

## END USER LICENCE AGREEMENT

DECERTO SP. Z O.O.

Higson

SAAS CLOUD LICENCE

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### **PLEASE READ CAREFULLY BEFORE SUBSCRIBING SOFTWARE FROM THE MARKETPLACE:**

This licence agreement (Licence) is a legal agreement between **you** (Subscriber or you)

and

**Decerto Sp. z o.o.** a company registered in Poland, entered into the National Court Register kept by the District Court for the Capital City of Warsaw, XII Commercial Division of the National Court Register under KRS number 0000263421 with its registered office in Warsaw, Zlota 59, 00-120 Warsaw, with the share capital of PLN 50 000, registered as a Value Added Taxpayer, VAT Number: PL9512191870, REGON Number: 140646200 (Licensor, us or we)

for:

- HIGSON computer software, (Software); and
- Documentation related to Software (Documents).

We license use of the Software and Documents to you on the basis of this Licence. We do not sell the Software or Documents to you. We remain the owners of the Software and Documents at all times.

#### IMPORTANT NOTICE TO ALL USERS:

- BY SUBSCRIBING TO THE SOFTWARE THROUGH MARKETPLACE YOU AGREE TO THE TERMS OF THIS LICENCE WHICH WILL BIND YOU AND. THE TERMS OF THIS LICENCE INCLUDE, IN PARTICULAR, LIMITATIONS ON LIABILITY IN CONDITION 5 AND 6.
- IF YOU DO NOT AGREE TO THE TERMS OF THIS LICENCE, YOU MUST NOT SUBSCRIBE AND YOU MAY NOT USE THIS SOFTWARE OR DOCUMENTS.

You should download and store a copy of this Licence for future reference.

The terms used in this licence agreement have been used in the meaning set out below ("DEFINITIONS"):

Term	Meaning
Licence Fees	shall have a meaning ascribed to them in Condition 1.3;
Cloud Services Provider	means, as applicable, Amazon Web Services, Inc.; Google LLC.
Permitted Devices	Cloud Services Provider's physical or virtual machines as selected in your Subscription for the Software on the Detail Page;
Territory	Global
Subscription	means a subscription you ordered in the Marketplace, and fulfilled by us, for the

	Software in accordance with this Agreement;
Subscription Period	means the time for which you are authorized to use the Software subject to this Agreement. This period lasts as long as you subscribe the Software.
Metered Pricing Model	is a pricing model whereby, you pay the Licence Fees to us based on how long you subscribe the Software; The Licence Fees in a Metered Pricing Model are shown in a Detail Page;
Detail Page	means a webpages within the Marketplace dedicated to Software where you can see the details and select various parameters, including pricing, that will govern your Subscription;
Marketplace	(i) in relation to the software marketplace operated by Amazon Web Services, Inc. means marketplace located at <a href="https://aws.amazon.com/marketplace/">https://aws.amazon.com/marketplace/</a> as it may be updated from time to time; (ii) in relation to Google LLC means marketplace located at <a href="https://cloud.google.com/marketplace">https://cloud.google.com/marketplace</a> as it may updated from time to time.

Terms and Conditions of this licence agreement:

## 1. GRANT AND SCOPE OF LICENCE AND LICENCE FEES AND OTHER FEES

1.1 In consideration of Licence Fees and you agreeing to abide by the terms of this Licence, we grant to you a non-exclusive, non-transferable licence to use the Software and the Documents in Territory on the terms of this Licence.

1.2 You may:

- (a) use the Software only on Permitted Devices, in the Territory for a Subscription Period.
- (b) use any Documents in support of the use permitted under *clause (a)* and make 1 copy of the Documents as is reasonably necessary for its lawful use.

1.3 The Licence Fees for use of Software shall be payable by you to us through the Cloud Services Provider on a Metered Pricing Model;

1.4 You acknowledge that, the Cloud Services Provider and Software may register the metered usage of the Software for the purpose of calculating the Licence Fees that will be charged to you.

1.5 You may be required to pay additional fees directly to the Cloud Services Provider, such as infrastructure costs, as required by the Cloud Services Provider.

## 2. RESTRICTIONS AND REQUIREMENTS

2.1 Except as expressly set out in this Licence or as permitted by any local law, you undertake:

- (a) not to copy the Software or Documents except where such copying is incidental to normal use of the Software, or where it is necessary for the purpose of back-up or operational security;
- (b) not to rent, lease, sub-license, loan, translate, merge, adapt, vary or modify the Software or Documents;
- (c) not to make alterations to, or modifications of, the whole or any part of the Software, nor permit the Software or any part of it to be combined with, or become incorporated in, any other programs;
- (d) not to disassemble, decompile, reverse-engineer or create derivative works based on the whole or any part of the Software nor attempt to do any such thing except to the extent that (by virtue of the relevant provisions of the Polish Copyright and Related Rights Act) such actions cannot be prohibited because they are essential for the purpose of achieving inter-operability of the Software with another software program, and provided that the information obtained by you during such activities:

- (i) is used only for the purpose of achieving inter-operability of the Software with another software program; and
  - (ii) is not unnecessarily disclosed or communicated without our prior written consent to any third party; and
  - (iii) is not used to create any software which is substantially similar to the Software;
- (e) to keep all copies of the Software secure and to maintain accurate and up-to-date records of the number and locations of all copies of the Software;
- (f) to supervise and control use of the Software and ensure that the Software is used by your employees and representatives in accordance with the terms of this Licence;
- (g) to include our copyright notice on all entire and partial copies you make of the Software on any medium;
- (h) not to provide or otherwise make available the Software in whole or in part (including but not limited to program listings, object and source program listings, object code and source code), in any form to any person without prior written consent from us; and
- (i) to comply with all applicable technology control or export laws and regulations.

2.2 The Software is not designed or developed for use in high-risk, hazardous environments requiring fail-safe performance, including without limitation in the operation of nuclear facilities, aircraft navigation or control systems, air traffic control, or weapons systems, or any other application in which the failure of the Software could lead to severe physical or environmental damages ("High Risk Activities"). You shall not use the Software for High Risk Activities.

2.3. By using the Software you acknowledge that you fulfil the OPERATING SYSTEM, HARDWARE AND OTHER REQUIREMENTS as provided by the relevant Cloud Services Provider and Licensor in Detail Page.

### 3. INTELLECTUAL PROPERTY RIGHTS

3.1 You acknowledge that all intellectual property rights in the Software and the Documents anywhere in the world belong to us, that rights in the Software are licensed (not sold) to you, and that you have no rights in, or to, the Software or the Documents other than the right to use them in accordance with the terms of this Licence.

3.2 You acknowledge that you have no right to have access to the Software in source code form.

3.3 Software may contain or be provided with components that are subject to the terms and conditions of "open source" software licenses ("Open Source Software"). To the extent required by the license to which the Open Source Software is subject, the terms of such license will apply instead of the terms of this Agreement with respect to such Open Source Software, including without limitation, any provisions governing attribution, access to source code, modification and reverse-engineering.

### 4. TAXES

4.1 Each Party will be responsible, as required under applicable laws, for identifying and paying all taxes and other governmental fees and charges (and any penalties, interest and other additions thereto) that are imposed on that Party upon or with respect to the transactions and payments under this Agreement.

4.2 Applicable taxes and duties may be due in addition to the Licence Fees payable by you. We may charge, through the Cloud Services Provider, and you will pay, where applicable, value added or goods and services tax, or withholding or other taxes ("Taxes").

4.3 You will receive a compliant tax invoice, issued by the Cloud Service Provider, where required.

4.5 Upon request, you will provide such information to us or to the Cloud Services Provider, as reasonably required, to determine whether we or the Cloud Services Provider are obligated to collect Taxes from you.

## 5. LIMITED WARRANTY

5.1 TO THE EXTENT PERMITTED UNDER LAW, WE PROVIDE NO WARRANTIES (WHETHER IMPLIED OR OTHERWISE) TO YOU IN RELATION TO THE SOFTWARE OR THE DOCUMENTS UNDER THIS LICENCE, AND ALL SUCH WARRANTIES ARE EXCLUDED.

## 6. LIMITATION OF LIABILITY

6.1 YOU ACKNOWLEDGE THAT THE SOFTWARE HAS NOT BEEN DEVELOPED TO MEET YOUR INDIVIDUAL REQUIREMENTS, INCLUDING ANY PARTICULAR CYBERSECURITY REQUIREMENTS YOU MIGHT BE SUBJECT TO UNDER LAW OR OTHERWISE, AND THAT IT IS THEREFORE YOUR RESPONSIBILITY TO ENSURE THAT THE FACILITIES AND FUNCTIONS OF THE SOFTWARE AS DESCRIBED IN THE DOCUMENTS MEET YOUR REQUIREMENTS.

6.2 WE ONLY SUPPLY THE SOFTWARE AND DOCUMENTS FOR INTERNAL USE BY YOUR BUSINESS, AND YOU AGREE NOT TO USE THE SOFTWARE OR DOCUMENTS FOR ANY RE-SALE PURPOSES.

6.3 WE SHALL NOT IN ANY CIRCUMSTANCES WHATEVER BE LIABLE TO YOU, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), BREACH OF STATUTORY DUTY, OR OTHERWISE, ARISING UNDER OR IN CONNECTION WITH THE LICENCE FOR:

- (A) LOSS OF PROFITS, SALES, BUSINESS, OR REVENUE;
- (B) BUSINESS INTERRUPTION;
- (C) LOSS OF ANTICIPATED SAVINGS;
- (D) LOSS OR CORRUPTION OF DATA OR INFORMATION;
- (E) LOSS OF BUSINESS OPPORTUNITY, GOODWILL OR REPUTATION;

WHERE ANY OF THE LOSSES SET OUT IN *CONDITION 6.3(A) TO CONDITION 6.3(E)* ARE DIRECT OR INDIRECT; OR

- (F) ANY SPECIAL, INDIRECT OR CONSEQUENTIAL LOSS, DAMAGE, CHARGES OR EXPENSES.

6.4 OTHER THAN THE LOSSES SET OUT IN *CONDITION 6.3* (FOR WHICH WE ARE NOT LIABLE), OUR MAXIMUM AGGREGATE LIABILITY UNDER OR IN CONNECTION WITH THIS LICENCE WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, SHALL IN ALL CIRCUMSTANCES BE LIMITED TO 5 000 USD (FIVE THOUSAND US DOLLARS ONLY). THIS MAXIMUM CAP DOES NOT APPLY TO *CONDITION 6.5*.

6.5 NOTHING IN THIS LICENCE SHALL LIMIT OR EXCLUDE OUR LIABILITY FOR:

- (A) DEATH OR PERSONAL INJURY RESULTING FROM OUR NEGLIGENCE;
- (B) FRAUD OR FRAUDULENT MISREPRESENTATION;
- (C) ANY OTHER LIABILITY THAT CANNOT BE EXCLUDED OR LIMITED BY POLISH LAW.

6.6 THIS LICENCE SETS OUT THE FULL EXTENT OF OUR OBLIGATIONS AND LIABILITIES IN RESPECT OF THE SUPPLY OF THE SOFTWARE AND DOCUMENTS. EXCEPT AS EXPRESSLY STATED IN THIS LICENCE, THERE ARE NO CONDITIONS, WARRANTIES, REPRESENTATIONS OR OTHER TERMS, EXPRESS OR IMPLIED, THAT ARE BINDING ON US. ANY CONDITION, WARRANTY, REPRESENTATION OR OTHER TERM CONCERNING THE SUPPLY OF THE SOFTWARE AND DOCUMENTS WHICH MIGHT OTHERWISE BE IMPLIED INTO, OR INCORPORATED IN, THIS LICENCE WHETHER BY STATUTE, COMMON LAW OR OTHERWISE, IS EXCLUDED TO THE FULLEST EXTENT PERMITTED BY LAW.

## 7. TERMINATION

7.1 We may terminate this Licence immediately (i) if you commit a material or persistent breach of this Licence, or (ii) Cloud Service Provider requests us to terminate your Licence.

7.2 On termination for any reason:

- (a) all rights granted to you under this Licence shall cease;
- (b) you must immediately cease all activities authorised by this Licence; and
- (c) you must immediately and permanently delete or remove the Software from all computer equipment in your possession, and immediately destroy or return to us (at our option) all copies of the Software and Documents then in your possession, custody or control and, in the case of destruction, certify to us that you have done so.

## 8. COMMUNICATIONS BETWEEN US

8.1 We may update the terms of this Licence at any time by publishing new terms on the Detail Page in accordance with this *Condition 8*. Your continued use of the Software and Documents following the deemed receipt and service of the notice under *Condition 8.3* shall constitute your acceptance to the terms of this Licence, as varied. If you do not wish to accept the terms of the Licence (as varied) you must immediately stop using and accessing the Software and Documents.

8.2 If we have to contact you, we will do so by email to the address you provided in accordance with your order for the Software.

8.3 Note that any notice:

- (a) given by us to you will be deemed received and properly served 24 hours after it is first posted on the Detail Page or 24 hours after an email is sent; and
- (b) given by you to us will be deemed received and properly served 24 hours after an email is sent.

8.4 In proving the service of any notice, it will be sufficient to prove, in the case of posting on the Detail Page, that the website was generally accessible to the public for a period of 24 hours after the first posting of the notice; and, in the case of an email, that such email was sent to the email address of the recipient given for these purposes.

## 9. EVENTS OUTSIDE OUR CONTROL

9.1 We will not be liable or responsible for any failure to perform, or delay in performance of, any of our obligations under this Licence that is caused by an Event Outside Our Control. An Event Outside Our Control is defined below in *Condition 9.2*.

9.2 An Event Outside Our Control means any act or event beyond our reasonable control, including without limitation: (i) actions and omissions of the Cloud Services Provider, or (ii) failure of public or private telecommunications networks.

9.3 If an Event Outside Our Control takes place that affects the performance of our obligations under this Licence our obligations under this Licence will be suspended and the time for performance of our obligations will be extended for the duration of the Event Outside Our Control.

## 10. HOW WE MAY USE YOUR PERSONAL INFORMATION

10.1 Under data protection legislation, we are required to provide you with certain information about who we are, how we process the personal data of those individuals who use the Software and the Documents and for what purposes and those individuals' rights in relation to their personal data and how to exercise them. This information is provided in <https://www.higson.io/static/privacy-policy> and it is important that you read that information.

## 11. OTHER IMPORTANT TERMS

11.1 We may transfer our rights and obligations under this Licence to another organisation, but this will not affect your rights or our obligations under this Licence.

11.2 You may only transfer your rights or your obligations under this Licence to another person or entity if we agree in writing.

11.3 This Licence and any document expressly referred to in it constitutes the entire agreement between us and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between us, whether written or oral, relating to its subject matter. You agree that you shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Licence or any document expressly referred to in it. You agree that you shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Licence or any document expressly referred to in it.

11.4 If we fail to insist that you perform any of your obligations under this Licence, or if we do not enforce our rights against you, or if we delay in doing so, that will not mean that we have waived our rights against you and will not mean that you do not have to comply with those obligations. If we do waive a default by you, we will only do so in writing [signed by us], and that will not mean that we will automatically waive any later default by you.

11.5 Each of the conditions of this Licence operates separately. If any court or competent authority decides that any of them are unlawful or unenforceable, the remaining conditions will remain in full force and effect.

11.6 This Licence, its subject matter and its formation (and any non-contractual disputes or claims) are governed by Polish law. We both irrevocably agree to the exclusive jurisdiction of the courts of Warsaw, Poland.

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