

BETA TEST AGREEMENT

PLEASE READ THIS BETA AGREEMENT CAREFULLY. BY DOWNLOADING, INSTALLING OR USING THE SOFTWARE YOU INDICATE ACCEPTANCE OF AND AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO THESE TERMS AND CONDITIONS, DO NOT DOWNLOAD, INSTALL OR USE THE SOFTWARE. EXCEPT AS SPECIFICALLY IDENTIFIED HEREIN, THIS AGREEMENT DOES NOT SUPERCEDE ANY OTHER WRITTEN AGREEMENT BETWEEN YOU AND Borderware Technologies Inc.

This Beta Test Agreement (the "Agreement") is made between Borderware Technologies Inc., with its principal place of business located at 50 Burnhamthorpe Rd., Suite 502, Mississauga, Ontario, Canada L3R 3T7 ("Borderware") and you ("Beta Customer") for the purpose of testing the beta product in which this agreement is included, which for purposes of this agreement shall be referred to as the "Beta Product". The terms and conditions of this Agreement are intended by the parties as a final expression of their agreement with respect to the subject matter hereof and may not be contradicted by evidence of any prior or contemporaneous agreement unless such agreement is signed by both parties. In the absence of such an agreement, this Agreement shall constitute the complete and exclusive statement of the terms and conditions and no extrinsic evidence whatsoever may be introduced in any judicial proceeding, which may involve the Agreement. This Agreement may not be modified except by a writing duly executed by both parties' authorized representatives.

1. NATURE OF AGREEMENT. The Beta Product is a release of a Borderware product that is not generally available for distribution at the time it is shipped to Beta Customer and is not intended for use in a production environment. The Beta Product shall be used by Beta Customer for testing purposes and within the parameters as mutually determined by the parties (the "Beta Test"). The purpose of the Beta Test shall be to facilitate the early commercial availability of the Beta Product and to obtain information about Beta Customer's experience with such. Upon termination of this Agreement, Beta Customer shall return the Beta Product to Borderware.

2. FEEDBACK. Notwithstanding the terms of any existing non-disclosure or confidentiality agreement between Beta Customer and Borderware, in consideration for receiving a copy of the Beta Product for testing, Beta Customer agrees to inform Borderware of all problems and ideas for enhancements which come to Beta Customer's attention during the period of this Agreement, and hereby assigns to Borderware all right, title and interest to such ideas and enhancements and all property rights therein including without limitation all patent, copyright, trade secret, mask work, trademark, moral right or other intellectual property rights.

3. TERM AND TERMINATION. This Agreement shall become effective upon Beta Customer's acceptance of the Agreement and installation of the Beta Product, and will continue until the date Borderware makes the Beta Product generally available to the public; provided, however, either party may terminate this Agreement at will before that date.

4. RESERVATION OF RIGHTS. Borderware retains all right, title and interest in the Beta Product(s) and in all materials delivered in connection with such. Beta Customer has no rights other than those granted in this Agreement.

5. CONFIDENTIAL INFORMATION. "Confidential Information" shall be defined to include the Beta Product, any software, source code, object code, documentation, Beta Test results, and any proprietary tools, proprietary knowledge or proprietary methodologies disclosed by Borderware to Beta Customer

under this Agreement. Beta Customer shall observe complete confidentiality with respect to the Confidential Information, and shall use its best efforts and take all reasonable steps to protect such from any use, reproduction, publication, disclosure, or distribution except as specifically authorized by this Agreement. Beta Customer shall promptly notify Borderware of any known unauthorized use or disclosure of the Confidential Information and will cooperate with Borderware in any litigation brought by Borderware against third parties to protect its proprietary rights. Beta Customer may not permit a third party access to, or use of, the Confidential Information without Borderware's prior written authorization. Beta Customer expressly agrees not to disclose to persons in its own organization who do not have a need to know the existence or contents of (i) the Beta Product(s); (ii) the Beta Test and its results, or (iii) this Agreement. Beta Customer's reports must be marked "Borderware Confidential".

6. DISCLAIMERS & LIMITATIONS OF LIABILITY

- A. The design of the Beta Product may be changed prior to general availability from Borderware without notice, and Borderware does not guarantee that compatibility of Beta Customer's system can or will be maintained with subsequent versions of Beta Product or Product, that may become generally available from Borderware. Borderware reserves the right to withdraw any Beta Product from Beta Testing and never release it as a commercial product.
- **B. THE BETA PRODUCTS AND TECHNICAL SUPPORT (IF ANY) ARE PROVIDED "AS IS" WITHOUT WARRANTY, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.** Beta Customer remains solely responsible for the design of Beta Customer's system and Beta Customer's results.
- **C. IN NO EVENT WILL BORDERWARE BE LIABLE FOR ANY DAMAGES UNDER THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO ANY LOST PROFITS, LOST SAVINGS OR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR FOR ANY CLAIM BY BETA CUSTOMER BASED ON A THIRD PARTY CLAIM.**
- D. The Beta Product may not be at the level of performance, compatibility or safety of generally available Borderware products. Beta Customer understands and agrees that Borderware makes no representation or warranties regarding use of the Beta Product. Beta Customer shall have sole responsibility for adequate protection and backup of its data or equipment used in connection with the Beta Product and Beta Customer shall not claim against Borderware for lost data, re-run time, inaccurate input, work delays or lost profits resulting from the use of the Beta Product.

7. GENERAL. This Agreement will be construed under the laws of the Province of Ontario, Canada, except for that body of law dealing with conflicts of law and the U.N. Convention of Contracts for the Sale of International Goods, which shall not apply. In the event there is a dispute concerning the subject matter of this Agreement, the proper venue shall be the courts located in the City of Toronto, Canada. Each party hereby waives opposition to jurisdiction in such court. Service of process can be done in accordance with the governing law of the contract. Performance of any obligation required by a party hereunder may be waived only by a written waiver signed by the other party, which waiver shall be effective only with respect to the specific obligation described therein. If any provision of this Agreement shall be held by a court of competent jurisdiction to be contrary to law, that provision will be enforced to the maximum extent permissible, and the remaining provisions of this Agreement will remain in full force and effect.

This Agreement is also available at: www.borderware.com/license_agreements.

By clicking on the “I ACCEPT” button below, You acknowledge having read the Agreement before accepting it, having the authority to accept the Agreement on behalf of the Beta Customer, and being eighteen (18) years of age or older.