



EYENUK WEBSITE TERMS OF USE

Last updated: April 07, 2019

These terms of use (the “Terms”) govern the relationship between Eyenuk, Inc., a corporation located at 5850 Canoga Avenue, Ste 250., Woodland Hills, CA 91367 (hereinafter, “Eyenuk,” “us,” or “we”) and you regarding your use of the Eyenuk.com website (the “Website”), which is designed to provide information and other services (collectively the “Service”).

Use of the Service is also governed by Eyenuk’s privacy policy, the current version of which can be found at www.eyenuk.com/privacy-policy (the “Privacy Policy”), which is incorporated herein by reference.

IMPORTANT – PLEASE READ CAREFULLY – THESE TERMS CREATE A LEGALLY BINDING AGREEMENT WHICH GOVERNS YOUR USE OF THE SERVICE. BY CREATING AN ACCOUNT (AS DEFINED BELOW) OR BY ACCESSING OR USING THE SERVICE OR ANY CONTENT OFFERED THROUGH THE WEBSITE, YOU ACCEPT AND AGREE TO BE BOUND, WITHOUT LIMITATION OR QUALIFICATION, BY THESE TERMS. IF YOU DO NOT ACCEPT ANY OF THESE TERMS, YOU ARE PROHIBITED FROM USING THE SERVICE. IF YOU WERE USING ANOTHER VERSION OF THE SERVICE OFFERED PRIOR TO YOUR ACCEPTANCE OF THESE TERMS, THESE TERMS ALSO APPLY TO YOUR PAST USE OF THAT OTHER VERSION OF THE SERVICE.

IMPORTANT DISCLAIMERS: This Website and the Service may contain or display information on medical and health-related topics. The information provided by this Website is not intended nor is implied to be a substitute for professional medical advice. Always seek the advice of your physician or other qualified health care provider prior to starting any new treatment or with any questions you may have regarding a medical condition.

1. Right, License and Restrictions.

1.1. License Grant For Service. Subject to your agreement to, and continuing compliance with, these Terms and any other relevant Eyenuk policies, Eyenuk grants you a non-exclusive, non-transferable, revocable limited right and license to access and use the Service. As used in these Terms, “Other User” means another licensee or user of the Service; “All Users” means you and all Other Users.

1.2. Minimum Age Requirement. An individual must be at least 18 years of age to use the Service.

1.3. Accounts and Access. You must register for an account through the Service (an “Account”). You may only register for one Account. An “Account Holder” means the person in whose name an Account is registered.

1.4. Use of the Service: The following restrictions apply to the use of the Service:

(a) You accept full responsibility for any unauthorized use of the Service by parties not authorized to use any of your Accounts. Additionally, you are responsible for any use of your credit card or other payment instrument (e.g. PayPal) incurred by parties using your Account;

(b) You shall not create an Account using a false identity or false information, or on behalf of someone other than yourself;

(c) Without first obtaining the written permission of Eyenuk, you shall not register for an Account or in any way use the Service if Eyenuk has removed, suspended, or otherwise terminated any Account registered by you, or on behalf of you or if Eyenuk has notified you that you may not use the Service;

(d) You shall not use your Account to advertise, solicit or transmit any commercial advertisements, including chain letters, junk email or repetitive messages to anyone;

(e) You shall not use the Service to engage in any illegal conduct;

(f) You shall not rent, lease, sell, trade, gift, bequeath or otherwise transfer your Account or your Plan to anyone without Eyenuk's written consent;

(g) You shall not reproduce, distribute or publicly display any content you access through the Service unless such content is clearly marked as "public" and you have been given the right to view such content; and

(h) You shall not do anything with any content you access through the Service that has been marked with restrictions or other instructions that is counter to such restrictions or other instructions.

1.5. Account Information and Management.

(a) Information Provided When Setting Up Account. When creating or updating an Account on the Service, you may be required to provide Eyenuk with certain personal information for yourself or for the individual acting on your behalf, which may include (but is not limited to) personal information such as name, birth date and email address, and, in some cases, payment information such as credit card numbers and billing information ("Account Information"). Account Information will be held and used in accordance with the Privacy Policy. You agree that you will supply accurate and complete Account Information to Eyenuk, and that you will update such information when and as it changes.

(b) Login Information. During the Account creation process, you will be required to select a username and password ("Login Information"). The following rules govern the security of your Login Information:

(i) You shall not share the Account or the Login Information, nor let anyone else access your Account or do anything else that might jeopardize the security of your Account;

(ii) In the event you become aware of, or reasonably suspect, any breach of security, including without limitation any loss, theft or unauthorized disclosure of the Login Information, you must immediately notify Eyenuk and change the password on your Account;

(iii) You are solely responsible for maintaining the confidentiality of the Login Information and you will be responsible for all uses of the Login Information, including purchases, whether or not authorized by you; and

(iv) You are responsible for anything that happens through your Account.

(c) Reclaiming Usernames. Eyenuk reserves the right to remove or reclaim any username at any time and for any reason or no reason, including but not limited to claims by a third party that a username violates the third party's rights.

1.6. Account Limitations and Prohibitions.

(a) General Effects of Violations. Any use of the Service in violation of these Terms is strictly prohibited, can result in the immediate revocation of your limited license granted by Section 1, and may subject you to liability for violations of law. Eyenuk is permitted to list or restrict use of the Service for anyone who Eyenuk reasonably believes has or will violate any applicable law when using the Service.

(b) Activity Prohibitions. You agree that you will not, under any circumstances:

(i) Engage in any act that Eyenuk deems to be in conflict with the spirit or intent of the Service, including but not limited to circumventing or manipulating these Terms;

(ii) Use the Service in connection with any violation of any applicable law or regulation, or do anything that promotes the violation of any applicable law or regulation by anyone;

(iii) Modify or cause to be modified any files or content that are used to offer the Service, without the express prior written consent of Eyenuk;

(iv) Disrupt, overburden, or aid or assist in the disruption or overburdening of (1) any computer or server used to offer or support the Service (each a "Server") or (2) the use or enjoyment of the Service by any other person;

(v) Institute, assist or become involved in any type of attack, including without limitation distribution of a virus, denial of service attacks upon the Service, or other attempts to disrupt the Service or any other person's use or enjoyment of the Service;

(vi) Gain, or attempt to gain, unauthorized access to the Service, Accounts, Servers or networks connected to the Service by any means (including, but not limited to, circumventing or modifying, or encouraging or assisting any other person to circumvent or modify, any security, technology, device or software that is part of the Service);

(vii) Post any information that is abusive, threatening, obscene, defamatory, libelous or racially, sexually, religiously or otherwise objectionable or offensive;

(viii) Harass, abuse, harm, or advocate or incite harassment, abuse or harm of another person or group of persons, including Eyenuk employees or customer service representatives;

(ix) Post, distribute or make available through the Service any material or information that infringes any copyright, trademark, patent, trade secret, right of privacy, right of publicity or other right of any person or entity or impersonates any other person;

(x) Transmit unauthorized communications through the Service, including junk mail, chain letters, spam and any materials that promote malware, spyware and downloadable items;

(xi) Interfere or attempt to interfere with the proper functioning of the Service or connect to or use the Service in any way not expressly permitted by these Terms;

(xii) Intercept, examine or otherwise observe any proprietary communications protocol used by a client, a Server or the Service, whether through the use of a network analyzer, packet sniffer or other device;

(xiii) Make any automated use of the Service or take any action that imposes or may impose (in our sole discretion) an unreasonable or disproportionately large load on our infrastructure, as we determine in our sole discretion;

(xiv) Bypass any robot exclusion headers or other measures we take to restrict access to the Service or use any software, technology or device to send content or messages, scrape, spider or crawl the Service, or harvest or manipulate data from, through, or relating to the Service;

(xv) Use, facilitate, create or maintain any unauthorized connection to the Service, including without limitation (1) any connection to any unauthorized server that emulates, or attempts to emulate, any part of the Service or (2) any connection using programs, tools or software not expressly approved in writing by Eyenuk;

(xvi) Copy, modify or distribute rights or content from any Eyenuk site, including but not limited to content that contains or is protected by Eyenuk's copyrights or trademarks or use any method to copy or distribute the content of the Service, except as specifically allowed in these Terms;

(xvii) Solicit or attempt to solicit personal information from Other Users, other than from Users with whom you have an existing business relationship and only in connection with a bona fide business purpose for which the Service is intended;

(xviii) Collect, harvest or post anyone's private information, including personally identifiable information (whether in text, image, video, or other form), identification documents or financial information through the Service; or

(xix) Upload or transmit (or attempt to upload or to transmit), without Eyenuk's express written permission, any material that acts as a passive or active information collection or transmission mechanism, including, without limitation clear graphics interchange

formats (“gifs”), 1x1 pixels, web bugs, cookies or other similar devices (sometimes referred to as “spyware,” “passive collection mechanisms” or “pcms”).

1.7. Suspension and Termination of Account, Plan and Service:

(a) FAILURE TO COMPLY. WITHOUT LIMITING ANY OTHER REMEDIES, WE MAY, WITH OR WITHOUT NOTICE TO YOU, LIMIT, SUSPEND, TERMINATE, MODIFY OR DELETE YOUR ACCOUNT, YOUR PLAN, YOUR ACCESS TO THE SERVICE OR PORTIONS THEREOF IF, IN OUR SOLE DISCRETION, YOU FAIL TO COMPLY WITH ANY OF THESE TERMS OR YOUR ACCOUNT IS USED FOR ACTUAL OR SUSPECTED ILLEGAL ACTIVITY OR IMPROPER USE OF THE SERVICE. EYENUK SHALL BE UNDER NO OBLIGATION TO COMPENSATE YOU FOR ANY LOSSES OR ADVERSE RESULTS THAT ARE DUE TO THE SUSPENSION, TERMINATION, MODIFICATION, OR DELETION OF YOUR OR ANY ACCOUNT.

(b) IP INFRINGEMENT.

(i) WITHOUT LIMITING ANY OTHER REMEDIES, WE MAY LIMIT, SUSPEND OR TERMINATE THE SERVICE AND ACCOUNTS OR PORTIONS THEREOF, PROHIBIT ACCESS TO OUR SITES AND THEIR CONTENT, SERVICES AND TOOLS, DELAY OR REMOVE ANY CONTENT AND TAKE TECHNICAL AND LEGAL STEPS TO PREVENT USERS FROM ACCESSING THE SERVICE IF WE BELIEVE THAT YOU ARE CREATING RISK OR POSSIBLE LEGAL LIABILITIES, INFRINGING THE INTELLECTUAL PROPERTY RIGHTS OF THIRD PARTIES OR ACTING INCONSISTENTLY WITH THE LETTER OR SPIRIT OF OUR TERMS OR POLICIES.

(ii) REPEAT INFRINGERS. IN APPROPRIATE CIRCUMSTANCES IT IS OUR POLICY TO SUSPEND OR TERMINATE ACCOUNTS OF USERS WHO ARE REPEAT INFRINGERS OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS.

(c) Right to Cease Service. Eyenuk reserves the right to stop offering and/or supporting the Service or part of the Service at any time, at which point the license granted hereunder to you to use the Service or a part thereof will automatically terminate. Eyenuk shall not be required to provide refunds, benefits or other compensation to users in connection with such cessation of the Service or any part thereof.

(d) Termination of Account. Termination of your Account can include disabling your access to the Service or any part thereof, including disabling access to any content that you or Other Users have submitted. You agree that if your Account is terminated, Eyenuk will not be obligated to preserve, provide you access to, or provide copies of any content submitted to the Service relating to your Account, whether by you or an Other User.

1.8. Intellectual Property Ownership in the Service. The Service, and all of its components and contents, (including without limitation any computer code, template content, pre-populated content, concepts, artwork, animations, sounds, musical compositions, audio-visual effects and text contained within) is owned by Eyenuk or its licensors, and all of which material is protected by United States and international patent, copyright, trademark, trade secret, and other intellectual property laws.

2. Posted Content.

2.1. Posted Content: “Posted Content” means any communications, videos, images, sounds, and all the material, data, and information that you upload, post, publish or transmit through the Service, including without limitation any comments you may make about content uploaded or transmitted by Other Users. We may provide you with templates, pre-populated communications, or other content through the Service (“Template Content”) that you may distribute, use or modify as part of using our Service to communicate with Other Users in a manner consistent with the intended use of the Service. You acknowledge that your use of any Template Content does not relieve you of any responsibilities or obligations under this Agreement. By transmitting or submitting any Posted Content while using the Service, you affirm, represent and warrant that such transmission or submission: (a) is accurate and not confidential; (b) is not in violation of any applicable law, contractual restrictions or other third party rights, and that you have permission from any third party whose personal information or intellectual property is comprised in the Posted Content; (c) will not, when Eyenuk exercises rights in Posted Content granted under Terms, result in any infringement of the intellectual property rights of any third party or violate or misappropriate any rights of publicity or privacy for any third party; and (d) is free of viruses, adware, spyware, worms or other malicious code. You further represent and warrant that you have all rights necessary to transmit Posted Content to Eyenuk and to grant the rights in Posted Content granted to Eyenuk under these Terms.

2.2. Licenses to Posted Content: You hereby grant Eyenuk a perpetual and irrevocable (other than as provided below), worldwide, fully paid-up and royalty free, non-exclusive, assignable, unlimited license and right to copy, reproduce, fix, adapt, modify, improve, translate, reformat, create derivative works of, manufacture, introduce into circulation, publish, distribute, sublicense, transmit, publicly display, publicly perform, or provide access to electronically, broadcast, communicate to the public by telecommunication, display, perform, enter into computer memory, and use and practice, in any way now known or in the future discovered, your Posted Content as well as all modified and derivative works thereof. Eyenuk will only exercise the rights granted in this Section 2.2 to offer or to facilitate the offering of Services. To the extent permitted by applicable laws, you hereby waive any moral rights or any of your rights of publicity or privacy you may have in any Posted Content. Eyenuk will cease any further public display or distribution of any Posted Content if you use the features of the Service that permit you to indicate that certain Posted Content is to no longer be displayed or distributed to Other Users except Eyenuk retains the right to display or distribute any Posted Content as necessary for Eyenuk to fulfill its legal duties or in connection with bringing or defending any legal claims or actions that may arise now or in the future.

2.3. Content Screening.

(a) Consent to Monitoring. By entering into these Terms, you hereby provide your irrevocable consent to our monitoring and recording of your use of the Service. You acknowledge and agree that you have no expectation of privacy vis a vis us or any of our service providers who provide services to us or you as part of the Service concerning the transmission of any information, including without limitation chat, text or voice communications.

(b) Options Regarding Posted Content. Eyenuk may reject, refuse to post or delete any or all Posted Content for any or no reason, including, but not limited to the reason that, in the sole judgment of Eyenuk, the contents or posting or other use of such Posted Content in connection with the Service violates these Terms.

2.4. User Interactions and Legal Problems; Releases. You hereby release us, and our officers, directors, agents, subsidiaries, joint ventures and employees, from any and all claims, demands, and damages (actual and consequential) of every kind and nature, known and unknown, arising out of or in any way connected with any dispute that arises between you and one or more Other Users. If you are a California resident, you acknowledge that you are aware of, and hereby waive your rights under the provisions of California Civil Code Section 1542, which provides: “A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.”

3. Use of Services.

3.1. Information About Eyenuk Products. The Services may provide you with information (“Information”) about products and services manufactured, offered or distributed by Eyenuk (“Eyenuk Products”). All Information is subject to updating or removal. YOU ACKNOWLEDGE THAT INFORMATION IS NOT A SUBSTITUTE FOR MEDICAL DIAGNOSIS OF ACTUAL PATIENTS AND ALL INFORMATION IS GENERAL INFORMATION ABOUT EYENUK PRODUCTS OR MEDICAL PROCEDURES OR PRODUCTS WITHOUT CONSTITUTING ANY SORT OF MEDICAL DIAGNOSIS OF OR INFORMATION ABOUT ANY PARTICULAR PATIENT’S FACTS OR CIRCUMSTANCES.

3.2. Product Training and Product Terms. The Information is not intended to be a substitute for training on use or marketing of Eyenuk Products and if you wish to engage in any marketing, resale or training of others regarding Eyenuk Products, Eyenuk may require that you undergo additional training or agree to be bound by other terms and conditions.

4. Third Party Advertising.

4.1. Third Party Advertisements. You understand that the Service may feature advertisements from Eyenuk or third parties. The Privacy Policy addresses our disclosure of information for third party advertising.

4.2. Links to Third Party Sites and Dealings with Advertisers. Eyenuk may provide links on the Service to third party websites or vendors who may invite you to participate in a promotional offer in return for receiving a benefit. Any charges or obligations you incur in your dealings with these third parties are your responsibility. Eyenuk makes no representation or warranty regarding any content, goods, or services provided by any third party even if linked from our Service, and we will not be liable for any claim relating to any third party content, goods, or services. The linked sites are not under the control of Eyenuk and may collect data or solicit personal information from you. Eyenuk is not responsible for their content, business practices or privacy policies, or for the collection, use or disclosure of any information those sites may collect. Further, the inclusion of any link does not imply endorsement by Eyenuk of these linked sites.

5. Copyright Notices; Complaints¹. It is Eyenuk’s policy to respond to notices of alleged copyright infringement that comply with the Digital Millennium Copyright Act (the “DMCA”). For more information, please go to Eyenuk’s “Copyright Page” to review our DMCA procedures. Eyenuk reserves the right to terminate without notice any user’s access to the Service if that user is determined by Eyenuk to be a “repeat infringer.” In addition, Eyenuk accommodates and does not interfere with standard technical measures used by copyright owners to protect their materials.

6. Updates to the Service. You understand that the Service undergoes frequent changes. Eyenuk may require that you accept or only use updates to the Service in order to continue using the Service. You acknowledge and agree that Eyenuk may update the Service without notifying you.

7. Disclaimer; Limitations; Waivers on Liability; Indemnification.

7.1. Disclaimer of Warranties.

(a) SERVICE PROVIDED “AS IS”. YOU EXPRESSLY AGREE THAT USE OF THE SERVICE IS AT YOUR SOLE RISK AND IS PROVIDED ON AN “AS IS” BASIS WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO WARRANTIES OF TITLE OR IMPLIED WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

(b) NO WARRANTY OF ERROR-FREE OPERATION. WITHOUT LIMITING THE FOREGOING, NEITHER EYENUK NOR ITS AFFILIATES OR SUBSIDIARIES, OR ANY OF THEIR DIRECTORS, EMPLOYEES, AGENTS, ATTORNEYS, THIRD-PARTY CONTENT PROVIDERS, THIRD-PARTY SERVICE PROVIDERS, DISTRIBUTORS, LICENSEES OR LICENSORS (COLLECTIVELY, “EYENUK PARTIES”) WARRANT THAT THE SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE. EYENUK PARTIES WILL NOT BE RESPONSIBLE FOR INCORRECT OR INACCURATE INFORMATION PROVIDED IN RESPONSE TO YOUR REQUESTS.

(c) NO WARRANTY REGARDING ACCESS TO ACCOUNTS AND CONTENT. EYENUK DOES NOT WARRANT THAT ALL CONTENT OR INFORMATION POSTED BY AN ACCOUNT HOLDER WILL REMAIN AVAILABLE AT ALL TIMES OR WILL NEVER BE DELETED, CORRUPTED OR OTHERWISE UNAVAILABLE. EYENUK DOES NOT WARRANT THAT THE SERVICE, ACCOUNT HOLDER INFORMATION OR ANY INFORMATION POSTED BY AN ACCOUNT HOLDER WILL BE KEPT FROM ANY PARTICULAR INDIVIDUAL OR ENTITY WHO EITHER HACKS OR ENGAGES IN UNAUTHORIZED ACCESS TO SUCH CONTENT OR INFORMATION OR IS MISTAKENLY GRANTED ACCESS BY EYENUK OR THROUGH THE SERVICE.

¹ This provision usually only makes sense if your website users will be submitting their own content that is creative in nature (think websites where people can submit their own stories, post their own drawings, photography, etc).

7.2. Limitations; Waivers of Liability.

(a) DISCLAIMER OF INDIRECT DAMAGES. YOU ACKNOWLEDGE AND AGREE THAT, TO THE FULLEST EXTENT PERMITTED BY ANY APPLICABLE LAW, THE DISCLAIMERS OF LIABILITY CONTAINED HEREIN APPLY TO ANY AND ALL DAMAGES OR INJURY WHATSOEVER CAUSED BY OR RELATED TO USE OF, OR INABILITY TO USE, THE SERVICE UNDER ANY CAUSE OR ACTION WHATSOEVER OF ANY JURISDICTION, INCLUDING, WITHOUT LIMITATION ACTIONS FOR BREACH OF WARRANTY, BREACH OF CONTRACT OR TORT (INCLUDING NEGLIGENCE) AND THAT THE EYENUK PARTIES SHALL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES IN ANY WAY WHATSOEVER ARISING OUT OF THE USE OF, OR INABILITY TO USE, THE SERVICE.

(b) NOT RESPONSIBLE FOR POSTED CONTENT. YOU SPECIFICALLY ACKNOWLEDGE THAT THE EYENUK PARTIES ARE NOT LIABLE, AND YOU AGREE NOT TO SEEK TO HOLD THE EYENUK PARTIES LIABLE, FOR THEIR RECEIPT, STORAGE, AND DISCLOSURE TO THIRD PARTIES OF POSTED CONTENT WHICH IS OF A SENSITIVE OR CONFIDENTIAL NATURE, INCLUDING IF SUCH POSTED CONTENT IS EXPOSED OR DISCLOSED THROUGH BREACH OF EYENUK'S SYSTEMS BY A THIRD PARTY, AND THAT THE RISK OF INJURY FROM THE FOREGOING RESTS ENTIRELY WITH YOU.

(c) NOT RESPONSIBLE FOR THIRD PARTY CONDUCT AND PRODUCTS. YOU FURTHER SPECIFICALLY ACKNOWLEDGE THAT THE EYENUK PARTIES ARE NOT LIABLE, AND YOU AGREE NOT TO SEEK TO HOLD THE EYENUK PARTIES LIABLE, FOR THE CONDUCT OF THIRD PARTIES, INCLUDING OTHER USERS OF THE SERVICE, OPERATORS OF EXTERNAL SITES AND MERCHANTS WHOSE PRODUCTS AND SERVICES ARE PURCHASED ON YOUR BEHALF AS PART OF THE SERVICE, AND THAT THE RISK OF THE SERVICE AND EXTERNAL SITES AND OF INJURY FROM THE FOREGOING RESTS ENTIRELY WITH YOU. EYENUK SHALL NOT BE RESPONSIBLE FOR ANY RETURNS, REFUNDS, OR GUARANTEES ON BEHALF OF THE PRODUCTS OR SERVICES YOU ARE PURCHASING OR THAT ARE PURCHASED ON YOUR BEHALF AS PART OF THE SERVICE.

(d) MONETARY LIMITATION OF LIABILITY. UNDER NO CIRCUMSTANCES WILL THE EYENUK PARTIES BE LIABLE TO YOU FOR MORE THAN THE AMOUNT YOU HAVE PAID EYENUK IN THE ONE HUNDRED EIGHTY (180) CALENDAR DAYS IMMEDIATELY PRECEDING THE DATE ON WHICH YOU FIRST ASSERT ANY SUCH CLAIM.

(e) FAILURE TO PAY. YOU ACKNOWLEDGE AND AGREE THAT IF YOU HAVE NOT PAID EYENUK ANY AMOUNTS IN THE ONE HUNDRED EIGHTY (180) CALENDAR DAYS IMMEDIATELY PRECEDING THE DATE ON WHICH YOU FIRST ASSERT ANY SUCH CLAIM, YOUR SOLE AND EXCLUSIVE REMEDY FOR ANY DISPUTE WITH EYENUK IS TO STOP USING THE SERVICE AND TO CANCEL YOUR ACCOUNT.

(f) DISCLAIMER MAY NOT BE APPLICABLE. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES OR THE LIMITATION OR

EXCLUSION OF LIABILITY FOR CERTAIN TYPES OF DAMAGES. THEREFORE, SOME OF THE ABOVE LIMITATIONS IN THE SECTION MAY NOT APPLY TO YOU.

7.3. Indemnification. You agree to defend, indemnify, save, and hold the Eyenuk Parties harmless from any claims, losses, damages, liabilities, including legal fees and expenses, arising out of your use or misuse of the Service, any violation by you of these Terms, or any breach of the representations, warranties and covenants made by you herein. Eyenuk reserves the right, at your expense, to assume the exclusive defense and control of any matter for which you are required to indemnify Eyenuk and you agree to cooperate with Eyenuk's defense of these claims. Eyenuk will use reasonable efforts to notify you of any such claim, action or proceeding upon becoming aware of it. You agree that the provisions in this Section will survive any termination of Terms, your Account or of the Service.

8. Dispute Resolution.

8.1. General. If a dispute arises between you and Eyenuk, our goal is to provide you with a neutral and cost effective means of resolving the dispute quickly. Accordingly, you and Eyenuk agree that we will resolve any claim or controversy at law or equity that arises out of this Agreement or our services (a "Claim") in accordance with one of the subsections below or as we and you otherwise agree in writing. Before resorting to these alternatives, we strongly encourage you to first contact us directly to seek a resolution. We will consider reasonable requests to resolve the dispute through alternative dispute resolution procedures, such as mediation or arbitration, as alternatives to litigation. Other than those matters listed in Section 8.2, you and Eyenuk agree to seek resolution of the dispute only through arbitration of that dispute in accordance with the terms of this Section 8, and not litigate any dispute in court. Arbitration means that the dispute will be resolved by a neutral arbitrator instead of in a court by a judge or jury.

8.2. Exclusions from Arbitration. YOU AND EYENUK AGREE THAT ANY CLAIM FILED BY YOU OR BY EYENUK IN SMALL CLAIMS COURT OR BY EYENUK RELATED TO PROTECTION OF EYENUK'S OR ANY EYENUK LICENSOR'S INTELLECTUAL PROPERTY ARE NOT SUBJECT TO THE ARBITRATION TERMS CONTAINED IN THIS SECTION 8.

8.3. RIGHT TO OPT OUT OF BINDING ARBITRATION AND CLASS ACTION WAIVER WITHIN 30 DAYS. IF YOU DO NOT WISH TO BE BOUND BY THE BINDING ARBITRATION PROVISION AND CLASS ACTION WAIVER IN THIS SECTION 8, YOU MUST NOTIFY EYENUK IN WRITING WITHIN THIRTY (30) DAYS OF THE DATE THAT YOU FIRST ACCEPT THIS AGREEMENT. YOUR WRITTEN NOTIFICATION MUST BE MAILED TO EYENUK TERMS ADMINISTRATOR, AND MUST INCLUDE: (1) YOUR NAME, (2) YOUR ADDRESS, (3) YOUR USERNAME, AND (4) A CLEAR STATEMENT THAT YOU DO NOT WISH TO RESOLVE DISPUTES WITH EYENUK THROUGH ARBITRATION.

8.4. Class Action Waiver. ANY DISPUTE RESOLUTION PROCEEDINGS, WHETHER IN ARBITRATION OR COURT, WILL BE CONDUCTED ONLY ON AN INDIVIDUAL BASIS AND NOT IN A CLASS OR REPRESENTATIVE ACTION OR AS A NAMED OR UNNAMED MEMBER IN A CLASS, CONSOLIDATED, REPRESENTATIVE OR PRIVATE ATTORNEY GENERAL ACTION, UNLESS BOTH YOU AND EYENUK SPECIFICALLY AGREE TO DO SO IN WRITING FOLLOWING INITIATION OF THE ARBITRATION.

8.5. Initiation of Arbitration Proceeding; Selection of Arbitrator. If you or Eyenuk elect to resolve your dispute through arbitration, the party initiating the arbitration proceeding must initiate it with the American Arbitration Association (“AAA”). The terms of this Section 8 will govern in the event they conflict with the arbitration rules identified below.

8.6. Arbitration Procedures. Because the software and/or service provided to you by Eyenuk concern interstate commerce, the Federal Arbitration Act (“FAA”) governs the arbitrability of all disputes. However, applicable federal or state law may also apply to the substance of any disputes. For claims of less than \$75,000, the AAA’s Consumer Arbitration Rules shall apply; for claims over \$75,000, the AAA’s Commercial Arbitration Rules and relevant fee schedules for non-class action proceedings shall apply. The AAA rules are available at www.adr.org or by calling 1-800-778-7879. Further, if your claims do not exceed \$75,000 and you provided notice to, and negotiated in good faith with, Eyenuk as described above, and if the arbitrator finds that you are the prevailing party in the arbitration, you will be entitled to recover reasonable attorneys’ fees and costs as determined by the arbitrator, in addition to any rights to recover the same under controlling state or federal law afforded to Eyenuk or you. The arbitrator will make any award in writing but need not provide a statement of reasons unless requested by a party. Such award will be binding and final, except for any right of appeal provided by the FAA, and may be entered in any court having jurisdiction over the parties for purposes of enforcement.

8.7. Location of Arbitration. You or Eyenuk may initiate arbitration in either Orange County, California or the county in which you reside. If you initiate arbitration in the county of your residence, Eyenuk may transfer the arbitration to San Francisco, California *provided* that Eyenuk agrees to pay any additional fees or costs you incur as a result of the change in location, as determined by the arbitrator.

8.8. Severability. If any clause within this Section 8 (other than the Class Action Waiver clause of Section 8.4) is found to be illegal or unenforceable, that clause will be severed from this Section 8 and the remainder of this Section 8 will be given full force and effect. If the Class Action Waiver (Section 8.4) clause is found to be illegal or unenforceable, this entire Section 8, except for this Section 8.8, will be unenforceable and the dispute will be decided by a court and **IN THAT INSTANCE, YOU AND EYENUK EACH WAIVE AND AGREE TO WAIVE ANY RIGHT TO TRIAL BY JURY, TO THE EXTENT ALLOWED BY LAW.**

8.9. Survival. This Section 8 shall survive any termination of the Terms.

9. General Provisions.

9.1. Updates to the Terms and Privacy Policy.

(a) Right to Update. Eyenuk reserves the right, at our discretion, to change, modify, add or remove portions of these Terms and our Privacy Policy at any time by posting the amended Terms or Privacy Policy through the Service. You may also be given additional notice, such as an email message or messaging within the Service, of any changes. You will be deemed to have accepted such changes by continuing to use the Service. Except as otherwise stated, all amended terms shall automatically be effective thirty (30) calendar days after they are initially posted. Eyenuk may also revise other policies, codes or rules at any time and the new versions will be available on

www.Eyenuk.com or in the Service. No amendment to the Terms or Privacy Policy shall apply to any dispute of which Eyenuk had actual notice before the date of the amendment.

(b) Seeking Consent. If Eyenuk revises these Terms or its Privacy Policy and seeks your consent to be bound by such revised Terms or revised Privacy Policy and you do not agree to be bound by such revised Terms or revised Privacy Policy before using the Service again, then notwithstanding anything to the contrary, Eyenuk reserves the right to terminate your Account and use of the Service.

(c) Disagreement With Terms. If at any time you do not agree to any provision of the then-current version of our Terms, the Privacy Policy or any other Eyenuk policy, rule or code of conduct relating to your use of the Service, your right to use the Service will immediately terminate, and you must immediately stop using the Service.

(d) Conflict. To the extent these Terms or the Privacy Policy conflict with any other Eyenuk terms, policy, rule, or code of conduct, the provisions of these Terms and the Privacy Policy will prevail.

9.2. Severability. If any provision of these Terms or the Privacy Policy is found invalid, illegal, or unenforceable, in whole or in part, by any court of competent jurisdiction, such provision will, as to such jurisdiction, be ineffective solely to the extent of such determination of invalidity, illegality, or unenforceability without affecting the validity, legality, or enforceability thereof in any other manner or jurisdiction and without affecting the remaining provisions of the Terms, which will continue to be in full force and effect.

9.3. Assignment. Eyenuk may assign any of its rights or delegate any of its obligations under these Terms, in whole or in part, to any person or entity at any time without your consent. You may not assign or delegate any rights or obligations under the Terms without the prior written consent of Eyenuk; any purported assignment or delegation in violation of this Section 9.3 is void.

9.4. Supplemental Policies. Eyenuk may publish additional policies related to specific services such as forums, contests, or loyalty programs. Your use, if any, of such services is subject to such specific policies and these Terms.

9.5. Entire Agreement. These Terms, together with any supplemental policies, the Privacy Policy, and any other documents expressly incorporated by reference herein, contain the entire agreement between Eyenuk and you with respect to the subject matter hereof and supersede all prior and contemporaneous understandings, agreements, representations and warranties of the parties hereto relating to the subject matter hereof, whether electronic, oral or written, or whether established by custom, practice, policy or precedent.

9.6. No Waiver. The failure of Eyenuk to require or enforce strict performance by you of any provision of these Terms or the Privacy Policy or failure to exercise any right under them shall not be construed as a waiver or relinquishment of Eyenuk's right to assert or rely upon any such provision or right in that or any other instance. The express waiver by Eyenuk of any provision, condition or requirement of these Terms or the Privacy Policy shall not constitute a waiver of any future obligation to comply with such provision, condition or requirement. Except as expressly and specifically set forth in these Terms, no representations, statements, consents, waivers or other acts or

omissions by Eyenuk shall be deemed a modification of these Terms nor legally binding, unless documented in physical writing, hand signed by you and a duly appointed officer of Eyenuk.

9.7. Notices. We may notify you via postings on www.Eyenuk.com and via email or any other communications means through contact information you provide to us. All notices given by you or required from you under these Terms or the Privacy Policy shall be in writing and addressed to the address in this Section 9.7. Any notices that you provide without compliance with this Section 9.7 shall have no legal effect.

Eyenuk, Inc.

5850 Canoga Avenue, Ste 250.

Woodland Hills, CA 91367

9.8. Equitable Remedies. You acknowledge that the rights granted and obligations made under these Terms to Eyenuk are of a unique and irreplaceable nature, the loss of which shall irreparably harm Eyenuk and which cannot be replaced by monetary damages alone, so that Eyenuk shall be entitled to injunctive or other equitable relief (without the obligations of posting any bond or surety or proof of damages) in the event of any breach or anticipatory breach by you. You irrevocably waive all rights to seek injunctive or other equitable relief, or to enjoin or restrain the operation of the Service, exploitation of any advertising or other materials issued in connection therewith, or exploitation of the Service or any content or other material used or displayed through the Service and agree to limit your claims to claims for monetary damages, limited by Section 7.2.

9.9. Force Majeure. Eyenuk shall not be liable for any delay or failure to perform resulting from causes outside the reasonable control of Eyenuk, including without limitation any failure to perform hereunder due to unforeseen circumstances or cause beyond Eyenuk's control, such as acts of God, war, terrorism, riots, embargoes, acts of civil or military authorities, fire, floods, accidents, strikes, shortages of transportation facilities, fuel, energy, labor or materials.

9.10. Governing Law. The Terms and Privacy Policy shall be governed by the laws of the State of California notwithstanding its conflict of laws provisions.