

Helioz Technologies Software and Services Agreement

Last Modified: March 26, 2024

Please read this Helioz Technologies Software and Services Agreement (“Agreement”) carefully before agreeing to and executing the "Business Terms and Acceptance" section of a Helioz Technologies Proposal Agreement, online order or any other purchase of Helioz Technologies products or services.

This Helioz Technologies Software and Services Agreement is a legally binding contract between your company as defined in a Helioz Technologies Proposal Agreement, Online Order or any other purchase documentation (“Customer”) and Helioz Technologies d.o.o., a wholly owned subsidiary of Helioz Ventures LLC, located at 8600 Bridgewater Ln, Cincinnati, OH 45243 USA ("Helioz Technologies"). Helioz Technologies will provide services to Customer subject to and conditioned upon your acceptance of this Helioz Technologies Software and Services Agreement.

By accepting the delivery of any Helioz Technologies services, Customer agrees to be bound by this Agreement, including the warranty disclaimers, limitations of liability, and termination provisions below. If you do not agree to the terms, do not execute a Helioz Technologies Proposal Agreement or accept delivery of Helioz Technologies services.

Any Helioz Technologies Proposal Agreement(s) and/or amendments to such Proposal Agreement(s) that reference this Helioz Technologies Services Agreement are considered attached hereto as Exhibit A and incorporated herein.

Helioz Technologies may update or change this Helioz Technologies Services Agreement from time to time. The current Agreement will be posted at <http://www.helioztechnologies.com/agreements>.

1. Services:

- 1.1. Helioz Technologies shall provide Customer with the services set out in the Proposal Agreement(s) (“Services”). Amendments to the Proposal Agreement(s) shall be agreed to in writing by both parties. Before any amendments to the Proposal Agreement(s) are implemented, all changes in the price necessitated by such amendments shall be agreed to in writing.

2. Fees and Costs:

- 2.1. Customer shall pay Helioz Technologies for the Services, the fees and costs set out in the Proposal Agreement(s).
- 2.2. Fees and costs are due and payable by Customer as stated in the "Business Terms and Acceptance" section of the Proposal Agreement(s).
- 2.3. The fees and any other amounts payable pursuant to this Agreement are exclusive of all national, state, regional, local, municipal or other taxes and fees including, but not limited to, excise, sales, use, property, ad valorem, intangibles, goods and services and value added taxes, customs duties and registration fees, now in force or enacted in the future, and all such taxes and fees, except taxes based on Helioz Technologies’ net worth, capital or net income shall be paid directly by the Customer, or if paid by Helioz Technologies, Customer will reimburse Helioz Technologies.
- 2.4. In addition to the fees and costs, Customer shall reimburse Helioz Technologies pursuant to Helioz Technologies’ then current standard policies for all travel and special or unusual out-of-pocket expenses incurred at Customer’s specific request which are not set forth in the Proposal Agreement(s).

3. Term and Termination

- 3.1. This Agreement is effective on the date a Proposal Agreement is last signed by Helioz Technologies and Customer ("Effective Date").
- 3.2. This Agreement shall have an initial term of three (3) years from the Effective Date. Thereafter, the Agreement shall automatically renew for successive one (1) year periods, unless either party provides the other with three (3) months prior written notice of termination before the end of each term. In the event of Customer's breach of this Agreement, such breach not cured within thirty (30) days receipt of notice of such breach, Helioz Technologies may terminate the Agreement upon written notice to Customer. In no event shall this Agreement be allowed to terminate while Services are being delivered as defined in Proposal Agreement(s).

4. Timetable:

- 4.1. Helioz Technologies will use reasonable efforts to provide the Services in accordance with the timetable, if any, set out in the Proposal Agreement(s).

5. Intellectual Property Rights:

- 5.1. All software code, web code or any other digital code delivered related in any way to the provision of Services, whether in binary, executable or human readable form, is copyrighted and the exclusive intellectual property of Helioz Technologies. Delivery of any such code to Customer is done under license for the term of this Agreement and under the terms and conditions defined in Proposal Agreement(s).
- 5.2. Helioz Technologies shall not be precluded in any way from developing, acquiring and/or marketing know-how, techniques, materials or solutions which may be similar to or competitive with know-how, techniques, materials or solutions delivered to Customer under this Agreement, provided that Helioz Technologies shall not utilize Confidential Information disclosed to it by Customer in the development of or marketing of such materials or solutions.
- 5.3. In the process of performing work related to Proposal Agreement(s), i) for data provided by Customer to Helioz Technologies related to the Services, and ii) and in the event that the Services are to be provided by Helioz Technologies utilizing software applications, documentation, data or any other information supplied by Customer in relation to which rights may be owned by third parties, Customer warrants and represents that:
 - 5.3.1. Customer has all necessary permissions, express or otherwise, to allow the use of software applications, documentation, data or any other information to be copied or otherwise used by Helioz Technologies during the course of the provision of Services;
 - 5.3.2. In providing the Services, Helioz Technologies will not be infringing the rights of any third parties; and
 - 5.3.3. The disclosure or use of the data and/or the software programs and documentation during the course of the Services will not involve the breach of any confidential or contractual relationship.

6. Personnel

- 6.1. Helioz Technologies reserves the sole right to determine the allocation of Helioz Technologies personnel in providing the Services.
- 6.2. Nothing herein shall prevent Helioz Technologies from assigning Helioz Technologies personnel, who are providing the Services to Customer under this Agreement, to perform

services similar to the Services for other customers of Helioz Technologies or restrict Helioz Technologies in any other way in its use of Helioz Technologies personnel.

7. Warranty

- 7.1. Helioz Technologies warrants that it will use reasonable care and skill in providing the Services.
- 7.2. Helioz Technologies warrants that software deliverables will perform in accordance with the agreed Scope of Work defined in Proposal Agreement(s) upon delivery of software deliverables to Customer. Subsequent software maintenance and enhancements will be made as part of a maintenance agreement between Helioz Technologies and Customer.
- 7.3. All warranty obligations shall be rendered void upon delivery of source code to Customer.
- 7.4. HELIOZ TECHNOLOGIES MAKES NO WARRANTY WITH RESPECT TO THE EQUIPMENT, MACHINERY, SYSTEMS AND/OR PRODUCTS DERIVED OR RESULTING HEREUNDER OR WITH RESPECT TO ANY EQUIPMENT, MACHINERY, SYSTEMS OR PRODUCTS OBTAINED BY HELIOZ TECHNOLOGIES IN THE PERFORMANCE OF ITS SERVICES AND DELIVERED OR CONVEYED TO CUSTOMER BY HELIOZ TECHNOLOGIES AND THE CUSTOMER ASSUMES ALL RISKS AND LIABILITY FOR THE RESULTS OBTAINED BY THE MANUFACTURE, USE OR IMPLEMENTATION OF THE SERVICES THAT ARE PROVIDED HEREIN, WHETHER USED SINGLY OR IN COMBINATION WITH OTHER DESIGNS OR PRODUCTS.
- 7.5. THE ABOVE WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED AND ALL SUCH WARRANTIES ARE HEREBY DISCLAIMED. EXCEPT AS SPECIFICALLY PROVIDED HEREIN, HELIOZ TECHNOLOGIES MAKES NO WARRANTIES, EXPRESS, IMPLIED, STATUTORY, OR IN ANY OTHER COMMUNICATION WITH CUSTOMER; AND HELIOZ TECHNOLOGIES SPECIFICALLY DISCLAIMS ANY OTHER WARRANTY INCLUDING THE IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. HELIOZ TECHNOLOGIES DOES NOT WARRANT THAT THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR FREE.

8. Confidentiality

- 8.1. In the performance of this Agreement, each party may have access to confidential, proprietary or trade secret information owned or provided by the other party relating to, but not limited to, software computer programs, object code, source code, marketing plans, business plans, financial information, specifications, flow charts, drawings and other data ("Confidential Information").
- 8.2. Confidential Information shall be marked clearly as confidential or proprietary, or shall be indicated as confidential or proprietary at the time of disclosure;
- 8.3. All Confidential Information supplied by one party to another pursuant to this Agreement will remain the exclusive property of the disclosing party.
- 8.4. Recipient agrees to use the same degree of care that it uses to protect its own confidential and proprietary information of similar importance, but in no event no less than reasonable care, to prevent the unauthorized use, disclosure, publication or dissemination of Confidential Information.
- 8.5. The receiving party will use such Confidential Information only for the purposes of this Agreement and will not copy, disclose, convey or transfer any of the Confidential Information or any part thereof to any third party, except pursuant to written permission granted by the disclosing party.
- 8.6. Neither party will have any obligation with respect to Confidential Information which: (i) is or becomes generally known to the public by means other than a breach of the obligations of a

receiving party; (ii) was previously known to the a receiving party or rightly received by a receiving party from a third party; or (iii) is independently developed by the receiving party without reference to or use of the Confidential Information.

- 8.7. Customer acknowledges that Helioz Technologies may utilize Customer's Confidential Information in the delivery of Helioz Technologies Services which may result in the accessibility of works derived from the Confidential Information via Helioz Technologies and/or third-party software and/or web-based applications. Customer will approve all works derived from Customer's Confidential Information prior to inclusion in any such applications. Such approval, if not documented otherwise, shall be deemed received if no objection is received from Customer at the time Helioz Technologies activates Customer's web solution for public access.
- 8.8. Recipient's duty to protect Discloser's Confidential Information expires five (5) years from the date of disclosure of Confidential Information. However, all obligations under this Agreement with respect to Confidential Information disclosed during the term of this Agreement shall survive such termination. Upon termination, all confidential written material shall be returned to the disclosing party along with a letter certifying that no copies have been made of such information.

9. Liability

- 9.1. Helioz Technologies' liability in connection with the provision of Services hereunder shall be subject to the following:
 - 9.1.1. Helioz Technologies shall incur no liability whatsoever (whether in contract, negligence or otherwise) for any loss or damage resulting from delay however caused.
 - 9.1.2. Customer assumes all risks and liability for the results obtained by the use or implementation of any Helioz Technologies and/or third-party applications in any way influenced or related to the provision of Services, whether such applications are used singly or in combination with other applications or products. Customer agrees that Helioz Technologies shall have no liability to Customer or to any third party for any ordinary, special or consequential damages or losses which might arise directly or indirectly by reason of Customer's use of the applications or the provision of Services. Customer shall protect, indemnify, hold harmless and defend Helioz Technologies of and from any loss, cost, damage or expense, including attorney's fees, arising from any claim asserted against Helioz Technologies that is in any way related to the provision of Services.
 - 9.1.3. With respect to any claim not subject to Section 9.1.2, the liability of Helioz Technologies for any claim hereunder, regardless of the form of action, whether in contract or tort, including claims of negligence against Helioz Technologies, shall be limited to the total of all amounts Customer has paid to Helioz Technologies for the Services that are alleged to have caused damages or that is related to the cause of action. In no event shall Helioz Technologies be liable for any incidental or consequential damages including, without limitation, loss of use, loss of profits or other consequential damages, even if Helioz Technologies has been advised of the possibility of such damages. No action, regardless of form, arising out of the transactions under this Agreement may be brought by Customer more than two years after the cause of action has occurred.

10. Export

- 10.1. Customer acknowledges that the Services, information, software application and/or technology provided hereunder may be subject to export controls. Customer agrees that any services, information, software and/or technology provided hereunder will not be exported (or reexported from the country in which it is first installed), directly or indirectly, separately or as

part of a system, without Customer, at its own cost, first obtaining all licenses from the United States Department of Commerce, United States Department of State or any other appropriate agency of the United States Government as may be required by law.

- 10.2. Customer acknowledges and agrees that it shall not use any information, software application and/or technology provided related to the Services hereunder in the design, development, production, stockpiling or use of missiles, or chemical or biological weapons or for facilities which are intended to produce chemical weapons or chemical weapon precursors, unless a validated export license is obtained from the U.S. Department of Commerce where required.
- 10.3. Customer further acknowledges and agrees that it shall not use any Services, information, software applications and/or technology hereunder either directly or indirectly to design, develop, fabricate or test nuclear weapons or nuclear explosive devices or to design, construct, fabricate, operate or construct components for facilities: for the chemical processing of irradiated special nuclear or source material; for the production of heavy water; for the separation of isotopes of source and special nuclear material; or for the fabrication of nuclear reactor fuel containing plutonium unless a validated export license is obtained from the U.S. Department of Commerce where required.

11. Hiring of Helioz Technologies Employees

- 11.1. Customer agrees that during the term of this Agreement and for a period of one (1) year after the termination of this Agreement, Customer shall not, except with the prior written consent of Helioz Technologies, offer employment to any of Helioz Technologies' employees.

12. General

- 12.1. Customer may not assign or otherwise transfer any of its obligations, rights or remedies under this Agreement and any such attempted assignment or transfer shall be null and void.
- 12.2. Any amendment or addition to this Agreement is valid only when agreed upon in writing and signed by both parties.
- 12.3. The waiver or failure of either party to exercise in any respect any right provided for herein shall not be deemed a waiver of any further right hereunder. This Agreement constitutes the entire terms and conditions between the parties with respect to the project covered in the Proposal Agreement(s) and supersedes all Proposal Agreement(s), all previous negotiations and agreements, written or oral, express or implied, between the parties with respect to such project. Notwithstanding the foregoing, it is expressly understood that specific terms and conditions outlined in the Proposal Agreement(s) may supersede or modify the terms and conditions of this Agreement where explicitly stated in the Proposal Agreement(s).
- 12.4. The complete or partial invalidity or unenforceability of any provision herein for any purpose shall in no way affect the validity or enforceability of such provision for any other purpose or the remaining provisions. Any such provision shall be deemed to be severed for that purpose subject to such consequential modification as may be necessary for the purpose of such severance.
- 12.5. All notices required to be given hereunder shall be in writing. Notice shall be considered delivered and effective upon receipt when sent by registered or certified mail, return receipt requested, addressed to the parties set forth above. Either party, upon written notice to the other, may change any name or address to which future notice shall be sent.
- 12.6. This Agreement shall be governed by, subject to and construed in accordance with the laws of the State of Ohio.
- 12.7. **THIS AGREEMENT IS ACCEPTED BY BOTH PARTIES BY EXECUTING A HELIOZ TECHNOLOGIES PROPOSAL AGREEMENT REFERENCING THIS AGREEMENT.**