

# Terms of Use

*Effective Date: 1 July 2021*

The Hypelitix Terms of Use (hereinafter the "Terms"), which are made available through the Website, establish the legal regulation of the relationship between the Limited Liability Company "InMemoryLabOÜ" registered at Harjumaakond, Tallinn, Kesklinnalinnaosa, Vesivärvatn 50-201, 10152, doing business in IT and computer systems sphere, hereinafter referred to as the Hypelitix Service (hereinafter the "Service") and Hypelitix Service Users.

Please take a moment to read the Terms carefully since they govern your use of the Service and Services.

References to "we," "our," or "us" (or similar words) shall mean the Hypelitix Service.

References to "you" or "your" (or words similar in meaning) shall mean our User or Client, depending on the Terms context.

If you agree to these Terms on behalf of an entity, you represent that you have the authority to bind the entity and its affiliates by these Terms, in which case the terms "you" or "your" refer to that entity and its affiliates. If you do not agree, you may not use or access the Service and Services.

Use of the Hypelitix Service is governed by the Terms and Privacy Policy.

The Service may revise, supplement or otherwise modify these Terms without prior notice. You acknowledge and agree that it is your responsibility to review these Terms periodically for any updates. You agree that your use of the Service after the effective date of such change will constitute your acceptance of the amended or otherwise modified Terms. If you do not agree to the changes, you must stop using the Service.

The Service provides the ability to analyze accounts in the "Instagram" social network, which are in the public domain. In particular, the Service allows you to analyze the metadata of publications, IGTV and stories in order to track the presence or absence of mentions and/or hashtags. The Google Cloud Vision API platform can be used for account analytics, which recognizes text on images and videos in the "Instagram" social network.

By clicking "I Agree" (by checking the box next to the word) when registering on the Site - creating an "Account", you also agree to the terms and conditions relating to registered users, unconditionally accepting them.

## 1. TERMS AND DEFINITIONS

**Account** - means a set of specific data, information, cumulatively related to one element of the Service, and individualized with the help of credentials provided by the Service to the Client when registering for the Service.

**Instagram Account** - means an Instagram account on the social network, available by the link <https://www.instagram.com>. There you can also find detailed information about Instagram.

**Data Analysis** - means the Service's analytical activities in relation to the received data, aimed at creating various types of commercially valuable information, within the limits permitted by the specific Permitted Purpose.

**Website** - means the Service's Internet resource, available on the Internet at: <https://hypelitix.com>, and containing information about the Service, the cost for providing the Services, as well as serving as an official means of notifying the Client about changes and updates to the Service by posting the relevant information on the Website.

**User** - means an individual who has the ability to access the Website, read the information, and register thereon.

**Client** - means a registered User who has a login and password to the Account and has paid for the Synchronization.

**Influencer** - means a user in the Instagram social network who has an extensive and loyal audience, whose publication metadata, IGTV and stories are tracked by the Client through Synchronizations.

**API** - (application programming interface) - means description of the ways (set of classes, procedures, functions, structures or constants) by which Service can interact with other software.

**Data Subject** - means an individual who is directly or indirectly identified or identifiable through personal data.

**Third parties** - means individuals, entrepreneurs and legal entities who are not Users or Clients of the Hypelitix Service.

**Credit** - means virtual currency, which is used to purchase real services provided by the Service.

**Synchronization** - means an attempt to download Instagram Account's data including Posts, Stories or IGTV from the "Instagram" social network.

**Payment Systems** - means a service for transferring money or other funds that provides cross-border services to any user in the world who has a bank card.

**Terms of Use** - means a document containing the terms, rules and main provisions of using the Service.

**GDPR** (General Data Protection Regulation) - means the regulation under European Union law on the protection of personal data of all natural persons who are citizens of the European Union. You can read the full text of the General Data Protection Regulation at: <https://gdpr-text.com>.

## 2. GENERAL

2.1. Hypelitix grants you a limited, non-exclusive, non-transferable, personal and non-assignable permission to use the Service.

2.2. You shall refrain from obscuring, modifying, removing or erasing any copyright or other proprietary rights notices contained in the Services.

2.3. You shall refrain from copying, modifying, adapting, translating or otherwise creating derivative works of any Services obtained from using the Service.

2.4. You warrant that you will not attempt, or assist others to actually reverse engineer, decompile, disassemble, or otherwise attempt to discover the source code of the software.

2.5. You agree to comply with all applicable laws and regulations when using and accessing the Service and the Services.

### **3. REGISTRATION**

3.1. You shall register an Account to use the Services. In order to successfully register you shall provide the following information:

- company name\*;
- country of incorporation;
- Unique company ID / VAT number;
- The name and surname of the employee representing the company<sup>1</sup>\*

After the registration process is completed, the Service will generate your login username and password. If you are issued a username and password, you must keep them secure and not share with anyone else, and you must not collect personal information from other Hypelitix Users, including account names. Hypelitix reserves the right to disable the access to Account issued to you at any time at its sole discretion. If Hypelitix disables access to your Account, you may be denied access to the Service, your account information, or any Companies associated with your Account.

3.2. You agree that any registration information you provide to Hypelitix will always be accurate, correct and relevant.

3.3. By registering with Hypelitix, you agree to receive emails including, but not limited to: newsletters, product updates. You may unsubscribe from this newsletter at any time.

3.4. After registration on the Service you will be given an access to the Services, such as:

- managing the list of Influencers: adding, deleting, sorting, filtering Influencers;
- information reviews about the status of the Influencer's Synchronization: display the Synchronization results: successful, failed, unexpected;
- time of the last Synchronization attempt;
- information provision about cached publications, stories, and Influencer IGTV;
- searching of cached publications, stories, IGTV Influencer by various criteria: publication date, list of mentions or hashtags.

### **4. PRIVACY**

4.1. Direct notification to data subjects is not possible and, pursuant to Article 14. paragraph 5 (b) of the GDPR, Hypelitix is not required to notify Influencer directly, and details of the Instagram Data

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<sup>1</sup> Items marked with \* are required when filling out.

Policy can be found at: <https://help.instagram.com>. In addition, notification is made through the Service's website and Privacy Policy.

4.2. We comply with the EU General Data Protection Regulation 2016/679 (GDPR).

4.3. Important information for data controllers: You acknowledge that you may become a data controller when processing personal data of individuals and must comply with the GDPR.

4.4. If you are an individual and you process personal data in the course of purely personal or "home" activities, you may be exempt from GDPR. If you are unsure whether such an exemption applies, please request legal advice.

4.5. If a data subject requests information about a Client who has received the data subject's personal data, Hypelitix is obligated to perform and execute the transfer of all information about you to that data subject.

4.6. If you have shared information obtained through the use of our service with a third party, you must tell us the full chain of custody such information was shared with within 72 hours of Hypelitix's request.

## **5. PROVISION OF SERVICES**

5.1. You agree that Hypelitix may change, discontinue, suspend or otherwise adjust aspects of the Services at any time without notice.

5.2 You acknowledge and agree that Hypelitix may terminate your access to the Services for non-payment or willful misrepresentation of the number of intended Synchronizations or other material breach of the Terms, which may result in you being denied access to the Services contained on or provided by the Hypelitix Service.

## **6. SECURITY**

6.1. You shall ensure your Hypelitix Service username and password protection against unauthorized access. You will be responsible for any activity that occurs under your Account. You agree to immediately notify Hypelitix of any unauthorized use of your credits, username, password, or any other breach of security.

6.2. Hypelitix may access your credits, username, password from time to time to assist you with technical or billing questions or to maintain or improve the Services.

## **7. SERVICES FEES**

7.1. Hypelitix maintains a variety of payment methods for Clients, including bank transfers, credit cards, debit cards, and PayPal. As soon as we have additional payment options, we will inform you accordingly and modify these Terms of Use.

7.2. You have the right to choose any available Payment Service Provider. You agree that Hypelitix is not responsible for any Payment Service Provider's actions, any additional transaction fees, bank charges or foreign exchange fees applied to your transaction. All payments to Hypelitix include the aforementioned fees and commissions, if applicable.

7.3. To access the Service, you must specify the required number of scheduled Synchronizations and pay by bank transfer, credit card, debit card, or PayPal Payment System.

7.4. Credits shall be deducted, if the Client manually initiated the Synchronization with the help of the Service or API, or set the automatic Synchronization by timer.

7.5. Debiting credits from the Client's account occurs for:

- successful result of Synchronization, in which the Instagram Account data has been loaded, the account is publicly available, publications, stories, IGTV has/has not been published;
- a normally unsuccessful result of Synchronization, in case the data has not been loaded, due to the respective Instagram Account does not exist (error code: NO\_SUCH\_USER), the Instagram Account is found in "Instagram" but the Instagram Account is closed (private) (error code: PRIVATE\_PROFILE), the Instagram Account data has been loaded but now this link shows another Instagram Account (error code: USERNAME\_CHANGED).

7.6. No credits will be debited from the Client's Account in case of unforeseen result of Synchronization. We reserve the right to determine which results of the Synchronization are considered as unforeseen.

7.7. Funds debited for successful or normally unsuccessful Synchronization shall not be returned.

7.8. You can find the current cost of 1 Synchronization at: <https://hypelitix.com/pricing.html>.

7.9. The Client shall have access to his/her Synchronizations for the last fourteen (14) days in the Account section.

7.10. The Hypelitix Service does not store or access your credit/debit card information and payment is made through the Payment System.

## **8. CONTENT**

8.1. You may use the data collected and displayed as a result of your use of the Service for informational purposes only.

8.2. You understand and acknowledge that such data may not be exhaustive and that data analysis is based on what third party data sources provide to Hypelitix. The data is based on publicly available data/content and Hypelitix does not verify the accuracy of the data/content provided by such third parties.

8.3. Any use of the data other than as specifically described herein is strictly prohibited. In addition, third parties may be required to access the Service to collect and display data, and such third parties may prevent Hypelitix from generating such data/content. In addition, government regulations and/or compliance with applicable law may prevent Hypelitix from using or providing certain data to you.

8.4. You agree that you must evaluate and bear all risks associated with the Services, including any reliance on the accuracy, completeness and integrity of such Services. By using the Service and the Services, you represent and warrant that you have such knowledge and experience in financial and business matters that enable you to evaluate the merits and risks of the information provided by the Service and effectively use the Services provided by Hypelitix as an analytical tool. You acknowledge

that the Services are provided to you without warranties of any kind. By using the Services, you understand and agree that the use of Services is at your sole discretion and risk.

8.5. The Service may contain links to other sites on the Internet that are owned and operated by Third party providers and other third parties. You acknowledge that Hypelitix is not responsible for material on any external sites.

8.6. You acknowledge that by using the Service, you may come into contact with content that you find harmful, offensive, threatening, obscene or indecent, and you acknowledge that Hypelitix has no liability to you for content, including but not limited to explicit language and other potentially offensive material.

8.7. You must acknowledge Hypelitix as the source of the data/content; if you use/display Hypelitix data/content online, you must link to the Hypelitix site, display the Hypelitix logo.

## **9. RESTRICTIONS**

You may use the Service only as specified above. You are prohibited from using the Service for any other purpose, including:

9.1. Using the Service if you are under the age of 16.

9.2. Using the Services if you do not have the necessary number of credits to make Synchronizations.

9.3. Using any means to modify or redirect the Service.

9.4. You are prohibited from using data/content collected through our Service after Hypelitix or the data subject requests the deletion. Such data/content must be deleted within 72 hours following the notice. Also, if a Data Subject requests to delete its information, you must ensure that all persons/companies/auditors to whom such information has been transmitted delete the aforementioned information.

9.5. Broadcast, reproduce, republish, post, transmit or distribute any part of the Services (except as specifically permitted under these Terms).

9.6. Assign, syndicate, resell or otherwise transfer or make available information obtained through the Services to third parties (unless you have a specific written agreement with Hypelitix to do so).

9.7. Copy, modify, create derivative works, reverse engineer or reverse assemble the Service, or otherwise attempt to discover any source code, or allow third parties to do so.

9.8. Use the Services in any manner that could damage, disable, overburden, or otherwise impair the Services and/or the Service or prevent any other party from using the Services and/or the Service;

9.9. Utilize any meta tags or any other "hidden text" using Hypelitix's name or trademarks without Hypelitix's prior written consent;

9.10. Display the Service in frames or use any other method to display the Service (or any Service content) without Hypelitix's prior written consent;

9.11. Use the Service in any manner that is inconsistent with the terms of any applicable third-party terms of use or other agreements (including the requirement to obtain written permission before certain uses of content);

9.12. Use the Services to "stalk" another person; and/or collect or store personal information about any other person.

9.13. Use any technique to compile any false or misleading information or content;

9.14. Harm minors in any way;

9.15. Intentionally or unintentionally violate any applicable local, state, national or international laws, including, but not limited to, rules adopted by the SEC, any rules of any national or other securities exchange, including, without limitation, the New York Stock Exchange, the American Stock Exchange or NASDAQ, and any rules having the force of law;

9.16. Use the Services in any way that violates or infringes on the rights of third parties, including, without limitation, copyrights, trademarks, publicity patents or other proprietary rights;

9.17. Use the Services to gain unauthorized access to any third party services, User Accounts, computer systems or networks;

9.18. Use Hypelitix domain name or other contact information as an alias email address, mailing and/or fax address (or any other type of return address) for any communication transmitted from another location or through another service, or otherwise impersonate Hypelitix or any other third party;

9.19. Any attempt to use automated programs, bots, screen scraping or any other method of data collection other than through our currently available API is strictly prohibited.

## **10. PUBLICITY**

10.1. You grant Hypelitix the right to add your name and company logo to the Client list and Website. Except as set forth above, neither party may use the other party's name or logo without the prior written consent of the other party.

## **11. CANCELLATION OR TERMINATION**

11.1. You may cancel the Services at any time, with or without cause. You understand and accept that if you cancel the Services:

- you may not receive a refund;
- you may lose access to and use of your username and password and any Services.

11.2. You acknowledge and agree that Hypelitix may terminate your username or password with or without notice to you. Reason for termination includes, but is not limited to, breach of the Terms, partial or complete interruption of the Services and/or the Service, extended period of inactivity, legal requirement, and failure to pay fees or charges you owe Hypelitix.

11.3. Cancellation or termination will result in immediate termination of your access to the Services, deletion of your login or password and all information received. All terminations are at the sole discretion of Hypelitix, and you agree that Hypelitix has no liability to you or any third party as a result of the termination.

11.4. Upon termination or expiration of this Agreement for any reason, all license rights granted to you in this Agreement immediately terminate and you irrevocably delete all data you have obtained from Hypelitix.

11.5. There will be no refunds for partial use of the Service, refunds for failures or unavailability of the Service due to circumstances beyond Hypelitix's control. Hypelitix shall have no liability for such loss. Hypelitix reserves the right to suspend or terminate your access to the Services for non-payment.

## **12. PROPRIETARY RIGHTS**

12.1. You acknowledge and agree that the Service and Services are the exclusive property of Hypelitix, and except as may otherwise be provided herein, Hypelitix does not grant you any express or implied rights therein.

12.2. You agree not to remove, obscure, or alter any proprietary rights notices (including copyright and trademark notices) that may be affixed to or contained on the Service. Hypelitix owns the copyrights in the Service as a compilation, and in all Services available through the Service.

12.3. All content on the Service, such as text, graphics, logos, button icons, images, data compilations and software, is the property of Hypelitix or its content suppliers and protected by the international copyright laws. Any Third party marks displayed on the Service and/or Services are the property of their respective owners.

12.4. You further acknowledge that the Services may contain information that is marked as confidential and that you shall not disclose such information without Hypelitix's prior written consent.

## **13. CONTACT US**

Name: InMemory Lab OÜ

Address: Harjumaakond, Tallinn, Kesklinnalinnaosa, Vesivärvatn 50-201, 10152

Mail: [contact@hypelitix.com](mailto:contact@hypelitix.com)

## **14. DISCLAIMER**

**DISCLAIMER OF WARRANTIES AND LIMITATION OF LIABILITY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. HYPELITIX SERVICE AND ITS OFFICERS, EMPLOYEES, AGENTS, PARTNERS, ETC. EXPRESSLY DISCLAIM ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, AS TO THE ACCURACY, ADEQUACY OR COMPLETENESS OF ANY INFORMATION CONTAINED IN OR GENERATED BY THIS SERVICE. THE MATERIALS, CONTENT IN THE SERVICE, AND SERVICES ARE PROVIDED TO YOU ON AN "AS IS" BASIS, WITHOUT WARRANTIES OF ANY KIND AS TO MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE, OR AS TO THE RESULTS TO BE OBTAINED FROM THE USE OF THE SERVICES. HYPELITIX DOES NOT WARRANT THAT THE SERVICES WILL MEET YOUR REQUIREMENTS; THE SERVICES WILL BE ERROR FREE, SECURE, OR UNINTERRUPTED; ANY ERRORS WILL BE CORRECTED; OR THE QUALITY OF THE SERVICES WILL MEET YOUR EXPECTATIONS. ANY SERVICES DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SERVICE ARE PROVIDED AT YOUR OWN DISCRETION AND RISK, AND HYPELITIX ASSUMES NO RESPONSIBILITY OR LIABILITY FOR ANY ERRORS OR OMISSIONS OR FOR ANY**



**DAMAGES, DIRECT OR INDIRECT, SPECIAL OR CONSEQUENTIAL, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NO ADVICE OR INFORMATION, ORAL OR WRITTEN, OBTAINED BY YOU FROM HYPELITIX OR ITS SERVICES SHALL CREATE ANY WARRANTY NOT EXPRESSLY SET FORTH IN THE TERMS. FURTHERMORE, HYPELITIX SHALL NOT BE LIABLE FOR DELAYS OR FAILURES CAUSED BY CIRCUMSTANCES BEYOND THEIR CONTROL.**

#### **15. GOVERNING LAW AND JURISDICTION**

15.1. Any dispute arising out of or in connection with these Terms, including any question as to its existence, validity or termination, shall be referred to and finally resolved by arbitration in accordance with the LCIA Rules, which shall be deemed incorporated by reference into this paragraph.

15.2. The arbitration tribunal shall consist of one arbitrator.

15.3. The seat of arbitration shall be London, United Kingdom.

15.4. The language of the arbitration shall be English.

15.5. The law governing these Terms and Conditions shall be the substantive law of England and Wales. Except where expressly precluded by the dispute, the parties agree to continue to perform their obligations under these Terms during the dispute resolution process and until such obligations are terminated or expire in accordance with the provisions of these Terms.