

## DermOQ Terms of Use

**Effective Date: September 16, 2021**

Please read the following carefully. These Terms of Use (these “**Terms**”) govern your access to and use of the DermOQ Inc. (“**DermOQ**,” “**we**,” “**us**,” “**our**”) websites at dermoq.com and oxygenlab.com (each, a “**Site**”) and the products and services provided by DermOQ (collectively, the “**Service**”).

This is a binding agreement. If you use the Service or click accept or agree to these Terms if presented to you in a user interface for the Service, we will understand this as your acceptance of these Terms and your agreement to all of its terms and conditions. By accepting these Terms or using the Service, you represent and warrant that you have the legal capacity to enter a contract in the jurisdiction where you reside. If you are entering into these Terms on behalf of a company or other legal entity, you represent and warrant that you have the authority to bind that party to these Terms, and in such event and unless otherwise noted, “you” and “your” will refer and apply to that party. **If you do not agree to all of these terms, you are not authorized to use the Service and you must promptly cease using it. By accessing or using the Service, you agree to be bound by the terms.**

**By agreeing to these Terms, you expressly agree to the arbitration of all Disputes as further described below.** Any controversy, allegation, or claim that arises out of or relates to the Service, these Terms, or any additional terms, whether heretofore or hereafter arising (collectively, a “**Dispute**”), except for any controversy, allegation or claim that arises out of or relates to our actual or alleged intellectual property rights (an “**Excluded Dispute**”), shall be finally resolved by arbitration. **The parties agree to arbitrate solely on an individual basis, and that these Terms do not permit class arbitration, or any claims brought as a plaintiff or class member in any class or representative arbitration proceeding.** The arbitrator or arbitral panel may not consolidate more than one person’s claims and may not otherwise preside over any form of a representative or class proceeding. In the event the prohibition on class arbitration is deemed invalid or unenforceable, then the remaining portions of the arbitration provisions will remain in force.

Nothing available on or through the Service should be interpreted as medical advice. If you have questions about particular products, their ingredients, or their effects, you should consult your doctor or health care provider. **IF YOU ARE IN NEED OF MEDICAL ATTENTION, CALL YOUR PHYSICIAN OR HEALTH CARE PROVIDER, OR 911, IMMEDIATELY.**

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**1. Your Access to the Service**

- a. *Internet Access.* When using the Service on your mobile, laptop, desktop, or other device (your “**Device**”), you acknowledge and agree that you are responsible for (i) maintaining Internet access for your Device and (ii) any Internet connection and telecommunications fees and charges that you incur.
- b. *Your Device.* DermOQ is not responsible for the operation of your Device. You are responsible for ensuring the system functions of your Device are in working order when accessing the Service, including, but not limited to screen display operation features of your Device.
- c. *No Guarantee.* Access to the Service may be suspended temporarily and without notice (i) in the event of system failure, (ii) for maintenance or repair, (iii) where we reasonably suspect there has been a breach of these Terms, (iv) for reasons reasonably beyond our control, or (v) as otherwise explained in these Terms.

**2. Permitted Use and Restrictions**

- a. *License Grant.* Subject to the terms and conditions of these Terms, DermOQ hereby grants you a limited, non-exclusive, personal, non-transferrable, non-sublicensable, non-assignable license to access and use the Service (including updates and upgrades that replace or supplement it in any respect and which are not distributed with a separate license, and any documentation) solely for your personal use on a Device that you own or control. We reserve all other rights that are not granted in these Terms.
- b. *Use Restrictions.* You may not access or use the Service in any way that is not expressly permitted by these Terms. You may not: (i) cause, permit, or authorize the modification, copy, creation of derivative works, translation, reverse engineering, decompiling, disassembling, or hacking of the Service; (ii) sell, assign, rent, lease, or grant rights in the

Service, including, without limitation, through sublicense, to any other person or entity; or (iii) use the Service for any unlawful, prohibited, abnormal, or unusual activity as determined by DermOQ in its sole discretion.

- c. *Eligibility.* You may only use the Service if you 18 years of age or older. Individuals under the age of 18 are not permitted to use the Service.
- d. *Investigations.* We may, but are not obligated to, monitor, or review our Service at any time. If we become aware of any possible violations by you of these Terms, we reserve the right to investigate such violations, and we may, at our sole discretion, immediately terminate your license to use the Service pursuant to Section 14 (*Termination*) below.
- e. *Violation of these Terms.* You must not use (or permit a third-party to use) the Service: (i) in any unlawful manner, for any unlawful purpose, or to act fraudulently or maliciously, for example, by hacking into or inserting malicious code, including viruses, or harmful data, into the Service or any operating system used by the Service; (ii) in a way that could damage, disable, overburden, impair or compromise our systems or security, or interfere with other users; (iii) to collect or harvest any information or data from the Service or our systems or attempt to decipher any transmissions to or from the servers running the Service; (iv) via use of a robot, spider, or other automated device to monitor or copy the Service or any information provided by the Service; (v) to send, knowingly receive, upload, download, use or re-use any material which does not comply with these Terms; or (vi) to transmit, or procure the sending of, any unsolicited or unauthorized advertising or promotional material or any other form of similar solicitation (spam). You acknowledge and agree that you are solely responsible, and DermOQ has no responsibility or liability to you or any other person or entity for, any breach by you of these Terms or for the consequences of any such breach.

### 3. **Privacy**

- a. These Terms also incorporate the terms of our Privacy Policy (as updated from time-to-time). Our Privacy Policy explains how your personal information will be collected and used as well as other information regarding your privacy. By agreeing to these Terms, you are also agreeing to the Privacy Policy and you consent to (i) the processing of your personal information as explained in the Privacy Policy and (ii) the collection of information from your Device as explained in the Privacy Policy.

### 4. **User Accounts and Security**

- a. *Accounts.* To use certain features of the Service, including purchasing products at wholesale, you may be required to create a DermOQ account and provide us with a username, password, and certain other information. You may also login using certain social media platforms to create your account. By logging in through a social media platform, you authorize us to collect your name, email address, language preference, and encrypted access credentials. You are solely responsible for the information associated with your account and anything that happens related to your account. You agree to provide true, accurate, current, and complete information as requested by any forms and maintain and update such information to keep it true, accurate, current, and complete. Your failure to maintain true, accurate, current, and complete account information, may result in your inability to fully access or use our Service.

- b. *Account Security.* Maintaining account security is very important. You are solely responsible for maintaining the confidentiality of your account passwords. You agree to notify DermOQ immediately if you become aware of any unauthorized use of your password or your account.
- c. *Account Sharing or Transfers.* Accounts may not be sold, traded, gifted, or otherwise transferred at any time under any circumstances. You may not share your account with, or disclose your password to, anyone else.
- d. *Fees.* You agree to pay all applicable fees and taxes incurred by you or anyone using your account. YOU ACKNOWLEDGE YOU ARE FULLY LIABLE FOR ALL CHARGES TO YOUR ACCOUNT, INCLUDING ANY UNAUTHORIZED CHARGES.
- e. *Account Deletion by You.* You may delete your account at any time. You may delete your account by contacting us at the information in Section 20 (*Contact Information*) below. When you delete your account, DermOQ may maintain a copy of the information in our internal records.
- f. *Account Deletion by Us.* DermOQ may terminate your account at any time for any reason or no reason, including if: (a) DermOQ determines that you are (i) in breach of or otherwise acting inconsistently with these Terms or (ii) engaging in fraudulent or illegal activities or other conduct that may result in liability to DermOQ; (b) DermOQ determines it is required by law to terminate your account; or (c) DermOQ decides to stop providing the Service or critical portions of the Service. When terminating your account, DermOQ may delete your account and the information in it. You have no ownership rights to your account.

## 5. **Terms of Sale and Payments**

- a. *Wholesale Accounts.* Our products are exclusively available at wholesale to valid business entities. By creating a DermOQ account and/or purchasing products through our Site, you represent and warrant to DermOQ that you own or are the authorized representative of a valid business entity and have the power, legal capacity, and authorization to enter into these Terms on the business entity's behalf. You agree to be personally liable for any misrepresentations, infringements, violations, acts, omissions, or indemnities granted to any party without proper authorization from your business entity.
- b. *Minimum Order Quantity.* DermOQ may, in its sole discretion, impose certain minimum order quantities on sales of our products.
- c. *Pricing.* All prices are listed in U.S. dollars and are exclusive of taxes and shipping charges. All prices are subject to change without notice.
- d. *Product Availability.* All orders are subject to acceptance and availability. We cannot guarantee the availability of a particular product at any particular time, and we reserve the right to change and/or cancel our merchandise offerings through the Service, without notice, at any time.

- e. *MSRP.* Any product ordered through your wholesale account shall only be sold at or higher than the manufacturer's suggested retail price (MSRP), as determined and updated by DermOQ from time to time.
- f. *Billing Policies.* If you purchase products, you acknowledge that you will be required to provide a current, valid, accepted method of payment ("**Payment Method**") and you agree that we may charge your Payment Method. You also understand that all payments must be in U.S. dollars. DermOQ uses authorized third parties for the purpose of processing your transactions, credit card authorizations, order fulfillment, and shipping. By submitting Payment Method details to us or our third-party processors, you grant (or otherwise authorize) DermOQ the right to store and process your information with such third parties. You agree that DermOQ will not be responsible for any failures of such third parties to adequately protect your information.
- g. *Cancellation.* We reserve the right to cancel an order of any reason or for no reason.
- h. *Shipping.* Shipping charges and taxes will be calculated and added to your order at the time of shipping. Shipping is F.O.B. Montebello, CA.
- i. *Returns.* If you are not satisfied for any reason, we will replace, exchange, or refund your order within 30 days of your DermOQ.com purchase. We are unable to accept products after that period. Replacements, exchanges, or refunds must be accompanied with an original receipt and order confirmation number. Products returned for refund within 30 days of purchase will be credited in the same form as the original payment method. All shipping charges are non-refundable.

All returns must include the original packing slip, your contact and address information, and the product you wish to return. DermOQ, Inc. is not responsible for lost or undelivered returns.

DermOQ, Inc.  
Attn: Returns Department  
1502 Gage Rd,  
Montebello, CA 90640

Processing of returns takes approximately 14 business days from receipt of the product. If you need additional information regarding returns please feel free to contact us at: 818-785-9100

## 6. **Medical and Health Disclaimer**

- a. The material and information available on or through the Service is intended to be used for personal or informational purposes only. Statements made about products have not been evaluated by the U.S. Food and Drug Administration or any other government agency and the results reported, if any, may not necessarily occur in all individuals. The statements available and products sold through the Service are not intended to diagnose, treat, cure, or prevent any condition or disease.
- b. All products should be used strictly in accordance with their instructions, precautions, and guidelines. Use of the Service is not intended to serve as a substitute for professional medical advice. Please consult with your own physician or health care

provider regarding the use of any goods, products, or information received from the Service before using or relying on them. Your physician or health care provider should address any and all medical questions, concerns, and decisions regarding the possible treatment of any medical condition. DermOQ does not give or intend to give any answers to medical-related questions and the Service does not replace any medical professional or medical resource. DermOQ is not and does not represent itself as a physician or health care provider, nor is this implied.

- c. Users concerned with allergies need to be aware of these risks and should confirm all allergies and sensitivities before using any item. DermOQ is not responsible for identifying ingredients that may cause allergic reactions for those with allergies. If you think you are having an adverse reaction to any item, stop immediately. TO THE EXTENT YOU BELIEVE YOU ARE HAVING A MEDICAL OR HEALTH EMERGENCY, CALL YOUR PHYSICIAN OR HEALTH CARE PROVIDER, OR 911, IMMEDIATELY.

## 7. Idea Submissions

- a. We welcome feedback from our users and customers and appreciate comments regarding our Service. However, our company policy does not permit us to accept or consider ideas, suggestions, proposals, or materials (“**Submissions**”) that we have not specifically requested. This policy is intended to help us, and our customers and users avoid future misunderstandings when new products or services developed internally by our employees might be similar or even identical to a user’s or customer’s idea.
- b. If, despite our request that you not send us your ideas, you still submit them, then regardless of any conditions you may have attempted to place on your Submission, the following terms shall apply to your Submission: you acknowledge and agree that: (i) such Submissions will be considered non-confidential and non-proprietary; (ii) we have the right (subject to our Privacy Policy), without limit in time and without payment to you, to use, copy, distribute, adapt, and disclose it via the Service or otherwise to third parties for any purpose, in any way, and in any media worldwide now known or later discovered, including, without limitation, the right to create derivative works, make improvements, perform (including through digital performance), and transmit (including through digital transmissions) such Submissions, and the right to transfer or sublicense such rights; (iii) we may have something similar to the Submissions already under consideration or in development; and (iv) you are not entitled to any compensation or reimbursement of any kind from us in connection with the Submissions under any circumstances.

## 8. Intellectual Property Rights

- a. *Trademarks.* The DermOQ name and logo and Oxygen Lab name and logo are trademarks and service marks of DermOQ. Unless you have been given our written permission, you do not have the right to use any of our trademarks, service marks or logos, and your unauthorized use of any of these may be a violation of federal and state trademark laws.
- b. *Ownership.* You acknowledge that all intellectual property rights in the Service, whether registered or unregistered, including but not limited to rights in graphics, logos, “look and feel,” trade dress, structure, organization, code, and all other content in the Service

and compilation thereof, anywhere in the world, belong to us or our licensors and are valuable trade secrets and confidential information of DermOQ, and are protected by intellectual property laws. You acknowledge and agree that DermOQ, and/or its licensors, own all right, title, and interest in and to the Service, including all intellectual property, industrial property, and proprietary rights recognized anywhere in the world at any time and that the Service is protected by U.S. and international copyright laws. Further, you acknowledge that the Service may contain information that DermOQ has designated as confidential, and you agree not to disclose such information without DermOQ's prior written consent. Nothing posted on the Service grants a license to any DermOQ trademarks, copyrights, or other intellectual property rights, whether by implication, estoppel or otherwise. You should assume that everything you see or read on the Service is proprietary information protected by copyright or trademark unless otherwise noted and may not be used except with the written permission of DermOQ. When accessing the Service, you agree to obey the law and to respect the intellectual property rights of others. Your use of the Service is at all times governed by and subject to laws regarding copyright ownership and use of intellectual property.

#### **9. Third-Party Sites and Services**

- a. The Service may contain links to or allow you to share content directly with other third-party websites ("**Third-Party Sites**"). You acknowledge that we have no control over the Third-Party Sites and are not responsible for their contents and/or availability. We do not assume any liability for your use of any of the foregoing, which use you acknowledge and agree shall be at your own risk.
- b. These links are provided to you for convenience only and do not constitute an endorsement or approval by us of the organizations that operate such websites, the content, or other material contained in the Third-Party Sites, and we have no association with their operators. Your use of the Third-Party Sites will be governed by their terms and conditions and privacy policies (if any) ("**Third-Party Terms**"). It is your responsibility to read and comply with Third-Party Terms.

#### **10. Notice for California Residents Pursuant to California Civil Code Section 1798.3**

- a. Under California Civil Code Section 1798.3, California users of an electronic commercial service receive the following consumer rights notice: California resident may reach the Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs by mail at 1625 North Market Blvd. Suite N 112, Sacramento, CA 95834, or by telephone at 800-952-5210

#### **11. Indemnity**

- a. You agree to indemnify and hold us and our affiliates, and their respective business partners, licensees, licensors, officers, directors, employees, and agents (the "**Indemnified Parties**") harmless from and against any and all claims, demands, losses, damages, liabilities, costs, and expenses (including, without limitation, reasonable attorneys' fees and costs), arising out of or in connection with: (a) your use of the Service; (b) your breach or violation of any of these Terms; or (c) your violation of the rights of any third party. We reserve the right to assume the exclusive defense and control of any matter subject to indemnification by you, which shall not excuse your

indemnity obligations. In such event, you shall provide the Indemnified Parties with such cooperation as is reasonably requested by the Indemnified Parties.

## **12. Warranty Disclaimer**

- a. WE PROVIDE THE SERVICE ON AN “AS IS” AND “AS AVAILABLE” BASIS. WE MAKE NO GUARANTEE THAT THE SERVICE WILL BE UNINTERRUPTED, ERROR FREE, OR FREE FROM VIRUSES OR OTHER HARMFUL COMPONENTS. WE HAVE NO OBLIGATION TO CORRECT ANY BUGS, DEFECTS OR ERRORS IN THE SERVICE OR TO OTHERWISE SUPPORT, DEVELOP OR MAINTAIN THE SERVICE. While we take reasonable precautions to prevent the existence of computer viruses and/or other malicious programs, we accept no liability for them. We also make no promises or guarantees, whether express or implied, that the content included on the Service is accurate, complete, or up to date
- b. TO THE MAXIMUM EXTENT PERMITTED BY LAW, WE EXCLUDE ALL CONDITIONS, WARRANTIES, REPRESENTATIONS AND OTHER TERMS, WHICH MAY APPLY TO THE SERVICE (INCLUDING OUR PRODUCTS) WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT OF THE RIGHTS OF THIRD PARTIES WITH RESPECT TO THE SERVICE (INCLUDING OUR PRODUCTS) AND ALL INFORMATION AND CONTENT INCLUDED ON THE SERVICE.
- c. No information or advice obtained through the Service, or affirmation by us, by words or actions, shall constitute a warranty.
- d. Because some states or jurisdictions do not allow the disclaimer of implied warranties, the foregoing disclaimers may not apply to you.

## **13. Limitation of Liability**

- a. IN NO EVENT SHALL THE INDEMNIFIED PARTIES BE LIABLE TO YOU FOR ANY DIRECT, INDIRECT, SPECIAL, CONSEQUENTIAL, OR EXEMPLARY DAMAGES (INCLUDING LOST PROFITS, ANY BREACH OF SECURITY OR ANY DAMAGE TO YOUR DEVICE, LOST DATA, PERSONAL INJURY, PROPERTY DAMAGE, OR LOSSES ARISING OUT OF YOUR USE OF OR RELIANCE ON THE SERVICE OR YOUR INABILITY TO ACCESS OR USE THE SERVICE) ARISING FROM, RELATING TO, OR IN ANY WAY CONNECTED WITH THE USE OR THE PERFORMANCE OF THE SERVICE (INCLUDING OUR PRODUCTS) OR THESE TERMS, ARISING AND WHETHER FRAMED IN CONTRACT OR TORT, REGARDLESS OF THE NEGLIGENCE (EITHER ACTIVE, AFFIRMATIVE, SOLE, OR CONCURRENT) OF DERMOQ, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- b. Your sole remedy for dissatisfaction with the Service including, without limitation, content offered on the Service, is to stop using the Service (including our products). Such limitation shall also apply with respect to damages incurred by reason of services or products received through or advertised in connection with the Service or any links on the Service, as well as by reason of any information or advice received through or advertised in connection with the Service or any links on the Service. Such limitation shall also apply with respect to damages incurred by reason of any content posted by a third-party or conduct of a third-party on the Service.



- c. In the event the foregoing exclusion of liability is determined, in whole or in part, to be invalid or unenforceable, then the Indemnified Parties' liability arising in connection with the Service or under these Terms whether in contract, tort (including negligence) or otherwise, shall not exceed, under any circumstances, the greater of: (i) the total amount paid for goods purchased through the Service in the preceding 30 days, or (ii) One Hundred Dollars (\$100). You agree that any claim or cause of action arising under these Terms or the performance or non-performance of the Service must be brought within one year after such claim or cause of action arises or be forever barred.
- d. THE LIMITATIONS AND DISCLAIMER IN THIS SECTION DO NOT PURPORT TO LIMIT LIABILITY OR ALTER YOUR RIGHTS AS A CONSUMER THAT CANNOT BE EXCLUDED UNDER APPLICABLE LAW. BECAUSE SOME STATES OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF OR THE LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, IN SUCH STATES OR JURISDICTIONS, DERMOQ'S LIABILITY SHALL BE LIMITED TO THE EXTENT PERMITTED BY LAW. THIS PROVISION SHALL HAVE NO EFFECT ON THE GOVERNING LAW PROVISION SET FORTH BELOW.
- e. IF YOU ARE A CALIFORNIA RESIDENT, YOU WAIVE CALIFORNIA CIVIL CODE SECTION 1542, WHICH STATES, IN PART: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY."

#### **14. Termination**

- a. We may terminate these Terms and/or terminate your permission to use the Service immediately, without prior notice or liability, if (a) you commit any breach of these Terms, (b) we discontinue the Service, or (c) we are prevented from providing the Service for any reason.
- b. Furthermore, we reserve the right to change, edit, suspend, delete, and/or cancel any part of the Service and/or your access to it at any time with or without notice to you: (i) if required by law, or (ii) due to an event beyond our control.
- c. On termination of these Terms for any reason: (x) all rights granted to you under these Terms will cease immediately, (y) you must immediately cease all activities authorized by these Terms (including your use of the Service), and (z) you acknowledge that we may restrict your access to the Service. Sections 3, 8, and 11–18 will survive any termination or expiration of these Terms.

#### **15. Communication Between Us**

- a. If you wish to contact us in writing, or if any condition in these Terms requires you to give us notice in writing, you can send this to us as indicated in Section 20 (*Contact Information*) at the bottom of these Terms. If we have to contact you or give you notice in writing, we may do so by email or using any other contact details you provide to us.

#### **16. Governing Law**

- a. These Terms and any matter arising out of or relating to these Terms, and any claim, cause of action, controversy, or matter in dispute between you and us, whether sounding in contract, tort, statute, regulation, or otherwise, shall be governed by the internal laws of the State of California in the United States, consistent with the Federal Arbitration Act, without regard to any choice or conflict of laws principles (whether of the State of California or any other jurisdiction). The United Nations Convention on Contracts for the International Sale of Goods is expressly excluded from these Terms.

## 17. Dispute Resolution

- a. *User Concerns.* Most user concerns can be resolved quickly and to the user's satisfaction by contacting us at the contact details in Section 20 (*Contact Information*) below.
- b. *Arbitration Procedures.* In the event your concern cannot be resolved informally, you and DermOQ agree that, except as provided in Section 17(e) below, all Disputes, (each a "**Claim**"), shall be finally and exclusively resolved by binding arbitration, which may be initiated by either party by sending a written notice requesting arbitration to the other party. Any election to arbitrate by one party shall be final and binding on the other. The arbitration will be conducted under the Streamlined Arbitration Rules and Procedures of JAMS that are in effect at the time the arbitration is initiated (the "**JAMS Rules**") and under the terms set forth in these Terms. In the event of a conflict between the terms set forth in this Section 17 (*Dispute Resolution*) and the JAMS Rules, the terms in this Section will control and prevail.

Except as otherwise set forth in Section 17(e) below, you may seek any remedies available to you under federal, state, or local laws in an arbitration action. As part of the arbitration, both you and DermOQ will have the opportunity for discovery of non-privileged information that is relevant to the Claim. The arbitrator will provide a written statement of the arbitrator's decision regarding the Claim, the award given, and the arbitrator's findings and conclusions on which the arbitrator's decision is based. The determination of whether a Claim is subject to arbitration shall be governed by the Federal Arbitration Act and determined by a court rather than an arbitrator. Except as otherwise provided in these Terms, (i) you and DermOQ may litigate in court to compel arbitration, stay proceedings pending arbitration, or confirm, modify, vacate, or enter judgment on the award entered by the arbitrator; and (ii) the arbitrator's decision shall be final, binding on all parties and enforceable in any court that has jurisdiction, provided that any award may be challenged if the arbitrator fails to follow applicable law.

IN THE CASE OF ARBITRATION AND WHERE PERMITTED BY LAW, YOU ARE AGREEING TO GIVE UP YOUR RIGHT TO GO TO COURT TO ASSERT OR DEFEND YOUR RIGHTS. YOUR RIGHTS WILL BE DETERMINED BY A NEUTRAL ARBITRATOR AND NOT A JUDGE OR JURY. YOU ARE ENTITLED TO A FAIR HEARING, BUT THE ARBITRATION PROCEDURES ARE SIMPLER AND MORE LIMITED THAN RULES APPLICABLE IN COURT. ARBITRATOR DECISIONS ARE ENFORCEABLE AS ANY COURT ORDER AND ARE SUBJECT TO VERY LIMITED REVIEW BY A COURT.

- c. *Location.* The arbitration will take place in the County of Los Angeles, California unless the parties agree to video, phone, or internet connection appearances.

- d. *Limitations.* You and DermOQ agree that any arbitration shall be limited to the Claim between DermOQ and you individually. YOU AND DERMOQ AGREE THAT (i) THERE IS NO RIGHT OR AUTHORITY FOR ANY DISPUTE TO BE ARBITRATED ON A CLASS-ACTION BASIS OR TO UTILIZE CLASS ACTION PROCEDURES; (ii) THERE IS NO RIGHT OR AUTHORITY FOR ANY DISPUTE TO BE BROUGHT IN A PURPORTED REPRESENTATIVE CAPACITY OR AS A PRIVATE ATTORNEY GENERAL; AND (iii) NO ARBITRATION SHALL BE JOINED WITH ANY OTHER ARBITRATION.
- e. *Exceptions to Arbitration.* You and DermOQ agree that the following Claims are not subject to the above provisions concerning binding arbitration: (i) any Excluded Dispute; (ii) any Claim related to, or arising from, allegations of theft, piracy, invasion of privacy, or unauthorized use; and (iii) any claim for equitable relief. In addition to the foregoing, either party may assert an individual action in small claims court for Claims that are within the scope of such court's jurisdiction in lieu of arbitration.
- f. *Arbitration Fees.* If you initiate arbitration for a Claim, you will need to pay the JAMS arbitration initiation fee. If we initiate arbitration for a Claim, we will pay the costs charged by JAMS for initiating the arbitration. All other fees and costs of the arbitration will be charged pursuant to the JAMS Rules.
- g. *Severability.* You and DermOQ agree that if any portion of this Section is found illegal or unenforceable (except any portion of Section 17(e)), that portion shall be severed and the remainder of the Section shall be given full force and effect. If Section 17(e) is found to be illegal or unenforceable then neither you nor DermOQ will elect to arbitrate any Claim falling within that portion of Section 17(e) found to be illegal or unenforceable and such Claim shall be exclusively decided by a court of competent jurisdiction within County of Los Angeles, California, United States of America, and you and DermOQ agree to submit to the personal jurisdiction of that court.

#### **18. Additional Important Terms**

- a. *Assignment.* The rights granted to you under these Terms may not be assigned without DermOQ's prior written consent, and any attempted unauthorized assignment by you shall be null and void.
- b. *Severability.* Except as otherwise provided in Section 17(g), if any part of these Terms is determined to be invalid or unenforceable, then that portion shall be severed, and the remainder of the Terms shall be given full force and effect.
- c. *Attorneys' Fees.* In the event any litigation or arbitration is brought by either party in connection with these Terms, except as otherwise provided in Section 17(f), the prevailing party shall be entitled to recover from the other party all the reasonable costs, attorneys' fees and other expenses incurred by such prevailing party in any legal action relating to these Terms.
- d. *No Waiver.* Our failure to enforce any provision of these Terms shall in no way be construed to be a waiver of such provision, nor in any way affect our right to enforce the same provision at a later time. An express waiver by DermOQ of any provision, condition, or requirement of these Terms shall not be understood as a waiver of your obligation to comply with the same provision, condition, or requirement at a later time.

- e. *Equitable Remedies.* You acknowledge and agree that DermOQ would be irreparably damaged if the terms of these Terms were not specifically enforced, and therefore you agree that we shall be entitled, without bond, other security, or proof of damages, to appropriate equitable remedies with respect to any breach of these Terms, in addition to such other remedies as we may otherwise have available to us under applicable laws.
- f. *Entire Agreement.* These Terms, including the documents referenced in these Terms, constitutes the entire agreement between you and DermOQ with respect to the Service and supersedes any and all prior agreements between you and DermOQ relating to the Service.
- g. *Transfer.* We may transfer our rights and obligations under these Terms to another organization, but this will not affect your rights or our obligations under these Terms.

#### **19. Changes to These Terms**

- a. We reserve the right, at our sole discretion, to amend these Terms at any time. As applicable, we will notify you of material changes to these Terms when you next access the Service (we may also email you about any material changes to these Terms). We reserve the right at any time and from time-to-time to modify or discontinue, temporarily or permanently, the Service (or any part of it) with or without notice.

#### **20. Contact Information**

- a. If you have any questions or comments relating to the Service or these Terms, please contact us at [info@oxygenlab.com](mailto:info@oxygenlab.com) or 818-785-9100.