

SDK LICENSE AGREEMENT

IMPORTANT – PLEASE READ THE TERMS OF THIS SDK LICENSE AGREEMENT (“**AGREEMENT**”) CAREFULLY. BY CLICKING ON THE “AGREE” BUTTON BELOW, YOU AGREE TO BE BOUND BY THIS AGREEMENT.

IF YOU DO NOT AGREE TO ANY OF THE TERMS OR CONDITIONS BELOW, YOU SHOULD CLICK ON THE “DISAGREE” BUTTON BELOW TO DISCONTINUE THE INSTALLATION.

This is a legal agreement between you and NewsGator Technologies, Inc. (“**NewsGator**”). The term “you” or “Developer” means the individual person installing or using the TapLynx SDK (as defined below) on her own behalf; or, if the TapLynx SDK is being downloaded or installed on behalf of a company, “you” or “Developer” means that company and the person downloading or installing the TapLynx SDK (who represents that she has the authority to do so on the company’s behalf).

1. DEFINITIONS. For the purposes of this Agreement, the following terms shall have the following meanings:

1.1 “Application Program” means an executable program, consisting of original code in source code or object code form, that Developer creates using the TapLynx SDK, on either a trial or commercial basis, that complies with the terms of this Agreement and that is designed to interface with end users via the iPhone application framework.

1.2 “Confidential Information” means all of the trade secrets, business and financial information, source codes, machine and operator instructions, business methods, procedures, know-how and other information of every kind that relates to the business of either party and is marked or identified as confidential, or disclosed in circumstances that would lead a reasonable person to believe such information is confidential. Confidential Information includes, without limitation, the TapLynx SDK, including any Documentation (as defined below) related thereto.

1.3 “Documentation” means the operating manuals, user instructions, technical literature and all other related materials, which may, from time to time, be supplied to Developer by NewsGator to facilitate the use and application of the TapLynx SDK.

1.4 “Intellectual Property Rights” means all existing and future worldwide copyrights, trademarks, service marks, trade secrets, patents, patent applications, moral rights, contract rights and other proprietary rights.

1.5 “License Key” means the downloadable code available from NewsGator or its authorized reseller that enables Developer to remove the NewsGator watermark from the Application Program upon payment of the license fee.

1.6 “TapLynx SDK” means the software and development tools (in object code format) and Documentation included therewith provided by or on behalf of NewsGator.

2. LICENSE AND RESTRICTIONS.

2.1 License to TapLynx SDK. Subject to the terms and conditions of this Agreement, including, without limitation, the payment of all applicable fees, NewsGator grants Developer a limited, non-transferable, non-exclusive license, without the right to grant sublicenses, to (a) use, perform and display the TapLynx SDK (in object code format only), solely for the internal business purpose of developing and testing Application Programs, (b) reproduce and execute the TapLynx SDK (in object code format only), solely as necessary to conduct demonstrations of the TapLynx SDK and the Application Programs, and (c) copy and distribute compliant Applications Programs in accordance with the terms of this Agreement. Developer may make only one (1) copy of the TapLynx SDK for backup and archival purposes, *provided, however*, that Developer shall reproduce on any such copy of the TapLynx SDK NewsGator’s copyright notice and any other proprietary rights notices or logos of NewsGator or any third party supplier or licensor that are on the original copy.

2.2 Restrictions. Except as expressly permitted herein, Developer shall not copy, reproduce, display, perform, modify or make derivative works of the TapLynx SDK, including, without limitation, any APIs or Documentation included therein or therewith. Developer has no right under this Agreement to, and will not in the absence of a separate agreement granting such right, market, sell, license, sublicense, distribute, act as a

service bureau, rent, loan or otherwise transfer the TapLynx SDK or any Application Program developed by or for Developer. Developer may not (i) use the TapLynx SDK to design or develop anything other than to develop an Application Program; (ii) make any copies of the TapLynx SDK except as authorized in Section 2.1; (iii) except as expressly set forth herein, modify, create derivative works of, reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code of the TapLynx SDK or any portion thereof, or authorize any third party to do any of the foregoing, except to the extent allowed under any applicable law; (iv) distribute, publish, sell, transfer, assign, lease, rent, lend, or sublicense either in whole or part the TapLynx SDK or any portion thereof to any third party; (v) redistribute any component of the TapLynx SDK; or (vi) remove, alter, disable, or obscure in any way any proprietary rights notices (including copyright notices or any watermarks or logos) of NewsGator or its suppliers included on or within the copies of the TapLynx SDK. Developer may not use the TapLynx SDK except in accordance with applicable laws and regulations. Developer may not use the TapLynx SDK to defraud any third party or to distribute obscene or other unlawful materials or information.

2.3 End User Licensing. If the Application Program developed by Developer requires that any constituent file of the TapLynx SDK be accessed as a direct or indirect result of the presence of the Developer application, then Developer shall ensure that any end-user obtaining access to such software application shall be subject to an end-user license agreement containing terms at least as protective of NewsGator and the TapLynx SDK as the terms set forth in this Agreement. Developer will immediately notify NewsGator if Developer becomes aware of any material breach of any such agreement relating to the TapLynx SDK.

3. **DISTRIBUTION.** Before Developer may commercially distribute, or make any Application Program available for commercial distribution, Developer shall purchase from NewsGator or its authorized reseller a License Key for each Application Program. Developer acknowledges and agrees that Developer has no license to distribute an Application Program unless Developer has purchased an applicable License Key.

4. **OWNERSHIP.**

4.1 NewsGator Materials. NewsGator and its respective suppliers and licensors shall retain all right, title and interest in and to the TapLynx SDK, all portions thereof, including, without limitation, all Intellectual Property Rights thereto. Other than the license expressly granted in Section 2, Developer receives no right, title or interest in or to the TapLynx SDK.

4.2 Application Programs. Developer retains all right, title and interest in and to the Application Programs, (except for any portion of the TapLynx SDK or any NewsGator Intellectual Property Rights incorporated or embodied therein), including all Intellectual Property Rights related thereto.

4.3 Third Party Materials. The TapLynx SDK may contain third party software which requires notices and/or additional terms and conditions. Such required third party software notices and/or additional terms are made a part of and incorporated by reference into this Agreement. By accepting this Agreement, you are also accepting the additional terms and conditions, if any, set forth therein. With respect to any additional software that may be made available to you by NewsGator, if you elect to download or access such additional software, you understand that you may have to agree to additional terms and conditions before you use such software. Certain items of independent, third-party code may be included in the TapLynx SDK that are subject to open source licenses (“**Open Source Software**”). Such Open Source Software is licensed under the terms of the license that accompanies such Open Source Software. Nothing in this Agreement limits Developer’s rights under, or grants Developer rights that supersede, the terms and conditions of any applicable end user license for such Open Source Software.

4.4 Feedback. Developer agrees that any comments, criticisms, suggested improvements, test results, and other feedback regarding the functioning, features, and other characteristics of the TapLynx SDK provided by Developer to NewsGator (collectively, “Feedback”) will not contain any confidential or proprietary information of Developer or any third party. Developer hereby grants NewsGator a worldwide, perpetual, irrevocable, fully paid and royalty-free, right to use and exploit the Feedback and related information in any manner and for any purpose.

4.5 Branding. In any Application Program developed by or on behalf of Developer, the NewsGator logo (to be provided by NewsGator) and tagline must be displayed in the manner set forth by NewsGator. The specifications for NewsGator branding are set forth in the then-current NewsGator branding guidelines. Should

NewsGator notify Developer of any amendment(s) to the branding guidelines, Developer agrees to make such modifications as required to be in compliance with such amended branding guidelines.

5. **SUPPORT.** Developer acknowledges and agrees that it has no rights to any upgrades, modifications, enhancements or revisions that NewsGator may make to the TapLynx SDK. NewsGator has no obligation to provide any support or engineering assistance of any sort, unless otherwise agreed in writing by NewsGator.
6. **CONFIDENTIALITY.** “**Confidential Information**” includes the TapLynx SDK, the underlying computer code to which Developer may obtain or receive access, the functional or technical design, logic, or other internal routines or workings of the TapLynx SDK, the Feedback, and any other materials of NewsGator that NewsGator designates as confidential or which Developer should reasonably believe to be confidential. Developer shall hold NewsGator’s Confidential Information in confidence and shall not disclose such Confidential Information to third parties nor use NewsGator’s Confidential Information for any purpose other than as necessary to perform under this Agreement. The Developer agrees to limit access to the Confidential Information to those employees, agents, and representatives who are necessary for the Developer to perform its obligations under this Agreement. All such employees, agents, and representatives must have a written confidentiality agreement with the Developer that is no less restrictive than the terms contained herein. The Developer will protect the Confidential Information from unauthorized use, access, or disclosure in the same manner as the Developer protects its own confidential or proprietary information of a similar nature and with no less than reasonable care. The foregoing restrictions on disclosure shall not apply to Confidential Information that is (a) already known by Developer without restriction; (b) becomes, through no act or fault of Developer, publicly known; (c) received by Developer from a third party without a restriction on disclosure or use; or (d) independently developed by Developer without reference to or use of NewsGator’s Confidential Information. Developer will return to NewsGator or destroy all Confidential Information of NewsGator in Developer’s possession or control and permanently erase all electronic copies of such Confidential Information promptly upon the written request of NewsGator or the expiration or termination of this Agreement, whichever comes first.
7. **WARRANTY; DISCLAIMER.** Each party warrants that it has full power and authority to enter into and perform this Agreement, and the person entering into this Agreement on such party’s behalf has been duly authorized and empowered to enter into this Agreement. THE LICENSE AND MATERIALS FURNISHED UNDER THIS AGREEMENT IS PROVIDED ON AN "AS IS" BASIS, WITHOUT ANY WARRANTIES OR REPRESENTATIONS EXPRESS, IMPLIED OR STATUTORY, AND NEWSGATOR SPECIFICALLY DISCLAIMS ANY AND ALL WARRANTIES OF ANY KIND WITH REGARD TO ANY SUBJECT MATTER OF THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF NON-INFRINGEMENT, TITLE, FITNESS FOR A PARTICULAR PURPOSE, FUNCTIONALITY OR MERCHANTABILITY, WHETHER EXPRESS, IMPLIED OR STATUTORY. IN NO EVENT WILL NEWSGATOR OR ITS SUPPLIERS BE LIABLE TO DEVELOPER OR ANY OTHER PARTY FOR ANY DAMAGES, EVEN IF NEWSGATOR OR ANY COMPANY REPRESENTATIVE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. DEVELOPER BEARS THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE OF THE SDK. TO THE EXTENT AN IMPLIED WARRANTY CANNOT BE EXCLUDED, SUCH WARRANTY IS LIMITED IN DURATION TO THE EXPRESS WARRANTY PERIOD. BECAUSE SOME STATES OR JURISDICTIONS DO NOT ALLOW LIMITATIONS ON THE DURATION OF IMPLIED WARRANTIES, THE ABOVE LIMITATION MAY NOT APPLY.
8. **INDEMNITY.** Developer shall, at its own expense, indemnify, defend and hold NewsGator harmless from and against any and all claims, costs, fees (including reasonable attorneys’ fees), damages, liabilities and expenses to the extent such claim arises out of: (a) any breach of this Agreement by Developer, (b) any allegation that any Application Program or combination of any Application Program with the TapLynx SDK or any portion thereof infringes any third party Intellectual Property Rights, and (c) any claims brought by third parties related to the Application Program.
9. **LIMITATION OF LIABILITY.** NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT: (1) IN NO EVENT SHALL NEWSGATOR’S TOTAL AGGREGATE LIABILITY (OR THAT OF ANY OF NEWSGATOR’S LICENSORS OR SUPPLIERS) TO DEVELOPER ARISING FROM OR RELATING TO THIS AGREEMENT EXCEED THE GREATER OF THE TOTAL AGGREGATE AMOUNT OF FEES

PAID BY DEVELOPER TO NEWSGATOR FOR THE TAPLYNX SDK OR \$100, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT OR OTHERWISE (IT BEING UNDERSTOOD THAT NEWSGATOR'S LIABILITY, AND THE LIABILITY OF ITS LICENSORS AND SUPPLIERS TO DEVELOPER MAY BE FURTHER LIMITED BY OTHER PROVISIONS OF THIS AGREEMENT); AND (2) NEITHER NEWSGATOR NOR ANY OF ITS LICENSORS OR SUPPLIERS SHALL BE LIABLE TO DEVELOPER FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, EXEMPLARY OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION LOST CODE, DATA, INFORMATION OR MATERIALS, LOST PROFITS OR REVENUE, BUSINESS INTERRUPTION, COMPUTER OR SYSTEM DOWNTIME OR UNAVAILABILITY, EVEN IF NEWSGATOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. Each party acknowledges that the fees and amounts payable set forth in this Agreement reflect the allocation of risk set forth in this Agreement and that the other party would not enter into this Agreement without these limitations on its liability. Each party agrees that these limitations shall apply notwithstanding any failure of essential purpose of any limited remedy. The foregoing limitations of liability are independent of any exclusive remedies for breach of warranty set forth in this Agreement. Some jurisdictions do not allow the exclusion or limitation of liability, so the above limitation or exclusion may not apply.

10. TERM AND TERMINATION.

10.1 Term. These terms of this Agreement shall commence on the date you accept this Agreement and shall continue until such time as the Agreement is terminated by NewsGator pursuant to this Section 10 (the "Term").

10.2 Termination by NewsGator for Cause. NewsGator may terminate this Agreement immediately if Developer is in material breach of any term or condition of this Agreement.

10.3 Termination by Either Party for Convenience. Either party may terminate this Agreement for any reason or no reason whatsoever upon sixty (60) days notice to the other party.

10.4 Effect of Termination. In the event of termination or expiration of this Agreement for any reason, Sections 1, 3, and 5-11 shall survive termination or expiration. Immediately upon any expiration of termination of this Agreement, Developer shall cease all use of the TapLynx SDK, delete any electronic copies of the TapLynx SDK, and shall return to NewsGator any and all tangible copies of the same.

11. GENERAL.

11.1 Notices. All notices and requests in connection with this Agreement shall be deemed given as of the day they are sent either by email, facsimile, overnight messenger delivery service, or in the United States of America mails, postage prepaid, certified or registered, return receipt requested to such address as each party may designate pursuant to this notice provision.

11.2 Governing Law. This Agreement shall be governed by the laws of the State of Colorado without respect to any of its conflict of laws provisions that would require the application of the laws of a different jurisdiction, and the parties hereby irrevocably consent to jurisdiction and venue in the state and federal courts sitting in the State of Colorado. In any action or suit to enforce any right or remedy under this Agreement or to interpret any provision of this Agreement, the prevailing party shall be entitled to recover its costs, including, without limitation, reasonable attorneys' fees.

11.3 Assignment. Developer shall not assign, delegate, convey or transfer, directly or indirectly, by operation of law or otherwise, this Agreement or its rights and obligations hereunder without the prior written consent of NewsGator, and any attempt to do so in contravention to this Section 11.3 shall be void and of no force and effect. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of each party's respective successors and permitted assigns.

11.4 No Waiver. No delay or omission by either party hereto to exercise any right, power or remedy occurring upon any noncompliance or default by the other party with respect to any of the terms of this Agreement shall impair any such right, power or remedy or be construed to be a waiver thereof. A waiver by either of the parties hereto of any of the covenants, conditions or agreements to be performed by the other shall not be construed to be a waiver of any succeeding breach thereof or of any covenant, condition or agreement herein contained. No waiver of a breach on one occasion shall be deemed a waiver on another occasion.

11.5Export Control. The TapLynx SDK or portions thereof may be subject to U.S. export control laws and may be subject to export or import regulations in other countries. Developer agrees to strictly comply with all such laws and regulations and acknowledges that it is solely responsible for obtaining such licenses to export, re-export or import the TapLynx SDK, or portions thereof, as may be required.

11.6U.S. Government End Users. The TapLynx SDK is a “commercial item” as that term is defined at 48 C.F.R. 2.101, consisting of “commercial computer software” and “commercial computer software documentation” as such terms are used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4, all U.S. Government end users acquire the TapLynx SDK with only those rights set forth therein.

11.7Force Majeure. If the performance of this Agreement or any obligation hereunder (other than the payment of money) is prevented, restricted or interfered with by any act or condition whatsoever beyond the reasonable control of the affected party, the party so affected will be excused from such performance to the extent of such prevention, restriction or interference.

11.8Severability. If any provision of this Agreement is deemed unenforceable, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions will continue in full force and effect.

11.9No Third Party Beneficiaries. Nothing in this Agreement is intended to confer any rights, benefits, remedies, obligations or liabilities on any third party (including without limitation any employees or agents of either party) other than the parties or their respective successors and permitted assigns. Developer shall not be considered a third party beneficiary of any agreements between NewsGator and any of its licensors or suppliers.

11.10Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and merges all prior and contemporaneous communications, and supersedes all prior oral and written agreements between the parties regarding the subject matter of this Agreement. This Agreement shall not be modified except by a written agreement dated subsequent to the date of this Agreement and signed on behalf of NewsGator and Developer by their respective duly authorized representatives.

QUESTIONS OR ADDITIONAL INFORMATION. If you have questions regarding this Agreement, or wish to obtain additional information, please send an e-mail to info@taplynx.com or write us at 950 17th Street, Suite 2500, Denver, CO 80202.