

LAPTOP PROGRAM DESCRIPTION/AGREEMENT

San Jose Charter Academy (SJCA) is committed to the California Constitution Mandate of making educational activities available to all students without regard to their families' ability or willingness to pay fees or request special waivers.

1. The Equipment

The Equipment used hereunder consists of one Apple Macintosh MacBook Air Computer ("Laptop"), the Licensed Software, and a protective bag.

2. The Licensed Software

At the discretion of SJCA, certain Licensed Software shall be preinstalled on the Laptop. The Licensed Software is written for use on the laptop. Parent and Student are authorized to use the Licensed Software on and only on the Laptop delivered pursuant to this Agreement. Parent and Student shall not provide or otherwise make available the Licensed Software or any part or copies thereof in any form to any third party. Parent and Student shall take all reasonable precautions to maintain the confidentiality of the Licensed Software. Parent and Student shall not allow or cause a copy of any Licensed Software to be installed on any device other than the Laptop. No title or ownership of the Licensed Software or any part thereof is transferred to Parent or Student by the terms of this Agreement.

3. Term of Use

The term of this Agreement, as to all Equipment, shall commence on the date this Agreement is signed, and shall continue for three (3) academic School years unless otherwise earlier terminated.

4. Parent Contribution

SJCA's ability to implement the program is based on some contributions from parents in the community. It is anticipated that some of the parents will choose to make a financial contribution for computer acquisition, which will result in a separate agreement enabling the parent to have an option to purchase the computer and substantial benefits that come from ownership. SJCA will provide computers to students for use in the program without regard to ability to make financial contribution.

5. Location and Control of Equipment

Parent shall at all times keep the Equipment in the sole possession and control of Parent or Student. Parent shall not use or permit the Equipment to be used for any purpose which, in the opinion of the SJCA, the Equipment is not designed or reasonably suited.

The equipment may be moved within the continental United States without prior consent of SJCA. While on premises other than School premises ("Off-Campus"), Parent acknowledges and agrees that: (a) Parent and Student shall use due care to ensure that the Equipment is not used for any illegal activity or private business purposes; (b) Parent and Student shall not sub-lease, rent or sell any Equipment (in whole or in part) to any third party; (c) Parent and Student shall not assign this Agreement or their obligations hereunder to any third party for any reason whatsoever.

6. Use Off-Campus

If Parent chooses to enable Student to remove the Laptop from School campus, Parent shall be responsible, at Parent's expense, use of the Equipment Off-Campus.

7. Title and Ownership

All Equipment used hereunder is and shall remain the property of SJCA and Parent has no property interest whatsoever therein for the term of the Agreement. Parent further agrees that he or she will not pledge, loan, mortgage, or attempt in any other manner to dispose of the Equipment or to suffer any liens encumbrances, or legal process to be incurred or levied on the Equipment. SJCA may affix tags, decals or plates to the Equipment indicating SJCA's ownership and neither Parent nor Student shall permit their removal or concealment.

For the duration of this Agreement, SJCA or its agents shall have free access to the Equipment at all reasonable times for the purpose of inspection and for any other purpose contemplated in this Agreement.

8. Maintenance and Repairs

SJCA/Parent is purchasing an AppleCare on site warranty for each laptop. In the event that the Equipment requires reasonable repair, Student or Parent shall bring the Equipment to SJCA for repair. SJCA, in its sole discretion, shall either repair the Equipment or contact Apple under the terms of the maintenance agreement between the School and Apple. During non-School hours, Student or Parent will be provided with a toll-free telephone number for technical problems with the Equipment. Parent is responsible for any expenses incurred in maintaining and/or repairing the Equipment, to the extent such maintenance and/or repairs are not covered by the AppleCare Warranty or, by the terms of the Liability Waiver (Safeware).

9. Annual Return of Equipment to School

On a date to be determined each school year, in the sole discretion of the school, Parent shall return the Equipment to the SJCA for a period of time during the summer months. At its own expense, the school shall arrange for reasonable repairs to the Equipment, software updates, or other Equipment maintenance and/or upgrade during the summer months of each school year.

10. Return of Equipment to School Upon Termination

Upon termination of this Agreement, for any reason whatsoever, Parent shall immediately return the Equipment to the School in the same operating order, repair, condition and appearance as on the date this Agreement was signed, reasonable wear and tear excepted.

11. Loss or Damage

Parent is responsible for any theft, loss or damage to the Equipment that is not covered by the School's AppleCare Warranty or by the terms of the Liability Waiver, by any cause at all, not including the negligence of the School, its employees or agents.

- (a) In the event of damage, Parent shall continue to make timely payments under the terms of this Agreement (if applicable), and shall notify SJCA immediately of the loss. The School shall have the sole discretion to determine whether damaged equipment is covered by the terms of the Liability Waiver. To the extent that the equipment is found to not be covered by the Liability Waiver, Parent agrees to purchase the loss Equipment at a cost not to exceed the cost to the School in acquiring the Equipment.
- (b) In the event of loss, Parent shall continue to make timely payments under the terms of this Agreement (if applicable), and shall notify SJCA immediately of the loss. The School shall have the sole discretion to determine whether lost equipment is covered by the terms of the Liability Waiver. Parent agrees to purchase the loss Equipment at a cost not to exceed the cost to the School in acquiring the Equipment. Parent shall provide a copy of the police report.

12. Warranty

The School warrants the Equipment delivered hereunder shall be free from defects in material or workmanship, to the extent warranted in the manufacturer's warranty. The School shall repair, or cause to be repaired, all Equipment subject to the manufacturer's warranty. Parent shall not return any Equipment to the manufacturer, absent the prior instruction and written consent of SJCA.

SJCA's sole responsibility under the warranty shall be, at School's option, to either repair or replace any component which fails during the warranty period due to a defect in workmanship and/or material and provided parent has promptly reported same to the School.

The above warranty is contingent upon proper use of the Equipment and does not cover Equipment which has been modified without the School's approval, or which has been subjected to unusual physical or electrical stress, or on which the original identification marks have been altered or removed.

THE ABOVE IS A LIMITED WARRANTY AND IT IS THE ONLY WARRANTY MADE BY THE SCHOOL. THE SCHOOL AND PARENT AND STUDENT RECEIVE NO WARRANTY EXPRESS OR IMPLIED AND THERE IS EXPRESSLY EXCLUDED ALL WARRANTIES OF MERCHANT ABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THE SCHOOL SHALL HAVE NO LIABILITY WITH RESPECT TO ITS OBLIGATIONS UNDER THIS AGREEMENT FOR CONSEQUENTIAL, EXEMPLAR, OR INCIDENTAL DAMAGES EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE STATED EXPRESS WARRANTY IS IN LIEU OF ALL LIABILITIES OR OBLIGATIONS OF THE DISTRICT FOR DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE DELIVERY, USE OR PERFORMANCE OF THE EQUIPMENT.

13. Option to Purchase

There shall be no required option to purchase at the end of the terms of this Agreement.

14. Infringement Indemnity

To the extent that the School has received from Apple Computer, Inc. an agreement to defend any claim or suit or proceeding brought against the School or Parent or Student based on a claim that the use or transfer of any Equipment delivered here under constitutes an infringement of any patent or property right in the United States, then Parent and/or Student shall be indemnified and defended against all such claims. Parent shall notify the School within ten (10) days after the commencement of any suit and shall give full authority, information, and assistance to the School or such person, as the School shall designate, for the defense of the suit. The School shall not be responsible for any settlement or compromise made without its consent. It is further provided that the School may, at any time, if it is concerned over the possibility of such infringement, at its option and expense, replace or modify the items of Equipment so that infringement will not exist, or require that the Equipment involved be returned to SJCA so that infringement will not exist.

The School shall have no liability to Parent under any provision of this Agreement if any Patent infringement or claim thereof is based upon the use of the Equipment delivered in connection with or in combination with equipment, devices or software not supplied by the School, or use in any other manner for which the Equipment was not designated.

15. Liability

Except as expressly provided in this Agreement through the Liability Waiver, the School shall not be liable for any loss, theft or damage claimed to have resulted from the use of the Equipment or to be related in any way to the acquisition in the transaction to which this Agreement relates, regardless of the form of action, except for loss or damage resulting from the sole negligence of SJCA. Parent shall hold the School harmless from any such claims and shall indemnify it from any expense or cost incurred if any such claims are made.

IN NO EVENT SHALL THE SCHOOL BE LIABLE TO PARENT OR STUDENT FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES OR FOR ANY CLAIM THAT AROSE IN A YEAR MORE THAN ONE YEAR PRIOR TO THE INSTITUTION OF SUIT THEREON. IN NO EVENT SHALL THE SCHOOL BE LIABLE FOR MORE THAN THE AMOUNT PAID BY THE PARENT FOR THE EQUIPMENT.

To the extent any loss or damage is sustained by Parent that is determined not to be covered by the Liability Waiver, Parent shall indemnify and hold the School harmless for any liability, loss, claim, or damage to persons or property arising out of Parent and/or Student's possession, operation or use of the Equipment or arising out of the fault or negligence of Parent and/or Student or their agents, including but not limited to any liability, loss, claim, or damage to persons or property arising out of Parent and/or Student's improper use of the Equipment.

16. Excusable Delays

Dates and time by which the School is required to render performance under this Agreement shall be postponed automatically to the extent that the School is prevented from meeting them by any causes beyond its reasonable control. Non-performance of any of the obligations of the School to this Agreement due to delays beyond its reasonable control shall not be considered a breach of this Agreement.

17. Termination

The School, at its sole option, and reserving all other rights and remedies available to it at law or equity, shall have the right to terminate this Agreement:

- a) Upon ten (10) days' written notice in the event that the Parent or Student violates any provision of this Agreement;
- b) In the event that Student no longer participates in a class where the laptop is used, whether by voluntary or involuntary means;
- c) In the event Parent or Student assigns any of his or her rights under this Agreement;
- d) In the event that the School is unable to continue to lease the Equipment from Apple Computer, Inc.
- e) In the event the Program is determined to be contrary to state or federal law;
- f) In the discretion of the School, for any purpose reasonably related to the educational benefit of students in the School, or in the furtherance of public policy.

The term of this Agreement is three (3) years. In the event that, for any reason, termination occurs prior to the completion of the three (3) year term of this Agreement, Parent shall cause the Laptop to be returned to the School immediately, and neither Parent nor Student shall receive any refund of the Parent Contribution paid, nor shall they retain any property interest in the Equipment issued to Student pursuant to this Agreement. However, if Parent so chooses, Parent can make a final payment on any remaining outstanding balance, and assume full ownership of the property interest in the Equipment issued to Student pursuant to this Agreement.

18. Enforceability; Severability

If any provision of this Agreement is invalid under any applicable statute or rule of law, to that extent it is deemed omitted. In the event that any provision of this Agreement or any obligation or grant of rights by either party is found invalid or unenforceable pursuant to a judicial decree of decision, any such provision, obligation or grant of rights shall be deemed and construed to extend only to the maximum permitted by law and the remainder of this Agreement shall remain valid and enforceable according to its terms.