

Legal Mumbo Jumbo About The Beta Participant Agreement

Congratulations on being selected to participate in an upcoming beta test! This Beta Participant Agreement is a legal document being executed between you and **Galactic Smarties** that outlines both your obligations and the company's. It is important for you and **Galactic Smarties** that you are comfortable with these terms. While it may not be exciting reading, you should read the entire agreement before you sign it. If you do not understand or agree to any part of the agreement, you should not sign this document and instead ask questions before completing it.

By signing this document, you are agreeing to all the provisions. Included in these terms is your agreement to:

- Actively use and evaluate the product or service being tested
- Provide the types of feedback requested and respond to questions
- Give **Galactic Smarties** all rights to any feedback you submit
- Not show the materials to possible competitors
- Not share copies, pictures, or videos of the test materials in any form
- Return the test materials if requested

Thank you! We look forward to your participation in the test.

BETA PARTICIPANT AGREEMENT

This Beta Participant Agreement (“Agreement”) is made and entered into between {Participant} (“Participant”) and Galactic Smarties (“Manufacturer”), and is effective as of the date of acceptance by the Participant.

Participant is an individual or business that desires to participate in “beta testing”, which provides access to confidential materials or services currently in development by Manufacturer. Manufacturer wishes to obtain the benefit of Participant’s services and reports as a beta tester of manufacturer’s materials or service. In consideration of the premises, and of the mutual covenants and conditions, the parties, agree to the following terms and conditions:

1. **Beta Test Material.** Each material or service listed on Exhibit A and all components, accessories, and documentation related to each such Beta Test Material and/or technology provided by Manufacturer including, but not limited to, specifications and other technical information, and all updates or revisions thereto, shall be referred to in the following provisions as the “Beta Test Material.” The parties hereto agree that Participant shall be a beta tester for those Beta Test Materials set forth on Exhibit A, as may be amended from time to time by Manufacturer.
2. **License.** Manufacturer hereby grants Participant a non-exclusive, non-transferable consent and license to use each Beta Test Material solely for the purpose of evaluating and testing the Beta Test Material for Manufacturer as described in Exhibit A. The Beta Test Material may not be publicly disclosed, sublicensed, sold, assigned, leased, loaned, or otherwise transferred by Participant to any third party for any reason.
3. **Manufacturer’s Obligations.**
 - a. Manufacturer will deliver the Beta Test Material to Participant at Manufacturer’s expense.
 - b. Manufacturer will provide the support or warranty service for the Beta Test Material described in the Exhibit and no other support or services.
 - c. Manufacturer has no obligation to develop or provide any updates or revisions to the Beta Test Material, and Manufacturer reserves the right to alter or adjust performance specifications for the Beta Test Material as it deems necessary or desirable.
 - d. Manufacturer will provide the instructions, safety information, warnings or cautions concerning the Beta Test Material described or included in Exhibit A and no other.
4. **Participant’s Obligations.**
 - a. Participant agrees to test and evaluate the Beta Test Material as requested and described in Exhibit A. Participant agrees to familiarize itself with the Beta Test Material information provided by Manufacturer and to only use or test the Beta Test Material as directed. Participant will notify Manufacturer of any and all functional flaws, errors, anomalies, and problems directly or indirectly associated with the Beta Test Material known to or discovered by Participant. In addition, Participant agrees to provide Manufacturer with such reports via the methods designated by Manufacturer and to promptly respond to any and all reasonable inquiries, questionnaires, surveys, and other test documents submitted to Participant by Manufacturer.
 - b. If Participant is a company or other entity, Participant shall designate to Manufacturer, in writing, an employee or representative who will serve as the single technical contact and who will be responsible for maintaining communication with the Manufacturer. In addition, the address, where Participant will test the Beta Test Material, will be given to Manufacturer in writing. If Participant changes either its technical contact person or address, it will promptly notify Manufacturer in writing of such change.

- c. Upon Manufacturer's request for the return of the Beta Test Material, Participant agrees to remove the app from all devices within seven days of Participant's receipt of Manufacturer's request to do so. If Participant fails to remove the Beta Test Material within this seven-day period, Participant agrees to purchase the Beta Test Material from Manufacturer at the retail price for such Beta Test Material, along with any applicable processing fees, as set forth in an invoice from Manufacturer.
- d. Any feedback, ideas, modifications, suggestions, improvements, and the like made by Participant with respect to the Beta Test Material ("Supportive Information") will be the property of Manufacturer. Participant agrees to assign, and hereby assigns, all right, title, and interest worldwide in the Supportive Information and the related intellectual property rights to Manufacturer and agrees to assist Manufacturer, at Manufacturer's expense, in perfecting and enforcing such rights. Manufacturer may disclose or use Supportive Information for any purposes whatsoever without any obligation to Participant.
- e. Participant agrees to pay all incidental costs (such as, costs for Internet and phone services, accessories, cabling, etc.) associated with the testing of the Beta Test Material and incurred during Participant's possession of the Beta Test Material, unless otherwise agreed to in writing by both parties and described in Exhibit A.

5. Confidentiality

- a. Participant acknowledges that as a beta tester, Participant may have access to, and Manufacturer may disclose to Participant, certain valuable information belonging to and relating to Manufacturer which Manufacturer considers confidential, including, but not limited to, information concerning the Beta Test Material, the Beta Test Material's trademark(s) and trade name(s), computer programs, user manuals, sales and marketing plans, business plans, processes, customer lists, and other trade secrets ("Confidential Information"). Participant shall use the Confidential Information solely for testing purposes and, for a period of three (3) years from Participant's receipt of the Confidential Information, shall not disclose, without Manufacturer's written consent, such Confidential Information to third parties or use such Confidential Information for its own benefit or for the benefit of third parties.
- b. If Participant is a company or other entity, Participant shall disclose Confidential Information only to those of its employees who need to know such information for the purpose of the agreed-upon beta testing, and shall ensure that its employees observe the confidentiality obligations in this Section 5. Participant acknowledges that the Beta Test Material contains Confidential Information developed or acquired by Manufacturer and that all rights therein and in other Manufacturer Confidential Information remain in Manufacturer. Participant will not disclose that it is evaluating or testing or has evaluated or tested the Beta Test Material to any third party without Manufacturer's prior written consent. In addition, Participant agrees to treat any communications and reports prepared under this Agreement, including, but not limited to, those prepared in accordance with Section 4.a, as Confidential Information and will not divulge the existence or content of such communications or reports to any third party without Manufacturer's prior written consent.
- c. This Agreement shall impose no obligation of confidentiality upon Participant with respect to any portion of the Confidential Information which: (i) now or hereafter, through no act or failure to act on Participant's part, becomes generally known or available; (ii) is known to Participant at the time Participant receives same from Manufacturer as evidenced by written records; (iii) is hereafter furnished to Participant by a third party as a matter of right and without restriction on disclosure.

6. Proprietary Rights; No Right to Copy, Modify, or Disassemble.

- a. The Beta Test Material provided by Manufacturer and all copies thereof, are proprietary to and the property of Manufacturer. All applicable rights in all copyrights, trademarks, trade secrets, trade names, patents and other

intellectual property rights in or associated with the Beta Test Material are and will remain in Manufacturer and Participant shall have no such intellectual property rights in the Beta Test Material.

- b. Participant may not copy or reproduce the Beta Test Material without Manufacturer's prior written consent, except as reasonably needed to perform its obligations hereunder and subject to the following restrictions. Participant may not copy or reproduce any software or documentation provided by Manufacturer, without Manufacturer's prior written consent, except as is reasonably needed to perform Participant's obligations under this Agreement. Each copy of software or documentation made by Participant must contain Manufacturer's proprietary and copyright notices in the same form as on the original. Participant shall not remove or deface any portion of any legend provided on any part of the Beta Test Material.
- c. Participant agrees to secure and protect the Beta Test Material and all copies thereof in a manner consistent with the maintenance of Manufacturer's rights therein and to take appropriate actions by instruction or agreement with any of its employees or agents permitted access thereto to satisfy its obligations hereunder.
- d. Participant shall not reverse engineer, alter, modify, disassemble or decompile the Beta Test Material, or any part thereof, without Manufacturer's prior written consent.

7. **Disclaimer of Warranty.** By its nature, the Beta Test Material may contain errors, bugs and other problems that could cause system failure and the testing and quality assurance of the Beta Test Material may not yet be completed. Because the Beta Test Material is subject to change, Manufacturer reserves the right to alter the Beta Test Material at any time, and any reliance on the Beta Test Material is at Participant's own risk. PARTICIPANT ACCEPTS THE BETA TEST MATERIAL "AS IS." MANUFACTURER MAKES NO WARRANTY OF ANY KIND REGARDING THE BETA TEST MATERIAL. MANUFACTURER HEREBY EXPRESSLY DISCLAIMS ALL IMPLIED AND STATUTORY WARRANTIES, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF THIRD PARTIES RIGHTS.

8. **Term and Termination.**

- a. The term of this Agreement shall begin on the date set forth above (or, if no date is given, then the date both parties accept this Agreement by written signature) and shall continue until terminated as set forth below. Upon termination of this Agreement for any reason, the three-year obligation to protect Confidential Information, as set forth in Section 5.a, shall survive such termination.
- b. This Agreement may be terminated at any time for any reason by either party giving ten days prior written notice to the other party, subject to Section 8.c below. A particular Beta Test Material Agreement shall automatically terminate upon the general release to the public of the final product derived from the Beta Test Material by Manufacturer, or sooner upon ten days prior written notice by either party. The parties acknowledge that Manufacturer is under no obligation to release any final product or Beta Test Material to the public.
- c. Upon termination of this Agreement or a particular Beta Test Material Agreement, Participant agrees to (a) return the Beta Test Material and all copies thereof to Manufacturer, if requested by Manufacturer in writing to do so, within seven days after such termination, or (b) if requested by Manufacturer to do so, certify to Manufacturer in writing that the Beta Test Material and all copies thereof have been destroyed, or (c) purchase the Beta Test Material as set forth in Section 4.c. The provisions of, and the obligations of the parties under, Sections 4.c, 4.d, 5, 6, 7, 8 and 9, and any other provisions that would normally survive, shall survive the termination of this Agreement.

9. **Limitation of Liability.** IN NO EVENT SHALL MANUFACTURER BE LIABLE TO PARTICIPANT OR ANY THIRD PARTY FOR ANY GENERAL, INCIDENTAL, CONSEQUENTIAL, INDIRECT, DIRECT, SPECIAL, OR

PUNITIVE DAMAGES, ARISING OUT OF OR RELATING TO THE BETA TEST MATERIAL OR THE TRANSACTIONS CONTEMPLATED HEREIN.

10. **Exporting Restrictions; United States Government Legends.** Beta Test Materials, including Software, provided to Participant may be subject to United States Export Restrictions. Participant agrees not to export or re-export any Beta Test Material or accompanying documentation in violation of any applicable laws and regulations of the United States or the country in which Participant obtained them. The software, firmware or other parts of the Beta Test Material covered by this Agreement may contain strong data encryption code, which cannot be exported outside the United States or Canada. Participant agrees not to export or re-export, either physically or electronically, an encrypted Beta Test Material or accompanying documentation without obtaining written authorization from the U.S. Department of Commerce.
11. **Waiver.** A waiver of any default hereunder or of any of the terms and conditions of this Agreement shall not be deemed to be a continuing waiver or a waiver of any other default or of any other term or condition, but shall apply solely to the instance to which such waiver is directed.
12. **Assignment; Severability.** Participant agrees not to assign any rights under this Agreement; any attempted assignment shall be null and void and shall result in the termination of this Agreement. If any part of this Agreement shall be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of any other part or provision of this Agreement that shall remain in full force and effect.
13. **Governing Law.** This Agreement shall be governed by the laws of the State in which Manufacturer is organized, excluding any such laws that might direct the application of the laws of another jurisdiction. The parties agree that the federal or state courts located in the State where Manufacturer is organized shall have exclusive jurisdiction to hear any dispute under this Agreement.
14. **Entire Agreement.** This Agreement and the Exhibits hereto, including any additional terms and conditions listed in Exhibit A for certain Beta Test Materials represent the entire agreement between the parties regarding the subject matter hereof and supersede any and all prior agreements between the parties, whether written or oral, regarding the subject matter hereof. This Agreement may not be modified or amended except by the written acceptance of both parties.

IN WITNESS WHEREOF, the Participant agrees to the terms of this Agreement effective as of the date of this acceptance.

PARTICIPANT Signature

Participant Name (Print)

Date
