



## Agreement to use the ThermoSmart Public API

The private limited company **ThermoSmart B.V.**, established at westervoortsedijk 73, 6827AV Arnhem,  
represented by its CEO Mr. E. Rietberg; hereinafter referred to as "**ThermoSmart**"

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**Licensee,**

represented by **ThermoSmart client**; hereinafter referred to as "**Gebruiker**"

collectively referred to as: "Parties";

### Whereas:

- ThermoSmart BV is active in the field of development, production, sales and support of intelligent heating solutions and has developed an online thermostat and associated software system.
- ThermoSmart BV offers an application programming interface (API) for the use by third parties ("User") of ThermoSmart Public API through automated means which, whether for a fee or not, enables the development of applications (apps) for the ThermoSmart system.
- The API data can be retrieved and sent to and from ThermoSmart Database and thus control the ThermoSmart thermostat.
- ThermoSmart BV offers an app store where User can download apps for the thermostat.
- For the development of apps developers / owners of apps can access the API under certain conditions in order to be able to use it.
- The use of the API is subject to the conditions set out in this document.
- User wants to use the API
- The Parties wish to lay down the arrangements for the use of the API in this agreement.

### The parties agree the following:

#### Article 1. Commissioning

- 1.1 A key (API key) is required to use the API. User will receive this key after registration has been completed.
- 1.2 Access to the account must be protected from unauthorized persons by means of a username and password. The password must be kept strictly confidential. ThermoSmart BV may assume that everything that, after registration with a user name and password, takes place under the guidance and supervision and responsibility of the User. ThermoSmart BV is therefore liable for all such actions unless the User has notified ThermoSmart BV that someone else knows the password.
- 1.3 Furthermore, the API key must be kept strictly confidential and must only be used for the use of the API. The use of the API key by others is not permitted without the express written consent of ThermoSmart BV.



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6800 AW Arnhem  
The Netherlands

Website : [www.ThermoSmart.nl](http://www.ThermoSmart.nl)

E-mail : [Info@ThermoSmart.nl](mailto:Info@ThermoSmart.nl)

- 1.4 If ThermoSmart BV discovers that the above terms and conditions have been violated, ThermoSmart BV may restrict or deny the User access to the API until the violation has been remedied. In addition, ThermoSmart BV is entitled to terminate the Agreement permanently, without any form of compensation.

## **Article 2. Consent ThermoSmart API License Agreement**

- 2.1 For so long as all requirements and obligations set forth in this document are complied with, ThermoSmart BV grants User permission to use the API for the purposes of websites, applications or other services.
- 2.2 It is prohibited to use the ThermoSmart Public API for acts that violate privacy and/or the Personal Data Protection Act, use in a context where racist or discriminatory content is present, use in a context where erotic or pornographic content is present (even if it is legal), use in a context where content is present that encourages hacking and such crime, and any other manner that violates Dutch law or other applicable laws and regulations.
- 2.3 Calling the API must be within reasonable standards ('fair use policy'). In particular, calls may not deviate excessively from the average of all users. In addition, ThermoSmart BV may temporarily limit or discontinue calling in the event of maintenance, failure or abuse.
- 2.4 The data obtained through the API may be presented on sites and services under User's control at User's own discretion and according to User's chosen layout. The presentation of the output must be submitted to ThermoSmart BV for verification. ThermoSmart BV reserves the right at any time to establish guidelines regarding the use of the API and/or the development of apps, which may be changed from time to time.
- 2.5 User is required to display the name and logo of ThermoSmart BV at every presentation of data obtained through the API unless otherwise agreed. ThermoSmart BV's instructions regarding the manner of presentation must be strictly adhered to. It is at all times prohibited to use the name or logo of ThermoSmart BV to give the false impression that the User is a member of ThermoSmart BV or has a special status or relationship with ThermoSmart BV.
- 2.6 Data obtained by means of the API may be temporarily stored (cached) provided that this is necessary to prevent unnecessary retrieval. However, the usual measures should be taken to verify that this data is not out of date. The user must do everything possible to prevent a visitor or end user from making a copy of data obtained by means of the API (with the exception of such a copy which is technically unavoidable).
- 2.7 If ThermoSmart BV discovers that the above terms and conditions are being violated or receives a complaint about this, ThermoSmart BV may restrict or deny access to the API until the violation has been remedied. In addition, ThermoSmart BV has the right to terminate the Agreement permanently, without any form of compensation.
- 2.8 ThermoSmart B.V. may recover damages resulting from violations of these rules of conduct from the User. The User indemnifies ThermoSmart BV against all claims from third parties relating to damage resulting from a violation of these rules of conduct.

## **Article 3. Availability and maintenance**

- 3.1 ThermoSmart BV makes every effort to make the API and ThermoSmart Public API available, but does not guarantee uninterrupted availability.



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- 3.2 ThermoSmart BV actively maintains the API and ThermoSmart Public API. Maintenance may take place at any time, even if this may result in a limitation of availability. If possible, maintenance will be announced in advance.
- 3.3 ThermoSmart BV may modify the functionality of the API and ThermoSmart Public API from time to time. User feedback and suggestions are welcome, but it is ThermoSmart BV's sole decision as to which changes to make or not to make.
- 3.4 ThermoSmart BV does not provide support for the use of the API other than the documentation made available by ThermoSmart BV, unless otherwise agreed.
- 3.5 ThermoSmart BV will not be liable for any malfunction of the app or other User services due to non-availability of the API. The User indemnifies ThermoSmart BV against all claims from third parties, including the User.

#### **Article 4. Intellectual property**

- 4.1 The ThermoSmart Public API, the associated software and all information provided via the API are the intellectual property ("IP") of ThermoSmart BV. Except as provided in the Agreement, they may not be copied or used in any way without the separate written consent of ThermoSmart BV, except as permitted by law.
- 4.2 If the User sends information to ThermoSmart BV, for example feedback about an error or a suggestion for improvement, the User grants an unrestricted and perpetual right to ThermoSmart BV to use this information for the service. This does not apply to information that User expressly marks as confidential.

#### **Article 5. Fee for API access**

- 5.1 The price, terms of payment and any other conditions for access to and use of the API may be agreed in an Annex to this Agreement.

#### **Article 6. Liability and Force Majeure**

- 6.1 Except in the case of intent/willful misconduct or gross negligence, ThermoSmart BV's liability is limited to the amount paid by the User in the three months preceding the occurrence of the harmful event. If User has not paid for the use of the API, this liability will be zero.
- 6.2 ThermoSmart BV is expressly not liable for direct and/or indirect damages, consequential damages, lost profits, lost savings and damages due to business interruption.
- 6.3 User indemnifies ThermoSmart BV against all claims from third parties in connection with the use of the API or ThermoSmart Public API.
- 6.4 In the event of force majeure, ThermoSmart BV will never be obliged to compensate for any damages incurred as a result. Force majeure includes, but is not limited to, malfunctions or outages of the internet, telecommunication infrastructure, power failures, domestic disturbances, mobilisation, war, traffic congestion, strikes, lockouts, business interruptions, stagnation in supply, fire and flooding.

#### **Article 7. Duration and termination**

- 7.1 This Agreement commences as soon as the User's registration has been completed and then runs for an indefinite period of time.
- 7.2 The User may terminate the Agreement at any time with two months' notice.



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7.3 ThermoSmart BV may terminate the Agreement if the User fails to invoke the API for a period of eighteen months. In that case, ThermoSmart BV will first send a reminder email to the email address known to ThermoSmart BV of the User.

## **Article 8. Modifications**

8.1 ThermoSmart BV may change the terms and conditions stated in this Agreement as well as any prices and other terms and conditions stated in an annex at any time.

8.2 ThermoSmart BV will send the changes or additions to the terms and conditions to the User by e-mail at least thirty (30) days prior to their entry into force so that the User can take note of them.

8.3 If the User does not wish to accept an amendment or supplement, the User may terminate the Agreement up to the date on which they becomes effective. Use of the service after the date of entry into force will be deemed to constitute acceptance of the amended or supplemented terms and conditions.

8.4 Amendments and additions to this Agreement shall only be valid insofar as they have been agreed upon in writing between the Parties.

## **Article 9. Other provisions**

9.1 This Agreement is governed by Dutch law.

9.2 Insofar as the rules of mandatory law do not prescribe otherwise, all disputes relating to this Agreement shall, after amicable mutual negotiations in the first instance between the Parties, be submitted to the competent Dutch court for the district in which ThermoSmart BV has its registered office.

9.3 If a provision in this Agreement requires a communication to be made "in writing", this will also be satisfied if the communication is made by e-mail, provided that it is sufficiently established that the communication actually originated from the alleged sender and that the integrity of the communication has not been compromised.

9.4 The version of any communication or information stored by ThermoSmart BV is deemed to be accurate unless the User provides evidence to the contrary.

9.5 If any provision of this Agreement is found to be null and void, this does not affect the validity of the entire terms and conditions. In such a case, the Parties will adopt (a) new provision(s) as a replacement, which will give effect to the intention of the original provision as far as is legally

9.6 ThermoSmart BV is entitled to transfer its rights and obligations under the Agreement to a third party who takes over the service or business activity in question from it.

## **Signed in duplicate,**

Location: Digital  
Date: 21 oktober, 2020  
ThermoSmart BV

Location: Digital  
Date: 21 oktober, 2020  
ThermoSmart client

This license agreement has been concluded digitally between ThermoSmart BV and ThermoSmart client. ThermoSmart BV offers this agreement digitally and has approved in this capacity. By applying



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for the license per 21 oktober, 2020 at 12:07, ThermoSmart client has also agreed to the condition. This agreement has been sent to both parties by email. It is also stored with reference: IT00000 - .

