

HYPERGANIC END USER LICENSE AGREEMENT

Last updated October 28, 2019. Replaces all prior versions.

Preamble

IMPORTANT–PLEASE READ CAREFULLY. This End User License Agreement (the “EULA”) is a legal agreement between you and Hyperganic Technologies AG governing the use of certain proprietary software and documentation (collectively referred to as the “Software”). The terms “Hyperganic”, “we”, “us” or “our” each refers to the licensor Hyperganic Technologies AG. The terms “you” or “your” each refers to you as the end user and licensee of our Software under this EULA. By installing, copying or otherwise using our Software, you are agreeing to be bound by and comply with the terms and conditions of this EULA. If you do not agree to the terms of this EULA, you are not allowed to install, copy or otherwise use the Software, or any portion thereof. We may modify the EULA, any Additional Terms or Subscription and Cancellation terms, for example, to reflect changes to the law or changes to our Services or Software. By continuing to use or access the Services or Software after the revisions are in effect, you agree to be bound by the revised Terms.

This EULA entitles you, the End User, to use the Hyperganic Software, including the accompanying internet-related services of Hyperganic to the extent Hyperganic makes them available to you.

Section 1 | Definitions

- 1. Issuer of license:** Hyperganic Technologies AG, Georgenstr. 38, 80799 München, Germany (“Hyperganic”).
- 2. Software:** “Software” in terms of this EULA means the computer software, web services, the accompanying media, printed materials, application documentation, electronic instruction manuals, and online instruction manuals. The term “Software” also includes the updates and upgrades related to a release, unless explicitly agreed otherwise in the following terms and conditions.
- 3. Content:** “Content” means any material, such as 3D models, blueprints, simulation data or images, that you upload and import into the Services or Software in connection with your use of the Services or Software. You retain all rights and ownership of your Content. We do not claim any ownership rights to your Content.
- 4. Computer system:** “Computer system” in this EULA denotes an individual computer or computer workstation and programmable components, especially PC plug-in cards.
- 5. Network:** “Network” means the linking of computer systems within the End User’s company. The term “Networks” especially includes server-based networks and virtual environments that may be implemented globally or locally.
- 6. Updates:** “Updates” means Software with equal or improved functionality whose purpose is to correct defects. Hyperganic generally provides updates free of charge.
- 7. Upgrades:** “Upgrades” means Software of a higher stage of expansion or with expanded functionality, sometimes with a change of release number. Upgrades generally have to be purchased.
- 8. Feedback:** You have no obligation to provide us with ideas, suggestions, or proposals (“Feedback”). If you submit Feedback to us however, then you grant us a non-exclusive, worldwide, royalty-free, sublicensable, and transferable license to make, use, sell, have made, offer to sell, import, reproduce, publicly display, distribute, modify, and publicly perform the Feedback.
- 9. Floating license model:** The “Floating license model” is a form of licensing in which the maximum number of users who can use the Software at the same time is fixed. In this case, the Software may be installed on as many computers as desired; as a rule, a central license server manages the installations and unlocks as many installations on the connected computers for use at the same time as are deposited in a license file.
- 10. Batch Processing:** A “Batch Process” is a process that runs unattended on a computer workstation or networked server to generate or modify geometric information.
- 11. Software for educational use:** Personalized Software provided to teachers, trainers and matriculated full-time students at state or state-recognized schools, technical colleges, universities, and educational institutes as well as enrolled full-time students, teachers, and instructors of said institutions for scholastic and academic education and continuing education, teaching and learning purposes that may be limited in its functionality and / or run time. It may neither directly nor indirectly be used for commercial, professional, or other profit-oriented purposes.
- 12. Not-for-Resale / NFR:** Software that is delivered by Hyperganic marked as “Not-for-Resale”, “trial,” “evaluation,” “not for resale,” or other similar designation and whose sale or distribution to third parties is prohibited without permission of Hyperganic. Further it may neither directly nor indirectly be used for commercial, professional, or other profit-oriented purposes. You may install and use the NFR version only for the period and purposes stated when the NFR version was issued to you.
- 13. Prerelease Version:** We may designate the Services or Software, or a feature of the Services or Software, as a prerelease or beta version (“Prerelease Version”). A Prerelease Version does not represent the final product and may contain bugs that may cause system or other failure and data loss. We may choose not to commercially release the Prerelease Version. You must promptly cease using the Prerelease Version and destroy all copies of Prerelease Version if we request you to do so, or if we release a commercial version of the Prerelease Version. Any separate agreement we enter into with you governing the Prerelease Version will supersede these provisions.
- 14. Region:** The Region applicable to you is the region listed below in which you have purchased the Software:
 - 14.1.** EMEA (Europe, Middle East and Africa),
 - 14.2.** The Americas (North and South America) or
 - 14.3.** APAC (Asia-Pacific).All rights not explicitly granted to you in this EULA are retained by Hyperganic. The Software is protected by copyright laws and international copyright treaties, as well as other intellectual property laws and other laws and treaties. Hyperganic or its distribution partners retain the title, copyright, and other intellectual property rights to the Software. This EULA does not grant you any rights to trademarks or service marks of Hyperganic.
- 15. Additional Terms.** Our Services and Software are licensed, not sold, to you, and may also be subject to one or more additional terms defined in separate license agreements, quote, offer, or similar documents (“Additional Terms”). If there is any conflict between the terms in the EULA and the Additional Terms, then the Additional Terms govern in relation to that Service or Software. The Additional Terms are subject to change.

Section 2 | Subject Matter of the Contract

1. Hyperganic offers the Software to you as the End User via a data storage device or download from the Internet. You are authorized to use this software only if you are properly licensed and the Software has been properly activated through an online license or by other authorized method and any use of the Software is governed by the terms and conditions under this EULA.
2. Unless otherwise specified in Additional Terms or a Hyperganic Service Level Agreement, the Software, upon first use, requires an online activation. When you connect to the Internet while using the software, the software will automatically contact Hyperganic or its affiliate to conduct activation to associate it with a certain device. Transmission of certain information will occur, and Internet, telephone and SMS service charges may apply. During activation (or reactivation that may be triggered by changes to your device's components), the software may determine that the installed instance of the software is counterfeit, improperly licensed or includes unauthorized changes. If activation fails, the software will attempt to repair itself by replacing any tampered Hyperganic software with genuine Hyperganic software. You may also receive reminders to obtain a proper license for the software. Successful activation does not confirm that the software is genuine or properly licensed. You may not bypass or circumvent activation. Certain updates, support, and other services might only be offered to users of genuine Hyperganic software.
3. The software may connect at various intervals to the Hyperganic activation servers to determine if the software license is still valid. Failure to connect to the activation servers for an extended period of time may deactivate the software until a connection to the activation servers can be re-established. Deactivation of the Software due to the inability to establish an online connection does not constitute a breach of this EULA on behalf of Hyperganic.
4. Software demo releases are delivered to you as the End User in accordance with Section 6 of this EULA.
5. Support and maintenance of your licensed Software are not included in this EULA and are the subject of a separate agreement ("Service Agreement") or the Additional Terms.

Section 3 | Extent of the Right of Use

1. We (and our licensors) remain the sole owner of all right, title, and interest in the Services or Software. Except as stated in this EULA, we do not grant you any rights to patents, copyrights, trade secrets, trademarks, or any other rights in respect to the items in the Services or Software. We reserve all rights not granted under this EULA.
2. You are granted, subject to all of the terms and conditions of this EULA, a personal, non-exclusive, non-transferable license entitling you to use the Software in accordance with this EULA on all of your hardware within the region applicable to you. If you are holding a single-user license, you are not entitled to install and use the Software on more than one computer system at the same time. If you have a single user license and you replace the hardware, you must delete the previously installed Software from the originally used hardware.
3. The use of the software outside of the end user's permitted region is not permitted.
4. You may not (a) Share your account information (except with an authorized account administrator); or (b) use another person's account. Your account administrator may use your account information to manage your use and access to the Services and Software.
5. The Software or Service may require you to take certain steps to activate the Software or Service or validate your subscription. Failure to activate or register the Software or Service, failure to validate the subscription, or a determination by us of fraudulent or unauthorized use of the Software or Service may result in reduced functionality, inoperability of the Software or Service, or a termination or suspension of the license.
6. If you have purchased updates or upgrades of a previous version of the Software, you are entitled to use these updates or upgrades only if you are the holder of a valid license for this previous version of the Software.
7. The right to use the Software includes the right to copy the Software where necessary. Necessary copying includes installation of the Software from the data storage device or a download medium – e. g., the Internet – onto a hard drive or mass storage device and the loading of the Software into the RAM or cache.
8. You may not assign or otherwise transfer the EULA or your rights and obligations under the EULA, in whole or in part, without our written consent, and any such attempt will be void. We may transfer our rights under the EULA to a third party.
9. The End User is not entitled to rent out, lease, or lend the Software to third parties without Hyperganic's permission, especially for purposes directly or indirectly related to any form of compensation.
10. Except as expressly permitted in Additional Terms, you may not
 - 10.1. modify, port, adapt or translate any portion of the Services or Software;
 - 10.2. reverse engineer, decompile, disassemble or otherwise attempt to discover the source code or any portion of any Service or Software;
 - 10.3. use or virtualize features of the Software or Service separately;
 - 10.4. work around any technical restrictions or limitations in the software;
 - 10.5. use the software as server software, for commercial hosting, make the software available for simultaneous use by multiple users over a network, install the software on a server and allow users to access it remotely, or install the software on a device for use only by remote users;
 - 10.6. use the Software to construct any kind of database;
 - 10.7. use any data mining or similar data gathering and extraction methods in connection with the Software or Services.
11. If the laws of your jurisdiction give you the right to decompile the Software to obtain information necessary to render the licensed portions of the Services or Software interoperable with other software, you must first request such information from us. We may, in our discretion, either provide such information to you or impose reasonable conditions, including a reasonable fee, on your decompilation of the Services or Software to ensure that our and our suppliers' proprietary rights in the Services and Software are protected.
12. You must be 13 or older to register for an individual Hyperganic ID. Schools that participate a primary and secondary education program may issue a child under 13 a Hyperganic ID, but only after obtaining express parental consent.
13. You must comply with all domestic and international export laws and regulations that apply to the software, which include restrictions on destinations, end users, and end use.

Section 4 | Special Licenses

Hyperganic may issue Software licenses under models defined by separate Additional Terms or by a Hyperganic Service Level Agreement. These licenses may include, but are not limited to: Server licenses, bulk runtime licenses and headless processing licenses.

Section 5 | Software for Educational Use

1. Software for educational use may neither directly nor indirectly be used for commercial, professional, or other profit-oriented purposes.
2. If the software license is purchased as software for educational use for students, this EULA will apply according to the terms below:

3. Software for educational use licenses are issued only to the persons listed in Section 1. Students therefore have to be actively enrolled in at least one course at an entitled educational institution listed in Section 1. If the Software is explicitly intended for established educational purposes, Hyperganic grants you the right to use this Software only for these established educational purposes. Only a qualified circle of users may use the Software. If you have doubts regarding your eligibility for a qualified circle of users, you must contact Hyperganic immediately.
4. Use of the Software for purposes other than those named in Section 5.3 is not permitted; in particular, resale of the Software and the accompanying rights for purposes other than the established educational purposes is not permitted.
5. Selling, renting out, leasing, or lending for profit Software, whose right to use is limited to educational purposes, or to persons who are not entitled to its use for educational purposes according to Section 5.3, is not permitted.
6. This license will only remain in effect as long as you are an enrolled full-time student or a teacher at an educational institute listed in Section 1. This license will expire when you are no longer an enrolled full-time student or a teacher at an educational institute listed in Section 1. This license will also expire if you breach any of the provisions of this license. When the license expires, you agree to destroy all copies of the Software.
7. A condition for granting the license is proof of education or teaching activity at one of said educational institutions. Accepted as proof are a valid student ID card and / or matriculation certificate and a proof of teaching activity on letter paper of the educational institute and additionally a photocopy of a national ID card / passport. All forms of proof must be valid at the time of registration or when the order is placed.
8. If you obtain the Software for educational use via the download Hyperganic makes available online for free, you recognize that the identifying information of the computer system used will be sent to Hyperganic during installation. Hyperganic affirms that the hardware's identifying information will not be made accessible to third parties and will only be used to generate and validate the necessary activation code.
9. Software provided for educational purposes is personalized and may only be used in accordance by the end users defined in section 1. These users are only permitted to use the software personally on their own computers within and outside of the educational institution at which they teach or are a student. The educational institution itself is not permitted to use the software for educational purposes but must license a classroom license of the software with Hyperganic.
10. This offer is valid until Hyperganic terminates it. Hyperganic reserves the right to terminate the offer at any time.
11. Software for educational use is only delivered to persons having unlimited legal competency. Minors need a written consent of a parent or legal guardian before placing an order.
12. You may install and use the Educational Version only in the country where you are qualified as an educational user.

Section 6 | Demo Versions / Beta Releases

1. Subject to the terms and conditions of this EULA, Hyperganic grants you a nonexclusive, nontransferable license to use Hyperganic Service and or Software for a period designated by Hyperganic for the purpose of testing and evaluating the Service and or Software.
2. You agree that you will at all times will hold in strict confidence and not disclose Confidential Information (as defined below) to any third party except as approved in writing by Hyperganic and will use the Confidential Information for no purpose other than evaluating the Software and or Service. You shall only permit access to Confidential Information to those of your employees having a need to know and who have signed confidentiality agreements or are otherwise bound by confidentiality obligations at least as restrictive as those contained herein. "Confidential Information" means all non-public materials and information provided or made available by Hyperganic to you, including products and services, information regarding technology, know-how, processes, software programs, research, development, financial information and information Hyperganic provides regarding third parties.
3. Your obligations under this EULA with respect to any portion of the Confidential Information shall terminate when you can document that: (a) it was in the public domain at the time it was communicated to you; (b) it entered the public domain subsequent to the time it was communicated to you through no fault of yours; (c) it was in your possession free of any obligation of confidence at the time it was communicated to you; (d) it was rightfully communicated to you free of any obligation of confidence subsequent to the time it was communicated to you; or (e) it was developed by employees or agents of yours who had no access to any information communicated to you. After your evaluation of the Service and or Software is complete, or upon request of Hyperganic, you shall promptly return to Hyperganic all documents, notes and other tangible materials and return or certify the destruction of all electronic documents, notes, software, data, and other materials in electronic form representing the Confidential Information and all copies thereof.
4. You agree that nothing contained in this EULA shall be construed as granting any ownership rights to any Confidential Information disclosed pursuant to this EULA, or to any invention or any patent, copyright, trademark, or other intellectual property right. You shall not make, have made, use or sell for any purpose any product or other item using, incorporating or derived from any Confidential Information or the Service and or Software. You will not modify, reverse engineer, decompile, create other works from, or disassemble any software programs contained in the Confidential Information or the Service.
5. If the Software or Service is a beta release or demo offering it may not be at the level of performance of a commercially available product offering. The Software may not operate correctly and may be substantially modified prior to first commercial release, or at Hyperganic's option may not be released commercially in the future. THE SERVICE AND OR SOFTWARE AND DOCUMENTATION ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, AND HYPERGANIC AND ITS LICENSORS DISCLAIM ALL WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE. NO ORAL OR WRITTEN ADVICE OR CONSULTATION GIVEN BY HYPERGANIC, ITS AGENTS OR EMPLOYEES WILL IN ANY WAY GIVE RISE TO A WARRANTY. THE ENTIRE RISK ARISING OUT OF THE USE OR PERFORMANCE OF THE SERVICE AND OR SOFTWARE REMAINS WITH YOU.
6. HYPERGANIC AND ITS LICENSORS SHALL NOT BE LIABLE FOR LOSS OF USE, LOST PROFIT, COST OF COVER, LOSS OF DATA, BUSINESS INTERRUPTION, OR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, SPECIAL, OR EXEMPLARY DAMAGES ARISING OUT OF OR RELATED TO THE SERVICE AND OR SOFTWARE OR THIS EULA, HOWEVER CAUSED AND REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) STRICT LIABILITY, OR OTHERWISE, EVEN IF SUCH PARTIES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL HYPERGANIC'S AGGREGATE CUMULATIVE LIABILITY FOR ANY CLAIMS ARISING OUT OF OR RELATED TO THIS EULA EXCEED \$50.00 OR THE AMOUNT YOU ACTUALLY PAID HYPERGANIC UNDER THIS EULA (IF ANY).
7. Your obligations under this EULA shall survive any termination of this EULA. This EULA shall be governed by and construed in accordance with the laws of Germany. You hereby agree that breach of this EULA will cause Hyperganic irreparable damage for which recovery of damages would be inadequate, and that Hyperganic shall therefore be entitled to obtain timely injunctive relief under this EULA, as well as such further relief as may be granted by a court of competent jurisdiction. You will not assign or transfer any rights or obligations under this EULA without the prior written consent of Hyperganic.
8. Every direct or indirect use of demo versions for profit purposes is prohibited. You recognize that Hyperganic will be notified of your use of a demo version during installation. It may neither directly nor indirectly be used for educational, teaching or training purposes.
9. Using a demo version requires that you carry out an up-to-date backup of your data before and during evaluation of the demo version. If data and / or work results are created during the test / evaluation phase, backing up this data and / or work is at your own risk.
10. The demo version may be used for a limited time period. If you decide to register the demo version you recognize that the identifying information of the computer system used will be sent to Hyperganic during registration.

11. During this test / evaluation phase, Hyperganic may offer you for a fee all services – particularly any kind of support – you may call upon when obtaining a license from Hyperganic.

Section 7 | Updates and Upgrades

1. Updates and upgrades for the Software may only be obtained with a valid license for the previous release. We may modify, update, or discontinue the Services or Software (including any portions or features) at any time, without liability to you or anyone else. However, for changes to paid offerings, we will make reasonable efforts to notify you of the modification, update or discontinuation. If we discontinue the Services or Software in its entirety, we will also allow you a reasonable time to download your Content and we may provide you with a pro rata refund for any unused fees for that Service or Software that you prepaid.
2. Due to the ongoing development of Hyperganic's Software products, current and previous versions of Hyperganic's Software may differ, possibly limiting the Software's usability. You recognize that developmental differences do not constitute a defect in the item and that as long as the Software is still under development, adjustments may be necessary and work results, as a matter of prudent risk management, should be backed up.
3. After installation of the update or upgrade, the previous release may only continue to be used if the updates or upgrades and all previous releases are installed on the same end device, the previous releases or copies thereof are not transferred to a third party device or some other device, and you recognize that all support duties Hyperganic may have with respect to the previous release may expire upon provision of the updates or upgrades.
4. Hyperganic employees and/or appointed contractors are trained and committed to exercise reasonable efforts to safeguard your hardware, servers, and loaded software and data by observing standard protection procedures in the performance of their work. You are responsible for performing any required backup, data protection, and hardware and server maintenance before the commencement of any work, upgrade or update by Hyperganic, its employees, and/or appointed contractors.

Section 8 | Violation of Rights of Use

1. You must not misuse the Services or Software. For example, you must not:
 - 1.1. access or attempt to access the Services or Software by any means other than the interface we provide or authorize;
 - 1.2. circumvent any access or use restrictions put into place to prevent certain uses of the Services or Software;
 - 1.3. share Content, or engage in behavior that violates anyone's intellectual property rights ("Intellectual Property Rights" means copyright, trademark, trade dress, patent, trade secret, unfair competition, right of privacy, right of publicity, and any other proprietary rights);
 - 1.4. upload or share any Content that is unlawful, harmful, threatening, abusive, tortious, defamatory, libelous, vulgar, lewd, profane, invasive of another's privacy, or hateful;
 - 1.5. impersonate any person or entity, or falsely state or otherwise misrepresent your affiliation with a person or entity;
 - 1.6. attempt to disable, impair, or destroy the Services and Software;
 - 1.7. upload, transmit, store, or make available any Content or code that contains any viruses, malicious code, malware, or any components designed to harm or limit the functionality of the Services or Software;
 - 1.8. disrupt, interfere with, or inhibit any other user from using the Services or Software (such as stalking, intimidating, or harassing others, inciting others to commit violence, or harming minors in any way);
 - 1.9. violate applicable law (including, but not limited to, where applicable, COPPA).
2. If Hyperganic's rights of use are violated, Hyperganic has the right to terminate this EULA without liability, and with no effect on any claims for damages. In such a case, you must return all Software, including all accompanying materials. If back-up copies have been made or copies have been made based on a copying license, these copies must be destroyed and the Software installed on the hardware in question must be deleted. You must provide Hyperganic with proof of deletion and destruction in written form upon first request.
3. The software contains technical functions for the protection of Hyperganic's usage rights against unauthorized use. The use of the software is monitored and checked to ensure that the software is being used in accordance with this agreement and authorized usage rights. In particular, the software gathers data about the system and network on which the software is installed and used as well as about the dates and number of duplications, use and access. This data can be sent to Hyperganic via the software's communication ports using network connections and the Internet. The end user agrees that Hyperganic processes and uses this data to protect and enforce their usage rights. The end user is not permitted to remove or circumvent these protective functions and is not permitted to use the software without these protective functions in place. Disabling the User Participation options will not disable this function.
4. If the end user breaches this agreement or Hyperganic's usage rights or Hyperganic reasonably determines they will do so, Hyperganic can prevent the further usage of the installation and installation of updates. Hyperganic reserves the right to file civil or criminal charges.
5. You shall establish and keep accurate records of accounts to calculate license fees due including the method of calculating the same. You will by your own record complete and update Hyperganic's summary statement format on account activity.
6. Your computation of any license fees due to Hyperganic under this Agreement will be deemed conclusive and correct, unless Hyperganic notifies you in writing of any error in the computation of such license fees disclosed by you. Hyperganic has the right to mandate, upon written request to you and no more than once for each calendar year and at Hyperganic's expense (except as provided below), a certified accounting firm (to be selected by Hyperganic) may inspect your records on which your reporting statements are based, provided that such accounting firm will hold such records in strict confidence except as necessary to report to Hyperganic and to you on the accuracy of your reports. If such an inspection shows that you have understated the license fees due to Hyperganic for any calendar year, you will pay, in addition to the amount due, customary fees and expenses charged by the accounting firm for such inspection and a surcharge of 25% percent on the amount due.

Section 9 | Non-availability of Service

1. Delays in delivery or services due to force majeure or events that make delivery considerably more difficult, unreasonable or impossible for Hyperganic more than temporarily – this particularly includes interruptions of operations, strikes, lockouts, official directives, shortages of raw materials, problems with power supply, mobilization, riots, etc., including if they affect Hyperganic's suppliers or their sub-suppliers – are not Hyperganic's responsibility even if legally binding periods and deadlines have been set. Such events entitle Hyperganic to delay the delivery or service for the duration of the impediment plus a reasonable run-up period or to withdraw from the EULA fully or partially due to the as yet unfulfilled performance.
2. When the Services / Software provide storage, we recommend that you also back up your Content elsewhere regularly. We may create reasonable technical limits on file size, storage space, processing capacity, and other technical limits. We may suspend the Services until you are within the storage space limit associated with your account.

3. Webpages describing the Services are accessible worldwide, but this does not mean all Services or service features are available in your country or that user-generated content available via the Services is legal or available in your country. Access to certain Services (or certain Service features, Sample Files or Content Files) in certain countries may be blocked by us or foreign governments. It is your responsibility to make sure your use of the Services is legal or available where you use them. Services are not available in all languages.

Section 10 | Warranty

1. Unless stated in the Additional Terms, the Services and Software are provided "AS-IS." To the maximum extent permitted by law, we disclaim all warranties, express or implied, including the implied warranties of non-infringement, merchantability, and fitness for a particular purpose. We make no commitments about the content within the Services. We further disclaim any warranty that (a) the Services or Software will meet your requirements or will be constantly available, uninterrupted, timely, secure, or error-free; (b) the results obtained from the use of the Services or Software will be effective, accurate, or reliable; (c) the quality of the Services or Software will meet your expectations; or (d) any errors or defects in the Services or Software will be corrected.
2. We specifically disclaim all liability for any actions resulting from your use of any Services or Software. You may use and access the Services or Software at your own discretion and risk, and you are solely responsible for any damage to your computer system or loss of data that results from the use of and access to any Service or Software. By uploading your Content to the Services or Software, you agree that you have: (a) all necessary licenses and permissions to use and Share your Content; and (b) the rights necessary to grant the licenses in the EULA. You will indemnify us and our subsidiaries, affiliates, officers, agents, employees, partners, and licensors from any claim, demand, loss, or damage, including reasonable attorneys' fees, arising out of or related to your Content, your use of the Services or Software, or your violation of the EULA.
3. Hyperganic shall be liable without limitations in case of intent and gross negligence, in case of injuries to life, body or health, pursuant to the terms of the German Product Liability Act, and under a guarantee granted by Hyperganic. Hyperganic's liability for slightly negligent breaches of a duty which is essential for the achieving of the purpose of the EULA (cardinal duty) shall be limited to such damage which was typical and foreseeable. Any other liability of Hyperganic is excluded. All other damage claims and expenses reimbursement claims become statute barred after a year from provision of the product release that was used at the time the damage was caused.
4. Hyperganic is not liable for damages of any kind incurred because you failed to install updates and / or upgrades, either for licensed Software provided free of charge or for purchased software licenses.
5. Hyperganic expressly advises against using multiple licensed versions of the Software on one computer system at the same time. Any warranty or liability for incompatibilities or resulting damages that may arise due to parallel installation of different licensed versions of the Software, especially non-usability of the licensed Software, is explicitly excluded.
6. In the case of slight negligence, the liability of Hyperganic for damage claims and expenses reimbursement claims – irrespective of the legal basis – shall be limited to a total maximum of EUR 25000 (in words twenty-five-thousand).
7. The liability for consequential and indirect damages such as lost profits, business interruption damage or lost savings is excluded.
8. Hyperganic assumes any guarantees, representations of qualities or of properties within the meaning of Section 443 of the German Civil Code only when they are identified explicitly in writing as "representation of quality", "representation of property" or "guarantees".
9. The provisions regarding the limitation of liability apply – irrespective of the legal basis – for all damage claims and expenses reimbursement claims including claims based on preliminary and collateral agreements.
10. Hyperganic shall not be liable for any delays resulting from circumstances or causes beyond its reasonable control, including, without limitation, fire or other casualty, act of God, strike or labor dispute, war or other violence, or any law, order or requirement of any governmental agency or authority.
11. Customer shall be responsible for ensuring that Customer has all relevant rights to patents and other third-party intellectual property rights, that are required to use the Product with the Printer. Customer shall be responsible for all regulatory processes to ensure the Product can legally be used with the Printer. Customer shall indemnify Hyperganic from all claims resulting from infringement of any third-party rights or violation of regulatory requirements.

Section 11 | Termination of this Contract

1. This EULA is concluded for an indefinite term. Either party may terminate the contract for cause without notice. Any material breach of the provisions of this EULA constitutes cause for termination. Termination of this EULA does not relieve you of any obligation to pay any outstanding fees.
2. If this EULA ends, Hyperganic is entitled to terminate the license, prohibit use of the Software, and discontinue support in the form of updates and / or upgrades.
3. If we terminate the EULA, or your use of the Service(s) for reasons other than for cause, we will make reasonable efforts to notify you at least 30 days prior to termination via the email address you provide to us with instructions on how to retrieve your Content. Unless stated in any Additional Terms, we may, at any time, terminate your right to use and access the Services or Software if:
 - 3.1. you breach any provision of the EULA (or act in a manner that clearly shows you do not intend to, or are unable to, comply with the EULA);
 - 3.2. you fail to make the timely payment of fees for the Services or Software, if any;
 - 3.3. you materially breach any provision of the EULA, and (i) the breach cannot be corrected; or (ii) we notify you of the breach and you fail to correct it within 14 days of the notice;
 - 3.4. you physically, verbally, or through other means abuse, threaten, bully, or harass us or our personnel (in such circumstances, we may alternatively suspend or restrict your access to the Services or Software);
 - 3.5. you have repeatedly made complaints in bad faith or without a reasonable basis, and continue to do so after we have asked you to stop (in such circumstances, we may alternatively suspend or restrict your access to the Services or Software);
 - 3.6. we are required to do so by law (for example, where the provision of the Services or Software to you is, or becomes, unlawful);
 - 3.7. we elect to discontinue the Services or Software, in whole or in part (such as if it becomes impractical for us to continue offering Services in your region due to change of law); or
 - 3.8. there has been an extended period of inactivity in your free account.

Section 12 | Third Party Rights

1. If Hyperganic renders or has rendered the contractual services in accordance with manufacturing descriptions, plans, drawings, user instructions, or other documents provided by you, you warrant that the performance of such services will not directly or indirectly violate any third party rights, especially intellectual property rights or copyrights, called property rights hereinafter.

2. In particular, lack of encumbrance by third party rights is not a required feature of the delivery or service to be rendered by Hyperganic. Hyperganic is not obligated to investigate conflicting rights of third parties independently. In the event of Section 12.1, you shall indemnify Hyperganic against any claims of third parties and will compensate Hyperganic for any damages incurred upon first request.
3. If, in the event of Section 12.1, a third party files a claim for discontinuation of further services, manufacture, or delivery of the contractual objects against Hyperganic based on a property right, a right of use, or a neighboring right, Hyperganic is entitled – without reviewing the legal situation – to terminate this EULA and to require reimbursement of expenditures already made from you.
4. Documents, objects, and the like delivered to Hyperganic that did not lead to a contract will be returned upon request if costs are reimbursed. Otherwise, Hyperganic is entitled to destroy them three (3) months after submitting the tender.
5. If the Software was delivered to you in return for payment of a license fee, Hyperganic reserves the right to dispute or settle claims against you due to violation of third party rights as specified by the provisions of 12.6 to 12.8 of this EULA.
6. The conditions for recovery based on violations of third party claims are as follows:
 - 6.1. you must immediately inform Hyperganic in writing as you become aware of a possible claim;
 - 6.2. you must cooperate with Hyperganic in disputing the claim, however you recognize in advance that Hyperganic reserves the right to take the lead in disputing the claim.
7. In these case of executing the right to dispute or potentially settle the claim, Hyperganic will pay the costs of the defense or settlement, both in court and outside of court, if you have given proper notification. Under these circumstances, if there is a final legal court ruling, Hyperganic will also pay any claims for damages. Hyperganic reserves the right to acquire corresponding licenses or to modify the Software in such a manner that the violation of third party rights is no longer present.
8. In addition to the general limitation of liability effected in this EULA, liability for violations of third party rights is explicitly excluded if you or third parties acting on your behalf make changes to the Software which cause the violation of rights, do not follow the instructions in the documentation for the Software, and / or use the Software together with other software products or services of third parties whose use Hyperganic has not authorized.

Section 13 | Data Protection

1. Personal information is saved for the purposes of processing customer orders and ensuring the lawful use of the licensed software. To this end, the end user's personal information will be saved by Hyperganic in accordance with the European General Data Protection Regulation (GDPR).
2. In as far as goods are ordered online, the forwarding of personal information might be necessary to complete the order. This information will only be saved and / or forwarded for purposes necessary for completing the order. Third parties to whom information is forwarded for order processing must also abide by the legal provisions of the GDPR with regard to the processing of personal information. If Hyperganic is obligated to forward personal information due to a court order, the personal information will only be forwarded to authorized parties. Furthermore, the forwarding of personal information to third parties for general advertising or marketing research purposes is not permitted without the expressed consent of the parties concerned.
3. If the software displays the function 'Send information to Hyperganic' or similar wording, the end user can enable or disable this function during installation, registration or use of the software. Where permitted by law, this function may be turned on by default, and the information is associated with your Hyperganic account. If this function is enabled, the existing network connection will be used from time to time to send software and hardware information to Hyperganic automatically. This information will in particular be the version and its regional and language settings for the software, system information about the hardware used and problems occurring with the software. The use of Hyperganic's online services, where the upload of content may be necessary is independent of this functionality
4. Hyperganic saves, processes and uses the information sent for statistical purposes and to improve products and services and will only forward this information to third parties or put it to a different use with the expressed consent of the end user.
5. If you do not notify us of updates to your payment method, to avoid interruption of your service, we may participate in programs supported by your card provider to try to update your payment information. You authorize us to continue billing your account with the updated information that we obtain.

Section 14 | Set-off

You are only entitled to off-set claims by Hyperganic if your counter-claims have been found to be legally valid or are uncontested. You may not exercise rights of retention based on claims other than those based on this EULA.

Section 15 | Miscellaneous

1. This EULA governs all rights and duties between Hyperganic and you. Amendments and additional agreements must be in written form.
2. Headings used in this EULA or Additional Terms are provided for convenience only and will not be used to construe meaning or intent.
3. If a clause of this EULA is or becomes invalid or if this EULA has a gap, the validity of the other clauses shall remain unaffected. In place of the invalid clauses, the statutory provision that come as close as possible to the invalid ones shall apply. If no respective statutory provision exists, a clause that comes as close as possible to the economic purpose desired by the parties shall be considered agreed; the same shall apply in case of a gap in the EULA.
4. This EULA is subject to the laws of the Federal Republic of Germany. The UN Convention on Contracts for the International Sale of Goods shall not apply.
5. The place of fulfilment and jurisdiction for all disputes between the parties arising from and in connection with this EULA shall be, as far as permitted, Munich.
6. The most recent valid version of the General Delivery, Service, and Payment Terms shall apply (AGB).
7. You may send notices to us at the following address: Hyperganic Technologies AG, Georgenstr. 38, 80799 München, Germany, Attention: General Counsel and legal@hyperganic.com
8. If this EULA is written in several languages, the English version is binding and the other versions are informational only. The English version shall have priority over the other versions in the case of discrepancy or inconsistency.