

TERMS OF SERVICE “Hyper Solutions” API Platform

These are the Terms of Service for using the ‘Hyper Solutions API Platform’ (the “**Terms**”), a platform with various API solutions offered by Hyper Solutions B.V., registered with the Dutch Chamber of Commerce under number 85561576, and in these Terms hereafter referred to as “**Provider**”.

By accessing or using the Platform and/or any of the API’s as offered thereon, you accept the applicability of these Terms, which will also need to be actively accepted through ‘opt-in’ when accessing the Platform for the first time.

1. DEFINITIONS

- 1.1 In these Terms, words written with capitals and not defined elsewhere will have the following meaning:
- 1.1.1 **API:** means the application programming interface including its corresponding Documentation as developed and offered by Provider on the Platform under these Terms.
 - 1.1.2 **Credentials:** means the usernames, passwords, API key and/or other tokens enabling access to the Platform and/or API.
 - 1.1.3 **Documentation:** means the technical content that documents the API, thereby including the instructions on how to effectively use and integrate the API.
 - 1.1.4 **Force Majeure:** means an event, or a series of related events, that is outside the reasonable control of Provider, including but not limited to: i) war, disasters, explosions, fires, floods, riots and terrorist attacks; ii) governmental measures or boycotts; iii) failures of the Internet or any public telecommunications network, failures of cloud providers, electricity failures; iv) hacker attacks, denial of service attacks, virus or other malicious software attacks or infections; v) failures of third party service providers; vi) strike actions; vii) pandemics.
 - 1.1.5 **GDPR:** means the General Data Protection Regulation (Regulation (EU) 2016/679).
 - 1.1.6 **Intellectual Property:** means any and all intellectual property rights, whether registered or unregistered, such as but not limited to patent rights, copyrights (including rights in source code and object code), database rights, rights in designs, utility models, trademarks, trade and business names and all associated goodwill, rights in or in connection with know-how and trade secrets.
 - 1.1.7 **Platform:** means the online platform that provides access to various API’s.
 - 1.1.8 **Support:** means support in relation to the use of, and the identification and resolution of errors in the API.
 - 1.1.9 **Update:** means a new version release of the API.
 - 1.1.10 **User:** means the person that is interested to use an API.
 - 1.1.11 **User Data:** means all data, works and materials uploaded or transmitted via the API by the User or generated as a result of the use of the API by the User, excluding analytics data relating to the use of the API and server log files.
- 1.2 Unless the context shows otherwise, the defined concepts in the singular include also the plural and vice versa.
- 1.3 Any reference to the words ‘written’ or ‘in writing’ will mean to include emails.

2. GENERAL

- 2.1 These Terms apply to the provision, use and availability of the Platform and the API to the User. By accessing the Platform and/or API the User agrees with and accepts the applicability of these Terms. These Terms constitute the entire agreement between the Provider and the User with regard to the use of and access to the Platform and subsequent API.
- 2.2 Additions to or deviations from these Terms shall only apply if and where agreed in writing between the Provider and the User.
- 2.3 If any provision of these Terms is held invalid or otherwise unenforceable, the enforceability of the remaining provisions of these Terms will not be impaired thereby. In such event, Provider will replace the invalid provision with a provision that is valid and enforceable thereby taking into account the intention of the original provision.
- 2.4 Provider is entitled to unilaterally amend the Terms at any time, and such updated Terms shall enter into effect at least fourteen (14) days from the date they are posted on the Platform and/or communicated via email. In the event the User does not wish to accept the amended version of the Terms, the User should immediately refrain from further using the Platform and API.

2.5 These Terms have also been drawn up for the benefit of: (a) all companies which Provider is affiliated with in a group, has or has had a management or cooperation agreement with including their directors and shareholders; (b) all directors, (former) employees and third parties (as well as their heirs) who work/have worked in any way for or were affiliated with or employed by Provider; and (c) all third parties Provider may engage in connection with the provision of the Platform and API's. The Terms apply as a third-party clause as referred to in Book 6, Section 253 of the Dutch Civil Code for the benefit of all persons and legal entities referred to in this clause. As a result they are entitled to invoke the respective provisions in these Terms as the occasion arises.

3. RIGHT TO USE THE API AND PLATFORM

- 3.1 Subject to the User's payment and compliance with these Terms, Provider grants User a limited, personal, revocable, non-exclusive, non-transferable, non-sublicensable license to access and use the API's.
- 3.2 The User agrees not to (and not to attempt to), either directly or indirectly:
- 3.2.1 use an API, the Platform and/or Credentials for any abusive or illegitimate purposes;
 - 3.2.2 use an API in a way which materially violates the Documentation and harms the API, the Platform and/or Provider, such to the sole discretion of Provider;
 - 3.2.3 copy, adapt, modify, prepare derivative works based upon, distribute, license, (re)sell, transfer, publicly display, publicly perform, transmit, stream, broadcast, attempt to discover any source code, reverse engineer, decompile, disassemble, or otherwise exploit an API, the Credentials or any portion thereof;
 - 3.2.4 infringe upon or violate Provider's Intellectual Property or the Intellectual Property of third parties;
 - 3.2.5 remove or alter any proprietary notices or labels on or in an API or the Platform;
 - 3.2.6 engage in any activity that causes, or may cause, damage to the API or the Platform, or impairment of the availability or accessibility of the API or the Platform;
 - 3.2.7 interfere with or circumvent the security features of the Platform, the API or part thereof.
- 3.3 The User acknowledges and agrees that Provider may monitor the User's use of an API in order to ensure quality, improve the services and to verify compliance with these Terms. The User shall not interfere with any such monitoring.
- 3.4 Provider may suspend access to the Platform or an API by the User without prior notice if Provider reasonably believes that the User is acting in violation of the Terms. Provider reserves the right to immediately terminate or suspend the User's access to the Platform and/or API and to revoke the Credentials, also without prior notice, if the User violates any provision under these Terms. Provider cannot be held liable for damage or refund claims of the User as a result of any such suspension or termination.

4. API, CREDENTIALS AND TERMINATION

- 4.1 Before being able to access and make use of an API, the User needs to register an account on the Platform by entering an email address and password, or the User may authorize access via OAuth service providers (as available). Provider withholds the right to remove or reject a User at its sole discretion, for example when detecting duplicate accounts or suspecting fraud.
- 4.2 After receipt of a get access request for the API, the User will be provided with the Credentials necessary to access and use the API.
- 4.3 The User will be independently responsible for complying with the Documentation and warrants that it has sufficient knowledge and experience in how to implement and use an API.
- 4.4 The User will be independently responsible for complying with or having installed the minimum (auxiliary) software or system requirements in order to achieve the interoperability with the API. Provider does not warrant or represent that the API will be compatible with any other software or systems or maintains such compatibility after an Update, unless explicitly indicated otherwise.
- 4.5 Any information provided by the User that is necessary for accessing and/or using the API, shall be accurate, complete and up to date at all times. The User acknowledges and warrants that he or she is not a minor (<16 years). Failure to do so constitutes a breach of the obligations under these Terms and may result in the immediate (temporary) suspension or termination of the Credentials.
- 4.6 The User agrees not to disclose the Credentials to any third party and shall notify Provider immediately upon becoming aware of any breach of security or unauthorized use of its Credentials. The User is fully responsible for safeguarding the Credentials and for any activities or actions that are being undertaken with the use of such

Credentials. Provider cannot and will not be held liable for any loss or damages resulting from the User's failure to maintain the secrecy or security of its Credentials.

- 4.7 Having a subscription, the User may request to terminate access to and use of a specific API, at any time before the subscription renewal date.
- 4.8 Under the "pay as you go"-option, the User is able to terminate access to and use of an API, at any time.
- 4.9 The User acknowledges and accepts that a termination of access and/or use of an API under these Terms never entitles the User to a refund of balance credits or fees already paid.

5. BALANCE CREDITS, FEES AND PAYMENT

- 5.1 In order to make use of an API, Provider offers the User with flexible payment options, including "package subscription" and "pay as you go". In order to make use of the "pay as you go"-option, the User needs to recharge its balance credits before being able to apply for the API.
- 5.2 The subscription fees and balance credits for the API can be made by credit card.
- 5.3 Package subscriptions automatically renew until receipt of a termination request for the API.
- 5.4 The User acknowledges and accepts that the balance credits under the "pay as you go"-option are valid for one year after the issue date of the balance credits. Balance credits will also automatically expire if the User closes its account and cannot be recovered. Balance credits are not legal tender or currency of any kind and have no cash value.
- 5.5 The subscription fees and balance credits are to be paid in advance and are non-refundable. Where necessary, Provider withholds the right to deduct the corresponding API fees from the User's prepaid balance credits.
- 5.6 Provider reserves the right to change applicable fees at any time. The subscription fee as lastly applied will stay in effect for the duration of that subscription period, and updated fees will apply to renewals or new subscriptions for the API. Where reasonably possible, Provider will provide the User prior notice of any upcoming changes in fees.
- 5.7 The User acknowledges and accepts that the API is a service, which will be fully delivered upon receipt of payment and provided Credentials. Accordingly, by subscribing to the API, the User explicitly waives its right to revoke the subscription and claim a refund of fees or balance credits.
- 5.8 If the User fails to (timely) pay any fees due, Provider reserves the right to suspend the User's access to the API until the outstanding fees have been fully paid.
- 5.9 Provider withholds the right to reject API access requests and payments for selected API's, including but not limited to unsupported services, suspected fraudulent or unauthorized transactions, or illegal activities.
- 5.10 The User may not transfer or sell balance credits to any other person or entity, and balance credits may only be used by the User of the account to which the balance credits are associated.

6. THE API's

- 6.1 Provider has no control over, and shall not be responsible or liable for: (a) the User Data; (b) purchases made through or resulting from the use of an API. The User agrees to indemnify and hold Provider harmless from and against any claim, demand, damages or costs (including attorneys' fees) that arise or may arise out of the points and actions under (a) and/or (b).
- 6.2 Provider offers Support to Users through a chat program. Provider will respond as soon as reasonably possible to requests or inquiries.
- 6.3 Although Provider undertakes to provide and maintain the API with the most reasonable care, the availability of the API cannot be guaranteed at all times. The API is provided 'AS IS' and 'AS AVAILABLE'. Provider does not guarantee that the API shall at all times function without error or interruption, nor that it will be wholly free from defects, errors and bugs. The User agrees to indemnify and hold Provider harmless from and against any claim, demand, damages or costs (including attorneys' fees) that arise or may arise out of the non-availability or malfunction of the API.
- 6.4 The API is available for use by the User for the period as indicated by Provider. However, Provider reserves the right to modify, discontinue or terminate, temporarily or permanently, the API or any part thereof, for any reason and at any time, without prior notice. Provider cannot be held liable for damages or loss of the User or any third party as a consequence of any such modification, discontinuance or termination.

- 6.5 Upon the termination or suspension of access to the API, regardless of the reason thereof, the right of the User to use the API immediately ceases and the Credentials may be revoked. Unless otherwise provided for in these Terms, the User will not be entitled to any refunds of balance credits, subscription fees (pro rata or otherwise), nor any damage compensation.
- 6.6 The User agrees to indemnify and hold Provider harmless from and against any claim, demand, damages or costs (including attorneys' fees) that arise or may arise out of the use of the API.

7. INTELLECTUAL PROPERTY RIGHTS

- 7.1 All Intellectual Property Rights in and related to the API and the Platform shall exclusively vest in Provider or its licensors. The User only acquires those rights of use that are explicitly granted in and in accordance with these Terms.
- 7.2 The User is prohibited from removing or amending any indications or credits of Intellectual Property or confidentiality from the Platform and/or API including underlying code.
- 7.3 Some of the software libraries or components required by or included in the API are licensed under an open source software license ("Open Source Components"). To the limited extent that the Open Source Components' license expressly supersedes these Terms, the User's use of any such Open Source Components is governed by the terms of the applicable open source software license.

8. LIMITATION OF LIABILITIES

- 8.1 The total aggregate liability of Provider due to an attributable failure or due to any other legal reason whatsoever, shall at all times be limited to the lower amount of: (i) the subscription fee received by Provider from the User for obtaining access to the API; or (ii) the fees for balance credits received by Provider from the User for the past three (3) months; or (iii) the amount of EUR 1,000.
- 8.2 Provider's liability for indirect loss or damage, consequential loss or damage, loss of profit, loss of revenues, missed savings, reduced goodwill, loss or damage due to business stagnation or interruption, loss or damage in connection with the use of the Platform and/or API, such as but not limited to, missed or unsuccessful purchases and/or not received items, is expressly excluded. Also Provider's liability for the damage, destruction or loss of data, or for the (temporary) unavailability of the Platform and/or API, is expressly excluded.
- 8.3 The exclusions and restrictions referred to in clause 9.1 to 9.2 will not apply if and in so far as the damage or loss are the result of an intentional act or gross recklessness by Provider.
- 8.4 Provider shall never be liable for any damages and costs incurred by the User or any third party which are the result of Force Majeure.
- 8.5 Except where performance by Provider is permanently impossible, Provider will only be in default for an attributable failure after it has been given written notice of the default thereby granting Provider with a reasonable term of at least thirty (30) days to remedy the default. The notice of default must contain a comprehensive and detailed description of the breach, in order to ensure that the Provider has the opportunity to respond adequately.
- 8.6 A condition for the filing of any claim to damages is always that the User reports the damage to Provider in writing as soon as possible and in any event not later than 10 (ten) days after the damage occurred. Claims for damages against Provider shall in any event lapse by the mere expiry of six (6) months after the damage occurred.
- 8.7 The User shall indemnify and hold harmless Provider from and against any and all claims, damages, losses or costs (including legal /attorney costs) of the User or third parties arising from or in any way related to the use of the API, including but not limited to:
 - 8.7.1 a violation of these Terms by the User;
 - 8.7.2 improper use of the Platform and/or API;
 - 8.7.3 a violation of any law, regulations or third party rights by the User.

9. APPLICABLE LAW

These Terms have been construed and shall be exclusively governed by the laws of The Netherlands.