



## Amendment 2 to the Apple Direct Customer Agreement

This Amendment ("Amendment") to the Apple Direct Customer Agreement ("Agreement") entered into by and between Apple Inc., a California corporation located at 1 Infinite Loop, Cupertino, CA 95014 ("Apple") and Commonwealth of Virginia listed below, each of whom agrees to be bound by and comply with all terms and conditions contained in this Amendment.

Legal Name ("Customer"): Commonwealth of Virginia

DBA Name:

Address: 11751 Meadowville LN, Chester, VA 23836

Capitalized terms used but not defined in this Amendment have the meanings set forth in the Agreement.

In the event of any conflict between the terms of this Amendment and the Agreement, the terms of this Amendment will prevail.

The Parties hereby agree to amend the Agreement as follows:

1. **Section 12, Authorized Users.** This section is added as following:

All Commonwealth of Virginia educational institutions (i.e., colleges, and school districts) authorized by the laws of the Commonwealth of Virginia to use this Contract. If an authorized user is purchasing under this Agreement Contractor shall assume it has the right to do so and neither Party will bear liability for unauthorized purchasers.

2. **Section 13, Reporting.** This section is added as following:

Contractor will provide monthly sales reports by the 15th day of every month. The Contractor shall submit the monthly sales "Monthly Sales Information" to VITA. Sales information shall be submitted through VITA Web page located at the following URL: <http://www.vita.virginia.gov/scm/default.aspx?id=97>. Supplier shall report total sales (defined as all invoiced payments received by Supplier from all authorized users) for their VITA Contract(s) during the preceding month. Supplier shall be responsible for submitting the monthly report of sales even if Supplier has had no sales (i.e., a \$0.00 total sales value) for the reporting period. The Supplier shall submit the Industrial Funding Adjustment (IFA) payment for the period covered by such "Monthly Sales Information" thirty (30) days after submitting the "Monthly Sales Information." The IFA payment is equal to two percent (2%) of total net sales reported during the relevant month. The IFA payment shall be submitted to VITA, Attention VITA Controller, in the form of a check or electronic payment, made payable to the Treasurer of Virginia. The IFA payment shall reference the appropriate contract number, "report amounts" and "report period."

The foregoing is the complete and final expression of the Parties' agreement to amend Contract VA-150605-APPL and cannot be modified, except by a writing signed by duly authorized representatives of both parties.

3. **Effect of Amendment to Agreement.**

Except as set forth in this Amendment, the Agreement shall continue in full force and effect in accordance with its terms.

The duly authorized representatives of the Parties execute this Amendment as of the Effective Date stated below.

SIGNATURE: Philip L. Pippert  
PRINT NAME: PHILIP L. PIPPERT  
TITLE: DIRECTOR, SCM  
DATE: 12/3/15

SIGNATURE: Rebecca Whittaker  
PRINT NAME: Rebecca Whittaker  
TITLE: Manager, US Contract Operations  
DEPT: Sales Operations  
EFFECTIVE DATE: 12/2/15



## Amendment to the Apple Direct Customer Agreement

This Amendment ("Amendment") to the Apple Direct Customer Agreement ("Agreement") entered into by and between Apple Inc., a California corporation located at 1 Infinite Loop, Cupertino, CA 95014 ("Apple") and Commonwealth of Virginia listed below, each of whom agrees to be bound by and comply with all terms and conditions contained in this Amendment.

Legal Name ("Customer"): Commonwealth of Virginia VA-150605-APPL

DBA Name:

Address: 11751 Meadowville LN, Chester, VA 23836

Capitalized terms used but not defined in this Amendment have the meanings set forth in the Agreement.

In the event of any conflict between the terms of this Amendment and the Agreement, the terms of this Amendment will prevail.

The Parties hereby agree to amend the Agreement as follows:

1. **Section 6, Indemnity.** This section is stricken in its entirety and replaced with the following:

6.1 Provided that Customer promptly notifies Apple in writing, gives Apple sole control over the defense and all related settlement negotiations, and does not compromise or settle any claims then, subject to the terms of this paragraph and the exceptions and limitations set forth below, including but not limited to Section 7.1 and 7.2, Apple will defend any proceeding or action brought by a third party against Customer to the extent based on a claim that: (i) an Apple Product that Customer has paid to acquire from Apple infringes a U.S. patent, copyright, trademark or misappropriates a U.S. trade secret; or (ii) personal injury or tangible property damage suffered by such third party was caused by Apple's gross negligence or willful misconduct during the performance of Services.

6.2 Notwithstanding the foregoing, Apple shall not be liable or responsible for, or obligated to defend any claims or damages arising out of or related to: (a) modification of any Apple Product; (b) combination, operation or use of the Apple Product with any other equipment, data, documentation, items or products; (c) use of Apple Product in a manner or for a purpose, or in a location, for which it was not intended; (d) import or export of any Apple Product in violation of applicable export control requirements, regulations or laws; (e) use or exportation of any Product(s) into any countries identified on any U.S. Government embargoed countries list; (f) use of any Apple Product in a manner or for a purpose not authorized under the applicable license terms; (g) any other products; or (h) Customer, its employees, agents, affiliates, subsidiaries or subcontractor's negligent acts or omissions.

6.3 Customer shall promptly notify Apple, in writing, of any claim, demand, proceeding or suit of which Customer becomes aware which may give rise to a right of defense under Section 6.1 ("Claim"). Notice of any Claim that is a legal proceeding, by suit or otherwise, must be provided to Apple within 30 days of Customer's first learning of such proceeding. Notice must be in writing and include an offer to tender the defense of the Claim to Apple. Apple, if it accepts such tender, may take over sole control of the defense of the Claim. That control includes the right to take any and all actions deemed appropriate by Apple in its sole discretion to resolve the Claim by settlement or compromise. Upon Apple's acceptance of tender, Customer will cooperate with Apple with respect to such defense and settlement. If a Claim is settled and to the extent permitted by law, neither party will publicize the settlement and will make every effort to ensure the settlement agreement contains a non-disclosure provision.

6.4 In the event of a Claim, Apple may at its sole option (but shall not be obligated to): (i) procure for Customer the right to continue use of the applicable Apple Product(s); (ii) replace the applicable Apple Product(s); (iii) modify the applicable Apple Product(s); or (iv) refund the amount paid by Customer to Apple for the applicable Apple Product, less depreciation. THE FOREGOING CONSTITUTES CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND APPLE'S ENTIRE LIABILITY FOR ANY CLAIMS ARISING OUT OF THIS SECTION 6.

The limitations, exclusions, and disclaimers contained in Section 6 are only valid to the extent not prohibited by Virginia law.

2. **Section 11.5, Entire Agreement.** This section is stricken in its entirety and replaced with the following:

Apple and Customer acknowledge that the Agreement supersedes and extinguishes all previous agreements and representations (whether oral or written), between or on behalf of the Parties with respect to its subject matter. The Agreement contains all of Apple's and Customer's agreements, warranties, understandings, conditions, covenants, promises and representations with respect to its subject matter. Apple and Customer acknowledge and agree that they have not relied on any other agreements, warranties, understandings, conditions, covenants, promises or representations in entering into this Agreement. Neither Apple nor Customer will be liable for any agreements, warranties, understandings, conditions, covenants, promises or representations not expressly stated or referenced in this Agreement. Apple is deemed to have refused any provisions in purchase orders, invoices or other documents or statements from Customer that purport to alter or have the effect of altering any provision of the Agreement and such refused provisions will be unenforceable.

Apple acknowledges that Customer is an agency of the State of Virginia and mandated by the Code of Virginia that every contract must include the list of terms and conditions stated in Exhibit A attached. Notwithstanding the foregoing, both Apple and Customer agree Apple is not subject to any terms in Exhibit A that are not mandated by Virginia law.



**3. Effect of Amendment to Agreement.**

Except as set forth in this Amendment, the Agreement shall continue in full force and effect in accordance with its terms.

The duly authorized representatives of the Parties execute this Amendment as of the Effective Date stated below.

Customer	Apple Inc.
SIGNATURE: <u><i>Philip L. Pippert</i></u>	SIGNATURE: <u><i>Vanessa Boenig</i></u>
PRINT NAME: <u>PHILIP L. PIPPERT</u>	PRINT NAME: _____
TITLE: <u>DIRECTOR, SCM</u>	TITLE: <u>Vanessa Boenig</u>
DATE: <u>6/5/15</u>	DEPT: <u>Bids &amp; Direct Operations Contracts Manager</u>
	EFFECTIVE DATE: <u>6/3/2015</u>





## Apple Direct Customer Agreement

This Agreement is entered into by and between Apple Inc., a California corporation located at 1 Infinite Loop, Cupertino, CA 95014 ("Apple") and:

Company Legal Name ("Customer"): Commonwealth of Virginia

DBA Name:

Address: 11751 Meadowville LN, Chester, VA 23836

---

### 1. Definitions

The following terms have the meanings specified below:

"**Agreement**" means, collectively, this Apple Direct Customer Agreement, Apple price lists and any mutually executed amendments or addenda to the Agreement.

"**Apple Product**" or "**Apple Products**" means Services, CTO Products, hardware and software products manufactured, distributed or licensed under the Apple brand name that Customer has paid to acquire or has properly licensed from Apple for its own use, but excluding any third party software and all other third party products.

"**Apple Confidential Information**" means any and all information in oral or written form that Customer knows or has reason to know is confidential information and that is disclosed in connection with this Agreement or to which Customer may have access in connection with this Agreement, including but not limited to financial information and data, personnel information, information regarding strategic alliances, costs or pricing data, the identities of customers and prospective customers, and new product release dates and new product specifications. Apple Confidential Information shall not include any information that: (i) was rightfully in a Customer's possession prior to disclosure without any obligation to maintain its confidentiality; (ii) was independently developed by Customer without the use of or reference to Apple Confidential Information; or (iii) is now, or hereafter becomes, publicly available other than through disclosure by Customer in breach of this Agreement.

"**Configure-To-Order Product**" or "**CTO Product**" means Products that Apple modifies from its standard configurations and that are available to Customer only by special order.

"**Customer Confidential Information**" means and is limited to information that is: (i) reduced to a tangible form, (ii) independently developed by Customer without the use of or reference to any Apple Confidential Information, and (iii) provided specifically at Apple's request after execution of this Agreement and after execution of an acknowledgment signed by an Apple Sales Director that such information shall be treated as Customer Confidential Information. Customer Confidential Information shall not include any information that: (a) is communicated verbally; (b) was rightfully in Apple's possession prior to disclosure without any obligation to maintain its confidentiality; (c) was independently developed by Apple without the use of Customer Confidential Information; (d) is required to verify Customer's compliance with any provisions of this Agreement; or (e) is now, or hereafter becomes, publicly available other than through disclosure by Apple in breach of this Agreement.

"**Effective Date**" means the date upon which an authorized representative of Apple signs this Agreement.

"**Limited Warranty**" means Apple's standard limited warranty that is set forth in the documentation that accompanies any Apple Products purchased under this Agreement.

"**Party**" means either Apple or Customer and "**Parties**" means both of them.

"**Products**" mean, collectively, Services, Apple Products and other products that are sold or licensed by Apple to Customer for its own use.

"**Services**" mean collectively, the standard, price-listed-services, support and/or training products sold under the Apple brand name.

### 2. Interpretation

In the event of any conflict or inconsistency between the terms of this Agreement and any license terms or terms of use accompanying any Apple Product, such license terms and/or terms of use shall control solely as to the use of the Apple Product covered by those terms.

### 3. Terms and Conditions of Purchase

#### 3.1 Ordering

All orders must be submitted by Customer to Apple. Customer is solely responsible for all purchase decisions, including but not limited to, ensuring the compatibility and appropriateness of all Products. All purchases of Products under this Agreement shall be made solely for Customer's end use and not for resale.

#### 3.2 Limited Billing Service Account



Apple will provide Customer a limited billing service account to use when placing service orders such as Customer Installable Parts (CIPs) and mail-in or on-site repairs. Customer may be asked to submit a purchase order when placing a service order. Customer acknowledges that Apple does not provide service CIP or repair pricing on an Apple price list. Apple will quote current service CIP or repair pricing to Customer prior to processing any purchase order, and Customer will have the option to either accept or decline the quoted prices. Apple will not process the purchase order if Customer declines the quoted price, but will process the purchase order under the terms of this Agreement if Customer accepts the quoted pricing.

### **3.3 Prices and Orders**

Customer agrees that Apple may change Product offerings, discounts and pricing at any time and without notice to Customer. Prices include standard freight and insurance using an Apple-selected carrier. Apple does not guarantee that Products will be available at all times during the Term. Apple reserves the right to accept or decline any order, in whole or in part. Apple may cancel any accepted order prior to shipment, if in its sole discretion, Apple determines that it has insufficient inventory to fulfill such order. Apple may make partial shipments of Customer's orders and will not be liable for any failure to ship complete orders. Customer will be invoiced separately for each partial shipment and will pay each invoice when due, without regard to subsequent deliveries. Apple will allocate its available inventory and make deliveries (including partial shipments) in its sole discretion and without liability to Customer.

### **3.4 Delivery**

Except for U.S. federal government agencies, title and risk of loss to all Products will pass to Customer upon shipment from Apple's shipping location. For Products shipped pursuant to Apple's standard practices in all but the last week of every Apple fiscal quarter during the Term, Apple will issue credits or replace Products returned due to damage in transit or that are lost in transit. For Products shipped pursuant to Apple's standard practices in the last week of every Apple fiscal quarter during the Term, Apple will not issue credits or replace Products returned due to damage in transit or that are lost in transit. Instead, Apple will provide for a policy of insurance under which Customer may make a claim for any loss. When Products are not shipped pursuant to Apple's standard practices but instead via a carrier selected by Customer, Apple will not issue credits or replace Products returned due to damage in transit or that are lost in transit. Customer shall insure Products for their full replacement value from delivery to Customer until Customer has paid Apple in full for such Products, and shall name Apple as a loss payee on the Customer's policy. For both government and non-government sales, shipping charges for orders shipped under Customer's instructions will be added to Apple's invoice or shipped freight collect, at Apple's option.

For U.S. federal government agencies only, title and risk of loss to all Products will pass to Customer upon delivery to Customer's delivery point.

### **3.5 Payment**

Customer shall be invoiced upon shipment of Products or performance of Services (as applicable), and provided Customer is qualified for credit with Apple, payment of such invoice is due no later than 30 days from the invoice date. All applicable local sales or use taxes, duties and other imposts, if any, due on account of purchases hereunder shall be paid by Customer. Proof of tax-exempt status must be on file at Apple's Support Center for any order to be treated as a tax-exempt transaction. Apple will also charge for any fees due from Customer by regulation or statute, including, if applicable, fees due under the California Electronic Waste Recycling Act or similar laws in other states. Apple reserves the right to change its price lists and Customer's credit terms at any time. In addition to Apple's other rights herein, Apple reserves the right, without liability or obligation to Customer, to suspend deliveries due to a payment default.

### **3.6 Product Returns**

Products purchased hereunder shall be subject to Apple's then-current policies for defective and dead-on-arrival (DOA) Products.

### **3.7 Support**

Apple will provide post-sales support for Apple Products as described in the documentation accompanying such Apple Products. Apple will not provide support for any Products other than unmodified Apple Products.

## **4. Confidentiality**

**4.1** During the Term and for five (5) years thereafter, Customer will not use Apple Confidential Information except as required to achieve the objectives of this Agreement, or disclose such Apple Confidential Information except to employees or contractors who have a need to know. Customer will not make any disclosure or statement of Apple Confidential Information in connection with the Agreement or its subject matter without Apple's prior, specific written consent. Customer shall not make any public statement regarding any item of Apple Confidential Information, including but not limited to any matter of business between Customer and Apple, or the nature of any contractual relations between Apple and Customer or any third party. Customer may disclose Apple Confidential Information to the extent required by law, provided that it first makes reasonable efforts to give Apple notice of such requirement prior to any such disclosure and takes reasonable steps to obtain protective treatment of the Apple Confidential Information.

**4.2** Apple will not use Customer Confidential Information except as required to achieve the objectives of this Agreement, or disclose such Customer Confidential Information except to employees, agents or contractors who have a need to know or as required by law. Except as otherwise stated herein, Apple will not make any disclosure or statement of such information without the Customer's prior written consent or as required by law.

## **5. Representations and Warranties**

**5.1** Customer represents and warrants that: (i) it has the right to enter into this Agreement and perform its obligations hereunder; (ii) the terms of this Agreement do not violate and will not cause a breach of the terms of any other agreement to which Customer





is a party or by which it is bound; and (iii) all Products purchased will be for Customer's own use in its facilities in the United States and will not be purchased for resale to any other entity or individual.

## **5.2 Apple Limited Warranty**

The sole warranty for an Apple Product purchased hereunder shall be the Limited Warranty. Except for the Limited Warranty, all Apple Products are sold "as is" and without additional warranty or support from Apple. All Products, other than Apple Products, are sold "as is" and without warranty or support from Apple, but may be accompanied by a manufacturer's warranty, as more particularly provided in the warranty documentation that accompanies such Products. Upon Customer's request, Apple will provide a copy of the manufacturer's warranty accompanying Products offered by Apple under this Agreement. Nothing in this Agreement shall be construed as obligating Apple to provide any warranty-related fulfillment or support for any Products, other than Apple Products.

## **5.3 Disclaimer**

**5.3.1** EXCEPT FOR THE LIMITED WARRANTY, APPLE MAKES NO WARRANTIES, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE PRODUCTS OR SERVICES, AND TO THE MAXIMUM EXTENT PROVIDED BY LAW, APPLE HEREBY DISCLAIMS SUCH WARRANTIES, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

**5.3.2** APPLE PRODUCTS ARE NOT INTENDED OR SUITABLE FOR USE IN SITUATIONS OR ENVIRONMENTS WHERE THE FAILURE OR TIME DELAYS OF, OR ERRORS OR INACCURACIES IN, THE CONTENT, DATA OR INFORMATION PROVIDED BY APPLE PRODUCTS COULD LEAD TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL OR ENVIRONMENTAL DAMAGE, INCLUDING WITHOUT LIMITATION THE OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR COMMUNICATIONS SYSTEMS, AIR TRAFFIC CONTROL, LIFE SUPPORT OR WEAPONS SYSTEMS.

## **6. Indemnity**

**6.1** Provided that Customer promptly notifies Apple in writing, gives Apple sole control over the defense and all related settlement negotiations, and does not compromise or settle any claims then, subject to the terms of this paragraph and the exceptions and limitations set forth below, including but not limited to Section 7.1 and 7.2, Apple will defend any proceeding or action brought by a third party against Customer to the extent based on a claim that: (i) an Apple Product that Customer has paid to acquire from Apple infringes a U.S. patent, copyright, trademark or misappropriates a U.S. trade secret; or (ii) personal injury or tangible property damage suffered by such third party was caused by Apple's gross negligence or willful misconduct during the performance of Services.

**6.2** Notwithstanding the foregoing, Apple shall not be liable or responsible for, or obligated to defend any claims or damages arising out of or related to: (a) modification of any Apple Product; (b) combination, operation or use of the Apple Product with any other equipment, data, documentation, items or products; (c) use of Apple Product in a manner or for a purpose, or in a location, for which it was not intended; (d) import or export of any Apple Product in violation of applicable export control requirements, regulations or laws; (e) use or exportation of any Product(s) into any countries identified on any U.S. Government embargoed countries list; (f) use of any Apple Product in a manner or for a purpose not authorized under the applicable license terms; (g) any other products; or (h) Customer, its employees, agents, affiliates, subsidiaries or subcontractor's negligent acts or omissions.

**6.3** Customer shall promptly notify Apple, in writing, of any claim, demand, proceeding or suit of which Customer becomes aware which may give rise to a right of defense under Section 6.1 ("Claim"). Notice of any Claim that is a legal proceeding, by suit or otherwise, must be provided to Apple within 30 days of Customer's first learning of such proceeding. Notice must be in writing and include an offer to tender the defense of the Claim to Apple. Apple, if it accepts such tender, may take over sole control of the defense of the Claim. That control includes the right to take any and all actions deemed appropriate by Apple in its sole discretion to resolve the Claim by settlement or compromise. Upon Apple's acceptance of tender, Customer will cooperate with Apple with respect to such defense and settlement. If a Claim is settled and to the extent permitted by law, neither party will publicize the settlement and will make every effort to ensure the settlement agreement contains a non-disclosure provision.

**6.4** In the event of a Claim, Apple may at its sole option (but shall not be obligated to): (i) procure for Customer the right to continue use of the applicable Apple Product(s); (ii) replace the applicable Apple Product(s); (iii) modify the applicable Apple Product(s); or (iv) refund the amount paid by Customer to Apple for the applicable Apple Product, less depreciation. THE FOREGOING CONSTITUTES CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND APPLE'S ENTIRE LIABILITY FOR ANY CLAIMS ARISING OUT OF THIS SECTION 6.

## **7. Limitation of Liability**

**7.1** Apple's maximum aggregate liability (including any liability for the acts or omissions of Apple's employees, agents and subcontractors) for any and all claims of any kind arising out of or in connection with the Agreement, whether in contract, warranty, tort (including negligence), misrepresentation, strict liability, statute, or otherwise, shall not exceed three hundred thousand dollars (\$300,000).

**7.2** IN NO EVENT, WHETHER AS A RESULT OF BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), MISREPRESENTATION, STRICT LIABILITY, STATUTE OR OTHERWISE, SHALL APPLE BE LIABLE FOR ANY LOSS OF PROFIT OR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, INDIRECT LOSSES (INCLUDING LOSS OF DATA, INTERRUPTION IN USE, UNAVAILABILITY OF DATA, UNAVAILABILITY OR INTERRUPTION IN AVAILABILITY OF APPLE PRODUCTS, OR OTHER ECONOMIC ADVANTAGE) OR FOR PUNITIVE OR EXEMPLARY DAMAGES.

**7.3** THE PARTIES AGREE THAT THE TERMS OF THE AGREEMENT, INCLUDING THOSE CONCERNING WARRANTIES, INDEMNITY AND LIMITATIONS OF LIABILITY, REPRESENT A FAIR ALLOCATION OF RISK BETWEEN THE PARTIES WITHOUT WHICH THEY WOULD NOT HAVE ENTERED INTO THIS AGREEMENT. LIABILITY FOR DAMAGES WILL BE LIMITED AND EXCLUDED, EVEN IF ANY EXCLUSIVE REMEDY



PROVIDED FOR IN THE AGREEMENT FAILS OF ITS ESSENTIAL PURPOSE. THE REMEDIES SET FORTH IN THIS AGREEMENT WILL BE CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES FOR ANY CLAIM MADE AGAINST APPLE.

## **8. Ownership**

### **8.1 Use of Name**

Neither party shall use the other's name, logo, trademarks or service marks in any advertising, communications or publications without the other party's prior written consent.

### **8.2 Software**

Customer acknowledges that Products often contain not only hardware but also software, including but not limited to, operating systems and applications. Such software may be included in ROMs or other semiconductor chips embedded in hardware, or it may be contained separately on disks or on other media. Such software is proprietary, is copyrighted, and may also contain valuable trade secrets and is protected by patents. Customer, as an end user, is licensed to use any software contained in such Products, subject to the terms of the license accompanying the Products, if any, and the applicable patent, trademark, copyright, and other intellectual property, federal and state laws of the United States.

### **8.3 Restrictions**

Unless Customer has obtained Apple's prior written consent, Customer, in addition to any obligations or restrictions set forth in any license, which may accompany a Product, shall not copy the software. Customer shall not disassemble, decompile, reverse engineer, copy, modify, create derivative works thereof or otherwise change any of the software or its form.

## **9. Export Compliance**

This Agreement is subject to all laws, regulations, orders or other limitations on the export and re export of commodities, technical data and software. Customer agrees that it will not export, re-export, resell or transfer any export-controlled commodity, technical data or software: (i) in violation of such limitations imposed by the United States or any other appropriate national government authority; (ii) to any country for which an export license or other governmental approval is required at the time of export, without first obtaining all necessary licenses and approvals, at Customer's sole cost and expense; (iii) to any country or national or resident of a country to which trade is embargoed by the United States, or any other relevant national authority; (iv) to any person or firm on any relevant government agency restricted party lists, (examples: United Nations Sanctions list, United States Denial Lists, Office of Foreign Assets Control Specially Designated Nationals List, etc.); or (v) for use in, or to an entity that might engage in, any sensitive nuclear, chemical or biological weapons, or missile technology end-uses unless authorized by the United States Government, and any other relevant government agency by regulation or specific license.

## **10. Term and Termination**

### **10.1 Term**

Unless terminated earlier as provided in this Agreement, the initial term of this Agreement shall be from the Effective Date until the following April 30 ("Initial Term"). This Agreement shall automatically renew for successive 12-month periods (each a "Renewal Term"), unless either party provides written notice of its election not to renew at least 90 days prior to the end of the Initial Term or then-current Renewal Term. The Initial Term and all Renewal Terms are referred to as the "Term".

### **10.2 Termination for Convenience**

This Agreement may be terminated by either Party at any time without cause (i.e., for any or no reason), on thirty (30) days' written notice to the other Party.

### **10.3 Termination for Cause**

Either party may terminate this Agreement upon 30 days prior written notice if the other party has breached this Agreement and has failed to cure such breach within 30 days of the date of such notice.

### **10.4 Effect of Notice of Termination**

If either Party gives notice of termination of the Agreement according to Section 10: (i) all unpaid invoices issued by Apple will be accelerated and become immediately due and payable on the effective date of termination; and (ii) Customer will cease placing new orders for Products from Apple on the effective date of termination.

### **10.5 Survival**

All defined terms and the following Sections of this Agreement shall survive expiration or any termination of the Agreement: 3.5 (Payment); 4 (Confidentiality); 5 (Representations and Warranties); 6 (Indemnity); 7 (Limitation of Liability); 9 (Export Compliance); 10.4 (Effect of Expiration or Termination); 10.5 (Survival); 11 (General Terms) and; any other Sections that by their nature would reasonably be expected to survive expiration or termination.

## **11. General Terms**

### **11.1 Governing Law**

If Customer is a public agency or institution, this Agreement will be governed by the laws of the state where Customer is located or if Customer is a federal government agency, this Agreement will be governed and interpreted in accordance with applicable federal law. If Customer is a private or corporate entity, this Agreement will be governed by the laws of the State of California, without regard to its conflict of laws provisions, and in the event of any action between the parties, venue shall be in the State of California.

### **11.2 Notice under the Agreement**

Notices under the Agreement may be given as follows:





11.2.1 Any notice under this Agreement 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 stated below for Apple and to the address designated in this Agreement by Customer for receipt of notices, or as may be provided by the Parties.

Apple Inc.  
Sales Contracts Management  
1 Infinite Loop, M/S 90-2CM  
Cupertino CA 95014

11.2.2 Either Party may give notice of its change of address for receipt of notices by giving notice in accordance with Section 11.2.1, or as authorized by Apple.

#### **11.3 Assignment by Apple**

Customer may not assign this Agreement or any of its rights or duties without Apple's prior written consent. Any non-compliant assignment by Customer shall be null and void. Apple may assign this Agreement, in whole or in part, in Apple's sole and absolute discretion, to any affiliate of or successor in interest to Apple, without the consent of Customer.

#### **11.4 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.

#### **11.5 Entire Agreement**

Apple and Customer acknowledge that the Agreement supersedes and extinguishes all previous agreements and representations (whether oral or written), between or on behalf of the Parties with respect to its subject matter. The Agreement contains all of Apple's and Customer's agreements, warranties, understandings, conditions, covenants, promises and representations with respect to its subject matter. Apple and Customer acknowledge and agree that they have not relied on any other agreements, warranties, understandings, conditions, covenants, promises or representations in entering into this Agreement. Neither Apple nor Customer will be liable for any agreements, warranties, understandings, conditions, covenants, promises or representations not expressly stated or referenced in this Agreement. Apple is deemed to have refused any provisions in purchase orders, invoices or other documents or statements from Customer that purport to alter or have the effect of altering any provision of the Agreement and such refused provisions will be unenforceable.

#### **11.6 No Reliance**

Apple and Customer each acknowledge and agree that, in entering into the Agreement, they have not relied on and will not be liable for any agreements, warranties, understandings, conditions, covenants, representations or promises other than those expressly stated or referenced in the Agreement. The parties acknowledge and understand that all terms of the Agreement are enforceable as written, and that Apple and Customer intend to enforce and comply with all written terms of the Agreement. Customer hereby acknowledges and agrees that it will be bound by all the terms in the Agreement, notwithstanding any prior or subsequent agreement, warranty, understanding, condition, covenant, representation or promise suggesting otherwise.

#### **11.7 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 this Agreement will be adjusted if possible so as to give maximum effect to the original intent and economic effect of the Parties.

#### **11.8 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.

#### **11.9 Force Majeure**

Neither party will be liable for delay or failure to fulfill its obligations under this Agreement, other than payment obligations, to the extent such delay or failure is due to unforeseen circumstances or causes beyond the party's reasonable control, including, but not limited to, acts of God, war, riot, embargoes, acts of civil or military authorities, acts of terrorism or sabotage, fire, flood, accident, strikes, inability to secure transportation, failure of communications networks, (a "Force Majeure"), provided such party promptly notifies the other party and uses reasonable efforts to correct such failure or delay in its performance. Customer may cancel any order delayed by more than thirty (30) days from the scheduled ship date due to a Force Majeure.

#### **11.10 Headings and Construction**

Paragraph headings are for reference only and will not affect the meaning or interpretation of this Agreement. Wherever the singular is used, it includes the plural, and wherever the plural is used, it includes the singular.

#### **11.11 Signature Authorization**

Each party represents that the person signing this Agreement certifies that he or she has authority to contractually bind Customer to the terms and conditions of this Agreement.

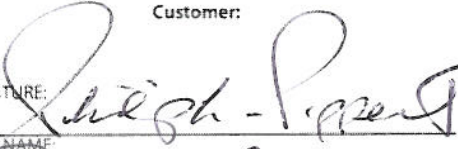
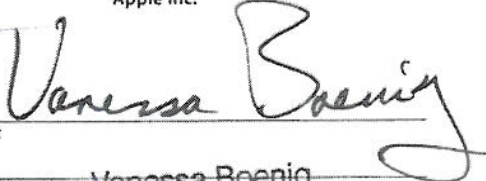
#### **11.12 Counterparts**

This Agreement may be executed in one or more counterparts (including by facsimile), each of which when so executed shall be deemed to be an original and shall have the same force and effect as an original. Such counterparts together shall constitute one and the same instrument.





The duly authorized representatives of the Parties execute this Agreement as of the dates stated below.

Customer:	Apple Inc.
SIGNATURE: 	SIGNATURE: 
PRINT NAME: PHILIP L. PIPPERT	PRINT NAME: Vanessa Boenig
PRINT TITLE: DIRECTOR, SCM	PRINT TITLE: Bids & Direct Operations Contracts Manager
DATE: 6/5/15	DATE: 6/3/2015
DEPARTMENT:	DEPARTMENT:



## Core Contractual Terms as in Effect December 1, 2013 through June 30, 2014

### 1. Applicable Laws and Courts

This solicitation and any resulting Contract shall be governed in all respects by the laws of the Commonwealth of Virginia and any litigation with respect thereto shall be brought in the courts of the Commonwealth. The Contractor shall comply with all applicable federal, state and local laws, rules and regulations.

### 2. Anti-Discrimination

In every Contract over \$10,000 the provisions in a. and b. below apply:

- a. During the performance of this Contract, the Contractor agrees as follows:
  - 1) The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except when there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause, including the names of all contracting agencies with which the contractor has contracts of over \$10,000.
  - 2) The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer.
  - 3) Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for meeting these requirements.
- b. The Contractor will include the provisions of a. above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

### 3. Immigration

Contractor does not, and shall not during the performance of this Contract, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.



#### **4. Contractor/Subcontractor Participation in E-Verify**

In compliance with *Code of Virginia* § 2.2-4308.2, (Effective December 1, 2013), registration and use of federal employment eligibility verification program is required for all Contractors and subcontractors ("employer") conducting business in the Commonwealth.

A. For purposes of this section, "E-Verify program" means the electronic verification of work authorization program of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (P.L. 104-208), Division C, Title IV, § 403(a), as amended, operated by the U.S. Department of Homeland Security, or a successor work authorization program designated by the U.S. Department of Homeland Security or other federal agency authorized to verify the work authorization status of newly hired employees under the Immigration Reform and Control Act of 1986 (P.L. 99-603).

B. Any employer with more than an average of 50 employees for the previous 12 months entering into a contract in excess of \$50,000 with any agency of the Commonwealth to perform work or provide services pursuant to such contract shall register and participate in the E-Verify program to verify information and work authorization of its newly hired employees performing work pursuant to such public contract.

C. Any such employer who fails to comply with the provisions of subsection B shall be debarred from contracting with any agency of the Commonwealth for a period up to one year. Such debarment shall cease upon the employer's registration and participation in the E-Verify program.

If requested, a Contractor must show proof of their continued participation e-Verify.

#### **5. Antitrust**

By entering into a Contract, the Contractor conveys, sells, assigns, and transfers to the Commonwealth of Virginia all rights, title and interest in and to all causes of action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by the Commonwealth of Virginia under said Contract.

#### **6. Payment**

a. To Prime Contractors:

- 1) Contractor shall provide social security number (for individual Contractors) or the federal employer identification number (for proprietorships, partnerships, and corporations).
- 2) Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however.

- 3) All goods or services provided under this Contract or purchase order, that are to be paid for with public funds, shall be billed by the Contractor at the Contract price, regardless of which public agency is being billed.
- 4) The following shall be deemed to be the date of payment: the date of postmark in all cases where payment is made by mail, or the date of offset when offset proceedings have been instituted as authorized under the Virginia Debt Collection Act.
- 5) Unreasonable Charges. Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed. In such cases, Contractors should be put on notice that final payment in full is contingent on a determination of reasonableness with respect to all invoiced charges. Charges that appear to be unreasonable will be researched and challenged, and that portion of the invoice held in abeyance until a settlement can be reached. Upon determining that invoiced charges are not reasonable, the Commonwealth shall promptly notify the Contractor, in writing, as to those charges which it considers unreasonable and the basis for the determination. A Contractor may not institute legal action unless a settlement cannot be reached within thirty (30) days of notification. The provisions of this section do not relieve an agency of its prompt payment obligations with respect to those charges that are not in dispute.

b. To Subcontractors:

- 1) A Contractor awarded a Contract under this solicitation is hereby obligated:
  - (a) To pay the subcontractor(s) within seven (7) days of the Contractor's receipt of payment from the Commonwealth for the proportionate share of the payment received for work performed by the subcontractor(s) under the Contract; or
  - (b) To notify the agency and the subcontractor(s), in writing, of the Contractor's intention to withhold payment and the reason.
- 2) Interest shall accrue at the rate of one percent per month (unless otherwise provided under the terms of the Contract) on all amounts owed by the Contractor that remain unpaid seven (7) days following receipt of payment from the Commonwealth for work performed by the subcontractor, except for amounts withheld as stated in (2) above. The date of mailing of any payment by U. S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier Contractor performing under the primary Contract. A Contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the



Commonwealth.

- 3) The Contractor will include the provisions of a. above in every subcontract or purchase order, so that the provisions will be binding upon each subcontractor or vendor.

## **7. Modifications**

This contract maybe modified in accordance with §2.2-4309 of the Code of Virginia. Such modifications may only be made by the representatives authorized to do so. No modifications to this contract shall be effective unless it is in writing and signed by the duly authorized representative of both parties. No term or provision hereof shall be deemed waived and no breach excused unless such waiver or consent to breach is in writing.

Any contract issued on a firm fixed price basis may not be increased more than twenty five percent (25%) or \$50,000.00 whichever is greater, without the approval of the Governor of the Commonwealth of Virginia or his authorized designee. In no event may the amount of the contract be increased without adequate consideration.

## **8. Drug-Free Workplace**

During the performance of this Contract, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific Contract awarded to a Contractor, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the Contract.

## **9. Section 508 Compliance**

All information technology which, pursuant to this Contract, is purchased or upgraded by or for the use of any Commonwealth agency or institution or political subdivision of the Commonwealth (the "Technology") shall comply with Section 508 of the Rehabilitation Act (29 U.S.C. 794d), as amended. If requested, the Contractor

must provide a detailed explanation of how compliance with Section 508 of the Rehabilitation Act is achieved and a validation of concept demonstration. The requirements of this Paragraph along with the Non-Visual Access to Technology Clause shall be construed to achieve full compliance with the Information Technology Access Act, §§2.2-3500 through 2.2-3504 of the Code of Virginia.

## **10. Non-Visual Access**

All information technology which, pursuant to this Contract, is purchased or upgraded by or for the use of any State agency or institution or political subdivision of the Commonwealth (the "Technology") shall comply with the following nonvisual access standards from the date of purchase or upgrade until the expiration of this Contract:

- (i) Effective, interactive control and use of the Technology shall be readily achievable by nonvisual means;
- (ii) The Technology equipped for nonvisual access shall be compatible with information technology used by other individuals with whom any blind or visually impaired user of the Technology interacts;
- (iii) Nonvisual access technology shall be integrated into any networks used to share communications among employees, program participants or the public; and
- (iv) The technology for nonvisual access shall have the capability of providing equivalent access by nonvisual means to telecommunications or other interconnected network services used by persons who are not blind or visually impaired.

Compliance with the foregoing nonvisual access standards shall not be required if the head of the using agency, institution or political subdivision determines that (i) the Technology is not available with nonvisual access because the essential elements of the Technology are visual and (ii) nonvisual equivalence is not available.

Installation of hardware, software, or peripheral devices used for nonvisual access is not required when the Technology is being used exclusively by individuals who are not blind or visually impaired, but applications programs and underlying operating systems (including the format of the data) used for the manipulation and presentation of information shall permit the installation and effective use of nonvisual access software and peripheral devices.

If requested, the Contractor must provide a detailed explanation of how compliance with the foregoing nonvisual access standards is achieved and a validation of concept demonstration.

The requirements of this Paragraph shall be construed to achieve full compliance



with the Information Technology Access Act, 2.2-3500 through 2.2-3504 of the Code of Virginia.

## **11. Authorized To Transact Business**

A Contractor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the Code of Virginia or as otherwise required by law.

A Contractor shall not allow its existence as a partnership or corporation to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50 of the Code of Virginia, to be revoked or cancelled at any time during the term of the Contract. The Commonwealth may void this Contract, in whole or in part, if the Contractor fails to remain in compliance with the provisions of this provision.

## **12. Insurance**

The Contractor and any subcontractors will maintain the following insurance coverages during the entire term of the Contract. All insurance coverages will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission. Contractor will provide Certificates of Insurance upon request to substantiate its compliance with these requirements.

- (i) Workers' Compensation - Statutory requirements and benefits. Coverage is compulsory for employers of three or more employees, to include the employer. Contractors who fail to notify the Commonwealth of increases in the number of employees that change their workers' compensation requirements under the Code of Virginia during the course of the contract shall be in noncompliance with the contract.
- (ii) Employer's Liability - \$100,000.
- (iii) Commercial General Liability - \$1,000,000 per occurrence. Commercial General Liability is to include bodily injury and property damage, personal injury and advertising injury, products and completed operations coverage. The Commonwealth of Virginia must be named as an additional insured and so endorsed on the policy.