

## **GENERAL TERMS FOR FIRSTBEAT SPORTS SERVICE 02/2019**

### **1. Introduction**

These General Terms for Firstbeat Sports Service shall apply to delivery agreement, Firstbeat's offer, or corresponding instrument and constitute the entire agreement (hereinafter "Agreement") of Firstbeat Sports Service between Firstbeat Technologies Oy or, if specified in the Agreement, its specific affiliate (hereinafter "Supplier" or "Firstbeat") and its customer ("Customer"), which as sports team or corresponding entity desires to obtain access and right to use by its Coaches and Athletes (as defined below) agreed features of Firstbeat Sports Service, as further agreed in more detail.

These General Terms constitute an integral part of the Agreement. Section 3 describes Sports Specific Terms and Section 4 Other Terms, which supplement the aforementioned. In case of discrepancy between the Sports Specific Terms (Section 3) and Other Terms (Section 4), the Sports Specific Terms shall prevail. Additionally, in case of discrepancy between these General Terms and specific agreement, the terms and conditions of the specific agreement shall prevail.

### **2. Definitions**

"Additional Service" shall mean any additional or Customer-specific service beyond the scope of the basic Service. Additional Service is supplied by Firstbeat to the Customer on its request due to Customer's field of business or other Customer-related reasons. Any terms and fees of Additional Service are to be agreed separately on case-by-case basis.

"Athletes" shall mean Subjects, defined by the Customer, whose sports performance and other data is stored in the Service as Customer Data or to whom the Customer has acquired and granted an applicable right to use the Service.

"Coach" shall mean individual person authorized by the Customer to use the Service and to register other Coaches or Athletes for the Service. Each Coach acts as a Main User as defined in the General Terms.

"Customer Data" shall mean all the data collected, inserted, and stored on the Service by the Customer or the User(s), for instance personal details and heart rate measurement data of Subject(s) or other individuals.

"Data Protection Legislation" shall mean applicable European Union or national general data protection and privacy legislation excluding any special legislation that may be applicable to the Customer.

"Documentation" shall mean applicable written or electrical material in any medium relating to the operation or functionality of Service including without limitation user manuals or handbooks provided by Firstbeat.

"Error" shall mean that the Software or Service is not materially functioning as described in the Documentation.

"Main User" shall mean an individual person designated by the Customer to administer and supervise the use of the Service within the Customer's organization.

"Operating Environment" shall mean the hardware and other equipment as well as operating software and other third-party software and Internet access which are required for the use of the Service.

"Service" shall mean the features of Firstbeat Sports service as specifically agreed in the Agreement, Documentation and/or specific offers and the related delivery or handling of equipment or data or other related services provided to Users or Subjects by Firstbeat.

"Software" shall mean the features of Firstbeat's standard form Sports software offered either as a service, for instance as a cloud service available through an Internet browser or installed locally to the User's device. Software is a tool for professional heartbeat analysis as described in the Documentation.

"Sports App" shall mean the Software, which is installed locally to the User's mobile device. This is typically used by the Athletes.

"Sports Cloud" shall mean the Software, which is available as a cloud service from Firstbeat's servers, for instance through an Internet browser.

"Sports Monitor" shall mean the Software, which is installed locally to the device for the purpose of monitoring, collecting and analyzing data from measurement devices. This is typically used by a Coach to monitor the Athletes' performance.

"Subject" or "End-User" shall mean persons, defined by the Customer, whose heartbeat information and other personal data is stored in the Service as Customer Data.

"Update" shall mean a revised version of the Software or Service for correcting error and faults appeared after publication of the previous version. Update may also include minor new features and functions.

"User(s)" shall mean individual persons authorized by the Customer to use the Service.

"User ID" shall mean user account provided for the Customer by Firstbeat or created by a Main User for other Users.

### **3. Sports Specific Terms**

#### **3.1 General**

Firstbeat Sports system is a tool designed for teams and groups to monitor training load and recovery. The monitoring is based on interpreting heartbeat and heart rate variability (HRV) using measurement devices and computer software. The solution is developed for the needs of coaches and fitness instructors for showing heart rate derived information for groups in real time for motivational and teaching. Further details regarding the Sports software and compatibility are described in the Agreement.

As described in detail in the General Terms and Firstbeat Privacy policy for Sports, the Customer is responsible for any requirements that the local or otherwise applicable legislation may have to preserve the personal data, such as a requirement to inform the data Subjects (Athletes) of the data use or privacy policy or to acquire their permission, or to update or delete the data as needed. The web user interface of the system (Sports Cloud) has a link to the Privacy policy. Firstbeat may change the Privacy policy from time to time, and the Customer assumes responsibility to check the policy occasionally to be aware of the most recent version.

The Customer shall appoint the Coach users and ensure they are aware of and follow any necessary legislation related to processing the Athlete data, including informing the Athletes and obtaining all consents and permissions necessary according to applicable data protection or privacy legislation. The Customer is responsible for actions of Users.

#### **3.2 Software License and Warranty**

Upon terms and limitations and against full and timely payment of all applicable fees and charges and subject to agreed amount of User profiles, Firstbeat grants to the Customer a restricted, non-exclusive and non-transferable license:

- (i) to install the Software to as many workstation(s) or device(s) as required for agreed number of User(s) permitted in the Agreement;
- (ii) to use the Software during validity of license acquired by the Customer as agreed upon these General Terms, solely for the agreed purpose in compliance with the Documentation;
- (iii) to access and to use the Service during the validity of right to use the Service (which depends on license type acquired by the Customer). If the subscription for license of Customer is valid for fixed period (e.g. one-year license), the license contains a right to use the Service during validity of the fixed license. After the initial period the right to access and use the Service is valid as offered by Firstbeat. The Service is revocable at the sole direction of Firstbeat and Firstbeat is entitled to change, alter or close the Service at any time, except that Firstbeat undertakes to keep the Service available during the guaranteed fixed period (e.g. one year or four years, as applicable) defined above.
- (iv) to use the Documentation for internal, non-commercial reference purposes only during the validity of the rights of use.

In case Firstbeat shall close the Service or Customer's right to use the Service expires, the license to Software remains in force as long as the license is valid. Upon expiration or termination of the Agreement for any reason the Customer must uninstall the Software and destroy all copies of the Software and Documentation.

Firstbeat warrants for the sole benefit of the Customer, that the Software, when operated in accordance with the terms of these General Terms, 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 delivery. In the event of an Error in the Service, further details are agreed in Section 4.4.

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 any defect attributable a) to the use of the Software contrary to these General Terms 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. Terms set forth in Section 4.4 shall supplement the warranty terms stated herein.

#### **3.3 Access to Service and Right to Use the Service**

Following terms shall apply to Sports Cloud:

Upon terms and limitations and against full and timely payment of all applicable fees and charges, Firstbeat grants the Customer a limited access and a non-exclusive, non-transferable right to use the agreed features of the Service by User(s) during the term of the Agreement via Internet from the server of Firstbeat or from locally installed Software. Access to the Service is granted solely as set forth above. The quantity of Users is set forth in the Agreement. If not defined in the Agreement, the quantity of User(s) shall be one (1).

The Customer shall not: (i) acquire any other rights for Service or distribute, rent, lease, loan, copy, sublicense or resell the Service, software or accompanying Documentation or any part thereof or any access rights thereof nor the license or any copy of it; (ii) 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; (iii) 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

the Agreement; (iv) modify, enhance or in any other manner change the Software, the Service or accompanying Documentation; (v) Remove, obliterate or otherwise alter Firstbeat's or third parties' proprietary rights notices; (vi) Assign or transfer any of its rights and obligations to the Service and/or Software arising from the Agreement or any User IDs or corresponding information to any third party without the prior written consent of Firstbeat.

Notwithstanding the aforementioned, the Customer may be entitled to assign end user rights to the Service outside its own organisation, if separately agreed between the Parties in the Agreement or otherwise. Any copying or use of the data processed in the Service shall be separately agreed.

Following terms shall apply to Sports App:

Coach may upon its sole risk and liability invite Athletes to use Firstbeat Sports App, which is available in certain territories in certain mobile application stores. Preconditions for the use of Sports App is that the Athletes accept applicable license terms to use of the Sports App.

Following terms shall apply to Sports API:

Firstbeat has developed the API feature for the Service which makes possible to import certain Customer Data from the Service to a third party's services. Such third-party services are offered by contractors (such as API Licensee) directly to Firstbeat's Customer who decides of the use of such Customer Data for such services. The Parties may separately agree upon use of API to be used as an interface between the Service and API licensee's applications.

Firstbeat shall have the right to deny access to the Service if the Service is used against the law, orders of the authorities, good customs, the Agreement, Documentation or any written instructions given by Firstbeat, or in case the Customer defaults payments or other fees due and payable to Firstbeat which remain unpaid for fourteen (14) days after written notice of such breach. Firstbeat is obligated to notify the Customer if access is denied for any reason. Misuse of User IDs, misuse of Customer Data, or attempting to access other software or files located on the Service not described in the Agreement is prohibited.

### 3.4 Devices

In the event the Customer purchases devices from Firstbeat, Firstbeat-branded devices have a limited warranty as set forth in the devices-specific warranty terms (<https://www.firstbeat.com/en/Firstbeat-Sports-heart-rate-device-warranty-information>). Any third-party devices shall only include such third party's warranty terms, in which the Customer's sole remedy shall be with the third party and not with Firstbeat.

In the event that Firstbeat leases or loans devices, the specific terms shall be separately agreed.

Customer is aware that some Firstbeat devices may use standard unencrypted radio technology in local data flow between the measurement devices and local radio receiver.

### 3.5 Term of Agreement

Unless otherwise specifically agreed, the Agreement is valid until further notice. The Agreement may contain an initial subscription period. The Agreement including General Terms will stay valid for subsequent purchases after the end of such fixed period. The Agreement may be terminated by the Customer by 30-days prior written notice to the end of the ordered fixed subscription period. If there is no currently valid license period, the Agreement can be terminated by the Customer by 30 days prior notice to the end of each month. Firstbeat's term of notice is described in Section 4.10.

In case the Customer's access to the Service is denied by Firstbeat because of the reasons specified in the General Terms (Section 3.3), the time the access is denied will not be subtracted from the billable term and Firstbeat shall not refund the Customer for any such time. In case the reason for denying the access is resolved within 30 days, such as unpaid bills are paid, Firstbeat will restore access within 7 days. If the reason is not resolved within 30 days, Firstbeat may terminate the Agreement with immediate effect. If the Agreement is terminated, Firstbeat or an authorized third party may take further proceedings in order to collect any unpaid fees, including any unpaid devices.

## 4. Other Terms

### 4.1 Scope

The following terms (sections 4 and 5) shall supplement the specific terms applicable for the Software and the Service (section 3).

The Service may involve producing individual and printable reports of each analysis in format further described in the Documentation. The Service is available from Firstbeat's server through suitable computer devices and may include data or equipment processing by Firstbeat as specified in the Agreement. The Service is available via User IDs granted by Firstbeat.

The scope of the Agreement and contents of the Service are expressly set forth in the Agreement and Documentation. Any expansion or alteration, apart from planned updates to the software, to the scope of the Service or Agreement shall be considered as Additional Service and thus shall be subject to a separate agreement between the parties.

## 4.2 General Obligations of the Parties

Firstbeat shall offer the Service for the use of the Customer and User(s) as described in the Agreement. Unless otherwise agreed, Firstbeat offers the Service from Finland or other EU countries. Firstbeat is responsible for providing the Service substantially in compliance with the Agreement.

The Customer is responsible for selection, use of the Service to its purposes and costs thereof according to applicable legislation in the Customer's territory and field of business, including fulfilling all regulatory requirements when using the Service.

All payment will be made by the Customer in accordance with the Agreement. The Customer is obligated to use the Service in accordance with the Agreement and applicable Documentation in exchange for full payment of applicable payments. The Customer is responsible for both (i) actions of the User(s) using the Service; (ii) interpretations and analysis made by the Customer or its representatives from the data or reports provided by the Service; and (iii) obtaining all consents and permissions necessary according to applicable data protection or privacy legislation. If the Customer's field of business or another Customer related factor causes special legislation to apply to the use of the Service or to service provider material (e.g., patient records), the Customer is responsible for acquiring all necessary consents and permissions. If the data created in the Service is used in the operations of the Customer as patient data, the Customer is responsible for complying with all information security and other regulations applying to patient data. In such case, the Customer must make a copy of such data and move it in Customer's own information systems. The Software of Firstbeat must not be used to store any information or material under special legislation and Firstbeat is not responsible for any such requirements related to Customer's operations.

The Customer is obligated to acquire and maintain Operating Environment for the Service in accordance with the minimum requirements of Firstbeat. In the event the Customer requests assistance from Firstbeat in interpreting or analysing the reports provided by the Service, the conditions shall be separately agreed as Additional Service.

The Customer has selected the technical solution for the Service as further set forth in the Agreement. Provided that due to Customer's field of business or other Customer-related reasons the Customer has a need for additional data protection level, it shall be separately agreed as Additional Service. The Customer acknowledges and accepts the risk of interruption of the Service and uses reasonable efforts to prevent damage to the User(s) activities caused by interruptions of Internet access or other malfunction related to Operating Environment or temporary downtime of the Service.

The Customer shall appoint a Main User to administer and supervise the use of the Service within the Customer's organization.

The Customer is obligated to ensure that User(s) keep User IDs confidential. The Customer is always responsible for the misuse of lost User IDs or any other misuse of User IDs. In the event the use of User IDs is in breach of the Agreement (e.g. same pre-paid code is used for more than one measurement), Firstbeat is entitled to charge additional fees.

The Customer shall at its own cost provide Firstbeat with adequate and accurate information in the agreed form and within the agreed time schedule, and handle the costs, expenses, routines, methods and practices related to the use of the Service (including maintenance and personal data processing).

## 4.3 Delivery and Acceptance of the Service

Firstbeat shall deliver to the Customer User IDs and make all measures necessary for opening the user account(s) and granting access to User(s).

The delivery of Service is deemed to be accepted by the Customer unless the Customer delivers Firstbeat a written notice itemizing the errors within fourteen (14) days from the date when Firstbeat has granted the Customer access to the Service. The Customer shall inform Firstbeat in writing of any Errors in the Service and/or Software without delay.

In any event the delivery of Service is deemed to be accepted when (i) Firstbeat has corrected the Errors reported by Customer to Firstbeat; or (ii) the said fourteen (14) days period has elapsed; or (iii) the Customer takes the Service into production use by offering the Service to its Subjects.

Firstbeat shall at its sole discretion either correct the Errors reported by the Customer or terminate with immediate effect the Agreement in which event Firstbeat shall as a sole remedy to the Customer refund the payments acquired by Firstbeat from the Customer, reduced with number of assessments which have been used before the termination, if the Agreement contains billing based on the number of assessments. Irrespective of the aforesaid, all minor errors which have no substantial impact for use of the Service do not prevent acceptance of the Service. Firstbeat shall use its commercially reasonable efforts to fix such minor errors when publishing Updates.

## 4.4 Firstbeat's Obligations concerning Error of Service

Firstbeat's warranties and obligations concerning maintenance, support, and availability of the Service are exhaustively defined in this clause and in the Agreement.

Firstbeat shall perform monitoring of the Service according to its then current practices to prevent malfunctions or downtimes of the Service. Firstbeat has a right to temporarily interrupt provision of the Service for maintenance, alteration, repair or installation purposes. Such interruptions will be made, to the extent possible, during the evenings or weekends. Firstbeat shall inform the Customer through the Service concerning scheduled interruptions in the Service, if possible.

An Error of the Service occurs if the Service substantially deviates from the Documentation. In the event of an Error, the Customer shall inform Firstbeat without undue delay. Firstbeat shall enter into corrective measures at latest on next working day. Firstbeat continues corrective measures during normal office hours until the Error is corrected.

The remedy set forth herein is subject to full compliance with the Operating Environment requirements. Firstbeat shall perform corrective measures at its own offices. Performing corrective measures at the Customer's location is subject to separate agreement and the Customer shall reimburse all reasonable travelling costs, including travel time.

Firstbeat is not liable for any errors which are a consequence of use of the Service against terms and conditions of the Agreement, Documentation or written instructions of Firstbeat, or which are consequence of use of other products than supplied by Firstbeat, or any change to the Service. In the event an error reported by the Customer does not fall under the responsibility of Firstbeat, Firstbeat is entitled to charge the Customer for the investigation of such reported error.

Firstbeat does not guarantee availability of the Service. In particular, Firstbeat is not liable for any downtime of the Service which is beyond reasonable control of Firstbeat, including without limitation to interruptions caused by telecommunications connections and all malfunctions by User(s) or Customer.

Firstbeat uses commercially reasonable efforts to develop the Service and publish Updates of the Service but is not liable for any such activities. Firstbeat is entitled to replace the previous version of the Service by Update, provided that Update contains corresponding features with the previous version.

In such event the Customer is obligated to make necessary updates for Operating Environment (such as updates to browser software) at its sole cost and risk. In the event the Customer refuses to take Update into use, Firstbeat may provide support to previous version at its sole discretion and provided that the Customer pays additional costs incurred. For avoidance of doubt, electing not to take Update version does not release the Customer to pay payments according to this Agreement.

FIRSTBEAT PROVIDES SOFTWARE, SERVICE AND ACCOMPANYING MATERIALS "AS IS" AND HEREBY SPECIFICALLY DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED.

If the Agreement defines mandatory User Training, then prior to any use of the Service the Customer shall ensure that User Training is fulfilled in a scope agreed in the Agreement or otherwise.

The Customer warrants that each User shall obtain necessary knowledge of the use of the Service and results provided by the Service. The Customer agrees actively to follow updates and detailed information of the use of the Service provided by Firstbeat.

THE FOREGOING WARRANTIES SET FORTH THE ENTIRE LIABILITY OF FIRSTBEAT AND THE FOREGOING WARRANTIES ARE THE ONLY EXPRESS WARRANTY MADE TO THE CUSTOMER AND/OR USER(S) AND/OR END-USER(S). 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. FIRSTBEAT DOES NOT WARRANT THAT ALL DEFECTS CAN BE CORRECTED, OR THAT THE OPERATION OF THE SOFTWARE WILL BE ERROR FREE AND/OR UNINTERRUPTED.

#### **4.5 Contact Person**

The Customer shall point a contact person to represent the Customer and be responsible for ensuring a fluent communication between the parties to the Agreement.

#### **4.6 Fees and Payment Terms**

All payments will be made by the Customer in accordance with the Agreement executed between the Customer and Firstbeat and/or its resellers. For the purposes of this clause, payments mean sums itemized in electronic ordering procedure (such as web shop or other corresponding means) or price list delivered by Firstbeat and/or its resellers. In absence of the Agreement, the prices shall be in accordance with Firstbeat's then current price list. The fees may consist of following, or other fees as defined in the Agreement:

- Fees based on number of assessments or number of registered Subjects in accordance with the Agreement
- Periodic subscription fee in accordance with the Agreement during the validity of subscription or Agreement.
- Sales or rental price of devices in accordance with the Agreement.
- User Training, additional training and other fees as agreed in the Agreement or otherwise ordered by the Customer.

Except as otherwise agreed in the Agreement, all payments will be charged monthly. All training and delivery of equipment will be invoiced upon delivery.

Unless otherwise agreed, payments shall be made in Euro or USD currency according to the offer.

As regards web shop, all payments will be made upon purchase transaction as further set forth in web shop. Pre-payment contains items specifically included in service pack offered.

Other services (such as additional analysis or subscription months) will be charged in accordance with the Agreement or in absence of agreed price, monthly in in accordance with then current price list.

Unless otherwise agreed, Firstbeat has a right to change prices by submitting a written notice no later than 30 days prior to the effective date of the price increase. In such event the Customer is entitled to terminate the Agreement on the effective date by submitting a written notice of termination within fourteen (14) days from the price increase announcement by Firstbeat.

Value added tax or corresponding tax will be added to all prices according to applicable legislation. Unless otherwise agreed, payment term for all payments will be 14 days. In the event of delayed payment, Firstbeat is entitled to invoice reasonable collecting charges and delay interest according to annual interest of 8%.

#### **4.7 Limitation of Liability**

In the event Firstbeat is in substantial breach of this Agreement and does not correct such breach within thirty (30) days from the written notice from the Customer, Firstbeat is obligated to compensate direct damages, proven by the Customer, incurred as a consequence of such breach. Except in the event the damage is caused intentionally or by gross negligence, Firstbeat's liability shall in no event exceed 15 % of the amounts actually paid by the Customer to Firstbeat during the period of twelve (12) months before occurrence of the breach. Except in the event the damage is caused intentionally or by gross negligence, in no event is Firstbeat liable for any indirect or consequential damages incurred to the Customer.

The Customer acknowledges and agrees that results of assessments created by the Service 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 Service fits for the intended purpose of the Customer and its Subject(s) and is not liable for any costs and damages incurred as a consequence of use of the Service. In the event Firstbeat informs the Customer of any factors which cause unstable assessment results, the Customer is obligated to take such information into account and to ensure that the Subject(s) approve such conditions. In the event the Customer's customer or Subject(s) presents any claims against the Customer concerning faulty results, the Customer is liable for such claims and holds Firstbeat harmless from such claims. The Customer is responsible for (i) acts and omissions of User(s) and Customer using the Service; (ii) interpretations and analysis made by User(s), Customer or its representatives from the data or reports provided by the Service.

In the event the faulty results are a consequence of defect in the Software, as evidenced by the Customer, and the Agreement allows the Customer to re-sell the particular Service further to Customer's customers, Firstbeat refunds a reasonable part of the price reduction paid by the Customer to its customers or Subject(s), if so agreed in advance. Any such payment is subject to limitations of first paragraph of this clause.

Neither party shall be liable for delay and damage caused by an impediment beyond the party's control and which the party could not have reasonably taken into account at the time of conclusion of the Agreement and whose consequences the party could not reasonably have avoided or overcome. Such force majeure events shall include, if not proven otherwise, *inter alia*, war or insurrection, earthquake, flood or other similar natural catastrophe, interruptions in general traffic, data communication or supply of electricity, import or export embargo, strike, lockout, boycott or other similar industrial action. A strike, lockout, boycott or other similar industrial action shall also be considered, if not proven otherwise, a force majeure event when the party concerned is target or a party to such an action. Each party shall without delay inform the other party in writing of a force majeure event and the termination of the force majeure event.

#### **4.8 Confidentiality**

The Service, Software and Documentation are confidential information of Firstbeat. The Customer agrees and undertakes to maintain such materials in confidence and not to use for any other purposes than the purpose of this Agreement any material delivered by Firstbeat to the Customer. The Customer is not allowed to disclose any such material or information to any third party, except for the purpose described in this Agreement.

Firstbeat agrees to hold in confidence all Customer Data and any other non-public information obtained from the Customer and/or End-Users.

The confidentiality obligations shall remain in force during validity of this Agreement and five (5) years thereafter. Nothing in this clause is intended to decrease the protection of applicable legislation concerning confidential information. The parties shall maintain the content of the Agreement confidential, unless expressly otherwise agreed.

The parties shall use all reasonable efforts to prevent the unauthorized use, copying, publication or dissemination of the confidential information of the other party.

No obligations are imposed by this Clause 4.8 with respect to a party's confidential information if that confidential information:

- (a) is known to the other party before disclosure under this Agreement and is not subject to any other obligation of confidentiality;
- (b) is or becomes publicly known through no act or default of the other party.

#### **4.9 Intellectual Property Rights**

Firstbeat retains all rights to the Service and related technology 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.

In the event authorized use of the unmodified Software or Service should infringe upon the intellectual property rights of a third party due to the reason attributable to Firstbeat, and at Firstbeat's opinion such infringement prevents or endangers to prevent the Customer or the User(s) to continue the use of the Service or any part thereof, Firstbeat may either procure the right to continue using the Service, or replace, or modify it to make it non-infringing. If none of the aforementioned options is reasonably feasible to Firstbeat, Firstbeat shall terminate the Agreement with immediate effect. As a consequence of such termination the Customer shall cease using the infringing Service or portions of it and is not obligated to pay any further payments. Firstbeat is not obligated to refund any fees, which are compensation of use of the Service from the period before termination.

As a sole remedy to the Customer Firstbeat refunds the payments corresponding the time period during which the Service has not been in use due to such infringement and, if the Agreement contains pre-paid assessment credits, refunds valid, unused credits according to the unit price of last credit purchase.

#### 4.10 Term of Agreement

The Agreement shall be in force in accordance with the Agreement.

Unless otherwise agreed, the Customer has access to the Service with the User IDs during the term the Service is provided.

Unless otherwise agreed, the termination period by the Customer is 30 days prior to the end of each quarter of the calendar year. If the Agreement is terminated by the Customer, no refund of already invoiced payments will be made.

Unless otherwise agreed, the termination period by Firstbeat is 6 months. If the Agreement includes an already invoiced fixed period, the termination by Firstbeat must be done at latest 6 months prior to the end of the fixed period.

Upon expiration of this Agreement Firstbeat is entitled to prevent the Users' access to the Service and the Customer shall return or delete any material belonging to Firstbeat. After the end of the customer relationship by termination or otherwise, or after the last invoiced User access period has ended, Firstbeat is committed to keeping the Customer Data in the Software for thirty-six (36) months, after which Firstbeat will erase the Customer Data from the Software. Upon request of the Customer, the Customer Data can be removed immediately after the end of the customer relationship. If due to the Customer field of business and/or applicable legislation the Customer Data must be kept for longer than the time defined above, this will be separately agreed as an Additional Service. The Customer is responsible for informing Firstbeat of this and for agreeing a new time period. If the Customer wants a copy of the Customer Data and the Customer presents the justification and mandate to receive the data, Firstbeat may provide the material to the Customer in a way separately agreed in exchange for a reasonable reimbursement of costs to Firstbeat. The Customer is responsible for the legality of such requested data hand-over.

#### 4.11 Regulatory Requirements. Privacy and Data Protection.

The Customer is aware that the Agreement applies to a standard Service, and it is the responsibility of the Customer to ensure that the Service is consistent with the legislation applicable to the field of business of the Customer. The Customer is responsible for and ensures that it has legal justification for handling personal data based on this Agreement, and that it has acquired all necessary and legally required consents (i) for acquiring and processing any personal data saved by the Customer in the Software or any other material of the Customer; and (ii) to transfer the data to the server of Firstbeat in Finland or anywhere else within the European Union. The Customer is responsible for and ensures that it has informed the Subject of his/her legal rights in the way required by the data protection legislation. Upon request, the Customer commits to inform Firstbeat of the acquired permissions and consents. The Customer is responsible for and ensures that it has implemented all organizational and other checks to ensure that the Service in its technical and other features corresponds the applicable (local) legislation and other applicable regulations. The Customer is responsible for and ensures that both its present and future processing of the Customer Data is legal, including transferring the material from one country to another.

If the Customer has not collected all required permissions or if the Customer decides not to collect, process, or save the personal data of the persons subject to the measurements in the Software, the Customer commits to process and save only anonymous data, which is not subject to personal data legislation or other data protection legislation. This type of anonymous use means, for instance, referring to the test subjects by nicknames, numbers or other non-traceable terms.

If any matter, for which the Customer is responsible, causes extra costs to Firstbeat, the Customer must compensate the costs to Firstbeat in full.

The Customer is the controller of the Customer Data saved in the Software, as defined in the Data Protection Legislation, to whom the data is saved and who has the right to control how the data is used. The Customer, as controller, has the responsibilities defined in the Data Protection Legislation, including creating and making available the necessary documentation about personal data processing and informing the data subjects and informing the data protection authorities. The Customer is responsible for the correctness of the data given to Firstbeat for processing. The Customer is responsible for correcting, erasing and updating data directly in the Service or ensuring such changes are communicated to Firstbeat. If these responsibilities of the Customer cause Firstbeat responsibilities, which are not covered in the Agreement, Firstbeat is entitled to charge for them separately. The Customer commits to keep Firstbeat free of any responsibility concerning the personal data processing.

To provide the Service and for the agreed time Firstbeat will process personal data in the Customer Data. If required, the type of personal data, the nature and purpose of the processing and categories of data subjects will be specified in more detail in the Agreement. For the purpose of the processing Firstbeat commits to (i) handle personal data according to the Agreement and more detailed written instructions possibly given by the Customer, if Data Protection Legislation does not require otherwise, including concerning the transfer of personal data to a third country or an international organization; (ii) ensure, that the persons who process the personal data are committed to confidentiality obligations or are subject to legally binding confidentiality obligations; (iii) as needed and subject to Firstbeat's consideration, implement appropriate technical and organizational measures to protect personal data and to maintain appropriate security level in the processing of personal data by measures required in Data Protection Legislation. The Customer is responsible for ensuring that Firstbeat is informed of all factors related to the personal data provided by the Customer, such as risk analyses or processing of special person groups, which affect the technical or organizational measures to be taken in accordance with the performance of the Agreement; (iv) immediately delegate to the Customer all requests from the Subjects concerning checking, rectifying, erasing or restricting of processing of their personal data or other requests, and the Customer is responsible for responding to the requests. Considering the nature of the processing, Firstbeat will assist the Customer to implement the Subjects rights to the extent possible by Firstbeat; (v) to assist the Customer, if necessary and to the extent possible, considering the nature of the processing and the information available to Firstbeat, to implement the information security of the processing, to detect information security breaches of personal data and to inform about them and to minimize the damage, to implement impact assessment and prior consultation of the supervisory authority as required by the information security legislation. Firstbeat is responsible to assist the Customer only to the extent required from a data processor by the Data Protection Legislation. Firstbeat will forward all queries from the information security authorities directly to the Customer, and Firstbeat has no

authority to represent the Customer or act on behalf of the Customer with the information security authorities supervising Firstbeat; (vi) erase after the end of the provision of Service, at latest after the time defined in these General Terms all personal data and existing copies; (vii) to make available to the Customer all information required to demonstrate the compliance with the responsibilities agreed here. If required, an audit or inspection as defined in the Data Protection Legislation, will be agreed separately.

The responsibilities of Firstbeat for assistance described in this chapter 4 are not included in the price of the Service, but Firstbeat has the right to charge the Customer for the time spent on assistance responsibilities and responsibilities due to written instructions from the Customer according to the charges detailed in the then current price list of Firstbeat.

Firstbeat maintains a general description of the processing of personal data in the Service in the Firstbeat Privacy Policy documentation, publicly available in Firstbeat website. Firstbeat shall inform the Customer of changes to the general description.

If, due to the field of business of the Customer, it is necessary to agree in more detail or separately about the protection of personal data, or if it is agreed that Firstbeat will take an active role in processing the Customer Data, the conditions for this must be defined in the Agreement.

#### **4.12 Marketing Communication. Firstbeat Brand**

Firstbeat and the Customer may jointly publish press releases concerning the use of the Service. Unless expressly prohibited by the Customer, Firstbeat is entitled to use the Customer as a reference. Firstbeat is entitled to forward a limited number of potential new customers to request user experiences from the contact person designated by the Customer.

Each party is entitled to set a link from its own Web page to the Web page of the other party.

The following apply in case the Agreement allows the Customer to sell the particular Service further to Customer's customers:

(i) The Customer is entitled to use in its marketing activities pictures and other marketing material available in the download section of the website offered by Firstbeat. The Customer shall use Firstbeat's trademarks, trade names, or other symbols which are available in the download section only for the purpose of identifying and advertising the Service within the scope of the Agreement. All such use must be in strict compliance with Firstbeat's instructions for use of such material (i.e., as specified in the current brand guidelines);

(ii) The Customer shall neither register nor have registered any trademarks, trade names, or symbols which are similar to those of Firstbeat. The Customer is not allowed to add its own name to any material of Firstbeat without Firstbeat's written permission or terms defined in the download section of Firstbeat's web pages. The Customer's right to use Firstbeat's trademarks, trade names, symbols or other material shall cease immediately upon the expiration or termination of this Agreement;

(iii) The Customer must either by displaying Firstbeat's logo or otherwise clearly identify in its marketing communication (at minimum service description and Web pages) that it is using the Software when providing services to its customers. The Customer shall follow reasonable instructions provided by Firstbeat from time to time.

## **5. FINAL PROVISIONS**

The Customer agrees and accepts that Firstbeat shall be entitled to access and have a copy and to utilize certain measurement results in an anonymized form for statistics, scientific research, and development purposes. If needed, the Customer shall inform the Subjects of such data disclosure in accordance with the Data Protection Legislation. The delivery of any such data shall be performed periodically by Firstbeat without any payment obligations from a party to the other party. 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 connected to any natural person NOR any information which makes it possible to identify any individual person behind the data.

Neither party shall be entitled to assign or transfer all or any of its rights, benefits and obligations under this Agreement without the prior written consent of the other party. Firstbeat is entitled to transfer the Agreement as part of total or partial transfer of its business. Firstbeat is entitled to use subcontractors.

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 the Agreement 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 the Agreement 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 the Agreement. Any amendments to the Agreement shall be made mutually in writing.

The 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.



This Agreement 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 Agreement or a breach or alleged breach shall be finally settled in district court of Helsinki, Finland.

These General Terms shall be valid from March 04, 2019.