



## Beta Test Agreement

This Beta Test Agreement governs the disclosure of information by FlyPager to your business or organization and use of FlyPager's beta service.

1. Subject to the terms and conditions of this Agreement, FlyPager grants Your business/organization a nonexclusive, nontransferable license to use FlyPager's service for a period designated by FlyPager for the purpose of testing and evaluating the Service. At the conclusion of the Beta Testing period, the pricing of this Service will change. Your business/organization will have the option at that time, and at anytime, to continue or discontinue the monthly FlyPager subscription.

2. Your business/organization agrees that it will hold at all times in strict confidence and not disclose Confidential Information (as defined below) to any third party except as approved in writing by FlyPager and will use the Confidential Information for no purpose other than evaluating the Service. Your business/organization shall only permit access to Confidential Information to those of its employees/volunteers having a need to know and who have signed confidentiality agreements or are otherwise bound by confidentiality obligations at least as restrictive as those contained herein. "Confidential Information" means all non-public materials and information provided or made available by FlyPager to Your business/organization, including products and services, information regarding technology, know-how, processes, software programs, research, development, financial information and information FlyPager provides regarding third parties.

3. Your business/organization's obligations under this Agreement with respect to any portion of the Confidential Information shall terminate when Your

business/organization can document that: (a) it was in the public domain at the time it was communicated to your business/organization; (b) it entered the public domain subsequent to the time it was communicated to your business/organization through no fault of Your business/organization; (c) it was in your business/organization's possession free of any obligation of confidence at the time it was communicated to Your business/organization; (d) it was rightfully communicated to Your business/organization free of any obligation of confidence subsequent to the time it was communicated to Your business/organization; or (e) it was developed by employees or agents of Your business/organization who had no access to any information communicated to Your business/organization. After Your business/organization's evaluation of the Service is complete, or upon request of FlyPager, Your business/organization shall promptly return to FlyPager all documents, notes and other tangible materials and return or certify the destruction of all electronic documents, notes, software, data, and other materials in electronic form representing the Confidential Information and all copies thereof.

4. Your business/organization agrees that nothing contained in this Agreement shall be construed as granting any ownership rights to any Confidential Information disclosed pursuant to this Agreement, or to any invention or any patent, copyright, trademark, or other intellectual property right. Your business/organization shall not make, have made, use or sell for any purpose any product or other item using, incorporating or derived from any Confidential Information or the Service. Your business/organization will not modify, reverse engineer, decompile, create other works from, or disassemble any software programs contained in the Confidential Information or the Service.

5. This Service is a beta release offering and is not at the level of performance of a commercially available product offering. The Service may not operate correctly and may be substantially modified prior to first commercial release, or at FlyPager's option may not be released commercially in the future. THE SERVICE AND DOCUMENTATION ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, AND FLYPAGER AND ITS LICENSORS DISCLAIM ALL WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS, MERCHANTABILITY, OR FITNESS FOR A

PARTICULAR PURPOSE. NO ORAL OR WRITTEN ADVICE OR CONSULTATION GIVEN BY FLYPAGER, ITS AGENTS OR EMPLOYEES WILL IN ANY WAY GIVE RISE TO A WARRANTY. THE ENTIRE RISK ARISING OUT OF THE USE OR PERFORMANCE OF THE SERVICE REMAINS WITH YOUR BUSINESS/ORGANIZATION.

6. FLYPAGER AND ITS LICENSORS SHALL NOT BE LIABLE FOR LOSS OF USE, LOST PROFIT, COST OF COVER, LOSS OF DATA, BUSINESS INTERRUPTION, OR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, SPECIAL, OR EXEMPLARY DAMAGES ARISING OUT OF OR RELATED TO THE SERVICE OR THIS AGREEMENT, HOWEVER CAUSED AND REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) STRICT LIABILITY, OR OTHERWISE, EVEN IF SUCH PARTIES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL FLYPAGER'S AGGREGATE CUMULATIVE LIABILITY FOR ANY CLAIMS ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED \$50.00 OR THE AMOUNT YOUR BUSINESS/ORGANIZATION ACTUALLY PAID FLYPAGER UNDER THIS AGREEMENT (IF ANY).

7. Your business/organization's obligations under this Agreement shall survive any termination of this agreement. This Agreement shall be governed by and construed in accordance with the laws of Pennsylvania. Your business/organization hereby agrees that breach of this Agreement will cause FlyPager irreparable damage for which recovery of damages would be inadequate, and that FlyPager shall therefore be entitled to obtain timely injunctive relief under this Agreement, as well as such further relief as may be granted by a court of competent jurisdiction. Your business/organization will not assign or transfer any rights or obligations under this Agreement without the prior written consent of FlyPager.

In Witness Whereof, your business/organization has caused this Agreement to be executed as of the date of online registration.