



General Terms and Conditions of EYEVIDEO GmbH for license customers

Status: 01.03.2021

PREAMBLE

EYEVIDEO GmbH, Casinostr. 38, 56068 Koblenz, Germany, ("**EYEVIDEO**") develops, among other things, software in the area of usability testing with which user studies ("**STUDY**") can be conducted.

EYEVIDEO offers customers the opportunity to conduct STUDIES using EYEVIDEO's web portal at www.eyevideo.de/portal ("**WEB PORTAL**") and using software developed by EYEVIDEO ("**SOFTWARE**") to record user data. Within the scope of the STUDIES, eye trackers ("**EYETRACKER**") may be used to record eye movements of test persons.

A. OVERARCHING REGULATIONS

1. Scope of application; Deviating terms and conditions of customers

- 1.1 These General Terms and Conditions of EYEVIDEO ("**GTC**") apply to all business relationships between EYEVIDEO and its customers (individually or jointly hereinafter "**CUSTOMERS**").
- 1.2 These GTC shall apply in particular to
 - a. the use of the WEB PORTAL by CUSTOMERS;
 - b. the use of the SOFTWARE TO BE installed locally on the respective end device used and the EYE TRACKER provided by EYEVIDEO, if applicable, for the performance of own STUDIES by CUSTOMERS;
 - c. the rest of the business relationship between EYEVIDEO and CUSTOMERS.
- 1.3 These GTC shall apply exclusively in the relationship with CUSTOMERS, unless expressly agreed otherwise. Deviating, conflicting or supplementary general terms and conditions of CUSTOMERS shall only become part of the contract if and to the extent that EYEVIDEO has expressly agreed to their validity in text form. This shall also apply if EYEVIDEO, being aware of the general terms and conditions of a CUSTOMER, has not

General Terms and Conditions EYEVIDEO

expressly objected to their validity or performs services to a CUSTOMER without reservation.

- 1.4 Individual agreements made with CUSTOMERS IN individual cases (including collateral agreements, supplements and amendments to these GTC) shall in any case take precedence

over the provisions of these GTC. The content of such agreements shall be governed by a contract or confirmation by EYEVIDEO in text form.

2. Subject matter of the contract and services of EYEVIDEO; Terms of use

- 2.1 EYEVIDEO offers CUSTOMERS essentially the following services against payment:

- a. The paid, time-limited use of the WEB PORTAL in the respective current version and with the respective currently offered functionalities by means of access via a telecommunications connection for the purpose of creating, managing and evaluating STUDIES by CUSTOMERS;
- b. The provision against payment of the SOFTWARE to be installed locally for the performance of STUDIES for use by CUSTOMERS FOR a period of time, including the granting of necessary rights of use to the software in the respective current software version and with the respective currently offered functionalities as well as the rental of EYE TRACKERS. The WEB PORTAL and the SOFTWARE together form a cloud solution for conducting STUDIES ("**EYEVIDEO LAB**");
- c. Provide storage space to the extent necessary to conduct STUDIES generated application data;
- d. Optional training and consulting services for CUSTOMERS IN connection with the use of EYEVIDEO LAB.

For the scope of services and the use of the services of EYEVIDEO mentioned under lit. a. to d. ("**SERVICES**"), in addition to the "OVERRIDING REGULATIONS" regulated in this Section A of these GTC, the "SPECIAL PROVISIONS FOR THE USE OF THE SERVICES of EYEVIDEO" regulated in Section B. shall apply.

- 2.2 The provision of hardware, software or (service) performances going beyond the SERVICES (E.G. provision of the terminal equipment and telecommunication connection

General Terms and Conditions EYEVIDEO

required for use) is not part of the scope of services owed by EYEVIDEO, unless expressly agreed otherwise.

- 2.3 The use of the SERVICES is subject to the minimum system requirements available at <https://eyevido.de/system-requirements> and to interoperability and compatibility restrictions.

3. Web portal; platform usage contract

- 3.1 In order to be able to use the SERVICES mentioned in section 2.1 lit. a to d, CUSTOMERS require access to the WEB PORTAL and the protected area of the WEB PORTAL available there for CUSTOMERS ("**PROTECTED CUSTOMER AREA**").
- 3.2 For the duration of the platform usage agreement, EYEVIDEO shall provide CUSTOMERS WITH the respective current version of the WEB PORTAL with the respective current functionalities offered on it for use and shall grant the respective CUSTOMER the necessary usage rights for this in accordance with the provisions of these GTC.
- 3.3 Access to the PROTECTED CUSTOMER AREA may only be used by the respective CUSTOMER, its employees or vicarious agents. The CUSTOMER is prohibited from disclosing the login data for access to the PROTECTED CUSTOMER AREA TO unauthorized third parties. The login data shall be stored in such a way that unauthorized third parties do not have access to the PROTECTED CUSTOMER AREA.
- 3.4 EYEVIDEO makes the WEB PORTAL available 24 hours a day, 365 days a year ("**SERVICE TIME**"). During the SERVICE TIME, EYEVIDEO owes an availability of the WEB PORTAL OF 99.9% on average of a calendar month. This availability is measured by putting the times during which the WEB PORTAL was actually available to CUSTOMERS during a calendar year in relation to the SERVICE TIME. Maintenance work may be performed by EYEVIDEO during maintenance windows, which do not count as part of the SERVICE TIME when calculating availability. EYEVIDEO will inform CUSTOMERS about maintenance windows and their changes at least one (1) week in advance. In case of urgent maintenance, EYEVIDEO may also schedule the maintenance windows with shorter notice or in case of emergency without notice. EYEVIDEO will make every effort to minimize the restrictions for CUSTOMERS during the maintenance work. The liability of EYEVIDEO according to clause 9 remains unaffected.

4. Term and termination of the platform usage agreement

- 4.1 The term of the contract for the use of the web portal ("**PLATFORM USAGE CONTRACT**") shall be governed by the agreement concluded between the Parties.
- 4.2 The term of the PLATFORM USE AGREEMENT and the duration of the provision of the SOFTWARE for the performance of STUDIES for use by CUSTOMER on a temporary basis, including the granting of necessary rights of use to the SOFTWARE in the respective current software version and with the respective currently offered functionalities pursuant to Section 2 lit. b (hereinafter referred to as "LICENSE AGREEMENT") shall be - depending on the license tariff selected by CUSTOMER - one month or one year, unless otherwise agreed. In this case, EYEVIDO shall inform CUSTOMER of the term and duration individually within the scope of the respective offer.
- 4.3 CUSTOMERS may rent EYE TRACKERS from EYEVIDO at any time during the term of the LICENSE AGREEMENT (hereinafter referred to as "**EYETRACKER RENTAL AGREEMENT**"). The Eyetracker RENTAL AGREEMENT shall end at the end of the LICENSE AGREEMENT without requiring a separate termination by the parties.
- 4.4 The right to extraordinary termination for good cause remains unaffected.
- 4.5 Any termination must be in text form (e.g. e-mail or fax).

5. Obligations of the customer

- 5.1 CUSTOMERS are obliged to keep their data stored in the PROTECTED CUSTOMER AREA (in particular contact data) up to date and to update it in case of changes in the PROTECTED CUSTOMER AREA. In the event that a change in the protected CUSTOMER AREA is not possible, the changes must be communicated to EYEVIDO in text form without delay.
- 5.2 The contents transmitted by a CUSTOMER to EYEVIDO or uploaded in the WEB PORTAL must not contain any racist, insulting, youth-endangering, pornographic, violence-glorifying depictions, must not violate third party rights (e.g. personality rights, name rights, copyrights and trademark rights) and must not violate legal provisions. EYEVIDO will inform the CUSTOMER ABOUT other restrictions regarding the contents to be evaluated and the file formats supported by EYEVIDO in the PROTECTED CUSTOMER AREA when creating the STUDY.
- 5.3 Before transmitting data and files to EYEVIDO, CUSTOMERS must ensure that they do not contain any malware (e.g. malware, viruses).

6. Prices, billing and payment modalities; Default of payment

- 6.1 The prices listed in the respective license overview at <https://eyevido.de/de/licenses> shall apply to the SERVICES, unless otherwise agreed in the context of individual offers.
- 6.2 Subject to deviating regulations in individual cases and unless otherwise regulated in these GTC, EYEVIDEO shall invoice the services provided to a CUSTOMER according to these GTC as follows:

CUSTOMERS SHALL pay EYEVIDEO for the provision of EYEVIDEO LAB, including the granting of the necessary rights of use to the SOFTWARE in the respective current software version and with the respective currently offered functionalities in accordance with section 2 lit. b within the framework of the LICENSE AGREEMENT the remuneration agreed between the parties, depending on the selected license tariff and contract term.

If desired, EYEVIDEO will provide the CUSTOMER with one or more EYE TRACKERS during the term of the LICENSE AGREEMENT. CUSTOMERS SHALL pay EYEVIDEO a rental fee for the rental of the eye TRACKERS under the EYE TRACKER RENTAL AGREEMENT. The rental fee shall be agreed separately between the parties and shall be payable in advance at the beginning of the rental period.

- 6.3 Fees are due within fourteen (14) days after receipt of a proper invoice for payment to the bank account named in the respective invoice. Invoices shall be sent exclusively electronically to the e-mail address stored in the CUSTOMER's user account or to the e-mail address last verifiably communicated to EYEVIDEO. The CUSTOMER agrees to this.
- 6.4 The CUSTOMER shall only be entitled to use the EYEVIDEO LAB in excess of the rights of use granted in these GTC pursuant to Section 15.1 with the prior written consent of EYEVIDEO. In the event of additional use without consent, in particular the use of a higher number of test persons than agreed, EYEVIDEO shall be entitled to invoice the remuneration accruing for the additional use in accordance with clause 6 lit. a, insofar as the CUSTOMER does not prove a significantly lower damage to EYEVIDEO. Further non-contractual claims for damages shall remain unaffected.
- 6.5 All prices are in EURO plus the statutory value added tax, unless otherwise stated.
- 6.6 EYEVIDEO reserves the right to assert the claim to the commercial due date interest (§ 353 HGB) against CUSTOMERS who are merchants in the sense of the HGB.

7. Privacy

The parties shall observe the applicable provisions of data protection law, in particular those applicable in the Federal Republic of Germany, and shall oblige the employees deployed within

General Terms and Conditions EYEVIDEO

the scope of these GTC to confidentiality and - insofar as relevant - other confidentiality provisions, insofar as they are not already obligated accordingly.

8. Indemnification obligation of the CUSTOMER

8.1 CUSTOMER shall indemnify and hold EYEVIDEO harmless with respect to any damages, liability, and costs and expenses (including reasonable attorneys' fees and disbursements) arising out of or resulting from

- a. moving image content, images, texts, software or other works uploaded by the CUSTOMER on the WEB PORTAL within the scope of EYEVIDEO LAB that infringe the rights of third parties,
- b. the CUSTOMER violates data protection regulations in connection with the use of the SERVICES and a data subject asserts claims against EYEVIDEO or the competent authority takes administrative measures against EYEVIDEO (e.g. imposes fines), unless such damage, liability as well as costs and expenses have been caused by EYEVIDEO's culpable action or omission.

8.2 If EYEVIDEO can claim or claims an exemption under this Section 8, the following principles shall apply:

- a. EYEVIDEO shall notify CUSTOMER in writing without undue delay upon becoming aware of the assertion of claims by third parties or the taking of administrative action by any authority that could trigger an indemnification obligation under this Section 8 (e.g. threatened, announced or ongoing legal or administrative proceedings) ("LITIGATION"), stating the subject matter. CUSTOMER shall notify EYEVIDEO in writing within seven (7) business days of receipt of such notice whether it will assume the conduct of the defense at its own expense. In such case, EYEVIDEO shall provide CUSTOMER with copies of all documents (e.g., attorney's letters, pleadings, regulatory or court letters and orders) and any other materials, information and support relating to the LITIGATION necessary for the defense.
- b. The CUSTOMER shall be entitled to conduct inspections itself or through consultants, in its own name on the basis of authorization and at its own expense, as well as to participate in negotiations and assert claims related to the LEGAL DISPUTE.

General Terms and Conditions EYEVIDO

- c. EYEVIDO will cooperate with the customer with regard to defense in LEGAL DISPUTES at the CUSTOMER's expense.
- d. In the event that CUSTOMER is unable or refuses to assume the conduct of the defense in any LITIGATION, EYEVIDO may assume the conduct of the defense, provided, however, that (i) CUSTOMER shall participate in the defense (including, without limitation, any legal proceedings) at its own expense upon request, and (ii) EYEVIDO shall not agree to any settlement without CUSTOMER's prior written consent, which consent shall not be unreasonably withheld.

9. Liability of EYEVIDO

- 9.1 Subject to the further provisions of this clause 9, EYEVIDO shall only be liable if and to the extent that EYEVIDO, its legal representatives, executives, employees or other vicarious agents are guilty of intent or gross negligence. However, in the event of default by EYEVIDO or impossibility of performance for which EYEVIDO is responsible, as well as in the event of breach of essential contractual obligations (so-called cardinal obligations), EYEVIDO shall be liable for any culpable conduct of its own or that of its legal representatives, officers, employees or other vicarious agents. Essential contractual obligations are defined in the abstract as obligations whose fulfillment makes the proper execution of the contract possible in the first place and on whose compliance the CUSTOMER may regularly rely.
- 9.2 Except in the case of intent or gross negligence on the part of EYEVIDO, its legal representatives, executives, employees or other vicarious agents, the liability of EYEVIDO shall be limited to the amount of damages typically foreseeable at the time of conclusion of the contract.
- 9.3 The exclusions and limitations of liability set forth in 9.1 and 9.2 shall not apply in the event of the assumption of express warranties, in the event of claims due to the absence of warranted characteristics and for damages arising from injury to life, body or health and in the event of mandatory statutory provisions. The limitations of liability regulated in clause 9.2 shall not apply in the event of a debtor's default by EYEVIDO to claims for default interest, to the lump sum for default pursuant to Section 288 (5) of the German Civil Code (Bürgerliches Gesetzbuch - BGB) and to compensation for the damage caused by default, which is justified in the costs of legal action.

General Terms and Conditions EYEVIDO

- 9.4 Notwithstanding the other provisions of this clause 9, the strict liability of EYEVIDO for damages (§ 536a BGB) for defects existing at the time of conclusion of the contract is excluded. Liability under the Product Liability Act shall remain unaffected.

10. Final provisions

- 10.1 The PLATFORM USAGE AGREEMENT, the LICENSE AGREEMENT and the agreements concluded via the SERVICES shall be governed exclusively by the laws of the Federal Republic of Germany, excluding the UN Convention on Contracts for the International Sale of Goods (CISG).
- 10.2 The place of jurisdiction for all disputes arising from or in connection with the contracts concluded between EYEVIDO and CUSTOMERS shall be Koblenz/Germany, to the extent permitted by law.
- 10.3 The place of performance is Koblenz/Germany.
- 10.4 Should any provision of these GTC be or become invalid or unenforceable, in whole or in part, for reasons other than those set forth in § 305-310 BGB, the validity of the remaining provisions of these GTC shall not be affected, unless, taking into account the following provision, the performance of the contract constitutes an unreasonable hardship for one party. Section 306 of the German Civil Code shall remain unaffected. The parties undertake to replace the invalid or unenforceable provision with a valid and enforceable provision that comes as close as possible to the economic purpose of the invalid or unenforceable provision. The same shall apply to the supplementary interpretation of the contract or any existing loopholes in the contract.

B. SPECIAL PROVISIONS FOR THE USE OF THE SERVICES OF EYEVIDO

11. Scope of services of EYEVIDO LAB

11.1 Within the scope of EYEVIDO Lab, EYEVIDO grants CUSTOMERS, for the purpose of preparing, conducting, evaluating and managing STUDIES by the CUSTOMER, for the duration of the contractual term of EYEVIDO LAB (clause 15), against payment, the use of (i) a separate customer area of the WEB PORTAL with the respective currently offered functionalities, (ii) the SOFTWARE to be installed locally on the respective end device used in the respective current version and with the respective currently offered functionalities as well as (iii) optionally one or more EYE TRACKERS. Furthermore, EYEVIDO shall provide storage space to the necessary extent for the application data generated during the use of EYEVIDO LAB on one or more data processing systems (servers) of EYEVIDO or its vicarious agents. STUDIES are limited to 100 study items per STUDY. Per STUDY, the duration of data recording per subject is limited to 120 minutes.

The CUSTOMER may rent EYE TRACKERS from EYEVIDO in accordance with clause 17.

11.2 EYEVIDO shall set up the necessary administrative rights for the respective CUSTOMER when booking EYEVIDO LAB in the PROTECTED CUSTOMER AREA.

11.3 Within the framework of EYEVIDO LAB, the CUSTOMER can create his own STUDIES IN the PROTECTED CUSTOMER AREA, prepare them and evaluate them after they have been carried out. Within the framework of EYEVIDO LAB, test persons can participate in STUDIES using the SOFTWARE.

11.4 The approach, acquisition and remuneration of test persons is not part of the scope of services of EYEVIDO within the scope of EYEVIDO LAB; rather, this is the responsibility of the respective CUSTOMER. The same applies with regard to any existing obligations under data protection regulations (in particular the DSGVO and the BDSG) in relation to test persons (e.g. obtaining consent when collecting personal data in the context of studies). The CLIENT is responsible for ensuring that any processing of personal data in the context of the use of EYEVIDO LAB is carried out in accordance with the applicable data protection regulations. With the WEB PORTAL, the

PROTECTED CUSTOMER AREA, the SOFTWARE and the EYE TRACKER, EYEVIDO merely provides the technical infrastructure for the performance of STUDIES by the CUSTOMER.

11.5 Within the scope of EYEVIDO LAB, EYEVIDO shall not be obliged to make the source code of the

SOFTWARE or the WEB PORTAL accessible to CUSTOMERS, unless this is necessary for the elimination of defects and EYEVIDO has rejected the elimination of defects or is in default with it. Apart

General Terms and Conditions EYEVIDEO

from that, CUSTOMERS are not entitled to adapt the WEB PORTAL or the SOFTWARE by customizing, neither in the sense of parameterization, nor by interfering with the source code.

12. Optional fringe benefits

In addition to the SERVICES mentioned in clause 11, EYEVIDEO offers CUSTOMERS in connection with EYEVIDEO LAB optionally the services mentioned below against payment:

- a. Consulting in the conception, design, implementation and evaluation of STUDIES;
- b. (product) training; and
- c. technical support for the installation and setup of the SOFTWARE as well as the installation and commissioning of the EYE TRACKERS provided by EYEVIDEO via remote means of communication (e.g. setup via telephone, chat or e-mail). Alternatively, the Parties may also agree that the above services are provided on site.

13. Booking of EYEVIDEO Lab and optional additional services

Upon request, EYEVIDEO shall send the CUSTOMER a binding offer for the provision of EYEVIDEO LAB as well as the provision of the optional ancillary services specified in clause 12, with a breakdown of the individual price and service components. The CUSTOMER may accept EYEVIDEO's offer in text form (e.g. by e-mail). Upon receipt of the acceptance by EYEVIDEO, a contract on the booking of EYEVIDEO Lab and the other services specified in the respective offer is concluded between the parties.

Alternatively, the order of an EYEVIDEO Lab license as well as the optional ancillary services mentioned in clause 12 can be made by the customer in text form (e.g. by e-mail) making an offer to conclude a contract. For this purpose, the customer shall specify the desired license start, the desired license type (Trial, Basic, Premium, Enterprise), the desired license period (one month or one year) and the account to which the license is to be assigned. The contract comes into effect if EYEVIDEO accepts the offer in text form within 7 days.

14. Rights of use; compliance with the terms of use by subjects

- 14.1 EYEVIDEO grants the CUSTOMER a simple, spatially unrestricted right to use the SOFTWARE as well as the firmware and software provided by EYEVIDEO in connection with the provision of EYE TRACKERS in accordance with these GTC for the duration of the contractual term of EYEVIDEO LAB, insofar as this is necessary for the contractually pursued purpose (hereinafter referred to as "**LICENSE**"). The LICENSE is limited to the number of test persons permitted according to the tariff. The LICENSE includes the right

General Terms and Conditions EYEVIDEO

to allow the subjects participating in STUDIES of the customer to use the SOFTWARE and the provided EYE TRACKERS in accordance with the provisions of these GTC

for a limited period of time. Otherwise, the right of use granted under this clause may not be transferred or sublicensed by the CUSTOMER.

- 14.2 The CUSTOMER shall oblige the test persons participating in its STUDIES to comply with the provisions of these GTC.
- 14.3 EYEVIDEO is entitled to anonymously statistically evaluate some data generated via EYEVIDEO Lab from conducted studies (eye tracking data (consisting of x-, y-coordinates, timestamp and duration), mouse click data (x-, y-coordinates, timestamp), mouse position data (x-, ycoordinates, timestamp), scrolling (x, y coordinates, timestamp), dwell time on a page and display size (x, y dimension)) in anonymized form for the purpose of conducting scientific research and making them available to other users as statistical comparison values. For this purpose, the CUSTOMER irrevocably grants EYEVIDEO the simple and transferable right, unrestricted in time, space and content, to use, process, publish and exploit this data in any form. The data do not allow any conclusions to be drawn about the test persons or the tested content.

15. Term and termination of EYEVIDEO LAB

- 15.1 Unless otherwise agreed, the contract term of EYEVIDEO Lab is based on the license tariff selected by the CUSTOMER. If the CUSTOMER does not terminate the contract by the end of the agreed term at the latest, the contract shall be extended by the originally booked contract term without further action.
- 15.2 The right to extraordinary termination for good cause shall remain unaffected.
- 15.3 Any termination must be in text form (e.g. e-mail or fax).

16. Renting eye tracker

- 16.1 CUSTOMERS have the option during the contractual term of EYEVIDEO LAB to rent EYE TRACKERS from EYEVIDEO for the purpose of conducting STUDIES within the scope of EYEVIDEO LAB for a fee.

The minimum rental period is one month.

- 16.2 The CUSTOMER is entitled to provide the EYE TRACKERS rented by him to the test persons registered for participation in a STUDY of the CUSTOMER for use on a temporary basis

General Terms and Conditions EYEVIDO

within the scope of the contractual use. Otherwise, the transfer of use to third parties requires the prior written consent of EYEVIDO.

- 16.3 The CUSTOMER must treat the EYE TRACKER provided with care, protect it from damage and observe the maintenance, care and use instructions or operating manuals provided by EYEVIDO. If the CUSTOMER leaves the eye tracker to other persons for use, he must ensure that such persons observe the provisions of sentence 1. Labels, stickers, signs, numbers or inscriptions attached to the EYE TRACKERS may not be removed, changed or made unrecognizable. The CUSTOMER shall only be entitled to make changes if the respective change is necessary to remedy the defect and EYEVIDO is in default with the correction of the defect, refuses to remedy the defect without justification or is unable to remedy the defect without delay for other reasons attributable to the area of responsibility of EYEVIDO. Other modifications and attachments require the prior consent of EYEVIDO. This applies in particular to attachments or installations to the EYE TRACKER as well as installation in other devices or (EDP) systems.
- 16.4 EYEVIDO will ship the rented EYE TRACKERS to the domestic address specified by the CUSTOMER.
- 16.5 Rental agreements concluded for EYE TRACKERS shall end upon expiration of the respective agreed rental period. If a rental period has not been agreed, rental agreements for EYE TRACKERS can be terminated monthly with a notice period of two (2) weeks to the end of the month. Rental contracts for EYE TRACKERS end at the latest - without the need for a notice of termination - with the termination of the contract for EYEVIDO LAB. After expiration of the rental period, rented EYE TRACKERS are to be sent to EYEVIDO insured at the CUSTOMER's expense or to be handed over personally at EYEVIDO's place of business.
- 16.6 The CUSTOMER shall immediately notify EYEVIDO in text form (e.g. by e-mail or fax) of any defects, (functional) malfunctions or damage occurring during the respective term of the contract. Visible external damage to an EYE TRACKER shall - as far as possible - be documented (e.g. by taking pictures). In case of defects of an EYE TRACKER, EYEVIDO shall be entitled, at its own discretion, to either
- a. to repair at its own expense,
 - b. to replace it at its own expense with a defect-free EYE TRACKER, or
 - c. replace with a newer version with equivalent or greater functionality.