

These Terms of Use are effective as of July 2, 2021

**NOTICE REGARDING DISPUTE RESOLUTION. *THESE TERMS CONTAIN TERMS THAT GOVERN HOW CLAIMS BETWEEN YOU AND US RELATING TO YOUR USE OF THE PROPERTIES WILL BE RESOLVED* FOR EXAMPLE, SECTION 20 CONTAINS AN ARBITRATION AGREEMENT AND WAIVER OF CLASS ACTION WHICH STATES THAT WE MUST ARBITRATE INSTEAD OF GOING TO A COURT BEFORE A JUDGE AND JURY AND THAT ALL SUCH ARBITRATION CLAIMS MUST BE BROUGHT IN YOUR INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS REPRESENTATIVE OR MEMBER OR OTHERWISE ON BEHALF OF OTHERS IN ANY PURPORTED CLASS, COLLECTIVE OR REPRESENTATIVE PROCEEDING.**

**Warranty Disclaimers and liability limitations.** While there are significant points throughout these Terms, please note Section 15 and 16 contain important limitations on our liability.

Welcome to Candy Digital. The following terms of use (the "Terms of Use") contain the terms and conditions applicable to you and your access to and use of this website, [www.candy.com](http://www.candy.com), including the mobile version (collectively, the "Website"), and our mobile application (the "App"), if applicable, in each case regardless of how accessed (collectively, the Website and the App are referred to as the "Properties"). The Properties are owned and operated by Candy Digital, Inc., a Delaware corporation, and/or its affiliates ("Candy Digital," "we", "us", "our"). Your use of the Properties (and any other feature, content or application offered by the Properties) is at all times subject to these Terms of Use, as the same may be modified by us, and all applicable laws, rules and regulations. Please read these Terms of Use carefully. If you are dissatisfied with these Terms of Use or the Properties or any material on the Properties, your sole and exclusive remedy is to discontinue using the Properties.

**1. Acceptance of Terms of Use. BY ACCESSING AND USING THE PROPERTIES, YOU AGREE THAT YOU HAVE READ, UNDERSTAND AND AGREE TO BE LEGALLY BOUND BY THESE TERMS OF USE.** If you do not agree to be bound by these terms of use, you may not access or use the Properties. These Terms of Use may be prospectively changed, modified, or altered by us in our sole discretion at any time without prior notice. If we materially change the Terms of Use, we will notify you through a notice, updated Terms of Use on the Properties or by email (sent to the email address specified in your account, if any), prior to or upon the change(s) becoming effective. Accordingly, when you access or use the Properties,

you should check the date of the Terms of Use and be aware of any changes since the last version. Your continued use of the Properties following the posting of any changes to these Terms of Use means that you accept such changes. Your access to and use of the Properties will be governed by the Terms of Use in effect at the time of such access or use.

2. **Other Sources of Terms and Conditions; Promotions and Coupons.** Certain provisions of the Terms of Use may be superseded by expressly designated legal notices, rules or other terms located on particular pages of the Properties, and, additionally in order to participate in or use certain services you may be required to agree to additional or different terms and conditions ("Additional Terms"). Sales hosted on Third Party Sites (defined in Section 5 below) are governed by the Third Party Sites' Additional Terms and any other applicable Additional Terms. Silence with respect to a particular term in either these Terms of Use or any Additional Terms does not constitute a conflict.

3. **Use of the Properties.** The content and information posted by us on the Properties may be used only for informational, personal or other purposes authorized by us. By accessing and using the Properties, you represent and warrant that: (a) all information you submit is truthful and accurate; (b) you will maintain the accuracy of such information; (c) you are 18 years of age or older; and (d) your use of the Properties does not violate any applicable law, rule or regulation. While we may sell products for children's use, these products are intended for sale only to adults. The Properties are general use sites and not targeted toward children under the age of 16. The Properties are intended for use by residents of the United States or non-residents that agree to use the Properties in accordance with U.S. laws, these Terms of Use and the [Privacy Policy](#). By using the Properties, you further represent and warrant that you (i) are located inside the U.S. or (ii) are located outside the EU and agree to be bound by U.S. laws. Use of and access to the Properties is void where prohibited.

4. **Unauthorized Use.** You may not use the Properties for any unauthorized use or for any illegal or unlawful purpose. Any unauthorized use or violation of these Terms of Use may immediately and automatically terminate your right to use and access the Properties and may subject you to legal liability. Appropriate legal action may be taken for any illegal or unauthorized use of the Properties. We may remove any unauthorized content, links, etc. without notice. Some examples of unauthorized, illegal or unlawful use of the Properties include, but are not limited to:

- Copying, modifying, displaying, performing, distributing, republishing, or retransmitting any content or material (including, by way of example, images and text), in whole or in part, from/on the Properties without our prior written consent;

- Collecting usernames and/or email addresses of users for the purpose of sending unsolicited email;
- Using a framing or similar technique without our prior written permission;
- Creating or maintaining any link from another website to any page on the Properties without our prior written permission;
- Criminal or tortious activity, including fraud, spamming, spimming (spam by instant message), sending of viruses or other harmful files, copyright infringement, patent infringement, or theft of trade secrets;
- Covering or obscuring the banner advertisements on the Properties, if any, via HTML/CSS or any other means;
- Any automated use of any system, such as using scripts to alter content;
- Interfering with, disrupting, or burdening the Properties or the networks, systems or services connected to the Properties;
- Using any automated system or software to extract data from the Properties for commercial purposes (including "screen scraping");
- Attempting to impersonate another user or person;
- Using the account, username, or password of another user or disclosing your password, as applicable, to any third party or permitting any third party to access your account;
- Displaying an advertisement, or accepting payment or anything of value from a third person in exchange for your performing any commercial activity on or through the Properties on behalf of that person, such as placing commercial content on the Properties;
- Using the Properties for any harassing, threatening, libelous, abusive, obscene or privacy-invading purposes;
- Attempting to include any of the following in products that are offered for sale on the Properties and that permits user-added content: (i) images that contain obscene, profane, pornographic or otherwise objectionable content; (ii) images, names or likenesses owned by any third party without such third party's authorization; (iii) any images of a person who has current or remaining collegiate athletic eligibility; or (iv) any images that include the name, image, or likeness of any celebrity, public figure or individual who has not authorized the use of his or her name, image or likeness; or
- Using the Properties in a manner inconsistent with any applicable law, rule or regulation.

5. **Links to Third Party Sites; Advertisers.** The Properties may provide you with links or other access to other websites, services, products or content of third parties, including the Other Platforms, as defined in Section 9 below ("Third Party Sites"). We have no control over, and do not necessarily endorse, any Third Party Site's services, products or content. You acknowledge and agree that you access such Third Party Sites at your own risk and are wholly responsible for making your own independent judgment regarding your use or interaction with the same. We recommend that you read the terms of use and privacy policies of each Third-Party Site that you access.

6. **Privacy Policy.** You agree to our collection, use and sharing of your information, including personal information, as set forth in our [Privacy Policy](#) ("Privacy Policy"). All provisions of the [Privacy Policy](#) are incorporated by reference herein.

7. **Products, Content and Specifications.** The inclusion of any products or services on the Properties does not imply or warrant that these products or services will be available at any particular time or that the listed attributes are accurate or complete. The actual color of products you see will depend in part on your computer system, and we cannot guarantee any color or texture or detail of actual products will be accurate. We do not endorse and have not verified the accuracy or reliability of any opinion or statement made on the Properties by any third party, including but not limited to customers, manufacturers, distributors or suppliers of products and services sold through the Properties, and product packaging and material may contain additional or different information. Always read labels, warnings, directions or other materials provided with the product before using. In addition, we may make changes to information about price, availability or other product attributes without notice.

8. **Property; Intellectual Property.** All content of the Properties (including, without limitation, text, graphics, icons, images, clips and software) is protected by copyright, trademark, and other laws. Names, logos, taglines, icons and marks on the Properties are the exclusive property of Candy Digital, Inc. and/or one of its affiliates, all rights reserved, and may not be used by you without our prior written permission. Unless otherwise indicated, all other intellectual property appearing on the Properties is the property of its respective owner. We reserve all rights not expressly granted in and to the Properties' content and services.

9. **User-Generated Content.** Users may be able to post content in certain areas on the Properties or on other websites or platforms that we own or operate, including on social media platforms such as Facebook, Instagram, Twitter and Pinterest ("Other Platforms"). You are solely responsible for any content (including, without limitation, photos, artwork, videos, text, graphics, and other information) you upload, post, display or otherwise provide to us through the Properties or Other Platforms ("User Content"). Any User Content you post or provide,

including any questions, reviews, comments and suggestions, will be treated as non-confidential and non-proprietary. By sharing User Content with us, you grant us a worldwide, royalty-free, perpetual, irrevocable and transferable right to use, copy, reproduce, perform, distribute, display, publish, sell, and create derivative works of, the User Content, and to grant and authorize sub-licensees of the foregoing. Additionally, we shall be free to use any ideas, concepts, know-how or techniques contained in such User Content for any purpose whatsoever, including, without limitation, developing, manufacturing and marketing products and services which incorporate such User Content. You further agree that this means that any User Content may appear on sites other than the Property through which you submitted your User Content including but not limited to Other Platforms. You represent and warrant that: (a) you own the User Content posted by you on the Properties or otherwise have the right to grant the license set forth in this Section 9; (b) your User Content does not violate the privacy rights, publicity rights, intellectual property rights, or any other rights of any person or entity; and (c) the posting of User Content on the Properties does not result in a breach of any contract between you and a third party. You agree that you will not use a false or misleading email address, impersonate another person or entity or otherwise mislead with respect to any User Content. You agree to pay for all royalties, fees and other monies owing to any person by reason of any User Content you post on the Properties. We are under no obligation to screen or monitor User Content but may review User Content from time to time at our sole discretion to review compliance with these Terms of Use. We may reject, refuse to post, edit or remove any User Content at any time without notice, for any or no reason.

**10. Digital Millennium Copyright Act (DMCA) Notice.** Materials (including User Content) may be made available via the Properties by users and other third parties not within our control. We are under no obligation to, and do not, scan content posted on the Properties for the inclusion of illegal or impermissible content. However, we respect the copyright interests of others. It is our policy not to permit materials known by us to infringe another party's copyright to remain on the Properties.

If you believe any materials on the Properties infringe a copyright, you should provide us with written notice that at a minimum contains:

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

Identification of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works at a single online website are covered by a single notification, a representative list of such works at that website;

Identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit us to locate the material;

Information reasonably sufficient to permit us to contact the complaining party, such as an address, telephone number, and, if available, an electronic mail address at which the complaining party may be contacted;

A statement that the complaining party has a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law; and

A statement that the information in the notification is accurate, and under penalty of perjury, that the complaining party is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

All DMCA notices should be sent to our designated agent as follows:

Candy Digital

180 Madison Avenue,

21<sup>st</sup> Floor

New York, NY 10016

Attn: Legal Department

OR

[fans@candy.com](mailto:fans@candy.com) with the subject line DMCA

11. **No Ideas Accepted**. We do not accept any unsolicited ideas to this Website from outside Candy Digital including without limitation suggestions about advertising or promotions, or merchandising of any products, additions to our services, or changes in methods of doing business. We may already be working on or may in the future work on a similar idea. If, notwithstanding this policy, you submit an unsolicited idea to this Website, you understand and acknowledge that Candy Digital has no obligation to acknowledge your submission, such idea is not submitted in confidence and we assume no obligation, expressed or implied, by considering it, and no confidential relationship is established between you and Candy Digital. By submitting your idea, you represent that you are authorized to do so, and your submission does not include the confidential information, proprietary know-how, trade secrets, or other intellectual property of any other person or party. Candy Digital's use or distribution of your submission will not give rise to any claims against Candy Digital or its affiliates. You hereby grant us an irrevocable, perpetual, world-wide license to use the idea and any associated

intellectual property in any manner, in any medium now known or hereafter developed, without compensation to you.

12. **Termination of Access and/or Account**. In addition to any right or remedy that may be available to us under these Terms of Use or under applicable law, we may limit, suspend, or terminate your access to the Website or Other Platforms (including, without limitation, your account registration and your ability to post User Content), at any time, with or without notice, and with or without cause. We also may refer any information on illegal activities, including your identity, to the proper authorities.

13. **Term**. These Terms of Use shall remain in full force and effect while you use or access the Properties or have an account with the Properties. See our [Privacy Policy](#) for instructions on how to modify or delete your account. Sections 2-6, 8-11 and 14-21, together with all other terms that reasonably may be interpreted as surviving, shall survive any termination of these Terms of Use.

14. **Indemnity**. You agree to defend, indemnify and hold us, our subsidiaries, affiliates, suppliers, and licensors and each of our respective officers, agents, partners and employees (the "Candy Digital Parties") harmless from any loss, liability, claim, or demand, including reasonable attorneys' fees, due to or arising out of (1) your use of the Properties in violation of these Terms of Use and/or arising from a breach of these Terms of Use (including, without limitation, any breach of your representations and warranties set forth herein) (2) any allegation that any content or other material you have submitted or transmitted to the Properties infringe, misappropriate or otherwise violate the copyright, trademark, trade secret or other rights of any party; (3) your violation of applicable law, and/or (4) your activities or omissions in connection with the Properties.

15. **DISCLAIMER OF WARRANTIES**. YOUR USE OF THE PROPERTIES IS AT YOUR SOLE RISK. TO THE FULLEST EXTENT PERMITTED BY LAW, YOU ARE RESPONSIBLE FOR COMPLYING WITH THESE TERMS OF USE AND ALL APPLICABLE LAWS WITH RESPECT TO THE USE OF THE PROPERTIES. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THESE TERMS OF USE, THESE PROPERTIES, INCLUDING ALL INFORMATION AND CONTENT MADE AVAILABLE ON OR ACCESSED THROUGH THE PROPERTIES, ARE MADE AVAILABLE TO YOU "AS IS" WITHOUT WARRANTIES OR REPRESENTATIONS OF ANY KIND. FURTHER, TO THE FULLEST EXTENT PERMISSIBLE BY LAW, WE DISCLAIM ALL WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE OF THE

PROPERTIES, THEIR CONTENTS AND THE PRODUCTS OR SERVICES LISTED OR PURCHASED THROUGH THE PROPERTIES. WE DO NOT WARRANT THAT THE FUNCTIONS CONTAINED IN THE PROPERTIES OR ANY MATERIALS OR CONTENT CONTAINED THEREIN WILL BE UNINTERRUPTED OR ERROR FREE, THAT DEFECTS WILL BE CORRECTED, OR THAT THE PROPERTIES OR THE SERVER THAT MAKES IT AVAILABLE IS FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. TO THE FULLEST EXTENT PERMITTED BY LAW, WE SHALL NOT BE LIABLE FOR THE USE OF THE PROPERTIES, INCLUDING, WITHOUT LIMITATION, THE CONTENT AND ANY ERRORS CONTAINED THEREIN. THIS DISCLAIMER CONSTITUTES AN ESSENTIAL PART OF THESE TERMS.

16. **LIMITATION ON LIABILITY.** IN NO EVENT SHALL THE CANDY DIGITAL PARTIES BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES, INCLUDING LOST PROFITS, LOSS OF GOODWILL, LOSS OF REPUTATION, COST OF COVER DAMAGES OR INTANGIBLE LOSSES OF ANY KIND ARISING FROM YOUR USE OF THE PROPERTIES, YOUR INABILITY TO USE THE PROPERTIES, OR THE PRODUCTS OR SERVICES AVAILABLE THROUGH THE PROPERTIES, EVEN IF THE CANDY DIGITAL PARTIES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. FURTHER, TO THE FULLEST EXTENT PERMITTED BY LAW, IN NO EVENT WILL THE CANDY DIGITAL PARTIES BE LIABLE FOR ANY DIRECT DAMAGES EXCEEDING THE GREATER OF THE FEES YOU PAID TO US FOR PRODUCTS AND SERVICES THAT ARE THE SUBJECT OF THE CLAIM AT ISSUE IN THE TWELVE MONTHS PRECEDING THE CLAIM OR TEN UNITED STATES DOLLARS.

17. **Third Party Transactions.** Through your use of the Properties, you may have the opportunity to engage in commercial or other transactions with other users, vendors and other third parties. You acknowledge that all transactions relating to any products or services offered by any third party, including but not limited to the purchase terms, payment terms, warranties, guarantees, maintenance and delivery terms relating to such transactions, are agreed to solely between the third party seller or purchaser of such products and services and you, and that you will look solely to such third party to enforce any of your rights. In the event of any problem with the products or services that you have purchased from a third party you agree that you will address such issues with the third party but all limitations of liability and other rights of Candy Digital shall apply nonetheless. ANY WARRANTY THAT IS PROVIDED IN CONNECTION WITH ANY PRODUCTS, SERVICES, MATERIALS OR INFORMATION AVAILABLE ON OR THROUGH THE PROPERTIES FROM A THIRD PARTY IS PROVIDED SOLELY BY SUCH THIRD PARTY AND NOT BY US.

18. **U.S. Export Controls.** Software made available to you by the Properties (the "Software"), if any, is subject to U.S. export controls. No Software may be downloaded from the Properties or otherwise exported or re-exported in violation of U.S. export laws. Downloading or using the Software is at your sole risk.

19. **Governing Law.** These Terms of Use and your use of the Properties will be governed by federal and Delaware law, regardless of the conflict of law provisions thereof and regardless of where you live or from where you access or use the Properties.

20. **Arbitration; No Class Action.** PLEASE READ THIS SECTION CAREFULLY. IT MAY SIGNIFICANTLY AFFECT YOUR LEGAL RIGHTS, INCLUDING YOUR RIGHT TO FILE A LAWSUIT IN COURT. Use or accessing the Properties or Offers constitutes your acceptance of this Arbitration provision.

As a condition of using the Properties, you and we agree that any and all disputes, claims and causes of action (collectively, "Claims") arising out of or connected with the Properties (except for small claims court Claims, if applicable) shall be resolved exclusively by binding arbitration under the rules of the American Arbitration Association ("AAA"), including the Supplementary Procedures for Consumer-Related Disputes, for full and final settlement of such Claim applying the Federal Arbitration Act and other federal arbitration laws. YOU UNDERSTAND AND AGREE THAT YOU ARE WAIVING YOUR RIGHT TO SUE OR GO TO COURT TO ASSERT OR DEFEND YOUR RIGHTS UNDER THIS CONTRACT. YOU AND WE ALSO AGREE THAT (A) ANY CLAIMS WILL BE RESOLVED INDIVIDUALLY NOT AS A PLAINTIFF OR CLASS REPRESENTATIVE, MEMBER OF OTHERWISE ON BEHALF OF OTHERS IN ANY PURPOSED CLASS, COLLECTIVE, OR REPRESENTATIVE PROCEEDING AND NOT THROUGH ANY CLASS ACTION, (B) IF A CLAIM PROCEEDS IN COURT ANYWAY, WE BOTH WAIVE ANY RIGHT TO A JURY TRIAL; AND (C) EITHER YOU OR WE MAY SEEK A COURT INJUNCTION REGARDING INTELLECTUAL PROPERTY INFRINGEMENT. ARBITRATION DOES NOT INVOLVE A JUDGE OR JURY. Although court review of an arbitration award may be limited, an arbitrator is empowered to award the same damages and relief as a court, including injunctive relief or statutory damages. Notwithstanding the foregoing, either party may seek temporary or emergency equitable relief to enforce its rights in any court of competent jurisdiction.

You may seek arbitration of a Claim by contacting our registered agent at: Incorporating Services, Ltd., 3500 S Dupont Highway, Dover, DE 19901. The arbitration may be conducted via telephone, written submissions or in person in a mutually agreed location. Payment of all filing, administration, arbitrator and/or mediator fees ("Fees") will be governed by AAA's rules. The AAA's rules are available at: [www.adr.org](http://www.adr.org) or call 800-778-7879 (toll-free) for instructions on how to obtain a copy. Unless the AAA arbitrator determines that your Claim was frivolous, we will (i) reimburse you for the Fees paid by you, and (ii) will not seek reimbursement from you for our attorneys' fees and costs associated with the arbitration. You and we further agree that an award and any judgment confirming it only applies to the arbitration in which it was awarded

and cannot be used in any other proceeding except to enforce the award itself and any post-arbitration action seeking to enforce an arbitration award or action seeking equitable or injunctive relief shall be brought exclusively in the courts of the State of Delaware, or the United States District Court for the District of Delaware. For any Claims that are not subject to arbitration, if any: (a) the exclusive jurisdiction and venue for proceedings involving Claims shall be the courts of competent jurisdiction sitting within the State of Delaware (the "Forum"), and the parties hereby waive any argument that any such court does not have personal jurisdiction or that the Forum is not appropriate or convenient; (b) you and we waive any and all rights to trial by jury with respect to any Claims.

21. **Miscellaneous.** We may give you notice of certain events from time to time. You hereby acknowledge and consent that such notices will be effective upon our posting them on the Properties or (if we choose to do so in our sole discretion) delivering them to you through email if you have provided us with your accurate email address. Our failure to exercise or enforce any right or provision of these Terms of Use shall not operate as a waiver of such right or provision. The section titles in these Terms of Use are for convenience only and have no legal or contractual effect. These Terms of Use and your account on the Properties are personal to you and may not be transferred or assigned. Our performance under these Terms of Use is subject to existing laws and legal process, and nothing contained in these Terms of Use is in derogation of our right to comply with governmental, court and law enforcement requests or requirements relating to your use of the Properties or information provided to or gathered by us with respect to such use. If any part of these Terms of Use is deemed to be illegal, invalid, void or for any reason unenforceable, then the invalid or unenforceable provision will be deemed superseded by a valid, enforceable provision that most closely matches the intent of the original provision and the remainder of the Terms of Use shall be unaffected and shall continue to be fully valid, binding, and enforceable. These Terms of Use, together with any additional terms and conditions or policies referred to and incorporated herein (including the [Privacy Policy](#) and/or additional terms applicable to various parts of the Properties), constitute the entire understanding between you and us. For the avoidance of doubt, these Terms of Use apply solely to the extent permitted by law.

22. **Contact Information.** Candy Digital, Inc. 180 Madison Avenue, 21<sup>st</sup> Floor, New York, NY 10016.