

FOODPAIRING — General API EULA

This General API EULA covers the relationship between Foodpairing NV (further mentioned as FP) and you, your Company, its employees, subcontractors of any third parties directly or indirectly involved in an Application Project (further mentioned as You).

This General API EULA is applicable during both the development, while using the Sandbox API, and production phase of your project, when your live/public Application is powered by our API.

By signing this agreement both parties expressly acknowledge to be bound by all its terms and conditions.

last updated: March 1st, 2016

FOODPAIRING®

discover exciting pairings

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SECTION 1

General framework

FP is a research-driven company supporting enterprises in the creation of customized applications with the Foodpairing methodology and technology. The Foodpairing methodology is based on scientific research of the aroma-profile of ingredients. FP has built a database containing over 1700 food and beverages ingredients and ingredient attributes. FP's data scientists have created several algorithms, calculating possible pairings between ingredients of the databank, the proximity of their match, calculating quantities and generating well balanced recipes.

The API information that is useful for your Application is:

- Pairings: Ingredients with attributes + their pairings matched on aroma interaction ($A + B$)
- Recipe generator: Ingredient pairings + quantities ($xA + yB$) in a certain recipe context
- User data management
- Replace model ($A = B$)



SECTION 2

General Definitions

For the purpose of this Agreement, the following terms shall have the following meaning:

1. **Back-end:** The data in the Foodpairing® databases, in particular the ingredients, ingredient features and attributes such as aroma and flavor characteristics, flavor analyses and several algorithms capable of creating pairings, recipes and replace models.
2. **API:** the private and proprietary application programming interface of FP, through which specific access to the Back-end is granted, through licensing for third party applications. The API will be in most cases customized for your live/public Application. In the development-phase, FP grants access to a **Sandbox API**, with a limited amount of calls/day and a subset of data.
3. **Work product:** output resulting from the use of your application and the API:
 - a) A food combination (a+b)
 - b) A recipe (ingredients + quantities + preparation methods).
4. **API call:** A query or request from the Applications to retrieve information from the Back-end through the API.
5. **API keys:** you and your subcontractors, as the case may be, will be issued one or more unique security keys, tokens, passwords and/or other credentials for accessing the API (collectively 'keys').
6. **Application:** Application you are developing in the framework of an API Project and of which the 'concept' is previously communicated and approved by FP, which will access the Back-end through the API, via this license Agreement (General API EULA).
7. **Service:** FP making the API available to you via license Agreement and under the terms and conditions of this agreement.

SECTION 3

GENERAL EULA (End User License Agreement) on API

1. FP grants you a **limited, non-exclusive, non-transferable, non-sublicensable license** on the API, in order to support your Application.
2. You and/or your subcontractors may **not sell, transfer, sublicense or otherwise disclose the given API keys** to any other party or use the keys with any other Application other than defined in this Agreement, or not according to the terms of this Agreement. You are responsible for maintaining the secrecy and security of the API keys and are responsible for all activities that occur using the API keys, regardless of whether such activities are undertaken by you or another third party.
3. FP reserves the **right to modify its Service and the API** from time to time at its sole discretion, and may release subsequent versions of the API. You may be required to use the most recent version in order to obtain the functionality. Those modifications will only have as a purpose to improve the Service and will have no impact on the continuity of the Service and its compatibility with your Application.
4. FP may **monitor the use of the API and may ask for access to the Application** for the sole purpose of verifying your compliance with this Agreement and any other separate Agreement.
5. You, or any person directly or indirectly related to you, will be responsible for your **appropriate conduct and for any consequences thereof**, while using the API and only for **purposes that are legal, proper and in accordance with this Agreement**. This means that when using the API he will not, directly or indirectly, take or enable another to take any of the following actions:
 - use any robot, spider, site search/retrieval application or other device to retrieve, wrap, frame, index or otherwise reproduce any portion of the Service.
 - reverse engineer, reverse assemble, decompile, modify or attempt to discover any source or object code of the API or any part of the Service.
 - transmit any viruses, worms, defects, Trojan horses or any items of a destructive nature
 - use the API in any manner that is competitive to Foodpairing or its Service, including without limitation, in connection with any application, website or product or service that also includes features, endorses, or otherwise supports in any way a third party that provides services competitive to FP's products and services, as determined in our sole discretion.
 - use the Service or API to distribute unsolicited advertising or promotions
 - charge users in any manner for access to or use of the API and the User Interface for Customers or impose any terms on users of the User Interface for Customers that are inconsistent with this

Agreement. Without limiting the foregoing, you may not sell, rent, lease, sublicense, redistribute or syndicate access to the FP API or the User Interface for Customers and you may not charge any kind of service, booking or similar fee in connection with any services made available via FP.

6. The license **extends to powering the Application as defined in this Agreement**. FP reserves the **right to revoke access** without any notification if you do not act in accordance with this Agreement. You shall not attempt, nor induce or enable third parties to attempt, to copy or retrieve the Back-end or substantial parts thereof by means of API Calls. No structural data shall be collected.

7. For promotion of its Services, FP may establish a **directory** of all licensees, including your Application. Whether your Application is included in such a directory would be at FP's sole discretion.

8. FP commits to undertake all reasonable efforts and work according to best practices in order to deliver a **continuous API availability** and **avoid any kind of downtime** (any time during the scheduled availability period that the production environment is not available for access). FP will do everything we can to achieve 100% uptime. Any **Excused downtime**, being downtime occurring **(I) during an excused scheduled maintenance period, (II) a company or its authorised developer's telecommunications and internet services, (III) software or hardware not provided and controlled by FP** (including third party software or sites that are accessed or linked through the FP Service) or **(IV) Force Majeure Events** within the meaning of the Agreement, will be measured and reported when necessary.

9. For any problem resolution the API operations team of FP is available between office hours (9AM-5PM CET). Please contact info@foodpairing.com to get in touch with the operations team and get support.

Problem definitions and response/resolution times:

1. Critical - Application is not accessible

Target response time 24 hrs during office hours

2. High - Significant malfunction of service, significantly limited access to service

Target response time 24 hrs during office hours

3. Medium - Product malfunctions but not restricted access

Target response time of 48 hrs during office hours. Resolution schedule provided within 15 working days or at next service update releases.

4. Low - Minor malfunctions or cosmetic change to product

Target response time 48 hrs during office hours. Resolution will be in a future service update.

5. Enhancement

Target response time of 72 hrs of identifying an enhancement request. Resolution will be available in a future release as determined by FP.

10. FP commits to undertake all reasonable efforts and work according to best practices in order to fulfill your target timings. Good cooperation between all parties is necessary to make the functionalities work within the above set timings. Unforeseen inefficiencies can delay the project. In that regards parties undertake to meet in order to solve any occurring issues asap.

11. FP has the right to collect anonymous user data, without your permission, meaning that with your Application being public/live, the unique ID and IP address of a user should be attached to each call to the API. This data is for internal usage and will be treated anonymised, it will help us improve our services.

SECTION 4

SANDBOX API EULA

During the **development phase** (before the official launch of an Application) FP grants a license limited to its **Sandbox API**, with a subset of data and a limited amount of API calls. This Sandbox API is **subject to the terms & conditions of this Agreement**. Once the Application is live/public and goes from development to production phase, the actual API EULA starts running, when approved by FP and under the terms & conditions of this Agreement and an **API Project Agreement**.

SECTION 5

License on the Work Product

1. Subject to the terms and conditions in, and only during the term of the EULA and this Agreement, FP grants you a **limited, non-exclusive, revocable, non-sublicensable and non-transferable license on the Work Product**, solely to develop, test, display, distribute and execute the Application.
2. **Display of the Work Product - attribution and goodwill:** you must clearly and conspicuously attribute the source of all Work Product as received from the Service. The live/public Application shall **factually and visibly state** in the User Interface that it is "**Powered by FOODPAIRING™**". If you display the Work Product in a way that FP finds unacceptable for any well founded reason, including display that violates this Agreement or it disparages, damages, tarnishes or impairs the value, integrity or goodwill of the Work Product or its subjects or brands there in, FP may require that you immediately change or cease the display of such Work Product.
3. You will **not permit any person, directly or indirectly, to (i) reverse engineer, disassemble, reconstruct, decompile, translate, modify, copy** or, other than as explicitly permitted hereunder, **or (ii) create derivative works of the Work Product**, for purposes going beyond the scope of online and offline communication.
4. You expressly acknowledges that, without limitation, the **following use of the Work Product is excluded from the License** and you will refrain from such use: Use of Work Product or API for **own creation of software and/or web applications, databases or creation of similar products by third parties which go beyond the scope of the project**. To the extent the COMPANY wishes to use the Work Product for such purposes, prior and written consent by FP for an additional license including other conditions, is required.

SECTION 6

License Agreement on Brands

1. **You grant FP a limited, non-sublicensable, non-transferable and non-exclusive license** to display the trade names, trademarks, service marks, logos, copyright notices, domain names and other distinctive brand elements associated with your company and the Application, for the sole **purpose of identifying the Application in a directory and/or promoting or advertising your use of the API.**

2. **FP grants you a limited, non-sublicensable, non-transferable, revocable, non-exclusive license** to display the FP trade name, trademarks, service marks, logos, copyright notices, domain names and other distinctive brand elements associated with FP and the API, for the sole purpose of factually and visibly stating in the Application that it is “Powered by Foodpairing®” in accordance with this Agreement and the Brand Kit, and the purpose of promoting or advertising the API and Application, during and after this Agreement.

3. **Parties commit to protection each other's Brands.** Neither party shall, at any time during or after the term of this Agreement, register or try to register, challenge or assist others to challenge each other's Brands. Nor shall either party attempt to register any Brands or brand identifiers, including domain names, that are confusingly similar in any way, including but not limited to, sound, appearance and spelling, to any of the other party's brands. Brand protection includes but is not limited to: (I) no use of Brands in any other way than as permitted under this Agreement, (II) not disparage its products or services, not tarnish, dilute or otherwise impair Brand, (III) not remove, obscure, distort or alter any element of a Brand.

SECTION 7

Intellectual Property Rights

1. You acknowledge that, to the exclusion of your IP rights, **FP owns all intellectual property rights in relation to (I) the Back-end, API and Work Product and any and all elements and components thereof**, including content, techniques, know how, algorithms, databases, technology, methodology, software, code; **(II) the FOODPAIRING™/FOODPAIRING® trademark** and trade name, logos, copyright notices, domain names and other distinctive brand elements of FP (further mentioned as ‘FP Brands’) and **(III) any feedback** (including suggestions, comments, improvements, ideas, etc.), about the FP Service, the Back-end, Work Product both existing as of the date of this Agreement and created during the term of this Agreement. (collectively, the "FP Property"). Any any element of the FP Property transmitted by FP in connection to your Application remains the property of FP.

2. You expressly confirm that, unless otherwise agreed in writing and apart from the rights validly licensed and given to COMPANY according to this agreement, **all intellectual property and other commercial rights in relation to results, which FP will solely generate, find or develop in the course of the collaboration**, related to improvements of existing techniques, models and methods owned by FP, **are exclusively held by FP** and are part of the FP Property.

3. You own all intellectual property rights, exclusive from the FP Property, conceived, developed, acquired or authored prior to entering into, during and after termination of this agreement. Such IP rights, including **IP rights on the Application**.

4. You acknowledge and agree that **FP may be independently creating applications**, content and other products or services that may be similar to the API/User Interface for Customers/ Work Product and its content with the exclusion of any elements that are owned, acquired, created or developed by COMPANY or its subcontractors during and after the term of this Agreement, and **nothing in this Agreement, will be construed as restricting or preventing FP from creating and fully exploiting such applications**, content and other items, without any obligation to COMPANY unless stated differently in this Agreement.

SECTION 8

Payment terms and conditions

Any fees applicable to you because of this Agreement shall be paid within 30 days end of month by wire transfer to FP's account with IBAN nr. BE37 3631 3268 5128 (ING) and BIC code BRUBEBB. If upon having requested notice from FP, you fail to pay the amounts due within 10 days as of receipt of the notice, you agree that a non-refundable fixed fee of EUR 125 shall be due to cover FP's administrative expenses in handling unpaid invoices and late payments. All pricing documented is exclusive VAT.

Any outstanding amounts at the due date for payment shall be subjected to an interest of 2% / month automatically and subject to prior notice being required.

SECTION 9

Publicity

The terms of disclosure and communication concerning the live/public Application shall be subject to the terms of this Agreement and the FP Brand Kit, and to any other Agreements made by the parties separately made from this General API Agreement (API Project Agreement)

SECTION 10

Exclusivity clause

You acknowledge and agree that FP may be independently creating Applications, content and other products or services that may be similar to the Application and its content with the exclusion of any elements that are owned, acquired, created, or developed by you, during and after the term of this Agreement, and nothing in this Agreement will be construed as restricting or preventing FP from creating and fully exploiting such, content and other items, without any obligation to you.

SECTION 11

Liability and indemnity

You acknowledge and accept that FP, except in case of gross negligence or intentional fault, shall **not be liable for any third party claims or damages** incurred due to anything related to the Service (including API, Work Product, Back-end) provided by or on behalf of FP pursuant to this Agreement. Therefore you agree to defend, indemnify and hold FP, its subsidiaries, affiliates, directors, officers, agents and employees harmless, from and against any and all claims, liabilities, damages (actual and consequential), losses and expenses (including legal and other professional fees) arising from or in any way related to any third party claims relating to materials or instructions provided to FP by you pursuant to his Agreement and or to any violation of this Agreement by you, unless such claim is caused directly and exclusively by the negligence or willful misconduct of FP. Upon FP's request you shall intervene in any of these third party claims. Upon receipt of notice of such third party claim, FP has the right to immediately terminate this Agreement, without any reimbursement of payments received.

If any third party seeks damages from FP caused by any claim regarding the quality, fitness for purpose, use or consumption of your products, resulting from the Work Product, you shall voluntarily intervene in

any court, administrative or arbitration proceedings and shall hold FP harmless and indemnify FP for any liability it has incurred vis-a-vis third parties in relation to such claims.

You acknowledge and accept that FP, except in case of gross negligence or intentional fault, shall **not be liable to you** for any direct, indirect, incidental, special, consequential or exemplary damages, resulting from: (I) the use or inability to use the Application or API (II) unauthorised access to, or the loss, corruption or alteration of the Application, API, content or data (III) statements, acts, conducts or omissions of any third party using the Application and the Service, (IV) FP's failure to protect the confidentiality of any passwords or access rights given to you, (V) the termination of the availability of the API or this Agreement, (VI) claims or damages incurred due to a delay of target timings (VII) any other matter relating to the API, Work Product, Application and the Service.

FP endeavors to protect all content, services, trademarks and designs owned by you from **unlawful copying by third parties**, however no warranties are made by FP in this regard and FP shall not be held liable for any (in)direct damages a third party or you may incur due to or resulting from such activities by third parties, unless damages are caused directly and exclusively by the negligence or willful misconduct of FP.

SECTION 12

Miscellaneous

If through using the Service, you utilize or obtain any product or service from a third party, you are additionally subject to such third party terms & conditions, however this shall not affect this Agreement with FP.

You acknowledge that each affiliate of FP shall be a third party beneficiary to this Agreement and that such other parties are entitled to directly enforce, and rely upon, any provision of this Agreement which confers a benefit or provides rights in favor of them. Other than this, no other person or company shall be a third party beneficiary to this Agreement.

Any failure or delay by either party to enforce at any time any term or condition of this Agreement shall not be considered a waiver of that party's right thereafter to enforce each and every term and condition of this Agreement. If any provision of this Agreement is found by a court of competent jurisdiction to be invalid, the parties nevertheless agree the the court should endeavor to give effect to the parties intentions as reflected in the provision, and the other provisions remain in full force and effect.

Any claim or cause of action related to the Service must be filed within one year after such claim or cause became known to you.

Neither party may assign nor transfer his rights or obligations under this Agreement without the other party's prior written permission, not to be unreasonably withheld, except that both parties may assign this Agreement to a third party into which they have merged or which has otherwise succeeded to all or substantially all of its business and assets to which this Agreement pertains, by purchase or stock, assets, merger, reorganization or otherwise, and which has assumed in writing or by operation of law its obligations under this Agreement.

SECTION 13

Enforcement and modalities (general)

This Agreement shall only become effective upon both parties acceptance, in writing, and shall remain binding until the end of the EULA Licensing period.

The Licensing period (EULA/Work Product/Brands) starts from the date the first call to the API is made and ends on the last day of the agreed licensing period. The license can be prolonged when parties renegotiate the Agreement after this period of time. Licenses are revocable during this period if you do not comply with the conditions of this Agreement or any other Agreement relating to this API Project.

Either party has the right to terminate this Agreement with immediate effect and without the need for a court intervention, by written notice, if the other party commits any material breach of the Agreement and fails to remedy such breach within 30 calendar days after receipt of a written notice.

Any other termination (without cause) by either party of this Agreement shall be subject to a 4 months prior written notice.

The rights granted by FP to you under this Agreement, including all licenses, shall terminate with the termination of this Agreement and without prejudice to any ownership rights both parties may have under this Agreement.

SECTION 14

Conflicting Documents

The parties under this Agreement have entered or will be entering into other Agreements. To the extent there are any terms in this Agreement that are inconsistent with the terms of other Agreements between the parties, this Agreement shall prevail except conditions & agreements of the API Project Agreement.

SECTION 15

Confidential Information

The term "Confidential Information" means any information of or relating to the parties that is not generally known and is designated as confidential or a reasonable person would understand to be confidential at the time of disclosure, including, without limitation, nonpublic information regarding products, services, programs, features, data, techniques, technology, code, ideas, inventions, research, testing, methods, procedures, know-how, trade secrets, business and financial information and other activities. All Confidential Information remains the property of each party and no license or other right is granted hereby, unless expressly granted herein. Parties will not disclose any Confidential Information to any third party, and will take all reasonable precautions to prevent its unauthorized dissemination, both during and after the term of this Agreement. Parties will limit the internal distribution of Confidential Information to the personnel and agents who have a need to know, and will take steps to ensure that dissemination is so limited. Parties will not use any Confidential Information for the benefit of anyone other. Upon written request, parties will destroy Confidential information. In addition to the terms of this provision, both parties will continue to be subject to any nondisclosure agreement that they have entered into separately. This provision will survive any termination of this Agreement.

SECTION 16

Governing law and jurisdiction

This Agreement shall be construed and interpreted exclusively in accordance with the laws and courts of Belgium. Each party shall have the right at all times to seek equitable remedies through the courts, including without limitation injunctive relief, in order to protect its confidential and proprietary information, as well as its trademarks, trade names and/or any other intellectual property rights.

For any further information on the API, please contact info@foodpairing.com