

Service Agreement

- Instaproofs, Inc. -

Revision: Jan 2017

PLEASE READ THROUGH THIS SERVICE AGREEMENT CAREFULLY, AS IT CONTAINS TERMS AND CONDITIONS THAT WILL BE USED TO GOVERN AND REGULATE YOUR ACCOUNTS WITH INSTAPROOFS INC. BY USING OUR SITES AND/OR SERVICES YOU ARE AGREEING TO BE BOUND BY THE TERMS AND CONDITIONS FOUND WITHIN THIS AGREEMENT. IF YOU DO NOT ACCEPT THE TERMS AND CONDITIONS FOUND WITHIN THIS AGREEMENT YOU MAY NOT USE OR ACCESS OUR SITES OR SERVICES.

This Service Agreement (the "**Agreement**") is an agreement between you ("**you**", "**your**" or "**the photographer**") and Instaproofs, Inc. ("**we**", "**us**", "**our**", or "**Instaproofs**"). The terms and conditions found herein apply to your use of our websites, including but not limited to Instaproofs.com (our "**Sites**"), and any related products and services that we offer or provide (collectively the "**Service**"). This Agreement may be modified by us at any time. Any such change will become effective immediately upon the posting of the new Agreement to our Sites or when it is otherwise communicated to you, whichever is earlier. Any "Material Change" to this Agreement will be effective fifteen (15) days from the date of posting. A "**Material Change**" is limited to any change that involves an increase in fees or liability for you. You will be deemed as having accepted (a) any Material Changes if you use our Sites or the Service after the 15-day notice period, and (b) any other changes if you use our Sites or the Service after the posting of the new terms. If you do not accept a change to this Agreement, or if you do not accept this Agreement in whole, your sole remedy is to contact us and close your Account. You are at all times responsible for reading and understanding each version of this Agreement.

1.0 Registration

1.1 Eligibility. To use the Service, you must (a) have an e-mail account that you actively check and can send and receive emails to and from, (b) create an administrative and storefront account with us (collectively known as your "**Account**") by providing complete and accurate registration information including your full name, your current phone number and email address, your business address, and all other requested contact information, (c) be at least 18 years old, and (d) if you represent a business, be duly authorized to enter into this Agreement on behalf of the business. It is your responsibility to keep your contact and registration information up to date at all times. We reserve the right to refuse to provide or discontinue the Service to any person or entity at any time for any reason.

1.2 Email Address and Password. As a part of creating an account with us you will be required to provide a valid email address and a password. The email address that you provide will be used as your login name to access and administer your Account. You will also be asked to supply a business email address (your "**registered email address**") and this address will be used as our primary method of our communicating with you. Your registered email address may be the same as your login email address, and your registered email address must be kept current at all times. You are solely responsible for maintaining the secrecy and security of your password. You should not disclose your password to any third party. All activities conducted on your Account will be deemed and treated as if they were conducted by you, the registered account holder. If your password is compromised, you must change your password and notify us immediately in order to avoid unauthorized use of your Account.

2.0 Agreement Term

2.1 Initial and Subsequent Terms. This Agreement in its entirety and any accompanying documents in their entirety will remain in effect for as long as you choose to use the Service. If you wish to cancel this Agreement, you may contact us and close your Account.

3.0 Privacy Policy

3.1 Instaproofs' privacy policy (the "**Privacy Policy**") applies to your use of the Site and Services, and its terms are made a part of this Service Agreement by this reference. To view Instaproofs' Privacy Policy [see here](#).

4.0 Products and Services

4.1 Instaproofs grants you a personal, non-exclusive, non-transferable, limited license to use the Site and to view or access the Services solely for your internal business use and subject to the condition that you do not (and do not allow any third party to) copy, modify, create a derivative work from, reverse engineer, reverse assemble, or otherwise attempt to discover any source code, sell, assign, sublicense, grant a security interest in, or otherwise transfer any right in or access to the Site, the Services, or any other content available via the Site. All rights not expressly granted to you in this Service Agreement are reserved and retained by Instaproofs. You further agree not to modify the Site, or any part thereof, in any form or manner, nor to use any modified versions of the Site or the Services, for any reason whatsoever, without the express written consent of Instaproofs. You may not attempt to gain any unauthorized access to the Site or any of its associated content, including computer systems, software, or networks. As a condition of your use of the System (including the Services), you agree that you will not use the System for any purpose that is unlawful or prohibited by these Terms of Use. You also agree to reimburse us for any damage, loss, cost or expense we incur, including any legal fees, because of your use of the System or the Services for any unlawful or prohibited purpose.

4.2 Description of Products and Services. In consideration for the fees and other charges specified in Section 5.1 of this Agreement, and subject to all other terms and conditions found herein, Instaproofs will provide and/or make available for your use the following:

4.3 Customizable Storefront. Each Account includes a customizable online storefront (your “**Storefront**”) that is to be used for the selling of photographs and photography related products and services. You may not sell, attempt to sell, or display non-photography related products or services through your Storefront. You also may not invoice for, or collect invoice payments for, any non-photography related products or services through your Storefront. Any misuse of your Storefront may result in the loss of access to your Storefront and a possible termination of your Account.

4.4 Administrative Account. Each Account includes access to an administrative area that is to be used for the managing of your Storefront and the orders that you receive through your Storefront. You are solely responsible for maintaining the secrecy and security of your administrative password.

4.5 Image Hosting. For the sole purpose of displaying and selling your images through your Storefront, we agree to host your images for as long as their associated events remain active and displayed on your Storefront. By default, each of your events may remain active (and the images may be hosted) for a period of time up to nine (9) months. The images associated with each event will be permanently deleted from our hosting environment within sixty (60) days of the event’s expiration date. All of the images that we host are subject to automated resizing and manipulation as required to provide consistently sized and formatted images on your Storefront. By default, all of the images that we host are stored in a size no larger than 1280px by 1280px. High resolution subscription plans are available for those wishing to store their images in a larger size and for longer periods of time.

4.6 Public Access to Images. We agree to allow public access to the images that you upload to your Account by displaying the images on your Storefront. If you wish for your images to be viewed by only select individuals you may password protect your events. It is your responsibility to safeguard the passwords that are given to your events.

4.7 Bulk Email. As a part of your Account you are provided with multiple tools that can be used for sending bulk emails. The bulk email tools that you are provided may not be used for sending unsolicited emails to any person at any time. Additionally, all bulk emails that are sent through your Account must be directly related to the events that are displayed on your Storefront. Sending unsolicited bulk emails and/or bulk emails that are not directly related to the events on your Storefront will result in the revocation of your bulk email capabilities and a possible termination of your Account.

4.8 Payment Processing. We will attempt to process and collect the payments for each order submitted through your Storefront, on your behalf. All orders submitted through your Storefront will immediately be billed to the purchaser's selected payment account. "Instaproofs, Inc." will be the name displayed on the purchaser's payment account statement in relation to the orders they place through your Storefront. We may withhold for investigation, or refuse to process, any transaction that we suspect is fraudulent, unlawful or otherwise violates the terms of this Agreement or any other policy. As consideration for using our Service, you irrevocably assign to us all rights and legal interests to any interest and/or other earnings that may accrue or are attributable to our holding of your funds.

4.8.1 Seller of Record. You are the seller of record for all purchases made through your Storefront, and any questions relating to the items that are being offered through your Storefront will be directed to you. With the exception of orders being shipped to the states of either Utah or Colorado, as the seller of record it is solely your responsibility to collect, report, and remit the required sales tax and any other required taxes to the proper taxing authorities and/or institutions. Orders placed through your Storefront that have a Utah or Colorado shipping address on them will have their sales tax calculated, collected, and remitted to the proper taxing authorities by Instaproofs directly, beginning July 17, 2013 for Utah and July 1, 2016 for Colorado.

4.8.2 Transaction Limits. No single transaction larger than nine thousand nine hundred and ninety-nine U.S. dollars (\$9,999) may be processed through our Service at any time. This transaction limit applies to both U.S. dollar transactions and non-U.S. dollar transactions. The U.S. dollar value of a non-U.S. dollar transaction will be calculated based on the current exchange rate for the currency used at the time of the transaction.

4.8.3 Transaction Verification. All orders placed through newly created and/or rarely used storefront accounts may be subject to multiple enhanced-verification procedures. These verification procedures may include verifying shipping names and addresses, calling the purchasers to verify their orders, plus any additional procedures needed to ensure each transaction's legitimacy. Additionally, transactions that are larger than two hundred and fifty U.S. dollars (\$250) are subject to our enhanced-verification procedures on a case-by-case basis on all accounts. Transactions that cannot be verified will result in their associated orders receiving a "Pending" status while we attempt to determine the legitimacy of the transaction. Transactions that cannot be verified within five (5) business days may result in the order being canceled and the transaction refunded to the purchaser. Once a transaction has been verified, the "Pending" status on its associated order will be removed. Notwithstanding any transaction limits and verification terms defined herein, we may delay, suspend or reject a transaction if we suspect that the transaction is unauthorized, fraudulent, suspicious or otherwise unusual based on prior transaction activity and application of our internal fraud controls.

4.8.4 Accepted Storefront Payment Methods. We currently accept multiple methods of payment for the orders that are placed through your Storefront, including but not limited to PayPal, American Express, Discover, Visa, and MasterCard. Transactions made in currencies other than the U.S. dollar are limited to PayPal, Visa, and MasterCard. Through the use of PayPal many additional payment methods can be used. Additional payment methods may be added or removed by us at any time without prior notice to you.

4.9 Transaction Refunds. If a transaction originated through your Storefront less than thirty (30) days prior to the desired refund date, and if the funds for the transaction have not yet been paid out to you, you may request a full or partial refund to be given to your customer for their transaction. When a transaction refund is sent, the amount of the refund is returned to the original payment source and the amount of the refund is immediately taken from your account balance. If a transaction cannot be refunded to its original payment source you must provide the refund to the purchaser in another way. You must also provide the refund to the purchaser in another way if the original transaction is more than 30 days old or if you have already been paid for the original transaction.

4.9.1 Purchaser Requested Refunds. All transaction refund requests made to us should come directly from you instead of from your customers. If your customer contacts us directly and requests a refund for an order they placed through your Storefront, we will promptly refer that purchaser back to you. If you are unresponsive to contact attempts made by either us or by the purchaser in relation to a purchaser requested refund we will decide on a case-by-case basis whether or not to refund the order without your prior approval. If a refund is deemed by us as being warranted, you hereby agree to immediately forfeit and/or repay to us the full amount that is refunded to the purchaser.

4.10 Order Notifications. Each time an order is placed through your Storefront, a notification email will be sent to your registered email address. In addition to the notification email that is sent out, complete order details will be made available for viewing within your administrative account immediately after each order is submitted through your Storefront. Because we cannot guarantee that notification emails will be successfully delivered to your email inbox, you are responsible for checking your administrative account on a regular basis in order to ensure that no orders go unnoticed. We are not liable or responsible for any non-received order notification emails and/or subsequent order cancellations or chargebacks that may occur because of the non-received notification emails. All order notification emails sent from us to your registered email address will be deemed as having been received by you at the time that the email was sent.

4.11 Backup Services. We are not an online backup service provider and we do not provide backup services. Although we provide the option for you to store and sell your images in high resolution, the sole purpose of offering those services is to provide you with a way to more easily sell your prints and fulfill your orders. It is solely your responsibility to keep copies of, and backup copies of, your full resolution images. Copies of the images you have stored on our servers can be downloaded in their resized format up until the images have been removed from our servers.

4.12 Order Fulfillment. Orders placed through your Storefront may be fulfilled in either of two ways: 1) you may use the details that we provide for the orders and fulfill your orders at the lab(s) of your choice, or 2) if you are a photographer based in the U.S. you may purchase a high resolution subscription and submit your orders for fulfillment through our fulfillment service. Not all orders can be fulfilled through our fulfillment service, and regardless of the method in which you choose to fulfill the order it is solely your responsibility to ensure that the order is fulfilled and delivered to your customers in a timely manner. More information about the high resolution subscription can be found in the *Store* tab within your administrative account. As described in Section 4.3 of this Agreement, all orders must be fulfilled within 21 days of the order being placed through your Storefront.

5.0 Your Responsibilities And Liabilities

5.1 Product Information. You are responsible for providing complete and accurate information for the goods and services offered and sold through your Storefront, including without limitation any product images, product names, product descriptions (including brand, model, dimension, weight, etc), product notices or disclaimers, product availability or status, shipping and handling charges, prices, and tax rates (collectively known as the "**Product Information**").

Providing inaccurate or incomplete Product Information for the items being displayed and offered through your Storefront may result in disciplinary actions including but not limited to the disablement of your Storefront and the termination of your Account.

5.2 Product Pricing. You are responsible for determining and setting the price for each of the products and services offered through your Storefront. You agree that no product or service will be offered for a fee of less than thirty U.S. cents (\$0.30) per item, and you further agree not to suggest to or encourage your Storefront visitors to purchase or pay for the products and services offered on your Storefront offline or through any other alternate payment methods.

5.3 Order Fulfillment Deadline. **IT IS SOLELY YOUR RESPONSIBILITY TO ENSURE THAT THE ORDERS PLACED THROUGH YOUR STOREFRONT ARE FULFILLED IN A TIMELY MANNER.** You agree to fulfill, or submit for fulfillment, all orders placed through your storefront within twenty-one (21) days of the orders being placed, unless an alternate fulfillment schedule has been communicated and agreed upon by both you and the purchaser beforehand, in which case you agree to fulfill the order in accordance with the previously agreed upon fulfillment schedule made between you and your customer.

5.4 Order Status. It is your responsibility to ensure that the status of your orders are kept up-to-date at all times. There are multiple statuses available for each order, including but not limited to: New, Ordered, Shipped, Complete, and Ready for Pickup. Once an order has been fulfilled the status of the order must updated to either *Shipped*, *Complete*, or *Ready for Pickup* (a "**Fulfilled Status**"). Only orders with a Fulfilled Status are recognized by our system as being fulfilled (a "**Fulfilled Order**"), and you will only receive payment for your Fulfilled Orders (see Section 6.1 of this Agreement for more details). Regardless of the contents of an order, the order must be given a Fulfilled Status before payment will be sent to you for the order. You agree to keep the status of your orders up-to-date at all times and you further agree that you will not give a Fulfilled Status to any order that has not been either 1) shipped to the shipping address provided with the order details, or 2) made available to the purchaser in another pre-arranged manner. Giving a Fulfilled Status to any order that has not been fulfilled will cause your Account to be considered in violation of this Agreement, and may result in disciplinary actions including but not limited to the disablement of your Storefront and the termination of your Account.

5.4.1 Failure to Notify Us of Fulfilled Orders. If one or more of your orders has not been given a Fulfilled Status within forty-five (45) days of the order being placed, we reserve the right to disable access to your administrative account and to disable access to your Storefront. If one or more of your orders have not been given a Fulfilled Status within sixty (60) days of the order being placed, we reserve the right to immediately cancel and refund the overdue order(s) and all other

non-fulfilled orders that are associated with your Account at that time.

5.5 Chargebacks. Any transaction that is submitted through your Storefront may be charged back or reversed to the purchaser (a "**chargeback**"). Some of the common reasons that purchasers file chargebacks include: (i) the purchaser does not recognize the transaction, (ii) the purchaser did not receive the items they purchased, (iii) the items received were significantly different than what was described, and (iv) the purchaser believes that charge is fraudulent. If a chargeback is filed for a transaction that was submitted through your Storefront, you have two choices: 1) you may allow the chargeback to go through, or 2) you may contest the chargeback as outlined in Section 4.5.1 of this Agreement. If the chargeback contestation is not resolved in your favor by the credit card association or card issuing bank, or if you choose not to contest a chargeback at all, you hereby agree to immediately forfeit and/or repay to us the original transaction amount plus any fees associated with the chargeback, as described in Section 5.1 of this Agreement.

5.5.1 Contesting a Chargeback. All chargebacks are initiated, handled, and decided by the purchaser's credit card issuer - not by Instaproofs - and they therefore follow that company's regulations and timeframes. With that being said, we will work with you to contest and resolve each of your chargebacks, should you choose to do that. In order to successfully contest a chargeback you will be required to provide multiple pieces of documentation to us, including but not limited to: shipping and delivery confirmation receipts, any and all contracts signed by you and the purchaser, any email conversations you have had with the purchaser, etc. Failure to provide us with the necessary documentation within three (3) days of the chargeback being filed may result in an irreversible chargeback. After the documentation has been given to us, we will then forward that same information on to the purchaser's credit card issuer. Once the card issuer has reviewed the submitted documentation they will either ask for additional documentation or they will make their decision. Once the card issuer has announced their decision, that decision is final and the chargeback cannot be contested again. Instaproofs does not play a part in deciding which side is awarded the chargeback decision.

5.5.2 Excessive Chargebacks. If we determine that you are incurring an excessive amount of Chargebacks, we may establish controls or conditions governing your account, including without limitation, by (a) establishing new service fees, (b) imposing transaction limits, and (c) terminating or suspending your Account.

5.5.3 Ignoring a Chargeback. It is very important that we receive a response from you regarding each chargeback that is filed for payments submitted through your Storefront. By using our Service you agree to respond to our chargeback communications within three (3) days. Failure to respond to our communication attempts for more than three (3) days may result in an irreversible chargeback.

5.6 Refunds and Disputes. You agree to immediately notify us of any refund requests or payment disputes relating to any payments that were made through your Storefront.

5.7 Communication. At times we may need to communicate with you concerning your Account, and it is your responsibility to ensure that we have your current contact information on file. To ensure that we can promptly communicate with you when necessary, you agree to maintain up-to-date and accurate contact information on your Account at all times. Your contact information must include a contact name, a current telephone number, a frequently checked email address, and a current physical mailing address. You also agree to reply to all of our communication attempts within 48 hours, regardless of whether the communication attempt is made through email, a telephone call, or a written/typed document.

5.7.1 Electronic Communication. Our primary method of communicating with you is through email. By registering for and using our Service, you affirmatively consent to receive notices electronically from us to your registered email address (your "**Consent**"). All email messages sent from us to your registered email address will be deemed to be in "writing" and received by you when sent to you. You are responsible for creating and maintaining your own records of such communications. Your continued Consent is required to use your Account; if you wish to withdraw your Consent you will need to close your Account.

5.7.2 Communication Failure. If we are unable to contact you, or if you fail to respond to our communication attempts, for a period of time longer than five (5) days, we reserve the right to disable access to your Storefront and/or remove access to your administrative account in order to minimize any potential future problems with your Account. If we are continually unable to reach you, or if you do not respond to our communication attempts for a period of time longer than two (2)

weeks, we reserve the right to immediately disable your Storefront, cancel your Account, and refund all unfulfilled orders back to the original purchasers.

5.8 Taxes. With the exception of sales tax on non-invoice Storefront purchases being shipped to either Utah or Colorado, you are solely responsible for determining any and all taxes and duties, including without limitation, sales, use, transfer, value added, withholding, income, and other taxes and/or duties assessed, incurred, or required to be collected, paid, or withheld for any reason in connection with the sale or purchase of any products or services through your Storefront ("**Taxes**"). Any action, inaction, or omission by you or any affiliate of yours, or any of your or their respective employees, agents, contractors, or representatives will be solely your responsibility to manage and take care of. In other words, you are responsible for collecting, withholding, reporting, and remitting correct Taxes to the appropriate taxing authorities, and we are not responsible for calculating, collecting, reporting, or remitting any Taxes to any taxing authority arising from any transaction on your behalf.

5.8.1 Taxes for Invoices. You are solely responsible for determining, collecting, reporting, and paying any and all Taxes in connection with invoices paid for through your Storefront, regardless of where you or the purchaser are located. Any action, inaction, or omission by you or any affiliate of yours, or any of your or their respective employees, agents, contractors, or representatives will be solely your responsibility to manage and take care of. In other words, you are responsible for collecting, withholding, reporting, and remitting correct Taxes to the appropriate taxing authorities, and we are not responsible for calculating, collecting, reporting, or remitting any Taxes to any taxing authority arising from any transaction on your behalf.

5.8.2 Utah and Colorado Sales Tax. We will calculate, collect, and remit any and all sales tax to the proper taxing authorities for non-invoice orders placed through your Storefront that have either a Utah or Colorado shipping address attached to them. Sales tax collected for these orders is not displayed in your cumulative order summary reports, and it is not displayed in the standard activity lists displayed in the administrative area of your account. In order to provide full disclosure of the amounts paid by your customers for their orders, the sales tax details for these orders can be viewed in the individual order details view. When payment is sent to you for the orders placed through your storefront, the sales tax that we have charged and collected for these orders will not be included in your payment since we remit this tax to the taxing authorities ourselves.

5.8.2.1 Special Handling of Discount Code Transactions. When a non-invoice order placed through your Storefront has a Utah or Colorado shipping address and some or all of the sales tax is paid for through the use of a discount code, we will collect the sales tax amount paid for with the discount code from your cumulative account balance. For example, if \$6.25 in sales tax is required on a \$100 order being shipped to Utah, and your client paid for their entire order including the sales tax with a discount code, your account balance will be debited \$6.25 to cover the sales tax required for that order.

5.9 Taxpayer Identification Number. Under Internal Revenue Code (IRC) Section 6050W, we are required to report to the IRS the total transaction volume processed by Instaproofs for our customers in the U.S. who both 1) receive more than \$20,000 in gross sales volume from the sales of goods or services in a single year (January 1st through December 31st), and 2) receive over 200 transactions in a that same year. BOTH requirements must be met before your account(s) will fall under this reporting requirement. If you have multiple accounts with us, the transactions from each of the accounts will be added together to come up with a cumulative total that will be compared against the required reporting thresholds. Before your transaction volume exceeds these reporting thresholds, you will be required to verify your identity by adding a Taxpayer Identification Number, such as a Social Security Number (SSN) or Employer Identification Number (EIN), to your existing account(s). Failure to provide your Taxpayer Identification Number when requested will result in your transactions being limited to a gross total of under \$20,000 and 200 transactions in a single year.

6.0 Service Fees and Charges

6.1 Service Fees and Charges. Our service fees and charges can be found at the following location:
http://instaproofs.com/contracts/InstaproofsFees_Current.pdf

7.0 Payment Method and Disbursement Schedule

7.1 Payment Method and Disbursement Schedule. Our payment method and disbursement schedule can be found at the following location:

http://instaproofs.com/contracts/InstaproofsPaymentSchedule_Current.pdf

8.0 Uploaded Images

8.1 Image License and Ownership. Through the use of our Service, you grant us a world-wide, non-exclusive, irrevocable, sub-licenseable, perpetual, fully paid up and royalty-free license to copy, display, edit, publish, distribute, reproduce and process the images uploaded to your Account (your “Images”). You further grant us the right to allow your customers to download any products and/or images they have purchased through your Storefront that have been previously designated by you as instantly downloadable products and images. Furthermore, if you fail to fulfill an order that was submitted through your Storefront within 60 days of the order being placed, and you are unresponsive to communication attempts by us, you hereby grant us the right to fulfill the order on your behalf and bill you for the associated fulfillment costs. We do not claim any ownership interest in your images through this license, and we will not use your images in any other ways without obtaining express permission from you prior to their use. You warrant that you have the right and unrestricted ability to grant this license to Instaproofs as set forth in this Section.

8.2 Inappropriate, Offensive, or Illegal Images. You may only upload images to our Service that 1) are fully owned by you and/or that you have the right to display, distribute and resell, 2) do not infringe upon or violate any third party’s rights or copyrights, 3) do not violate any law, rule, or regulation of any governmental or quasi-governmental entity, 4) are not pornographic, racist, lewd, obscene, defamatory, libelous, or otherwise offensive, and 5) do not contain viruses or other harmful programming elements. Any image found in our opinion to be in violation of these conditions shall be immediately removed from your Account upon its discovery, and multiple violations may result in disciplinary actions including but not limited to the disablement of your Storefront and the termination of your Account.

8.3 Right to View. We reserve the right to view the images uploaded to our Service as needed in the course of business.

8.4 Image Screening Obligation. We claim no obligation to attempt to actively monitor, screen, or regulate the quality or suitability of your Images.

8.5 Indemnification. You agree to indemnify Instaproofs and its respective employees, directors, agents and representatives from any and all damages, costs, claims, expenses or other liability arising from or relating to the breach or alleged breach by you of the representations and warranties set forth in sections 7.1 and 7.2 on this Agreement. You further agree to hold Instaproofs and its respective employees, directors, agents and representatives faultless and non-liable for any misuse of your images by the public that may occur due to your use of our Service.

9.0 Termination

9.1 Suspension or Termination by Us. We may suspend or terminate this Agreement and close your Account for any reason at any time. Without limiting the foregoing, we may suspend the Service and access to your Account (including without limitation the funds in your Account) if (a) you have violated the terms of this Agreement, (b) you pose an unacceptable credit or fraud risk to us, or (c) you provide false, incomplete, inaccurate, or misleading information (including without limitation any registration and contact information and/or any Product Information) or (d) otherwise engage in fraudulent or illegal conduct.

9.2 Termination by You. You may terminate this Agreement and cancel your Account with us at any time, so long as there are no unfulfilled orders associated with your Account and there is no existing balance owed to you or us on your Account. If there is a balance owed to you, your Account will remain active until the next scheduled payment date, at which time the payment will be made and your Account will be closed as requested. If there is a balance owed to us, your Account will remain active until the balance has been paid. If you have unfulfilled orders associated with your Account, you may not cancel your Account until those orders have been fulfilled.

9.3 Dormant Accounts. If you fail to log into your Account for a period of four (4) consecutive months, your Account will be, at our sole discretion, closed and any balance due will be forwarded to you on the next appointed payment date

(as further described in Section 6.1 of this Agreement). Any unfulfilled orders remaining on your Account will be canceled and refunded back to the purchaser(s) at our earliest convenience.

9.4 Effect of Termination. Once this Agreement has been terminated and your Account has been closed, your Storefront will be disabled and you will no longer have access to your Account or the images, data, transaction details, customer information, and other items that may have been previously associated with your Account. We will not be liable to you for compensation, reimbursement, or damages on account of the loss of time, prospective profits, anticipated sales, goodwill, or on account of expenditures, investments, or commitments in connection with your use of the Service. A termination of this Agreement does not relieve you of any obligations to pay any fees or costs accrued prior to the termination of the Agreement, and it does not relieve you of the duty to fulfill the orders you have previously received. In addition to any provision that is reasonably necessary to accomplish or enforce the purpose of this Agreement, the following Sections of this Agreement survive and remain in effect in accordance with their terms upon the termination of this Agreement: 3.7, 3.7.1, 3.8, 3.8.1, 4.3 through 5.9, 8.5, and 10.0 through 10.10.

10.0 General Provisions

10.1 Release. In consideration for your use of the Services and the Site, you hereby release and discharge Instaproofs and its employees, officers and agents, from any and all claims, demands, and damages, whether actual or consequential (collectively, "Losses"), related to the items sold by you, including but not limited to, Losses related to or arising from defective items or unfulfilled orders.

10.2 Disclaimer of Warranties. Instaproofs does not represent or warrant that the Services or the Site will be (i) secure, (ii) available at any particular time or location, (iii) free of viruses or other harmful materials, or (iv) free of defects or errors.

THE SITE AND THE SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE", WITHOUT WARRANTIES OR GUARANTIES OF ANY KIND, EITHER EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, AND ANY WARRANTIES IMPLIED BY A COURSE OF PERFORMANCE, COURSE OF DEALING, OR USAGE OF TRADE.

10.3 Indemnity. You agree to indemnify and hold harmless Instaproofs and its respective employees, directors, agents and representatives from and against any and all claims, costs, losses, damages, judgments, tax assessments, penalties, interest, and expenses (including without limitation reasonable attorneys' fees) arising out of or relates to: (a) any actual or alleged breach of your representations, warranties, or obligations set forth in this Agreement, including without limitation any violation of our policies or credit card association and bank rules; (b) any actual or alleged misuse of the images you have uploaded to our Service; (c) your wrongful or improper use of the Service; (d) any transaction submitted through your Storefront (including without limitation the accuracy of any Product Information that you provide or any claim or dispute arising out of products or services offered or sold by you); and (e) any transactions that you submit to our Service either for yourself or on behalf of another entity.

10.4 Limitation of Liability. TO THE EXTENT PERMITTED BY APPLICABLE LAW, WE AND OUR EMPLOYEES, DIRECTORS, AGENTS AND REPRESENTATIVES WILL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, THE STOREFRONT, YOUR IMAGES, THE SERVICE (INCLUDING THE INABILITY TO USE THE SERVICE), THE SECURITY OF THE SITE OR SERVICE, ANY APPLICATION USING OUR SERVICE, OR ANY SERVICES OR GOODS PURCHASED OR TRANSACTIONS ENTERED INTO THROUGH THE SERVICE. TO THE EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL AGGREGATE LIABILITY OF US OR OUR EMPLOYEES, DIRECTORS, AGENTS AND REPRESENTATIVES ARISING OUT OF OR IN CONNECTION WITH THE SITE OR THE SERVICES, THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE, PRODUCT LIABILITY OR OTHER THEORY), WARRANTY, OR OTHERWISE, EXCEED THE AMOUNT OF FEES EARNED BY US IN CONNECTION WITH YOUR USE OF THE SERVICE DURING THE THREE (3) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE CLAIM FOR LIABILITY. In no event will we be liable to you for any failure or delay by us (or our employees, agents, or representatives) in performing our obligations

under this Agreement, regardless of whether the failure or delay is caused by an event or condition beyond our control.

The laws of certain states or other jurisdictions do not allow limitations on implied warranties, or the exclusion or limitation of certain damages. If these laws apply, some or all of the above disclaimers, exclusions, or limitations may not apply to you, and you may have rights in addition to those contained in this Agreement.

10.5 Business Relationship. The parties in this Agreement shall perform all of their duties under this Agreement as independent entities. Nothing in this Agreement shall be construed to give either party the power to direct or control the daily activities of the other party, or to constitute the parties as principal and agent, employer and employee, franchiser and franchisee, partners, joint venturers, co-owners, or otherwise as participants in a joint undertaking. You shall be deemed the broker of all products and/or services sold through your Storefront.

10.6 Confidential Information. “Confidential Information” means documents or manuals related to the Site or Services, or proprietary information relating to a party’s business plans or processes. Each party acknowledges and agrees that any confidential information received from the other party will be the sole and exclusive property of the other party and may not be used or disclosed to others except as necessary to perform the obligations required under this Agreement. Upon termination of this Agreement, each party shall promptly return all Confidential Information belonging to the other party except as otherwise provided in this Agreement. This section's confidentiality agreements shall survive any termination or expiration of this Agreement.

10.7 Entire Agreement. This Agreement and its accompanying documents constitutes the entire agreement of the parties with respect to the subject matter of this Agreement, and supersedes and cancels all prior and contemporaneous agreements, claims, representations, and understandings of the parties in connection with the subject matter of this Agreement. Each party acknowledges and agrees that the other has not made any representations, warranties or agreements of any kind, except as expressly set forth herein. This Agreement may be changed by us at any time upon which the newest version will become binding.

10.8 Severability. If any portion of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remaining portions of this Agreement will remain in full force and effect and, upon our request, the court will construe any invalid or unenforceable portions in a manner that most closely reflects the effect and intent of the original language. If such construction is not possible, the provision will be severed from this Agreement and the rest of the Agreement remains in full force and effect.

10.9 Governing Law. This Agreement will be deemed entered into in the State of Utah and will be governed by and interpreted in accordance with the laws of the State of Utah, excluding that body of law known as conflicts of law. The parties agree that any dispute arising under this Agreement shall be resolved solely in the state or federal courts in Washington County, Utah, and the parties hereby expressly consent to jurisdiction therein.

10.10 Fair Meaning. The language in this Agreement shall be construed as to its fair meaning and not strictly for or against either party individually.