

NEWSGATOR BUZZ LICENSE AGREEMENT

BY CLICKING THE ACCEPT BUTTON OR USING THE SERVICE FROM NEWSGATOR, YOU AGREE TO BE BOUND BY AND BECOME A PARTY TO THIS AGREEMENT. IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THIS AGREEMENT, YOU MUST CLICK THE BUTTON THAT INDICATES THAT YOU DO NOT ACCEPT THE TERMS AND YOU MAY NOT USE THE SERVICE.

“You” and “Licensee” mean the individual person accessing or using the Service or Documentation on his or her own behalf; or, if the Service or Documentation are accessed or used on behalf of an organization, such as an employer, “You” and “Licensee” mean the organization for which the Service or Documentation are accessed or used, and the person accessing or using the Service or Documentation represents that he or she has the authority to do so on your behalf.

1. Service

1.1 License. Subject to the terms and conditions of this Agreement, NewsGator hereby grants to Licensee the limited, nonexclusive and nontransferable license to access and use the Service. This license is subject to the applicable fees and conditions as detailed in your invoice. “Service” means the Buzz application software hosted and provided by NewsGator Technologies, Inc. (“NewsGator”) to Licensee, including any Documentation. “Documentation” means the documentation for the Service that is created by or for NewsGator and provided by NewsGator to Licensee. “End User” means any person or entity that uses the Service and has paid the applicable fees.

1.2 License and Service Agreement (“Agreement”). Licensee acknowledges that each End User is bound by the terms of this Agreement. NewsGator may suspend or terminate access to the Service at any time in NewsGator’s discretion, and the access or account of any End User that does not abide by the terms of this Agreement terminated. NewsGator Technologies reserves the right to update and change this Agreement from time to time without notice or acceptance by you. You can review the most current version of this Agreement at any time at: http://www.newsgator.com/downloads/TermsOfService_Buzz.pdf. This Agreement will also be applicable to the use of the Service on a trial basis.

2. Confidential Information. Licensee hereby agrees not to disclose any information relating to the Service or NewsGator (including, but not limited to, its design and performance capabilities, the results of any performance/benchmark tests, and any authorization codes or license keys) to third parties without the prior written permission from NewsGator. Licensee shall treat all information not generally known to the public regarding the Service or NewsGator provided by NewsGator as NewsGator’s “Confidential Information,” including without limitation NewsGator’s current or proposed software or services, Documentation and any proprietary tools, proprietary knowledge or proprietary methodologies disclosed by NewsGator to Licensee under this Agreement. Licensee shall hold such Confidential Information in the strictest confidence and take all reasonable steps to protect such from any use, reproduction, publication, disclosure or distribution except as specifically authorized by this Agreement.

3. **Warranty Disclaimer.** THE SERVICE AND THE DOCUMENTATION ARE PROVIDED “AS-IS”, WITHOUT WARRANTY OF ANY KIND, AND NEWSGATOR AND ITS SUPPLIERS SPECIFICALLY DISCLAIM ANY AND ALL REPRESENTATIONS, WARRANTIES, OR CONDITIONS, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING THE WARRANTIES OR CONDITIONS OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, ACCURACY, AND QUIET ENJOYMENT.

4. **Indemnity.** Licensee shall indemnify and hold harmless NewsGator from and against any loss, liability, damage, cost, or expense (including attorneys’ fees), as incurred, arising directly or indirectly from or related to (a) Licensee's breach of any provision of this Agreement, (b) Licensee's use of the Service, or (c) the infringement of any third party's intellectual property rights by the Licensee’s use of the Service.

5. **Limitation of Liability.** IN NO EVENT SHALL NEWSGATOR OR ITS SUPPLIERS BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE, OR CONSEQUENTIAL DAMAGES (INCLUDING DAMAGES FOR LOST PROFITS) ARISING FROM OR IN CONNECTION WITH THIS AGREEMENT (HOWEVER ARISING, INCLUDING BY WAY OF NEGLIGENCE), EVEN IF NEWSGATOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL NEWSGATOR'S TOTAL, CUMULATIVE LIABILITY TO LICENSEE EXCEED THE CUMULATIVE FEES PAID BY THE LICENSEE. THE EXISTENCE OF ONE OR MORE CLAIMS WILL NOT SERVE TO ENLARGE THIS LIMIT. LICENSEE ACKNOWLEDGES AND AGREES THAT THE LIMITATIONS OF NEWSGATOR’S LIABILITY ARE (A) REASONABLE IN LIGHT OF NEWSGATOR'S FEES FOR THE RIGHTS GRANTED HEREIN, AND (B) ESSENTIAL AND FUNDAMENTAL PARTS OF THIS AGREEMENT WHICH ARE NECESSARY TO INDUCE NEWSGATOR TO ENTER INTO THIS AGREEMENT.

6. **Term and Termination.**

6.1 **Term.** The term of this Agreement shall commence as of the date on which Licensee first accesses or accessed the Service and/or the Documentation and continue for one year unless terminated earlier pursuant to this Section 7. This Agreement will automatically extend for one year terms unless either party gives the other party notice of such party's intent not to renew the Agreement no less than 30 days prior to the end of the then-current term.

6.2 **Termination.**

(a) **For Cause.** Either party may terminate this Agreement upon thirty (30) days written notice of a material breach by the other party if such breach is not cured within such thirty (30) day period. In addition, NewsGator may terminate this Agreement immediately, upon written notice, for Licensee’s breach of Sections 1 (Service License), or 2 (Confidential Information).

(b) **Other.** NewsGator may terminate this Agreement immediately if Licensee undergoes a transaction in which a controlling interest in the equity securities or voting interest in Licensee

becomes owned by a new entity. NewsGator may also, at its discretion disable access to the system or terminate this Agreement.

(c) **Rights Upon Termination.** Upon termination of this Agreement, Licensee shall immediately discontinue Use of the Service.

(d) **No Liability.** Each party understands that the rights of termination or expiration hereunder are absolute. Neither party shall incur any liability whatsoever for any damage, loss or expenses of any kind suffered or incurred by the other arising from or incident to any termination of this Agreement by such party or any expiration hereof which complies with the terms of the Agreement whether or not such party is aware of any such damage, loss or expenses. In particular, without in any way limiting the foregoing, neither party shall be entitled to any damages on account of prospective profits or anticipated sales. Licensee agrees to waive the benefit of any law or regulation providing compensation to Licensee arising from the termination or failure to renew this Agreement and Licensee hereby represents and warrants that such waiver is irrevocable and enforceable by NewsGator.

(e) The provisions of Sections 2 (Confidentiality), 3 (Warranty Disclaimer), 4 (Indemnity), 5 (Limitation of Liability), 7 (Term and Termination), and 8 (General) shall survive the expiration or termination of this Agreement by either party for any reason.

7. General

7.1 **Assignment.** This Agreement may not be assigned by Licensee without the prior written approval of NewsGator. NewsGator's rights and obligations under this Agreement, in whole or in part, may be assigned by NewsGator.

7.2 **Waiver.** The waiver by either party of a breach of any provisions contained herein must be in writing and shall in no way be construed as a waiver of any succeeding breach of such provision or the waiver of the provision itself.

7.3 **Severability.** In the event that any provision of this Agreement shall be unenforceable or invalid under any applicable law or be so held by applicable court decision, such unenforceability or invalidity shall not render this Agreement unenforceable or invalid as a whole, and, in such event, such provision shall be changed and interpreted so as to best accomplish the objective of such provision within the limits of applicable law or applicable court decisions.

7.4 **Controlling Law.** This Agreement shall be governed in all respects by the laws of the State of Colorado without giving effect to any conflict of laws provisions that provide for the application of the law of another jurisdiction. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement.

7.5 **Forum.** All disputes arising under this Agreement may be brought in the state or federal courts located in Denver, Colorado (as applicable). Licensee consents to personal jurisdiction of the above courts.



7.6 No Agency. Nothing contained herein shall be construed as creating any agency, partnership, or other form of joint enterprise between the parties.

7.7 Headings. The paragraph headings appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or extent of such paragraph or in any way affect such paragraph.

7.8 Entire Agreement. This Agreement completely and exclusively states the agreement of the parties regarding its subject matter. It supersedes, and its terms govern, all prior proposals, agreements, or other communications between the parties, oral or written, regarding such subject matter. This Agreement shall not be modified except by a subsequently dated written amendment signed on behalf of NewsGator and Licensee by their duly authorized representative and any provision of a purchase order purporting to supplement or vary the provisions hereof shall be void.