

Catapult – End User Licence Agreement

Important Information

This end user licence agreement (**EULA**) is a **legally binding contract** between you and Catapult that sets forth the terms and conditions that govern your use of the Software.

You must accept the terms of this EULA to install or use the Software. Please read this EULA carefully before clicking a “Continue” (or a similar) button or installing or using the Software.

If you are under 18 years of age or considered a minor in your country, you promise to Catapult that you have your parent or legal guardian’s permission to install or use the Software. Please have them read this EULA with you. If you are a parent or legal guardian of a minor in your country, by allowing your child to use the Software, you are subject to the terms of this EULA and responsible for your child’s use of the Software.

This EULA is version 211215.

Definitions

In this EULA:

- “Apple” means Apple Inc.;
- “Apple Device” refers to a Device bearing the branding or a trademark of Apple;
- “Catapult” means Catapult Sports Pty Ltd ABN 66 137 513 378 of 75 High Street, Prahran, VIC 3181 or, if different, the Catapult entity set out in the Customer Agreement;
- “Customer” means the person (whether an Individual, Team, entity or firm) who has placed an Order for the Software under a Customer Agreement;
- “Device” means a product or other device which is authorized under the Customer Agreement to have the Software installed and run on it;
- “Software” refers to the software application provided with this EULA and any program documentation provided by Catapult and licensed to you subject to the terms and conditions of this EULA;
- “Third Party Technology” refers to the separately licensed product or cloud service offering associated with the Software of which you are an authorized user pursuant to the Separate Terms; and
- “You” and “your” refer to the Individual that has agreed to use the Software in accordance with this EULA,

and, unless the context requires otherwise, capitalized terms used, but not defined, in this EULA have the same meaning as given in the Customer Agreement.

Introduction

Catapult has entered into an agreement with the Customer in relation to the Software (the **Customer Agreement**). Pursuant to the Customer Agreement, Catapult hereby grants to you (as an authorized user of the Software) a limited, non-exclusive, non-sublicensable, revocable, and non-transferable license to install and use the Software on the Device on the terms and conditions of this EULA and, to the extent they apply to end users, the Customer Agreement.

The terms and conditions of the Customer Agreement are set out therein or, if applicable under an Order and the General Terms and Conditions (version 210924) (the **General T&Cs**). If the General T&Cs apply then they incorporate Additional T&Cs (see clause 1.2 of the General T&Cs) such as Catapult’s Privacy Policy (version 210916) (the **Privacy Policy**), the Data Processing Addendum (version 010518) (the **DPA**) and any Separate Terms.

The General T&Cs and the Privacy Policy are available at catapultsports.com/standard-terms, or they may be requested from Catapult. You should contact the Customer to confirm whether or not the General T&Cs apply and, if they do not, to request a summary of your rights and obligations under the Customer Agreement.

The Customer Agreement and, if applicable, the General T&Cs, Privacy Policy and other Additional T&Cs should be read carefully as they form an integral part of this EULA and contain important information such as:

- how Catapult processes personal data (see the Privacy Policy);
- your and the Customer's obligations under the Customer Agreement (see clause 8 of the General T&Cs if applicable);
- Catapult's use of your data (see clause 14 of the General T&Cs if applicable); and
- Catapult's ability to update, change or replace the terms of the Customer Agreement and, if applicable, the General T&Cs and Additional T&Cs (see clause 1.3 of the General T&Cs).

The above points are provided to highlight some of the key clauses of this EULA, and they do not replace, amend or override this EULA, the text of which alone is authoritative. Reading these points is not a substitute for reading this EULA, including, if applicable, the General T&Cs, Privacy Policy and Additional T&Cs.

This EULA will also govern any upgrades to the Software that replace and/or supplement the original Software, unless such upgrades are accompanied by a separate license, in which case the terms of that license will govern.

This EULA and the Customer Agreement, including, if applicable, the General T&Cs, Privacy Policy and Additional T&Cs, are provided in the English language only, and any other language versions are for accommodation only and not binding on the parties.

This EULA is governed by the laws of, and the parties submit to the non-exclusive jurisdiction of the courts of: (i) the Commonwealth of Massachusetts – if the Catapult entity is Catapult Sports Inc., Catapult Sports LLC, or SBG Sports Software Inc.; (ii) England – if the Catapult entity is Catapult Sports Limited, Catapult Sports EMEA Limited, or SBG Sports Software UK Ltd; (iii) Victoria, Australia – if the Catapult entity is Catapult Sports Pty Ltd, Catapult Sports SAS, or any other Catapult Group Company not stated in this paragraph; and (iv) the People's Republic of China – if the Catapult entity is Catapult Sports Technology Beijing Co Ltd; or, if different, that jurisdiction specified in the Customer Agreement. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this EULA.

Unless otherwise stated in this EULA, to the extent of any conflict or inconsistency between any of the Customer Agreement, an Order (if applicable), the General T&Cs (if applicable), the Additional T&Cs (if applicable), and this EULA, the first-mentioned document in this sentence shall prevail over the latter.

Catapult warranties

Catapult represents and warrants to you that:

- (a) no Service, Software or item of Equipment, or the use of any of the foregoing, will result in any unauthorized use of the rights (including IPR) of any person; and
- (b) the Equipment is free from defects and faults including, if the General T&Cs apply, those specified in, as applicable, paragraph (i) or (ii) of the definition of Warranted Equipment in clause 7(a) of the General T&Cs (Repair and replacement).

Disclaimer

Subject to the Catapult warranties (above) and the provisions dealing with Non-excludable Provisions (below):

- (a) all the Products, Software and Services are provided to you on an “as is” basis;
- (b) Catapult does not guarantee that the Products, Software or Services will: (i) source or make available information which is accurate, complete or current; (ii) be error-free or uninterrupted; (iii) operate with your content or your applications, or with any other hardware, software, systems or data not provided by Catapult; (iv) meet your requirements, specifications or expectations; or (v) be the colour as they appear on your computer monitor’s display;
- (c) information made available by the Products, Software and Services is provided for general information only and should not be relied upon or used as the sole basis for making decisions without consulting primary, more accurate, more complete or more timely sources of information; any reliance on such information is at your own risk;
- (d) Catapult has no obligation to update, and reserves the right to modify the contents of, the Catapult Website; and
- (e) Catapult excludes and disclaims to the maximum extent permitted by law all guarantees, conditions, warranties or terms of any kind, whether express or implied or imposed by any applicable law, including, without limitation, merchantability and fitness for a particular purpose.

Some jurisdictions do not allow the exclusion of guarantees, conditions, warranties, rights, remedies, or terms implied or imposed by any applicable law (each a **Non-excludable Provision**). This may include provisions under consumer protection legislation. **Nothing in this EULA affects your statutory rights as a consumer or excludes, restricts or modifies a Non-excludable Provision which cannot lawfully be excluded, restricted or modified.**

You acknowledge that Catapult does not control the transfer of data over communications facilities, including the internet and cloud-based services, and that the Software may be subject to limitations, delays, and other problems inherent in the use of such communications facilities. Catapult is not responsible for any delays, delivery failures, or other damage resulting from such problems. Catapult is not responsible for any issues related to the performance, operation or security of the Software that arise from your content, your applications or third party content. Catapult does not make any representation or warranty regarding the reliability, accuracy, completeness, correctness, or usefulness of third party content, and disclaims all liabilities arising from or related to third party content (including, but not limited to, any optional third party tools as referenced on the Catapult Website).

Liability

Except for a breach of clause 13 of the General T&Cs (Confidentiality) (if the General T&Cs apply), and to the extent permitted by law and except as otherwise expressly set out in this EULA:

- (a) the liability of a party under or in respect of the Customer Agreement and, if applicable, an Order is (irrespective of the number of end users and EULAs) limited in the aggregate to an amount equal to the amounts paid by the Customer under that Customer Agreement or Order; and
- (b) a party is not liable to the other party for: (i) any special, indirect, incidental or consequential loss or punitive loss or damage; (ii) loss of data, profits, revenue, business, goodwill, bargain, anticipated savings or management time; or (iii) the cost of procuring substitute products or services arising out of, or in connection with, this EULA or the use or performance of Products, Services or Software,

whether or not the first party was, or should have been, aware of the possibility of such loss or damage.

Catapult's liability under this EULA for each Product, Service, or Software provided to you, and the calculation of damages relating to the same, is limited solely to Catapult's liability for, and the damages payable in respect of, that Product, Service, or Software and does not involve the amount paid or payable for any other Products, Services, or Software delivered to you by Catapult (whether under this EULA or otherwise).

Catapult will not be liable for, nor responsible for, any failure in the Catapult Software in any way resulting from or attributable to: (i) your systems; (ii) unusually high usage volumes; (iii) failures outside of Catapult's facilities, other than vendors used by Catapult to provide the Software; (iv) your, or any third party's, products, services, or software; (v) scheduled maintenance; or (vi) unauthorized access, breach of firewalls or other hacking efforts by third parties.

As a condition precedent to recovery, claims for loss or damage caused by Catapult must be made in writing by you within 30 days after the loss or damage the subject of the claim.

You acknowledge that irreparable damage would occur in the event any provision of this EULA was not performed in accordance with its terms and that Catapult shall be entitled to specific performance of that terms, in addition to any other remedy at law or in equity.

Catapult's liability for breach of a Non-excludable Provision is limited, at Catapult's option and so far as the Non-excludable Provisions permit, to:

- (a) in the case of goods, the replacement of the goods or the supply of equivalent goods, the repair of the goods, the payment of the cost of replacing the goods or of acquiring equivalent goods, or the payment of the cost of having the goods repaired; or
- (b) in the case of services, the supplying of the services again, or the payment of the cost of having the services supplied again.

To the extent permitted by law, a party's liability to the other party under or in connection with this EULA is reduced to the extent, if any, to which the other party's acts or omissions cause or contribute to its own loss or damage.

The limitations and exclusions of the liability set out in this liability clause apply regardless of the basis on which such liability arises, whether in contract, breach of statutory duty, tort (including negligence), in equity or under statute.

Nothing in this EULA shall exclude or limit either party's liability for death or personal injury caused by its (or its agent's or subcontractor's) negligence, or for fraud or fraudulent misrepresentation or for any other liability that cannot, as a matter of law, be limited or excluded.

Termination

Your right to use the Software will cease upon the earlier of (i) the expiration, termination or suspension of the Customer Agreement; (ii) the expiration, termination or suspension of your status as an authorized user of the Software; and (iii) the termination of this EULA for any reason (including, without limitation your failure to comply with any of the terms set forth in this EULA).

On termination of this EULA, you must destroy all copies of the Software and take any other actions requested by Catapult in accordance with the Customer Agreement.

Except as expressly set out in the Customer Agreement, the terms and conditions governing the Customer Agreement are not affected by the termination of your right to use the Software under this EULA. The provisions of this EULA that by their nature continue shall survive any expiration or termination of this EULA.

General Acknowledgments

Both parties acknowledge and agree that:

- Catapult may audit your use of the Software;
- this EULA is solely between Catapult and you, with the relationship being that of licensor and licensee;
- this EULA (with the agreements it incorporates) forms the entire agreement between Catapult and you in relation to its subject matter and replaces all previous agreements, arrangements, understandings, representations or other communications between the parties in relation to that subject matter;
- any provision of this EULA which is wholly or partially void or unenforceable is severed to the extent that it is void or unenforceable. The remainder of this EULA will remain in full force and effect; and
- no waiver of a right or remedy under this EULA is effective unless it is in writing and signed by the party granting it. It is only effective in the specific instance and for the specific purpose for which it is granted. A single or partial exercise of a right or remedy under this EULA does not prevent a further exercise of that or of any other right or remedy.

You represent and warrant that:

- you are an authorized user of the Software under the Customer Agreement;
- you accept and abide by this EULA as presented to you, and that any changes, additions or deletions by you to these terms and conditions will not be accepted by Catapult and will not be part of this EULA; and
- you are not located in a country that is subject to a US Government embargo, or that has been designated by the US Government as a “terrorist supporting” country; and you are not listed on any US Government list of prohibited or restricted parties.

Acknowledgments for Apple Device users

If you install or use the Software on an Apple Device (the **Licensed Application**), then both parties further acknowledge and agree that:

- this EULA is concluded between Catapult and you only, and not with Apple, and that Catapult, not Apple, is solely responsible for the Software and the content thereof;
- the license granted to you for the Licensed Application is limited to a non-transferable license to use the Licensed Application on any Apple Devices that you own or control and as permitted by the Usage Rules set forth in the Apple Media Services Terms and Conditions, except that such Licensed Application may be accessed and used by other accounts associated with the purchaser via Family Sharing or volume purchasing where such other user is also an authorized user;
- Catapult is solely responsible for providing any maintenance and support services with respect to the Licensed Application, as specified in this EULA, or as required under applicable law. Catapult and you acknowledge that Apple has no obligation whatsoever to furnish any maintenance and support services with respect to the Licensed Application;
- Catapult is solely responsible for any product warranties, whether express or implied by law, to the extent not effectively disclaimed. In the event of any failure of the Licensed Application to conform to any applicable warranty, you may notify Apple, and Apple will refund the purchase price for the Licensed Application to you; and, to the maximum extent permitted by applicable law, Apple will have no other warranty obligation whatsoever with respect to the Licensed Application, and any other claims, losses, liabilities, damages, costs or expenses attributable to any failure to conform to any warranty is Catapult’s sole responsibility;

- Catapult and you acknowledge that Catapult, not Apple, is responsible for addressing any claims of you or any third party relating to the Licensed Application or your possession and/or use of the Licensed Application, including, but not limited to: (i) product liability claims; (ii) any claim that the Licensed Application fails to conform to any applicable legal or regulatory requirement; and (iii) claims arising under consumer protection, privacy, or similar legislation, including in connection with Catapult's Licensed Application's use of the HealthKit and HomeKit frameworks;
- Catapult and you acknowledge that, in the event of any third party claim that the Licensed Application or your possession and use of that Licensed Application infringes that third party's intellectual property rights, Catapult, not Apple, will be solely responsible for the investigation, defense, settlement and discharge of any such intellectual property infringement claim; and
- Catapult and you acknowledge and agree that Apple, and Apple's subsidiaries, are third party beneficiaries of this EULA and that, upon your acceptance of the terms and conditions 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 thereof.

Contact information

If you have any questions, complaints or claims with respect to the Software, please submit a reasonably detailed Support Request to Catapult Support via the "Submit a Request" feature at support.catapultsports.com or, for MatchTracker, Focus, Hub, RaceWatch and Fusion via the "How to?" feature at sbgssportssoftware.atlassian.net/servicedesk/customer/portals, or by a method otherwise notified to you.

Confirmations

By clicking the "**I Agree**" (or a similar) button below or installing or using the Software, you, in your capacity as a user of the Software, agree and confirm that:

- you are at least 18 years old, and you have read, accept, and agree to be legally bound by this EULA, including, if applicable, the terms and conditions set out in the General T&Cs, Privacy Policy and Additional T&Cs; and
- if you are less than 18 years old, your parent or legal guardian has completed any registration processes, read, accepted, and agrees to be legally bound by this EULA on your behalf, including, if applicable, the terms and conditions set out in the General T&Cs, Privacy Policy and Additional T&Cs.

If you **do not** agree to this EULA, or are under 18 years old and have not received appropriate parental or legal guardian consent, **do not** click an "I Agree" (or similar) button, and **do not** install or use the Software.