

## TERMS OF SERVICE

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Hyperform, Inc. ("Hyperform," "Company," "we," "us," and "our") provides its services (described below) to you through its website located at [www.hyperform.app](http://www.hyperform.app) (the "Site") and related services, including services in connection with the Site, in so far as the latter are provided by Hyperform (collectively, such services, including any new features and applications such as mobile applications, and the Site, the "Service(s)"), subject to these Terms of Service (as amended from time to time, the "Terms of Service"). We reserve the right, at our sole discretion, to change or modify portions of these Terms of Service at any time. If we do this, we will post the changes on this page and will indicate at the top of this page the date these terms were last revised. We may also notify you of such revisions, either through the Services user interface, in an email notification or through other reasonable means. Any such changes will become effective immediately as of the date they are posted. Your continued use of any Services after the date any such changes become effective constitutes your acceptance of the new Terms of Service.

**PLEASE READ THESE TERMS OF SERVICE CAREFULLY, AS THEY CONTAIN AN AGREEMENT TO ARBITRATE AND OTHER IMPORTANT INFORMATION REGARDING YOUR LEGAL RIGHTS, REMEDIES, AND OBLIGATIONS. THIS AGREEMENT TO ARBITRATE REQUIRES (WITH LIMITED EXCEPTION) THAT YOU SUBMIT CLAIMS YOU HAVE AGAINST US TO BINDING AND FINAL ARBITRATION, AND FURTHER (1) YOU WILL ONLY BE PERMITTED TO PURSUE CLAIMS AGAINST HYPERFORM ON AN INDIVIDUAL BASIS, NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY CLASS OR REPRESENTATIVE ACTION OR PROCEEDING, (2) YOU WILL ONLY BE PERMITTED TO SEEK RELIEF (INCLUDING MONETARY, INJUNCTIVE, AND DECLARATORY RELIEF) ON AN INDIVIDUAL BASIS, AND (3) YOU MAY NOT BE ABLE TO HAVE ANY CLAIMS YOU HAVE AGAINST US RESOLVED BY A JURY OR IN A COURT OF LAW.**

The Services are offered and available to users who are 18 years of age or older. By using the Services, you represent and warrant that you are 18 years of age or older and are otherwise capable of forming a legally binding contract with Hyperform. If you do not meet these requirements, you must not access or use the Services.

You acknowledge and confirm that (i) you have read and understand all of the terms, conditions, policies, provisions, disclosures and disclaimers contained herein, including our Privacy Policy, available at <https://hyperform.app/privacy> and incorporated herein by reference (ii) these Terms have the same force and effect as a signed agreement, and (iii) you expressly accept and agree to be bound by the terms hereof.

### Subject Matter and Extent

The Service is a social platform where individuals who have registered with the Service and have set up a profile and/or account (hereinafter referred to as "User(s)," "you" and "your") can connect with other Users, as well as upload, post, monetize and share digital goods, services and content ("Content"), and get paid for the sale and/or license thereof. The Services are aimed at Users who create Content and wish to make it available to other Users via the Services (hereinafter referred to as "Creator(s)") and Users who wish to consume or otherwise use Content produced or otherwise created by Creators (hereinafter referred to as "Customers(s)"). Any User may be both a Creator and a Customer, though it is not necessary for the User to establish the latter in advance.

In order to use the Service, the User needs to have an Internet connection with the necessary bandwidth. The bandwidth required in particular depends upon the type of Content provided. In addition, the use of the Service makes it necessary for the User to have the most up-to-date version of a frequently used browser (e.g., Google Chrome, Safari, etc.). Should the User's equipment not fulfill these requirements, he or she may not be able to use the Service, or not in its entirety. Hyperform does not owe the User uninterrupted availability of the Service.

You acknowledge that Hyperform may establish general practices and limits concerning use of the Service, including without limitation the maximum period of time that data or other content will be retained by the Service and the maximum storage space that will be allotted on Hyperform's servers on your behalf. You agree that Hyperform has no responsibility or liability for the deletion or failure to store any data or other content maintained or uploaded by the Service. You acknowledge that Hyperform reserves the right to terminate accounts that are inactive for an extended period of time and that Hyperform reserves the right to change these general practices and limits at any time, in its sole discretion, with or without notice.

### Services of Hyperform

With the Service, Hyperform provides a social network for mutual exchange and posting of Content. Any User can create his or her own profile, and post Content on it that is visible and available for license or purchase by other Users of the Services.

Hyperform shall be entitled to continue to develop the Service, at its own discretion, in order to add new features and improve existing features. Hyperform shall always make the most up-to-date version of the Service available to the User.

Except for transactions involving the license to use the Services and these Terms of Service, Hyperform is not a party to any transactions regarding the purchase and sale of Content conducted through the Services – such transactions are solely between Creators and Customers. Neither is Hyperform the creator or owner of the Content listed on or made available through the Services. Hyperform's Services allow Creators to manage and streamline the administrative aspects of their business, including providing Users with a user-friendly platform through which to purchase and sell/license Content. Creators are solely responsible for ensuring that any Content made available through the Services meet all applicable laws, rules and regulations, and that the Content described by Creators are delivered as described in an accurate and satisfactory manner. Hyperform has no control over and does not guarantee (a) the existence, quality, safety, suitability, or legality of Content made available through the Services; (b) the truth or accuracy of Creators' descriptions of the Content made available on or through the Services; (c) the ability of Creators to fulfill purchases as made available through the Services; (d) the ability of Customers to pay for purchases as purchased through the Services; (e) that Creators or Customers will actually complete a transaction through the Services; or (f) the safety, suitability, or legality of communications of users, whether in public or private, via online or offline interactions.

### **Mobile Services and Messaging**

The Service includes certain services that are available via a mobile device, including (i) the ability to upload content to the Service via a mobile device, (ii) the ability to browse the Service and the Site from a mobile device and (iii) the ability to access certain features through an application downloaded and installed on a mobile device (collectively, the "Mobile Services"). To the extent you access the Service through a mobile device, your wireless service carrier's standard charges, data rates and other fees may apply. In addition, downloading, installing, or using certain Mobile Services may be prohibited or restricted by your carrier, and not all Mobile Services may work with all carriers or devices.

By using the Mobile Services, you agree that we may communicate with you regarding Hyperform and other entities by SMS, MMS, text message or other electronic means to your mobile device and that certain information about your usage of the Mobile Services may be communicated to us. In the event you change or deactivate your mobile telephone number, you agree to promptly update your Hyperform account information to ensure that your messages are not sent to the person that acquires your old number. By providing us with your phone number, you consent to receive prerecorded calls and information from us via SMS and/or MMS messages sent through an automated telephone dialing system ("Text Service"), even if you have opted in to the National Do Not Call List, any state Do Not Call List, or the internal Do Not Call List of any company. You may be required to respond to an initial message as instructed to complete your registration and confirm enrollment in the Text Service. The enrollment process will disclose the program, frequency of messages, and options to cancel your enrollment. You do not have to participate in the Text Service in order to use the Services. In the event you no longer want to participate in the Text Service, you agree to notify us directly. There is no additional charge for the Text Service, but your mobile carrier's standard message and data rates apply to any messages you send or receive through the Text Service, including confirmations and subsequent texts. Your carrier may prohibit or restrict certain mobile features and certain mobile features may be incompatible with your carrier or mobile device. We are not liable for any delays in the receipt of, or any failures to receive, any SMS or MMS messages, as delivery is subject to effective transmission by your mobile carrier and compatibility of your mobile device. Please contact your mobile carrier if you have any questions regarding these issues or your mobile data and messaging plan. As described in the Text Service enrollment and welcome messages, including messages sent to a shortcode associated with the Text Service or by reply to any message you receive from us, you may text "STOP" to cancel or "HELP" for customer support information. If you choose to cancel your Text Service, you agree to receive a final text message from the Text Service confirming your cancellation.

Hyperform reserves the right to modify or discontinue, temporarily or permanently, the Service (or any part thereof) with or without notice. You agree that Hyperform will not be liable to you or to any third party for any modification, suspension or discontinuance of the Service.

### **Registration and Account Management**

Users may be required to register with Hyperform in order to access and use certain features of the Service. The User is agreeing to all terms and conditions of the Service, including these Terms of Service. If you choose to register for the Service, you agree to provide and maintain true, accurate, current and complete information about yourself as prompted by the Service's registration form. Should any individual details change, the User will rectify them without delay. Registration data and certain other information about you are governed by our Privacy Policy. Each User may only set up one user account.

You are responsible for maintaining the confidentiality of your password and account, if any, and are fully responsible for any and all activities that occur under your password or account, even if such activities were not authorized by you. As such, all of your account details are to be kept secret, and, subject to the explicit consent of Hyperform, may not be made accessible to third parties. It is incumbent upon all Users to back up his or her details, documents and content stored on the Service to his or her own storage media at regular intervals. You agree to (a) immediately notify Hyperform of any unauthorized use of your password or account or any other breach of security, and (b) ensure that you exit from your account at the end of each session when accessing the Service. By registering, creating an account and/or otherwise accessing the Service and/or the Site, you agree that you have no legal claim to conclude a use agreement. Hyperform will not be liable for any loss or damage arising from your failure to comply with this Section.

### **Conditions for All Users of Services and the Site**

You are solely responsible for all code, video, images, information, data, text, software, music, sound, photographs, graphics, messages or other materials including Content ("Materials") that you upload, post, publish or display (hereinafter, "upload") or email or otherwise use via the Service. The following are examples of the kind of Materials and/or use that is illegal or prohibited by Hyperform, and for which Hyperform reserves the right to investigate and take appropriate legal action against anyone who, in Hyperform's sole discretion, violates this provision, including without limitation, removing the offending Materials from the Service, suspending or terminating the account of such violators and reporting you to the law enforcement authorities. As such, you agree not to use the Service or Site to:

- (a) Email or otherwise upload any Materials that: (i) infringe any intellectual property or other proprietary rights of any party; (ii) you do not have a right to upload under any law or under contractual or fiduciary relationships; (iii) contain software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment; (iv) pose or create a privacy or security risk to any person; (v) constitute unsolicited or unauthorized advertising, promotional materials, commercial activities and/or sales, "junk mail," "spam," "chain letters," "pyramid schemes," "contests," "sweepstakes," or any other form of solicitation; (vi) are unlawful, harmful, threatening, abusive, harassing, tortious, excessively violent, defamatory, vulgar, obscene, pornographic, libelous, invasive of another's privacy, hateful racially, religiously, ethnically or otherwise objectionable; or (vii) in the sole judgment of Hyperform, are objectionable or which restrict or inhibit any other person from using or enjoying the Service, or which may expose Hyperform or its users to any harm or liability of any type; or
- (b) Interfere with or disrupt the Service or servers or networks connected to the Service, or disobey any requirements, procedures, policies or regulations of networks connected to the Service; or
- (c) Use or launch any automated system, including without limitation, "robots," "spiders," "scrapers," "offline readers," or other automated means that accesses the Service and/or Site in a manner that sends more request messages to the Hyperform servers in a given period of time than a human can reasonably produce in the same period by using a conventional on-line web browser; or
- (d) Copy, modify, create a derivative work from, reverse engineer or reverse assemble the Service or Site, or any portion thereof, nor will you otherwise attempt to discover any source code, or permit or allow any third party to do any of the same; or
- (e) Sell, assign, sublicense, distribute, commercially exploit, grant a security or other interest in, or otherwise transfer any right in, or make available to a third party, the Site or Service in any way;
- (f) Take any action that imposes, or may impose in our sole discretion, an unreasonable or disproportionately large load on our infrastructure; or
- (g) Bypass any measures we may use to prevent or restrict access to the Service or Site;

- (h) Use the Service or Site in any manner that damages, disables, overburdens, or impairs the Service or Site or interferes with any other party's use and enjoyment of the Service or Site (such as misusing any reporting, dispute, or appeals channel, such as by making fraudulent or groundless reports or appeals); or
- (i) Mirror or frame the Service or the Site or any part of it on any other web site or web page; or
- (j) Violate any applicable local, state, national or international law, or any regulations having the force of law; or
- (k) Impersonate any person or entity, or falsely state or otherwise misrepresent your affiliation with a person or entity; or
- (l) Solicit personal information from anyone under the age of 18; or
- (m) Harvest or collect email addresses or other contact information of other users from the Service by electronic or other means for the purposes of sending unsolicited emails or other unsolicited communications; or
- (n) Advertise or offer to sell or buy any goods or services for any business purpose that is not specifically authorized; or
- (o) Further or promote any criminal activity or enterprise or provide instructional information about illegal activities; or
- (p) Attempt to gain unauthorized access to the Service or Site; or
- (q) Access the Service or Site by any means other than through the interface that is provided by Hyperform for use in accessing the Service and Site; or
- (r) Create or maintain any link from another website to any page on this Site or the Service without our prior written permission; or
- (s) Run or display this Site or the Service or any information or material displayed on this Site or in the Service in frames or through similar means on another website without our prior written permission; or
- (t) Obtain or attempt to access or otherwise obtain any materials or information through any means not intentionally made available or provided for through the Service.

#### **Additional Terms for Creators**

If you are a Creator, then, without limiting the generality of any representations or warranties provided elsewhere in these Terms of Service, you represent and warrant to us that you will:

- (a) Obtain, prior to the start of offering your Content to Customers through the Service, all applicable licenses, permits, and authorizations (individually and collectively, "Permissions") with respect to Content offered by you and made available to Customers through the Services; and
- (b) Only make Content available to Customers through the Service after you have obtained any specific Permissions necessary for making such Content available, including, but not limited to, any state, county, municipal or other local authority's authorization, traffic engineering authorizations, fire department inspection reports, authorization to receive minors (if applicable), sanitary authorization (if applicable), and any other potential applicable authorization; and
- (c) Maintain in force throughout the term of your access to the Service the applicable Permissions to promote, produce, sponsor host and sell all Content offered by you on the Services.

Without limiting the generality of any release provided under these Terms of Service, as a material inducement to Hyperform permitting you to access and use the Services, you hereby agree to release Hyperform and its officers, affiliates, representatives, shareholders, contractors, directors, agents, partners and employees from all damages (whether direct, indirect, incidental, consequential or otherwise), losses, liabilities, costs and expenses of every kind and nature, including, without limitation, attorneys' fees, known and unknown, arising out of or in any way connected with your Permissions, any failure to obtain or maintain any Permissions, or any error in obtaining or maintaining any Permissions.

Further, without limiting your indemnification obligations elsewhere under these Terms of Service, you agree to defend, indemnify and hold Hyperform and its officers, directors, agents, licensors, payment processing partners, other partners and employees, harmless from any and all damage (whether direct, indirect, incidental, consequential or otherwise), loss, liability, cost and expense (including, without limitation, reasonable attorneys' and accounting fees) resulting from any claims due to or arising out of your Permissions, any failure to obtain or maintain any Permissions, or any error in obtaining or maintaining any Permissions. You agree to provide evidence of Permissions and related information prior to making goods or services available through the Services and promptly upon the reasonable request of Hyperform from time to time.

When you sign up as a Creator, you may be required to select a membership tier and a payment plan. You agree to pay Hyperform the amount that is specified in the payment plan in accordance with the terms of such plan and these Terms of Services. You hereby authorize Hyperform to bill your payment instrument in advance on a periodic basis as further described in our Payments & Fees section below. We reserve the right to change prices and/or fees for membership, as further described in our Payments & Fees section below.

We may offer certain access and benefits to Creators that have signed up for an account and/or membership tier. Please consult our Site or email [help@hyperform.app](mailto:help@hyperform.app) for information about membership tiers, including our current benefits and any applicable fees. From time to time, we may offer different membership tiers, and the fees for such membership may vary. The access and benefits may change over time as we operate the membership program. We reserve the right to modify, suspend or discontinue, temporarily or permanently, any membership benefits or access from time to time with prior notice to you. Any membership fees or other fees charged to you are non-refundable except as expressly set forth in these Terms of Service. We reserve the right to accept or refuse members in our discretion.

## **Purchasing or Licensing Content**

### Content Agreements

When Customers purchase or license Content from Creators via the Service (a "Content Transaction"), such Content Transaction shall be solely governed by a separate agreement between the Creator and the Customer (hereinafter referred to as "Content Agreement"). A User's execution of a Content Agreement via the Service is a legally binding offer on the part of the Creator and the Customer to conclude a Content Agreement. The Users shall conclude the Content Agreement in his or her own names outside of the Services. Hyperform only acts as a broker for the Content Transaction between the Customer and the Creator. No direct contractual relationship exists between Hyperform and the Creator or Customer in regard to the provision of Content and Content Transaction. It is the sole responsibility of Creator and Customer to confirm the accuracy of the price of the Content as set forth in the Content Agreement ("Content Price") as it is displayed in the Services. Hyperform shall not be liable to Creator and/or Customer for any Content Transactions that do not conform to the Content Agreement. Any disputes between Customer and Creator over Content Transactions and/or Content Price are solely the responsibility of Customer and Creator to resolve and Hyperform share bear no responsibility or liability in relation thereof.

### Payment of Fees by Customers

In addition to payment of the Content Price, Customer shall be responsible for the payment of any costs and/or fees due to Hyperform for handling the Content Transaction (hereinafter referred to as the "Hyperform Fee"). The Hyperform Fee will be displayed at the time of checkout and Customer will be deemed to have acknowledged and accepted the Hyperform Fee upon execution of a Content Transaction. Hyperform's claim to the Hyperform Fee arises upon the execution of a Content Transaction. The claim to the Hyperform Fee shall also continue to exist, to the full extent, even if the Content Agreement expires or is terminated prematurely for other reasons or a Content Transaction is otherwise voided after execution. We reserve the right to change Hyperform Fee at any time, at our sole discretion.

Any Customer wishing to engage in a Content Transaction must provide Hyperform information regarding your credit card or other payment instrument. You represent and warrant to Hyperform that such information is true and that you are authorized to use the payment instrument. You will promptly update your account information with any changes (for example, a change in your billing address or credit card expiration date) that may occur. You hereby authorize Hyperform to bill your payment instrument in connection with any Content Transaction. If all eligible payment methods we have on file are declined or your payment otherwise fails, we may immediately cancel or revoke your access to the Services or we may contact you to ask you to provide a new eligible payment method before you are able to execute a Content Transaction. If you contact your bank or credit card company to decline or reverse the charge of fees, we may revoke your access to our Services in general.

If you are billed by us, you will be required to provide information regarding your credit card or other payment instrument to our third party payment processors (the "Payment Processors"). Hyperform currently uses Stripe (<https://stripe.com/>) as its Payment Processor, but reserves the right to change Payment Processors. You will tender payment to the applicable Payment Processor. Fees for the Service will be processed by the applicable Payment Processor. You are bound by the applicable Payment Processor's terms and conditions for the processing of payments, as the same may be modified by such Payment Processor from time to time (collectively, the "Payment Processor Terms"). Information provided to any Payment Processor is governed by the applicable Payment Processor Terms. Stripe's Payment Processor Terms are comprised of Stripe's Connected Account Agreement, located at <https://stripe.com/connect-account/legal>, which includes the Stripe Services Agreement located at <https://stripe.com/legal> and Stripe's Global Privacy Policy located at <https://stripe.com/privacy>. We are not responsible for the performance of any Payment Processor, including Stripe.

### Remuneration for Creators

A Creator wishing to receive remuneration for Content Transactions must provide your banking information to Hyperform via our banking API partner, Dwolla. The provision of any such information, including your personal information is governed by our Privacy Policy. The Creator hereby irrevocably directs Hyperform to accept the payments for the remuneration from the Customers for and on behalf of the Creator. Should a Customer execute a Content Transaction, Hyperform will pay out to the Creator the Content Price that the Customer pays as set forth in the Content Agreement. Payment shall be made to the bank account specified by Creator in Creator's Service account within 10 Days. Creator, and not Hyperform, shall be responsible for all taxes associated with the Services other than U.S. taxes based on Hyperform's net income.

You expressly authorize Hyperform's service provider, Dwolla, Inc. to originate credit transfers to your financial institution account. You authorize Hyperform to collect and share with Dwolla your personal information including full name, email address and financial information, and you are responsible for the accuracy and completeness of that data. Dwolla's Privacy Policy is available here <https://www.dwolla.com/legal/privacy/>.

### **International Use and Export Controls**

Software (defined below) available in connection with the Service and the transmission of applicable data, if any, is subject to United States export controls. No Software may be downloaded from the Service or otherwise exported or re-exported in violation of U.S. export laws. Downloading or using the Software is at your sole risk. Recognizing the global nature of the Internet, you agree to comply with all local rules and laws regarding your use of the Service, including as it concerns online conduct and acceptable content.

### **Intellectual Property**

#### Service Content, Software and Trademarks

You acknowledge and agree that the Service may contain content or features ("Service Content") that are protected by copyright, patent, trademark, trade secret or other proprietary rights and laws. Except as expressly authorized by Hyperform, you agree not to modify, copy, frame, scrape, rent, lease, loan, sell, distribute or create derivative works based on the Service or the Service Content, in whole or in part, except that the foregoing does not apply to your own Content that you legally upload to the Service. In connection with your use of the Service you will not engage in or use any data mining, robots, scraping or similar data gathering or extraction methods. If you are blocked by Hyperform from accessing the Service (including by blocking your IP address), you agree not to implement any measures to circumvent such blocking (e.g., by masking your IP address or using a proxy IP address). Any use of the Service or the Service Content other than as specifically authorized herein is strictly prohibited. The technology and software underlying the Service or distributed in connection therewith are the property of Hyperform, our affiliates and our partners (the "Software"). You agree not to copy, modify, create a derivative work of, reverse engineer, reverse assemble or otherwise attempt to discover any source code, sell, assign, sublicense, or otherwise transfer any right in the Software. Any rights not expressly granted herein are reserved by Hyperform.

The Hyperform name and logos are trademarks and service marks of Hyperform (collectively the "Hyperform Trademarks"). Other company, product, and service names and logos used and displayed via the Service may be trademarks or service marks of their respective owners who may or may not endorse or be affiliated with or connected to Hyperform. Nothing in this Terms of Service or the Service should be construed as granting, by implication, estoppel, or otherwise, any license or right to use any of Hyperform Trademarks displayed on the Service, without our prior written permission in each instance. All goodwill generated from the use of Hyperform Trademarks will insure to our sole and exclusive benefit.

### Third Party Materials

Under no circumstances will Hyperform be liable in any way for any content or materials of any third parties (including Creators and other users), including, but not limited to, for any errors or omissions in any content, or for any loss or damage of any kind incurred as a result of the use of any such content. You acknowledge that Hyperform does not pre-screen content, but that Hyperform and its designees will have the right (but not the obligation) in their sole discretion to refuse or remove any content that is available via the Service. Without limiting the foregoing, Hyperform and its designees will have the right to remove any content that violates these Terms of Service or is deemed by Hyperform, in its sole discretion, to be otherwise objectionable. You agree that you must evaluate, and bear all risks associated with, the use of any content, including any reliance on the accuracy, completeness, or usefulness of such content.

### License to Materials

With respect to the Materials, you represent and warrant that you own all right, title and interest in and to such Materials, including, without limitation, all copyrights and rights of publicity contained therein. By uploading any Materials you hereby grant and will grant Hyperform and its affiliated companies a nonexclusive, worldwide, royalty free, fully paid up, transferable, sublicensable, perpetual and irrevocable license to copy, display, upload, perform, distribute, store, modify and otherwise use your Materials in connection with the operation of the Service and the promotion, advertising or marketing thereof, in any form, medium or technology now known or later developed.

You acknowledge and agree that any questions, comments, suggestions, ideas, feedback or other information about the Service ("Submissions"), provided by you to Hyperform are non-confidential and Hyperform will be entitled to the unrestricted use and dissemination of these Submissions for any purpose, commercial or otherwise, without acknowledgment or compensation to you.

You acknowledge and agree that Hyperform may preserve and disclose Materials if required to do so by law or in the good faith belief that such preservation or disclosure is reasonably necessary to: (a) comply with legal process, applicable laws or government requests; (b) enforce these Terms of Service; (c) respond to claims that any content violates the rights of third parties; or (d) protect the rights, property, or personal safety of Hyperform, its users and the public. You understand that the technical processing and transmission of the Service, including your Materials, may involve (a) transmissions over various networks; and (b) changes to conform and adapt to technical requirements of connecting networks or devices.

### DMCA Complaints

Hyperform respects the intellectual property of others, and we ask our users to do the same. If you believe that your work has been copied in a way that constitutes copyright infringement, or that your intellectual property rights have been otherwise violated, you should notify Hyperform of your infringement claim in accordance with the procedure set forth below. Hyperform will process and investigate notices of alleged infringement and will take appropriate actions under the Digital Millennium Copyright Act ("DMCA") and other applicable intellectual property laws with respect to any alleged or actual infringement. A notification of claimed copyright infringement should be emailed to Hyperform Copyright Agent at help@hyperform.app (Subject line: "DMCA Takedown Request"). You may also contact us by mail at: help@hyperform.app. To be effective, the notification must be in writing and contain the following information:

- (1) An electronic or physical signature of the person authorized to act on behalf of the owner of the copyright or other intellectual property interest; and
- (2) A description of the copyrighted work or other intellectual property that you claim has been infringed; and
- (3) A description of where the material that you claim is infringing is located on the Service, with enough detail that we may find it on the Service; and
- (4) Your address, telephone number, and email address; and
- (5) A statement by you that you have a good faith belief that the disputed use is not authorized by the copyright or intellectual property owner, its agent, or the law; and
- (6) A statement by you, made under penalty of perjury, that the above information in your Notice (as hereinafter defined) is accurate and that you are the copyright or intellectual property owner or authorized to act on the copyright or intellectual property owner's behalf.

### DMCA Counter-Notices

If you believe your Materials were removed (or to which access was disabled) are not infringing, or that you have the authorization from the copyright owner, the copyright owner's agent, or pursuant to the law, to upload and use your Materials, you may send a written counter-notice containing the following information to the Copyright Agent:

- (1) Your physical or electronic signature; and
- (2) Identification of the Materials that have been removed or to which access has been disabled and the location at which the Materials appeared before they were removed or disabled;
- (3) A statement that you have a good faith belief that the Materials were removed or disabled as a result of mistake or a misidentification of the Materials; and
- (4) Your name, address, telephone number, and email address; and
- (5) A statement that you consent to the jurisdiction of the federal court located within Northern District of Illinois and a statement that you will accept service of process from the person who provided notification of the alleged infringement.

If a counter-notice is received by the Copyright Agent, Hyperform will send a copy of the counter-notice to the original complaining party informing that person that it may replace the removed content or cease disabling it within ten (10) business days. Unless the copyright owner files an action seeking a court order against the content provider, member or user, the removed Materials may be replaced, or access to them restored, within ten (10) to fourteen (14) business days or more after receipt of the counter-notice, at our sole discretion.

#### Repeat Infringer Policy

In accordance with the DMCA and other applicable law, Hyperform has adopted a policy of terminating, in appropriate circumstances and at Hyperform's sole discretion, users who are deemed to be repeat infringers. Hyperform may also at its sole discretion limit access to the Service and/or terminate the memberships of any users who infringe any intellectual property rights of others, whether or not there is any repeat infringement.

#### **Third Party Websites**

The Service may provide, or third parties may provide, links or other access to other sites and resources on the Internet (including sites and services offered by Creators and/or Customers). Hyperform has no control over such sites and resources and Hyperform is not responsible for and does not endorse such sites and resources. You further acknowledge and agree that Hyperform will not be responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with use of or reliance on any content, events, goods or services available on or through any such site or resource. Any dealings you have with third parties (including those between Customers and Creators) found while using the Service are between you and the third party, and you agree that Hyperform is not liable for any loss or claim that you may have against any such third party.

#### **Social Networking Services**

You may enable or log in to the Service via various online third-party services, such as social media and social networking services like LinkedIn, those offered by Meta (Facebook, Instagram, etc.), Youtube or Twitter ("Social Networking Services"). By logging in or directly integrating these Social Networking Services into the Service, we make your online experiences richer and more personalized. To take advantage of this feature and capabilities, we may ask you to authenticate, register for or log into Social Networking Services on the websites of their respective providers. As part of such integration, the Social Networking Services will provide us with access to certain information that you have provided to such Social Networking Services, and we will use, store and disclose such information in accordance with our Privacy Policy. For more information about the implications of activating these Social Networking Services and Hyperform's use, storage and disclosure of information related to you and your use of such services within Hyperform (including your friend lists and the like), please see our Privacy Policy. However, please remember that the manner in which Social Networking Services use, store and disclose your information is governed solely by the policies of such third parties, and Hyperform shall have no liability or responsibility for the privacy practices or other actions of any third party site or service that may be enabled within the Service.

In addition, Hyperform is not responsible for the accuracy, availability or reliability of any information, content, goods, data, opinions, advice or statements made available in connection with Social Networking Services. As such, Hyperform is not liable for any damage or loss caused or alleged to be caused by or in connection with use of or reliance on any such Social Networking Services. Hyperform enables these features merely as a convenience and the integration or inclusion of such features does not imply an endorsement or recommendation.

#### **Indemnity & Release**

You agree to release, indemnify and hold Hyperform and its affiliates and their officers, employees, directors and agents (collectively, "Indemnitees") harmless from any from any and all losses, damages, expenses, including reasonable attorneys' fees, rights, claims, actions of any kind and injury (including death) arising out of or relating to your use of the Service, any Materials, your connection to the Service, your violation of these Terms of Service or your violation of any rights of another. We reserve the right, at our own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you, in which event you will cooperate with us in asserting any available defenses.

### **Disclaimer of Warranties**

YOUR USE OF THE SERVICE IS AT YOUR SOLE RISK. THE SERVICE IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. HYPERFORM AND OUR OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES, SUB-CONTRACTORS, AGENTS AND AFFILIATES (THE "HYPERFORM PARTIES") EXPRESSLY DISCLAIM ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, PERFORMANCE, SECURITY AND NON-INFRINGEMENT.

HYPERFORM MAKES NO WARRANTY THAT (I) THE SERVICE WILL MEET YOUR REQUIREMENTS, (II) THE SERVICE WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE, (III) THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SERVICE WILL BE ACCURATE OR RELIABLE, OR (IV) THE QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION, OR OTHER MATERIAL PURCHASED OR OBTAINED BY YOU THROUGH THE SERVICE WILL MEET YOUR EXPECTATIONS.

### **Limitation of Liability**

YOUR USE OF THE SERVICES AND ALL PRODUCTS AND SERVICES DELIVERED TO YOU THROUGH THE SERVICE AND ANY CONTENT ON THE SERVICE IS AT YOUR SOLE RISK AND DISCRETION. YOU EXPRESSLY UNDERSTAND AND AGREE THAT HYPERFORM WILL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY DAMAGES, OR DAMAGES FOR LOSS OF PROFITS, INCLUDING BUT NOT LIMITED TO, DAMAGES FOR LOSS OF GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES (EVEN IF HYPERFORM HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), WHETHER BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, RESULTING FROM: (I) THE USE OR THE INABILITY TO USE THE SERVICE; (II) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS AND SERVICES RESULTING FROM ANY GOODS, DATA, INFORMATION OR SERVICES PURCHASED OR OBTAINED OR MESSAGES RECEIVED OR TRANSACTIONS ENTERED INTO THROUGH OR FROM THE SERVICE; (III) UNAUTHORIZED ACCESS TO OR ALTERATION OF YOUR TRANSMISSIONS OR DATA; (IV) STATEMENTS OR CONDUCT OF ANY THIRD PARTY ON THE SERVICE; OR (V) ANY OTHER MATTER RELATING TO THE SERVICE. IN NO EVENT WILL HYPERFORM'S TOTAL LIABILITY TO YOU FOR ANY AND ALL DAMAGES, LOSSES OR CAUSES OF ACTION EXCEED THE AMOUNT YOU HAVE PAID HYPERFORM IN THE LAST SIX (6) MONTHS, OR, IF GREATER, ONE HUNDRED DOLLARS (\$100).

SOME JURISDICTIONS DO NOT ALLOW THE DISCLAIMER OR EXCLUSION OF CERTAIN WARRANTIES OR THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES. ACCORDINGLY, SOME OF THE ABOVE LIMITATIONS SET FORTH ABOVE MAY NOT APPLY TO YOU OR BE ENFORCEABLE WITH RESPECT TO YOU. IF YOU ARE DISSATISFIED WITH ANY PORTION OF THE SERVICE OR WITH THESE TERMS OF SERVICE, YOUR SOLE AND EXCLUSIVE REMEDY IS TO DISCONTINUE USE OF THE SERVICE.

IF YOU ARE A USER FROM NEW JERSEY, THE FOREGOING SECTIONS TITLED "DISCLAIMER OF WARRANTIES" AND "LIMITATION OF LIABILITY" ARE INTENDED TO BE ONLY AS BROAD AS IS PERMITTED UNDER THE LAWS OF THE STATE OF NEW JERSEY. IF ANY PORTION OF THESE SECTIONS IS HELD TO BE INVALID UNDER THE LAWS OF THE STATE OF NEW JERSEY, THE INVALIDITY OF SUCH PORTION SHALL NOT AFFECT THE VALIDITY OF THE REMAINING PORTIONS OF THE APPLICABLE SECTIONS.

### **Dispute Resolution by Binding Arbitration**

**PLEASE READ THIS SECTION CAREFULLY AS IT AFFECTS YOUR RIGHTS.**

#### Agreement to Arbitrate

This Dispute Resolution by Binding Arbitration section is referred to in this Terms of Service as the "Arbitration Agreement." You agree that any and all disputes or claims that have arisen or may arise between you and Hyperform, whether arising out of or relating to this Terms of Service (including any alleged breach thereof), the Services, any advertising, any aspect of the relationship or transactions between us, shall be resolved exclusively through final and binding arbitration, rather than a court, in accordance with the terms of this Arbitration

Agreement, except that you may assert individual claims in small claims court, if your claims qualify. Further, this Arbitration Agreement does not preclude you from bringing issues to the attention of federal, state, or local agencies, and such agencies can, if the law allows, seek relief against us on your behalf. You agree that, by entering into this Terms of Service, you and Hyperform are each waiving the right to a trial by jury or to participate in a class action. Your rights will be determined by a neutral arbitrator, not a judge or jury. The Federal Arbitration Act governs the interpretation and enforcement of this Arbitration Agreement.

#### Prohibition of Class and Representative Actions and Non-Individualized Relief

YOU AND HYPERFORM AGREE THAT EACH OF US MAY BRING CLAIMS AGAINST THE OTHER ONLY ON AN INDIVIDUAL BASIS AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE ACTION OR PROCEEDING. UNLESS BOTH YOU AND HYPERFORM AGREE OTHERWISE, THE ARBITRATOR MAY NOT CONSOLIDATE OR JOIN MORE THAN ONE PERSON'S OR PARTY'S CLAIMS AND MAY NOT OTHERWISE PRESIDE OVER ANY FORM OF A CONSOLIDATED, REPRESENTATIVE, OR CLASS PROCEEDING. ALSO, THE ARBITRATOR MAY AWARD RELIEF (INCLUDING MONETARY, INJUNCTIVE, AND DECLARATORY RELIEF) ONLY IN FAVOR OF THE INDIVIDUAL PARTY SEEKING RELIEF AND ONLY TO THE EXTENT NECESSARY TO PROVIDE RELIEF NECESSITATED BY THAT PARTY'S INDIVIDUAL CLAIM(S), EXCEPT THAT YOU MAY PURSUE A CLAIM FOR AND THE ARBITRATOR MAY AWARD PUBLIC INJUNCTIVE RELIEF UNDER APPLICABLE LAW TO THE EXTENT REQUIRED FOR THE ENFORCEABILITY OF THIS PROVISION.

#### Pre-Arbitration Dispute Resolution

Hyperform is always interested in resolving disputes amicably and efficiently, and most customer concerns can be resolved quickly and to the customer's satisfaction by emailing customer support at [help@hyperform.app](mailto:help@hyperform.app). If such efforts prove unsuccessful, a party who intends to seek arbitration must first send to the other, by certified mail, a written Notice of Dispute ("Notice"). The Notice to Hyperform should be sent to [help@hyperform.app](mailto:help@hyperform.app) ("Notice Address"). The Notice must (i) describe the nature and basis of the claim or dispute and (ii) set forth the specific relief sought. If Hyperform and you do not resolve the claim within sixty (60) calendar days after the Notice is received, you or Hyperform may commence an arbitration proceeding. During the arbitration, the amount of any settlement offer made by Hyperform or you shall not be disclosed to the arbitrator until after the arbitrator determines the amount, if any, to which you or Hyperform is entitled.

#### Arbitration Procedures

Arbitration will be conducted by a neutral arbitrator in accordance with the American Arbitration Association's ("AAA") rules and procedures, including the AAA's Consumer Arbitration Rules (collectively, the "AAA Rules"), as modified by this Arbitration Agreement. For information on the AAA, please visit its website, <http://www.adr.org>. Information about the AAA Rules and fees for consumer disputes can be found at the AAA's consumer arbitration page, <http://www.adr.org/consumer>. If there is any inconsistency between any term of the AAA Rules and any term of this Arbitration Agreement, the applicable terms of this Arbitration Agreement will control unless the arbitrator determines that the application of the inconsistent Arbitration Agreement terms would not result in a fundamentally fair arbitration. The arbitrator must also follow the provisions of these Terms of Service as a court would. All issues are for the arbitrator to decide, including, but not limited to, issues relating to the scope, enforceability, and arbitrability of this Arbitration Agreement. Although arbitration proceedings are usually simpler and more streamlined than trials and other judicial proceedings, the arbitrator can award the same damages and relief on an individual basis that a court can award to an individual under the Terms of Service and applicable law. Decisions by the arbitrator are enforceable in court and may be overturned by a court only for very limited reasons.

Unless Hyperform and you agree otherwise, any arbitration hearings will take place in a reasonably convenient location for both parties with due consideration of their ability to travel and other pertinent circumstances. If the parties are unable to agree on a location, the determination shall be made by AAA. If your claim is for Ten Thousand United States Dollars (\$10,000 USD) or less, Hyperform agrees that you may choose whether the arbitration will be conducted solely on the basis of documents submitted to the arbitrator, through a telephonic hearing, or by an in-person hearing as established by the AAA Rules. If your claim exceeds Ten Thousand United States Dollars (\$10,000 USD), the right to a hearing will be determined by the AAA Rules. Regardless of the manner in which the arbitration is conducted, the arbitrator shall issue a reasoned written decision sufficient to explain the essential findings and conclusions on which the award is based.

#### Costs of Arbitration

Payment of all filing, administration, and arbitrator fees (collectively, the "Arbitration Fees") will be governed by the AAA Rules, unless otherwise provided in this Arbitration Agreement. If the value of the relief sought is Seventy-five

Thousand United States Dollars (\$75,000 USD) or less, at your request, Hyperform will pay all Arbitration Fees. If the value of relief sought is more than Seventy-five Thousand United States Dollars (\$75,000 USD) and you are able to demonstrate to the arbitrator that you are economically unable to pay your portion of the Arbitration Fees or if the arbitrator otherwise determines for any reason that you should not be required to pay your portion of the Arbitration Fees, Hyperform will pay your portion of such fees. In addition, if you demonstrate to the arbitrator that the costs of arbitration will be prohibitive as compared to the costs of litigation, Hyperform will pay as much of the Arbitration Fees as the arbitrator deems necessary to prevent the arbitration from being cost-prohibitive. Any payment of attorneys' fees will be governed by the AAA Rules.

### Confidentiality

All aspects of the arbitration proceeding, and any ruling, decision, or award by the arbitrator, will be strictly confidential for the benefit of all parties.

### Severability

If a court or the arbitrator decides that any term or provision of this Arbitration Agreement (other than the subsection (b) titled "Prohibition of Class and Representative Actions and Non-Individualized Relief" above) is invalid or unenforceable, the parties agree to replace such term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision, and this Arbitration Agreement shall be enforceable as so modified. If a court or the arbitrator decides that any of the provisions of subsection (b) above titled "Prohibition of Class and Representative Actions and Non-Individualized Relief" are invalid or unenforceable, then the entirety of this Arbitration Agreement shall be null and void, unless such provisions are deemed to be invalid or unenforceable solely with respect to claims for public injunctive relief. The remainder of the Terms of Service will continue to apply.

### Future Changes to Arbitration Agreement

Notwithstanding any provision in this Terms of Service to the contrary, Hyperform agrees that if it makes any future change to this Arbitration Agreement (other than a change to the Notice Address) while you are a user of the Services, you may reject any such change by sending Hyperform written notice within thirty (30) calendar days of the change to the Notice Address provided above. By rejecting any future change, you are agreeing that you will arbitrate any dispute between us in accordance with the language of this Arbitration Agreement as of the date you first accepted these Terms of Service (or accepted any subsequent changes to these Terms of Service).

### **Termination**

You agree that Hyperform, in its sole discretion, may suspend or terminate your account (or any part thereof) or use of the Service and remove and discard any content within the Service, for any reason, including, without limitation, for lack of use or if Hyperform believes that you have violated or acted inconsistently with the letter or spirit of these Terms of Service. Any suspected fraudulent, abusive or illegal activity that may be grounds for termination of your use of Service, may be referred to appropriate law enforcement authorities. Hyperform may also in its sole discretion and at any time discontinue providing the Service, or any part thereof, with or without notice. You agree that any termination of your access to the Service under any provision of this Terms of Service may be affected without prior notice, and acknowledge and agree that Hyperform may immediately deactivate or delete your account and all related information and files in your account and/or bar any further access to such files or the Service. Further, you agree that Hyperform will not be liable to you or any third party for any termination of your access to the Service.

### **User Disputes**

You agree that you are solely responsible for your interactions with, and any disputes you may have with, any other user in connection with the Service (including, without limitation, and claims or disputes between Customers and Creators) and Hyperform will have no liability or responsibility with respect thereto. Hyperform reserves the right, but has no obligation, to become involved in any way with disputes between you and any other user of the Service.

### **General**

These Terms of Service constitute the entire agreement between you and Hyperform and govern your use of and access to the Service and the Site, superseding any prior agreements between you and Hyperform with respect to the Service and/or Site. You also may be subject to additional terms and conditions that may apply when you use affiliate or third party services, third party content or third party software. These Terms of Service will be governed by the laws of the State of Illinois without regard to its conflict of law provisions. With respect to any disputes or claims

not subject to arbitration, as set forth above, you and Hyperform agree to submit to the personal and exclusive jurisdiction of the state and federal courts located within Cook County, Illinois. The failure of Hyperform to exercise or enforce any right or provision of these Terms of Service will not constitute a waiver of such right or provision. If any provision of these Terms of Service is found by a court of competent jurisdiction to be invalid, the parties nevertheless agree that the court should endeavor to give effect to the parties' intentions as reflected in the provision, and the other provisions of these Terms of Service remain in full force and effect. You agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to use of the Service or these Terms of Service must be filed within one (1) year after such claim or cause of action arose or be forever barred. A printed version of these Terms of Service and of any notice given in electronic form will be admissible in judicial or administrative proceedings based upon or relating to this agreement to the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form. You may not assign this Terms of Service without the prior written consent of Hyperform, but Hyperform may assign or transfer this Terms of Service, in whole or in part, without restriction. The section titles in these Terms of Service are for convenience only and have no legal or contractual effect. Notices to you may be made via either email or regular mail. The Service may also provide notices to you of changes to these Terms of Service or other matters by displaying notices or links to notices generally on the Service and/or Site.

### **Privacy**

At Hyperform, we respect the privacy of our users. For details, please see our Privacy Policy. By using the Service, you consent to our collection and use of personal information as outlined herein and therein.

### **Notice for California Users**

Under California Civil Code Section 1789.3, users of the Service from California are entitled to the following specific consumer rights notice: The Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs may be contacted in writing at 1625 North Market Blvd., Suite N 112, Sacramento, CA 95834, or by telephone at (916) 445-1254 or (800) 952-5210. You may contact us at [help@hyperform.app](mailto:help@hyperform.app) or by phone at 631-751-3194.

### **Questions? Concerns? Suggestions?**

Please contact us at [help@hyperform.app](mailto:help@hyperform.app) to report any violations of these Terms of Service or to pose any questions regarding this Terms of Service or the Service.