

HYPERGANIC END USER LICENSE AGREEMENT

Last updated February 21, 2023. Replaces all prior versions.

Preamble

IMPORTANT—PLEASE READ CAREFULLY. This End User License Agreement (the “EULA”) is a legal agreement between you and Hyperganic Group GmbH (or a subsidiary of Hyperganic Group GmbH in accordance with Section 20 of this EULA) governing the use of certain proprietary Software (as defined below) and Documentation (as defined below). The terms “Hyperganic”, “we”, “us” or “our” each refers to the licensor Hyperganic Group GmbH (or its respective subsidiary, as the case may be). The terms “End User”, “you” or “your” each refers to you as the end user and licensee of our Software under this EULA. We will only allow you to install, copy or otherwise use our Software, if 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.

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. Additional Terms:** “Additional Terms” shall have the meaning given to it in Section 5.
- 2. Computer system:** “Computer System” in this EULA denotes an individual computer or computer workstation and programmable components, especially PC plug-in cards.
- 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. Documentation:** “Documentation” means the technical and/or functional descriptions provided along with the Software, if any. Documentation may be provided in electronic form or online, e.g. via the internet. Documentation may also include, among other things, a description of performance characteristics, special features, hardware and software requirements, installation requirements, conditions of use and end user manuals.
- 5. Educational User:** “Educational User” shall have the meaning given to it in the first paragraph of Section 7.
- 6. Educational Use Software:** “Educational Use Software” shall have the meaning given to it in the first paragraph of Section 7.
- 7. Feedback:** “Feedback” shall have the meaning given to it in Section 10.2.
- 8. Intellectual Property Rights:** “Intellectual Property Rights” means copyright, trademark, trade dress, patent, trade secret and any other proprietary rights.
- 9. Issuer of license:** Hyperganic Group GmbH, Georgenstr. 38, 80799 München, Germany (“Hyperganic”) or a subsidiary of Hyperganic Group GmbH in accordance with Section 20 of this EULA.
- 10. 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.
- 11. Paid License:** “Paid License” shall have the meaning given to it in Section 6.1.
- 12. Prerelease Version:** “Prerelease Version” shall have the meaning given to it in Section 8.1.
- 13. Services:** “Services” means any service that Hyperganic may decide to or may agree to provide to you in relation to the Software and its use by you, including any support or maintenance services.
- 14. Software:** “Software” in terms of this EULA means any computer software, software applications, software functions, web services, the accompanying media, printed materials, application documentation, electronic instruction manuals, and online instruction manuals that we make available to you. The term “Software” also includes the updates and upgrades related to a release, unless explicitly agreed otherwise in the following terms and conditions.
- 15. Trial Version:** “Trial Version” shall have the meaning given to it in Section 8.1.
- 16. Updates:** “Updates” means Software with equal or improved functionality whose purpose is to correct defects. Hyperganic generally provides updates free of charge.
- 17. Upgrades:** “Upgrades” means Software of a higher stage of expansion or with expanded functionality, sometimes with a change of release number. Upgrades generally require an additional or separate paid license.

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, 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 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 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.
4. 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.
5. 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.
6. To use the Software, subject to any age restrictions applicable in your jurisdiction, you must have full legal capacity or have the consent of your legal guardian. If you are acting in your capacity as a legal guardian agreeing to this EULA for another person, you are legally responsible for the use of the Software by that person and for observing any additional age restrictions applicable in your jurisdiction.
7. Support and maintenance of your licensed Software are not included in this EULA and may be the subject to Additional Terms.

Section 3 | Extent of the Right of Use

1. You are granted, subject to the terms and conditions of this EULA and the Additional Terms, if any, a personal, non-exclusive, non-transferable, non-sublicensable, limited license entitling you to use the Software during the term in accordance with this EULA and the Additional Terms, if any, on all of your hardware. For avoidance of doubt: If you received your license on the basis of a contractual relation to one of our resellers or any other party entitled to sub-license our Software prior to or after the conclusion of this EULA, this Section 3.1 does not apply and the scope of your right to use the Software is dependent on and is limited by the terms you concluded with that other party, but in any way limited to the scope of the license in this Section 3.1. Provided that you forthwith notify Hyperganic and obtain its prior written consent for any adaptation, created, developed and/or modified work, via email (support@hyperganic.com).
2. 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. If you have licensed 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.
4. 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.
5. The End User is not entitled to rent out, lease, or lend the Software to third parties without Hyperganic's prior written permission, especially for purposes directly or indirectly related to any form of compensation.
6. Except as expressly permitted in Additional Terms, you shall not
 - 6.1. modify, port, adapt, create or develop derivative work or translate any portion of the Services or Software;
 - 6.2. reverse engineer, decompile, disassemble or otherwise attempt to discover the source code or any portion of any Service or Software;
 - 6.3. use or virtualize features of the Software or Service separately;
 - 6.4. work around any technical restrictions or limitations in the Software;
 - 6.5. 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.
7. 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.

Section 4 | Retention of Rights

We (and relevant third party licensors) remain the sole owner of all rights, title, and interest in the Services and the Software, including rights, title and interest in Software (or parts thereof) that we develop for, on behalf and/or on the instruction of you and/or for you, unless explicitly provided otherwise in Additional Terms. All rights, in particular, Intellectual Property Rights, not explicitly granted to you in this EULA are retained by Hyperganic and/or relevant third party open source software licensors. The Software is protected by copyright laws and international copyright treaties, as well as other Intellectual Property Right 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, in particular, does not grant you any rights to trademarks or service marks of Hyperganic.

Section 5 | Additional Terms

Our Software is licensed, not sold, to you in accordance with the terms of this EULA. Our Services and/or Software may also be subject to one or more additional terms defined in separate (license) agreements, quotes, offers, or similar documents concluded between you and Hyperganic, and/or terms of third party open source software licensors set out in the OSS terms for Hyperganic Core (<https://platform.hyperganic.com/oss/core>) and OSS Terms for Hyperganic (<https://platform.hyperganic.com/oss/platform>) (the "Additional Terms"). If there is any conflict between the terms in this EULA and any Additional Terms concluded between Hyperganic and you, then the Additional Terms govern in relation to that Service or Software.

Section 6 | Calculation of License Fees

1. If and to the extent you agreed to and are obliged to pay license fees for the use of the Software and/or Services to Hyperganic according to Additional Terms (the "Paid License"), you shall establish and keep accurate records of accounts for the purpose of calculating 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 if so requested by Hyperganic.
2. In case of a Paid License, Hyperganic shall be entitled at its own expense to review and audit these accounts and the respective books and records of you as a licensee of a Paid License for the purpose of auditing the calculation of the license fee, but not more than once in each calendar year. For this purpose, Hyperganic may engage an auditor, tax advisor or accountant being bound to professional secrecy duties who may inspect your records relevant for the calculation. The auditor shall hold such records in strict confidence except to the extent necessary for reporting to Hyperganic and the End User on the accuracy of your account statements, provided, however, that the auditor shall not disclose to Hyperganic any personal data (including the identity) of any customer of the End User. You shall provide the auditor with all information and documents the auditor reasonably requests for the purpose of auditing your account statements. 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 auditor for such inspection and a surcharge of 25% percent on the amount due.

Section 7 | Software for Educational Use

The following terms of this Section 7 apply to Software provided to teachers, trainers, instructors and matriculated full-time students (each an "Educational User") at state or state-recognized schools, technical colleges, universities, and educational institutes for scholastic and academic education and continuing education, teaching and learning purposes ("Educational Use Software").

1. Educational Use Software may neither directly nor indirectly be used for commercial, professional, or other profit-oriented purposes. Selling, renting out, leasing, or lending for profit Educational Use Software or making it available to persons who are not entitled to its use for educational purposes is not permitted.
2. Educational Use Software are issued only to Educational Users. Students therefore have to be actively enrolled in at least one course at an entitled educational institution. If the Educational Use Software is explicitly intended for established educational purposes, Hyperganic grants you the right to use this Educational Use Software only for these established educational purposes. Only a qualified circle of Educational Users may use the Educational Use Software. If you have doubts regarding your eligibility for a qualified circle of users, you must contact Hyperganic immediately.
3. Use of the Educational Use Software for purposes other than the educational purposes set out in this Section 7 or by individuals other than Educational Users is not permitted.
4. This license will only remain in effect as long as you fulfil the requirements for the use of the Educational Use Software set out in this Section 7 and will expire when you no longer fulfil these requirements.
5. 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.
6. If you obtain the Educational Use Software via a 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.
7. You are only permitted to use the Educational Use Software personally on your own computers within and outside of the educational institution at which you teach or are a student. The educational institution itself is not permitted to use the Educational Use Software but must license a classroom license of the Software with Hyperganic.
8. You may install and use the Educational Use Software only in the country where you are qualified as an Educational Users.

Section 8 | Trial Versions / Prerelease Versions

The terms and conditions in this Section 8 apply only to your use of Trial Versions and Prerelease Versions and do not apply to generally available Software.

1. A "Trial Version" is a version of the Software that is delivered by Hyperganic marked as "trial" or "evaluation" or other similar designations. A "Prerelease Version" is a version of the Software or Service or a feature of the Software or a Service that we designate as a "prerelease" or "beta version" or with a similar designation.
2. A Trial Version may neither directly nor indirectly be used for commercial, professional, or other profit-oriented purposes and you may install and use such versions only for the period and purposes stated when such version was issued to you.
3. 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.
4. If the Software or Service is a Prerelease Version 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.
5. Every direct or indirect use of Prerelease Versions for profit purposes is prohibited. You recognize that Hyperganic will be notified of your use of a Prerelease Version during installation. It may neither directly nor indirectly be used for educational, teaching or training purposes.
6. Using a Prerelease Version requires that you carry out an up-to-date backup of your data before and during evaluation of the Prerelease 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.
7. Any right to use the Trial Version shall expire automatically upon (a) you not complying with the terms of this EULA and (b) upon the expiry of the evaluation period. You acknowledge that some products come with time-limited license keys and will automatically disable themselves upon the expiry of the evaluation period. Unless otherwise agreed, you are not entitled to receive any form of support from Hyperganic during the evaluation period.

Section 9 | 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 Licenses, we will make reasonable efforts to notify you in advance of the modification, Update or discontinuation. If we discontinue the Services or Software in its entirety, or alter the Software in a way that materially degrades the benefit you receive from it, we will also allow you a reasonable time to download your Content and we will 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 the Software, current and previous versions of the 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 10 | Confidentiality and Feedback

1. You shall keep strictly confidential and shall not disclose to any other person any non-public information (including commercial terms or code) that is received or retrieved in connection with this EULA, the Services, the Software and/or any Additional Terms, unless such information (i) was in the public domain at the time of disclosure; (ii) became part of the public domain through no act or omission of you; (iii) was lawfully disclosed to you by a third party having the right to disclose it; or (iv) was already known by you at the time of disclosure. You further agree that you will protect this confidential information from any unauthorized use, access, or disclosure with no less than a reasonable degree of care than your own confidential information.
2. You are under no obligation to provide Hyperganic with any ideas, suggestions, documents and/or proposals regarding the Services or Software ("Feedback"). However, if you voluntarily provide Feedback to Hyperganic, you grant Hyperganic a non-exclusive, royalty-free, perpetual, non-revocable, transferable and otherwise unrestricted license to use and exploit your Feedback for any purpose worldwide. In doing so, you retain ownership of any rights in the Feedback. By submitting Feedback, you acknowledge and represent that (i) your Feedback does not contain any confidential or proprietary information about you or any third party; (ii) no confidentiality obligations, express or implied, will arise for Hyperganic with respect to the Feedback; (iii) Hyperganic may have already considered or may be working to develop content similar to the Feedback; and (iv) under no circumstances will you be entitled to any compensation, indemnification or reimbursement from Hyperganic for your Feedback.

Section 11 | Your Obligations

1. You shall make yourself familiar and comply with the Documentation provided from time to time.
2. You shall use the Software and the Services always in accordance with and for no purpose other than as explicitly provided for in this EULA and/or in the Additional Terms.
3. You must not misuse the Services or Software. For example, you must not:
 - 3.1. access or attempt to access the Services or Software by any means other than the interface we provide or authorize;
 - 3.2. circumvent any access or use restrictions put into place to prevent certain uses of the Services or Software;
 - 3.3. engage in behavior that violates anyone's Intellectual Property Rights;
 - 3.4. upload or share any Content that is unlawful, harmful, threatening, abusive, tortious, defamatory, libelous, vulgar, lewd, profane, invasive of another's privacy, or hateful;
 - 3.5. impersonate any person or entity, or falsely state or otherwise misrepresent your affiliation with a person or entity;
 - 3.6. attempt to disable, impair, or destroy the Services and Software;
 - 3.7. 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;
 - 3.8. 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);
 - 3.9. violate applicable law or regulations.
4. You shall comply with the applicable national and international anti-terrorism provisions as well as the national and international sanctions and export control regulations applicable in relation to Your use and access of the Software and Services. In particular, You must not access or use the Software or the Services from within a location that is subject to respective sanctions or restrictions in accordance with national or international sanctions and export control regulations or if You appear on any national or other governmental restricted parties list that are applicable to You or Your use and access of the Software and Services. Further, You must not use or access the Software or Services or develop any Application for any purpose prohibited by national or international laws and regulations applicable to You, including, without limitation, the development, design, manufacture, or production of nuclear, missile, or chemical or biological weapons. When registering onto the Hyperganic Platform, we request You to confirm that you will not be using the Software and Services for any such purposes.
5. 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 EULA 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. You agree that Hyperganic processes and uses this data to protect and enforce its usage rights. You are 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.
6. If you breach this EULA or Hyperganic's usage rights or Hyperganic reasonably determines you are doing so, Hyperganic can prevent the further usage of the installation and installation of Updates. Hyperganic reserves the right to file civil or criminal charges.

Section 12 | Your Responsibilities

1. You shall ensure and shall be responsible that
 - 1.1 the objects generated by you using the Software comply with and do not infringe any third-party Intellectual Property Rights;
 - 1.2 when uploading your Content to the Services or Software, you have all necessary licenses and permissions to use and share your Content;
 - 1.3 you have all relevant rights to patents and other third-party Intellectual Property Rights that are required to use the Software with a specific 3D printer and you shall be responsible for all regulatory processes to ensure that the Software can legally be used with that 3D printer;
 - 1.4 the objects generated by you using the Software comply with any applicable statutory laws and regulations and do not cause harm or damage to their end user;
 - 1.5 you will fulfill any applicable regulatory requirements, including full compliance with all applicable laws, regulations, and policies related to the manufacturing, marketing, sale, distribution and use of the objects generated by using the Software of any country or territory where you use the Software; and that
 - 1.6 you comply with all domestic and international export laws and regulations that apply to you and the objects generated by using the Software, which may include restrictions on destinations, end users, and end use.
2. 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, the objects generated or manufactured by you using the Software, or your violation of this EULA, including claims resulting from infringement of any third-party Intellectual Property Rights or violation of regulatory requirements.
3. 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 any Intellectual Property Rights.

Section 13 | Non-availability of Services

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 14 | Hyperganic's Warranties

1. The Documentation alone is decisive for the required quality and functionality of the Software. Hyperganic is not liable for any other condition of the Software. In particular, Hyperganic does not represent or warrant that (a) the Software works together in a selection or configuration that was not solely and freely determined by Hyperganic, (b) that it will run uninterrupted or error free, or (c) that all Software errors can be eliminated. A technical error in the Software shall only be considered a defect if it causes the Software to not be compliant with the required quality and functionality as determined by the Documentation.
2. Warranty claims and other liability claims, including any claims under Section 15, and/or claims for the refund of expenses against Hyperganic will only be available to you if the license to the Software was granted to you by Hyperganic; if you received your license on the basis of a contractual relation to one of our resellers or any other party entitled to sub-license our Software prior to or after the conclusion of this EULA, your claims are determined by the agreement concluded with that other party. This does not limit your claims under applicable product liability laws.
3. SECTION 14.1 APPLIES ONLY TO PAID LICENSES. WITH RESPECT TO LICENSES TO THE SOFTWARE THAT ARE FREE OF CHARGE, IN PARTICULAR, EDUCATIONAL USE SOFTWARE, TRIAL VERSIONS OR PRERELEASE VERSIONS, UNLESS EXPLICITLY STATED OTHERWISE IN THIS EULA OR THE ADDITIONAL TERMS, THE SERVICES AND SOFTWARE ARE PROVIDED "AS-IS." IN THESE CASES, 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.
4. WITH RESPECT TO LICENSES TO THE SOFTWARE THAT ARE FREE OF CHARGE, IN PARTICULAR, EDUCATIONAL USE SOFTWARE, TRIAL VERSIONS OR PRERELEASE VERSIONS, UNLESS EXPLICITLY STATED OTHERWISE IN THIS EULA OR THE ADDITIONAL TERMS, 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.
6. 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 Paid Licenses.
7. 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.
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. 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.

Section 15 | Third Party Rights

1. Only in case of a Paid License (and not in case of a royalty-free/free-of-charge license), Hyperganic will, at its sole discretion, either defend you against or settle any claim brought against you if such claim (i) is brought by any owner of an Intellectual Property Right specified below giving rise to the claim and (ii) alleges that your use of the Software, in accordance with this EULA, constitutes a direct infringement or misappropriation of such owner's patent claim(s), copyright, trademark or trade secret right. Hyperganic will pay damages finally awarded against you (or the amount of any settlement Hyperganic enters into) with respect to such claims. This obligation of Hyperganic does not apply if the alleged infringement or misappropriation results from (i) use of the Software in conjunction with any software or service other than the Software;(ii) failure to promptly use an update provided by Hyperganic if such infringement or misappropriation could have been avoided by use of the update; or (iii) any use not permitted by this EULA or the Additional Terms, if any. This obligation of Hyperganic will also not apply if you fail to timely notify Hyperganic in writing of any such claim; however your failure to provide or delay in providing such notice shall not relieve Hyperganic of its obligations under this Section 15, except to the extent Hyperganic is prejudiced by your failure to provide or delay in providing such notice. Hyperganic is permitted to control fully the defense and any settlement of any such claim as long as such settlement

does not include a financial obligation on or admission of liability by you. In the event you decline Hyperganic's proffered defense, or otherwise fails to give full control of the defense to Hyperganic's designated counsel, then you waive Hyperganic's obligations under this Section 15.1. You must reasonably cooperate in the defense of such claim and provide Hyperganic with all relevant information and reasonable support. You may appear in any proceedings concerning such claim or legal dispute, at your own expense, through counsel reasonably acceptable to Hyperganic. Hyperganic expressly reserves the right to cease such defense of any claim(s) in the event the Software is no longer alleged to infringe or misappropriate, or is held not to infringe or misappropriate, the third party's rights. Hyperganic may settle or mitigate damages from any claim or potential claim by substituting alternative substantially equivalent non-infringing programs and supporting documentation for the Software. You must not undertake any action in response to any infringement or misappropriation, or alleged infringement or misappropriation of the Software that is prejudicial to Hyperganic's rights.

2. Any limitations to the liability and obligations of Hyperganic according to this Section 15 will also apply for the benefit of any subsidiary of Hyperganic and their respective licensors.
3. THE PROVISIONS OF THIS SECTION 15 STATE THE SOLE, EXCLUSIVE, AND ENTIRE LIABILITY AND OBLIGATION OF HYPERGANIC AND ITS LICENSORS TO YOU, AND IS YOUR SOLE REMEDY, WITH RESPECT TO THE INFRINGEMENT OR MISAPPROPRIATION OF THIRD-PARTY INTELLECTUAL PROPERTY RIGHTS, EXCEPT AS EXPLICITLY STATED OTHERWISE IN THIS EULA.

Section 16 | Limitation of Liability

1. In case of a royalty-free/free-of-charge license to the Software, Hyperganic's liability for defects of quality or defects of title in relation to the Software shall be limited to the case that Hyperganic has fraudulently concealed from you such defect. Apart therefrom, Hyperganic shall be liable to you in case of a royalty-free/free-of-charge license in cases of intent or gross negligence only.
2. If not explicitly provided otherwise in this EULA, Hyperganic is liable in the cases of (a) damages sustained by you from loss of life, bodily injury or damage to health due to a violation of duty on the part of Hyperganic, (b) damages sustained by you in the context of the German Product Liability Law, a guarantee assumed by Hyperganic or deceit on the part of Hyperganic, (c) damages sustained by you through intent or gross negligence on the part of Hyperganic and/or (d) damages sustained by you through violation by Hyperganic of an obligation which is a precondition for the proper execution of this EULA or the Additional Terms, if any, and on the fulfillment of which you regularly and rightfully rely on (cardinal obligation).
3. Hyperganic's liability is unlimited in the cases of Section 16.2 (a), (b) and/or (c). In all other cases of Section 16.2, liability is limited to the typical foreseeable damage. In case of a royalty-free/free-of-charge license, you agree that a maximum damage of EUR 25,000 per year is typical and foreseeable in the context of this EULA. In case of a Paid License, you agree that a maximum damage of EUR 500,000 per year is typical and foreseeable in the context of this EULA. If there is a risk for a damage that increases EUR 25,000 in case of a royalty-free/free-of-charge license and EUR 500,000 in case of a Paid License, you are obliged to inform Hyperganic thereof.
4. Hyperganic's liability is excluded in all claims not covered by Section 16.1 and Section 16.2, regardless of their legal grounds, including, but not limited to claims regarding initial defects of the Software. Claims according to Section 16.2 (d) become time barred one year after the start of the statutory limitation period.
5. The preceding liability regulations also apply to the personal liability of the bodies, employees and vicarious agents of Hyperganic.

Section 17 | Term and Termination

1. If not agreed otherwise in the Additional Terms, this EULA is concluded for an indefinite term and can be terminated in accordance with this Section 17.
2. If not agreed otherwise in the Additional Terms, this EULA may be terminated by either you or us upon 30 days' prior notice.
3. The termination for good cause remains unaffected. A good cause for the termination of this EULA shall, in particular, exist if you breach any of the following material obligations under this EULA or any payment obligations under the Additional Terms and (i) the breach cannot be corrected; or (ii) we notify you of the breach and you fail to remedy it within 14 days of the notice:
 - 3.1 your obligations and limitations in relation to the use of the Software, in particular, those stipulated in Section 3 and Section 11;
 - 3.2 your responsibilities in relation to the use of the Software set out in Section 12; and
 - 3.3 your obligations in relation to confidentiality, in particular, those stipulated in Section 10.
4. If this EULA ends, the license granted in this EULA ends.
5. Upon termination of this EULA, you will no longer be entitled to use any of the Software or Services. Further, you shall 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 shall be destroyed and the Software installed on the hardware in question shall be deleted. You shall provide Hyperganic with proof of deletion and destruction in written form upon first request.
6. Upon an ordinary termination of this EULA by us, the following shall apply in addition to Section 17.5:
 - 6.1 In case you have ordered unit packages during the term of a Paid License for which the respective package term has not expired, the Paid License and all your rights with respect to these packages will continue until the relevant package term ends in accordance with the Additional Terms (by expiry or volume consumption).
 - 6.2 Subject to Section 17.6.1, with the termination becoming effective, you shall no longer be entitled to use the Software or to generate or produce any further objects with files exported from the Software prior to the effectiveness of the termination.
 - 6.3 You shall not be discharged from any liability or obligation to Hyperganic that you have agreed to be liable for and that became due or payable prior to the effective date of such termination, including without limitation, payment in full of any amount due to Hyperganic under a Paid License.

- 6.4 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.
- 6.5 The provisions of this EULA shall cease to have effect, except for Section 10, Sections 12 through 17, Section 19 and Section 22 that shall survive the termination of these Terms.

Section 18 | Data Protection

1. The use of the Software and the Services is subject to our Privacy Policy that can be accessed on our website (<https://www.hyperganic.com/privacy/>).
2. Personal information is saved for the purposes of processing your 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).
3. 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.
4. 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
5. 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.
6. 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.
7. If, after conclusion of the contract, the End User realizes that personal data is part of the data to be processed in accordance with this EULA, the End User is obliged to inform the provider immediately thereof. The parties will then immediately agree on a data protection-compliant legitimation of the processing by means of a processor controller agreement.

Section 19 | 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 20 | Subsidiaries

If you enter into a contractual relation with one of our subsidiaries (currently Hyperganic Pte. Ltd., Singapore, and Landian (Liaoning) A.I. Technology R&D Co, Ltd, China) and any of the contracts concluded with any of the subsidiaries refer to the most recent version of this EULA, your contractual partner of this EULA shall be the respective subsidiary and not Hyperganic Group GmbH and any reference to Hyperganic, we or us shall be deemed references to that subsidiary.

Section 21 | Amendments to this EULA

1. Amendments to this EULA must be in written form to be effective.
2. We reserve the right to make changes to this EULA, as far as these are necessary in order to compensate for equivalence disruptions that have arisen after the conclusion of this EULA or to fill contractual gaps or to serve the implementation of changes to the law, changes to the highest court jurisdiction or changed market conditions.
3. We will inform you in writing, via email or in connection with your login to your account about changes to this EULA.
4. As far as these changes are not covered by Section 21.2 and do not concern essential contractual provisions, your consent to the change of this EULA is considered granted, as long as you do not object to the change in writing within six weeks after receipt of the change notification or continue to use the Software.
5. As far as these changes go beyond those covered by Section 21.2 and 21.4, these changes become effective upon your consent. If you object or do not consent to these changes within a period of six weeks after the change notification, your license shall terminate 30 days after your objection or the expiry of this six weeks period, as further set out in Section 17. The continued use of your license is considered as a consent to these changes. In the change notification, we shall explicitly point you to the requirements and consequences as set out in this Section 21.5.

Section 22 | Miscellaneous

1. Written form within the meaning of this EULA includes text form, in particular, exchange of emails and (pdf) copies.
2. This EULA governs all rights and duties between Hyperganic and you. Amendments and additional agreements must be in written form.
3. 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.
4. Headings used in this EULA or Additional Terms are provided for convenience only and will not be used to construe meaning or intent.
5. 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.
6. 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.
7. 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.
8. The most recent valid version of the General Terms and Conditions of Hyperganic Group GmbH (GTC) shall apply.
9. You may send notices to us at the following address: Hyperganic Group GmbH, Attention: General Counsel, Georgenstr. 38, 80799 München, Germany, legal@hyperganic.com
10. 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.