

## SOFTWARE LICENSE AGREEMENT

IMPORTANT: EACH SOFTWARE PROGRAM (hereinafter "SOFTWARE") PROVIDED BY ANY AFFILIATE OR DEALER OF FIRSTBEAT TECHNOLOGIES LTD HAVING ITS REGISTERED OFFICE AT YLIOPISTONKATU 28, 40100 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 SOFTWARE LICENSE AGREEMENT. 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 Agreement;

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 the Agreement 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 SPORTS, as marketed and licensed by FIRSTBEAT. The Software is especially designed for professional sports, coaching and study of athletes and teams. The Software has been designed to generate viewable and printable reports on the basis of heart beat recording and analysis. The reports and other properties of the Software are described in the accompanying Documentation.

**"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

2.1 The Software is attended for professional use and operates in windows environment. The Software enables diverse, ambulatorically gathered heart beat analysis and it is capable for

analyze responses of autonomous nervous system caused by physical load and non-physical load, and to recognize occurrence of body's stress reactions and relaxation. The Software is designed as a tool for analysis, measurement and testing for measuring well-being. The Software is designed primarily to professional use to correspond to demands of occupational health care services and other instances in welfare services with their measurement and analysis needs. The Software produces individualized and accessible reports, which can be scanned and printed, on health- and fitness training, weight watching and monitoring stress.

2.2 The CUSTOMER is willing to use the Software for the purpose to evaluate possible purchase of commercial license of the Software ("Purpose").

2.3 In the event the CUSTOMER desires to acquire commercial license or any other services (including without limitation to installation services, user training, and any on-site services), any such services are subject to agreement and payment between the Parties.

### **3 GRANT OF LICENSE AND LIMITATIONS THEREOF**

3.1 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 Agreement, PC workstation(s) shall mean a computer which is used by one overlapping user); and
- (ii) A restricted, non-exclusive, and non-transferable license to use Software (and data medium) as agreed upon in this Agreement, solely for the Purpose in compliance with the Documentation, however solely by users who have obtained User Training as defined in this Agreement. 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; and
- (iii) A right to use the Documentation for internal, non-commercial reference purposes only during the validity of the rights of use.

3.2 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 Agreement.
- (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

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 Agreement.

- (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 Agreement 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 Agreement; 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**

- 5.1 The Software is delivered in object code form to the CUSTOMER without any unnecessary delay after the Parties have entered into this Agreement. The Licensee shall at its own expense acquire and prepare the Operating Environment in conformity of this Agreement and instructions given by FIRSTBEAT. FIRSTBEAT shall 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.
- 5.2 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, the CUSTOMER shall without unnecessary delay perform any necessary remote work and/or bug fixing which is reasonably deemed necessary to achieve the agreed functionality of the Software and deliver a new copy of the Software to the CUSTOMER. The fixed Software shall be subject to a new Acceptance Period in accordance with this clause.
- 5.3 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 commercial use, which ever of these conditions is fulfilled first.

#### **6 WARRANTIES AND LIMITATIONS THEREOF**

- 6.1 In the event of commercial license, the following warranties shall apply:
- 6.2 FIRSTBEAT warrants for the sole benefit of the CUSTOMER, that the Software, when operated in accordance with the terms of this Agreement, 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.

- 6.3 FIRSTBEAT shall, as the sole and exclusive remedy, free-of-charge and without undue delay correct any and all Defects in Product being in breach of the aforesaid warranty in Clause 6.1 above provided, however, that they are reported in writing by the CUSTOMER to FIRSTBEAT during the warranty period. The correction of a Defect may also take place by providing a new product, a detour or 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.
- 6.4 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.
- 6.5 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 Agreement 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.
- 6.6 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.
- 6.7 FIRSTBEAT's liability for the Errors in the Software shall be limited to the fulfilment of the warranty obligations set forth in Clauses 6.1 - 6.6 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 Agreement shall be available to the CUSTOMER. After the warranty period FIRSTBEAT shall have no obligations concerning the Software based on the delivery of Software.
- 6.8 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.
- 6.9 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.
- 6.10 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 DELIVERY OF MEASUREMENT DATA BY THE CUSTOMER**

- 7.1 The CUSTOMER shall, at the request of FIRSTBEAT, deliver FIRSTBEAT a copy of certain results of measurements for statistical and research and development purposes. The delivery of any such data shall be performed periodically and the CUSTOMER shall submit any such data in agreed medium of through the agreed remote access. Delivery of any such data is a part of the co-operation and the CUSTOMER shall not have a right to invoice FIRSTBEAT for any such action.
- 7.2 For avoidance of doubt, any such data shall contain solely statistical information (such as age and gender) and measurement results. Any such data shall NOT contain information which might be combined to any natural person NOR any information which makes it possible to identify any individual person behind the data. The CUSTOMER shall not incorporate any personal data as defined in EU Data Protection Directive (Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the of personal data and on the free movement of such data) and therefore data protection regulation does not apply to the delivery of any such data.

## **8 PAYMENTS AND PAYMENT TERMS**

- 8.1 In consideration of the CUSTOMER's right to use the Software granted pursuant to the terms and conditions of this Agreement, the CUSTOMER shall pay FIRSTBEAT the license and other payments in accordance with the agreement between the Parties.
- 8.2 In the event the Parties have not agreed the prices separately, the prices shall be in accordance with FIRSTBEAT's then current price list.
- 8.3 If the CUSTOMER does not pay any sum under this Agreement 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 Finnish Interest Act (633/1982) as amended from time to time, or twelve month Euribor plus eight (8) percent, whichever is the lower. FIRSTBEAT shall also have a right to suspend its performance of any obligations under this Agreement while the CUSTOMER is in delay of its payment obligations.
- 8.4 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.

## **9 PROPRIETARY AND CONFIDENTIAL INFORMATION**

- 9.1 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.

## **10 LIMITATION OF LIABILITY**

- 10.1 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,

limitation damages resulting from loss of use, loss of data (and/or recreation thereof), howsoever arising under or in connection with this Agreement, except in cases of intentional misconduct or gross negligence.

10.2 The overall liability of FIRSTBEAT towards the CUSTOMER shall be limited to an amount corresponding to fifteen percent (15%) of the total amount of payments paid by the CUSTOMER during the period of twelve (12) months prior to any such event, with the exception of liability, which has been caused by the FIRSTBEAT's gross negligence or intentional misconduct.

## **11 TERM AND TERMINATION**

11.1 This Agreement 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.

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

11.3 Upon expiration of this Agreement 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.

## **12 MISCELLANEOUS**

12.1 This Agreement shall be governed by and construed in accordance with the laws of Finland, excluding its choice of law provisions.

12.2 Any dispute arising out of this Agreement or a breach or alleged breach, shall be determined by binding arbitration conducted in English, or if the dispute is initiated in Finland, in Finnish. The arbitration shall be held in Helsinki, Finland in accordance with the Rules of the Board of Arbitration of the Central Chamber of Commerce of Finland by one arbitrator appointed according to the aforementioned Rules. The award rendered shall be considered final and binding upon between the parties and shall not be subject to appeal to any court. FIRSTBEAT shall, however at its discretion have a right to require the CUSTOMER to pay the agreed payments in the district court of the domicile of the CUSTOMER.

12.3 The CUSTOMER shall not be entitled to assign or transfer all or any of its rights, benefits and obligations under this Agreement without the prior written consent of FIRSTBEAT. FIRSTBEAT shall have a right to assign or transfer this Agreement to a third party in the event of total or partial transfer of its business.

12.4 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.

12.5 If, at any time, any provision of this Agreement, 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.

12.6 No Party shall be deemed by operation of this Agreement or otherwise to be the agent or representative of the other Party for any purpose hereunder whatsoever. The Parties shall at all

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.

12.7 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.

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

12.9 Both Parties shall comply with all laws and regulations of any country, state or government applicable to its performance pursuant to this Agreement. 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.

12.10 This Agreement 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.

12.11 FIRSTBEAT shall be entitled to use the business relation between the Parties as a reference and otherwise in its marketing activities and in accordance with the instructions given by the CUSTOMER from time to time (if any).