



Channel Partner Terms and Conditions

Overview

This Agreement contains the complete terms and conditions that apply to Channel Partner's participation in the Channel Partner Program of Eyonic Systems, Inc. (the "Program"). Carefully read these terms and conditions, which represent a legally binding agreement between Eyonic Systems, Inc. ("we" or "Eyonic") and you ("you" or "Channel Partner"). A Channel Partner Program is where a person, entity, Channel Partner or its agent, drive traffic to another's products or services via direct information, marketing, a website or website content, and may earn financial compensation ("Payouts"). Payouts are made for "Transactions" (actions by Visitors as defined by Eyonic) referred by a Channel Partner and made by a "Visitor" (any person or entity that is not the Channel Partner or the Channel Partner's agent) through direct sales or a Site. As used in this Agreement, "Site" means, depending on the context, either www.eyonic.com or the website owned or controlled by Channel Partner. Eyonic compensates Channel Partners in accordance with this Agreement and the Channel Partner Program Payout specifications.

1. Participation in the Program

(a) General

Channel Partner shall submit a completed Program application to begin the enrollment process for the opportunity to earn Payouts by promoting Eyonic in accordance with the Channel Partner's Program terms and complying with this Agreement. Eyonic will evaluate your application and notify you if the application is accepted or rejected. Eyonic may reject Channel Partner's application for any reason, in Eyonic's sole discretion, including if Eyonic determines that Channel Partner's Site or business practices are objectionable for the Program. If Channel Partner is accepted into the Program, Channel Partner shall notify Eyonic in writing of any significant changes to the content or structure of Channel Partner's Site within ten (10) days of such change(s).

(b) Emails

You hereby understand, acknowledge and accept that Eyonic may, and has the right granted by you to send emails and other communications to you on behalf of Eyonic, including solicitation and service emails. You have the ability to change some of your email settings and preferences at any time.

(c) Prohibited Use of Links

(i) Definition

For the purposes of this Agreement, "Link(s)" means any code that Eyonic makes available to Channel Partner which is used for linking from your Site to web pages on Eyonic.com, and may include banners, text, search boxes, buttons, or other graphics or devices. Channel Partner shall not modify Link(s) in any way. Eyonic will not be responsible for errors that occur in the tracking of transactions if Channel Partner has made or caused any such modification(s).

(ii) General Links to Eyonic.com

Channel Partner shall only post Links approved by Eyonic. Approved Links will be made available to Channel Partner upon Channel Partner's acceptance into the Program. Channel Partner may also post on its Site links obtained directly from e-mails and newsletters received from Eyonic. Any deviations from the guidelines and treatment described in this Agreement must be approved in advance and in writing by Eyonic. Eyonic may at any time, without prior notice, remove the Links described above, require Channel Partner to remove the Links, or dynamically replace the Eyonic creative or text with creative or text suitable to Eyonic in Eyonic's sole discretion.

(iii) Location & Infringement

You may not place Links to Eyonic's Site or Site content in third party newsgroups, message boards, blogs, unsolicited emails and other types of spam, link farms, counters, chatrooms, or guest books. None of the Channel Partner's promotional activities may infringe on Eyonic's proprietary rights (including but not limited to trademark rights), or a third party's proprietary rights.

2. Channel Partner Obligations to Eyonic

(a) Accurate Information

You agree to provide Eyonic with accurate information about you and your promotional methods.

(b) Use of Links

You represent and warrant that all promotional means used by you and your Site will not contain objectionable content (including but not limited to content that is misleading, libelous, defamatory, obscene, violent, bigoted, hate-oriented, illegal, and/or promoting illegal goods, services or activities), and that you will not mislead others. You agree to: (i) use ethical and legal business practices, (ii) comply with the Channel Partner's Program terms and this Agreement, (iii) and maintain a privacy policy on your Site. Eyonic must approve all promotional activities related to Eyonic's services and may deem these promotional activities inappropriate and a material breach of this Agreement in Eyonic's sole discretion. Eyonic reviews Channel Partner conduct and any suspected fraudulent, abusive or otherwise illegal content or activity by you through your promotional methods is grounds for immediate termination of this Agreement and/or deactivation as a Channel Partner.

(c) Email Links & Promotional Methods

Channel Partner may use Links within emails that Channel Partner sends to registered users of the Channel Partner Site. Use of such Links is subject to all of the requirements and restrictions with respect generally as set forth in this Agreement. Emails making reference to Eyonic, that include Links, or that concern any other aspect of the Program, may be sent only to individuals who have elected to receive such emails. "Spamming", including the sending of unsolicited electronic communications, will not be tolerated and may lead to termination of this Agreement. You represent and warrant that you will not engage in and/or facilitate spamming, indiscriminate advertising or unsolicited commercial email or otherwise fail to comply with the CAN SPAM Act of 2003 (Public Law 108-187 or any successor legislation), and/or any other laws and/or regulations that govern email marketing and/or communications. You will not be entitled to any Payouts generated through Spamming tactics. Channel Partner shall comply with any and all regulations, statutes and applicable laws of the United States or any other state, country or jurisdiction related to email, and/or electronic communications. It is Channel Partner's responsibility to be aware of all such regulations, statutes and laws.

3. Eyonic's Services

(a) Transaction Processing

Eyonic will process transactions placed by Visitors who follow Links from Channel Partner's Site to the Eyonic Site. Eyonic reserves the right to reject transactions that do not comply with any reasonable requirements that Eyonic may periodically establish. Eyonic will be responsible for all aspects of transactions processing and fulfillment. In addition, Eyonic will prepare order forms; process payments, cancellations, and handle customer service. Channel Partner will notify Eyonic via email prior to, or within 30 days after, a Visitor transaction. Information will include the Visitor's first and last name, business name where applicable, and location. Eyonic will track transactions made with Visitors who purchase products using Links and generate reports summarizing this sales activity which will be emailed to Channel Partner quarterly. To permit accurate tracking, reporting, and Payouts, Channel Partner shall ensure that Links are properly formatted. Eyonic will not be responsible for improperly formatted Links.

(b) Charge-backs

Eyonic may apply a debit to your account in an amount equal to a Payout previously credited to your account or paid out in circumstances of: (i) service cancellations; (ii) duplicate entry or other clear error; (iii) non-bona fide transactions; (iv) non-receipt of payment from, or refund to, the Visitor by Eyonic; or (v) Channel Partner failure to comply with Program terms. Charge-backs may be applied to your account at any time, including previous payment cycles.

(c) Support

Support is available through the Contact Us form on Eyonic's Site, via phone support during normal operating hours, and via email.

(d) Payouts

(i) Qualified Transactions

Eyonic will pay referral fees (as defined below) to Channel Partner for services or products purchased in Qualified Transactions (as defined below). For the purposes of this Agreement, a "Qualified Transaction" means a transaction whereby a visitor: (i) uses a Link to enter the Eyonic Site or is referred by a Channel Partner; (ii) subscribes to one or more services using Eyonic's Site; and (iii) remits full payment to Eyonic.

(ii) Referral Fees

Referral Fees refers to the fees Eyonic will pay Channel Partner based on the amount of Qualified Transactions generated by the Channel Partner, in accordance with the fee schedule set forth below.

- Eyonic will pay Channel Partner 10% of the total purchase price of services or products purchased as part of a Qualified Transaction up to \$10,000 per calendar year.
- Eyonic will pay Channel Partner 12.5% of the total purchase price of services or products purchased as part of a Qualified Transaction for those transactions between \$10,000 and up to \$25,000 per calendar year.
- Eyonic will pay Channel Partner 15% of the total purchase price of services or products purchased as part of a Qualified Transaction for those transactions over \$25,000 per calendar year.

(iii) Fee Payment

Eyonic will pay Channel Partner the Referral Fees, in accordance with the Channel Partner's Payout rate, on a rolling basis on the 20th of each month following a qualified transaction. On or about the 20th of each calendar month, Eyonic will issue you any positive balance for Transactions reported for the previous month, provided this balance exceeds the required "Minimum Account Balance" of \$50. Eyonic shall have no obligation to make payment of any Payouts for which Eyonic has not received payment from the relevant customer of all monies due to Eyonic. Eyonic reserves the right to assess service fees in order to process or stop your payment as necessary. The number or amount of Transactions, credits for Payouts, and debits for Charge-backs, as calculated by Eyonic, shall be final and binding on you. Eyonic does not make any guarantee of a minimum amount of business or that Channel Partner will earn any amount of Referral Fees under this Agreement.

(iv) Negative Accounts

You may have a negative balance if your account is debited amounts equivalent to previous Payouts for Charge-backs and you do not have an adequate account balance to cover the Charge-back amounts. When you have a negative balance, you must immediately remit payment to Eyonic in an amount sufficient to bring your account to a zero balance, or your account is subject to 1.5% interest fee per month, compounded monthly.

4. Policies and Pricing

Customers who buy products or services through the Program will be deemed to be customers of Eyonic. Accordingly, all Eyonic rules, policies, and operating procedures concerning customer orders, customer service, and product and service sales will apply to such customers with respect to their transactions at Eyonic.com. Eyonic may change policies and operating procedures at any time consistent with applicable laws. Since prices and availability may vary from time to time, Channel Partner may not display Eyonic price information on Channel Partner's Site.

5. Proprietary Rights

As between Channel Partner and Eyonic, Eyonic shall own all right, title and interest, including all Intellectual Property Rights, in and to the Eyonic Site, the Program and the Links. For the purposes of this Agreement "Intellectual Property Rights" means copyright rights, trademark rights, patent rights, trade secrets, moral rights, right of publicity, authors' rights, contract and licensing rights, goodwill and all other intellectual property rights as may exist now and/or hereafter come into existence, and all renewals and extensions thereof, regardless of whether such rights arise under the laws of the United States or any other state, country or jurisdiction.

As a Channel Partner, Eyonic is granting you the right to display and link to our Site or Site content in accordance with the Program terms, for the limited purposes of promoting the Program, subject to the terms and conditions of this agreement. Your use of links signifies your agreement to refrain from copying or modifying any icons, buttons, banners, graphics files or content contained in the link, including but not limited to refraining from removing or altering any copyright or trademark notices. You acknowledge that you obtain no proprietary rights in Eyonic's trademarks, service marks, tradenames, URL's, copyrighted material, patents, and patent applications, and agree not to challenge Eyonic's proprietary rights.

6. Confidentiality

Channel Partner or Eyonic may provide the other with information that is confidential and proprietary to that party, as designated by the disclosing party or that is reasonably understood to be proprietary and/or confidential ("Confidential Information"). The receiving party agrees to make commercially reasonable efforts, but in no case no less effort than it uses to protect its own Confidential Information, to maintain the confidentiality of and to protect any proprietary interests of the disclosing party. Confidential Information shall not include (even if designated by a party) information: (i) that is or becomes part of the public domain through no act or omission of the receiving party; (ii) that is lawfully received by the receiving party, from a third party, without restriction on use or disclosure, and without breach of this Agreement or any other agreement without knowledge by the receiving party of any breach of fiduciary duty, or (iii) that the receiving party had in its possession prior to the date of this Agreement. Upon termination of this Agreement, you must destroy or return to Eyonic any Confidential Information provided by Eyonic to you under this Agreement.

7. Terms, Deactivation & Notices

(a) Terms

Channel Partner's acceptance of the terms and conditions of this Agreement shall be evidenced by Channel Partner's submission of a completed Program application, provided, however, that this Agreement shall not be effective unless and until Eyonic has accepted Channel Partner into the Program. This Agreement may be terminated by either party upon 15 days' written notice. This Agreement may be terminated immediately upon notice for Channel Partner breach of this Agreement. Payouts may be withheld during investigation of breach of this Agreement.

(b) Deactivation

Eyonic may terminate Channel Partner at any time in Eyonic's sole discretion. Breach of any section of this Agreement is cause for immediate termination of this Agreement and may result in Charge-back of one or more Payouts.

(c) Termination of Program

Programs and offers may be discontinued at any time.

(d) Notices

Except as provided elsewhere herein, both parties must send all notices relating to this Agreement to: (i) for Eyonic, via email, or mailed to Eyonic Systems Inc., 607 Elmira Road, Ste 113, Vacaville CA 95687; and, (ii) to Channel Partner, at the email or physical address listed on Channel Partner's application (effective upon sending as long as Eyonic does not receive an error message regarding delivery of email or five days after mailing).

(e) Post-termination

Upon termination of this Agreement, any outstanding payments shall be paid by Eyonic to Channel Partner within 30 days of the termination date, and any outstanding debit balance shall be paid by Channel Partner to Eyonic within 30 days of termination of this Agreement. All payments are subject to recovery for Charge-backs. Upon termination of this Agreement, all permissions granted under this Agreement will terminate and Channel Partner must immediately remove all Links to our Site.

8. Relationship of Parties

The parties are independent contractors and nothing in this Agreement will create any partnership, joint venture, agency, franchise, sales representative, or employment relationship between the parties. Channel Partner will have no authority to make or accept any offers or representations on behalf of Eyonic. Channel Partner will not make any statement, whether on the Channel Partner Site or otherwise, that would reasonably contradict anything in this Section.

9. Responsibility for Channel Partner's Site

Channel Partner will be solely responsible for the development, operation, and maintenance of Channel Partner's Site and for all content that appears on such Site. Such responsibility includes, without limitation: (i) the technical operation of Channel Partner's Site and all related equipment; (ii) the accuracy, timeliness and appropriateness of content posted on Channel Partner's Site; (iii) ensuring that posted materials do not violate or infringe upon the rights of any third party; (iv) ensuring that posted content is not libelous or otherwise illegal. Channel Partner shall not use any Eyonic proprietary materials in a manner that is disparaging or that otherwise portrays Eyonic negatively.

10. Limitation of Liability

EYONIC SHALL NOT BE LIABLE TO YOU OR TO ANY OTHER PERSON OR ENTITY FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL, OR EXEMPLARY DAMAGES, INCLUDING LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT (HOWEVER ARISING, AND REGARDLESS OF THE THEORY OF RECOVERY). EYONIC'S TOTAL LIABILITY TO CHANNEL PARTNER ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT IS LIMITED TO THE GREATER OF FIVE HUNDRED DOLLARS (\$500) OR THE AMOUNTS PAID BY EYONIC TO CHANNEL PARTNER DURING THE TWELVE (12) MONTHS IMMEDIATELY BEFORE THE FIRST REOCCURRENCE OF EVENTS GIVING RISE TO THE IMPOSITION OF LIABILITY UNDER THIS AGREEMENT. SOME JURISDICTIONS DO NOT ALLOW THE FOREGOING LIMITATIONS, SO THEY MAY NOT APPLY TO CHANNEL PARTNER.

11. Disclaimers

Eyonic makes no express or implied warranties or representations with respect to the Program or any products sold through the Program. Eyonic will make reasonable commercial efforts to keep its Site operational during normal business hours but makes no representation that the operation of the Site will be uninterrupted or error-free, and Eyonic will not be liable for any such interruptions or errors. The parties agree that a certain amount of system downtime is normal and Channel Partner agrees not to hold Eyonic liable for any of the consequences of such interruptions.

12. Miscellaneous

All rights not expressly granted herein by Eyonic to Channel Partner are reserved by Eyonic. There are no implied rights. The titles and headings herein are for reference purposes only and shall not in any manner limit the construction of this Agreement, which shall be considered as a whole. This Agreement shall be governed by and construed under the laws of the State of California, without regards to its conflict of laws principals.

This Agreement may be amended or supplemented only in writing and signed by duly authorized representatives of Eyonic. No term or provision hereof will be considered waived by either party, and no breach excused by either party, unless such waiver or consent is in writing signed on behalf of the party against whom the waiver is asserted. No consent by either party to, or waiver of, a breach by either party, whether express or implied, will constitute a consent to, waiver of, or excuse of any other, different, or subsequent breach by

either party.

If any provision of this Agreement is held invalid or unenforceable for any reason, the remainder of the provision shall be amended to achieve as closely as possible the economic effect of the original term and all other provisions shall continue in full force and effect.

Eyonic may assign this Agreement without restriction, provided that assignee agrees in writing to be bound by the terms of this Agreement. Channel Partner may not assign this Agreement or any rights, duties, or obligations under this Agreement, whether by operation of law or otherwise, without the prior written consent of Eyonic and any attempt to do so without such consent will be void. This Agreement will bind and inure to the benefit of the parties and their respective successors and permitted assigns.

Except as may be otherwise specifically provided in this Agreement, this Agreement is not intended to and shall not confer upon any other person or business entity, other than the parties hereto, any rights or remedies with respect to the subject matter hereof.

This Agreement constitutes the entire agreement between the parties relating to this subject matter and supersedes all prior or simultaneous representations, discussions, negotiations and agreement(s), whether written or oral.