

**DATED** \_\_\_\_\_

**(1) Pharmicare (Europe) Limited**

**(2) << >>**

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**REFERRAL PARTNER AGREEMENT**

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**THIS AGREEMENT** is made the            day of

**BETWEEN:**

- (1)     Pharmacare (Europe) Limited, a company registered in England & Wales under number 06408300 whose registered office is at The Old Rectory, Church Street, Weybridge, Surrey, KT13 8DE (“the Company”) and
- (2)     [<<Name of Referral Partner>> a company registered in <<Country of Registration>> under number <<Company Registration number>> whose registered office is at <<Registered office>> (“the Referral Partner”)]

OR

[<<Name of Referral Partner>> an individual whose address is <<Address>> (“the Referral Partner”)]

**WHEREAS:**

- (1)     The Company offers commission on the sale of goods and services to customers referred by referral partners in its Skin Doctors Affiliate Programme (the “Programme”).
- (2)     The Company operates its website for the Skin Doctors™ Brand at [www.skindoctors.co.uk](http://www.skindoctors.co.uk) (the “Company Website”).
- (3)     The Referral Partner operates its website at <<URL>> (the “Referral Partner Website”).
- (4)     The Referral Partner wishes to enrol in the Programme on a non-exclusive basis and shall do so upon submission of a registration form on the Company Website at [www.skindoctors.co.uk](http://www.skindoctors.co.uk).

**IT IS AGREED** as follows:

**1. Definitions and Interpretation**

1.1     In this Agreement the following terms shall have the following meanings:

- “Business Day”**                     means any day other than Saturday or Sunday that is not a bank or public holiday;
- “Commencement Date”**         means the date of the Referral Partner’s acceptance of the terms of this Agreement;
- “Confidential Information”**       means all business, technical, financial or other information created or exchanged between the Parties in the course of fulfilling their obligations under this Agreement;
- “Current Term”**                     means the Term that the Parties may be in at any given time;
- “Intellectual Property Rights”**    means any rights subsisting in a copyright work, trade mark, patent or design and shall be construed in accordance with the Copyright Designs and Patents Act 1988, Trade Marks Act 1994 and Patents Act 1977;
- “Registered Email Address”**       means the email address of the Company as provided in the *Affiliate Administration area* or the email address of the Referral Partner as provided in the Referral Partner’s Registration Data;
- “Registration Data”**                means the information provided by the Referral Partner when registering for enrolment in the Programme; and

**“Term”** means the term of this Agreement, as defined in Clause 13 of this Agreement, during which you shall participate in the Programme under the terms and conditions set out in this Agreement.

- 1.2 The headings used in this Agreement are for convenience only and shall have no effect upon the interpretation of this Agreement.
- 1.3 Words imparting the singular number shall include the plural and vice versa.

## 2. **Enrolment in the Programme**

- 2.1 The Referral Partner hereby agrees that, at the time of registration, they will provide accurate and complete Registration Data and that the Referral Partner shall inform the Company of any changes in such Registration Data.
- 2.2 The Company may, at their sole discretion, review the Referral Partner Website following the Referral Partner's acceptance of the terms of this Agreement. The Referral Partner will be informed within 7 Business Days of the outcome of their application. Following acceptance of the terms of this Agreement, the Referral Partner will receive further instructions to allow them to commence marketing and promotion of our goods.
- 2.3 The Company may, in their sole discretion, choose to reject any application for any reason (and is under no obligation to disclose such reasons). Reasons for which an application may be rejected include, but are not limited to, content on the Referral Partner Website that:
  - 2.3.1 is in any way unlawful, harmful, threatening, obscene, harassing, discriminatory, defamatory or otherwise objectionable;
  - 2.3.2 facilitates or promotes violence, terrorism, or any other criminal activity;
  - 2.3.3 is sexually explicit; or
  - 2.3.4 infringes or assists or encourages the infringement of any intellectual property rights belonging to any party.

## 3. **Relationship of the Parties**

Subject to any provisions set out in this Agreement which are expressly to the contrary:

- 3.1 Nothing in this Agreement shall for any purpose constitute, or be taken to constitute:
  - 3.1.1 a partnership between the parties; or
  - 3.1.2 either party as an agent of the other party.
- 3.2 The Referral Partner shall have no right or authority to do any of the following, and it will not do so or purport to do so:
  - 3.2.1 bind the Company in any way; or
  - 3.2.2 on behalf of the Company make any representation or give any warranty or assume any obligation of any kind, whether express or implied, or incur any liability or do any act or enter into any contract.

## 4. **Referral Website Links**

- 4.1 In the Referral Partner's Affiliate Administration Area will be the requisite materials for a hyperlink to the Company Website. These materials will include the option to generate a unique URL and a selection of graphic files that can be used.
- 4.2 The unique URL as it appears in the Referral Partner's Affiliate Administration Area must be copied exactly and not altered in any way. Failure to comply with this condition may result in the Referral Partner receiving no credit for the Company's sales that are generated through

the Referral Partner Website.

- 4.3 Under no circumstances may any of the graphic files provided by the Company be modified in any way without our prior written authorisation.
- 4.4 The Company reserves the right to request the alteration or removal of a link from the Referral Partner Website.
- 4.5 The Referral Partner is required to assume full responsibility to maintain all links to the Company Website from the Referral Partner Website.

## 5. **Site Maintenance and Content**

- 5.1 Each Party shall be exclusively responsible for maintaining and updating its own website. Subject to the provisions of this Clause 5 and Clause 10 below, neither Party shall have any obligations to the other Party in relation to the maintenance or content of their website.
- 5.2 Subject to Sub-clause 5.3 of this Agreement, neither Party may host any content that:
  - 5.2.1 is in any way unlawful, harmful, threatening, obscene, harassing, discriminatory, defamatory or otherwise objectionable;
  - 5.2.2 facilitates or promotes violence, terrorism, or any other criminal activity;
  - 5.2.3 is sexually explicit; or
  - 5.2.4 infringes or assists or encourages the infringement of any intellectual property rights belonging to any party.
- 5.3 Neither Party shall be under any obligation to pre-screen any content added to their website by third parties; however in the event that either Party receives from the other a written notification of any content that falls within that described in Sub-clause 5.2 of this Agreement, such content must be removed within 7 Business Days of receipt of such notice.

## 6. **Orders**

- 6.1 The Company undertakes to use their best and reasonable endeavours to process and fulfil all orders placed by referred customers generated by the Referral Partner.
- 6.2 It shall be the Company's full responsibility to ensure that all orders are completed. The Company shall be responsible for order entry, payment processing, handling, shipping, cancellations, returns and all subsequent customer service. The Referral Partner shall have no further involvement with the customer or the completion of the transaction and all customers will be made aware of the same.

## 7. **Commission and Referral Fees**

- 7.1 The Referral Partner will be paid commission at the rates set out in Sub-clause 7.2 on the sales value generated through the Referral Partner Website.
- 7.2 Commission shall be paid at the rate of 10% (excluding shipping and taxes from referral calculations).
- 7.3 In the event that a customer cannot be tracked, no commission will be paid.
- 7.4 If a customer is referred by multiple referral partners, the first to refer that customer shall receive the commission.
- 7.5 Commission shall be calculated and paid to the Referral Partner in accordance with the Company's Payment Procedure which is set out in Schedule 1 to this Agreement.
- 7.6 Any and all commission paid to the Referral Partner shall be based on sales revenue less any tax due; however the Referral Partner may still be liable to pay tax on their commission. By accepting the terms of this Agreement the Referral Partner hereby acknowledges that

they are solely responsible for the payment of tax on any income they may generate through their involvement in the Programme.

- 7.7 The Company reserves the right to modify the rate of commission at any time. The Referral Partner will be given 7 Business Days' prior written notice (the "Notice Period") of any such change. The Referral Partner will be given the option to opt out of the Programme within the Notice Period and will, on the exercise of that option, be paid any Commission due.

## 8. Trade Marks

- 8.1 The Company hereby grants to the Referral Partner a non-exclusive, non-transferrable, royalty free licence to use the Skin Doctors™ Trade Marks.
- 8.2 The Referral Partner may use the Trade Marks only to the extent required to establish links and perform their obligations as a referral partner under the terms of this Agreement.
- 8.3 In the event that the Referral Partner wishes to use the Trade Marks for any purposes outside of this Agreement they must not do so without prior written consent, such consent not to be unreasonably withheld.
- 8.4 By accepting the terms of this Agreement the Referral Partner hereby agrees that:
- 8.4.1 the Trade Marks shall remain the property of Pharmacare (Europe) Ltd, or any of its associated Group Companies where relevant, unless and until the Company assigns those marks to a third party;
  - 8.4.2 nothing in this Agreement shall be deemed to confer any ownership rights in the Trade Marks on the Referral Partner; and
  - 8.4.3 the Referral Partner shall not contest the validity of the Trade Marks.

## 9. Intellectual Property

- 9.1 Unless otherwise expressly indicated and subject to Sub-clause 9.3 below, the Company is the sole and exclusive owner of all Intellectual Property Rights ("IPRs") in the Company Website including, but not limited to: all code, text, sound, video, graphics, photographs and other images that form a part of the same. The Company shall also be the sole and exclusive owner of all IPRs which may subsist in any supporting documentation which shall include, but not be limited to, site plans, maps, design sketches and other preparatory material.
- 9.2 The Company shall be the sole and exclusive owner of all IPRs which may subsist in all future updates, additions and alterations to the Company Website, such material including any supporting documentation.
- 9.3 Unless otherwise expressly indicated, all IPRs in product images and descriptions belong to the manufacturers or distributors of such products as may be applicable.
- 9.4 If you create your own photographs using our products on your blog or social media, you agree to us using these images on marketing materials. We will credit your blog name if we use them.

## 10. Referral Partner Warranties and Indemnity

- 10.1 In accepting the terms of this Agreement, the Referral Partner hereby warrants and acknowledges that:
- 10.1.1 The Referral Partner Website does not and will not contain any content that:
    - a) is in any way unlawful, harmful, threatening, obscene, harassing, discriminatory, defamatory or otherwise objectionable;
    - b) facilitates or promotes violence, terrorism, or any other criminal activity;
    - c) is sexually explicit; or

- d) infringes or assists or encourages the infringement of any intellectual property rights belonging to any party.
- 10.1.2 The Referral Partner Website is and shall remain functional and, subject to the provisions of Clause 15 of this Agreement, reasonable downtime for maintenance or third-party access restrictions, accessible to all users of the internet;
- 10.1.3 All necessary authorities, consents and approvals have been obtained in respect of the Referral Partner's obligations under this Agreement and will remain valid and effective throughout the Term;
- 10.1.4 The Referral Partner's obligations under this Agreement shall constitute legal, valid and binding obligations. Such obligations shall be direct, unconditional and general obligations; and
- 10.1.5 The Referral Partner will not refer to the Company in any way in any unsolicited bulk email campaigns or other spamming practices that may be conducted.
- 10.2 By accepting the terms of this Agreement, the Referral Partner agrees that it shall indemnify the Company in full against all liability, loss, damages, costs and expenses (including legal expenses) awarded against or incurred or paid by the Company as a result of, or in connection with:
  - 10.2.1 breach of any warranty given by the Referral Partner in relation to the Referral Partner Website;
  - 10.2.2 any claim that the Referral Partner Website infringes the patent, copyright, trade mark or other intellectual property rights of any other person, except to the extent that the claim arises from compliance with any terms stipulated by the Company; and
  - 10.2.3 any act or omission by the Referral Partner or its employees, agents or sub-contractors in performing the Referral Partner's obligations under this Agreement.

## 11. Disclaimers

- 11.1 The Company makes no warranty or representation that the Company Website, the Programme, or any goods or services sold through the Programme will meet the Referral Partner's requirements or those of the Referral Partner's visitors, that they will be of satisfactory quality, that they will be fit for a particular purpose, that they will not infringe the rights of third parties, that they will be compatible with all systems, that they will be secure and that all information provided will be accurate.
- 11.2 The Company makes no guarantee of any specific results from the use of the Company Website or from enrolment in the Programme.
- 11.3 The Company makes no guarantee that the Company Website shall remain functional and accessible to all users of the internet.

## 12. Liability

- 12.1 The Company shall not be liable to the Referral Partner for any indirect or consequential loss that the Referral Partner may suffer even if such loss is reasonably foreseeable or if the Company has been advised of the possibility of such loss being incurred.
- 12.2 The Company's entire liability to the Referral Partner in respect of any breach of the Company's contractual obligations, any breach of warranty, any representation, statement or tortious act or omission including negligence arising under or in connection with this Agreement shall be limited to the sum of outstanding commission due to the Referral Partner.
- 12.3 Notwithstanding any other provision in this Agreement, the Company's liability to the Referral Partner for death or injury resulting from the Company's own negligence or that of its employees, agents or sub-contractors shall not be limited.

### 13. **Term and Termination**

- 13.1 This Agreement shall come into force and become binding on the Commencement Date and shall continue in force for a period of 90 days from that date (the "Initial Term"). Following the Initial Term, the Referral Partner's enrolment in the Programme shall be renewed automatically for successive periods of 90 (each a "Renewal Term") unless and until terminated in accordance with this Clause 13.
- 13.2 Either Party may terminate this Agreement by giving 7 Business Days' prior written notice to the other:
- 13.2.1 at any time where the other Party has committed a material breach of this Agreement and such breach has remained unremedied 7 Business Days after receiving written notice of that breach; or
- 13.2.2 if the other Party enters into liquidation whether compulsory or voluntary (except for the purposes of bona fide reconstruction or amalgamation with the prior written approval of the other Party), or compounds with or makes any arrangement with its creditors or makes a general assignment for the benefit of its creditors, or if it has a receiver, manager, administrative receiver or administrator appointed over the whole or substantially the whole of its undertaking or assets, or if it ceases or threatens to cease to carry on its business, or makes any material change in its business, or if it suffers any analogous process under any foreign law.
- 13.3 Either Party may request the termination of the Agreement at the end of the Current Term for any reason provided that written notice is given at least 7 Business Days before the end of the Current Term.
- 13.4 Upon the termination of this Agreement for any reason, the Referral Partner shall remove the links established under this Agreement.
- 13.5 Upon the termination of this Agreement for any reason, all licenses granted shall also terminate.
- 13.6 In the event that the Company terminates this Agreement in accordance with Sub-clause 13.2.1, any Commission owed to the Referral Partner at that time shall be forfeited.

### 14. **Confidentiality**

- 14.1 Each Party (a "Receiving Party") shall keep the Confidential Information belonging to the other Party (a "Supplying Party") confidential and secret and shall not use or disclose or make the Confidential Information available, directly or indirectly, to any person other than its officers and employees who need the Confidential Information to enable the Receiving Party to perform its obligations under this Agreement and provided that such officers and employees are also obliged to keep such Confidential Information confidential and secret. The foregoing obligations shall not apply to any information acquired by the Receiving Party which:
- 14.1.1 at the time of its acquisition was in the public domain; or
- 14.1.2 at a later date comes into the public domain through no fault of the Receiving Party.
- 14.2 Each Party hereby agrees and undertakes:
- 14.2.1 that all Confidential Information shall be and shall remain at all times the sole and exclusive property of the Supplying Party;
- 14.2.2 that its right to use Confidential Information shall wholly cease upon the termination of this Agreement; and
- 14.2.3 to return to the Supplying Party on termination of this Agreement all material embodying Confidential Information (including information stored on digital media) or any part thereof and all copies thereof.

## 15. **Force Majeure**

Neither Party to this Agreement shall be liable for any failure or delay in performing their obligations where such failure or delay results from any cause that is beyond the reasonable control of that Party. Such causes include, but are not limited to, power failure, Internet Service Provider failure, industrial action, civil unrest, fire, flood, storms, earthquakes, acts of terrorism, acts of war, governmental action or any other event that is beyond the control of the Party in question.

## 16. **Severance**

The Parties agree that, in the event that one or more of the provisions of this Agreement is found to be unlawful, invalid, or otherwise unenforceable, that / those provisions shall be deemed severed from the remainder of this Agreement. The remainder of this Agreement shall be valid and enforceable.

## 17. **Notice**

Unless otherwise stated in this Agreement, the Parties agree that all notices to be served under this Agreement shall be in writing and may be sent by email to the other Party's Registered Email Address with a hard copy of the same to be sent by first class post to the addresses detailed at the head of this Agreement or as provided by the Referral Partner in its Registration Data within 7 Business Days of the email.

## 18. **Entire Agreement**

18.1 This Agreement shall embody and set forth the entire agreement and understanding between the Parties and shall supersede all prior oral or written agreements, understandings or arrangements relating to the Programme or the relationship between the Parties. Neither Party shall be entitled to rely on any agreement, understanding or arrangement not expressly set forth in this Agreement, save for any representation made fraudulently.

18.2 Unless otherwise expressly provided elsewhere in this Agreement, the Agreement may be varied only by a document signed by both of the Parties.

## 19. **General**

### 19.1 No Waiver

The Parties shall agree that no failure by either Party to enforce the performance of any provision in this Agreement shall constitute a waiver of the right to subsequently enforce that provision or any other provision of this Agreement. Such failure shall not be deemed to be a waiver of any preceding or subsequent breach and shall not constitute a continuing waiver.

### 19.2 Non-exclusivity

The relationship between the Parties shall be and shall remain non-exclusive. Both parties are free to enter into similar relationships with other parties.

### 19.3 Non-assignment

The Referral Partner may not assign any or all of its rights or obligations under this Agreement without the prior written consent of the Company, such consent not to be unreasonably withheld.

## 20. **Law and Jurisdiction**

20.1 This Agreement shall be governed by the laws of England and Wales.



**IN WITNESS WHEREOF** this Agreement has been duly executed the day and year first before written

**SIGNED by**

Name .....

Job Title .....

**for and on behalf of Pharmacare (Europe) Ltd**

**SIGNED by**

Name .....

**for and on behalf of <<Referral Partner Name>>**

## **SCHEDULE 1**

### **Payment Procedure**

Pharmacare Europe Ltd. will send you a form to complete with your bank details when you join the programme and an invoice template you can use if you do not already have one.

At the point of one month in arrears, you can send us a monthly invoice for any conversions earned in the month prior. This will be paid to you via BACS transfer 14 days after your invoice has been sent to us.

If any orders from referrals are returned within the statutory 30-day period, the commission will not be paid out.