

# General Terms and Conditions Hyperhost B.V.

These General Terms and Conditions apply to all offers and quotes from Hyperhost B.V. with respect to Services and are an integral part of every Agreement between Hyperhost B.V. and Customer. Provisions or conditions imposed by the Customer that derogate from, or are not present in, these General Terms and Conditions, are only binding for Hyperhost B.V. if Hyperhost B.V. expressly accepts these in Writing.

Capitalised terms must be understood as defined in Article 1 of these terms and conditions.

## Article 1. Definition of used terminology

In these General Terms and Conditions, the following terms should be understood as defined herewith.

- 1.1. **Hyperhost:** Hyperhost B.V., established at Groningen, the Netherlands, registered at the Chamber of Commerce of the Netherlands under 70572321.
- 1.2. **Website of Hyperhost:** the website of Hyperhost, available in <https://hyperhost.io>.
- 1.3. **Subscription:** the Agreement where one or more parties bind themselves for a certain period to provide services continuously (such as a hosting agreement for 12 months).
- 1.4. **Account:** the right to access to a user interface that Customer can use to manage and configure (certain aspects of) the Services, as well as the information stored by Customer.
- 1.5. **General Terms and Conditions:** the provisions in the present document.
- 1.6. **Customer:** the natural or legal person whom Hyperhost concludes the Agreement with, including parties negotiating with Hyperhost to that end, as well as their (authorised) representatives or agents, assignees and heirs.
- 1.7. **Services:** the products and/or services that Hyperhost shall deliver to Customer pursuant to the Agreement.
- 1.8. **Materials:** all works, such as websites and (web) applications, software, house styles, logos, flyers, brochures, leaflets, lettering, advertisements, marketing and/or communication plans, concepts, images, texts, sketches, documentation, advices, reports and other products of the mind, including preparatory materials thereof and (whether or not coded) files or data carriers on which the Materials are stored.
- 1.9. **Agreement:** every agreement between Hyperhost and Customer on the basis of which Hyperhost delivers Services to Customer.
- 1.10. **Writing:** paper writings, e-mail, communication by fax, to the extent the identity of sender and the integrity of the message can be sufficiently established.
- 1.11. **High Risk Applications:** applications where errors in the Services may lead to death or severe injuries, severe environmental damage or the loss of (personal) data with very high consequential damage. Examples of High Risk Applications are: transport systems where a mistake can result in trains to derail or planes to crash; medical systems where a mistake can result in a patient to receive no treatment or the wrong treatment; systems on which a substantial part of the population relies for the provision of crucial government services, such as DigiD (in the Netherlands); systems in which (a lot of) medical data or other special categories of data within the meaning of the General Data Protection Act, or otherwise highly sensitive data, are stored.

## Article 2. Conclusion of agreements

- 2.1. Customer can request the Services through the Website of Hyperhost. The Agreement is regarded as concluded if an email, containing the confirmation and acceptance of the request, is sent – whether or not by automatic means – to Customer.
- 2.2. If Customer is a consumer, Customer may terminate the agreement free of charge within a period of one month from the moment the order is made.

## Article 3. Execution of the agreement

- 3.1. After the Agreement is concluded, Hyperhost shall make best efforts and apply sufficient care and craftsmanship to fulfil the agreement.
- 3.2. Hyperhost shall make efforts to effect qualitatively good and uninterrupted availability of the Services and their associated systems and networks, and to provide the Customer with access to data stored therein. However, Hyperhost does not make any warranties on the quality or availability, unless agreed otherwise in the quotation referring to a Service Level Agreement (SLA).
- 3.3. Any terms stated or provided by Hyperhost for the delivery of Service shall be merely indicative, except for the terms stated in the SLA that can only be regarded as obligations of result.
- 3.4. Hyperhost is entitled to hire third parties to carry out certain work, if that is necessary for the proper execution of the Agreement. Any unexpected additional costs associated herewith shall be borne by Customer.

only if agreed so in advance and in Writing. These General Terms and Conditions also apply to work carried out by third parties in the context of the Agreement.

3.5. If such is agreed, Hyperhost shall provide Customer access to an Account. The Account shall be accessible by entering a username and password. Every action through Customer's account or through an Account made by Customer shall fall under the responsibility of Customers and shall be at Customer's own risk. If Customer suspects or should reasonably suspect that an Account is being abused, Customer shall report this to Hyperhost in order to be able to take measures.

3.6. Hyperhost shall be available to provide a reasonable level of customer support remotely by telephone and e-mail, during normal office hours, unless the applicable SLA states otherwise.

3.7. All changes to the Agreement, either at the request of Customer or as a result of changes of circumstances that require a different execution, shall be regarded as additional work, if they come with additional costs. If this results in less work, this will be deducted from the costs. This will be invoiced to Customer accordingly.

#### **Article 4. Obligations of Customer**

4.1. Customer shall make best efforts to do whatever it reasonably takes to allow for a timely and correct execution of the Agreement. More specifically, Customer shall make sure to provide all data to Hyperhost of which Hyperhost has indicated that they are necessary for the delivery of the Services or of which Customer should reasonably know that they are necessary for that purpose. The term in which Hyperhost should execute the agreement shall start only after Hyperhost has received all requested and necessary data.

4.2. If Customer knows or expects that Hyperhost should take certain (extra) measures to be able to fulfil its obligations, Customer shall notify Hyperhost without delay. For example, this obligation applies where Customer knows or should know that an extraordinary peak in the workload of the systems of Hyperhost will occur, that are likely to cause the unavailability of the Services. This applies especially where Customer knows that Services are also delivered to other parties through the same systems as Hyperhost uses to deliver Services to Customer. After such warning, Hyperhost shall make all efforts to prevent the unavailability of Services. All reasonable additional costs made in this context shall be borne by Customer, unless agreed otherwise in Writing.

4.3. Customer may use the Services for High Risk Applications

4.4. If Customer needs any permit or other permission from a government agency or third party for the intended use of the Services, it is Customer's responsibility to obtain such permits or authorisation. Customer guarantees Hyperhost that it has all permits and permissions required for the intended use of the Services by Customer.

#### **Article 5. Rules of conduct and Notice and Takedown**

5.1. Customer is prohibited to use the Services to violate Dutch or other regulation that Customer or Hyperhost is subject to, or to violate rights of others.

5.2. Hyperhost prohibits that the Services are used to publish or disseminate Materials (whether they are lawful or not) that:

- are evidently intended to support others to violate rights of third-parties, such as website containing (exclusively or predominantly) hacktools or explanations of cybercrimes that is evidently intended to enable the reader to execute the described criminal activities (and not to defend himself against such);
- are evidently libelous, slanderous, abusive, racist, discriminatory or inciting hatred;
- contain child pornography or bestiality pornography or are evidently intended to help other find such materials;
- constitute a violation of the privacy of third parties, which also includes the dissemination of personal data of third parties without any permission or necessity and the approaching of third parties with unsolicited communication;
- contain hyperlinks, torrents or references to (places containing) materials that evidently infringe copyrights, neighbouring rights or portrait rights;
- contain unsolicited commercial, charitable or idealistic communication;
- contain malware such as viruses or spyware.

5.3. The dissemination of pornographic Materials using the Services is allowed to the extent this does not constitute a violation of these General Terms and Conditions.

5.4. Customer shall refrain from hindering other customers and internet users or harming the systems or networks of Hyperhost or other customers. Customer is prohibited to execute processes or programs, whether or not through the systems of Hyperhost, of which Customer knows or should reasonably know that these may

cause damage or hindrance to Hyperhost, its customers or internet users.

5.5. If according to Hyperhost hindrance, damage or other dangers arise to the functioning of the systems or networks of Hyperhost or third parties and/or service delivery through the internet, Hyperhost shall be entitled to take all measures that it reasonably deems necessary to ward off or prevent such danger. More specifically, such danger may exist of excessive transmission of e-mails or other data, denial-of-service attacks, poorly secured systems or activities of viruses, Trojans or similar software. .

5.6. If Hyperhost receives a complaint on violation of this Article by Customer, or if Hyperhost establishes that there is such violation, Hyperhost shall notify Customer of such complaint or violation as soon as possible. Customer shall respond as soon as possible, after which Hyperhost shall decide how to deal with it. In exceptional cases, where the complainer has requested not to forward the complaint to Customer or Hyperhost established that the violation is evident, Hyperhost is not obliged to forward the complaint.

5.7. If Hyperhost establishes that there is a violation, it shall block access to the Material(s) concerned, without removing the Material(s) definitely (if this proves technically impossible, Hyperhost shall create a backup). Hyperhost shall make efforts to not affect other Materials in that process. Hyperhost shall notify Customer on the taken measures as soon as possible.

5.8. At all times, Hyperhost shall be entitled to report any detected illegal activities.

5.9. Although Hyperhost aspires to act in the most reasonable, careful and adequate way after complaints about Customer, Hyperhost shall never be obliged to compensate any damages resulting from the measures taken in the context of this Article.

5.10. Customer is allowed to resell the Services, but only bundled with or as part its own products or services without disclosing the name of Hyperhost as supplier or subcontractor. Customer shall indemnify Hyperhost from any claims from Customer's customers. Hyperhost is also entitled to take measures in the context of this Article for violations of these General Terms and Conditions by Customer's own customers.

#### **Article 6. Domain name applications**

6.1. Application for, and approval and use of domain names shall be subject to the applicable rules of the registering organisations, such as the Stichting Internet Domeinregistratie Nederland for .nl domain names. Such organisations shall decide whether domain names are approved or not. Hyperhost solely acts as a mediator and does not guarantee the acceptance of any application.

6.2. Only from confirmation by Hyperhost, which states that the requested domain name is registered, Customer can take notice of such registration. An invoice for the costs of registration cannot be regarded as a confirmation of registration.

6.3. Customer indemnifies Hyperhost from all damages related to (the use of) a domain name by or on behalf of Customer. Hyperhost is not liable for Customer's loss of (user) rights in the domain name or for cases where third parties are awarded with or have applied for the domain name in the meantime.

6.4. Customer shall comply with the rules of the registering organisations for application, approval and use of the domain name. Hyperhost shall refer to these rules in the course of the registration procedure.

6.5. Hyperhost shall be entitled to disable or make the domain name inaccessible, or to put it in its own name if Customer is demonstrably failing to comply with the Agreement, but only for the period that Customer is in default and only after Hyperhost has sent to Customer a notice of default in writing.

6.6. In case of termination of the Agreement due to default of Customer, Hyperhost shall be entitled to terminate the Customer's domain name registration respecting a notice period of two months.

#### **Article 7. Storage and data limits**

7.1. Hyperhost is entitled to set a maximum to the storage capacity or monthly data traffic that Customer may or can use in the context of the Services.

7.2. The limits are safeguarded by the system's functioning and cannot be exceeded, unless there is a hack or error. If such hack or error is caused by Customer or attributable to Customer, Hyperhost is entitled to charge the exceeded limits to Customer.

7.3. Hyperhost shall not be liable for any consequences of the inability to send, receive, store or change data in case the applicable limit for storage capacity or data traffic is exceeded by Customer.

#### **Article 8. Intellectual property rights**

8.1. All intellectual property rights developed or made available by Hyperhost in the context of the Agreement shall be vested exclusively in Hyperhost or its licensors.

8.2. Customer only has the user rights or other rights that are granted under these General Terms and Conditions or the Agreement, or those that are otherwise explicitly granted in Writing. In other cases, Customer shall not reproduce the Materials or make the Materials available to the public. The foregoing does not apply where it is evident that Hyperhost has mistakenly refrained from granting Customer such rights

explicitly. However, access to or sharing of source codes of Materials shall always be subject to an explicit license.

8.3. Unless agreed otherwise in Writing, Customer is not allowed to remove or modify any notice of copyrights, trademarks, trade names or other intellectual property rights in these Materials, including indications of the confidential nature and secrecy of the Materials.

8.4. Hyperhost is allowed to take technical measures to protect its Materials. If Hyperhost has protected its Materials through such technical measures, Customer is prohibited to remove or circumvent such measures, except where mandatory law provides otherwise.

#### **Article 9. Prices**

9.1. Unless specified otherwise, and unless Customer is a consumer, all prices stated by Hyperhost exclude VAT and other levies imposed by the government.

9.2. If a price is based on data provided by Customer and these appear to be incorrect, Hyperhost is entitled to adjust the prices accordingly, even after the Agreement is concluded.

9.3. If the Agreement is a Subscription, Hyperhost is entitled to modify the prices at any time.

9.4. Price changes are subject to the same conditions and procedures as changes in the Services and in these General Terms and Conditions.

#### **Article 10. Payments**

10.1. Hyperhost shall invoice the payable amounts to Customer. Hyperhost may issue electronic invoices. Hyperhost is entitled to invoice amounts that are due periodically prior to the delivery of Services.

10.2. The payment term for an invoice is fourteen days after the invoice date, unless agreed otherwise in Writing.

10.3. If Customer has not paid the invoice within fourteen days after the payment term has lapsed, Customer is automatically in default.

10.4. If Customer is in default, this shall have the following consequences:

- A statutory interest is due on the outstanding invoice;
- Websites and other Materials hosted by Customer may, without further warning, be made inaccessible until the outstanding amounts, interest and other payable amounts are paid.

10.5. Customer is not allowed to invoke suspension, set-off or deduction, unless Customer is a consumer.

10.6. If Customer fails to comply with any of the obligations in the Agreement, Hyperhost is, without sending Customer a notice of default, entitled to take back delivered goods in addition to the delivered Services, without prejudice to the right of Hyperhost to compensation for damage, lost profits and interest.

#### **Article 11. Liability**

11.1. In the context of the conclusion and execution of the Agreement, Hyperhost is not liable except for the cases stated below, and limited to the maxima stated therewith. However, in case where the SLA's compensation scheme, which constitutes a penalty clause, applies, the payment thereof shall replace the compensation for the actual damage that arises from violation of the norms in the SLA.

11.2. The total liability of Hyperhost for damages suffered by Customer arising from attributable shortcomings by Hyperhost in complying with the obligations of the Agreement is limited, per event or series of coherent events, to an amount equal to the total payable amounts (excluding VAT) that Customer has paid under the Agreement until the moment the damage has occurred or, if the Agreement is concluded for a term longer than three months, to an amount equal to the payments that Customer has made in the last three months. The aforementioned shortcomings also include each shortcoming in complying with the warranty agreed with Customer, or any wrongful action by Hyperhost, its employees or hired third parties. In no case shall the total compensation for direct damages amount to more than €1,000 (THOUSAND EUROS) (excluding VAT).

11.3. Hyperhost is explicitly not liable for:

- a) damages arising from measures taken by Hyperhost in good faith, but that has nevertheless appeared to be wrongly imposed;
- b) damages arising from unavailability of the Services, loss of data or breaches of technical or organisational security measures, and
- c) indirect damages, consequential damages, lost profits, lost savings and damages arising from business interruptions.

11.4. The liability of Hyperhost for attributable shortcomings in complying with the Agreement only arises if Customer puts Hyperhost in default without delay and in Writing, giving a reasonable term to redress the shortcomings, and if the attributable shortcomings of Hyperhost remain after this term. Hyperhost shall receive

the notice of default within fourteen days after the damage has been discovered.

11.5. The exceptions to and limitations of liability as stated in this Article shall lapse if the damages is the result of intention or deliberate recklessness of the management of Hyperhost.

11.6. Customer is liable to Hyperhost for damages arising from attributable errors or shortcomings by Customer. Customer indemnifies Hyperhost against claims concerning the use of the Services by Customer or with its permission in a manner not complying with the rules of conduct in these General Terms and Conditions. This indemnification also applies to persons who are not employees of Customer, but who nevertheless use the Services under the responsibility of or with permission of Customer.

#### **Article 12. Force majeure**

12.1. Parties cannot be bound to any obligation in the Agreement in case of force majeure reasonably renders the compliance with an obligation reasonably impossible, if such circumstance was not or should not have been foreseeable at the time the Agreement was concluded.

12.2. Force majeure must be understood to include (but shall not be limited to): interruptions of public infrastructure normally available to Hyperhost on which the delivery of Services depend, but which are beyond the factual or contractual control of Hyperhost, such as the functioning of IANA, RIPE or SIDN, and all networks in the internet that Hyperhost has not a contractual relation with; interruptions in the infrastructure and/or Services of Hyperhost caused by cyber crimes, such as (D)DOS attacks or (un)successful attempts to circumvent the protection of networks or systems; shortcoming of suppliers of Hyperhost, that Hyperhost could not foresee and where Hyperhost cannot hold the supplier liable, for example because there was a case of force majeure; defects in things, equipment, programs or other source materials which the Customer has prescribed to use; unavailability of personnel (because of illness or other causes); measures taken by the government; strikes; war; terrorist attacks and domestic disturbances.

12.3. If a case of force majeure continues for more than three months, each party is entitled to terminate the Agreement in Writing. In such case, any performance already made on the basis of the Agreement shall be paid in proportion to the performance, without the parties being obliged to pay any other amount.

#### **Article 13. Secrecy**

13.1. The parties shall treat confidentially any information that they provide to each other before, during or after performance of the agreement if said information is marked as confidential or if the receiving party knows or should reasonably suspect that the information was intended to be confidential. The parties shall also impose this obligation on their employees and on any third party they engage with for performance of the agreement.

13.2. Hyperhost shall make efforts to prevent that it takes notice of data that Customer stores or disseminates through its hardware or software in relation to the Services, unless this is necessary for a proper performance of the agreement or Hyperhost is required to pursuant to a statutory provision or court order. In such case, Hyperhost shall make efforts to restrict the notice of such data as much as possible, to the extent this is within its power.

13.3. The obligations of this article will continue to exist after the agreement has ended for any reason whatsoever and for as long as the providing party can reasonably claim the confidentiality of the information.

#### **Article 14. Term and termination**

14.1. The term of the Agreement is equal to the time span necessary to deliver the Services. If the Agreement is a Subscription, it is concluded for an indefinite period of one day.

14.2. If parties agree on a fixed term for the Subscription, parties may not terminate the Agreement early, unless there are special grounds as defined in this Article. Each of the parties may terminate the Agreement early, observing a notice period that is proportionate to the duration of the Agreement. For each year that the Agreement continues, the notice period will be extended with one month, and for each month that the Agreement continues, the notice period will be extended with two work days. For example, an Agreement that continues for three years and five months will be subject to a notice period of three years and ten work days.

14.3. In the absence of an early termination of a Subscription, it will be renewed for an indefinite period. The renewed Subscription will be subject to a notice period of one month.

14.4. Hyperhost may terminate or suspend the Agreement immediately if one of the following special grounds applies:

- a) Customer is in default concerning a substantial obligation;
- b) Customer has filed for bankruptcy;
- c) Customer has applied for a moratorium;
- d) Activities of Customer are being terminated or liquidated.

14.5. If Hyperhost suspends the fulfilment of obligations, it retains the entitlements arising from the law and

the Agreement, including the right of payment for the Services that are suspended.

14.6. If the Agreement is terminated, the claims of Hyperhost against Customer are immediately due and payable. In case of termination or dissolution of the Agreement, outstanding invoices remain due and payable, without any obligation to cancel or nullify such invoices. In case of termination or dissolution by Customer, Customer may only terminate that part of the Agreement that has not yet been executed by Hyperhost. If dissolution can be attributed to Customer, Hyperhost is entitled to claim damages arising directly or indirectly therefrom.

14.7. The entitlement of Hyperhost to suspension in aforementioned cases applies to all Agreements it has concluded with Customer at that time, even if Customer is only in default concerning one Agreement, and without prejudice to the right of Hyperhost to compensation for damages, lost profits and interest.

#### **Article 15. Procedure after termination**

15.1. After the Agreement has ended as a consequence of termination or dissolution, Hyperhost shall be entitled to immediately remove or make inaccessible all data of Customer and terminate all Accounts of Customer.

15.2. Hyperhost shall remove data it has stored for Customer without specific measures to make removal irreversible.

#### **Article 16. Precedence and changes of conditions**

16.1. Hyperhost reserves the right to change or complement these General Terms and Conditions applying to its Services. Changes also apply to agreements already concluded, subject to a notice period of 30 days.

16.2. Changes shall be announced by e-mail to Customer, or by means of any other channel for which Hyperhost can prove that the announcement has reached Customer. Non-substantive changes of minor importance may be made without any announcement.

16.3. If Customer refuses to accept a change, Customer shall inform Hyperhost thereof in Writing accompanied by its reasons within two weeks after the announcement of the changes. Hyperhost may then reconsider the change(s) concerned. If Hyperhost does not revoke the change(s) concerned, Customer may terminate the Agreement from the date the new conditions will enter into effect.

16.4. Provisions related to specific Services shall take precedence over general provisions related to all Services. Further arrangements between Hyperhost and Customer shall only take precedence over these General Terms and Conditions if agreed so explicitly in Writing, or if that is evidently the intent of both parties.

#### **Article 17. Other provisions**

17.1. The Agreement is subject to Dutch law.

17.2. All disputes arising from the Agreement between Hyperhost and Customer shall be submitted to the competent Dutch court for the district in which Customer is established, unless statutory provisions prescribe otherwise.

17.3. If a provision in the Agreement turns out to be void, this shall not affect the validity of the Agreement as a whole. In such cases, parties shall establish (a) new provision(s) as a replacement, which shall be drafted in away that meets as much as possible the intent of the original Agreement and these General Terms and Conditions.

17.4. Information and announcements, including price indications, on the Website of Hyperhost are subject to programming and typing errors. In case of any inconsistency between the Website and the Agreement, the Agreement prevails.

17.5. Log files and other, whether or not electronic, administration of Hyperhost constitute full proof of statements of Hyperhost and any (electronic) communication or stored version thereof received by Hyperhost shall be deemed to be authentic, subject to evidence to the contrary to be provided by Customer.

17.6. Parties shall notify one another without delay in writing regarding any changes of name, postal address, e-mail address, telephone number or bank account number.

17.7. Parties are only entitled to transfer their rights and obligations under this Agreement to third parties with prior permission from the other party in Writing. Such permission is not required in the case such transfer is part of a company takeover or the acquisition of a majority of shares in the party concerned.