

**PALM WEBOS
BETA APPLICATION CATALOG AGREEMENT**

This Palm webOS Beta Application Catalog Agreement ("**Agreement**") is entered into by and between Palm, Inc. and its subsidiaries and affiliates ("**Palm**"), a corporation with offices at 950 W. Maude Ave., Sunnyvale, CA 94085, and Licensor (as defined in **Exhibit A**) effective as of the Effective Date (as defined in **Exhibit A**).

In consideration of the mutual promises contained herein and for other good and valuable consideration, the parties hereby agree as follows:

1. Definitions.

- a. "**Application**" means the software and technology set forth on **Exhibit A**, all updates, patches, error corrections and bug fixes thereto, and any documentation and related materials of the commercial version of the Application and documentation, which is provided to Palm by Licensor.
- b. "**Licensor's Marks**" means the names, trademarks, service marks and logos of Licensor, solely as provided to Palm by Licensor in writing, specifically for use under this Agreement.
- c. "**Intellectual Property Rights**" shall mean all current and future worldwide patents and other patent rights, copyrights, trade secrets, trademarks and all other intellectual property rights and the related documentation or other tangible expression thereof.

2. Distribution and Trademark License.

- a. **Distribution License.** Licensor hereby grants to Palm a worldwide, exclusive (even as to Licensor), royalty-free license to reproduce, distribute, perform and display the Application, in executable object code form only, through any form of media, now or hereinafter developed or devised, for use with Palm webOS devices, including but not limited to the Palm Pre; Licensor also grants to Palm the worldwide, non-exclusive, royalty-free license to use and reproduce the Application for Palm's reasonable internal purposes. Exercise of the foregoing license shall be at Palm's sole discretion.
- b. **License to Advertise and Market.** Licensor hereby grants to Palm a worldwide, non-exclusive, royalty-free, license to use, reproduce, distribute, perform and display Licensor's Marks and the Application through any form of media, now or hereinafter developed or devised, to advertise, market and promote the Application in connection with the rights granted in Section 2(a), including without limitation, for use in business development, evaluation, testing, and to publicize and/or demonstrate the functionality of the Application, including, without limitation, any depictions thereof, including but not limited to screen shots, videos, animations, web pages, catalogs, training materials, or any other marketing material in any medium. All use and goodwill of Licensor's Marks shall inure to the benefit of Licensor, and all of Licensor's Marks shall be owned solely and exclusively by Licensor or its subsidiaries. Licensor reserves the right from time to time, to change the appearance and/or style of the Licensor Marks, in Licensor's sole discretion. At Licensor's request, Palm shall implement any such changes as soon as reasonably practicable, unless required earlier by a court order.
- c. The licenses set forth in this Section 2 shall be sublicenseable by Palm solely to the extent necessary to manufacture Palm devices, and to market, promote and distribute the Application as set forth herein. Licensor reserves all rights not expressly granted hereunder to the Application and Licensor's Marks. Palm shall not reverse engineer, reverse compile or disassemble the Application, except to the extent such acts may not be prohibited by applicable law.

- 3. **Incorporation of SDK Agreement.** Licensor hereby agrees to be bound to the terms and conditions of the "Palm Early Access Software Development Kit License Agreement" (the "**SDK Agreement**") which Licensor agreed to before receiving access to Palm's Software Development Kit, and which is incorporated by reference herein.

4. Term and Termination.

- a. **Term.** The term of this Agreement shall be from the Effective Date until the termination by Palm of the Beta Application Catalog, which Palm may terminate at any time in its sole discretion. Licensor acknowledges and agrees that in order for distribution of the Application to continue after the cessation of the Beta Application Catalog, Palm may require Licensor to agree to additional or different terms and conditions, which shall be contained in the agreement for the distribution of applications under the full commercial deployment of the application catalog (the "**Palm Application Catalog Agreement**"), to which Licensor will have the option to agree or disagree, in its sole discretion. Licensor further acknowledges and agrees that the Palm Application Catalog Agreement may contain terms that allow Palm to retain a share of the revenue generated from license of the Applications. For purposes of this Agreement, the "**Beta Application Catalog**" shall be the initial application catalog hosted by Palm where applications may be made available to end users of Palm devices, in accordance with the terms and conditions of this Agreement.
 - b. **Termination.** This Agreement may be terminated by either party without cause, upon sixty (60) days written notice to the other party. This Agreement may be terminated by Palm immediately upon written notice, for any breach by Licensor of: (i) Section 9(b); or (ii) Sections 3.6 through 3.8 of the SDK Agreement.
 - c. **Effect of Termination.** Upon any termination or expiration of this Agreement any sublicenses granted to third parties or end users for the Application shall survive any expiration or termination thereof. Section 1 and Sections 7 through and including 12 shall survive any termination or expiration of this Agreement for any reason.
- 5. Marketing and Publicity.** The parties may agree to marketing activities and approved uses upon mutual written agreement, which shall be set forth separately and incorporated by reference herein. Except as set forth in Section 2(b), or as otherwise expressly provided herein, neither party may issue any press releases, publicity or information relating to this Agreement without the prior written approval of the other party, unless otherwise required by law. Licensor shall have no right to use any Palm trademarks, service marks or any logos, except as expressly set forth in writing by Palm.
- 6. Support.** Licensor shall be solely responsible to provide support to end users for the Application, and shall reply to support requests in a timely manner, via email, phone or website, at a minimum. Licensor shall also provide level-two support to Palm free of charge via telephone as required, and respond to any requests within one (1) business day.
- 7. Confidentiality.**
- a. **Definition.** Each party agrees to hold the Confidential Information of the other party in confidence, and not to use or disclose such Confidential Information, except as permitted hereunder, or as required for performance under this Agreement, without the express written consent of the other party. For purposes herein, "**Confidential Information**" means any and all technical and non-technical information disclosed by one party ("**Disclosing Party**") to

the other ("**Receiving Party**") under this Agreement and related to the past, present or future business or technology of the Disclosing Party. The substance of this Agreement shall be Confidential Information. The relationship between the parties shall also be Confidential Information, but solely until the time Palm chooses to publicly disclose such information. The Disclosing Party may mark Confidential Information "confidential" or "proprietary," but regardless of whether so marked or identified, any information that the Receiving Party knew or should have known was considered confidential or proprietary by the Disclosing Party will be considered Confidential Information of the Disclosing Party under this Agreement.

- b. **Exclusions.** Notwithstanding the foregoing, neither party shall have any obligation under this Section with respect to any information that it can prove is (i) now or hereafter, through no unauthorized act or failure to act on the Receiving Party's part, generally known to the public; (ii) known to the Receiving Party without an obligation of confidentiality effective at the time the Receiving Party received the same from the Disclosing Party, as evidenced by written records; (iii) hereafter furnished to the Receiving Party by a third party as a matter of right and without restriction on disclosure; or (iv) independently developed by the Receiving Party.

8. **Royalties and Payments.** Palm hereby agrees that during the Term, Palm shall not collect any additional payment from end users to download the Application from the Beta Application Catalog. Licensors hereby agree that: (i) it shall not be entitled to receive any monetary or other compensation in exchange for Palm's distribution of the Application under this Agreement; (ii) Licensors themselves will not collect any payment from end users in exchange for downloading the Application; and (iii) Licensors shall not (and shall not grant the right to any third party to) distribute the Application except under this Agreement, unless otherwise mutually agreed to by the parties in writing.

9. **Warranties and Representations.**

- a. **Licensors' Application Warranty.** Licensors warrant to Palm that the Application will be free from material defects or errors, and Licensors shall use commercially reasonable efforts to correct any such material defect or errors. EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, THE APPLICATION IS PROVIDED ON AN "AS IS" BASIS, WITH NO OTHER WARRANTIES, EXPRESS OR IMPLIED.
- b. **Licensors' Authority to License.** Licensors represent and warrant that it has the right and authority to enter into this Agreement, and that in its performance hereunder it shall obey all applicable laws, regulations and rules of any government body or agency or other competent authority, and shall not (i) use any proprietary information of another party without appropriate authorization, or (ii) infringe or misappropriate the intellectual property rights (including, without limitation, patent, copyright, trademark or trade secret rights, or rights of publicity or privacy) of another party. Licensors further represent and warrant that it has all right and authority to make available the Application as licensed hereunder, including any services related to the Application, and any content which may be provided through such Application or services, including without limitation, proper payment of any royalties to authors, artists or performing societies. Palm shall have the right to terminate this Agreement immediately, without any liability to Licensors, if Palm receives notice of any breach or threatened breach of this Section.
- c. **Security of Application Code.** Licensors acknowledge and agree that: (i) Applications may be viewable or inspectable by third parties; (ii) Palm is not obligated to take any steps to obfuscate the code associated with the Applications or take any other steps to prevent third parties from viewing or inspecting Application code; and (iii) any obfuscation or additional security measures shall be solely at Licensors' direction and cost.

10. **Limitation of Liability.** EXCEPT WITH RESPECT TO OBLIGATIONS UNDER SECTION 7 (CONFIDENTIALITY), SECTION 9(b) (AUTHORITY TO LICENSE) AND SECTION 11 (INDEMNIFICATION), NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY OR ANY THIRD PARTY FOR ANY INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, LOSS OF PROFITS OR REVENUE, OR INTERRUPTION OF BUSINESS IN ANY WAY ARISING OUT OF OR RELATED TO THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT PRODUCT LIABILITY OR OTHERWISE, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

11. **Indemnification.**

- a. **By Licensors.** Licensors shall, at its own expense, indemnify, defend and hold harmless Palm and its officers, directors, employees, representatives and agents against any third party claim, suit, action, or proceeding based on or relating to: (i) a claim that Licensors' Marks, or Licensors' Application, software, technology infringe the Intellectual Property Rights of any third party or violates any applicable law; (ii) the use of the Application; or (iii) a breach by Licensors of Section 9(b).
- b. **By Palm.** Subject to Section 11(a), Palm shall, at its own expense, indemnify, defend and hold harmless Licensors and its officers, directors, employees, representatives, and agents against any third party claim, suit, action, or proceeding based on or relating to: (i) a claim that the Palm devices (excluding the Application), software, technology, or trademarks, infringe the Intellectual Property Rights of any third party or violates any applicable law; or (ii) the sale or use of a Palm device (except for such claims arising from the Application).
- c. **Indemnification Procedure.** Each party seeking indemnity ("**Indemnified Party**") agrees to promptly notify the other party ("**Indemnifying Party**") of, render reasonable assistance to (at the Indemnified Party's sole expense), and permit the Indemnifying Party to direct the defense or settlement of such action or claim, except that the Indemnifying Party shall not settle any such suit or claim without the Indemnified Party's prior written approval unless such settlement (i) includes a complete release of the Indemnified Party and its officers, employees and agents (the "**Indemnitees**"), (ii) does not require any Indemnitee to pay any amount or deliver any other consideration, and (iii) places no restriction on the future conduct of any Indemnitee.
12. **Miscellaneous Legal Provisions.** This Agreement, together with all Exhibits hereto, contains the entire agreement of the parties, and supersedes any and all previous agreements with respect to the subject matter hereof, whether oral or written. No modification or amendment to this Agreement, nor any waiver of any rights under this Agreement, shall be effective unless in writing and signed by both parties to this Agreement. This Agreement shall be binding and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. This Agreement may not be assigned by either party without the other party's prior written consent, such consent not to be unreasonably withheld, except that: (i) either party may assign this Agreement to any acquirer of all or of substantially all of such party's equity securities, assets or business related to the subject matter of this Agreement without the prior approval of the other party; and (ii) Palm may freely assign this Agreement to any subsidiary or affiliate of Palm without Licensors' approval. Each of the parties shall at all times during the term of this Agreement act as, and shall represent itself to be, an independent contractor, and not an agent or employee of the other. All notices and consents required or permitted to be given under this Agreement shall be in writing to the parties at the addresses designated herein or to such other address as either party may designate to the other by written notice, and shall be effective upon receipt. Written notice shall be made by personal delivery or sent by nationally recognized

overnight commercial courier service to the other party. 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. The exercise of any right or remedy provided in this Agreement shall be without prejudice to the right to exercise any other right or remedy provided by law or equity, except as expressly limited by this Agreement. In the event any provision of this Agreement is found to be invalid, illegal or unenforceable, the validity, legality and enforceability of any of the remaining provisions shall not in any way be affected or impaired. This Agreement shall be governed by and construed under the laws of the State of California and the United States without regard to conflicts of laws provisions thereof. Unless waived by Palm in writing for the particular instance, the sole and exclusive jurisdiction and venue for actions related to the subject matter hereof shall be the state and federal courts located in Santa

Clara County, California. Both parties consent to the exclusive jurisdiction of such courts and agree that process may be served in the manner provided herein for giving of notices or otherwise as allowed by California or federal law. Neither party shall export, directly or indirectly, any information acquired under this Agreement or any products utilizing any such information to any country or to any individual or entity for which the U.S. Government or any agency thereof at the time of export requires an export license or other government approval without first obtaining such license or approval. With respect to any export transactions under this Agreement, both parties will cooperate in any reasonable manner to effect compliance with all applicable export regulations. This Agreement may be executed in two counterparts, each of which shall be deemed to be an original, and both of which together shall constitute one contract. The headings in this Agreement are for purposes of reference only and shall not limit or otherwise affect the meaning hereof.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives effective as of the Agreement Effective Date.

PALM, INC.:

By: _____

Printed: _____

Title: _____

LICENSOR:

SIG: _____ COMPANY: _____
By: James Barr dDiphInKIng
Printed: 9/7/09
Title: Application Developer
Address: 7909 Calibre Crossing Dr #307
Charlotte, NC 28227

**EXHIBIT A
TO PALM SOFTWARE DISTRIBUTION AGREEMENT**

1. **EFFECTIVE DATE:** The "Effective Date" of this Agreement shall be:

9/7/09

2. **LICENSOR:** "Licensor" shall mean:

Address:

Phone:

Fax:

Principal Contact:

Title:

7909 Calibre Crossing Dr, Apt #307, Charlotte, NC, 28227
(847) 858-9670
James Barr
Application Developer

3. **APPLICATION:** "Application" shall be defined to include the following:

Application Name:

Version:

Languages:

Description:

dk GoogleVoice
0.9.0
English
This application interfaces the Palm Pre device contacts with the Google Voice Service. The interface allows users to send sms texts, make phone calls, and check history for their Google voice phone number.

The foregoing is agreed as evidenced by the authorized signatures below:

PALM, INC.:

By: _____

Printed: _____

Title: _____

LICENSOR:

By: _____

Printed: _____

Title: _____

SIG: James Barr
9/7/09
Application Developer
COMPANY: d0lph1nK1ng