

## **End User License Agreement**

### **DataDiary App**

#### **§ 1 - Scope of application**

(1) This license agreement applies for the use of the Miele DataDiary App (the “App”) made available by the Miele & Cie. KG, Carl-Miele-Straße 29, 33332 Gütersloh, Germany (“Miele”) to the licensee (“you”). Usage of the App provided by Miele is solely permitted on the basis of the terms and conditions defined below.

(2) The App is exclusively made available to entrepreneurs within the meaning of § 14 BGB or legal entities under public law or rather natural persons who use the Miele App in the execution of their professional activity for an entrepreneur within the meaning of § 14 BGB or for a legal entity under public law (e.g. employees) –, however, in no case, for consumers within the meaning of § 13 BGB.

(3) By purchasing the Miele DataDiary Solution and by using this App You accept this license agreement in full. By accepting this license agreement, you acknowledge and agree to the following license agreement. If You are an individual representing a company, organization or other legal entity (“Entity”), You represent and warrant that You have the legal authority to accept the Terms on behalf of such Entity and to bind it to the Terms. If You are not authorized, you may not accept the Terms and must not use the Software.

(4) The App complements the Miele DataDiary Solution. Due to this, You or Your Entity necessarily need the Miele DataDiary Solution in order to be enabled to use the functionalities of the App.

#### **§ 2 - Object of license agreement**

(1) This license agreement solely relates to your use of the App. No other services are owed to you under this license agreement.

(2) Miele grants you a limited, non-exclusive right to use the App for the agreed amount of user, subject to your proper payment for the Miele DataDiary Solution and strict compliance with all applicable laws, this license agreement and any applicable terms and conditions available for the Miele DataDiary Solution. No additional rights are granted to you. Miele is the sole and exclusive owner of the rights to the App. Any form of sub-licensing or rental of the App or usage rights to the App may not be granted by you.

#### **§ 3 - (Remote) Updates**

(1) The App is provided as a dynamic, developing product. Miele may extend, update or modify the App, in particular add, modify or remove individual functions, at any time and at its own reasonable discretion unless this is unreasonable for you. Miele shall inform you about any changes and/or supplements to the scope of the App. You can find such information to an update in the release notes. This license agreement shall also apply to updates or revisions thereto. To ensure the correct and stable functionality of the App, you need to install the latest version/update of the App. Miele is not obliged to maintain support for older versions/updates and does not warrant the compatibility of older versions/updates with newer Miele Data Diary Solutions. However, you are not entitled to claim for any update of the App which extends the functions of the App.

(2) In addition to Miele's right to extend, update or modify the App, Miele may provide updates for the software embedded in the Miele DataDiary Solution. Miele is entitled at any time to adapt the functional scope of the software embedded in the Miele DataDiary Solution to ongoing technical development by means of the update installation. However, you are not entitled to claim for any update of the embedded software for the Miele DataDiary Solution which extend the functions of your Miele DataDiary Solution.

#### **§ 4 – Restrictions**

You acknowledge and agree to the following restrictions and warrant that You will not encourage or facilitate any third party to violate these restrictions.

- a) You shall not distribute, rent or otherwise sub-license the App without our prior approval;
- b) You shall not install or use the App for more users as you are allowed to;
- c) You shall not use the App for any illegal purposes or in any way which could violate these Terms or any applicable law, in particular but without limitation to applicable data protection law or any other third party rights;
- d) You shall not use the App to interfere with, try to gain unauthorized access to, or otherwise disrupt any other products and/or services made available by Miele or any servers or networks connected with any products and/or services made available by Miele;
- e) You shall not transmit any malware, defects or any other items of destructive nature or any other items which could threaten the App or any other products and/or services made available by Miele, to any servers or networks connected with any products and/or services made available by Miele;
- f) You shall not translate, decompile, copy, reverse engineer, create derivative works or otherwise modify the App unless You are explicitly entitled to do so under applicable mandatory law or under the Miele Vulnerability Disclosure Policy;

The foregoing restrictions do not apply to individual components of the App that are subject to an open source license and whose use is therefore governed by the respective open source license.

#### **§ 5 – Processing of data**

The App collects and processes personal data for authentication and logging purposes. The App is conceptualized to run in a closed network environment and all personal data processed through the App will be stored locally on your device or IT-infrastructure. Miele has no access to any personal data processed through the App. For the avoidance of doubt it shall be clarified that due for this very reason Miele does not process any personal data in the meaning of applicable data protection law, in particular in the meaning of the EU general data protection regulation ("GDPR").

#### **§ 6 - Property rights**

(1) By accepting this license agreement, you acknowledge Miele's and all other third party property rights to the App in their entirety, and you are obliged to their preservation. These rights include, among others, copyrights, patents, trademarks and trade secrets.

(2) You agree to undertake all necessary steps to prevent possible damage or injury to these rights, to stop said damage or injury, and to prosecute third parties if a third party has wrongfully accessed or come into the possession of the App from you.

## **§ 7 - Liability and guarantee**

**(1) MIELE MAKES NO REPRESENTATIONS OR GUARANTEES OF ANY KIND WHATSOEVER AS TO THE APP OR FUNCTIONALITY OF THE APP, UNLESS EXPLICITLY STATED OTHERWISE.**

**(2) MIELE DISCLAIMS ALL LIABILITY AND WARRANTY FOR VERSIONS OF THE APP WHICH ARE NOT INTENDED FOR USE BY END USERS (TEST, PILOT, ALPHA, BETA VERSIONS OR SIMILAR). YOU AGREE THAT YOU ARE AWARE OF AND ACCEPT THE RISKS INVOLVED IN USING SUCH PROGRAMS; IN PARTICULAR, THAT MALFUNCTIONS OR DATA LOSS MAY OCCUR. THE USE OF SUCH PROGRAMS IS AT THE SOLE RISK OF YOU AND ANY CLAIMS RELATING TO WARRANTY AND LIABILITY SHALL BE EXCLUDED.**

**(3) MIELE SHALL BE LIABLE FOR DAMAGES CAUSED BY INTENT, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT AND IN ACCORDANCE WITH THE PROVISIONS SET FORTH IN THE GERMAN PRODUCT LIABILITY ACT WITHOUT LIMITATION. IN THE EVENT OF SLIGHT OR MINOR NEGLIGENCE, MIELE SHALL ONLY BE LIABLE WITHOUT LIMITATION FOR DAMAGES TO LIFE, HEALTH OR PERSONAL INJURY. IN ALL OTHER CASES OF SLIGHT OR MINOR NEGLIGENCE, MIELE SHALL BE LIABLE INsofar AS MIELE BREACHES OR VIOLATES AN OBLIGATION WHICH IS ESSENTIAL FOR THE PROPER IMPLEMENTATION OF THIS LICENSE AGREEMENT AND OF WHICH YOU RELY ON OR MAY REGULARLY RELY ON – IN SUCH EVENT, MIELE'S LIABILITY TO YOU SHALL BE LIMITED TO THE TYPICAL FORESEEABLE DAMAGE UNDER THIS LICENSE AGREEMENT. FURTHER CLAIMS FOR DAMAGES CAUSED BY SLIGHT OR MINOR NEGLIGENCE ARE EXCLUDED.**

**(4) YOU ARE NOT ENTITLED TO CLAIM FOR DAMAGES CAUSED BY SOFTWARE DEFECTS, INsofar AS YOU FAIL TO APPLY ONLINE SOFTWARE UPDATES PROVIDED BY MIELE AND THE DAMAGE COULD HAVE BEEN AVOIDED IF THE UPDATE HAD BEEN APPLIED. THIS ALSO APPLIES TO SECURITY VULNERABILITIES, WHICH ARISE PROVIDED THAT THE SOFTWARE UPDATE WAS NOT INSTALLED BY YOU OR THE UPDATE WAS ABORTED DURING INSTALLATION.**

**(5) YOU ARE AWARE THAT NO CLAIMS FOR DAMAGES CAN BE MADE AGAINST MIELE RESULTING FROM YOUR NEGLIGENCE, UNAUTHORIZED OR ILLEGAL SECURITY MECHANISMS, ESPECIALLY WITHIN YOUR OWN LAN OR MOBILE DEVICE, OR AS A CONSEQUENCE OF YOU USING THE APP CONTRARY TO THE TERMS OF THIS LICENSE AGREEMENT. YOU MUST ALSO MAKE SURE THAT THE APP CANNOT BE MISUSED BY THIRD PARTIES AND MUST SECURE ACCESS TO THE APP AS WELL AS TO COMPATIBLE PRODUCTS ACCORDINGLY.**

**(6) IF YOU LOSE YOUR DEVICE ON WHICH THE APP IS ACCESSIBLE (E.G. THROUGH LOSS, THEFT, ETC.) THEN YOU ARE RESPONSIBLE FOR IMMEDIATELY REVOKING ANY ACCESS PERMISSIONS WITH APPROPRIATE MECHANISMS IN ORDER TO ENSURE THAT UNAUTHORIZED ACCESS TO THE APP IS PREVENTED.**

**(7) IF YOU KNOW OR HAVE REASON TO BELIEVE OF ANY POTENTIAL DAMAGE TO MIELE IN CONNECTIONS WITH YOUR USE OF THE APP, YOU ARE OBLIGATED TO INFORM MIELE OF ANY SUCH DAMAGE OR LOSS SCENARIOS.**

## **§ 8 - Consideration of the characteristics of mobile services**

For the avoidance of doubt it shall be clarified that any transmission of the content over telecommunication networks (e.g. wireless, wired, etc.) lies exclusively within the competence and responsibility of the mobile operator used by you. Any charges for the use of necessary telecommunications services relating to this are your responsibility.

## **§ 9 – Duration and Termination of License Agreement**

**(1) This License Agreement come into effect with your acceptance and is closed for the specific period as You or Your Entity and Miele agreed on in the context of the ordering process.**

(2) The Parties statutory right to terminate this license agreement for a compelling reason without a notice period shall remain unaffected. In Particular, Miele is authorized to immediately terminate this license agreement without a notice period in the event of a material breach of this license agreement or any term set forth in this license agreement by you.

(3) Termination of this license agreement shall lead to withdrawal of your authorization to use the App, and you must immediately stop such use.

#### **§ 10 - Final provisions**

(1) This license agreement is subject to German law, excluding the provisions of the UN Convention on Contracts for the International Sale of Goods (CISG). The exclusive place of jurisdiction for all disputes arising from or in connection with this license agreement shall be the courts responsible for Gütersloh, Germany.

(2) You are not permitted to transfer or assign your rights and duties arising from this license agreement to a third party unless Miele's prior written approval.

(3) Any changes to this license agreement must be agreed between the parties. In case Miele wishes to make changes to this license agreement Miele shall notify you of the changes and you may object to the changes within a reasonable period of time as specified by Miele ("Objection Period") within the notification. If you do not object to the changes within the Objection Period it will be deemed that you accept the changes. In case you object to the changes Miele may terminate the license agreement with a two weeks' notice. Miele will also inform you about the Objection Period and the legal effect of objecting or non-objecting separately within the notification.

#### **§ 11 - Effectiveness clause**

In the event of invalidity or ineffectiveness of individual terms, the effectiveness of other license terms remains unaffected. Invalid or ineffective provisions shall be replaced by effective terms that best approximate the economic purpose of the ineffective or invalid terms.