



## End User License Agreement

Last Updated: February, 2017

Thank you for your interest in this application for your mobile device (the “App”) provided to you by Watteam Ltd. and its affiliates (“Watteam”), and our Web site at [www.watteam.com](http://www.watteam.com) (the “Site”), as well as all related web sites, networks, downloadable software, and other software and services provided by us and on which a link to these Terms of Use and End User License Agreement is displayed (collectively, together with the Site, our “Service”) which enables you to use certain features of the Service from your mobile device together with the Watteam Powerbeat meter incorporating hardware that interacts with the App (“Watteam Product”). This End User License Agreement, along with the Watteam Website Terms of Use, the Watteam Privacy Policy, the Watteam Powerbeat Limited Warranty and any other applicable policies (together, the “Policies”) (collectively, “EULA”), as may updated from time to time, govern your use of the App, the Watteam Product, and the Service. This EULA is a legally binding contract between you and Watteam regarding your use of the Service. You may request a copy of this EULA by emailing us at [info@watteam.com](mailto:info@watteam.com).

Certain aspects of the App and/or the Service are provided by one or more third parties. Such third parties may have their own policies and end user license agreements (collectively, “Third Party Policies and EULAs”) that apply to your use of the App and/or the Service. Nothing in this EULA is intended to modify or limit such Third Party Policies and EULAs. This EULA only applies to the App and the Service to the extent actually developed, distributed, licensed and supported by or on behalf of Watteam.

**PLEASE READ THE EULA CAREFULLY. BY DOWNLOADING, INSTALLING, OR OTHERWISE ACCESSING OR USING THE APP OR THE SERVICE, YOU AGREE THAT YOU HAVE READ, UNDERSTOOD, AND AGREE TO BE BOUND BY THE EULA. IF YOU DO NOT AGREE, YOU MAY NOT USE THE APP OR THE SERVICE.**

You acknowledge and agree that, as provided in greater detail in the EULA:

- the App is licensed, not sold to you, and that you may use the Service only as set forth in this EULA;
- your use of the Service may be subject to separate third party terms of service and fees, including without limitation, certain Third Party Policies and EULAs as well as the terms of service and data, SMS, MMS, and other fees of your mobile network operator, which are your sole responsibility;
- you consent to the collection and use of your personally identifiable information and information about your location in accordance with the Watteam Privacy Policy and the privacy policies of third parties included within the Third Party Policies and EULAs;



- the Service is provided “as is” without warranties of any kind and Watteam’s liability to you is limited;
- disputes arising hereunder will be resolved by binding arbitration, AND BY ACCEPTING THIS EULA, YOU AND WATTEAM ARE EACH WAIVING THE RIGHT TO A TRIAL BY JURY OR TO PARTICIPATE IN A CLASS ACTION. YOU AGREE TO GIVE UP YOUR RIGHT TO GO TO COURT to assert or defend your rights under this contract (except for matters that may be taken to small claims court). Your rights will be determined by a NEUTRAL ARBITRATOR and NOT a judge or jury and your claims cannot be brought as a class action. Please review the Arbitration Agreement below for the details regarding your agreement to arbitrate any disputes with Watteam;
- the App requires access to the following services on your mobile device: UDID, MAC address, or other applicable device identifier, phone state and identity, internet, and SMS/MMS messaging;
- access to certain features of the Service may require access to information about the location of your device, such as GPS coordinates; and
- if you are using the App on an iOS-based device, you agree to and acknowledge the “Notice Regarding Apple,” below.

1. **Service Overview.** The Service provides users of our Watteam Product the ability to monitor quantitative power measurements related to their cycling via our hosted software (“Software”). You may also purchase replacement Watteam Product, batteries and battery chargers from the Site.

2. **Eligibility.** You must be at least thirteen (13) years of age to use the Service. By agreeing to this EULA, you represent and warrant to us: (i) that you are at least thirteen (13) years of age; (ii) that you have not previously been suspended or removed from the Service; and (iii) that your registration and your use of the Service is in compliance with any and all applicable laws and regulations. If you are using the Service on behalf of an entity, organization, or company, you represent and warrant that you have the authority to bind such organization to this EULA and you agree to be bound by this EULA on behalf of such organization.

3. **Accounts and Registration.** To access most features of the Service, you must purchase our Watteam Product and register for an account. When you register for an account, you may be required to provide us with some information about yourself (such as your name, e-mail address or other contact information). You agree that the information you provide to us is accurate and that you will keep it accurate and up-to-date at all times. When you register, you will be asked to provide a password. You are solely responsible for maintaining the confidentiality of your account and password. You agree to accept responsibility for all activities that occur under your account. If you have reason to believe that your account is no longer secure, then you must immediately notify us at [info@watteam.com](mailto:info@watteam.com).



#### 4. **Payment.**

4.1 **Service.** Currently, Watteam does not charge owners of the Watteam Product additional fees for use of the Service. However, Watteam may begin charging fees, or change fees, for use of the Service or specific features of the Service, on a going-forward basis at any time. Before you are required to pay any fees for use of the Service, you will have an opportunity to review and accept the applicable fees that you will be charged.

4.2 **Product.** Watteam may make available for purchase the Watteam Product and replacement batteries and battery chargers for your Watteam Product via the Site. All fees stated on the Site are in U.S. Dollars and are non-refundable. Watteam will charge the payment method you specify at the time of purchase. You authorize Watteam to charge all sums described in this EULA to that payment method, including all applicable taxes and shipping fees. If you pay any applicable fees with a credit card, Watteam may seek pre-authorization of your credit card account prior to your purchase to verify that the credit card is valid and has the necessary funds or credit available to cover your purchase.

5. **[Location-Based Services].** Access to certain features of the Service require access to your location in order to tailor your experience with the Service (“Location-based Services”). For information about how we use the information we collect through the Location-based Services, please review our Privacy Policy. PLEASE NOTE THAT LOCATION DATA MAY NOT ALWAYS BE ACCURATE, AND WATTEAM DISCLAIMS ANY AND ALL WARRANTIES RELATED TO LOCATION-BASED SERVICES.

6. **App Terms.** The terms of this Section 6 govern your acquisition and use of App.

6.1 **Third Party Accounts.** In order to download the App, you may be required by the third party who is distributing or providing you access to the App, such as Apple, Inc. (each, a “Distributor”) to create an account. You are solely responsible for maintaining the security of any logins, passwords, or other credentials that you select or that are provided to you to access your account with any Distributor. Your use of any account with a Distributor is subject to any terms, conditions, and policies, including privacy policies, of that Distributor. Watteam is not responsible for any act or omission of any Distributor.

6.2 **License to the App.** Subject to your complete and ongoing compliance with all the terms and conditions set forth in this EULA (including without limitation payment of any applicable fees and compliance with all license restrictions), Watteam grants you (1) a limited, non-exclusive, non-transferable, non-sub licensable, revocable license to use one copy of the App downloaded directly from Watteam or from a legitimate marketplace (such as Apple’s iTunes store), solely in object code format and solely for your personal use for lawful purposes, on a single compatible mobile device that you own or control; and (2) permission to access and use the Service, only for your personal use, and solely through the use of a licensed copy of the App. You may not reproduce, distribute, publicly display, or publicly perform the App or any part of the Service. Except if, and solely to the extent that, such a restriction is impermissible under applicable law, you may not

(a) decompile, reverse engineer, or otherwise access or attempt to access the source code for the App, or make or attempt to make any modification to or derivative work of the App; or (b) interfere with or circumvent any feature of the App, including without limitation any security or access control mechanism. You may not use the App or the Service for any purpose other than a purpose for which the App and the Service are expressly designed. The term App, as used herein, includes any update or modification to the App made available to you by Watteam (unless provided with separate terms). If you are prohibited under applicable law from using the App or the Service, you may not use them.

**6.3 Access to the App; Third Party Fees.** Except for the Watteam Product, Watteam does not provide you with any equipment to use the App. You are responsible for all fees charged by third parties to access and use the App (e.g., charges by mobile carriers). Without limiting the foregoing, you are solely responsible for the payment of all applicable fees associated with any carrier service plan you use in connection with your use of the Service (such as voice, data, SMS, MMS, roaming, other applicable fees charged by the carrier). Accordingly, you should use care in selecting a service plan offered by your carrier. If your device is lost or stolen, you must notify Watteam immediately to suspend services.

**6.4 Special Terms Regarding Apple.** If you download software from Apple, Inc.'s App Store, your use of the software must at all times be in accordance with the Usage Rules set forth in the Apple, Inc. App Store Terms of Service, and you acknowledge that this EULA is between you and Watteam only, not with Apple. Apple is not responsible for the Service and the content thereof. This EULA is not intended to provide for usage rules for software that are less restrictive than the Usage Rules set forth for "Licensed Applications" in, or that otherwise conflict with, the App Store Terms of Service. Apple has no obligation whatsoever to furnish any maintenance and support services with respect to the Service. In the event of any failure of the Service to conform to any applicable warranty, then you may notify Apple and Apple will refund any applicable purchase price for the App to you; and, to the maximum extent permitted by applicable law, Apple has no other warranty obligation whatsoever with respect to the Service. Apple is not responsible for addressing any claims by you or any third party relating to the Service or your possession and/or use of the Service, including, but not limited to: (i) product liability claims; (ii) maintenance and support; (iii) any claim that the Service fails to conform to any applicable legal or regulatory requirement; and (iv) claims arising under consumer protection or similar legislation. Apple is not responsible for the investigation, defense, settlement and discharge of any third party claim that the Service and/or your possession and use of the App infringe that third party's intellectual property rights. You agree to comply with any applicable third party terms, when using the Service. Apple, and Apple's subsidiaries, are third party beneficiaries of this EULA, and upon your acceptance of this EULA, Apple will have the right (and will be deemed to have accepted the right) to enforce this EULA against you as a third party beneficiary of this EULA. You hereby represent and warrant that (i) you are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a "terrorist supporting" country; and (ii) you are not listed on any U.S. Government list of prohibited or restricted parties.

## 7. User Content.

**7.1 User Content Generally.** Certain features of the Service may permit users to post content, including messages, reviews, photos, video, images, folders, data, text, and other types of works (collectively, “User Content”) and to publish User Content on the Service. *You retain copyright and any other proprietary rights that you may hold in the User Content that you post to the Service.*

**7.2 Limited License Grant.** By posting or publishing User Content, you grant Watteam a perpetual, worldwide, non-exclusive, royalty-free right and license (with the right to sublicense) to host, store, transfer, display, perform, reproduce, modify, and distribute your User Content, in whole or in part, in any media formats and through any media channels (now known or hereafter developed). Any such use of your User Content by Watteam may be without any compensation paid to you.

**7.3 Limited License Grant to Other Users.** By posting and sharing User Content with another user of the Service, you hereby grant that user a non-exclusive license to access and use such User Content as permitted by this EULA and the functionality of the Service.

**7.4 User Content Representations and Warranties.** You are solely responsible for your User Content and the consequences of posting or publishing User Content. By posting and publishing User Content, you affirm, represent, and warrant that:

- you are the creator and owner of, or have the necessary licenses, rights, consents, and permissions to use and to authorize Watteam and users of the Service to use and distribute your User Content as necessary to exercise the licenses granted by you in this Section 7 and in the manner contemplated by Watteam and this EULA; and
- your User Content, and use of your User Content as contemplated by this EULA, does not and will not: (i) infringe, violate, or misappropriate any third party right, including any copyright, trademark, patent, trade secret, moral right, privacy right, right of publicity, or any other intellectual property or proprietary right; or (ii) slander, defame, libel, or invade the right of privacy, publicity or other property rights of any other person.

**7.5 User Content Disclaimer.** Watteam is under no obligation to edit or control User Content that you or other users post or publish, and Watteam will not be in any way responsible or liable for User Content. Watteam may, however, at any time and without prior notice, screen, remove, edit, or block any User Content that in Watteam’s sole judgment violates this EULA or is otherwise objectionable. You understand that when using the Service you will be exposed to User Content from a variety of sources and acknowledge that User Content may be inaccurate, offensive, indecent or objectionable. You agree to waive, and hereby do waive, any legal or equitable rights or remedies you have or may have against Watteam with respect to User Content. Watteam expressly disclaims any and all liability in connection with User Content. If notified by a user or content owner that User Content allegedly does not conform to this EULA, Watteam may investigate the allegation and

determine in its sole discretion whether to remove the User Content, which Watteam reserves the right to do at any time and without notice.

## 8. **Digital Millennium Copyright Act.**

8.1 **DMCA Notification.** Watteam complies with the provisions of the Digital Millennium Copyright Act applicable to internet service providers (17 U.S.C. §512, as amended). If you have any complaints with respect to material posted on the Service, you may contact Watteam's Designated Agent at the following address:

Watteam Ltd. Headquarters  
17780 Fitch Avenue, Suite 111  
Irvine, California 92604  
E-mail: [info@watteam.com](mailto:info@watteam.com)

Any notice alleging that materials hosted by or distributed through the Service infringe intellectual property rights must include the following information:

- i. An electronic or physical signature of the person authorized to act on behalf of the owner of the copyright or other right being infringed;
- ii. A description of the copyrighted work or other intellectual property that you claim has been infringed;
- iii. A description of the material that you claim is infringing and where it is located on the Service;
- iv. Your address, telephone number, and email address;
- v. A statement by you that you have a good faith belief that the use of the materials on the Service of which you are complaining is not authorized by the copyright owner, its agent, or the law; and
- vi. A statement by you that the above information in your notice is accurate and that, under penalty of perjury, you are the copyright or intellectual property owner or authorized to act on the copyright or intellectual property owner's behalf.

8.2 **Repeat Infringers.** Watteam will promptly terminate without notice the accounts of users that are determined by Watteam to be "repeat infringers." A repeat infringer is a user who has been notified of infringing activity more than twice and/or has had User Content removed from the Service more than twice.

## 9. **Prohibited Conduct.** BY USING THE SERVICE YOU AGREE NOT TO:



9.1 Use the Service for any illegal purpose, or in violation of any local, state, national, or international law;

9.2 post, upload, or distribute any User Content or other content that is unlawful, defamatory, libelous, inaccurate, or that a reasonable person could deem to be objectionable, profane, indecent, pornographic, harassing, threatening, embarrassing, hateful, or otherwise inappropriate;

9.3 Violate, or encourage others to violate, the rights of third parties, including by infringing or misappropriating third party intellectual property rights;

9.4 Interfere with security-related features of the Service, including without limitation by (i) disabling or circumventing features that prevent or limit use or copying of any content, or (ii) reverse engineering or otherwise attempting to discover the source code of any portion of the Service except to the extent that such activity is expressly permitted by applicable law;

9.5 Interfere with the operation of the Service or any user's enjoyment of the Service, including without limitation by (i) uploading or otherwise disseminating viruses, adware, spyware, worms, or other malicious code, (ii) making unsolicited offers or advertisements to other users of the Service, (iii) attempting to collect, personal information about users or third parties without their consent; or (iv) interfering with or disrupting any networks, equipment, or servers connected to or used to provide the Service, or violating the regulations, policies, or procedures of such networks, equipment, or servers;

9.6 Perform any fraudulent activity including impersonating any person or entity, claiming false affiliations, accessing the Service accounts of others without permission, or falsifying your age or date of birth;

9.7 Sell or otherwise transfer the access granted by this EULA or any Materials (as defined in Section 15) or any right or ability to view, access, or use any Materials; or attempt to do any of the prohibited acts described in this Section 9, or assist or permit any persons in engaging in any of the acts described in this Section 9.

## 10. **Third Party Services and Linked Websites.**

10.1 Watteam may provide tools through the Service that enable you to export information, including User Content, to third party services, including through features that allow you to link your account on Watteam with an account on the third party service, such as Twitter or Facebook, or through our implementation of third party buttons (such as "like" or "share" buttons). By using these tools, you agree that Watteam may transfer such information to the applicable third party service. Such third party services are not under Watteam's control, and Watteam is not responsible for their use of your exported information. The Service may also contain links to third party websites. Such linked websites are not under Watteam's control, and Watteam is not responsible for their content.



11. **Termination of Use; Discontinuation and Modification of the Service.** If you violate any provision of this EULA, your permission to use the Service will terminate automatically. Additionally, Watteam, in its sole discretion, may terminate your user account on the Service or suspend or terminate your access to the Service at any time, with or without notice. Watteam also reserves the right to modify or discontinue the Service at any time (including, without limitation, by limiting or discontinuing certain features of the Service) without notice to you. Watteam will have no liability whatsoever on account of any change to the Service or any suspension or termination of your access to or use of the Service. You may terminate your account at any time by contacting customer service at [info@watteam.com](mailto:info@watteam.com). If you terminate your account, you will remain obligated to pay all outstanding fees, if any, relating to your use of the Service incurred prior to termination. If you or we terminate your account, you must immediately destroy all copies of the App and all of its component parts.

12. **Feedback.** If you provide feedback to Watteam regarding the Service (“Feedback”), you acknowledge that the Feedback is not confidential and you authorize Watteam to use that Feedback without restriction and without payment to you. Accordingly, you hereby grant to Watteam a nonexclusive, royalty-free, fully-paid, perpetual, irrevocable, transferable, and fully sub licensable right to use the Feedback in any manner and for any purpose.

13. **Privacy Policy; Additional Terms.**

13.1 **Privacy Policy.** Please read the Watteam Privacy Policy ([www.watteam.com/privacy](http://www.watteam.com/privacy)) carefully for information relating to Watteam’s collection, use, storage and disclosure of your personal information. The Watteam Privacy Policy is hereby incorporated by reference into, and made a part of, this EULA.

13.2 **Additional Terms.** Your use of the Service is subject to any and all additional terms, policies, rules, or guidelines applicable to the Service or certain features of the Service that Watteam may post on or link to on the Service (the “Additional Terms”), such as end user license agreements for any downloadable applications that Watteam may offer, or rules applicable to particular features or content on the Service, subject to Section 14 below. All such Additional Terms are hereby incorporated by reference into, and made a part of, this EULA.

14. **Modification of this EULA.** Watteam reserves the right, at its discretion, to change this EULA on a going-forward basis at any time. Please check this EULA periodically for changes. If a change to this EULA materially modifies your rights or obligations, you will be required to accept such modified terms in order to continue to use the Service. Material modifications are effective upon your acceptance of such the modified EULA. Immaterial modifications are effective upon publication. For the avoidance of doubt, disputes arising under this EULA will be resolved in accordance with this EULA in effect that the time the dispute arose.

15. **Ownership; Proprietary Rights.** The Service is owned and operated by Watteam. The visual interfaces, graphics, design, compilation, information, data, computer code (including source code or object code), products, Software, services, and all other





elements of the Service (the “Materials”) provided by Watteam are protected by all relevant intellectual property and proprietary rights and applicable laws. All Materials contained in the Service are the property of Watteam or our third party licensors. Except as expressly authorized by Watteam, you may not make use of the Materials. Watteam reserves all rights to the Materials not granted expressly in this EULA.

16. **Indemnity.** You agree that you will be responsible for your use of the Service, and you agree to defend, indemnify, and hold harmless Watteam and its officers, directors, employees, consultants, affiliates, subsidiaries, agents, and Distributors (collectively, the “Watteam Entities”) from and against any and all claims, liabilities, damages, losses, and expenses, including reasonable attorneys’ fees and costs, arising out of or in any way connected with (i) your access to, use of, or alleged use of the Service; (ii) your violation of this EULA or any representation, warranty, or agreements referenced in this EULA, or any applicable law or regulation; (iii) your violation of any third party right, including without limitation any intellectual property right, publicity, confidentiality, property or privacy right; or (iv) any disputes or issues between you and any third party. Watteam reserves the right, at its own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you (and without limiting your indemnification obligations with respect to such matter), and in such case, you agree to cooperate with our defense of such claim.

17. **Disclaimers; No Warranties.**

THE SERVICE AND ALL MATERIALS AND CONTENT AVAILABLE THROUGH THE SERVICE ARE PROVIDED “AS IS” AND ON AN “AS AVAILABLE” BASIS, WITHOUT WARRANTY OR CONDITION OF ANY KIND, EITHER EXPRESS OR IMPLIED. THE WATTEAM ENTITIES SPECIFICALLY (BUT WITHOUT LIMITATION) DISCLAIM ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, RELATING TO THE SERVICE AND ALL MATERIALS AND CONTENT AVAILABLE THROUGH THE SERVICE, INCLUDING BUT NOT LIMITED TO (i) ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, QUIET ENJOYMENT, OR NON-INFRINGEMENT; AND (ii) ANY WARRANTIES ARISING OUT OF COURSE OF DEALING, USAGE, OR TRADE. THE WATTEAM ENTITIES DO NOT WARRANT THAT THE SERVICE OR ANY PART OF THE SERVICE, OR ANY MATERIALS OR CONTENT OFFERED THROUGH THE SERVICE, WILL BE UNINTERRUPTED, SECURE, OR FREE OF ERRORS, VIRUSES, OR OTHER HARMFUL COMPONENTS, AND DO NOT WARRANT THAT ANY OF THE FOREGOING WILL BE CORRECTED.

NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM THE SERVICE OR ANY MATERIALS OR CONTENT AVAILABLE ON OR THROUGH THE SERVICE WILL CREATE ANY WARRANTY REGARDING THE WATTEAM ENTITIES OR THE SERVICE THAT IS NOT EXPRESSLY STATED IN THIS EULA. YOU ASSUME ALL RISK FOR ALL DAMAGES THAT MAY RESULT FROM YOUR USE OF OR ACCESS TO THE SERVICE, YOUR DEALINGS WITH OTHER SERVICE USERS, AND ANY MATERIALS OR CONTENT AVAILABLE THROUGH THE SERVICE. YOU UNDERSTAND AND AGREE THAT YOU USE THE SERVICE AND USE, ACCESS, DOWNLOAD, OR OTHERWISE OBTAIN MATERIALS



OR CONTENT THROUGH THE SERVICE AND ANY ASSOCIATED SITES OR SERVICES AT YOUR OWN DISCRETION AND RISK, AND AS BETWEEN YOU AND THE WATTEAM ENTITIES, YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR PERSON OR PROPERTY (INCLUDING YOUR PERSONAL PROPERTY USED IN CONNECTION WITH THE SERVICE) OR LOSS OF DATA OR ANY OTHER LOSS THAT RESULTS FROM THE USE OF THE SERVICE OR THE DOWNLOAD OR USE OF SUCH MATERIALS OR CONTENT.

SOME JURISDICTIONS MAY PROHIBIT A DISCLAIMER OF WARRANTIES AND YOU MAY HAVE OTHER RIGHTS THAT VARY FROM JURISDICTION TO JURISDICTION.

**18. Limitation of Liability.**

IN NO EVENT WILL THE WATTEAM ENTITIES BE LIABLE TO YOU FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA, OR OTHER INTANGIBLE LOSSES) ARISING OUT OF OR RELATING TO YOUR ACCESS TO OR USE OF, OR YOUR INABILITY TO ACCESS OR USE, THE SERVICE OR ANY MATERIALS OR CONTENT ON THE SERVICE, WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), STATUTE OR ANY OTHER LEGAL THEORY, WHETHER OR NOT THE WATTEAM ENTITIES HAVE BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGE.

YOU AGREE THAT THE AGGREGATE LIABILITY OF THE WATTEAM ENTITIES TO YOU FOR ANY AND ALL CLAIMS ARISING OUT OF OR RELATING TO THE USE OF OR ANY INABILITY TO USE THE SERVICE (INCLUDING ANY MATERIALS OR CONTENT AVAILABLE THROUGH THE SERVICE) OR OTHERWISE UNDER THIS EULA, WHETHER IN CONTRACT, TORT, OR OTHERWISE, IS LIMITED TO THE GREATER OF (i) THE AMOUNTS YOU HAVE PAID TO WATTEAM FOR ACCESS TO AND USE OF THE SERVICE IN THE TWELVE MONTHS PRIOR TO THE CLAIM OR (ii) \$100.

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES. ACCORDINGLY, THE ABOVE LIMITATION MAY NOT APPLY TO YOU.

EACH PROVISION OF THIS EULA THAT PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTIES, OR EXCLUSION OF DAMAGES IS TO ALLOCATE THE RISKS UNDER THIS EULA BETWEEN THE PARTIES. THIS ALLOCATION IS AN ESSENTIAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN THE PARTIES. EACH OF THESE PROVISIONS IS SEVERABLE AND INDEPENDENT OF ALL OTHER PROVISIONS OF THIS EULA. THE LIMITATIONS IN THIS SECTION WILL APPLY EVEN IF ANY LIMITED REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

19. **Governing Law.** This EULA is governed by the laws of the State of California without regard to conflict of law principles. To the extent that any lawsuit or court proceeding is permitted hereunder, you and Watteam agree to submit to the personal and exclusive jurisdiction of the state courts and federal courts located within Los Angeles County, California for the purpose of litigating all such disputes. Watteam operates the Service from its offices in California, and it makes no representation that Materials included in the Service are appropriate or available for use in other locations.

20. **General.** This EULA, together with the Terms of Use, Warranty, Privacy Policy and any other agreements expressly incorporated by reference, constitute the entire and exclusive understanding and agreement between you and Watteam regarding your use of and access to the Service, and except as expressly permitted above may be amended only by a written agreement signed by authorized representatives of all parties to this EULA. You may not assign or transfer this EULA or your rights hereunder, in whole or in part, by operation of law or otherwise, without our prior written consent. Watteam may assign this EULA at any time without notice. The failure to require performance of any provision will not affect Watteam's right to require performance at any time thereafter, nor will a waiver of any breach or default of this EULA or any provision of this EULA constitute a waiver of any subsequent breach or default or a waiver of the provision itself. Use of section headers in this EULA is for convenience only and will not have any impact on the interpretation of particular provisions. If any part of this EULA is held to be invalid or unenforceable, the unenforceable part will be given effect to the greatest extent possible and the remaining parts will remain in full force and effect. Upon termination of this EULA, any provision that by its nature or express terms should survive will survive such termination or expiration, including Sections 2, 3, 11, 12, 13, and 15 through 23.

## 21. **Dispute Resolution and Arbitration.**

21.1 **Generally.** In the interest of resolving disputes between you and Watteam in the most expedient and cost effective manner, you and Watteam agree that any and all disputes arising in connection with this EULA will be resolved by binding arbitration. Arbitration is more informal than a lawsuit in court. Arbitration uses a neutral arbitrator instead of a judge or jury, may allow for more limited discovery than in court, and can be subject to very limited review by courts. Arbitrators can award the same damages and relief that a court can award. Our agreement to arbitrate disputes includes, but is not limited to all claims arising out of or relating to any aspect of this EULA, whether based in contract, tort, statute, fraud, misrepresentation or any other legal theory, and regardless of whether the claims arise during or after the termination of this EULA. **YOU UNDERSTAND AND AGREE THAT, BY ENTERING INTO THIS EULA, YOU AND WATTEAM ARE EACH WAIVING THE RIGHT TO A TRIAL BY JURY OR TO PARTICIPATE IN A CLASS ACTION.**

21.2 **Exceptions.** Notwithstanding Section 21.1, we both agree that nothing in this EULA will be deemed to waive, preclude, or otherwise limit either of our right to: (i) bring an individual action in small claims court; (ii) pursue enforcement actions through applicable federal, state, or local agencies where such actions are available; (iii) seek



injunctive relief in a court of law; or (iv) to file suit in a court of law to address intellectual property infringement claims.

**21.3 Arbitrator.** Any arbitration between you and Watteam will be governed by the Commercial Dispute Resolution Procedures and the Supplementary Procedures for Consumer Related Disputes (collectively, “AAA Rules”) of the American Arbitration Association (“AAA”), as modified by this EULA, and will be administered by the AAA. The AAA Rules and filing forms are available online at [www.adr.org](http://www.adr.org), by calling the AAA at 1-800-778-7879, or by contacting Watteam.

**21.4 Notice; Process.** A party who intends to seek arbitration must first send a written notice of the dispute to the other, by certified mail or Federal Express (signature required), or if we do not have a physical address on file for you, by electronic mail (“Notice”). Watteam’s address for Notice is: Watteam Ltd. Headquarters, 17780 Fitch Avenue, Suite 111, Irvine, California 92604. The Notice must: (i) describe the nature and basis of the claim or dispute; and (ii) set forth the specific relief sought (“Demand”). We agree to use good faith efforts to resolve the claim directly, but if we do not reach an agreement to do so within thirty (30) days after the Notice is received, you or Watteam may commence an arbitration proceeding. During the arbitration, the amount of any settlement offer made by you or Watteam must not be disclosed to the arbitrator until after the arbitrator makes a final decision and award, if any. If our dispute is finally resolved through arbitration in your favor, Watteam will pay you: (a) the amount awarded by the arbitrator, if any; (b) the last written settlement amount offered by Watteam in settlement of the dispute prior to the arbitrator’s award; or (c) \$1,000, whichever is greater.

**21.5 Fees.** If you commence arbitration in accordance with this EULA, Watteam will reimburse you for your payment of the filing fee, unless your claim is for greater than \$10,000, in which case the payment of any fees will be decided by the AAA Rules. Any arbitration hearings will take place at a location to be agreed upon in Los Angeles County, California, provided that if the claim is for \$10,000 or less, you may choose whether the arbitration will be conducted: (i) solely on the basis of documents submitted to the arbitrator; (ii) through a non-appearance based telephonic hearing; or (iii) by an in-person hearing as established by the AAA Rules in the county (or parish) of your billing address. If the arbitrator finds that either the substance of your claim or the relief sought in the Demand is frivolous or brought for an improper purpose (as measured by the standards set forth in Federal Rule of Civil Procedure 11(b)), then the payment of all fees will be governed by the AAA Rules. In such case, you agree to reimburse Watteam for all monies previously disbursed by it that are otherwise your obligation to pay under the AAA Rules. Regardless of the manner in which the arbitration is conducted, the arbitrator will issue a reasoned written decision sufficient to explain the essential findings and conclusions on which the decision and award, if any, are based. The arbitrator may make rulings and resolve disputes as to the payment and reimbursement of fees or expenses at any time during the proceeding and upon request from either party made within fourteen (14) days of the arbitrator’s ruling on the merits.

**21.6 No Class Actions.** YOU AND WATTEAM AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL



CAPACITY AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. Further, unless both you and Watteam agree otherwise, the arbitrator may not consolidate more than one person's claims, and may not otherwise preside over any form of a representative or class proceeding.

**21.7 Modifications.** If Watteam makes any future change to this arbitration provision (other than a change to Watteam's address for Notice), you may reject any such change by sending us written notice within thirty (30) days of the change to Watteam's address for Notice, in which case your account with Watteam will immediately be terminated and this arbitration provision, as in effect immediately prior to the amendments you reject will survive.

**21.8 Enforceability.** If Section 21.6 is found to be unenforceable or if the entirety of this Section 21 is found to be unenforceable, then the entirety of this Section 21 will be null and void and, in that case, the parties agree that the exclusive jurisdiction and venue described in Section 19 will govern any action arising out of or related to this EULA.

**22. Consent to Electronic Communications.** By using the Service, you consent to receiving certain electronic communications from us as further described in our Privacy Policy. Please read our Privacy Policy to learn more about your choices regarding our electronic communications practices. You agree that any notices, agreements, disclosures, or other communications that Watteam sends to you electronically will satisfy any legal communication requirements, including that such communications be in writing.

**23. Contact Information.** The services hereunder are offered by Watteam Ltd. Headquarters, 17780 Fitch Avenue, Suite 111, Irvine, California 92604. You may contact us by sending correspondence to the foregoing address or by emailing us at [info@watteam.com](mailto:info@watteam.com). If you are a California resident, you may have this EULA mailed to you electronically by sending a letter to the foregoing address with your electronic mail address and a request for this EULA. Under California Civil Code Section 1789.3, California Website users are entitled to the following specific consumer rights notice: The Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs may be contacted in writing at 1625 N. Market Blvd., Suite S-202, Sacramento, California 95834, or by telephone at (800) 952-5210.