

Service Level Agreement (SLA)

www.multitouch-appstore.com | Version 1.0 | Date: 30.09.2020



This eyefactive Service Level Agreement (the “**SLA**”) governs the services provided by eyefactive GmbH having a registered business address at Haferweg 40, 22769 Hamburg, Germany, and the company registration number HRB 158902 (“**eyefactive**”) to a business entity (the “**Customer**”) (collectively the “**Parties**” and each individually a “**Party**”) through the customisable touchscreen software applications, including the paid versions of the software applications and the associated cloud services (collectively, the “**Services**”).

By using the Services, clicking on the “I agree” or similar button, or concluding a service agreement with eyefactive, the Customer agrees to the terms and conditions set out in this SLA

1. Scope of the SLA

1.1 This SLA sets out the minimum service levels requirements for Customer’s access and use of the Services, operating times of the Services, and the support services related to the Services.

1.2 This SLA does not apply to the extent that:

- i. The Internet is unavailable to either Party; or
- ii. Any hardware or software used by the Customer to access the Services fails to operate in accordance with the requirements of the SLA and any terms and conditions in force during the term of the SLA; or
- iii. The Customer fails to comply with Customer’s obligations under the SLA; or
- iv. The Customer uses beta versions of the Services, debugger accounts or other test environments; or
- v. There are any other instances outside of the reasonable control of eyefactive.

2. Parties’ Commitment

2.1 Notwithstanding anything in contrary to this SLA, eyefactive commits to:

- i. Render the Services that conform to generally accepted industry standards, provided that:
 - a. The Services have not been modified, changed, or altered by anyone other than eyefactive;
 - b. The Customer promptly notifies eyefactive of any downtime of the Services or any support enquiries related thereto;
 - c. The Customer provides adequate troubleshooting information allowing eyefactive to identify and address problems; and
 - d. All fees due have been paid by the Customer;
- ii. Comply with all applicable legal and regulatory requirements applying to the exercise of the eyefactive’s rights and the fulfilment of eyefactive’s obligations under this SLA;
- iii. Have access to all necessary know-how, expertise and experience to perform its obligations under this SLA;
- iv. Put in place industry-applicable up-to-date technical and organisational security measures to keep all Customer’s data processed through the Services safe secure;

- v. Inform the Customer of any failures of the Services by email or through the eyefactive website if eyefactive deems, at its sole discretion, the reporting to be necessary;
- vi. Resolve all defects and errors related to the Services no later than within 30 (thirty) calendar days commencing on the date eyefactive becomes aware of said defect or error;
- vii. Provide at least 99% active operating time with respect to the Services during each calendar month within the term of the SLA, excluding regularly scheduled maintenance times; and
- viii. If eyefactive does not meet the commitment specified in the section 2.1.vii and the Customer experiences adverse consequences as a result of the downtime of the Services, eyefactive agrees, upon request of the Customer or at its sole discretion, to provide a service credit to the Customer.

2.2 The Customer commits to:

- i. Use the Services in accordance with the terms of the SLA, the service contract, and other general terms in force during the term of the SLA;
- ii. Use the Services in accordance with the recommendations, operating rules, and guidelines set by eyefactive;
- iii. Ensure that Customer’s authorised agents, employees, or other persons responsible for accessing and using the Services are instructed on the proper use of the Services in line with the instructions provided by eyefactive;
- iv. Ensure that the Services are used in combination with the recommended software (e.g., Windows 10 (64 Bit), TeamViewer, and AppSuite CMS) and remain solely responsible for obtaining a license to use the said software; and
- v. Ensure that the Services are used on a suitable piece of hardware at Customer’s facilities.

2.3 eyefactive reserves the right, without obtaining prior consent from the Customer, to engage third parties in assisting eyefactive to fulfil its obligations under the SLA.

3. Scheduled & Unscheduled Maintenance

- 3.1 eyefactive shall provide maintenance services related to the Services to the Customer within the term of the SLA. The maintenance services shall be provided in accordance with the standards of skill and care reasonably expected from a leading service provider in eyefactive’s industry.
- 3.2 eyefactive reserves the right to, upon a prior notice to the Customer, schedule regular maintenance times related to the Services (the “Regular Maintenance”). During the Regular Maintenance, all or a part of the Services may not be available to the Customer.
- 3.3 The Regular Maintenance is considered to be scheduled Regular Maintenance if it is communicated to the Customer at least 2 (two) business days in advance of the scheduled Regular Maintenance.
- 3.4 The Regular Maintenance that has been communicated to the Customer in advance does not count as a downtime of the Services.

- 3.5 eyefactive puts reasonable efforts to ensure that the Regular Maintenance does not have an adverse effect to the Services and to Customer's business activities. Therefore, eyefactive shall, if reasonably possible schedule the Regular Maintenance for non-business time (e.g., at night on the weekend).
- 3.6 eyefactive reserves the right, in its sole discretion, to suspend provision of all or a part of the Services for unscheduled maintenance, if reasonably necessary. In that event, eyefactive will put reasonable efforts to notify the Customer as soon as reasonably possible.

4. Service Credits

- 4.1 eyefactive reserves the right but is not under any obligation to issue service credits under section 2.1.vii of the SLA or in any other instances where eyefactive believes, at its sole discretion, that the provision of the Services is impaired due to eyefactive's fault.
- 4.2 The service credit can be requested by the Customer by contacting eyefactive directly no later than 15 (fifteen) days from the date of the Services first became unavailable and providing all requested documentation. Any service credit issued by eyefactive is valid for one year from the date on which the service credit was issued.
- 4.3 Any downtime of the Services shall be calculated by using eyefactive's system logs and other records related thereto.
- 4.4 eyefactive reserves the right to suspend the provision of the Services and issuance of the service credits if (i) any fees due to be paid by the Customer for the Services are overdue, (ii) the Customer breaches any material contractual obligations under the SLA, (iii) a force majeure event occurs, or (iv) the provision of the Services is interrupted due to the fault of the Third Parties (as defined in section 6.2 of the SLA). eyefactive shall give to the Customer at least 5 (five) business days written notice of its intention to suspend the Services on the said bases.
- 4.5 If the Services are suspended for reasons specified in section 4.4, the Customer shall not be eligible for any service credit under section 4.1 of the this SLA.

5. Operating Times, Support & Notices

- 5.1 The Services shall be available at all times, unless the availability of the Services is impaired due to the Regular Maintenance, unscheduled maintenance, or force majeure events.
- 5.2 Support services related to the Services shall be available during the business hours (i.e., from 9am to 5pm) on the business days in Berlin, Germany (CEST) (the "Business Hours"). The support services shall be provided in English or German.
- 5.3 The Customer is entitled to choose one of the available support levels, subject to the applicable fees. Each of the support levels may have different response times and terms and conditions related thereto.
- 5.4 To make a support request or report an outage of the Services, the Customer must contact eyefactive via one of the following methods:
- Call the support team by phone on +49 9999 695 - 0 during the Business Hours; or
 - Send an email to support (at) eyefactive.com; or c. Use the contact form available at <https://www.multitouch-appstore.com/en/contact>; or
 - Use the contact form available within the AppSuite CMS software.

- 5.5 Support requests received by eyefactive outside of the Business Hours will be deemed to be received on the next business day.
- 5.6 Requests for support and emergency support will be fulfilled on a best-effort basis.
- 5.7 Support requests shall be responded to by eyefactive by providing:
- A resolution; or
 - An ETA for a resolution.
- 5.8 If eyefactive is unable to provide a resolution within the time period of the respective support level, eyefactive will provide daily informational notices by phone or email to the Customer.
- 5.9 If an incident or a service request is not responded to within the response times of the respective support level, the Customer is entitled to contact Customer's account manager by referring the support ticket number.
- 5.10 Any downtime of the Services reported by the Customer via a support request shall be reimbursed by eyefactive to the Customer in accordance with then-current fees of the Services.

6. Limitation of Liability

- 6.1 To the extent permitted by the applicable law, eyefactive shall not be liable to the Customer in respect of any loss of business, profits, contracts or opportunities, and other indirect, incidental, punitive, special or other related damages, arising out of or in connection with the Services, the unavailability of the Services, and the SLA.
- 6.2 The Customer acknowledges and agrees that eyefactive may use third-party service providers (the "Third Parties") to facilitate the Services. The acts and omissions of the Third Parties may be outside of the control of eyefactive. To the maximum extent permitted by law, eyefactive excludes any liability for any loss or damage resulting from the acts and omissions of such Third Parties.

7. Governing law and jurisdiction

- 7.1 The Parties agree that this SLA shall be governed and construed in accordance with the laws of Germany, without regard to its conflicts of law provisions.
- 7.2 All disputes arising out of the conclusion, interpretation, execution and termination of the SLA shall be resolved by arbitration proceedings.
- 7.3 Nothing herein prevents the Parties from seeking any interim injunction it deems necessary in order to preserve the status quo prior to the resolution of any dispute, in any jurisdiction.

8. Final Provisions

- 8.1 Modification. eyefactive reserves the right, at any time, to modify this SLA and the Services by sending a prior notice to the Customer no later than 7 (seven) calendar days prior to the amendment date. An amended version of the SLA shall be made available on the website of eyefactive with the amendment date.
- 8.2 Severability. To the extent that any provision of the SLA is deemed unenforceable, all remaining provisions of this SLA shall not be affected thereby and shall remain in full force and effect.

- 8.3 Indemnification. The Customer agrees to indemnify, defend, and hold harmless eyefactive, its shareholders, directors, contractors, managers, officers, employees, agents, advisors, representatives or controlling persons against any loss, damage, expense, or cost, including reasonable attorney's fees, arising out of any claim, demand, proceeding or lawsuit related to Customer's access, use, and misuse of the Services or a failure to comply with the terms of this SLA.
- 8.4 Force majeure. eyefactive is not responsible for any failure to perform its obligations under the SLA if the performance of its obligations is prevented or delayed due to a force majeure event, including, but not limited to, natural disasters, riots, wars, fires, terrorist attacks, failures of the Internet or any public telecommunications network, hacker attacks, denial of service attacks, virus or other malicious software attacks or infections, power failures, and industrial disputes.
- 8.5 Assignment. The Parties are entitled to assign their rights and obligations under the SLA to a third party, with a prior notification to the other Party. Parties' rights and obligations under this SLA will inure to the benefit and be binding upon Parties' successors and assignees.
- 8.6 Waiver of breach. The waiver by eyefactive of a breach of any provision of this SLA by the Customer shall not operate as a waiver of any subsequent breach by the Customer. No waiver shall be valid unless placed in writing and signed by eyefactive.
- 8.7 Ambiguities related to drafting. The Parties agree that any ambiguity created by this SLA will not be construed against the drafter of the same.
- 8.8 Warranties. The Parties represent and warrant that they have all authority, licenses and permits to execute and perform this SLA and their obligations under this SLA and that each Party has been fully authorised to execute this SLA.
- 8.9 Term and termination. The SLA shall commence on the date on which the Customer starts using the Services and continue until terminated by eyefactive or the Customer ceases to use the Services, whichever comes first. The SLA shall also be terminated immediately upon termination or expiration of Customer's right to use the Services.

9. Contact

Any questions regarding this SLA should be addressed to eyefactive by using the following contact details:

Email: support(at)eyefactive.com

Postal address for communication: eyefactive GmbH, Haferweg
40, 22769 Hamburg, Germany

Phone number: +49 9999 695 – 0