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Beta Test Agreement Kit

Presented by Centercode

v1.2

Introduction

Worrying about the legal aspects of running a beta test can be a major stumbling block. You probably know some of the things you need to cover, like having a non-disclosure agreement (NDA), because they're fairly intuitive. But there are a whole host of terms and conditions that are critical and yet a complete mystery if you lack beta testing experience. That's why we're making this kit available. We think it's in everyone's best interest to have access to specialized beta testing agreements, whether you're one of our customers or not. And equally important, we think you deserve explanations to help make sense of them.

We have a handful of goals with this companion document:

- Introduce you to a Beta Participant Agreement vs. Non-Disclosure Agreement
- Explain the key terms of these documents in a way that's easy to understand
- Highlight some terms and conditions that you might want to change to suit your needs
- Present an FAQ that you can use (and share) as a learning resource

Contents of this Kit:

1. Quickstart
2. Standalone Non-Disclosure Agreement (NDA)
3. Standalone Beta Participant Agreement (BPA)
4. Hybrid Beta Participant Agreement / Non-Disclosure Agreement
5. This Companion Document

The Fine Print (Important Disclaimer)

All materials in this package have been prepared for general information purposes only to permit you to learn more about beta testing. They are not intended to convey or constitute legal advice and are not a substitute for obtaining legal advice from a qualified attorney. Information contained herein and in the accompanying documents is offered as-is without warranties of any kind, may not be current, and is subject to change without notice. You should not act upon any such information without first seeking qualified professional counsel.

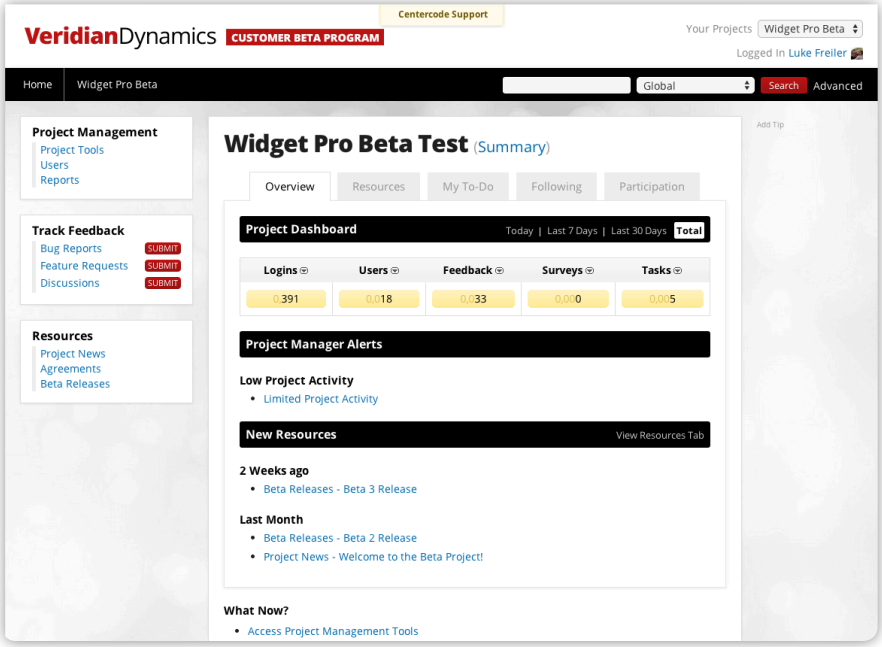
Who is Centercode?

Centercode has been offering industry-leading beta test management solutions since 2001. Our customer list includes some of the biggest technology companies in the world.

The Centercode beta management platform offers everything you need to quickly build a pool of beta candidates, recruit targeted participants, automate the legal agreement process, run an extremely successful beta test, and distribute the results to the right people.

In addition, we've managed hundreds of beta tests for companies spread throughout the world in nearly every sector of technology. This includes hardware, software, web, mobile, gaming, consumer, and enterprise.

We feel that our depth of experience provides us with both the unique perspective and authority to make valuable documents like these available.



For a **demo** of our software or a consultation regarding our services, please visit **www.centercode.com/demo**

The Beta Test Agreements

The general terms that you want your beta testers to agree to can really be sorted into two groups: (1) confidentiality (generally covered by an NDA); and (2) everything else (covered by the BPA). However, there's no legal reason to use two separate documents. In fact, we prefer to execute one single document that covers everything. Doing so is easier on all parties (you and your beta testers), and nicely centralizes essential information. But NDAs are standard in so many industries, while Beta Participant Agreements (BPAs) serve a very specific purpose, so people often think of them as distinct documents.

So what exactly is a BPA?

Your BPA is the agreement between you and your tester, whether an individual or a company, that establishes the guidelines and expectations for your beta test. We'll go through the various terms in more detail, but its contents range from very practical instructions on things like feedback reporting and how to return beta products, to highly technical legal clauses that exist to protect your company under a variety of circumstances.

While the BPA is a legally binding document, perhaps its most important purpose is to encourage your testers to pause for a moment, set aside their enthusiasm for the product they're about to test, and reflect on what is expected of them in this process. In other words, it focuses the tester directly on the commitment at hand (participation, communication, etc.), and reinforces the importance of this by putting it into a legal context.

What's in a BPA?

The best way to understand the BPA is to go through its contents, so we're offering these explanations to help guide you. We suggest reading them side-by-side with a copy of our BPA.

Description of Beta Test Material. Your description of beta test material is the formal definition of the product or service that your beta tester will be testing. We recommend filling out this description in an additional document labeled Exhibit A, which is incorporated by reference into the agreement. The purpose of this description is to set the groundwork that the rest of the agreement is built upon (i.e. what is being tested, what is covered by confidentiality, what is returned at the end of the test phase, etc.).

Grant of License. The product you're testing is almost always going to be protected by some sort of intellectual property right, whether it's copyright or patent. Without granting your testers a license, they have no legal right to perform the tests. However, it's important that this license is not universal. For example, our license grant is limited in purpose (beta testing only), limited to only the tester executing the agreement (it is not transferable), and explicitly disallows things like sales and sublicensing of the beta test materials.

Manufacturer's Obligations. This section explains what the tester can and cannot expect from you. Generally, this covers your obligation to ship the product at your expense (if applicable), what kind of support and instructions you'll be offering during the test phase, whether or not you'll be developing or providing updates, etc.

Participant's Obligations. This section, on the other hand, explains what you expect from the tester. This includes the obligation to become familiar with, test, and report feedback on the beta test material. It also covers what the tester is expected to do with the test material after the test is over; your ownership of tester's feedback, ideas, and suggestions; and the tester's responsibility to cover incidental costs like internet and phone service, accessories, etc.

Confidentiality. In our hybrid BPA/NDA document, there is a confidentiality section for enforcing beta secrecy. It restricts your testers from sharing any confidential information and beta test material with third parties, using your confidential information for anything but testing, disclosing their participation in the test or any communications prepared as part of their test participation, or using information they've learned during the test for their own benefit. If the participant is a company, it instructs that confidential information should be disclosed only to those individuals within the company as necessary for carrying out the company's obligations as a tester.

It's important to note though, that there are certain conditions under which materials and information given to testers in the beta test is no longer considered confidential, such as when the information: (1) becomes generally known to the public through no fault of the tester; (2) was already known to the tester at the time when it was disclosed by you; and (3) is rightfully disclosed to the tester by a third-party without further non-disclosure restrictions.

Proprietary Rights. This section discusses generally that the tester has no intellectual property rights in the beta test materials by virtue of their participation in the test. The same idea is covered more specifically in Participant's Obligations, Section 4.4 of the BPA. This is a critical concept because, without these terms, testers could make claims that they have property rights in feature ideas, modifications, improvements, etc. that they suggested during the course of the beta test.

Restrictions on Copying, Modifying, and Disassembling. In order to protect your intellectual property, the BPA contains provisions that prohibit the tester from copying beta test materials except as necessary to carry out their testing obligations and require that any copies retain proprietary and copyright notices, etc. It also prohibits reverse engineering, modification, disassembly, and similar techniques that could be used by a curious tester or competitor to figure out how your product works.

Export Restrictions. Certain types of beta test materials, particularly software, might be subject to U.S. export restrictions. This is especially true when it comes to strong data encryption. This provision protects you by putting the tester on notice that the product cannot be exported without authorization from the U.S. Department of Commerce.

Term and Termination. Our standard agreement establishes that the agreement continues until terminated by written notice or upon public release of the beta test materials. The confidentiality portion of the agreement, however, persists for 3 years after the termination of the agreement. We find this useful as a general rule, but you may choose to shorten this length if you feel it is unnecessarily prolonged. It's also important to note that this clause contains provisions about the return or destruction of beta test materials at the end of the test.

Miscellaneous Contract Clauses. As with any contract, there are a lot of terms that are focused more on legal issues than the subject of the contract. These include your standard warranty disclaimers, limitations on liability, waiver, assignment, severability, governing law, and entire agreement (integration) clauses.

If you're using our standalone NDA, the content is fairly similar. The difference is that it only covers confidentiality; proprietary rights; the prohibition on copying, modifying, and disassembly; and the general contract clauses. The standalone BPA covers the rest.

Common Variations

As you might expect, there's a lot of variation when it comes to Beta Participant Agreements and NDAs. For example, if you've precisely planned a beta test with strict deadlines, you might prefer to list very specific dates and expectations in your agreement. On the other hand, if your beta is more open-ended and dynamic, your agreement will need to be drafted more generally.

The other way these agreements vary is in their level of protection for the company and product. This might take the form of additional restrictions on the tester, disclaimers, or disclosing as little information as possible about who you are and what you're testing. A word of caution is required, though. The more you attempt to protect yourself, the less comfortable testers tend to feel about signing the agreement. You may lose some testers if you are overly restrictive or cautious.

To help you better understand how you can adjust our templates to suit the needs of your beta test, we'll run through the three primary categories of variations that we've seen when managing beta tests for our clients.

1. Tester Expectations

What Happens When It's Over. This is an important decision for every beta test, and it's reflected in the Beta Participant Agreement, so you will have to alter your agreement accordingly. Will testers keep the product they're testing or ship it back to you? Maybe it makes sense to have them destroy it instead (or uninstall, if it's software). Keep in mind, while you should disclose any requirement to return or destroy the product at the end of the test, you do not need to disclose if testers will receive the final version of the product as a reward for their participation, as this could adversely influence tester participation.

Duration of the Test. We'd recommend being specific here only if you need to be. If you have strict deadlines and want to reinforce the importance of time to your testers, you can include dates or milestones for when testing starts, ends, when reports should be turned in, when products should be returned, etc. They can be listed with actual dates, numbers of weeks after testing begins, or some combination of both.

2. Product Liability

Warranty. The question of warranty is particularly important if testers are keeping the product when testing is over. Do you plan to offer replacement for the beta product beyond the test period? If so, for how long? If you are offering no warranty, that needs to be very clear. Your Beta Participant Agreement is the place to spell out these terms.

Limitation of Liability. This is one of the most important but most intimidating provisions in a test agreement. Naturally, you don't want to be liable for any unexpected problems that arise in testing. However, the more you try to disclaim, the more you risk scaring off potential testers who will think there are serious problems with your product. If you can, avoid describing a multitude of catastrophic failures in your disclaimers.

3. Business and Strategy

Strategic Vagueness. Sometimes companies will provide very little information in Beta Participant Agreements, using initials instead of their company name and generic descriptions of a product. This can be a shrewd decision if you are launching a drastically different product or entering a new market and you want to protect that information before testing. On the other hand, beta testers may be less interested in partnering with a mystery corporation or testing a product they know nothing about.

Intellectual Property Protection. Along the same lines, you want to tailor your IP-protection clauses to the kind of product you're testing and level of protection you need. There are standard clauses, like no modification and no reverse engineering. But if you are testing a product that people are very interested in hacking, like a game console, you may want to be more specific, like no disassembly, no decompiling, no memory dumping, no bus analysis, etc. If your product is just a minor variation of one that's already publicly available, perhaps you need fewer IP-protection clauses.

Length of Non-Disclosure Protection. Finally, the length of non-disclosure protection covered by your agreements will vary depending on the kind of protection you need. For the latest iteration in your company's long-standing product line, maybe non-disclosure protection ends at the public launch. If your product is very innovative, maybe you stick with three years after the end of the testing period. It's important to be fair with the restrictions here, because testers can be apprehensive about very long non-disclosure periods.

Beta Agreement FAQ

What is an NDA?

An NDA ("Non-Disclosure Agreement") is a legal document executed between two parties, intended to identify and enforce requirements for confidentiality, generally regarding trade secrets. In the case of a beta test, an NDA is executed between the company developing the product and the beta tester (either a company or individual) in order to ensure that the beta tester will not share any information about the beta product.

Do I need an NDA?

While not all companies require an NDA as part of their beta program, it's generally recommended and a common practice. Beyond the legal protection they offer, NDAs illustrate to the beta tester the severity of keeping all beta and product-related information private throughout and after a beta test.

When don't I need an NDA?

NDAs are generally utilized in private ("closed") beta tests that include beta testers not employed by the company (employees generally do not require an NDA as their employment agreement already covers confidentiality). NDAs are generally not necessary in public ("open") betas, because an NDA would conflict with the marketing awareness goals of the public beta.

What should a beta tester NDA cover?

A beta NDA should focus on the importance of confidentiality in the beta program. This should include any information about the product itself, the company, or even the beta process.

Is an electronic signature allowed on these agreements?

In the United States, electronic signatures have the same legal effect as a written signature. Laws vary by country, though, and you should research your local laws to ensure that electronic signatures are valid where you are.

What happens if a beta tester breaks an NDA?

While it's not as common as many might think, from time to time there are beta testers who get a little overly excited and expose confidential beta information, generally online to small audiences. This may include discussion of the product in forums, video on YouTube, or screenshots posted to a blog. Most of the time these testers mean no harm and a stern warning will result in them removing the offending materials.

If, after a warning, a user persists in breaching the NDA, a cease and desist letter should be sent. Alternatively, most sites (such as YouTube and Flickr) have a policy that allows copyright holders to request materials be removed. In online forums, most moderators will quickly remove content out of fear of legal retaliation.

What is a Beta Participant Agreement (BPA)?

A Beta Participant Agreement (BPA) is an agreement executed between a beta tester (either an individual or company) and the company developing a beta product. The BPA is primarily intended to set participation expectations and requirements, in addition to covering items such as beta software license agreement and indemnity from harm caused by beta products.

Do I need a BPA?

While there is no legal requirement to execute a BPA, we consider it a best practice for most beta tests. First and foremost, a good BPA clearly sets expectations so that beta testers understand the level of commitment they're signing up for. In our experience, this practice can raise participation rates in addition to avoiding uncomfortable future conversations.

What should a beta testing BPA cover?

Your BPA should include a description of beta test material; grant of license; your obligations as the manufacturer; the tester's obligations; confidentiality; information on your proprietary rights; prohibitions on copying, modifying, disassembling, reverse engineering, etc.; export restrictions; along with term and termination. It should also include your typical contract clauses like disclaimer of warranties, limitations on liability, waiver, assignment, severability, governing law, and entire agreement/integration.

What happens if a beta tester breaks a BPA?

In most cases, the primary purpose of the BPA is to inform users of their accepted participation requirements for a given beta test. In the event that a tester fails to participate, thus breaking the agreement, the BPA may be used to remind the user of their agreed-upon responsibility. It is important to note, however, that while a BPA is technically a legal agreement, it is generally not enforced on legal grounds.

For more information, you can download our free Keeping Beta Tests Confidential eBook.

How do beta testers complete the agreements (NDA/BPA)?

In the past, beta test agreements (both NDA and BPA) were executed manually by instructing beta testers to print the agreement, sign it, and fax it back to a designated number. The beta manager would then track, organize, and manage agreements manually. Today there are a number of digital (online or browser-based) agreement systems available, including the Content Agreement functionality found in the Centercode beta test management software, which automates the process.

Is there any reason to keep them as separate agreements?

There is no direct requirement to keep these agreements separate. The reason we chose to include both separate and merged copies was due to situations where companies have a standard NDA that they're expected to use within their beta program. In these scenarios, the BPA may be used in addition to the NDA. That said, if an existing NDA is not present or required, we recommend using the single NDA/BPA document.

Will the NDA or BPA dissuade people from participating?

Occasionally we've seen testers opt out of a beta test opportunity because they didn't like the terms of the agreement. This isn't the norm, though. If you see a large number of people turning down a test after reading your terms, you may want to examine the agreement to see if you're being unreasonable.

Closing Thoughts

Thank you for taking the time to review this. We really hope that these documents will help you launch your beta tests with less friction and anxiety. If you want to see how painless and successful betas can be, we hope that you'll consider working with us for your next test.

Where can I learn more?

We're working hard to provide useful information regarding all aspects of beta testing. If you're interested in learning more, you could:

1. Download Our Other Beta Resources

We provide a collection of free high-quality beta resources at www.centercode.com/library.

2. Visit Our Blog

We provide weekly informational posts filled with unique information based on our experience, available at www.centercode.com/blog.

3. Join Our Newsletter

We provide a monthly newsletter including great unique beta test management information as well as special promotions and offers. You can subscribe at www.centercode.com/newsletter.

4. Follow us on Twitter

We share tidbits of useful beta related information at @centercode. Feel free to join in the conversation and ask questions.

5. Email Us

We're always available to answer questions directly. We're fanatical about beta, and always happy to help. Email us at questions@centercode.com.

For a **demo** of our software or a consultation regarding our services, please visit **www.centercode.com/demo**