

**PLEASE SCROLL DOWN AND READ ALL OF THE FOLLOWING TERMS AND CONDITIONS OF THE OS X BETA SEED AND CONFIDENTIALITY AGREEMENT ("AGREEMENT") CAREFULLY. IF YOU AGREE TO BE BOUND BY ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT, CLICK ON THE "ACCEPT" BUTTON. IF YOU DO NOT AGREE TO BE BOUND BY ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT, CLICK ON THE "DECLINE" BUTTON AND YOU WILL BE INELIGIBLE TO PARTICIPATE IN THE OS X BETA SEED PROGRAM.**

**OS X BETA SEED AND CONFIDENTIALITY AGREEMENT  
APPLE SOFTWARE ENGINEERING  
APPLE INC.**

**1. Participation in the OS X Beta Seed Program.** The purpose of the OS X Beta Seed Program ("**Seeding Program**") is to make alpha, beta, and other pre-release software, pre-release services, and related documentation, materials, and information (collectively, the "**Pre-Release Software**") available to Seeding Program participants from time to time 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 the Seeding Program is voluntary and does not create a legal partnership, agency, or employment relationship between you and Apple. You understand that your participation in the Seeding Program does not obligate Apple to provide you with any Pre-Release Software. Apple reserves the right to modify the terms, conditions, and policies of this Seeding Program at any time without notice, and to revoke your participation in this Seeding Program at any time.

You also certify that you are of the legal age of majority in the jurisdiction in which you reside (at least 18 years of age in many countries) and you represent that you are legally permitted to join the Seeding Program. This Agreement is void where prohibited by law and the right to become a Seeding Program participant is not granted in such jurisdictions. Unless otherwise agreed or permitted by Apple in writing, you cannot share or transfer any software or other materials you receive from Apple in connection with being a Seeding Program participant. The Apple ID and password you use to login as a Seeding Program participant cannot be shared in any way or with any one. You are responsible for maintaining the confidentiality of your Apple ID and password and for any activity in connection with your Seed account. Notwithstanding the foregoing restrictions in this Section 1, if you are the parent or legal guardian of individuals between the ages of 13 and the legal age of majority in the jurisdiction in which you reside, you may allow such individuals to share your Apple ID and password for their use in connection with the Seeding Program solely under your supervision and only in accordance with this Agreement. You are responsible for such individuals' compliance with and violations of this Agreement and any other Apple agreements.

**2. Access to Pre-Release Software; Seeding Tools; and Additional Terms.** You understand that Apple may make Pre-Release Software available to Seeding Program participants for downloading online through the Mac App Store and/or as otherwise provided through the Seeding Program (e.g., by manual download of a digital image). From time to time, Apple, at its option, may also provide you with software or services as part of the Seeding Program, including but not limited to scripts, code snippets, utilities, configuration profiles, sample code, troubleshooting applications and bug submission tools (“**Seeding Tools**”) as part of your participation in the Seeding Program. All use of such Pre-Release Software and Seeding Tools shall be pursuant to the terms and conditions of this Agreement and/or another license agreement accompanying such Pre-Release Software or Seeding Tools (collectively, “Pre-Release Software” and “Seeding Tools” shall be referred to as “**Apple Software**” for purposes of this Agreement).

If the Apple Software is accompanied by a separate license agreement, you agree that the license agreement accompanying such Apple Software, in addition to Sections 5 and 6 of this Agreement, shall govern your use of the Apple Software. Any inconsistencies between the provisions of the license agreement accompanying the Apple Software and Sections 5 and 6 of this Agreement shall be governed by this Agreement. If there is no license agreement accompanying the Apple Software, your use of the Apple Software will be subject to the provisions of this Agreement.

**3. License Grant and Restrictions.** Subject to your compliance with this Agreement, Apple hereby grants you a personal, limited license to use the Apple Software solely for testing and evaluation purposes and only in connection with this Seeding Program. Except as otherwise permitted under Section 15, this license does not grant you the right to use the Apple Software for any other purpose, or to disclose, reproduce, distribute, modify or create derivative works of the Apple Software. You agree not to decompile, reverse engineer, disassemble, decrypt, or otherwise attempt to derive the source code of any Apple Software (except as and only to the extent the foregoing restrictions are prohibited by applicable law, or to the extent as may be permitted by licensing terms governing use of open-sourced components included with any such Apple Software). Unless otherwise permitted under Section 15 below, you certify that the Apple Software will only be used for testing and evaluation purposes in connection with the Seeding Program, and will not be rented, sold, leased, sublicensed, assigned, distributed or otherwise transferred. Apple retains ownership of all Apple Software, and except as expressly set forth herein, no other rights or licenses are granted or to be implied under any Apple intellectual property.

**4. Feedback.** As part of the Seeding Program, Apple will provide you with the opportunity to submit bug reports, questionnaires, enhancement requests, issue reports and/or support information (collectively, “**Feedback**”) to Apple. Apple may request this information from you through the Seeding Tools as well

as by email, web questionnaires, bug forms, and other mechanisms. By agreeing to this Agreement, you agree that Apple may contact you from time to time about the Seeding Program, and you hereby consent to receive such communications. Except as otherwise set forth in Section 8, you agree that in the absence of a separate written agreement to the contrary, Apple will be free to use any Feedback you provide for any purpose.

**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, features, functionality, and screen shots), the Seeding Tools, and any other information disclosed by Apple to you in connection with the Seeding Program will be considered and referred to in this Agreement as “**Confidential Information.**” Information that otherwise would be deemed Confidential Information but (a) is generally and legitimately available to the public through no fault or breach of yours, (b) is generally made available to the public by Apple, (c) is independently developed by you without the use of any Confidential Information, (d) was rightfully obtained from a third party who had the right to transfer or disclose it to you without limitation, or (e) any third party software and/or documentation provided to you by Apple and accompanied by licensing terms that do not impose confidentiality obligations on the use or disclosure of such software and/or documentation will not be considered Confidential Information under this Agreement. All Confidential Information remains the sole property of Apple and you have no implied licenses or other rights in the Confidential Information not specified in this Agreement.

**6. Nonuse and Nondisclosure of Confidential Information.** Except as expressly permitted in this Section 6, you agree that you will not disclose, publish, or otherwise disseminate any Confidential Information to anyone other than individuals who are enrolled in the same individual seed as you, or as otherwise expressly permitted or agreed to in writing by Apple. You further agree to take reasonable precautions to prevent any unauthorized use, disclosure, publication, or dissemination of Confidential Information, including preventing access to or display of the Apple Software to third parties. You agree to accept Confidential Information for the sole purpose of effecting the permitted uses of the Apple Software as set forth in this Agreement. 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. 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 seek immediate injunctive relief to enforce obligations under this Agreement in addition to any other rights and remedies it may have.

**7. Precautions for the use of Pre-Release Software.** You understand that to participate in seeds of Pre-Release Software you may need to remove certain pre-loaded, commercial Apple software from your computer in order to load the

Pre-Release Software. You further understand that once you load such Pre-Release Software onto your computer, you may be unable to revert back to the pre-loaded, commercial release of the Apple software you were using prior to loading the Pre-Release Software or any earlier release of the Pre-Release Software. **YOU ACKNOWLEDGE THAT BY INSTALLING SUCH PRE-RELEASE SOFTWARE ON YOUR COMPUTERS, THESE COMPUTERS MAY NOT BE CAPABLE OF BEING RESTORED TO THEIR ORIGINAL CONDITION. APPLE SHALL NOT BE RESPONSIBLE FOR ANY COSTS, EXPENSES OR OTHER LIABILITIES YOU MAY INCUR AS A RESULT OF YOUR TESTING, INSTALLATION OR USE OF PRE-RELEASE SOFTWARE, INCLUDING BUT NOT LIMITED TO ANY DAMAGE TO ANY EQUIPMENT, SOFTWARE OR DATA.** In addition, the Pre-Release Software may contain errors or inaccuracies that could cause failures, corruption or loss of data and/or information from your computer and from peripherals (including, without limitation, servers and printers) connected thereto. **Apple strongly encourages you to back-up all data and information on your computer and any peripherals prior to your participation in such seeds. The Pre-Release Software is not intended for use, and should not be used, in production or business-critical systems.**

## **8. Consent to Collection and Use of Data.**

**8.1 Pre-Release Versions of OS X.** In order to test and improve Apple's products and services, and unless you opt out as set forth below, you acknowledge that Apple and its subsidiaries and agents will be collecting, using, storing, processing and analyzing (collectively, "**Collecting**") diagnostic, technical, usage, and/or related information from your computers that are running pre-release versions of OS X as part of this Seeding Program. This information will be Collected in a form that does not personally identify you and may be Collected from such computers at any time. The information that would be Collected includes, but is not limited to, general diagnostic and usage data, various unique system or hardware identifiers, information about your computer, system and application software, and peripherals, and, if Location Services is enabled, the real-time geographic location of your computer and location search queries. **By installing or using pre-release versions of OS X on your computer, you acknowledge and agree that Apple and its subsidiaries and agents have your permission to Collect all such information and use it as set forth above. If You do not agree to the foregoing, you may opt out by changing Your Diagnostics & Usage and/or Location Services settings in System Preferences on your computer.**

**8.2 Other Pre-Release Software and services.** In order to test and improve Apple's products and services, and only if you choose to install or use other Pre-Release Software or services provided as part of the Seeding Program, you acknowledge that Apple and its subsidiaries and agents may be Collecting diagnostic, technical, usage and related information from other Pre-Release Software or services and from your computer, peripherals or other hardware that

uses such Pre-Release Software. You should carefully review the release notes and other information disclosed to you by Apple as part of the Seeding Program prior to choosing whether or not to install or use any such other Pre-Release Software or services. **By installing or using such other Pre-Release Software or services, you acknowledge and agree that Apple and its subsidiaries and agents have your permission to Collect any and all such information and use it as set forth above.**

**8.3 System Logs and Diagnostic Files.** In addition, as part of your participation in the Seeding Program, you will have the option of manually attaching and/or using Apple's Seeding Tools to attach detailed hardware and/or system diagnostic files (e.g., kernel logs, Apple System Profile logs, hang logs, crash logs, spin logs, install logs, application logs, etc.) from your computer ("**System Logs**") to send to Apple. Such System Logs may include personally identifiable information, including, without limitation, your account name, information regarding your contacts, calendar events, and email correspondence. **Providing these System Logs is voluntary, but if you do provide them to Apple, then you acknowledge that Apple may use them for Apple's diagnostic purposes and to improve the Seeding Program and Apple's products and services.**

**8.4 Privacy Policy.** Data collected pursuant to this Section 8 will be treated in accordance with Apple's Privacy Policy, which is incorporated by reference into this Agreement and which can be viewed at: <http://www.apple.com/legal/privacy>.

**9. No Support and Maintenance; Future Products.** During your participation in the Seeding Program or in a particular seed, Apple is not obligated to provide you with any maintenance, technical or other support for the Pre-Release Software. If, at Apple's option, such support is provided, it will be provided in addition to your normal warranty coverage for your computer. You agree to abide by any support rules and policies that Apple provides to you in order to receive such support. You acknowledge that Apple has no express or implied obligation to announce or make available a commercial version of the Pre-Release Software to anyone in the future. Should a commercial version be made available, it may have features or functionality that are different from those found in the Pre-Release Software licensed hereunder.

**10. Discussion Forums.** As part of the Seeding Program, you may have the ability to participate in discussion forums provided by Apple about the Pre-Release Software and other Confidential Information that Apple may make available to you. For purposes of such discussion forums, Apple is providing a limited exception to Section 6 by allowing you to discuss certain Apple Confidential Information received by you in connection with a particular seed with other seed participants who are in the same seed as you in the Apple designated discussion forum for such seed, and only within this discussion forum. Except for

the limited purpose of discussions with other seed participants within such forums, you acknowledge and agree that this Agreement does not grant you the right to copy, reproduce, publish, blog, disclose, transmit, or otherwise disseminate any Apple Confidential Information.

**11. No Warranty.** The Apple Software provided hereunder may be designated as alpha, beta, development, pre-release, untested, or not fully tested versions. The Apple Software may be incomplete and may contain errors or inaccuracies that could cause failures, corruption and/or loss of data or information. You expressly acknowledge and agree that, to the extent permitted by applicable law, all use of the Apple Software is at your sole risk and that the entire risk as to satisfactory quality, performance accuracy and effort is with you. APPLE IS PROVIDING ALL CONFIDENTIAL INFORMATION, INCLUDING THE PRE-RELEASE SOFTWARE AND SEEDING TOOLS, TO YOU SOLELY ON AN "AS IS" BASIS AND WITHOUT ANY WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, ACCURACY, COMPLETENESS, PERFORMANCE, AND FITNESS FOR A PARTICULAR PURPOSE. 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 access to the Pre-Release Software in the future.

**12. Disclaimer of Liability.** YOU ASSUME ALL RISKS AND ALL COSTS ASSOCIATED WITH TESTING, INSTALLATION, OR USE OF THE PRE-RELEASE SOFTWARE AND SEEDING TOOLS PROVIDED UNDER THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY BACK-UP EXPENSES, COSTS INCURRED FOR THE USE OF THE PRE-RELEASE SOFTWARE ON YOUR COMPUTER AND PERIPHERALS, AND ANY DAMAGE TO ANY EQUIPMENT, SOFTWARE, INFORMATION OR DATA. TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW, IN NO EVENT WILL APPLE BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, WHETHER ARISING IN TORT (INCLUDING NEGLIGENCE), CONTRACT OR OTHERWISE, ARISING OUT OF OR RELATED TO THIS AGREEMENT, INCLUDING ANY LIABILITY THAT STEMS FROM ANY USE OF THE PRE-RELEASE SOFTWARE ON YOUR COMPUTER AND/OR ANY PERIPHERALS CONNECTED THERETO, AND/OR FROM ANY OTHER CONFIDENTIAL INFORMATION, AND/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.

**13. Term and Termination.** This Agreement will continue in effect until terminated in accordance with this Section 13. You may terminate this Agreement or an individual seeding project at any time, for any reason, but only by returning or destroying any Confidential Information that is in your possession or control (including, without limitation, any Pre-Release Software); provided however that if you are unable to purge certain Pre-Release Software from your computer, then you agree that you will continue to hold the Pre-Release Software as 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, cease all use of, and/or destroy the Pre-Release Software and all other Confidential Information as provided in this Section. Following termination of this Agreement or an individual seeding project for any reason, the restrictions of Section 3, 4-8, the last two sentences of Section 9, and 11-20, inclusive, will continue to bind the parties.

**14. No Export.** You agree that you will not export or re-export any of the Pre-Release Software or Confidential Information received from Apple except as authorized by United States law and the laws of the jurisdiction in which the Apple Software was obtained. In particular, but without limitation, the Apple Software may not be exported or re-exported (a) into any U.S. embargoed countries 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 Apple Software, you represent and warrant that you are not located in any such country or on any such list. You also agree that you will not use the Apple Software for any purposes prohibited by United States law, including, without limitation, the development, design, manufacture or production of missiles, nuclear, chemical or biological weapons. You certify that this Apple Software will only be used for evaluation and testing purposes, and will not be rented, sold, leased, sublicensed, assigned, or otherwise transferred. Further, you certify that you will not transfer or export any product, process or service that is a direct product of this Apple Software.

**15. Third Party Software & Information.** Portions of the Apple Software may include third party software and other copyrighted material. Acknowledgements, licensing terms, and disclaimers for such material are contained in the Apple Software, and your use of such material is governed by such respective terms. Mention of third parties and third party products in any materials, advertising, promotions or coupons provided to Seeding Program participants 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, and Apple shall have 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.

**16. 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.

**17. 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.

Notwithstanding the foregoing, if you are an agency, instrumentality or department of the federal government of the United States, then this Agreement shall be governed in accordance with the laws of the United States of America, and in the absence of applicable federal law, the laws of the State of California will apply. Further, and notwithstanding anything to the contrary in this Agreement, all claims, demands, complaints and disputes will be subject to the Contract Disputes Act (41 U.S.C. §§601-613), the Tucker Act (28 U.S.C. § 1346(a) and § 1491), or the Federal Tort Claims Act (28 U.S.C. §§ 1346(b), 2401-2402, 2671-2672, 2674-2680), as applicable, or other applicable governing authority.

If you (as an entity entering into this Agreement) are a U.S. public and accredited educational institution, then (a) this Agreement will be governed and construed in accordance with the laws of the state (within the U.S.) in which your educational institution is domiciled, except that body of state law concerning conflicts of law; and (b) any litigation or other dispute resolution between you and Apple arising out of or relating to this Agreement, the Apple Software, or your relationship with Apple will take place in federal court within the Northern District of California, and you and Apple hereby consent to the personal jurisdiction of and exclusive venue of such District unless such consent is expressly prohibited by the laws of the state in which your educational institution is domiciled.

This Agreement shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded.



**18. Government End Users.** The Apple Software and related documentation are “Commercial Items”, as that term is defined at 48 C.F.R. §2.101, consisting of “Commercial Computer Software” and “Commercial Computer Software Documentation”, as such terms are used in 48 C.F.R. §12.212 or 48 C.F.R. §227.7202, as applicable. Consistent with 48 C.F.R. §12.212 or 48 C.F.R. §227.7202-1 through 227.7202-4, as applicable, the Commercial Computer Software and Commercial Computer Software Documentation are being licensed to U.S. Government end users (a) only as Commercial Items and (b) with only those rights as are granted to all other end users pursuant to the terms and conditions herein. Unpublished-rights reserved under the copyright laws of the United States.

**19. 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.

**20. Severability; Complete Understanding.** If any provision of this Agreement is found to be unenforceable or invalid, that provision shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and enforceable. This Agreement, including any appendices made effective pursuant to this Agreement and any additional licenses accompanying the Apple 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 Apple Software will be governed by the license agreement accompanying the Apple 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.