distress, execution or other process is not satisfied by me within 7 (Seven) days from the date of it; or

7.1.6 if any representation or warranty made or deemed to be made by me or under this Memorandum of Charge is incorrect in any respect which you deem material; or

7.1.7 a notice is delivered by you to me to exercise the call option to purchase shares pursuant to the Call Option; or

7.1.8 I cease to hold, as the registered holder and beneficial owner thereof, any of the Charged Securities; or

7.1.9 if you in your absolute discretion, consider that the security provided under this Memorandum of Charge is in jeopardy.

### **7.2 Breach capable of remedy**

For the purpose of Clause 7.1.2, a breach shall be considered capable of remedy if:-

7.2.1 I can comply with the provision in question in all respects other than as to the time of performance; and

7.2.2 the time of performance is not of the essence of the provision in question.

### **7.3 Notification of an Event of Default**

I shall notify you forthwith in writing upon the occurrence of an Event of Default.

## **7.4 Effect of Default**

Upon the occurrence of an Event of Default:-

7.4.1 the Indebtedness shall immediately become payable by me to you; and

7.4.2 you shall immediately be entitled to enforce the security constituted by this Memorandum of Charge in accordance with Clause 8 without prior notice to or concurrence on my part.

## **8. POWER OF SALE**

### **8.1 Sale of Charged Securities**

Upon the happening of an Event of Default, but subject always to Clause 8.2, you shall be entitled, without notice to me and any consent or concurrence by me, at any time(s) thereafter and so long as the Indebtedness shall remain unpaid by me to you, to sell the Charged Securities to such person (including yourselves or your related or associated or affiliated company), in such manner (whether by private treaty or by public auction) and upon such terms and conditions as you deem fit.

### **8.2 Call Option**

Upon the occurrence of an Event of Default described in Clause 7.1.7, I will sell the Charged Securities to you in accordance with the provisions of the Shareholders Agreement.

### **8.3 Proceeds From Sale**

The proceeds of any sale made under Clauses 8.1 and 8.2 shall be applied by you as follows:-

8.3.1 firstly, in or towards the payment and discharge of the costs incurred by such sale;

8.3.2 secondly, in or towards the payment of the Indebtedness; and

8.3.3 the residue, if any, shall be paid to me or to my order.

### **8.4 No trust of power of sale**

In respect of the exercise of your power of sale pursuant to Clause 8.1, you are not and shall not be deemed to be a trustee of the power of sale and you shall not be obliged to:-

8.4.1 consult me in any respect; or

8.4.2 sell the Charged Securities:-

i) at any particular time after the occurrence of any of the Event of Default;

ii) in any particular numbers; or

iii) to satisfy any particular part of the Indebtedness.

### **8.5 Discharge of Duties**

You shall be deemed to have discharged your duties as chargee upon a sale of the Charged Securities if your exercise of your power of sale is bona fide.

### **8.6 Liability**

You shall not be responsible in any way whatsoever for any involuntary loss occasioned by your exercise of your power of sale under this Memorandum of Charge and howsoever arising.

## **9. INCOME FROM CHARGED SECURITIES**

9.1 Any dividends, interest or other payments which may be paid or payable after the date of this Memorandum of Charge in respect of the Charged Securities may be applied by you as though they were proceeds of a sale of the Charged Securities under this Memorandum of Charge and notwithstanding that the right to exercise the power of sale under Memorandum of Charge has not arisen.

9.2 I will pay over to you (immediately upon receipt of the same) without demand, such of the dividends, interest or other payments as are hereby charged and as are received by me during the continuance in force of this Memorandum of Charge.

## **10. PAYMENT OF CALLS**

### **10.1 Calls payable by me**

During the term of this Memorandum of Charge, I will duly and punctually pay all calls, instalments and other payments (if any) due and payable in respect of the Charged Securities.

### **10.2 Payment by you**

If I defaulted in paying any call, instalment or other payment (if any) due and payable in respect of the Charged Securities, you may make such payments on my behalf.

### **10.3 Advances**

Any money paid by you under Clause 10.2 forms part of the Advances and shall be treated as a debt owing and payable by me to you.

## **11. VOTING RIGHTS**

11.1 You or your nominees may exercise at your discretion and in my name or otherwise at any time (whether before or after the right to exercise the power of sale under this Memorandum of Charge has arisen) and without notice to me or any further consent or concurrence by me in respect of the Charged Securities, the voting rights and any powers or rights which may be exercised by the person(s) in whose name(s) the Charged Securities are registered.

11.2 If required by you, I will duly appoint such proxies as you may nominate to attend as the proxy for the holder of the Charged Securities, all general meetings of NSMH.

## **12. CONTINUING SECURITY**

The security created under this Memorandum of Charge shall be a continuing security for all money now or hereafter or from time to time owing and due by me to you.

## **13. PROHIBITION AGAINST DEALINGS**

During the term of this Memorandum of Charge, I will not (save as permitted under this Memorandum of Charge) transfer, sell, or otherwise howsoever, deal with the Charged Securities or any interest in the Charged Securities or subject the same to any further charge, mortgage or other encumbrance without your prior written consent.

## **14. NEW AND SEPARATE ACCOUNTS**

14.1 If you have actual or constructive notice that I will execute or create any further charge, mortgage or other encumbrance over the Charged Securities or any part of it in favour of any other corporation, person, or persons, you may and shall be deemed to have, immediately after the receipt of such notice, opened a new or separate account in your books.

14.2 With effect from the time of the Notice of Further Encumbrances, all payments in account made by us to you shall:-

14.2.1 notwithstanding any legal or equitable rule of presumption to the contrary, be placed or deemed to have been placed to the credit of the new and separate account opened or deemed to have been opened under Clause 14.1; and

14.2.2 not reduce the amount due by me to you at the time when you receive or was deemed to have received the Notice of Further Encumbrance.

14.3 The provisions of Clauses 14.1 and 14.2 shall not prejudice the security which you otherwise would have had under this Memorandum of Charge for the payment of the Indebtedness for the time being outstanding and due to you notwithstanding that the same may become due or owing or be incurred after the time when you receive or was deemed to have received the Notice of Further Encumbrance.

## **15. SUSPENSE ACCOUNT**

15.1 You may place and keep any money received by you under this Memorandum of Charge to the credit of a suspense account for as long as you deem fit.

15.2 You are not obliged to apply any money placed or kept in the Suspense Account or any part of it in or towards discharge of the Indebtedness or any part thereof.

15.3 Notwithstanding any such payment, in the event of any proceedings in or analogous to winding up or liquidation, composition or arrangement against me, you may prove for and agree to accept any dividend or composition in respect of the whole or any part of the Indebtedness in the same manner as if this security had not been created.

## **16. ADDITIONAL SECURITY**

16.1 The security created under this Memorandum of Charge is in addition to and without prejudice to:-

16.1.1 any collateral or other securities which you may now or after the date of this Memorandum of Charge hold from or on any account;

16.1.2 any collateral or other security or any lien to which you may be otherwise entitled (including any security charge or lien prior to the date of this Memorandum of Charge on the Charged Securities); and

16.1.3 the liability of any person not a party to this Memorandum of Charge for all or any part of the Indebtedness.

16.2 All money received by you from me or any person(s) liable to pay the same may be applied by you to any account or item of account or any transaction(s) to which the same may be applicable.

## 17. CONSOLIDATION

You are entitled to consolidate this Memorandum of Charge with any other charge, mortgage or other encumbrances. Unless otherwise agreed by you, the security under this Memorandum of Charge shall not be discharged except on payment to you not only of the Indebtedness but also all money secured by any other security created by me or by any person through whom I claim.

## 18. CERTIFICATE

A certificate signed by any of your officers as to the amount of the Indebtedness for the time being due and owing or incurred to you by me shall, in the absence of manifest error, be accepted by me as conclusive evidence that the amount stated in the certificate is due or owing to you as aforesaid.

## 19. INDULGENCE

19.1 You may at all times, without discharging or in any way affecting the security created under this Memorandum of Charge, do any of the following:-

19.1.1 grant to me and/or to any surety, guarantor or other person any time or indulgence;

19.1.2 renew any bills, notes, or other negotiable securities;

19.1.3 take any securities or guarantees from me and/or any surety, guarantor or other person;

19.1.4 deal with, exchange, release, modify or abstain from taking, perfecting or enforcing any securities or other guarantees or rights which you may now or

after the date of this Memorandum of Charge have from or against me and/or any surety, guarantor or other person; and

19.1.5 make any compromise, composition, arrangement or dealing with me and/or any surety, guarantor or other person.

19.2 The security created under this Memorandum of Charge shall not be affected by any invalidity of any security.

## 20. DISCHARGE OF SECURITY

20.1 If the whole of the Indebtedness is paid to you, then subject to your rights of consolidation in Clause 17, you shall, upon my request and at my cost, discharge the charge hereby created and release to me or as I may direct, the certificates or other documents of title to the Charged Securities and the instrument of transfers thereof.

20.2 You are not bound to deliver stocks, shares, or securities bearing serial numbers identical with those deposited with or transferred to you so long as the stocks, shares or denomination and nominal amount rank pari passu with those initially deposited with or transferred to you (subject to any capital reorganisation which may have occurred in the meantime).

20.3 Any discharge or release of the charge hereby created shall be deemed to be made subject to the condition that it will be void if any payment which you have received is set aside under any applicable law or proves to have been for any reason invalid.

## 21. NOTICES & LANGUAGE

### 21.1 Service of Notice

Any notice or request with reference to this Memorandum of Charge shall be in writing signed by the party by whom it is served or by its solicitors and shall be deemed to be sufficiently served or given for all purposes herein on the party to whom it is served if it is left by hand at or sent by commercial courier, registered post or facsimile (with copy by hand or commercial courier or ordinary or registered post) to (as applicable) the address of the party to whom it is sent as set out below or the registered office for the time being of such party or such other address as one party may from time to time notify to the other party in writing.

i) to me:- -----

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_



ii) to you:- -----

NU SKIN ENTERPRISES , INC.  
75 West Center Street  
Provo, Utah 84601,  
United States of America  
Telefax: 00 1 801 345 3899  
Attn: .....

## **21.2 Time of service**

A notice sent:-

21.2.1 by facsimile (and confirmed by the delivery of a copy thereof by hand or commercial courier or ordinary or registered post) shall be deemed to have been served and received upon completion of the effective transmission of such notice and a written record of the transmission is printed out from the sender's facsimile machine;

21.2.2 by ordinary or registered post within Malaysia shall be deemed to have been served and received on the **3rd** (Third) day occurring after the date on which it is posted;

21.2.3 by an ordinary or registered post outside Malaysia shall be deemed to have been served and received on the **10th** (Tenth) day occurring after the date on which it is posted;

21.2.4 by hand or commercial courier shall be deemed to have been served at the time of delivery of the notice.

## **21.3 Language**

All correspondence, notices, reports and other forms of communication between the parties hereto contemplated in, in respect of, incidental to and in relation to this Memorandum of Charge shall be in the English language.

## **22. POWER OF ATTORNEY**

Simultaneously with the execution of this Memorandum of Charge, I will execute a Power of Attorney (in the form annexed to this Memorandum of Charge and marked "Appendix 1" together with such modifications as you may agree upon in writing) and confer upon you or your nominee(s) the powers and authorities described in the Power of Attorney.

## **23. RESIGNATION FROM OFFICE OF DIRECTOR OF COMPANY**

If required by you upon the occurrence of an Event of Default, I will resign (either immediately or on such date as you specify) from the office of director of (as applicable) NSMH and NU SKIN (MALAYSIA) SDN. BHD. and if such office is held by my nominee(s), procure the resignation of my nominee(s) from the office of director of (as applicable) NSMH and NU SKIN (MALAYSIA) SDN. BHD. without payment of any compensation for loss of office on (as applicable) NSMH's or NU SKIN (MALAYSIA) SDN. BHD's board as required by you.

## **24. CHANGES**

The security, liabilities and obligations created by this Memorandum of Charge shall continue to be valid and binding for all purposes whatsoever notwithstanding my bankruptcy, death or unsoundness of mind.

## **25. LOSS/DAMAGE/DIMINUTION IN VALUE**

So long as the Charged Securities are in your or your nominees', servants' or agents' or any assignee's or transferee's possession, custody or control under the provisions of this Memorandum of Charge, neither you nor any such person shall be answerable or responsible for the loss of or damage to or diminution in value of any of the Charged Securities howsoever arising and whether by the exercise or non-exercise of any of the authorities or powers conferred upon you or your nominees under this Memorandum of Charge or by reason of your or your nominees holding the Charged Securities in your or as applicable, your nominees' name(s).

## **26. COSTS**

### **26.1 Solicitors costs**

Each party hereto shall bear its own solicitors' costs of and incidental to this Agreement.

### **26.2 Stamp duty on the Memorandum of Charge**

I will bear the stamp duty chargeable on this Memorandum of Charge and all other relevant documents incidental to this Memorandum of Charge and, if relevant, any penalties for late stamping. Any payment made by you on our behalf of any costs and expenses which I am liable to pay for under this Memorandum of Charge shall form part of the Indebtedness.

## 27. TIME

Time wherever mentioned shall be the essence of this Memorandum of Charge.

## 28. GOVERNING LAW & JURISDICTION

This Memorandum of Charge shall be governed by the laws of Malaysia. Subject to Clause 29, I hereby submit myself and my assets to the non-exclusive jurisdiction of the courts in Malaysia.

## 29. ARBITRATION

### 29.1 Reference to Arbitration

Any dispute or difference which may arise between the parties hereto at any time hereafter whether during the continuance in force of this Memorandum of Charge or upon or after its termination, touching any matter or thing herein contained or the operation or construction of this Memorandum of Charge or any matter or thing in any way connected with, arising from or in relation to this Memorandum of Charge or the rights, duties, liabilities of the Parties hereunder shall be finally settled by arbitration in accordance with the United Nations Commission on International Trade Law Arbitration Rules 1976.

### 29.2 Arbitral Proceedings

A reference to arbitration shall be 3 (Three) arbitrators and the arbitration shall be held in Provo, Utah, United States of America. The language to be used in the arbitral proceedings shall be English.

### 29.3 Interim remedies

Pending the establishment of the arbitral tribunal, the parties hereto may apply to the courts in Malaysia (which shall have non-exclusive jurisdiction) for the grant of interim injunctions and orders for the protection and preservation of property subject of or relating to this Memorandum of Charge.

## 30. NON-WAIVER

No failure or delay on your part in exercising nor any omission to exercise any right, power, privilege or remedy accruing to you hereunder upon any default on my part shall impair any such right, power privilege or remedy or be construed as a waiver thereof or an acquiescence in such default, nor shall any action by you in respect of any default or any acquiescence in any such default, affect or impair any of your rights, powers, privileges or remedies in respect of any other subsequent default.

## 31. ASSIGNMENT OR TRANSFER OF CHARGE

You shall be at liberty, at any time, with or without the concurrence by and without notice to me, and at your own costs and expense, to assign and transfer this Memorandum of Charge.

## 32. SUCCESSORS-IN-TITLE

This Memorandum of Charge shall be binding upon your and my successors-in-title and assigns and persons deriving title under (as applicable) you or me.

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**IN WITNESS WHEREOF** we have hereunto executed this Memorandum of Charge the day month and year first above written.

SIGNED BY            )

)

in the presence of:-        )

## Risks Related to Our Business

### **Currency exchange rate fluctuations could lower our revenue and net income.**

In 2001, we recognized 83% of our revenue in non-United States markets in each market's respective local currencies. We purchase inventory primarily in the United States in U.S. dollars. In preparing our financial statements, we translate revenue and expenses in foreign countries from their local currencies into U.S. dollars using weighted average exchange rates. If the U.S. dollar strengthens relative to local currencies, our reported revenue, gross profits and net income will likely be reduced. For example, in 2001, the Japanese yen significantly weakened, which reduced our operating results on a U.S. dollar reported basis. Our 2002 operating results could be similarly harmed if the Japanese yen weakens from current levels. Given our inability to predict the degree of exchange rate fluctuations, we cannot estimate the effect these fluctuations may have upon future reported results, product pricing or our overall financial condition. Although we attempt to reduce our exposure to short-term exchange rate fluctuations by using foreign currency exchange contracts, we cannot be certain these contracts or any other hedging activity will effectively reduce exchange rate exposure.

### **Because our Japanese operations account for over 50% of our business, any adverse changes in our business operations in Japan would harm our business.**

Approximately 57% of our 2001 revenue was generated in Japan. Various factors could harm our business in Japan, including worsening of economic conditions. Economic conditions in Japan have been poor in recent years and may worsen or not improve. Our revenue in Japan decreased from 68 billion yen in 1999 to 60 billion yen in 2000, representing a 12% decrease in local currency terms, in part because of economic conditions and stagnant consumer confidence. Continued or worsening economic and political conditions in Japan could further reduce our revenue and net income. In addition, our operations in Japan face significant competition from existing and new competitors. Our operations would also be harmed if our planned growth initiatives fail to generate continued interest and enthusiasm among our distributors in this market and fail to attract new distributors.

### **If we are unable to retain our existing independent distributors and recruit additional distributors, our revenue will not increase.**

We distribute almost all of our products through our independent distributors and we depend on them directly for substantially all of our revenue. Our distributors may terminate their services at any time, and, like most direct selling companies, we experience high turnover among distributors from year to year. As a result, we need to continue to retain existing and recruit additional independent distributors. To increase our revenue, we must increase the number of and/or the productivity of our distributors.

Although we experienced an increase in executive and active distributors in 2001, we have experienced declines from time to time in both active distributors and executive distributors in the past. The number of our active and executive distributors may not increase and could decline once again in the future. We cannot accurately predict how the number and productivity of distributors may fluctuate because we rely upon our existing distributors to recruit, train and motivate new distributors. Our operating results could be harmed if our existing and new business opportunities and products do not generate sufficient interest to retain existing distributors and attract new distributors. The number and productivity of our distributors also depends on several additional factors, including:

- adverse publicity regarding us, our products, our distribution channel or our competitors;
- failure to motivate our distributors with new products;
- the public's perception of our products and their ingredients;
- the public's perception of our distributors and direct selling businesses in general; and
- general economic and business conditions.

In addition, we may face saturation or maturity levels in a given country or market. This is of particular concern in Taiwan, where industry sources have estimated that over 10% of the population is already involved in some form of direct selling. The maturity of several of our markets could also affect our ability to attract and retain distributors in those markets.

### **The regulatory environment in China is rapidly evolving, and our expansion plan for operations in China may be modified or otherwise harmed by regulatory changes, subjective interpretations of laws or an inability to work effectively with national and local government agencies.**

Our plans for expansion in China are still developing and are subject to further review and modification as we work with national and local government agencies in connection with the implementation of our current plans. Although we are presently working closely with both national and local agencies in developing our plans, our efforts to comply with local laws may be harmed by a rapidly evolving regulatory climate and subjective interpretation of laws by the authorities. Further, due to the foregoing restrictions, our global network marketing business model cannot be fully implemented at present in China and as a result, we are subject to the risk that some of our foreign distributors may conduct business in China in a prohibited manner and bring about negative media or regulatory actions. Any determination that our operations or activities are not in compliance with applicable regulations could negatively impact our business and our reputation with Chinese regulators.

The current restrictions on direct selling activities in China could harm our ability to expand our operations in China as planned. Although the regulatory climate in China is changing with the country's accession to the World Trade Organization, it is uncertain whether restrictions impacting our business, including the requirement that sales only be transacted by employees of the company in a fixed retail location, will be eased. We cannot assure you that we will be able to implement the direct selling model we utilize in our other markets at any time in the foreseeable future in China, and we believe this could limit our success in this market.

**Restrictions on direct selling activities in China require us to employ a local sales force that markets and sells our products from retail store locations, and we have limited previous experience in managing retail stores or an employed sales force.**

The current regulatory environment in China prohibits us from implementing our distribution model there. As a result, in order to enter this market, we have established 32 retail stores and hired approximately 430 sales employees, as of March 31, 2002. We plan to significantly increase the number of our retail stores in China over the next year and introduce a number of our premium personal care products through these stores in early 2003. Opening and operating these retail stores in China will involve significant expense, including expenses associated with hiring additional sales personnel, entering into leases for commercial space and maintaining sufficient inventory to supply these stores. We anticipate investing approximately \$15 million in our retail store expansion over the next 12 months. If this expansion is not successful, we may not recover our investment. We have limited prior experience in managing retail stores or an employed sales force and accordingly, we cannot assure you that we will be able to do so successfully. If we are unable to effectively manage our retail stores or employees, our government relations may be compromised and our ability to realize our expansion plans in China may be prejudiced.

**Because of regulations that require us to locally manufacture products we sell in China, we have invested substantial financial resources in our own manufacturing facility and we cannot assure you that we will be successful in managing these operations.**

Chinese regulations currently require that we sell locally manufactured products. As a result, we have acquired and operate our own manufacturing plant which produced approximately 30% of our products sold in China for the three months ended March 31, 2002. We have no previous experience in manufacturing products and we cannot assure you that we will be successful in managing these operations.

Further, we rely on other local manufacturers to produce the remaining products we sell in China. We could experience difficulties or other disruptions in the manufacture of our products by third parties. To the extent we experience any such difficulties or disruptions, we may be unable to achieve timely delivery of our products for sale, which could result in lost revenue. In addition, we have

implemented processes and procedures to ensure adequate quality control for our products manufactured by third parties, but we cannot assure you that these standards will be met consistently and any failure to maintain the quality associated with our brand could harm our reputation and revenue potential. Chinese commercial law is relatively undeveloped compared to most of our other major markets and, as a result we may have limited legal recourse in the event we encounter significant difficulties with our third-party manufacturers. Further, limited protection of intellectual property is available under Chinese law and the local manufacturing of our products may subject us to an increased risk that unauthorized parties may attempt to copy or otherwise obtain or use our product formulations. As a result, we cannot assure you that we will be able to adequately protect our product formulations.

**If we are unable to expand operations in any of the new markets we have currently targeted, we may have difficulty achieving our long-term objectives.**

A significant percentage of our revenue growth over the past decade has been attributable to our expansion into new markets. For example, the revenue growth we experienced in 2001 was due in part to our successful expansion of operations into Singapore and Malaysia. Moreover, our growth over the next several years depends on our ability to successfully introduce our products and our distribution system into new markets, including China and Eastern Europe. In addition to the regulatory difficulties we may face in accessing these new markets, we could face difficulties in achieving acceptance of our premium-priced products in developing markets. In the past, we have struggled to operate successfully in developing country markets, such as Latin America. This may also be the case in China and Eastern Europe and the other new markets into which we currently intend to expand. If we are unable to successfully expand our operations into these new markets, our opportunities to grow our business may be limited and as a result, we may not be able to achieve our long-term objectives.

**Adverse publicity concerning our business, marketing plan or products could harm our business and reputation.**

The size of our distribution force and the results of our operations can be particularly impacted by adverse publicity regarding us, the legality of our distributor network, our products or the actions of our distributors. Specifically, we are susceptible to adverse publicity concerning:

- the legality of network marketing;
- the ingredients or safety of our or our competitors' products;
- regulatory investigations of us, our competitors and our respective products;
- the actions of our current or former distributors; and

- public perceptions of direct selling businesses generally.

In addition, in the past we have experienced negative publicity that has harmed our business in connection with regulatory investigations and inquiries. We may receive negative publicity in the future and it may harm our business and reputation.

**Although our distributors are independent contractors, improper distributor actions that violate laws or regulations could harm our business.**

Distributor activities in our existing markets that violate governmental laws or regulations could result in governmental actions against us in markets where we operate. Except in China, our distributors are not employees and act independently of us. We implement strict policies and procedures to ensure our distributors will comply with legal requirements. However, given the size of our distributor force, we experience problems with distributors from time to time. For example, product claims made by some of our distributors in 1990 and 1991 led to an investigation by the United States Federal Trade Commission, or FTC, which resulted in a consent decree with the FTC described further below. Distributors often desire to enter a market before we have received approval to do business in order to gain an advantage in the market. Improper distributor activity in new geographic markets can be particularly harmful to our ability to

ultimately enter these markets, which is of a particular concern in China given the current restrictions on direct selling activities and the political climate in that market.

**Failure of our Internet and our other technology initiatives to create sustained distributor enthusiasm and incremental revenue growth would negatively impact our business.**

We have invested over \$100 million in technology for our business over the last five years, including our acquisition of Big Planet. Through these investments, we have introduced various Internet and other initiatives in our major markets in order to increase distributor sponsorship and retention. Although we believe these initiatives have provided us with a competitive advantage, uncertainty exists regarding the long-term effects of these initiatives. We cannot assure you that these initiatives will continue to increase distributor sponsorship and activity or generate revenue growth on a sustained basis. These initiatives are subject to various risks and uncertainties including:

- our possible inability to maintain a reliable technology infrastructure with the necessary speed, data capacity and security, as well as timely development of complementary products such as high-speed modems, for providing reliable Internet access and services;
- the possibility that we may encounter technical problems and delays in deploying planned Internet and technological enhancements, either of which could reduce distributor enthusiasm, increase the costs of these initiatives and negatively impact our revenue;
- our potential inability to adapt to rapidly changing technologies and evolving industry standards and to improve the performance, features and reliability of our services;
- the possibility that new product introductions and initiatives will adversely affect sales of our other products and not generate incremental growth; and
- our potential inability to adapt our systems to new standards or protocols or to manage increased Internet activity levels or increased government regulation, particularly those relating to the liability of online service companies for information carried on or disseminated through their services.

Our adoption of new Internet and technological advances to enable our distributors to increase productivity has required substantial expenditures, and we may not be able to integrate the Internet or related technologies into our business in a profitable manner. For example, we have experienced difficulties in marketing our price-sensitive Big Planet products and services. We incurred operating losses related to these products and services in the United States of approximately \$16 million for the year ended December 31, 2001 and \$3 million for the three months ended March 31, 2002.

**Failure of new products to gain distributor and market acceptance could harm our business.**

A critical component of our business is our ability to develop new products that create enthusiasm among our distributor force. If we fail to introduce new products planned for introduction in 2002, our distributor productivity could be harmed. In addition, if any new products fail to gain market acceptance, are restricted by regulatory requirements, or have quality problems, this would harm our results of operations. Factors that could affect our ability to continue to introduce new products include, among others, government regulations, the loss of key research and development staff from our divisions, the termination of third-party research and collaborative arrangements, proprietary protections of competitors that may limit our ability to offer comparable products and any failure to anticipate changes in consumer tastes and buying preferences.

**Government inquiries, investigations and actions could harm our business.**

From time to time we receive formal and informal inquiries from various government regulatory authorities about our business and our compliance with local laws and regulations. Any determination that we or any of our distributors are not in compliance with existing laws or regulations could potentially harm our business. Even if governmental actions do not result in rulings or orders, they potentially could create

negative publicity. Negative publicity could detrimentally affect our efforts to recruit or motivate distributors and attract customers and consequently, could reduce revenue and net income.

In 1993, we, together with three of our distributors, entered into a consent decree with the FTC relating to its investigation of our distributors' product claims and practices. As part of the settlement of the FTC's, investigation, we paid a fine of approximately \$1 million to the FTC. In August 1997, we reached a settlement with the FTC with respect to alleged violations of this consent decree pursuant to which we paid an additional \$1.5 million fine. In December 2000, we received notice from the FTC that they were once again investigating our compliance with our consent decree. In August 2001, we provided information to the FTC in response to the FTC's request and we have had informal discussions with the FTC on this matter since that date. We believe that the negative publicity generated by these FTC actions harmed our business and results of operations in the United States and further actions by the FTC or other comparable state or federal regulatory agencies, in the United States or abroad, could have a further negative impact on us in the future.

In addition, we are susceptible to government initiated campaigns that do not rise to the level of formal regulations. For example, the South Korean government, several South Korean trade groups and members of the South Korean media initiated campaigns in 1997 and 1998 urging South Korean consumers not to purchase luxury or foreign goods. We believe that these campaigns, and the related media attention they received, together with the economic recession in the South Korean economy, significantly harmed our recently opened South Korean business. Our revenue from our South Korean operations decreased by 85% in 1998 as compared to 1997. We cannot assure you that similar government, trade group or media actions will not occur again in South Korea or in other countries where we operate or that such events will not similarly harm our net operations.

### **The loss of key high-level distributors could negatively impact our distributor growth and our revenue.**

We have approximately 550,000 active distributors and 26,000 executive distributors. Approximately 400 distributors currently occupy the highest distributor level under our Global Compensation Plan. These distributors, together with their extensive networks of downline distributors, account for substantially all of our revenue. As a result, the loss of a high-level distributor or a group of leading distributors in the distributor's network of downline distributors whether by their own choice or through disciplinary actions by us for violations of our policies and procedures could negatively impact our distributor growth and our revenue.

### **Laws and regulations may prohibit or severely restrict our direct sales efforts and cause our revenue and profitability to decline.**

Various government agencies throughout the world regulate direct sales practices. These laws and regulations are generally intended to prevent fraudulent or deceptive schemes, often referred to as "pyramid" schemes, that compensate participants for recruiting additional participants irrespective of product sales, use high pressure recruiting methods and/or do not involve legitimate products. The laws and regulations in our current markets often:

- impose order cancellations, product returns, inventory buy-backs and cooling-off rights for consumers and distributors;
- require us or our distributors to register with governmental agencies;
- impose reporting requirements to regulatory agencies; and/or
- require us to ensure that distributors are not being compensated based upon the recruitment of new distributors.

Complying with these widely varying and sometimes inconsistent rules and regulations can be difficult and require the devotion of significant resources on our part. If we are unable to continue business in existing

markets or commence operations in new markets because of these laws, our revenue and profitability will decline.

China currently has laws that prohibit us from conducting business using our current direct selling distribution model. In 2001, China was admitted to the World Trade Organization and as a result, China has agreed to ease its current restrictions on direct selling by December 2004. There can be no assurance, however, that these restrictions will in fact be eased or, if they are, that we will be allowed to conduct a direct selling business in China. Other countries where we currently do business could change their laws or regulations to negatively affect or prohibit completely direct sales efforts. In addition, government agencies and courts in the countries where we operate may use their powers and discretion in interpreting and applying laws in a manner that limits our ability to operate or otherwise harms our business. If any governmental authority were to bring a regulatory enforcement action against us that interrupts our business, revenue and earnings would likely suffer.

### **Challenges by private parties to the form of our network marketing system could harm our business.**

We may be subject to challenges by private parties, including our distributors, to the form of our network marketing system or elements of our business. In the United States, the network marketing industry and regulatory authorities have generally relied on

the implementation of distributor rules and policies designed to promote retail sales to protect consumers and to prevent inappropriate activities and to distinguish between legitimate network marketing distribution plans and unlawful pyramid schemes. We have adopted rules and policies based on case law, rulings of the FTC, discussions with regulatory authorities in several states and domestic and global industry standards. Legal and regulatory requirements concerning network marketing systems, however, involve a high level of subjectivity, are inherently fact based and are subject to judicial interpretation. Because of the foregoing, we can provide no assurance that we would not be harmed by the application or interpretation of statutes or regulations governing network marketing, particularly in any civil challenge by a current or former distributor.

**Government regulation of our products and services may restrict or inhibit introduction of these products in some markets and could harm our business.**

Our products and our related marketing and advertising efforts are subject to extensive government regulation by numerous domestic and foreign governmental agencies and authorities. These include the Food and Drug Administration, or FDA, the FTC, the Consumer Product Safety Commission, and the United States Department of Agriculture in the United States, State Attorneys General and other state regulatory agencies, and the Ministry of Health, Labor and Welfare in Japan along with similar government agencies in foreign markets where we operate. We may be unable to introduce our products in some markets if we fail to obtain the necessary regulatory approvals, or if any product ingredients are prohibited. For example, we stopped marketing our product *Cholestin* (the red yeast rice version) as a dietary supplement in the United States because the FDA believed *Cholestin* qualified as a drug and therefore required FDA approval before it could be sold in the United States. Our markets have varied regulations concerning product formulation, labeling, packaging and importation. These laws and regulations often require us to, among other things:

- reformulate products for a specific market to meet the specific product formulation laws of that country;
- conform product labeling to the regulations in each country; and
- register or qualify products with the applicable government authority or obtain necessary approvals or file necessary notifications for the marketing of our products.

Failure to introduce products or delays in introducing products could reduce revenue and decrease profitability. Regulators also may prohibit us from making therapeutic claims about products despite research and independent studies supporting these claims. These product claim restrictions could prevent us from realizing the potential revenue from some of our products.

**Increases in duties on our imported products in our non-United States markets could reduce our revenue and harm our competitive position.**

Historically, we have imported most of our products into the countries in which they are ultimately sold. These countries impose various legal restrictions on imports and typically impose duties on our products. In any given country, regulators may increase duties on imports and, as a result, reduce our profitability and harm our competitive position relative to locally produced goods. In some countries, government regulators may prevent importation of our products altogether.

**Governmental authorities may question our intercompany transfer pricing policies or change their laws in a manner that could increase our effective tax rate or otherwise harm our business.**

As a United States company doing business in international markets through our subsidiaries, we are subject to foreign tax and intercompany pricing laws, including those relating to the flow of funds between our company and our subsidiaries. Regulators in the United States and in foreign markets closely monitor our corporate structure and how we effect intercompany fund transfers. If regulators challenge our corporate structure, transfer pricing mechanisms, or intercompany transfers, our operations may be harmed, and our effective tax rate may increase. Tax rates vary from country to country, and if regulators determine that our profits in one jurisdiction may need to be increased, we may not be able to fully utilize all foreign tax credits that are generated, which will increase our effective tax rate. For example, our corporate income tax rate in the United States is 35%. If our profitability in a higher tax jurisdiction, such as Japan where the corporate tax rate is currently set at 46%, increases disproportionately to the rest of our business, our effective tax rate may increase. We cannot assure you that we will continue operating in compliance with all applicable customs, exchange control and transfer pricing laws, despite our efforts to be aware of and comply with such laws. If these laws change, we may need to adjust our operating procedures and our business may suffer.

**Losing suppliers or rights to sell products could harm our business.**

For approximately nine years, we have acquired ingredients and products from one unaffiliated supplier that currently manufactures approximately 50% of our Nu Skin personal care products. We currently rely on two unaffiliated suppliers, one of which supplies 38% and the other of which supplies 27% of our Pharmanex nutritional supplements. We obtain one of our nutritional supplements, *Cordymax Cs-4*, from a sole supplier in China pursuant to a contract expiring in 2006. We also license the right to distribute some of our products from third parties. Because of the concentrated nature of our suppliers and manufacturers, the loss of any of these suppliers or manufacturers, or the failure of suppliers to meet our needs, could restrict our ability to produce or distribute many products and harm our revenue as a result.

**We depend on our key personnel and the loss of the services provided by any of our executive officers or other key employees could harm our business and results of operations.**

Our success depends to a significant degree upon the continued contributions of our senior management, many of whom would be difficult to replace. These employees may voluntarily terminate their employment with us at any time. We may not be able to successfully retain existing personnel or identify, hire and integrate new personnel. In particular, our Chief Financial Officer, Corey Lindley, oversees our new market development efforts in addition to his financial responsibilities. Due to our significant investment in China and the complexity and potential significance of that market, he will relocate for a period of time to Shanghai, China in the fall of 2002. We expect Mr. Lindley to continue to function as our Chief Financial Officer while he resides in Asia. If we need to replace Mr. Lindley as the Chief Financial Officer and we cannot find a suitable replacement, or if we lose the services of our other executive officers or key employees for any reason, our business, financial condition and results of operations could be harmed.

**Our markets are intensely competitive, and market conditions and the strengths of competitors may harm our business.**

The markets for our Nu Skin and Pharmanex products are intensely competitive. Our results of operations may be harmed by market conditions and competition in the future. Many competitors have

much greater name recognition and financial resources than we have, which may give them a competitive advantage. For example, our Nu Skin products compete directly with branded, premium retail products. We currently do not have significant patent or other proprietary protection, and competitors may introduce products with the same ingredients that we use in our products. Because of regulatory restrictions concerning claims about the efficacy of dietary supplements, we may have difficulty differentiating our products from competitors' products, and competing products entering the nutritional market could harm our nutritional supplement revenue. The markets for many of our Big Planet products are extremely competitive and price-sensitive, which has kept margins low for these products and negatively impacted our ability to sell these products in a profitable manner. We cannot assure you that we will be able to successfully identify and market high margin products that would fit in our technology-oriented Big Planet product line and improve our profitability.

We also compete with other network marketing companies for distributors. Some of these competitors have a longer operating history and greater visibility, name recognition and financial resources than we do. Some of our competitors have also adopted and could continue to adopt some of our successful business strategies, including our global compensation plan for distributors. Consequently, to successfully compete in this market and attract and retain distributors, we must ensure that our business opportunities and compensation plans are financially rewarding. We cannot assure you that we will be able to successfully compete in this market.

**Product liability claims could harm our business.**

We may be required to pay for losses or injuries purportedly caused by our products. Although we have had a very limited product claims history, we have recently experienced difficulty finding insurers willing to provide product liability coverage at reasonable rates due to insurance industry trends and the rising cost of insurance generally. As a result, we have elected to self-insure our product liability risks for our core product lines. Until we elect and are able to obtain product liability insurance, if any of our products are found to cause any injury or damage, we will be subject to the full amount of liability associated with any injuries or damages. This liability could be substantial. We cannot predict if and when product liability insurance will be available to us on reasonable terms.

**System failures could harm our business.**

Because of our diverse geographic operations and our complex distributor compensation plan, our business is highly dependent on efficiently functioning information technology systems. These systems and operations are vulnerable to damage or interruption from fires, earthquakes, telecommunications failures and other events. They are also subject to break-ins, sabotage, intentional acts of vandalism and similar misconduct. Despite any precautions, the occurrence of a natural disaster or other unanticipated problems could result in interruptions in services and reduce our revenue and profits.

**The market price of our Class A common stock is subject to significant fluctuations due to a number of factors which are beyond our control, including but not limited to variations in our quarterly operating results, market trends related to our products and economic and currency exchange issues in the foreign markets we operate.**

Many factors could cause the market price of our stock to fall. Some of these factors are:

- fluctuations in our quarterly operating results;
- the sale of shares of Class A common stock by our original or significant stockholders;
- general trends in the market for our products;
- acquisitions by us or our competitors;
- economic and/or currency exchange issues in those foreign countries in which we operate;
- changes in estimates of our operating performance or changes in recommendations by securities analysts; and
- general business and political conditions.



Broad market fluctuations could also lower the market price of our Class A common stock regardless of our actual operating performance. In addition, we have publicly disclosed our five-year growth projections and these long-term projections are inherently risky and uncertain. If we fail to meet the metrics contained in those projections, our stock price may be harmed.

**The holders of our Class B common stock control over 90% of the combined stockholder voting power, and third parties will be unable to gain control of our company through purchases of Class A common stock.**

The original stockholders of our company, together with their family members and affiliates, have the ability to control the election and removal of the board of directors and, as a result, future direction and operations, without the supporting vote of any other stockholder. Consequently, these original stockholders, together with their family members and affiliates, are able to control decisions about business opportunities, declaring dividends, issuing additional shares of Class A common stock or other securities, and the approval of any merger, consolidation or sale of all or substantially all of our assets. These stockholders own all outstanding shares of Class B common stock, which have ten-to-one voting privileges over shares of Class A common stock. They may make decisions that are adverse to your interests. Currently, these stockholders and their affiliates collectively own shares that represent more than 90% of the combined voting power of the outstanding shares of both classes of common stock. As long as these stockholders are majority stockholders, third parties will not be able to obtain control of our company through open-market purchases of shares of our Class A common stock.

**Approximately 54 million shares and vested options, or 67% of our total outstanding shares, are restricted from immediate resale but may be sold into the market in the near future, which could affect the market price of our Class A common stock.**

If our stockholders sell a substantial number of shares of our Class A common stock in the public market, the market price of our Class A common stock could fall. Several of our principal stockholders hold a large number of shares of the outstanding Class A common stock and the Class B common stock that are convertible into Class A common stock. Some of the original stockholders have been actively selling shares on the open market. Additional sales by these stockholders or a decision by any of the other principal stockholders to aggressively sell shares could depress the market price of our Class A common stock.

As of July 1, 2002, we had 81,570,961 shares of common stock outstanding. All of these shares are freely tradeable, except for approximately 54 million shares and vested options held by certain stockholders and our executive officers and directors, which are subject to lock-up restrictions as described below. These shares will become eligible for sale in the public market as follows:

Number of Shares	Date
Approximately 17 million	90 days after July 26, 2002 pursuant to a lock-up agreement between the underwriters and our officers, directors and certain original shareholders who did not sell in the recent offering
Approximately 4 million	180 days after July 26, 2002 pursuant to a lock-up agreement among the underwriters, us and R. Craig Bryson
Approximately 33 million	2 years after July 26, 2002 pursuant to a lock-up agreement among the underwriters, us and stockholders who sold shares in the recent offering, which restrictions may be waived only with the consent of the majority of our independent directors

The above table reflects the lock-up arrangements with the underwriters pursuant to which we and our executive officers, directors and those original shareholders who did not sell shares in the recent public offering have agreed that we will not sell or otherwise dispose of any shares of Class A common stock, or securities convertible into or exchangeable for our Class A common stock, without the prior written consent of the underwriters for a period of 90 days after July 26, 2002. In addition, the table reflects the lock-up arrangements among the selling stockholders in the offering, the underwriters and us, providing that the company's original shareholders who are selling in this offering (constituting all but one of the selling stockholders, which is a charitable organization) will not sell or otherwise dispose of any shares of Class A common stock, or securities convertible into or exchangeable for our Class A common stock, without the prior written consent of the underwriters and the majority of our independent directors for a period of two years after July 26, 2002, except with respect to the shares beneficially owned by R. Craig Bryson whose lock-up agreement is for a period of 180 days. This agreement is subject to the following exceptions:

- charitable donations in the second year of up to 500,000 shares in the aggregate by the selling stockholders to a charitable organization;
- transfers of common stock to selling stockholders from fixed charitable remainder trusts established by the selling stockholder;
- transfers of common stock to immediate family members or related persons or estate planning entities who agree to be bound by the terms of this two-year lock-up agreement;
- sales of shares of which the selling stockholder is deemed to have beneficial ownership but whose interest presents no opportunity to profit from the shares being sold; and
- transfers of shares by lenders under an existing pledge of shares as security for a loan of approximately \$20 million to Nedra D. Roney in the case of a default under the loan or in connection with a refinancing thereof.

We have also entered into a separate lock-up arrangement with the original shareholders pursuant to which these shareholders agree that after the expiration of the 2 year lock-up agreement they will be subject to the volume restrictions set forth under Rule 144, as in effect on the date of this prospectus, on the sale of shares, which shares would otherwise be eligible for unlimited sale under the securities laws. In the event these lock-up restrictions were removed, the resulting sales could cause the price of our Class A common stock to decline.