

AppStore Partner Agreement

between

APPSTORE-PARTNER

Company: Name

Company: Street, Nr.

Company: Post Code, City

Company: Country

Contact: Name

Contact: E-Mail

Contact: Phone

- hereinafter referred as APPSTORE-PARTNER -

and

EYEFACTIVE GMBH

Haferweg 40
22769 Hamburg
Germany

+49 4103 / 90380 – 0
info@eyefactive.com

- hereinafter referred as EYEFACTIVE.

Preamble

- A. EYEFACTIVE develops and markets interactive multitouch software. This software is available as apps via EYEFACTIVE's own AppStore, which is accessible online at <https://www.multitouch-appstore.com> and via the touchscreen CMS software 'AppSuite'.
- B. APPSTORE-PARTNER and EYEFACTIVE close this contract to agree a partnership that allows APPSTORE-PARTNER to promote the AppStore and market the supplied apps.

1 Objects of agreement

- 1.1 Licences for apps (hereinafter "APPS") that are publicly offered in the eyefactive AppStore (hereinafter "APPSTORE") serve as contractual products (hereinafter "CONTRACTUAL PRODUCTS"). Besides, further CONTRACTUAL PRODUCTS might be added that will be offered through the APPSTORE in the future. EYEFACTIVE reserves the right to exclude certain APPS or other APPSTORE products from the CONTRACTUAL PRODUCTS.
- 1.2 APPS are protected through an encoding system and activated via the APPSTORE through a licence (hereinafter "LICENCES"). LICENCES apply for one PC (hereinafter "DEVICE") that is connected to a multitouch display. A distinction is drawn between permanent and temporary LICENCES (purchase or rent).
- 1.3 Each respective fee-based acquisition of CONTRACTUAL PRODUCTS via the APPSTORE is considered to be a transaction (hereinafter "TRANSACTION").
- 1.4 CONTRACTUAL PRODUCTS are to be obtained exclusively through the APPSTORE.

2 AppStore Partner Program

- 2.1 The APPSTORE-PARTNER can
 - 2.1.1 obtain CONTRACTUAL PRODUCTS independently via the APPSTORE and resell or let them on his own account (hereinafter "RESELLER"). receiving special discounts on the regular APPSTORE prices (hereinafter "DISCOUNTS").
 - 2.1.2 promote CONTRACTUAL PRODUCTS (hereinafter "AGENT"), receiving commissions for a successful sale in return (hereinafter "COMMISSIONS").
- 2.2 RESELLER, AGENTS and clients have to register in the APPSTORE and will thereupon receive an APPSTORE account (hereinafter "ACCOUNT").

- 2.3 The APPSTORE-PARTNER receives an individual and unique partner ID (hereinafter "PID"). This PID can be linked with the clients' ACCOUNTS. This way, COMMISSIONS for TRANSACTIONS of his clients can be assigned to the APPSTORE-PARTNER and DISCOUNTS can be granted.
- 2.4 The APPSTORE-PARTNER receives a weblink (hereinafter "WEBLINK"), consisting of a standard URL of the APPSTORE and an individual alias name of APPSTORE-PARTNER.
- 2.5 Clients can obtain discounts on CONTRACTUAL PRODUCTS through individual coupon codes (hereinafter "CC"). CCs are not combinable with one another and never apply for APPSTORE-PARTNER.
- 2.6 PIDs and CCs act as follows:
- 2.6.1 Client ACCOUNTS can be allocated to a PID in a way that the respective PID is entitled to COMMISSIONS for TRANSACTIONS of this ACCOUNT.
- 2.6.2 If a client comes through the WEBLINK of APPSTORE-PARTNER to the APPSTORE'S website and registers for the first time, the client's ACCOUNT will be assigned to the PID that belongs to the WEBLINK. In order to do so, the enabling of cookies at the client's browser is a prerequisite.
- 2.6.3 If a client uses a CC for a TRANSACTION, only the PID assigned to the CC is entitled to a COMMISSION for this respective TRANSACTION.
- 2.6.4 The assignment of an ACCOUNT to a PID can neither be overwritten nor newly defined.
- 2.6.5 The assignment of an ACCOUNT to a PID expires automatically after 24 months.

3 Deliverables, Rights and Obligations of EYEFACTIVE

- 3.1 The APPSTORE-PARTNER receives a PID, a WEBLINK and a CC, as defined in the annex of this contract. Upon individual consultation with EYEFACTIVE, the APPSTORE-PARTNER can obtain further CCs for special sales campaigns or marketing measures.
- 3.2 As RESELLER, the APPSTORE-PARTNER receives a DISCOUNT (see annex) on the APPSTORE prices of the CONTRACTUAL PRODUCTS.
- 3.3 As AGENT, the APPSTORE-PARTNER receives COMMISSIONS (see annex) for TRANSACTIONS effected from client ACCOUNTS that are assigned to his PID. The entitlement to COMMISSIONS becomes effective only after full payment of the underlying TRANSACTION through the client.
- 3.4 On a monthly basis, EYEFACTIVE provides the APPSTORE-PARTNER with statements of all TRANSACTIONS assigned to his PID and balances them.
- 3.5 During the contract period, EYEFACTIVE provides the APPSTORE-PARTNER with a free demo package of LICENCES for different Apps. These are not for resale.

4 Deliverables, Rights and Obligations of APPSTORE-PARTNER

- 4.1 The APPSTORE-PARTNER will, in the best of his ability, support the marketing of the CONTRACTUAL PRODUCTS. He will particularly:
- 4.1.1 pre-install the AppSuite on his multitouch hardware products (where technically possible),
 - 4.1.2 deliver his hardware products along with an advertising flyer and the CCs of the CONTRACTUAL PRODUCTS,
 - 4.1.3 actively offer the CONTRACTUAL PRODUCTS to his clients, and
 - 4.1.4 promote the CONTRACTUAL PRODUCTS and/or the APPSTORE through the WEBLINK on his homepage.
- 4.2 As RESELLER, the APPSTORE-PARTNER assumes full communication with his clients, including pre-sales activities, as well as briefing of clients and first level support.
- 4.3 During the contract period, the APPSTORE-PARTNER can only receive the CONTRACTUAL PRODUCTS from EYEFACTIVE.
- 4.4 The APPSTORE-PARTNER is entitled to refer to himself as „eyefactive-AppStore-Partner" during the contract period.
- 4.5 The APPSTORE-PARTNER is granted the right to offer his clients optional services, such as the creation of mods (modifications) of the CONTRACTUAL PRODUCTS, and bill these on his own account.
- 4.6 The APPSTORE-PARTNER acts as an independent salesman, both with respect to his clients and EYEFACTIVE. The APPSTORE-PARTNER is not authorized to represent EYEFACTIVE by way of legal transactions.
- 4.7 The APPSTORE-PARTNER, in his capacity as AGENT and RESELLER, ensures that all conditions, particularly the validity, the combinability, the discount and the URL of the CCs assigned to the clients, are communicated comprehensively and correctly to clients and third parties. The APPSTORE-PARTNER is the only person liable for potential losses and claims resulting from violation of this obligation.
- 4.8 The APPSTORE-PARTNER ensures in its capacity as RESELLER that the general terms and conditions of the APPSTORE (GTC), in the respective current version available through the APPSTORE's website, are fully asserted against his customers. The APPSTORE-PARTNER is the only person liable for potential losses and claims resulting from violation of this obligation.

5 Application of general terms and conditions (GTC)

The general terms and conditions of the APPSTORE (GTC) apply for all TRANSACTIONS. The APPSTORE-PARTNER accepts the general terms and conditions of the APPSTORE.

6 Prices and Terms of Payment

- 6.1 The prices for CONTRACTUAL PRODUCTS are determined by the prices listed online on the APPSTORE.
- 6.2 A monthly settlement of all TRANSACTIONS will be conducted. If this should result in a financial obligation of the APPSTORE-PARTNER (especially if he/she is acting as RESELLER), payment becomes due without deduction within 7 workdays after date of invoice.
- 6.3 In the event of payment arrears and any objectively justifiable doubts regarding the solvency or creditability of the APPSTORE-PARTNER, EYEFACTIVE, without prejudice to its other rights, shall be entitled to declare all claims under the business relationship to be due immediately. In this case, EYEFACTIVE is also entitled to demand advance payments or collateral security.

7 Labelling Rights

- 7.1 The APPSTORE-PARTNER must neither remove, amend or cover, nor conceal in any other way indications of copyrights, trademark rights and other property rights.
- 7.2 The APPSTORE-PARTNER is not entitled to register trademarks or other exclusive rights of EYEFACTIVE or submit them for registration. The APPSTORE-PARTNER is not entitled to utilize the name, trademarks or other exclusive rights of EYEFACTIVE directly or indirectly as part of his own name.

8 Contract Period, Termination

- 8.1 This contract becomes effective upon its signing. It has a minimum term of 24 months and is automatically extended by another 12 months after end of contract. The contract can be terminated in writing by one of the contracting parties giving three months' notice to the end of the contract. Relevant for compliance of the cancellation period is the time of receipt of the termination notice by the other party.
- 8.2 Without prejudice to the termination with notice pursuant to 8.1., the APPSTORE-PARTNER remains entitled to COMMISSIONS as long as the client ACCOUNT is assigned to the PID.
- 8.3 The right to terminate the contract without notice for an important reason remains unaffected by the terms given under 8.1. An important reason according to sentence 1 is given:

- 8.3.1 if insolvency proceedings are opened over the assets of the other contracting party, or such proceedings have been rejected due to a lack of assets;
 - 8.3.2 if one of the contracting partners is in default of payment for longer than a month despite reminder notice and setting of a deadline;
 - 8.3.3 if one contracting partner culpably violates a major condition of this contract;
 - 8.3.4 if shares in a business belonging to a contracting party are transferred to a third party, who is a competitor of a contracting party, or
 - 8.3.5 if a contracting party acquires shares in a business of a third party, who is a competitor of a contracting party.
- 8.4 If reasons pursuant to number 8.3.1, 8.3.4 and 8.3.5 of this contract are at hand, the respective party has to inform the respective other party promptly and in writing within a maximum period of five workdays.
- 8.5 Each termination has to be made in written form, whereby textual form (email) shall not satisfy the requirements for written form.

9 Processing of Trade Relations

- 9.1 The termination and ending of this contract as such does not concern the individual contracts concluded between EYEFACTIVE and the APPSTORE-PARTNER during its performance.
- 9.2 In case of a termination with notice, EYEFACTIVE will continue to supply the APPSTORE-PARTNER at the previously applicable terms in a way that he can fulfill the commercial activities with third parties that have been concluded in the normal course of business until the end of contract. EYEFACTIVE can demand payment in advance.

10 Non-Disclosure

- 10.1 Both contracting parties commit to maintain strict and unlimited secrecy regarding any information of the respective other party as obtained during the cooperation. Apart from the operational methods and procedures, this particularly applies to this contract itself and to all information which are considered confidential or which are clearly recognizable as company or business secrets.
- 10.2 Exempted from the obligation to confidentiality is information that is already in the possession of the respective contracting party at the time of provision through the contracting party, apparent information, or information that has been obtained lawfully by third parties. If a contracting party invokes such an exemption, the burden of proof for the existence of the exemption remains with this respective party.

11 Privacy

The APPSTORE-PARTNER and EYEFACTIVE undertake to comply with the legal regulations for data protection, in particular the German Teleservices Act (German TMG Telemediengesetz) as well as the Federal Data Protection Act (German BDSG Bundesdatenschutzgesetz).

12 Transfer

The APPSTORE-PARTNER is not entitled to transfer or in any other way assign his rights or obligations fixed in this contract to third parties without written approval of EYEFACTIVE.

13 Other Components of the Contract

Important components of this contract are:

1. General terms and conditions (GTC) of the AppStore in the current version at the time of conclusion of this contract, available at <http://www.multitouch-appstore.com/en/gtc>
2. Annex "conditions" (including PID, DISCOUNT, COMMISSIONS, WEBLINK, CC, etc)

14 Hierarchy of Documents

The regulations of the following documents apply in the given order:

1. Individual contract
2. AppStore Partner Contract
3. General terms and conditions (GTC) of the AppStore

The regulations of the first-named documents shall always take precedence in case of contradiction over the documents named secondary.

15 Final Provisions

- 15.1 German law applies to the exclusion of the UN's Law on the Sale of Goods (CISG).
- 15.2 The place of jurisdiction for all disputes arising in connection with this contract or individual agreements concluded in its performance is Hamburg, Germany.
- 15.3 There are no additional verbal agreements. This declaration can only be amended, suspended or complemented in written form.
- 16 Should individual clauses of this contract prove to be invalid, the remaining provisions shall remain unaffected by this.

Place / Date

APPSTORE-PARTNER'S SIGNATURE