

EYEXAM of California, Inc.
WEBSITE TERMS OF USE

(EFFECTIVE AS OF JULY 25th, 2023)

TERMS OF USE

To download and/or print these Terms of Use (“TOU”), click [here](#).

IMPORTANT - These TOU together with our [Privacy Policy](#), terms of sale and returns policy ("Additional Policies") are a legal agreement (“Agreement”) between you ("You", or “you”) and Luxottica of America Inc., its parents, subsidiaries, affiliates, representatives, officers, and directors (collectively, “Luxottica”, “us”, “we”, or “our”) and govern your use of this website.

BY ACCEPTING THIS AGREEMENT, YOU AGREE ALL DISPUTES WILL BE RESOLVED USING BINDING ARBITRATION AND CONSENT TO A CLASS ACTION WAIVER. Please read this TOU carefully before using our website and any online services software or apps (collectively “Services”) provided by Luxottica that post a link to this TOU. By using or continuing to use our Services, You agree to be bound by and accept the TOU in effect at the time of such use. Your use of our Services is expressly conditioned upon your agreement to these TOU.

Luxottica may make changes to these TOU, from time to time, in its sole discretion, by updating this posting on our website without notice to you. Your continued use of our website following the posting of a new version of the TOU constitutes your acceptance of any such changes. Accordingly, whenever you visit our website, check to see if a new version has been posted.

1. **LICENSE GRANT.** The Service and all of its content (“Content”), including all copyrights, patents, trademarks, service marks, trade names and all other intellectual property rights therein (“Intellectual Property”), are owned or controlled by Luxottica, our licensors, and certain other third parties. All right, title, and interest in and to the Content and Intellectual Property available via the Service is the property of Luxottica, our licensors or certain other third parties, and is protected by US and international copyright, trademark, trade dress, patent and/or other Intellectual Property and unfair competition rights and laws to the fullest extent possible. Luxottica owns the copyright in the selection, compilation, assembly, arrangement, and enhancement of the Content on the Service. Luxottica hereby grants to You a personal, revocable, limited, non-exclusive, and non-transferable license to use the Services solely for your personal use, which does not include activities related to any commercial, entrepreneurial or professional activity, provided that You comply with the terms and conditions of this TOU. Notwithstanding the foregoing, You may not modify, translate, decompile, create derivative work(s) of, copy, distribute, disassemble, broadcast, transmit, publish, remove or alter any proprietary notices or

labels, license, sublicense, transfer, sell, mirror, frame, exploit, rent, lease, private label, grant a security interest in, or otherwise use the Services in any manner not expressly permitted herein.

2. **USER REPRESENTATIONS.** In order to use the website, you must be 18 years or older and have the power to enter into a binding contract with us and not be barred from doing so under any applicable laws; or 16 years or older and have your parent or guardian's consent to the Agreement. The website is not intended for children under the age of 16 and no person under the age of 16 may use the website. If you use the website, you are confirming that you are at least 16 years old.
3. **PROPRIETARY RIGHTS.** This TOU provides only a limited license to You to access and use the Services. Accordingly, You expressly acknowledge and agree that Luxottica transfers no ownership or Intellectual Property interest or title in and to the Services to You or anyone else. All text, graphics, user interfaces, visual interfaces, photographs, sounds, artwork, computer code (including html code), programs, software, products, information, and documentation as well as the design, structure, selection, coordination, expression, "look and feel," and arrangement of any content contained on or available through the Services, unless otherwise indicated, are owned, controlled, and licensed by Luxottica. EYEXAM of California Inc., the EYEXAM of California Inc. logo(s), and all other names, logos, and icons identifying EYEXAM OF CALIFORNIA INC. and its products and services are proprietary trademarks of EYEXAM of California Inc. and any use of such marks, including, without limitation, as domain names, account identifiers, or as search terms, without express written permission is strictly prohibited. Other product and company names or logos mentioned or displayed on or through the Services may be the trademarks and/or service marks of their respective owners
4. **CONTENT**
 - a. Content submitted by You. From time to time We may make available on this Services bulletin boards, chat rooms, comment areas, billboards, forums, news groups, postings sections or similar communication facilities that offer the opportunity to post, publish, distribute, transmit, broadcast, or otherwise make available on or submit through the Services. In such instances, We welcome your comments on our Services. However, any notes, messages, billboard postings, ideas, suggestions, or other material which You submit to Luxottica ("User-Generated Content") must not harass, slander, malign, libel, defame, threaten, or otherwise violate any rights of any third-parties and must not include any profanity, obscene, indecent, pornographic, defamatory, unlawful, or otherwise objectionable material all as determined by us. Furthermore, User-Generated Content must not infringe the intellectual property rights, privacy rights, rights of publicity, or other proprietary rights of any person or entity. Upon your submission of any and all User-Generated Content, You grant Luxottica a non-exclusive, unrestricted, unconditional, unlimited, cost-free, royalty-free, perpetual, irrevocable right and license to use, reproduce,

copy, sell, re-sell, modify, alter, publish, publicly display, publicly perform, record, post, translate, transmit, broadcast, disclose, distribute, make derivative works of, and otherwise use the User-Generated Content, such that Luxottica shall be and is entitled to use such User-Generated Content for any type of use and exploit in any manner whatsoever, including promotional purposes and advertising, in perpetuity, in any and all media whether now known or hereafter devised, without any compensation to you. You irrevocably waive and agree not to assert (and warrant that all individuals featured have waived and agreed not to assert) any moral rights in connection with the User-Generated Content. You expressly waive any and all rights, grounds and actions concerning the inspection and approval of the finished product that may be produced and used in connection with your User-Generated Content. By submitting any User-Generated Content to us, You represent and warrant that You are at least the age of majority in the jurisdiction in which you reside and are the parents or legal guardian, or have all proper consents from the parent or legal guardian, of any minor who is depicted in or contributed to any User-Generated Content you submit, and that as to User-Generated Content you hold all necessary right, title and license to such User-Generated Content and that your submission of such materials to the Services does not and will not violate or infringe the rights of any third-parties or cause any harm to any person, including but not limited to intellectual property or privacy rights.

- b. **Non-confidentiality of content submitted by You.** Except as otherwise described in any applicable Additional Policies you agree that (a) your User-Generated Content will be treated as non-confidential and non-proprietary by us – regardless of whether you mark them “confidential,” “proprietary,” or the like – and will not be returned, and (b) to the maximum extent not prohibited by applicable law, Luxottica does not assume any obligation of any kind to you or any third-party with respect to your User-Generated Content. Upon request, you will provide documentation necessary to authenticate rights to such content and verify your compliance with these Terms or any applicable additional terms. You acknowledge that the Internet and mobile communications may be insecure and subject to breaches of security; according, you acknowledge and agree that your User-Generated Content is submitted at your own risk.

- 5. **PROCEDURE FOR ALLEGING COPYRIGHT INFRINGEMENT.** If you are a copyright owner who would like to send us a notice to identify content or material posted on the Service that is infringing that you would like removed from our Service, or if you are a user whose work has been removed in response to such a notice of infringement, you may submit such notice to us by contacting us here: OnlineIPenforcement@luxottica.com.

- a. **Copyright Complaints** We respect the intellectual property of others. If you believe that your work has been copied and is accessible on the website in a way that constitutes copyright infringement, please notify us and provide the following information:
1. A description of the copyrighted work that you claim has been infringed, including the URL (i.e., web page address) of the location where the copyrighted work exists or a copy of the copyrighted work;
 2. Identification of the URL or other specific location on the website where the material that you claim is infringing is located;
 3. Your name, address, telephone number and email address;
 4. A statement that you have a good faith belief that the use of the copyrighted work is not authorized by the copyright owner, its agent or the law;
 5. A statement that the information in the notification is accurate, and under penalty of perjury, that the signatory is either the owner, or is authorized to act on behalf of the owner, of an exclusive copyright right that is allegedly infringed; and
 6. An electronic or physical signature of the owner or of the person authorized to act on behalf of the owner of the copyright interest.
- b. Our agent for notice claims of copyright infringement on the website can be reached as follows:

Legal Department
Eyexam of California Inc.
4000 Luxottica Place
Mason, Ohio 45040
Phone: 513-765-4321
Email: privacyoffice@luxotticaretail.com

6. **CREATING AN ACCOUNT.** If You register with us or create an account, you are solely responsible and liable for the security and confidentiality of your access credentials and for restricting access to your device and for all activity under your account. Usernames and passwords must be personal and unique that do not violate the rights of any person or entity, and is not offensive. We may reject the use of any password, username, or email address for any reason in our sole discretion. You are solely responsible for your registration information and for updating and maintaining it. You will immediately notify us here privacyoffice@luxotticaretail.com of any unauthorized use of Your account, password, or username, or any other breach of security, but will remain responsible for any unauthorized use thereafter. You will not sell, transfer, or assign your account or any account rights. In addition, accounts may only be set up by an authorized representative of the individual that is the subject of the account and who is of the age of majority. We do not review accounts for authenticity, and are not responsible for any unauthorized accounts that may appear on the Service. For any dispute as to account creation or authenticity, we shall have the sole right, but are not obligated, to resolve such dispute as we determine appropriate, without notice.

7. **RESTRICTIONS** You agree not to modify, distribute, disclose or create works wholly or partially based on the Services. You cannot (nor allow third parties to) sublicense, rent, sell, distribute, circulate, provide, transform, de-codify, break down, disassemble, reverse engineer, create derivative works of, modify or translate the Services, or in any case reproduce, copy, use or provide the Services, or parts of it, in any other manner except for that expressly permitted herein or permitted by mandatory law. You acknowledge and accept that the acquisition of any content or data through use of the Services is solely your responsibility and that You are solely responsible for any damage to the system or loss of data caused by using the service, even indirectly.
8. **PRIVACY POLICY.** Please review Luxottica's Privacy Policy found at [Privacy Policy](#) for a summary of Luxottica's personally identifiable information collection and use practices. Personally identifiable information we collect may be transferred to servers located outside of your jurisdiction of residence. As such, your personally identifiable information will be subject to that country's laws. By using the Service, You also acknowledge, agree and consent to our data practices as described in our [Privacy Policy](#).
9. **CONSENT TO CONTACT**
 - a. **Text Messages and Phone Calls**
 1. By providing your telephone number and indicating you would like to receive communications regarding your appointments you expressly consent to receiving text messages and/or phone calls from EYEXAM of California Inc.
 2. Message and data rates may apply. Maximum number of messages per month will vary. You can unsubscribe at any time by:
 - a. Texting STOP. You will receive a text confirming that you have been unsubscribed.
 - b. Calling your Provider's office to remove your telephone number from communications.
 3. EYEXAM of California Inc. will not be liable for any delays in the receipt of any text messages. Delivery is subject to effective transmission from your network operator.
 4. Data obtained from you in connection with this text messaging service may include your mobile phone number, your carrier's name, and the date, time, and content of your messages and other information you provide to EYEXAM of California Inc. as part of this service. EYEXAM of California Inc. may use this information to contact you and provide services you request from EYEXAM of California Inc. may also use this information as described in the subscription list you have enrolled in.
 - b. **Emails**

1. By including your email in any submission, you are extending an express invitation to Luxottica. to be contacted. For any service, you represent that all of the information you have provided in your submission is true and complete

c. Voice recording and monitoring consent

1. You agree and consent that Luxottica. may record or monitor communications made by you during any calls you make to the Website as permitted by 18 U.S.C. § 2511 et seq., Cal. Penal Code § 630 et seq., and other state laws that regulate call monitoring and recording. By calling the Website, you expressly consent and grant it the right to record or monitor and use this information for the purposes set out in the Privacy Policy. The Website is under no obligation to monitor or record its services for accuracy, completeness, or quality.

10. **AVAILABILITY AND CONTINUITY OF SERVICE.** You acknowledge and accept that Luxottica reserves the right, at its own and complete discretion, to temporarily or permanently (i) suspend, terminate, or eliminate the Services, (ii) disable any access to the Services, and/or (iii) restrict, suspend, or terminate your account for any reason.
11. **LINKS TO OTHER SITES.** We are not responsible for third parties or their content, advertisement(s), apps or sites (“Third-Party Services”). Our Services may facilitate access to other sites or on-line social media networks or pages for your convenience. These Third- Party Services have not necessarily been reviewed by Luxottica and are maintained by third parties over which Luxottica exercises no control. This may include the ability to register or sign into our Services using third-party tools, and to post content on third-party sites and services using their plug-ins made available on our Services. Use caution when dealing with third parties and consult their terms of use and privacy policies. We take no responsibility for Third-party Services. Accordingly, Luxottica expressly disclaims any responsibility for the content, the materials, the accuracy of the information, and/or the quality of the products or services provided by, available through, or advertised on these Third-Party Services. Moreover, inclusion of any links do not imply an endorsement with respect to any third party or any website or the products or services provided by any third party.
12. **WARRANTY DISCLAIMER. AS PERMITTED BY APPLICABLE LAW AND EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN OUR WARRANTY POLICY LUXOTTICA MAKES NO REPRESENTATIONS OR WARRANTIES ABOUT THE WEBSITE OR ANY GOODS PURCHASED BY YOU THROUGH THE WEBSITE FOR ANY PURPOSE AND EXPRESSLY DISCLAIMS ANY AND ALL EXPRESS OR IMPLIED WARRANTIES AND REPRESENTATIONS INCLUDING, WITHOUT LIMITATION ANY WARRANTIES OF MERCHANTABILITY, WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, ACCURACY OF DATA, AND**

NONINFRINGEMENT, AND DOES NOT GUARANTEE THAT THE SERVICES WILL FUNCTION WITHOUT INTERRUPTION OR ERRORS AND PROVIDES SERVICES (INCLUDING CONTENT AND INFORMATION) ON AN “AS IS” AND “AS AVAILABLE” BASIS, AND “WITH ALL FAULTS” BASIS. SOME LAWS MAY NOT PERMIT CERTAIN DISCLAIMERS SO SOME OR ALL OF THESE DISCLAIMERS MAY NOT APPLY TO YOU.

- 13. LIMITATION OF LIABILITY. AS PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL LUXOTTICA BE LIABLE FOR ANY INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE USE OF THE WEBSITE OR WITH THE DELAY OR INABILITY TO USE THE WEBSITE, SERVICES, OR USER-GENERATED-CONTENT, WHETHER BASED IN CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE. NOTWITHSTANDING THE FOREGOING, TOTAL LIABILITY OF LUXOTTICA FOR ANY REASON WHATSOEVER RELATED TO USE OF THE WEBSITE SHALL NOT EXCEED THE TOTAL AMOUNT PAID BY YOU TO LUXOTTICA IN CONNECTION WITH THE SUBJECT MATTER OF THE PARTICULAR DISPUTE.**
- 14. INDEMNITY** As permitted by applicable law, by using this application, You agree to defend, indemnify and hold harmless Luxottica and its parent and affiliates, and their directors, employees and agents, against any loss, damage, liability, cost, expense (including legal fees) asserted by any third party and arising from: (i) your use of and access to the Services; (ii) any User-Generated Content; (iii) your breach of any of these TOU; and (iii) your infringement of any third party rights, including without limitation any property, privacy or intellectual property rights. This indemnity shall survive the duration of your use of the Services.
- 15. ENFORCEMENT** You acknowledge that any breach, threatened or actual, of this TOU will cause irreparable injury to Luxottica, such injury would not be quantifiable in monetary damages, and Luxottica would not have an adequate remedy at law. You therefore agree that Luxottica shall be entitled, in addition to other available remedies, to seek and be awarded an injunction or other appropriate equitable relief from a court of competent jurisdiction restraining any breach, threatened or actual, of your obligations under any provision of this TOU.
- 16. TERM AND TERMINATION.** This TOU will take effect at the time You begin using the Services. This TOU will terminate automatically if You fail to comply with its terms and conditions. Termination will be effective without notice. You may also terminate this TOU at any time by ceasing all use of the Services. Sections 3, 4, 7, 8, 9, 10, 11, 12, 14, 15, and this sentence of this Section 16, will survive the termination of this TOU for any reason.
- 17. WAIVER & SEVERABILITY** Failure to insist on strict performance of any of the terms and conditions of this TOU will not operate as a waiver of any subsequent or other default or failure of performance. If any part of this TOU is determined to be

invalid or unenforceable pursuant to applicable law or court order including, but not limited to, the warranty disclaimers and the liability limitations set forth above, then the invalid or unenforceable provision will be deemed superseded by a valid, enforceable provision that most clearly matches the intent of the original provision and the remainder of this TOU shall continue in effect.

18. DISPUTE RESOLUTION & AGREEMENT TO ARBITRATE

THIS SECTION LIMITS CERTAIN RIGHTS, INCLUDING THE RIGHT TO MAINTAIN A COURT ACTION, THE RIGHT TO A JURY TRIAL, AND THE RIGHT TO PARTICIPATE IN ANY FORM OF CLASS ACTION.

a. You and Luxottica each agree that any and all disputes or claims with or against any party that relate to or arise from this agreement, your use of or access to this website, or any products or services sold, offered, or purchased through our website shall be resolved exclusively through final and binding arbitration, rather than in court. The sole exceptions to this requirement are (a) either party may assert individual claims in small claims courts if those claims otherwise qualify for small claims court and as long as the matter remains in such court and is not removed or appealed to a court of general jurisdiction and (b) each party may bring suit in court to enjoin infringement or other misuse of intellectual property rights. The Federal Arbitration Act governs the interpretation and enforcement of this Agreement to Arbitrate section (this “Agreement to Arbitrate”).

b. Prohibition of Class and Representative Actions and Non-Individualized Relief.

1. You and Luxottica agree that each of us may bring claims that relate to or arise from your use of or access to our website, any products or services sold, offered, or purchased through our Services, or communications (including calls, texts, or emails) that relate to or arise from your use of or access to our website only on an individual basis and not as a plaintiff or class member in any purported class or representative action or proceeding, including but not limited to actions under the Telephone Consumer Protection Act, 47 U.S.C. § 227 et seq., the California Invasion of Privacy Act, Cal. Penal Code § 630 et seq., and other federal and state telemarketing and privacy laws. Unless both parties agree otherwise, the arbitrator may not consolidate or join more than one person’s or party’s claims, and may not otherwise preside over any form if a consolidated, representative, or class proceeding. The arbitrator may award relief, including monetary, injunctive, and declaratory relief, only in favor of the individual party seeking relief and only to the extent necessary to provide relief necessitated by that party’s individual claim(s). Any relief awarded cannot affect our other users.

c. Arbitration Procedures.

1. The arbitrator, and not any federal, state, or local court or agency, shall have exclusive authority to resolve any dispute arising out of or relating to the interpretation, applicability, enforceability or formation of this Agreement to Arbitrate, any part of it, or of this Agreement including, but not limited to, any claim that all or any part of the Agreement to Arbitrate or this Agreement is void or voidable.
2. The arbitration will be conducted by the American Arbitration Association (“AAA”) under its rules and procedures, including the AAA’s Supplementary Procedures for Consumer-Related Disputes (as applicable), as modified by this Agreement to Arbitrate. The AAA’s rules and a form for initiating arbitration proceedings is available on the AAA’s site at <http://www.adr.org>.
3. If the value of the relief sought is \$10,000 or less, you or we may elect to have the arbitration conducted by telephone or based solely on written submissions, which election shall be binding on you and us subject to the arbitrator’s discretion to require an in-person hearing, if the circumstances warrant. Attendance at an in-person hearing may be made by telephone by you and/or us unless the arbitrator requires otherwise.
4. The arbitrator will decide the substance of all claims in accordance with the laws of the State of Ohio, including recognized principles of equity, and will honor all claims of privilege recognized by law. The arbitrator shall not be bound by rulings in prior arbitrations involving our other users, but is bound by rulings in prior arbitrations involving the same user to the extent required by applicable law. The arbitrator’s award shall be final and binding and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.
5. This arbitration provision shall survive termination of this Agreement to Arbitrate and the closing of your Account or your use of or access to our Services, or any products or services sold, offered, or purchased through our Services.
6. Costs of Arbitration
 - a. Payment of all filing, administration and arbitrator fees will be governed by the AAA’s rules, unless otherwise stated in this Agreement to Arbitrate. Each party shall be responsible for their own attorneys’ fees and costs in arbitration, unless they are authorized by law or the arbitrator determines that a claim was frivolous or brought for an improper purpose or in bad faith. Notwithstanding anything to the contrary, Luxottica will pay all fees and costs that we are required to pay by law.

d. Confidentiality

1. The arbitration proceedings and arbitration award shall be maintained by the parties as strictly confidential, except as is otherwise required by court order or as is necessary to confirm, vacate or enforce the award and for disclosure in confidence to the parties' respective attorneys, tax advisors and senior management and to family members of a party who is an individual.

e. Severability

1. If an arbitrator or court decides that any part of this Agreement to Arbitrate is invalid or unenforceable, the other parts of this Agreement to Arbitrate shall still apply, except if an arbitrator or court decides that any of the provisions under the subheading "Prohibition of Class and Representative Actions and Non-Individualized Relief" of this Agreement to Arbitrate are invalid or unenforceable, then the entirety of this Agreement to Arbitrate shall be null and void. The remainder of the Agreement will continue to apply.

19. APPLICABLE LAW & VENUE

- a. The law applicable to the interpretation and construction of this Agreement and any transaction using or related to the website, shall be the Federal Arbitration Act, applicable federal laws, and the laws of the State of Ohio, USA, without regard to principles of conflict of laws, subject to the Federal Arbitration Act and other federal law relating to the arbitrability of claims. You agree that all matters relating your access to or use of the website, including all disputes will be governed by the laws of the United States and by the laws of the State of Ohio.
- b. Any action relating to use of this website or any transaction must be brought in the state or federal courts serving Hamilton County, Ohio, for any lawsuit or court proceedings permitted under this Agreement. You consent and submit to the personal jurisdiction of such courts for the purposes of any such actions. You further agree to file any cause of action with respect to this Agreement within one year after the cause of action arises. You agree that a cause of action filed after this date is barred.

20. INDEPENDENT PARTY You are an independent party. No joint venture, partnership, employment, or agency relationship exists between You and Luxottica as a result of this TOU or your utilization of the Services.

21. ENTIRE AGREEMENT. This TOU, the Additional Policies and any other agreement or terms or conditions for services, information, or licenses available through the Services represent the entire agreement between You and Luxottica with respect to use of the Services, and they supersede all prior or contemporaneous communications and proposals, whether electronic, oral, or written between You and Luxottica with respect to the Services.

22. **NO ASSIGNMENTS.** You may not assign or transfer any rights under this Agreement without the prior written consent of Luxottica.
23. **UPDATES TO TERMS.** Luxottica may make changes to these TOU, from time to time, in its sole discretion, by updating this posting on the Website without notice to you. Your continued use of the Website following the posting of a new version of the TOU constitutes your acceptance of any such changes. Accordingly, whenever you visit the Website, check to see if a new version has been posted.
24. **HEADINGS** Headings are for convenience only.