



(v26Sep2018v2)

## Apple Direct Customer Agreement

This Agreement is entered into by and between Apple Inc., a California corporation located at One Apple Park Way, Cupertino, California 95014 ("Apple") and Customer, each of whom agrees to be bound by and comply with all terms and conditions contained in the Agreement.

Customer Legal Name ("Customer"): THE RECTOR AND VISITORS OF THE UNIVERSITY OF VIRGINIA

DBA Name: UNIVERSITY OF VIRGINIA

Address: 1001 EMMET ST N CHARLOTTESVILLE VA 22903-4833 United States of America

### Purpose

Customer wishes to purchase Products from Apple for Customer's own use, and the Parties intend that this Agreement will govern the purchase of such Products in accordance with the terms and conditions set forth below.

### 1. Definitions

The following terms have the meanings specified below:

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

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

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

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

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

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

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

"**Line of Credit**" means a line of credit established for Customer by Apple in its sole discretion.

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

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

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



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## **2. Interpretation**

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

## **3. Terms and Conditions of Purchase**

### **3.1 Ordering**

Customer may order Products from Apple by either: (i) ordering at an Apple Retail Store, (ii) ordering electronically through the online portal managed by Apple, (iii) submitting a purchase order to Apple, as permitted by Apple, or (iv) by any other means communicated by Apple. Customer is solely responsible for all purchase decisions, including but not limited to, ensuring the compatibility and appropriateness of all Products. All purchases of Products under this Agreement shall be made solely for Customer's end use and not for resale. In the event Customer submits orders via an online portal managed by Apple, Customer agrees to Apple's Terms of Use and Privacy Policy located on such online portal. Furthermore, purchases through an online portal may also be subject to an Online Sales Policy. In the event of any inconsistency between this Agreement and the Online Sales Policy, this Agreement will govern.

**3.2** Customer's subsidiaries and/or affiliates may not purchase Products from Apple under this Agreement unless Apple has agreed in signed writing with Customer that such subsidiaries and/or affiliates are authorized to purchase Products from Apple pursuant to this Agreement. Such authorization shall be subject to the parent company having provided a guarantee of the debts to Apple of such subsidiaries and/or affiliates and compliance with the obligations of this Agreement by such subsidiaries and/or affiliates. Notwithstanding the foregoing, Apple may require at its sole discretion that the debts to Apple of such subsidiaries and/or affiliates must be included in a parent company guarantee.

### **3.3 Limited Billing Service Account**

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

### **3.4 Prices and Orders**

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

### **3.5 Delivery**

**3.5.1** Except for U.S. federal government agencies, title and risk of loss to all Products will pass to Customer upon shipment from Apple's shipping location. For Products shipped pursuant to Apple's standard practices, Apple will issue credits or replace Products returned due to damage in transit or that are lost in transit. When Products are not shipped pursuant to Apple's standard practices but instead via a carrier selected by Customer, Apple will not issue credits or replace Products returned due to damage in transit or that are lost in transit and Customer's sole recourse for loss or damage shall be against its own insurer, its selected carrier, and its carrier's insurer. Customer shall insure Products for their full replacement value for delivery to Customer until Customer has paid Apple in full for such Products, and shall name Apple as a loss payee on the Customer's policy. For both government and non-government sales, shipping charges for orders shipped under Customer's instructions will be added to Apple's invoice or shipped freight collect, at Apple's option.

**3.5.2** For orders picked up by Customer at the Apple Retail Store, risk of loss or damage to Products will pass to Customer upon pick up of the Products from the Apple Retail Store. Title to the Products will pass to Customer when Apple provides notice that the Products are available for pick up from the Apple Retail Store. Customer shall contact the Apple Retail Store for any issues regarding pick up of the Products.

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

### **3.6 Payment**

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

### **3.7 Product Returns**



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

### **3.8 Support**

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

## **4. Confidentiality**

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

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

## **5. Representations and Warranties**

**5.1** Customer represents and warrants that: (i) it has the right to enter into this Agreement and perform its obligations hereunder; (ii) the terms of this Agreement do not violate and will not cause a breach of the terms of any other agreement to which Customer is a party or by which it is bound; and (iii) all Products purchased will be for Customer's own use in its facilities in the United States and will not be purchased for resale to any other entity or individual.

### **5.2 Apple Limited Warranty**

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

### **5.3 Disclaimer**

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

**5.3.2** Apple Products are not intended or suitable for use in situations or environments where the failure or time delays of, or errors or inaccuracies in, the content, data or information provided by Apple Products could lead to death, personal injury, or severe physical or environmental damage, including without limitation the operation of nuclear facilities, aircraft navigation or communications systems, air traffic control, life support or weapons systems.

## **6. Indemnity**

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

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



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

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

**6.5** Customer shall not use the Apple Products, iCloud Storage APIs and iCloud service, or any component or function thereof, (i) to create, receive, maintain or transmit protected health information (as defined at 45 C.F.R § 160.103) or (ii) in any manner that would make Apple or any other third-party distributor, supplier or provider of those technologies a business associate, as defined under the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations ("HIPAA") at 45 C.F.R. § 160.103, of the Customer or any third party. Customer agrees to be solely responsible for complying with any reporting requirements under law or contract arising from Customer's breach of this Section and to reimburse Apple for any losses incurred by Apple relating to those reporting obligations.

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

## **7. Limitation of Liability**

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

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

**7.3** THE PARTIES AGREE THAT THE TERMS OF THE AGREEMENT, INCLUDING THOSE CONCERNING WARRANTIES, INDEMNITY AND LIMITATIONS OF LIABILITY, REPRESENT A FAIR ALLOCATION OF RISK BETWEEN THE PARTIES WITHOUT WHICH THEY WOULD NOT HAVE ENTERED INTO THIS AGREEMENT. LIABILITY FOR DAMAGES WILL BE LIMITED AND EXCLUDED, EVEN IF ANY EXCLUSIVE REMEDY PROVIDED FOR IN THE AGREEMENT FAILS OF ITS ESSENTIAL PURPOSE. THE REMEDIES SET FORTH IN THIS AGREEMENT WILL BE CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES FOR ANY CLAIM MADE AGAINST APPLE.

## **8. Ownership**

### **8.1 Use of Name**

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

### **8.2 Software**

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

### **8.3 Restrictions**

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

## **9. Export Compliance**

This Agreement is subject to all laws, regulations, orders or other limitations on the export and re-export of commodities, technical data and software. Customer agrees that it will not export, re-export, resell or transfer any export-controlled commodity, technical data or software: (i) in violation of such limitations imposed by the United States or any other appropriate national government authority; (ii) to any country for which an export license or other governmental approval is required at the time of export, without first obtaining all necessary licenses and approvals, at Customer's sole cost and expense; (iii) to any country or national or resident of a country to which trade is embargoed by the United States, or any other relevant national authority; (iv) to any person or firm on any relevant government agency restricted party lists, (examples: United



Nations Sanctions list, United States Denial Lists, Office of Foreign Assets Control Specially Designated Nationals List, etc.); or (v) for use in, or to an entity that might engage in, any sensitive nuclear, chemical or biological weapons, or missile technology end-uses unless authorized by the United States Government, and any other relevant government agency by regulation or specific license.

## **10. Term and Termination**

### **10.1 Term**

Unless terminated earlier as provided in this Agreement, the initial term of this Agreement shall be from the Effective Date until the following December 20, 2028 ("Initial Term"). This Agreement shall renew for one more term of five (5) years ("Renewal Term"). The Initial Term and all Renewal Terms are referred to as the "Term".

### **10.2 Termination for Convenience**

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

### **10.3 Termination for Cause**

Apple may immediately terminate this Agreement and any other existing agreement with Customer if: (i) Customer fails to fully perform any obligation under the Agreement; (ii) Customer commits a criminal offence, engages in fraud or any unlawful or unfair business practice; (iii) there is a material change in or transfer of Customer's management, ownership, control or business operations, or Customer becomes affiliated, through common management, ownership, or control, with any person or entity that is unacceptable to Apple; or (iv) Customer's actions expose or threaten to expose Apple to any liability, obligation, or violation of law.

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

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

### **10.5 Survival**

All defined terms and the following Sections of this Agreement shall survive expiration or any termination of the Agreement: 3.6 (Payment); 4 (Confidentiality); 5 (Representations and Warranties); 6 (Indemnity); 7 (Limitation of Liability); 9 (Export Compliance); 10.4 (Effect of Notice of Termination); 10.5 (Survival); 11 (General Terms) and; any other Sections that by their nature would reasonably be expected to survive expiration or termination.

## **11. General Terms**

### **11.1 Governing Law**

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

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

Notices under the Agreement may be given as follows:

**11.2.1** Any notice under this Agreement must be in writing and will be deemed given upon the earlier of actual receipt or ten (10) days after being sent by courier, return receipt requested, to the address stated below for Apple and Customer for receipt of notices, or as may be provided by the Parties.

Apple Inc.  
U.S. Contracts Operations  
One Apple Park Way, M/S 581-CNTR  
Cupertino, California 95014

Mark Cartwright  
Senior Director, Procurement and Supplier Diversity Services  
University of Virginia, Carruthers Hall  
PO Box 400202  
Phone: (434) 924-7174  
Email: vfg2sc@virginia.edu  
1001 N. Emmet Street Charlottesville, VA 22904

**11.2.2** Either Party may give notice of its change of address for receipt of notices in any of the following manners: (a) in accordance with Section 11.2.1 (b) by email to the address provided by the Party, or (c) as otherwise authorized by Apple.

### **11.3 Assignment by Apple**



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

#### **11.4 Modifications**

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

#### **11.5 Entire Agreement**

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

#### **11.6 No Reliance**

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

#### **11.7 Severability**

If a court of competent jurisdiction holds that any provision of this Agreement is invalid or unenforceable, the remaining portions of this Agreement will remain in full force and effect, and this Agreement will be adjusted if possible so as to give maximum effect to the original intent and economic effect of the Parties.

#### **11.8 Waivers**

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

#### **11.9 Force Majeure**

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

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

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

#### **11.11 Signature Authorization and Electronic Signature**

Each Party represents that the person signing this Agreement certifies that he or she has authority to contractually bind Customer to the terms and conditions of this Agreement. The Parties agree that this Agreement or any related documents may be accepted by electronic signature, which shall be accepted in lieu of a handwritten signature with full force and effect.

#### **11.12 Counterparts**

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

#### **11.13 Additional Eligible Purchasers**

(i) Eligible Purchasers include the Customer and any school districts and their public or private not-for-profit school systems, state universities and colleges, and community, vocational and technical colleges, state, county or city agency or department (including fire departments and libraries), special district, port authority, municipality, township, or Native American reservation in the state that Customer is located ("Eligible Purchasers"). Products purchased shall be for each of the Eligible Purchaser's own use in the United States and shall not be purchased for the purpose of resale to another entity or individual. Apple reserves complete discretion in making eligibility determinations.

(ii) The Customer shall be responsible and be liable only for purchases made directly by it on its own purchase orders and shall not be liable for any purchases made by or acts of any other Eligible Purchasers purchasing under this Agreement. Eligible Purchasers shall be responsible and



liable for purchases made by or acts of the Eligible Purchaser subject to the terms and conditions of this Agreement and shall not be liable for any purchases made by or acts of any other Eligible Purchasers purchasing under this Agreement.

(iii) By placing orders hereunder, Eligible Purchaser acknowledges and agrees to be bound by the terms and conditions of this Agreement and shall be deemed a "Customer" under the terms of the Agreement.

#### **11.14 Administrative Fee**

Excluding all orders at an Apple Retail Store, Apple shall pay to Customer a Publicly Accessible Contract Annual Fee ("PAC Annual Fee") of .25% no later than sixty (60) days following the end of each Apple fiscal 4<sup>th</sup> quarter. The PAC Annual Fee shall be submitted yearly and is based on net sales of products and services under this Agreement (less any charges for taxes and/or shipping).

Payment of PAC Annual Fee will take the form of a check. Checks will be made payable to the University of Virginia and sent to:

Constance Alexander  
Office Manager, Procurement and Supplier Diversity Services  
University of Virginia, Carruthers Hall  
PO Box 400202  
1001 N. Emmet Street Charlottesville, VA 22904

#### **11.15 Reporting**

Excluding all orders at an Apple Retail Store, Apple will provide a yearly report of all invoiced items transacted under the Agreement to Customer within thirty (30) days following the end of each Apple fiscal 4<sup>th</sup> quarter. Reports will be submitted electronically via email in a format determined by Apple. Report data includes: (i) sold-to customer name; (ii) Apple customer number; (iii) customer group (i.e., K-12 education, higher education, or state and local government); (iv) purchase order number; (v) Apple sales order number; (vi) order entry date; (vii) invoice number; (viii) invoice date; (ix) quantity; (x) unit price; (xi) total invoiced price; (xii) Apple part number; (xiii) material description; (xiv) ship-to name; and (xv) ship-to address (city, street, state, zip code).

#### **11.16 Virginia's Freedom of Information Act (FOIA)**

This Agreement is governed by and subject to the Commonwealth of Virginia's Freedom of Information Act (FOIA). All pricing information, consistent with the public interest and the underlying policy of the Commonwealth of Virginia, is open to the inspection of any qualified requestor and cannot be designated as confidential, proprietary or trade secret to avoid disclosure. Pricing information is also shared on a need-to-know basis both within the University and its affiliates and consultants for purposes of operational review, transaction management, contract compliance & monitoring, benchmarking and performance improvement. Attempts to prevent disclosure of pricing information by designating it as confidential, proprietary or trade secret will be ignored. In addition, any non-price information considered by a firm to be proprietary or to constitute trade secret(s) is also subject to disclosure under FOIA, except that information provided by Selected Firm that constitutes proprietary information or trade secret(s), other than pricing information, may be exempted from disclosure if Selected Firm invokes the protections of Virginia Code Section 2.2-4342(F) in writing and follows its stated requirements prior to or upon submission of the information for which Selected Firm is seeking protection.

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



Customer

Apple Inc.

DocuSigned by:  
SIGNATURE: Jennifer Wagner Davis  
PRINT NAME: Jennifer Wagner Davis  
PRINT TITLE: Executive Vice President and Chief Operating Officer  
DATE: 4/15/2024

SIGNATURE: Johnny Mendoza  
PRINT NAME: Johnny Mendoza  
PRINT TITLE: Project Coordinator  
DATE: 2/28/2024  
DEPARTMENT: US Sales Ops

UVA Tracking#: UVA-AGR-4051



# Primary Lease Purchase Agreement

This Primary Lease Purchase Agreement dated as of 3/25/2024 this "Primary Lease") is entered into by and between Apple Inc. ("Lessor") and THE RECTOR AND VISITORS OF THE UNIVERSITY OF VIRGINIA ("Lessee").

**1. Primary Lease; Schedules.** Subject to the terms of this Primary Lease, Lessee agrees to Lease, purchase and acquire from Lessor certain Equipment and/or software (the "Equipment") as may be described in any Lease Schedule in the form of Exhibit A (each, a "Schedule") which may be executed by the parties from time to time. Nothing in this Primary Lease shall be construed to impose any obligation upon, or otherwise commit, Lessor to enter into any proposed Schedule, it being understood that whether Lessor enters into any proposed Schedule shall be a decision solely within Lessor's discretion. Lessee understands that Lessor requires certain documentation and information necessary to enter into any Schedule, and Lessee agrees to provide Lessor with any documentation or information Lessor may request in connection with Lessor's review of any proposed Schedule. Such documentation may include but shall not be limited to: (a) a description of the proposed Equipment, including the cost and its contemplated use and location, (b) information related to the vendor(s) manufacturing, licensing (subject to the terms of the Vendor's applicable end user license agreement(s)), delivering, installing or maintaining the proposed Equipment for Lessee (the "Vendor"), (c) documentation or information concerning the financial condition of Lessee, and (d) other information related to the Schedule and Lessee. The terms and conditions of this Primary Lease (including all exhibits and any amendments hereto), are incorporated by reference into each Schedule and each Schedule, once executed by Lessor and Lessee, shall constitute a separate and independent Lease and installment purchase of the Equipment identified therein, hereinafter referred to as a "Lease."

**2. Invoice Payment or Reimbursement.** With respect to any Lease, and subject to the provisions of Section 3 if applicable, Lessor shall have no obligation whatsoever to make any payment to a Vendor or reimburse Lessee for any payment made to a Vendor for the Equipment that is the subject of such Lease until three (3) business days after Lessor's receipt of the following in form and substance satisfactory to Lessor in its sole discretion: (a) a Schedule executed by a duly authorized representative of Lessee; (b) a fully executed partial or final acceptance certificate as applicable ("Acceptance Certificate"); (c) a resolution or evidence of other official action taken by Lessee's governing body authorizing Lessee to enter into the related Lease and any applicable Escrow Agreement, the acquisition of the Equipment subject thereto, and confirming that Lessee's actions were in accordance with all applicable state, local and federal laws, including laws regarding open meetings and public bidding; (d) evidence of insurance with respect to the Equipment in accordance with the provisions of Section 15 of this Primary Lease; (e) a Vendor invoice for the Equipment and, if such invoice has been paid by Lessee, evidence of payment thereof and, if applicable, evidence of official intent to reimburse such payment as required by the Treasury Regulations; (f) a completed and executed Form 8038-G or 8038-GC; (g) an Incumbency Certificate; (h) a Bank Qualification Designation; (i) Lease Payment Instructions; (j) Insurance Coverage Requirements; (k) an opinion of Lessee's counsel; and (l) such other documents, items, or information reasonably required by Lessor. Lessor shall provide each such document to Lessee in a form and substance satisfactory to Lessor.

**3. Escrow Agreement.** Upon agreement by both Lessee and Lessor as to any Lease, the parties shall enter into an escrow agreement (an "Escrow Agreement") with an escrow agent selected by Lessee, such selection subject to Lessor's approval, establishing an account from which the cost of the Equipment subject to such Lease is to be paid (the "Escrow Account"). Upon execution and delivery of an Escrow Agreement by the parties thereto and satisfaction of any conditions precedent set forth in Section 2 of this Primary Lease or in such Escrow Agreement, Lessor shall deposit or cause to be deposited into the Escrow Account under the related Escrow Agreement funds for the payment of the costs of acquiring the Equipment under such Lease. Lessee acknowledges and agrees that no disbursements shall be made from an Escrow Account except for portions of the Equipment that are operationally complete and functionally independent and that may be fully utilized by Lessee without regard to whether the balance of the Equipment is delivered and accepted.

**4. Delivery and Acceptance of Equipment.** Lessee shall order the Equipment, cause the Equipment to be delivered and installed at the location specified in each Lease, and pay any and all delivery and installation costs and applicable sales and other taxes in connection therewith. When the Equipment identified in any Lease has been delivered and installed, Lessee shall immediately inspect the Equipment and evidence its acceptance by executing and delivering to Lessor the Acceptance Certificate. If Lessee signed a purchase contract for the Equipment, by signing a Schedule Lessee assigns its rights, but none of its obligations under the purchase contract, to Lessor.

**5. Lease Payments.** Lessee agrees to pay "Lease Payments" to Lessor in accordance with the payment Schedule set forth in each Lease, exclusively from legally available funds, consisting of principal and interest components in the amounts and on such dates as provided in each Lease. Lessee shall pay Lessor a charge on any Lease Payment not paid on the date such payment is due at the rate of 12% per annum or the highest lawful rate, whichever is less, from such due date until paid. The "Commencement Date" for each Lease is the date when interest commences to accrue under such Lease, which date shall be the earlier of (a) the date Lessee partially or fully accepts the Equipment pursuant to Section 4, or (b) the date of Lessor's deposit into an Escrow Account of sufficient monies to purchase the Equipment. Lessor will advise Lessee as to the address to which Lease Payments shall be sent. The Lease Payment is due whether or not Lessee receives an invoice. Restrictive endorsements on checks sent by Lessee will not reduce Lessee's obligations to Lessor. Unless a proper exemption certificate is provided, applicable sales and use taxes may be paid by Lessee from funds advanced to Lessee by Lessor for such purpose in connection with the execution and delivery of the related Lease or may be paid by Lessee pursuant to Section 4 hereof. Lessor and Lessee understand and intend that the obligation of Lessee to pay Lease Payments under each Lease shall constitute a current expense of Lessee and shall not in any way be construed to be a debt of Lessee in contravention of any applicable constitutional or statutory limitation or requirement concerning the creation of indebtedness or debt by Lessee, nor shall anything contained in this Primary Lease or in any Lease constitute a pledge of the general tax revenues, funds or monies of Lessee.

**6. Non-Appropriation of Funds.** Lessee is obligated to pay Lease Payments under each Lease for each fiscal period as may lawfully be made from funds budgeted and appropriated for that purpose for such fiscal period. Lessee currently intends to remit and reasonably believes that funds in an amount sufficient to remit all Lease Payments and other payments under each Lease can and will lawfully be appropriated and made available to permit Lessee's continued utilization of the Equipment under such Lease and the performance of its essential function during the scheduled "Lease Term" as reflected in each Lease. Lessee currently intends to do all things lawfully within its power to obtain and maintain funds from which the Lease Payments under each Lease may be made, including making provision for such payments to the extent necessary in each budget or appropriation request adopted in accordance with applicable provisions of law. Notwithstanding the foregoing, Lessor acknowledges that the decision whether or not to budget and appropriate funds or to extend the term of a Lease for any period beyond the original or any additional fiscal period is within the discretion of the governing body of Lessee. In the event that Lessee's governing body fails or is unwilling to budget, appropriate or otherwise make available funds for the payment of Lease Payments and other payments, if any, under a Lease following the then current fiscal period (an "Event of Non-appropriation"), Lessee shall have the right to terminate such Lease on the last day of the fiscal period for which sufficient appropriations were made without penalty or expense, except as to the portion of any Lease Payment for which funds shall have been appropriated and budgeted, in which event Lessee shall return the Equipment subject to such Lease in accordance with Section 19 of this Primary Lease. Lessee agrees to deliver notice to Lessor of such Event of Non-appropriation with respect to a Lease and termination at least thirty (30) days prior to the end of the then current fiscal period, but failure to give such notice shall not extend the term of the affected Lease beyond such then current fiscal period.

**7. Unconditional Obligation.** Upon the commencement date of a Lease pursuant to Section 5 of this Primary Lease, and except as provided in Section 6, "Non-Appropriation of Funds," the obligations of Lessee to make Lease payments and to perform and observe the other covenants and agreements contained in each Lease shall be absolute and unconditional in all events without abatement, diminution, deduction, set-off or defense, for any reason including, without limitation, any failure of the Equipment to be delivered or installed, any disputes with Lessor or any vendor of any Equipment, defects, malfunctions or breakdowns in the Equipment, any accident, condemnation, damage, destruction, or unforeseen circumstance, or any temporary or permanent loss of its use.

**8. Disclaimer of Warranties.** The sole warranty for the Equipment is the applicable product warranty (defined below). Lessor makes no representations or warranties, express or implied, whatsoever, including without limitation, as to the Equipment's merchantability, fitness for a particular purpose, suitability, design, condition, durability, operation, quality of materials or workmanship, non-infringement, or compliance with specifications or applicable law, or that the operation or use of the Equipment will be uninterrupted, secure or free of errors, defects, viruses, malfunctions, and Lessee, as of the date of Lessee's acceptance as set forth in Section 4, accepts such Equipment as is and with all faults. Lessee acknowledges that Lessee has selected the Equipment based upon Lessee's own judgment. Lessee acknowledges that the Equipment was manufactured and/or assembled, or in the case of software was developed and licensed, by the applicable vendor and that any warranty rights with respect to such Equipment shall be provided by the applicable vendor (the "Product Warranty"). Lessee agrees to settle any dispute it may have regarding performance of the Equipment directly with the applicable vendor and not to make any claim against the Lease payments due Lessor or any Assignee (as hereinafter defined). Lessee agrees to continue to pay Lessor, or such Assignee (as applicable), all Lease payments and other payments without abatement or set off for any dispute with a vendor regarding the Equipment. Nothing in this Primary Lease or in any Lease shall relieve Apple Inc. of its obligations under the product warranty offered by Apple Inc. for applicable Apple-branded Equipment. Lessee

acknowledges and agrees that the product warranty is a separate agreement between Lessee and the applicable vendor and that such product warranty is not a part of this Primary Lease or any Lease.

**9. Title and security interest.** Unless otherwise required by the laws of the state where Lessee is located, during each Lease term, title to the Equipment shall be vested in Lessee, subject to the rights of Lessor under such Lease. In the event Lessor terminates a Lease pursuant to Section 17 of this Primary Lease or an Event of Non-Appropriation occurs under a Lease, title to the related Equipment shall immediately vest in Lessor free and clear of any rights, title or interests of Lessee. Lessee, at its expense, shall protect and defend Lessee's title to the Equipment and Lessor's rights and interests therein and keep the Equipment free and clear from any and all claims, liens, encumbrances, and legal processes of Lessee's creditors and other persons. To secure the payment of all of Lessee's obligations under each Lease, Lessee hereby grants to Lessor a first priority purchase money security interest in the Equipment subject to each such Lease, anything attached or added to the Equipment by Lessee at any time, Lessee's rights under each agreement for the licensing of software to the extent that a security interest therein may be granted without violating the terms of such agreement, and on all proceeds, including proceeds from any insurance claims for loss or damage, from such Equipment. Lessee authorizes Lessor to file a financing statement perfecting Lessor's security interest under the laws of Lessee's state. Lessee agrees to promptly execute such additional documents, in a form satisfactory to Lessor, which Lessor deems necessary or appropriate to establish and maintain its security interest in the Equipment. The Equipment is and will remain personal property and will not be deemed to be affixed to or a part of the real estate on which it may be situated. If applicable, as further security therefor, Lessee hereby grants to Lessor a first priority security interest in the cash and negotiable instruments from time to time comprising each escrow account and all proceeds (cash and non-cash) thereof, and agrees with respect thereto that Lessor shall have all the rights and remedies of a secured party under the applicable Uniform Commercial Code.

**10. Use, Maintenance and Repair.** Upon installation, no item of Equipment will be moved from the location specified for it in the related Lease (the "Equipment Location") without Lessor's prior consent, which consent will not be unreasonably withheld, except that any items of Equipment that are intended by design to be a mobile piece of technology (i.e., laptop computers) may be moved within the continental U.S. without consent. Lessor shall have the right at all reasonable times during regular business hours, subject to compliance with Lessee's customary security procedures, to enter into and upon the property of Lessee for the purpose of inspecting the Equipment. In order to facilitate the use of the Equipment by students and/or Lessee's employees ("Authorized Users") while on premises other than those belonging to Lessee, Lessee acknowledges and agrees that: (a) Lessee shall use due care to ensure that the Equipment is not (i) used in violation of any applicable law, in a manner contrary to that contemplated by the related Lease, or for private business purposes, or (ii) used by anyone other than authorized users; and (b) Lessee (and not authorized users) shall be solely responsible for (i) maintaining insurance in accordance with the terms of the related Lease, (ii) payment of any applicable sales, property, and other taxes on the Equipment, and (iii) return of the Equipment under a Lease to Lessor upon the occurrence of an Event of Default or Event of Non-Appropriation thereunder. Lessee agrees that it will use the Equipment under each Lease in the manner for which it was intended, as required by all applicable manuals and instructions and as required to keep the Equipment eligible for any manufacturer's certification and/or standard, full service maintenance contract. Lessee agrees that it will, at Lessee's own cost and expense, maintain, preserve, and keep the Equipment under each Lease in good repair, condition, and working order, ordinary wear and tear excepted. All replacement parts and repairs shall be governed by the terms of the related Lease. Lessee will not make any permanent alterations to the Equipment that will result in a decrease in the market value of the Equipment.

**11. Liens; Taxes.** Lessee will not sell, transfer, assign, pledge, sub-Lease, or part with possession of the Equipment, or file or permit a lien to be filed against the Equipment, except as otherwise expressly provided under this Primary Lease and the related Lease. The parties to this Primary Lease intend that the Equipment will be used for governmental or proprietary purposes of Lessee and that the Equipment will be exempt from all property taxes. Lessee shall timely pay all assessments, license and filing fees, taxes (including sales, use, excise, personal property, ad valorem, stamp, documentary, and other taxes) and all other governmental charges, fees, fines, or penalties whatsoever, whether payable by Lessor or Lessee, now or hereafter imposed by any governmental body or agency on or relating to the Equipment or the Lease payments or the use, registration, rental, shipment, transportation, delivery, ownership, or operation of the Equipment and on or relating to this Primary Lease or any Lease; provided, however, that the foregoing shall not include any federal, state, or local income or franchise taxes of Lessor.

**12. Limitation of Liability.** Notwithstanding anything to the contrary, Lessor shall not be liable for any direct damages of Lessee resulting from, arising out of, or in connection with this agreement, whether arising in contract, tort, strict liability, or otherwise, regardless of the theory of liability. Further, notwithstanding anything to the contrary, with respect to each Lease, Lessee agrees that (a) Lessor shall have no liability, cost, or expense with respect to transportation, installation, selection, purchase, Lease, ownership, possession, modification, maintenance, condition, operation, use, return, or disposition of the Equipment, and (b) Lessor shall have no responsibility in connection with the selection of the Equipment, the ordering of the Equipment, its suitability for the use intended by

Lessee, Lessee's compliance or non-compliance with competitive pricing and/or bidding requirements, the acceptance by the Vendor of the order submitted, if applicable, or any delay or failure by the Vendor or its sales representative to deliver, install, or maintain the Equipment for Lessee's use. In no event shall Lessor be liable for any incidental, indirect, special, consequential, exemplary, or punitive damages in connection with or arising out of any Lease or the existence, furnishing, functioning, or Lessee's use of any item of Equipment provided for in any Lease, whether in contract, tort, strict liability, or otherwise, regardless of the theory of liability and regardless of whether Lessor has been advised of the possibility of such damages. The parties agree that the provisions in this Primary Lease fairly allocate the risks between the parties without which they would not have entered into this Primary Lease.

**13. Identification.** Lessor shall be entitled to insert missing or correct information on the related Lease, including, without limitation, Lessee's official name, serial numbers, and any other information describing the Equipment under such Lease; provided that Lessor forwards copies of such changes to Lessee.

**14. Loss or Damage.** Lessee shall be responsible for any loss, theft of, and/or damage to the Equipment or any portion thereof from any cause whatsoever, regardless of the extent or lack of insurance coverage, from the time the Equipment is delivered to Lessee pursuant to the related Lease until the end of the Lease term thereunder or until the Equipment is returned to Lessor pursuant to Section 19 of this Primary Lease. If any item of the Equipment is lost, stolen, or damaged, Lessee shall immediately provide written notice of such loss to Lessor and shall, within fifteen (15) days after such loss, at Lessee's option, either: (a) repair the damaged Equipment so that it is in good condition and working order, eligible for any manufacturer's certification; (b) replace the damaged Equipment at Lessee's sole cost and expense with Equipment having substantially similar manufacturer's specifications and of equal or greater value to the damaged Equipment immediately prior to such Equipment being damaged, such replacement Equipment to be subject to Lessor's approval, whereupon such replacement Equipment shall be substituted in the applicable Lease and the other related documents by appropriate endorsement or amendment; or (c) pursuant to Section 18(b), purchase Lessor's interest in the damaged Equipment on a pro rata basis (notwithstanding the limitation in Section 18(b) only to prepaying in whole) and continue the related Lease for the non-damaged Equipment for the balance of the applicable Lease term. In such event, Lessor will provide Lessee with a revised amortization of Lease Payments for the non-damaged Equipment. Lessor will forward to Lessee any insurance proceeds which Lessor receives for damaged Equipment for Lessee's use in the repair or replacement of the damaged Equipment, unless there has been an Event of Default or an Event of Non-Appropriation by Lessee, in which event Lessor will apply any insurance proceeds received to reduce Lessee's obligations under Section 17 of this Primary Lease.

**15. Insurance.** In the event that Lessee is not self-insured (as hereafter provided), Lessee shall, at its expense, keep the Equipment fully insured against loss, fire, theft, damage, or destruction from any cause whatsoever in an amount not less than the greater of (a) the total Lease Payments for the Lease term under the related Lease or (b) the full replacement cost of the Equipment without consideration for depreciation. Upon Lessor's request, Lessee shall also provide such additional insurance against injury, loss, or damage to persons or property arising out of the use or operation of the Equipment as is customarily maintained by owners of property similar to the Equipment. With Lessor's prior written consent, Lessee may self-insure against such risks. The policy shall state that Lessor shall be notified of any proposed cancellation at least 30 days prior to the date set for cancellation. All such insurance shall be in form, issued by such insurance companies and be in such amounts as shall be satisfactory to Lessor, and shall provide that losses, if any, shall be payable to Lessor as "loss payee," and all such liability insurance shall include Lessor as an "additional insured." Upon Lessor's request, Lessee shall provide Lessor with a certificate or other evidence of insurance acceptable to Lessor evidencing the insurance coverage required under the related Lease. In the event Lessee fails to provide such evidence within 10 days of Lessor's request, or upon Lessor's receipt of a notice of policy cancellation, Lessor may (but shall not be obligated to) obtain insurance covering Lessor's interest in the Equipment at Lessee's sole expense. Lessee will pay all insurance premiums and related charges.

**16. Default.** Lessee will be in default under a Lease upon the occurrence of any of the following (each, an "Event of Default"): (a) Lessee fails to pay any Lease Payment or other payment due in full under such Lease within 10 calendar days after its due date; (b) Lessee fails to perform or observe any other promise or obligation in this Primary Lease and/or any Lease and does not correct the default within 30 days after written notice of default by Lessor; (c) any representation, warranty, or statement made by Lessee in this Primary Lease or any Lease shall prove to have been false or misleading in any material respect when made; (d) Lessee fails to obtain and maintain insurance as required by Section 15, or any insurance carrier cancels any insurance on the Equipment; (e) the Equipment or any portion thereof is misused, used in a manner not authorized by the applicable end user license agreement (if any) accompanying such Equipment, or used in violation of the terms of the related Lease; (f) the Equipment or any part thereof is lost, destroyed, or damaged beyond repair and remains uncured in accordance with Section 14; (g) a petition is filed by or against Lessee under any bankruptcy or insolvency laws; or (h) an Event of Default occurs under any other Lease or prior financing with Lessor or assigns or their respective affiliates, but any such Assignee may only exercise remedies with respect to other Leases for which it is the Assignee.

**17. Remedies.** Upon the occurrence of an Event of Default under a Lease, Lessor may, in its sole discretion, do any or all of the following (without penalty, liability, or obligation on Lessor's part and without limiting any other rights or remedies available to Lessor): (a) provide written notice to Lessee of the Event of Default; (b) as liquidated damages for loss of a bargain, and not as a penalty, declare due and payable any and all amounts which may then be due and payable under the Lease, plus all Lease Payments remaining through the end of the then current fiscal period; (c) with or without terminating the Lease Term under such Lease, (i) enter the premises where the Equipment is located and retake possession of such Equipment or require Lessee at Lessee's expense to promptly return any or all of such Equipment to the possession of Lessor in accordance with the requirements in Section 19, and (ii) at Lessee's expense, sell or Lease such Equipment or, for the account of Lessee, sublease such Equipment, continuing to hold Lessee liable for the difference between the Lease Payment payable by Lessee pursuant to the terms of such Lease to the end of the current fiscal period and the net proceeds of any such sale, Lease, or sublease. Lessor may require Lessee to remove all proprietary data from the Equipment, holding Lessor and its assigns harmless if Lessee fails to do so. Lessee will not make any claims against Lessor or the Equipment for trespass, damage, or any other reason. The exercise of any of such remedies shall not relieve Lessee of any other liabilities under any other Lease. Without limiting the foregoing, Lessor may take whatever action, either at law or in equity, may appear necessary or desirable to enforce its rights under any Lease, or as a secured party in any or all of the Equipment. No remedy of Lessor is intended to be exclusive and every such remedy, now or hereafter existing, at law or in equity, shall be cumulative and shall be in addition to every other remedy given under a Lease. In the event that Lessor sells or otherwise liquidates the Equipment following an Event of Default or an Event of Non-appropriation as herein provided and realizes net proceeds (after payment of costs) in excess of total Lease Payments under the related Lease that would have been paid during the related scheduled Lease Term plus any other amounts then due under the related Lease or Leases, Lessor shall immediately pay the amount of any such excess to Lessee.

**18. Purchase Option.** At the option of Lessee, and provided that no Event of Default or Event of Non-appropriation has occurred and/or is continuing under any Lease, Lessor's interest in all, but not less than all, of the Equipment subject to a Lease will be transferred, conveyed, and assigned to Lessee, free and clear of any right or interest of Lessor, and such Lease shall terminate: (a) upon payment in full of all Lease Payments under such Lease and all other amounts then due thereunder or (b) on any Lease Payment due date under such Lease, provided that Lessee shall have delivered written notice at least 30 days prior to such date of Lessee's intention to purchase the Equipment subject to such Lease pursuant to this provision, by paying to Lessor, in addition to the Lease Payment due on such date, an amount equal to the purchase price (the "Purchase Price") shown for such Lease Payment due date in the payment Schedule included in the applicable Lease. Lessee hereby acknowledges that the Purchase Price under a Lease includes a prepayment premium.

**19. Return of Equipment.** In the case of an Event of Default under a Lease or an Event of Non-appropriation by Lessee with respect to a Lease in accordance with Section 6, Lessee will, at Lessee's sole cost and expense, immediately return the Equipment (including all copies of any software free of any proprietary data), manuals, and accessories to any location and aboard any carrier Lessor may designate in the continental United States. The Equipment must be properly packed for shipment in accordance with the manufacturer's recommendations or specifications, freight prepaid and insured, and maintained in accordance with the terms of the related Lease. All Equipment must be free of markings. Lessee will pay Lessor for any missing or defective parts or accessories. Lessee will continue to pay Lease Payments until the Equipment is accepted by Lessor, which acceptance shall be deemed to occur fifteen (15) days after delivery unless Lessor rejects the Equipment for good cause within such fifteen (15) day period. Notwithstanding anything in this Section 19 to the contrary, any amounts to be paid by Lessee as provided in this Section 19 shall be payable solely from funds legally available for the purpose.

**20. Lessee's Representations and Warranties.** Lessee hereby represents, covenants, and warrants for the benefit of Lessor that as of the date hereof and as of the commencement date for each Lease, and throughout each Lease Term: (a) Lessee is a state or political subdivision thereof within the meaning of Section 103 of the Internal Revenue Code of 1986, as amended (the "Code"); (b) Lessee is duly organized and existing under the Constitution and laws of the state in which Lessee is located; (c) Lessee is authorized to enter into and carry out its obligations under this Primary Lease and each Lease and every other document required to be delivered in connection with this Primary Lease and a Lease; (d) this Primary Lease and each Lease have been duly authorized, executed, and delivered by Lessee in accordance with all applicable laws, codes, ordinances, regulations, and policies; (e) any person signing the Primary Lease and each Lease has the authority to do so, is acting with the full express authorization of Lessee's governing body, and holds the office indicated below his or her signature, which is genuine; (f) the Equipment is essential to the immediate performance of a governmental or proprietary function by Lessee within the scope of Lessee's authority and shall be used during the Lease Term only by Lessee and only to perform such function; (g) Lessee intends to use the Equipment for the entire Lease Term and shall take such action, in accordance with Section 6, to include in its annual budget request, for submission to Lessee's governing body, any funds required to fulfill Lessee's obligations for each succeeding fiscal period during the applicable Lease Term; (h) Lessee has complied fully with all applicable laws, codes, ordinances, regulations, and policies, governing open meetings, competitive pricing and/or public

bidding and appropriations required in connection with each Lease, the selection and acquisition of the Equipment and the selection of vendor; (i) all payments due and to become due during Lessee's current fiscal period under a Lease are within the fiscal budget of such fiscal period, and are or will be included within an unrestricted and unencumbered appropriation currently available for the Lease/purchase of the Equipment under the related Lease; (j) Lessee shall not do or cause to be done any act which shall cause, or by omission of any act allow, the interest portion of any Lease Payment to become includible in Lessor's gross income for federal income taxation purposes under the Code; (k) Lessee shall comply with the information reporting requirements of Section 149(e) of the Code with respect to each Lease (such compliance shall include, but not be limited to, the execution of Form 8038-G or 8038-GC information reporting returns as appropriate); (l) all financial information provided by Lessee is true and accurate and fairly represents Lessee's financial condition; (m) Lessee has not for at least its most recent ten fiscal periods failed to appropriate or otherwise make available funds sufficient to pay rental or other payments coming due under any Lease purchase, installment sale or other similar agreement; (n) there is no litigation, pending or threatened that would materially adversely affect the transactions contemplated by this Primary Lease, any Lease or the financial condition of Lessee; and (o) any and all Equipment that Lessee Leases, purchases, and/or acquires pursuant to this Primary Lease and any Lease hereunder is for Lessee's internal purposes only and Lessee is not and will not Lease, purchase or acquire the Equipment for resale.

**21. Assignment.** Lessor may, upon notice to Lessee but without Lessee's consent, sell, assign, or transfer from time to time Lessor's rights, title, and interest under this Primary Lease and/or any Lease or Leases or interest therein, including the right to receive Lease Payments under a Lease and Lessor's security interest in the Equipment under a Lease and any related escrow agreement to one or more Assignees or sub-Assignees (each, an "Assignee"). Lessee agrees that, upon such assignment, the Assignee will have the same rights and benefits of Lessor under the terms of the related Lease. Lessee agrees that the rights of Assignee will not be subject to any claims, defenses, or set-offs that Lessee may have against any vendor. Upon notice to Lessee of such assignment, Lessee agrees to respond to any requests about the related Lease and, if directed by Lessor, to pay Assignee all Lease Payments and other amounts due under such Lease. Lessee hereby appoints Lessor as its agent to maintain a record of all assignments of each Lease in a form sufficient to comply with the registration requirements of Section 149(a) of the Code and the regulations prescribed thereunder from time to time, and Lessor agrees to maintain such registration record.

**22. Additional Payments.** Lessor may, but is not obligated to, take on Lessee's behalf any action which Lessee fails to take as required by any Lease, and Lessee shall pay any expenses incurred by Lessor in taking such action, which will be in addition to the Lease Payments as set forth in the related Lease.

**23. Release and Indemnification.** To the extent permitted by applicable state law and subject to Section 6, Lessee shall indemnify, release, protect, hold harmless, save, and defend Lessor from and against any and all liability, obligation, loss, claim, tax, and damage whatsoever, regardless of the cause thereof, and all costs and expenses in connection therewith (including, without limitation, attorneys' fees) arising out of or resulting from (a) entering into this Primary Lease and/or any Lease; (b) the ownership of any item of Equipment; (c) the ordering, acquisition, use, installation, deployment, testing, operation, condition, purchase, delivery, rejection, storage, or return of any item of Equipment; (d) any damage to property or personal injury or death of any person in connection with the operation, use, installation, deployment, testing, condition, possession, storage, or return of any item of Equipment, or in connection with or resulting from Lessee's acts, omissions, negligence, misconduct, or breach of any provision of this Primary Lease or any Lease(s) hereunder; and/or (e) the breach of any covenant or any material representation of Lessee contained in this Primary Lease or any Lease. The indemnification obligations set forth herein shall continue in full force and effect notwithstanding the payment in full of all obligations under any Lease or the termination of the Lease Term under any Lease for any reason.

**24. Miscellaneous.** Each Lease, together with this Primary Lease, contains the entire agreement of the parties regarding the subject matter hereof which is limited to Lease financing. Time is of the essence in each Lease. If a court of competent jurisdiction finds any provision of any Lease to be unenforceable, the remaining terms of such Lease shall remain in full force and effect. Each Lease may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument; provided, however, that only counterpart one of each Lease (including the terms and conditions of this Primary Lease incorporated therein by reference) shall constitute the original for such Lease for purposes of the sale or transfer of such Lease as chattel paper. References herein to "Lessor" shall be deemed to include each of its Assignees from and after the effective date of each assignment; references herein to "Lessor" shall not refer to Apple Inc. in its capacity as a vendor or in any capacity other than as a Lessor hereunder. The captions or headings in this Primary Lease and in each Lease are for convenience only and in no way define, limit, or describe the scope or intent of any provisions. This Primary Lease and each Lease will be governed by the laws of the state where Lessee is located without regard to the conflict of law principles thereof. Lessor and Lessee both intend to comply with all applicable laws. If it is determined that Lessee's payments under the Lease result in an interest payment higher than allowed by

applicable law, then any excess interest collected will be applied to the repayment of principal, and interest will be charged at the highest rate allowed by law.

**25. Notices.** All written notices under any Lease must be sent by certified mail or recognized overnight delivery service, postage prepaid, to the addresses as stated on each Lease, or by facsimile transmission, with written confirmation of receipt.

**26. Electronic Signatures.** Notwithstanding anything to the contrary in this Primary Lease, Lessee and Lessor both intend that this Primary Lease and any Schedule, acceptance certificate, escrow agreement, or any other related document or certificate (each a "Document") containing the electronic signature of both parties using the procedure or method for electronic signatures that Lessor provided to Lessee ("Electronic Signature") shall constitute the sole original authenticated Document for all purposes (including without limitation the perfection of security interests and admissibility of evidence). Lessee and Lessor acknowledge that any such electronic signatures will be applied by the duly authorized representative of the respective party with the intent to sign, authenticate, and accept the documents on behalf of such party.

**IMPORTANT: READ BEFORE SIGNING.** THE TERMS OF THIS PRIMARY LEASE AND EACH LEASE SHOULD BE READ CAREFULLY BECAUSE ONLY THOSE TERMS IN WRITING ARE ENFORCEABLE. TERMS OR ORAL PROMISES WHICH ARE NOT CONTAINED IN THIS PRIMARY LEASE OR A LEASE MAY NOT BE LEGALLY ENFORCED. THE TERMS OF THIS PRIMARY LEASE OR A LEASE MAY ONLY BE CHANGED BY ANOTHER WRITTEN AGREEMENT BETWEEN THE PARTIES. EXCEPT FOR AN EVENT OF NON-APPROPRIATION, EACH LEASE IS NOT CANCELABLE BY LESSEE.

Lessor: **Apple Inc.**

Lessee


**THE RECTOR AND VISITORS OF THE  
UNIVERSITY OF VIRGINIA**

Carruthers Hall, 1001 Emet Street North,  
Charlottesville, VA 22903

Name:



Name:

DocuSigned by:  
  
B80D8723BAC8463...

Jennifer Wagner Davis

Title:



Title:

Executive Vice President and Chief Operating Officer

Fed Tax ID #: 546-001-796

UVA Tracking #: UVA-AGR-4051