

MASTER LEASE AND LICENSING AGREEMENT
Version S2 BioPhotonic Scanner United States

This Master Lease and License Agreement ("Agreement") is entered into as of this ____ day of _____, 200_ (the "Effective Date") between Nu Skin United States, Inc., a Delaware corporation having a place of business at 75 West Center Street, Provo, Utah 84601 ("Lessor"), and the below identified Lessee. This Agreement consists of this page ("Signature Page"), and the attached terms and conditions ("Terms and Conditions"). Each reference on this Signature Page shall be construed to incorporate all the terms provided in the Terms and Conditions. In the event of any conflict between the provisions of this Signature Page and the Terms and Conditions, the latter shall control. The basic terms of this Agreement:

A. Scanner. This Agreement is for a lease of personal property and related software known as the Pharmanex BioPhotonic Scanner ("Scanner") as more specifically described on the attached *Exhibit A*, which is incorporated herein by this reference.

B. Expiration Date. This Agreement is for a period of 36 months from the date on which the first Basic Rental is due and payable.

C. Rental. Basic Rental of \$199.00, monthly plus all Assessments, shall be due and payable *in arrears* on the last business day of each month. Each Rental payment shall be prorated for any partial month, and payments and all Assessments, shall be payable by Lessee's credit card.

D. Down Payment. \$500.00, which amount shall be applied to the final Rental payments due (equivalent to the Down Payment amount) so long as it has not previously been applied to a Lessee obligation due to a Default under the Agreement or forfeited upon earlier Termination or Expiration. The Down Payment shall be due and payable upon the execution by Lessee of this Signature Page.

E. Credit Card Information for Rentals, Down Payment, Assessments and Other Amounts (TWO REQUIRED):

Discover Card American Express VISA Credit VISA Debit MasterCard Credit MasterCard Debit
Credit Card Number (PRINT CLEARLY) _____ Exp. Date ____/____
Credit Card Billing Address, Zip Code _____
Card Holder Name as it Appears on the Credit Card _____

Discover Card American Express VISA Credit VISA Debit MasterCard Credit MasterCard Debit
Credit Card Number (PRINT CLEARLY) _____ Exp. Date ____/____
Credit Card Billing Address, Zip Code _____
Card Holder Name as it Appears on the Credit Card _____

Cardholder's Signature: Use of the card is authorized by Lessee's signature on this Signature Page.

F. Renewal at Expiration. This Agreement shall be automatically extended from year to year, in accordance with the provisions of Section 3, Term, of the Terms and Conditions, for a Renewal Term Rental of \$99.00 per month, plus all Assessments, due and payable monthly, in arrears, by valid credit card, on the same Rental Payment Dates as under the original Term, subject to the non-renewal and early termination provisions of such Section 3.

G. Occupation. If the LESSEE/LICENSEE is a health care professional or works in the health care industry, please indicate specific profession or occupation (e.g., chiropractor, MD, dentist, nurse, etc.): _____

H. Primary Location: * the Equipment and Related Software shall be kept primarily at:

_____ Telephone No.: _____

_____ **IN WITNESS WHEREOF**, the parties have executed this Master Lease and Licensing Agreement as of this ____ day of _____, 20__ , and Lessee's signatory warrants his/her authority to sign as Lessee or on Lessee's behalf.

LESSOR/LICENSOR:

NU SKIN ENTERPRISES UNITED STATES, INC. Name (print or type): _____

By: _____

Name: _____

Its: _____

Address: 75 West Center Street
Provo, Utah 84601

ATTN: _____

(1) LESSEE/LICENSEE (IF AN INDIVIDUAL):

Signature: _____

Address: _____

Telephone Number: _____

Social Security No.: _____

(2) LESSEE/LICENSEE (IF A CORPORATION):

Name of corporation: _____

By: _____

Name of person signing: _____

Its: _____

Principal Corporate Address: _____

Telephone Number: _____

Terms and Conditions

1. **Meaning of Words** – “Scanner” means the Scanner and related equipment described in Exhibit A. “Related Software” means the software programs developed and owned by Lessor and described in such Exhibit A. “Distributor” shall mean an independent contractor who has signed a Distributor Agreement with Nu Skin Enterprises United States, Inc or its affiliate. Capitalized terms not defined in this Agreement shall have the meaning set forth in the Signature Page.
2. **Lease and License** - Lessor agrees to lease to Lessee, and Lessee agrees to lease from Lessor, the Scanner, and Lessor hereby licenses to Lessee the Related Software, all in accordance with the terms and conditions of this Agreement. **LESSEE WARRANTS THAT IT SHALL USE THE SCANNER PRIMARILY FOR BUSINESS PURPOSES AND NOT FOR PERSONAL, FAMILY OR OTHER PURPOSES. LESSEE FURTHER WARRANTS THAT IT SHALL ONLY USE THE SCANNER FOR THE PURPOSES EXPRESSLY ALLOWED IN SECTION 7.**
3. **Term; ADR; No Medical Device** –The term of this Agreement shall be a period of 36 consecutive months (“Initial Term”), commencing on the Effective Date. If Lessee is not in breach, this Agreement, shall renew automatically for additional 12 consecutive month periods (“Renewal Term”) unless either party gives the other written notice of its intent not to renew this Agreement at least 60 days prior to the expiration date (as set forth in the Signature Page, and hereinafter the “Expiration”) of its Initial Term or any Renewal Term. If Lessee fails to comply with Lessor’s Automatic Delivery Rewards (“ADR”) requirements, as announced and revised by Lessor from time to time (the “Minimum ADR Requirement”), Lessor may disable the Scanner and terminate this Agreement. Lessee acknowledges that (a) the Scanner is not a medical device, is not, and cannot diagnose, treat, cure or prevent any disease, has not been cleared as an approved medical device and Lessee assumes the risk that this Agreement may be terminated if the Scanner is deemed to be an unapproved medical device by the FDA, and (b) Lessor makes no representation or warranty that the Scanner is *not* a medical device. Lessee may terminate this Agreement at any time, subject to (i) thirty days prior written notice to Lessor; (ii) the return of the Scanner; (iii) payment of any Rental and other amounts accrued or owed through the termination date (and thereafter for obligations surviving termination); and (iv) payment of all remaining Rental and other amounts which otherwise would have accrued through Expiration, discounted by five percent (5%) per annum; *provided, however*, that if Lessor re-leases the Scanner within sixty days of receipt of notice of early termination, Lessee shall be released from its payment obligation under the foregoing subsection, but shall forfeit the Down Payment.
4. **Rent; Prepayment** – Lessee shall pay Lessor the Down Payment, Basic Rental and Renewal Term Rental (collectively, the “Rental”) for the use of the Scanner and the licensing of the Related Software, in the amounts and on the dates (“Rental Payment Dates”) specified in the Signature Page. So long as there is no Default or termination under this Agreement, the Down Payment shall be applied towards the final payments of the Initial Term. If any amount payable is not paid within five (5) business days after it is due, Lessee shall immediately pay Lessor a late charge equal to 5% of such amount. Lessee shall also pay Lessor interest on all overdue amounts at the rate of 18% per annum or the maximum amount allowed by law, whichever is less. The Down Payment, all Rental, late charges and interest shall be payable automatically by a valid credit card as shown on the Signature Page, which credit card Lessee hereby authorizes Lessor to charge to receive Rental and all other amounts due and payable under this Agreement. Failure to maintain a valid, active credit card to make Rental payments shall constitute grounds for immediate termination of the Agreement.
5. **Title; Label** - Title to the Scanner (including any replacements, additions, accessories, modifications, upgrades, and enhancements) shall remain with Lessor at all times, and Lessee shall have no right, title or interest therein other than its leasehold and licensing interests under this Agreement. Lessee shall, at its expense, protect and defend Lessor’s title to the Scanner and keep it free and clear from any claims, liens, and encumbrances. The Scanner shall at all times be and remain personal property. Lessor may affix, or direct Lessee to affix, a label to the Scanner, and Lessee shall not alter, deface, cover or remove such identification or label.
6. **Limitation on Warranties** – The Scanner will be of the kind and quality described in the Signature Page, free of defects in workmanship and, with regard to the Scanner, in the material. Lessor shall, upon receipt of written notification and receipt of the Scanner (insured and shipped at Lessee’s expense), take steps to correct such nonconformity either by replacing the Scanner and/or Related Software, or component thereof, or by repairing any defective part or parts, at Lessor’s option. **The foregoing warranty shall be null and void if Lessee has modified, abused or damaged the Scanner or Related Software, or if the Scanner or Related Software is lost or damaged in shipping, in which event Lessee shall indemnify Lessor for all losses resulting therefrom; and provided further, that the foregoing warranty shall be null and void if Lessee removes the Scanner or Related Software outside the United States or Canada. THE FOREGOING WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES OF LESSOR AND LESSOR SHALL NOT BE DEEMED TO HAVE MADE ANY OTHER WARRANTIES OF MERCHANTABILITY, FITNESS FOR PURPOSE OR OTHER WARRANTIES, EXPRESS OR IMPLIED. Lessor shall have no liability to Lessee or any third party for any special, direct, indirect, incidental or consequential damages of any sort.**
7. **Use and Operation of Scanner** - Lessee understands and agrees that the Scanner (and the Related Software) is a measuring tool, for use in determining whether to increase a person’s intake of certain selected dietary ingredients,

specifically carotenoids. The information derived from the measurement obtained from the Scanner is only part of an overall, well rounded approach to good health practices, including regular monitoring of certain dietary intakes, and is not intended to provide an overall nutritional profile. Lessee shall use the Scanner in accordance with this Agreement and the User Manual accompanying the Scanner, in particular, shall not (i) make any unapproved claims; (ii) use the Scanner or Related Software to promote or sell nutritional supplements except those of Lessor or of Pharmanex, LLC; or (iii) represent that the Scanner can diagnose, prevent, mitigate, treat or cure any disease or condition of the human body. All Scanner use shall be in conformity with all applicable laws and regulations, any insurance policies, the warranties of Lessor herein, any manufacturer warranties, and any Scanner maintenance agreements. Lessee may permit other Distributors to use and operate the Scanner for customers and clients of such Distributors; *provided, however*, that Lessee shall continue to remain liable for all obligations under this Agreement. Lessee shall not relinquish possession of the Scanner or Related Software to a Distributor until such Distributor has been trained in the use, benefits and limitations of the Scanner, and has obtained Distributor's agreement to abide by this Section 7. Lessee shall insure that Distributors do not permit any other person, firm or corporation to use the Scanner or Related Software.

8. **Risk of Loss** – Lessee assumes all risk of loss, damage, theft or destruction of the Scanner. If the Scanner is lost or stolen, or if Lessor determines that it cannot be repaired, Lessee shall, within 30 days after such loss, theft, damage or destruction, pay Lessor the cost of replacing such Scanner, as applicable, plus any other amounts owed under this Agreement, whereupon this Agreement shall terminate. The Down Payment may be applied toward outstanding Rental, late charges or Assessments.

9. **Maintenance and Repairs** – Lessee shall keep the Scanner in good working order and condition, and shall pay for the maintenance and repairs to keep the Scanner, which shall be made only by or through Lessor.

10. **Taxes and Assessments** – Lessee shall be responsible for and shall hold Lessor harmless from all documentation and filing fees and all taxes relating to this Agreement, the Scanner ("Assessments"), but excluding any Federal, state or local income taxes of Lessor imposed upon Lessor in consequence of its receipt of Rental payments.

11. **Indemnification** – Lessee assumes liability for and hereby agrees to indemnify, protect and keep harmless Lessor and its affiliates and their officers, directors and employees from and against any and all liabilities, obligations, losses, damages, injuries, claims, demands, penalties, actions, costs and expenses, including reasonable attorney's fees and expenses, of whatsoever kind and nature, arising out of the use, condition or maintenance of the Scanner, whether authorized by Lessor or not, or whether arising from use of the Scanner by another Distributor, including but not limited to any use not authorized under Section 7. Any Lessee who is subject to the privacy rules of HIPAA and who uploads data from a scan to Lessor without a signed HIPAA Authorization, shall indemnify, protect and keep harmless Lessor and its affiliates and their officers, directors and employees from and against any and all liabilities, obligations, losses, damages, injuries, claims, demands, penalties, actions, costs and expenses, including reasonable attorney's fees and expenses, arising from Lessee's failure to obtain a HIPAA Authorization. Lessee alone shall determine if Lessee is subject to HIPAA, and Lessor hereby disclaims any responsibility or liability in connection with Lessee's failure to comply. The indemnities hereunder shall survive the Expiration or termination of this Agreement.

12. **Return of Scanner** – At the Expiration or earlier termination of this Agreement, Lessee shall return the Scanner and Related Software to Lessor at Lessor's address on the Signature Page, properly packaged and fully insured, at Lessee's expense, and freight prepaid by Lessee, in the same operating order, repair condition and appearance as on the Effective Date, except for reasonable wear and tear resulting from authorized use thereof. If the Scanner and Related Software are not returned in a timely fashion, or if repairs are necessary to place the Scanner or Related Software in the condition required in this Section, Lessee shall continue to pay to Lessor Rental at the last prevailing rate for the period of delay in redelivery, or for the period of time reasonably necessary to perform such repairs together with the cost of such repairs, as applicable. Lessor's acceptance of such Rental on account of such delay or repair does not constitute a renewal of the Term or a waiver of Lessor's right to prompt return of the Scanner in proper condition. If Lessor determines that the Scanner cannot be repaired, then Section 8 shall apply.

13. **Representations and Warranties of Lessee** – Lessee represents and warrants that: (i) this Agreement and all related documents are Lessee's legal, valid and enforceable obligations; (ii) it has entered into a Distributor Agreement with Lessor; (iii) the credit card identified on the Signature Page is in Lessee's name and is valid and is in full force and effect, and Lessee has authority to authorize Lessor to deduct or receive Rental and all other payments under this Agreement from such credit card, and that such credit card shall remain valid during the Term; (iv) **LESSEE'S DECISION TO LEASE THE SCANNER AND LICENSE THE RELATED SOFTWARE IS ENTIRELY DISCRETIONARY AND SUCH LEASE AND LICENSE MAY OR MAY NOT BENEFIT LESSEE'S BUSINESS AS A DISTRIBUTOR FOR LESSOR OR ANY OF ITS AFFILIATES;** (v) **LESSEE SHALL NOT RECEIVE ANY DISTRIBUTOR COMMISSIONS AS A RESULT OF LESSEE'S DECISION TO LEASE THE SCANNER AND LICENSE THE RELATED SOFTWARE;** (vi) Lessee is an independent contractor and as such shall not attempt to speak for or to bind Lessor or its affiliates in any way; and (vii) Lessee shall not, and shall not permit any other person or entity, to operate or use the Scanner so as to incur or impose any liability against or obligation on Lessor.

14. **Default, Remedies and Adverse Credit Notice**– The following shall be Events of Default: (i) Lessee's failure to pay any amounts hereunder when due; (ii) the failure of any of Lessee's representations or warranties herein to be correct in any respect at any time; (iii) Lessee ceases to do business as a going concern, or sells substantially all of its assets, merges, consolidates or reorganizes with or into any entity; (iv) Lessee's insolvency, bankruptcy or assignment for the benefit of creditors (v) Lessee's failure to perform any obligation under its Distributor Agreement, including compliance with all policies and procedures in force by Lessor or any other agreement with Lessor or Lessor's affiliates, or any other creditor; or (vi) an adverse change in Lessee's financial condition as a result of which Lessor, in good faith, deems itself or the Scanner to be insecure. At any time after an Event of Default, Lessor may exercise any one or more of the following remedies and any other remedies under applicable law: (i) by written notice, terminate this Agreement; (ii) render the Scanner unusable; (iii) enforce Lessee's performance of this Agreement and/or recover damages for its breach; (iv) whether or not this Agreement is terminated, cause Lessee to promptly return the Scanner; and (v) recover all of its costs and expenses, including attorneys' fees. In addition to the foregoing remedies, with respect to the Related Software, Lessor shall also have the right to retain and fully exercise all of its rights and elections under Title 11 of the United States Code (the "Bankruptcy Code"), specifically including Section 365 of the Bankruptcy Code. If a petition in bankruptcy is filed by or against Lessee, Lessee shall assume or reject this Agreement, including the license granted hereunder, within sixty (60) days thereof. The personal property lease of the Scanner and license of the Related Software may not be severed for purposes of this Agreement. Lessor may also, at its option, recover by set off against bonuses due to Lessee under the Distributor Agreement, or by charging to Lessee's credit card, the amounts owing under this Agreement. Lessor's remedies shall be cumulative and in addition to all other legal or equitable remedies. No express or implied waiver of any Default shall waive any later Default. Any action by Lessee against Lessor relating to this Agreement must be commenced within one (1) year after any such cause of action accrues. **AS REQUIRED BY UTAH LAW, YOU ARE HEREBY NOTIFIED THAT A NEGATIVE CREDIT REPORT REFLECTING ON YOUR CREDIT RECORD MAY BE SUBMITTED TO A CREDIT-REPORTING AGENCY IF YOU FAIL TO FULFILL THE TERMS OF YOUR CREDIT OBLIGATIONS UNDER THIS AGREEMENT.**

15. **Assignment** – **LESSEE MAY NOT ASSIGN OR TRANSFER ITS RIGHTS AND OBLIGATIONS UNDER THIS AGREEMENT WITHOUT THE PRIOR WRITTEN CONSENT OF LESSOR. LESSOR MAY ASSIGN ITS RIGHTS UNDER THIS AGREEMENT AT ANY TIME.**

16. **True Lease** – Nothing contained herein shall give or convey to Lessee any right, title or interest in and to the Scanner or Related Software except as a lessee or licensee thereof. It is the express intent of the parties that this Agreement constitutes a true lease of personal property and a software license, and in no event shall it be considered a sale of the Scanner or the Related Software to Lessee.

17. **Tax Benefits** – Lessee acknowledges that Lessor is the owner of the Scanner for Federal and state income tax purposes, and as such is entitled to take all Federal and corresponding state depreciation deductions.

18. **Force Majeure** – The obligations of Lessor hereunder shall be suspended to the extent it is hindered or prevented from complying therewith because of the manufacturer's inability to perform for any cause whatever beyond its control.

19. **Miscellaneous** – The rights herein granted to Lessor shall also apply to its affiliated and subsidiary companies. The failure of a party to insist upon the performance of any term or condition of this Agreement or to exercise any right hereunder on one or more occasions shall not constitute a waiver or relinquishment of its right to demand future performance of such term or condition, or to exercise such right in the future. If any term of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then this Agreement will remain in full force and effect as if such invalid or unenforceable term had never been included. All notices and other communications required or permitted to be given under this Agreement shall be transmitted in writing to the address on the Signature Page by Certified United States Mail, by guaranteed overnight delivery, by electronic mail, or by facsimile. The laws of the State of Utah shall govern this Agreement. Any action brought to enforce it must be brought in Provo, Utah or in the Federal Courts in Utah. The Parties consent to the personal jurisdiction of such courts within Utah and waive any objection to improper venue. This Agreement, the Attachments and Exhibits embody the entire agreement between the Parties. No changes, modifications or amendments to any terms or conditions in this Agreement are valid or binding unless agreed to by the Parties in writing by their authorized representatives.

**EXHIBIT A
TO
MASTER LEASE AND LICENSING AGREEMENT**

EQUIPMENT

<u>Quantity</u>	<u>Vendor</u>	<u>Serial No(s). of Scanner S2 System(s)</u>	<u>Serial No(s). of Dell Laptop(s)</u>
	Nu Skin Enterprises United States, Inc.		

Description:

The term "Scanner" as used in this Agreement means: Pharmanex BioPhotonic Carotenoid Antioxidant Scanner System version 2 (S2) (the "S2 Scanner System"), manufactured by Pharmanex, consisting of hardware and software, including the following: (i) one BioPhotonic scanner which emits a green light source; (ii) one encasement which houses the light source and spectrometer; (iii) one laptop computer (the "Laptop") (which receives the data from the optical scanner), including but not limited to the processor, AC adapter, cables, liquid crystal displays, compact drive, hard drive, keyboard, base, battery, memory modules, internal modem, connectors, documentation, and all software provided with the Laptop or embedded therein or in any of the foregoing Laptop components or accessories; (iv) all Related Software, which means any proprietary software development tools, software libraries, rendering engines, content and other software or computer programming code, including all program output in the form of screen displays, graphics, printer output, plotter output and sounds that are part thereof relating to the S2 Scanner System (and whether embedded in the S2 Scanner System or residing on the Laptop), and in which Lessor shall retain all authorship and ownership rights, title and interest, subject to the licensing rights granted to Lessee under the Agreement; and (v) carrying cases for the S2 Scanner System and the Laptop, whether any of the foregoing (i) through (v) are now owned or hereafter acquired or developed, together with all additions, replacements, enhancements and modifications, and all proceeds and products thereof.

The term "Related Software" means any proprietary software development tools, software libraries, rendering engines, content and other software or computer programming code, including all program output in the form of screen displays, printer output, plotter output and sounds that are part thereof relating to the Scanner (and whether embedded in the Scanner or residing on the laptop used therewith), that are in existence and owned by Lessor as of the Effective Date, and in which Lessor shall retain all authorship and ownership rights, title and interest, subject to the licensing rights granted to Lessee under the Agreement.