

STEM AUDIO

Software and Product End User Agreement

This Stem Audio Software and Product End User Agreement (this “**Agreement**”) is a binding agreement between **STEM AUDIO**, a California corporation (the “**Company**”), and you (“**your**” or “**you**”) for the Stem Audio products that you purchased from Stem Audio or one of its authorized distributors (the “**Products**”) and the software included with the Products and made available to you as an owner of the Products (the “**Software**”). By using or accessing the Products and the Software, you agree to this Agreement. If you are using the Software and Services on behalf of a company, then you represent and warrant that you have the authority to do so on behalf of your company.

1. License Grant and Scope. Subject to and conditioned upon your strict compliance with all terms and conditions set forth in this Agreement, the Company hereby grants to you a non-exclusive limited license to use, the Software, as incorporated into, or used in conjunction with, the Products and the documentation provided by the Company (the “**Documentation**”) with the Software and the Products, subject to all conditions and limitations set forth in this Agreement.

2. Use Restrictions. You shall not directly or indirectly: (a) use the Software or the Documentation beyond the scope of the license granted under Section 1; (b) modify, translate, adapt, or otherwise create derivative works of the Software or the Documentation; or (c) reverse engineer, disassemble, decompile, decode, or otherwise attempt to derive or gain access to the source code of the Software or any part thereof;

3. Collection and Use of Information By Company.

(a) You acknowledge that the Company collects the following data relating to your Products, which are provided by the Company to you to provide product support to you and to further development of current and future Products by the Company (collectively, “**Data**”):

(i) data from tests performed by you using the Products (e.g., Room Check, Room Adapt, and Room Test). This data will include, without limitation, the audio recordings from the sounds tests that you perform as well as information relating to the microphone sensitivities, and reverberance levels captured by the speakers (note: audio will be recorded to capture the “test tones” (and other background noise) during these tests);

(ii) network performance of your Products, such as the number of lost packets and the network bandwidth of the system in which the Products are being operated;

(iii) error logs identifying system errors with respect to the Product and the Software (e.g., the loss of connection with respect to a unit or room or a failure of Software

test with respect to the Product). The error information collected will consist of the MAC address of the Product, the time the error occurred, and the type of error event;

(iv) information relating to room pairings and how units work as part of a unit or room. The information collected will consist of the MAC address of the Products, the existence of a pairing, the time the pairings occurred, and the units paired;

(v) setup and configurations of Products using the Software. The information collected consists of how many units are in a room setup and the type of units in a room setup. Identifying information relating to the actual room where the Products are setup will not be collected.

(b) You further agree that the Company may use the foregoing information collected to measure the performance of the Products and Software and to develop updates, upgrades, and improved Products and Software.

4. Information Not Collected By the Company. Data collected and stored will be identified only by the unique MAC address of the units to which the Data relates. The Company will not store or use the Data with information relating to a particular user, organization, or location, unless the Company is researching a particular inquiry by you, in which case you will need to provide the Company with the unique MAC address for the Product so that Company can identify your device to investigate your inquiry. Repair and maintenance logs will be kept separate from any Data (as defined in this Agreement). The Company's repair and maintenance logs that are associated with your account will be utilized only for servicing your account (de-identified general repair and maintenance history for Products and Software may be maintained by the Company to track general Product and Software performance).

5. DISCLAIMER OF WARRANTIES. Except as expressly provided by the Company in a written Company warranty provided by the Company to you, the Software and Products are provided "AS-IS". To the maximum extent permitted by law, the Company disclaims all warranties express or implied, including the implied warranty of non-infringement, merchantability, and fitness for a particular purpose.

6. Limitation of Liability. TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW:

(a) IN NO EVENT WILL COMPANY OR ITS AFFILIATES, OR ANY OF ITS OR THEIR RESPECTIVE COMPANIES OR SERVICE PROVIDERS, BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY USE, INTERRUPTION, DELAY, OR INABILITY TO USE THE SOFTWARE; LOST REVENUES OR PROFITS; DELAYS, INTERRUPTION, OR LOSS OF SERVICES, BUSINESS, OR GOODWILL; LOSS OR CORRUPTION OF DATA; LOSS RESULTING FROM SYSTEM OR SYSTEM SERVICE FAILURE, MALFUNCTION, OR SHUTDOWN; FAILURE TO ACCURATELY TRANSFER, READ, OR

TRANSMIT INFORMATION; FAILURE TO UPDATE OR PROVIDE CORRECT INFORMATION; SYSTEM INCOMPATIBILITY OR PROVISION OF INCORRECT COMPATIBILITY INFORMATION; OR BREACHES IN SYSTEM SECURITY; OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, OR PUNITIVE DAMAGES, WHETHER ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT THE COMPANY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

(b) IN NO EVENT WILL COMPANY AND ITS AFFILIATES', INCLUDING ANY OF ITS OR THEIR RESPECTIVE COMPANYS' AND SERVICE PROVIDERS', COLLECTIVE AGGREGATE LIABILITY UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER, UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, EXCEED THE TOTAL AMOUNT PAID TO THE COMPANY PURSUANT TO THIS AGREEMENT FOR THE PARTICULAR PRODUCTS AND SOFTWARE TO WHICH SUCH LIABILITY RELATES.

7. Governing Law. This Agreement shall be interpreted and construed in accordance with the laws of California. Any and all claims, controversies and causes of action arising out of or relating to this Agreement, whether sounding in contract, tort or statute, shall be governed by the laws of the California, including its statutes of limitations, without giving effect to any conflict-of-laws rule that would result in the application of the laws of a different jurisdiction. Any action arising out of this agreement shall be brought exclusively in a court of competent jurisdiction located in Orange County, California.

8. Entire Agreement; Amendments; Severability; Counterparts. This Agreement constitutes the entire agreement and understanding of the parties, and supersedes any and all previous agreements and understandings, whether oral or written, between the parties with respect to the matters set forth in this Agreement. No provision of this Agreement may be amended, modified or waived, except in a writing signed by the parties. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision, and if any restriction in this Agreement is found by a court to be unreasonable or unenforceable, then such court may amend or modify the restriction so it can be enforced to the fullest extent permitted by law. The section headings in this Agreement have been inserted as a matter of convenience of reference and are not a part of this Agreement.