End User License Agreement

Effective Starting Date: March 13, 2019

This End User License Agreement ("EULA") is a legal agreement between you (either an individual or a single legal entity) and Herzum to use any of the Herzum Apps.

If you are agreeing to this Agreement not as an individual but on behalf of your company, government, or other entity for which you are acting, then "you" means your entity and you are binding your entity to this Agreement.

By installing, downloading or using any of Herzum apps delivered on the Atlassian Marketplace, you agree to be bound by the terms of this EULA.

If you do not agree to the terms of this EULA, you may not install, copy, download or otherwise use the Herzum Apps.

Definitions

Accessible Code means source code that is unprotected and accessible.

Herzum means Herzum North America, Inc., 175 N. Franklin St. Suite #301, Chicago IL 60606 USA.

Herzum Apps means any software, utilities, plug-in, or other applications, made available by Herzum, including those on the Atlassian Marketplace, also including he Herzum Approval, Herzum Quick Linker, Herzum Attachment Manager, Herzum Moderator Approval, also including current and prior versions.

Authorized User means a person who accesses and uses the Software under a User License.

Fees mean all fees and expenses payable by you to Herzum in acquiring the Software and as applicable any Maintenance or User Licenses.

Free License means a license for which the Fees are waived by Herzum.

Maintenance means the provision by Herzum to you of Software updates and/or enhancements made generally available to customers from time to time, and online technical support for the sole purpose of addressing technical issues relating to the use of the Software.

Media means all images, icons, text files, PDFs or other static non-code assets contained within the Software.

Parties means either Herzum or you or both.

Protected Code means any source code that is protected against access by you and any third party without Herzum’s prior written permission.

Reseller means a third party selling and distributing Herzum products which it is authorized by Herzum to do so.

Software means the Herzum app that accompanies this EULA, which may include computer software, Accessible Code, and Protected Code and may include associated media, Media, printed materials, “online” or electronic documentation and Internet-based services.

User License means a license granted under this EULA to you to permit an Authorized User to use the Software. The number of User Licenses granted to you is dependent on the Fees paid by you.

Rules of Interpretation

- A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- A reference to a party includes its personal representatives, successors or permitted assigns.
- A reference to one gender includes a reference to the other gender.
- A reference to writing or written includes faxes, e-mails, communications via websites and comparable means of communication.

Grant of License

Upon your acceptance of this EULA, Herzum grants you the non-exclusive right to use the Software subject to the following:

1. Full License
   a. Authorised Users - The licenses granted are subject to the condition that you must ensure the maximum number of Authorized Users accessing and using the Software concurrently is equal to or less than the number of User Licenses for which the necessary Fees have been paid to the Reseller or Herzum. You may purchase additional User Licenses at any time on payment of the appropriate Fees to the Reseller or Herzum.
   b. Backup - You are permitted to copy the Software for data protection, archiving and backup purposes only and for no other purpose. However, only the strictly necessary number of backup copies may be made.

2. Evaluation License
   a. Installation and Use - If the Software is only provided for evaluation purposes your rights are limited to download, install and use the Software for a limited period ("Evaluation Period"). On the expiry of the Evaluation Period, the Software will cease to function and you must remove and delete all copies of the Software in your possession.

3. General License Terms
a. **Scope** - Each license granted by Herzum under this EULA is unless otherwise specified in this EULA or agreed by Herzum in writing; worldwide, non-exclusive and non-transferable.

b. **Duration** - Subject to the terms of this EULA and unless terminated earlier in accordance with this EULA, the term granted hereunder shall be:

   i. perpetual for a Paid License of the downloaded Software;
   ii. the Evaluation Period for an Evaluation License shall be thirty days, beginning on the day the Herzum App is downloaded, and shall not be extended unless agreed upon by Herzum.

c. **Permitted Computers** - Except as otherwise agreed in writing by Herzum, you must only install the Software and make the Software available for use on hardware systems owned, leased or controlled by you.

d. **Responsibility for Non-controlled systems** - If Herzum permits you to install the Software or make the Software available for use on hardware systems not owned, leased or controlled by you ("Uncontrolled Systems"), you will ensure the terms of this EULA are complied with by users of such Uncontrolled Systems and you indemnify Herzum for all costs, damages and loss Herzum suffers arising from such installation or use of the Software on Uncontrolled Systems.

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**Fees**

You must pay all Fees by their due date notified to you and in the manner directed at the time of Purchase of the Software.

Failure to pay Fees by the due date will result in the immediate termination of the licenses granted under this EULA.

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**Reservation of Rights and Ownership**

Herzum reserves all rights not expressly granted to you in this EULA.

The Software and all copies thereof are protected by copyright and other intellectual property laws and treaties.

Herzum own the title, copyright, and all other intellectual property rights in the Software and all subsequent copies of the Software.

The Software is licensed, not sold and you do not acquire any rights of ownership in the Software.

Herzum have and retain exclusive ownership of all rights in the Software.

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**Support**

Herzum will provide online technical support to the End User, to one designated contact specified by the End User in connection with the purchase of the Software.

The online technical support is for the sole purpose of addressing technical issues relating to the use of the Software (excluding any form of on-site visits by Herzum personnel or contractors).

This section of the Agreement is only valid for End User’s having paid the applicable license fee for the Software and only for the time period which the license fee covers in accordance with the purchase order.

Herzum’s Service level agreement ("SLA") includes further details what is, and what is not, included in Herzum’s online technical support.

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**Obligations and Investigation**

You must at all times ensure that:

- only an Authorized User uses the Software and only in accordance with the terms and conditions of this EULA; and
- the Software is not used for rental, time-sharing, subscription service, hosting or outsourcing.

You must not, whether through negligent act or omission:

- decompile, reverse engineer, disassemble modify, attempt to derive any part or whole of the Software; or
- copy or embed elements of the Accessible Code contained in the Software into other software; or
- sell, sub-license or redistribute the Software; or
- commit any act or omission the likely result of which is that Herzum’s reputation will be brought into disrepute or which act or omission could reasonably be expected to have or does have a material and adverse effect on Herzum’s interests.

The Software includes license protection mechanisms that are designed to manage and protect the intellectual property rights of Herzum. You must not modify or alter those features to try to defeat the Software or use rules that the license protection mechanisms are designed to enforce. Any such attempt by you will result in the immediate termination of any license granted under this EULA.

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**Notification**

If you discover to have breached any of its obligations under this EULA, you must immediately report such breach to Herzum, in writing.

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**Investigation of Unauthorized Use and Distribution**
If Herzum reasonably suspects you are breaching a term of this EULA and in particular, but without limitation, its obligations under clause Obligations, Herzum reserves the right to require you to provide an unqualified certificate executed by your auditor verifying compliance with the terms of this EULA. If such an unqualified certificate is not received by Herzum within ninety (120) calendar days of being required, it will be considered that a breach of this EULA has occurred allowing Herzum to terminate the licenses granted under this EULA.

**Termination**

Without prejudice to any other rights and in addition to any other termination rights in this EULA, Herzum may terminate with immediate effect, this EULA if

1. you fail to comply with the terms and conditions of this EULA; or
2. you suspend, or threaten to suspend, payment of your debts or you are unable to pay your debts or you admit inability to pay your debts; or
3. any event occurs, or proceeding is taken, with respect to you in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clauses 1 and 2.

Immediately upon termination of a license granted under this EULA, you must at your own cost:

- cease permitting access to and procure that all authorized users immediately; and
- cease all use of the Software; remove all copies of the Software from its computer systems or any Uncontrolled Systems; and
- provide Herzum with written certification that you have destroyed all copies of the Software.

**Infringement Indemnification**

If the Software becomes, or in the opinion of Herzum may become, the subject of a claim of infringement of any third party’s intellectual property rights, Herzum may, at its option and in its discretion:

- procure for you the right to use the Software free of any liability; or
- replace or modify the Software to make it non-infringing; or
- refund any license Fees related to this Software paid by you.

The foregoing states the sole liability of Herzum and the exclusive remedy of you for any infringement of intellectual property rights by the Software or any other items provided by Herzum under this EULA.

Herzum’s liability for infringement of third-party intellectual property rights shall be limited to breaches of rights subsisting in Illinois.

You will indemnify and hold harmless Herzum against all costs, expenses, losses, and claims made against Herzum as a result of any infringement of a third party’s intellectual property rights arising from you or your authorized user’s unauthorized use of the Software under this EULA.

You acknowledge and agree that if you breach this EULA, Herzum may bring an action directly against you.

**Exclusion of Warranties**

To the maximum extent permitted by applicable law in the jurisdiction in which the Software is supplied or Maintenance is provided, Herzum provides the Software and any Maintenance AS IS AND WITH ALL FAULTS, and except otherwise expressly contained in the EULA, hereby disclaim all other warranties and conditions, whether express, implied or statutory.

**Limitation of Liability**

**Non-excludable Warranties**

You may have remedies against Herzum imposed by law or statute which can not be excluded by Herzum.

To the extent you have such legal remedies against Herzum then to the fullest extent permitted by law Herzum’s liability is limited:

1. at Herzum’s option, to:
   a. in the case of the Software:
      i. repairing or replacing the Software; or
      ii. the cost of such repair or replacement; and
   b. in the case of Maintenance services;
   c. resupply of the Maintenance services; or
   d. the cost of having the Maintenance services supplied again;
   or
2. if the limitation set out in 1 is not applicable then to an amount of the liability up to a maximum of the sum of the multiple of three times the amount actually paid by you for the Software.

**Limitation of Liability for other Losses**

Subject to the Non-excludable Warranties, notwithstanding any damages you might incur for any reason whatsoever to the maximum extent permitted by applicable law the entire liability of Herzum under any provision of this EULA and your exclusive remedy hereunder shall be limited to an amount of the liability up to a maximum of the sum of the multiple of three times the amount actually paid by you for the Software.
Consequential Loss

Notwithstanding anything else in the Limitation of Liability, to the maximum extent permitted by applicable law, in no event shall Herzum be liable for:

- any loss of income;
- loss of business profits or contracts;
- business interruption;
- loss of the use of money or anticipated savings;
- loss of information;
- loss of opportunity, goodwill or reputation;
- loss of, damage to or corruption of data;
- special, incidental, punitive, indirect; or consequential damages whatsoever arising out of or in any way related to the use of or inability to use the Software;
- the provision of or failure to provide Maintenance or other services; information;
- software and related content through the Software or otherwise arising out of the use of the Software or otherwise under or in connection with any provision of this EULA, even in the event of the fault;
- tort (including negligence);
- misrepresentation;
- strict liability;
- breach of contract or breach of warranty of Herzum, (including any such liability for the acts or omissions of its employees, agents and subcontractors); and even if Herzum has been advised of the possibility of such damages.

Herzum shall have no liability to you where faults arise from:

- the possession, use, development, modification or maintenance of the Software by you other than in accordance with this license, if the infringement would have been otherwise avoided; or
- misuse, incorrect use of or damage to the Software from whatever cause (other than any act or omission by Herzum); or
- any breach of your obligations under this license; or
- any modification not authorized by Herzum resulting in a departure from the license; or
- any operator error on the part of you.

Publicity Rights

You grant Herzum the right to include you as a customer in Software promotional material, including your logo.

You can deny Herzum this right at any time by submitting a written request via email to legal@herzum.com, requesting to be excluded from Software promotional material.

Requests made after Purchase may take thirty (30) calendar days to process.

Amendment

This EULA may not be amended except with the written agreement of Herzum whose consent may be withheld in its complete discretion without any requirement to provide reasons.

Assignment

You may assign this EULA to:

1. succeeding parties in the case of a merger, acquisition or change of control; or
2. if you are a supplier to a government agency; provided, however, that in each case, a. Herzum is notified in writing within ninety (90) days of such assignment; and b. the assignee agrees to be bound by the terms and conditions contained in this EULA; and c. upon such assignment the assignee makes no further use of the Software licensed under this EULA.

Herzum may assign its rights and obligation under this EULA without your consent. Any permitted assignee shall be bound by the terms and conditions of this Agreement.

Restrictions

The export of the Software from the country of original Purchase may be subject to control or restriction by applicable local law.

You are solely responsible for determining the existence and application of any such law to any proposed export and for obtaining any needed authorization.

You agree not to export the Software from any country in violation of applicable legal restrictions on such export.

Governing Law and exclusions
This Agreement shall be applied, governed by and construed in accordance with Illinois law, without regard to or application of choice of law rules or principles.

This EULA and any disputes or claims arising out of or in connection with its subject matter or formation (including non-contractual disputes or claims) are governed by and construed in accordance with the laws of Illinois and shall be submitted to the exclusive jurisdiction of the Illinois courts.

**Entire Agreement**

This EULA (and any addendum or amendment to this EULA which is included with the Software) is the entire agreement between you and Herzum relating to the Software and they supersede all prior or contemporaneous oral or written communications, proposals and representations with respect to the Software or any other subject matter covered by this EULA.

Each party acknowledges that, in entering into this EULA (and the documents referred to in it), neither relies on any statement, representation, assurance or warranty (“Representation”) of any person (whether a party to this EULA or not) other than as expressly set out in this EULA or those documents.

Each party agrees that the only rights and remedies available to it arising out of or in connection with a Representation shall be for breach of contract as provided in this EULA.

Nothing in this clause shall limit or exclude any liability for fraud.

**Notices**

All notices given to Herzum must be sent to legal@herzum.com, if by electronic communication, or Herzum North America, Inc., 175 N. Franklin St. Suite #301. Chicago IL 60606 USA, if by mail, and to you at the address you have provided upon Purchase of the Software.

Notice will be deemed received and properly served 36 hours after an electronic communication (including email) is sent, or five days after the date of posting of any letter.

In proving the service of any notice, it will be sufficient to prove, in the case of a letter, that such letter was properly addressed, stamped and placed in the post and, in the case of an electronic communication, that such e-mail was sent to the specified e-mail address of the addressee.

**Waiver**

If Herzum fails, at any time during the term of this EULA, to insist upon strict performance of any of your obligations under this EULA, or if Herzum fails to exercise any of the rights or remedies to which it is entitled under this EULA, this shall not constitute a waiver of such rights or remedies and shall not relieve you from compliance with such obligations.

A waiver by Herzum of any default shall not constitute a waiver of any subsequent default.

No waiver by Herzum of any of these terms and conditions shall be effective unless it is expressly stated to be a waiver and is communicated to you in writing.

**Severability**

If any provision of the EULA (or part of a provision) is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable and to give effect to the commercial intention of the parties.

**Further Assurance**

Each party shall (at its own expense) promptly execute and deliver all such documents, and do all such things, or procure the execution and delivery of all documents and doing of all such things as are required to give full effect to the EULA and the transactions contemplated by it.

**No Partnership**

Nothing in the EULA is intended to, or shall be deemed to, establish any agency, partnership or joint venture between any of the parties, constitute any party the agent of another party, nor authorize any party to make or enter into any commitments for or on behalf of any other party.