



## EYESmart Terms & Conditions

*Effective Date: 01/09/2025*

*Version: 1.0*

### **Between the customer as set out in the EYESmart Offer**

(hereafter the “**Customer**”) and

#### **Early Years Evaluation Smart Ltd.**

20 Wenlock Road,  
London, England, N1 7GU  
Company number 16405085  
(hereafter “**EYESmart**”)

### **Definitions**

“**Admin User**” means an admin user of the Customer who has full access to the Platform;

“**Agreement**” means these terms and conditions between EYESmart and the Customer regarding the services provided by EYESmart;

“**Authorised User**” is a collective term for all Admin Users, Staff Users, Individual Direct Users, and Family Users who have been granted access to use the Platform;

“**Customer Data**” has the meaning set out in the EYESmart Data Processing Agreement; ,

“**Confidential Information**” means any information of commercial value, in whatever form or medium, including commercial or technical know-how, technology, business operations, customer information, pricing or any other information that is labelled confidential information or information reasonably considered confidential because of its’ nature and manner of disclosure;

“**Family User**” means third parties connected with the schools, daycares or nurseries, family, specified in the EYESmart Offer, for example parents, guardians or other family members of children attending the Customer’s settings; or family members of the Individual Direct Customer.

“**EYESmart Offer**” means the offer made by EYESmart setting out the details of the chosen subscription package, additional services (if applicable) and payment terms;

“**Maintenance Window**” means weekends or the time period between 01:00 and 08:00 CET (00:00 and 07:00 GMT/20:00 and 03:00 (9 PM and 3 AM) EST/17:00 and 00:00 (5 PM and 12 AM) PST) on working days;

“**Platform**” means the early years evaluation software services provided by EYESmart with features subject to the chosen subscription package as described in the EYESmart Offer;

“**Site**” refers to an individual physical location, such as a school, daycare or nursery, family, operated by the Customer, and using the Platform under the Customer’s control. The Customer may operate more than one Site;

“**Staff User**” means a user of the Platform who is an employee of the Customer (other than Admin Users) with appropriate permission rights as necessary in order for the employee to perform its’ duties;

“**Subscription Term**” means the chosen subscription period, either annually or monthly unless otherwise stated in the EYESmart Offer, which is the term of this Agreement; “**Usage and Activity Data**” as the meaning set out in Clause 11.1.

## 1. Introduction

- 1.1. The following terms and conditions set out the agreement between EYESmart and the Customer regarding the services provided by EYESmart. The Agreement applies to the Customer irrespective of whether the Customer subscribes to a paid subscription package or if the Customer uses the free package. By using the free package, a Customer is bound by this Agreement.
- 1.2. The EYESmart Offer sets out the details of the Customer's chosen subscription package, additional services (if applicable) and payment terms.
- 1.3. The Customer may receive the EYESmart Offer by email or in the Platform itself. The Customer is bound by this Agreement when accepting the EYESmart Offer. The EYESmart Offer is governed by the terms of this Agreement.

## 2. The Platform

- 2.1. EYESmart provides the Customer with the Platform, an early years evaluation software services with features subject to the chosen subscription package as described in the EYESmart Offer, including the support and maintenance as set out in Clause 6. The Platform is provided as a software-as-a-service application over the Internet, and the Platform is hosted by EYESmart.
- 2.2. EYESmart may offer the Customer, and Family Users separately, additional services and features in the Platform that go beyond the agreed standard features. Such additional services and features are optional for both the Customer and Family Users and subject to additional fee as specified by EYESmart from time to time.

## 3. License and Limitations

- 3.1. EYESmart grants to the Customer a non-exclusive, non-transferable, non-sublicensable, revocable and limited license to access and use the Platform and any agreed additional services and features specified in the EYESmart Offer or as otherwise agreed by the parties in writing in respect of the number of Sites specified in the EYESmart Offer (subject to any specified limitations) during the Subscription Term of the Agreement, such license being subject to Customer's acceptance of, and usage being compliant with the EYESmart Terms of Use.
- 3.2. The Customer may increase the number of Sites allowed to use the Platform and/or purchase add-on services either within the Platform itself, by email where such email request becomes binding upon EYESmart acknowledging it, or by a new EYESmart Offer provided to the Customer by EYESmart.
- 3.3 The Customer must not, directly or indirectly:
  - a) copy, modify, translate, adapt or otherwise create derivative works or improvements, whether or not patentable, of the Platform;
  - b) reverse engineer, disassemble, decompile, decode or otherwise attempt to derive or gain access to the source code of the Platform;
  - c) remove, delete, alter or obscure any trademarks or any copyright, trademark, patent or other intellectual property right notices from the Platform;
  - d) sublicense, assign, transmit or otherwise distribute all or any portion of the Platform other than as permitted by the terms of this Agreement;
  - e) use the Platform or any information provided by EYESmart or their licensors for the purpose of developing, or having developed, product or services competitive with the Platform, or;
  - f) except as otherwise set forth herein or agreed in writing between the Parties, permit the Platform (in whole or in part) to be used, examined, reviewed or inspected by third parties.
- 3.4 Any breach of the above limitations will constitute a material breach of this Agreement.

## 4. Customer Obligations

- 4.1 The Customer is responsible for:
  - a) inserting correct and accurate information and Customer Data in the Platform and updating this Customer Data in event of changes;
  - b) ensuring that its IT systems (to the extent they are used in relation to the Platform) are up-to-date and that IT equipment etc. functions properly at all times;
  - c) taking reasonable steps, where possible and within its control, to ensure that Authorised Users use the Platform in compliance with the [Terms of Use](#), which each Authorised User must accept

upon signing in for the first time. This includes reasonable monitoring for inappropriate behaviour, including taking appropriate action within its capacity, and taking reasonable steps to ensure that all Staff User access credentials and passwords are kept confidential, safe and used only for accessing the Platform;

- d) complying with all applicable laws and regulations with respect to its activities under this Agreement, including but not limited to observantly use any features designed to ease compliance with specific country or state law requirements.

4.2. Customer shall negotiate at all times in good faith, including but not limited to in its declaration of the number of sites at which the Platform will be used. If Customer negotiates in bad faith, withholding information in the negotiation with EYESmart that provides a factual discount on the price that would otherwise have been set by EYESmart, as per EYESmart's standard pricing model in the relevant territory at the time of the negotiation with Customer, Customer will be in material breach of this Agreement. Any calculation of damages owed to EYESmart arising from any such fraud in this instance shall be from the earlier of the first date of Customer's ability to access the Platform, Customer's first payment to EYESmart, or Customer's acceptance of the Agreement. Any remedy in this section shall be without prejudice to EYESmart's statutory and/or common law rights, and EYESmart reserves the right to report fraudulent behaviour to the authorities of the jurisdiction in which Customer resides and seek relief against any cause of action in any legal theory, including but not limited to tort and criminal law, in the said jurisdiction.

## **5. Access to the Platform and Authorised Users**

5.1. EYESmart provides the Customer with access to the Platform via Individual Direct User account or Admin User account(s). The Admin User may grant Staff Users access to the Platform and provide them with the appropriate permission rights as necessary in order for them to perform their duties.

5.2. The Individual Direct User, Admin User and Staff User with adequate permission rights, may grant Family Users access to the Platform.

5.3. Admin User, Staff User, Individual Direct User and Family User are collectively referred to as "Authorised User"/ "Authorised Users".

5.4. All Authorised Users must accept the [Terms of Use](#) when signing up for the first time. The Customer may, at its sole discretion, set additional guidelines and policies around the use of the Platform and the Customer shall have the sole responsibility to inform all its Staff Users and Family Users (as may be applicable) of any such relevant Customer guidelines and policies.

## **6. Maintenance, Support and Operation**

6.1. EYESmart will provide the Platform to the Customer, including maintenance and support, using reasonable skill and care expected of a competent provider of similar services, in a timely and professional manner, in accordance with applicable laws, good industry practices and using appropriately skilled, trained and qualified personnel.

6.2 Depending on the selected subscription package, EYESmart will provide support to the Customer regarding the use of the Platform through the EYESmart Customer Experience team.

6.3. The support covers onboarding and training in the usage of the Platform, answering concise and precise questions concerning the usage of the Platform, carrying out simple troubleshooting and providing general guidance regarding the Platform.

6.4. Reporting of bugs and operational issues can also be addressed to the EYESmart Customer Experience team.

6.5. The support does not include technical consultancy or troubleshooting of the Customer's IT system.

6.6. Support is available on working days within normal business hours, Monday to Friday from 9:00 to 17:00 (9 AM to 5 PM) local time for the US, Europe, and 08:00 to 16:00 in the UK, via the support chat in the Platform.

6.7. Uptime and Maintenance

- a) EYESmart uses all commercially reasonable efforts to always deliver the most possible uptime of the Platform. The status of the Platform and overview of planned maintenance and incidents are available at <https://eye-smart.com/>, where the Customer can subscribe to status updates.

- b) All scheduled maintenance will, as far as reasonably possible, be carried out with minimal disruption for the Customer and conducted outside ordinary business hours. To the extent possible, maintenance is conducted during the Maintenance Window.
- c) The Platform might be unavailable due to maintenance work etc. within the period of the Maintenance Window. For safety reasons or when correcting critical errors, EYESmart can be forced to close down parts of or the entirety of the Platform during hours outside the Maintenance Window in order to protect the Platform, including its systems, and/or the Customer's Data from risks. To the extent possible, EYESmart will notify the Customer by email and/or on the Platform of unscheduled actions outside of the Maintenance Window.
- d) EYESmart will use reasonable endeavours to sustain a continuous operation, including ongoing maintenance of the Platform by correcting errors and dysfunctions. The correction of significant errors will be initiated within ordinary business hours, while other errors are targeted within a reasonable period of time in relation to the nature of the error and the impact on the Platform and the Customer's use thereof.
- e) EYESmart will further use reasonable endeavours to continue development of the Platform, engaging both in development of existing functionalities and development of new functionalities as may be appropriate.
- f) Relevant monitoring is installed on the system and EYESmart monitors the Platform's system on a regular basis. EYESmart will act as quickly as reasonably possible on any incidents that could affect the Customer's use of the Platform.

#### 6.8. Backup

- a) Backup of the Platform and of the Customer's Data will be carried out as referred to in the EYESmart Data Processing Agreement.

### 7. Fees and Payment Terms

- 7.1. The Customer must pay an annual or monthly subscription fee, which is based on the Customer's desired functionalities, subscription package, and the number of daycares, nurseries, or schools using the Platform, and which is set out in the EYESmart Offer.
- 7.2. The Customer must pay a separate fee for any purchased add-ons added to the Platform, as per the pricing applicable at the time the additional services are provided.
- 7.3. The Customer may have to pay a one-time fee in relation to the set-up of the Platform as may be set out in the EYESmart Offer.
- 7.4. The fees, exclusive of value added tax (VAT), and payment terms are specified separately in the EYESmart Offer. Value added tax (VAT), as applicable from time to time to the Customer, may be included on the invoice. EYESmart may invoice the Customer for such amounts, and the Customer will pay that amount unless it provides EYESmart with a valid tax exemption certificate authorised by the appropriate taxing authority. In such jurisdictions as EYESmart does not invoice the Customer for VAT or other such similar sales tax, use tax, sales and use tax, excise tax or similar local tax, charge or fee whatsoever, the Customer is responsible for paying all such external fees and taxes associated with its use of the Platform, wherever levied, such as they apply.
- 7.5. Unless otherwise stated in the EYESmart Offer, EYESmart may, at its sole discretion, change the annual and/or monthly subscription pricing or add-ons pricing with effect from the subsequent renewal of the Subscription Term, provided a written notification (including e-mails) is sent to the Customer no later than two (2) months prior to the start of that subsequent Subscription Term.
- 7.6. Invoiced amounts are due within fourteen (14) days from the invoice date, unless otherwise stated in the EYESmart Offer. For late payment, EYESmart is entitled to charge a 2% arrears per commenced month, starting from the due date. If the invoice is not paid by the due date, EYESmart is, until the overdue payment is received, entitled to prevent the Customer accessing the Platform until all arrears have been received (without prejudice to EYESmart's right to terminate the Agreement as per Clause 16).
  - a) Notwithstanding the above, Customer may raise a dispute, in writing, against an invoice within 5 business days of Customer's receipt of such invoice. Any such dispute will be resolved within 14 days of Customer's raising of said dispute, and EYESmart shall not unreasonably find against Customer with respect to such dispute. Failure to provide a written statement explaining in

reasonable detail the reasons for disputing the charge(s) within such time period irrevocably waives any objection and further recourse regarding such charges.

## 8. Intellectual Property

- 8.1. Customer acknowledges and agrees that:
- a) the EYESmart Platform, documentation, training material and EYESmart trademarks (collectively "EYESmart IP") are owned by, and will remain the sole property of, EYESmart, and/or EYESmart's licensors, as applicable;
  - b) the EYESmart IP contains and embodies copyrights, trade secrets and other intellectual property rights (collectively "Intellectual Property Rights") owned or licensed by EYESmart and their licensors, and;
  - c) EYESmart and their licensors shall continue to be the sole owner of all Intellectual Property rights in and to the EYESmart IP worldwide including, without limitation, any derivative work and/or works.
- 8.2. The Customer shall not obtain any ownership to the Intellectual Property underlying the EYESmart IP, nor any other of EYESmart and/or EYESmart's licensors' IP, nor any other rights to the Platform, except to access and use the Platform in accordance with the license granted under this Agreement.
- 8.3. The Customer grants EYESmart a limited, revocable, non-exclusive, non-transferable, non-sublicensable, royalty-free license to use the Customer's name and/or logo during the Term for the following purposes; a) to provide the Customer with a branded version of the Platform (if applicable), and b) to identify the Customer as a customer in EYESmart's sales and marketing efforts, including on its website, social media channels, customer lists, and in presentations to prospective customers. All such use shall comply with any branding guidelines that the Customer provides. The Customer may revoke this permission at any time by providing a written notice to EYESmart.
- 8.4. Customer assigns to EYESmart all right, title and interest in any ideas, suggestions, enhancement requests, recommendations or any feedback provided to EYESmart relating to the Platform, to the extent the Customer is permitted to do so. The Customer further acknowledges that EYESmart will be entitled to use, implement and exploit any such feedback, ideas, suggestions for any purpose whatsoever without any obligation of confidentiality (except to the extent it comprises the Customer confidential information), attribution, accounting or compensation.

## 9. Confidentiality

- 9.1. Each party (the "**Receiving Party**") undertakes and agrees to hold in confidence and not to use the other party's (the "**Disclosing Party**") Confidential Information otherwise than in the exercise and performance of its rights and obligations under this Agreement (the "**Permitted Purposes**")
- 9.2. The Receiving Party must not divulge any Confidential Data of the Disclosing Party to any person, except to its own employees/workers under contract and then only on a "need-to-know" basis for the Permitted Purpose.
- 9.3. Confidential Information of EYESmart includes all aspects of the Platform and the services.
- 9.4. Confidential Information of the Customer includes the Customer Data.
- 9.5. Confidential Information does not include information that i) is or becomes generally available to the public (unless if it is because of the Receiving Party breach of this Agreement); ii) was in the possession or known by the Receiving Party prior to receipt from the Disclosing Party; iii) was rightfully disclosed to the Receiving Party without restriction by a third party; iv) was independently developed without use of any Confidential Information of the Disclosing Party; or v) is required to be disclosed by law.

## 10. Personal Data Processing

- 10.1. As part of providing the services, operating and supporting the Platform, EYESmart conducts processing of Customer Data for which the Customer and the Customer's end-customer are the controller of. Consequently, EYESmart is acting as a processor in respect of Customer Data. The Customer is responsible for determining and ensuring their own compliance with applicable data protection legislation, including the lawfulness of engaging EYESmart as Processor.
- 10.2. The data protection obligations of the parties are set out in the EYESmart Data Processing Agreement, which is incorporated by reference into this Agreement.

10.3. The data, including Customer Data, submitted into the Platform by the Customer or the Users is the property of the Customer and the Customer's end-customer.

10.4. Subject to the above, EYESmart will otherwise process Customer Data in accordance with commercially reasonable good industry practices. The Customer may request in writing, with 30 days' notice, documentation regarding measures taken to implement and maintain data security. EYESmart will not unreasonably withhold such information but may require the execution of a binding non-disclosure agreement between Customer and EYESmart.

## 11. Usage and Activity Data

11.1. The Customer acknowledges and agrees that EYESmart may collect, generate and process anonymised and, in certain cases, pseudonymised (de-identified) data derived from the Customer's use of the Platform ("Usage and Activity Data"). Where anonymization is not possible, EYESmart ensures that any pseudonymised (de-identified) data is processed in a manner that significantly reduces the risk of re-identification by removing or obfuscating personal identifiers and employing industry-standard safeguards. Additionally, EYESmart does not attempt to re-identify such data and employs strict controls to prevent unauthorised access or linkage back to individual identities. If the German Social Code, First Book (SGB I) applies to the Customer, any processing of pseudonymised data will be conducted only as permitted under § 35 SGB I.

11.2. Any such Usage and Activity Data may be used to analyse, develop, and improve the Platform and related services. Additionally, aggregated benchmarking insights may be generated and utilised in best practices guidance, recommendation or other reports, and may be shared publicly and with customers, provided that such data does not identify any individual customers or person.

11.3. EYESmart may also generate and share individualised reports with customers regarding their own usage of the Platform to provide insights, recommendations or other relevant analytics, provided that such data does not identify any persons.

11.4. Where pseudonymised data is processed, EYESmart acts as the Controller and processes such data in compliance with any applicable data protection laws, ensuring that processing is limited to what is strictly necessary for the purposes set out above (EYESmart's legitimate interests). Details of these processing activities are further outlined in the EYESmart Privacy Policy.

## 12. Third Party Services

12.1. Certain of EYESmart's services, including but not limited to the Platform, allow the Customer to connect to various third-party services via API or other integrations (collectively the "**Linked Services**") and may contain links to other third-party websites and services. EYESmart provides these connections to the Customer as a convenience only, and the inclusion of any connection or link does not imply, nor should be construed as, carrying EYESmart's express or implied endorsement with respect to the Linked Services, website, or policies, nor any association, affiliation, or collaboration with its operators.

12.2. The Customer's access to and use of such Linked Services is governed solely by the terms and conditions, or other such similar agreement, as between the Customer and the provider of such Linked Services (the "**Linked Service Provider**"). The Customer hereby waives any cause of action in any legal theory of damages against EYESmart with respect to, without limitation, any link contained in a Linked Service, the functionality or non-functionality of a Linked Service, any factual damages arising out of the use of a Linked Service. EYESmart, furthermore, disclaims all liability for any claim arising, in whole or in part, from the policies and/or procedures of any and all Linked Service Providers.

12.3. The Customer hereby acknowledges that using a Linked Service may constitute an instruction to EYESmart to share part, parts, or the whole of the Customer's data with a Linked Service Provider, and that the use of such a Linked Service constitutes consent to share such data with such Linked Services as the Customer may engage. By connecting such Linked Services, the Customer agrees that it is consenting to the necessary continuous integration and information sharing about the Customer, EYESmart Users and Customer's data, as defined in the EYESmart Data Processing Agreement, for the provision of such Linked Services, to such Linked Service Providers.

12.4. The Customer will indemnify EYESmart against and hold EYESmart harmless from any liability caused by Linked Services, including but not limited to data breaches, and any and all other acts, omissions, and/or behaviours propagated by such Linked Services and Linked Service Providers.

12.5. The Customer shall use Linked Services at its own risk and shall be solely responsible for performing due diligence as to the compliance of such Linked Services with local laws, regulations, court orders and administrative requirements, including but not limited to data protection requirements, and choosing to engage such Linked Service Providers.

### **13 . Security and Disclaimer of Warranties**

13.1. EYESmart strives to ensure that operation of the Platform is as secure and reliable as possible in accordance with good IT practices. EYESmart has taken certain security measures that are further specified in the EYESmart Data Processing Agreement.

13.2. The Platform and any and all other EYESmart services, features, and products are provided “as is”, without warranty, representation, condition or guarantee of any kind, either expressed or implied, including but not limited to any implied warranties, representations, conditions or guarantees of quality, merchantability, fitness for a particular purpose or non-infringement, all of which are disclaimed to the fullest extent permitted by law. EYESmart specifically, but without limitation, does not warrant that:

- a) the Platform will be uninterrupted, error-free or flawless;
- b) the Platform will be secure against hacker attacks or other unauthorized access to the Platform, even though EYESmart shall use reasonable endeavours to design the Platform to resist hacker attacks and other unauthorized access;
- c) the Platform will at any given time be fully operational or accessible to the Customer;
- d) the Platform (including new versions, updates etc.) will be compatible or work with other software, applications or systems or operate on any hardware without interruption; or
- e) any specific functionalities of the Platform will be available at any given time.

13.3 . EYESmart has no responsibility or liability for any third-party platforms that the Customer may integrate with the Platform.

13.4 . Features offered to ease the Customer compliance with specific country, state, local or other legal, regulatory, or other administrative requirements are provided “as is”. EYESmart accepts no responsibility of Customers usage of such features and compliance with such requirements. EYESmart will use all commercially reasonable endeavours to update such features in case of potential changes to applicable legislation as soon as reasonably possible.

### **14 . Errors and Omissions**

Provided the Customer wishes to complain about errors or omissions within the Platform, this must be done promptly after first coming to the Customer’s notice, and in any event within 30 (thirty) days. Otherwise, the Customer waives any claim against EYESmart arising from any such error or omission, whether alleged or actual.

### **15. Liability and Limitation of Liabilities**

15.1. Nothing in this Agreement will exclude either party’s liability for death or personal injury caused by its negligence, or fraud or fraudulent misrepresentation or any other liability which cannot be excluded by law.

15.2. Neither party will be held liable for any indirect, special, incidental or consequential damages whatsoever (including but not restricted to, damages for loss of profits, operating loss, loss of business, demands raised by third parties, data loss or expenses regarding reestablishment of data, loss arising out of or in any way related to the use of or inability to use the Platform, third-party software and/or third-party hardware used with the Platform) which may occur in respect of the Agreement.

15.3. Loss of data is considered as indirect loss, except if the data cannot be recovered from the latest backup or EYESmart has not backed up in accordance with Clause 6. In those cases, the loss is considered a direct loss.

15.4. EYESmart will not be liable for the Customer’s loss of data where such data has been submitted by the Customer after the time of the latest backup.

15.5. Except for any liability under Clause 15.1, each party’s total aggregate liability for damages for or in respect of any claim under or in connection with this Agreement (whether or not such liability results from or involves negligence) shall in all circumstances be limited to an amount equal to the fees paid by the

Customer in respect of the usage of the Platform twelve (12) months prior to the event giving rise to the claim.

## **16. Subscription Term, Termination and Breach of Contract**

- 16.1. The Subscription Term of this Agreement is the chosen subscription period, either annually or monthly. The Subscription Term will automatically renew for subsequent Subscription Terms, unless the Agreement is terminated by either party in accordance with this Agreement. In the event, the EYESmart Offer sets out a different Subscription Term and/or a different automatic renewal period, the EYESmart Offer shall prevail.
- 16.2. The Customer may terminate the Agreement by giving at least a one (1) month written notice (includes email) at any time. For the avoidance of doubt, the Customer is not entitled to any reimbursement of paid fees. In the event, the EYESmart Offer sets out different termination rights for convenience, the EYESmart Offer shall prevail.
- 16.3. EYESmart can terminate the Agreement by giving a three (3) month's written notice (includes email), unless other arrangements have been made between the parties. Such termination will take effect at the end of the then current Subscription Term.
- 16.4. If the Customer is using a free package of the Platform, EYESmart has the right to deactivate and block the Customer's account on the Platform, and therefore terminate the Agreement, if it has been inactive for more than three (3) months. EYESmart will provide a prior written notice (including email).
- 16.5. If the Customer breaches a payment obligation set out in Clause 7 and such breach is not remedied within fourteen (14) days of EYESmart giving the Customer a written notice (includes email) of the relevant breach, EYESmart may terminate the Agreement with immediate effect.
- 16.6. Either party may terminate this Agreement with immediate effect by giving written notice (includes email) to the other (without affecting any other rights or remedy, if i) a party fails to comply with any material provision of this Agreement and such failure to comply (if capable of remedy) is not remedied within thirty (30) days of the other party giving written notice (includes email) to it of the relevant breach; ii) the other party suffers an insolvency event; or iii) the other party suspends, or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.
- 16.7. If EYESmart proposes a material change to the Agreement, provided that the changes are not required by applicable law or regulations, and the Customer objects to the material change by providing reasonable arguments, the Customer is entitled to terminate the Agreement by giving EYESmart a written notice (includes email) terminating the Agreement at the end of the Subscription Term or at the day the proposed changes take effect, whichever is sooner.
- 16.8. Upon termination of this Agreement, the Customer must immediately pay any outstanding invoices (if any), the license under this Agreement will immediately end and the Customer will no longer have access to the Platform. In addition, the Customer must specifically instruct EYESmart to return the Customer Data before the termination takes effect. Otherwise, the Customer Data will be deleted in accordance with the EYESmart Data Processing Agreement.
- 16.9. Clauses on warranties, intellectual property, limitations of liability, data protection, and confidentiality shall survive expiration or termination of this Agreement and continue in force indefinitely or as permitted by applicable law.

## **17. Force Majeure**

Neither party will be liable for a breach of this Agreement caused by circumstances beyond that party's control, including (for example), strikes, lockouts, public regulations, war, terrorism, water damage, trade restrictions, virus or hacker attacks, illness or deaths of key employees, IT failures, telecommunications malfunctions, fire, electricity breach, power failure, flooding, lightning strike, pandemic, epidemic, acts of government or abnormal weather conditions ("Force Majeure Event"). In such circumstances the time for performance will be extended by a period equivalent to the period during which performance of the obligations has been delayed or failed to be performed. If the period of delay or non-performance continues for a period exceeding 60 days, the party not affected by the Force Majeure Event, may terminate this Agreement immediately on written notice to the other.

**18. Assignment**

- 18.1. EYESmart may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights and/or obligations under this Agreement.
- 18.2. The Customer will not, without the prior written consent of EYESmart, assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights and/or obligations under this Agreement.

**19. Third Party Rights**

No one other than a party to the Agreement will have any right to enforce any of its terms.

**20. Severability**

If any provision or part-provision of the Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this Clause 20 shall not affect the validity and enforceability of the rest of the Agreement.

**21. Amendments**

The Customer agrees that EYESmart has the right, from time to time, to make changes to the terms of the Agreement if it deems a change is necessary for it to comply with applicable law, regulations (including data protection laws) or otherwise deems necessary or appropriate as determined at EYESmart discretion. Any changes will take place 14 days after EYESmart has notified the Customer of such change in writing by email. If the Customer by providing reasonable arguments objects to any material changes proposed, other than those required to comply with law and regulations, the Customer can terminate the Agreement in accordance with clause 16.7.

**22. Waiver**

A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not: (i) waive that or any other right or remedy; or (ii) prevent or restrict the further exercise of that or any other right or remedy.

**23. Notices**

Any notice given to a party under or in connection with this Agreement will be in writing and will be delivered by e-mail. Such notice will be deemed to have been received within 1 working day after sending that email to the other party's designated point of contact.

**24. Entire Agreement**

- 24.1. This Agreement together with the EYESmart Data Processing Agreement and the EYESmart Offer (including any other additional agreements if applicable to the parties) constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 24.2. Each party agrees that it will have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it will have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Agreement.

**25. Governing Law and Dispute Resolution**

- 25.1. In the event of any discrepancy or inconsistency between the various translations of these Terms and Conditions (including Data Processing Agreement) provided by EYESmart, the English language version shall prevail and be the controlling version. All interpretations of the Agreement shall be made in accordance with the English language version.

25.2. In the event of any dispute, claim or disagreement relating to this Agreement, the parties must use their best efforts to amicably resolve any such dispute. If the parties are unable to resolve the dispute within a reasonable period of time, each party is entitled to submit the matter to be resolved by the courts (as referenced below).

25.3. This indemnity and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales. The courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this indemnity or its subject matter or formation.

**26. Arbitration and Class Action Waiver**

26.1. At EYESmart's sole discretion, it may require the Customer to submit any disputes arising from this Agreement including disputes arising from or concerning their interpretation, violation, invalidity, non-performance, or termination, to final and binding arbitration under the Rules of London Court of International Arbitration, applying the laws of England and Wales, with the language of proceedings being in English.

26.2. The Customer further agrees that the Customer will resolve any disputes on an individual basis, and that any claims brought under this Agreement must be brought in the Customer's individual capacity, and not as a plaintiff or class member in any purported class, collective, or representative proceeding. The Customer further agrees that it will not participate in any class action (existing or future) brought by any third party arising under this Agreement. If any court or arbitrator determines that the class action waiver set forth in this paragraph is void or unenforceable for any reason or that an arbitration can proceed on a class basis, then such class action is not subject to arbitration and must be litigated in the courts of England and Wales.

**27. Limitation on Time to File Claims**

27.1. Any cause of action or claim the Customer may have arising out of or relating to this Agreement must be commenced within one year after the cause of action accrues, otherwise, such cause of action or claim is permanently barred. Should this Clause 27 be determined to be void or unenforceable for any reason, it shall be without prejudice to any indemnification or limitation of liability set forth in this Agreement, above.