



Self-Servicing Account Agreement Maricopa County Community College District

This Self-Servicing Account Agreement is made between Apple Computer, Inc., a California corporation at 1 Infinite Loop, Cupertino, California 95014, ("Apple") and MCCCD, a corporation, federal or state agency, or educational institution located at 2411 W. 14th Street, Tempe, AZ 85281-6942 ("Self-Servicer").

1. Definitions

When used in this Agreement, the following terms have the meanings specified below:

- A. "Agreement" means collectively this Self-Servicing Account Agreement, any amendments or additions, any documents or materials incorporated by reference, and the Apple Service Programs Manual.
B. "Apple Marks" means trademarks, service marks, logos and product names owned by or licensed to Apple, and used on and in connection with Authorized Apple Price Lists.
C. "Apple Service Price List" means a then-current list of prices for Self-Servicer's purchase of Service Stock and Service Training & Tools from Apple.
D. "Apple Service Programs Manual" means the then-current information made available to Self-Servicer, which describes Apple's policies and procedures for providing customer service and support, and which are incorporated by reference to this Agreement and which Apple may update periodically.
E. "Authorized Service Location" means the location(s) where Apple authorizes Self-Servicer, under this Agreement, to service Self-Servicer's own Apple Product.
F. "Confidential Information" means confidential information disclosed by either party to the other, including but not limited to the terms and conditions of this Agreement, any non-public information relating to the other party's research, development, proprietary technology, product and marketing plans, finances, personnel, business opportunities, and pricing, but does not include information that becomes public knowledge except to the extent made public in violation of this Agreement.
G. "IUFU" ("Inoperable Upon First Use") means a Product that does not function or operate upon first use.
H. "Products" means Apple products owned by Self-Servicer and that Self-Servicer is authorized by Apple to repair.
I. "Service Products" means Service Stock and Service Training & Tools.
J. "Service Stock" means new, used, remanufactured, or refurbished modules, replacement parts and piece parts that Apple sells to Self-Servicer for the sole purpose of repairing Products owned by Self-Servicer.
K. "Service Training & Tools" means Product service documentation, tools, diagnostics and training materials.

2. Appointment

- A. Apple appoints Self-Servicer as a limited and nonexclusive Apple Authorized Self-Servicer for the sole purpose of performing service on certain Apple Products that Self-Servicer owns, as specified in the applicable portions of the Apple Service Programs Manual for the service of Products, and Self-Servicer accepts this appointment.
B. Self-Servicer's appointment is to perform service on the Products that the Self-Servicer owns in the United States of America only; it shall neither export nor sell Service Stock for export, either directly or indirectly.

3. Scope of Authorization

- A. Upon Apple's confirmation that Self-Servicer will utilize certified technicians in accordance with the Apple Service Programs Manual, Self-Servicer is authorized to purchase Service Stock for the sole purpose of repairing Products owned by Self-Servicer, as is permitted by the Apple Service Programs Manual. Apple reserves the right to remove or add Service Products from the Apple Service Price List and change the Apple Service Programs Manual and scope of Self-Servicer's authorization at any time and without notice. Self-Servicer will have a commercially reasonable period of time to implement such changes by Apple, not to exceed thirty (30) days.
B. Self-Servicer will not resell or otherwise transfer Service Stock to third parties. Self-Servicer will only use Service Stock purchased from Apple, except where Apple authorizes other purchases. Self-Servicer will not utilize used, remanufactured or refurbished Service Products obtained from unauthorized sources to perform repairs, except where Apple authorizes other parts to be used in Covered Repairs.

4. Self-Servicer's Obligations

- A. Without limitation, Self-Servicer will: (i) adhere to all requirements of the Apple Service Programs Manual, including those requiring the use of certified technicians; (ii) repair Products presented for repair in accordance with all terms and conditions applicable to its status as a Self-Servicer; (iii) purchase and keep current at all times an inventory of Service Stock that is reasonably sufficient to meet Self-Servicer's obligations under this Agreement; (iv) obtain all required certifications, registrations and licenses, and comply with federal, state and local laws and regulations.
B. Self-Servicer will maintain an Internet email address, which it will provide to Apple, and have Internet access at all times. Self-Servicer will access Apple's service web sites at least weekly to ascertain whether Apple has modified the Apple Service Programs Manual.
C. Self-Servicer will notify Apple promptly in writing of any suspected Product or Service Product defect or safety issue.
D. Self-Servicer will pay any applicable sales or use taxes, duties and other imposts due on account of purchases under this Agreement.

OFFICE OF GENERAL COUNSEL RECEIVED

JAN 30 2006

5. Purchases from Apple

A. Any order placed with Apple is subject to acceptance by Apple, and Apple may decline any order, in whole or in part, for any reason. Apple may cancel any accepted order prior to shipment. Unless Service Provider notifies Apple otherwise, Apple may make partial shipments of Self-Servicer's orders. Apple will not be liable for any failure to ship complete orders. Apple will allocate its available inventory and make deliveries (including partial shipments) in its sole discretion and without liability to Self-Servicer. Self-Servicer acknowledges that Apple may choose to allocate available inventory to or among Apple's own retail and web-based stores, education customers, sales territories, other service providers, or otherwise, before Self-Servicer, and that there may be delays in Apple's fulfillment of Self-Servicer's orders. Self-Servicer will be invoiced separately for each partial shipment and will pay each invoice when due, without regard to subsequent deliveries.

B. The price for Service Products purchased directly from Apple will be the price on the Apple Service Price List on the date that Apple ships the Products. Self-Servicer will be invoiced upon shipment of Product and, provided Self-Servicer is qualified for credit from Apple, payment of such invoice will be due no later than thirty (30) days from the date of invoice. Apple reserves the right to change the Apple Service Price List and Self-Servicer's credit terms at any time.

C. Self-Servicer acknowledges that Apple has set its prices and entered into this Agreement in reliance upon the provisions of this Agreement, particularly including (but not limited to) Sections 12 and 14A, and that the provisions of this Agreement form an essential basis of the bargain between the parties.

D. Title and risk of loss to all Service Products will pass to Self-Servicer upon shipment from Apple's shipping location. For Service Products shipped pursuant to Apple's standard practices in all but the last week of every Apple fiscal year during the term of this Agreement, Apple will issue credits or replace Service Products returned due to damage in transit or that are lost in transit. For Service Products shipped pursuant to Apple's standard practices in the last week of every Apple fiscal quarter during the term of this Agreement, Apple will not issue credits or replace Service Products returned due to damage in transit or that are lost in transit. Instead, Apple will provide third-party insurance for damaged or lost Service Products with Self-Servicer named as the loss payee. When not shipping Service Products pursuant to Apple's standard practices but instead shipping via a carrier selected by Self-Servicer, Apple will not issue credits or replace Service Products returned due to damage in transit or that are lost in transit.

6. Confidentiality

To the extent permitted by law, neither party will use the other's Confidential Information except as required to achieve the objectives of this Agreement, nor will disclose such Confidential Information except to employees, agents or contractors who have a need to know or as required by law. Neither party will make any disclosure or statement of Confidential Information in connection with this Agreement or its subject matter without the other's prior written consent or as required by law.

7. Limited Warranty to Self-Servicer

A. Apple warrants to Self-Servicer that Service Products shipped by Apple will: (i) conform to their general descriptions on the Apple Service Price List and (ii) will not be Inoperable Upon First Use. These warranties are nontransferable and void if the product has been modified, abused or subjected to unusual physical or electrical stress. Self-Servicer's sole and exclusive remedy for any breach of this warranty will be replacement of the nonconforming service part upon its return to Apple.

B. APPLE MAKES NO OTHER WARRANTY TO SELF-SERVICER, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICE PRODUCTS. APPLE SPECIFICALLY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

8. Records, Inspections and Reporting

A. Unless otherwise instructed by Apple, Self-Servicer will report to Apple any information that Apple may reasonably request, in formats prescribed by Apple. Apple will have the right to inspect Self-Servicer's Authorized Service Locations and other related facilities at any time during regular business hours for purposes of verifying Self-Servicer's compliance with the terms of this Agreement and Apple Service Programs Manual.

B. Self-Servicer will maintain, at the applicable Authorized Service Location, its records, contracts, accounts and written and signed work orders relating to the service of Products for at least five (5) years. Upon Apple's reasonable request, during the term of this Agreement and for five (5) years after its expiration or termination, Self-Servicer will promptly provide copies of any requested records, financial statements and documents to Apple.

C. Self-Servicer will provide Apple with state sales tax exemption certificates and any other documentation requested by taxing authorities to substantiate any claim of exemption from taxes, duties, or imposts.

9. Proprietary Rights

A. Apple Marks

Service Provider is not permitted to use the Apple Marks in furtherance of Service Provider's appointment. Service Provider shall not use or allow others to use any of the Apple Marks on any promotional merchandise such as key chains, mugs, or T-shirts unless such use is pursuant to Apple's written merchandising policies. No other rights to any Apple property or right is granted. Service Provider agrees that Apple owns all rights in the Apple Marks, and that any use by Service Provider shall inure to the benefit of Apple. Except as expressly permitted hereunder, Service Provider agrees not to use any Apple trademark, service mark, logo, trade dress, design, "look and feel" (e.g., the design and layout of Apple's retail stores or websites, or the name under which Service Provider does business), in any manner whatsoever, or act in any manner that implies an endorsement of Service Provider by Apple. Service Provider will not remove, obfuscate or add any mark to any materials provided by Apple.

B. Software Rights

Self-Servicer will not separate any software or its end-user license agreement from Service Products. Self-Servicer will not disassemble, decompile, reverse engineer, copy, modify, create derivative works, or otherwise change such software or its form. Self-Servicer may distribute software that is incorporated in or packaged with Service Products solely in connection with the authorized repair of Products owned by Self-Servicer, and will have no other rights with respect to such software.

10. Insurance

Public schools and/or school districts, federal and state agencies with an approved self-insurance program in effect have fulfilled Apple's insurance requirements. For all other Authorized Service Locations, Self-Servicer will have a general liability insurance policy, including coverage for premises liability, products, and completed operations. This policy will have limits of not less than one million dollars (\$1,000,000) per incident for bodily, personal injury or property damage, or one million dollars (\$1,000,000) in a combined single limit, and a Certificate of Insurance will be made available to Apple at its request.

11. Indemnity

A. If Self-Servicer notifies Apple in writing and gives Apple sole control over the defense and all related settlement negotiations, Apple will defend, hold harmless and indemnify Self-Servicer against any damages finally awarded or amounts paid in settlement as a result of any claim or threat of claim brought by a third party against Self-Servicer to the extent based on an allegation that: (i) the marketing or use of any Service Product sold by Apple to Self-Servicer or software licensed by Apple to a customer infringes any U.S. patent, copyright, trademark, trade secret or other proprietary right of a third party, or (ii) a defective Apple Service Product that directly caused death or personal injury or damage to tangible property; provided that Self-Servicer did not alter, modify, or otherwise change the Service Product or software that gave rise to such claim.

B. Self-Servicer will defend, hold harmless and indemnify Apple against any claim or threat of claim brought by a third party against Apple arising out of the acts or omissions of Self-Servicer, its employees or agents, excluding acts or omissions expressly required or prescribed by this Agreement.

C. If either party seeks indemnification provided for in this Section, each party seeking indemnification will cooperate with and provide reasonable assistance in the defense or settlement of any claim or legal proceeding. Self-Servicer and Apple will not make public any terms, or the mere existence, of any settlements.

12. Limitation of Liability and Remedies

The total liability of either party to the other on all claims of any kind under or related to this Agreement, whether in contract, warranty, tort, strict liability, statute or otherwise, shall be limited to one hundred thousand dollars (\$100,000). IN NO EVENT, WHETHER AS A RESULT OF BREACH OF CONTRACT, WARRANTY, TORT, STRICT LIABILITY, STATUTE OR OTHERWISE, SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL OR INDIRECT DAMAGES (INCLUDING LOST BUSINESS PROFITS, LOSS OF DATA, INTERRUPTION IN USE, OR UNAVAILABILITY OF DATA), OR FOR PUNITIVE OR EXEMPLARY DAMAGES. The limitation in the preceding two sentences shall not apply to (i) indemnity claims under Section 11, (ii) any claims by Apple against Self-Servicer for violation of intellectual property rights, including claims under Section 9, or (iii) the amount due from Self-Servicer to Apple for products or services purchased from Apple. The remedies set forth in this Agreement will be Self-Servicer's sole and exclusive remedies for any claim against Apple under or related to this Agreement. Self-Servicer waives and relinquishes any rights or claims under franchise, dealership, or other statutes, or at common law, that would or might arise out of Apple's termination of this Agreement, Apple's refusal to accept Self-Servicer's order, or Apple's refusal to renew or extend the term of this Agreement.

13. Term and Termination

A. Term

Unless terminated earlier as provided in this Agreement, the initial term of this Agreement shall be from the date Apple signs it until June 30, 2006; and unless either party provides written notice to the contrary to the other party not less than thirty (30) days before the expiration of any renewal term, this Agreement shall be renewed for additional one (1) year periods.

B. Termination

This Agreement may be terminated as follows: (i) either party may terminate this Agreement at any time, with or without cause, on thirty (30) days written notice of termination to the other party; and (ii) Apple may terminate this Agreement and any other active agreement with Self-Servicer immediately and without any period to remedy if: (a) Self-

Servicer fails to fully perform any obligation under this Agreement or violates any practices or procedures set forth in the Apple Service Programs Manual, (b) Self-Servicer commits a felony or engages in any unlawful business practice, (c) there is a material change in or transfer of Self-Servicer's management, ownership, control, business operations, or Self-Servicer becomes affiliated, through common management, ownership, or control, with any person who or entity that is unacceptable to Apple, (d) Self-Servicer's actions expose or threaten to expose Apple to any liability, obligation, or violation of law, (e) Self-Servicer fails to maintain sufficient net worth and working capital to meet its obligations, has a receiver or trustee appointed for its property, becomes insolvent or makes an assignment for the benefit of creditors, (f) Self-Servicer closes its last Authorized Service Location, or (g) Self-Servicer abandons this Agreement.

C. Effect of Notice of Termination

If either party gives notice of termination of this Agreement according to Section 13B(i): (i) all unpaid Apple invoices will become due on the effective date of termination; (ii) Apple may refuse all or part of Self-Servicer's orders received by Apple after the date of notice of termination; and (iii) Self-Servicer will cease placing new orders for Service Products. In addition, if termination is in accordance with Section 13B(ii), all unpaid Apple invoices will become due on the effective date of termination.

D. Effect of Expiration or Termination

Within ten (10) days after expiration or termination, Self-Servicer will provide a list of all Service Products remaining in Self-Servicer's inventory to Apple and Apple reserves the first right to purchase such Service Products. If Apple purchases Service Products from Self-Servicer, the price will be determined by the parties. If Apple purchases Service Products from Self-Servicer, upon Apple's acceptance of such Service Products, Apple will issue a credit to Self-Servicer in the amount of Apple's purchase to offset any amount due Apple by Self-Servicer or, if there is no amount due Apple from Self-Servicer, Apple will pay Self-Servicer forty-five (45) days from Apple's acceptance of such Service Products. If Apple does not purchase Service Products remaining in Self-Servicer's inventory, Self-Servicer may sell such Service Products solely to an Apple Authorized Service Provider. Furthermore, upon expiration or termination of this Agreement: (i) Apple will cancel all unshipped Service Product orders; (ii) Self-Servicer will complete all service in progress, and will make final claim upon Apple for all reimbursement for providing repair under warranty and under Apple's AppleCare Protection Plan within THIRTY (30) DAYS of the date of such expiration or termination; and (iii) Self-Servicer will return promptly to Apple all Apple property in Self-Servicer's possession, such as loaned equipment and all material containing Confidential Information. If Self-Servicer fails to comply with any provisions of Sections 13.C or 13.D, Apple is not obligated to refund amounts due Self-Servicer, if any, until forty-five (45) days after Self-Servicer has complied fully with Sections 13.C and 13.D.

E. Survivorship

Those sections that by their nature survive expiration or termination of this Agreement will survive expiration or termination.

14. General Terms

A. Governing Law; Venue; Limitation of Claims

This Agreement will be governed and interpreted under the laws of California, U.S.A. without regard to its conflict of laws provisions. In the event of any dispute or controversy between the parties to this Agreement, the parties shall try to resolve the dispute in a fair and reasonable way. To that end, the parties shall first attempt to resolve such dispute or controversy through one senior management member of each party. If the parties' senior management members are unable to resolve such dispute or controversy within sixty (60) days after the

complaining party's written notice (a "Dispute Notice") to the other party of such dispute or controversy, the parties shall further seek to resolve the dispute or controversy pursuant to non-binding mediation conducted in either Santa Clara County or San Francisco, California. Each party shall bear its own expenses in connection with the mediation, except that Apple shall pay the fees and expenses of the mediator. If the parties are unable to resolve the dispute or controversy within sixty (60) days after commencing mediation, either party may commence litigation in the state or federal courts in Santa Clara County, California (but only such courts). Notwithstanding the foregoing, each party shall have the right to seek equitable relief in order to protect any rights to confidentiality or intellectual property. The parties hereby waive any bond requirements for obtaining equitable relief. To the extent permitted by law, EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES ALL RIGHT OF TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER OR NOT RELATING TO OR ARISING OUT OF THIS AGREEMENT). ANY LITIGATION ARISING OUT OF ANY DISPUTE OR CONTROVERSY BETWEEN THE PARTIES TO THIS AGREEMENT MUST BE BROUGHT WITHIN ONE (1) YEAR FROM THE FIRST DATE SUCH ACTION COULD HAVE BEEN BROUGHT. IF A LONGER PERIOD IS PROVIDED BY STATUTE, THE PARTIES HEREBY EXPRESSLY WAIVE IT.

B. Notice

Any notice under this Agreement, except notices of changes in Apple Service Programs Manual as provided below, must be in writing and will be deemed given upon the earlier of actual receipt or ten (10) days after being sent by first class mail, return receipt requested, to the address set forth below for Apple and to the address designated on page one (1) of this Agreement by Self-Servicer for receipt of notices, or as may be provided by the parties.

Apple Computer, Inc.
Sales Contracts Management
1 Infinite Loop, M/S 38-2CM
Cupertino, CA 95014

Either party may give notice of its change of address for receipt of notices by giving notice in accordance with this section. Notices of changes in the Apple Service Programs Manual that are posted on the Apple service web sites will be given by Apple by posting to the Apple service web sites and will be deemed given when posted.

C. Severability

If a court of competent jurisdiction holds that any provision of this Agreement is invalid or unenforceable, the remaining portions of this Agreement 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 Agreement.

D. Headings and Construction

Paragraph headings are for reference only and will not be considered as parts of this Agreement. Wherever the singular is used, it includes the plural, and, wherever the plural is used, it includes the singular.

E. Waivers

A party's waiver of any breach by the other party or failure to enforce a remedy will not be considered a waiver of subsequent breaches of the same or of a different kind.

F. Assignments and Other Material Business Changes

Self-Servicer will notify Apple promptly if there is a material change in Self-Servicer's ownership, management, or control; or Self-Servicer acquires an ownership, managerial or controlling interest in a third party that sells or services Products. Self-Servicer may not assign, in whole or in part, this Agreement without Apple's prior written approval.

G. Relationship of Parties

Self-Servicer is an independent contractor, has no power or authority to bind Apple, and is contracting for certain goods and services. Nothing in this Agreement will be construed as creating any relationship such as employer-employee, principal-agent or franchisor-franchisee, except as otherwise specifically provided in Section 2 of this Agreement.

H. Entire Agreement

Apple and Self-Servicer acknowledge this Agreement supersedes and extinguishes all previous agreements and representations of, between or on behalf of the parties. This Agreement contains all of Apple's and Self-Servicer's agreements, warranties, understandings, conditions, covenants, and representations. Neither Apple nor Self-Servicer will be liable for any agreements, warranties, understandings, conditions, covenants, or representations not expressly set forth or referenced in this Agreement. Self-Servicer acknowledges that Apple reserves the right to refuse any different or additional provisions in purchase orders, invoices or similar documents, and such refused provisions will be unenforceable.

I. Modifications

Except as otherwise provided in this Agreement, no modification to this Agreement will be binding unless in writing and signed by an authorized representative of each party.

Self-Servicer

SIGNATURE: *[Handwritten Signature]*
PRINT NAME: _____
TITLE: _____
DATE: 1-31-06

Apple Computer, Inc
SIGNATURE: *[Handwritten Signature]*
PRINT NAME: VONDA SMITH
TITLE: Education Contracts Mgr
DEPT: Sales Contracts Management
EFFECTIVE DATE: 2/8/06



Amendment to the Self-Servicing Account Agreement

This Amendment to the Self-Servicing Account Agreement ("Amendment") amends the Self-Servicing Account Agreement ("Agreement") between Apple Computer, Inc., a California corporation located at 1 Infinite Loop, Cupertino, CA 95014 ("Apple") and:

Company Name ("Self-Servicer"): Maricopa County Community College District
Address: 2411 West 14th Street
City, ST, Zip: Tempe, AZ 85281-6942

This Amendment further amends the Agreement as follows:

1. **Section 7B. Limited Warranty to Self-Servicer.** This paragraph is modified by adding the words "TO THE EXTENT PERMITTED BY LAW" in the beginning of the first sentence.

2. **Section 12. Limitation of Liability and Remedies.** This paragraph is modified by adding the words "to the extent permitted by law" after the words "thousand dollars (\$100,000)" in the first sentence. Additionally, the words "to the extent permitted by law" are added after the words "under or related to this Agreement" in the fourth sentence. Lastly, the words "to the extent permitted by law" are added after the words "extend the term of this Agreement" in the last sentence.

3. **Section 14. General Terms. Paragraph A. Governing Law; Venue; Limitation of Claims.** This paragraph is modified by deleting the first sentence and replacing it in its entirety as follows: "This Agreement will be governed and interpreted under the laws of California, U.S.A, to the extent permitted by law." Additionally, the last three sentences of this paragraph are deleted in their entirety.

4. **Section 14. General Terms. Paragraph J. Cancellation, K. Unavailability of Funds, L. Non-Discrimination.** This Agreement is modified by adding the following sections in their entirety.

"J. Cancellation. The Maricopa Community Colleges may cancel this Agreement under Arizona Revised Statutes 38-511 (Cancellation for conflict of interest - <http://www.azleg.state.az.us/ars/38/00511.htm>) for a violation of that statute. This notice complies with the requirements of that statute.

K. Unavailability of Funds. The Maricopa Community Colleges may terminate this Agreement, without penalty, if its Governing Board fails to appropriate funds in subsequent fiscal years to support the program that is the subject of this Agreement. The Maricopa Community Colleges shall give Contractor prompt written notice after it knows that funding will not be available.

L. Non-Discrimination. Both parties shall comply with all federal, state, and local laws, rules, and regulations, and executive orders concerning non-discrimination in employment, education, and services on the basis of sex, race, disability, religion, national origin, or veteran's status."

Unless specifically changed by this Amendment, the terms and conditions of the Agreement remain in full force and effect and apply to all transactions contemplated by this Amendment. In the event of a conflict between the provisions of the Agreement and provisions of this Amendment, the provisions of this Amendment will prevail.

The duly authorized representatives of the parties execute this Amendment as of the dates set forth below.

Self-Servicer	Apple Computer, Inc
SIGNATURE: <u>Margaret McConnell</u>	SIGNATURE: <u>Vanda Smith</u>
PRINT NAME: _____	PRINT NAME: <u>VANDA SMITH</u>
TITLE: _____	TITLE: <u>Education Contract Mgr</u>
DATE: <u>1-31-06</u>	DEPT: Sales Contracts Management
	EFFECTIVE DATE: <u>2/8/06</u>