

AppleCare Technical Support Services

Terms and Conditions

Apple Computer, Inc. and its subsidiaries ("Apple") will provide AppleCare Technical Support Services in accordance with the following terms and conditions ("Terms and Conditions").

1. Definitions

The following definitions shall apply:

- 1.1 "AppleCare Technical Support Services" or "Services" means the services provided by Apple under these Terms and Conditions in support of Customer's use of the Supported Product(s), including but not limited to providing access to online support information and resources, distributing and licensing software, and providing interactive telephone and email technical support.
- 1.2 "Authorized Contact(s)" means the individual(s) identified by Customer as having authority to receive Technical Support Services on behalf of Customer.
- 1.3 "Authorized Location(s)" means facility(ies) identified by Customer for which persons located therein are authorized recipients of Customer's computing support services.
- 1.4 "Confidential Information" means any information disclosed by Apple relating to AppleCare Technical Support Services, including but not limited to information learned by Customer from Apple employees or agents that relates to Apple's products, designs, product support, business plans, business opportunities, research, development, know-how, personnel, or third-party confidential information disclosed by Apple to Customer; provided, however, that "Confidential Information" will not include information that: (i) is now or subsequently becomes generally available to the public through no fault or breach on the part of Customer; (ii) Customer can demonstrate to have had rightfully in its possession prior to disclosure by Apple; (iii) is independently developed by Customer without the use of any Confidential Information of Apple; or (iv) the Customer rightfully obtains from a third party who has the right to transfer or disclose it.
- 1.5 "Customer" means the entity ordering AppleCare Technical Support Services and represented by the Authorized Contact(s).
- 1.6 "Response Times" shall mean the time between the Customer contacting Apple to request interactive technical support and the time Apple responds to such request. Response Times are measured in Apple business hours.
- 1.7 "Service Plan" means a support offering made available by Apple that provides specific AppleCare Technical Support Services to Customer's Authorized Contacts for the benefit of Customer's designated Authorized Locations.
- 1.8 "Support Incident" shall mean a specific, discrete problem that can be answered by isolating its origin to a single cause. Apple in its sole discretion will determine what constitutes a Support Incident. A Support Incident has reached resolution when Customer receives the following: (a) information that resolves the problem; (b) information on how to obtain a software solution that will resolve the problem; (c) notice that the problem is caused by a known, unresolved issue or an incompatibility issue with software programs; (d) information that identifies the problem as being resolved by upgrading to a newer release of software; or (e) notice that the problem has been identified as a hardware equipment issue.
- 1.9 "Supported Product" or "Product" shall mean the Apple branded product or such other product as may be identified by Apple for which AppleCare Technical Support Services shall be provided under these Terms and Conditions in support of Customer's use.

2. Services

- 2.1 Service Plans. Apple will provide Services in accordance with the Service Plans, or additional service options, ordered by Customer, as described in documentation posted at www.apple.com/support/products/.
- 2.2 License. AppleCare Technical Support Services shall be delivered exclusively to the Authorized Contact(s) identified by Customer. Apple grants to Customer a nonexclusive, nontransferable, limited license to use the AppleCare Technical Support Services exclusively for the purpose of assisting the Authorized Location(s) in its computing environment. Customer may not use or distribute the AppleCare Technical Support Services beyond the confines of the Authorized Location(s) and Apple reserves all right to the AppleCare Technical Support Services not expressly granted herein.



2.3 Additional Terms

- a. **Software.** In the event that software is made available as part of the AppleCare Technical Support Services, such software shall be the copyrighted work of Apple and/or its suppliers. Customer may install, reproduce, and use the software exclusively for the purpose of supporting the Authorized Locations, but, except as may be permitted by applicable law, may not decompile, reverse engineer, modify, rent, lease, loan, or create derivative works in the software. APPLE AND ITS SUPPLIERS HEREBY DISCLAIMS ALL WARRANTIES AND CONDITIONS WITH REGARD TO THE SOFTWARE, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT. If the software is subject to the terms of a separate license agreement, the terms of the separate license agreement shall govern the software's terms of use.
- b. **Online Services.** In the event that online support resources are made available to Customer as part of the AppleCare Technical Support Services, access to and use of such resources will be subject to the creation of an online account for each Authorized Contact and additional terms and conditions ("Online Terms and Conditions"). Online Terms and Conditions shall include those governing access to and use of Apple's Knowledge Base support resources, Technical Training and private discussion boards as posted at <http://www.apple.com/legal/default.html>, <http://spweb.info.apple.com> and <http://discussions.info.apple.com/webx/help>.
- c. **On-site Services.** In the event that on-site support resources are made available to Customer as part of the AppleCare Technical Support Services, the scheduling of such resources will occur at least fourteen (14) days in advance of delivery. A Customer representative must be present when Apple delivers on-site support resources. In the event that Customer's representative fails to attend an on-site support Service, an additional fee may be charged if the Service has to be re-scheduled. Customer shall provide free and safe access to the Authorized Locations to enable Apple to fulfill its obligations. In the event an Authorized Location is relocated, an additional fee may be charged for the provision of on-site Services.
- d. **Additional Services.** In the event that additional services outside the scope of the Service Plan are provided to Customer, such services may be subject to additional terms and conditions.

2.4 Limitations

- a. **Current Release.** In order to receive AppleCare Technical Support Services, the Product that Customer is seeking Services for must be at its most current release level, or at such other level as may be agreed to by Apple; and Customer must comply with all Terms and Conditions. Customer will install remedial patches and software updates as required by Apple in order to keep Supported Products eligible for Service.
 - b. **Response Times.** Apple will use reasonable efforts to respond to a request for interactive technical support within the Response Times stated in the applicable Service Plan during the hours of operation described in the Service Plan. However, Apple shall not be liable for its failure to respond within the stated Response Time, nor will it be in breach of these Terms and Conditions solely by reason of such failure.
 - c. **Proper Use of Supported Products.** Apple's obligation to provide AppleCare Technical Support Services is contingent upon the Customer's proper use and application of the Supported Products. Additionally, Apple shall be under no obligation to provide Services where an issue has arisen due to:
 - (i) Modification or use of a Supported Product in a manner not intended or approved by Apple or the product's manufacturer,
 - (ii) The failure of Customer to upgrade the Supported Product to a more current release,
 - (iii) The use of a product that is in prerelease or beta form,
 - (iv) The use of third-party software or hardware not covered within the scope of the applicable Service Plan, or
 - (v) Incompatibility of the system running the covered Supported Product.
 - d. **Change in Services.** Apple may change or discontinue the scope of AppleCare Technical Support Services under a particular Service Plan at any time without notice. However, in the event that a change or discontinuation of Services is material to Customer under the Service Plan, Customer shall be entitled to cancel the Service Plan in accordance with the Term and Termination section and be paid a prorated refund of the unexpired portion of the Service Plan's term.
- 2.5 **Obtaining Services.** Upon acceptance of Customer's order, Apple shall provide to Customer detailed instructions on obtaining the various Services under the ordered Service Plan. Customer is responsible for all fees in establishing and maintaining email, telephone, Internet or other communication devices in the delivery of Services to Customer.

3. Customer Responsibilities

Customer agrees to cooperate with and follow instructions provided by Apple, including but not limited to providing all documentation and assistance necessary to demonstrate and allow Apple to diagnose an issue. Customer shall be solely responsible for any and all restoration and reconstruction of lost or altered files, data, or programs. Customer will maintain and implement a complete data backup and disaster recovery plan. Customer shall be solely responsible for any and all security of its confidential, proprietary and/or classified information. Customer shall acquire and maintain any email or communication systems if such systems are required by Apple to render the Services. Customer will ensure that all Authorized Contact(s) have a reasonable understanding of the Supported Products for which they seek Service and the system that it is operating on, and shall be fully aware of Customer's obligations regarding Confidential Information.

4. Orders, Prices, Payment Terms

- 4.1 Order. To purchase Services, Customer must submit a firm order to Apple identifying the currently offered Service Plan, (and if applicable optional services), Activation Date, Authorized Contacts and Authorized Locations. All orders are subject to acceptance by Apple.
- 4.2 Prices. Pricing for Services shall be effective on the date Apple accepts Customer's order. Apple may change pricing for Services at anytime, without notice. Pricing is exclusive of, and Customer will pay, all applicable sales, use, consumption, goods and service, value added or like taxes.
- 4.3 Payments Terms. Unless Customer is purchasing AppleCare Technical Support Services directly from Apple and has credit terms, in which case payment shall be due and payable within thirty (30) days of Apple's invoice date, all payments are due and payable prior to the delivery of Services. Apple may impose an additional fee of 1.5% per month or such lower amount if not permitted by law, on all outstanding amounts not paid when due.

5. Warranty

Services delivered under these Terms and Conditions shall be performed in a workmanlike manner. All information provided by Apple as part of the Services is supplied "AS IS" without warranty of any kind as to its accuracy or completeness. THE WARRANTIES CONTAINED IN THESE TERMS AND CONDITIONS ARE EXCLUSIVE. EXCEPT AS PROVIDED HEREIN, APPLE EXCLUDES ALL WARRANTIES, ORAL OR WRITTEN, STATUTORY, EXPRESS OR IMPLIED, AS PERMITTED BY APPLICABLE LAW INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES AS TO QUALITY, CARE, SKILL, AND FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE SERVICES PROVIDED UNDER THESE TERMS.

6. Confidentiality

As permitted by law, Customer will not disclose, publish, or disseminate Confidential Information to any person other than the Authorized Contact(s) or persons within the Authorized Location with a business need to know, and Customer agrees to take reasonable precautions to prevent any unauthorized use, disclosure, publication, or dissemination of Confidential Information. Customer agrees to accept Confidential Information for the sole purpose of assisting the Authorized Location in its computing environment. Customer agrees not to use Confidential Information otherwise for its own or any third party's benefit without the prior written approval of an authorized representative of Apple in each instance.

7. Limitation of Liability

TO THE MAXIMUM EXTENT PERMITTED BY LAW, APPLE IS NOT RESPONSIBLE FOR SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES RESULTING FROM ANY BREACH OF WARRANTY OR CONDITION, OR UNDER ANY OTHER LEGAL THEORY, INCLUDING BUT NOT LIMITED TO LOSS OF REVENUE; LOSS OF ACTUAL OR ANTICIPATED PROFITS (INCLUDING LOSS OF PROFITS ON CONTRACTS); LOSS OF THE USE OF MONEY; LOSS OF ANTICIPATED SAVINGS; LOSS OF BUSINESS; LOSS OF OPPORTUNITY; LOSS OF GOODWILL; LOSS OF REPUTATION; LOSS OF, DAMAGE TO, OR CORRUPTION OF DATA; OR ANY INDIRECT OR CONSEQUENTIAL LOSS OR DAMAGE HOWSOEVER CAUSED INCLUDING ANY COSTS OF RECOVERING, PROGRAMMING, OR RESTORING ANY PROGRAM OR DATA STORED OR USED WITH SUPPORTED PRODUCTS AND ANY FAILURE TO MAINTAIN THE CONFIDENTIALITY OF DATA STORED ON SUPPORTED PRODUCTS. THE FOREGOING LIMITATION SHALL NOT APPLY TO DEATH OR PERSONAL INJURY CLAIMS. APPLE SPECIFICALLY DOES NOT REPRESENT THAT IT WILL BE ABLE TO RESOLVE ANY SUPPORT ISSUES UNDER THESE TERMS WITHOUT RISK TO OR LOSS OF THE PROGRAMS OR DATA. APPLE'S LIABILITY FOR ANY AND ALL DAMAGE SHALL IN NO EVENT EXCEED THE PAYMENTS RECEIVED BY APPLE FOR SERVICES PROVIDED PURSUANT TO THESE TERMS. THE REMEDIES SET FORTH HEREIN SHALL BE CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES FOR ANY BREACH BY APPLE UNDER THESE TERMS AND CONDITIONS.

8. Term and Termination

- 8.1 Term. Unless stated otherwise, AppleCare Technical Support Services shall commence on the date of activation as indicated on Apple's invoice or other document confirming acceptance of Customer's order ("Activation Date"), and shall terminate twelve (12) months thereafter. For AppleCare Technical Support Services that are limited to a single or defined number of Support Incidents, AppleCare Technical Support Services for each Support Incident shall terminate upon resolution of the issue or ten (10) business days from the Activation Date or date on which the Service was requested, whichever is earlier.
- 8.2 Termination. Apple may terminate a Service Plan or additional Services immediately in the event Customer breaches these Terms and Conditions. Apple may modify the terms, conditions, and policies of the AppleCare Technical Support Service at any time without notice. Customer may terminate AppleCare Technical Support Services for any reason upon thirty (30) days' written notice to Apple. Upon termination of AppleCare Technical Support Services for any reason, Customer shall immediately return to Apple, or destroy, all materials, data, documentation, and software provided under the AppleCare Technical Support Service and remove and destroy or return to Apple any software that may have been copied to Customer's systems. All unused Support Incidents shall expire at termination.
- 8.3 Survival of Terms. The terms and limitations, exclusions and warranties contained herein that by their sense and context are intended to survive the termination of these Terms and Conditions, shall so survive, including without limitation the confidentiality and payment terms provisions.

9. General

- 9.1 Force Majeure. Apple will not be liable for performance delays or for non-performance, due to causes beyond its reasonable control.

- 9.2 Waiver; Severability. The waiver of any breach or default under these Terms and Conditions shall not constitute a waiver of any subsequent breach or default. If a court of competent jurisdiction holds that any provision of these Terms and Conditions is invalid or unenforceable, the remaining portions will remain in full force and effect, and the parties will replace the invalid or unenforceable provision with a valid and enforceable provision that achieves the original intent of the parties and economic effect of the Terms and Conditions.
- 9.3 Country Restrictions. Some Service Plans and AppleCare Technical Support Services may not be available in all countries. Unless otherwise indicated by Apple, all AppleCare Technical Support Services shall be provided in English.
- 9.4 Recording Calls. In delivering AppleCare Technical Support Services Apple may record part or all of the calls between Customer and Apple for quality assurance and reference purposes.
- 9.5 Assignment; Right to Subcontract. Apple may subcontract Apple's obligations to provide AppleCare Technical Support Services or parts thereof to another party. The provision of AppleCare Technical Support Services is not assignable by Customer without the prior written consent of Apple, and any attempted assignment without such consent shall be void.
- 9.6 Use Restrictions. AppleCare Technical Support Service is for business and educational use only. AppleCare Technical Support Service is not intended for use in the operation of nuclear facilities, aircraft navigation, communication systems, or air traffic control machines in which case the failure of the AppleCare Technical Support Services to attain a desired result could lead to death, personal injury, or severe physical or environmental damage.
- 9.7 U.S. Government Use. Any software that is made available to the United States Government under these Terms and Conditions is classified as "restricted computer software" as defined in clause 52.227-19 of the FAR. The United States Government's rights to the software are as provided in clause 52.227-19 of the FAR.
- 9.8 Notices. Notices required by AppleCare Technical Support Services shall be sent by registered or certified mail, or commercial courier service, to Apple, at: Apple Computer, Inc., 2323 Ridgepoint Dr., M/S 212-PRO, P.O. Box 149125, Austin, TX 78714 or via email at admin@spmail.info.apple.com, or shall be sent by registered or certified mail, or commercial courier service to Customer at the address set forth in Apple's invoice. Such notice shall be deemed given: three (3) business days after the date of mailing if sent by certified or registered mail; or one (1) business day after the date of deposit with a commercial courier service offering next business day service with confirmation of delivery; or one (1) business day after confirmation of successful transmission if sent by electronic mail.
- 9.9 Export. Customer may not use or otherwise export or re-export the AppleCare Technical Support Services except as authorized by United States law and the laws of the jurisdiction in which the AppleCare Technical Support Services were obtained.
- 9.10 Additional Legal Rights. These Terms and Conditions afford Customer specific legal rights. Customer may have additional legal rights that vary from jurisdiction to jurisdiction.
- 9.11 Governing Law. The laws of the State of California shall govern the provision of AppleCare Technical Support Services, except with regard to its conflict of laws provisions. If the law of any state or province where AppleCare Technical Support Services is purchased is inconsistent with these terms, the laws of that state or province shall govern.
- 9.12 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.
- 9.13 Data Protection. In providing Services to Customers, Apple may collect and process data on behalf of Customers, including transferring data to affiliated companies or service providers located in the EU as well as in India, Japan, Canada or the USA, where data protection laws may not be as comprehensive as within the Customer's country of residence. Apple will implement technical and organizational security measures aimed at protecting the data against unauthorized access or disclosure as well as unlawful destruction. Customers will be responsible for the instructions they give to Apple regarding the processing of data, and Apple will act on those instructions as reasonably necessary for the performance of the service and support obligations. Customers should contact Apple at the email address or telephone numbers provided by Apple if they do have questions or do not consent to their data being processed in this way.
- 9.14 Order of Precedence. If any inconsistencies or conflicts arise between these Terms and Conditions, Online Terms and Conditions, and any Service Plan, the following order of precedence shall apply in order of priority a. Terms and Conditions; b. Service Plans; c. Online .
- 9.15 Complete Agreement. These Terms and Conditions including any additional terms referenced herein constitute the entire agreement between Apple and Customer with regard to AppleCare Technical Support Services and supersedes all prior negotiations, agreements, and understandings with respect to the subject matter hereof, and no addition to or deletion from or modification of any of the provisions hereto shall be binding upon Apple unless made in writing and signed by an authorized representative of Apple. Any term or condition on any order or other document submitted by Customer shall be of no force or effect whatsoever, and is specifically rejected.

