

Terms of Service

Effective as of March 9, 2021 for all users signing up on or after March 9, 2021. For existing users the changes will be effective from April 9, 2021. [Click here](#) for the prior version of our Terms of Service.

These Terms of Service define the terms by which subscribers may use the software platform and the accompanying software services and are an agreement between you (the "Subscriber") and HappyFox, Inc. (the "Company"), who may each individually be referred to as a "Party" or collectively as the "Parties." By subscribing to, using, downloading, installing, or otherwise accessing the software platform and the software services, you expressly acknowledge that you have read, accept, and agree to be bound by these Terms of Service, as well as any applicable laws hereunder. You should not enter into a subscription to use this software platform and the software services, if you do not agree to these Terms of Service. Your use of the Company software platform and software services is also subject to Company's [Privacy Policy](#). If you are subscribing to or using the Services on behalf of an organization, you are agreeing to these Terms of Service for that organization and promising that you have the authority to bind that organization and its agents (the "Organization") to these Terms of Service. In that case, "you," "your," and Subscriber will also refer to the Organization, wherever possible.

Company may modify these Terms of Service at any time in its sole discretion, and any amendments will apply upon thirty (30) days prior written notice. Your continued use of the software platform and software services after any amendments shall signify your acceptance of the amendments. You should return to this page from time to time in order to ensure that you are aware of any updated terms.

1. SUBSCRIPTION

For the Trial Period, Term, or any Renewal Term as defined in Section 6 below, Company grants to Subscriber the non-exclusive, non-transferable right to permit Authorized Users as listed in the applicable online order form ("Order Form") and End Users (if applicable) to access, use, display, and run the Software Services in accordance with these Terms of Service. For the purpose of this Section, "Authorized User" shall be defined as any individual authorized by Subscriber to register a staff account identified through a unique login as a helpdesk staff member and/or administrator. "End User" shall be defined as any individual who seeks to interact with Subscriber or an Authorized User through the Software Services. "Software Service(s)" shall be defined as the Software Platform and any related services further described in Section 3 below, which are made available by Company to Subscriber. "Software Platform" shall be defined as the then-current version of the software solution developed and hosted by Company for use by Subscriber, along with any updates, upgrades, modifications, or improvements made available thereto

- a. **Adding Authorized Users.** For those Company Products for which the Order Form sets forth an Authorized User limit, in the event that Subscriber seeks to add additional Authorized Users beyond the number of Authorized Users listed in the applicable Order Form during the Term or Renewal Term, the additional Authorized Users required may be purchased for an additional subscription fee, which shall be prorated by the number of days remaining in the applicable Term or Renewal Term

as defined below. Subscriber shall have the right to assign and reassign Authorized Users in its sole and absolute discretion.

- b. **Decreasing Authorized Users.** Subscriber may not decrease the designated number of Authorized Users until the expiration of the current Term or Renewal Term as defined below. In the event Subscriber seeks to decrease the designated number of Authorized Users upon renewal, Subscriber shall provide to Company a written notice of its request at billing@happyfox.com at least thirty (30) days prior to the expiration of the then-current Renewal Term.
- c. **Usage Limits.** For certain Company Products, the Order Form may set forth usage limitations other than a maximum number of Authorized Users, which may include factors including, but not limited to, data size, usage volume, and revenue (any of the forgoing, "Usage Limits"). In the event Subscriber seeks to increase the User Limits set forth in an Order Form during the Term or Renewal Term, Subscriber will be billed for the increased usage limit, the fee for which shall be prorated by the number of days remaining in the applicable Term or Renewal Term as defined below.
- d. **Decreasing Usage Limits.** Subscriber may not decrease Usage Limits until the expiration of the current Term or Renewal Term as defined below. In the event Subscriber seeks to decrease Usage Limits upon renewal, Subscriber shall provide to Company a written notice of its request at billing@happyfox.com at least thirty (30) days prior to the expiration of the then- current Renewal Term.

2. INTELLECTUAL PROPERTY

- a. **Ownership of Software Platform.** Subscriber acknowledges and agrees that no title to the intellectual property in the Software Platform is transferred to Subscriber under this Agreement. Subscriber further acknowledges that all right, interest, title and full ownership rights to the Software Platform and all intellectual property rights therein will remain the exclusive property of Company and its licensors. Subscriber agrees not to remove any trademark, copyright, or other proprietary notices on the knowledge base as delivered, and to reproduce all such notices on and in all authorized copies.
- b. **Restrictions.** Subscriber may not share, distribute, resell, rent, lease, sublicense, transfer, create derivative works of the Software Platform, or otherwise permit any unauthorized third party to access, use, or display the Software Platform. The Software Services and the Software Platform contain Company's trade secrets, and in order to protect those trade secrets, Subscriber agrees not to take any action to reverse engineer, compile, translate, disassemble, copy, or create derivative works of the, Software Services or Software Platform in whole or in part, nor to permit any third party to do so. Any use of the Software Services or Software Platform by Subscriber that exceeds the scope of the subscription shall constitute a material breach of the subscription.
- c. **Ownership of Logos and Trademarks.** Subscriber acknowledges and agrees that Company owns all right, title, and interest in the logos and trademarks used by Company in conjunction with the marketing and advertising of the Software Platform and Software Services, and that no right to use any such logos and trademarks is granted herein.
- d. **Ownership of Content.** Subscriber acknowledges and agrees that Company owns all right, title, and interest in any text, images, other content that Company incorporates into the Software Platform (the "Content"), and any improvements or derivative works made thereto of such Content.

- e. **Ownership of Data.** Subscriber shall retain all right, title, and interest in any data: (i) imported into the Software Platform by Subscriber, Authorized Users, End Users; or (ii) generated by Subscriber or Authorized Users from the Software Services (collectively, the “Data”). You agree that we may access, store and use the Data that you provide in accordance with the terms of the Privacy Policy and your choices (including settings). You agree that Company has no obligation to store, maintain or provide you a copy of any content or information that you or others provide, except to the extent required by applicable law, as noted in our Privacy Policy, or to the extent expressly provided in these Terms of Service. Moreover, nothing herein shall be construed as a guarantee of the availability of any content or information that you or others provide.
- f. **Application License.** Company will make available to Subscriber and Authorized Users the Application for download pursuant to these Terms of Service. “Application” shall be defined as a downloadable software application, which when run and operated from a mobile device or computer desktop, will access the Software Platform and manage the features associated with the Application. The Company hereby grants Subscriber and its Authorized Users a limited license to download and use the Application during the Term, solely in conjunction with the use of the Software Platform and Software Services, subject to the terms of these Terms of Service.
- g. **SDK License.** If Subscriber’s plan includes HappyFox Chat and the In-App Chat SDK, the Company hereby grants Subscriber a limited license to download and use the In-App Chat SDK, during the Term, solely for the purpose of integrating HappyFox Chat with Subscriber’s mobile application. Such license is limited to the Term and is subject to the terms of these Terms of Services.
- h. **Third-Party Integrations.** Some of the Company’s Products may integrate with select third-party software applications (“SaaS applications”). To the extent Subscriber (or its Authorized Users) elect to integrate any Company Product with a third-party SaaS application, Subscriber agrees that such election shall be deemed as authorizing the Company to access Subscriber’s applicable SaaS application account as reasonably necessary to provide the applicable services as part of the offered integration. Subscriber represents and warrants that it has the authority to provide such access to the Company and that doing so will not violate Subscriber’s agreement with the third-party SaaS provider. The Company shall not be liable for any increase in Subscriber’s third-party SaaS application fees arising from any integration with a Company Product.

3. SOFTWARE SERVICES MADE AVAILABLE TO SUBSCRIBER

- a. **Core Software Services.** During the Trial Period, Subscriber and Authorized Users shall have access to the functionality comprising Company’s Enterprise Plan, as is further described at www.happyfox.com/help-desk-price. During the Term and any Renewal Term, Subscriber and Authorized Users shall have access to the functionality comprising the plan selected in the Order Form (the “Designated Plan”), as well as any and all improvements, updates, or enhancements released thereafter as they are made available to subscribers. Company’s eight (8) plan options currently made available to subscribers are further described at www.happyfox.com/help-desk-price. These include limited agent plans, which include not only the “Enterprise Plan”, offered during the Trial Period, but also the more limited plans, the “Mighty Plan” and “Fantastic Plan”, as well as enhanced “Enterprise Plus Plan”. In addition, the Company offers unlimited agent plans, referred to as the “Starter,” “Growth,” “Scale,” and “Scale Plus” plans. Company

reserves the right to restrict the functionality of its core Software Services made available to Subscriber at any time upon prior written notice in its sole and absolute discretion.

- b. **Hosting and Maintenance Services.** As part of the standard subscription services made available to Subscriber, Company will host the Software Platform and any Data contained therein at its U.S. data center locations in the United States. Upon Subscriber's request, if available and depending on the specific Company services purchased by Subscriber, Company may also offer alternative E.U. data center locations in Europe, which will then host all subscriber data in E.U. data centers. For the avoidance of doubt, unless Subscriber requests EU data hosting and Subscriber's Order Form designates an EU data center (which such Order Form may designate such EU data center will only host data associated with certain Company products and not others), then the Company shall host Subscriber's data at a U.S. data center location. Subscriber acknowledges that: (i) Subscriber Data associated with certain Company products can only be hosted in the U.S.; and (ii) availability of an E.U. data center to host Subscriber Data may depend on a number of factors including, but not limited to, Subscriber's plan level. Company shall make commercially reasonable efforts to maintain the availability of the Software Platform on a twenty-four (24) hour basis, seven (7) days a week, excluding: (i) planned downtime for upgrades and maintenance (of which Company will use commercially reasonable efforts to provide advance notice)("Scheduled Downtime"); and (ii) for any unavailability caused by circumstances beyond our reasonable control, including for example, an act of God, act of government, flood, fire, earthquake, civil unrest, act of terror, strike, or other labor problem (other than one involving Company employees), Internet service provider failure or delay, or acts undertaken by third parties, including without limitation, a denial of service attack.
- c. **Attachment Storage Services.** Company will make available to Subscriber attachment storage services in accordance with the data storage limit applicable to Subscriber's Designated Plan as set forth at www.happyfox.com/help-desk-price. In the event that Subscriber exceeds the attachment storage limit applicable to the Designated Plan at any time, then Company shall have the right upon thirty (30) days prior notice to suspend the performance of all services unless Subscriber either: (i) reduces the attachments stored under the applicable limit; or alternatively, (ii) amends and upgrades the subscription to the plan appropriate to Subscriber's actual attachment storage use. The privacy of all Data shall be protected by Company in accordance with its privacy policy then in-effect, which is posted at <https://www.happyfox.com/privacy-policy/> and incorporated by reference.
- d. **Technical Support Services.** Company makes available to Subscriber technical support services via e-mail on a twenty-four (24) hour, seven (7) days a week basis. In addition, Company makes available to Subscriber live chat technical support services and phone-based technical support services in accordance with the schedule applicable to Subscriber's Designated Plan as set forth at www.happyfox.com/help-desk-price, as well as application program interface ("API") support in accordance with Subscriber's Designated Plan as set forth at www.happyfox.com/help-desk-price. All technical support hour availability is based on the Pacific Time Zone.
- e. **Routine Back-Up and Disaster Recovery Services.** Company maintains regular daily off-site, encrypted backups for a duration of thirty (30) days. In addition to its routine backups, Company provides disaster recovery backup services in

accordance with its business continuity plan currently in effect. Company shall make commercially reasonable efforts to maintain and test the consistency of these backups; notwithstanding the foregoing, however, Subscriber acknowledges and agrees that Company shall have no responsibility for the failure of any back-up or disaster recovery service.

- f. **Transitioning Services.** During the Term and any Renewal Terms, Company will make available to Subscriber upon request a copy of Subscriber's Data. All such copies of Data will be provided but will not include any attachments.
- g. **Professional and Training Services.** Company makes available to Subscriber both professional services and training services for an additional charge by separate agreements.

4. SUBSCRIBER, AUTHORIZED USER, AND END USER OBLIGATIONS

- a. **Maintain Security of Login IDs and Passwords.** Subscriber, Authorized Users and End Users shall be solely responsible for maintaining the security of all login IDs and passwords and refraining from sharing such information with third parties.
- b. **Data Restrictions.** Subscriber, Authorized Users and End Users shall refrain from importing any of the following into the Software Platform: personal health information ("PHI") or related health data, genetic data, social security numbers, credit card numbers, political opinions, racial or ethnic origin data, religious or philosophical belief data, trade union membership information, sex life data regarding any natural person, sexual orientation data, and any data disclosing criminal records.
- c. **Consent and Lawfulness of Processing.** Subscriber, Authorized Users, and End Users shall refrain from importing into the Software Platform any personally-identifiable information about a natural person ("PII"), except to the extent the applicable Subscriber, Authorized User, or End User has legally-valid consent of the data subject to import such PII to be processed by the Company in accordance with these Terms of Service. Subscriber represents and warrants that PII provided to the Company under its account (including the accounts of its Authorized Users and including through use by its End Users) will be provided in compliance with applicable law and that Subscriber has the legal authority to authorize the Company to process such PII in accordance with these Terms of Service (including, without limitation, as part of any analytics or related services provided by the Company if Subscriber accesses HappyFox Business Intelligence). Without limiting any other indemnification obligations set forth in these Terms of Service, Subscriber agrees to indemnify, defend, and hold the Company (including its affiliates, directors, officers, employees, and other agents) harmless for any loss or liability arising out of the breach of this paragraph.
- d. **Competition Restrictions.** Subscriber, Authorized Users and End Users acknowledge and agree that direct competitors are expressly prohibited from accessing the Software Services, except with Company's prior written consent. Such prohibition includes but is not limited to access for monitoring performance, availability, functionality, or benchmarking for competitive purposes.
- e. **Acceptable Use.** Subscriber, Authorized Users and End Users shall be solely responsible for fully complying with the following terms and conditions:
 - i. **No Illegal, Harmful, or Offensive Use or Content.** Subscriber, Authorized Users and End Users shall refrain from encouraging, promoting, facilitating or instructing others to use the Software Services for any illegal, harmful, fraudulent, infringing or offensive use, or to transmit, store, display, distribute

or otherwise make available content that is illegal, harmful, fraudulent, infringing or offensive. Prohibited activities or content include:

1. **Illegal, Harmful or Fraudulent Activities.** Any activities that are illegal, that violate the rights of others, or that may be harmful to others, our operations or reputation, including disseminating, promoting or facilitating child pornography, offering or disseminating fraudulent goods, services, schemes, or promotions, make-money-fast schemes, ponzi and pyramid schemes, phishing, or pharming.
2. **Infringing Content.** Content that infringes or misappropriates the intellectual property or proprietary rights of others.
3. **Offensive Content.** Content that is defamatory, obscene, abusive, invasive of privacy, or otherwise objectionable, including content that constitutes child pornography, relates to bestiality, or depicts non-consensual sex acts.
4. **Harmful Content.** Content or other computer technology that may damage, interfere with, surreptitiously intercept, or expropriate any system, program, or data, including viruses, Trojan horses, worms, time bombs, or cancelbots.

ii. **No Security Violations.** Subscriber, Authorized Users and End Users shall refrain from using the Software Services to violate the security or integrity of any third-party network, computer or communications system, software application, or network or computing device (each, a “System”). Prohibited activities include:

1. **Unauthorized Access.** Accessing or using the System without permission, including attempting to probe, scan, or test the vulnerability of the System or to breach any security or authentication measures used by the System.
2. **No EMail or Other Message Abuse.** Subscriber, Authorized Users and End Users shall refrain from distributing, publishing, sending, or facilitating the sending of unsolicited mass email or other messages, promotions, advertising, or solicitations (like “spam”), including commercial advertising and informational announcements. For the avoidance of doubt, this specifically includes refraining from altering or obscuring mail headers or assuming a sender’s identity without the sender’s explicit permission. Neither Subscriber nor Users will collect replies to messages sent from another internet service provider if those messages violate this policy or the acceptable use policy of the applicable provider.
3. **No Processing Data on Behalf of a Third Party.** Subscriber, Authorized Users and End Users shall refrain from using the Software Services to process data on behalf of any third party without express authorization of such third party or otherwise using the Software Services to process data without all necessary authority to do so.
4. **No Using the Software Services to Discover the Source Code.** Subscriber, Authorized Users and End Users shall refrain from using the Software Services to attempt to decipher, decompile, reverse engineer, or otherwise discover the source code of the software comprising the Software Platform.
5. **No Using the Software Services to Store or Transmit Protected Health Information.** Subscriber, Authorized Users and End Users shall

refrain from using the Software Services to store or transmit protected health information as the term is defined in 45 C.F.R. 160.103.

- iii. **No Use of Automated Systems.** Subscriber, Authorized Users and End Users shall refrain from using or launching any automated system that accesses the Software Services in a manner that sends more request messages to the server in a given period of time than a human can reasonably produce in the same period by using a conventional online web browser.
- iv. **Use of API.** Subscriber, Authorized Users and End Users shall adhere to any and all restrictions and policies relating to the API as communicated by Company in writing.
- v. **Monitoring and Enforcement.** Company reserves the right, but does not assume the obligation, to investigate any violation of or misuse of the Software Services. In particular, Company agrees to:
 - 1. Investigate violations of this acceptable use policy or misuse of the Services.
 - 2. Remove, disable access to, or modify any content or resource that violates this Policy or any other agreement that Company has with Subscriber or any User for use of the Software Services.
- vi. **Reporting.** Company shall have the right to report any activity that Company suspects violates any law or regulation to appropriate law enforcement officials, regulators, or other appropriate third parties. Company's reporting may include disclosing appropriate customer information. Company also may cooperate with appropriate law enforcement agencies, regulators, or other appropriate third parties to help with the investigation and prosecution of illegal conduct by providing network and systems information related to alleged violations of this acceptable use policy.

If Subscriber or Authorized Users or End Users become aware of any violation of this Policy, such party will immediately notify Company and provide Company with assistance, as requested, to stop or remedy the violation.

5. FEES AND PAYMENTS

- a. **Software Service Subscription Fees.** During the Term and any Renewal Term(s), Subscriber shall pay to Company the Software Service subscription fees as set forth in the Order Form. For Designated Plans will a limited number of "agents" or Authorized Users, the number of Authorized Users shall not be fewer than the minimum quantity of five (5) Authorized Users. If at any time during a Term or Renewal Term, Subscriber adds new Authorized Users (if applicable to Subscriber's plan) or upgrades to a new plan, then Subscriber will pay a pro-rated fee for the additional subscription fees incurred for the remainder of the Term or applicable Renewal Term. All payments shall be non-refundable.
- b. **Payments.** Payment for all Software Service subscription fees shall be due and payable in advance at the commencement of the applicable Term or Renewal Term. Failure to pay any fee when due and payable shall constitute a material breach of these Terms of Service. All payments shall be made in US Dollars and may be made via credit card online or by separate payment via invoice. Unless otherwise stated, listed fees for the Services are exclusive of taxes. Subscriber shall be solely responsible for any taxes imposed on the Services (including, without limitation, state or other sales taxes), other than taxes assessed against the Company measured by its net income. Any taxes incurred by Company shall be reflected on the invoice and billed directly to Subscriber.

- c. **Past Due Payments.** On all amounts outstanding and payable to Company, interest shall accrue from the date such amounts are due and payable at the rate of One and One-Half Percent (1.5%) per month or the maximum amount allowable by applicable law, whichever is less. Subscriber's payment of interest on overdue amounts shall not cure or waive any default pursuant to this Agreement. Company shall further have the right on fifteen (15) days prior written notice to suspend the performance of all services if any payment due and payable goes unpaid. Following any suspension, Subscriber shall have thirty (30) days to restart the subscription upon the payment of the past due payment. Company also reserves the right to submit any balance to collections which goes unpaid for ninety (90) days following the invoice date, in which case Subscriber will be responsible for all costs of collection and attorney's fees.
- d. **Fee Increases.** Upon sixty (60) days prior written notice in advance of the commencement of a Renewal Term, Company shall have the right to raise the subscription fees in an amount not to exceed five percent (5%) more than the published fees charged to subscribers in the preceding calendar year.

6. TERM AND TERMINATION

- a. **Term.** If applicable, the trial subscription commences on the date Subscriber signs up for a trial subscription and expires fourteen (14) days thereafter ("Trial Period"). Upon submission of an Order Form, the subscription shall commence on the effective date designated therein (the "Effective Date") and shall remain in effect during the subscription period indicated on the Order Form (the "Term"). For those products that have an annual and monthly subscription period option, Subscriber shall have the option of designating a monthly subscription period or an annual subscription period in its sole and absolute discretion. Upon expiration of the Term, the subscription will automatically renew for successive subscription periods (each period is a "Renewal Term"), unless either Company or Subscriber provides prior written notice of its intent to terminate, at least thirty (30) days prior to the expiration of the then-current Renewal Term.
- b. **Termination at Will.** Subscriber shall have the right to terminate at will during the Term or any Renewal Term for any reason at the sole and absolute discretion of Subscriber upon thirty (30) days prior written notice to Company; provided that Subscriber shall not be entitled to a refund of any prepaid fees for the remainder of the then-current Term or Renewal Term nor shall termination pursuant to this section relieve Subscriber of the obligation to pay fees that were otherwise due for the remainder of the then-current Term or Renewal Term. Subscriber shall have the right to terminate without notice during the Trial Period for any reason at the sole and absolute discretion of Subscriber.
- c. **Termination for Breach of Acceptable Use Policy Requirement.** Company shall have the right to immediately terminate the subscription upon notice to Subscriber during the Trial Period, Term, or Renewal Term, upon any Subscriber, Authorized User, or End-User breach of Section 4(e).
- d. **Termination for Other Material Breach.** Either Company or Subscriber may terminate the Term or any Renewal Term for material breach in the event that the other Party materially breaches any term or condition of these Terms of Service and fails to cure such breach within thirty (30) days prior written notice to the breaching Party of the breach and its intent to terminate and the breaching Party's failure to cure during the thirty (30) day period. Upon any termination of the Term or Renewal Term for material breach, Company shall have the right to immediately suspend the performance of all Services.

- e. **Suspension of Services; Survival Clauses.** Upon any expiration or termination of the Agreement, Company shall have the right to immediately and permanently suspend the performance of all Services. The following terms and conditions shall survive any expiration or termination of a subscription or renewal subscription until such time as they are exhausted: Sections 2 (a-e), 5 (a-c), 6 (e, g), 7, and 9-10.
- f. **Force Majeure.** The failure of either Party to perform any obligation by reason of “acts of God,” acts of governments, terrorism, riots, wars, accidents, or deficiencies in materials or transportation, or other causes of any nature beyond its control shall not be deemed to be a breach of these Terms of Service, provided that the nonperforming or delayed Party provides to the other Party written notice of the existence and nature of such reason for the nonperformance and delay, and resumes performance immediately upon the elimination of the relevant force majeure. In the event that the force majeure event continues for more than thirty (30) days, then the non-delayed Party may terminate the subscription.
- g. **Data Expungement Following Expiration or Termination.** Upon expiration or termination of Subscriber's subscription, the Company shall have no further obligation to store or maintain any of the Data and the Company shall be entitled to delete any and all Data effective immediately. Notwithstanding the foregoing, the Company may, in its discretion, but subject to applicable law (including any applicable data privacy and security laws) and the Company's Privacy Policy, continue to store and maintain any Subscriber Data after expiration or termination of Subscriber's subscription; provided, however, that Subscriber shall, upon request, be entitled to have any and all Data deleted at an earlier date and receive confirmation thereof.

7. CONFIDENTIAL INFORMATION

During the Trial Period, Term, or Renewal Term, and for a period of five (5) years thereafter, Company and Subscriber may each disclose certain Confidential Information to the other Party. Company and Subscriber shall each refrain from using or exploiting any and all Confidential Information of the other Party for any purposes or activities other than those specifically authorized in these Terms of Service. Company and Subscriber each represent and warrant that they will each hold Confidential Information in confidence and protect Confidential Information to the same extent and by the same means they each use to protect the confidentiality of their own proprietary or confidential information that they do not wish to disclose. Neither Company nor Subscriber shall disclose or facilitate disclosure of Confidential Information of the other Party to anyone except its employees, independent contractors, vendors, or affiliates who have a “need to know such information.” Company and Subscriber shall each ensure that the employees, independent contractors, vendors, or affiliates to whom the Confidential Information is disclosed comply with their obligations under this Section 7 with respect to the Confidential Information. All Confidential Information made available hereunder, including copies thereof, shall be returned to the disclosing Party or shall be certified as destroyed at the request of the disclosing Party.

For the purposes of this Section, “Confidential Information” shall be defined as all of the proprietary, non-public information of either Party disclosed pursuant to or in furtherance of this Agreement, including but not limited to all Technical Information and any information relating to Data and future enhancements and improvements.

Notwithstanding the foregoing, “Confidential Information” shall not include any information, that the recipient can demonstrate through its records: (i) was in its knowledge or possession prior to disclosure by the discloser; (ii) was in the public domain at the time of disclosure or subsequently entered the public domain through no fault of

recipient; or (iii) was disclosed to recipient by a third party with the right to make such a disclosure. "Technical Information" shall be defined as all proprietary or non-public information, know-how, trade secrets, data, materials, inventions, source code, or discoveries owned by company that are necessary or useful to the Software Platform and are in the possession of Company as of the Effective Date.

8. WARRANTY DISCLAIMER

THE SOFTWARE PLATFORM, APPLICATION AND THE SOFTWARE SERVICES ARE PROVIDED ON AN "AS IS" BASIS. USE AND RELIANCE ON THE SOFTWARE PLATFORM, APPLICATION, AND THE SERVICES ARE AT SUBSCRIBER'S OWN RISK. COMPANY EXPRESSLY DISCLAIMS ANY WARRANTY THAT USE OF THE SOFTWARE PLATFORM OR ACCESS TO THE SERVICES WILL BE CONTINUOUS, UNINTERRUPTED, BUG-FREE, ERROR-FREE, VIRUS-FREE, FREE OF DEFECTS, OR FREE OF TECHNICAL PROBLEMS; THAT THE SOFTWARE SERVICES WILL MEET ALL OF SUBSCRIBER'S NEEDS; THAT THE DATA UPLOADED TO THE SOFTWARE PLATFORM WILL BE COMPLETELY SECURE FROM THIRD PARTIES AND WILL NEVER BE SUBJECT TO ANY LOSS; OR THAT ANY PARTICULAR BACKUP MADE BY THE COMPANY WILL BE VIABLE. COMPANY EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, CONDITIONS, GUARANTEES, OR REPRESENTATIONS WITH RESPECT TO THE SOFTWARE PLATFORM AND THE SOFTWARE SERVICES, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, MERCHANTABLE OR SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT OF THIRD PARTY RIGHTS, OR ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, OR USAGE OF TRADE. COMPANY DOES NOT WARRANT THAT ALL ERRORS, BUGS, OR DEFECTS CAN OR WILL BE CORRECTED OR THAT THE SOFTWARE PLATFORM OR SERVICES WILL OPERATE BUG-FREE, ERROR-FREE, CONTINUOUSLY, OR UNINTERRUPTED.

9. LIABILITY

- a. **Consequential Damages.** NEITHER COMPANY NOR SUBSCRIBER SHALL IN ANY EVENT BE LIABLE TO EACH OTHER FOR ANY CONSEQUENTIAL, PUNITIVE, EXEMPLARY, SPECIAL, INCIDENTAL, OR INDIRECT DAMAGES OF ANY KIND, INCLUDING WITHOUT LIMITATION, LOSS OF DATA OR PROFITS, LOSS OF BUSINESS OPPORTUNITIES, COSTS OF PROCUREMENT OR REPLACEMENT GOODS AND SERVICES, COVER, OR RELIANCE DAMAGES, ARISING OUT OF OR IN CONNECTION WITH THESE TERMS OF SERVICE OR THE DELIVERY, USE, PERFORMANCE, OR INTERRUPTION OF THE SOFTWARE PLATFORM OR THE SOFTWARE SERVICES, WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED UPON CONTRACT, WARRANTY, THIRD-PARTY CLAIMS, TORT (INCLUDING NEGLIGENCE) STRICT LIABILITY, OR OTHERWISE, AND WHETHER OR NOT COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE. THE PARTIES AGREE THAT THESE LIMITATIONS WILL SURVIVE AND APPLY EVEN IF ANY LIMITED REMEDY SPECIFIED IN THESE TERMS OF SERVICE IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CONSEQUENTIAL DAMAGES; THIS SECTION APPLIES ONLY TO THE EXTENT AVAILABLE BY APPLICABLE LAW.
- b. **Limitation of Liability.** Except for indemnification by Subscriber, each Party's cumulative liability to the other Party from all claims and under all theories of liability shall be limited to the total amount of all subscription fees paid by Subscriber to Company in the twelve (12) month period immediately preceding the events from which arose the claim. This limitation shall apply notwithstanding the failure of the essential purpose of any remedy thereunder.

c. **Indemnification.**

i. **Subscriber Indemnification.** Subscriber shall indemnify, defend, and hold Company and its affiliates and their vendors, officers, employees, independent contractors, representatives, and agents harmless for any loss, liability, damage, or expense (including reasonable attorneys' fees) arising from: (A) any acts or omissions by Subscriber or an Authorized User; (B) any misappropriation of trade secrets by Subscriber or an Authorized User; or (C) any infringement by Subscriber or Authorized User of intellectual property in the Software Platform, the logos or trademarks, or the Content.

ii. **Company Indemnification.** Company shall indemnify, defend, and hold Subscriber, Authorized Users, and their officers, employees, independent contractors, representatives, and agents harmless for any loss, liability, damage, or expense (including reasonable attorney's fees) arising from any infringement of third-party copyright or patent rights.

iii. **Indemnification Requirements.** If either Party seeks indemnification pursuant to this Section 9(c), such Party shall: (A) promptly notify the indemnifying Party in writing of the claim; (B) provide the indemnifying Party sole control of the defense and settlement; and (C) provide all reasonable assistance requested by the indemnifying Party in the defense and settlement of the claim.

10. MISCELLANEOUS

- a. **Entire Understanding.** These Terms of Service contain the entire understanding of the Parties with respect to the subject matter contained herein, and shall supersede all prior agreements and understandings, whether written or oral.
- b. **Governing Law.** These Terms of Service shall be governed by and construed in accordance with the laws of the State of California, without regard to conflicts of law principles.
- c. **Dispute Resolution.** All disputes or controversies arising out of or in connection with these Terms of Service, their interpretation, performance, or termination, shall be submitted to binding arbitration in Irvine, California under the Commercial Rules of the American Arbitration Association under the Federal Arbitration Act. Any dispute resolution proceeding arising out of or related to these Terms of Service or the Services shall be conducted only on an individual basis and not in a class, consolidated or representative action, and Subscriber expressly agrees that class action and representative action procedures shall not be asserted in nor apply to any arbitration pursuant to these terms and conditions. The proceeding shall be conducted in the English language by a single arbitrator and the costs of the arbitration, including administrative and arbitrators' fees, shall be shared equally by the Parties. Each Party shall bear its own costs and attorneys' and witnesses' fees. The arbitration award shall be final and each Party shall comply in good faith and submit itself to the jurisdiction of the appropriate courts for the sole purpose of the entry of such arbitrator's award to render effective such arbitration decision. Notwithstanding the foregoing, judgment on the award by the arbitrator may be entered in any court having jurisdiction. If judicial enforcement or review of the arbitrator's decision is sought, the prevailing Party shall be entitled to costs and reasonable attorneys' fees.
- d. **Severance.** If any provision of these Terms of Service is held unenforceable or in conflict with the law of any jurisdiction, the validity of the remaining provisions shall not be affected by such holding. The Parties agree to negotiate and amend in

good faith such provision in a manner consistent with the intentions of the Parties as expressed in the Terms of Service if any invalid or unenforceable provision affects the consideration of either Party.

- e. **Modifications.** These Terms of Service may be modified at any time and will become effective with respect to a then-existing subscription upon thirty (30) days prior written notice to Subscriber.
- f. **Assignment.** These Terms of Service shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns. Neither Party may assign any subscription or renewal subscription to a third party without the prior written consent of the other Party, except that each Party may transfer the terms and conditions of a subscription or renewal subscription to a successor in the event of a merger or an acquisition of all or substantially all of such Party's assets; provided, however, that such transfer may only occur if the assignee in each case agrees to be bound by each of the terms and conditions set forth in the Terms of Service.
- g. **Notices.** All notices provided in connection with the Terms of Service will be in writing, and will be delivered by: (i) certified or registered mail, postage prepaid and return receipt requested; or (ii) courier and will be deemed effective upon receipt by the authorized representative in the case of Subscriber at Subscriber's address listed on the Order Form or in the case of Company at Company's address at 530 Technology Drive, STE 100, Irvine CA 92618, United States or at such other addresses as the Parties may designate by written notice to each other.
- h. **Waiver.** No waiver by either Party of any breach of these Terms of Service, no matter how long continuing or how often repeated, shall be deemed a waiver of any subsequent breach thereof, nor shall any delay or omission on the part of either Party to exercise any right, power, or privilege hereunder be deemed a waiver of such right, power, or privilege.
- i. **Conflict.** In the event of any conflict between the terms and conditions of this Terms of Service and the terms of any web page incorporated into this Terms of Service, the terms of this Terms of Service shall be controlling.

Last modified: March 9, 2021

SERVICE-SPECIFIC TERMS

Effective as of: March 9, 2021

Unless otherwise defined in these Service Specific Terms, capitalized terms will have the meaning given to them in the [Terms of Service \(current version\)](#) and [Privacy Policy \(current version\)](#).

HappyFox HelpDesk

HappyFox HelpDesk is a help desk and customer support software solution, including an all-in-one help desk ticketing system. Company's plan options currently made available to subscribers are further described at www.happyfox.com/help-desk-price/. The plan selected by Subscriber as set forth in the Order Form shall be referred to as the "Designated Plan." Pricing shall be reflected on the applicable Order Form.

HappyFox Chat

HappyFox Chat is the Company's live chat solution, which can be integrated on Subscriber's website. Company's plan options currently made available to subscribers are further described at www.happyfox.com/live-chat/live-chat-pricing/. HappyFox Chat provides for an unlimited number of Authorized User within Subscriber's organization. The Order Form will set forth pricing and Usage Limits based on the number of chats initiated per month. If Subscriber exceeds the Usage Limit set forth in the Order Form, Subscriber's plan will automatically be upgraded to the next level and Subscriber will be billed for the difference in price for the remainder of the then-current Term or Renewal Term. Subscribers to HappyFox Chat also have access to the In-App Chat SDK, as described below, which is separately billed. Pricing shall be reflected on the applicable Order Form.

In-App Chat SDK

HappyFox's In-App Chat SDK is a separately offered and billed feature for subscribers to HappyFox Chat. The In-App Chat SDK allows Subscribers to integrate HappyFox Chat into Subscriber's iOS or Android mobile application. The In-App Chat SDK is billed annually, as set forth in the Order Form.

HappyFox Chatbot

HappyFox Chatbot is an AI powered, custom-built chatbot solution for your business. Due to the custom nature of the solution, the pricing for HappyFox Chatbot is customized for each Subscriber and is as set forth in the Order Form. HappyFox Chatbot is offered exclusively on annual billing plans. Subscribers to HappyFox Chatbot also have access to subscribe to the In-App Chat SDK, as described above, which is separately billed.

HappyFox Business Intelligence

HappyFox Business Intelligence provides valuable customer support analytics presented in user-friendly visualized formats. The Product automatically syncs with Subscriber's HappyFox HelpDesk account, from which customer support data is pulled and analyzed. HappyFox Business Intelligence also integrates with a number of other popular SaaS applications. Pricing for HappyFox Business Intelligence differs depending on which integrations are selected by Subscriber and the Usage Limitations applicable to such integration. Specific pricing is set forth in the Order Form. Subscriber's usage is limited to those SaaS application integrations identified in the Order Form and the applicable Usage Limits set forth in the Order Form. Please note that the types of Usage Limits may vary depending on the specific SaaS integrations selected (which may include, but are not limited to, limitations based on factors such as revenue or number of help desk tickets) and Subscriber should refer to the Order Form for details. If Subscriber exceeds the Usage Limit set forth in the Order Form, Subscriber's plan will automatically be upgraded to the next level and Subscriber will be billed for the difference in price for the remainder of the then-current Term or Renewal Term.

HappyFox Workflows

HappyFox Workflows automates help desk tasks to improve agent productivity and reduce manual errors. Due to the custom nature of the solution, pricing for HappyFox Workflows is customized for each Subscriber and is set forth in the Order Form. HappyFox Workflows is offered on an annual billing plan. HappyFox Workflows integrates with certain other popular SaaS applications, with additional applications to be added in the future. Pricing may be dependent on which integrations you select to access with HappyFox Workflows.

HappyFox Assist AI

HappyFox Assist AI improves internal agent productivity by automatically handling routine and repetitive IT help desk questions through Slack and Microsoft Teams. The solution also syncs with the ticketing platform to provide for an audit trail. HappyFox Assist AI integrates with Slack and Microsoft Teams and requires you to have a subscription to one of those two platforms. Pricing shall be reflected on the applicable Order Form.



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- [Email Ticketing](#)
- [Knowledge Base](#)
- [Help Desk Reporting](#)
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- [Multilingual Help Desk](#)
- [Self Service Portal](#)
- [SLA Management](#)
- [Satisfaction Survey](#)
- [Email Notification](#)
- [Help Desk Customization](#)
- [Help Desk Ticket Features](#)
- [Multilingual Knowledge Base](#)
- [Internal Knowledge Base](#)
- [HappyFox SMS](#)
- [Asset Management](#)
- [Task Management](#)
- [Agent Scripting](#)

USE CASES

- [Help Desk Software](#)
- [Ticketing System](#)
- [Shared Inbox Software](#)
- [Trouble Ticket Management](#)
- [Issue Tracking Software](#)
- [Customer Service](#)
- [Email Support Software](#)
- [Customer Complaint Management](#)
- [Internal Help Desk Software](#)
- [Ticket Tracking Software](#)
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- [Facilities](#), [Marketing](#), [Sales](#)

SWITCH TO HAPPYFOX

- [Switch from Zendesk](#)
- [Switch from Kayako](#)

COMPARE

- [Zendesk vs HappyFox](#)
- [Freshdesk vs HappyFox](#)
- [Kayako vs HappyFox](#)
- [Zohodesk vs HappyFox](#)
- [Gmail Alternative for Support](#)

RESOURCES

- [E-Books & Guides](#)
- [Webinars](#)
- [Customer Stories](#)
- [Videos](#)
- [Blog](#)
- [Help Desk API Docs](#)

COMPANY

- [About Us](#)
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- [Jobs](#)

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[Case Management Software](#)
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