

FIRSTBEAT ATHLETE END USER SOFTWARE LICENSE AGREEMENT ("EULA")

IMPORTANT: EACH SOFTWARE PROGRAM (hereinafter "SOFTWARE") PROVIDED BY ANY AFFILIATE OR DEALER OF FIRSTBEAT TECHNOLOGIES LTD HAVING ITS REGISTERED OFFICE AT RAUTPOHJANKATU 6, 40700 JYVÄSKYLÄ, FINLAND (hereinafter "FIRSTBEAT") TO YOU (hereinafter "CUSTOMER") IS A PROPRIETARY PRODUCT OF FIRSTBEAT AND IS PROTECTED BY COPYRIGHT LAWS AND INTERNATIONAL TREATY. COPYRIGHT LAWS PROHIBIT MAKING ADDITIONAL COPIES OF THE SOFTWARE FOR ANY REASON. THE LICENSEE MAY NOT COPY THE WRITTEN MATERIALS ACCOMPANYING THE LICENSED SOFTWARE. THE USE OF THE SOFTWARE IS LIMITED TO THE TIME PERIOD DURING WHICH THE CUSTOMER PAYS APPLICABLE LICENSE PAYMENTS TO FIRSTBEAT OR ITS REPRESENTATIVE.

NOTE: BY INSTALLING AND USING OF THE SOFTWARE THE CUSTOMER INDICATES THAT THE CUSTOMER ACCEPTS, UNDERSTANDS AND AGREES TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS EULA. IF THE CUSTOMER DOES NOT AGREE TO ALL OF THE TERMS AND CONDITIONS CONTAINED HEREIN, PLEASE RETURN THE SOFTWARE AND ALL POSSIBLE COPIES THEREOF TO THE DISTRIBUTOR FROM WHOM THE SOFTWARE PRODUCT HAS BEEN OBTAINED.

By installing the Software the CUSTOMER is willing to acquire a license and FIRSTBEAT is willing to grant a license to the Software in accordance with the terms and conditions set forth in this EULA;

NOW THEREFORE the Parties agree as following:

1 DEFINITIONS

"License Fee" shall mean a consideration payable by the CUSTOMER to FIRSTBEAT upon and subject to this EULA between the Parties.

"Defect" shall mean that the Software when used in the Operating Environment does not substantially function in accordance with the Documentation.

"Documentation" shall mean all written or graphical material in any medium relating to the operation or functionality of the Software including without limitation user's manual provided by FIRSTBEAT at its sole discretion.

"Operation Environment" shall mean the hardware and other equipment as well as operating system software and other third party software which are required for the intended use of the Software.

"Software" shall mean object code version of FIRSTBEAT's computer software named Firstbeat ATHLETE, current version as marketed and licensed by FIRSTBEAT. The Software is a software for individual use in training. Software helps user to train with correct training load.

"User Training" shall mean standard user training for the CUSTOMER and is ordered by purchasing a commercial license of the Software.

2 PURPOSE AND SCOPE

The Software is attended for individual use and operates in windows environment for PC. This coach software helps you train with correct training load. It teaches the appropriate relationship between training and rest precisely for your fitness level. The Software Guides to perform workouts with suitable intensity and duration Provides detailed post-analysis of each recorded workout. It adapts future training plan based on already performed workouts.

The CUSTOMER is willing to use the Software for his own personal purposes relating to sports training and coaching ("Purpose").

3 GRANT OF LICENSE AND LIMITATIONS THEREOF

Upon terms and limitations and against full and timely payment of all applicable fees and charges FIRSTBEAT grants to the CUSTOMER:

- (i) A right to install the Software to as many PC workstation(s) as the CUSTOMER obtains licenses. For the purpose of this EULA, PC workstation(s) shall mean a computer which is used by one overlapping user). Unless otherwise agreed the amount of PC Workstation is one (1); and
- (ii) A restricted, non-exclusive, and non-transferable license to use Software (and data medium) as agreed upon in this EULA, solely for the Purpose in compliance with the Documentation. The said license is in force for a fixed term as agreed between the Parties and is subject to the full payment of annual License Fees as defined herein (if any); and
- (iii) A right to use the Documentation for internal, non-commercial reference purposes only during the validity of the rights of use.

The CUSTOMER shall not:

- (i) Transfer the Software to any other computer or platform without FIRSTBEAT's consent;
- (ii) Distribute, rent, lease, loan, sublicense or resell the Software or accompanying Documentation or any part thereof nor the license or any copy of it;
- (iii) Copy, in whole or in part, any Software in machine readable form except where such copies are made solely for the purpose of back-up; or archiving, provided, however, that in no event shall the CUSTOMER cause or permit more than two (2) copies of the Software to be in existence at any time without the prior written consent of FIRSTBEAT. Any Documentation provided by FIRSTBEAT shall not be reproduced without express written consent of the FIRSTBEAT.
- (iv) Reverse engineer, decompile, disassemble, re-engineer, or otherwise create or attempt to create or permit, allow, or assist others to create the source code of the Software, or the Software's structural framework, or to use the Software in whole or in part for any purposes except as expressly set forth herein as being permissible for the CUSTOMER pursuant to this EULA.
- (v) Modify, enhance or in any other manner change the Software or create derivative works based on the Software without the prior written consent of FIRSTBEAT. The CUSTOMER acknowledges and agrees that any and all modifications, enhancements and/or any and all other changes to the Licensed Software developed by the CUSTOMER with or without advise and/or support of FIRSTBEAT or by FIRSTBEAT to CUSTOMER, whether or not reimbursed by the CUSTOMER and whether or not developed in conjunction with the CUSTOMER's employees, agents, directors, officers, or contractors shall be the sole and exclusive property of FIRSTBEAT. The CUSTOMER acknowledges and agrees that the modified, enhanced or changed versions of the Software do not constitute software different or independent of the Software, and therefore, such modified, enhanced or changed versions of the Software are governed by the terms and conditions of this EULA.
- (vi) Remove, obliterate or otherwise alter FIRSTBEAT's or third parties' proprietary rights notices.
- (vii) Assign or transfer any of its rights and obligations to the Software arising from this EULA to any third party without the prior written consent of FIRSTBEAT.

4 INTELLECTUAL PROPERTY RIGHTS

FIRSTBEAT, or its suppliers retain all rights not expressly granted to the CUSTOMER in this EULA; including, without limitation, the title and interest to and in the Software and all informational, intellectual property, industrial property and proprietary rights. FIRSTBEAT neither grants nor otherwise transfers any rights of ownership or copyrights in the Software or Documentation to the CUSTOMER and the CUSTOMER shall have only such license rights to use the Software as are specified herein. Software and other products are protected by copyright, trade secret, industrial and other intellectual property laws and treaties. The CUSTOMER shall not sell, transfer, publish, display, disclose or otherwise make such materials available to others.

5 DELIVERY AND ACCEPTANCE

The Licensee shall at its own expense acquire and prepare the Operating Environment in conformity of this EULA and instructions given by FIRSTBEAT. Unless otherwise agreed by CUSTOMER and FIRSTBEAT, FIRSTBEAT shall either (i) provide CUSTOMER access to FIRSTBEAT's web site where CUSTOMER is allowed to download a copy of the Software; or (ii) deliver the Software in cd-rom or corresponding media. Unless the Parties expressly agree otherwise, FIRSTBEAT shall not be responsible for the installation of the Software and the CUSTOMER shall be exclusively responsible for the installation of the Software.

The CUSTOMER undertakes to perform the acceptance test within fourteen (14) days after the delivery of the Software ("Acceptance Period"). The CUSTOMER shall without delay inform FIRSTBEAT in writing of all Defects detected in the Software during the Acceptance Period. Errors which do not substantially interfere with the use of the Software shall not prevent the acceptance of the Software and FIRSTBEAT shall correct them when submitting updates. If the Software is not accepted by the CUSTOMER in the acceptance test due to the reasons attributable to FIRSTBEAT, FIRSTBEAT shall deliver a replacing copy of the Software to the CUSTOMER,. The fixed Software shall be subject to a new Acceptance Period in accordance with this clause.

The Software shall be deemed to be accepted by the CUSTOMER; (i) once the CUSTOMER has given FIRSTBEAT a written certificate of acceptance, or (ii) if the CUSTOMER has not notified FIRSTBEAT of the Defects in the Software within the Acceptance Period, or (c) when the CUSTOMER takes the Software into use, which ever of these conditions is fulfilled first.

6 WARRANTIES AND LIMITATIONS THEREOF

FIRSTBEAT warrants for the sole benefit of the CUSTOMER, that the Software, when operated in accordance with the terms of this EULA, shall be capable of operating in the Operating Environment and materially conform to the Specifications. The said warranty shall be valid for a period of ninety (90) days commencing from the date of acceptance.

FIRSTBEAT shall, as the sole and exclusive remedy, free-of-charge and without undue delay provide a new copy of the Software provided that such Defects in Product have been reported to FIRSTBEAT within the time frame defined above in this Clause 6 The correction of a Defect may also take place by providing the CUSTOMER with written instructions to bypass the Defect, if this can take place without additional costs or substantial inconvenience to the Licensee.

FIRSTBEAT shall perform the warranty corrections from its office. Alternatively the CUSTOMER is obliged to provide at its own cost FIRSTBEAT with a remote access to Software via internet or otherwise for the performance of the warranty corrections. If separately agreed, the Defect diagnosis and correction will be made at the CUSTOMER's site, in which case FIRSTBEAT is entitled to charge for travel time and travel expenses in accordance with the FIRSTBEAT's then current price list.

The warranty for the Software shall expire, if the Software is not used in the agreed Operating Environment or the CUSTOMER makes or commissions third party to make changes to the Software or to the Operating Environment, which have not been approved by FIRSTBEAT in writing in advance or the CUSTOMER refuse

to update the basic software configuration recommended by FIRSTBEAT. Furthermore, the warranty given by FIRSTBEAT hereunder does not cover repair of an Defect attributable a) to the use of the Software contrary to this EULA or the written instructions given by FIRSTBEAT, or b) to a third party product, or c) to a change or correction of the Software or the Operating Environment made by the CUSTOMER or a third party.

If it's established, that the error reported by the CUSTOMER is not covered by the warranty, FIRSTBEAT shall be entitled to charge for the error diagnosis and locations in accordance with the FIRSTBEAT's then current price list. FIRSTBEAT shall also be entitled to charge the CUSTOMER for such agreed corrections of errors that are not covered by the warranty.

FIRSTBEAT's liability for the Errors in the Software shall be limited to the fulfilment of the warranty obligations set forth in this Clause 6 and they shall constitute the CUSTOMER's sole and exclusive remedy concerning the delivery of the Software and no other remedies notwithstanding those expressly stated in this EULA shall be available to the CUSTOMER. After the warranty period FIRSTBEAT shall have no obligations concerning the Software based on the delivery of Software.

The CUSTOMER acknowledges and agrees that analyzes created by the Software may, based on various reasons including without limitation to unstable conditions, induce inaccurate or faulty results or results which are open to various interpretations. FIRSTBEAT therefore does not warrant that the Software fits for the intended purpose of the CUSTOMER. In the event FIRSTBEAT submits the CUSTOMER any more detailed information of any such risks, the CUSTOMER is liable to inform the permitted users of the Software thereof. The CUSTOMER shall enforce necessary disclaimers towards its customers. In the event any such permitted user submits a claim towards the CUSTOMER based on faulty results of analyzes, the CUSTOMER shall defend and settle the claim at its own cost and shall hold FIRSTBEAT harmless of any such claim.

In the event of any claim, demand, cause of action, debt or liability to a third party based on infringement of any third party copyright, patent, trademark or any other intellectual property right FIRSTBEAT may, at its own expense, change, modify, or delete all or any part of the Software in order to avoid any such infringement, or alleged infringement.

THE FOREGOING WARRANTIES SET FORTH THE ENTIRE LIABILITY OF LICENSOR AND THE FOREGOING WARRANTIES ARE THE ONLY EXPRESS WARRANTY MADE TO THE CUSTOMER. FIRSTBEAT HEREBY SPECIFICALLY DISCLAIMS ALL OTHER WARRANTIES, INCLUDING BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. LICENSOR DOES NOT WARRANT THAT ALL DEFECTS CAN BE CORRECTED, OR THAT THE OPERATION OF THE SOFTWARE WILL BE ERROR FREE AND/OR UNINTERRUPTED.

7 PAYMENTS AND PAYMENT TERMS

In consideration of the CUSTOMER's right to use the Software granted pursuant to the terms and conditions of this EULA, the CUSTOMER shall pay FIRSTBEAT the license and other payments in accordance with the agreement between the Parties.

In the event the Parties have not agreed the prices separately, the prices shall be in accordance with FIRSTBEAT's then current price list.

If the CUSTOMER does not pay any sum under this EULA within five (5) days of the due date, then (without prejudice to FIRSTBEAT's other rights and remedies) FIRSTBEAT reserves the right to charge simple interest on such sum (as well after as before any judgment) from the due date to the date of payment at the rate for late payment according to the applicable interest legislation. FIRSTBEAT shall also have a right to suspend its performance of any obligations under this EULA while the CUSTOMER is in delay of its payment obligations.

All amounts payable are exclusive of value added tax (VAT), sales tax and any other applicable taxes or duties (with the exception only of those based on the income of FIRSTBEAT), which shall also be payable by the CUSTOMER in accordance with applicable legislation.

8 PROPRIETARY AND CONFIDENTIAL INFORMATION

The source code of the Software is a trade secret of FIRSTBEAT and will not be disclosed to the CUSTOMER. The object code or the Software and Documentation contain confidential and proprietary information of FIRSTBEAT, which is valuable to FIRSTBEAT and is based on long term product development. For the above-mentioned purposes, the CUSTOMER agrees and undertakes to maintain in confidence and not to use for any other purposes than the Purpose any material delivered by FIRSTBEAT to the CUSTOMER or other non-public commercial or technical information obtained by the CUSTOMER from any FIRSTBEAT company or its technology. The CUSTOMER is not allowed to disclose any such material or information to any third party. The CUSTOMER agrees to use all reasonable efforts to prevent the unauthorized use, copying, publication or dissemination of the Software and Documentation.

9 LIMITATION OF LIABILITY

FIRSTBEAT shall be liable to the CUSTOMER in contract, tort or otherwise, whatever the cause thereof, for any loss of revenue or of profit, business or goodwill or any indirect, special, consequential, incidental or punitive cost, damages or expense of any kind, including without limitation damages resulting from loss of use, loss of data (and/or recreation thereof), howsoever arising under or in connection with this EULA, except in cases of intentional misconduct or gross negligence.

The overall liability of FIRSTBEAT towards the CUSTOMER shall be limited to an amount corresponding to fifteen percent (15%) of the total amount of the license fee, with the exception of liability, which has been caused by the FIRSTBEAT's gross negligence or intentional misconduct.

10 TERM AND TERMINATION

This EULA shall become effective when approved by the CUSTOMER and shall be temporarily in force for the period the Parties have agreed upon and subject to full payment of all applicable payments.

FIRSTBEAT may without prejudice to any other rights immediately terminate this EULA and the license shall expire in the event of any default by the CUSTOMER of any term, covenant, or obligation under this EULA or upon assignment, transfer or disposition of the Software or upon the assignment of this EULA by the CUSTOMER without the prior written consent of FIRSTBEAT.

Upon expiration of this EULA for any cause, the CUSTOMER must uninstall the Software, and destroy all copies of the Software and Documentation or return them to FIRSTBEAT, as instructed by FIRSTBEAT.

For avoidance of doubt, these license terms are not intended to anyhow limit the consumer's right of withdrawal which is based on mandatory applicable legislation. In the event the CUSTOMER is a consumer and desires to use right of withdrawal based on EU Distance Selling Directive or other mandatory legislation, the CUSTOMER must contact the representative who has sold the license to the CUSTOMER.

11 MISCELLANEOUS

FIRSTBEAT may, but is not obliged to release updates of Software to its Website. In the event FIRSTBEAT releases update which is available to all its licensees without charge, CUSTOMER is entitled to download such update provided that CUSTOMER's license is valid. In the event FIRSTBEAT releases a new version of FIRSTBEAT ATHLETE software (such as version 2.0), any such new version must be ordered against then current price list, if the CUSTOMER desires to obtain a license to such new version.

This EULA shall be governed by and construed in accordance with the laws of Finland, excluding its choice of law provisions. Any dispute arising out of this EULA or a breach or alleged breach, shall be finally settled in district court of Helsinki, Finland or in the district court of the domicile of the CUSTOMER.

The CUSTOMER shall not be entitled to assign or transfer all or any of its rights, benefits and obligations under this EULA without the prior written consent of FIRSTBEAT.

A failure to exercise, or any delay in exercising, on the part of either Party, any right or remedy hereunder shall neither operate as a waiver thereof, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise thereof or the exercise of any other right or remedy.

If, at any time, any provision of this EULA, including its Appendices, is deemed by a court of competent jurisdiction to be illegal, invalid or unenforceable in any respect, the legality, validity or enforceability of the remaining provisions shall in no way be affected or impaired thereby. The invalid provision shall be replaced by a valid one which achieves to the extent possible the original purpose and commercial goal of the invalid provision.

No Party shall be deemed by operation of this EULA or otherwise to be the agent or representative of the other Party for any purpose hereunder whatsoever. The Parties shall at all times be considered independent contractors. No Party shall have any right or authority to assume, create, or incur any liability or obligation of any kind in the name of or on behalf of the other Party except in accordance with the provisions hereof, or as may otherwise be agreed by the Parties in writing.

A breach by one Party of any of the promises or agreements contained in this Agreement may result in irreparable and continuing damage to the other Party for which there may be no adequate remedy at law, and the other Party is therefore entitled to seek injunctive relief as well as such other and further relief as may be appropriate.

Headings are used for the purposes of references only and shall not affect the interpretation of this EULA.

Both Parties shall comply with all laws and regulations of any country, state or government applicable to its performance pursuant to this EULA. The CUSTOMER shall indemnify and hold FIRSTBEAT and its possible subcontractors and licensors harmless against any third party claims resulting from breach by the CUSTOMER of its obligations under this Section.

This EULA and all correspondence between the Parties and relating hereto shall be in the English or Finnish language unless the Parties agree to the contrary, in respect of some specific documents.

For any additional information or further inquiries, please visit FIRSTBEAT's web site at www.firstbeattechnologies.com <<http://www.firstbeattechnologies.com>> or do not hesitate to contact FIRSTBEAT's representatives.