



This **Beta Test Agreement** is between you, the User who agrees to enter this Agreement ("You") and Northeast Indiana Commercialization Consortium LLC dba STRE.ME ("STRE.ME"), which covers Your use of the STRE.ME beta product(s) that accompanies this Beta Test Agreement, which may include associated media, printed materials, and online or electronic documentation.

1. DEFINITIONS

1. (a) **"Beta Products"** shall mean the beta version of certain STRE.ME products (including any Updates thereto, in the case of software) and the media and Documentation provided by STRE.ME to You. Beta Products may include Software and/or Hardware, both as defined below.
2. (b) **"Beta Test Request Form"** means STRE.ME's beta test request form, executed by You, that refers to this Agreement. Such Beta Test Request Forms(s) is (are) hereby incorporated into this Agreement by reference.
3. (c) **"Documentation"** shall mean the printed or online written reference material furnished to You in conjunction with the Beta Products, including, without limitation, instructions, beta testing guidelines, and end-user guides.
4. (d) **"Intellectual Property Rights"** shall mean all intellectual property rights, including, without limitation, patent, copyright, trademark, and trade secret.
5. (f) **"Open Source Software"** means various open-source software components of the Software that are licensed to You under the terms of the applicable license agreements included with such open-source software components or other materials for the Software.
6. (g) **"Software"** shall mean the applicable STRE.ME software products licensed to you for non-production or in-production evaluation purposes under this Agreement.
7. (h) **"Updates"** shall mean a modification, error correction, bug fix, new release, or other updates to or for any Software.

2. LICENSE GRANT, USE, AND OWNERSHIP

1. (a) **Limited License.** Subject to the terms and conditions of this Agreement, STRE.ME grants You a non-exclusive, nontransferable license (without the right to sublicense) (i) to use the Software in accordance with the Documentation solely for purposes of internal testing and evaluation, and in-production testing of the Beta Products until December 31, 2019; (ii) to use the Documentation provided with the Software in support of Your authorized use of the Software; and (iii) to copy the Software for archival or backup purposes, provided that all titles and trademarks, copyright, and restricted rights notices are reproduced on such copies. Nothing in

(b) **Evaluation Feedback.** The purpose of this limited license is the testing and evaluation of the Beta Products and Documentation. In furtherance of this purpose, You shall provide feedback to STRE.ME concerning the functionality and performance of the Beta Products from time to time as reasonably requested by STRE.ME, including, without limitation, identifying potential errors, improvements, modifications, bug fixes, or enhancements ("Feedback"). Such Feedback will be in a manner convenient to You and will be subject to reasonable availability of Your personnel. Notwithstanding the foregoing, before disclosing to STRE.ME any information in connection with this Agreement which You consider proprietary or confidential, You will obtain STRE.ME's prior written approval to disclose such information to STRE.ME, and without such prior written approval from STRE.ME, You will not disclose any such information to STRE.ME. Feedback and other information which is provided by You to STRE.ME in connection with the Beta Products or this Agreement may be used by STRE.ME to improve or enhance its products and, accordingly, You grant STRE.ME a non-exclusive, perpetual, irrevocable, royalty-free, worldwide right and license to use, reproduce, disclose, sublicense, distribute, modify, and otherwise exploit such Feedback and information without restriction.

(c) **Restrictions.** You shall not copy or use the Beta Products (including the Documentation) or disseminate Confidential Information, as defined below, to any third party except as expressly permitted in this Agreement. You will not, and will not permit any third party to, sublicense, rent, copy, modify, create derivative works of, translate, reverse engineer, decompile, disassemble, or otherwise reduce to a human-perceivable form any Software or accompanying Documentation. In no event shall You use the Beta Products for Your product development or any other commercial purpose. The Beta Products and all performance data and test results, including without limitation, benchmark test results (collectively "Performance Data"), relating to the Beta Products are the Confidential Information of STRE.ME, and will be treated under the terms of Section 4 of this Agreement. Accordingly, You will not publish or disclose to any third party any Performance Data relating to the Beta Products.



(d) **Ownership.** STRE.ME shall own and retain all right, title and interest in and to the Intellectual Property Rights in the Beta Products and any derivative works thereof, subject only to the limited license expressly outlined in Section 2(a) hereof. You do not acquire any other rights, express or implied, in the Beta Products. ALL RIGHTS NOT EXPRESSLY GRANTED HEREUNDER ARE RESERVED TO STRE.ME.

(e) **No Support Services.** STRE.ME is under no obligation to support the Beta Products in any way or to provide any Updates to You. In the event STRE.ME, in its sole discretion, supplies any Update to You, such Update shall be deemed Software hereunder and shall be subject to the terms and conditions of this Agreement.

2. TERM AND TERMINATION

Unless otherwise terminated as specified under this Agreement, Your rights concerning the Beta Products will terminate upon the earlier of (a) December 31, 2019, or (b) the initial release by STRE.ME of the next generally available version of the Beta Product. Either party may terminate this Agreement at any time for any reason or no reason by providing the other party advance written notice thereof. STRE.ME will immediately terminate this Agreement and Your rights concerning the Beta Products without notice in the event of improper disclosure of STRE.ME's Beta Products as specified under Section 4 (Confidentiality) below. Upon any expiration or termination of this Agreement, the rights and licenses granted to You under this Agreement shall immediately terminate, and You will immediately cease using and will return to STRE.ME (or, at STRE.ME's request, destroy), the Beta Products, Documentation, and all other tangible items in Your possession or control that are proprietary to STRE.ME or contain STRE.ME Confidential Information.

3. CONFIDENTIALITY

(a) "Confidential Information" shall mean all trade secrets, know-how, inventions, techniques, processes, algorithms, software programs, hardware, schematics, planned product features, functionality, methodology, performance and software source documents relating to the Beta Products, and other information provided by STRE.ME, whether disclosed orally, in writing, or by examination or inspection, other than information which You can demonstrate (i) was already known to You, other than under an obligation of confidentiality, at the time of disclosure; (ii) was generally available in the public domain at the time of disclosure to You; (iii) became generally available in the public domain after disclosure other than through any act or omission by You; (iv) was subsequently lawfully disclosed to You by a third party without any obligation of confidentiality; or (v) was independently developed by You without use of or reference to any information or materials disclosed by STRE.ME or its suppliers. Confidential Information shall include without limitation the Beta Products, Documentation, Performance Data, any Updates, information relating to STRE.ME products, product roadmaps, and other technical, business, financial and product development plans, forecasts, and strategies. You shall not use any Confidential Information for any purpose other than as expressly authorized under this Agreement. In no event shall You use the Beta Products or any Confidential Information to develop, manufacture, market, sell, or distribute any product or service. In no event shall You disclose any Confidential Information to any third party. Without limiting the foregoing, You shall use at least the same degree of care that it uses to prevent the disclosure of its confidential information of like importance, but in no event less than reasonable care, to prevent the disclosure of such Confidential Information.

4. LIMITATION OF LIABILITY

IT IS UNDERSTOOD THAT THE BETA PRODUCTS ARE PROVIDED WITHOUT CHARGE FOR LIMITED TESTING AND FEEDBACK PURPOSES. ACCORDINGLY, THE TOTAL LIABILITY OF STRE.ME AND ITS SUPPLIERS ARISING OUT OF OR RELATED TO THIS AGREEMENT SHALL NOT EXCEED \$100. IN NO EVENT SHALL STRE.ME OR ITS SUPPLIERS HAVE LIABILITY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, OR LOSS OF BUSINESS INFORMATION), HOWEVER, CAUSED AND ON ANY THEORY OF LIABILITY, EVEN IF STRE.ME AND ITS SUPPLIERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

5. WARRANTY DISCLAIMER

IT IS UNDERSTOOD THAT THE BETA PRODUCTS, DOCUMENTATION, AND ANY UPDATES MAY CONTAIN ERRORS AND ARE PROVIDED FOR LIMITED TESTING AND FEEDBACK ONLY. THE BETA PRODUCTS, THE DOCUMENTATION, AND ANY UPDATES ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. STRE.ME AND ITS SUPPLIERS



SPECIFICALLY DISCLAIM ALL IMPLIED WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE. You acknowledge that STRE.ME has not promised or guaranteed to You that such Beta Products will be announced or made available to anyone in the future, that STRE.ME has no express or implied obligation to You to announce or introduce the Beta Products, and that STRE.ME may not introduce a product similar or compatible with the Beta Products. Accordingly, You acknowledge that any research or development that it performs regarding the Beta Products or any product associated with the Beta Products is done entirely at its own risk. Specifically, the Beta Products may contain features, functionality or modules that will not be included in the final production version of the Beta Products, if released, or that will be marketed separately for additional fees.

6. OTHER PROVISIONS

1. (a) **Governing Law.** This Agreement and all disputes arising out of or related thereto shall be governed by and construed under the laws of the State of Indiana without reference to conflict of laws principles. All such disputes shall be subject to the exclusive jurisdiction of the state and federal courts located in Allen County, Indiana, and the parties agree and submit to the personal and exclusive jurisdiction and venue of these courts.
2. (b) **Assignment.** You shall not assign this Agreement or any rights or obligations hereunder, directly or indirectly, by operation of law, merger, acquisition of stock or assets, or otherwise, without the prior written consent of STRE.ME. Subject to the foregoing, this Agreement shall inure to the benefit of and be binding upon the parties and their respective successors and permitted assigns.
3. (c) **Export Regulations.** You understand that STRE.ME is subject to regulation by the U.S. and foreign governments and agencies, which prohibit export or diversion of certain technical products and information to certain countries and individuals. You warrant that it will comply in all respects with all export and re-export restrictions applicable to the technology and documentation provided hereunder.
4. (d) **Modification.** This is the entire agreement between the parties relating to the subject matter hereof and all other terms are rejected. No waiver or modification of this Agreement shall be valid unless in writing signed by each party. The waiver of a breach of any term hereof shall in no way be construed as a waiver of any term or other breaches hereof. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law the remaining provisions of this Agreement shall remain in full force and effect.
5. (e) **Counterparts.** This Agreement may be executed in two (2) counterparts, both of which taken together shall constitute one (1) single agreement between the parties. The parties hereto agree that a version of this Agreement transmitted by means of electronic message or electronic record (electronic mail, electronic data interchange, or facsimile), once duly signed by the authorized representatives of each party, shall constitute a binding agreement and shall have the same force and effect as a document bearing original signatures.

7. CONTACT INFORMATION

If you have any questions about this Beta Test Agreement, or if you want to contact STRE.ME for any reason, please direct all correspondence to STRE.ME, 3201 Stelhorn Road, Fort Wayne, IN 46815, United States of America or info@stre.me.