

# HAPPYORNOT'S END USER LICENSE AGREEMENT (EULA)

## 1. GENERAL

This HappyOrNot's End User License Agreement (EULA) shall apply to provision of Service and Appliance(s) and any other services and related materials, documents and media by HappyOrNot (including its respective Affiliates) to the End-Customer (the "Subscriber") provided through authorized HappyOrNot Partner ("Reseller"). Terms in this EULA are defined in [Clause 18](#) (Definitions) and elsewhere in this EULA. HappyOrNot, Reseller and Subscriber are individually referred to in this EULA as a "Party" and collectively as the "Parties".

## 2. OWNERSHIP OF SERVICE & SUBSCRIBER DATA

**2.1 Ownership and Use of the Service and Appliance(s).** The Service, as well as the hardware platform, the data processing infrastructure, the software providing all or part of the functionality of the Service and the Appliance(s), the data processing and telecommunications hardware incorporated into the Appliance(s), and the software providing all or part of the functionality of the Appliance(s), are the property of HappyOrNot and its licensors, and are protected by copyright, patent, trade secret and other intellectual property right laws. HappyOrNot and its licensors retain any and all right, title, and interest in and to the Service, the Appliance(s) and their underlying functionality (including, without limitation, all Intellectual Property Rights), including all copies, modifications, extensions, and derivative works thereof. Subscriber shall not dismantle or reverse engineer the Appliance(s). Subscriber's right to use the Service and the Appliance(s) is limited to the rights expressly granted in this EULA. All rights not expressly granted to Subscriber are reserved and retained by HappyOrNot and its licensors.

**2.2 Ownership and Use of Subscriber Data.** All Subscriber Data are the property of Subscriber, and Subscriber retains any and all right, title, and interest in and to the Subscriber Data, including all copies, modifications, extensions and derivative works thereof made by Subscriber. HappyOrNot's use of Subscriber's Data will be limited to providing the Service to Subscriber and otherwise satisfying its obligations under this EULA, and is subject to Privacy Laws and HappyOrNot's Privacy Policy; provided however, that nothing in this Clause 2.2 or anywhere else in this EULA shall prevent HappyOrNot from using Subscriber's Data in an aggregated and anonymized manner that does not include personally identifiable information and/or personal information to optimize existing algorithms, features, or functionality, to develop new algorithms, features, or functionality, or otherwise to modify, improve, or enhance the Service, in HappyOrNot's sole discretion.

## 3. GRANT OF RIGHTS

Subject to the terms of this EULA, Subscriber is granted for a period of validity of Order Form(s) and this EULA a non-exclusive, non-perpetual, non-transferable (except as specified in Clause 6.2.1 and Clause 17.2), worldwide, royalty-free right and license (i) to install the Appliance(s) at authorized locations as set forth in applicable Order Form(s) or SOW (if any), and (ii) to access and use the Service during the Service Term set forth in an applicable Order Form(s) or SOW (if any) in accordance with the limitations of this EULA, and the terms of applicable Order Form(s) or SOW (if any) (e.g., any transaction volume terms and limitations to particular Subscriber legal entities, business units, projects, brands, products and/or services set forth therein). Subscriber is granted the foregoing right and license to use the Service, as well as any analytics, reports, or other results of the Service provided by HappyOrNot or otherwise in connection with use of the Service, exclusively for Subscriber's internal business purposes, to optimize its business practices, or to evaluate and modify its internal policies or procedures.

## 4. SUBSCRIBER RESPONSIBILITIES

**4.1 Subscriber Responsible for User Accounts.** Subscriber is responsible for all activity occurring under Subscriber's User accounts (except to the extent any such activity is caused by HappyOrNot), and for complying with all applicable laws and regulations in using the Service and the Appliance(s). Subscriber also must: (a) notify Reseller or HappyOrNot promptly upon becoming aware of any unauthorized use of any Subscriber password or account (or any other breach of security of the Service or any tampering with the Appliance(s)), and (b) notify Reseller or HappyOrNot promptly upon becoming aware of, and stop, any unauthorized copying, distribution, or other misuse of any aspect of the Service or the software providing its functionality.

**4.2 Use Restrictions.** Subscriber shall not, without HappyOrNot's prior written consent, cause or permit: (a) use or other commercial exploitation of any element of the Service or the Appliance(s), except to the extent expressly permitted by this EULA (Subscriber may allow its own customers to access the functionality or output of the Service, via interfaces, portal applications and the like, solely for Subscriber's internal business purposes and in accordance with this EULA); (b) creation of any modifications or derivative works of the Service, the Appliance(s), or any element or component of either; (c) reverse engineering of the Appliance(s), the Service, or any or all of its functionality; (d) gaining of unauthorized access to components of the Appliance(s) or the Service or its related systems or networks (for example, by impersonation of another user of the Service or provision of false identity information); or (e) interference with or disruption of the integrity or performance of the Service or the data contained therein (for example, via unauthorized benchmark testing or penetration testing). HappyOrNot reserves the right to take all steps reasonably necessary to protect the security, integrity, or availability of the Service (e.g., by temporarily suspending access by anyone who introduces malicious code or attempts to do so), notwithstanding anything to the contrary in this EULA.

**4.3 Internet Access.** Subscriber must have Internet access to access the full functionality of the Service.

**4.4 Recommended Equipment.** HappyOrNot shall not be responsible for problems associated with Subscriber's access to or use of the Service using equipment not

recommended by HappyOrNot, i.e., hardware older than seven (7) years old, and/or unsupported web-browser with out-of-date updates.

## 5. PRIVACY, DATA PROTECTION, SECURITY, CONTINUITY & SUPPORT

**5.1 Compliance with Privacy Laws.** HappyOrNot will use Subscriber's Data only as permitted by Privacy Laws and this EULA. Notwithstanding the foregoing, if complying with Privacy Laws would materially change HappyOrNot's costs or risks in providing the Service (including, without limitation, by requiring HappyOrNot to relocate its data centers), each Party will have the right to terminate this EULA (including all applicable Order Forms or SOW (if any)) upon at least thirty (30) days prior written notice to the other Party. In the event of such termination, Subscriber's sole right and HappyOrNot's/Reseller's sole obligation will be to refund to Subscriber, on a pro rata basis, any Fees paid under all applicable Order Forms or SOW (if any) then in effect that are unused as of the termination effective date.

**5.1.1 Data Protection.** To the extent Subscriber uses HappyOrNot's services which require processing of Personal Data (personally identifiable information (PII) and/or personal information), prior to the use of any of such services, HappyOrNot and Subscriber shall execute in writing **Attachment 1: Standard Contractual Clauses for Controllers and Processors in the EU/EEA** and/or **Attachment 2: Standard Contractual Clauses for Personal Data Transfers from an EU Processor to a Controller Established in a Third Country (Processor-to-Controller Transfers)**.

**5.2 Security of the Service.** Throughout the term of applicability of this EULA, HappyOrNot will maintain a data security program for the Service that will include reasonable administrative, physical, technical, organizational, and other security measures to protect against unauthorized access to, destruction, loss, unavailability, or alteration of, Subscriber's Data processed or stored by the Service. HappyOrNot shall not be responsible or liable for any deletion, correction, damage, destruction, or loss of Subscriber Data that does not arise from a breach of this EULA by HappyOrNot, or where any such deletion, correction, damage, destruction, or loss of Subscriber Data is attributable to the act or omission of the Subscriber.

**5.3 Business Continuity & Disaster Recovery.** HappyOrNot will implement and maintain throughout the term of this EULA commercially reasonable business continuity and disaster recovery plans to help ensure availability of the Subscriber Data following any significant interruption or failure of critical business processes or systems affecting the availability of Service.

**5.4 Service Level Agreement (SLA).** During the validity of this EULA, HappyOrNot will provide Service and technical support for the Service in accordance with Service Level Agreement available at [www.happy-or-not.com/en/sla/](http://www.happy-or-not.com/en/sla/), except otherwise agreed by HappyOrNot in applicable Order Form(s), Exhibit(s) or Addendum(s), as long as Subscriber is entitled to receive support under applicable Order Form(s) and this EULA.

## 6. TERM & TERMINATION

**6.1 Entry into force of Order Form(s), SOW (if any) and EULA.** Once Subscriber has placed an Order(s), SOW (if any) for HappyOrNot's Services through HappyOrNot's authorized Reseller and HappyOrNot has confirmed and accepted such Order, the Order Form(s), SOW (if any) together with this EULA shall enter into force on the effective date identified in the Order Form(s), SOW (if any), or immediately upon Subscriber's use of the Service. The Order Form(s) and EULA shall continue in effect until all Order Form(s) have expired or are terminated in accordance with Clause(s) 6.2 and/or 6.5.

**6.2 Termination of Order Form(s), SOW (if any) and EULA.** Subject to provisions of clause 6.4, Order Form(s), SOW (if any) and/or this EULA will terminate upon the occurrence of any of the following: (i) expiration or termination of Order Form(s), SOW (if any), or (ii) a material breach of this EULA by Subscriber or HappyOrNot as specified in clause 6.5. Order Form(s), SOW (if any) and/or this EULA cannot be terminated without legally valid cause i.e., "for convenience".

**6.2.1 Expiration or termination of Partner (Reseller) Agreement between HappyOrNot and Reseller.** If Agreement between Partner (Reseller) and HappyOrNot expires or is terminated for whatever reason, the rights and obligations of agreement(s) between Partner (Reseller) and End-Customer (Subscriber) ("**Reseller's Agreement with End-Customers**") shall be immediately assigned (transferred) to HappyOrNot upon any such expiration or termination, except separately agreed otherwise in writing between the Parties. It is expressly agreed hereby that HappyOrNot shall only assume rights and/or obligations towards Subscriber which are specified under this EULA and shall not be liable for any rights and/or obligations towards Subscriber, which were agreed additionally between Reseller and Subscriber, and which go beyond HappyOrNot's obligations under this EULA. It is expressly agreed between HappyOrNot, Reseller and Subscriber that expiration or termination of Partner (Reseller) Agreement between HappyOrNot and Reseller for whatever reason, shall not give the right of termination of Order Form(s), SOW (if any) and EULA to Subscriber. Upon any expiration or termination of Agreement between Partner (Reseller) and HappyOrNot, except where expressly prohibited by the law, HappyOrNot will have the right to contact Subscriber directly. Parties hereby grant all necessary consents to that effect.

**6.3 Survival of clauses upon Expiration or Termination of Order Form(s) and EULA.** [Clauses 1, 2, 4, 2, 6, 3, 6, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16 and 17](#) of this EULA shall survive any expiration or termination of Order Form(s) and this EULA. Duly executed Addendums (if any) or Exhibits (if any) or SOW(s) (if any) may identify additional terms that will survive any expiration or termination of Order Form(s) and EULA. Regardless of the basis for expiration or termination of Order Form(s) and EULA, HappyOrNot will make Subscriber Data available to the Subscriber via the Platform for sixty-five (65) days after expiration or termination thereof. HappyOrNot will not be obligated to retain any Subscriber Data for longer than

thirty (30) days after any such expiration or termination, except longer periods are required by the law.

**6.4 Term of Order Form(s).** The term of particular Order Form(s) will be set forth therein, starting on the Effective Date specified therein and continuing for the initial term specified therein ("**Initial Service Term**"). Unless expressly prohibited by the law or otherwise set forth in the applicable Order Form(s) or Addendum (if any), or unless the Order Form(s) is terminated in accordance with clause 6.5, upon expiration of the Initial Service Term, the relevant Order Form(s) will renew automatically for a period of one (1) year at a time ("**Renewal Service Term**"), unless either Party notifies the other Party in writing, at least sixty (60) days (subject to Clause 7.1) prior to the end of the then-current Service Term, that it chooses not to renew. The Initial Service Term and all Renewal Service Terms (if any) are referred to collectively as the "**Service Term**." HappyOrNot may amend this EULA and its integral parts upon the Renewal Service Term by giving a written notice of ninety (90) days prior to the end of the then-current Service Term.

If automatic renewal is expressly prohibited by the law or is separately agreed in writing between the Parties, the Order Form(s) and EULA shall expire upon the expiration of the **Initial Service Term**.

**6.5 Termination of Order Form(s).** Either Party may terminate any Order Form(s) for cause (material breach) upon a written notice to the other Party, if the other Party fails to cure any material breach thereof within thirty (30) days after receiving reasonably detailed written notice from the other Party alleging the material breach. If termination of an Order Form(s) pertains to a particular Order Form(s), that particular Order Form(s) shall be terminated without having any effect on other Order Form(s). If termination pertains to all Order Form(s), all Order Form(s) shall be terminated, and this EULA shall be terminated automatically.

**6.6 Effect of Termination of Order Form(s).** Subject to the exclusive remedy provisions in this EULA (e.g., clauses regarding Compliance with Privacy Laws, Indemnification, Warranties, Service Levels, Confidentiality, Intellectual Property): (a) if Subscriber terminates Order Form(s) in accordance with Clause 6.5, Subscriber will be entitled to a refund, on a pro rata basis, of any Fees paid thereunder that are unused as of the termination effective date; and (b) if HappyOrNot terminates Order Form(s) in accordance with Clause 6.5, all amounts owed by Subscriber thereunder will become due and payable.

## 7. ORDER PROCESS

Subscriber orders HappyOrNot's Service, and/or any additional Professional Services, through Reseller via one or more Order Form(s) or Statement of Work ("SOW") (if any), which is placed by the Reseller to HappyOrNot.

**7.1. Adjustment of Fees Upon Renewal.** HappyOrNot reserves the right to adjust the Fees for its Service under one or more Order Forms, effective upon commencement of the next renewal service term of the relevant Order Form(s), based on the increase in the Consumer Price Index (CPI) + 2% at the time of the notice in the country of ordering the Service, provided however that in no event any such price adjustment shall exceed 8%. HappyOrNot shall notify the Subscriber via Reseller in writing at least ninety (90) days before the end of the then-current service term.

## 8. FEES & PAYMENT

**8.1 Payment Details.** Subscriber must pay all fees and charges in accordance with the Order Form(s), SOW (if any) ("**Fees**"). Annual Fees are invoiced annually upfront upon order, fourteen (14) days, thirty (30) days, forty-five (45) days or sixty (60) days net, depending on the **Reseller's Agreement with End-Customer (Subscriber)**, however, the payment shall in no case exceed sixty (60) days, except such is expressly authorized by HappyOrNot in writing.

If Subscriber, in addition to existing subscription(s) any time during the invoicing year adds new subscription(s), and wishes to consolidate orders into a single invoice, the invoicing of the new subscription(s) will be adjusted according to the remaining number of months of that invoicing year. If during the period of existing subscription(s), the Subscriber upgrades the Appliance(s) model or Service, the existing subscription(s) will be terminated, and remaining fees of that invoicing year will be credited to the new subscription(s).

Except to the extent otherwise expressly stated in this EULA (e.g., in Clause 6.6), or in applicable Order Form(s), Addendum (if any), SOW (if any) or invoice(s):

- all obligations to pay Fees are non-cancelable and non-refundable;
- Subscriber must make all payments without setoffs, withholdings, or deductions of any kind;
- Subscriber shall pay a fee of five (5) EUR per each invoice;
- all payments must be in euros (EUR) unless otherwise agreed in applicable Order Form(s);
- Subscriber agrees to pay charges related to Fees due to Reseller (and in case of transfer (assignment) due to HappyOrNot) as expressed upfront or in accordance with a pre-existing and mutually agreed to banking relationship.

Except to the extent otherwise expressly stated therein, if applicable Order Form(s), SOW (if any) provides for payment via credit card or electronic money transfer (e.g., ACH), Reseller (and in case of transfer (assignment) a HappyOrNot) is permitted to process such payment on the date of Reseller's (and in case of transfer (assignment) HappyOrNot's) invoice.

**8.2 Taxes.** The Fees are exclusive of all taxes, levies, or duties imposed by taxing authorities in connection with any Order Form(s), SOW (if any). Subscriber is responsible for paying all such taxes, levies, or duties. If the Reseller (and in case of transfer (assignment) HappyOrNot) has the legal obligation to pay or collect taxes for which Subscriber is responsible (e.g., VAT within the territory of European Union), the appropriate amount will be invoiced to and paid by Subscriber unless Subscriber provides to Reseller (and in case of transfer (assignment) to HappyOrNot) a valid tax exemption certificate authorized by the appropriate taxing authority before the invoice is issued.

**8.3 Subscriber Contact Information.** Subscriber shall update billing and other contact information within thirty (30) days after any changes, via email to Reseller's contact person and in case of transfer (assignment) to HappyOrNot.

**8.4 Consequences of Non-Payment.** If Subscriber fails to pay Fees under any Order Form(s), SOW (if any), then in addition to any other rights Reseller (and in case of transfer (assignment) HappyOrNot) may have under this EULA or applicable law:

- Except expressly prohibited by the applicable law, Subscriber shall owe the Reseller (and in case of transfer (assignment) to HappyOrNot) an interest penalty of seven percent (7%) per annum on any outstanding balance under each delinquent invoice, or the maximum permitted by law (whichever is less);
- Reseller (and in case of transfer (assignment) HappyOrNot) will be entitled to recover its reasonable costs of collection; and
- HappyOrNot reserves the right to temporarily suspend Subscriber's access to the Service if Subscriber's account remains delinquent for thirty (30) days after receipt of a delinquency notice from Reseller (and in case of transfer (assignment) from HappyOrNot), which may be provided via email to Subscriber's billing contact (and in case of transfer (assignment) via email to HappyOrNot's billing contact). Subscriber will continue to incur and owe all applicable Fees irrespective of any such Service suspension due to Subscriber's delinquency.

## 9. HARDWARE / APPLIANCE(S) TERMS

In addition to the restrictions set forth in Clause 2 above, leasing of the Appliance(s) is governed in accordance with Clause 9.1.

**9.1 Leased Appliance(s).** Unless expressly specified and authorized in writing by HappyOrNot in applicable Order Form(s) or Addendum (if any), which expressly references that Order Form(s), the Appliance(s) supplied to the Subscriber as part of the Service are leased to Subscriber and the exclusive property of HappyOrNot. HappyOrNot reserves the right to replace the Appliance(s) from time to time at its own discretion free of charge for the Subscriber. Unless specified otherwise in applicable Order Form(s) or Addendum (if any), which expressly references that Order Form(s), Subscriber, after the expiry or termination of Order Form(s) and EULA, Subscriber shall return the Appliance(s) to Reseller or HappyOrNot if so requested by HappyOrNot, or recycle the Appliance(s) according to applicable Subscriber's local laws/regulations and/or practices.

All Appliance(s) supplied to Subscriber are ready for use. The Appliance(s) contains a mobile transceiver module for sending and receiving information. The Subscriber is solely responsible, including financially and/or otherwise, for ensuring that the necessary network, data and communication systems which the Appliance(s) Services require (e.g. cellular network signal) are available. Subscriber shall use the Appliance(s) at authorized locations as set forth in applicable Order Form(s) unless otherwise approved by HappyOrNot in advance. Subscriber shall be responsible for all costs associated with a change of location(s).

**9.2 Guarantee and Replacement Policy.** Guarantee period for the Appliance(s) is the duration of the "**Initial Service Term**", starting from the date the Appliance(s) were delivered to Subscriber ("**Guarantee Period**"). Guarantee period does not cover the "**Renewal Service Term**". Subscriber shall, depending on the Appliance(s)' model, be responsible for changing the batteries after a span of six (6) months from the date of delivery of the Appliance(s) (except separately agreed otherwise with the Reseller with no obligation incurred by HappyOrNot as a result of such arrangement), or connecting the charger to a power outlet and, if required, acquiring and installing new batteries at Subscriber's expense (except agreed otherwise with the Reseller with no obligation incurred by HappyOrNot as a result of such arrangement). The Subscriber shall be responsible for replacing the SIM card (supplied and/or authorized by HappyOrNot) when requested to do so by HappyOrNot or Reseller.

The Subscriber shall operate all Appliance(s) only indoors and with due care. The Subscriber shall keep the Appliance(s) clean. The Subscriber shall not open the Appliance(s) or tamper with it in any way unless otherwise instructed by HappyOrNot or Reseller (with HappyOrNot's permission).

If the Appliance(s) breaks during the Guarantee Period, HappyOrNot will replace the broken Appliance(s) free of charge, provided it has been used in accordance with the Appliance's requirements and HappyOrNot's instructions ("**Guarantee**"). Subscriber shall use only original HappyOrNot supplied equipment, including spare parts. If the Appliance(s) is broken due to inappropriate use, poor maintenance, or any other contributory negligence by the Subscriber or Subscriber's client(s) or stolen, HappyOrNot will replace the broken/stolen Appliance(s) and Subscriber shall bear all costs (in accordance with then-current price list) associated with the setup and delivery of new Appliance(s). HappyOrNot shall not be liable for any unauthorized use of the Appliance(s) or spare parts, and such unauthorized use, which causes any harm or disruption of the Appliance(s) or Services, shall deprive Subscriber of the Guarantee.

**9.3 Specific terms applicable to "Smiley Digital".** Each subscribed item is represented by a Smiley Digital token. Activation depends on the selected type of Smiley Digital product. For "Smiley Digital Pop-up" and "Smiley Digital Embed Web", Subscriber receives a JavaScript code, which Subscriber shall use for implementing the survey on the designated website. The script must not be edited or changed in any way and must be included and implemented on the Subscriber's website in the form provided by HappyOrNot. The "Smiley Digital" panel dimension, look, feel and position on Subscriber's web page shall not be changed or customized, without an express written permission from HappyOrNot. For "Smiley Digital Embed Email," an image with four Smileys is delivered. Alternatively, Subscriber can implement raw html code to generate the Email image. The "Smiley Digital" image's dimension, look and feel shall not be changed or customized, without an express written permission from HappyOrNot. For "Smiley Digital Solo", the product consists of a QR code and a short URL that is delivered to Subscriber for implementation of a survey in a physical or digital touch point.

If Subscriber wishes to create 1-10 surveys, Subscriber must order the package with 1-10 number of tokens. If Subscriber wishes to create more than 10 surveys, Subscriber can order the unlimited\* package (\*up to 500 tokens). It is the sole responsibility, financially and otherwise, of Subscriber to ensure that the Smiley Digital products are correctly deployed and installed according to HappyOrNot's installation instructions. Upon the termination of the EULA and/or relevant Order Form(s), the Subscriber shall promptly remove all Smiley Digital panels.

**9.4 Delivery and Assembly.** Delivery of any tangible goods is FCA Turku, Finland (Incoterms® 2020). Standard shipping time is fourteen (14) days for non-branded Appliance(s) and twenty-one (21) days for branded Appliance(s), except separately agreed otherwise. Shipping fees are quoted based on Subscriber's delivery location. The Subscriber shall: (i) pay for the shipping of Appliance(s) from HappyOrNot's designated premises to Subscriber's designated premises, and (ii) assemble the Appliance(s) according to the manual provided with it.

#### 10. THIRD-PARTY INTERACTIONS

To the extent use of the Service requires use of any third-party products or services (e.g., Oracle Java, Adobe Acrobat, Amazon Web Services, and/or a Web browser), HappyOrNot does not make any representations or warranties regarding any such third-party products or services, and in no event will HappyOrNot have any liability whatsoever in connection therewith.

#### 11. ADDITIONAL OR TAILOR-MADE PROFESSIONAL SERVICES

If Subscriber wishes to purchase any additional or tailor-made training, implementation, or other professional services relating to the Service and to be provided by HappyOrNot (or with express permission of HappyOrNot by the Reseller) ("Professional Services"), the Parties will mutually execute one or more separate Order Form(s) and/or SOW (if any) containing the relevant terms and conditions. Professional Services are separate and apart from the Service provided under this EULA, and neither Party's obligations in connection with the Service are dependent in any way on any Professional Services. Except to the extent expressly set forth to the contrary in any applicable Order Form(s) or SOW (if any) and expressly authorized by HappyOrNot, the following provisions will apply to all such Professional Services:

- a. HappyOrNot will retain all ownership rights in and to all copyrightable works, deliverables, designs, inventions, know-how, software, techniques, trade secrets, work product, and other materials created by or for HappyOrNot (either alone or jointly with Subscriber or others) and provided to Subscriber as part of the Professional Services, and any derivative works thereof, excluding any incorporated Confidential Information provided by Subscriber; and
- b. Subject to the terms of this EULA, Subscriber is granted a non-exclusive, non-perpetual, non-transferable, worldwide, royalty-free license to perform, display or otherwise use internally only the materials set forth in (a) above in connection with the Service during the term of the EULA.

#### 12. WARRANTIES & DISCLAIMERS

12.1 HappyOrNot represents and warrants that the Service will perform substantially in accordance with the relevant product data sheet(s) found at [www.happy-or-not.com](http://www.happy-or-not.com) and Service Level Agreement found at [www.happy-or-not.com/en/sla/](http://www.happy-or-not.com/en/sla/), under normal use and circumstances.

Subscriber's exclusive remedy and HappyOrNot's sole obligation with regard to the breach of any warranties in this Clause 12.1 will be for HappyOrNot to make commercially reasonable efforts to correct the non-conformity or, if HappyOrNot is unable to correct the non-conformity within sixty (60) days after HappyOrNot has received a written notice regarding the non-conformity, for Subscriber to terminate applicable Order Form(s) and receive a refund, on a pro rata basis, of any Fees paid under such Order Form(s) that are unused as of the termination effective date.

**12.2 Warranty disclaimers.** Except to the extent expressly stated in this EULA: (a) HappyOrNot and its licensors make no representations or warranties of any kind, whether express, statutory, or implied (in fact or by operation of law), regarding the Service, the Appliance(s), the Professional Services, or any matter whatsoever; and (b) HappyOrNot and its licensors do not warrant that the Service, the Appliance(s), or any Professional Services are or will be error-free, meet Subscriber's requirements, or be timely or extremely secure. HappyOrNot, its licensors, expressly disclaim all implied warranties of merchantability, fitness for a particular purpose, and non-infringement with respect to the Service, the Appliance(s), and any Professional Services, and Subscriber has no right to make or pass on to any third-party any representation or warranty.

#### 13. INDEMNIFICATION

13.1 **By HappyOrNot.** HappyOrNot shall defend Subscriber and will indemnify and hold the Subscriber harmless from and against any claims asserted by a third-party based on an allegation that use of the Service in accordance with the EULA and applicable Order Form(s) infringes a copyright in any country or a patent of the USA, a member state of the European Union, Canada, or Australia (collectively, "Claims"). In case of such Claim HappyOrNot will promptly and at its own expense: (i) obtain for Subscriber the right to continue using the Service in accordance with this EULA and applicable Order Form(s); (ii) modify the item(s) in question to no longer be infringing; or (iii) replace such item(s) with a non-infringing functional equivalent. If, after all commercially reasonable efforts, HappyOrNot determines in good faith that options (i), (ii) and (iii) are not feasible, HappyOrNot will remove the infringing item(s) from the Service, and Subscriber will be entitled to a refund on a pro rata basis of any Fees paid by Subscriber for such infringing element(s) that are unused as of the removal date.

HappyOrNot or Reseller will have no obligation or liability for any claim under this clause or anywhere else in this EULA to the extent arising from: (i) combination, operation, or use of the Appliance(s) or Service in direct contradiction with the provisions of this EULA or use with any product, device, spare part, software, or service not supplied by HappyOrNot to the extent that the combination, operation, or use creates the infringement; (ii) the

unauthorized alteration or modification by Subscriber of the Appliance(s) or Service, or (iii) HappyOrNot's compliance with Subscriber's designs, specifications, requests, or instructions in providing Services or Professional Services to the extent the Claim is based on such compliance.

13.2 **By Subscriber.** Except where explicitly prohibited by the law, Subscriber shall defend, indemnify, and hold harmless HappyOrNot and Reseller, and their Affiliates, officers, directors and employees from and against any claims asserted by a third-party based on a breach by Subscriber of Clause 4 (Subscriber Responsibilities) of this EULA. Subscriber will also defend, indemnify and hold harmless HappyOrNot and Reseller, and their Affiliates, officers, directors and employees by paying all damages, costs and expenses (including reasonable legal fees and costs) finally awarded by a court of competent jurisdiction or agreed in a written settlement agreement signed by Subscriber or its Affiliates, arising out of the third-party claims described in this clause.

#### 13.3 Requirements for Indemnification.

Each Party's respective defense and indemnity obligations under Clauses 13.1 and 13.2 are contingent upon the indemnified Party: (a) promptly giving notice of the third-party claim to the defending/indemnifying Party once the claim is known; (b) except where explicitly prohibited by the law, giving the defending/indemnifying Party exclusive and sole control of the defense and settlement of the claim and not compromising or settling the claim without the defending/indemnifying Party's approval (though the defending/indemnifying Party must not settle such claim unless the settlement unconditionally releases the other Party of all liability and does not adversely affect the other Party's business or service in a material manner); and (c) providing appropriate information and reasonable cooperation to the defending/indemnifying Party in connection with the claim. The foregoing are the defending/indemnifying Party's sole obligations, and the indemnified Party's exclusive remedies with respect to indemnification and the matters addressed in this Clause 13.

#### 14. LIMITATION OF LIABILITY

**To the maximum extent permitted by applicable law:**

**14.1 Except as provided in Clauses 13 and 14.3, HappyOrNot's, Reseller's, or Subscriber's total aggregate liability arising from or relating to any Order Form(s) and/or this EULA, shall be subject to a total aggregate liability cap of the amounts actually paid by and/or due from Subscriber in the twelve (12) month period immediately preceding the event giving rise to the claim.**

**14.2 In no event, except as provided in Clause 14.3, will HappyOrNot, Reseller or Subscriber be liable for any indirect, punitive or consequential damages of any kind (including, without limitation, loss of revenue, profits, use, data or other economic advantage) arising out of, or in any way connected with the EULA, regardless of cause;**

**14.3 Except where explicitly prohibited by the law, limitation of liability set forth in Clauses 14.1 and 14.2 above shall not apply to liability and damages resulting from either party's gross negligence and/or willful misconduct with respect to obligations under Clause 2, Clause 3, Clause 4, Clause 15 and Clause 16.**

#### 15. CONFIDENTIALITY

15.1 **Definition.** As used in this EULA, "Confidential Information" means information and materials provided by the disclosing Party ("Discloser") to the Party receiving such information or materials ("Recipient") that (a) are identified as confidential at the time of disclosure, or (b) a reasonable person in the relevant industries should understand to be confidential based on the nature of the information and materials and all other relevant factors. For the avoidance of doubt, Subscriber's Confidential Information includes, without limitation, Subscriber's non-public business plans; Reseller's Confidential Information includes, without limitation, Reseller's non-public business plans; and HappyOrNot's Confidential Information includes, without limitation, pricing terms offered under any Order Form(s) or SOW (if any), HappyOrNot's non-public business plans, all non-public aspects of the HappyOrNot technology pertaining to the Service and the Appliance(s) (including the Service and the Appliance(s)), and the results of any evaluation of the Service performed by or on behalf of Subscriber for purposes of monitoring its availability, performance or functionality, or for any other benchmarking or competitive purposes.

15.2 **Purpose.** Recipient must not use any of Discloser's Confidential Information for any purpose other than carrying out Recipient's obligations or exercising its rights under this EULA (the "Purpose").

15.3 **Permitted Disclosures and Obligations.** Recipient must not disclose to any third-party any Confidential Information, other than to Recipient's Affiliates, contractors and consultants who: (a) need to know such information in order to fulfill the Purpose, and (b) are bound by confidentiality obligations substantially similar to Recipient's under this EULA (each Party is fully responsible for its respective Affiliates', contractors' and consultants' compliance with this EULA). Recipient must treat all Discloser's Confidential Information with the same degree of care Recipient gives to its own Confidential Information, but not less than reasonable care. Neither Party may disclose publicly the existence or nature of any negotiations or other communications between the Parties without prior written consent of the other Party. Recipient and its Affiliates, contractors and consultants who receive Confidential Information hereunder must: (i) not use any such Confidential Information to compete with Discloser or in any other way except as reasonably necessary for the Purpose; (ii) not reverse engineer, disassemble or decompile any prototypes, software, or other tangible objects received from Discloser under this EULA which embody Confidential Information; (iii) promptly notify Discloser of any unauthorized use or disclosure of its Confidential Information of which Recipient becomes aware; and (iv) reasonably assist Discloser in remedying any such unauthorized use or disclosure.

15.4 **Exclusions.** Recipient's obligations under Clause 15 do not apply to Discloser's Confidential Information that Recipient can evidentially prove: (a) is or becomes part of the public domain through no fault of Recipient or Recipient's Affiliates, contractors or consultants; (b) is rightfully in Recipient's possession free of any confidentiality obligation; (c) was independently developed by Recipient (which is documented by evidence) without using any Discloser Confidential Information; or (d) is communicated to Recipient by an

unaffiliated third-party free of confidentiality obligation. Disclosure by Recipient of Confidential Information (i) in response to a valid order or other legal process issued by a court or other governmental body having jurisdiction, (ii) as otherwise required by law, or (iii) necessary to establish the rights of HappyOrNot, Reseller or Subscriber. The Recipient will not breach this EULA if, to the extent legally permitted, Recipient gives prompt notice and reasonable cooperation to Discloser so Discloser may seek to prevent or limit such disclosure.

**15.5 Destruction of Confidential Information.** Promptly after any request by Discloser, or following the expiration or termination of Order Form(s) and/or this EULA, Recipient will: (a) destroy or return to Discloser all Confidential Information and materials in Recipient's possession or control, and (b) upon written request by Discloser, confirm such return/destruction in writing; provided, however, that the Recipient may retain electronic copies of any computer records or electronic files containing any Discloser's Confidential Information that have been created pursuant to Recipient's standard, commercially reasonable archiving and backup practices, as long as Recipient continues to comply with this EULA with respect to such electronic backup copies for so long as such Confidential Information is retained.

**15.6 Confidentiality Period.** Recipient's obligations with respect to Discloser's Confidential Information under Clause 15 will remain in effect for the term of the Order Form(s) and/or EULA, and for three (3) years after any expiration or termination of Order Form(s) and/or EULA, provided, however, that Recipient's obligations under Order Form(s) and/or the EULA will continue to apply to Confidential Information that qualifies as a trade secret under applicable law for as long as it so qualifies and has been identified as such by Discloser.

## 16. INTELLECTUAL PROPERTY

**16.1 Ownership.** As between Subscriber, Reseller and HappyOrNot, HappyOrNot is the exclusive owner of, and shall retain, all right, title, and interest in and to all Intellectual Property Rights associated with, incorporated into or embodied in, or otherwise related to or arising from the Service and the Appliance(s); further, in addition to any other provisions elsewhere in this EULA, ownership rights shall vest in HappyOrNot, and HappyOrNot shall retain all right, title, and interest in and to all Intellectual Property Rights related to all works, deliverables, designs, inventions, know-how, software, techniques, trade secrets, work product, and any other materials provided to Subscriber by HappyOrNot as part of the Service, and any derivative works thereof, excluding any incorporated Confidential Information provided by Subscriber.

## 17. GENERAL

**17.1 Governing Law.** This EULA, Addendum(s) (if any), Exhibit(s) (if any), applicable Order Form(s) and/or SOW (if any), including any other terms referenced therein, shall be governed by Finnish law, without regard to the conflicts of law provisions of any jurisdiction.

Any possible claims, disputes and controversies arising out of this EULA, Addendum(s) (if any), Exhibit(s) (if any), Appendix(es) (if any), Attachment(s) (if any), applicable Order Form(s) and/or SOW (if any), including any other terms referenced therein, shall be primarily negotiated and settled between the Parties. Should the Parties fail to settle within thirty (30) days of either party's written request for amicable settlement negotiations, or any other mutually agreed extension period of amicable settlement negotiations, any dispute, controversy or claim arising out of or relating to this EULA, or the breach, termination or validity thereof, shall be resolved by the court or by arbitration as specified below.

In cases where claims, disputes and controversies relating to this EULA, Addendum(s) (if any), Exhibit(s) (if any), Appendix(es) (if any), Attachment(s) (if any), applicable Order Form(s) and/or SOW (if any), including any other terms referenced therein, or the breach, termination or validity thereof, arise due to the acts or omissions between Reseller and End-Customer (and not between HappyOrNot and Reseller or HappyOrNot and End-Customer), any such dispute, controversy or claim shall be governed by Finnish law, without regard to the conflicts of law provisions of any jurisdiction, except Reseller and End-Customer have chosen some other jurisdiction in their Reseller's Agreement with End-Customers to govern their relationship. For avoidance of doubt, choice of any other jurisdiction or governing law by Reseller and End-Customer in Reseller's Agreement with End-Customers shall not in any way invalidate or amend this EULA, nor shall it bring any other obligations and/or liability to HappyOrNot, nor shall it diminish any rights and/or obligations, and it shall only apply to the rights and obligations between Reseller and End-Customer. In case of conflicts of law provisions between Finnish law and other chosen jurisdiction, Finnish law shall always prevail.

In cases where claims, disputes and controversies arise relating to this EULA, Addendum(s) (if any), Exhibit(s) (if any), Appendix(es) (if any), Attachment(s) (if any), applicable Order Form(s) and/or SOW (if any), including any other terms referenced therein, validity, termination or the breach by HappyOrNot or against HappyOrNot, or breach of obligations by Reseller or Subscriber under this EULA, any such dispute, controversy or claim shall be finally settled by arbitration in accordance with the Arbitration Rules of the Finland Chamber of Commerce. The number of arbitrators shall be three (3). The seat of arbitration shall be Tampere, Finland. The language of the arbitration shall be English. The parties expressly and irrevocably waive the right to proceed in any other jurisdiction or forum, and hereby expressly and irrevocably waive any objections to jurisdiction and venue as set forth in this Clause 17.1. Notwithstanding the foregoing or any other provision of this EULA to the contrary, HappyOrNot may seek to enjoin a breach of the confidentiality provisions set forth in Clause 15 of this EULA and of the Intellectual Property set forth in Clause 16 of this EULA in any court of competent jurisdiction. The Service is a service, not a good, and is not subject to the United Nations Convention on the International Sale of Goods.

**17.2 Assignment.** Neither Party may assign, sublicense, or otherwise transfer (by operation of law or otherwise) this EULA, or any of its rights or obligations hereunder, to any third-party without prior written consent of the other Party, which consent shall not be unreasonably withheld, delayed, or conditioned. However, HappyOrNot, Reseller or Subscriber may assign or otherwise transfer this EULA, along with all associated Order Forms (and all its rights and obligations thereunder), SOW (if any) to: (a) a successor-in-interest in connection with a merger, acquisition, reorganization, a sale of most or all of its

assets, or other change of control, or (b) to its Affiliate. In case of such permitted transfer, this EULA, along with all associated Order Forms, SOW (if any) shall bind and inure to the benefit of the Parties and their respective permitted successors and transferees.

**17.2.1 Subcontracting.** HappyOrNot may use subcontractors to perform all or any part of its obligations under this EULA (which are essential for HappyOrNot's performance of its obligations, and which do not provide the services directly to Subscriber) without Subscriber's prior written consent, provided however that HappyOrNot shall be fully responsible for all acts and omissions of its subcontractors.

**17.3 Force Majeure.** If HappyOrNot, Reseller or Subscriber are prevented from performing, or unable to perform, any of its obligations under the Order Form(s), SOW (if any) and/or EULA due to any cause beyond its reasonable control, e.g., war, riots, labor unrest, fire, earthquake, flood, hurricane, epidemic, pandemic, or other natural disasters and acts of God, major Internet service failures or delays, and denial of service attacks (collectively, "Force Majeure"), the affected Party's performance will be excused for the resulting period of delay or inability to perform. The affected Party must, however: (a) give the other Party prompt written notice of the nature and expected duration of such Force Majeure, (b) use commercially reasonable efforts to mitigate the delay and other effects, (c) periodically notify the other Party of significant changes in the status of the Force Majeure, and (d) notify the other Party promptly when the Force Majeure ends.

**17.4 Marketing.** Except expressly prohibited by the law or authorized by HappyOrNot, HappyOrNot may use Subscriber's name and logo on HappyOrNot's website and marketing materials solely to identify Subscriber as a user of HappyOrNot's Services (without revealing any details about the Parties' relationship). Except expressly agreed otherwise, within thirty (30) days after Subscriber goes live on the Service: (a) HappyOrNot, Reseller (if applicable) and Subscriber will issue a limited, mutually agreed press release (or other joint public announcement) regarding Subscriber's use of the Service, and (b) Subscriber will also reasonably consider serving as a reference for HappyOrNot.

**17.5 Insurance.** Each Party will maintain sufficient insurance coverage to adequately cover its respective obligations under applicable Order Form(s), SOW (if any) and this EULA. Upon request, each Party will provide to the other Party a copy of its current certificate of insurance evidencing such coverage.

**17.6 Independent Contractors.** The Parties are independent contracting parties. Neither Party has or will hold itself out as having any right or authority to incur any obligation on behalf of the other Party.

**17.7 Notices.** All legal notices (e.g., notice of termination of Order Form(s), SOW (if any) and/or this EULA shall be between Reseller and Subscriber and must be delivered in writing: (a) in person, (b) by nationally recognized overnight delivery service, or (c) by certified mail (requiring signature) to the other Party's corporate headquarters, and with a mandatory copy sent to the official email address identified by Reseller and Subscriber.

All legal notices alleging a material breach by HappyOrNot, which may result in termination of Order Form(s), SOW (if any) and/or this EULA between Reseller and Subscriber, must be delivered to HappyOrNot in writing: (a) in person, (b) by nationally recognized overnight delivery service, or (c) by certified mail (requiring signature) to HappyOrNot's corporate headquarters, and with a mandatory copy sent to [legal@happy-or-not.com](mailto:legal@happy-or-not.com) and a copy to Reseller's official email address.

Either Party may change its notice address by giving a written notice to the other Party immediately upon such change, but not later than thirty (30) days.

**17.8 Amendment; Modification; Waiver.** This EULA provided "AS IS", and cannot be amended or modified by Reseller or Subscriber, except with the express prior written consent and authorization from HappyOrNot. Any amendments or modifications of this EULA by Reseller of Subscriber except with the express prior written consent and authorization from HappyOrNot are null and void. Any services, which Reseller may offer to Subscriber in addition to the services provided under this EULA, shall be between Reseller and Subscriber and shall not amend or modify this EULA nor in any way bind HappyOrNot.

Within the scope of the applicable law, HappyOrNot's Privacy Policy and HappyOrNot's Service Level Agreement can be revised from time to time at HappyOrNot's sole discretion.

No waiver by any Party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the waiving Party. Except as otherwise set forth in this EULA, no failure to exercise, or delay in exercising of any rights, remedy, power, or privilege arising from this EULA shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

**17.9 Severability.** If any term or provision of this EULA is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of the EULA or invalidate or render unenforceable such term or provision in any other jurisdiction. The Parties shall negotiate in good faith to modify such term or provision so as to effect the original intent of the Parties.

**17.10 Entire Agreement.** This EULA, together with Addendum(s) (if any), Exhibit(s) (if any), Appendix(es) (if any), Attachment(s) (if any), applicable Order Form(s) and/or SOW (if any), including any other terms referenced in any of these documents, comprises the entire agreement between the Parties, and supersedes all prior or contemporaneous negotiations, discussions or agreements, whether written or oral, regarding such subject matter, and may only be modified by a document signed by duly authorized representatives of the Parties.

## 18. DEFINITIONS

The following definitions are used in this EULA:

"**Affiliate**" means a company, corporation, individual, partnership or other legal entity that directly or indirectly controls, is controlled by, or is under common control with a Party to

