



Commonwealth of Virginia
Virginia Information Technologies Agency

APPLE HARDWARE, SOFTWARE & SERVICES

Date: June 27, 2014

Contract #: VA-100706-APPL

Authorized User: Educational Institutions, Teachers and Students Only

Contractor: Apple Inc.
1 Infinite Loop
Cupertino, CA 95014

FIN: 94-2404110

Contact Person: See Page 3

Term: July 1, 2014 – June 30, 2015

Pricing: <http://www.apple.com/education/pricelists>

Payment: Net 30 days

For Additional Information, Please Contact:

Contract Information:
Virginia Information Technologies Agency
Supply Chain Management

Doug Crenshaw
Strategic Sourcing Manager
Phone: 804-416-6160
E-Mail: doug.crenshaw@vita.virginia.gov
Fax: 804-416-6361

NOTES: Individual Commonwealth of Virginia employees are not authorized to purchase equipment or services for their personal use from this Contract.

For updates, please visit our Website at <http://www.vita.virginia.gov/procurement/contracts.cfm>

VIRGINIA INFORMATION TECHNOLOGIES AGENCY (VITA): Prior review and approval by VITA for purchases in excess of \$100,000.00 is required for State Agencies and Institutions only.

APPLE CONTACTS:

Paul Mordan, Sales Rep

State and Local Government Agencies

Voice: (703) 264-5116

11921 Freedom Drive, Suite 600

Reston, VA 20191

EMAIL: pmodan@apple.com

Thomas Schlein, Sales Rep

K12 Education

Voice: (512) 674-2812

12545 Riata Vista Circle

MS: 198-3IES

Austin, TX 78727

EMAIL: tschlein@apple.com

Mike Garcia, Sales Rep

Higher Education

Voice: (512) 674-6893

12545 Riata Vista Circle

MS: 198-3IES

Austin, TX 78727

EMAIL: mgarcia@apple.com



Apple Inc.

MODIFICATION # 4 TO CONTRACT NUMBER VA-071006-APPL

BETWEEN THE COMMONWEALTH OF VIRGINIA and APPLE INC.

This MODIFICATION # 4 is an agreement between the Commonwealth of Virginia, hereinafter referred to as "State" or "Commonwealth" or "VITA" (Virginia Information Technologies Agency), and Apple Inc., hereinafter referred to as "Contractor". This Modification is hereby incorporated into and made an integral part of Contract VA-071006-APPL (the Agreement).

The purpose of this Modification is to document both parties' agreement to modify the Contract as follows:

1. Extension of Agreement Term

Ref Sec 28 "TERM"

The contract is hereby renewed from 7/1/2014 - 6/30/2015.

2. Ratification of Modifications # 1, 2 and 3

Upon execution of this Modification, the parties hereby acknowledge and agree that the following extensions of the Agreement are hereby ratified and approved: Extension #1: 7/1/2011 to 6/30/2012; Extension #2: 7/1/2012 to 6/30/2013; and Extension #3: 7/1/2013 to 6/30/2014.

The foregoing is the complete and final expression of the parties' agreement to modify Contract VA-071006-APPL and cannot be modified, except by a writing signed by duly authorized representatives of both parties.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

PERSONS SIGNING THIS CONTRACT ARE AUTHORIZED REPRESENTATIVES OF EACH PARTY TO THIS CONTRACT AND ACKNOWLEDGE THAT EACH PARTY AGREES TO BE BOUND BY THE TERMS AND CONDITIONS OF THE CONTRACT.

The duly authorized representative of the Purchaser certifies that Purchaser's policies do not prohibit the acceptance and execution of terms and conditions in electronic form.

The duly authorized representatives of the parties execute this Agreement as of the dates set forth below.

**Company and Location Information**

Legal Name COMMONWEALTH OF VIRGINIA
Operating As/Doing Business As Name COMMONWEALTH OF VIRGINIA
Address Line 1 11761 Meadowville Lane
Address Line 2
Town/City Chester
State/Prov Virginia
Zip Code 23836
Country US

Authorized Representative

First Name Douglas
Last Name Crenshaw
Job Title/Position VITA Strategic Sourcing Manager
Phone Number 8044166160
Email Address doug.crenshaw@vita.virginia.gov
Fax

By checking this box, I represent and warrant that all the information provided is true and correct and that I am authorized to agree to the terms and conditions in this Agreement on behalf of said applicant. I have read and accept the terms and conditions of this Agreement and acknowledge this will be accepted as my signature in lieu of a written signature with full force and effect.

Date Approved by Customer

23 Jun 2014 11:50:44 AM(Pacific Time)

All connections to our server are logged and traced: YOUR IP ADDRESS HAS BEEN LOGGED: 166.67.66.7

Date Approved by Apple

24 Jun 2014 09:16:53 AM(Pacific Time)

**MODIFICATION # 3
TO
CONTRACT NUMBER VA-100706-APPL
BETWEEN THE
COMMONWEALTH OF VIRGINIA
APPLE INC.**

This MODIFICATION # 3 is an agreement between the Commonwealth of Virginia, hereinafter referred to as "State" or "Commonwealth" or "VITA" (Virginia Information Technologies Agency), and Apple Inc. hereinafter referred to as "Contractor". This Modification is hereby incorporated into and made an integral part of Contract VA-100706-APPL (the Agreement).

The purpose of this Modification is to document both parties' agreement to modify the Contract as follows:

Ref Sec 28 "TERM"

The contract is hereby renewed from 7/1/2013 – 6/30/2014.

The foregoing is the complete and final expression of the parties' agreement to modify Contract VA-100706-APPL and cannot be modified, except by a writing signed by duly authorized representatives of both parties.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

PERSONS SIGNING THIS CONTRACT ARE AUTHORIZED REPRESENTATIVES OF EACH PARTY TO THIS CONTRACT AND ACKNOWLEDGE THAT EACH PARTY AGREES TO BE BOUND BY THE TERMS AND CONDITIONS OF THE CONTRACT.

APPLE INC.

BY:

NAME:

Vanessa Boenig
TITLE: Bids & Direct Operations Contracts Manager

DATE:

5-28-2013

COMMONWEALTH OF VIRGINIA

BY:

NAME:

PHILIP L. PIPPERT
TITLE: DIRECTOR, SEM

DATE:

6/3/13

**MODIFICATION # 2
TO
CONTRACT NUMBER VA-100706-APPL
BETWEEN THE
COMMONWEALTH OF VIRGINIA
AND
APPLE INC.**

This MODIFICATION # 2 is an agreement between the Commonwealth of Virginia, hereinafter referred to as "State" or "Commonwealth" or "VITA" (Virginia Information Technologies Agency), and Apple Inc., hereinafter referred to as "Contractor". This Modification is hereby incorporated into and made an integral part of Contract VA-100706-APPL (the Agreement).

The purpose of this Modification is to document both parties' agreement to modify the Contract as follows:

Ref Sec 28 "TERM"

The contract is hereby renewed from 7/01/12 through 06/30/13.

The foregoing is the complete and final expression of the parties' agreement to modify Contract VA-100706-APPL and cannot be modified, except by a writing signed by duly authorized representatives of both parties.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

PERSONS SIGNING THIS CONTRACT ARE AUTHORIZED REPRESENTATIVES OF EACH PARTY TO THIS CONTRACT AND ACKNOWLEDGE THAT EACH PARTY AGREES TO BE BOUND BY THE TERMS AND CONDITIONS OF THE CONTRACT.

APPLE INC.

BY: Dee Murray

NAME: Dee Murray

TITLE: Mgr., EBU Contracts

DATE: 6/13/2012

COMMONWEALTH OF VIRGINIA

BY: Dee Crenshaw

NAME: Dee Crenshaw

TITLE: VITA Services Manager

DATE: 6/13/12

**MODIFICATION # 1
TO
CONTRACT NUMBER VA-100706-APPL
BETWEEN THE
COMMONWEALTH OF VIRGINIA
AND
APPLE, Inc.**

This MODIFICATION # 1 is an agreement between the Commonwealth of Virginia, herein referred to as "State" or "Commonwealth" or "VITA" (Virginia Information Technologies Agency), and APPLE, Inc., herein referred to as "Contractor". This Modification is hereby incorporated into and made an integral part of Contract VA-0100706-APPL (the Agreement).

The purpose of this Modification is to document both parties' agreement to modify the Contract as follows:

Ref Sec. 28 "TERM"

The contract term is hereby renewed from July 1, 2011 through June 30, 2012.

The foregoing is the complete and final expression of the parties' agreement to modify Contract VA-100706-APPL and cannot be modified, except by a writing signed by duly authorized representatives of both parties.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

PERSONS SIGNING THIS CONTRACT ARE AUTHORIZED REPRESENTATIVES OF EACH PARTY TO THIS CONTRACT AND ACKNOWLEDGE THAT EACH PARTY AGREES TO BE BOUND BY THE TERMS AND CONDITIONS OF THE CONTRACT.

APPLE, Inc.

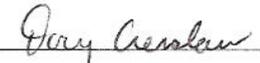
BY: 

NAME: Stephen Glaros

TITLE: Sr. Mgr. Contracts

DATE: 5/13/11

COMMONWEALTH OF VIRGINIA

BY: 

NAME: Doug Crenshaw

TITLE: VITA Sourcing Mgr

DATE: 5/13/11

**MASTER AGREEMENT
CONTRACT VA-100706-APPL
BETWEEN
THE COMMONWEALTH OF VIRGINIA
AND
Apple Inc.**

1. SCOPE OF CONTRACT

This is an agreement (the "Contract") between the Virginia Information Technologies Agency ("VITA"), on behalf of the Commonwealth of Virginia ("Commonwealth"), and Apple Inc. (the "Contractor"), having its principal place of business at 1 Infinite Loop, Cupertino, CA 95014. This Contract contains the contractual terms and conditions by which the Commonwealth and Contractor will establish a master contract for the use by Commonwealth agencies, Commonwealth Institutions, and other public bodies of the Commonwealth as defined in § 2.2-4301 of the Virginia Public Procurement Act (VPPA), and hereinafter collectively referred to as "Authorized Users," or "Purchasers" to acquire Products and Apple Products, both as defined in Section 2 below, pursuant to the terms herein and for use by students, teachers and educational institutions. Authorized Users and the Commonwealth may each be referred to as "Purchaser" herein, provided, however that the Commonwealth and Contractor agree that Authorized Users are not intended third party beneficiaries of this Contract. Notwithstanding anything that may be construed to the contrary, the parties agree that the scope of this Contract does not include or extend to professional services. To the extent, if any, that the Commonwealth and/or any Authorized Users desire to purchase professional services from Contractor, they may do so by means of a separate agreement.

2. INTERPRETATION OF AGREEMENT

As used in this Contract,

"Apple Products" means hardware and software products manufactured, distributed or licensed ("sold") under the Apple Inc. brand name, that the Commonwealth has paid to acquire (or license) from Contractor for its own use but excluding any Apple-branded software that Contractor distributes free-of-charge, third party-branded hardware components, third party-branded component technology, third party open source software or freeware and all other third party-branded products, copies of which may be found at <http://www.apple.com>.

"Products" means Services and hardware and software products, including Apple Products, that may be sold by Contractor to Commonwealth for the Commonwealth's own use. "Services" mean, collectively, the standard, price-listed service, support and/or training products sold under the Apple Inc. brand name that the Commonwealth has paid to acquire, provided, however, that in no event shall professional services or consulting services be included under this Contract or within the meaning of Services.

The documents comprising this Contract, and their order of precedence in case of conflict, are: this document, consisting of Terms and Conditions labeled 1 through 45, Attachment A, "Reporting Format" and Attachment B, "Software Installation Waiver Letter." The foregoing

documents represent the complete and final agreement between Commonwealth and Contractor with respect to the subject matter of this Contract, and shall supersede all prior agreements and understandings between the parties hereto, whether written or oral. However, to the extent a Purchaser does not purchase Products or Services under this Agreement and orders Products or Services under a separate contract vehicle with Contractor, that separate contract will represent the complete and final agreement between Purchaser and Contractor with respect to those Products.

If a term or condition of this Contract is found by a court of competent jurisdiction to be illegal or unenforceable, it shall be severed, and the validity of the remaining terms and conditions shall not be affected. Notwithstanding the foregoing in this Section 2, Purchaser's use, as an end user, of the Products shall be subject to the terms of the license accompanying the Products, copies of which may be found at <http://www.apple.com/legal/sla/> if any, and the applicable patent, trademark, copyright and other intellectual property, federal and state laws of the United States.

3. VENDORS MANUAL

The provisions of the Commonwealth of Virginia *Vendors Manual* apply to the purchase of nontechnology goods and nonprofessional services only, and therefore do not apply to this Contract.

4. APPLICABLE LAWS AND COURTS; EXPORT COMPLIANCE

A. **Governing Law.** This Contract shall be governed in all respects by the laws of the Commonwealth of Virginia and any litigation with respect thereto shall be brought in the courts of the Commonwealth. Each party shall comply with all applicable federal, state and local laws, rules and regulations.

B. **Export Compliance.** All Products and Services sold under this Agreement are subject to all applicable laws, regulations, orders and other limitations on the export and re-export of commodities, technical data and software. PURCHASERS SHALL BE SOLELY RESPONSIBLE FOR COMPLIANCE WITH ALL APPLICABLE EXPORT AND REEXPORT CONTROL RULES AND further 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 relevant national government authority; or (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 or other approvals; (iii) to any country or national or resident of a country to which trade is embargoed by the United States; (iv) to any person or firm on the U.S. Department of Commerce's Table of Denial Orders or Entities list, or U.S. Treasury Department's list of Specially Designated Nationals; or (v) for use in any sensitive nuclear, chemical or biological weapons, or missile technology end-uses unless authorized by the U.S. Government by regulation or specific license.

5. ANTI-DISCRIMINATION

Contractor certifies to the Commonwealth that it will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, and the Americans

With Disabilities Act. Notwithstanding anything to the contrary contained herein, the parties acknowledge and agree that Contractor utilizes a variety of vendors and subcontractors that are located either outside of the United States and/or that are involved in the supply-chain for the Apple Products and, accordingly, such vendors and subcontractors are not considered within the scope of §2.2-4311 of the Virginia Public Procurement Act or the provisions of this Section 5 of the Contract for purposes of a compliance obligation, if any, that Contractor may have thereunder.

In every Contract over \$10,000 during the performance of this Contract, the Contractor agrees as follows:

1) The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except if there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this Nondiscrimination clause.

2) The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer. 3) Notices, advertisements and solicitations placed in accordance with Federal law, rule or regulation shall be deemed sufficient for meeting these requirements.

6. ETHICS IN PUBLIC CONTRACTING

Contractor certifies that to the best of its actual knowledge as of the Effective Date, it enters into this Agreement without collusion or fraud and that it has not offered or received any kickbacks or inducements from any other offeror, supplier, manufacturer or subcontractor in connection with this Agreement, and that it has not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.

7. IMMIGRATION REFORM AND CONTROL ACT OF 1986

Contractor certifies that it does not and will not during the performance of this Contract knowingly employ illegal alien workers or otherwise violate the provisions of the federal Immigration Reform and Control Act of 1986.

8. DEBARMENT STATUS

Contractor certifies that it is not currently debarred by the Commonwealth of Virginia from submitting offers on Contracts for the type of goods and/or services covered by this solicitation, nor is it an agent of any person or entity that is currently debarred.

9. PRICING AND PAYMENT

A. Prices

Prices shall be as set forth on the applicable Contractor price list (the "Authorized Apple Price

Lists”) in effect on the date Purchaser’s order is accepted by Contractor. The current Contractor price list can be found at <http://www.apple.com/education/pricelists/>. Contractor reserves the right to accept or decline any order, in whole or in part. Contractor may cancel any accepted order prior to shipment. If Contractor declines an order, Contractor shall provide Purchaser with reasonable notice of same. Upon Purchaser’s receipt of an order confirmation (including estimated shipment date), Purchaser may cancel the order at any time prior to shipment of Products with written notice to Contractor. Unless Purchaser notifies Contractor otherwise, Contractor may make partial shipments of Purchaser’s order. Contractor will not be liable for any failure to ship complete orders. Contractor will allocate its available inventory and make deliveries (including partial shipments) in its sole discretion and without liability to Purchaser. Prices include standard freight and insurance using a Contractor-selected carrier. Contractor will provide Purchaser a limited billing service account to use when placing service orders such as Customer Installable Parts (CIPs) and mail-in or on-site repairs. Apple shall accept all orders for of Products other than finished good orders, service orders and mail-in or on-site repair orders that are submitted using the eVa system as provided elsewhere under this Contract. The Commonwealth acknowledges it is the responsibility of each Purchaser to comply with any applicable obligations to place orders through the eVA system and that Apple shall incur no liability for processing any order received by a Purchaser outside of the eVA system. Purchaser acknowledges that Contractor does not provide service CIP or repair pricing on a Contractor price list; Contractor will quote current pricing for any such CIPs or repairs to Purchaser prior to processing any purchase order, and Purchaser will have the option to either accept or decline the quoted prices. In the event Purchaser accepts the quoted pricing, Contractor will process the purchase order under the terms of this Contract; should Purchaser decline the quoted prices, Contractor will not process the purchase order. Contractor will charge for any fees due from Purchaser by regulation or statute, including, if applicable, fees due under the California Electronic Waste Recycling Act or similar statutes in other states. Contractor reserves the right to change the Authorized Apple Price Lists and the purchaser’s credit terms at any time.

B. Payment

1) Invoices for items ordered, delivered and accepted shall be submitted by the Contractor directly to the payment address shown on the purchase order. All invoices shall show the state Contract number and/or purchase order number.

2) The Commonwealth will pay all invoices net thirty (30) calendar days after the date of invoice. Any payment terms requiring payment in less than thirty (30) calendar days will be regarded as requiring payment thirty (30) calendar days after the date of the invoice. This shall not affect offers of discounts for payment in less than thirty (30) calendar days, however.

3) All goods or services provided under this Contract or purchase order, that are to be paid for with public funds, shall be billed by the Contractor at Contractor’s then-current published list price in effect on the date Purchaser’s order is accepted by Contractor regardless of which Authorized User is being billed. Purchaser will be invoiced separately for each partial shipment and will pay each invoice when due, without regard to subsequent deliveries.

4) The following shall be deemed to be the date of payment: the date of postmark in all

cases where payment is made by mail, or the date of submission in all cases where payment is made electronically.

10. ASSIGNMENT OF CONTRACT

To the fullest extent permitted by law, the parties agree that neither party's rights under this Contract shall be assignable, in whole or in part, to any other party without the other party's written consent, and that any purported assignment or transfer without such consent shall be null and void.

If any law limits the right of the parties to prohibit assignment or nonconsensual assignments, the effective date of the assignment shall be as follows. Contractor shall give VITA prompt written notice of the assignment, signed by authorized representatives of both Contractor and the assignee. Any payments made prior to the using agency's receipt of such notification and form shall not be covered by this assignment. In the event the Commonwealth receives any notice from a third party claiming to be an assignee of any rights of Contractor under this Contract, Contractor agrees that payment or other performance in respect of those rights shall not be due until at least thirty (30) calendar days after the Commonwealth's receipt of the notice required by the above paragraph or receipt of a similarly executed notice confirming the absence or revocation of the purported assignment. The Supply Chain Management directorate of VITA shall promptly notify the Contractor of any assignment notice it receives. Notwithstanding the foregoing in this Section 10, Contractor may assign this Agreement to the surviving entity, without the obligation of consent or any other obligations under this Section 10, in the event of any merger, acquisition or sale of all or substantially all of its assets, by providing notice to VITA within a reasonable time following such event.

11. MODIFICATIONS, WAIVER AND SEVERABILITY

No modifications to this Contract shall be effective unless it is in writing and signed by the duly authorized representative of both parties. No term or provision hereof shall be deemed waived and no breach excused unless such waiver or consent to breach is in writing. If a court of competent jurisdiction holds that any provision of this Contract is invalid or unenforceable, the remaining portions of this Contract will remain in full force and effect, and the parties will replace the invalid or unenforceable provision with a valid and enforceable provision that achieves the original intent of the parties and economic effect of the Contract.

12. TAXES

Sales to the Commonwealth are normally exempt from State sales tax. State sales and use tax certificates of exemption, Form ST-12, will be issued upon request, and can be obtained online at <http://www.tax.state.va.us/>. Deliveries against this Contract shall usually be free of Federal excise and transportation taxes. VITA's excise tax exemption registration number is 54-73-0076K. Notwithstanding, any applicable local sales or use taxes, duties and other imposts, if any, due on account of purchases hereunder shall be paid by Purchaser. Proof of sales and use tax-exempt status must be on file with Contractor for any order to be treated as a tax-exempt transaction.

13. INSURANCE

By signing and submitting a proposal under this solicitation, Contractor certifies that it will have

the insurance coverage specified in Section 14 at the time the Contract is executed. The Contractor will maintain the insurance coverage specified in Section 14 during the entire term of the Contract and that all insurance coverage will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission. Copies of certificates of insurance for the required coverages shall be provided by the Contractor upon request to the Commonwealth.

14. INSURANCE COVERAGES AND LIMITS REQUIRED:

a. Worker's Compensation - Statutory requirements and benefits.

b. Employers Liability - \$100,000.

c. Commercial General Liability - \$4,000,000 combined single limit. Commercial General Liability is to include Premises/Operations Liability, Products and Completed Operations Coverage, and Independent Contractor's Liability or Owner's and Contractor's Protective Liability. The Commonwealth of Virginia must be named as an additional insured under Contractor's Commercial General Liability coverage.

Notwithstanding the above in Sections 13 and 14, Contractor shall be permitted to self-insure, provided it maintains a shareholders' net value of over \$100,000,000.

15. DRUG-FREE WORKPLACE

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

16. NONDISCRIMINATION OF CONTRACTORS

An offeror, or Contractor shall not be discriminated against in the solicitation or award of this Contract because of race, religion, color, sex, national origin, age, or disability or against faith-based organizations. If the award of this Contract is made to a faith-based organization and an individual, who applies for or receives goods, services, or disbursements provided pursuant to this Contract objects to the religious character of the faith-based organization from which the individual receives or would receive the goods, services, or disbursements, the public body shall offer the individual, within a reasonable period of time after the date of his objection, access to

equivalent goods, services, or disbursements from an alternative provider.

17. eVA Business-To-Government Vendor Registration: eVA Internet electronic procurement solution, website portal www.eVA.virginia.gov, streamlines and automates government purchasing activities in the Commonwealth. The eVA portal is the gateway for vendors to conduct business with state agencies and public bodies. All vendors desiring to provide goods and/or services to the Commonwealth shall participate in the eVA Internet e-procurement solution either through the eVA Basic Vendor Registration Service or eVA Premium Vendor Registration Service.

a. eVA Basic Vendor Registration Service: \$25 Annual Registration Fee plus the appropriate order Transaction Fee specified below. eVA Basic Vendor Registration Service includes electronic order receipt, vendor catalog posting, on-line registration, electronic bidding, and the ability to research historical procurement data available in the eVA purchase transaction data warehouse.

b. eVA Premium Vendor Registration Service: \$25 Annual Registration Fee plus the appropriate order Transaction Fee specified below. eVA Premium Vendor Registration Service includes all benefits of the eVA Basic Vendor Registration Service plus automatic email or fax notification of solicitations and amendments.

c. For orders issued prior to August 16, 2006, the Contractor Transaction Fee is 1%, capped at a maximum of \$500 per order.

d. For orders issued August 16, 2006 and after, the Contractor Transaction Fee is:

- (i) DMBE-certified Small Businesses: 1%, capped at \$500 per order.
- (ii) Businesses that are not DMBE-certified Small Businesses: 1%, capped at \$1,500 per order.

18. eVA Business-To-Government Contracts and Orders: The Contract will result in multiple purchase order(s) with the eVA transaction fee specified below assessed for each order.

a. For orders issued prior to August 16, 2006, the Contractor Transaction Fee is 1%, capped at a maximum of \$500 per order.

b. For orders issued August 16, 2006 and after, the Contractor Transaction Fee is:

- (i) DMBE-certified Small Businesses: 1%, Capped at \$500 per order.
- (ii) Businesses that are not DMBE-certified Small Businesses: 1%, Capped at \$1,500 per order.

The eVA transaction fee will be assessed approximately 30 calendar days after each purchase order is issued. Any adjustments (increases/decreases) will be handled through eVA change orders.

Internet electronic procurement solution, website portal www.eva.virginia.gov, streamlines and automates government purchasing activities in the Commonwealth. The portal is the gateway for contractors to conduct business with state agencies and public bodies.

Contractors desiring to provide goods and/or services to the Commonwealth shall participate in the eVA Internet e-procurement solution and agree to comply with the following:

Failure to provide an electronic catalog (price list) or index page catalog for items awarded will be cause for the Commonwealth to find Contractor in breach of the Contract, subject to the cure period described in Section 19 below. The format of this electronic catalog shall conform to the eVA Catalog Interchange Format (CIF) Specification that can be accessed and downloaded from www.eVA.virginia.gov. Contractors should email Catalog or Index Page information to eVA-catalog-manager@dgs.virginia.gov.

19. BREACH

Contractor reserves the right to suspend any or all shipments to a Purchaser against orders accepted by Contractor pursuant to this Agreement in the event of any payment default by the Purchaser. To the extent permitted by law, Contractor also reserves the right to change Purchaser's credit terms at any time upon notice for reasonable cause. Either party may terminate this Agreement without cause upon thirty (30) calendar days prior written notice. Notwithstanding anything in the foregoing, Contractor may not terminate this Agreement without cause during the first twelve (12) months of the Term of the Agreement. Either party may terminate this Agreement upon thirty (30) calendar days prior written notice if the other party is in material breach of this Agreement and has failed to cure such breach within thirty (30) calendar days of the date of such notice. Upon expiration or any notice of termination of this Agreement: (i) the due date of all Contractor invoices shall be accelerated so that they become immediately due and payable; (ii) Contractor may refuse all or part of any purchase orders received by Contractor pursuant to this Agreement after the date of notice of termination; and (iii) Purchaser will cease placing new orders.

20. FORCE MAJEURE

A party shall not be in breach of this Contract if its default was due to causes beyond the reasonable control of, and occurred without any fault or negligence on the part of such party. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the Commonwealth in either its sovereign or Contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather. The Commonwealth will pay all outstanding sums owed at the time of any cancellation due to breach. In no event shall any failure by either party to exercise any remedy available to it be construed as a waiver or consent to any breach.

21. CONTRACTOR, WARRANTIES

A. The sole warranty for Apple Product, if any, purchased under this Contract shall be Contractor's standard Limited Warranty as set forth in the documentation that accompanies each Apple Product, a copy of which may be found at <http://www.apple.com/legal/warranty/>.

B. All Products, other than Apple Product, are sold "as is" and without warranty or support from Contractor, but may be accompanied by a manufacturer's warranty, as more particularly provided in any warranty documentation that accompanies such Products.

C. THE PARTIES AGREE THAT ALL IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION ALL IMPLIED WARRANTIES OF CONDITION, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE HEREBY DISCLAIMED BY CONTRACTOR AS TO THE PRODUCTS, SERVICES, MATERIALS, DOCUMENTS, INFORMATION AND LABOR FURNISHED BY CONTRACTOR PURSUANT TO THIS CONTRACT. IN ADDITION, NOTHING IN THIS CONTRACT SHALL BE CONSTRUED AS OBLIGATING CONTRACTOR TO PROVIDE ANY WARRANTY-RELATED FULFILLMENT OR SUPPORT FOR ANY THIRD PARTY-BRANDED PRODUCTS.

22. DELIVERY DATE

The Contractor shall use commercially reasonable efforts to deliver the Products within thirty (30) calendar days after Contractor's acceptance of the order, except in the case of a Force Majeure event as defined in Section 20 herein, or Contractor's suspension of delivery due to Purchaser's payment default as described in Section 19 herein, or if Contractor cancels the order before shipment as permitted by Section 9 herein.

23. TITLE AND RISK OF LOSS OR DAMAGE

Title and risk of loss to all Products will pass to Purchaser upon delivery of the Products. When shipping pursuant to Contractor's standard practices in all but the last week of every Contractor fiscal quarter during the term of this Agreement, however, it is Contractor's policy to replace Products returned due to damage in transit or that are lost in transit. For Products shipped pursuant to Contractor's standard practices in the last week of every Contractor fiscal quarter during the term of the Agreement, Contractor will not issue credits or replace Products returned due to damage in transit or that are lost in transit. Instead, Contractor will provide third-party insurance for damaged or lost Products with Purchaser named as the loss payee. If Purchaser provides Contractor with specific shipping instructions, then Contractor will use commercially reasonable efforts to ship such orders according to Purchaser's instructions. Shipping charges for orders shipped under Purchaser's instructions will be added to Contractor's invoice. When not shipping Products pursuant to Contractor's standard practices but instead shipping via a carrier selected by Purchaser, Contractor will not issue credits or replace Products returned due to damage in transit or that are lost in transit.

24. CONTRACTOR DISCOUNTS

Pricing and discounts will be offered per the applicable Contractor published price list, which current price list can be found at <http://www.apple.com/education/pricelists/>. Contractor, at its discretion, is allowed to revise its pricing and discounts during the Contract term or any extensions thereof provided that Contractor is required to identify in writing, the pricing or the percentage discount. Commonwealth acknowledges that discounts will vary.

25. INDEMNIFICATION

A. Subject to the exceptions in Section 25(C) below and the Commonwealth's compliance with the notice and defense provisions in Section 25(B) below, Contractor shall defend the Commonwealth from third party lawsuits alleging: (i) an Apple Product that the Commonwealth has paid to acquire from Contractor under this Contract infringes a U.S. patent, copyright or trademark of such third party, or (ii) personal injury, death, or tangible property damage suffered by such third party or a then-current employee of the Commonwealth was caused by the gross negligence or willful misconduct of Contractor during the course of Contractor's performance of the Agreement (each a "Claim"). This Section 25(A) shall not be construed to bar any legal remedies the Contractor may have with respect to the Commonwealth's failure to fulfill its obligations pursuant to this Contract.

B. To qualify for such defense, the Commonwealth shall promptly notify Contractor in writing of any such Claim of which the Commonwealth becomes aware which may give rise to a right of defense pursuant to this Section 25. Notice of any Claim must be provided to Contractor within thirty (30) calendar days of the Commonwealth's first learning of such Claim. Notice must include an offer to tender the sole control of the defense of the Claim to Contractor. Contractor, 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 necessary to completely and finally resolve the Claim by settlement or compromise. Upon acceptance of tender, the Commonwealth will cooperate with Contractor with respect to such defense and settlement. If a Claim is settled then, to the extent permitted by applicable law, the Commonwealth will not publicize the settlement. The Commonwealth's obligations under this Section 25(B) are subject to Sections 2.2-510 and -514 of the Virginia Code.

C. Notwithstanding anything to the contrary contained herein, the Commonwealth agrees that the Contractor has no obligation for any Claim arising out of, resulting from or related to: (i) the acts, omissions, negligence or misconduct of the Commonwealth, any employee(s) of the Commonwealth, Authorized Users or any other party, (ii) any modification of the Apple Product(s) if such infringement would have been avoided by the use of the applicable Apple Products without such modifications, (iii) the combination, operation or use of the Apple Products with non-Apple branded Products or other non-Apple-provided software, data or documentation if such infringement would have been avoided by the use of the applicable Apple Products without combination with such non-Apple branded Products or other non-Apple-provided programs, data or documentation, unless such combination was contemplated by the documentation, (iv) violation of any import or export control laws, or (v) use of any Apple Product consisting of software in a manner not authorized under the applicable Apple end user license agreement (the "EULA").

D. In the event of any Claim, Contractor shall have the right, but not the obligation, to do any of the following at its sole option: (i) procure, at its own expense, the right for the Commonwealth to continue using the allegedly infringing Apple Product, (ii) replace or modify such Apple Product with functionally equivalent materials so that they become non-infringing or (iii) refund the Commonwealth the amount that the Commonwealth paid to Contractor for the allegedly infringing Apple Product.

E. THE FOREGOING SHALL CONSTITUTE THE COMMONWEALTH'S SOLE REMEDY AND CONTRACTOR'S SOLE AND EXCLUSIVE LIABILITY FOR ANY AND ALL CLAIMS.

26. NON-APPROPRIATION

All funds for payment of Products ordered under this Contract are subject to the availability of legislative appropriation for this purpose. In the event of non-appropriation of funds by the Legislature for the items under this Contract, the Commonwealth will terminate this Contract for those goods or services for which funds have not been appropriated. Written notice will be provided to the Contractor as soon as possible after legislative action is completed. If any purchases are to be supported by federal funding, and such funding is not made available, the Commonwealth may terminate this Contract for goods or services dependent on such federal funds without further obligation.

27. HEADINGS NOT CONTROLLING

Headings used in this Contract are for reference purposes only and shall not be considered to be a substantive part of this Contract.

28. TERM

A. This Contract shall take effect on the date of its final execution by both parties, and shall continue in full force for one (1) year ("Initial Term"). This Contract may be renewed by mutual, written consent for four additional one (1) year periods. The Commonwealth will issue a written request for renewal to the Contractor stating its intent to renew no less than thirty (30) calendar days prior to the expiration of any current Term.

B. In the event of expiration or any termination of this Contract, all defined terms and the following provisions of this Agreement shall survive: 1, 2, 3, 4, 9(B), 11, 19, 20, 21, 27, 28(B), 29, 33, 45, 46(A).

29. LIMITATION OF LIABILITY

A. TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE COMMONWEALTH AGREES THAT THE MAXIMUM AGGREGATE LIABILITY OF CONTRACTOR AND ITS PRINCIPALS, OFFICERS, SUBCONTRACTORS, MEMBERS, AGENTS AND EMPLOYEES (COLLECTIVELY, "CONTRACTOR PARTIES") TO THE COMMONWEALTH, ALL AUTHORIZED USERS, AS WELL AS ANY AND ALL PARTIES CLAIMING THROUGH THE COMMONWEALTH OR ANY AUTHORIZED USER(S) FOR ANY AND ALL DIRECT DAMAGES RESULTING FROM, ARISING OUT OF OR RELATING TO THIS CONTRACT, THE PRODUCTS AND/OR THE SERVICES FURNISHED PURSUANT TO THIS CONTRACT, HOWEVER CAUSED AND WHETHER ARISING UNDER CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, STATUTE OR ANY OTHER THEORY OF LIABILITY, SHALL NOT EXCEED THE LESSER OF: (1) FOUR MILLION U.S. DOLLARS (US \$4,000,000) OR (2) THE TOTAL AMOUNTS ACTUALLY PAID BY THE COMMONWEALTH TO CONTRACTOR FOR PRODUCTS AND/OR SERVICES PURCHASED BY THE

COMMONWEALTH HEREUNDER DURING THE SIX (6) MONTH PERIOD IMMEDIATELY PRECEDING THE CLAIM, PROVIDED, HOWEVER THAT IF AND ONLY IF THE CLAIM ARISES DURING THE FIRST SIX (6) MONTHS OF THE INITIAL TERM OF THIS CONTRACT THEN THIS ITEM 29(A)(2) SHALL BE CALCULATED AS SIX (6) TIMES THE AMOUNT ACTUALLY PAID BY THE COMMONWEALTH TO CONTRACTOR FOR PRODUCTS AND/OR SERVICES PURCHASED BY THE COMMONWEALTH HEREUNDER DURING THE ONE (1) MONTH PRECEDING THE CLAIM. THE LIMIT SET FORTH IN THIS SECTION 29 WILL APPLY WHETHER OR NOT CONTRACTOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE DIRECT DAMAGES LIMIT SET FORTH IN THIS SECTION 29 APPLIES NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS CONTRACT AND SHALL NOT APPLY TO CONTRACTOR'S OBLIGATIONS UNDER SECTION 25 ("INDEMNIFICATION"), SUBJECT TO THE EXCEPTIONS AND CONDITIONS THEREIN.

B. NOTWITHSTANDING ANYTHING TO THE CONTRARY, IN NO EVENT, WHETHER AS A RESULT OR BREACH OF CONTRACT, TORT, STRICT LIABILITY, STATUTE OR OTHERWISE, SHALL CONTRACTOR OR ANY OF THE CONTRACTOR PARTIES BE LIABLE TO THE COMMONWEALTH OR ANY AUTHORIZED USERS (OR ANY PARTY CLAIMING THROUGH THE COMMONWEALTH OR ANY AUTHORIZED USERS) FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL OR INDIRECT DAMAGES (INCLUDING, WITHOUT LIMITATION, CLAIMS FOR LOST BUSINESS PROFITS OR REVENUE, LOSS OF DATA, INTERRUPTION IN USE, UNAVAILABILITY OF DATA, OR THE COST OF THE PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES) OR FOR PUNITIVE OR EXEMPLARY DAMAGES HOWEVER CAUSED AND WHETHER ARISING UNDER CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, STATUTE OR ANY OTHER THEORY OF LIABILITY.

C. THE REMEDIES SET FORTH IN THIS CONTRACT SHALL BE THE SOLE AND EXCLUSIVE REMEDIES FOR ANY AND ALL CLAIMS AGAINST CONTRACTOR, INCLUDING THE CONTRACTOR PARTIES, UNDER OR RELATED TO THIS CONTRACT. THE PARTIES FURTHER AGREE THAT THE LIABILITY CAP SET FORTH IN SUBSECTION 29(A) ABOVE SHALL NOT BE APPLIED CUMULATIVELY OR ON A PER CLAIM BASIS AND NOTHING SHALL BE CONSTRUED SO AS TO ENLARGE THAT AGGREGATE LIMIT.

D. THE PARTIES AGREE THAT THE SECTIONS REGARDING WARRANTY DISCLAIMER, RIGHT OF DEFENSE, AND LIMITATIONS OF LIABILITY REPRESENT THE BASIS OF THE BARGAIN AND A FAIR ALLOCATION OF RISK BETWEEN THE PARTIES WITHOUT WHICH THEY WOULD NOT HAVE ENTERED INTO THIS CONTRACT.

30. SITE PREPARATION

A. Product environmental specifications, if deemed required in Contractor's reasonable discretion, for the Products to be delivered under this Contract shall be furnished in writing by the Contractor prior to purchase. These specifications shall be in such detail to ensure that the

Products to be installed shall operate efficiently from the point of view of environment.

B. The Commonwealth shall prepare the site at its own expense and in accordance with the Product environmental specifications provided by the Contractor.

31. TERMINATION FOR CONVENIENCE

Either party may terminate this Contract in whole or in part, for convenience at any time by submitting to the other party, a writing, thirty (30) calendar days prior to the date of termination. The parties shall be obligated for all outstanding Orders, as per Contract, subsequent to this termination. The Commonwealth shall not be obligated for any other costs in the event of termination for convenience. Both parties agree that termination for convenience shall not affect a party's right to cure a breach as defined in Section 19, Breach.

32. TERMINATION FOR CAUSE

Either party may terminate this Contract in the event the other is in material breach of this Contract, pursuant to Section 19, Breach.

33. CONTRACTUAL DISPUTES

In accordance with Section 2.2-4363 of the Code of Virginia, claims, whether for money or other relief, shall be submitted in writing to the purchasing agency no later than sixty (60) days after final payment is made to Contractor. Pendency of claims shall not delay payment of amounts due in the final payment. The applicable public body shall render a final decision in writing within thirty (30) calendar days after the Contractor's issuance of its written claim. The Contractor may not invoke any available administrative procedure under Section 2.2-4365 of the Code of Virginia nor institute legal action prior to receipt of the applicable public body's decision on the claim, unless that public body fails to render its decision within thirty (30) calendar days. The decision of the applicable public body shall be final and conclusive unless the Contractor, within one (1) year of the date of the final decision on the claim, invokes appropriate action under Section 2.2-4364, Code of Virginia or the administrative procedure authorized by Section 2.2-4365, Code of Virginia, subject to the terms below of this Section 33 and to Section 4(A) of this Contract. The Virginia Information Technologies Agency, its officers, agents and employees, including, without limitation, the Contracts Manager, are executing this Agreement and any Orders issued hereunder, solely in its or their statutory and regulatory capacities as agent for the Commonwealth agency purchasing and receiving the goods or services identified in the Appendices to this Agreement or on the subsequent Order in question and need not be joined as a party to any dispute that may arise thereunder. The parties agree that the Authorized Users are not intended third party beneficiaries of this Contract. The Commonwealth and Contractor agree that there are no intended third party beneficiaries to this Contract.

34. SMALL BUSINESS PARTICIPATION

Contractor and VITA agree to meet promptly after the Effective Date of this Contract to discuss the participation of Virginia Department of Minority Business Enterprise (DMBE)-certified Small Businesses as subcontractors and second-tier suppliers under this Contract.

Contractor and VITA agree to meet annually thereafter to review small business subcontracting reports and discuss further action with respect to small business subcontracting and spend.

In addition, no less frequently than annually, Supplier shall submit to VITA a report on its fiscal year spend, as a percentage of its total spend, with Small Business Enterprises, Minority Business Enterprises, Women Business Enterprises and Service Disable Veteran Enterprises. Supplier shall submit the report to SWaM@vita.virginia.gov.

35. FINAL ACTUAL INVOLVEMENT REPORT

The Contractor will submit, prior to completion or at completion of the Contract and subject to final payment, a report on the actual dollars spent with small businesses and businesses owned by women and minorities during the performance of the Contract. At a minimum, this report shall include for each firm Contracted with and for each business class (i.e. small, minority-owned, women-owned) the total actual dollars spent on this Contract, the planned involvement of the firm and business class as specified in the proposal, and the actual percent of the total estimated Contract value.

36. ORDERS

Purchasers may order Products from this Contract by one of the following Order methods, provided that Contractor may refuse any provisions in purchase orders, invoices or similar documents that are different than or additional to the terms of this Contract, and such refused provisions will be unenforceable:

- A. Purchase Order: An official Purchase Order form issued by a Purchaser.
- B. EVA: eVA is the Commonwealth's total e-procurement solution. Contractor shall not reject an order solely because it is issued through eVA.

37. INVOICING

Contractor shall remit each invoice upon shipment to the Purchaser. Contractor shall issue invoices, identifying at a minimum, the components listed below.

- A. manufacturer's product number
- B. product description
- C. price per unit
- D. quantities of merchandise
- E. extended price
- F. date ordered

38. COMPLIANCE WITH FEDERAL LOBBYING ACT

A. To the extent, if any, that Contractor is a recipient of federal funds as defined in 31 U.S.C.A Section 1352, then Contractor shall not, in connection with this Agreement, engage in any activity prohibited by 31 U.S.C.A. Section 1352 (entitled "Limitation on use of appropriated funds to influence certain Federal Contracting and financial transactions") or by the regulations issued from time to time there under (together, the "Lobbying Act"), and shall promptly perform all obligations mandated by the Lobbying Act in connection with this Agreement, including, without limitation and upon the request of the Commonwealth, obtaining and delivering to the

Commonwealth all necessary certifications and disclosures.

B. Contractor is hereby advised that a significant percentage of the funds used to pay Contractor's invoices under this Agreement may be federal funds. Under no circumstances shall any provision of this Agreement be construed as requiring or requesting the Contractor to influence or attempt to influence any person identified in 31 U.S.C.A. Section 1352 (a) (1) in any matter.

39. SUPPLIER'S REPORT OF SALES AND INDUSTRIAL FUNDING ADJUSTMENT

By the 10th day of every month, the Supplier shall submit the "Supplier Monthly Report of Sales". A template showing the format in which the report is to be submitted and contact information for submission is available at www.vita.virginia.gov/scm/default.aspx?id=97. The report shall be submitted via electronic mail to the VITA IFA Coordinator and shall report total sales (defined for purposes of this report as all invoiced payments received by Supplier from all Authorized Users) under this Contract during the preceding month. Supplier shall be responsible for submitting the monthly report of sales even if Supplier has had no sales (i.e., a \$0.00 total sales value) for the reporting period.

The Supplier shall submit the Industrial Funding Adjustment (IFA) payment for the period covered by such "Supplier Monthly Report of Sales" within thirty (30) days after submitting the "Supplier Monthly Report of Sales". The IFA payment is equal to two percent (2%) of total net sales under this Contract reported during the relevant month.

The IFA payment shall be submitted to VITA, Attention VITA Controller in the form of a check or electronic payment, made payable to the Treasurer of Virginia. The IFA payment shall reference this Contract number, "report amounts", and "report period" and shall be accompanied by a copy of the relevant "Supplier Monthly Report of Sales". Contact information for submission of IFA payments is available at www.vita.virginia.gov/scm/default.aspx?id=97.

Failure to comply with reporting, payment and distribution requirements of this section may result in default of the Contract.

40. NONVISUAL ACCESS TO TECHNOLOGY

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

- (i) Effective, interactive control and use of the Technology shall be readily achievable by nonvisual means;
- (ii) The Technology equipped for nonvisual access shall be compatible with information technology used by other individuals with whom any blind or visually impaired user of the Technology interacts;
- (iii) Nonvisual access technology shall be integrated into any networks used to share communications among employees, program participants or the public; and

(iv) The technology for nonvisual access shall have the capability of providing equivalent access by nonvisual means to telecommunications or other interconnected network services used by persons who are not blind or visually impaired.

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

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

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

The requirements of this Paragraph shall be construed to achieve full compliance with the Information Technology Access Act, 2.2-3500 through 2.2-3504 of the Code of Virginia.

Apple shall be deemed in compliance with the requirements of this section, as well as those applicable based on Section 508 of the Rehabilitation Act, as amended, by making available documentation of its compliance with applicable accessibility standards. Such documentation is available on the following Contractor website: <http://www.apple.com/accessibility/>.

41. 508 COMPLIANCE

All information technology which, pursuant to this Contract, is purchased or upgraded by or for the use of any Commonwealth agency or institution or political subdivision of the Commonwealth (the "Technology") shall comply with Section 508 of the Rehabilitation Act (29 U.S.C. 794d), as amended. If requested, the Contractor must provide a detailed explanation of how compliance with Section 508 of the Rehabilitation Act is achieved and a validation of concept demonstration. The requirements of this Paragraph along with the Non-Visual Access to Technology Clause shall be construed to achieve full compliance with the Information Technology Access Act, §§2.2-3500 through 2.2-3504 of the Code of Virginia.

Apple shall be deemed in compliance with the requirements of this section, as well as those applicable based on Section 508 of the Rehabilitation Act, as amended, by making available documentation of its compliance with applicable accessibility standards. Such documentation is available on the following Contractor website: <http://www.apple.com/accessibility/>.

42. PRIME CONTRACTOR RESPONSIBILITY

If the Contractor's proposal includes any goods or services to be supplied by another party, the Contractor agrees to act as prime contractor for the procurement and maintenance of the entire proposed configuration and shall be the sole point of contact with regard to all obligations under this Contract.

43. TYPE OF CONTRACT

This is an indefinite delivery, indefinite quantity, non-exclusive requirements Contract.

44. COMMONWEALTH'S RESPONSIBILITIES DURING WARRANTY

A. During any term of Warranty, Commonwealth personnel shall not perform or attempt repairs to the Products except as authorized in advance by the Contractor.

B. The Commonwealth shall permit access to the Products which is to be maintained, subject to the installation site's reasonable security regulations.

C. The Commonwealth may provide storage space for spare parts and working space, including heat, light, ventilation, electric current and outlets, and telephones (for local calls only) for the use of maintenance personnel.

D. The Commonwealth shall maintain the site in accordance with the Product environmental specifications (if any) furnished by the Contractor.

45. DISPOSITION OF SOFTWARE

Unless otherwise instructed by the Contractor, the State shall erase, destroy or otherwise render unusable any software component of a Product within thirty (30) calendar days from the date of termination of the applicable license for any reason. A letter certifying this destruction shall be sent to the Contractor as soon as this process is completed. The Commonwealth shall have the right to retain one copy for archival purposes. Notwithstanding the foregoing, the Commonwealth will abide by the terms and conditions of Contractor's EULA.

46. SOFTWARE

A. **Apple-Branded Software.** Unless the Commonwealth has obtained Contractor's prior written consent, Purchaser, in addition to any obligations or restrictions set forth in any license that may accompany a Product, shall not copy the software, except to back up or for archival purposes, and the Commonwealth shall promptly affix to any such copy the same proprietary and copyrights notices as were affixed to the original. Purchaser shall not disassemble, decompile, reverse engineer, copy, modify, create derivative works thereof, or otherwise change any of the software or its form.

B. **Third-Party Software.** Any software other than Apple Product consisting of software, regardless of whether or not such software is acquired or licensed pursuant to this Contract shall be defined as "Third Party Software." In the event the Commonwealth wishes Contractor to install and/or image or create an image of any Third Party Software on Apple Products pursuant to this Contract, the Commonwealth will execute Contractor's standard Software Installation Waiver Letter attached hereto as Attachment A (the "Software Letter") and which shall be incorporated into this Contract by this reference. The Commonwealth understands that Contractor is under no obligation to perform any such installation or imaging services unless the Software Letter is executed without modification and delivered to Contractor along with the completed exhibit required thereunder.

**Exhibit A
Software List**

Customer Name: _____
Date of Submission: _____, 200__

Provide each of the following for each software title:

- (1) Complete Software Title
- (2) Version Number
- (3) Licensor Name
- (4) Licensor Website and Phone Number
- (5) Identify if Commercial software or Freeware/Open Source software
- (6) Provide terms of license agreement for actual software title and version number

The duly authorized representatives of the parties execute this Contract as of the dates stated below. This Contract 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 but such counterparts together shall constitute one and the same instrument. PERSONS SIGNING THIS CONTRACT ARE AUTHORIZED REPRESENTATIVES OF EACH PARTY TO THIS CONTRACT AND ACKNOWLEDGE THAT EACH PARTY AGREES TO BE BOUND BY THE TERMS AND CONDITIONS OF THE CONTRACT.

Commonwealth of Virginia

Apple Inc.

SIGNATURE:

Samuel A. Nixon, Jr.

SIGNATURE:

Stephen Glass

PRINT NAME:

Samuel A. Nixon, Jr.

PRINT NAME:

Stephen Glass

TITLE:

CIO

TITLE:

Sr. Mgr. Contracts

DATE:

7/1/10

DEPT:

Sales Contracts Management

DATE:

6/25/10

ATTACHMENT A
Software Installation Waiver Letter

Apple Inc.
1 Infinite Loop
Cupertino, CA 95014
Attention: Apple Contracts Department
Via Fax No. 866-314-3084

Re: Solution Software Installation Agreement ("Agreement")

Dear Apple Inc.:

The undersigned purchaser of Apple Inc. ("Apple") computer equipment (the "Institution") has requested that Apple install certain third-party software, including FOSS defined below, ("Software") that is specifically listed on the attached Exhibit A, as may be updated in accordance with the procedure outlined below (the "Software List") on computer equipment ordered by Institution. This Agreement confirms the terms under which Apple agrees to provide and/or direct its subcontractors to provide, such installation and/or imaging services ("Services") in consideration for Institution's warranties, representations and covenants set forth below.

1. Upon execution and delivery of this Agreement to Apple, Institution shall furnish a complete Software List in Exhibit A. If, at any time during the Term, Institution desires to update the Software List, Institution may do so by delivering an addendum to the Software List that identifies the additional Software. In that event, Institution must deliver such updated Software List to Apple at least thirty (30) days prior to the date on which Institution desires Apple to perform the Services with respect to such additional Software. If Institution requests or if Apple discovers that any Software to be installed as part of the Services is not specifically identified on the initial Software List (or any updated Software List), then Apple shall be immediately excused from its obligation to perform any Services with respect to such Software not listed on the Software List (or updated Software List).
2. Upon delivery of the initial Software List and, in each case, upon delivery of any updated versions of the Software List, Institution shall provide Apple with copies of all applicable end user license agreements and all other licensing terms (collectively referred to as the "EULAs") for the Software, except to the extent Apple informs Institution that a copy of any particular Software EULA is not needed. Except to the extent Apple informs Institution that a copy of any particular Software EULA is not needed Institution understands that if Apple is not provided with a legible and complete copy of the EULA for each Software title such Software will not be installed by Apple and Apple will be immediately excused from its obligation to perform any Services with respect to such Software.
3. Upon execution and delivery of this Agreement and the Software List, along with the corresponding EULAs, Institution hereby appoints Apple, including its subcontractors, as Institution's agent for the sole purpose of installing the Software as part of the Services. If it is necessary for Institution to utilize the Software, Institution hereby authorizes Apple, and its subcontractors, to accept the terms of all applicable Software EULAs, including all FOSS EULAs, on Institution's behalf as Institution's agent for purposes of the

Services. Notwithstanding the foregoing, Apple shall not be deemed to have accepted, on its own behalf, or to be bound by any such Software EULAs and/or Software FOSS EULA terms as a consequence of installing the Software for Institution.

4. Institution represents, warrants and covenants throughout the Term (defined below) that: (a) Institution has the present actual authority and all rights necessary to authorize and permit Apple, including its subcontractors, to install the Software, (b) Institution has obtained from all applicable copyright owners or licensors all rights and licenses necessary to utilize any and all Free/Open Source software ("FOSS") that is part of the Software, (c) Institution has not obtained such rights or licenses necessary to utilize any FOSS directly or indirectly from Apple, either separately or pursuant to the purchase of the computer equipment, (d) none of the Software contains any FOSS that consists of or includes any software code that is licensed under the GNU General Public License version 3 ("GPL3") or the GNU Lesser General Public License version 3 ("LGPL3") or any later versions thereof, (e) Institution agrees to the terms of all applicable Software EULAs, including all FOSS EULAs, (f) Institution is fully responsible for obtaining all consents, providing any notices and fulfilling any and all other obligations required under the Software EULAs and FOSS EULAs, and (g) the person signing below has the requisite legal authority to bind Institution to this Agreement.
5. To the extent lawfully permitted, Institution shall pre-pay (upon notice from Apple) or promptly (and within no later than thirty (30) days) reimburse Apple, its subcontractors and agents with respect to any and all bona fide claims, losses, damages and liability related to any breach of the foregoing warranties ("Losses"). If Institution fails to pre-pay or promptly reimburse Apple for any Losses, Apple shall be entitled to incur any costs, including costs of legal representation, at Institution's sole cost and expense in order to address such Losses.
6. Institution understands that the Services are provided by Apple "AS IS," without any warranty, express or implied. APPLE AND ITS SUBCONTRACTORS SHALL NOT BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES RELATED TO, ARISING OUT OF, OR RESULTING FROM THE SERVICES OR INSTITUTION'S USE OF THE SOFTWARE, EVEN IF ADVISED OF THEIR POSSIBILITY AND REGARDLESS OF THE THEORY OF RECOVERY, WHETHER IN CONTRACT, TORT AND/OR UNDER STATUTE. APPLE'S MAXIMUM AGGREGATE LIABILITY FOR INSTITUTION'S DIRECT DAMAGES ARISING FROM THE SERVICES, INCLUDING ANY NON-PERFORMANCE OF THE SERVICES, SHALL NOT EXCEED THE GREATER OF FIFTY THOUSAND U.S. DOLLARS (\$50,000).
7. The parties agree that the foregoing provisions represent a fair allocation of risk between the parties without which they would not have entered into this Agreement.
8. If, at any time during the Term (defined below), Apple discovers or has inadequate information to conclude that Institution has complied with its warranties provided above, Apple reserves the right to immediately suspend all or any portion of the Services or terminate this Agreement. In addition, if an incomplete Software List is provided to Apple or if, at any time during the Term, Apple discovers or has reason to believe that any Software,

whether or not identified on the Software List, includes or consists of any code that is licensed under the GPL3 or LGPL3, or any later versions thereof, then Apple reserves the right to immediately suspend all or any portion of the Services or terminate this Agreement. Any such suspension or termination by Apple shall be without further obligation or duty to Institution.

litigation shall be brought in courts of competent jurisdiction in Virginia.

9. The term of this Agreement will continue for a three (3) year period from the date executed below ("Term"). This Agreement, together with the Software List, will constitute the entire Agreement as to the subject matter. This Agreement shall not be superseded by any contemporaneous or future agreement(s) entered into by the parties, notwithstanding anything to the contrary contained in any other such agreement(s). Subject to Section 7, Apple is not obligated to perform the Services until this Agreement is delivered in executed form to Apple, together with the Software List and the corresponding EULAs. Upon any termination or expiration of this Agreement, Sections 1 through 9 shall survive indefinitely. This Agreement may be executed by fax and in counterparts, which, together will be deemed the original and neither party will raise such method of execution as a defense to enforcement hereof. If Apple does not execute this Agreement but performs any Services hereunder then, notwithstanding that fact, Institution agrees that all rights and duties of the parties will be legally enforceable and binding upon the parties. The parties agree that the terms of this Agreement are confidential and shall not be disclosed by either party except to their respective legal advisors or as required by applicable law or court order, provided that written notice is provided to the other party prior to any such disclosure. This Agreement will be governed by Virginia law and all

Executed on _____, 20_____.

Institution: _____

By (print name): _____

Signature: _____

Title: _____

Accepted by:

Apple Inc. _____

By (print name): _____

Signature: _____

Title: _____