

## TERMS OF USE

## PRIVACY POLICY

## CUSTOMER SERVICE POLICY

### TERMS OF USE

1. Terms and Conditions Overview; Consent. Canary Yellow, LLC (“Canary Yellow,” “we,” “our,” and/or “us”) operates the websites available at <https://canary--yellow.com> and at <https://gallery.canary--yellow.com> (collectively, the “Website” or “Site”). To assist You in using the Website and associated services (including any third-party services) offered through the Website (the “Services”) and to ensure a clear understanding of the relationship arising from Your use of the Website and participation in the Services, we have created (i) these Terms of Use (the “Terms of Use” or “Terms”), (ii) a [Privacy Policy](#); and (iii) a [Customer Service Policy](#). Our Terms govern Your use of the Website and participation in our Services. Our [Privacy Policy](#) explains how we treat information You provide to us through the Website (including but not limited to Canary Yellow social media, third-party links, any other communications related to the Services). Our [Customer Service Policy](#) explains our pricing, sales, shipping, delivery, refund, and returns policy. Our Terms, [Privacy Policy](#), and [Customer Service Policy](#) apply to any visitor to the Website (collectively, “You,” and/or “Your”), including casual visitors to the Website who do not participate in the Services.

**PLEASE READ THE TERMS, [PRIVACY POLICY](#), AND [CUSTOMER SERVICE POLICY](#) CAREFULLY BEFORE YOU ACCESS OR USE THE WEBSITE. BY ACCESSING THE WEBSITE, YOU AGREE TO BE BOUND BY ALL OF THE TERMS AND CONDITIONS IN EACH OF THE AFOREMENTIONED POLICIES. IF YOU DO NOT WISH TO BE BOUND BY THESE TERMS AND CONDITIONS, PLEASE DO NOT ACCESS THE WEBSITE.**

- a. *Your Agreement.* These Terms govern: (i) Your use of the Website, (ii) Your receipt of and participation in the Services, (iii) Your provision of information in connection with using the Website (collectively, the “User Content”); and (iv) Your use of information obtained through the Website and the Services, including information, software, artwork, text, video, audio, pictures, content, trademarks, trade dress, and other intellectual property owned by Canary Yellow or its licensors and made available to You through the Website (collectively, the “Canary Yellow Content”).
- b. *Your Consent to our Privacy Policy.* As noted above, our [Privacy Policy](#) explains how we treat information that You provide to us through the Website. By accessing the Website, You consent to our privacy practices.
- c. *Your Consent to our Customer Service Policy.* As noted above, our [Customer Service Policy](#) explains the pricing, taxation, shipping, refunds, and return policies of the Website. By accessing the Website, You consent to those terms in the [Customer Service Policy](#).

2. *Ownership; Reservation of Rights; Grant of Rights.*

- a. *Ownership; Reservation of Rights.* The Canary Yellow Content is the proprietary property of Canary Yellow and its licensors, and is protected by U.S. and international copyright and other intellectual property laws, or is used under the principles of fair use. Canary Yellow and its licensors retain all rights with respect to the Canary Yellow Content except those expressly granted to You in these Terms. You agree not to duplicate, publish, display, distribute, modify, or create derivative works from the material presented through the Website and/or through the Services unless specifically authorized in writing by Canary Yellow.
  
- b. *Submission of Contributions and Grant of Rights to Canary Yellow.* Canary Yellow requests that You refrain from sending unsolicited creative materials through the Website. Notwithstanding the foregoing, the Website may invite You to submit Product reviews, chat, comment or otherwise interact with the Website and other users, and may provide You with the opportunity to create, submit, post, display, transmit, perform, publish, distribute or broadcast content to Canary Yellow and/or the Website, including, without limitation, text, writings, video, audio, photographs, graphics, comments, suggestions or other material (collectively "Contributions"). Any Contributions (and any unsolicited materials) You transmit to Company will be treated as non-confidential and non-proprietary, except as otherwise explicitly set forth in these Terms.
  - i. When You create or make available a Contribution, You thereby represent and warrant that:
    1. the creation, distribution, transmission, public display and performance, accessing, downloading and copying of Your Contribution does not and will not infringe the proprietary rights, including but not limited to the copyright, patent, trademark, trade secret or moral rights of any third party;
    2. You are the creator and owner of or have the necessary licenses, rights, consents, releases and permissions to use and to authorize Company and users of the Website to use Your Contributions as necessary to exercise the licenses granted by You under this Terms of Use;
    3. You have the written consent, release, and/or permission of each and every identifiable individual person in the Contribution to use the name or likeness of each and every such identifiable individual person to enable inclusion and use of the Contribution in the manner contemplated by this Website;
    4. Your Contribution is not obscene, lewd, lascivious, filthy, violent, harassing or otherwise objectionable (as determined by Company), libelous or slanderous, does not ridicule, mock, disparage, intimidate or

abuse anyone, does not advocate the violent overthrow of any government, does not incite, encourage or threaten physical harm against another, does not violate any Applicable Law, regulation, or rule, and does not violate the privacy or publicity rights of any third party;

5. Your Contribution does not contain material that solicits personal information from anyone under 18 or exploit people under the age of 18 in a sexual or violent manner, and does not violate any federal or state law concerning child pornography or otherwise intended to protect the health or well-being of minors;
  6. Your Contribution does not include any offensive comments that are connected to race, national origin, gender, sexual preference or physical handicap;
  7. Your Contribution does not otherwise violate, or link to material that violates, any provision of this Agreement or any Applicable Law or regulation; and
  8. in submitting Your Contribution, You have not used a false e-mail address, pretended to be someone other than Yourself, or otherwise misled Company or third parties as to the origin of any Contribution.
- ii. By posting Contributions to any part of the Website, You automatically grant, and You represent and warrant that You have the right to grant, to Canary Yellow an unrestricted, unconditional, unlimited, irrevocable, perpetual, non-exclusive, transferable, royalty-free, fully-paid, worldwide right and license to host, use, copy, reproduce, disclose, sell, resell, publish, broadcast, retitle, archive, store, cache, publicly perform, publicly display, reformat, translate, transmit, excerpt (in whole or in part) and distribute such Contributions (including, without limitation, Your name, image and voice) for any purpose, commercial, advertising, or otherwise, to prepare derivative works of, or incorporate into other works, such Contributions, and to grant and authorize sublicenses of the foregoing. The use and distribution may occur in any media formats and through any media channels. Such use and distribution license will apply to any form, media, or technology now known or hereafter developed, and includes our use of Your name, company name, and franchise name, as applicable, and any of the trademarks, service marks, trade names and logos, personal and commercial images You provide. Canary Yellow does not assert any ownership over Your Contributions; rather, as between us and You, subject to the rights granted to us in this [Terms of Use](#), You retain full ownership of all of Your Contributions and any intellectual property rights or other proprietary rights associated with Your Contributions. Canary Yellow has the right, in our sole and absolute discretion, to (i) remove, edit, redact or otherwise change any Contributions, (ii) re-categorize any Contributions to place them in more appropriate locations, or (iii)

pre-screen or delete any Contributions that are determined to be inappropriate or otherwise in violation of this Agreement.

iii. By uploading Your Contributions to the Website, You hereby grant to each end user of the Website a personal, limited, non-transferable, perpetual, non-exclusive, royalty-free, fully-paid license to access, download, print and otherwise use Your Contributions. You further acknowledge and agree that Canary Yellow shall not be liable to You for any end user's use, sale, or commercial exploitation of any kind of Your Contribution You post on the Website. Notwithstanding the above, Your grant of rights of Your Contributions may be subject to certain regulations depending upon the territory in which You reside. Please review our Privacy Policy related to those rights.

c. *Grant of Rights to You in Canary Yellow Content.* Subject to Your compliance with these Terms, we grant to You a limited, non-exclusive, non-transferrable, worldwide right to access, execute, perform, and otherwise use the Website and Canary Yellow Content solely for Your personal purposes, and provided that You shall not: (i) license, sublicense, sell, resell, distribute, or otherwise commercially exploit the Website or Canary Yellow Content; (ii) distribute, modify or make derivative works based upon the Website or Canary Yellow Content; or (iii) reverse engineer, reverse compile, or access the Website or the Canary Yellow Content in order to build a competitive product or service.

3. *Code of Conduct.* **AS A CONDITION TO YOUR USE OF THE WEBSITE AND THE SERVICES, YOU AGREE TO FOLLOW OUR CODE OF CONDUCT, SET OUT BELOW.** Under this Code of Conduct, You will not:

- a. Upload, email, or otherwise transmit any images or other User Content that is unlawful, obscene, harmful, hateful, invade the privacy of any third party, contain nudity or pornography, or is otherwise objectionable.
- b. Disseminate materials that impact or invade the privacy of others, such as photographs, video clips, sound recordings, personally identifiable information, or other materials that reveal personal, private, or sensitive information about another person, without that person's consent.
- c. Submit material that is intentionally false, defamatory, unlawfully threatening, or unlawfully harassing.
- d. Infringe any third party's copyright, patent, trademark, trade secret, or other proprietary rights or rights of publicity or privacy.

- e. Transmit material that contains viruses, Trojan horses, worms, time bombs, cancelbots, or other computer-programming applications or routines that are intended to damage, detrimentally interfere with, surreptitiously intercept, or expropriate any system, data, or personal information.
  - f. Use the Website to artificially generate traffic or page links to a website or for any other purpose not expressly allowed under these Terms.
  - g. Use the Website in a manner that could disable, overburden, or impair the Website or Services, or interfere with any other party's use and enjoyment of the Website and Services, such as through sending "spam" email.
  - h. Use the Website to test or reverse engineer the Website in order to find limitations, vulnerabilities, or to evade filtering capabilities.
  - i. Seek to obtain access to any materials or information through "hacking," "data harvesting," or through other means we have not intentionally made available to You through the Website.
  - j. Use the Website for any purpose that is unlawful or prohibited by these Terms. For example, You will not use the Website to violate any law, statute, or regulation (including, without limitation, those governing export control, consumer protection, unfair competition, anti-discrimination, or false advertising).
4. *Monitoring; Revocation or Suspension of Use Privileges.* We reserve the right at any time to (i) monitor Your use of the Website, and (ii) terminate or suspend Your use of some or all of the Services if You engage in activities that we conclude, in our discretion, breach our Code of Conduct or otherwise violate these [Terms of Use](#) or [Privacy Policy](#).
- a. Although we have no – and assume no – obligation to monitor activities on the Website, please understand that we may employ filters designed to detect and block inappropriate content under our Code of Conduct. We reserve the right to request You to edit, or to remove any information or materials, in whole or in part, that we believe, in our discretion, are incompatible with our Code of Conduct. **IF YOU DO NOT REMOVE OBJECTIONABLE CONTENT AT OUR REQUEST, WE MAY TERMINATE YOUR USE OF SOME OR ALL OF THE SERVICES.**
  - b. Users should also understand that our Code of Conduct is based in many instances on principles of Applicable Law. Users who violate our Code of Conduct accordingly may be exposed under these laws to criminal charges and/or civil liability. Canary Yellow reserves the right at all times to disclose information it deems necessary to satisfy any

Applicable Law, regulation, legal process, or governmental request, consistent with our [Privacy Policy](#).

5. *Reports and Complaints.* If You believe that a user has acted inappropriately, such as by violating our Code of Conduct, You may report Your concerns by contacting us in accordance with Section 21 (Contact Us).
6. *User Conduct; User Disputes.* Canary Yellow is not responsible and/or liable for User Content or user conduct. You are solely responsible for Your User Content, conduct, and interaction with other site visitors, both online and offline. We have no obligation to become involved in disputes between site visitors. If You have a dispute with one or more site visitors, You release Canary Yellow (and our officers, directors, agents, employees, subsidiaries, and affiliates) from claims, demands, and damages (actual and consequential) of every kind and nature, known and unknown, arising out of or in any way connected with such dispute.
7. *Warranty Disclaimer.* **CANARY YELLOW DOES NOT PROMISE THAT THE WEBSITE OR SERVICES WILL BE SECURE, ACCURATE, ERROR-FREE OR UNINTERRUPTED. THE WEBSITE AND ALL SERVICES AND CONTENT WITHIN IT ARE DELIVERED ON AN "AS IS" AND "AS AVAILABLE" BASIS. WHEN YOU ACCESS THE WEBSITE, YOU DO SO AT YOUR OWN RISK. CANARY YELLOW DOES NOT WARRANT OR REPRESENT THAT MATERIALS YOU DOWNLOAD FROM THE SITE WILL BE FREE OF VIRUSES OR OTHER HARMFUL FEATURES.**

**EXCEPT AS EXPRESSLY SET FORTH HEREIN, CANARY YELLOW DISCLAIMS: (i) ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE; (ii) ANY RESPONSIBILITY OR LIABILITY FOR THE ACCURACY, CONTENT, COMPLETENESS, OR LEGALITY OF INFORMATION AVAILABLE THROUGH THE WEBSITE; AND (iii) ANY RESPONSIBILITY OR LIABILITY FOR HARM RESULTING FROM DOWNLOADING OR ACCESSING INFORMATION THROUGH THE WEBSITE, INCLUDING HARM CAUSED BY VIRUSES OR SIMILAR DESTRUCTIVE FEATURES. YOU EXPRESSLY AGREE THAT USE OF THE WEBSITE AND RELATED SERVICES AND CONTENT IS AT YOUR SOLE RISK.**

8. *Limitation of Liability.* **UNDER NO CIRCUMSTANCES INCLUDING, BUT NOT LIMITED TO, BREACH OF CONTRACT, TORT, OR NEGLIGENCE, WILL CANARY YELLOW BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL DAMAGES (INCLUDING LOST PROFITS) OF ANY KIND, UNDER CONTRACT, NEGLIGENCE, STRICT LIABILITY, OR OTHER THEORY, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS, USE, DATA, LOSS OF OTHER INTANGIBLES, LOSS OF SECURITY OF INFORMATION YOU HAVE PROVIDED IN CONNECTION WITH YOUR USE OR ANY THIRD PARTY'S USE OF THE WEBSITE OR SERVICES DIRECTLY THROUGH US OR ONE OF OUR AFFILIATES OR THIRD-PARTY PROVIDERS, OR UNAUTHORIZED INTERCEPTION OF ANY SUCH INFORMATION BY THIRD PARTIES, EVEN IF ADVISED IN ADVANCE OF SUCH DAMAGES OR LOSSES. WE WILL NOT BE LIABLE FOR LOSSES OF ANY KIND RESULTING FROM YOUR OR ANY THIRD PARTY'S USE OF, OR INABILITY TO USE, THE WEBSITE OR SERVICES. WE WILL NOT BE LIABLE FOR ANY UNAUTHORIZED ACCESS, USE, OR DISCLOSURE OF ANY INFORMATION RELATING TO YOU HELD, MAINTAINED, OR UNDER THE CONTROL OF ANY THIRD PARTY, INCLUDING ANY SECURITY BREACH RELATING TO**

**INFORMATION ABOUT YOU EXPERIENCED BY A THIRD PARTY. OUR MAXIMUM LIABILITY FOR ALL LOSSES, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, WILL BE THE TOTAL AMOUNT, IF ANY, OF FEES PAID BY YOU TO US IN THE TWELVE (12) MONTHS PRIOR TO THE OCCURRENCE GIVING RISE TO SUCH LIABILITY OR FIFTY DOLLARS, WHICHEVER IS GREATER. THESE LIMITATIONS MAY NOT APPLY TO YOU, IN PART OR IN FULL, IF YOU ARE IN A JURISDICTION THAT DOES NOT PERMIT SUCH LIMITATIONS. NO CLAIM MAY BE ASSERTED BY YOU AGAINST US MORE THAN TWELVE (12) MONTHS AFTER THE DATE OF THE CAUSE OF ACTION UNDERLYING SUCH CLAIM AROSE.**

9. *Indemnity.* You agree to defend, indemnify, and hold Canary Yellow and its subsidiaries, affiliates, officers, directors, agents, and employees harmless from and against any third-party liability, claims, actions, demands, costs and expenses, including reasonable attorneys' fees, arising from or related to Your breach of these Terms. We reserve the right to assume the exclusive defense and control of any matter otherwise subject to indemnification by You, in which event You shall cooperate with us in asserting any available defense. You shall not settle any actions or claims on our behalf without our prior written consent.
10. *Contact for Alleged Copyright Infringement.* Canary Yellow respects the intellectual property rights of others and requires that its users do the same. If You believe that Your Work (the "Work") has been copied in a way that constitutes copyright infringement, please provide our copyright agent the following written information: (i) an electronic or physical signature of the person authorized to act on behalf of the owner of the copyright interest; (ii) a description of the copyrighted work that You claim has been infringed upon; (iii) a description of where the material that You claim is infringing is located on the Website; (iv) Your address, telephone number, and e-mail address; (v) a statement by You that You have a good-faith belief that the disputed use is not authorized by the copyright owner, its agent, or the law; and (vi) a statement by You, made under penalty of perjury, that the above information in Your notice is accurate and that You are the copyright owner or authorized to act on the copyright owner's behalf. Our copyright agent for notice of claims of copyright infringement on the Website can be reached as follows:, please notify us as follows:

- a. By Mail: Attn: DMCA copyright administrator:

Canary Yellow, LLC  
1201 N. Market Street, Suite 111  
Wilmington, DE 19801

- b. By email to [dmca@canary---yellow.com](mailto:dmca@canary---yellow.com)

Your notice must comply with the Digital Millennium Copyright Act (17 U.S.C. §512) (the "DMCA"), the text of which can be found at the U.S. Copyright Office website: <https://www.copyright.gov>. Upon receipt of a compliant notice, we will respond and proceed in accordance with the DMCA. Please note, You will be liable for damages (including costs and attorneys' fees) if You materially misrepresent that a product or activity is not infringing the copyrights of others or that the material or activity was removed or disabled by mistake or misidentification. Accordingly, if You are not sure whether certain material infringes the copyrights of others or that the material or activity was removed or disabled by mistake or misidentification, we suggest that You first contact a

lawyer. In accordance with Section 512(i)(1)(a) of the DMCA, Canary Yellow will, in appropriate circumstances, disable and or terminate Your account in the event of a material misrepresentation of infringement by You.

11. *Modifications to these Terms.* Canary Yellow reserves the right to modify and change the Terms and the functionality of the Website and any Services at any time. Any new Terms will be posted here and have the date of the most recent change. Your access to or use of the Website and/or Services following any changes to the Terms will constitute Your acceptance of such changes. Please feel free to print out a copy of these Terms for Your records.

12. *Assignment.* These Terms shall not be assignable by You, either in whole or in part. Canary Yellow reserves the right to assign its rights and obligations under these Terms.

13. *Agreement To Arbitrate Disputes; No Class Actions; Waiver Of Jury Trial.* **PLEASE READ THIS SECTION CAREFULLY – IT MAY SIGNIFICANTLY AFFECT YOUR LEGAL RIGHTS, INCLUDING YOUR RIGHT TO FILE A LAWSUIT IN COURT AND TO HAVE A JURY HEAR YOUR CLAIMS. IT CONTAINS PROCEDURES FOR MANDATORY BINDING ARBITRATION AND A CLASS ACTION WAIVER. IF YOU ARE A U.S. RESIDENT, YOU ALSO AGREE TO THE FOLLOWING MANDATORY ARBITRATION PROVISIONS:**

- a. **WE BOTH AGREE TO ARBITRATE:** You and Canary Yellow agree to resolve any claims relating to the Website, the Services or these Terms by final and binding arbitration, except to the extent You have in any manner violated or threatened to violate Canary Yellow's intellectual property rights (for example, trademark, trade secret, copyright, or patent rights). Under such circumstances Canary Yellow may bring a lawsuit solely for injunctive relief to stop unauthorized use or abuse of the Website, or intellectual property infringement (for example, trademark, trade secret, copyright, or patent rights) without first engaging in arbitration or the informal dispute-resolution process described herein. You and Canary Yellow may also litigate in court to compel arbitration, stay proceedings pending arbitration, or to confirm, modify, vacate or enter judgment on the award entered by the arbitrator.
- b. **WHAT IS ARBITRATION:** Arbitration is more informal than a lawsuit in court and seeks to resolve disputes more quickly. Instead of a judge or a jury, the case will be decided by a neutral arbitrator who has the power to award the same damages and relief that a court can. If any provision of this arbitration agreement is found unenforceable, the unenforceable provision shall be severed, and the remaining arbitration terms shall be enforced.
- c. **ARBITRATION PROCEDURES:** The Federal Arbitration Act governs the interpretation and enforcement of this dispute resolution provision. Arbitration shall be initiated through JAMS. Except as otherwise expressly provided herein, any dispute, controversy, or claim arising out of or relating to the Website, the Services or these Terms shall be referred to and finally determined by arbitration in accordance with the JAMS Streamlined Arbitration Rules and Procedures. If there is a conflict between JAMS Rules and the rules set forth herein, the rules set forth in this agreement to arbitrate will govern. The JAMS



Rules and instructions for how to initiate an arbitration are available from JAMS at <http://www.jamsadr.com> or 1-800-352-5267. To initiate arbitration, You or Canary Yellow must do the following things:

- i. Write a demand for arbitration. The demand must include a description of the claim and the amount of damages sought to be recovered. You can find a copy of a Demand for Arbitration at <http://www.jamsadr.com>.
- ii. Send three copies of the Demand for Arbitration, plus the appropriate filing fee to Your local JAMS office.
- iii. Send one copy of the Demand for Arbitration to the other party.

Payment of all filing, administration and arbitrator fees will be governed by the JAMS Rules, except that for claims of less than \$1,000 You will be obligated to pay \$25 and Canary Yellow will pay all other administrative costs and fees. In addition, for claims of less than \$1,000, Canary Yellow will reimburse You for the \$25 fee if the arbitrator rules in Your favor. Arbitration under this agreement shall be held in the United States county where You live or work, Delaware, or any other location we mutually agree to, subject to Delaware law. The arbitration may award on an individual basis the same damages and relief as a court (including injunctive relief). Any judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction.

- d. **AUTHORITY OF ARBITRATOR:** The arbitrator will decide the rights and liabilities, if any, of You and Canary Yellow, and the dispute will not be consolidated with any other matters or joined with any other cases or parties. The arbitrator shall have the authority to grant motions dispositive of all or part of any claim. The arbitrator shall have the authority to award monetary damages and to grant any non-monetary remedy or relief available to an individual under Applicable Law. The arbitrator shall issue a written award and statement of decision describing the essential findings and conclusions on which the award is based, including the calculation of any damages awarded. The arbitrator has the same authority to award relief on an individual basis that a judge in a court of law would have. The award of the arbitrator is final and binding upon You and Canary Yellow.
- e. **NO CLASS ACTIONS:** You may only resolve disputes with us on an individual basis and may not bring a claim as a plaintiff or a class member in a class, consolidated, or representative action. Class arbitrations, class actions, private attorney general actions, and consolidation with other arbitrations are not permitted.
- f. **WAIVER OF JURY TRIAL: THE PARTIES HEREBY WAIVE THEIR RIGHTS TO GO TO COURT AND HAVE A TRIAL IN FRONT OF A JUDGE OR A JURY, INSTEAD ELECTING THAT ALL CLAIMS AND DISPUTES SHALL BE RESOLVED BY ARBITRATION. ARBITRATION PROCEDURES ARE TYPICALLY MORE LIMITED, MORE EFFICIENT AND LESS COSTLY THAN RULES APPLICABLE IN COURT AND ARE SUBJECT TO VERY LIMITED REVIEW BY A COURT. IN THE EVENT ANY LITIGATION SHOULD ARISE BETWEEN YOU AND CANARY YELLOW IN ANY STATE OR FEDERAL COURT IN A SUIT TO VACATE OR ENFORCE AN**

**ARBITRATION AWARD OR OTHERWISE, YOU AND CANARY YELLOW WAIVE ALL RIGHTS TO A JURY TRIAL, INSTEAD ELECTING THAT THE DISPUTE BE RESOLVED BY A JUDGE. THE PRECEDING SENTENCE DOES NOT APPLY TO NEW JERSEY RESIDENTS. YOU ACKNOWLEDGE THAT YOU HAVE BEEN ADVISED THAT YOU MAY CONSULT WITH AN ATTORNEY IN DECIDING TO ACCEPT THIS AGREEMENT TO ARBITRATE.**

14. *Opt-Out of Arbitration.* You can decline this agreement to arbitrate by emailing support@canary--yellow.com and providing the requested information as follows: (1) Your Name; (2) the URL of this agreement to arbitrate; (3) Your Address; (4) Your Phone Number; and (5) a clear statement that You wish to opt out of this agreement to arbitrate. The opt-out notice must be emailed no later than 30 days after the date You first accept this agreement to arbitrate by using the Website.
  
15. *General; Law.* These Terms shall be governed in all respects by the laws of the State of Delaware without giving effect to its conflicts of law provisions. For any action where the Arbitration Agreement permits the parties to litigate in court, You further expressly consent and agree to submit to the exclusive jurisdiction and venue of a court of competent jurisdiction located in Wilmington, Delaware. If any provision of these Terms is held to be invalid or unenforceable by arbitration or a court of competent jurisdiction, such invalidity or unenforceability shall not impair, affect or render invalid or unenforceable any other provision of these Terms, and such invalid or unenforceable provision shall be replaced by a provision that is valid and enforceable and that comes closest to expressing the intention of such invalid or unenforceable provision. Headings are for reference purposes only and in no way define, limit, construe, or describe the scope or extent of such section. Canary Yellow's failure to act with respect to a breach by You or others does not waive its right to act with respect to subsequent or similar breaches.
  
16. *Entire Agreement.* These Terms set forth the entire understanding and agreement between Canary Yellow and You with respect to the subject matter hereof and supersede any prior or contemporaneous understanding, whether written or oral.
  
17. *Additional Terms.* Certain Services may be subject to additional or different terms and conditions. By way of example, specific Services and/or portions of the Website related to our [Privacy Policy](#) and [Customer Service Policy](#) are subject to terms and conditions that may differ from these [Terms of Use](#), and You will have the opportunity to decline to participate in such Services or Website if You do not agree with the differing terms and conditions.
  
18. *English Language.* It is the express wish of the parties that this Agreement and all related documents be drawn up in English.
  
19. *Survival.* In addition to any provision that by its nature or intent is intended to survive the termination of these Terms, the following provisions shall survive the termination of these Terms and shall apply indefinitely: (i) Section 2 (Ownership; Reservation of Rights; Grant of Rights); (ii) Section 7 (Warranty Disclaimer); (iii) Section 8 (Limitation of Liability); (iv) Section 9 (Indemnity); (v) Section 12 (Assignment); (vi) Section 15 (General; Law); and (vii) Section 19 (Survival).

20. *Relationship to Privacy Policy, Customer Service Policy, and Other Contracts.* These Terms must be read in conjunction (i) with our [Privacy Policy](#), (ii) our [Customer Service Policy](#); and (iii) with other agreements into which You may enter concerning the Website (if any). The provisions of our [Customer Service Policy](#) and [Privacy Policy](#) are incorporated herein. To the extent these Terms conflict with the terms of our [Customer Service Policy](#) and/or [Privacy Policy](#), the terms of our respective [Customer Service Policy](#) and/or [Privacy Policy](#) shall control. Similarly, to the extent these Terms conflict with the terms and conditions of any specific agreement You enter with us, the terms and conditions of such specific agreement will control.
21. *Contact Us.* If You have any questions about this Terms of Use, the Website, or Services, please contact us at [support@canary---yellow.com](mailto:support@canary---yellow.com).
22. *Effective Date.* The effective date of these Terms of Use is November 9, 2020.

## PRIVACY POLICY

1. *General Terms.* This [Privacy Policy](#) (the “Privacy Policy”) applies to our website available at [canary---yellow.com](http://canary---yellow.com) and at <https://gallery.canary---yellow.com> (collectively, the “Website” or “Site”) operated by Canary Yellow, LLC (“Canary Yellow,” “we,” “our”, or “us”), as well as to the services available via the Website and otherwise (including online and offline third-party services) and information available on the Website (collectively, the “Services”). This [Privacy Policy](#) describes how we collect, use, and disclose information, governs how we treat this information, and lets any visitor to the Website (collectively, “You,” and/or “Your”) know Your associated rights. Please read this [Privacy Policy](#) carefully; once You consent to this [Privacy Policy](#) and its terms, it creates legal obligations on You and on Canary Yellow. Our Website contains links to other websites for Your convenience and reference. We are not responsible for the privacy practices or the content of those sites.
2. *Navigating this Privacy Policy.* To help You navigate our [Privacy Policy](#), we have divided it into numbered sections and provided a set of definitions in Section 16 (Definitions) to allow easy reference to key concepts.
3. *Your Consent to this Privacy Policy.* Our [Privacy Policy](#) applies to any visitor to the Website and/or user of the Services (collectively, “You”). We ask You to show Your consent to this [Privacy Policy](#) in different ways.

  - a. *Consent by Site User.* We have structured the Website so that, You are able to come to the Website and review selected information about our Services without providing us with any Personally Identifiable Information. By accessing and using the Website or Services as a visitor, You are acknowledging that You have read and understood this [Privacy Policy](#), [Terms of Use](#), and [Customer Service Policy](#), and agree to be legally bound by them.

- b. *Consent by User Acting in a Representative Capacity.* If You are agreeing to our [Privacy Policy](#) on behalf of a company or other legal entity (“Your Organization”), then (i) You represent and warrant that You have authority to act on behalf of, and to bind Your Organization, and (ii) for all purposes in this [Privacy Policy](#), the term “You” means Your Organization on whose behalf You are acting.
    - c. *Right to Withdraw Consent.* You have the right to withdraw Your consent at any time, in accordance with Section 9 (Your Right to Opt-Out; Right of Access; Object to Processing; Deleting Information).
- 4. *The Information We Collect.* To provide our Services, and to otherwise conduct our business via the Website, we rely on information provided by, and collected from, our users. This information consists of the following:
  - a. *Personally Identifiable Information.* We collect certain information that identifies You as an individual (collectively, “Personally Identifiable Information”). The Personally Identifiable Information we collect may include the following:
    - i. Your name;
    - ii. Your phone number;
    - iii. Your email address;
    - iv. Your name (and/or company name, as applicable);
    - v. Your shipping and billing address;
    - vi. Device identifiers, such as cookies and IP addresses;
    - vii. Device information, such as hardware and software settings;
    - viii. IP addresses and log information, such as Your device’s name, the type and version of Your web browser, and referrer addresses that can function to identify a user device; and
    - ix. Tracking information that we, or a third party, may collect.
  - b. *Anonymous Information.* Our Website also collects, processes, and/or uses information that does not identify You or Your devices, including Personally Identifiable Information that has been made anonymous by: (i) removing identifying fields and aggregating the information with other information so that individual subjects of the information cannot be re-identified, or (ii) anonymizing the information with techniques that remove or modify the identifying data so as to prevent re-identification of the anonymized information (collectively, “Anonymous Information”). Information that meets these criteria might include, for example, demographic information, statistical information (e.g., page views and hit counts), and general tracking information.

- c. *Treatment of Combined Information.* If we combine Non-Personally Identifiable Information or Anonymous Information with Personally Identifiable Information, we treat the resulting combination as Personally Identifiable Information.
5. *How We Collect this Information.* We collect the above information through the following means and technologies:
  - a. *Contacting Canary Yellow.* You can contact us with questions or comments – for example, You can contact us to learn more about our products and services. In order to communicate with us, You must provide certain Personally Identifiable Information.
  - b. *Information Provided to Third Parties.* As explained further in Section 7.a (Our Service Providers), we may engage third parties to perform certain services for us or on our behalf, including but not limited to verification, payment processing, shipping, customer service, etc.. Any communication by You on the Website may be managed by such third parties, and we may obtain those communications by the applicable service provider Your information that You provide.
  - c. *Newsletters.* We may offer newsletters and other content about Canary Yellow, our services and products, and other issues that we believe may be of interest to You. We will use Your Personally Identifiable Information to provide You with this content. You can opt-out of receiving this content, by following the instructions set out in Section 9 (Your Right to Opt-Out; Right of Access; Object to Processing; Deleting Information).
  - d. *Device Identifiers; Logs; IP Addresses.* To determine whether Your device is supported by the Website and Services, we may collect certain information about Your device and network, including Your IP address, Your operating system and browser, Your device model, information about Your use of the Website or Services, as well as the presence of any software that the Website or Services may require to operate with Your device, or other third party software or mobile apps on Your device. We automatically receive and record this information in log files, and this is generally Non-Personally Identifiable Information.
  - e. *Cookies.* A cookie is a small amount of data that is sent to Your browser from a website's computers and stored on Your computer's hard drive. Cookies can be used to provide You with a tailored user experience and to make it easier for You to use a website upon a future visit. We may include cookies on the Website and use them to recognize You when You return to the Website. You may choose not to accept cookies. Important: Any adjustments You may make to the settings in Your browser software concerning the acceptance or refusal of cookies may modify Your browsing on the Internet and Your terms of access to certain services requiring use of these cookies. For example, by refusing certain essential cookies, You may no longer be able to place orders on our website. If You choose to refuse the registration of cookies on Your terminal or if You delete cookies that are already registered, we decline all responsibility for any

consequences relating to the degraded performance of our services resulting from the fact we are unable to register or consult the cookies required for their performance and which You have refused or deleted.

- f. *Beacons and Tags.* The Website may use certain data collection technologies that rely on (i) beacons; (ii) pixel tags and object hyperlinking tags; and (iii) other means to link an object to an Internet address, a remote software application, a remote database, or other remote means of receiving or processing information. We may use these technologies to tell us what parts of the Website have been visited or to measure the effectiveness of searches that users perform on the Website. These technologies also enable us to send email messages in a format users can efficiently read, to learn whether these email messages have been opened, and to help ensure, for example, that our messages are of interest to our users. These technologies provide us with Anonymous Information, Non-Personally Identifiable Information and, in certain instances, Personally Identifiable Information.
  
- g. *Click-Throughs.* We may send email messages or display links that use a “click-through URL” linked to the Website or to another resource. When You click one of these URLs, You pass through our web server before arriving at the destination website page or other resource. Click-throughs may use and collect Anonymous Information and Non-Personally Identifiable Information. We may track this click-through data to help determine interest in particular topics and measure the effectiveness of our user communications.
  
- h. *Links to Third-Party Sites.* The Website may also contain links or produce search results that reference links to third party websites (collectively “Linked Sites”), such as those to visit our pages on social media websites. Canary Yellow has no control over these Linked Sites or their content and does not assume responsibility or liability for any content, opinions, material available on Linked Sites, or such Linked Sites’ privacy practices with respect to information that You provide to the Linked Sites. Canary Yellow does not endorse the content of any Linked Site, nor does Canary Yellow warrant that a Linked Site will be free of computer viruses or other harmful code that can impact Your computer or other web-access device. By using the Website to search for or link to another site, You agree and understand that such use is at Your own risk. For example, if You submit Personally Identifiable Information to a Linked Site, then the Information that You submit shall be governed by the Linked Site’s privacy policy and/or terms of use, and not by Canary Yellow’s [Privacy Policy](#), [Customer Service Policy](#), and [Terms of Use](#).
  
- i. *Other Technologies and Data Sources.* We may combine Personally Identifiable Information that You provide to us with other data, including demographic information (such as age, job industry, or job title) for purposes of responding to Your inquiries, and for other purposes specified in this [Privacy Policy](#). If information we combine in this manner includes Your Personally Identifiable Information, we will treat the combined information as Your Personally Identifiable Information for all purposes under this [Privacy Policy](#).

- j. *Biometric Data.* While the Website does not collect biometric data (including the use of email addresses in combination with a password or security question answer), some of Our Service Providers may collect such data as described in Section 7.a (Our Service Providers). If You submit Personally Identifiable Information (including biometric data) to one of Our Service Providers, the Information You submit shall be governed by the Service Provider’s privacy policy and terms of use, and not by Canary Yellow’s [Privacy Policy](#), [Customer Service Policy](#), and [Terms of Use](#).
6. *How We Use this Information.* We use the information we collect or process, including Anonymous Information, Non-Personally Identifiable Information, and Personally Identifiable Information, as permitted under Applicable Law, including where the use is based on (i) the consent You provide to us at the point of collection; (ii) performance of our agreement to provide You with the Services; (iii) compliance with our legal obligations; and/or (iv) our Legitimate Interests, as well as a third party’s Legitimate Interests. More specifically, we use the information we collect for some or all of the following:

Our Uses of the Information	Bases for Our Use
To provide You with the Services You request and, specifically, to allow us to send You email with information	<ul style="list-style-type: none"> <li>• Performance and management of our agreement with You</li> </ul>
To conduct fraud monitoring, prevention, and detection activities	<ul style="list-style-type: none"> <li>• Our Legitimate Interests</li> </ul>
To respond to Your inquiries	<ul style="list-style-type: none"> <li>• Performance and management of our agreement with You</li> <li>• Our Legitimate Interests</li> </ul>
To consider Your submittals and other expressions of interest in connection with our career opportunities	<ul style="list-style-type: none"> <li>• Our Legitimate Interests</li> </ul>
To customize Your visit to and use of the Website and Services	<ul style="list-style-type: none"> <li>• Our Legitimate Interests</li> </ul>
To determine which of our products, services, and content (including, if applicable, our newsletter) might interest You and, upon making this determination, to provide You with the associated information	<ul style="list-style-type: none"> <li>• Your consent</li> <li>• Our Legitimate Interests</li> </ul>
To track access to and use of the Website and Services, and conduct data and other analyses, including anonymization and aggregation of Personally Identifiable Information	<ul style="list-style-type: none"> <li>• Our Legitimate Interests</li> </ul>

Our Uses of the Information	Bases for Our Use
To perform internal administration, auditing, operation, and troubleshooting for the Website and Services	<ul style="list-style-type: none"> <li>• Our Legitimate Interests</li> </ul>
To engage in the activities specified in Section 7 (How We Share This Information)	<ul style="list-style-type: none"> <li>• Our Legitimate Interests</li> <li>• Compliance with our legal obligations</li> <li>• Performance and management of our agreement with You</li> </ul>
To evaluate and improve the Website, Services, and our communications, and to develop and test new services and content	<ul style="list-style-type: none"> <li>• Our Legitimate Interests</li> </ul>
To comply with Applicable Law	<ul style="list-style-type: none"> <li>• Compliance with our legal obligations</li> </ul>

Note that when determining the bases for our use of Your information, we rely on what we consider to be the most appropriate basis, even if there are multiple bases available in connection with our use. The retention of Your data varies based on use. If You would like to see our full retention policy, please email us at [privacy@canary---yellow.com](mailto:privacy@canary---yellow.com).

7. *How We Share this Information.* We value Your privacy, and we share the information we collect only in the manner set out below.

a. *Our Service Providers.* We engage third parties to perform functions on our behalf, and these may include functions such as maintaining the Website, collecting information, responding to and sending email or other messages, payment processing, and other functions useful to our business. In this capacity, we may provide service providers with Personally Identifiable Information, Non-Personally Identifiable Information, and Anonymous Information as applicable. The following are examples:

i. We may use service providers to provide customer service (where applicable) or marketing support, such as to process and distribute email. These service providers generally require access to Your Personally Identifiable Information in order to perform these services.

ii. We may use analytics service providers to assist us in understanding and using Non-Personally Identifiable Information and other information that we collect via the Website. A service we use in this regard is Google Analytics, and information concerning how Google uses the information is available at <https://policies.google.com/privacy/partners>, and opt-out options specific to Google Analytics are available at <https://tools.google.com/dlpage/gaoptout>.

iii. Our Website includes links to third party websites and other API's offering services that augment those services offered on our Website.



- iv. We may use service providers to anonymize and aggregate Personally Identifiable Information in order to generate Anonymous Information.
- v. **We may engage service providers to analyze the interests and attributes of our users and, using techniques based on Anonymous Information and Non-Personally Identifiable Information, identify others who might share those interests and attributes. We then use this information to reach out to relevant market segments to provide them information concerning the Website or Services.**

If You would like to see our full list of our service providers and their respective data and privacy policies, please make a request at [support@canaryyellow.com](mailto:support@canaryyellow.com).

- b. *Questions of Harm; Legal Process.* We may disclose Your Personally Identifiable Information and Non-Personally Identifiable Information to third parties, including law enforcement agencies, attorneys, and private investigator organizations, where it is necessary, or where we have a good faith belief that it is necessary:
  - i. To comply with legal process;
  - ii. To protect and defend our rights and property, including the Website and associated content;
  - iii. To protect against misuse or unauthorized use of the Website or Services;
  - iv. To protect the personal safety or property of Website users or the public, including Your personal safety or property (it being understood that we assume no duty to provide, or monitor the need for, such protections); and
  - v. **To cooperate with public and government authorities including, where required, authorities outside Your jurisdiction.**

While You are not able to opt out of this use of information, we will take reasonable steps to limit such use, and disclose only the information we reasonably believe is necessary for the above purposes. If we receive legal process calling for the disclosure of Your Personally Identifiable Information, we will attempt to notify You within a reasonable amount of time, unless such notification is not permitted.

- c. *Transfer of the Website.* We shall be entitled to transfer information that we collect (including Personally Identifiable Information) to a third party in connection with a reorganization, merger, sale, joint venture, assignment, transfer, or other disposition (including a disposition in connection with a bankruptcy or similar proceedings) of all or substantially all assets or stock of the business unit or division responsible for the information under this [Privacy Policy](#); provided the acquiring third party has agreed to safeguard Your Personally Identifiable Information with protections that are compatible with those set out in this [Privacy Policy](#).
      - d. *Our Affiliates.* We may choose to rely on and share the information we collect with our affiliates. By “affiliate” we mean an entity that is closely related to us, such as an entity that controls, is controlled by, or is under common control with, Canary Yellow, our affiliates will be bound by the terms of this [Privacy Policy](#).
- 8. *How We Safeguard the Information We Collect.* We recognize the sensitivity of our users’ Personally Identifiable Information and we have put in place security systems designed to prevent unauthorized access to or disclosure of this information. Our security systems include physical, technical, and administrative information security controls, and we take commercially reasonable steps to secure and safeguard such Personally Identifiable Information in accordance with Applicable Law.
  - a. *Our Retention of Data.* Canary Yellow retains Personally Identifiable Information for the period of time necessary to fulfill the purposes for which we obtained the Personally Identifiable Information and consistent with Applicable Law. We use the following criteria to set our retention periods: (i) the duration of our relationship with You; (ii) the existence of a legal obligation as to the retention period; and (iii) the advisability of retaining the information in light of our legal position (for example, in light of applicable statutes of limitations, litigation, or regulatory investigations).
  - b. *Accuracy and Minimization of Data.* Canary Yellow takes reasonable steps (i) to maintain the accuracy of the Personally Identifiable Information we process, and (ii) to limit the Personally Identifiable Information that we process to that which is reasonably necessary for the purposes for which we obtained the information.
  - c. *Accessing and Updating Your Information.* If You would like to review, correct, or update the Personally Identifiable Information that You have provided to us, or if You would like to request an electronic copy of this Personally Identifiable Information for purposes of transmitting it to another company (to the extent Applicable Law provides You with this right to data portability) You may make such requests by us as provided in Section 15 (Contact Us).
- 9. *Your Right to Opt-Out; Right of Access; Object to Processing; Deleting Information.*

- a. *Unsubscribing to Email.* If You no longer wish to receive email messages from us, You can opt out of this Service by either (i) following the “unsubscribe” instructions located near the bottom of each email message; or (ii) contacting us as provided in Section 15 (Contact Us).
  - b. *Right of Access.* Subject to certain exceptions, You have the right to have access to and/or correct any personal information our organization holds about Your personal data. If You wish to make a Subject Access Request (“SAR”), please complete the following SAR form.
  - c. *Deleting Information.* If You request, we will take reasonable steps to remove Your name and email address from our databases, within the time frames (if any) set out in Applicable Law. Please understand, however, that if You request the deletion of Your information, You will no longer be able to receive certain Services. In addition, it may be impractical (or essentially impossible) to remove the requested information completely, due to requirements promulgated by Applicable Law, and/or data backups and records of deletions. As such, certain Personally Identifiable Information may remain in our databases following the deletion of Your account; we will continue to treat the remaining information (if any) in accordance with this [Privacy Policy](#) and Applicable Law.
  - d. *Objections.* If You object to our processing of Your Personally Identifiable Information, and a request for us to delete this information is not, in Your view, sufficient, please contact us as provided in Section 15 (Contact Us).
  - e. *Anonymous Information.* We will not delete Anonymous Information from our database, and nothing in this [Privacy Policy](#) restricts our use of Anonymous Information.
  - f. *Your “Right to be Forgotten.”* If You are protected by the GDPR with respect to our use of Your information, upon proper request, we will take the steps set out in the GDPR to erase Your Personally Identifiable Information, including information that may be publicly available via the Website.
10. *Advisory Regarding Participation by Children and Teens.* Under U.S. Federal Law (as reflected in the Children’s Online Privacy Protection Act), **WE DO NOT COLLECT OR STORE ANY PERSONALLY IDENTIFIABLE INFORMATION FROM INDIVIDUALS THAT WE KNOW ARE UNDER THE AGE OF 13.** If You wish to receive further information concerning privacy policies in general, and concerning online social networking and safety, You should visit the following website: <http://www.ftc.gov/privacy/index.html>.
11. *Notice of Privacy Rights to California Residents.*

- a. *Shine the Light*. California Civil Code Section 1798.83, also known as the “Shine the Light” law requires certain businesses to respond to requests from California users who ask about business practices related to disclosing Personally Identifiable Information to third parties for direct marketing purposes. The Shine the Light law further requires us to allow California residents to opt out of certain disclosures of Personally Identifiable Information to third parties for their direct marketing purposes. If You are a California resident and would like a copy of such notice, please submit a written request to at [support@canary--yellow.com](mailto:support@canary--yellow.com)
  
- b. *California Consumer Privacy Act Privacy Policy*. This section only applies to customers who are residents of California under the California Consumer Privacy Act of 2018 (“CCPA”) and other California privacy laws (together “California Laws”). Defined terms as used herein shall have the same meaning as defined terms in the CCPA.
  - i. *Personal Information We Collect*. We collect information that identifies, relates to, describes, references, is capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular consumer or household (“Personal Information”). The CCPA sets forth certain categories of information under Cal. Civil Code §1798.140 (o)(1) and we have listed all of those categories below. For each category, we have provided information as to whether or not we have collected Personal Information under those categories within the last twelve (12) months:
    - 1. *Identifiers*. We collect Personal Information of Users of Canary Yellow Website, which fall within the category of Identifiers and which include Personal Information such as: A real name, alias, postal address, unique personal identifier, online identifier, Internet Protocol address, email address, account name, or other similar identifiers.
  
    - 2. *Personal information categories listed in Cal. Civ. Code § 1798.80(e) (the California Customer Records Statute)*. We collect Personal Information You directly provide to us. See [Section 4](#).
  
    - 3. *Commercial Information*. This includes information such as records of personal property, products or services purchased, obtained, or considered, or other purchasing or consuming histories or tendencies. Included in this category is:
      - a. Information we receive from You in Your use of the Website in order to use Canary Yellow Service.
  
      - b. Information about Canary Yellow Service including:

- information about Your use of Canary Yellow Service (including account related information such as payment information, purchase history);
- customer services information; and
- customer relationship management and marketing information.

4. *Biometric Information.* See [Section 5.j](#)

5. *Internet or other electronic network activity information including.* See [Sections 5.d, 5.e, 5.f, 5.g, 5.h, and 5.i](#)

6. *Audio, electronic, visual, thermal, olfactory, or similar information.* We do not collect sensory information such as audio, electronic, visual, thermal, olfactory or other similar Personal Information that identifies, relates to, describes, is capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular consumer or household.

7. *Professional or employment related information.* We do not collect professional or employment related information with regard to job applications, employment records, professional association memberships and other job-related Personal Information.

8. *Inferences drawn from other Personal Information.* We collect information that may be considered a profile reflecting a person's preferences, characteristics, psychological trends, predispositions, behavior, attitudes, intelligence, abilities and aptitudes.

ii. The Personal Information in [Section b.iis](#) collected from the following sources:

- Information Received Directly from You;
- Internet activity by Your use of the Website including online tracking through use of cookies; and
- Public Websites and social media platforms.

iii. *The Business Or Commercial Purposes For The Personal Information We Collect.* We may disclose Your Personal Information to a third party for business or commercial purposes. See [Sections 6 and 7](#).

iv. *California Residents' Privacy Rights and Choices.* If You are consumer as defined in the CCPA, i.e., a resident of California as defined in Section 17014 of Title 18 of the California Code of Regulations, You have certain rights in relation to Your Personal Information under the CCPA. Under the CCPA, You have the following rights:

1. *Right to Request Information Collected and Shared for a Business Purpose.* If we collect Personal Information about You that is disclosed for a business purpose, You have the right to request that we disclose to You:
  - The categories of Personal Information that we have collected about You
  - The categories of sources from which the Personal Information about You is collected
  - The business or commercial purpose for collecting or selling Personal Information
  - The categories of Personal Information we disclosed about You for a business purpose
2. *Right Not to Be Discriminated Against.* You have the right to not be discriminated against by a business because You exercised any of the consumer's rights under the CCPA.
3. *Right to Request Deletion.* You have the right to request that we delete any of Your Personal Information that we collected from You and retained, subject to certain exceptions
4. *Right to Request Access and Data Portability.* Upon receipt of a verifiable request from You to access Your Personal Information we shall promptly take steps to disclose and deliver, free of charge to You, the Personal Information in accordance with Cal. Civil Code §1798.100 (d). The Personal Information may be delivered by mail or electronically, and if provided electronically, the information shall be in a portable and, to the extent technically feasible, in a readily useable format that allows You to transmit this information to another entity without hindrance. We may provide Personal Information to You, but we are not required to provide Personal Information to You more than twice in a 12-month period.

v. *Verification and Record-keeping.*

1. If You are a California resident, we will process Your request to exercise Your Rights in accordance with California Laws. When a request is made, we may first take steps to sufficiently verify Your identity to protect Your privacy and security. Once we confirm Your identity and verify Your consumer request, we will delete (and direct our service providers to delete) Your Personal Information from our records, unless an exception applies.
  
2. We may deny Your deletion request if retaining the information is necessary for us or our service providers to:
  - Complete the transaction for which we collected the Personal Information, provide a good or service that You requested, take actions reasonably anticipated within the context of our ongoing business relationship with You, or otherwise perform our contract with You.
  - Detect security incidents, protect against malicious, deceptive, fraudulent, or illegal activity, or prosecute those responsible for such activities.
  - Debug products to identify and repair errors that impair existing intended functionality.
  - Exercise our right to free speech, ensure the right of another consumer to exercise their free speech rights, or exercise another right provided for by law.
  - Comply with the California Electronic Communications Privacy Act (Cal. Penal Code § 1546 *seq.*).
  - Enable solely internal uses that are reasonably aligned with consumer expectations based on Your relationship with us.
  - Comply with a legal obligation.
  - Otherwise use Your Personal Information internally in a lawful manner that is compatible with the context in which You provided it.
  
3. A record concerning the requests may be maintained pursuant to our legal obligations. Further, we may charge a reasonable fee or refuse to act on a request if such request is excessive, repetitive or manifestly unfounded.

12. *Do Not Track Notice.* Our Website does not change its behavior when receiving “Do Not Track” signals from browser software.

13. *Complaints.*

- a. Canary Yellow wants Your feedback. If You have any suggestions on how we can improve our Services or complaints You would like us to address, please contact us as set forth in [Section 15](#) (Contact Us). If You are a California resident, You may report complaints to the Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs. Other states may provide similar avenues for lodging complaints. Please check with Your state’s consumer protection authority.
  - b. If You are protected by the GDPR with respect to our use of Your information, You may lodge a complaint with a data protection authority for Your country or region. A list of EU data protection authorities is available at [http://ec.europa.eu/newsroom/article29/item-detail.cfm?item\\_id=612080](http://ec.europa.eu/newsroom/article29/item-detail.cfm?item_id=612080).
14. *Modifications to this Privacy Policy.* Canary Yellow reserves the right to modify and change this [Privacy Policy](#) at any time for our business purposes and to comply with changes in Applicable Law. The new [Privacy Policy](#) will be posted here and have the date of the most recent change. Your access to or use of the Website and/or Services following any changes to the [Privacy Policy](#) will constitute Your acceptance of such changes. Please feel free to print out a copy of the [Privacy Policy](#) for Your records.
15. *Contact Us.* If You have any questions about this [Privacy Policy](#), the Website, or Services, please contact us at [privacy@canary---yellow.com](mailto:privacy@canary---yellow.com).
16. *Definitions.* Below are definitions applicable throughout this [Privacy Policy](#). Additional terms are defined in context.
  - a. “Anonymous Information” has the meaning set out in Section 4.b (Anonymous Information). If You are protected by the GDPR with respect to our use of Your information, the term.
  - b. “Applicable Law” means statutes, regulations, and any other laws that apply to the Website or the Services. For example, if You are protected by the GDPR with respect to our use of Your information, the term “Applicable Law” includes the GDPR.
  - c. “GDPR” means the European Union General Data Protection Regulation.
  - d. “Legitimate Interest” means, for purposes of the GDPR, that there is a good reason for processing Your Personally Identifiable Information, and that the processing is carried out in a way that minimizes impacts (if any) on Your privacy rights and interests. The term “Legitimate interest” also refers to our use of information in ways that You would reasonably expect, based on Your relationship to us. For example, there is a Legitimate Interest in collecting and processing Your Personally Identifiable Information: (i) to



safeguard the Website, Services, networks, content, and related information and resources; (ii) to administer and generally conduct our business; and (iii) to prevent fraud.

- e. “Non-Personally Identifiable Information” has meaning set out in Section 4.b (Anonymous Information).
- f. “Personally Identifiable Information” has meaning as set out in Section 4.a (Personally Identifiable Information). If You are protected by the GDPR with respect to our use of Your information, the term “Personally Identifiable Information” has the same meaning as the term “personal data” under the GDPR.

17. *Relationship to Terms of Use, Customer Service Policy, and Other Contracts.* These [Privacy Policy](#) terms must be read in conjunction (i) with our [Terms of Use](#), (ii) our [Customer Service Policy](#); and (iii) with other agreements into which You may enter concerning the Website (if any). The provisions of our [Customer Service Policy](#) and [Terms of Use](#) are incorporated herein. To the extent these terms conflict with the terms of our [Customer Service Policy](#) and/or [Terms of Use](#), as it relates to “privacy,” the terms of this [Privacy Policy](#) shall control. Similarly, to the extent these terms conflict with the terms and conditions of any specific agreement You enter with us, the terms and conditions of such specific agreement will control.

18. *Effective Date.* The effective date of this [Privacy Policy](#) is November 9, 2020.

## **CUSTOMER SERVICE POLICY**

1. *Customer Service Policy.* This [Customer Service Policy](#) (the “Customer Service Policy”) applies to our website available at [canaryyellow.com](https://canaryyellow.com) and at <https://gallery.canaryyellow.com> (collectively, the “Website” or “Site”) operated by Canary Yellow, LLC (“Canary Yellow,” “we,” “our”, or “us”), as well as to the services available via the Website and otherwise (including online and offline third-party services) and information available on the Website (collectively, the “Services”). This [Customer Service Policy](#) describes how You (collectively, “You,” and/or “Your”) make purchases and payments, and governs customer verification, payment processing, delivery, returns, and exchanges. Please read this [Customer Service Policy](#) carefully; once You consent to this [Customer Service Policy](#) and its terms, it creates legal obligations on You and on Canary Yellow.

Our Website contains links to other websites for Your convenience and reference. We are not responsible for the privacy practices or the content of those sites.

2. *Making Purchases through the Website; Restrictions; Auction Sales; Buy Now.*

- a. *General Requirements.* The purchase of products through the Website is strictly limited to parties who can lawfully enter into and form contracts in accordance with the laws of the State of Delaware.
  - i. *Valid Age.* You may only make purchases through the Website if You are eighteen (18) years of age or older.
  - ii. *Provide Personal Information.* In order to make a purchase on this Website, You will be required to provide Your personal details, including but not limited to Your legal name, phone number, e-mail address, and other requested information indicated at the time of order (the "Order"). You represent and warrant that all personal information is valid and correct, and You confirm that You are the person referred to in the information provided.
  - iii. *Valid Address.* Purchases will only be shipped to a valid mailing address that matches Your billing address, is found in the databases of our couriers, and that is otherwise deemed acceptable by Canary Yellow in our sole and absolute discretion. Please refer to Sections 2 through 7 for additional terms related to the purchase, billing, and shipping of any product on this Website.
  - iv. *Authorization to Conduct Credit Check. Anti-Fraud, and Other Verifications.* By making a purchase, You expressly authorize us (and our third-party service providers) to perform credit checks, authentication of Your identity and address, and to conduct anti-fraud and other verifications.
  - v. *Other Consents.* By making purchases, You expressly consent to the terms and conditions in Section 2.b (Purchase Limitations and Restrictions).
- b. *Purchase Limitations and Restrictions.* Without limiting the generality of any other section of this [Customer Service Policy](#), Canary Yellow reserves the right:
  - i. To limit or refuse any Order You place with us. Purchases on this Website are limited as follows:
    1. Purchases of clear canvas cases and art prints are limited to quantities of one (1) such SKU/item per household.
    2. Purchases of gradient chairs are limited to quantities of two (2) chairs total per household. For clients seeking to purchase more than two (2) chairs should contact Customer Service at [Section 11](#) (Contact).
    3. Purchases of products in our Marketplace are limited to those quantities identified in each product listing.

4. Purchases of all other products offered on the Website are limited to five (5) SKUs/items per household.

Purchases of quantities in excess of the above, whether in a single or multiple transactions, will be cancelled. These restrictions may include Orders placed by or under the same account, the same credit card, and/or Orders that use the same billing and/or shipping address.

- ii. Notwithstanding [Section 2.b.i](#), from time to time, Limited Edition (“Limited Edition”) products may also be offered on this Website. These Limited Edition products may be subject to certain limitations and restrictions, as determined by Canary Yellow at the time of offering.
  - iii. To verify the validity of all Orders and/or cancel any Order if we find evidence of fraud, tampering and/or any other violation of the terms and conditions of this Agreement.
  - iv. To cancel or refuse any Order You place with us that does not satisfy our Payment Method and Verification policy (as provided below).
  - v. To cancel or refuse any Order You place with us that does not satisfy our [Customer Service Policy](#), including but not limited to false or multiple request or notices for return or refunds.
  - vi. To refuse any request to customize or alter any Order after such order has been placed or delivered.
  - vii. To limit, restrict, or refuse any sale, product offerings, or shipments of items purchased through the Website, in our sole discretion, based upon territories (domestic and international). In the event that we are unable to or choose not to ship an item, You will be notified accordingly and the amount for that item charged in relation to Your Order will be refunded accordingly.
- c. *Pre-Orders*. From time to time, we may offer products on a “pre-order” basis. Pre-ordered products may be subject to additional terms and conditions, including delivery times, geographic restrictions, or the like. By Your placement of an order for any such products, You agree to those pre-order terms. You will also be required to pay in advance the full amount due as a deposit, inclusive of shipping fees, taxes and import duties, as applicable.
  - d. *Marketplace Products and Sales*.

- i. Our Services include an online marketplace where You may browse, buy, bid on, select artwork, collaborations, and other products (“Marketplace Products”). Our Services also include features that enable You to contact and communicate with us or our marketplace sellers (“Marketplace Sellers”) about the Marketplace Products listed on our Website.
- ii. You may be required (at our sole discretion) to provide additional information and/or to meet additional eligibility requirements before You are allowed to bid and/or buy in auctions, and may also be required to provide additional documentation (including, without limitation, financial information) before being permitted to do so.
- iii. In addition to our standard [Customer Service Policy](#), additional terms and conditions may apply to Marketplace Products. It is Your responsibility to read them carefully before buying, bidding on, inquiring about any Marketplace Products available on the Website.
- iv. As a marketplace, unless otherwise agreed to or noted in writing, we do not own, take title to, have possession of, or sell the Marketplace Products listed, marketed, offered or sold on or in connection with our Services (whether online or offline). We do not sell Marketplace Products on behalf of the seller. All Marketplace Products is offered for sale and sold directly from the seller to the buyer, and we are not a party to any sale. We do not transfer, and are not responsible for transferring, legal ownership or physical possession of Marketplace Products from the seller to the buyer.
- v. We may facilitate communication or payment between buyers, prospective buyers, bidders, and sellers in connection with some property. However, such Services are offered for convenience only. We have no agency authority and are not the agent of any buyer, prospective buyer, bidder or seller for any purpose. Our involvement in any sale transaction is limited to providing this marketplace, and, in some cases, accepting payment from the buyer on behalf of the seller in connection with the sale of some property. We may, but are not obligated to, provide intermediary services between buyers, prospective buyers, bidders, and sellers in connection with customer service or dispute resolution matters. In the event we elect in our sole discretion to provide intermediary services, we will attempt to help you resolve disputes in good faith and based solely on our interpretation of our policies, in our sole discretion; we will not make judgments regarding legal issues or claims. Our decision is final and binding on all parties and cannot be appealed, challenged or reversed.
- vi. We do not endorse or control and are not responsible for the conduct (whether online or offline) of any buyer, prospective buyer, bidder or seller. We make no

representations or warranties as to the character, reputation, policies or practices of any buyer, prospective buyer, bidder or seller. We make no representations or warranties that any buyer, prospective buyer, bidder or seller will complete any transaction or otherwise perform as promised (whether or not we collect or agree to collect payment from any buyer on behalf of any seller).

- vii. We do not endorse or make any representations or warranties of any kind, express or implied, with respect to: (i) Marketplace Product listings on our Services, whether as to accuracy, completeness, truthfulness, reliability or otherwise; or (ii) any Marketplace Product listed, marketed, offered or sold (whether online or offline) by any Marketplace Seller and/or third party, whether as to quality, size, condition, description, provenance, attribution, authenticity, legality, merchantability, fitness for a particular purpose, or otherwise.
- viii. No statement made by any Marketplace Seller about any Marketplace Product (whether orally, in writing, on our Services or otherwise) will be considered a representation, warranty, or assumption of liability of any kind by us.
- ix. We reserve the right, at any time at our sole discretion, to refuse to list, de-list, or delay or suspend listing of any Marketplace Product on our Services. We will not be liable to any user for doing so.
- x. We may receive a commission from some sellers on some sales, subject to separate agreements between us and those sellers.

e. Auction Sales.

- i. *Additional Auction Terms.* Marketplace Sellers that use the Website are separate businesses from Canary Yellow and may have their own additional terms and conditions that apply to the Marketplace Products they offer for sale. Such terms and conditions may be posted in such Marketplace Product's listing on the Website or otherwise made available on the Services in connection with such Marketplace Product, and you are responsible for reviewing all relevant information available on the Website before buying or bidding on any property. If these conditions conflict with any Marketplace Seller's terms and conditions posted on the Website, the Marketplace Seller's applicable terms and conditions will apply to the extent of the conflict. However, in no event will any Marketplace Seller's terms and conditions constitute any representation, warranty, or assumption of liability of any kind by us.
- ii. *Bidder Registration and Requirements.* In order to bid, You will may be required to create an account and register as a bidder, providing any required contact and payment information, and completing any required forms. We may require You to provide documentation of Your identity, bank or other financial references,

and other qualifying information in order to bid at any time. We may also require that you deposit a portion of any bid that you place, in which case, if you are not the winning bidder, Your deposit will be refunded to You, and if You are the winning bidder, Your deposit may be used to offset the appropriate portion of the purchase price. In any case, we may refuse registration or bidding access to any bidder at any time at our sole discretion, including, without limitation, if we believe such action is necessary to comply with the law or to maintain the integrity or reputation of the Services. You represent and warrant that all information You provide is true and accurate, and that You will not permit any other person or entity to bid using your account or login credentials.

- iii. *Automatic Bidding.* Our online bidding system is an automatic bidding system. When you place a bid on the Website, You enter the maximum amount that you are willing to pay for the item (Your “Maximum Bid”). The amount You enter can be the next minimum bid indicated on the Marketplace Product or any greater amount. When You enter your Maximum Bid, the system will automatically place a bid for You at the amount of the next minimum bid, according to our automatic bidding increments. As the auction continues, the system will continue to bid automatically for You by increments (as determined in the Marketplace Product listing), up to Your Maximum Bid, only as much as necessary to maintain Your position as the highest bidder. We may modify, add or remove bidding increments at our sole discretion at any time before, during or after any auction.
- iv. *Bidder’s Responsibility.* Each bidder that places a bid is required to complete the transaction if they place the winning bid (or their bid is otherwise accepted), as a bid is a legally binding commitment to purchase the item if You are the winning bidder. When You place a bid on any item, You are accepting personal liability for the purchase price, any applicable taxes, any and all shipping and packing costs, and all other applicable charges. You also represent and warrant that any bids placed by You or on Your behalf are not the result of any collusive or other anti-competitive agreement and are otherwise consistent with federal and state antitrust law.
- v. *Our Discretion.* We reserve the right, at our absolute discretion, to: (i) reject or revoke Your registration or permission to bid at any time before, during or after any auction; (ii) reject, revoke or refuse to accept any bid at any time before, during or after any auction (even bids that have been previously confirmed, whether on the Website, by email, text message or otherwise); (iii) determine bidding increments and otherwise advance bidding on the Website at any time in any manner we may decide; and (iv) restart or continue bidding during or after any auction conducted on the Website.
- vi. *All Bids are Final.* Please note that all bids are final once submitted and may not be cancelled or modified by You, except with our express written consent under circumstances that we consider appropriate at our sole discretion. Potential

examples include if a bidder accidentally enters the wrong bid amount on the product (e.g. \$10,000 instead of \$1,000), if there is a material change to an item's listing on the Website after a bid is placed, or if an item is withdrawn from an auction. You must contact us immediately after placing the bid at issue in order to request to cancel or modify any bid placed in error.

vii. *Reserves.* Some items in an auction may be offered for sale subject to a reserve price ("Reserve"), as indicated on the product listing, which is the confidential minimum price below which the item will not be sold. An item's Reserve will not exceed its low pre-sale estimate, if applicable. When You bid on an item with a Reserve, if Your Maximum Bid meets or exceeds the Reserve, the system will automatically increase your bid to meet the Reserve, according to our automatic bidding increments. We may implement the Reserve for any item by opening bidding on behalf of the seller, and may continue to bid on behalf of the seller up to the amount of the Reserve, by placing consecutive or successive bids or bids in response to other bidders.

viii. *Countdown Clock and Closing.* We may display a countdown clock on the Services in connection with some auctions. This is provided for general informational use only and does not constitute any warranty as to the closing time of any item. If You are interested in an item, You should refer to its individual listing on the Website to see if bidding has closed and should not rely on the countdown clock. If a bid is placed on an item during the last five minutes before its original closing time, we will have the right at our sole discretion, but no obligation, to extend bidding for such item for an additional five minutes after the original closing time, and may continue to extend bidding for such item until five minutes pass without any bids being placed. The extension of one item's closing time will not affect the closing time of any other item. You may need to refresh or reload the bidding page on the Website to see if bidding for an item has closed.

ix. *Offline Auctions.* Some property available for bidding on the Website may be offered for sale in an auction conducted offline ("Offline Auction") by a party other than us ("Offline Auctioneer"). In such cases, we may collect bids on such property through the Website before the Offline Auction, and may transfer those bids to the Offline Auctioneer to execute against other bidders in the Offline Auction. Bidding for such property on the Website will close the day before the Offline Auction or at such other time as indicated on the Website. The Offline Auctioneer may have different bidding increments than us, and You agree that (as applicable) Your Maximum Bid may be executed in the Offline Auction according to the Offline Auctioneer's bidding increments without further notice to You, up to the amount of Your Maximum Bid. In any case, the Offline Auctioneer reserves the right to reject any bid at any time at its absolute discretion, and we and the Offline Auctioneer will have no liability whatsoever for any such rejection. After the Offline Auction, the Offline Auctioneer will contact winning bidders directly to collect payment, arrange for delivery or pickup of purchased property, and conduct any other applicable post-sale

activities, and we will have no responsibility to such bidders in these regards unless we expressly indicate otherwise. For example, we may sometimes accept payment from winning bidders on behalf of the Offline Auctioneer, in which case we will notify such bidders directly that we are doing so.

- x. *Bidding Information and Seller Communications.* If You use the Website to bid in any auction, You agree that we may provide the seller with Your name, email address and other contact information, and bidding information, and the seller may contact You about your bid, purchase, or participation in the auction.
  
  - xi. *Bidding Record.* Our own internal records related to bidding through the Website will be final and binding in all disputes. In the event of any inconsistency between our own internal records and any information provided to any bidder (whether on the Website, by email, text message, orally or otherwise), our own internal records will control.
  
  - xii. *Transfer of Title.* We do not transfer and are not responsible for transferring legal ownership of property from the seller to the buyer. The Uniform Commercial Code will apply to the transfer of ownership between the buyer and the seller, unless the buyer and the seller agree otherwise.
- f. *Buy Now.* You may be able to place orders to purchase some Marketplace Products on the Website using the online purchase feature. Where available, the online purchase feature will be indicated on the product listing with a "Buy Now" button. Buy Now purchase orders are binding on the buyer. When you place an order using the "Buy Now" feature, You are required to complete the transaction subject to these conditions. For some products, the "Buy Now" feature may be available in addition to competitive auction bidding, in which case the "Buy Now" feature will be available until the current bid for such property meets or exceeds the starting bid, or, if such property has a Reserve (see Section 2(e)(vii)), until the current bid for such property meets or exceeds the Reserve. If such property is ordered using the "Buy Now" feature, it will be withdrawn from the auction pending completion of the "Buy Now" sale. Each buyer that places an order using "Buy Now" is required to complete the transaction if they hit the "Buy Now" button. When You purchase products on any item, You are accepting personal liability for the total purchase price (as provided in the product listing). We reserve the right, at our absolute discretion, to: (i) reject or revoke your registration or permission to "Buy Now" at any time; and, (ii) reject, revoke or refuse to accept any such order or offer at any time (even orders or offers that may have been previously confirmed, whether on the Website, by email, text message or otherwise). **Please note that all offers and sales are final once submitted and may not be cancelled or modified by You.**

### 3. *Cart, and Electronic Transmissions.*



- a. *Items in Cart.* Please note that merchandise is only held for You once You have completed Your Order. Adding an item or items to Your shopping cart (“Cart”) does not reserve such item(s) for You or guarantee that You will be able to purchase such item(s) at a later date. An item can sell out while it’s sitting in Your Cart. If an item was removed from Your Cart, this may mean that we have sold out prior to You completing Your Order. Canary Yellow reserves the right, in its sole and absolute discretion, to change the prices offered on the website at any time, including without limitation, items that have been placed in Your Cart.
- b. *Electronic Transmissions.* The transmission of data or information over the internet or other forms of networks may not be secure, and is subject to possible loss, interception or alteration while in transit. Canary Yellow does not assume any liability for any damage You may experience or costs You may incur as a result of any electronic transmissions over the internet, other forms of networks or otherwise while using a Website. In no event will any information You provide on or through a Website be deemed to be confidential, create any fiduciary obligations to You on our part, or result in any liability to You on our part in the event that such information is inadvertently released by us or accessed by third parties without Your knowledge or consent.

#### 4. *Product Information; Prices; and Currency.*

- a. *Not Responsible for Errors.* Information (including, but not limited to, information relating to product descriptions, pricing, promotions, offers, and/or availability) provided by Canary Yellow in relation to the Website is believed to be accurate at the time of publication. However, there may sometimes be information on the Website that contains typographical errors, inaccuracies, or omissions. We reserve the right, in our sole and absolute discretion, to correct any such errors, inaccuracies or omissions and to change or update information or cancel Orders if any information on the Website is erroneous or inaccurate at any time without prior notice (including after You have submitted Your Order).
- b. *Product Prices.* Canary Yellow makes every effort to ensure that the prices and items listed on the Website are up to date and correct. However, the prices and items listed on the Website are NOT guaranteed and are subject to change without notice. When item and/or price changes are made, those changes may not be immediately reflected on the Website. Canary Yellow posts changes to the Website as often and as quickly as possible in light of our business priorities, but sometimes these postings may be delayed. In such cases, Canary Yellow reserves the right to change item availability and selection, and/or the prices that accompany those items.
- c. *Currency.* Canary Yellow utilizes certain third-party services to provide product prices in Your local currency. The local currency calculations are based upon those prices set by Canary Yellow in United States Dollars. Please be aware that fluctuations in currency exchange rates will affect the product prices in Your local currency. In addition,

as part of the conversion process, third-party service providers may round Your local currency price to adjust for the fluctuating currency exchange rate and conversion fees.

5. *Payment Method; Verification; Remedies for Non-Payment.*

- a. *Payment of Orders.* You have a legal obligation to pay for any Orders, bids, or “Buy Now” purchases made by You. By completing an Order through the Website, You are agreeing to pay, in full, the prices and all applicable taxes and specified shipping and handling and other fees in relation to Your Order, bid, or “Buy Now” purchase either by credit card or other permitted payment method. Payments are processed by a third party service provider and Canary Yellow does not collect Your financial information. Canary Yellow will only charge You the invoiced amount, but Your financial institution may charge You a service charge or other bank fees.
- b. *Time of Billing; Taxes, and Other Fees.* You will be billed for Your Order at the time Your Order is placed. With respect to any auction purchase, upon conclusion of the auction sale, you will be billed for the total purchase price. You will be entirely responsible for all applicable taxes related to Your Order (e.g. sales tax, use tax, VAT, Internet sales tax and/or any other taxes or levies that Canary Yellow is required to collect from You) under Applicable Law at the time You are billed. Taxes may depend on delivery location.
- c. *Change of Payment Methods.* Canary Yellow reserves the right, in its sole and absolute discretion, to change the permitted methods of payment, including without limitation, the credit cards and/or other types of payment options we are able or willing to accept, at any time. If complete payment for Your Order is not received and verified by us, Your Order will not be processed. If You do not complete or improperly complete Your Order, it may not be accepted or acknowledged.
- d. *Verification of Payment Information and Orders by Canary Yellow.*
  - i. In order to complete an Order through the Website, You may be required to provide certain additional information that is required to process Your Order. For example, You will be required to provide valid payment information (e.g., a valid credit/debit card number and expiration date) to facilitate payment of Your Order. You confirm that the credit/debit card that is being used, as applicable, is Yours or that You have been specifically authorized by the owner of the credit/debit card to use it. All credit/debit card purchases are subject to validation checks and authorization by the card issuer. If the issuer of Your payment card refuses to authorize payment to Canary Yellow, we will not be liable for any delay or non-delivery.
  - ii. All Orders are subject to verification by Canary Yellow at any time and for any reason. We reserve the right, in our sole and absolute discretion, to require

proof of identity in a form acceptable to Canary Yellow (i) to verify the legitimacy of any Order and/or other information; (ii) to verify that Your address matches the databases of our couriers; and/or (iii) for any other reason we deem necessary for the purposes of fulfilling an Order. In order to help protect You and Canary Yellow from fraudulent transactions, we may provide Your transaction-related information to a reputable third party organization to perform verification.

- e. *Remedies for Non-Payment.* Except as otherwise specifically provided herein, if for any reason You cancel any payment made by credit card or otherwise fails to pay the total purchase price with respect to any products in accordance with the [Customer Service Policy](#), Marketplace Seller terms and conditions, or other listed terms identified in the product listings, You will be in default ("Buyer Default") and will be liable for payment of such total purchase price and any other applicable charges. In the event of Buyer Default in connection with any products, without limiting any other rights or remedies available to us or the seller (whether at law, in equity, or under these [Customer Service Policy](#)), subject to the Uniform Commercial Code, the we or the Marketplace Seller, as the case may be, may cancel the sale of such property to the defaulting buyer and resell such property publicly or privately on terms the seller thinks fit, and the defaulting You will be liable for payment of any deficiency between the resale price obtained by the seller and the purchase price originally owed by You. In any case, the You will be liable to us, and the Marketplace Seller, as the case may be, for any and all costs, expenses (including reasonable attorneys' fees), and damages of whatever kind incurred in connection with such Buyer Default, the collection of any amounts due from You. In addition, if You for any reason fail to pay the total purchase price with respect to any products in accordance with Section 5(a), You irrevocably authorizes us, at our option, to charge You for any outstanding portion of such total purchase price using any credit card information You have provided on the Website or in connection with the purchase, whether or not You provided such credit card information in connection with the sale at issue.
6. *Shipping Methods and Costs.* Canary Yellow offers different shipping options based upon each particular item's size, weight, value, etc. Please review each offer carefully when selecting the shipping method You desire, as shipping methods may vary in price, delivery time, and other factors. The price for delivery will be made clear to You during the check-out process. Please note that we may not be able to ship to all valid addresses and, in such circumstances, we reserve the right in our sole and absolute discretion to cancel Your purchase transaction and Order. We will notify You by e-mail if we are unable to ship Your Order, including but not limited to reasons of invalid or unverified shipping addresses. In the event You receive a notice of invalid or unverified shipping addresses, You will have forty-eight (48) hours to contact customer support to provide a valid alternate shipping address. If (i) You are unable to provide an alternative valid shipping address within that time; (ii) we are we are unable to verify the alternative address You provide or the item You ordered is no longer available by the time Your alternative address is verified; or (iii) we are unable to ship to the territory of the alternative address, Your Order will be cancelled, and You will receive a refund (to the extent You have not acted in bad faith in providing such information to the Website). We further reserve the right not to offer expedited or other forms of shipping. Please refer to Section 7 for terms and conditions related to return of shipments.

a. *Freight Delivery Orders:* Some of our products are too large to ship by standard methods and must be shipped by freight. Freight shipments are also offered for certain combinations of products. We arrange freight shipments through our international and local vendors to facilitate seamless delivery from our warehouse directly to you.

i. Process.

1. You choose an available delivery option at checkout. Delivery options vary by item; all available options will be displayed in cart.
2. Your Order gets picked up from our warehouse. We will send You a shipping confirmation email to let you know your Order is on its way.
3. Your Order is shipped to a local delivery professional in Your area, who will contact You upon receipt to schedule a delivery date and time.
4. Upon delivery, You must inspect the conditions and packaging of Your Order. If you find any damage to the Order, You must notify the driver and immediately report the damage to us.

ii. Freight Delivery Service. Our freight delivery service covers the following:

- Delivered by appointment to the location of your choice.
- Includes item collection, packing, shipping, limited local carrier insurance (subject to the carrier's liability policies), and in-home delivery (unpacking and removal of packaging materials).

iii. Your Responsibilities. You are responsible for:

- ensuring that the Order being delivered will fit through any doorway, hallway, stairwells or elevators prior to delivery.
- Your signature is required upon delivery. You are responsible for Your failure to be available to sign for Your delivery at the agreed upon delivery date and time.
- Surcharges may apply for deliveries not on ground level or difficult to access locations. You are responsible for providing the local delivery professional with such information at the time You and the local delivery professional schedule the delivery date and time, including, without limitation, any residential or commercial building requirements (e.g., freight elevator access, delivery times, certificates of insurance).
- The local delivery professional will not perform installation, electrical wiring, or assembly functions.

iv. Front Door Service. In the event you are unable to meet the local delivery professional, You may elect to accept the Order by front door delivery. By electing front door delivery, you acknowledge and agree that our local delivery professional may deliver your Order, in our reasonable discretion, to Your front door, porch, landing area, garage, or inside or directly outside of your lobby (if You reside in an apartment or condominium).

- Front door service includes: local pickup, shipping, and local carrier insurance (subject to local carrier's policies).
- Front door services DOES NOT include: unpacking or removal of packaging materials.
- You are responsible for ensuring that the Order being delivered will fit through any doorway, hallway, stairwells or elevators prior to delivery.
- You assume risk of loss or other damage upon delivery to your front door.

b. *Parcel Courier Orders:* If Your order was shipped via small parcel courier (e.g., UPS, FedEx, etc.) You will not be called for a delivery date. Please track Your order online to ensure that You are available to receive the delivery.

7. *Delivery Time.* Due to the high volume of demand, and limited offers and sales, delivery can take longer than estimated, sometimes significantly so. This is especially true of delivery made outside of the United States. Any delivery timescales provided to You are estimates only. Orders may be delivered in one or more deliveries. Your purchases of products are insured up to the point of delivery. Upon delivery, all products purchased become Your responsibility. Canary Yellow does not accept any liability whatsoever for delayed delivery (including without limitation any delays which may be caused by any fulfilment houses which we may use). If You have any questions relating to delivery, please email us at support@canary---yellow.com.

a. *Scheduling Delivery Time of Freight Delivery.* For Orders by freight delivery, a local delivery professional will contact You 24 to 48 hours prior to the delivery date to schedule a convenient drop-off window, usually between 2 and 5 hours wide, but may be longer. It is Your responsibility to meet the truck at the delivery location. Failure to meet the truck will result in additional charges for re-delivery, storage or return of the Order. Any charges We receive from a missed or failed delivery are your sole responsibility, and must be paid by You prior to any re-delivery of your Order.

8. *Cancellations, Refunds and Return Policy.*

- a. Except as otherwise provided herein, all products are non-cancellable, non-returnable, and non-refundable, and sold "As-Is."
- b. *Permitted Returns.* Subject only to this Section 8.b, we shall have the sole discretion to elect whether to refuse any return request, inspect the item that is the subject of a return request (for which You shall incur any expense of return to us for such inspection), or honor the return request (a "Permitted Return"). If we grant a Permitted Return, we may elect, in our sole discretion and subject to availability, to replace the Permitted Return with available inventory of the same product, or refund the purchase price You paid for the product (inclusive of the initial standard delivery charge, or if part of a larger order, the standard per item delivery charge). For those Permitted Returns under Section 8.b.iii, we will not refund the shipping costs to return the Order. In addition, as it relates to all Orders, any Permitted Return that: (x) is not in its original

condition and original packaging (or re-packaged in accordance with Section 8.d (Return Shipping Guidelines); or (y) which we reasonably believe has been damaged by You, will not be accepted by us. Permitted Returns shall include only:

- i. *Damaged Items.* Only those items purchased by the original purchaser and received by the original purchaser in damaged condition from our manufacturer is capable of being deemed a Permitted Return. We do NOT consider the packaging or box part of the item in making this determination, and we will not offer refunds or replacements for any damage to such packaging or box. You shall notify Canary Yellow of receipt of any damaged item no later than five (5) days after delivery of the item to You (the "Damage Notice Period") by sending notice to support@canary---yellow.com, including (i) a description of the damage; (ii) photograph of the damaged item; and (iii) copy of the original receipt. Any notification or request by You beyond the Damage Notice Period shall be refused and rejected. Please be advised that due to the limited and special nature of the items, we may not be able to replace the item.
  
- ii. *Wrong Color, Wrong Size, or Wrong Item.* If You receive the wrong color, wrong size, or wrong item You purchased, please notify us at no later than five (5) days after delivery of the item to You to support@canary---yellow.com, including (i) a description of the item intended for purchase; (ii) photograph of the item received; and (iii) a copy of the original receipt (the "Wrong Color/Size/Item Notice"). Any notification or request by You beyond the Wrong Color/Size/Item Notice Period may be refused or rejected, in our sole discretion. Please be advised that due to the limited and special nature of the items, we may not be able to replace the item. We can only accept exchanges from the country which the shipment was sent. In addition, **please note that customized items cannot be returned or exchanged.** You are responsible for ensuring that the customization details are correct. No cancellation nor alteration may be made once a customized order has been placed. It is not possible to request customization for items after an order has been placed or delivered.
  
- iii. *European Union Consumer Rights Directive.* Where the EU Consumer Rights Directive (2011/83/EU) as implemented into national law in the various EU jurisdictions applies to You, unless one of the exceptions below applies, You have the right to cancel its order without giving reason within 14 days from the day on which You receive the Order. You must inform Canary Yellow of Your decision to cancel the order in writing within this period. Upon receipt Canary Yellow will reimburse all payments received from You for the Order purchased and You will incur no fee as a result of such reimbursement. However, reimbursement may be withheld until Canary Yellow has received the Order(s) back from You. You must send back the Items following the instructions of Canary Yellow. You will bear the cost of returning the Order to the Seller. You may lose this right if the value of the Order(s) returned diminishes due to the handling of the Order. The right of cancellation does not apply to: (a) the supply of Items made to the buyer's specifications (You are responsible for ensuring that the customization details are correct. No cancellation nor alteration may be made once a

customized order has been placed. It is not possible to request customization for items after an order has been placed or delivered.); (b) the supply of Items which may deteriorate or expire rapidly; (c) the delivery of Items which are not suitable for return due to health protection or hygienic reasons if unsealed by the buyer after delivery, or which are, after delivery, mixed with other items; (d) the delivery of sealed video or audio recordings or of sealed software if unsealed by the buyer after delivery; and (e) the setting aside stock that would result in difficulty to fulfill.

- c. *Return of Shipments By Shipping Carriers For Non-Acceptance or Wrong Address.* In the event Your Order is returned to us by a shipping carrier based upon Your failure to sign for the shipment and/or “return-to-sender wrong address,” Your Order will be cancelled, and You will receive a refund (less all expenses related to shipping and duties and a 5% fee restocking fee on the Order).
- d. *Return Shipping Guidelines.* Permitted Returns must be professionally packed (e.g., by FedEx, UPS, etc.) in accordance with this Section 8.d:
  - i. *Artwork, Posters, and Prints:* All artwork, posters and prints must (A) be protected in Glassine paper or acid-free archival tissue paper and plastic sheeting; (B) be placed between foam board (at least ½” thick) or two-ply cardboard; (C) use cardboard corner protectors to protect the edges of the artwork; and (D) be packaged in an art box consisting or corrugated foam inserts.
  - ii. *Clear Canvas Frames:* Clear Canvas Frames must (A) be protected in Glassine paper or acid-free archival tissue paper and plastic sheeting; (B) be placed between foam board (at least ½” thick) or two-ply cardboard; (C) use cardboard corner protectors to protect the edges of the frame; and (D) be packaged in an art box consisting or corrugated foam inserts.
  - iii. *Gradient Chair:* Gradient Chairs must (A) be wrapped in bubble wrap completely; and (B) be packaged in a crate or industrial box suitable for the protection and weight requirements of the chair. Box corners must be used to protect the integrity of the box to prevent damage to the chair.
  - iv. *Books:* All individual books, and those book sets must (A) be in original packaging; (B) wrapped in bubble wrap; and (C) packaged in an industrial box suitable for the protection and weight of the book(s) to prevent damage to the book(s) and book sets.
  - v. *Apparel, accessories, and leather goods:* All apparel, accessories, and/or leather goods must be sent back in their original packaging together with all the

materials received with the item/s (authenticity cards, dust bags, covers , tags, etc.) and should have a copy of the invoice inside. The item/s must be unharmed, unwashed, not worn or altered and must have all original security seals still attached. When trying on shoes, please be mindful not to scratch the soles or mark the shoe box. Briefs, swimsuits and bikini bottoms should be tried on over underwear, without removing the protective adhesive strip or it will not be accepted. This is for hygiene reasons. We will not accept any returns that have been worn or are soiled.

- vi. Limited Edition Products. As these items are highly collectible, please only remove the protective cover and packaging once You are certain that You wish to keep the item. Removal of the protective cover will result in refusal of any request to return. All limited edition products must be returned in its original packaging, and shipped in an appropriate industrial box suitable for the product's size and weight.

9. *Warranties.* Due to the special nature of the products offered, neither Canary Yellow nor Alaska Alaska LLC ("AA LLC"), nor any of their respective parents, subsidiaries or affiliates, makes any representation or warranty to You, the original purchaser, or any subsequent third-party purchaser that the products will be free from defects. The original purchaser or any subsequent third-party, accept the products "as-is," with the limitations below. Products received by the original purchaser in a damaged or materially defective manner from our manufacturer shall be covered by this limited warranty, subject to terms and conditions of this Customer Service Policy. Differences in character, color, design variations, or manufacturing variations are not considered damaged or defective products under this limited warranty. Acceptance of the product without providing Canary Yellow with notice as set forth in Section 8 (Cancellations, Refund and Return Policy) and/or any use thereafter, shall void any limited warranty available to the original purchaser. This limited warranty is the original purchaser's exclusive remedy and neither Canary Yellow nor AA LLC, nor any of their respective parents, subsidiaries or affiliates, authorize any person to create for it any other obligation or liability in connection with the products offered on this Site. Any limited warranty is limited to repair, replacement, or refund, at Canary Yellow's sole discretion. All complaints and notices must be resolved through the Permitted Return procedures (See Section 8.b). This limited warranty gives the original purchaser specific legal rights and the original purchaser may also have other rights, which vary from state to state. **THIS LIMITED WARRANTY IS THE ONLY WARRANTY PROVIDED BY CANARY YELLOW, AA LLC OR THEIR RESPECTIVE PARENTS, SUBSIDIARIES AND AFFILIATES REGARDING THE PRODUCTS ON THE SITE. TO THE MAXIMUM EXTENT PERMITTED BY LAW, CANARY YELLOW, AA LLC, AND THEIR RESPECTIVE PARENTS, SUBSIDIARIES AND AFFILIATES, EXPRESSLY DISCLAIM, AND YOU HEREBY WAIVE, ALL OTHER WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE THAT MAY BE APPLICABLE TO CANARY YELLOW'S PRODUCTS IS LIMITED BASED ON THE INDIVIDUAL ITEM WARRANTY, IF ANY. NEITHER CANARY YELLOW NOR AA LLC, NOR ANY OF THEIR RESPECTIVE PARENTS, SUBSIDIARIES OR AFFILIATES, SHALL BE LIABLE FOR ANY CONSEQUENTIAL OR INCIDENTAL DAMAGES OR FOR ANY CLAIMS, DAMAGES, EXPENSES OR LOSSES, EVEN IF ANY SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING THE FOREGOING WARRANTIES, IN NO EVENT WILL CANARY YELLOW, AA LLC OR THEIR RESPECTIVE PARENTS, SUBSIDIARIES AND**



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10. *Relationship to Terms of Use, Privacy Policy, and Other Contracts.* These [Customer Service Policy](#) terms must be read in conjunction (i) with our [Terms of Use](#), (ii) our [Privacy Policy](#); and (iii) [Customer Service Policy](#) with other agreements into which You may enter concerning the Website (if any). The provisions of our and Terms of Use are incorporated herein. To the extent these terms conflict with the terms of our and/or [Terms of Use](#), as it relates to "Purchases," "Orders," "Shipping," and "Returns and Refunds" the terms of this [Customer Service Policy](#) shall control. Similarly, to the extent these Terms conflict with the terms and conditions of any specific agreement You enter with us, or the terms contained on the Website for a specific item, if any, the terms and conditions of such specific agreement or on the Website for such specific item, as applicable, will control.

11. *Contact.* If You have any questions about these Terms, the practices of this Website, or Your dealings with this Website, please contact us at:

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1201 N. Market Street, Suite 111  
Wilmington, DE 19801  
Phone: 310.923.7317  
Email: support@canary---yellow.com

12. *Effective Date.* The effective date of this Customer Service Policy is November 9, 2020.