

Apple Professional Services Terms and Conditions

1 Payment. Pursuant to these Apple Professional Services Terms and Conditions ("Agreement") Customer agrees to pay for Services, as referenced, on a time and materials basis at the rates or fixed fee specified. If no rate or fixed fee is specified, Customer agrees to pay for Services at current published rates of Apple Inc. ("Apple"). Charges for fraction of hours shall be rounded to the nearest whole number. Provided Customer is eligible for Apple's credit terms, charges for Services will be invoiced after the Services are performed on a monthly basis unless otherwise specified. Customer shall make payment for Services and reasonable travel and living expenses incurred by Apple within 30 days of invoice date. Any overdue amounts shall be subject to a finance charge at the rate of 1.5% per month commencing on the date such amount becomes overdue, or the highest rate permitted by applicable law, whichever is lower. Customer will pay any tax Apple becomes obligated to pay by virtue of this Agreement exclusive of taxes based on the net income of Apple. This Agreement is for Services and does not include parts, materials or goods.

2 Services. Apple shall make reasonable endeavors to provide Services on a timely basis, subject to availability of qualified personnel and the difficulty and scope of the Services to be provided. However, Apple shall not be liable for its failure to do so, nor will it be in breach of this Agreement solely by reason of such failure. Apple may reassign and substitute personnel at anytime and may provide the same or similar Services to other customers. Services supplied by Apple under this Agreement are provided to assist Customer. Customer, not Apple, will be responsible for determining objectives.

3 Property Rights. Any ideas, concepts, inventions, know-how, data-processing techniques, software or documentation developed by Apple personnel (alone or jointly with Customer) in connection with Services provided to Customer ("Apple Information") will be the exclusive property of Apple, except to the extent that such items are a derivative of Customer's property. Upon payment of all sums due, Apple grants Customer a non-exclusive, royalty-free, nontransferable (without right to sublicense) license to use the software or other proprietary rights in Services developed under this Agreement. Apple may provide Customer with specific, customized or unique suggestions or information as part of the Services developed by Apple, which suggestions or information do not have application to other customers of Apple ("Customer-Owned Information"). Apple will identify all Customer-Owned Information and furnish that information to Customer subject to the qualifications set forth in this Agreement, and Customer will own all of Apple's right, title and interest in the Customer-Owned Information.

4 Warranty. Except as expressly represented otherwise in this Agreement, and to the extent not prohibited by law, all Services, including any documentation, publications, software programs or code, and other information provided by or on behalf of Apple to Customer under this Agreement are furnished on an "AS-IS" basis, without warranty of any kind, whether express, implied, statutory or otherwise especially as to quality, reliability, timeliness, usefulness, sufficiency and accuracy. ALL IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION ALL IMPLIED WARRANTIES OF CONDITION, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE DISCLAIMED BY APPLE. NO ORAL OR WRITTEN INFORMATION PROVIDED BY APPLE SHALL CREATE A WARRANTY UNLESS INCORPORATED INTO THIS AGREEMENT.

5 Liability. TO THE EXTENT PERMITTED BY LAW, APPLE WILL NOT BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL OR OTHER INDIRECT DAMAGES, SUCH AS LOST PROFITS, EVEN IF APPLE HAS KNOWLEDGE OF THE LIKELIHOOD OF SUCH DAMAGES. IN THE EVENT THAT APPLE SHALL FAIL TO PROVIDE SERVICES IN ACCORDANCE WITH THIS AGREEMENT, APPLE'S ENTIRE LIABILITY AND CUSTOMER'S EXCLUSIVE REMEDY SHALL BE FOR APPLE TO USE ITS REASONABLE EFFORTS TO REPERFORM THOSE SERVICES WITHIN A REASONABLE PERIOD OF TIME; PROVIDED, THAT IN THE EVENT APPLE IS UNABLE TO CORRECT ANY DEFAULT OR BREACH OF THIS AGREEMENT, APPLE MAY ELECT TO REFUND ALL PAYMENTS ACTUALLY RECEIVED FROM CUSTOMER FOR THE SERVICES IN QUESTION IN FULL SATISFACTION OF APPLE'S OBLIGATIONS UNDER ALL THEORIES OF LAW. SUCH REFUND SHALL CONSTITUTE APPLE'S ENTIRE LIABILITY AND CUSTOMER'S EXCLUSIVE REMEDY FOR SUCH DEFAULT OR BREACH. IN NO EVENT SHALL THE AGGREGATE LIABILITY FOR DAMAGES OF APPLE, ITS EMPLOYEES OR AGENTS, EXCEED THE AMOUNTS CUSTOMER ACTUALLY PAID TO APPLE FOR THE SERVICES AT ISSUE UNDER THIS AGREEMENT. TO THE EXTENT PERMITTED BY LAW, THE LIMITATIONS IN THIS SECTION SHALL APPLY TO PERSONAL INJURY AND DEATH.

6 Confidentiality. To the extent permitted by law, both parties agree to preserve the confidentiality of data and information relating to the other's business, including data and information belonging to third parties, that is either in writing marked as confidential or, if disclosed orally, communicated as confidential at time of disclosure and confirmed as confidential in writing within thirty (30) days of disclosure ("Confidential Information"). Neither party will have any obligation to maintain the confidentiality of any data or information which (a) was in the receiving party's lawful possession prior to the submission thereof by the owning party (b) is lawfully obtained by the receiving party from a third party under no obligation of confidentiality, (c) is or becomes generally known or available other than by unauthorized disclosure, or (d) is independently developed by either party. Both parties will keep all Confidential Information in confidence and will not disclose any item of Confidential Information to any person other than employees, agents, or contractors who need to know the same in the performance of their duties to the parties. The receiving party will protect and maintain the confidentiality of all Confidential Information with the same degree of care as it employs to protect its own Confidential Information, but in any event with at least a reasonable degree of care. Apple is not precluded from developing and marketing products, which provide the same or similar functionality as the Services, provided that such products do not use Customer's Confidential Information or incorporate work originally created by or owned by Customer. Neither party may export the other's Confidential Information without the other party's written consent. The obligations created under this Section shall survive termination of this Agreement for a period of five (5) years.

7 Term. This Agreement shall terminate on the End Date. If no End Date is specified, this Agreement shall terminate twelve (12) months from the date of this Agreement. This Agreement may be renewed or extended upon the mutual consent of the parties. Customer will have the right to terminate this Agreement after work has commenced upon ten (10) days written notice, provided that Customer will pay to Apple all charges for Services performed and all expenses incurred by Apple up to the effective date of such termination. Apple may at its option terminate this Agreement immediately if Customer has (i) failed to cure any breach of this Agreement within thirty (30) days of written notice from Apple, (ii) breached the terms of section 6, or (iii) failed to pay an outstanding sum within five (5) days of written notice of delinquency. In addition, Apple may at its option suspend Services immediately upon Customer's failure to make payment in accordance with this Agreement. The provisions of Sections 1, 3, 4, 5, 8, 9, 10 and 11 shall survive termination.

8 Non-Solicitation. During the term of this Agreement, and for one (1) year thereafter, Customer shall not offer employment to, or employ, an employee or contractor of the other party directly involved in the Services, or induce such employee or contractor of Apple to breach any employment agreement or services contract with the Apple. This provision shall not preclude Customer from making offers of employment through public advertisements.

9 Publicity. In connection with Apple's promotion of its professional services, including but not limited to, the listing on its web site of customers who have utilized such services, Customer grants to Apple a worldwide non-exclusive royalty free license to publicly use Customer's name and trademark(s). Apple agrees to make reasonable efforts to adhere to any trademark guidelines that Customer may wish Apple to adopt, as delivered in writing to Apple from time to time.

10 Cancellation. Customer may cancel Services prior to the start date by providing email notice with receipt confirmation to Apple at eduservices@apple.com. Apple is not responsible for errors in the delivery of cancellation or reschedule notices. When notice is received at least fifteen calendar days (15) days or more in advance of the estimated start date of Services, the Customer is entitled to a refund if payment was

prepaid, or may reschedule for a later available date without penalty. There are no refunds or reschedule allowances for Service changes made within fourteen (14) days of the estimated start date of Services. Apple reserves the right to cancel or reschedule Services dates at any time, or replace personnel who may be assigned to deliver the Services. If Apple cancels a Service, the Customer is entitled to a refund if payment was prepaid, or may reschedule for a later available date without penalty. Apple shall not be responsible for any loss incurred by Customer as a result of a cancellation or reschedule.

11 Miscellaneous. To the extent permitted by law the laws of the state of California shall govern this Agreement. Neither party shall be liable for any delay or failure to meet its obligations under this Agreement due to circumstances beyond its reasonable control, including but not limited to war, riot, insurrection, civil commotion, labor strikes or lockouts, shortages, factory or other labor conditions, fire, flood, earthquake or storm. If any provision of this Agreement should be held to be unenforceable or invalid for any reason, such unenforceability or invalidity shall not affect the enforceability or validity of the remaining provisions, and the parties will substitute for such provision an enforceable and valid provision, which most closely approximates the intent and economic effect of the unenforceable or invalid provision. This Agreement constitutes the entire agreement between the parties with respect to the Services provided hereunder and supersedes all prior proposals, both written and oral, and all other written and oral communications between the parties. No modification to the Agreement will be binding unless it is in writing and signed by an authorized representative of each party. Apple may use subcontractors to perform any Services hereunder. Any quote for Services will be valid for 30 days, unless otherwise specified.