

SUBSCRIPTION AND TERMS OF USE AGREEMENT

Please read this Subscription and Terms of Use Agreement (the "Agreement") carefully before ordering or using any EasyBeeper services. This Agreement establishes the terms and conditions upon which EasyBeeper LLC ("EasyBeeper") agrees to provide you ("Subscriber") with the online paging services available for purchase through www.EasyBeeper.com and all other services provided by EasyBeeper, including the development and hosting of websites, your access to and use of the EasyBeeper interface, and your use of any code provided to you by EasyBeeper (collectively, the "Services"). BY CLICKING THE "I AGREE" BUTTON ON THE ORDERING PAGE OR THE LOGIN PAGE, YOU ARE ACKNOWLEDGING THESE TERMS AND CONDITIONS AND AGREEING TO ABIDE BY THEM.

1. Available Services and Licenses

- A. EasyBeeper has developed and owns the proprietary software used to provide and facilitate EasyBeeper's online paging services (the "Software"). EasyBeeper agrees, during the Term of this Agreement (as defined below), to provide Subscriber with a license to use the Software via the Internet, as governed by the terms of this Agreement.
- B. During the Term of this Agreement, EasyBeeper grants Subscriber a limited, revocable, nonsublicensable, nontransferable, nonexclusive, license to use the Software via the access tools provided to Subscriber or otherwise made available to Subscriber by EasyBeeper, including the EasyBeeper interface accessible at www.admin.easybeeper.com, all solely for Subscriber's internal business purposes. Subscriber shall make no attempt to, and shall not permit anyone else to (a) copy, alter, modify, improve, reverse engineer, disassemble, or decompile the Software, (b) interfere in any manner with the hosting of the Software, or (c) sublicense to, transfer to, or otherwise use or make available the Software or the Services for the benefit of any third party.
- C. If Subscriber elects to access and use the Software through a dialogue box embedded on Subscriber's existing website, EasyBeeper will provide Subscriber with a line of code that enables Subscriber to install this interface on Subscriber's website (the "Link Code"). Upon delivery of the Link Code to Subscriber until the termination of this Agreement, EasyBeeper grants Subscriber a limited, revocable, nonsublicensable, nontransferable, nonexclusive, license to use the Link Code for the sole purposes of adding a dialogue box to Subscriber's website and enabling and allowing visitors to Subscriber's website to use the Services through that dialogue box. Subscriber agrees not to modify, copy, alter, publish, or otherwise use the Link Code, except as contemplated by this Agreement. Subscriber agrees further to retain all copyright notices and other identifying features included in the Link Code, and to cease all use of the Link Code and to remove it from Subscriber's web site upon termination of this Agreement.

- D. If Subscriber elects to access and use the Software by establishing a separate EasyBeeper website that will allow Subscriber's employees, customers, patients, clients, or other business-related contacts to access the Services, EasyBeeper will help Subscriber create a simple website with limited customizable options. Among other things, EasyBeeper will help Subscriber select a URL for the website (subject to availability) and EasyBeeper will attempt to obtain that URL for Subscriber's use. EasyBeeper will help Subscriber design and edit a simple website accessible through the selected URL. EasyBeeper will own the URL and the copyright to the content of the website, along with all other intellectual property rights associated with the website. Upon completion of the website until the termination of this Agreement, EasyBeeper agrees to grant Subscriber a limited, revocable, nonsublicensable, nontransferable, nonexclusive, license to use the selected URL and website content for the sole purposes of enabling and allowing visitors to the website to use the Services through that website. Subscriber agrees to retain all copyright notices and other identifying features included with the website, and to cease all use of the URL and website content upon termination of this Agreement, except as expressly provided elsewhere in this Agreement.
- E. EasyBeeper reserves the sole and exclusive right to modify, add, remove, supplement, and/or discontinue any or all elements and aspect of the Services, including discrete features of the Services, at any time without advance notice to Subscriber.

2. Payment Terms

- A. EasyBeeper will invoice Subscriber monthly, by email or otherwise, for all charges incurred during the calendar month preceding the invoice, including all monthly recurring, per message, set-up, and one-time charges. Invoices will be due and payable in full in accordance with their terms no later than 30 days after the date of the invoice. Payments may be made by credit card, PayPal, check or money order, or any other method agreed to by EasyBeeper. Subscriber agrees to identify and authorize one individual to receive invoices and to address all issues relating to the invoices. Subscriber agrees to provide EasyBeeper with up-to-date contact information for this individual and to notify EasyBeeper of any changes to the identified individual or her contact information.
- B. Monthly recurring and per message charges for the Services will be based upon the pricing scheme selected by Subscriber when ordering the Services, at the rates and on the terms described on EasyBeeper's website. All prices are subject to change by EasyBeeper without prior notice to customer. Usage charges will be billed for the calendar month immediately preceding the invoice date based on Subscriber's usage during that month. Subscriber will pay for all costs associated with the use of its accounts, whether the usage was authorized by Subscriber or not.
- C. Subscriber shall pay any setup charges, any one-time fees, and the first month's

recurring charges concurrent with the execution of this Agreement and prior to receiving access to the Services. Subscriber shall pay when invoiced any costs or fees billed by EasyBeeper to Subscriber for additional services or merchandise provided. The amount of setup charges and one-time fees due shall be as established on www.easybeeper.com, or as agreed to by EasyBeeper in writing.

- D. Payments to EasyBeeper are not refundable. No refunds shall be given for canceled accounts, usage or installation fees unless the account or installation was defective and not working, as determined by EasyBeeper in its sole discretion.
- E. Subscriber shall pay all taxes and duties, including but not limited to sales, use, and excise taxes whether international, national, state, or local, however designated, that are levied against EasyBeeper by reason of the performance by EasyBeeper of the services under this Agreement, excluding only income taxes.
- F. Failure to pay any invoice when due shall entitle EasyBeeper to immediately terminate this Agreement and to cut off Subscriber's access to the Services without advanced notice or any liability to Subscriber. Invoices not paid on time will accrue interest at the rate of 12% per annum, compounded daily, or the maximum amount of interest allowed by applicable law. Subscriber agrees to pay all attorney and collection agency fees, and all other costs EasyBeeper may reasonably incur to collect unpaid amounts due to EasyBeeper.
- G. Any payments Subscriber makes to EasyBeeper on-line or by credit card will be processed using services provided by PayPal, osCommerce, and other credit card processing or on-line payment service providers that EasyBeeper may elect to use in the future. Subscriber's use of these services is pursuant to the terms of service, privacy, and data usage policies of these third-party service providers.

3. Term of Agreement/Termination

- A. The Term of this Agreement (the "Term") shall commence upon Subscriber's subscription to the Services through www.easybeeper.com and payment in full of any required setup or one-time charges. The Term shall continue until this Agreement is cancelled consistent with its terms.
- B. Except as otherwise expressly provided elsewhere in this Agreement, either party may terminate this Agreement on no less than 30 days' advance written notice to the other. Written notice of cancellation shall be made by e-mail, U.S. mail, or fax. If Subscriber terminates this Agreement, the termination shall be effective as of the last day of the first full calendar month following Subscriber's written notice of termination.
- C. On termination of this Agreement for any reason, (a) any amounts owed to EasyBeeper under will be immediately due and payable in full, (b) all licenses granted to Subscriber by EasyBeeper pursuant this Agreement shall immediately

terminate, (c) Subscriber shall immediately remove the Link Code and all Software from its website, terminate all use of the Software, and otherwise take all steps necessary to cease its use of the Services, and (d) subscriber will have 15 business days to access and remove any remaining materials stored with EasyBeeper.

- D. If, prior to termination, Subscriber has been using a URL owned by EasyBeeper, Subscriber shall have the option to purchase the URL from EasyBeeper for \$1,000. Subscriber may exercise this option by delivering a written notice of Subscriber's desire to purchase the URL and a check, money order, or credit card payment in the amount of \$1,000 to EasyBeeper within 10 calendar days after the termination of this Agreement. Upon payment in full and receipt of Subscriber's written notice, EasyBeeper will take all reasonable steps to transfer the URL to Subscriber or to another individual or entity of Subscriber's choosing. Subscriber will be solely liable for any transfer, processing, or other fees incurred in connection with transferring the URL from EasyBeeper to Subscriber. In no event will EasyBeeper be liable to Subscriber for any loss, damage, or cost incurred in connection with the termination of Subscriber's use of the URL, the transfer of the ownership of that URL to Subscriber, or any unavailability or lack of functionality of the URL following the termination of this Agreement.

4. Equipment

As between EasyBeeper and Subscriber, Subscriber shall be solely responsible, at its own expense, for acquiring, installing, maintaining, and updating all connectivity equipment, hardware, software, and other equipment that may be necessary for it and others using the Services through it to connect to, access, and use the Software and the Services.

5. Ownership Rights

EasyBeeper and its suppliers retain all right, title, and interest in and to the Software, the Link Code, any URL and website content made available to Subscriber, and all other software, materials, proprietary information, and technology used by EasyBeeper or provided to Subscriber in connection with the Services, including, without limitation, all documentation relating to the Software, and any and all improvements, updates, and modifications to the Software and related materials, and all intellectual property rights of any nature whatsoever. EasyBeeper reserves any and all rights and licenses not expressly granted to Subscriber under this Agreement.

6. Security

EasyBeeper will provide Subscriber with one or more unique user identification names and passwords for access to and use of the Software through the EasyBeeper interface at www.admin.easybeeper.com ("User IDs"). Subscriber

shall be solely responsible for ensuring the security and confidentiality of all User IDs. Subscriber acknowledges that it will be solely and fully responsible for all liabilities incurred through the use of any User ID, including usage charges. Subscriber agrees to promptly notify EasyBeeper of any breach of security related to the Services, including but not limited to unauthorized use of a User ID. To help ensure the security of your User ID, please sign out from your EasyBeeper account at the end of each session.

7. Use Policy

- A. Subscriber may not use or permit others to use the Software or the Services in any way that violates United States federal, state, local, or international law or the rights of others. This prohibition includes, but is not limited to, any actions of Subscriber or its users that are threatening, obscene or defamatory, which violate trade secret, copyright, trademark or patent rights, which violate rights of privacy or publicity, which result in the spread of computer viruses or other damaging programs or data files, or which violate any export restrictions. EasyBeeper will cooperate fully with law enforcement agencies and may terminate this Agreement immediately without further liability or obligation to Subscriber if criminal activity is suspected.
- B. If EasyBeeper finds or suspects that Subscriber is in violation of this acceptable use policy, EasyBeeper may, in its sole discretion, immediately restrict, suspend, and/or permanently cancel Subscriber's account, or terminate this Agreement, all without advance notice or any liability to Subscriber.
- D. EasyBeeper reserves the right to modify these terms of use and any other terms and conditions of this Agreement at any time without advanced notice to Subscriber. EasyBeeper shall endeavor to notify Subscriber of such changes by posting them on the [EasyBeeper](#) website and notifying Subscriber using the Services, notifications including in Subscriber's invoices, or by any other means employed by EasyBeeper. Subscriber agrees to review periodically the terms of this Agreement as posted on the EasyBeeper website for any changes. Subscriber's continued use of the Services and Software following any change to this Agreement constitutes Subscriber's agreement to be bound by the modified terms and conditions of this Agreement as posted on the EasyBeeper website.

8. Confidentiality

EasyBeeper agrees to use reasonable commercial efforts to maintain the confidentiality of information transmitted through EasyBeeper's electronic answering services. Upon termination of this Agreement, EasyBeeper will, upon Subscriber's written, detailed request, destroy any Subscriber materials containing confidential information. Nothing in this paragraph or elsewhere in this Agreement shall preclude EasyBeeper from producing, without notice to Subscriber, any confidential materials required to be disclosed by law or in

response to a subpoena, as needed to enforce the terms of this Agreement, or in connection with a sale, transfer, or similar transaction of EasyBeeper or of some or all of its assets, all as determined by EasyBeeper in its sole discretion.

9. Content

All information transmitted, accessed, or otherwise processed using the Services (the "Content") is the sole responsibility of the person from which such content originated. EasyBeeper reserves the right (but shall have no obligation) to pre-screen, review, flag, filter, modify, refuse, store, or permanently delete and destroy any or all Content, all without any notice or liability to Subscriber or to any third parties. EasyBeeper shall have no responsibility to Subscriber or to any third party for any Content or for EasyBeeper's treatment of that Content. By using the Services and allowing others to do so, Subscriber gives EasyBeeper a perpetual, irrevocable, worldwide, sublicensable, royalty-free, nonexclusive license to use, reproduce, adapt, modify, translate, and distribute any Content submitted or transmitted on or through the Services, all in connection with providing the Services, which may including (a) transmitting or distributing the Content over various public networks and in various media; and (b) making such changes to the Content as are necessary to conform and adapt that Content to the technical requirements of connecting networks, devices, services or media. Subscriber confirms and warrants that it has all the rights, power and authority necessary to grant the above license.

10. Privacy Policy

Any information Subscriber provides to EasyBeeper, whether on-line or otherwise, including all personal data, is strictly and wholly voluntary. EasyBeeper uses information collected from Subscriber and other users of the Services for purposes of: (1) responding to inquiries and providing information about the Services; (2) enabling Subscriber and others to use the Services; (3) understanding EasyBeeper's customer base and target customers; and (4) improving EasyBeeper's offerings. Data provided through EasyBeeper's website to third-party service providers, including on-line payment service providers, is subject to use and disclosure by such third parties in accordance with their respective privacy and data usage policies.

EasyBeeper also collects anonymous data about visitors to its various websites. Any visit to an EasyBeeper website may automatically generate data not linked to personal information, such as IP (Internet Protocol) addresses, browser types, operating systems, domain names, access times, and referring web site addresses. EasyBeeper uses this anonymous data to obtain general statistics regarding the use of the EasyBeeper websites and specific web pages, to evaluate how its visitors use and navigate the websites on an aggregate basis, and otherwise to run its business.

11. Disclaimer of Warranties

The Services, Software, and all other materials provided to Subscriber are provided "as-is" and EasyBeeper does not warrant that the Services, the Software, or any other materials provided to Subscriber will meet Subscriber's needs, or that they will be error free or uninterrupted, or that all errors will be corrected. EASYBEEPER EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, CONCERNING THE SERVICES, THE SOFTWARE, AND ALL OTHER MATERIALS AND SERVICES PROVIDED TO SUBSCRIBER PURSUANT TO THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ALL WARRANTIES OF ACCURACY, COMPLETENESS, TIMELINESS, NONINFRINGEMENT, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE.

12. Limitation of Liability

Subscriber acknowledges and agrees that EasyBeeper's electronic answering services may, from time to time, become unavailable for any or for no reason, including, without limitation, technical failures with the Internet or the Software, equipment problems, computer viruses, worms, and the like, or as the result of scheduled maintenance. Subscriber further acknowledges and understands that there may be delays, omissions, or inaccuracies in the content provided through electronic answering services. Under no circumstances shall EasyBeeper or anyone else involved in administering, distributing or providing the Services, be liable to Subscriber, any end user, or any other third party, for any indirect, incidental, special, consequential, or punitive damages, however caused and even if apprised of the possibility of such damages in advance, regardless of the cause of action or theory of liability, including, without limitation, any loss of revenues or lost profits, damages that result from the use of or inability to use the Services, mistakes, omissions, interruptions, deletion of files or e-mail errors, defects, viruses, delays in operation or transmission, failure of performance, theft, or destruction. Because some states do not allow the exclusion or limitation of liability for consequential or incidental damages, in such states, EasyBeeper's liability is limited to the greatest extent permitted by law. In no event shall EasyBeeper's liability to Subscriber exceed the aggregate amounts paid by Subscriber to EasyBeeper during the three months prior to the event or omission giving rise to the purported liability.

13. Indemnification

Subscriber will take all necessary measures to avoid EasyBeeper being made a party to any lawsuit or claim arising out of or relating to the Services or this Agreement. Subscriber agrees to indemnify and hold harmless EasyBeeper and its officers, directors, members, employees, attorneys, and agents from any and all losses, claims, costs, and damages of whatever nature arising out of or relating to this Agreement, including, without limitation, the defense of any claims brought by any of Subscriber's customers, clients, users, business contacts and

other third parties against EasyBeeper. Subscriber hereby further agrees to pay all reasonable attorney fees and other costs incurred by EasyBeeper and/or its officers, directors, members, employees, attorneys, and agents in connection with any indemnified claim.

14. Relationship of the Parties

The relationship between EasyBeeper and Subscriber is that of vendor and vendee. They shall not be construed as being joint ventures, franchiser/franchisee, or employer/employee. This agreement is a commercial agreement between businesses, not a consumer agreement. Subscriber has no authority, apparent or otherwise, to contract for or on behalf of EasyBeeper, or in any way to legally bind EasyBeeper in any fashion.

15. Assignment

Subscriber shall not sell, transfer or assign any of its rights or obligations under this Agreement without the prior written consent of EasyBeeper. Any unauthorized transfer or assignment shall be null and void; provided, however, that any such Assignment shall not relieve the subscriber of its obligations under this Agreement. EasyBeeper shall be entitled to transfer and assign its rights and obligations under this Agreement without notice to Subscriber in connection with any sale, change of control, or transfer of all or any portion of EasyBeeper or its assets.

16. Governing Law

Interpretation and enforcement of this Agreement shall be governed by the laws of the State of Colorado.

17. Enforceability

If any provision of this Agreement shall be held invalid or unenforceable in whole or in part for any reason, such provision shall be ineffective to the extent of such invalidity or unenforceability without in any manner affecting the validity or enforceability of any of the remaining provisions of this Agreement.

18. Jurisdiction, Venue, Waiver of Jury Trial, and Time Limitation

The parties hereby agree that only the courts of the State of Colorado shall have jurisdiction over this Agreement and over any controversies arising out of or relating to this Agreement. The parties further agree and expressly consent to the exclusive personal jurisdiction of and venue in a court of competent jurisdiction in the City and County of Denver in the State of Colorado for purposes of any dispute arising out of or relating to this Agreement. The parties

hereby voluntarily waive their right to a jury trial regarding any litigation between the parties including controversies arising out of this Agreement. Any cause of action or claim with respect to the services provided under this Agreement must be commenced within one year after the claim or cause of action arises or such claim or cause of action is barred.

19. Attorney Fees and Costs

The prevailing party shall be entitled to recover its actual costs and attorney fees and all other litigation costs incurred in connection with any lawsuit arising out of or relating to this Agreement, including any appeals and the enforcement of any judgment arising from such action or proceeding.

20. Captions

Captions contained in the Agreement are for reference purposes only and are not part of the Agreement.

21. Waiver

A term or condition of this Agreement can be waived only by written consent of the parties. Forbearance or indulgence by either party in any regard shall not constitute a waiver of the term or condition to be performed and, until performance of the term or condition is complete, the other party may invoke any remedy available under the Agreement or by law, despite such forbearance or indulgence.

22. Entire Agreement

This Agreement contains the entire understanding of the parties with respect to the matters contained herein and the terms of this agreement supersede and govern any prior or contemporaneous oral or written communications between the parties with respect to the subject matter of this agreement, all of which are merged herein. There are no promises, covenants, or undertakings other than those expressly set forth herein. It is expressly understood and agreed by the parties that no employee, agent, or representative of EasyBeeper has the authority to bind EasyBeeper to any statement, representation, or warranty unless the same is specifically set forth in this Agreement. It is also understood and agreed that no usage of trade or other regular method of dealing between the parties shall be used to modify, interpret, supplement, or alter in any manner the terms of this Agreement.