

**APPLE COMPUTER, INC.**

**APPLE DEVELOPER CONNECTION PROGRAMS  
TERMS AND CONDITIONS**

- 1. Relationship With Apple Computer, Inc. ("Apple").** You understand and agree that none of Apple's Developer Connection (ADC) programs creates a legal partnership or agency relationship between you and Apple. Neither you nor Apple is a partner, an agent or has any authority to bind the other.
- 2. Use Of Apple Trademarks, Logos, etc.** You agree that under no circumstances will you use the name "Apple Premier" or "Apple Select" or the like in any advertising or promotion, except as expressly set forth in this paragraph. You will not use the name "Apple Computer, Inc.," the trademark "Apple," the Apple logo, or any other trademark or trade name of Apple in any advertising or in any way whatsoever, except that you may include a discrete notice indicating that a program is compatible with particular models of Apple computers. Any such notice will not make it appear that your own product originates from Apple. The size of the type for the word "Apple" will be smaller and less conspicuous than the size of the type used for your trade name or trademark. Such notice will never include the use of Apple's logos, and use of the Apple name must always be accompanied by the statement that: "Apple is the registered trademark of Apple Computer, Inc."
- 3. Transfer Of Membership Benefits And Materials.** The benefits and materials provided to you as an ADC program member may be transferred only to your employees and contractors who have established an ADC membership. You agree that you will not otherwise transfer, publish, or disseminate such materials or benefits.
- 4. No Warranty.** You understand that all information provided to you by Apple is supplied "AS IS" without warranty of any kind as to its accuracy or completeness. To the extent that Apple makes available any products or product information, you understand that Apple is under no obligation to provide updates, enhancements, or corrections, or to notify you of any product changes that Apple may make.
- 5. Prototype License And Confidentiality.** If your membership includes a Prototype Seed Program benefit, you agree to be bound by the terms and conditions set forth in the attached Prototype License and Confidentiality Agreement in addition to the terms and conditions set forth herein. Certain third party software provided by Apple, however, may be accompanied by different licensing terms, in which case such licensing terms will govern your use of that particular third party software.
- 6. Pre-release Software.** You understand that Apple may make alpha, beta and other pre-release versions of Apple software available to members for downloading online pursuant to the terms and conditions of the Prototype License and Confidentiality Agreement set forth below and/or another license agreement accompanying such software. You agree that if the software is accompanied by a license agreement, prior to downloading the software you will read the license agreement, and if you decide to download the software, your use of the software will be governed by the terms and conditions set forth in such license agreement. If there is no license agreement accompanying the software, your use of the software will be subject to the Prototype License and Confidentiality Agreement set forth below. You certify that alpha, beta and other pre-released test software will only be used for testing purposes, and will not be rented, sold, leased, sublicensed, assigned, or otherwise transferred except as permitted in Section 3 of this agreement. Further, you certify that you will not transfer or export any product, process or service that is the direct product of the beta test software and that final testing will be done with any finished product which will be released to the mass market.
- 7. Export.** You agree that you will not export or reexport any of the software or Confidential Information received from Apple (a) into (or to a national or resident of) any U.S. embargoed countries (currently, Cuba, Iran, Iraq, Libya, North Korea, Serbia, Sudan, Syria or the Taliban Controlled areas of Afghanistan); or (b) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Department of Commerce Denied Person's List or Entity List. In joining this program, you represent and warrant that you are not located in, under the control of, or a national or resident of any such country or on any such list. You also agree that you will not use these products

for any purposes prohibited by United States law, including, without limitation, the development, design, manufacture or production of nuclear, missiles, or chemical or biological weapons.

**8. Third Party Information.** Mention of third parties and third party products in any materials, advertising, promotions or coupons provided to program members is for informational purposes only and constitutes neither an endorsement nor a recommendation. All third party product specifications and descriptions are supplied by the respective vendor or supplier. Apple assumes no responsibility with regard to the selection, performance, or use of these vendors or products. All understandings, agreements, or warranties, if any, take place directly between the vendors and the prospective users.

**9. Terms.** You understand that Apple reserves the right to modify the terms, conditions, and policies of its developer programs at any time without notice, and to revoke your participation in such programs at any time. No refund or partial refund of any ADC annual fee will be made for any reason.

**10. Apple Independent Development.** You understand and agree that Apple may acquire, license, develop for itself or have others develop for it, and market or distribute similar hardware or software to that which you may develop. In the absence of a separate written agreement to the contrary, Apple will be free to use any information you provide to Apple for any purpose, subject to any applicable patents or copyrights.

**11. Hardware Purchase Terms And Conditions.** If your membership includes a Hardware Purchase Program benefit, you agree to be bound by the terms and conditions set forth in the attached Hardware Purchase Agreement in addition to the terms and conditions set forth herein.

**12. Technical Support Terms And Conditions.** If your membership includes Developer Technical Support Services, or you purchase such services separately, you agree to be bound by the terms and conditions set forth in the attached Developer Technical Support Services Agreement in addition to the terms and conditions set forth herein.

**13. Credit Application.** You may be asked to fill out a credit application if you are applying for membership and/or services that require payment of fees in excess of \$3500.

**14. Consequential Damages.** UNDER NO CIRCUMSTANCES SHALL APPLE BE LIABLE FOR, SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, TORT OR COVER DAMAGES, INCLUDING WITHOUT LIMITATION, DAMAGES RESULTING FROM DELAY OF DELIVERY OR FROM LOSS OF PROFITS, DATA, BUSINESS OR GOODWILL, WHETHER OR NOT APPLE HAS BEEN ADVISED OR IS AWARE OF THE POSSIBILITY OF SUCH DAMAGES.

**15. Choice of Law.** This Agreement will be governed by and construed in accordance with the laws of the State of California, as applied to agreements entered into and to be performed entirely within California between California residents. The parties further submit to and waive any objections to personal jurisdiction of and venue in any of the following forums: U.S. District Court for the Northern District of California, California Superior Court for Santa Clara County, Santa Clara County Municipal, court or any other forum in Santa Clara County, for any litigation arising out of this Agreement. If for any reason a court of competent jurisdiction finds any provision, or portion thereof, to be unenforceable, the remainder of this Agreement shall continue in full force and effect.

**16. Complete Agreement.** This Agreement constitutes the entire agreement between the parties with respect to and supersedes all prior or contemporaneous understandings regarding such subject matter. No addition to or removal or modification of any of the provisions of this Agreement will be binding upon Apple unless made in writing and signed by an authorized representative of Apple.

**17. Agreement in English.** The parties hereto confirm that they have requested that this Agreement and all attachments and related documents be drafted in English. Les parties ont exigé que le présent contrat et tous les documents connexes soient rédigés en anglais.

## **PROTOTYPE LICENSE AND CONFIDENTIALITY AGREEMENT TERMS AND CONDITIONS**

**1. Prototype License Grant.** Subject to your compliance with the terms and conditions of this Agreement, Apple hereby grants you a nonexclusive, nontransferable right and license to use certain Apple pre-release software and related documentation and information (collectively the "Prototype") as identified in an appendix to this Agreement, including but not limited to an appendix appearing with the software on a website for downloading, but only for the limited purposes set forth in this Section 1. You agree not to use the Prototype for any purpose other than: (a) the testing of the Prototype, and (b) the development by you of a product designed to operate in combination with the same operating system for which the Prototype is designed, so long as you do not violate any of Apple's intellectual property rights, including for example and without limitation, trade secrets, patents, copyrights, trademarks and industrial design in developing such product. This license does not grant you any right to incorporate or make use of any Apple intellectual property in any such product. Except as expressly set forth herein, no other rights or licenses are granted or to be implied under any Apple intellectual property. If you test the Prototype, you agree to do so diligently and to complete and promptly return progress and error reports supplied by Apple.

**2. Definition of Confidential Information.** You agree that the Prototype and any information concerning the Prototype, including its nature and existence, and any other information disclosed by Apple to you, including but not limited to information learned by you from Apple employees, agents or through inspection of Apple's property, that relates to Apple's products, designs, business plans, business opportunities, finances, research, development, know-how, personnel, or third-party confidential information disclosed to you by Apple, will be considered and referred to collectively in this Agreement as "Confidential Information." Confidential Information, however, does not include: (a) information that is now or subsequently becomes generally available to the public through no fault or breach on your part; (b) information that you can demonstrate to have had rightfully in your possession prior to disclosure to you by Apple; (c) information that is independently developed by you without the use of any Confidential Information; (d) information that you rightfully obtain from a third party who has the right to transfer or disclose it; or (e) any third party software and/or documentation provided by Apple and accompanied by licensing terms that do not impose confidentiality obligations on the use or disclosure of such software and/or documentation, for example, software governed by the GNU General Public License(s). All Confidential Information remains the sole property of Apple. You have no implied licenses or other rights in the Confidential Information not specifically granted in Section 1.

**3. Nonuse and Nondisclosure of Confidential Information.** You will not disclose, publish, or disseminate Confidential Information to anyone other than (a) those of your employees and contractors with a demonstrable need to know who have binding, written, confidentiality obligations to you that protect such Confidential Information against unauthorized disclosure, or (b) other employees and contractors working for the same entity as you who have themselves entered into a Prototype License and Confidentiality Agreement with Apple including any appendices or additional licenses accompanying the Prototype. You agree not to decompile, reverse engineer, disassemble or otherwise reduce the Prototype to a human-perceivable form, and you will not modify, network, rent, lease, or loan the Prototype in whole or in part. You further agree to take reasonable precautions to prevent any unauthorized use, disclosure, publication, or dissemination of Confidential Information. You agree to accept Confidential Information for the sole purpose of effecting the permitted uses of the Prototype as set forth in Section 1 above. You agree not to use Confidential Information otherwise for your own or any third party's benefit without the prior written approval of an authorized representative of Apple in each instance.

**4. Storage of the Prototype.** You agree to restrict access to the Prototype so that only those employees and contractors entitled to view such Prototype under the terms of Section 3 above may see or use the Prototype. You further agree to maintain an accurate log of all those given access to the Prototype by you. You may make only as many copies of Prototype software and documentation as are reasonably necessary to effectuate the permitted uses of the Prototype listed in Section 1. You must preserve any proprietary rights notices on the Prototype and must place all such notices on any copies made.

**5. Verification of Compliance.** You agree that authorized Apple representatives with 24 hours advance notice may inspect the location where the Prototype is stored, the Prototype and copies of other Confidential Information and your Prototype access log during your normal business hours in order to verify that you are complying with your obligations under this Agreement.

**6. No Warranty.** The Prototype may be designated as alpha, beta, development, pre-release, untested, or not fully tested versions of the Prototype. The Prototype may contain errors that could cause failures or loss of data, and may be incomplete or contain inaccuracies. You expressly acknowledge and agree that use of the Prototype is at your sole risk. The Confidential Information, including the Prototype, is provided "AS IS," and without any warranty, whether express or implied, as to their performance, accuracy or completeness. You acknowledge that Apple has not promised or guaranteed to you that the Prototype will be publicly announced or made available to anyone in the future, and that Apple has no express or implied obligation to you to announce or introduce the Prototype or any similar or compatible product, or to continue to offer or support the Prototype in the future.

**7. Equitable Relief.** You hereby acknowledge that unauthorized disclosure or use of Confidential Information could cause irreparable harm and significant injury to Apple that may be difficult to ascertain. Accordingly, you agree that Apple will have the right to obtain immediate injunctive relief to enforce obligations under this Agreement in addition to any other rights and remedies it may have.

**8. No Export.** You agree that you will not export or reexport any of the software or Confidential Information received from Apple (a) into (or to a national or resident of) any U.S. embargoed countries (currently Cuba, Iran, Iraq, Libya, North Korea, Serbia, Sudan, Syria or the Taliban Controlled areas of Afghanistan); or (b) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Department of Commerce Denied Person's List or Entity List. By using the Confidential Information, you represent and warrant that you are not located in, under control of, or a national or resident of any such country or on any such list.

**9. Term and Termination.** This Agreement will continue in effect until terminated in accordance with this Section. You may terminate this Agreement or an individual seeding project at any time, for any reason, but only by returning to Apple: (a) the Prototype and all extant copies of other Confidential Information on any tangible medium, and (b) a written certification by an authorized representative of yours that all tangible copies of the Prototype and any other Confidential Information have been returned to Apple or completely destroyed and that all electronic memories have been purged of any Confidential Information. Apple may terminate this Agreement or an individual seeding project at any time, with or without cause, immediately upon written notice to you, and may terminate this Agreement immediately for any breach of the confidentiality provisions set forth herein. Within seven (7) days of your receipt of Apple's termination notice, or earlier if requested by Apple, you will return the Prototype and all other Confidential Information as provided in this Section. All of your obligations under this Agreement will continue to bind you until you have fully complied with the foregoing requirements of this Section concerning the return of Apple materials. Following termination of this Agreement or an individual seeding project for any reason, the provisions of Sections 3-14, inclusive will continue to bind the parties.

**10. Disclaimer of Liability.** APPLE WILL NOT BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, WHETHER ARISING IN TORT (INCLUDING NEGLIGENCE), CONTRACT OR OTHERWISE, THAT STEM FROM ANY USE OF THE PROTOTYPE AND/OR OTHER CONFIDENTIAL INFORMATION OR APPLE'S PERFORMANCE OR FAILURE TO PERFORM UNDER THIS AGREEMENT.

**11. No Waiver or Assignment.** No delay or failure to take action under this Agreement will constitute a waiver unless expressly waived in writing, signed by a duly authorized representative of Apple, and no single waiver will constitute a continuing or subsequent waiver. This Agreement will bind your successors but may not be assigned, in whole or part, by you without the written approval of an authorized representative of Apple.

**12. Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the State of California, as applied to agreements entered into and to be performed entirely

within California between California residents. The parties further submit to and waive any objections to personal jurisdiction of and venue in any of the following forums: U.S. District Court for the Northern District of California, California Superior Court for Santa Clara County, Santa Clara County Municipal, court or any other forum in Santa Clara County, for any litigation arising out of this Agreement.

**13. Government End Users.** If the Prototype is supplied to the United States Government, the Prototype is classified as "restricted computer software" as defined in clause 52.227-19 of the FAR. The United States Government's rights to the Prototype are as provided in clause 52.227-19 of the FAR.

**14. Agreement in English.** The parties hereto confirm that they have requested that this Agreement and all attachments and related documents be drafted in English. Les parties ont exigé que le présent contrat et tous les documents connexes soient rédigés en anglais.

**15. Complete Understanding.** This Agreement, including any appendices made effective pursuant to this Agreement and any additional licenses accompanying the Prototype, constitutes the entire agreement with respect to the Confidential Information disclosed herein and supersedes all prior or contemporaneous oral or written agreements concerning such Confidential Information. Any inconsistencies between this Agreement and any license accompanying the Prototype will be governed by the license agreement accompanying the Prototype. Except as expressly set forth herein, any waiver or amendment of any provision of this Agreement shall be effective only if in writing and signed by authorized representatives of both parties.

## **HARDWARE PURCHASE AGREEMENT TERMS AND CONDITIONS**

As an Apple Developer Connection Program Member you are agreeing to the following by ordering through the ADC Hardware Purchase Program. You are also subject to and bound by the terms and conditions agreed to on the ADC Member Site.

1. Your ADC Membership may permit you to purchase a limited number of development systems at a discount. A system is equivalent to one (1) CPU with one (1) monitor; one (1) iMac; or one (1) portable. Third-party products are not available for discounted purchase. We ask that you carefully plan your equipment needs for the membership year. Please see the ADC Member Site for information on the number of development system discounts available under your membership
2. Standard terms of sale offered are PAYMENT ATTACHED, VISA/MASTERCARD, CREDIT TERMS WITH APPLE (selected regions), and APPLE LEASING PROGRAM (selected regions). For PAYMENT ATTACHED orders, please attach a cashier's check or money order, payable to Apple Computer Inc. Company or personal checks will not be accepted. For CREDIT information, please contact the Austin Support Center. Mixed cash and credit payment cannot be accepted. Credit card payment may not be paid on multiple credit card accounts.
3. Applicable local sales tax (of the shipping destination) must be added to all orders. If you are tax exempt, attach a copy of your exemption certificate to each order. Resale certificates cannot be accepted.
4. All purchases are FOB Apple's shipping location. Title and risk of loss to all Product will pass to Reseller upon shipment from Apple's shipping location. When shipping pursuant to Apple's standard practices, however, it is Apple's policy to replace product returned due to damage in transit or that is lost in transit. Therefore, Apple will file claims for damaged product and place tracers for lost product. If Reseller provides Apple with specific shipping instructions, then Apple will use commercially reasonable efforts to ship such orders according to Reseller's instructions. Apple will not be liable for any failure to do so. Shipping charges for orders that are shipped under Reseller's instructions will be added to Apple's invoice, or shipped freight collect, at Apple's option.
5. Apple will endeavor to ship items within four to six weeks after accepting your order. Apple cannot, however, guarantee shipment within this period.
6. Participants in the ADC Hardware Purchase Program agree not to resell or otherwise transfer any items purchased for a period of at least one year from the date of shipment, and agree that all equipment ordered under the Apple Developer Hardware Purchase Program will be used only for the purpose of developing software and/or hardware products that will be sold for use with Apple products.
7. In no event shall Apple be liable for incidental, consequential, indirect, or special damages, including, without limitation, lost business profits or revenue.
8. This Agreement and the purchase made hereunder shall be subject to, and construed in accordance with, the laws of the State of California, excluding that portion of that law concerning choice and conflict of laws.
9. This Agreement constitutes the entire agreement between the parties pertaining to the subject matter hereof and the purchase made hereunder. Any other written or oral agreements between the parties, or modifications to this Agreement (including any of the terms of any purchase order or other document submitted by the Premier Program developer or the terms of the Order Form and Purchase Contract), shall be of no force or effect as regards the subject hereof unless incorporated herein by a writing signed by authorized representatives of both parties specifically referencing this paragraph. In the event that any portion of this Agreement should be determined to be void or invalid for any reason, its remaining terms shall be interpreted so as to reflect the basic intentions and objectives of the parties.
10. Apple has a no-return policy on equipment purchases. You may contact your Regional Support Center to request a return, and under special circumstances a return may be granted. Returns will not be accepted without prior authorization. If a return is granted, you may be charged a 15 percent restocking fee.

11. You understand that Apple reserves the right to modify the terms and conditions of the Apple Developer Hardware Purchase Program at any time

12. Limited Warranty: All Apple hardware purchased through the Apple Developer Hardware Purchase Program is warranted in accordance with the terms and conditions specified in the warranty, if any, delivered with the product. Additional copies of such are available from any Apple authorized dealer. All repairs and upgrades must be performed by an Authorized Apple Service provider.

13. Prices are set at the time of shipment. You understand that Apple can not guarantee price protection on shipped product if there are price changes after the shipment of a product. Product and program prices are subject to change without notice.

## **DEVELOPER TECHNICAL SUPPORT SERVICES TERMS AND CONDITIONS**

The following terms and conditions will apply to ADC Developer Technical Support Services (the "Services"):

1. All inquiries and responses shall be made via email in accordance with any instructions provided by Apple.
2. Although Apple will try to provide an initial response to a technical support inquiry within three business days, and will follow-up with additional responses as necessary, Apple makes no guarantees with respect to response time or resolution of the issue.
3. All information, software, or other materials provided by Apple are supplied "AS IS" without warranty of any kind as to their accuracy or completeness. **APPLE DOES NOT GUARANTEE RESULTS OR IDENTIFICATION OR CORRECTION OF PROBLEMS. APPLE DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE SERVICES, SOFTWARE, OR OTHER MATERIALS PROVIDED.**
4. Any code that Apple provides as part of any technical support is licensed to you and shall be used by you only in accordance with the terms and conditions accompanying the code. Apple retains all rights in such code. You have no right to copy, decompile, reverse engineer, sublicense or otherwise distribute such code, except as may be expressly provided in the terms and conditions accompanying the code.
5. When requesting and receiving technical support, you will not provide Apple with any information, including that incorporated in your software, that is confidential to you or any third party. Any notice, legend, or label to the contrary contained in any materials provided by you to Apple shall be without effect. Apple shall be free to use all information it receives in any manner it deems appropriate.
6. Apple reserves the right to reject a request for service at any time and for any reason, in which event Apple may credit your membership for the rejected support request.
7. You shall be solely responsible for any restoration of lost or altered files, data or programs.
8. **IN NO EVENT SHALL APPLE BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT OR SPECIAL DAMAGES OF ANY NATURE, INCLUDING WITHOUT LIMITATION, LOST BUSINESS PROFITS AND LOST DATA. THIS LIMITATION WILL APPLY EVEN IF APPLE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. APPLE'S LIABILITY FOR ANY AND ALL DAMAGES SHALL IN NO EVENT EXCEED THE AMOUNT OF FEES PAID BY YOU UNDER THIS CONTRACT.**