

PAGEPLANET SOFTWARE, INC. 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 PAGEPLANET SOFTWARE, INC.

This Beta Test Agreement (the "Agreement") is made between PagePlanet Software, Inc. with its principal place of business located at 3300 Octavia Street, Raleigh, North Carolina, 27606 US ("PagePlanet Software") and you ("Beta Customer") for the purpose of testing the beta of Modular Gateway Interface (MGI) Version 3 for Macintosh OS X / Apache 2, 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 PagePlanet Software 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 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 PagePlanet Software or delete the Beta Product from any system on which it has been installed.
2. **FEEDBACK.** Notwithstanding the terms of any existing non-disclosure or confidentiality agreement between Beta Customer and PagePlanet Software, in consideration for receiving a copy of the Beta Product for testing, Beta Customer agrees to inform PagePlanet Software of all problems and ideas for enhancements which come to Beta Customer's attention during the period of this Agreement, and hereby assigns to PagePlanet Software 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, registration for the "Beta Test" and installation of the Beta Product, and will continue until the date PagePlanet Software 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.** PagePlanet Software 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 PagePlanet Software 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 PagePlanet Software of any known unauthorized use or disclosure of the Confidential Information and will cooperate with PagePlanet Software in any litigation brought by PagePlanet Software 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 PagePlanet Software'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 made directly to PagePlanet Software via phone, email or in writing or Beta Customer's reports may be made via the closed MGI Beta listserve provided by PagePlanet Software for the purpose of discussing the Beta Product(s).
6. **DISCLAIMERS & LIMITATIONS OF LIABILITY**
 - A. The design of the Beta Product may be changed prior to general availability from PagePlanet Software without notice, and PagePlanet Software 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 PagePlanet Software. PagePlanet Software 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 PAGEPLANET SOFTWARE 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 PagePlanet Software products. Beta Customer understands and agrees that PagePlanet Software 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 PagePlanet Software for lost data, re-run time, inaccurate input, work delays or lost profits resulting from the use of the Beta Product.

7. GENERAL.

A. **Governing Law.** This Agreement, and all matters arising out of or relating to this Agreement, shall be governed by the laws of the State of North Carolina, and shall be deemed to be executed in North Carolina.

B. **Jurisdiction.** Any legal action or proceeding relating to this Agreement shall be instituted in any state or federal court in Wake County, North Carolina. PagePlanet Software and Beta Customer agree to submit to the jurisdiction of, and agree that venue is proper in, the aforesaid courts in any such legal action or proceeding.