

Affiliate Program Terms and Conditions

1. Definitions and interpretation

- 1.1. "Accepted Claim" means i) a Purchased Claim or ii) a Paid Claim when the Claim is an NCNP Claim;
- 1.2. "Acceptance Email" means an email by Happy Delay confirming that Happy Delay accepts the person to whom such email is addressed as an Affiliate
- 1.3. "Affiliate" means the individual or legal entity specified as the applicant for Happy Delay Affiliate Program on a completed and submitted Registration Form that has concluded an Agreement with Happy Delay (see definition under clause 1.8);
- 1.4. "Affiliate Channel" means channels and/or any funnels, mediums used by the Affiliate for the communication with their audiences, such as social media and newsletters;
- 1.5. "Affiliate Program" means the Happy Delay's affiliate program detailed in the Agreement;
- 1.6. "Affiliate Tracking" means the process through which Happy Delay is quantifying the visits, clicks, and Claims that the Link on an Affiliate Website is generating;
- 1.7. "Affiliate Website" means the website or websites owned and operated by the Affiliate and specified by the Affiliate on the Registration Form;
- 1.8. "Agreement" means the collectiveness of these Affiliate Program Terms and Conditions, the Registration Form and the Acceptance Email, and any amendments to it from time to time;
- 1.9. "Claim" means any claim existing under article 7 of Regulation EC 261/2004 of the European Parliament and of the Council of 11 February 2004, establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights.
- 1.10. "Client" means any person that has concluded a Claim Sale Agreement and/or a Collection Agreement, as defined in Happy Delay's General Terms and Conditions and/or Additional no cure, no pay conditions, or on whose behalf any of the aforementioned agreements was concluded;
- 1.11. "Collection Agreement" means an agreement as defined in the Additional no cure no pay conditions of Happy Delay;
- 1.12. "Happy Delay" means the limited liability company Happy Delay B.V., with its statutory seat in Utrecht, the Netherlands and registered with the Dutch Chamber of Commerce (Kamer van Koophandel) under 71518835.
- 1.13. "Happy Delay IPR" means all Happy Delay intellectual property rights, including, but not limited to, patents, patentable inventions, utility models, trademarks (whether registered or unregistered) and service marks, logos, brand names, trade names, slogans confusingly similar to the Trademarks rights in designs, Graphic designs, videos and any other audiovisual material, pictures, audio, trade or business names, domain names, copyrights (including rights in software), topography rights, source codes, contact and customer knowledge, process information, manuals, instructions, guidelines, information about legal court cases that is not public knowledge and other rights in software, rights in confidential know-how and confidential information, and rights in databases (whether or not any of these are registered and including applications for registration of any such right) and all rights under licenses and consents in relation to any such right;
- 1.14. "Happy Delay Website" means websites specified by Happy Delay that the Link links to;
- 1.15. "Link" means a hyperlink in the format agreed by the Parties (whether in text or in an image or otherwise) from the Affiliate Website or Affiliate Channel to the Happy Delay Website

enabling Happy Delay to track visitors from the Affiliate Website or Affiliate Channel to the Happy Delay Website using its affiliate tracking system;

- 1.16. "NCNP Claim" means any Claim in relation to which a Collection Agreement has been concluded.
- 1.17. "Paid Claim" means a Claim that has been paid in full by the Airline;
- 1.18. "Prohibited Materials" means content, works or other materials that constitute, or that Happy Delay reasonably determines to constitute:
 - a) material that breaches any applicable laws, regulations or legally binding codes;
 - b) material that infringes any third party intellectual property rights or other rights;
 - c) indecent, obscene, pornographic or lewd material;
 - d) material that is offensive or abusive, or is likely to cause annoyance, inconvenience or anxiety to another internet user;
 - e) computer viruses, spyware, trojan horses or other malicious or harmful routines, programs or software; and/or
 - f) spam or unsolicited bulk email or unsolicited commercial email or using any form of spyware, parasiteware, adware or similar software, or using any other antisocial or deceptive methods.
- 1.19. "Purchased Claim" means any Claim in relation to which a Deed of Assignment as defined in Happy Delay's General Terms and Conditions has been concluded.
- 1.20. "Registration Form" means the Happy Delay sign up funnel (<https://www.HappyDelay.com/en/affiliate/>) enabling users to apply to become Affiliates;
- 1.21. "Term" means the term of the Agreement;
- 1.22. Any capitalized terms not defined in these Affiliate Program Terms and Conditions shall have the meaning as defined in the General Terms and Conditions or Additional no cure, no pay conditions of Happy Delay.
- 1.23. All words used in these Affiliate Program Terms and Conditions in the singular, where the context so permits, shall be deemed to include the plural and vice versa.

2. The Affiliate Program

- 2.1. To begin the enrolment process, the Affiliate will need to submit a completed Registration Form. Happy Delay may reject an application, if Happy Delay determines in its absolute discretion that the applicant's site is unsuitable for the Affiliate program for any reason, including, but not limited to, inclusion of content that is any way unlawful, in breach of property rights, harmful, threatening, defamatory, obscene, indecent, harassing, or discriminatory on the grounds of disability, race, gender, ethnicity, sexual orientation, age, or otherwise objectionable in other manner.
- 2.2. The Affiliate will be responsible for hosting, maintaining and operating the Affiliate Website and Channel and ensuring that the Link is placed on the Affiliate Website and Affiliate Channel in accordance with the Agreement. Any time that a Link is on an Affiliate Website or is visible via an Affiliate Channel, it is governed by the Agreement.
- 2.3. The Affiliate will use all reasonable endeavors to ensure that the Link is displayed on the Affiliate Website and Channels throughout the Term.
- 2.4. Notwithstanding the foregoing, neither party warrants that Happy Delay Website or Affiliate Website or Channel will be accessible on the Internet 24 hours a day. If a party's website or channel is down for more than seven (7) business days, such party will notify the other party and upon such notice, the other party may elect to terminate the Agreement immediately.

- 2.5. Notwithstanding anything to the contrary expressed or implied by the Agreement, each party will have the right, at any time, to exclude, remove or have removed from its website, servers or any other publicly displayed materials, any marks, links, Intellectual Property Rights (IPR), content, software, tools, or other items and materials provided under the Agreement which such party, in its sole discretion, deems to constitute prohibited material or increase or seek to increase the number of Accepted Claims using any fraudulent or deceptive method. Nothing in this section will be construed as giving either party a right to edit or to control the appearance, content, advertising or any other feature of the other party's website(s), links, marks, and IPR.
- 2.6. The Affiliate must not take any action in connection with the Affiliate Program, which might reasonably be expected to lead to the possibility of damage to the reputation and goodwill of Happy Delay and/or Happy Delay Website.
- 2.7. Happy Delay will process Claims and potential Claims submitted by visitors using the Link in accordance with applicable legal requirements and Happy Delay's terms and conditions. Happy Delay reserves the right to reject transactions that do not comply with Happy Delay's policy or any other reasonable requirements that Happy Delay may periodically establish. Happy Delay will be responsible for all aspects of transactions processing and fulfillment. Among other things, Happy Delay will prepare order forms, process payments, cancellations and handle customer service. Happy Delay will track Accepted Claims from the Affiliate Link to the Happy Delay Website and reports summarizing this activity will be sent to the Affiliate via e-mail. The form, content, and frequency of the reports are limited to those reports and capabilities available through the Happy Delay system. To permit accurate tracking, reporting, and fee accrual, the Affiliate must ensure that the Links are properly formatted. Happy Delay will not be responsible for improperly formatted links, regardless of whether the Affiliate has made amendments to the code or not.

3. Fees and payments

- 3.1. In respect of each Accepted Claim, Happy Delay shall make a payment to the Affiliate (the "Fee"). Unless agreed otherwise between Happy Delay and Affiliate, the amount of Fee shall be counted and paid subject to the provisions of this section.
- 3.2. The Fee shall equal an amount in EUR as agreed between Happy Delay and the Affiliate for each Accepted Claim and be calculated at the end of each month. Happy Delay automatically performs the calculation of the Fee of a month within the Affiliate Tracking platform on the basis of the total amount of Accepted Claims. Happy Delay shall submit a report (the "Report") to the Affiliate as soon as it is generated and without any further and unnecessary delay.
- 3.3. The Report shall be considered as the invoice (self-billing invoice) which reflects the payment for the stated month. If the Affiliate has provided a Dutch VAT number, 21% VAT will be added to the Report and will be paid to the Affiliate. If the Affiliate has provided a VAT number from another EU or non-EU jurisdiction, Happy Delay will charge itself VAT under article 196 of the EU VAT Directive (2006/112/EC).
- 3.4. The fee will be paid out if its amount exceeds:
 - a) for EU bank transfers – forty (40) EUR,
 - b) for non-EU bank transfers – one hundred (100) EUR – for the invoiced month. In case if the Fee for the month does not exceed the amounts written above it shall be transferred to the next payout.
- 3.5. Happy Delay shall pay the Fee and any other payments in Euro (€) unless agreed otherwise. If applicable, any imposed withholding taxes, VAT, or transaction costs (including bank costs) will be deducted from the Fee transferred to Affiliate and Affiliate cannot claim any compensation from Happy Delay in relation thereto. If the Fee or other payments are to be paid out in other currency than Euro (€), the due amount shall be

calculated with the exchange rate from Euro foreign exchange reference rate of ECB to this other currency in regard to the date of the invoicing. In such condition, the Report shall contain the description of the specific service, the total cost in Euro (€), the total cost in agreed currency and the applied exchange rate.

- 3.6. If a Claim is by accident accepted more than once, only the first accepted Claim is considered an Accepted Claim. Claims that are based on fraud will not qualify as an Accepted Claim.
- 3.7. Happy Delay determines in its sole discretion, whether a Claim is identical to another Claim or fraudulent. In any event, a Claim that has already become an Accepted Claim through a nonaffiliate filing or a filing through another affiliate will not be deemed an Accepted Claim for any later affiliate filings.
- 3.8. In the event that the Agreement is terminated or expires, the outstanding amount, if any, is paid by Happy Delay to the Affiliate.
- 3.9. Any amounts received by the Affiliate from Happy Delay in connection with fraud, deceit or other unlawful means by the Affiliate or a third party will be promptly refunded by the Affiliate.
- 3.10. Clients who submit Claims through this program will be deemed to be Clients of Happy Delay without affecting their status as the Affiliate's customer. Accordingly, all Happy Delay rules, policies and operating procedures concerning Claims and customer support service will apply to those Clients with respect to their transactions with Happy Delay. Happy Delay may change its policies and operating procedures at any time consistent with applicable laws. Happy Delay will use commercially reasonable efforts to present current and accurate information but cannot guarantee the availability or price of any particular service.
- 3.11. Unless agreed otherwise in writing (including by email), the Fee shall be deemed to cover Affiliate for any costs made by Affiliate in relation to the Agreement.

4. Promotion of affiliation with Happy Delay

- 4.1. The Affiliate may promote Happy Delay, which promotions may include (non-exhaustively) social media messages, online or printed advertising, pictures, films or graphics. Affiliate shall consult with Happy Delay about any intended promotions. It is the Affiliate's responsibility to provide Happy Delay with a complete, accurate, clear and timely description of the nature of such promotion. Affiliate shall not publish any promotions without the prior approval by Happy Delay. Any promotion not in compliance with the foregoing shall be considered as the grounds for immediate termination of the Agreement and any resulting damages shall be for the account of Affiliate.
- 4.2. Any damages resulting from unlawful promotions shall be for the account of Affiliate, unless and to the extent Happy Delay was informed about all factors that made the promotion unlawful.
- 4.3. During the Term, Happy Delay may promote the Affiliate Program by referring to the Affiliate, its website, social media accounts, logos or trademarks. Happy Delay shall comply with any instructions by Affiliate with regard to the use of the foregoing.

5. Data Protection

- 5.1. Affiliate and Happy Delay shall both comply with the EU General Data Protection Regulation (EU 2016/679) and any applicable law, rules or regulations in recording and processing data ("Data Laws").
- 5.2. Where either Happy Delay or the Affiliate records data relating to individuals, each party agrees that they will fully inform the individuals of the purpose of the information being

recorded, and will only use the information for that purpose. The Affiliate agrees that it will cooperate fully with Happy Delay in all commercially reasonable requests that Happy Delay deems necessary to comply with the Data Laws.

5.3. Affiliate shall comply with the terms of Happy Delay's Privacy Policy.

6. Intellectual Property

6.1. During the Term and subject to the Agreement, Happy Delay hereby grants to the Affiliate a worldwide, non exclusive, non-transferable, royalty-free right and license to display Link, Link design and Happy Delay's logo, solely for the purpose of the Affiliate performing the promotion as described in clause 4 in compliance with Affiliate's obligations under the Agreement.

6.2. The Affiliate undertakes:

(a) to use all reasonable endeavours not to cause or permit any acts or omissions which may damage, endanger or reduce the value of Happy Delay IPR in the Link and Happy Delay's logo or Happy Delay's title to the Link and Happy Delay's logo or to knowingly encourage or assist others to cause or permit any such acts or omissions;

(b) on the expiry or termination of the Agreement, to cease to use the Link or any Happy Delay IPR;

(c) that, in the event that Happy Delay notifies Affiliate to cease to use any part of the Link or to amend it, to do so within fourteen (14) days;

(d) only to use the Link in accordance with the Agreement and any guidelines provided by Happy Delay on use of the Link;

(e) not to use any name or mark or design substantially similar to or capable of being confused with the Link or Happy Delay's logo; and

(f) not to combine any trademark included in the Link or Happy Delay's logo with any other mark, logo, device or name without the prior written consent of Happy Delay and in accordance with any reasonable conditions attached to that consent.

6.3. Any and all goodwill arising from either party's use of the other party's intellectual property rights will inure solely to the benefit of the owner of such intellectual property rights and neither during nor after the termination of the Agreement will either party assert any claim to the other party's intellectual property rights.

7. Warranties and representations

7.1. Each party represents and warrants that:

(a) the execution of the Agreement by such party and the performance of its duties and obligations under the Agreement does not and will not violate any Agreement to which such party is a party or by which such party is otherwise bound;

(b) such party will fulfill its obligations under the Agreement with such care, skill and diligence as may reasonably be expected of properly skilled and competent persons experienced and skilled in the subject matter of the relevant obligations.

7.2. The Affiliate uses the Link, Happy Delay's trademarks/logos, and the Happy Delay Website at its own risk, on an "as is" basis.

7.3. Happy Delay will have no liability to the Affiliate should the Link, Happy Delay's trademarks/logos or the Happy Delay Website or any of them be declared invalid or any third party make any claim of infringement or otherwise in relation to them.

7.4. The Affiliate represents and warrants to Happy Delay that its website, including the Affiliate marks and Affiliate content, will not violate or infringe the rights of others, including, without limitation, any privacy, publicity or other personal or proprietary right.

7.5. Except as set out in the Agreement all conditions, warranties and representations expressed or implied by statute, common law or otherwise are hereby excluded.

- 7.6. Happy Delay makes no express or implied warranties or representations with respect to the Affiliate Program or any services sold through the Affiliate Program (including, without limitation, warranties of fitness, merchantability, non-infringement, or any implied warranties arising out of a course of performance, dealing, or trade usage). In addition, Happy Delay makes no representation that the operation of its website will be uninterrupted or error-free and Happy Delay will not be liable for the consequences of any interruptions or errors. Happy Delay will, however, make commercially reasonable efforts to correct errors or interruptions promptly.

8. Confidentiality

- 8.1. The Agreement and the information exchanged by the Parties thereunder, including without limitation the terms and conditions thereof, shall be considered Confidential Information.
- 8.2. During the Term of the Agreement and after termination or expiry thereof, a party who has received Confidential Information disclosed to it by the other party may not use such Confidential Information for a purpose other than the performance of its obligations under the Agreement, and may not disclose Confidential Information to a person except with the prior written consent of its counterparty under the agreement or in accordance with clauses 8.3 and 8.4.
- 8.3. Parties may disclose Confidential Information:
- (a) to any of their directors, other officers, employees to the extent that disclosure is reasonably necessary for the purposes of the Agreement, in which case it shall ensure that the disclosure complies with the obligations of confidentiality under the Agreement;
 - (b) if it is required by law or regulation to be disclosed, but only to the extent and for the purpose of such required disclosure after providing advance written notice to another party if reasonably possible, such that party which confidential information will be disclosed is afforded an opportunity to contest the disclosure or seek an appropriate protective order;
 - (c) if it was in the respective party's possession free of any obligation of confidentiality or was in the public domain at the time of disclosure;
 - (d) to any potential investors if required to do so by any stock exchange provided that it gives notice to the other party of the disclosure as soon as practicable;

9. Indemnity, limitations, and exclusions of liability

- 9.1. Each party (the "Defaulting Party"), at its own expense, will indemnify, defend and hold harmless the other party, its affiliates, and their respective directors, officers, employees, subcontractors, agents and representatives (collectively, the "Claiming party") against any and all losses or damages suffered by the Claiming party, arising from or in connection with any and all third party claims, actions, suits and proceedings, arising out of or in connection with:
- (a) any breach or alleged breach by the Defaulting party of any term, representation or warranty in the Agreement;
 - (b) the infringement or alleged infringement by the Defaulting party of any IPRs of a third party;
 - (c) or, the negligence or willful misconduct of the Defaulting party, its affiliates, and/or its and their respective directors, officers, employees subcontractors, agents and representatives acting within the scope of their duties for the Defaulting party.
- 9.2. The Claiming party will give prompt written notice of any claim to the Defaulting party and will provide such information and assistance as reasonably requested by the Defaulting party in its negotiation, defense or settlement of such claim, over which the Defaulting party will have control. The Defaulting party will allow the Claiming party's and/or its legal advisor(s) to participate in such negotiations, defense, or settlement.

Notwithstanding the foregoing, the Defaulting party shall not enter into any settlement or another arrangement that materially adversely affects the Claiming party without the Claiming party's prior written consent, which consent shall not be unreasonably withheld.

- 9.3. Each party shall indemnify the other party against any and all losses suffered by the second party, arising from or in connection with any negligence or willful misconduct of the first party, its Affiliates, and/or its and their respective directors, officers, employees and representatives acting within the scope of their duties for such first party, except to the extent that such losses are attributable to the negligence or willful misconduct of the second party, its affiliates, and/or its and their respective directors, officers, employees and representatives acting within the scope of their duties for such second party.
- 9.4. Nothing in the Agreement shall operate to exclude or restrict either party's liability for death or personal injury resulting from negligence, to which no limit applies.

10. Force Majeure Events

- 10.1. If a party is prevented, hindered or delayed from or in performing any of its obligations (including payment) under the Agreement by an event beyond its reasonable control (including without limitation, strike, lockout, cyber attack, labor dispute, act of God, war, riot, civil commotion, malicious damage, compliance with a law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm and difficulty or increased cost in obtaining workers, goods or transport) that party's obligations under the Agreement are suspended while the event continues and to the extent that it is prevented, hindered or delayed.

11. Termination

- 11.1. The Agreement shall commence on the date of the receipt of an Acceptance Email by the Affiliate for an indefinite period until terminated by one of the Parties. Upon termination, the Affiliate shall promptly remove all Happy Delay related content and links from its website, social media account or any other digital or physical location where such content placed.
- 11.2. The Affiliate is only eligible to earn payments on Accepted Claims during the Term. In the event overpayment is made by Happy Delay, the Affiliate agrees to promptly remit such excess payment upon notification by Happy Delay. Happy Delay may withhold the Affiliate's final payment for a reasonable time to ensure that all transactions have been correctly completed.
- 11.3. Each party may terminate the Agreement at any time, by giving not less than fourteen (14) days written a notice of termination to the other party.
- 11.4. Either party may terminate the Agreement immediately without further notice in case of a breach by the other party of any of the terms of the Agreement or in case of any unlawful behavior by the other party.
- 11.5. A party validly terminating the Agreement shall be under no liability whatsoever to the other party for any losses suffered as a result of the termination.
- 11.6. Expiry or valid termination of the Agreement shall not affect any accrued rights or liabilities of either party.
- 11.7. If the Agreement expires or is validly terminated for any reason:
(a) all rights and licenses granted hereunder, and all obligations and covenants imposed hereunder, shall immediately cease, except as otherwise expressly provided herein; and
(b) each party shall stop using all Confidential Information, IPR, links and/or marks of the other party then in its possession.

12. General

- 12.1. The Agreement supersedes any previous written or oral Agreement between the Parties in relation to the matters dealt with in the Agreement and constitutes the whole agreement between the Parties relating to the subject matter of the Agreement.
- 12.2. Affiliate cannot assign any of the rights granted under the Agreement without the prior written consent of Happy Delay (such consent to be at Happy Delay's discretion). Happy Delay may freely assign its rights under the Agreement and without further notice.
- 12.3. Any notices issued in connection with the Agreement shall be in writing in English or any other language commonly used between Parties and sent by e-mail. Such notice shall have effect after seven (7) days after sending it by e-mail to the other party.
- 12.4. If any provision of the Agreement is held to be invalid or unenforceable for any reason, the remaining provisions will continue in full force and effect, and the Parties agree to replace any invalid provision with a valid provision, which most closely approximates the intent and economic effect of the invalid provision.
- 12.5. Each party to the Agreement is acting as an independent contractor, and nothing in the Agreement will create or be construed to create any partnership, joint venture, agency, franchise, sales representative, or employment relationship between the Parties. Neither party will have any right, power or authority to act or create any obligation, express or implied, on behalf of the other.
- 12.6. The Affiliate acknowledges that it has read and agrees to the Agreement, including these Affiliate Program Terms and Conditions. The Affiliate understands that Happy Delay may at any time (directly or indirectly) solicit customer referrals on terms that may differ from those contained in the Agreement or operate websites that are similar to or compete with the Affiliate website. The Affiliate has independently evaluated the desirability of participating in the program and is not relying on any representations, guarantee, or statement other than as set forth in the Agreement.
- 12.7. Each party reserves the right to modify its own content, links, or marks from time to time in its sole discretion, upon written notice to the other party.
- 12.8. Happy Delay is authorized to alter these Terms & Conditions and/or set supplementary conditions at any time. Happy Delay will inform the Affiliate about any such changes with not less than twenty-one (21) days written the notice. In the event, if the Affiliate will not submit the notice of the refusal to accept the new terms, it shall be deemed that the Affiliate has agreed to these conditions. If the Affiliate will reject the new terms and provisions, the Agreement shall terminate automatically with the end of such term.
- 12.9. The Agreement and all matters arising from or connected with it are governed by Dutch law and shall be resolved exclusively by the competent Court in the Netherlands.
- 12.10. If any translations of the Agreement have been provided, such translations are for information purposes only. In the event of an inconsistency between the Agreement in English wording and the translation, the English wording shall prevail.