

**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 15<sup>th</sup> 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-256, on October 11, 2016, for Apple Branded Products and Related Services. Upon execution of this Contract, a notice of award for RFO DIR-SDD-TMP-256 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-TSO-TMP-256, including all addenda; and Exhibit 2, RFO DIR-TSO-TMP-256, 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 Master Lease Agreement will control with respect to the terms and conditions contained therein and with respect to all other terms and conditions, the order of precedence shall be as follows: Appendix D, Master Lease Agreement, 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; Exhibit 1, Vendor’s Response to RFO DIR-TSO-TMP-256, including all addenda; and Exhibit 2, RFO DIR-TSO-TMP-256, including all addenda; are incorporated by reference and constitute the entire agreement between DIR and Vendor governing the acquisition of products and services being leased pursuant to the Master Lease Agreement and the Master Lease Agreement constitutes the entire agreement between DIR and Vendor governing the terms and conditions of the lease of the products and the services. 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 Master Lease Agreement will control with respect to the terms and conditions contained therein and with respect to all other terms and conditions, the controlling document shall be this Contract, then Appendix A, then Appendix B, then Appendix C, then Exhibit 1, and finally Exhibit 2. Except with respect to the terms and conditions contained in the Master Lease Agreement, 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 mutually agreed upon provisions shall be deemed to have superseded earlier provisions.

**2. Term of Contract**

The term of this Contract shall be thirty (30) months 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 two (2) optional one year terms. Additionally, the parties by mutual agreement may extend the term for up to six (6) additional months.

**3. Product and Service Offerings**

**A. Products**

Vendor Products available under this Contract are limited to Apple-Branded Products and such third-party products offered by Apple, Inc. (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.

Authorized Third Party Products are those hardware, peripherals, accessories and software by other manufacturers or publishers that may be used as an attachment or embedded within an Apple device to create, enhance or extend the functionality of the Apple branded device; or to create, enhance or extend the functionality of the Authorized Third Party Product which relies on an Apple device platform to function. For example, and not by way of limitation, Device Security and Control Software such as JAMF or accessories such as OtterBox.

Vendor may incorporate changes to their authorized Third Party product offering; however, any changes must be within the scope of products awarded based on the solicitation described in Section 1.B. Vendor will provide the third party products list to DIR on a monthly basis or as soon as available, whichever comes first. Vendor may not add a manufacturer’s product which was not proposed in the Vendor’s response to the solicitation described in Section 1.B without pre-approval of DIR. DIR will notify Vendor with each of third party products updates which product, if any, are ineligible. DIR shall use its best reasonable effort to accept, reject or request further information or time within five business days.

**B. Services**

Vendor and Customers may contract for installation of standard equipment and products, training, imaging, tagging of inventory, and Technology Services 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 terms 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.

Customer is responsible for timely obtaining, at no cost to Vendor, all consents required for Vendor’s use of any of Customer’s third party products (including but not limited to software) necessary for Vendor to perform services, including but not limited to imaging services, under the Contract. Unless otherwise agreed to by the parties in writing, Customer will provide all Customer-licensed software necessary for Vendor to perform its obligations under the Contract.

**4. Pricing**

Pricing to the DIR Customer shall be as set forth in Appendix A, Section 8, Pricing, Purchase Orders, Invoices and Payment, and as set forth in Appendix C, Pricing Index, and shall include the DIR Administrative Fee.

**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 half of one percent (0.50%). Payment will be calculated for all sales, net of returns and credits. For example, the administrative fee for sales totaling \$100,000 shall be \$500.00.

**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:

Kelly Parker, CTPM, CTCM  
Director, Cooperative Contracts  
Department of Information Resources  
300 W. 15<sup>th</sup> St., Suite 1300  
Austin, Texas 78701  
Phone: (512) 475-1647  
Facsimile: (512) 475-4759

Email: [kelly.parker@dir.texas.gov](mailto:kelly.parker@dir.texas.gov)

If sent to the Vendor:

Matt Baker

Apple Inc.

1 Infinite Loop

Cupertino, California 95014

Phone: (512) 674-6505

Facsimile: (512) 532-0866

Email: [bids@apple.com](mailto:bids@apple.com)

## 7. Software License, Service 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. Texas State Agencies that have the requisite capital authority and who are not required to utilize such authority via the Texas Public Finance Authority may or may not be eligible to utilize the Master Lease Agreement; each such agency must confer with its own counsel to make this determination.

**C. Conflicting or Additional Terms**

This section is deleted in its entirety, Software shall be pursuant to Section 7(A), Software License Agreement.

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

A. **Contract, Section 3, Definitions, A) Customer** is hereby restated in its entirety as follows:

**A. Customer** - any Texas state agency, unit of local government, institution of higher education as defined in Section 2054.003, Texas Government Code, the Electric Reliability Council of Texas, the Lower Colorado River Authority, a private school, as defined by Section 5.001, Education Code, a private or independent institution of higher education, as defined by Section 61.003, Education Code, a volunteer fire department, as defined by Section 152.001, Tax Code, and those state agencies purchasing from a DIR contract through an Interagency Agreement, as authorized by Chapter 771, Texas Government Code, any local government as authorized through the Interlocal Cooperation Act, Chapter 791, Texas Government Code, and the state agencies and political subdivisions of other states as authorized by Section 2054.0565, Texas Government Code and, except for telecommunications services under Chapter 2170, Texas Government Code, assistance organizations as defined in Section 2175.001, Texas Government Code to mean:

- 1) A non-profit organization that provides educational, health or human services or assistance to homeless individuals;
- 2) A nonprofit food bank that solicits, warehouses, and redistributes edible but unmarketable food to an agency that feeds needy families and individuals;
- 3) Texas Partners of the Americas, a registered agency with the Advisory Committee on Voluntary Foreign Aid, with the approval of the Partners of the Alliance Office of the Agency for International Development;
- 4) A group, including a faith-based group, that enters into a financial or non-financial agreement with a health or human services agency to provide services to that agency's clients;
- 5) A local workforce development board created under Section 2308.253;
- 6) A nonprofit organization approved by the Supreme Court of Texas that provides free legal services for low-income households in civil matters;
- 7) The Texas Boll Weevil Eradication Foundation, Inc., or an entity designated by the commissioner of agriculture as the foundation's successor entity under Section 74.1011, Texas Agriculture Code;
- 8) A nonprofit computer bank that solicits, stores, refurbishes and redistributes used computer equipment to public school students and their families; and
- 9) A nonprofit organization that provides affordable housing.

Notwithstanding the foregoing, the definition of Customer shall be limited to those entities located in the State of Texas.

- B. **Contract, Section 3, Definitions, F) Order Fulfiller** is hereby restated in its entirety as follows:

Order Fulfiller - the party, either Vendor or a party explicitly approved and designated by Vendor, to fulfill a Purchase Order under the Contract.

- C. **Contract, Section 4, General Provisions, B) Modification of Contract Terms and/or Amendments, 2)** is hereby restated in its entirety as follows:

Customers shall not have the authority to modify the terms of the Contract. Pre-printed terms and conditions on any Purchase Order issued by Customer hereunder are hereby rejected by Vendor and will have no force and effect.

- D. **Contract, Section 4, General Provisions, E) Survival** is hereby restated in its entirety as follows:

The right secured by Customer under applicable software license agreements, warranties or service agreements shall terminate pursuant to the terms of those agreements (e.g. Vendor's limited warranty). Rights and obligations under this Contract which by their nature should survive, including, but not limited to the DIR Administrative Fee; and any and all payment obligations invoiced prior to the termination or expiration hereof; obligations of confidentiality; and, indemnification, will remain in effect after termination or expiration hereof.

- E. **Contract, Section 5, Intellectual Property Matters** is hereby restated in its entirety as follows:

Absent a written amendment to this Contract, no customization services are included or contemplated or permitted under this Contract. Therefore, this Section 5 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, and Technology Services without an amendment to this Contract.

If Customer and Vendor desire to contract for other terms and conditions or services that are acceptable to Customer and Vendor, they must do so in a statement of work separate from this Contract.

- F. **Contract, Section 6, Terms and Conditions Applicable to State Agency Purchases Only, 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), 2)** is hereby restated in its entirety as follows:

- 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 6(A)(2) shall only apply to products offered under this Contract 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.

**G. Contract, Section 6, Terms and Conditions Applicable to State Agency Purchases Only, B) Purchase of Commodity Items (Applicable to State Agency Purchases Only), 2) is hereby restated in its entirety as follows:**

2) Commodity items are commercially available software, hardware and technology services that are generally available to businesses or the public and for which DIR determines that a reasonable demand exists in two or more state agencies. Hardware is the physical technology used to process, manage, store, transmit, receive or deliver information. Software is the commercially available programs that operate hardware and includes all supporting documentation, media on which the software may be contained or stored, related materials, modifications, versions, upgrades, enhancements, updates or replacements. Technology Services are the services, functions and activities that facilitate the implementation, or use of software or hardware. Technology Services include seat management, staffing augmentation, training, maintenance and subscription services. Technology Services do not include telecommunications services. Seat management is services through which a state agency transfers its responsibilities to a vendor to manage its personal computing needs, including all necessary hardware, software and Technology Services.

**H. Contract, Section 6, Terms and Conditions Applicable to State Agency Purchases Only, B) Purchase of Commodity Items (Applicable to State Agency Purchases Only), 3) is hereby restated in its entirety as follows:**

3) Vendor agrees to coordinate State agency commodity item sales through existing DIR contracts when Customer identifies that Customer is a State agency (e.g. on purchase order). Institutions of higher education are exempt from this Subsection 6.B.

**I. Contract, Section 7, Contract Fulfillment and Promotion, A) Service, Sales and Support of the Contract is hereby restated in its entirety as follows:**

Vendor shall provide service, sales and support resources to serve all Customers throughout the State. It is the responsibility of the Vendor to sell, market, and promote

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products and related services available under the Contract. Vendor shall use its best efforts to ensure that potential Customers are made aware of the existence of the Contract.

- J. **Contract, Section 7, Contract Fulfillment and Promotion, C) Product Warranty and Return Policies and D) Customer Site Preparation** are hereby restated in their entirety as follows:

The sole warranty for an Apple-Branded Product purchased under this Contract shall be the Vendor's standard limited warranty (the "Limited Warranty") as set forth in the documentation that accompanies the Apple-Branded Product or as published on Vendor's website. 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 10(A) of this Contract.

- K. **Contract, Section 7, Contract Fulfillment and Promotion, E) Internet Access to Contract and Pricing Information, 1) Vendor Webpage, d)** is hereby restated in its entirety as follows:

d) discount percentage (%) off MSRP or Apple List Price;



**L. Contract, Section 7, Contract Fulfillment and Promotion, H) Vendor and Order Fulfiller Logo** is hereby restated in its entirety as follows:

Subject to DIR's compliance with Vendor's trademark guidelines located at [www.apple.com/legal/trademark/guidelinesfor3rdparties.html](http://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. However, DIR may retain instances of Vendor name and logo in its internal records, and DIR may reference the Vendor (as a former vendor, as applicable) by name as necessary in reports and briefings.

**M. Contract, Section 7, Contract Fulfillment and Promotion, L) DIR Cost Avoidance** is hereby restated in its entirety as follows:

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.

**N. Contract, Section 8, Pricing, Purchase Orders, Invoices, and Payments, A) Manufacturer's Suggested Retail Price (MSRP) or List Price** is hereby restated in its entirety as follows:

MSRP is defined as Apple's manufacturer suggested retail price as found on [www.apple.com](http://www.apple.com). A price list especially prepared for a given solicitation is not acceptable.

**O. Contract, Section 8, Pricing, Purchase Orders, Invoices, and Payments, C) Customer Price, 1)** is hereby restated in its entirety as follows:

The price to the Customer shall be calculated as follows:

Customer Price = (MSRP or **Apple List Price**) x (1– Customer Discount % as set forth in Appendix C, Pricing Index **or better**) x (1 + DIR Administrative Fee, as set forth in the Contract).

**P. Contract, Section 8, Pricing, Purchase Orders, Invoices, and Payments, C) Customer Price, 3)** is hereby restated in its entirety as follows:

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 within ten (10) business days. This requirement applies to Apple-Branded 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.

**Q. Contract, Section 8, Pricing, Purchase Orders, Invoices, and Payments, F) Travel Expense Reimbursement** is hereby restated in its entirety as follows:

Pricing for services provided under this Contract are exclusive of any travel expenses that may be incurred in the performance of those services unless Vendor notifies Customers that travel expenses are included in the price of the 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 be included as part of the amounts payable by Customer for any services rendered under this Contract. The DIR administrative fee specified in the Contract is not applicable to travel expense reimbursement. Anticipated travel expenses must be pre-approved in writing by Customer. Customer reserves the right not to pay travel expenses which are not pre-approved in writing by the Customer. For the avoidance of doubt, travel expenses that are incorporated into the price of the service (where reimbursement is not requested by the Customer) shall not be deemed "travel expense reimbursement".

**R. Contract, Section 8, Pricing, Purchase Orders, Invoices, and Payments, G) Changes to Prices** is hereby restated in its entirety as follows:

Subject to the requirements of this section, Vendor may change the price of any product or service at any time, based upon changes to the MSRP or Apple List Price, 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 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. Vendor will report any change in price to DIR: at time of update at [www.apple.com](http://www.apple.com). If DIR does not agree a price increase, it will notify Vendor, and Vendor will remove the Product or Service referenced in Appendix C.

**S. Contract, Section 9, Contract Administration, A) Contract Managers, 2) Vendor Contract Manager** is hereby restated in its entirety as follows:

Vendor shall identify a specific Contract Manager whose duties shall include but not be limited to: i) supporting the marketing and management of the Contract, ii) facilitating dispute resolution between Vendor or Order Fulfiller and a Customer, and iii) advising DIR of Vendor's or Order Fulfiller's performance under the terms and conditions of the Contract. DIR reserves the right to require a change in Vendor's then-current Contract Manager if the assigned Contract Manager is not, in the reasonable opinion of DIR, adequately serving the needs of the State. Prior to requesting removal of Contact Manager, DIR shall provide notice to Vendor and thirty (30) days to cure any issues identified by DIR.

**T. Contract, Section 9, Contract Administration, B) Reporting and Administrative Fees** is hereby restated in its entirety as follows:

1) Reporting Responsibility

a) Vendor shall be responsible for reporting all products and services purchased through Vendor and Order Fulfillers under the Contract. Vendor shall file the monthly reports, subcontract reports, and pay the administrative fees in accordance with the due dates specified in this section.

b) DIR shall have the right to verify required reports and to take any actions necessary to enforce its rights under this section, including but not limited to compliance checks of Vendor's applicable Contract. Vendor will provide all required documentation at no cost.

2) Detailed Monthly Report

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 calendar month period. Reports are due on the fifteenth (15th) calendar day of the month following the month of the sale. If the 15th calendar day falls on a weekend or state or federal holiday, the report shall be due on the next business day. The monthly report shall include, per transaction: the detailed sales for the period, Customer name, invoice date, invoice number, description, quantity, MSRP or List Price, unit price, extended price, Customer Purchase Order number, contact name (if not available, put Accounts Payable), Customer's complete billing address, the estimated administrative fee for the reporting period, subcontractor name (if applicable), EPEAT designation (if applicable), configuration (if applicable), contract discount percentage, actual discount percentage, negotiated contract price (if

fixed price is offered instead of discount off of MSRP), and other information as 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. Vendor shall report in a manner required by DIR which is subject to change dependent upon DIR's business needs. Failure to do so may result in contract termination.

3) Historically Underutilized Businesses Subcontract Reports

a) Vendor shall electronically provide Customer with Vendor's relevant Historically Underutilized Business Subcontracting Report, pursuant to the Contract, as required by Chapter 2161, Texas Government Code upon request by Customer. Reports shall also be submitted to DIR.

b) Reports shall be due in accordance with the CPA rules.

4) DIR Administrative Fee

a) The Vendor shall pay an administrative fee 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. DIR will review Vendor monthly sales reports, close the sales period, and notify the Vendor of the administrative fee no later than the fourteenth (14th) day of the second month following the date of the reported sale report. Vendor shall pay the administrative fee the twenty-fifth (25th) calendar day of the second month following the date of the reported sale report. For example, Vendor reports January sales by February 15th; DIR closes January sales and notifies Vendor of administrative fee by March 14th; Vendor submits administrative fee for January sales by March 25th.

b) DIR may change the amount of the administrative fee upon thirty (30) calendar days written notice to Vendor without the need for a formal contract amendment. The change will take effective in the reporting period following the thirty (30) calendar day notice.

c) Vendor shall reference the DIR Contract number, reporting period, and administrative fee amount on any remittance instruments.

5. Accurate and Timely Submission of Reports

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

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action, including the timeline for completion of correction. The corrective plan of action shall be subject to DIR approval.

b) Should Vendor fail to correct inaccurate reports or cure the delay in timely delivery of reports and payments within the corrective plan of action timeline, DIR reserves the right to require an independent third party audit of the Vendor's records as specified in C.3 of this Section, at Vendor's expense. The auditor will be selected by mutual agreement, and all payments to the mutually agreed upon auditor will be subject to DIR approval.

c) Failure to timely submit five (5) reports or administrative fee payments within any rolling twelve (12) month period may, at DIR's discretion, result in the addition of late fees of \$100/day for each day the report or payment is due (up to \$1000/month) or suspension or termination of Vendor's Contract. DIR will not assess more than \$25,000 in late fees over the life of the Contract.

**U. Contract, Section 9, Contract Administration, C) Records and Audit** is hereby restated in its entirety as follows:

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 or designee, 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 or designee in the conduct of the audit or investigation, including providing all relevant 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 and Vendor considers relevant to the investigation or audit.

2) Vendor and Order Fulfillers shall maintain applicable purchase orders, invoices, and price schedules necessary to properly account for all payments made to Vendor pursuant to the Contract to establish compliance with the Contract until the later of a period of seven (7) from the date of invoice or litigation issues that arise under the Contract to the extent timely notice of such is provided by DIR to Vendor. 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) (except for that non-standard, custom Vendor Products which will be reported at actual price paid), 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 applicable purchase orders and invoices and other documents directly related to the Contract and necessary to properly account for all payments made to Vendor pursuant to 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 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.

4) For procuring State Agencies whose payments are processed by the Texas Comptroller of Public Accounts, the volume of payments made to Vendor and 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.

**V. Contract, Section 10, Vendor Responsibilities, A) Indemnification** is hereby restated in its entirety as follows:

1) 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 omission. TO THE EXTENT CONTRIBUTORY NEGLIGENCE ON THE PART OF DIR OR CUSTOMER IS FOUND, VENDORS OBLIGATIONS TO INDEMNIFY AND HOLD HARMLESS WILL NOT BE PRECLUDED, BUT THE AMOUNT OF VENDOR'S ULTIMATE FINANCIAL RESPONSIBILITY WILL BE REDUCED BY THE PROPORTION OF NEGLIGENCE ATTRIBUTED TO DIR OR CUSTOMER.

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 by Vendor with the Office of the Attorney General when Texas state agencies are named defendants in any lawsuit 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.

**W. Contract, Section 10, Vendor Responsibilities, C) Vendor Certifications** is hereby restated in its entirety as follows:

Vendor certifies on behalf of Vendor that it:

(i) has not given or offered to give any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the Contract;

(ii) are not currently delinquent in the payment of any franchise tax owed the State and are not ineligible to receive payment under §231.006 of the Texas Family Code and acknowledge the Contract may be terminated and payment withheld if this certification is inaccurate;

(iii) neither they, nor anyone acting for them, have violated the antitrust laws of the United States or the State, nor communicated directly or indirectly to any competitor or any other person engaged in such line of business for the purpose of obtaining an unfair price advantage, except as disclosed to DIR, who finds no impediment to contract.

(iv) have not received payment from DIR or any of its employees for participating in the preparation of the Contract;

(v) under Section 2155.004, Texas Government Code, the Vendor certifies that the individual or business entity named in this bid or Contract is not ineligible to receive the specified contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate;

(vi) to the best of their knowledge and belief, there are no suits or proceedings pending or threatened against or affecting them, which if determined adversely to them will have a material adverse effect on the ability to fulfill their obligations under the Contract;

(vii) Vendor and its executive officers are not suspended or debarred from doing business with the federal government as listed in the System for Award Management (SAM) maintained by the General Services Administration;

(viii) as of the effective date of the Contract, are not listed in the prohibited vendors list authorized by Executive Order #13224, 'Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism', published by the United States Department of the Treasury, Office of Foreign Assets Control;

(ix) Vendor represents and warrants that, for its performance of this Contract, it shall purchase products and materials produced in the State of Texas when available at the price and time comparable to products and materials produced outside the state, to the extent that such is required under Texas Government Code, Section 2155.4441; Parties acknowledge and agree that the purpose of this Contract is to provide products from Vendor's generally available products, which may be sourced outside of Texas.

(x) certifies that all equipment and materials used in fulfilling the requirements of this contract are of high-quality and consistent with or better than applicable industry standards, if any. All Works and Services performed pursuant to this Contract shall be of high professional quality and workmanship and according consistent with or better than applicable industry standards, if any;

**X. Contract, Section 10, Vendor Responsibilities, I) Security of Premises, Equipment, Data and Personnel** is hereby restated in its entirety as follows:



Vendor and/or Order Fulfiller may, from time to time during the performance of the Contract, have access to the personnel premises, equipment, and other tangible property belonging to the Customer. Vendor shall use its best efforts to preserve the safety, security, and the integrity of 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, subject to Section 10(K), Limitation of Liabilities. If a Vendor and/or Order Fulfiller fails to comply with Customer's security requirements, then Customer may immediately terminate its Purchase Order and related Service Agreement. Customer shall identify security requirements prior to commencement of any services and Vendor retains the right to decline or cancel the purchase order if it does not accept Customer's security requirements. For the avoidance of doubt, background and /or criminal history investigations shall be pursuant to Section 10(J), Background and /or Criminal History Investigation. In the event Vendor requests and receives data from Customer, such data shall be handled pursuant to Vendor's applicable data and security policies and procedures and/or terms of use.

**Y. Contract, Section 10, Vendor Responsibilities, J) Background and/or Criminal History Investigation** is hereby restated in its entirety as follows:

Vendor conducts annual criminal background checks of employees who will be providing onsite services to Customer under the Contract. The annual criminal background check includes, but is not limited to, searches for federal sex offender registry, violent crimes and crimes against minors.

To the extent Customer requires additional investigations: 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 the Customer at Customer's expense. 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 Customer is performing its own criminal history investigation, Customer shall provide notice of such to Vendor at the time of issuance of the purchase order for services.

**Z. Contract, Section 10, Vendor Responsibilities, K) Limitation of Liability** is hereby restated in its entirety as follows:

Notwithstanding anything to the contrary, except to the extent prohibited by Texas or federal 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

Vendor Contract No. \_\_\_\_\_

(INCLUDING, WITHOUT LIMITATION, CLAIMS FOR LOST BUSINESS PROFITS OR REVENUE, LOSS OF DATA, INTERRUPTION IN USE, UNAVAILABILITY OF DATA) 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. 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.

**AA. Contract, Section 10, Vendor Responsibilities, M) Prohibited Conduct** is hereby restated in its entirety as follows:

Except as disclosed to DIR, Vendor certifies and warrants that, to the best of its knowledge as of the date of this certification, neither Vendor nor any Order Fulfiller, subcontractor, firm, corporation, partnership, or institution represented by Vendor, nor anyone acting for such Order Fulfiller, subcontractor, firm, corporation or institution has: (1) violated the antitrust laws of the State of Texas under Texas Business & Commerce Code, Chapter 15, or the federal antitrust laws. Vendor represents and warrants that, to the best of its knowledge as of the date of this certification, Vendor has not communicated its response to the Request for Offer directly or indirectly to any competitor or any other person engaged in such line of business during the procurement for the Contract. DIR finds that there is no impediment to Contract.

**BB. Contract, Section 10, Vendor Responsibilities, N) Required Insurance Coverage** is hereby restated in its entirety as follows:

As a condition of this Contract with DIR, Vendor shall provide the listed insurance coverage within 5 business 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, upon Customer's request, provide a certificate of insurance 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 requested certificate of insurance is provided to, and approved by, DIR and the Customer. Requested certificate of insurance shall be deemed approved and accepted if no objection is provided to Vendor within three (3) business days following receipt of the certificate of insurance. All required insurance must be issued by companies that have an A rating and a Financial Size Category Class of VII from A.M.

Best and are authorized to do business in the State of Texas and authorized to provide the corresponding coverage. Required coverage must remain in effect through the term of the Contract and each Purchase Order issued to Vendor there under. In the event of cancellation, Vendor shall provide thirty (30) days notice to DIR and/or Customer and shall promptly replace such insurance so that no lapse of coverage occurs. The minimum acceptable insurance provisions are as follows:

1) Commercial General Liability

Commercial General Liability must include \$1,000,000 per occurrence for Bodily Injury and Property Damage, with a general aggregate limit of \$2,000,000;-Personal Injury and Advertising Liability of \$1,000,000; Products/Completed Operations Aggregate Limit of \$2,000,000; and Damage to Premises Rented: \$50,000. Agencies may require additional Umbrella/Excess Liability insurance. 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 included as an additional insured; and
- d) Waiver of Subrogation
- 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 \$1,000,000 PER ACCIDENT, \$1,000,000 DISEASE PER EMPLOYEE AND \$1,000,000 PER DISEASE POLICY LIMIT.

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. The policy shall contain the following provisions:

- a) Waiver of Subrogation; and
- b) Customer and DIR included as an additional insured.

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

**CC. Contract: Section 10, Vendor Responsibilities, P) Immigration** is hereby restated in its entirety as follows:

The Vendor shall comply with all requirements related to federal immigration laws and regulations, to include but not be limited to, the Immigration and Reform Act of 1986, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA")

and the Immigration Act of 1990 (8 U.S.C.1101, et seq.) regarding employment verification and retention of verification forms for any individual(s) who will perform any labor or services under this Contract.

Pursuant to Executive Order No. RP-80, issued by the Governor of Texas on December 3, 2014, and as subsequently clarified, the Vendor shall, as a condition of this Contract, also comply with the United States Department of Homeland Security's E-Verify system to determine the eligibility of:

- all persons 1) to whom the E-Verify system applies, and 2) who are hired by the Vendor during the term of this Contract to perform duties within Texas;

**DD. Contract: Section 10, Vendor Responsibilities, Q) Public Disclosure** is hereby restated in its entirety as follows:

No public disclosures or news releases pertaining to this contract shall be made by either party without prior written approval of both parties.

**EE. Contract, Section 10, Vendor Responsibilities, T) Deceptive Trade Practices; Unfair Business Practices, 1)** is hereby restated in its entirety as follows:

Except as expressly discussed by Vendor, Vendor certifies that Vendor has not been (i) found liable in any administrative hearing, litigation or other proceeding of Deceptive Trade Practices violations as defined under Chapter 17, Texas Business & Commerce Code or (ii) has outstanding allegations of any Deceptive Trade Practice pending in any administrative hearing, litigation or other proceeding.

**FF. Contract, Section 11, Contract Enforcement, B) Termination, 1) Termination for Non-Appropriation, a) Termination for Non-Appropriation by Customer** is hereby restated in its entirety as follows:

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 or they may return the product and discontinue using services under any return policies 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 ordinarily due under the Contract, nor shall it be liable for any damages or any other amounts which are caused by or associated with such termination.

**GG. Contract, Section 11, Contract Enforcement, B) Termination, 1) Termination for Non-Appropriation, b) Termination for Non-Appropriation by DIR** is hereby restated in its entirety as follows:

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 Customer issues a Purchase Order and has accepted delivery of the product or services, Customer is obligated to pay for the product or services in accordance with the payment terms of the Contract or Customer may return the product and discontinue using services subject to Vendor's return policies. In the event of such termination, Customer will not be considered to be in default or breach under this Contract, nor shall it be liable for any further payments ordinarily due under this Contract, nor shall it be liable for any damages or any other amounts which are caused by or associated with such termination.

**HH. Contract, Section 11, Contract Enforcement, B) Termination, 3) Termination for Convenience** is hereby restated in its entirety as follows:

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 or other contractual document or relationship by giving the other party thirty (30) calendar days written notice.

**II. Contract, Section 11, Contract Enforcement, B) Termination, 5) Immediate Termination or Suspension** is hereby restated in its entirety as follows:

DIR may immediately suspend or terminate its Contract without advance notice if DIR receives notice or knowledge of potentially criminal violations by Vendor in the United States (whether or not such potential violations directly impact the provision of goods or services under this Contract). In such case, the Vendor may be held ineligible to receive further business. In the event that Vendor is convicted of such criminal violation(s), DIR may terminate for cause; otherwise, any termination will be for convenience, but DIR or Customer will not be liable for any costs other than payment for goods and services delivered to DIR or Customer and not returned. DIR or Customer will use reasonable efforts to provide notice (to the extent allowed by law) to Vendor within five (5) business days after imposing the suspension or termination. Vendor may provide a response and request an opportunity to present its position. DIR or Customer will review Vendor presentation, but is under no obligation to provide formal response. Vendor shall be provided a good faith opportunity to cure any alleged violation.

JJ. **Contract, Section 11, Contract Enforcement, B) Termination, 6) Customer Rights Under Termination** is hereby restated in its entirety as follows:

In the event the Contract expires or is terminated for any reason, Customer shall retain the rights afforded pursuant to Appendix A, Section 4, General Provisions, E) Survival.

KK. **Contract, Section 11, Contract Enforcement, B) Termination, 7) Vendor or Order Fulfiler Rights Under Termination** is hereby restated in its entirety as follows:

In the event a Purchase Order expires or is terminated, a Customer shall pay: 1) all amounts due for products or services ordered prior to the effective termination date and ultimately delivered and not returned for failure to comply with specifications on apple.com, and 2) any applicable early termination fees agreed to in such Purchase Order.

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

**APPLE INC.**

**Authorized By:** Signature on File

**Name:** Eleanor Deeney

**Title:** SR. Manager, US Contract Management

**Date:** 05/05/17

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

**Authorized By:** Signature on File

**Name:** Hershel Becker

**Title:** Chief Procurement Officer

**Date:** 5/7/2017

**Office of General Counsel:** DB 5/7/2017