

**Apple Computer, Inc.**  
**iTunes 7 and QuickTime 7 Bundling Agreement**  
**(Software CD/DVD Bundles)**

**APPLE COMPUTER, INC.**  
Software Licensing Department  
12545 Riata Vista Circle  
MS 198-3SWL  
Austin, TX 78727  
E-Mail Address:  
sw.license@apple.com

Licensee (Company Name): \_\_\_\_\_  
(Must be the copyright owner of products listed in Exhibit A, paragraph 2)

Individual to Contact: \_\_\_\_\_

Street Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_

Zip/Postal Code: \_\_\_\_\_ Country: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Fax Number: \_\_\_\_\_

E-Mail Address: (Required) \_\_\_\_\_

Licensee's Site: \_\_\_\_\_  
(provide name and address of Licensee's page/URL on the World Wide Web, if applicable)

**Agreement**

Apple Computer, Inc. ("Apple") and Licensee agree that the terms and conditions of this Agreement shall govern Licensee's use and distribution of the iTunes and QuickTime Software, as defined below.

**1. Definitions**

1.1 "Bundle" means the bundle(s) identified in Exhibit A distributed by or on behalf of Licensee.

1.2 "Effective Date" means the date on which Apple executed this Agreement as set forth on the signature page.

- 1.3 “Software” means the iTunes and QuickTime Software identified in Exhibit A, and any updates thereto provided by Apple to Licensee pursuant to this Agreement.

**2. License.**

Subject to Licensee’s compliance with all the terms and conditions of this Agreement, Apple grants Licensee a nontransferable, non-exclusive, paid-up and royalty-free license to reproduce and distribute, on CD ROM or DVD only, the Software solely as part of the Bundle. This license is expressly conditioned upon Licensee’s compliance with the following requirements:

- (a) Licensee may market the Software solely bundled with the Bundle(s) identified in Exhibit A, for a combined single price in a single package, and may not set or imply a dollar value for the Software.
- (b) Licensee may not modify or alter the Software, or the Apple End User Agreement that accompanies the Software. The Software must be installed as part of the default installation of the Bundle without any additional action or selection required by the End User, using the installer provided by Apple. Installation must include all files as installed by such installer and must ensure that the iTunes alias and the QuickTime player alias appear on the desktop.
- (c) If Licensee distributes iTunes for Mac OS X pursuant to this Agreement, Licensee must also distribute QuickTime 7 for Mac OS X in each Bundle.
- (d) End Users must be required to click on the acceptance button in Apple's End User Software License Agreement before they may access the Software.
- (e) Licensee may not make or permit any third party to make any representation or warranty relating to the Software that is not expressly made by Apple in writing.
- (f) Licensee may use third party distributors to distribute the Bundle only in Licensee’s final product packaging and provided such third parties are bound by written terms no less restrictive than the limitations in this Agreement.
- (g) Licensee agrees not to modify, reverse engineer, reverse compile, or otherwise disassemble the Software. Licensee may not use, reproduce, sublicense, display, distribute or dispose of the Software, in whole or in part, other than as expressly permitted under this Agreement. Licensee further agrees that it will not display or distribute any screen shots of the iTunes Music Store without Apple's written consent.

- (h) At its option, Apple may authorize Licensee by notice to distribute a newer version of the Software pursuant to the terms of this Agreement. Apple reserves the right to license any new version of the Apple Software separately and subject to different terms and conditions. In the event that Apple makes a newer version available pursuant to the terms of this Agreement, upon written request from Apple, Licensee agrees that as soon as commercially practicable, but in no event more than 30 days after receipt of such request, Licensee will stop distributing the older version.
- (i) Licensee will ensure that all products with which the Software is distributed are compatible with the Software.

### **3. Ownership of Software.**

Licensee acknowledges that the Software is proprietary to Apple and that Apple retains all right, title, and interest in the Software, including without limitation all copyrights, patents, trademarks and other proprietary rights.

### **4. Trademarks.**

- 4.1 Licensee agrees it will use the QuickTime logo and the iTunes logo (i) on Licensee Product(s) manuals, (ii) on physical software media (e.g., printed on the CD or DVD face), and in a visible position on both (iii) the outside of the media packaging (e.g., outside of jewel case or sleeve) and (iv) the outside of the overall packaging (e.g., shelf box, book cover or marketing folder) of Licensee Product(s), using the logo artwork provided by Apple and in accordance with the logo usage guidelines provided by Apple. Apple grants Licensee a non-exclusive license to use Apple's "iTunes" logo and "QuickTime" logo for the above purposes and in connection with Licensee's marketing and distribution of the Software, provided all use of such logos is in accordance with Apple's then-current third party usage guidelines and quality standards available at:

<http://developer.apple.com/mkt/swl/quicktime.html>

- 4.2 Licensee agrees that it has no other rights to the QuickTime Logo and/or the iTunes logo, and that all use of the QuickTime logo and/or the iTunes logo shall inure to the benefit of Apple.
- 4.3 Upon Apple's request, Licensee shall provide samples of any Licensee materials using Apple logos pursuant to this Agreement.
- 4.4 Apple may replace the iTunes logo and/or the QuickTime logo with a new logo at any time. In the event that Apple notifies Licensee of a replacement logo, Licensee will promptly cease using the older version of the logo and commence using the new logo pursuant to this Agreement, except that Licensee may

continue distributing then-existing inventory of the Bundle for six months from the date of such notice, unless otherwise prohibited pursuant to this Agreement.

## **5. Provision of Samples and Distribution Reports.**

5.1 **Samples.** Upon written request from Apple, Licensee will provide Apple with a sample of each requested Licensee Product with which the Software is distributed. Samples submitted must be in the full packaging as received by the End User.

5.2 **Distribution Reports.** During the term of this Agreement, Licensee agrees to provide to Apple an annual report (the “Distribution Report”) stating the number of copies of each Bundle in which the Software was included that were distributed during the previous calendar year. Licensee shall submit the Distribution Report electronically to [sw.license@apple.com](mailto:sw.license@apple.com) within thirty (30) days of the close of each calendar year, and Licensee shall maintain such records for one (1) year after the last copy of the Software has been distributed.

## **6. Customer Support.**

Licensee shall not be responsible for end user support for the Software. Apple shall provide support solely to the extent provided by Apple’s then-current support policies.

## **7. Term and Termination.**

7.1 This Agreement begins on the Effective Date and will continue until terminated pursuant to this Section 7.

7.2 Apple may immediately terminate this Agreement if Licensee fails to cure its breach of this Agreement within thirty (30) days of notice by Apple. This Agreement will automatically terminate if Licensee becomes insolvent, has a receiver appointed, or if Licensee makes an assignment for the benefit of creditors, or becomes the subject of any proceeding under any bankruptcy, insolvency, or debtor’s relief law.

7.3 Either party may terminate this Agreement upon thirty days notice, with or without cause.

7.4 Apple may terminate this Agreement immediately upon notice in the event that a third party files a lawsuit or other legal proceeding arising in whole or in part out of Licensee's distribution of the Software or in the event that Licensee breaches Sections 2(a), (b), (d), (e) or (i).

7.5 Upon expiration or termination, Licensee may continue to distribute its then-current inventory of Software provided such distribution is in compliance with the terms of this Agreement, except that if Apple terminates this Agreement for breach or terminates pursuant to Section 7.4, Licensee shall immediately cease

distributing the Software. Sections 1, 2(e), 2(g), 2(h), 3, 4.2, 6, 7.5, 7.6, 7.7, 8, 9, 10, 11 and 12 will survive any expiration or termination of this Agreement.

7.6 The rights of the parties under this clause are in addition to any other rights and remedies provided by law or under this Agreement.

7.7 APPLE SHALL NOT BE LIABLE FOR DAMAGES OR COSTS OF ANY NATURE ARISING FROM THE EXPIRATION OR TERMINATION OF THIS AGREEMENT IN ACCORDANCE WITH ITS TERMS.

## **8. Disclaimer of Warranties and Limitation of Liabilities.**

8.1 The Software, the iTunes logo and the QuickTime logo are licensed to Licensee on an "AS IS" basis. APPLE MAKES NO WARRANTIES, EITHER EXPRESS OR IMPLIED, REGARDING THE SOFTWARE OR ANY APPLE LOGOS LICENSED HEREUNDER, INCLUDING WITHOUT LIMITATION, WARRANTIES WITH RESPECT TO MERCHANTABILITY, NONINFRINGEMENT OR FITNESS FOR ANY PARTICULAR PURPOSE.

8.2 IN NO EVENT SHALL APPLE BE LIABLE FOR INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES RELATING TO THIS AGREEMENT, THE SOFTWARE OR ANY APPLE LOGOS LICENSED HEREUNDER, WHETHER UNDER A THEORY OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EVEN IF APPLE HAS BEEN MADE AWARE OF THE POSSIBILITY OF SUCH DAMAGES. LICENSEE ACKNOWLEDGES THAT THIS ALLOCATION OF RISKS IS A PART OF THE BARGAIN OF THIS AGREEMENT. Apple's total liability under this Agreement, however arising, shall not exceed five hundred dollars.

## **9. Indemnification**

9.1 Apple has no obligation to indemnify, defend or hold Licensee harmless from and against any claim that the Software and/or logos licensed hereunder infringe any third party patent, copyright, trademark or other intellectual property right. Licensee will promptly notify Apple of any such claim.

9.2 Licensee will indemnify, defend and hold Apple harmless from any and all claims, damages, losses, liabilities, costs and expenses (including reasonable fees of attorneys and other professionals) arising out of or in connection with Licensee's and its distributors' distribution of the Software, unless the claim arises solely out of the Software as originally provided by Apple to Licensee. The foregoing exception will not apply to a claim arising out of the combination of the Software with any other software or hardware. Apple will promptly notify Licensee of any such claim and will provide reasonable cooperation and assistance in connection with such claims.

## **10. Export**

Licensee may not use or otherwise export or reexport the Apple Software 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, Licensee represents and warrants that Licensee is not located in any such country or on any such list. Licensee also agrees that Licensee will not use the Apple Software 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.

## **11. Notices**

Any notice required under this Agreement will be deemed given: (i) when delivered personally; (ii) by facsimile; (iii) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid; (iv) via electronic mail; or (v) as otherwise expressly provided in this Agreement. All communications will be sent to the parties' physical or electronic addresses noted on the first page of this Agreement. Licensee shall inform Apple in writing of any change in Licensee's physical or electronic address.

## **12. General.**

12.1 Publicity. Licensee agrees that it will not make any press releases or public announcements referring to this Agreement without Apple's prior consent.

12.2 No Waiver. Neither party's failure or delay in exercising any of its rights will constitute a waiver of such rights unless expressly waived in writing.

12.3 Relationship of the Parties. Neither party may represent or bind the other party in any way and nothing stated in this Agreement will be construed as creating the relationships of joint venturers, partners, employer and employee, franchisor and franchisee, master and servant, or principal and agent.

12.4 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. Any litigation or other dispute resolution between the parties relating to this Agreement will take place in the Northern District of California. The parties consent to the personal jurisdiction of, and venue in, the state and federal courts within that District.

- 12.5 Assignment. This Agreement will be binding on the assigns, heirs and successors (whether through merger or otherwise) of the parties, except that it may not be assigned by Licensee by any means, including without limitation, by operation of law or merger. Any attempted assignment of this Agreement in violation of this section will be void.
- 12.6 Severability. If for any reason a court of competent jurisdiction finds any provision of this Agreement, or portion thereof, to be unenforceable, that provision of the Agreement will be enforced to the maximum extent permissible so as to effect the economic benefits and intent of the parties, and the remainder of this Agreement will continue in full force and effect.
- 12.7 Complete Understanding. This Agreement, including all Exhibits attached, constitutes the entire Agreement between the parties concerning the use and distribution of the Software. Any waiver or amendment of any provision of this Agreement will be effective only if in writing and signed by authorized representatives of both parties.

LICENSEE:

APPLE:

By: \_\_\_\_\_  
(signature)

By: \_\_\_\_\_  
(signature)

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: Administrator

Date: \_\_\_\_\_

Date: \_\_\_\_\_  
("Effective Date")

## Exhibit A

### THIS EXHIBIT MUST BE COMPLETED BY LICENSEE

Please provide the following information separately for each Bundle to be covered by this Agreement (attach additional copies of this page if necessary) prior to submission to Apple for signature. In the future, you may request that Bundles be added to this license using the Supplement to Exhibit A form available at:  
<http://developer.apple.com/mkt/swl/quicktime.html>

1. Check below each Apple Software product that you will distribute with the Bundle:

- iTunes 7 for MacOS X and QuickTime 7 for MacOS X (must include both)**
- iTunes 7 for Windows and QuickTime 7 for Windows (dual installer version which installs both applications)**

2. Identify the product(s) to be included with the Apple Software in the Bundle, including, the title or product name, version or model number, and a description of the product:

Title:

Version Number:

Description:

3. Anticipated release date of the Bundle:

4. Licensee Contact for the Bundle (include name, phone, fax, email address and Site URL):

5. Check the category that best describes the Bundle:

- Music Enhanced CD/DVD
- Game/Entertainment Software
- Business Promotional Software
- Business Training Software
- Education Software - PreK
- Education Software - K12
- Education Software - Higher Education
- Education Software - Adult Education
- Education Software - Medical /Veterinarian
- Developer Tools Software
- Content Creation Tool Software (includes: Digital Imaging; Editing, Authoring, and Desktop Publishing)
- Other