

## Terms & Conditions

Effective Date: March 24, 2020

Thank you for visiting our “FYFE Beauty” mobile application (“App”). This App is operated by FYFE Beauty, LLC (“we,” “us,” or “our”). These Terms and Conditions (“Terms and Conditions”) govern your use of the App, and your agreement is a condition precedent to using this App. Please read these Terms and Conditions carefully before proceeding.

### Binding Effect

BY DOWNLOADING, INSTALLING, AND USING THIS APP, YOU AGREE, WITHOUT LIMITATION OR QUALIFICATION, TO BE BOUND BY THESE TERMS AND CONDITIONS, TO WHICH WE RESERVE THE RIGHT TO MAKE CHANGES FROM TIME TO TIME, CONSISTENT WITH APPLICABLE LAW. IF YOU DO NOT AGREE TO THESE TERMS AND CONDITIONS, DO NOT DOWNLOAD, INSTALL, OR USE THE APP AND DELETE THE APP FROM YOUR DEVICE.

PLEASE BE AWARE THAT THESE TERMS AND CONDITIONS CONTAIN A BINDING ARBITRATION AGREEMENT AND CLASS ACTION WAIVER THAT WAIVE YOUR RIGHT TO A COURT HEARING AND JURY TRIAL.

### Additional Terms

In addition to these Terms and Conditions, your use or purchase of, or participation in, certain products, services or contests offered on our App may require you to accept additional terms and conditions applicable to such products, services and/or contests (collectively, “Additional Terms”). The Additional Terms are incorporated and made a part of these Terms and Conditions by this reference.

### Age Requirements for Use of this App

#### Age Requirements for General Use

Individuals under 13 years of age are not eligible to use this App and may not submit any personal information to us. If you are under 13 years of age, DO NOT USE THIS APP as this App or its products may contain adult content. By using this App, you hereby represent that you are at least 13 years of age.

#### Age Requirements for Purchases

You must be at least 18 years of age and fully able and competent to enter into the terms, conditions, obligations, affirmations, representations, and warranties herein, in order to purchase products on this App. By agreeing to the Terms and Conditions during the checkout process, you represent and certify that you are legally able to enter into any and all purchase agreements with us and our partners, vendors, agents, and service providers.

### Modification to these Terms and Conditions

We will email you or post a notification on this App in the event of any material changes to these Terms and Conditions. Such changes, whether in the form of modifications, additions, or deletions, shall be effective when specified in the relevant notification or, if the change is immaterial, immediately upon appearing on this App. Please check these Terms and Conditions periodically for changes. Your continued use of this App following our posting of any changes to these Terms and Conditions means that you accept those changes.

## Creating and Accessing Your Account

In order to access the App, you will be required to create an account and provide certain personal information such as your name and email address.

You must treat your account information (including, without limitation, your password and any other piece of information required as part of our security procedures) as confidential, and you must not disclose the foregoing to any other person or entity. You also acknowledge that your account is personal to you and agree not to provide any other person with access to this App or portions of it using your username, password or other security information. You agree to notify us immediately of any unauthorized access to or use of your username or password or any other breach of security. You agree to be responsible for any use of this App or portions of it (including, without limitation, for all orders placed and for all activities that occur) using your username, password, or other security information. You also agree to ensure that you exit from your account at the end of each session.

## Terminating Your Account

You may disable your account at any time by contacting us at [support@fyfebeauty.com](mailto:support@fyfebeauty.com). Additionally, we may, in our sole and absolute discretion, disable, suspend or terminate your account at any time, with or without notice, and for any reason, including, but not limited to, if you breach these Terms and Conditions. Upon disabling your account, we may retain your data in accordance with our [Privacy Policy](#). Even if your account is disabled, suspended or terminated, be aware that you will continue to be bound by these Terms and Conditions.

## Memberships

You can find a description of our membership offering(s) (“**Membership**”) in the App. You may purchase a Membership in the App by paying a membership fee in advance on a monthly basis or another interval that we disclose to you in advance (each, an “**Interval**”). Once your initial Membership payment is processed, and effective as of that date (the “**Membership Start Date**”), your Membership shall immediately commence and shall continue to be effective for an initial period of one (1) Interval following your Membership Start Date (the “**Initial Membership Period**”). Your Membership shall renew automatically for additional, successive one (1) Interval periods (e.g., shall continue on a month-to-month basis) (each, a “**Renewal Membership Period**”), until cancelled in accordance with these Terms and Conditions.

During the Initial Membership Period or any Renewal Membership Period, you may cancel your Membership at any time, provided that you shall not be entitled to nor receive a refund of any kind or for any amount. If you cancel your Membership at any time during your Initial Membership Period or during a Renewal Membership Period, you shall continue to retain access to the applicable Membership for the remainder of the then-current Initial Membership Period or Renewal Membership Period. To cancel your Membership please visit the profile section of the App or contact us at [support@fyfebeauty.com](mailto:support@fyfebeauty.com).

You will be charged the rate stated at the time of purchase (plus applicable taxes) at the beginning of each billing period of your Membership via the payment method that you have provided. You are solely responsible for ensuring that your billing and payment information is correct to prevent your Membership from being cancelled. If your payment method cannot be charged for any reason (such as expiration or insufficient funds), and you have not cancelled your Membership, you remain responsible for any uncollected amounts, and we will attempt to charge the payment method as you may update your payment method information. This may result in a change to the start of your next Membership period and may change the date on which you are billed for each period. In addition, we reserve the right to cancel your Membership if your payment method cannot be successfully charged.

Prices and terms for Memberships may change at any time. The prices and terms in effect as of the Membership Start Date or the date your Membership last renewed (as applicable) shall remain in effect for the duration of the applicable Initial Membership Period or Renewal Membership Period (as the case may be), provided that new or

modified prices and terms may apply to renewals or new Memberships. We will provide you with reasonable notice of any updates or changes in prices or terms before they become effective. If you do not want to renew your Membership under such new or modified prices or terms, you may cancel your Membership as described herein.

### **Restrictions on Use**

You may use this App and all associated content solely for your personal use and enjoyment. This App or any portion of this App may not be reproduced, duplicated, copied, sold, resold, visited, or otherwise exploited for any commercial purpose without our express written consent. To access parts of this App or some of the resources it offers, you may be asked to provide certain, sometimes personal, information. It is a condition of your use of this App that all the information you provide on this App is correct, current, and complete.

You agree not to use any device, software, or routine to interfere with the proper functioning of the App. In using the App, you **may not**:

- Transmit any unlawful, threatening, abusive, libelous, defamatory, obscene, vulgar, pornographic, profane, or indecent information of any kind, including images and language;
- Transmit or solicit any information, software, or other material that violates or infringes upon the rights of others, including material that is an invasion of privacy or publicity rights; is protected by copyright, trademark, or other proprietary rights; or is a derivative work with respect thereto, without first obtaining permission from the owner or right holder; or
- Transmit any information, software, or other material that contains a virus or other harmful component.

Additionally, you are prohibited from violating or attempting to violate any security features of this App. You shall not attempt to modify, reverse-engineer, decompile, disassemble, or otherwise reduce or attempt to reduce to a human-perceivable form any of the source code used by us in providing this App. Any violation of system or network security may subject you to civil and/or criminal liability.

### **User Covenants**

By accessing our App, you agree to, acknowledge, and represent as follows:

- You will comply with all applicable laws in using the App, including any products and/or services made available to you on or through the App, and you will not perform or fail to perform any act that you know or reasonably should know would place us or our affiliates in violation of any applicable law. You agree to comply with all laws and regulations regarding online conduct and acceptable content and regarding the transmission of technical data exported from the United States or the country from which you access the App and the products and/or services provided on the App.
- You have the authority and capacity, under the laws of the state or jurisdiction in which you reside, to make the representations and be bound by the covenants provided herein.

### **Copyrights, Trademarks, and Other Proprietary Rights**

When accessing this App, you agree to obey the law and to respect the intellectual property rights of others. You agree that you shall be solely responsible for any violations of any relevant laws and for any infringement of third-party rights caused by any User Content (defined below) that you provide or transmit to us.

As between you and us, all content on this App, including text, hidden text within our source code, trademarks, software, photos, video, images, graphics, music, audio-visual content, podcasts, recordings, sound, or any other

digital media, is owned by us and/or our licensors and is subject to protection by patent, copyright, trademark, or other proprietary rights. In addition, the entire content of this App is copyrighted as a collective work under the United States copyright laws, and we own the copyright in the selection, coordination, arrangement, and enhancement of such content. Any feedback or testimonials you provide to use relating to the App, or the services provided on the App, shall be deemed to be non-confidential. We shall be free to use such information on an unrestricted basis.

All trademarks, trade names, trade dress, logos, and service marks (collectively, the “**Trademarks**”) appearing on this App are the property of their respective owners, including, in some instances, us and/or our partner companies. Nothing contained on this App or these Terms and Conditions serves to grant you, by implication or otherwise, a license or right to use any of the Trademarks or copyrights owned by us or by any third party.

Except as expressly provided herein, you may not modify, create derivative works, copy, redistribute, reproduce, publish, transmit, display, commercialize, or in any other way exploit any content or material from this App without express written permission from us and, if applicable, the respective copyright owner. You acknowledge that you do not acquire any ownership rights by downloading or printing copyrighted material.

### **Custom Makeover Services**

We may provide you custom makeover services through the App. You hereby acknowledge and agree that any and all results and proceeds of any of such custom makeovers, including, without limitation, personalized product recommendations, personalized custom quotes and/or modified headshots, are strictly for your personal use only. You may not modify, create derivative works, copy, redistribute, reproduce, publish, transmit, display, commercialize, or in any other way exploit any of such results and proceeds.

### **Monitoring; Copyright Complaints**

You agree that we have the right, but not the obligation, to monitor, suspend, terminate, edit, disclose, refuse to post, or remove at any time, for any reason in our sole discretion, any material, content, and/or activity anywhere on this App, including, without limitation, by suspending or terminating your access to or use of this App. Notwithstanding this right, we do not and cannot review all materials submitted to this App. If notified, we will investigate an allegation that content transmitted to us is in violation of these Terms and Conditions and determine whether to have the communication removed. However, we assume no responsibility or liability arising from or relating to any actions or content transmitted by or between you or any third party within or outside of this App, including, but not limited to, any error, defamation, libel, slander, omission, falsehood, obscenity, pornography, profanity, danger, or inaccuracy contained therein.

### Digital Millennium Copyright Act

We may, in appropriate circumstances, terminate the access of users who infringe or otherwise violate the rights of others. While we reserve the right to terminate the access of users who infringe or otherwise violate the rights of others in our sole discretion, if you are a Repeat Offender (as defined below), your access to the App will be suspended or terminated. “**Repeat Offender**” shall mean any user of the App against whom we receive three (3) or more Infringement Notifications (as defined below).

If you believe that your work has been copied and is accessible on this App in a way that constitutes copyright infringement, you may notify us (each, an “**Infringement Notification**”) by providing the following information (as required by the Online Copyright Infringement Liability Limitation Act of the Digital Millennium Copyright Act (“**DMCA**”), 17 U.S.C. sec. 512):

- A physical or electronic signature of the person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed;

- Identification of the copyrighted work claimed to have been infringed, or if multiple copyrighted works at this App are covered by a single notification, a representative list of such works at this App;
- Identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit us to locate the material;
- Information reasonably sufficient to permit us to contact you, such as an address, telephone number, and if available, an e-mail address;
- A statement that you have a good faith belief that use of the material in the manner complained of is not authorized by you, your agent, or the law; and
- A statement that the information in the notification is accurate, and, under penalty of perjury, that you are authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

Please send the written communication to our copyright agent by e-mail AND by U.S. Mail to:

**FYFE Beauty, LLC**  
 503 Boccaccio Avenue  
 Venice, California 90291  
 Attn: DMCA Agent  
 Email: support@fyfebeauty.com  
 E-mail Subject: "DMCA Request"

### **User Content**

You are, and shall remain, solely responsible for the content of any materials, including, without limitation, creative suggestions, submissions, artwork, logos, service marks, trademarks, images, text, ideas, notes, drawings, photographs, videos, messages, concepts, or other information or communications (collectively, "**User Content**") you send, upload, post or transmit to us via this App, the Internet, e-mail, or otherwise. You hereby grant to us and our affiliates, the royalty-free, perpetual, irrevocable, worldwide, transferable, non-exclusive right and license to use, reproduce, modify, adapt, publish, translate, and display User Content (i) in order to provide the services and information requested by you (e.g., in connection with a custom makeover, virtual try-on, and/or custom beauty product recommendation), and (ii) for internal business purposes. You represent and warrant that you are the owner of or have the right to license User Content and that your User Content does not infringe, misappropriate or violate the intellectual property or other proprietary rights of any third party.

### **Third Party Sites**

We may provide links and pointers to apps or Internet sites maintained by others ("**Third-Party Sites**"). Third-Party Sites may be located in different countries and that may be subject to different regulatory and other legal requirements. We have not reviewed all of the Third-Party Sites linked to this App and are not responsible for the content or services offered on such Third-Party Sites, including, but not limited to, any advertising, order processing and fulfillment, or payment terms related to such Third-Party Sites. Access to participating retailers does not constitute an endorsement by us of any retailers, or the resources, products, or services offered by them. We have no responsibility or liability for these Third-Party Sites' independent policies or actions and are not responsible for the privacy practices of such Third-Party Sites or retailers. Complaints, claims, concerns, or questions regarding Third-Party Sites should be directed to the applicable third party.

While we may provide links and locations of participating retailers and vendors who sell products or services online, we cannot control the completion or validity of the transactions of such retailers and vendors or the content of their Third-Party Sites. These Third-Party Sites and store locations are only for your convenience and therefore

you access them at your own risk. However, we seek to protect the integrity of this App and the links placed upon it. We therefore welcome any feedback on not only our own App, but also Third-Party Sites and retailers we link to and/or identify on our App (*e.g.*, if a specific link does not work).

If we provide links to social media platforms, such as Facebook or Twitter, and you choose to visit those websites through our links, please note that the personal information you post, transmit, or otherwise make available on those websites may be viewed by the general public. We do not control any content information, made available on social media pages and are not responsible for any third-party use of any information, including, without limitation, personally identifiable information, that you have posted, transmitted, or otherwise made available there.

## **App Updates**

We will not be liable if, for any reason, all or part of this App is ever unavailable. We reserve the right at any time and from time to time to modify or discontinue, temporarily or permanently, the App, including, without limitation, the products and services made available on the App, (or any part thereof) with or without notice. We undertake no obligation to update, amend, or clarify information on this App, including without limitation, pricing information, except as required by law. No specified update or refresh date applied on this App should be taken to indicate that all information on the App has been modified or updated. Please remember when reviewing information on this App that such information may not represent the complete information available on a subject. In addition, subsequent events or changes in circumstances may cause existing information on this App to become inaccurate or incomplete.

On occasion, information on this App may contain errors. We reserve the right to, at any time without prior notice, correct any errors, inaccuracies, or omissions, and to change or update information or cancel orders if any information on the App is inaccurate (including after you have submitted your order).

## **Purchases**

### Products

To make a broader array of products available to our users, we offer products (i) via in-App purchasing (*i.e.*, on the App), and (ii) via linked Third-Party Sites. These Terms and Conditions shall govern products offered on this App. You understand and acknowledge that we are not responsible for any products offered via linked Third-Party Sites, including, but not limited to any order processing, order fulfillment, payments terms or returns for such products. Please refer to the applicable Third-Party Site for further information.

Products offered on this App are offered subject to availability. All products should be used strictly in accordance with their instructions, precautions and guidelines. Products are not intended to diagnose, treat, cure or prevent any condition or disease. You should always check the ingredients for products to avoid potential allergic reactions.

### Prices and Promotions

All prices, discounts, and promotions posted on this App are subject to change without notice. We may, from time to time, offer promotions or other discounts on product purchases. We reserve the right to suspend any such promotions, update product information and change prices at any time without notice. Furthermore, we reserve the right to change, limit, refuse, or cancel any order you place with us at our sole discretion. If we change or cancel an order, we will attempt to notify you by contacting the e-mail and/or billing address and/or phone number provided at the time the order was made.

We strive to display accurate price information; however, we may, on occasion, make inadvertent typographical errors, inaccuracies, or omissions related to pricing and availability. We reserve the right to correct any errors, inaccuracies, or omissions at any time, and to cancel any orders arising from such occurrences.

### Coupons/Discount Codes

Use is limited to one (1) time per coupon and/or discount code per customer. Discounts will be applied at checkout. Online offers have no cash value and are not redeemable for cash. Coupons and discount codes are not valid on previous purchases or when combined with other promotional offers.

### Payment Terms

Terms of payment are within our sole discretion and, unless otherwise agreed by us in writing, payment must be received by us before our acceptance of an order. By entering into any transaction on this App, you warrant and represent that all information you provide is true, correct, and complete (including, without limitation, your credit card information and billing address); that any credit card transactions submitted by you are authorized; that charges incurred by you will be honored by your credit card company; that you will pay charges incurred by you at the posted prices, including shipping and handling charges and all applicable taxes, if any, regardless of the amount quoted on the App at the time of your order; and that you are the legal holder of any credit card or payment account used to enter into any transaction on this App.

If, in our sole discretion, we determine that: (i) your means of payment is not valid, (ii) a transaction is not authorized, (iii) your means of payment cannot be processed or verified at the time of any charge, (iv) a charge is disputed for any reasons other than failure by us to deliver the item(s) purchased by you, (v) you have abused or misused promotions or promotion codes, as applicable, or (vi) you have otherwise used the App to enter into an improper transaction, we reserve the right to immediately terminate any pending transactions, suspend your access to the App, and terminate all of our obligations hereunder.

### Payment Processing

By agreeing to the Terms and Conditions, you consent that the payment processing services for products purchased on this App are provided by Stripe.

### Returns and Refunds

Except as stated otherwise for any specific products, these Terms and Conditions shall govern the returns for products purchased via in-App purchasing.

Our policy is to accept returns of products within fourteen (14) days following delivery of products and refund your purchase price, less the original shipping and handling costs and less the shipping and handling costs for such return, so long as such return is made with valid proof of purchase and provided such products are returned in unused and unopened condition. To return products, you must first email us at [orders@fyfebeauty.com](mailto:orders@fyfebeauty.com) to initiate the return. We will provide you with a pre-paid return label in connection with such returns.

If you feel that you did not receive your purchased product and you have been charged, please contact us at [orders@fyfebeauty.com](mailto:orders@fyfebeauty.com).

### Questions

If you have any questions or concerns please email us at [orders@fyfebeauty.com](mailto:orders@fyfebeauty.com).

## **Disclaimers**

This App may provide users with certain beauty related information, including, but not limited to, information relating to custom makeovers, information from our concierge chat, video tutorials, and personalized beauty product recommendations. All such information is provided on an “as is” and “as available” basis and you hereby acknowledge and agree that any use of such information is at your sole risk. This App does not give or intend to give any answers to medical related questions and this App does not replace any medical professional or medical resource. In addition, you acknowledge that the inclusion of any people, products or items in this App does not constitute an endorsement by such people, products or items (as applicable) of the App.

YOU EXPRESSLY ACKNOWLEDGE AND AGREE THAT YOUR USE OF THE APP, AND ANY PRODUCTS OR SERVICES MADE AVAILABLE ON THE APP, IS AT YOUR SOLE RISK. THIS APP, INCLUDING THE PRODUCTS AND SERVICES MADE AVAILABLE ON AND THROUGH THE APP, IS PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS. WE EXPRESSLY DISCLAIM ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. WE MAKE NO WARRANTY THAT THE APP, INCLUDING, THE PRODUCTS AND SERVICES MADE AVAILABLE ON AND THROUGH THE APP, WILL MEET YOUR REQUIREMENTS OR WILL BE UNINTERRUPTED, TIMELY, UNFAILINGLY SECURE, OR ERROR-FREE, THAT THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THIS APP OR SUCH PRODUCTS OR SERVICES WILL BE ACCURATE OR RELIABLE, THAT THE QUALITY OF ANY INFORMATION OR MATERIALS PURCHASED OR OBTAINED BY YOU THROUGH THE APP OR SUCH PRODUCTS OR SERVICES WILL MEET YOUR EXPECTATIONS, AND THAT ANY ERRORS IN THE APP OR SUCH PRODUCTS OR SERVICES WILL BE CORRECTED. YOU FURTHER ACKNOWLEDGE AND AGREE THAT ANY MATERIAL DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE APP OR SUCH PRODUCTS OR SERVICES IS DONE AT YOUR OWN DISCRETION AND RISK AND THAT YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR DEVICE OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF ANY SUCH MATERIAL. WE MAKE NO WARRANTIES, REPRESENTATIONS, OR GUARANTEES AS TO, AND ASSUME NO RESPONSIBILITY FOR, THE CORRECTNESS, SUFFICIENCY, COMPLETENESS, OR EFFICACY OF THE INFORMATION CONTAINED ON THIS APP OR ON ANY THIRD-PARTY SITES. WE DO NOT CONTROL OR ENDORSE ANY ACTIONS RESULTING FROM YOUR PARTICIPATION IN THE APP OR SUCH PRODUCTS OR SERVICES, AND, THEREFORE, WE SPECIFICALLY DISCLAIM ANY LIABILITY WITH REGARD TO ANY ACTIONS RESULTING FROM YOUR PARTICIPATION. WE ALSO DISCLAIM ANY AND ALL LIABILITY FOR THE ACTS, OMISSIONS AND CONDUCT OF ANY THIRD PARTIES IN CONNECTION WITH OR RELATED TO YOUR USE OF THE APP OR SUCH PRODUCTS OR SERVICES. WE DO NOT WARRANT THAT THE APP, INFORMATION, CONTENT, MATERIALS, SERVICES, PRODUCTS (INCLUDING ANY SOFTWARE) INCLUDED ON OR OTHERWISE MADE AVAILABLE TO YOU THROUGH THE APP ARE FREE OF VIRUSES, CONTAMINATION, DESTRUCTIVE FEATURES OR OTHER HARMFUL COMPONENTS. YOUR SOLE REMEDY AGAINST US FOR DISSATISFACTION WITH THE APP OR SUCH PRODUCTS OR SERVICES PROVIDED OR MADE AVAILABLE TO YOU ON THE APP IS TO STOP USING THE APP OR SUCH PRODUCTS OR SERVICES, AS APPLICABLE. THE FOREGOING LIMITATION OF RELIEF IS AN ESSENTIAL PART OF THE BARGAIN BETWEEN YOU AND US UNDER THESE TERMS AND CONDITIONS. NOTE THAT SOME JURISDICTIONS DO NOT ALLOW LIMITATIONS ON THE LENGTH OF AN IMPLIED WARRANTY, SO THE ABOVE LIMITATIONS OR EXCLUSIONS MAY NOT APPLY TO YOU.

## **Limitation of Liability**

TO THE FULLEST EXTENT PERMISSIBLE PURSUANT TO APPLICABLE LAW, IN NO EVENT SHALL WE AND OUR SUCCESSORS, ASSIGNS, AFFILIATES, LICENSORS, SERVICE PROVIDERS, CONTENT PROVIDERS, MEMBERS, EMPLOYEES, REPRESENTATIVES, AGENTS, OFFICERS, DIRECTORS, AND MANAGERS BE LIABLE FOR ANY INCIDENTAL, DIRECT, INDIRECT, PUNITIVE, ACTUAL,



CONSEQUENTIAL, SPECIAL, EXEMPLARY, OR OTHER DAMAGES, INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES (EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR SUCH DAMAGES ARE REASONABLE FORESEEABLE), RESULTING FROM: (I) THE USE OR THE INABILITY TO USE THE APP, OR ANY PRODUCTS, SERVICES, SOFTWARE OR INFORMATION MADE AVAILABLE ON THE APP; (II) UNAUTHORIZED ACCESS TO OR ALTERATION OF YOUR TRANSMISSIONS OR DATA; (III) THE IMPROPER AUTHORIZATION FOR THE PRODUCTS AND/OR SERVICES OFFERED ON THE APP BY SOMEONE CLAIMING SUCH AUTHORITY; OR (IV) STATEMENTS OR CONDUCT OF ANY THIRD PARTY ON THE APP.

IN NO EVENT SHALL THE COLLECTIVE LIABILITY OF US AND OUR SUCCESSORS, ASSIGNS, AFFILIATES, LICENSORS, SERVICE PROVIDERS, CONTENT PROVIDERS, MEMBERS, EMPLOYEES, REPRESENTATIVES, AGENTS, OFFICERS, DIRECTORS, AND MANAGERS TO OR THROUGH YOU FOR ALL DAMAGES, LOSSES, AND CAUSES OF ACTION WHETHER IN CONTRACT, TORT OR OTHERWISE, EXCEED THE AMOUNT PAID BY YOU TO US.

Some jurisdictions do not allow the exclusion of certain warranties or the limitation or exclusion of liability for incidental or consequential damages. Accordingly, in certain jurisdictions, some of the above limitations of liability may not apply to you; all other provisions of these Terms and Conditions remain in full force and effect.

### **Indemnification**

You agree to indemnify, defend, and hold harmless us, our subsidiaries and affiliates, and our and their members, managers, officers, directors, employees, agents, licensors, retailers, and suppliers from and against all claims (whether or not such claims are merely alleged or otherwise), losses, expenses, damages, and costs, including reasonable attorneys' fees, costs, and arising out of or in connection with: (i) your violation of these Terms and Conditions or other documents incorporated herein by reference; (ii) your use of the App, and/or any products or services made available on the App; (iii) your violation of another person's rights; (iv) your dispute with another user; (v) the unauthorized access to any protected area of the App; (vi) your violation of applicable law; or (vii) any claim related to your User Content, including a claim that your User Content caused damage to another person. This indemnification obligation will continue after you stop using the App and/or our products or services made available on the App. We reserve the right, at our own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you at your expense, and you shall not in any event settle or otherwise dispose of any matter without our prior written consent.

### **Privacy**

We respect your privacy and are committed to protecting it. Our [Privacy Policy](#) governs the processing of all personal data collected from you in connection with your use of this App.

### **Accessibility**

If you have difficulty using or accessing any element of this App or if you have any feedback regarding accessibility of this App, please feel free to contact us at [support@fyfebeauty.com](mailto:support@fyfebeauty.com).

### **Force Majeure**

We will not be liable or responsible to you, nor be deemed to have defaulted or breached these Terms and Conditions, for any failure or delay in our performance under these Terms and Conditions when and to the extent such failure or delay is caused by or results from acts or circumstances beyond our reasonable control, including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest, national emergency, revolution, insurrection, epidemic, lockouts, strikes or other labor disputes (whether or not relating to our

workforce), restraints or delays affecting carriers, inability to obtain or delay in obtaining adequate or suitable supplies, breakdown of materials or telecommunications, or power outage.

## **Notices**

We may send you responses or notices by e-mail, posting to this App, or written communication sent by U.S. Postal Service. You agree that all agreements, notices, disclosures, and other communications that we provide to you electronically satisfy any legal requirement that such communications be in writing.

## **Dispute Resolution**

### Governing Law

These Terms and Conditions and your use of this App shall be governed by and construed for both substantive and procedural purposes in accordance with the laws of the State of California, U.S.A., without giving effect to any principles of any choice or conflict of law provision or rule (whether of the State of California or any other jurisdiction) that would cause the laws of any jurisdiction other than those of the State of California to apply.

### Jurisdiction

This App, this App's content, products, and incentives are intended to comply with U.S. state and federal laws and regulations. If you are a non-U.S.-based user, be advised that other countries may have laws, regulatory requirements that are different from those in the U.S.

### Timing of Claims

Any cause of action or claim you may have with respect to this App including, but not limited to, the purchase of products must be commenced within one (1) year after the claim or cause of action arises.

### Arbitration and Venue

Any dispute relating in any way to your use of this App shall be submitted to confidential arbitration in Los Angeles, California, except that, to the extent you have in any manner violated or threatened to violate our intellectual property rights, we may seek injunctive or other appropriate relief in any state or federal court and you consent to jurisdiction and venue in such courts in Los Angeles, California. Arbitration under these Terms and Conditions shall be conducted under the rules then prevailing of the American Arbitration Association in accordance with its Commercial Arbitration Rules and before a single arbitrator.

Ultimately, the selected arbitrator must have expertise in the subject matter of the dispute. The expenses of the arbitration charged by the arbitrator shall be borne by the prevailing party or otherwise as appropriately allocated between the parties to the arbitration by the arbitrator in his or her discretion. However, in every other regard, each party shall pay for and bear its own costs and legal fees, costs, and expenses. The arbitration shall be completed within one hundred twenty (120) days of either giving notice or filing a demand to arbitrate with the American Arbitration Association (whichever shall first occur).

### Final Arbitration

The arbitrator's award shall be binding and may be entered as a judgment in any court of competent jurisdiction. The testimony, evidence, ruling, and all documentation regarding any arbitration shall be considered confidential information. Neither party may use, disclose, or divulge any such information unless otherwise required by law.

## Class Action Waiver

To the fullest extent permitted by applicable law, no arbitration under these Terms and Conditions shall be joined to an arbitration involving any other party subject to these Terms and Conditions, whether through class arbitration proceedings or otherwise. You agree to an arbitration on an individual basis. In any dispute, NEITHER YOU NOR WE WILL BE ENTITLED TO JOIN OR CONSOLIDATE CLAIMS BY OR AGAINST OTHER USERS IN COURT OR IN ARBITRATION OR OTHERWISE PARTICIPATE IN ANY CLAIM AS A CLASS REPRESENTATIVE, CLASS MEMBER, OR IN A PRIVATE ATTORNEY GENERAL CAPACITY. The arbitral tribunal may not consolidate more than one (1) person's claims, and may not otherwise preside over any form of a representative or class proceeding. The arbitral tribunal has no power to consider the enforceability of this class arbitration waiver and any challenge to the class arbitration waiver may only be raised in a court of competent jurisdiction.

## **Miscellaneous**

The division of these Terms and Conditions into sections and the headings of the various sections in these Terms and Conditions are for convenience of reference only and shall not affect the construction or interpretation of these Terms and Conditions. You acknowledge and agree that any principle of construction or rule of law that provides that an agreement shall be construed against the drafter of the agreement in the event of any inconsistency or ambiguity in such agreement shall not apply to these Terms and Conditions. Our failure to insist upon or enforce strict performance of any provision of these Terms and Conditions shall not be construed as a waiver of any provision or right. Neither the course of conduct between the parties nor trade practice shall act to modify any of these Terms and Conditions. We may assign our rights and duties under these Terms and Conditions to any party at any time without notice to you and without your express consent. You will not assign any of your rights or delegate any of your obligations under these Terms and Conditions without our prior written consent. Any purported assignment or delegation in violation of this section is null and void. No assignment or delegation relieves you of any of your obligations under these Terms and Conditions. There shall be no third-party beneficiaries to these Terms and Conditions. Any provision of these Terms and Conditions that contemplates performance or observance subsequent to any expiration or termination of these Terms and Conditions, or which is otherwise necessary to interpret the respective rights and obligations of the parties hereunder, shall survive any expiration or termination of these Terms and Conditions and continue in full force and effect. If any provision of these Terms and Conditions shall be held unlawful, void, or for any reason unenforceable, then that provision shall be deemed severable from these Terms and Conditions and shall not affect the validity and enforceability of any remaining provisions. These Terms and Conditions, together with our [Privacy Policy](#), constitute the entire agreement between the parties pertaining to the subject matter hereof and supersede in their entirety any and all written or oral agreements previously existing between the parties with respect to such subject matter.

## **U.S. Use Only**

This App is controlled and operated by us from our offices in the United States of America, and the content, services, products and incentives we may provide from time to time on and through the App are intended to comply with U.S. state and federal laws and regulations. We make no representation that any of the materials or the services to which you have been given access are available or appropriate for use in other locations. Those who access or use this App from other jurisdictions do so at their own volition and are responsible for compliance with local law. If you are a non-U.S.-based user, be advised that other countries may have laws or regulatory requirements that differ from those in the U.S. Some jurisdictions do not allow the exclusion of certain warranties or the limitation or exclusion of liability for incidental or consequential damages. Accordingly, in certain jurisdictions, some of the above limitations of liability may not apply to you; all other provisions of these Terms and Conditions remain in full force and effect.

## **Notice for California Users**

Under California Civil Code Section 1789.3, California users of the App are entitled to the following specific consumer rights notice: The Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs may be contacted in writing at 1625 North Market Blvd., Suite N. 112, Sacramento, CA 95834, or by telephone at (916) 445-1254 or (800) 952-5210. We may be contacted via email at [support@fyfebeauty.com](mailto:support@fyfebeauty.com).

### **Questions**

If you have any questions or comments regarding these Terms and Conditions, our [Privacy Policy](#), or this App, please feel free to contact us by e-mail at [support@fyfebeauty.com](mailto:support@fyfebeauty.com).