

Purchase Terms and Conditions

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Welcome to Image Skincare!

Thank you for choosing Image International Manufacturing, LLC (“Image,” “we,” “us” or “our”) and our professional skincare products and solutions (collectively, our “Products”).

We are pleased to provide you with the opportunity to purchase our Products pursuant to these Purchase Terms and Conditions (these “Terms”).

PLEASE READ THESE TERMS CAREFULLY BEFORE PURCHASING OUR PRODUCTS. BY PURCHASING OUR PRODUCTS, OR BY CLICKING TO ACCEPT OR AGREE TO THESE TERMS WHEN THIS OPTION IS MADE AVAILABLE TO YOU, YOU AGREE TO BE BOUND AND ABIDE BY THESE TERMS, INCLUDING OUR [PRIVACY POLICY](#). IF YOU DO NOT AGREE WITH ANY PORTION OF THESE TERMS (INCLUDING ANY PORTION OF OUR [PRIVACY POLICY](#)), YOU MUST NOT PURCHASE OUR PRODUCTS.

THESE TERMS CONTAIN DISCLAIMERS OF WARRANTIES AND LIABILITY AND AN AGREEMENT TO ARBITRATE CERTAIN CLAIMS. THESE TERMS ALSO ALLOW YOU TO PURSUE CLAIMS AGAINST US ONLY ON AN INDIVIDUAL BASIS, AND NOT AS PART OF ANY CLASS OR REPRESENTATIVE ACTION OR PROCEEDING, AND YOU MAY SEEK RELIEF (INCLUDING MONETARY, INJUNCTIVE AND DECLARATORY RELIEF) ONLY ON AN INDIVIDUAL BASIS.

IF YOU FAIL TO COMPLY WITH ANY PROVISION OF THESE TERMS, WE MAY IMMEDIATELY TERMINATE YOUR ACCOUNT AND ANY ORDER YOU MAKE FOR OUR PRODUCTS. ONCE YOU PLACE AN ORDER FOR PRODUCTS, YOU MAY NOT TERMINATE THE ORDER FOR ANY REASON. OTHER THAN CERTAIN RETAIL SIZE PRODUCTS, YOU MAY NOT RETURN OR EXCHANGE OUR PRODUCTS ONCE WE SHIP THEM TO YOU.

By establishing an Account (as defined below) or purchasing our Products, you promise, represent and warrant to us that you:

- (i) are an aesthetician, registered nurse, physician, physician assistant or other professional certified by your relevant state professional and regulatory authority, that may, by virtue of your certification, apply our Products on your clients or patients;
- (ii) are purchasing our Products for your application of such Products on your clients or patients as a service in exchange for a service fee;
- (iii) will only sell our Products to individuals that you believe are purchasing our Products for their personal use or the use of their friends and family;
- (iv) will only sell our Products in quantities that are reasonable for an individual’s personal use and not for resale;
- (v) will only sell our Products to individuals you reasonably believe are located within the United States;
- (vi) will only sell our Products at your place of business as designated by you in your Account;
- (vii) will not sell our Products online on any website without our prior written approval, which we may grant or deny in our sole and absolute discretion, and which may be subject to separate terms and conditions;
- (viii) will only sell our Products to end users of the Products and not to parties that resell our Products, or can be reasonably anticipated to resell our Products;
- (ix) will use our Products only in a lawful manner and otherwise in compliance with these Terms; and
- (x) have the capacity to be bound by these Terms.

If you are acting on behalf of an entity, you are making the foregoing promises, representations and warranties on behalf of the entity.

1. Your Use of Products

1.1 Conditions of Use. You may use our Products only: (i) for application on your clients or patients as a service at your place of business as identified by you in your Account; (ii) if you are a skincare professional, aesthetician, registered nurse, physician, physician assistant or other professional with a certification from your relevant state professional and regulatory authority that allows you, by virtue of your certification, to apply our Products on your clients or patients as a service; (iii) after you have reviewed and understand the functions, benefits, and recommended use of all Products as described in the relevant treatment protocols and educational materials and (iv) in a lawful manner and otherwise in accordance with these Terms.

1.2 Our Colgate Pricing Policy. You are free at all times to set the price at which you sell our Products to your customers. If a reseller such as yourself chooses to price our Products differently than at the suggested prevailing retail price, it is our policy to discontinue sales of our Products to that reseller. You may request our suggested prevailing retail price list by calling our Customer Service Department at 1-800-796-SKIN (7546). This paragraph is intended to inform you of our policy. It does not constitute consideration for any part of this Agreement, and does not separately constitute an agreement between you and us regarding the price you will charge your customers for our Product.

1.3 Limitation on Sale of Products and Prohibition on Resale. You will only sell our Products:

- (i) to your individual clients or patients in connection with a service in exchange for a service fee;
- (ii) to individuals that you believe are purchasing our Products for their personal use or the use of their friends and family,
- (iii) to individuals in quantities that are reasonable for an individual's personal use;
- (iv) to individuals you reasonably believe are located within the United States;
- (v) solely within the United States;
- (vi) from your place of business as designated by you in your Account; and
- (vii) to end users of the Products and not to parties that resell our Products, or can be reasonably anticipated to, resell our Products.

You will not sell our Products online on any website without our prior written approval, which we may grant or deny in our sole and absolute discretion, and which may be subject to separate terms and conditions. Without limiting the generality of the foregoing, distribution of our Products for resale is strictly prohibited. Any member who violates the terms in this paragraph shall be subject to liquidated damages pursuant to paragraph 11.3.

1.4 Application of Products as a Service. You may only use our Products solely for your application of such Products on your clients or patients as a service at your place of business as identified by you in connection with your Account. Your application of Products as a service to your clients or patients is subject to the following conditions:

- You must apply our Products solely in accordance with our relevant treatment protocols, available via your Account or by contacting our Customer Service Department at 1-800-796-SKIN (7546);
- You must own or have appropriate authority to operate or conduct your activities at your place of business; and
- You must provide, and we will not in any event be responsible for, retail support for your clients or patients on to which you apply Products.

Your failure to comply with these conditions, including failure to apply our Products in accordance with our treatment protocols may result in one or more adverse outcomes.

1.5 Marketing of Products as a Service. You are authorized by us to market, advertise and promote our Products as part of your services to clients and patients, provided that you:

- Display our Products at the facility at which you will apply such Products;

- Display branded signage provided by us (if any) at your place of business in a location that is visible to the public;
- Do so only consistent with good business practice and in a manner that reflects favorably at all times on our Products and our good name, goodwill and reputation;
- Market, advertise and promote as of your services only those of our Products that you currently have in your inventory;
- Have sufficient knowledge of the industry and products competitive with each Product (including specifications, features and benefits) so as to be able to explain in detail to your clients or patients the differences between our Products and competing products, and information on standard protocols and features of each of our Products;
- Observe all directions and instructions given to you by us in relation to the marketing, advertisement and promotion of our Products, including any sales or marketing policies as they currently exist or as they may hereafter be changed by us;
- Promptly notify us of and address and investigate any complaint or adverse claim about any Product or its use of which you become aware;
- Offer any accessories (including other Products) bundled or packaged with any Products only on those terms and conditions as we may, from time to time, require;
- Use only that promotional information and material provided by us to you or preapproved in writing by us, and only the most up-to-date information and material provided by us to you or preapproved in writing by us; and
- Immediately remove or cease displaying any specified Products or promotional materials on our request.

You may not, under any circumstances:

- Engage in any unfair, competitive, misleading or deceptive practices respecting us, our Products or in any way relating to our Intellectual Property Rights, including any product disparagement or "bait-and-switch" practices;
- Separate any accessories (including other Products) bundled or packaged with any Products from our Products or sell or distribute any of our Products on a standalone basis;
- Remove, translate or modify the contents or documentation of or related to any of our Products, including any warranty statements; or
- Display our Products anywhere other than at your place of business as designated by you in your Account without our prior written consent, which we may withhold, in our sole and absolute discretion.

Subject to the foregoing requirements and prohibitions, you may promote and advertise our Products on your website and social media accounts provided that you do not feature a "click to buy" option or display pricing without our prior written approval, which we may grant or deny in our sole and absolute discretion, and which may be subject to separate terms and conditions.

We may, in our sole and absolute discretion, provide you with access to a selection of pictures, videos, Product descriptions, and related marketing support through our customer file share network, or with branded signage and other sales and marketing materials, each which you may use solely in connection with marketing our Products as a service to your client or patients. Your use of any of these materials is subject to and governed by these Terms.

1.6 Our Right to Inspection and Monitoring of Your Account. We reserve the right to inspect your place of business, and at any time to monitor your Account determine your compliance with these Terms, including, without limitation, this Section 1.

1.7 Allergic Reactions. If any of your clients or patients claims an allergic or other reaction to or arising from any of our Products, you must immediately contact our Customer Service Department at 1-800-796-SKIN (7546), complete an Allergic Reaction Form, and take other action as reasonably requested by us, including return of the Product. Unless advised in writing by us, do not discard the Product alleged to have caused an allergic or other reaction. On receipt of an Allergic Reaction Form, we will investigate the incident and take appropriate action in accordance with our policies.

1.8 Client Forms. Prior to any application by you of our Products on any of your clients or patients as a service, we require that you obtain from each client or patient a completed and executed Customer Consent Form and a Skin Health Questionnaire or forms and questionnaires of substantially similar nature designed by you (collectively the "Client Forms"). **You must keep copies of all executed Client Forms during the time period you have an Account and for a period of three years thereafter, and on our request, promptly provide and allow us to review copies of any such Client Forms.**

You must also maintain consultation and visitation records as may be required by relevant professional associations or any governmental or regulatory authority for your clients or patients.

1.9 Storage and Inspection Requirements. We require and you agree to observe the following storage and inspection requirements at all times:

- Store the Products at room temperature;
- Keep the Products away from direct sunlight, extreme heat, and dampness;
- Maintain Product containers and testers tightly closed at all times; and
- Regularly inspect Products to ensure that Products are not expired or soon to be expired, tampered with, or damaged in any way, and that Product seals have not been broken.

1.10 Customer Service. You shall provide your clients or patients with your current contact information and make it known to them that you are available to answer questions, provide advice, and respond to their concerns on a continuing basis. You shall respond to any questions or concerns relating to product information, proper usage, or other inquiries. You shall consult the educational materials or contact us directly in responding to your clients' or patients' concerns or questions.

2. Your Account

2.1 Your Account. We may require you to establish an account with us ("Account"), which may include your creation of a username or password and submission of information or materials about you ("Your Information").

As a condition to establishment of your Account, we may require that you provide such information and materials as we may reasonably request from time to time, including the following:

- As applicable, a copy of your state professional cosmetology license, aesthetician license, registered nurse license, physician license, physician assistant license and any other professional license required by state or local law or ordinance in order for you to apply our Products on your clients or patients;
- A completed Professional Treatment and Liability Form;
- The declarations page of the insurance policies we require you to keep in accordance with paragraph 2.4 below, and other relevant insurance related documents as reasonably requested by us; and
- If you claim an exemption from any sales tax, a current copy of your State Sales Tax Exemption Form for purposes of treatment services.

2.2 You Must Maintain the Security of Any Password Issued to You. If you create, or we issue you, a password in connection with your Account, then you acknowledge that your password and your Account is personal to you and will not to provide any other person with access to your Account (and by extension, to our Products) or portions of it using your user name, password or other security information. We are not liable for any loss that you may suffer as a result of the authorized or unauthorized use of your password by a third party. We may disable any user name, password or other identifier, whether chosen by you or provided by us, at any time in our sole discretion for any or no reason, including if, in our sole opinion, you have violated any provision of these Terms.

You will immediately notify us of any unauthorized use of your password, any unauthorized use of your Account, any violation of these Terms, or any other breach of security known to you in connection with your Account or our Products by calling our Customer Service Department at 1-800-796-SKIN (7546) or by sending an e-mail to us at: info@imageskin.com.

2.3 You Must Maintain the Integrity of Your Information. If you provide Your Information to us, then you will only provide true, current, complete and accurate information, and not to misrepresent your identity. You will keep Your Information current and to update Your Information if any of Your Information changes. Your Information may include information or materials that may be of confidential nature or that can personally identify you, such as information regarding Products you have purchased or financial information. Our collection, use and disclosure of Your Information are governed by these Terms, including the terms of our [Privacy Policy](#).

WE MAKE NO WARRANTY OR REPRESENTATION REGARDING THE CONFIDENTIALITY OF ANY COMMUNICATION OR INFORMATION TRANSMITTED ON OR THROUGH YOUR ACCOUNT. WE WILL NOT BE RESPONSIBLE OR LIABLE IN ANY WAY FOR ANY INJURY, LOSS OR DAMAGE TO YOUR COMPUTERS, MOBILE PHONES OR OTHER DEVICES, OR INTERCEPTION OR USE OF CREDIT CARD INFORMATION OR OTHER PERSONALLY IDENTIFIABLE INFORMATION, RELATED TO OR RESULTING FROM USE OF YOUR ACCOUNT.

2.4 Your Insurance. Without limiting your indemnification obligations under these Terms, you must, during the time period you have an Account and for a period of two years thereafter, at your own expense maintain and carry in full force and effect with financially sound and reputable insurers all types and amounts of insurance required by applicable law, rule or regulation, and otherwise in accordance with standard industry practice. For avoidance of doubt, your insurance will include, at a minimum, General Commercial Liability, Professional Liability, and Personal Injury Liability, each with adequate minimum coverage per occurrence and in aggregate for the policy period. **You will ensure that Image International Manufacturing, LLC is named as an additional insured on each policy of insurance maintained by you in accordance with this paragraph.** We may, in our sole and absolute discretion, require a specific amount of minimum coverage by so requesting in writing.

2.5 Termination of Your Account. You may terminate your Account or any Order, at any time for any reason by giving us ten days' notice in writing, by email at info@imageskincare.com or by calling our Customer Service Department at 1-800-796-SKIN (7546). We may terminate your Account or any Order: (i) immediately without notice to you if we determine, in our sole and absolute discretion, that your financial condition or creditworthiness is inadequate or unsatisfactory to perform under these Terms, or (ii) that you are in violation of your payment obligations under or are otherwise in breach of these Terms; (iii) immediately without notice to you on upon your death or incapacity, if you are an entity, on your ceasing of operations, dissolution, liquidation or suspension; or (iv) upon written notice to you if we determine, in our sole and absolute discretion, that you or any circumstances relating to you can adversely affect our Products, reputation or our business or (v) upon written notice to you if any provision of these Terms is deemed to create a franchise relationship between you and us.

Notwithstanding termination of your Account, any of your obligations under these Terms that, by their nature, should reasonably be expected to survive termination of your Account, will survive termination of your Account.

On termination of your Account, if requested by us in writing, you must immediately cease offering, marketing and applying our Products to your clients or patients. We may include such a request in our notice of termination, or in a written notice issued subsequent thereto or to your termination of your Account.

2.6 Our Repurchase of Products at Termination. In the event of the termination your Account, we may, in our sole and absolute discretion, repurchase from you any Products in your possession. Any such repurchase will be at the price or prices paid by you to us for the relevant Product, minus (i) shipping and handling charges incurred when purchasing our Products, (ii) the cost of reshipping Products back to us by our then current common carrier, and (iii) a 20% restocking fee. We may pay the purchase price of any repurchased Products by offsetting any monies due from you to us. Once we provide you with notice of our intent to repurchase any Products, you will make arrangements to ship repurchased Products promptly and without undue delay, and in any event, within five business days. Title to and risk of loss with respect to any repurchased Products will pass on delivery to the address we specify in writing. We reserve the right to reject any repurchased Product that is not in a resalable condition as determined by us, in our sole and absolute discretion, upon receipt of the Product.

3. Purchase and Sale Terms

3.1 Orders Procedure. When you place an order for Products through your Account, you are making an offer to purchase Products under the terms and conditions of these Terms, and on no other terms. We may, in our sole and absolute discretion, accept or reject orders for Products by confirming the order (whether by written confirmation, invoice or otherwise) or by delivering our Products, whichever occurs first. If we do not accept an order, it will lapse. No order is binding on us unless accepted by us as set forth in this paragraph. **We reserve the right, in our sole and absolute discretion, to require minimum order quantities for certain Products.**

3.2 Pricing. You will purchase Products at the prices for Products in effect at the time that we accept an order from you. All prices for Products are exclusive of, and you are solely responsible for, and will pay all taxes with respect to, or measured by, the manufacture, sale, shipment, use or price of Products (including interest and penalties thereon).

Advertised prices and available quantities are subject to change without notice and may vary by area or location. Also, we may, in our sole and absolute discretion, provide you with discounts, rebates, markdowns and similar promotions.

Please note that our website or other materials may contain technical inaccuracies and typographical or other errors in connection with our Products, including prices or available quantities. We make no representations and assume no responsibility as to the completeness, accuracy or timeliness of any content describing our Products (including any features, specifications, prices and available quantities). We may, in our sole and absolute discretion, honor accepted orders or information affected by any errors, inaccuracies or omissions in connection with our Products.

3.3 Cancellation of Orders. We may, in our sole and absolute discretion, cancel an order placed by you if we discontinue our sale of Products or reduce or allocate our inventory of Products, or if we determine, (i) in our sole and absolute discretion, that your financial condition or creditworthiness is inadequate or unsatisfactory to perform under these Terms, or that you are in violation of your payment obligations under or are otherwise in breach of these Terms; (ii) immediately without notice to you on upon your death or incapacity, if you are an entity, on your ceasing of operations, dissolution, liquidation or suspension; (iii) upon written notice to you if we determine, in our sole and absolute discretion, that you or any circumstances relating to you can adversely affect our Products, reputation or our business; or (iv) upon written notice to you if any provision of these Terms is deemed to create a franchise relationship between you and us. If we terminate an order for any reason, your sole and exclusive remedy is a refund of amounts paid for Products not delivered to you prior to termination. **Once you place an order for Products, you may not terminate such order any reason.**

3.4 Payment Terms. You will pay applicable prices and fees for Products on submission of your order. You must make all payments by cashier's or bank check, Visa, MasterCard, Discover or American Express. On your request, we may, in our sole and absolute discretion, approve your Account for credit on terms to be confirmed in writing by us. Until we approve and communicate the terms of credit to you in writing, you may not purchase Products on credit.

If you fail to make a payment as set forth in these Terms or our written credit terms within five (5) calendar days of a required payment, you will owe us an additional book-keeping fee equal to ten percent (10%) of the unpaid required payment. Thereafter, we will credit any payments made by you to any unpaid interest, in the first instance, and then toward unpaid payment obligations.

If you make any payment with a debit or credit card, then you represent and warrant that you have the right to use that card in connection with your Account, including with your purchase of Products. By submitting information relating to that card, you grant to us the right to provide such information to third parties for purposes of facilitating transactions under your Account. We may require verification of this information prior to our acceptance of any order (including delivery of any Products) or completion of any other transaction under your Account.

3.5 Shipment and Delivery. We will deliver Products specified in orders accepted by us in the quantities and to the address specified in the order. We will use commercially reasonable efforts to deliver Products as promptly as practicable. Scheduled shipment dates (if any) are generally estimates only; while we anticipate using commercially

reasonable efforts to meet any scheduled shipment dates, in no event will we be liable for any loss, damage, or penalty resulting from any delay in shipment or delivery.

We ship our Products via a common carrier chosen at our sole and absolute discretion. You will pay for all shipping and handling charges, and we will add the fees for such charges to each order. We do not insure any Products while in transit, and any you must cover any and all costs associated with insurance for Products that you obtain.

3.6 Title and Risk of Loss. Title and risk of loss to Products will pass to you on our delivery of the relevant Products to the carrier. For the avoidance of doubt, the carrier to which we deliver Products is treated as your agent.

3.7 Inspection. You must inspect Products upon delivery and either accept or, if our Products are nonconforming, reject such Products. You are deemed to have accepted delivered Products unless you notify us by email at info@imageskincare.com or by calling our Customer Service Department at 1-800-796-SKIN (7546) that our Products are nonconforming within three business days of delivery and furnish us with written evidence or other documentation as reasonably required by us. If you timely notify us of any nonconforming Products, and if we determine that our Products are, in fact, nonconforming, then we will, at our option either replace such nonconforming Products with conforming Products, or refund the price for such nonconforming Products, together with all shipping and handling expenses incurred by you in connection therewith, or if Products are excess Products, refund the price for such excess Products, together with all shipping and handling expenses incurred by you in connection therewith. If you do not reject any excess Products within three business days of delivery and instead accept the delivery at the increased quantity, then you will promptly pay the applicable price for excess Products. Except as explicitly provided otherwise, any inspection or other action under this paragraph will not reduce or otherwise affect your obligations under these Terms. The remedies set forth in this paragraph set forth your sole and exclusive remedies for our delivery of nonconforming or excess Products.

3.8 Returns and Exchanges. We do not accept returns or exchanges certain of our Products including Products known as professional size products, including, but not limited to back bar products, enhancers, Ormedic Balancing Lip Complex, Ageless Clear Lashes, t-shirts, trial kits, samples, I Peels, and items purchased as part of an opening order package. You may return or exchange only retail size Products which are unopened, unused, with an unbroken seal and unopened packaging and in resalable new condition. All returns must be accompanied by a Return Management Authorization (RMA) number issued by our Customer Service Department at 1-800-796-SKIN (7546). We reserve the right to reject any returns or exchanges should we determine, in our sole and absolute discretion, that a Product is not unopened or unused, with an unbroken seal and unopened packaging or not in resalable new condition, or should you fail to provide us with information or materials (including photos) relating to the relevant Products that we may request from time to time.

You are responsible for all shipping charges associated with a return or exchange. Additionally, Products returned 30 days after delivery and with an expiration date of one year or less, are subject to a restocking fee of 20% of the standard price for the relevant Product at the time of return (and not, for example, the price you paid for the Product).

3.9 Availability/Changes in Products. We may, in our sole and absolute discretion, at any time and without notice to you, including after acceptance of an order, make changes, corrections, cancellations or improvements to our Products, portions or components of our Products or to the availability of our Products.

4. No Franchise or Business Opportunity Agreement

We are independent contractors and nothing in these Terms will be deemed or constructed as creating a joint venture, partnership, agency relationship, franchise or business opportunity between you and us. Neither you nor us, by virtue of these Terms, will have any right, power or authority to act or create an obligation, express or implied, on behalf of the other. We and you each assume responsibility for the actions of our and your personnel under these Terms and will be solely responsible for their supervision, daily direction and control, wage rates, withholding income taxes, disability benefits, or the manner and means through which the work under these Terms will be accomplished. Except as provided otherwise in these Terms, you have the sole discretion to determine your methods of operation, your accounting practices, the types and amounts of insurance you carry, your personnel practices, your advertising and promotion, your clients or patients, and your service areas and methods. The relationship created by these Terms between you and us is solely that of us as a seller of Products and you as a purchaser of Products.

5. Intellectual Property Rights

5.1 Subject to your rights expressly granted by us to you under these Terms:

- All industrial and other intellectual property rights comprising or relating to our Products, trademarks, internet domain names, works of authorship, expressions, designs and design registrations (whether or not copyrightable, including copyrights and copyrightable works, data, data files, and databases and other specifications and documentation), trade secrets, and all industrial and other intellectual property rights, and all rights, interests and protections that are associated with, equivalent or similar to, or required for the exercise of, any of the foregoing, however arising, in each case whether registered or unregistered and including all registrations and applications for, and renewals or extensions of, these rights or forms of protection under the laws of any jurisdiction throughout in any part of the world (collectively, our “Intellectual Property Rights”) are our or our licensors’ sole and exclusive property;
- You will not acquire any ownership interest in any of our Intellectual Property Rights under these Terms;
- Any goodwill derived from the use by you of our Products or our Intellectual Property Rights inures to our (or our licensors’) sole and exclusive benefit;
- If you acquire any Intellectual Property Rights in or relating to any Product (including any rights in any trademarks, derivative works or patent improvements relating to our Products), by operation of law, or otherwise, these rights are deemed and are hereby irrevocably assigned to us or its licensors, as the case may be, without further action by you or us; and
- You will use our Intellectual Property Rights solely for the purposes of performing your obligations under these Terms and only in accordance with these Terms and our instructions.

You will not:

- take any action that may interfere with any of our rights in or to our Intellectual Property Rights;
- challenge any of our right, title or interest in or to our Intellectual Property Rights;
- make any claim or take any action adverse to our ownership of our Intellectual Property Rights;
- register or apply for registrations, anywhere in the world, for our trademarks or any other trademark that is similar to our trademarks or that incorporates our trademarks in whole or in confusingly similar part;
- use any mark, anywhere, that is confusingly similar to our trademarks;
- engage in any action that tends to disparage, dilute the value of, or reflect negatively on our Products or any of our trademarks;
- misappropriate any of our trademarks for use as a domain name;
- alter, obscure or remove any of our trademarks or trademark or copyright notices or any other proprietary rights notices placed on our Products, marketing materials or other materials that we may provide; or
- place our name or any of our trademarks: (i) on, or directly or indirectly in connection with, any facility that is not your principal place of business without or prior, written consent, which may be withheld in our sole and absolute discretion; or (ii) in, or directly or indirectly as part of, your trade, corporate or firm name or style or any of your divisions, subsidiaries or affiliates, if any.

5.2 No Continuing Rights to our Intellectual Property Rights. If your Account terminates for any reason and you must cease offering, marketing and applying our Products to your clients or patients, then your rights to use our Intellectual Property Rights under these Terms will cease immediately and you will immediately cease all display, advertising, promotion and use of all of our Products, trademarks and any other materials that displays our Products or related Intellectual Property Rights and not thereafter use, advertise, promote or display any trademark, trade name or product designation or any part thereof that is similar to or confusing with our trademark or with any trademark, trade name or product designation associated with us or any Product.

6. We Make No Representations or Warranties Regarding Products, our Intellectual Property Rights or Your Account

WE MAKE NO WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED REGARDING ANY PRODUCTS, OUR INTELLECTUAL PROPERTY RIGHTS, YOUR ACCOUNT, OR ANY MATERIALS OR OTHER INFORMATION PROVIDED BY US TO YOU, INCLUDING ANY WARRANTIES OF (i)

MERCHANTABILITY, (ii) FITNESS FOR A PARTICULAR PURPOSE, (iii) TITLE, (iv) NON-INFRINGEMENT, OR (v) PERFORMANCE, INCLUDING WITHOUT LIMITATION, WITH RESPECT TO ACCURACY, CORRECTNESS, COMPLETENESS, SAFETY, OR RELIABILITY, WHETHER ARISING BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE, ALL OF WHICH ARE EXPRESSLY DISCLAIMED. YOU ACKNOWLEDGE THAT YOU HAVE NOT RELIED ON ANY REPRESENTATION OR WARRANTY MADE BY US, OR ANY OTHER PERSON ON OUR BEHALF.

Without limiting the generality of the foregoing, your use of our Products, our Intellectual Property Rights, your Account, and all information, content, or materials provided by us to you is at your sole risk. It is your sole responsibility to independently evaluate the accuracy, correctness or completeness of our Products, our Intellectual Property Rights, your Account, and all information, content, or materials provided by us to you. The foregoing does not affect any warranties which cannot be excluded or limited under applicable law.

7. Force Majeure

Neither we nor you are liable or responsible to the other, or will be deemed to have defaulted under or breached these Terms, for any failure or delay in fulfilling or performing any term of these Terms (except for any obligations to make payments under these Terms), when and to the extent the failure or delay is caused by or results from acts beyond the impacted party's ("Impacted Party") reasonable control (each, a "Force Majeure Event"). The Impacted Party will give prompt written notice to the other, stating the period of time the occurrence is expected to continue. The Impacted Party will use diligent efforts to end the failure or delay and ensure the effects of the Force Majeure Event are minimized.

Without limiting the generality of the foregoing, you acknowledge that operation of and access to your Account may be interfered with as a result of technical issues or numerous factors outside of our control. We make no representation, warranty, or guarantee that your Account will be free of infection from any viruses, worms, Trojan horses, trap doors, back doors, easter eggs, time bombs, cancelbots or other code or computer programming routines that contain contaminating or destructive properties or that are intended to damage, detrimentally interfere with, surreptitiously intercept or expropriate any system, data or personal information. We will not be liable for any loss or damage caused by a distributed denial-of-service attack, viruses or other technologically harmful material that may infect your computer, device, data, programs or other equipment or material due to your use of your Account or items obtained through your Account or to your downloading of any material posted on your Account or any links to your Account.

8. Limitations on Our Liability

IN NO EVENT WILL WE BE RESPONSIBLE OR LIABLE TO YOU OR ANY THIRD PARTY FOR DAMAGES OF ANY KIND, WHETHER AS A RESULT, IN WHOLE OR IN PART, DIRECTLY OR INDIRECTLY, OF A BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING STRICT LIABILITY AND NEGLIGENCE) OR OTHERWISE, FOR ANY DAMAGES, INCLUDING SPECIAL, INCIDENTAL, EXEMPLARY, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES THAT INCLUDE DAMAGES FOR ANY PERSONAL OR BODILY INJURY, EMOTIONAL DISTRESS, INJURIES TO PROPERTY AND LOSS OF PROFIT, REVENUE OR BUSINESS, AS A DIRECT OR INDIRECT RESULT OF: (I) YOUR BREACH OR VIOLATION OF ANY TERM OR CONDITION OF THESE TERMS; (II) YOUR ACCESS AND USE OF OUR PRODUCTS, OUR INTELLECTUAL PROPERTY RIGHTS, YOUR ACCOUNT, OR ANY INFORMATION OR MATERIALS PROVIDED BY US TO YOU UNDER THESE TERMS; (III) YOUR DELAY IN ACCESSING OR INABILITY TO ACCESS OR USE OUR PRODUCTS, OUR INTELLECTUAL PROPERTY RIGHTS, YOUR ACCOUNT, OR ANY INFORMATION OR MATERIALS PROVIDED BY US TO YOU UNDER THESE TERMS FOR ANY REASON; (IV) YOUR DOWNLOADING OR USE OF ANY OF OUR INTELLECTUAL PROPERTY RIGHTS OR INFORMATION OR MATERIALS MADE AVAILABLE BY US TO YOU UNDER THESE TERMS; (V) YOUR RELIANCE ON OR USE OF OUR PRODUCTS, OUR INTELLECTUAL PROPERTY RIGHTS, YOUR ACCOUNT, OR ANY INFORMATION OR MATERIALS PROVIDED BY US TO YOU UNDER THESE TERMS; (VI) ANY THIRD PARTY'S USE OF OUR PRODUCTS, OUR INTELLECTUAL PROPERTY RIGHTS, YOUR ACCOUNT, OR ANY INFORMATION OR MATERIALS PROVIDED BY US TO YOU UNDER THESE TERMS ON YOUR BEHALF; (VII) THE BREACH OF OUR SECURITY AND UNAUTHORIZED DISCLOSURE OF YOUR INFORMATION; OR (VIII) ANY INFORMATION OR MATERIALS OBTAINED ON OR THROUGH YOUR ACCOUNT, OR OTHERWISE ARISING OUT OF THE USE OF OUR PRODUCTS OR INTELLECTUAL

PROPERTY RIGHTS, IN EACH CASE, EVEN IF WE OR OUR AGENTS, REPRESENTATIVES, LICENSORS, VENDORS, SUPPLIERS OR ANY OTHER APPLICABLE THIRD PARTY HAVE BEEN ADVISED OF THE POSSIBILITY OF DAMAGES. OUR TOTAL AGGREGATE LIABILITY AND THE LIABILITY OF OUR DIRECTORS, OFFICERS, MEMBERS, MANAGERS, EMPLOYEES, INDEPENDENT CONTRACTORS, SHAREHOLDERS, REPRESENTATIVES AND AGENTS ARISING OUT OF THESE TERMS WILL NOT EXCEED \$100.

YOU SPECIFICALLY ACKNOWLEDGE THAT WE WILL NOT BE LIABLE FOR THE DEFAMATORY, OFFENSIVE OR ILLEGAL CONDUCT OF ANY THIRD PARTY, AND THAT THE RISK OF HARM OR DAMAGE FROM THIRD-PARTY CONDUCT RESTS ENTIRELY WITH YOU. IN ADDITION, YOU SPECIFICALLY ACKNOWLEDGE THAT WE WILL NOT BE LIABLE FOR ANY CONSEQUENCES OF ACTIONS YOU TAKE OR FAIL TO TAKE BASED ON THIRD PARTY CONDUCT, INCLUDING DEATH, PERSONAL INJURY, PROPERTY DAMAGE OR EMOTIONAL DISTRESS, AND THAT THE RISK OF HARM OR DAMAGE FROM SUCH ACTIONS OR INACTIONS RESTS ENTIRELY WITH YOU.

ANY CAUSE OF ACTION ARISING OUT OF OR RELATED TO OUR PRODUCTS, OUR INTELLECTUAL PROPERTY RIGHTS, YOUR ACCOUNT, OR ANY INFORMATION OR MATERIALS PROVIDED BY US TO YOU UNDER THESE TERMS MUST COMMENCE WITHIN 1 YEAR AFTER THE CAUSE OF ACTION ACCRUES. OTHERWISE, SUCH CAUSE OF ACTION IS PERMANENTLY BARRED.

Certain state laws do not allow limitations on implied warranties or the exclusion or limitation of certain damages. If these state laws apply to you, some or all of the above disclaimers, exclusions or limitations may not apply to you.

In the event that any limitation on the period of time for bringing an action, claim, dispute or proceeding against us, located in this "Limitations on Our Liability" section, is determined or held to be inapplicable or unenforceable by any court, arbitration panel or other tribunal, then the statute of limitations for the State of Florida, including Chapter 95, Florida Statutes, will apply to any such action, claim, dispute or proceeding referred to final or binding arbitration.

9. Your Release and Indemnification of Us

You are solely and absolutely responsible for and hereby release and covenant and agree to defend, indemnify and hold us and our officers, directors, members, managers, shareholders, employees, independent contractors, agents and representatives harmless from and against any and all claims, liabilities, damages and expenses, including attorneys' fees, arising out of or attributable to: (i) any breach or violation of these Terms by you or your representatives; (ii) your use, storage or application of our Products; (iii) your access or use of our Intellectual Property Rights, your Account, or any information or materials provided by us to you under these Terms; (iv) access or use of your Account under any password that may be issued to you; (v) any orders for Products placed on or through your Account; or (vi) any personal injury, property damage, emotional distress or other harm caused by you.

10. Governing Law

10.1 Florida Law is the Applicable Law. These Terms as well as any dispute related to or arising from these Terms are governed by and construed in accordance with the internal laws of the State of Florida, without regard to conflicts of law principles.

11. Our Remedies

11.1 Availability of Injunctive Relief. You acknowledge that we will suffer irreparable harm if you fail to strictly adhere to, breach, or threaten to breach any of the Terms set forth herein, such that damages at law would be an inadequate remedy. Therefore, in such event, we will be entitled, in addition to all other available rights and remedies, to the entry of an injunction immediately restraining such activity, without being required to show any actual damage or to post an injunction bond, or to a decree mandating specific performance of the provision(s) at issue.

11.2 Choice of Forum and Consent to Jurisdiction. Any action or proceeding for injunctive relief pursuant to paragraph 11.1 will be brought in the courts of record of Palm Beach County, Florida, or the United States District

Court, Southern District of Florida, Palm Beach County Division. You consent to the exclusive jurisdiction of such court and waive any objection to the laying of venue of any such action or proceeding in such court. We may effect service of any court paper on you by mail or in such other manner as may be provided under applicable laws, regulations, rules of procedure or local rules. Any party who unsuccessfully challenges the enforceability of this forum selection clause shall reimburse the prevailing party for its attorney's fees.

11.3 Liquidated Damages. In the event that you sell or offer for sale any Product through any unauthorized website, in violation of paragraph 1.3 of these Terms, and in addition to any other remedies available to us, you hereby agree to pay to us one thousand United States dollars (\$1,000.00) for each unit of Product sold or offered for sale in such manner. You hereby waive any defense to our right to obtain liquidated damages on the basis that actual damages are calculable or that the liquidated damages do not represent a reasonable determination of our damages or otherwise constitute a penalty.

11.4 Court Proceedings Relating to Seller Identification. Nothing in this agreement is intended to or shall preclude our ability to commence an action in a court of law for purposes of ascertaining the identity of any unauthorized seller of our Products.

12. Legal Disputes

With the exception of those actions and/or claims described in Section 11 above, any claim or dispute at law or equity that has arisen or may arise between us relating in any way to or arising out of these Terms, your use of or access to our Products, our Intellectual Property Rights, your Account, or any information or materials provided by us to you under these Terms, will be resolved in accordance with the provisions set forth in this "Legal Disputes" section. Please read this "Legal Disputes" section carefully. It affects your rights and will have a substantial impact on how claims you and we have against each other are resolved.

12.1 Agreement to Arbitrate. Any civil action, claim, dispute or proceeding arising out of or relating to this or any previous version of these Terms, your use of or access to our Products, our Intellectual Property Rights, your Account, or any information or materials provided by us to you under these Terms will be resolved exclusively through final and binding arbitration, before a single arbitrator, rather than in court.

Arbitration is more informal than a lawsuit in court. There is no judge or jury in arbitration, and court review of an arbitration award is very limited. However, an arbitrator can award the same damages and relief on an individual basis that a court can award to an individual. An arbitrator should apply the terms of these Terms as a court would.

The arbitrator, and not any federal, state or local court or agency, will have exclusive authority to resolve any dispute arising out of or relating to the interpretation, applicability, enforceability or formation of these Terms, and to arbitrate any part of these Terms, including any claim that all or any part of the this section or these Terms is void or voidable.

The arbitration will be conducted by the American Arbitration Association (the "AAA") exclusively in Palm Beach County, Florida, under the AAA's rules and procedures, including the AAA's Consumer Arbitration Rules (as applicable), as modified by this section. The AAA's rules are available at www.adr.org. A form for initiating arbitration proceedings is available on the AAA's site at <http://www.adr.org>.

You and we will select the arbitrator, and if you and we are unable to reach agreement on selection of the arbitrator within 30 days after the notice of arbitration is served, then the AAA will select the arbitrator. Arbitration will not commence until the party requesting arbitration has deposited U.S. \$1,000 with the arbitrator for the arbitrator's fees and costs. The party requesting arbitration will advance such sums as are required from time to time by the arbitrator to pay the arbitrator's fees and costs until the prevailing party is determined or the parties have agreed in writing to an alternate allocation of fees and costs.

The arbitrator will decide the substance of all claims exclusively in accordance with the laws of the State of Florida, including recognized principles of equity, and will honor all claims of privilege recognized by law. The arbitrator will not be bound by rulings in prior arbitrations involving our other users, but is bound by rulings in prior arbitrations involving the same user to the extent required by applicable law. Judgment upon any award rendered by the arbitrator

is final, binding and conclusive upon you and us and your and our respective administrators, executors, legal representatives, successors and assigns, and may only be entered in the state or federal courts of record for Palm Beach County, Florida.

12.2 Prohibition of Class and Representative Actions and Non-Individualized Relief. **EACH OF US MAY BRING CLAIMS AGAINST THE OTHER ONLY ON AN INDIVIDUAL BASIS AND NOT AS PART OF ANY PURPORTED CLASS OR REPRESENTATIVE ACTION OR PROCEEDING. UNLESS BOTH YOU AND WE AGREE OTHERWISE IN WRITING, THE ARBITRATOR MAY NOT CONSOLIDATE OR JOIN MORE THAN ONE PERSON'S OR PARTY'S CLAIMS, AND MAY NOT OTHERWISE PRESIDE OVER ANY FORM OF A CONSOLIDATED, REPRESENTATIVE OR CLASS PROCEEDING. ALSO, THE ARBITRATOR MAY AWARD RELIEF (INCLUDING MONETARY, INJUNCTIVE AND DECLARATORY RELIEF) ONLY IN FAVOR OF THE INDIVIDUAL PARTY SEEKING RELIEF AND ONLY TO THE EXTENT NECESSARY TO PROVIDE RELIEF NECESSITATED BY THAT PARTY'S INDIVIDUAL CLAIM(S). ANY RELIEF AWARDED CANNOT AFFECT OTHER USERS.**

THEREFORE, YOU DO NOT HAVE THE OPPORTUNITY TO GO TO COURT TO ASSERT OR DEFEND YOUR RIGHTS AND YOU GIVE UP YOUR RIGHT TO PARTICIPATE IN OR BRING CLASS ACTIONS. BY PURCHASING PRODUCTS OR ESTABLISHING AN ACCOUNT, YOU CONSENT TO THESE RESTRICTIONS.

12.3 Judicial Forum for Legal Disputes. In the event that any provision of this section is found not to apply to you or to a particular claim or dispute as a result of a decision by the arbitrator or a court order, any claim or dispute that has arisen or may arise between you and us must be resolved exclusively by a state or federal court located in Palm Beach County, Florida. You and we will submit to the personal jurisdiction of the courts located within Palm Beach County, Florida for the purpose of litigating all such claims or disputes.

13. Miscellaneous

If any provision of these Terms is contrary to, prohibited by or deemed invalid under applicable law, such provision will be inapplicable and deemed omitted to the extent so contrary, prohibited or invalid, but the remainder of these Terms will not be invalidated thereby and will be given full force and effect so far as possible. If any provision of these Terms may be construed in two or more ways, one of which would render the provision invalid or otherwise voidable or unenforceable and another of which would render the provision valid and enforceable, such provision will have the meaning that renders it valid and enforceable.

For purposes of these Terms, the words "include," "includes" and "including" are deemed to be followed by the words "without limitation"; and the word "or" is not exclusive. The headings contained in these Terms are for convenience of reference only, are not to be considered a part of these Terms, and will not limit or otherwise affect in any way the meaning or interpretation of these Terms.

All covenants, agreements, representations and warranties made in these Terms, as may be amended by us, from time to time, will survive your acceptance of these Terms and the termination of these Terms.

No failure to exercise, and no delay in exercising, any right or any power set forth in these Terms by us will operate as a waiver of such right or power, nor will any single or partial exercise of any right or power under these Terms by us preclude further exercise of that or any other right or power under these Terms.

We may update, amend or change these Terms at any time, in our sole discretion and without notice. Amendments will take effect immediately upon us posting such updates on our website. We encourage you to periodically check these Terms for changes, as your continued access and use of our Products, our Intellectual Property Rights, your Account, or any information or materials provided by us to you under these Terms following the posting of any changes will automatically be deemed your acceptance of all changes. If you do not agree to any change to these Terms, you must discontinue using our Products, our Intellectual Property Rights, your Account and any information or materials provided by us to you under these Terms. These Terms replace all previous notices or statements with respect to this subject, and cannot be modified orally or in writing by any of our associates, representatives or any other third parties.

We may give, assign or transfer our rights or obligations under these Terms to any person or entity at any time with or without your consent. You may not give, assign or transfer your rights or obligations under these Terms to any person or entity without our prior written consent, which may be withheld in our sole and absolute discretion. Any attempt to assign your rights or obligations under these Terms without our consent will be void.

These Terms (together, with any documents they expressly incorporate by reference, including our [Privacy Policy](#)) represent the entire understanding and agreement between you and us regarding the subject matter of these Terms, and supersede all other previous agreements, understandings or representations regarding these Terms.

If you have questions, comments, concerns or feedback regarding these Terms, please contact us via email at: info@imageskincare.com or by calling our Customer Service Department at 1-800-796-SKIN (7546).