



Water Hero: End User License Agreement

By using the software (“Product Software”) that is embedded on the Water Hero product (“Product”), you agree to the terms of this End User License Agreement (“EULA”) between you and Water Hero, Inc. (“Water Hero” or “we”). IF YOU DO NOT AGREE TO THE TERMS OF THIS EULA, YOU MAY NOT USE THE PRODUCT SOFTWARE AND YOU MAY CHOOSE TO PROMPTLY RETURN THE PRODUCT FOR A REFUND OF THE PRODUCT PURCHASE PRICE BY CONTACTING WATER HERO AT THE ADDRESS BELOW. Your use of (a) the existing website located at www.waterheroinc.com, my.waterheroinc.com or any alternative Water Hero owned domains or sub-domains, (each, a “Site”), (b) services through the Site (and any updates thereto) (“Site Services”), and (c) certain software that may be downloaded to your mobile device (and any updates thereto) (“Mobile Software”) is governed by the Terms of Service. Your purchase of the Product (excluding the Product Software) is governed by the Water Hero limited warranty, the terms of which are provided with the Product. This EULA does not govern your use of the Site, Site Services, or Mobile Software, or your purchase of the Product (excluding the Product Software).

This EULA governs your access and use of the Product Software. This EULA gives you specific legal rights, and you may also have other legal rights in addition, which vary from jurisdiction to jurisdiction. The disclaimers, exclusions, and limitations of liability under this EULA will not apply to the extent prohibited by applicable law. Some jurisdictions do not allow the exclusion of implied warranties or the exclusion or limitation of incidental or consequential damages or other rights, so those provisions of this EULA may not apply to you.

THIS IS A LEGAL AGREEMENT. BY ACCESSING AND USING THE PRODUCT SOFTWARE, YOU ARE ACCEPTING AND AGREEING TO THIS EULA ON BEHALF OF YOURSELF OR THE ENTITY YOU REPRESENT IN CONNECTION WITH THE ACCESS. YOU REPRESENT AND WARRANT THAT YOU HAVE THE RIGHT, AUTHORITY, AND CAPACITY TO ACCEPT AND AGREE TO THIS EULA ON BEHALF OF YOURSELF OR THE ENTITY YOU REPRESENT. YOU REPRESENT THAT YOU ARE OF SUFFICIENT LEGAL AGE IN YOUR JURISDICTION OR RESIDENCE TO USE OR ACCESS THE PRODUCT SOFTWARE AND TO ENTER INTO THIS EULA. IF YOU DO NOT AGREE WITH ANY OF THE PROVISIONS OF THESE TERMS, YOU SHOULD CEASE ACCESSING OR USING THE PRODUCT SOFTWARE.

AS DESCRIBED BELOW, YOU ARE CONSENTING TO AUTOMATIC SOFTWARE UPDATE OF THE PRODUCT SOFTWARE. IF YOU DO NOT AGREE, YOU SHOULD NOT USE THE PRODUCT SOFTWARE.

AS DESCRIBED BELOW, SECTION 9 DESCRIBES IMPORTANT LIMITATIONS OF THE PRODUCT SOFTWARE AND RELATED SERVICES, ESPECIALLY IN CONNECTION WITH LIFE SAFETY AND CRITICAL USES. PLEASE READ THESE DISCLOSURES CAREFULLY, AS YOU ARE ACKNOWLEDGING THEM AND ACCEPTING THEM.

1. License.

Subject to the terms of this EULA, Water Hero grants to you a limited and nonexclusive license (without the right to sublicense) to execute one (1) copy of the Product Software, in executable object code form only, solely on the Product that you own or control and solely for use in conjunction with the Product for your personal, non-commercial purposes.

2. Restrictions.

You agree not to, and you will not permit others to, (a) license, sell, rent, lease, assign, distribute, transmit, host, outsource, disclose or otherwise commercially exploit the Product Software or make the Product Software available to any third party, (b) copy or use the Product Software for any purpose other than as permitted in Section 1, (c) use any portion of the Product Software on any device or computer other than the Product that you own or control, (d) remove or alter any trademark, logo, copyright or other proprietary notices, legends, symbols or labels in the Product Software, or (e) modify, make derivative works of, disassemble, reverse compile or reverse engineer any part of the Product Software (except to the extent applicable laws specifically prohibit such restriction for interoperability purposes, in which case you agree to first contact Water Hero and provide Water Hero an opportunity to create such changes as are needed for interoperability purposes). You may not release the results of any performance or functional evaluation of any of the Product Software to any third party without prior written approval of Water Hero for each such release.

3. Automatic Software Updates.

Water Hero may from time to time develop patches, bug fixes, updates, upgrades and other modifications to improve the performance of the Product Software and related services ("Updates"). These may be automatically installed without providing any additional notice or receiving any additional consent. You consent to this automatic update. If you do not want such Updates, your remedy is to stop using the Product. If you do not cease using the Product, you will receive Updates automatically. You acknowledge that you may be required to install Updates to use the Product and the Product Software and you agree to promptly install any Updates Water Hero provides. Your continued use of the Product is your agreement to this EULA.

4. Ownership.

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5. Open Source.

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6. Term and Termination.

This EULA and the license granted hereunder are effective on the date you first use the Product Software or Product and shall continue for as long as you own the Product, unless this EULA is terminated under this section. Water Hero may terminate this EULA at any time if you fail to comply with any term(s) hereof. You may terminate this EULA effective immediately upon written notice to Water Hero. Upon termination of this EULA, the license granted hereunder will terminate and you must stop all use of the Product Software, but the terms of Sections 2 through 18 (inclusive) will remain in effect, after any such termination.

7. Warranty Disclaimer.

NOTWITHSTANDING ANYTHING TO THE CONTRARY AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, WATER HERO PROVIDES THE PRODUCT SOFTWARE "AS-IS" AND DISCLAIMS ALL WARRANTIES AND CONDITIONS, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, QUIET ENJOYMENT, ACCURACY, AND NON-INFRINGEMENT OF THIRD-PARTY RIGHTS. WATER HERO DOES NOT GUARANTEE ANY SPECIFIC RESULTS FROM THE USE OF THE PRODUCT SOFTWARE. WATER HERO MAKES NO WARRANTY THAT THE PRODUCT SOFTWARE WILL BE UNINTERRUPTED, FREE OF VIRUSES OR OTHER HARMFUL CODE, TIMELY, SECURE, OR ERROR-FREE.

YOU USE ALL PRODUCT INFORMATION (AS DEFINED BELOW), THE PRODUCT SOFTWARE, AND THE PRODUCT AT YOUR OWN DISCRETION AND RISK. YOU WILL BE SOLELY

RESPONSIBLE FOR (AND WATER HERO DISCLAIMS) ANY AND ALL LOSS, LIABILITY, OR DAMAGES, INCLUDING TO YOUR HVAC SYSTEM, PLUMBING, HOME, PRODUCT, OTHER PERIPHERALS CONNECTED TO THE PRODUCT, COMPUTER, MOBILE DEVICE, AND ALL OTHER ITEMS AND PETS IN YOUR HOME, RESULTING FROM YOUR USE OF THE PRODUCT INFORMATION, PRODUCT SOFTWARE, OR PRODUCT.

8. Limitation of Liability

Nothing in this EULA and in particular within this "Limitation of Liability" clause shall attempt to exclude liability that cannot be excluded under applicable law.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN ADDITION TO THE ABOVE WARRANTY DISCLAIMERS, IN NO EVENT WILL (A) WATER HERO BE LIABLE FOR ANY CONSEQUENTIAL, EXEMPLARY, SPECIAL, OR INCIDENTAL DAMAGES, INCLUDING ANY DAMAGES FOR LOST DATA OR LOST PROFITS, ARISING FROM OR RELATING TO THE PRODUCTS OR PRODUCT SOFTWARE, EVEN IF WATER HERO KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES, AND (B) WATER HERO'S TOTAL CUMULATIVE LIABILITY ARISING FROM OR RELATED TO THE PRODUCTS AND PRODUCT SOFTWARE, WHETHER IN CONTRACT OR TORT OR OTHERWISE, EXCEED THE FEES ACTUALLY PAID BY YOU TO WATER HERO OR WATER HERO'S AUTHORIZED RESELLER FOR THE PRODUCT AT ISSUE IN THE PRIOR 6 MONTHS (IF ANY). THIS LIMITATION IS CUMULATIVE AND WILL NOT BE INCREASED BY THE EXISTENCE OF MORE THAN ONE INCIDENT OR CLAIM. WATER HERO DISCLAIMS ALL LIABILITY OF ANY KIND OF WATER HERO' LICENSORS AND SUPPLIERS.

9. Limitations of Product Software

You acknowledge that the Products and Product Software are not certified for emergency response. YOU UNDERSTAND THAT THE PRODUCTS AND PRODUCT SOFTWARE ARE NOT A THIRD-PARTY MONITORED EMERGENCY NOTIFICATION SYSTEM - - WATER HERO DOES NOT MONITOR EMERGENCY NOTIFICATIONS AND WILL NOT DISPATCH EMERGENCY AUTHORITIES TO YOUR HOME IN THE EVENT OF AN EMERGENCY. In addition, the Water Hero Customer Care and Support contacts cannot be considered a lifesaving solution for people at risk in the home, and they are no substitute for emergency services. All life threatening and emergency events should be directed to the appropriate response services.

Unless explicitly promising a "guarantee," Water Hero does not guarantee or promise any specific level of energy or water savings or other monetary benefit from the use of the Products or Product Software or any feature of them. Actual energy or water savings and monetary benefits vary with factors beyond Water Hero's control or knowledge. From time to time, Water Hero may use the Product Software to provide you with information that is unique to you and your water usage and suggests an opportunity to save money on water bills if you adopt suggestions or features of the Product or Product Software. We do this to highlight an opportunity based on our analysis and information about you and your household. You acknowledge that these promotions are

not a guarantee of actual savings, and you agree not to seek monetary or other remedies from Water Hero if your savings differ.

The Product Software provides you information (“Product Information”) regarding the Products in your home and their connection with other products and services. All Product Information is provided “as is” and “as available”. We cannot guarantee that it is correct or up to date. In cases where it is critical, accessing Product Information through the Product Software is not a substitute for direct access of the information in the home.

10. Confidentiality.

“Confidential Information” shall mean the Product Software and all other information disclosed to you that Water Hero characterizes as confidential at the time of its disclosure either in writing or orally, except for information which you can demonstrate: (a) is previously rightfully known to you without restriction on disclosure; (b) is or becomes, from no act or failure to act on your part, generally known in the relevant industry or public domain; (c) is disclosed to you by a third party as a matter of right and without restriction on disclosure; or (d) is independently developed by you without access to the Confidential Information. You shall use your best efforts to preserve and protect the confidentiality of the Confidential Information at all times, both during the term hereof and for a period of at least 3 years after termination of this EULA, provided, however, that any source code you receive shall be held in confidence in perpetuity. You shall not disclose, disseminate or otherwise publish or communicate Confidential Information to any person, firm, corporation or other third party without the prior written consent of Water Hero. You shall not use any Confidential Information other than in the course of the activities permitted hereunder. You shall notify Water Hero in writing immediately upon discovery of any unauthorized use or disclosure of Confidential Information or any other breach of this EULA, and will cooperate with Water Hero in every reasonable way to regain possession of Confidential Information and prevent any further unauthorized use. If you are legally compelled to disclose any of the Confidential Information, then, prior to such disclosure, you will (i) immediately notify Water Hero prior to such disclosure to allow Water Hero an opportunity to contest the disclosure, (ii) assert the privileged and confidential nature of the Confidential Information, and (iii) cooperate fully with Water Hero in protecting against any such disclosure and/or obtaining a protective order narrowing the scope of such disclosure and/or use of the Confidential Information. In the event such protection is not obtained, you shall disclose the Confidential Information only to the extent necessary to comply with the applicable legal requirements.

11. For U.S. Government End Users.

The Product Software is a “commercial item,” as that term is defined at 48 C.F.R. 2.101 (OCT 1995), and more specifically is “commercial computer software” and “commercial computer software documentation,” as such terms are used in 48 C.F.R. 12.212 (SEPT 1995). Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4

(JUNE 1995), the Product Software is provided to U.S. Government End Users only as a commercial end item and with only those rights as are granted to all other customers pursuant to the terms and conditions herein.

12. Export Compliance.

The Product Software and related technology are subject to U.S. export control laws and may be subject to export or import regulations in other countries. You agree to strictly comply with all such laws and regulations and acknowledge that you have the responsibility to obtain authorization to export, re-export, or import the Product Software and related technology, as may be required. You will indemnify and hold Water Hero harmless from any and all claims, losses, liabilities, damages, fines, penalties, costs and expenses (including attorney's fees) arising from or relating to any breach by you of your obligations under this section.

13. Governing Law; Venue.

The courts in some countries will not apply Massachusetts law to some types of disputes. If you reside in one of those countries, then where Massachusetts law is excluded from applying, your country's laws will apply to such disputes related to these terms. Otherwise, you agree that this EULA, and any claim, dispute, action, cause of action, issue, or request for relief relating to this EULA, will be governed by the laws of Massachusetts, without giving effect to any conflicts of laws principles that require the application of the laws of a different jurisdiction. Any action or proceeding relating to this EULA must be brought in a federal or state court located in Suffolk County, Massachusetts and each party irrevocably submits to the jurisdiction and venue of any such court in any such claim or dispute, except that Water Hero may seek injunctive relief in any court having jurisdiction to protect its intellectual property or Confidential Information.

14. Assignment.

Neither the rights nor the obligations arising under this EULA are assignable by you, and any such attempted assignment shall be void and without effect.

15. Notices.

Any notice to you may be provided by email to the address that you registered with Water Hero.

16. Severability.

If any provision of this EULA is unenforceable, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions will continue in full force and effect.

17. Waiver.

All waivers by Water Hero will be effective only if in writing. Any waiver or failure by Water Hero to enforce any provision of this EULA on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

18. General.

The Product Software is deemed irrevocably accepted upon your use of the Product Software or Product. Water Hero will have no responsibility to provide maintenance or support services with respect to the Product Software. The parties are independent contractors.

You acknowledge that the Product Software contains valuable trade secrets and proprietary information of Water Hero, that any actual or threatened breach of Section 2 (Restrictions) of this EULA will constitute immediate, irreparable harm to Water Hero for which monetary damages would be an inadequate remedy, and that injunctive relief is an appropriate remedy for such breach.

The headings of Sections of this EULA are for convenience and are not to be used in interpreting this EULA.

Except as otherwise provided in this section, no amendment to this EULA will be valid unless it is in writing hand-signed by the parties.

Questions or Additional Information. If you have questions regarding this EULA, please contact support@waterhero.com.