

TERMS

TERMS OF USE

Last updated and effective as of November 20, 2022.

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To use the Services, you must be, and represent and warrant that you are, of legal age (18 years of age or older or otherwise of legal age in your jurisdiction, or, if you have parental consent, 13 years of age) and able to agree to these Terms. If you use the Services on behalf of an entity, you represent and warrant that you have the authority to bind that entity, your acceptance of the Terms will be deemed an acceptance by that entity, and “you” and “your” herein shall refer to that entity. If VAS and/or VAS Group have previously prohibited you from accessing or using the Services, you are not permitted to access or use the Services.

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When you enroll in a text message service (“Mobile Program”) offered by VAS Group, you agree to receive offers, abandoned shopping cart messages, and other information from us via SMS and/or MMS message at the mobile number you provided during the service’s registration process. You may be required to respond to an initial message as instructed to complete registration and confirm enrollment.

Messages may be sent using an automatic telephone dialing system. There is no additional charge for this service, unless specifically disclosed and agreed by you, but you may be offered opportunities to make purchases through the Mobile Program and you will be responsible for any charges associated with such purchases. Message frequency varies. Your mobile carrier’s message and data rates may apply to any messages you send or receive through the Mobile Program, including our confirmations and subsequent texts. Please contact your mobile carrier for more information regarding your mobile data and messaging plan.

As described at program enrollment and in program welcome messages, including messages sent to a shortcode associated with the Mobile Program or by replying to any message you receive from us, you may text “STOP” to cancel or “HELP” for customer support information. You can contact customer support directly by emailing privacy@canary--yellow.com using the subject line beginning with: “SMS Marketing Inquiry”.

If you choose to stop your subscription, you agree to receive a final text message from the Mobile Program to confirm your cancellation. Our information collection and use policies regarding your information are set forth in our [Privacy Policy](#). Mobile Programs that include marketing messages, including abandoned shopping cart messages, may use any information collected about you under our [Privacy Policy](#) to link your activity to your mobile number, personalize messages, and/or link your mobile number to an abandoned shopping cart.

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You warrant and agree that, while accessing or using the Services, you will not:

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- insert your own or a third party's advertising, marketing or other promotional content into any Site Content, or post, upload, transmit or submit such content as part of Your Content;
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- obtain or attempt to gain unauthorized access to other computer systems, materials, information or any services available on or through the Services, through any means, including through means not intentionally made publicly available or provided through the Services;
- scrape, access, monitor, index, frame, link, or copy any content or information on the Services by accessing the Services in an automated way, using any robot, spider, scraper, web crawler, or

any other method of access other than manually accessing the publicly-available portions of the Services through a browser or accessing the Services through any API provided or approved by VAS and/or VAS Group, or otherwise engage in any automatic or unauthorized means of accessing, logging-in or registering on the Services, or obtaining lists of users or other information from or through the Services, including, without limitation, any information residing on any server or database connected to the Services;

- use the Services in any manner that could interrupt, damage, disable, overburden or impair the Services or interfere with any other party's use and enjoyment of the Services, including, without limitation, sending mass unsolicited messages or "flooding" servers;
- post or otherwise make available any material that contains any software, device, instructions, computer code, files, programs and/or other content or feature that is designed to interrupt, destroy, harm, or limit the functionality of any computer software or hardware or telecommunications equipment
- use the Services for benchmarking, or to compile information for a product or service;
- frame, inline link, or similarly display the Services or any portion of the Services;
- use the Services in violation of our or of any of the Parties' or Related Parties' intellectual property or other proprietary or legal rights, or of the rights of any third party;
- use the Services in violation of any law;
- attempt (or encourage or support anyone else's attempt) to circumvent, reverse-engineer, decrypt, or otherwise alter or interfere with, the Services;
- facilitate violations of these Terms or the Sites' Privacy Policy;
- post any trade secrets or other confidential information, or post any material that you do not have a right to make available under any law or under contractual or fiduciary relationships, including but not limited to inside information, proprietary and confidential information learned or disclosed as part of employment relationships or under non-disclosure agreements;
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- attempt to indirectly undertake any of the foregoing.

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Some of the Services are only available if you create an account. When any of the Services require you to open an account ("**Your Account**") or to otherwise provide user or registration information, including usernames and passwords ("**Your User Information**"), you must complete the registration process by providing VAS and/or VAS Group with complete, current, and accurate information and must update Your User Information to keep it complete, current, and accurate. By registering, you agree that you are fully responsible for all activities that occur under Your Account. Parties may assume that any communications they receive under Your Account have been made by you. You grant to the Parties the right to use, store, monitor, retrieve and transmit Your User Information in connection with the operation of and/or the provision of any of the Services. Our information collection and use policies with respect to the privacy of Your User Information are set forth in the Sites' Privacy Policy, which is incorporated into these Terms by reference for all purposes. You agree that information submitted to Your Account will be transmitted to and shared with third parties that may be located in other countries

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You are solely responsible for maintaining the confidentiality of Your User Information. You are also solely responsible for any and all activities that occur under Your Account or Your User Information. You must notify VAS immediately, via e-mail to contact@canary---yellow.com, of any suspected or actual unauthorized use of Your Account or Your User Information, and of any and all other security breaches. You understand and agree that VAS and/or VAS Group may require you to provide information that may be used to confirm your identity and help ensure the security of your account.

VAS and/or VAS Group will not be liable for any loss, damages, liability, expenses or lawyers' fees that you may incur as a result of someone else using Your Account, either with or without your knowledge and/or authorization, and regardless of whether you have or have not advised us of such unauthorized use. You will be liable for losses, damages, liability, expenses and lawyers' fees incurred by VAS and/or VAS Group, or a third party due to someone else using Your Account.

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If you voluntarily terminate Your Account or allow Your Account to lapse, you may reactivate Your Account at any time through the account interface on the Services. Accounts terminated by us for any type of abuse, including without limitation, a violation of these Terms, may not be reactivated. Certain provisions of these Terms will still apply post termination.

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Some of the Services require you to pay a fee, the details of which are available in various areas of the Services that allow you to purchase products or services. If you choose to join a mobile marketing list, please be aware that there are usually costs associated with receiving SMS or MMS messages, which are determined by your carrier. You should contact your carrier to determine the charges that may apply before you sign up to receive updates via SMS or MMS. If you wish to stop receiving such messages from us, at any time, simply write "STOP" in a reply to any message from VAS or VAS Group. You agree to pay all fees and applicable taxes incurred by you or anyone using Your Account or Your User Information.

By submitting an order through the Services, you agree to pay in advance the price of the product(s) or service(s) ordered, plus any applicable taxes, shipping and handling and/or other charges. Payment may be made by credit card, or any other method of payment made available to you (each, a "Method of Payment"). In order to make a payment, you must provide valid credit card and/or other billing information and authorize VAS (or any third party payment service provider engaged by VAS) to charge your Method of Payment for all orders placed and accepted via the Services.

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EXCEPT AS OTHERWISE SET FORTH IN THE CUSTOMER SUPPORT POLICIES OF VAS, VAS GROUP AND ITS AFFILIATES (IF AND WHEN APPLICABLE), YOU ACKNOWLEDGE AND AGREE THAT ANY APPLICABLE FEES AND OTHER CHARGES FOR FEE-BASED PRODUCTS OR SERVICES ARE NOT REFUNDABLE IN WHOLE OR IN PART. YOU ARE FULLY LIABLE FOR ALL CHARGES TO YOUR ACCOUNT OR THROUGH YOUR USER INFORMATION, INCLUDING ANY UNAUTHORIZED CHARGES.

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THE LIMITATION OF LIABILITY DESCRIBED ABOVE SHALL APPLY FULLY TO RESIDENTS OF NEW JERSEY.

INDEMNIFICATION

TO THE FULL EXTENT PERMITTED BY LAW, YOU AGREE TO INDEMNIFY, DEFEND, AND HOLD EACH OF THE PARTIES, AND THE RELATED PARTIES HARMLESS FROM AND AGAINST ANY CLAIM OR DEMAND, INCLUDING WITHOUT LIMITATION, REASONABLE LAWYERS' FEES AND DISBURSEMENTS, MADE BY ANY THIRD PARTY IN CONNECTION WITH OR ARISING OUT OF YOUR USE OF THE SERVICES, YOUR CONNECTION TO THE SERVICES, YOUR VIOLATION OF THE TERMS OR PRIVACY POLICY, YOUR VIOLATION OF AN APPLICABLE LAW, YOUR SUBMISSION, POSTING, OR TRANSMISSION OF SITE CONTENT TO THE SERVICES, AND/OR YOUR VIOLATION OF ANY RIGHTS OF ANOTHER. VAS AND VAS GROUP RESERVE THE RIGHT, AT EACH ENTITY'S OWN EXPENSE, TO ASSUME THE EXCLUSIVE DEFENSE AND CONTROL OF SUCH DISPUTES, AS APPROPRIATE, AND IN ANY EVENT, YOU WILL COOPERATE WITH US IN ASSERTING ANY AVAILABLE DEFENSES.

If you are a California resident, you hereby waive California Civil Code §1542, which says: "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor." This release includes the criminal acts of others. If you are not a California resident, you waive your rights under any statute or common law principle similar to Section 1542 that governs your rights in the jurisdiction of your residence.

Arbitration and Class Action Waiver

PLEASE READ THIS SECTION CAREFULLY. IT AFFECTS YOUR LEGAL RIGHTS, INCLUDING YOUR RIGHT TO FILE A LAWSUIT IN COURT.

You and the Parties agree that these Terms affect interstate commerce and that the Federal Arbitration Act governs the interpretation and enforcement of these arbitration provisions. This Section is intended to be interpreted broadly and governs any and all disputes between you and either or both of the Parties, including but not limited to claims arising out of or relating to any aspect of the relationship between you and either or both of the Parties, whether based in contract, tort, statute, fraud, misrepresentation or any other legal theory; claims that arose before these Terms or any prior

agreement (including, but not limited to, claims related to your use of the Services); and claims that may arise after the termination of these Terms or agreement to arbitrate. The only disputes excluded from this broad prohibition are the litigation of certain intellectual property and small court claims, as provided below.

By agreeing to these Terms, you agree to resolve any and all disputes with the Parties as follows:

Initial Dispute Resolution: Most disputes can be resolved without resort to litigation. You can reach the Parties' support department at contact@canary---yellow.com. Except for intellectual property and small claims court claims, the parties agree to use their best efforts to settle any dispute, claim, question, or disagreement directly through consultation with the Parties' support department, and good faith negotiations shall be a condition to either party initiating a lawsuit or arbitration.

Binding Arbitration: If the parties do not reach an agreed-upon solution within a period of thirty (30) days from the time informal dispute resolution is initiated under the Initial Dispute Resolution provision above, then either party may initiate binding arbitration as the sole means to resolve claims, subject to the terms set forth below. Specifically, all claims arising out of or relating to these Terms (including the Terms' or Privacy Policy's formation, performance, and breach), the parties' relationship with each other, and/or your use of the Service shall be finally settled by binding arbitration administered by JAMS in accordance with the JAMS Streamlined Arbitration Procedure Rules for claims that do not exceed \$250,000 and the JAMS Comprehensive Arbitration Rules and Procedures for claims exceeding \$250,000 in effect at the time the arbitration is initiated, excluding any rules or procedures governing or permitting class actions. The arbitrator, and not any federal, state, or local court or agency, shall have exclusive authority to resolve all disputes arising out of or relating to the interpretation, applicability, enforceability, or formation of these Terms or the Privacy Policy, including but not limited to any claim that all or any part of these Terms or Privacy Policy is void or voidable, whether a claim is subject to arbitration, or the question of waiver by litigation conduct. The arbitrator shall be empowered to grant whatever relief would be available in a court under law or in equity. The arbitrator's award shall be written and shall be binding on the parties and may be entered as a judgment in any court of competent jurisdiction.

You will be required to pay \$250 to initiate an arbitration against us. If the arbitrator finds the arbitration to be non-frivolous, the relevant Parties will pay all other fees invoiced by JAMS, including filing fees and arbitrator and hearing expenses. You are responsible for your own attorneys' fees unless the arbitration rules and/or applicable law provide otherwise.

The parties understand that, absent this mandatory arbitration provision, they would have the right to sue in court and have a jury trial. They further understand that, in some instances, the costs of arbitration could exceed the costs of litigation and the right to discovery may be more limited in arbitration than in court. If you are a resident of the United States, arbitration may take place in the county where you reside at the time of filing. For individuals residing outside the United States, arbitration shall be initiated in the State of New York, United States of America. You and Parties further agree to submit to the personal jurisdiction of any federal or state court in New York, New York, order to compel arbitration, to stay proceedings pending arbitration, or to confirm, modify, vacate, or enter judgment on the award entered by the arbitrator.

Class Action Waiver: The parties further agree that the arbitration shall be conducted in their individual capacities only and not as a class action or other representative action, and the parties expressly waive their right to file a class action or seek relief on a class basis. **YOU AND THE PARTIES AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE**

PROCEEDING. If any court or arbitrator determines that the class action waiver set forth in this paragraph is void or unenforceable for any reason or that an arbitration can proceed on a class basis, then the arbitration provisions set forth above shall be deemed null and void in their entirety and the parties shall be deemed to have not agreed to arbitrate disputes.

Exception: Litigation of Intellectual Property and Small Claims Court Claims: Notwithstanding the parties' decision to resolve all disputes through arbitration, either party may bring enforcement actions, validity determinations or claims arising from or relating to theft, piracy or unauthorized use of intellectual property in state or federal court or in the U.S. Patent and Trademark Office to protect its intellectual property rights ("intellectual property rights" means patents, copyrights, moral rights, trademarks, and trade secrets, but not privacy or publicity rights). Either party may also seek relief in a small claims court for disputes or claims within the scope of that court's jurisdiction.

30-Day Right to Opt Out: You have the right to opt out and not be bound by the arbitration and class action waiver provisions set forth above by sending (from the email address you used to register for your account) written notice of your decision to opt out to contact@canary---yellow.com with the subject line, "ARBITRATION AND CLASS ACTION WAIVER OPT-OUT." The notice must be sent within thirty (30) days of your first use of the Service or the effective date of the first set of Terms containing an Arbitration and Class Action Waiver section, whichever is later; otherwise, you shall be bound to arbitrate disputes in accordance with the terms of these paragraphs. If you opt out of these arbitration provisions, the Parties also will not be bound by them.

Changes to This Section: the Parties will provide thirty (30) days' notice of any changes to this section by posting on the Service, sending you a message, or otherwise notifying you when you are logged into your account. Amendments will become effective thirty (30) days after they are posted on the Service or sent to you.

Changes to this section will otherwise apply prospectively only to claims arising after the thirtieth (30th) day. If a court or arbitrator decides that this subsection on "Changes to This Section" is not enforceable or valid, then this subsection shall be severed from the section entitled "Arbitration and Class Action Waiver," and the court or arbitrator shall apply the first Arbitration and Class Action Waiver section in existence after you began using the Service.

Survival: This Arbitration and Class Action Waiver section shall survive any termination of your account or the Service.

NOTICE OF CLAIMS OF COPYRIGHT INFRINGEMENT

VAS and VAS Group respect the intellectual property rights of others and require users of the Sites to do the same. In accordance with the Digital Millennium Copyright Act, 17 U.S.C. § 512 (the "DMCA") and other applicable law, it is each entity's policy, in appropriate circumstances, to terminate the account of a user who is deemed to infringe third-party intellectual property rights and/or to remove user content that is deemed to be infringing. To notify VAS and VAS Group of your claim of copyright infringement related to any Site Content, please send a written communication to the following designated copyright agent:

- a. Copyright Agent
By Mail: Attn: copyright administrator:
Canary Yellow, LLC
1201 N. Market Street, Suite 111
Wilmington, DE 19801

b. By email to dmca@canary---yellow.com

Your notice must include:

- 1) A physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed;
- 2) Identification of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works at a single online site are covered by a single notification, a representative list of such works at that site;
- 3) Identification of 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;
- 4) Information reasonably sufficient to permit us to contact you, such as an address, telephone number, and, if available, an electronic mail address;
- 5) A statement that you have a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law; and
- 6) 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.

Upon receiving a proper notification of copyright infringement as described above, we will remove or disable access to the allegedly infringing material and promptly notify the alleged infringer of your claim. We also will advise the alleged infringer of the counter-notification procedure, as described in and required by the DMCA.

If we receive a valid counter-notification, we will restore the removed or disabled material after ten (10), but no later than fourteen (14), business days from the date on which we receive the counter-notification, unless this Copyright Agent first receives notice from you, as the party filing the original notification of copyright infringement, informing us that you have filed a court action to restrain infringement of the material in question. Please also note that, pursuant to Section 512(f) of the DMCA, any person who knowingly materially misrepresents that material or activity is infringing may be subject to liability.

Please note that the above contact information is for intellectual property infringement notices only. **DO NOT CONTACT THIS COPYRIGHT AGENT FOR OTHER INQUIRIES OR QUESTIONS.**

MODIFICATIONS

VAS and VAS Group reserve the right to modify, suspend, refuse or terminate, in the entities' sole discretion, at any time, temporarily or permanently, for any or no reason and without notice or liability to you, any portion of the Services.

VAS and VAS Group reserve the right to modify these Terms and/or any other guidelines or policies affecting the Services at any time, and all revisions will become effective upon the earlier of (a) posting of the revisions on the Sites, or (ii) distribution of the revisions by electronic mail. For this reason, please

visit this page on a regular basis and check the “last updated and effective” date at the top of this page to ensure that you are familiar with the most recent version of these Terms. Your continued use of any of the Services after the effective date of any revisions means that you accept and agree to all such revisions. If you do not agree to, or cannot comply with, the modified Terms, you must stop using the Services.

ASSIGNMENT

You agree that VAS and VAS Group may assign or delegate any of the rights or licenses granted hereunder, and/or transfer, sub-contract or delegate any of the obligations, under these Terms. Your agreement to these Terms is personal to you and you may not transfer or assign it, your rights, licenses, or obligations to any third party. Any attempted transfer or assignment in violation hereof shall be null and void.

GOVERNING LAW AND JURISDICTION

By visiting or using the Services, you agree that the laws of the United States of America and the laws of the State of New York, without regard to the principles of conflicts of laws, will govern your use of the Services, and these Terms and all matters relating to your access to and/or use of the Services, including all disputes between you and us and/or any of the Parties and/or the Related Parties. You and VAS Group irrevocably submit to the exclusive jurisdiction of, and venue in, the state and federal courts seated in New York County, New York, and the related appellate courts, in any related action or proceeding. You hereby waive any and all jurisdictional and venue defenses otherwise available. YOU AGREE THAT ANY COURT ACTION ARISING OUT OF OR RELATED TO YOUR USE OF THE SERVICES, THESE TERMS AND ALL MATTERS RELATING TO YOUR ACCESS TO AND/OR USE OF THE SERVICES MUST BE COMMENCED BY YOU WITHIN ONE (1) YEAR AFTER THE CAUSE FOR SUCH ACTION ACCRUES; OTHERWISE, SUCH CAUSE OF ACTION SHALL BE PERMANENTLY BARRED.

ENTIRE AGREEMENT

These Terms shall be deemed to include all other notices, policies, disclaimers and other terms and conditions contained in the Services, including, without limitation, the Sites’ Privacy Policy and all other Additional Terms; provided, however, that these Terms shall prevail in the event of a conflict with any such other documents. Any rights not expressly granted in these Terms are reserved to us and to the Parties.

These Terms constitute the entire agreement between you and us, and supersede all prior or contemporaneous communications and proposals, whether electronic, oral or written, between you and us, with respect to your use of the Services and all matters relating to your access to, and/or use of, the Services except as expressly provided herein. A printed version of these Terms and of any notice given in electronic form shall be admissible in any and all judicial or administrative proceedings based upon or relating to these Terms to the same extent as other business documents and records originally generated and maintained in printed form.

If any part of these Terms is determined to be invalid or unenforceable under applicable law including, without limitation, the warranty disclaimers and liability limitations stated above, then the invalid or unenforceable provision(s) will be deemed superseded by a valid, enforceable provision that most closely matches the intent of the original provision, and the remainder of these Terms shall continue in full force and effect.

CONTACT US

If you have any questions about these Terms, please contact us at contact@canary---yellow.com