

Terms and Conditions of Use

IN THESE TERMS AND CONDITIONS, "WE," "US," "ITS" AND "OUR" REFER TO Happy Gears, Inc./NetSpyGlass.com, ("HGI/NSG"), AND "YOU" AND "YOUR" REFER TO YOU. Before using our service (the "NetSpyGlass.com Service"), please read this agreement carefully.

1. ACCEPTANCE OF TERMS

By using the NetSpyGlass.com Service, you agree to be bound by these terms and conditions of use ("Terms"). If you do not agree to these Terms, please do not use the NetSpyGlass.com Service. HGI/NSG provides the information and services on the NetSpyGlass.com Service to you, the user, conditioned upon your acceptance, without modification, of the Terms contained herein. Your use of the NetSpyGlass.com Service constitutes your agreement with such Terms. We reserve the right, at our discretion, to change, modify, add or remove portions of these Terms periodically. Such modifications shall be effective immediately upon posting of the modified Terms to our website. Your continued use of the NetSpyGlass.com Service following the posting of changes to these Terms will mean that you accept those changes.

To update the Terms, we will post the changed version and its effective date on this page. We reserve the right at any time and from time to time to modify or discontinue, temporarily or permanently, the NetSpyGlass.com Service (or any part thereof). HGI/NSG shall not be liable to any user or other third party for any such modification, suspension or discontinuance except as expressly provided herein.

2. NO UNLAWFUL OR PROHIBITED USE

By using the NetSpyGlass.com Service, you warrant to HGI/NSG that you will not use the NetSpyGlass.com Service for any purpose that is unlawful or prohibited by these Terms. If you violate any of these Terms, your permission to use the NetSpyGlass.com Service automatically terminates.

3. DESCRIPTION OF SERVICE

The NetSpyGlass.com Service provides instructional and promotional information about the NetSpyGlass Performance Monitoring Automation service (NSG PMA). Your use of the NSG PMA may also be covered under this agreement or under a separate license agreement (the "License Agreement") and require payment of fees solely at the option of HGI/NSG.

Your rights to access and use the NetSpyGlass.com Service is subject to your complying with all terms of any such License Agreement.

3.1 TECHNICAL SUPPORT. HGI/NSG will provide you technical support services for the Service and NSG PMA on the same basis as it provides these services to similarly situated customers as specified in any agreed to and fully paid quotes, offers, or order forms ("the order").

3.2 SETUP SERVICES. If HGI/NSG will perform Setup Services, they will be specified in the order, as "Professional Services" and/or "Operational Support," and may include a description of what the services include.

4. REGISTRATION OBLIGATIONS

If required by HGI/NSG, each user must: (a) provide true, accurate, current and complete information on the NetSpyGlass Service's registration form (collectively, the "Registration Data") and (b) maintain and promptly update the Registration Data as necessary. If, after investigation, we have reasonable grounds to suspect that any user's information is untrue, inaccurate, not current or incomplete, we may suspend or terminate that user's account and prohibit any and all current or future use of the Services (or any portion thereof) by that user other than as expressly provided herein.

5. DATA UPLOAD

If you utilize the NetSpyGlass.com Service with NetSpyGlass software, you may upload certain data relating to your NSG Service Instance. We may use this data to provide you with the NetSpyGlass.com Service.

6. TERMINATION

We may terminate the NetSpyGlass.com Service or any portion thereof in our absolute discretion and for any reason.

Our termination of any user's access to the NetSpyGlass.com Service hereunder may be effected without notice and, on such termination, we may immediately deactivate or delete user's account and/or bar any further access to any data, information, or reports we may have generated.

7. INDEMNITY

Each user shall indemnify, defend and hold harmless Happy Gears, Inc./NetSpyGlass.com, its subsidiaries and affiliates and their respective officers, employees and agents from any and all claims, demands, damages, costs and liabilities, including reasonable attorneys' fees, made by any third party due to or arising out of that user's acts or omissions, including claims arising out of that user's use of the NetSpyGlass.com Service.

8. DISCLAIMER OF WARRANTIES

EACH USER'S USE OF THE NETSPYGLASS.COM SERVICE IS AT HIS OR HER SOLE RISK. THE NETSPYGLASS.COM SERVICE IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS AND HGI/NSG ASSUMES NO RESPONSIBILITY FOR THE TIMELINESS, DELETION, MIS-DELIVERY OR FAILURE TO STORE ANY USER DATA. EACH USER WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO HIS OR HER COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM THE USE OF THE NETSPYGLASS.COM SERVICE. HGI/NSG EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

SPECIFICALLY, HGI/NSG MAKES NO WARRANTY THAT (I) THE NETSPYGLASS.COM SERVICE WILL MEET YOUR REQUIREMENTS, (II) ANY USER ACCESS WILL BE UNINTERRUPTED, TIMELY, SECURE OR ERROR-FREE, (III) THE QUALITY OF ANY CONTENT, PRODUCTS, SERVICES, INFORMATION OR OTHER MATERIAL OBTAINED BY

ANY USER WILL MEET SUCH USER'S EXPECTATIONS, AND (IV) ANY ERRORS IN THE NETSPYGLASS.COM SERVICE WILL BE CORRECTED. EXCLUDING ONLY DAMAGES ARISING OUT OF HGI/NSG'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, HGI/NSG SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES (EVEN IF HGI/NSG HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), RESULTING FROM ANY USER'S USE OR INABILITY TO USE THE NETSPYGLASS.COM SERVICE; THE COST OF PROCUREMENT OF SUBSTITUTE SERVICES; UNAUTHORIZED ACCESS TO OR ALTERATION OF TRANSMISSIONS OR DATA; OR ANY OTHER MATTER RELATING TO THE NETSPYGLASS.COM SERVICE. NOTHING HEREIN SHALL BE DEEMED TO CREATE AN AGENCY, PARTNERSHIP, JOINT VENTURE, EMPLOYEE-EMPLOYER OR FRANCHISOR-FRANCHISEE RELATIONSHIP OF ANY KIND BETWEEN HGI/NSG AND ANY USER OR OTHER PERSON OR ENTITY NOR DO THESE TERMS OF SERVICE EXTEND RIGHTS TO ANY THIRD PARTY. SCHEDULED AND PREVENTIVE MAINTENANCE AS WELL AS REQUIRED AND EMERGENCY MAINTENANCE WORK MAY TEMPORARILY INTERRUPT THE NETSPYGLASS.COM SERVICE.

9. LIMITATION OF LIABILITY

IN NO EVENT SHALL HGI/NSG INC., SUBSIDIARIES, OFFICERS, DIRECTORS, EMPLOYEES OR OUR SUPPLIERS BE LIABLE FOR LOST PROFITS OR ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE HGI/NSG WEBSITES, OUR SERVICES OR THIS AGREEMENT (HOWEVER ARISING, INCLUDING NEGLIGENCE).

OUR LIABILITY, AND THE LIABILITY OF SUBSIDIARIES, OFFICERS, DIRECTORS, EMPLOYEES, AND SUPPLIERS, TO YOU OR ANY THIRD PARTIES IN ANY CIRCUMSTANCE IS LIMITED TO \$1000. SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU.

10. GENERAL INFORMATION

The Terms constitute the entire agreement between each user and HGI/NSG and govern each user's use of the NetSpyGlass.com Service, superseding any prior agreements. Each user may be subject to additional terms and conditions that may apply when that user uses NSG PMA Service. The Terms and the relationship between each user and HGI/NSG shall be governed by the laws of the State of California without regard to its conflict of law provisions and each party shall submit to the personal and exclusive jurisdiction of the courts located within the county of Santa Clara County, California. If any provision of the Terms is found by a court of competent jurisdiction to be invalid, the parties nevertheless agree that the court should endeavor to give effect to the parties' intentions as reflected in the provision, and the other provisions of the Terms remain in full force and effect. Our Privacy Policy is incorporated into these Terms by reference.

Last updated: December 2019