

CUSTOMER SEED AND CONFIDENTIALITY AGREEMENT
APPLE SOFTWARE ENGINEERING
APPLE COMPUTER, INC.
One Infinite Loop MS: 303-1CS
Cupertino, California 95014

1. Participation In The Seed Program. The purpose of the Customer Seed Program is to make alpha, beta, and other pre-release software and related documentation and information (collectively the “Pre-release Software”) available to program participants for the purpose of providing Apple with feedback on the quality and usability of the Pre-release Software. You understand and agree that participation in Apple’s Customer Seed Program is voluntary and does not create a legal partnership, agency, or employment relationship between you and Apple, and neither you nor Apple has any authority to bind the other. You understand that your participation in the Customer Seed Program does not obligate Apple to provide you with any Pre-release Software or related documentation. Should Apple decide to provide you with Pre-release Software, you agree to use and evaluate the Pre-release Software diligently and to complete and promptly return progress, feedback, and error reports requested by Apple. You agree that 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. Apple reserves the right to modify the terms, conditions, and policies of its Customer Seed Program at any time without notice, and to revoke your participation in such program at any time.

2. Pre-release Software. You understand that Apple may make Pre-release Software available to program participants on CD-ROM or for downloading online pursuant to the terms and conditions contained herein and/or another license agreement accompanying such software. If the Pre-release Software is accompanied by a separate license agreement, you agree that the license agreement accompanying the Pre-release Software, in addition to sections 4, 5, and 6 of this Agreement, shall govern your use of the Pre-release Software. Any inconsistencies between the provisions of the license agreement accompanying the Pre-release Software and Sections 4, 5, and 6 of this Agreement shall be governed by this Agreement. If there is no license agreement accompanying the Pre-release Software, your use of the Pre-release Software will be subject to the provisions of this Agreement. Unless otherwise permitted under Section 3 below, you certify that the Pre-release Software will only be used for evaluation purposes, and will not be rented, sold, leased, sublicensed, assigned, or otherwise transferred.

3. Third Party & Open-Sourced Components. Portions of the Pre-release Software may include third party software and other copyrighted material. Acknowledgements, licensing terms, and disclaimers for such material are contained in the “online” electronic documentation for the Pre-release Software, and your use of such material is governed by their respective terms. Certain third party software included with the Pre-release Software may be open sourced software (collectively the “Third Party Open-Sourced Components”) and may be governed by separate licensing terms. You may modify or replace these Third Party Open-Sourced Components, provided that: (i) the resultant modified Pre-release Software is used in place of the unmodified Pre-release Software; and (ii) you otherwise comply with the terms of this Agreement and any applicable licensing terms governing use of the Third Party Open-Sourced Components. Apple is not obligated to provide any maintenance, technical or other support for the resultant modified Pre-release Software.

4. License Grant. Subject to your compliance with the terms and conditions of this Agreement, Apple hereby grants you a license to use the Pre-release Software made available to you through the Customer Seed Program solely for the purpose of testing and evaluating the Pre-Release Software. Except as otherwise permitted under Section 3 above, this license does not grant you the right to use the Pre-release Software for any other purpose, or to disclose, reproduce, distribute, modify or create derivative works of the Pre-release Software, or to publish articles or books (whether electronic or hard copy) based in whole or in part on the Pre-release Software or your use thereof without the prior written approval of an authorized representative of Apple in each instance. Except as otherwise permitted under Section 3 above, you agree not to decompile, reverse engineer, or disassemble the Pre-release Software. Except as expressly set forth herein, no other rights or licenses are granted or to be implied under any Apple intellectual property.

5. Definition of Confidential Information. You agree that the Pre-release Software and any information concerning the Pre-release Software, including its nature and existence, and any other information disclosed by Apple to you in connection with this Agreement, 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 4.

6. Nonuse and Nondisclosure of Confidential Information. Except as expressly permitted in this Section 6, you agree that you will not disclose, publish, or disseminate Confidential Information to anyone. In the event that Apple provides a feedback forum for communication of Confidential Information between program participants, you agree that the forum provided by Apple shall be the only manner by which you will discuss or disclose Confidential Information. You further agree to take reasonable precautions to prevent any unauthorized use, disclosure, publication, or dissemination of Confidential Information, including preventing access to the Pre-release Software by others. You agree to accept Confidential Information for the sole purpose of effecting the permitted uses of the Pre-release Software as set forth in Section 4 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.

7. No Warranty. The Pre-release Software may be designated as alpha, beta, development, pre-release, untested, or not fully tested versions. The Pre-release Software 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 Pre-release Software is at your sole risk. THE CONFIDENTIAL INFORMATION, INCLUDING THE PRE-RELEASE SOFTWARE, IS PROVIDED "AS IS," AND WITHOUT ANY WARRANTY, WHETHER EXPRESS OR IMPLIED, AS TO ITS PERFORMANCE, ACCURACY OR COMPLETENESS. You acknowledge that Apple has not publicly announced the availability of the Pre-release Software, that Apple has not promised or guaranteed to you that such Pre-release Software will be 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 Pre-release Software or any similar or compatible product, or to continue to offer or support the Pre-release Software in the future.

8. 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.

9. No Export. You agree that you will not export or re-export any of the Pre-release Software or Confidential Information received from Apple (a) into (or to a national or resident of) any U.S. embargoed country (currently Cuba, Iran, Libya, North Korea, Serbia, Sudan, or Syria); 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.

10. 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 Pre-release Software and all copies of other Confidential Information on any tangible medium, and (b) a written certification that all tangible copies of the Pre-release Software 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 Pre-release Software 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 5-16, inclusive, will continue to bind the parties.

11. 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 PRE-RELEASE SOFTWARE AND/OR OTHER CONFIDENTIAL INFORMATION OR APPLE'S PERFORMANCE OR FAILURE TO PERFORM UNDER THIS AGREEMENT, EVEN IF APPLE HAS BEEN ADVISED OR IS AWARE OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL APPLE'S TOTAL LIABILITY TO YOU FOR ALL DAMAGES (OTHER THAN AS MAY BE REQUIRED BY APPLICABLE LAW IN CASES INVOLVING PERSONAL INJURY) EXCEED THE AMOUNT OF FIFTY DOLLARS (\$50.00). THE FOREGOING LIMITATIONS WILL APPLY EVEN IF THE ABOVE STATED REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

12. 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 may not be assigned by you in whole or in part. Any contrary assignment shall be null and void.

13. 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.

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

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

16. Complete Understanding. This Agreement, including any appendices made effective pursuant to this Agreement and any additional licenses accompanying the Pre-release Software, 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. Except to the extent provided under Section 2 above, any inconsistencies between this Agreement and any license agreement accompanying the Pre-release Software will be governed by the license agreement accompanying the Pre-release Software. 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.