

**STATE OF TEXAS
DEPARTMENT OF INFORMATION RESOURCES
CONTRACT FOR PRODUCTS AND RELATED SERVICES**

Apple Inc.

1. Introduction

A. Parties

This Contract for products and related services is entered into between the State of Texas, acting by and through the Department of Information Resources (hereinafter “DIR”) with its principal place of business at 300 West 15th Street, Suite 1300, Austin, Texas 78701, and Apple Inc. (hereinafter “Vendor”), with its principal place of business at 1 Infinite Loop, Cupertino, California, 95014.

B. Compliance with Procurement Laws

This Contract is the result of compliance with applicable procurement laws of the State of Texas. DIR issued a solicitation on the Comptroller of Public Accounts’ Electronic State Business Daily, Request for Offer (RFO) DIR-SDD-TMP-193, on August 9, 2012, for Apple Branded Manufacturer Hardware, Software, and Related Services. Upon execution of this Contract, a notice of award for RFO DIR-SDD-TMP-193 shall be posted by DIR on the Electronic State Business Daily.

C. Order of Precedence

For purchase transactions under this Contract, the order of precedence shall be as follows: this Contract; Appendix A, Standard Terms and Conditions For Products and Related Services Contracts; Appendix B, Vendor’s Historically Underutilized Businesses Subcontracting Plan; Appendix C, Pricing Index; Appendix D, Master Lease Agreement; Exhibit 1, Vendor’s Response to RFO DIR-SDD-TMP-193, including all addenda; and Exhibit 2, RFO DIR-SDD-TMP-193, including all addenda; are incorporated by reference and constitute the entire agreement between DIR and Vendor governing purchase transactions. For Lease transactions under this Contract the order of precedence shall be as follows: this Contract; Appendix D, Master Lease Agreement; Appendix A, Standard Terms and Conditions For Products and Related Services Contracts; Appendix B, Vendor’s Historically Underutilized Businesses Subcontracting Plan; Appendix C, Pricing Index; Exhibit 1, Vendor’s Response to RFO DIR-SDD-TMP-193, including all addenda; and Exhibit 2, RFO DIR-SDD-TMP-193, including all addenda; are incorporated by reference and constitute the entire agreement between DIR and Vendor governing lease transactions. In the event of a conflict between the documents listed in this paragraph related to purchases, the controlling document shall be this Contract, then Appendix A, then Appendix B, then Appendix C, then Appendix D, then Exhibit 1, and finally Exhibit 2. In the event of a conflict between the documents listed in this paragraph related to lease transactions, the controlling document shall be this Contract, then

Appendix D, then Appendix A, then Appendix B, then Appendix C, then Exhibit 1, and finally Exhibit 2. In the event and to the extent any provisions contained in multiple documents address the same or substantially the same subject matter but do not actually conflict, the more recent provisions shall be deemed to have superseded earlier provisions.

2. Term of Contract

The term of this Contract shall be one (1) year commencing on the last date of approval by DIR and Vendor. Prior to expiration of the original term, DIR and Vendor may extend the Contract, upon mutual agreement, for up to three (3) optional one-year terms. Protracted contract negotiations may, in DIR's sole discretion, result in fewer optional terms.

3. Product and Service Offerings

A. Products

Vendor Products available under this Contract are limited to Apple-Branded Products and such third-party branded products offered by Apple (collectively referred to as "Vendor Products"). "Apple-Branded Products" means services, hardware and software products manufactured, distributed or licensed under the Apple brand name that DIR has acquired or licensed from Vendor for its own use, but excluding third party software and all other third party products. Vendor may incorporate changes to their product offering; however, any changes must be within the scope of Vendor Products awarded based on the posting described in Section 1.B above.

B. Services

Services available under this Contract are limited to services related to Apple-Branded Products described in Section 3.A above. Vendor may incorporate changes to their service offering; however, any changes must be within the scope of services awarded based on the posting described in Section 1.B above.

4. Pricing

A. Manufacturer's Suggested Retail Price (MSRP)

MSRP is defined as Vendor's published retail price.

B. Customer Discount

The minimum Customer discount for all Vendor Products and Services will be the percentage off MSRP as specified in Appendix C, Pricing Index.

C. Customer Price

1) The price to the Customer shall be calculated as follows:

$$\text{Customer Price} = \text{MSRP} - \text{Customer Discount}$$

2) Customers purchasing products and services under this Contract may negotiate more advantageous pricing or participate in special promotional offers. In such event, a copy of such better offerings shall be furnished to DIR upon request.

3) If pricing for Apple-Branded Products available under this Contract are provided at a lower per unit price for equal quantities to those purchased under a single purchase order to: (i) an eligible Customer who is not purchasing those Apple-Branded Products under this Contract or (ii) any other entity or consortia authorized by Texas law to sell said Apple-Branded Products to eligible Customers, then, if applicable, the available Customer Price in this Contract shall be adjusted to that lower price. This requirement applies to products or services quoted by Vendor for a quantity of one (1) under like terms and conditions, and does not apply to volume or special pricing purchases. This Contract shall be amended within ten (10) business days to reflect the lower price.

D. DIR Administrative Fee

The administrative fee specified in Section 5 below shall not be broken out as a separate line item when pricing or invoice is provided to Customer.

E. Shipping and Handling Fees

The price to the Customer under this Contract shall include all shipping and handling fees. Shipments will be Free On Board Customer's destination. No additional fees shall be charged to the Customer for standard shipping and handling. If the Customer requests expedited delivery, Customer will be responsible for any charges for expedited delivery.

F. Tax-Exempt

As per Section 151.309, Texas Tax Code, Customers under this Contract are exempt from the assessment of State sales, use and excise taxes. Further, Customers under this Contract are exempt from Federal Excise Taxes, 26 United States Code Sections 4253(i) and (j). Vendor reserves the right to request documentation supporting the Customer's tax exempt status under State and/or Federal law and Customer will provide such information.

G. Travel Expense Reimbursement

Pricing for services provided under this Contract are exclusive of any travel expenses that may be incurred in the performance of those services. Travel expense reimbursement may include personal vehicle mileage or commercial coach transportation, hotel accommodations, parking and meals; provided, however, the amount of reimbursement by Customers shall not exceed the amounts authorized for state employees as adopted by each Customer; and provided, further, that all reimbursement rates shall not exceed the maximum rates established for state employees under the current State Travel Management Program (<http://www.window.state.tx.us/procurement/prog/stmp/>). Travel time may not be included as part of the amounts payable by Customer for any services rendered under this Contract. The DIR administrative fee specified in Section 5 below is not

applicable to travel expense reimbursement. Anticipated travel expenses must be pre-approved in writing by Customer.

H. Changes to Prices

Vendor may change the price of any Vendor Product or Service at any time, based upon changes to the MSRP, but, subject to the below, discount levels shall remain consistent with the discount levels specified in this Contract. In the event of an administrative fee change pursuant to Section 5(B) of this Contract, Vendor may change the discount level to reflect the change in administrative fee. Price decreases shall take effect automatically during the term of this Contract and shall be passed onto the Customer immediately for orders not yet accepted by Vendor.

5. DIR Administrative Fee

A) The administrative fee to be paid by the Vendor to DIR based on the dollar value of all sales to Customers pursuant to this Contract is three fifths of one percent (.35%) of net sales. Payment will be calculated for all sales, net of returns and credits. For example, the administrative fee for sales totaling \$100,000 shall be \$350.

B) All prices quoted to Customers shall include the administrative fee. DIR may change administrative fee amounts; however, no revision will take effect before ninety (90) days following written notice. Vendor may revise pricing to reflect the change in administrative fee.

6. Notification

All notices under this Contract shall be sent to a party at the respective address indicated below.

If sent to the State:

Robin Abbott, Manager
Contracts and Vendor Management
Department of Information Resources
300 W. 15th St., Suite 1300
Austin, Texas 78701
Phone: (512) 475-4700
Facsimile: (512) 475-4759
Email: robin.abbott@dir.texas.gov

If sent to the Vendor:

Avital Elad, Sr. Contracts Negotiator, Education Contracts
Apple Inc.
1 Infinite Loop, MS: 90-2CM
Cupertino, California 95014
Phone: (408) 974-3402
Facsimile: (408) 974-4908
Email: aelad@apple.com

7. Software License and Leasing Agreements

A. Software License Agreement

Customer, as an end user, is licensed to use any software contained in the Vendor Products, subject to the terms of the license agreement accompanying the Vendor Products (herein incorporated by reference), if any, and the applicable patent, trademark, copyright, and other intellectual property, federal and state laws of the United States. Unless Customer has obtained Vendor's prior written consent, Customer, in addition to any obligations or restrictions set forth in any license that may accompany a Vendor Product, shall not copy the software, except to back up or for archival purposes, and Customer shall promptly affix to any such copy the same proprietary and copyrights notices as were affixed to the original. Customer shall not disassemble, decompile, reverse engineer, copy, modify, create derivative works thereof, or otherwise change any of the software or its form. As it relates to the use of the Vendor Product (separate and apart from the purchasing terms in this Contract), and without waiving Customers sovereign immunity, and to the extent permitted by law, the terms and conditions of the license agreement will prevail over any and all agreements between the parties. **It is the Customer's responsibility to read any applicable license agreement and determine if the Customer accepts the license terms and conditions. If DIR licenses software for its own use under this Contract, it shall be responsible for its compliance with any applicable license agreement terms and conditions.**

B. Master Lease Agreement

DIR and Vendor hereby agree that Vendor is authorized to utilize the Master Lease Agreement in Appendix D of this Contract for DIR authorized entities as Lessees that are **not** Texas State Agencies or otherwise required by statute to utilize the Texas Public Finance Authority for such leasing transactions.

8. Intellectual Property Matters

Absent a written amendment to this Contract, no customization services are included or contemplated or permitted under this Contract, and the Professional Services Agreement included in the Vendor's proposal is expressly excluded from this Contract. Therefore, this Section 8 concerning Intellectual Property Matters is unnecessary and is deleted.

Vendor and Customers may contract for installation of standard equipment and products, training, imaging and tagging of inventory without an amendment to this Contract. Additional terms and conditions that do not conflict with the Contract and are acceptable to Customer and Vendor may be added in a statement of work and given effect. No additional term or condition added in a statement of work issued by a Customer can conflict with or diminish a term or condition of the Contract. In the event of a conflict between a statement of work and the Contract, the Contract term shall control.

9. Authorized Exceptions to Request for Offer DIR-SDD-TMP-193 for Apple Branded Manufacturer Hardware, Software and Related Services.

A. Section 2. Scope, 2.1 Products, the second paragraph only is hereby replaced in its entirety:

In addition, third party products may also be included at the discretion of DIR. NOTE: DIR has established Microsoft Volume Licensing agreements directly with the Publisher of the software, Microsoft Licensing, GP to consider the State of Texas as a single customer and grant discounts based on the volume of the State of Texas as a whole. Therefore, for any contract awarded as a result from this RFO, Customer may not issue purchase orders for any Microsoft Volume Licensing software licenses that may infringe on any Volume Licensing program and related agreements that DIR has established directly with the Publisher. Software that is installed/loaded as part of an operating system at the time of configuration is acceptable.

10. Authorized Exceptions to Appendix A, Standard Terms and Conditions for Product and Related Services Contracts.

A. Section 4. General Provisions, A. Entire Agreement, is hereby replaced in its entirety:

The Contract and any documents or statutes incorporated by reference, Appendices, and Exhibits constitute the entire agreement between DIR and the Vendor. No statement, promise, condition, understanding, inducement or representation, oral or written, expressed or implied, which is not contained in the Contract, Appendices, or its Exhibits shall be binding or valid.

B. Section 5. Product Terms and Conditions, A. Electronic and Information Resources Accessibility Standards, As Required by 1 TAC Chapters 206 and 213 (Applicable to State Agency and Institution of Higher Education Purchases Only, Item 2), is hereby replaced in its entirety:

2) Except as provided below and upon request, but not later than thirty (30) days after request, Vendor shall provide DIR with a completed Voluntary Product Accessibility Template (VPAT) of the specified product or a URL to the VPAT for reviewing compliance with the State of Texas Accessibility requirements (based on the federal standards established under Section 508 of the Rehabilitation Act). However, if (i) Vendor releases a new product and a VPAT has not yet been created or (ii) Vendor removed a VPAT from its website (<http://www.apple.com/accessibility/resources/>) because a product was no longer current, Vendor shall have ninety (90) days after the request to provide DIR with a completed VPAT of the specified product or a URL to the VPAT. This Section 5(A)(2) shall only apply to products offered under this Contract Number DIR-SDD-2068, effective as of the date of last signature of this Contract and which expires in one (1) year from the last day of approval by DIR and Vendor.

C. Section 6. Contract Fulfillment and Promotion, C. Product Warranty and Return Policies, is hereby replaced in its entirety:

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

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

APPLE-BRANDED 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-BRANDED 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.

For the avoidance of doubt, this provision does not limit or restrict the Vendor's indemnification obligations in Section 9(A) of this Contract.

D. Section 6. Contract Fulfillment and Promotion, G. Vendor and Order Fulfiller Logo, is hereby replaced in its entirety:

Subject to DIR's compliance with Vendor's trademark guidelines located at www.apple.com/legal/trademark/guidelinesfor3rdparties.html, DIR may use the Vendor's and Order Fulfiller's name and logo in the promotion of the Contract to communicate the availability of products and services under the Contract to Customers. Use of the logos may be on the DIR website or on printed materials. Any use of Vendor's and Order Fulfiller's logo by DIR must comply with and be solely related to the purposes of the Contract and any usage guidelines communicated

to DIR from time to time. Nothing contained in the Contract will give DIR any right, title, or interest in or to Vendor's or Order Fulfiller's trademarks or the goodwill associated therewith, except for the limited usage rights expressly provided by Vendor and Order Fulfiller.

E. Section 6. Contract Fulfillment and Promotion, K. DIR Cost Avoidance, is hereby replaced in its entirety:

As part of the performance measures reported to state leadership, DIR must provide the cost avoidance the State has achieved through the Contract. Upon request by DIR, Vendor shall provide DIR with a detailed report of a representative sample of products sold under the Contract. The report shall contain: product part number, product description, MSRP for standard Apple-Branded Products, and price to Customer under the Contract. Vendor may provide reporting based on its standard report format that will include the items listed in this section.

F. Section 8. Contract Administration, B. Reporting and Administrative Fees, 2) Detailed Monthly Report, is hereby replaced in its entirety:

Vendor shall electronically provide DIR with a detailed monthly report in the format required by DIR showing the dollar volume of any and all sales under the Contract for the previous Vendor fiscal month period. Reports shall be submitted to the DIR ICT Cooperative Contracts E-Mail Box at ict.sales@dir.texas.gov. Reports are due on the fifteenth (15th) calendar day after the close of the previous month period. It is the responsibility of Vendor to collect and compile all sales under the Contract from participating Order Fulfillers and submit one (1) monthly report. The monthly report shall include, per transaction: the detailed sales for the period, the Order Fulfiller's company name, if applicable, Customer name, invoice date, invoice number, description, part number, manufacturer, quantity, MSRP for standard Apple Branded Products, unit price, extended price, Customer Purchase Order number, contact name, Customer's complete billing address, and other information as reasonably required by DIR. Each report must contain all information listed above per transaction or the report will be rejected and returned to the Vendor for correction in accordance with this section.

G. Section 8. Contract Administration, B. Reporting and Administrative Fees, 4) DIR Administrative Fee, subparagraph a), is hereby replaced in its entirety:

a) An administrative fee shall be paid by Vendor to DIR to defray the DIR costs of negotiating, executing, and administering the Contract. The maximum administrative fee is set by the Texas Legislature in the biennial General Appropriations Act. Payment of the administrative fee shall be due on the fifteenth (15th) calendar day after the close of the previous month period. DIR may change administrative fee amounts; however, no revision will take effect before ninety (90) days following written notice. Vendor may revise pricing to reflect the change in administrative fees.

H. Section 8. Contract Administration, B. Reporting and Administrative Fees, 5) Accurate and Timely Submission of Reports, subparagraph a), is hereby restated in its entirety:

- a) The reports and administrative fees shall be accurate and timely and submitted in accordance with the due dates specified in this section. Vendor shall correct any inaccurate reports or administrative fee payments within five (5) business days upon written notification by DIR. Vendor shall deliver any late reports or late administrative fee payments within five (5) business days upon written notification by DIR. If Vendor is unable to correct inaccurate reports or administrative fee payments or deliver late reports and fee payments within five (5) business days, Vendor must contact DIR and provide a corrective plan of action, including the timeline for completion of correction. The corrective plan of action shall be subject to DIR approval.

I. Section 8. Contract Administration, C. Records and Audit, is hereby restated in its entirety:

- 1) Pursuant to Texas State law, acceptance of funds under the Contract by Vendor and/or Order Fulfiller acts as acceptance of the authority of the State Auditor's Office, or any successor agency, to conduct an audit or investigation in connection with those funds. Vendor further agrees to cooperate fully with the State Auditor's Office or its successor in the conduct of the audit or investigation, including providing all records requested. Vendor will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Vendor or directly by Order Fulfillers and the requirement to cooperate is included in any subcontract or Order Fulfiller contract it awards pertaining to the Contract. Under the direction of the Legislative Audit Committee, a Vendor that is the subject of an audit or investigation by the State Auditor's Office must provide the State Auditor's Office with access to any information the State Auditor's Office considers relevant to the investigation or audit.
- 2) Vendor and Order Fulfillers shall maintain adequate records to establish compliance with the Contract until the later of a period of four (4) years after the latest of payment of the Vendor Product(s) or termination of the Contract or until full, final and unappealable resolution of all Compliance Check or litigation issues that arise under the Contract. Such records shall include per transaction: the Order Fulfiller's company name if applicable, Customer name, invoice date, invoice number, description, part number, manufacturer, quantity, Manufacturer Suggested Retail Price (MSRP) (excluding non-standard, custom Vendor Products), unit price, extended price, Customer Purchase Order number, contact name, Customer's complete billing address, the calculations supporting each administrative fee owed DIR under the Contract, Historically Underutilized Businesses Subcontracting reports, and such other documentation as DIR may request.
- 3) Vendor and/or Order Fulfillers shall grant access to all paper and electronic

records, books, documents, accounting procedures, practices and any other items relevant to the performance of the Contract to the DIR Internal Audit department or DIR Contract Management staff, including the compliance checks designated by the DIR Internal Audit department, DIR Contract Management staff, the State Auditor's Office, and of the United States, and such other persons or entities designated by DIR for the purposes of inspecting, Compliance Checking and/or copying such books and records. Vendor and/or Order Fulfillers shall provide copies and printouts requested by DIR without charge. DIR shall provide Vendor and/or Order Fulfillers ten (10) business days' notice prior to inspecting, Compliance Checking, and/or copying Vendor's and/or Order Fulfiller's records. Vendor's and/or Order Fulfillers records, whether paper or electronic, shall be made available during regular office hours. Vendor and/or Order Fulfiller personnel familiar with the Vendor's and/or Order Fulfiller's books and records shall be available to the DIR Internal Audit department, or DIR Contract Management staff and designees as needed. Vendor and/or Order Fulfiller shall provide adequate office space to DIR staff during the performance of Compliance Check. Except as otherwise specified, each party will bear its own cost in the performance of the audit. If any audit reveals a Material Accounting Error, Vendor must reimburse DIR for actual and reasonable costs of such audit. Material Accounting Error means (a) with regard to audits of invoices, an aggregate variance from all applicable invoices of Vendor reviewed during such audit in excess of 1.5% of the aggregate amount shown on all of the invoices reviewed during such audit; and (b) with regard to audits of fees, an aggregate underpayment of all fees due to DIR under this Contract during a Vendor fiscal quarter in excess of 5%.

4) For procuring State Agencies whose payments are processed by the Texas Comptroller of Public Accounts, the volume of payments made to Order Fulfillers through the Texas Comptroller of Public Accounts and the administrative fee based thereon shall be presumed correct unless Vendor can demonstrate to DIR's satisfaction that Vendor's calculation of DIR's administrative fee is correct.

5) Vendor asserts that any information concerning any of Vendor's other customers or anything not pertaining specifically to goods and services sold by Vendor to DIR under the corresponding Contract constitutes confidential information of Vendor. Subject to Texas State law, any information, books, records and supporting documents made available in the course of any audits are confidential information of Vendor and will be maintained in strict confidence by DIR.

J. Section 9. Vendor Responsibilities, A. Indemnification, is hereby restated in its entirety:

1) Indemnity. Subject to the exceptions in this Section 9(A)(1) and the terms of Section 9(A)(2) below, Vendor will indemnify and hold harmless DIR and Customers from any claim by a third party against Customer to the extent based on a claim that: (i) an Apple-Branded Product sold by Vendor to Customer infringes a U.S. patent, copyright, trademark or trade secret; or (ii) personal injury or economic loss suffered by such third party was caused by Vendor's negligence or misconduct. Notwithstanding anything to the contrary, Vendor is not liable to defend or be

responsible for any claims or damages arising solely out of or solely related to: (a) modification of any Apple-Branded Product; (b) combination, operation or use of any Apple-Branded Product with non Apple-Branded Vendor Products or other programs, data or documentation; (c) Customer's violation of any import or export control requirements, regulations and laws; (d) Customer's use or exportation of any Vendor Product into any countries identified on any U.S. Government embargoed countries list; (e) use of any Apple-Branded Product in a manner not authorized under the applicable license terms; (f) any other Vendor Products; or (g) Customer's, its agents, employees or contractors' negligent acts or omissions. IN ACCORDANCE WITH TEXAS STATE LAW, VENDORS OBLIGATIONS TO INDEMNIFY AND HOLD HARMLESS WILL NOT BE PRECLUDED OR LIMITED BY ANY CLAIM OF CONTRIBUTORY NEGLIGENCE. THE ABOVE IS CUSTOMER'S AND DIR'S SOLE AND EXCLUSIVE REMEDY AND VENDOR'S ENTIRE LIABILITY FOR ALL SUCH CLAIMS.

2) Notice and Defense Conditions. Customer shall promptly notify Vendor, in writing, of any claim, demand, proceeding or suit of which Customer becomes aware which may give rise to a right of defense under this Section 9(A)("Claim"). Notice of any Claim that is a legal proceeding, by suit or otherwise, must be provided to Vendor within 30 days of Customer's first learning of such proceeding. The defense shall be coordinated with the Office of the Attorney General and Vendor may not agree to any settlement as to claims against Texas state agencies without first obtaining concurrence from the Office of the Attorney General. 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.

3) Mitigation. In the event of any actual or potential Claim, Vendor will be entitled (but not obligated), at its sole option, to: (i) procure for Customer the right to continue use of the applicable Apple-Branded Product(s); (ii) replace the applicable Apple-Branded Product(s); (iii) modify the applicable Apple-Branded Product(s); or (iv) refund the amount paid by Customer to Vendor for the applicable Apple-Branded Product.

4) Independent Contractor. VENDOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, IT IS FURNISHING SERVICES IN THE CAPACITY OF AN INDEPENDENT CONTRACTOR AND THAT VENDOR IS NOT AN EMPLOYEE OF THE CUSTOMER, DIR OR THE STATE OF TEXAS.

K. Section 9. Vendor Responsibilities, B. Taxes/Worker's Compensation/UNEMPLOYMENT INSURANCE, is hereby restated in its entirety:

VENDOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, VENDOR SHALL BE ENTIRELY RESPONSIBLE FOR

THE LIABILITY AND PAYMENT OF VENDOR'S AND VENDOR'S EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCES IN THIS CONTRACT. VENDOR AGREES TO COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO ANY SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. VENDOR AGREES AND ACKNOWLEDGES THAT VENDOR ITS EMPLOYEES, REPRESENTATIVES, AGENTS OR SUBCONTRACTORS SHALL NOT BE ENTITLED TO ANY STATE BENEFIT OR BENEFIT OF ANOTHER GOVERNMENTAL ENTITY CUSTOMER. THE CUSTOMER AND/OR THE STATE SHALL NOT BE LIABLE TO THE VENDOR ITS EMPLOYEES, AGENTS, OR OTHERS FOR THE PAYMENT OF TAXES OR THE PROVISION OF UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION OR ANY BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF ANOTHER GOVERNMENTAL ENTITY CUSTOMER.

L. Section 9. Vendor Responsibilities, I. Security of Premises, Equipment, Data and Personnel, is hereby restated in its entirety:

Vendor and/or Order Fulfiller may, from time to time during the performance of the Contract, have access to the personnel of Customers and the premises, equipment, and other tangible property belonging to the Customer. Vendor shall preserve the safety of such personnel and the safety, security, and the integrity of such premises, equipment, and other tangible property. Vendor shall be responsible for damage to Customer's premises, equipment, and other tangible property when such damage is caused by its employees or subcontractors.

M. Section 9. Vendor Responsibilities, J. Background and/or Criminal History Investigation, is hereby restated in its entirety:

Prior to commencement of any services, background and/or criminal history investigation of the Vendor and/or Order Fulfiller's employees and subcontractors who will be providing services to the Customer under the Contract may be performed by certain Customers. Should any employee or subcontractor of the Vendor and/or Order Fulfiller who will be providing services to the Customer under the Contract not be acceptable to the Customer as a result of the background and/or criminal history check, then Customer may immediately request replacement of the employee or subcontractor in question. If Vendor refuses to make the replacement, the Customer may terminate its Purchase Order.

N. Section 9. Vendor Responsibilities, K. Limitation of Liability, is hereby restated in its entirety:

Notwithstanding anything to the contrary, except to the extent prohibited by applicable law, the maximum aggregate liability of Vendor for any and all claims and damages arising out of or related to this Contract, whether arising in contract,

warranty, tort, strict liability, statute or otherwise, shall be limited to ten million dollars (\$10,000,000.00). IN NO EVENT SHALL VENDOR BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, SPECIAL, INDIRECT DAMAGES (INCLUDING, WITHOUT LIMITATION, CLAIMS FOR LOST BUSINESS PROFITS OR REVENUE, LOSS OF DATA, INTERRUPTION IN USE, UNAVAILABILITY OF DATA, OR THE COST OF THE PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES) OR FOR PUNITIVE OR EXEMPLARY DAMAGES, WHETHER AS A RESULT OR BREACH OF CONTRACT, WARRANTY, TORT, STRICT LIABILITY, STATUTE OR OTHERWISE. The remedies set forth in this Contract shall be Customer's and DIR's sole and exclusive remedies for any and all claims against Vendor, its agents and subcontractors in connection with or related to this Contract. The parties further agree that the liability cap set forth herein shall not be applied cumulatively or on a per claim basis and nothing shall be construed so as to enlarge that aggregate limit. This limitation of Vendor's liability shall not apply to Vendor's intellectual property indemnification obligations in Section 9(A) of this Contract. THE PARTIES AGREE THAT THE ABOVE TERMS REPRESENT A FAIR ALLOCATION OF RISK BETWEEN THE PARTIES WITHOUT WHICH THEY WOULD NOT HAVE ENTERED INTO THE AGREEMENT.

O. Section 9. Vendor Responsibilities, L. Overcharges, is hereby replaced in its entirety:

Vendor hereby assigns to DIR any and all of its claims for overcharges associated with this contract which arise under the antitrust laws of the United States, 15 U.S.C.A. Section 1, et seq., and which arise under the antitrust laws of the State of Texas, Tex. Bus. and Comm. Code Section 15.01, et seq. This provision will only apply when such overcharges directly impacted prices the Vendor charged DIR or Customers.

P. Section 9. Vendor Responsibilities, N. Required Insurance Coverage, is hereby replaced in its entirety:

As a condition of this Contract with DIR, Vendor shall provide the listed insurance coverage within 5 days of execution of the Contract if the Vendor is awarded services which require that Vendor's employees perform work at any Customer premises and/or use employer vehicles to conduct work on behalf of Customers. In addition, when engaged by a Customer to provide services on Customer premises, the Vendor shall, at its own expense, secure and maintain the insurance coverage specified herein, and shall provide proof of such insurance coverage to the related Customer within five (5) business days following the execution of the Purchase Order. Vendor may not begin performance under the Contract and/or a Purchase Order until such proof of insurance coverage is provided to, and approved by, DIR and the Customer. All required insurance must be issued by companies that are A+ financially rated and duly licensed, admitted, and authorized to do business in the State of Texas. The Customer and DIR will be named as Additional Insureds on all required coverage.

Required coverage must remain in effect through the term of the Contract and each Purchase Order issued to Vendor there under. The minimum acceptable insurance provisions are as follows:

1) Commercial General Liability

Commercial General Liability must include a combined single limit of \$500,000 per occurrence for coverage A, B, & C including products/completed operations, where appropriate, with a separate aggregate of \$500,000. The policy shall contain the following provisions:

- a) Blanket contractual liability coverage for liability assumed under the Contract;
- b) Independent Contractor coverage;
- c) State of Texas, DIR and Customer listed as an additional insured;
- d) 30-day Notice of Termination in favor of DIR and/or Customer; and
- e) Waiver of Transfer Right of Recovery Against Others in favor of DIR and/or Customer.

2) Workers' Compensation Insurance

Workers' Compensation Insurance and Employers' Liability coverage must include limits consistent with statutory benefits outlined in the Texas Workers' Compensation Act (Art. 8308-1.01 et seq. Tex. Rev. Civ. Stat) and minimum policy limits for Employers' Liability of \$250,000 bodily injury per accident, \$500,000 bodily injury disease policy limit and \$250,000 per disease per employee.

3) Business Automobile Liability Insurance

Business Automobile Liability Insurance must cover all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternative acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident. The policy shall contain the following endorsements in favor of DIR and/or Customer:

- a) Waiver of Subrogation;
- b) 30-day Notice of Termination; and
- c) Additional Insured.

Vendor shall have the option to self-insure, as long as Vendor maintains an audited net worth (Shareholder's Equity) of \$100,000,000.00.

Q. Section 10. Contract Enforcement, B. Termination, 1) Termination for Non-Appropriation, is hereby restated in its entirety:

a) Termination for Non-Appropriation by Customer

Customer may terminate Purchase Orders if funds sufficient to pay its obligations under the Contract are not appropriated: i) by the governing body on behalf of local governments; ii) by the Texas legislature on behalf of state agencies; or iii) by budget execution authority provisioned to the Governor or the Legislative

Budget Board as provided in Chapter 317, Texas Government Code. In the event of non-appropriation, Vendor and/or Order Fulfiller will be provided ten (10) calendar days written notice of intent to terminate. Notwithstanding the foregoing, if a Customer issues a Purchase Order and has accepted delivery of the product or services, they are obligated to pay for the product or services in accordance with Section 7(C) of Appendix A to the Contract or they may return the product and discontinue using services under any return provisions that Vendor offers. In the event of such termination, the Customer will not be considered to be in default or breach under this Contract, nor shall it be liable for any further payments after the date of termination, nor shall it be liable for any damages or any other amounts which are caused by or associated with such termination.

b) Termination for Non-Appropriation by DIR

DIR may terminate Contract if funds sufficient to pay its obligations under the Contract are not appropriated: by the i) Texas legislature or ii) by budget execution authority provisioned to the Governor or the Legislative Budget Board as provided in Chapter 317, Texas Government Code. In the event of non-appropriation, Vendor and/or Order Fulfiller will be provided thirty (30) calendar days written notice of intent to terminate. Notwithstanding the foregoing, if DIR issues a Purchase Order and has accepted delivery of the product or services, DIR is obligated to pay for the product or services in accordance with the payment terms of the Contract as set forth in Section 7(C) of Appendix A to the Contract or it may return the product and discontinue using services under any return provisions that Vendor offers. In the event of such termination, DIR will not be considered to be in default or breach under this Contract, nor shall it be liable for any further payments after the date of termination, nor shall it be liable for any damages or any other amounts which are caused by or associated with such termination.

R. Section 10. Contract Enforcement, B. Termination, 3) Termination for Convenience, is hereby restated in its entirety:

Either party may terminate the Contract, in whole or in part, by giving the other party thirty (30) calendar days written notice. A Customer may terminate a Purchase Order if it is determined by the Customer that Order Fulfiller will not be able to deliver product or services in a timely manner to meet the business needs of the Customer.

This Contract is executed to be effective as of the date of last signature.

Apple Inc.

Authorized By: /Signature on File/ _____

Name: David Ryan _____

Title: Senior Manager, WW Contracts _____

Date: 02/05/13 _____

The State of Texas, acting by and through the Department of Information Resources

Authorized By: ____/Signature on File/ _____

Name: Carl Marsh _____

Title: Chief Operating Officer _____

Date: 02/08/13 _____

Office of General Counsel: ____/Signature on File/ 02/07/13 _____