

**MASTER PURCHASE AGREEMENT FOR APPLE BRANDED PRODUCTS AND SERVICES  
BETWEEN  
APPLE, INC.  
AND  
MISSISSIPPI DEPARTMENT OF INFORMATION TECHNOLOGY SERVICES  
AS CONTRACTING AGENT FOR THE  
AGENCIES AND INSTITUTIONS OF THE STATE OF MISSISSIPPI**

This Master Purchase Agreement for Apple Branded Products and Services (hereinafter referred to as "Master Agreement") is entered into by and between Apple, Inc., a California corporation having its principal offices at 1 Infinite Loop, Cupertino, California 95014 (hereinafter referred to as "Apple"), and the Mississippi Department of Information Technology Services, having its principal place of business at 3771 Eastwood Drive, Jackson, Mississippi 39211 (hereinafter referred to as "ITS"), as contracting agent for the governmental agencies and educational institutions of the State of Mississippi (hereinafter referred to as "Purchaser"). ITS and Purchaser are sometimes collectively referred to herein as "State."

**WHEREAS**, ITS desires to enter into a Master Agreement containing the terms and conditions which will govern any orders placed by Purchaser during the term of this Master Agreement for Apple branded hardware and software and related Services as defined herein;

**NOW THEREFORE**, in consideration of the mutual understandings, promises, consideration and agreements set forth, the parties hereto agree as follows:

**ARTICLE 1 TERM OF AGREEMENT**

Unless terminated as prescribed elsewhere herein, this Master Agreement will become effective on the date it is signed by all parties (the "Effective Date") and will continue in effect for three (3) years thereafter, or until all warranties provided by Apple to Purchaser have expired, whichever occurs last (hereinafter referred to as "Initial Term"). At the end of the Initial Term, the Master Agreement may, upon the written agreement of ITS and Apple, be renewed for an additional term, the length of which will be agreed upon by the parties. Apple will notify ITS sixty (60) days in advance prior to the expiration of the Initial Term or any renewal term and ITS shall have thirty (30) days in which to notify Apple of its intention to either renew or cancel this Master Agreement.

**ARTICLE 2 DEFINITIONS**

The following terms as used herein shall have the following meanings:

**2.1 "Apple Branded Products"** means hardware and software products manufactured, distributed or licensed under the Apple brand name that Purchaser has paid to acquire or has properly licensed from Apple, but excludes any third party products.

**2.2 "Effective Date"** shall mean the date this Master Agreement is signed by all parties.

**2.3 "Initial Term"** shall mean the period of three (3) years following the Effective Date of this Master Agreement.

**2.4 "ITS"** shall mean the Mississippi Department of Information Technology Services.

**2.5 "Master Agreement"** shall mean this Master Purchase Agreement for Apple Branded Products and Services and any agreed upon amendments thereto between ITS and Apple.

**2.6** “**Products**” shall mean Apple Branded hardware and Apple Branded software, including keyboards, mice and cables used to operate the Apple Branded hardware.

**2.7** “**Purchase Order**” shall mean the document pursuant to which, among other things, Purchaser orders the Products and Services from Apple.

**2.8** “**Purchaser**” shall mean the governmental agencies, educational institutions and governing authorities within Mississippi who procure Apple Branded Products and Services from Apple pursuant to this Master Agreement.

**2.9** “**Services**” means Apple’s price listed services such as installation, deployment, asset tagging, imaging, and professional development as it relates to hardware. Customized, detailed or long term services such as maintenance or content production are outside the scope of this Master Agreement.

**2.10** “**State**” shall mean ITS and Purchaser collectively.

### **ARTICLE 3 MODIFICATION OR RENEGOTIATION**

This Master Agreement may be modified only by written agreement signed by the parties hereto, and any attempt at oral modification shall be void and of no effect. The parties agree to renegotiate the Master Agreement in the event that federal and/or state revisions of any applicable laws or regulations make changes in this Master Agreement necessary.

### **ARTICLE 4 INCLUDED PARTIES AND PRICING**

Apple will accept orders from and furnish the Products and Services under the terms of this Master Agreement. Prices shall be as set forth on the applicable Apple price list in effect on the Apple website ([www.apple.com/education/pricelists](http://www.apple.com/education/pricelists)) the date Purchaser’s order is accepted by Apple. Apple reserves the right to accept or decline any order, in whole or in part.

### **ARTICLE 5 ORDERS**

**5.1** The State does not guarantee that it will purchase any certain amount under this Master Agreement.

**5.2** When a Purchaser decides to procure any Products or Services from Apple, the Purchaser, after following applicable state procurement rules and regulations, may issue a Purchase Order to Apple. The Purchase Order shall reference this Master Agreement and shall set forth the Products or Services to be procured; the prices for same; any warranty period; the specific details of the transaction, and the Purchaser’s designated contact. All Purchase Orders shall be governed by, and incorporate by reference, the terms and conditions of this Master Agreement. Excluding better pricing and/or discounts which may be specified in a Purchase Order, in the event of a conflict between a Purchase Order and this Master Agreement, the terms and conditions of this Master Agreement shall prevail. Prior to Apple processing a Purchase Order, Purchaser may notify Apple to adjust the quantities of purchases based upon the availability of funding or as determined necessary by the Purchaser.

**5.3** Apple understands and agrees that it must maintain a record of sales to be reported to ITS on a quarterly basis and must adhere to the Apple EPL Terms and Conditions document attached hereto as Exhibit A.

## **ARTICLE 6 METHOD AND TIME OF PAYMENT**

**6.1** Once the Products have been accepted by Purchaser as prescribed in Article 7 herein or there has been lack of notice to the contrary, Apple shall submit an invoice for the cost and shall certify that the billing is true and correct. Services, if any, will be invoiced as they are rendered. Apple shall submit invoices and supporting documentation electronically to Purchaser during the term of this Master Agreement using the processes and procedures identified by the State. Purchaser agrees to pay Apple in accordance with Mississippi law on "Timely Payments for Purchases by Public Bodies", Sections 31-7-301, et seq. of the 1972 Mississippi Code Annotated, as amended, which generally provides for payment of undisputed amounts by the Purchaser within forty-five (45) days of receipt of the invoice. All payments shall be in United States currency. Apple understands and agrees that Purchaser is exempt from the payment of taxes. Payments by state agencies using Mississippi's Accountability System for Government Information and Collaboration (MAGIC) shall be made and remittance information provided electronically as directed by the State. The payments by these agencies shall be deposited into the bank account of Apple's choice. No payment, including final payment, shall be construed as acceptance of defective Products or incomplete work, and Apple shall remain responsible and liable for full performance in strict compliance with the contract documents specified in the article herein titled "Entire Agreement".

**6.2** If payment of undisputed amounts is not made to Apple within forty-five (45) days of Purchaser's receipt of the invoice, Purchaser shall be liable to Apple for interest at a rate of one and one-half percent (1 ½%) per month (or such lesser rate as may be the maximum permissible rate under the law) on the unpaid balance from the expiration of such forty-five (45) day period until such time as payment is made. This provision for late payments shall apply only to undisputed amounts for which payment has been authorized.

**6.3** Acceptance by Apple of the full payment from the Purchaser under a Purchase Order shall operate as a release of all claims for payment against the State by Apple and any subcontractors or other persons supplying labor or materials used in the performance of any work under a Purchase Order.

## **ARTICLE 7 DELIVERY, RISK OF LOSS, INSTALLATION, AND ACCEPTANCE**

**7.1** Apple shall deliver the Products to the location specified by Purchaser and pursuant to the delivery schedule mutually agreed to by the parties.

**7.2** Apple shall assume and shall bear the entire risk of loss and damage to the Products from any cause whatsoever while in transit and at all times throughout its possession thereof.

**7.3** If installation Services by Apple are required, Apple acknowledges that installation of the Products shall be accomplished with minimal interruption of Purchaser's normal day to day operations, and that the installation will be pursuant to the requirements of the Purchaser.

**7.4** If installation Services by Apple is required, Apple shall be responsible for installing all Products and materials in accordance with all state, federal and industry standards for such items.

**7.5** If installation Services by Apple are required, Apple shall provide Purchaser with an installation schedule identifying the date, time and location within the scheduling deadlines agreed to by Apple and Purchaser. Apple warrants that all Products shall be properly delivered, installed and integrated, if necessary, for acceptance testing within the scheduling deadlines set forth by

Purchaser as the site is deemed ready for installation. Services will be deemed accepted at the time they are rendered by Apple.

**7.6** Apple shall be responsible for replacing, restoring or bringing to at least original condition any damage to floors, ceilings, walls, furniture, grounds, pavements, and sidewalks directly caused by its personnel and operations during the installation, subject to mutual approval by the parties.

**7.7** Unless a different acceptance period is agreed upon in writing by the Purchaser and Apple, Purchaser shall accept or reject the Products provided by Apple after a ten (10) working day testing period utilizing testing criteria as mutually agreed upon by the parties or the published technical documents for testing. During the acceptance period, Purchaser shall have the opportunity to evaluate and test the Products to confirm that they perform without any defects and perform pursuant to Apple's Product specifications. Purchaser may be deemed to have accepted the Product at the end of the ten (10) working day period unless Purchaser notifies Apple that the Product fails to perform as stated herein.

**7.8** In the event the Product fails to perform as stated in Article 7.7 herein, Purchaser shall notify Apple at the conclusion of the acceptance period. Unless a different period of time is agreed upon by Apple and Purchaser, Apple shall, within four (4) working days or such other mutually agreed upon time period, correct the defects identified by Purchaser or replace the defective Product. If Apple neither corrects the defects nor replaces the defective Product, Purchaser reserves the right to return the Product to Apple at Apple's expense and to cancel the Purchase Order. For the avoidance of doubt, Apple's failure to include accessories (i.e., cables, earbuds, mice, and the like) in the shipment shall not be deemed a "failure to perform" for the purposes of this section. Purchaser shall contact Apple for any such incomplete shipment and Apple shall, at its expense, ship same to Purchaser.

**7.9** Upon receipt of a corrected or replaced Product, Purchaser shall have another acceptance period as set forth in Article 7.7 herein, in which to reevaluate/retest such Product.

**7.10** If, after Apple has tendered to Purchaser Apple's attempt to correct the Product, Purchaser again determines the Product to have a defect, Purchaser may take such actions as it deems appropriate, including either (i) notifying Apple that it has elected to keep the Product despite such defects; (ii) returning the Product to Apple and providing Apple with an opportunity to deliver a substitute Product acceptable to Purchaser within the time period specified by Purchaser, or (iii) returning the Product to Apple at Apple's expense and canceling the Purchase Order. If the Purchaser returns the Product pursuant to clause (iii) herein, Purchaser may also pursue any remedy available to it in law or in equity.

## **ARTICLE 8 TITLE TO EQUIPMENT**

Title to hardware Products provided under this Master Agreement shall pass to Purchaser upon delivery of same to Purchaser's specified location.

## **ARTICLE 9 WARRANTIES**

**9.1** Apple represents and warrants that it has the right to sell the Products provided under this Master Agreement.

**9.2** Apple represents and warrants that Purchaser shall acquire good and clear title to the hardware Products purchased hereunder, free and clear of all liens and encumbrances.

**9.3** Apple represents and warrants that each Product delivered shall be delivered new and not as a "used, substituted, rebuilt, refurbished or reinstalled" Product.

**9.4** Apple represents and warrants that all hardware Products provided pursuant to this Master Agreement shall be free from defects in material, manufacture, design and workmanship for a period of one (1) year after Purchaser's acceptance. Apple's obligation pursuant to this warranty shall include, but is not limited to, the repair or replacement of the hardware Product, or the redoing of the faulty installation, at no cost to Purchaser. In the event Apple can not repair or replace the hardware Product during the warranty period within ten (10) working days after receipt of notice of the defect, Apple shall refund the purchase price of the hardware Product and refund any fees paid for services that directly relate to the defective hardware Product, and Purchaser shall have the right to terminate the Purchase Order and this Master Agreement in whole or in part, solely as between those two entities. Purchaser's rights hereunder are in addition to any other rights Purchaser may have. Notwithstanding the foregoing, Purchaser shall pay for all Products accepted and retained by Purchaser and all Services rendered by Apple prior to the termination.

**9.5** Apple represents and warrants that all software Products provided pursuant to this Master Agreement shall be free from material defects and provide Purchaser complete functionality as described in its technical documentation for a period of ninety (90) days after Purchaser's acceptance. Apple's obligations pursuant to this warranty shall include, but are not limited to, the repair of all defects or the replacement of the software Product at the expense of Apple. In the event Apple is unable to repair or replace the software Product within ten (10) working days after receipt of notice of the defect, Purchaser shall be entitled to a full refund of the fees paid and shall have the right to terminate the Purchase Order and this Master Agreement in whole or in part, solely as between those two entities. Purchaser's rights hereunder are in addition to any other rights Purchaser may have.

**9.6** Apple represents and warrants that all Services hereunder shall be performed by competent personnel and shall be of professional quality consistent with generally accepted industry standards for the performance of such services and shall comply in all respects with the requirements of this Master Agreement. For any breach of this warranty, Apple shall, for a period of ninety (90) days from performance of the services, perform the services again, at no cost to Purchaser, or if Apple is unable to perform the services as warranted, Apple shall reimburse Purchaser the fees paid to Apple for the unsatisfactory services.

**9.7** Apple represents and warrants that it will not unilaterally, under any circumstances including enforcement of a valid contract right, (a) trigger a lockup program or device, or (b) take any step which would in any manner interfere with Purchaser's use of the software and/or which would restrict Purchaser from accessing its data files or in any way interfere with the transaction of Purchaser's business. For any breach of this warranty, Apple at its expense shall, within five (5) working days after receipt of notification of the breach, deliver Products to Purchaser that are free of such disabling code, lockup program or device. Upon the request of Purchaser or as may be required by law, Apple will provide information or assistance regarding the disabling of its Products.

**9.8** Apple represents that the Apple software, as delivered to Purchaser, does not contain a computer virus. Should a virus be discovered, Apple shall provide an update to Purchaser as soon as possible such that Purchaser can immediately install such update to any affected products. Apple software updates are typically delivered by notice to users, and it shall be the users' or Purchasers'

responsibility to ensure such updates are completed.

**9.9** Apple represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act, Section 71-11-1, et seq. of the Mississippi Code Annotated (Supp2008), and will register and participate in the status verification system for all newly hired employees. The term "employee" as used herein means any person that is hired to perform work within the State of Mississippi. As used herein, "status verification system" means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. Apple agrees to maintain records of such compliance and, upon request of the State, to provide a copy of each such verification to the State. Apple further represents and warrants that any person assigned to perform services hereunder meets the employment eligibility requirements of all immigration laws of the State of Mississippi. Apple understands and agrees that any breach of these warranties may subject Apple to the following: (a) termination of the Purchase Order and this Master Agreement and ineligibility for any state or public contract in Mississippi for up to three (3) years, with notice of such cancellation/termination being made public, or (b) the loss of any license, permit, certification or other document granted to Apple by an agency, department or governmental entity for the right to do business in Mississippi for up to one (1) year, or (c) both. In the event of such termination/cancellation, Apple would also be liable for any additional costs incurred by the State due to contract cancellation or loss of license or permit.

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

#### **ARTICLE 10 INFRINGEMENT INDEMNIFICATION**

**10.1** Apple represents and warrants that neither the Products, their elements nor the use thereof violates or infringes on any copyright, patent, trade secret or other proprietary right of any person or entity. Apple, at its own expense, shall defend or settle any and all infringement actions filed against Apple or Purchaser which involve the Products provided under this Master Agreement and shall pay all costs, attorney fees, settlements, damages and judgment finally awarded against Purchaser, provided that: (i) Purchaser promptly notifies Apple in writing of any such claim of which it has knowledge; (ii) Apple has, to the extent authorized by Mississippi law, sole control of the defense of any actions and negotiations related to the defense or settlement of any claim, and (iii) Purchaser cooperates in the defense of the claim by supplying Apple all relevant information currently available and in its possession, all at Apple's expense.

**10.2** If Apple believes that the Product is or will become the subject of an infringement claim, or in the event that use of the Product is enjoined, Apple, at its own expense, shall: (a) first procure for Purchaser the right to continue using the Product, or upon failing to procure such right; (b) modify or replace the Product to make it non-infringing while maintaining substantially similar software functionality or data/informational content, or upon failing to secure either such right, (c) request Purchaser to return the infringing items to Apple and Apple shall refund the fees previously paid by Purchaser for the Products the Purchaser may no longer use. Said refund shall be paid within ten (10) working days of notice to Purchaser to discontinue said use.

**10.3** Apple shall have no indemnification obligations to Purchaser under this Article for any infringement resulting directly from: (i) the combination or use of the Product with other items not provided by Apple; (ii) material modification of the Product by someone other than Apple, its agents or subcontractors or Purchaser's employees who were working at Apple's direction, where such modification creates the infringement; (iii) use of an allegedly infringing version of the Product if the alleged infringement would have been avoided by the use of a different version Apple made available to Purchaser at no cost to Purchaser, as long as the new or corrected version did not adversely affect the Purchaser's system's functionality.

#### **ARTICLE 11 EMPLOYMENT STATUS**

**11.1** Apple shall, during the entire term of this Master Agreement, be construed to be an independent contractor. Nothing in this Master Agreement is intended to nor shall it be construed to create an employer-employee relationship, partnership, agency, or joint venture relationship.

**11.2** Apple represents that it has, or will secure, if needed, at its own expense, applicable personnel who shall be qualified to perform the required duties identified in a Purchase Order. Such personnel shall not be deemed in any way directly or indirectly, expressly or by implication, to be employees of Purchaser. Apple shall pay when due, all salaries and wages of its employees and it accepts exclusive responsibility for the payment of federal income tax, state income tax, social security, unemployment compensation and any other withholdings that may be required. Neither Apple nor employees of Apple are entitled to state retirement or leave benefits.

**11.3** Any person assigned by Apple to perform the services hereunder shall be the employee of Apple, who shall have the sole right to hire and discharge its employee. Purchaser may, however, direct Apple to replace any of its employees performing services under this Master Agreement.

#### **ARTICLE 12 SOFTWARE**

Purchaser 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. Purchaser, 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.

#### **ARTICLE 13 BEHAVIOR OF EMPLOYEES/SUBCONTRACTORS**

Apple will be responsible for the behavior of all its employees and subcontractors while on the premises of any Purchaser location. Any Apple employee or subcontractor acting in a manner determined by the administration of that location to be detrimental, abusive or offensive to any of Purchaser's staff and/or student body, will be asked to leave the premises and may be suspended from further work on the premises. All Apple employees and subcontractors who will be working at such locations shall be covered by Apple's comprehensive general liability insurance policy.

#### **ARTICLE 14 AUTHORITY, ASSIGNMENT AND SUBCONTRACTS**

**14.1** In matters of proposals, negotiations, contracts, and resolution of issues and/or disputes, the parties agree that Apple represents all contractors, third parties, and/or subcontractors Apple has assembled for any given Purchaser project. The Purchaser is required to negotiate only with Apple, as Apple's commitments are binding on all proposed contractors, third parties, and subcontractors.

**14.2** Apple may not assign or otherwise transfer the Purchase Order or this Master Agreement or its obligations hereunder without the prior written consent of ITS and Purchaser, which consent shall not be unreasonably withheld. Any attempted assignment or transfer of its obligations without such consent shall be null and void. The Purchase Order and this Master Agreement shall be binding upon the parties' respective successors and assigns.

**14.3** Apple must obtain the written approval of Purchaser before subcontracting any portion of the Purchase Order and this Master Agreement. No such approval by Purchaser of any subcontract shall be deemed in any way to provide for the incurrence of any obligation of Purchaser in addition to the total fixed price agreed upon in the Purchase Order. All subcontracts shall incorporate the terms of the applicable Purchase Order and this Master Agreement and shall be subject to the terms and conditions of same and to any conditions of approval that Purchaser may deem necessary.

**14.4** Apple understands and agrees that any subcontract agreement Apple enters into shall contain a provision advising the subcontractor that the subcontractor shall have no lien and no legal right to assert control over any funds held by the Purchaser, and that the subcontractor acknowledges that no privity of contract exists between the Purchaser and the subcontractor and that Apple is solely liable for any and all payments which may be due to the subcontractor pursuant to its subcontract agreement with Apple.

**14.5** All subcontractors shall be bound by any negotiation, arbitration, appeal, adjudication or settlement of any dispute between Apple and the Purchaser, where such dispute affects the subcontract.

#### **ARTICLE 15 AVAILABILITY OF FUNDS**

It is expressly understood and agreed that the obligation of Purchaser to proceed under this Master Agreement and the Purchase Order is conditioned upon the appropriation of funds by the Mississippi State Legislature and the receipt of state and/or federal funds for the performances required under this Master Agreement. If the funds anticipated for the fulfillment of this Master Agreement and the Purchase Order are, at any time, not forthcoming, or are insufficient, either through the failure of the federal government to provide funds or of the State of Mississippi to appropriate funds, or if there is a discontinuance or material alteration of the program under which funds were available to Purchaser for the payments or performance due under this Master Agreement, Purchaser shall have the right to immediately terminate the order and this Master Agreement as to itself only, without damage, penalty, cost or expense to Purchaser of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination. Purchaser shall have the sole right to determine whether funds are available for the payments or performances due under the Purchase Order and this Master Agreement. In the event of termination due to unavailability of funds, Apple shall be paid for services rendered by Apple in connection with this Master Agreement and accepted by Purchaser prior to the date of receipt of notification of termination.

#### **ARTICLE 16 TERMINATION**

**16.1 Termination Upon Mutual Agreement:** A Purchase Order may be terminated in whole or in part upon the mutual written agreement of Apple and the Purchaser.

**16.2 Termination Due To Bankruptcy:** Should Apple become the subject of bankruptcy or receivership proceedings, whether voluntary or involuntary, or execute an assignment for the benefit

of its creditors, the Purchaser may, upon the giving of thirty (30) days prior written notice, terminate a Purchase Order and this Master Agreement without the assessment of penalties, solely as between those two parties.

**16.3 Termination Other Than For Cause:** Purchaser or Apple may terminate a Purchase Order and this Master Agreement as to itself only, in whole or in part and without the assessment of penalties, for any reason by giving thirty (30) calendar days written notice specifying the effective date thereof to the other party.

**16.4 Termination For Cause:** If Purchaser or Apple fail to comply with the terms and conditions of the Purchase Order or this Master Agreement, either Purchaser or Apple may terminate the Purchase Order and this Master Agreement solely as between those two entities and without the assessment of any penalties, upon thirty (30) calendar days prior written notice unless the defaulting party cures such breach within such thirty (30) calendar day period, or such other cure period as may be mutually agreed upon by Apple and Purchaser. The non-defaulting party may also pursue any remedy available to it in law or in equity.

**16.5 Termination of Master Agreement:** ITS may terminate this Master Agreement without the assessment of penalties for any reason after giving thirty (30) calendar days written notice specifying the effective date thereof to Apple but any Purchase Order entered into prior to the termination date of this Master Agreement shall survive the termination of the Master Agreement. The terms of this Master Agreement shall survive its termination/expiration with respect to any un-expired Purchase Orders.

**16.6** Upon termination of a Purchase Order, Apple shall refund any and all applicable unexpended pro-rated maintenance/service fees previously paid by the Purchaser. Further, in the event a Purchase Order is terminated, Apple shall be paid for work completed by Apple and accepted by Purchaser prior to the termination. Such compensation shall be based upon and shall not exceed the amounts set forth in the particular Purchase Order.

#### **ARTICLE 17 GOVERNING LAW**

This Master Agreement and each Purchase Order shall be construed and governed in accordance with the laws of the State of Mississippi and venue for the resolution of any dispute shall be Jackson, Hinds County, Mississippi. Apple expressly agrees that under no circumstances shall Purchaser or ITS be obligated to pay an attorneys fee, prejudgment interest or the cost of legal action to Apple. Further, nothing in this Master Agreement shall affect any statutory rights Apple and Purchaser may have that cannot be waived or limited by contract.

#### **ARTICLE 18 WAIVER**

Failure of either party hereto to insist upon strict compliance with any of the terms, covenants and conditions hereof shall not be deemed a waiver or relinquishment of any similar right or power hereunder at any subsequent time or of any other provision hereof, nor shall it be construed to be a modification of the terms of this Master Agreement. A waiver by the State to be effective, must be in writing, must set out the specifics of what is being waived, and must be signed by an authorized representative of the State.

#### **ARTICLE 19 SEVERABILITY**

If any term or provision of a Purchase Order or this Master Agreement is prohibited by the laws of the State of Mississippi or declared invalid or void by a court of competent jurisdiction, the remainder

of the Purchase Order or this Master Agreement shall be valid and enforceable to the fullest extent permitted by law provided that the Purchaser's purpose for entering into the Purchase Order can be fully achieved by the remaining portions of the Purchase Order that have not been severed.

#### **ARTICLE 20 CAPTIONS**

The captions or headings in this Master Agreement are for convenience only, and in no way define, limit or describe the scope or intent of any provision or section of this Master Agreement.

#### **ARTICLE 21 THIRD PARTY ACTION NOTIFICATION**

Apple shall notify ITS and Purchaser in writing within a reasonable period of time of Apple filing bankruptcy, reorganization, liquidation or receivership proceedings upon any action or suit being filed or any claim being made against Apple or Purchaser by any entity that may result in litigation related in any way to the Purchase Order or this Master Agreement and/or which may affect Apple's performance under the Purchase Order or this Master Agreement.

#### **ARTICLE 22 AUTHORITY TO CONTRACT**

Apple warrants that it is a validly organized business with valid authority to enter into this Master Agreement; that entry into and performance under this Master Agreement is not restricted or prohibited by any loan, security, financing, contractual or other agreement of any kind, and notwithstanding any other provision of this Master Agreement to the contrary, that there are no existing legal proceedings, or prospective legal proceedings, either voluntary or otherwise, which may adversely affect its ability to perform its obligations under a Purchase Order and this Master Agreement.

#### **ARTICLE 23 NOTICE**

Any notice required or permitted to be given under this Master Agreement shall be in writing and personally delivered or sent by electronic means provided that the original of such notice is sent by certified United States mail, postage prepaid, return receipt requested, or overnight courier with signed receipt, to the party to whom the notice should be given at their usual business address. ITS' address for notice is: Craig P. Orgeron, Ph.D., Executive Director, Mississippi Department of Information Technology Services, 3771 Eastwood Drive, Jackson, Mississippi 39211. Apple's address for notice is: Mr. Ralph E. Wright, Senior Contracts Negotiator, Apple, Inc., 12545 Riata Vista Circle, Austin, Texas 78727. Purchaser's address for notice will be set forth in the applicable Purchase Order. Notice shall be deemed given when actually received or when refused. The parties agree to promptly notify each other in writing of any change of address or points of contact.

#### **ARTICLE 24 RECORD RETENTION AND ACCESS TO RECORDS**

Apple shall establish and maintain financial records, supporting documents, statistical records and such other records as may be necessary to reflect its performance of the provisions of this Master Agreement and the Purchase Order. Subject to the signing of a mutually agreed upon non-disclosure agreement, the Purchaser, ITS, any state or federal agency authorized to audit Purchaser, and/or any of their duly authorized representatives, accountants or attorneys, shall, at their own expense and upon prior reasonable notice have unimpeded, prompt access to the Purchase Order, this Master Agreement, and to any of Apple's proposals, books, documents, papers and/or records that are directly relating to the Purchase Order and this Master Agreement to make audits, copies, examinations, excerpts and transcriptions at the State's or Apple's office as applicable where such records are kept during normal business hours. In no event shall Apple furnish or be required to furnish any information concerning any of Apple's other customers or anything not pertaining specifically to goods and services sold by Apple to the Purchaser under the

corresponding Master Agreement. All records relating to this Master Agreement and the Purchase Order shall be retained by Apple for three (3) years from the date of receipt of final payment under this Master Agreement and the Purchase Order. However, if any litigation or other legal action, by or for the state or federal government has begun that is not completed at the end of the three (3) year period, or if an audit finding, litigation or other legal action has not been resolved at the end of the three (3) year period, the records shall be retained until resolution.

#### **ARTICLE 25 INSURANCE**

Apple represents that it will maintain workers' compensation insurance as prescribed by law which shall inure to the benefit of Apple's personnel, as well as comprehensive general liability and employee fidelity bond insurance. Apple will, upon request, furnish Purchaser with a certificate of conformity providing the aforesaid coverage.

#### **ARTICLE 26 DISPUTES**

**26.1** Should disputes arise with respect to a Purchase Order or this Master Agreement, Apple and Purchaser agree to act immediately to resolve such disputes. Time is of the essence in the resolution of disputes. Apple agrees that, the existence of a dispute notwithstanding, it will continue without delay to carry out all of its responsibilities under the Purchase Order and/or this Master Agreement. Should Apple fail to continue without delay to perform its responsibilities under the Purchase Order and/or this Master Agreement in the accomplishment of all work, any additional costs incurred by Apple or Purchaser as a result of such failure to proceed shall be borne by Apple and Apple shall make no claim against Purchaser for such costs.

**26.2** If Apple and Purchaser cannot resolve a dispute within ten (10) calendar days following written notification by either party of the existence of said dispute, then the following procedure shall apply:

**A.** The parties agree to resolve such matters through submission of their dispute to the Executive Director of ITS, who shall reduce his/her decision to writing and mail or otherwise furnish a copy thereof to the parties within ten (10) calendar days after presentation of such dispute for his/her decision.

**B.** Purchaser may withhold payments on disputed items pending resolution of the dispute. The withholding of such disputed payments shall not constitute cause for termination or suspension of the Purchase Order and/or this Master Agreement by Apple.

**C.** The Executive Director's decision shall not be a final determination of the parties' rights and obligations under the terms of this Master Agreement. Such disagreeing party shall be entitled to seek such other rights and remedies available it may have at law or in equity.

#### **ARTICLE 27 COMPLIANCE WITH LAWS**

**27.1** Apple shall comply with, and all activities under a Purchase Order and this Master Agreement shall be subject to all Purchaser policies and procedures of which Apple has knowledge, and all applicable federal, state and local laws and regulations as now existing and as may be amended or modified. Specifically, but not limited to, Apple shall not discriminate against any employee nor shall any party be subject to discrimination in the performance of the Purchase Order and this Master Agreement because of race, creed, color, sex, age, national origin or disability. Further, if applicable, Apple shall comply with the provisions of the Davis-Bacon Act including, but not limited to, the wages, recordkeeping, reporting and notice requirements set forth therein.

**27.2** Apple represents and warrants that it will comply with the state's data breach notification

laws codified at Section 75-24-29 of the Mississippi Code Annotated (Supp. 2012). Further, to the extent applicable, Apple represents and warrants that it will comply with the applicable provisions of the HIPAA Privacy Rule and Security Regulations (45 CFR Parts 160, 162 and 164) ("Privacy Rule" and "Security Regulations", individually; or "Privacy and Security Regulations", collectively); and the provisions of the Health Information Technology for Economic and Clinical Health Act, Title XIII of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5 (the "HITECH Act").

#### **ARTICLE 28 CONFLICT OF INTEREST**

Apple shall notify Purchaser of any potential conflict of interest resulting from the representation of or service to other clients. If such conflict cannot be resolved to Purchaser's satisfaction, Purchaser reserves the right to terminate the Purchase Order and this Master Agreement as to itself only.

#### **ARTICLE 29 SOVEREIGN IMMUNITY**

By entering into this Master Agreement with Apple, the State of Mississippi does in no way waive its sovereign immunities or defenses as provided by law.

#### **ARTICLE 30 CONFIDENTIAL INFORMATION**

**30.1** Apple shall treat all Purchaser data and information to which it has access by its performance under the Purchase Order and this Master Agreement as confidential and shall not disclose such data or information to a third party without specific written consent of Purchaser. In the event that Apple receives notice that a third party requests divulgence of confidential or otherwise protected information and/or has served upon it a subpoena or other validly issued administrative or judicial process ordering divulgence of such information, Apple shall promptly inform Purchaser and thereafter respond in conformity with such subpoena to the extent mandated by state and/or federal laws, rules and regulations. This Article shall survive the termination or completion of the Purchase Order or this Master Agreement and shall continue in full force and effect and shall be binding upon Apple and its agents, employees, successors, assigns, subcontractors or any party or entity claiming an interest in the purchase order or this Master Agreement on behalf of, or under the rights of Apple following any termination or completion of the Purchase Order or this Master Agreement.

**30.2** Purchaser shall treat all documents it receives from Apple that are marked "Confidential" by Apple as confidential and proprietary and shall not disclose such documents to a third party without Apple's specific written consent. In the event that the Purchaser receives notice that a third party requests divulgence of such confidential information and/or has served upon it a subpoena or other validly issued administrative or judicial process ordering divulgence of such information, the Purchaser shall promptly inform Apple and thereafter respond in conformity with such subpoena to the extent mandated by state or federal law.

**30.3** With the exception of any attached exhibits which are labeled as "confidential", the parties understand and agree that the Purchase Order and this Master Agreement do not constitute confidential information, and may be reproduced and distributed by the State without notification to Apple. ITS will provide third party notice to Apple of any requests received by ITS for any such confidential exhibits so as to allow Apple the opportunity to protect the information by court order as outlined in ITS Public Records Procedures.

#### **ARTICLE 31 EFFECT OF SIGNATURE**

Each person signing a Purchase Order or this Master Agreement represents that he or she has read the Purchase Order and this Master Agreement in its entirety, understands its terms, is duly authorized to execute the Purchase Order or this Master Agreement on behalf of the parties and

agrees to be bound by the terms contained herein. Accordingly, the Purchase Order and this Master Agreement shall not be construed or interpreted in favor of or against the State or Apple on the basis of draftsmanship or preparation hereof.

#### **ARTICLE 32 SURVIVAL**

Articles 8, 9, 10, 12, 17, 24, 29, 30, and all other articles which, by their express terms so survive or which should so reasonably survive, shall survive any termination or expiration of the Purchase Order or this Master Agreement.

#### **ARTICLE 33 DEBARMENT AND SUSPENSION CERTIFICATION**

Apple certifies that neither it nor its principals: (a) are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any federal department or agency; (b) have, within a three (3) year period preceding this Master Agreement, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state anti-trust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property; (c) are presently indicted or otherwise criminally or civilly charged by a governmental entity with the commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state anti-trust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property, and (d) have, within a three (3) year period preceding this Master Agreement, had one or more public transaction (federal, state or local) terminated for cause or default.

#### **ARTICLE 34 COMPLIANCE WITH ENTERPRISE SECURITY POLICY**

Apple and Purchaser understand and agree that all Products and services provided by Apple under this Master Agreement must be and remain in compliance with the State of Mississippi's Enterprise Security Policy. The parties understand and agree that the State's Enterprise Security Policy is based on industry-standard best practices, policy, and guidelines at the time of contract execution. The State reserves the right to introduce a new policy during the term of this Master Agreement and require Apple to comply with same in the event the industry introduces more secure, robust solutions or practices that facilitate a more secure posture for the State of Mississippi.

#### **ARTICLE 35 ENTIRE AGREEMENT**

**35.1** This Master Agreement constitutes the entire agreement of the parties with respect to the subject matter contained herein and supersedes and replaces any and all prior negotiations, understandings and agreements, written or oral, between the parties relating hereto, including all terms of any unsigned or "shrink-wrap" license included in any package, media or electronic version of Apple-furnished software, or any "click-wrap" or "browse-wrap" license presented in connection with a purchase via the internet.

**35.2** The Master Agreement made by and between the parties hereto shall consist of, and precedence is hereby established by the order of the following:

- A.** This Master Agreement signed by Apple and ITS;
- B.** Any Exhibits attached to this Master Agreement;
- C.** The published EPL;

- D. Apple branded software end user license agreement or other licensing terms that may accompany Apple Products, only to the extent their provisions do not violate Mississippi law; and
- E. The actual Purchase Order, or additional contract terms between Purchaser and Apple if required.

**35.3** The intent of the above listed documents is to include all items necessary for the proper execution and completion of the services by Apple. The documents are complementary, and what is required by one shall be binding as if required by all. A higher order document shall supersede a lower order document to the extent necessary to resolve any conflict or inconsistency arising under the various provisions thereof; provided, however, that in the event an issue is addressed in one of the above mentioned documents but is not addressed in another of such documents, no conflict or inconsistency shall be deemed to occur by reason thereof. The documents listed above are shown in descending order of priority, that is, the highest document begins with the first listed document ("A. This Master Agreement") and the lowest document is listed last ("E. The actual Purchase Order").

#### **ARTICLE 36 TRANSPARENCY**

In accordance with the Mississippi Accountability and Transparency Act of 2008, §27-104-151, et seq., of the Mississippi Code of 1972, as Amended, the American Accountability and Transparency Act of 2009 (P.L. 111-5), where applicable, and §31-7-13 of the Mississippi Code of 1972, as amended, where applicable, a fully executed copy of this Master Agreement and any subsequent amendments shall be posted to the State of Mississippi's accountability website at: <https://www.transparency.mississippi.gov>. Prior to ITS posting this Master Agreement and any subsequent amendments to the website, any attached exhibits which contain trade secrets or other proprietary information and are labeled as "confidential" will be redacted by ITS.

#### **ARTICLE 37 LIABILITY ISSUES**

Unless jointly agreed otherwise in writing, Apple's liability as to a Purchaser with respect to Apple Branded Products shall not exceed two (2) times the total amount paid by Purchaser to Apple under the applicable Purchase Order. In no event will Apple be liable to Purchaser for special, indirect, consequential or incidental damages including lost profits, lost savings or lost revenues of any kind unless Apple was advised of the possibility of such loss or damage or unless such loss or damage could have been reasonably foreseen. Excluded from this or any liability limitation are claims related to fraud, bad faith, infringement issues, bodily injury, death, physical damage to tangible personal property and real property, and the intentional and willful misconduct or gross negligent acts of Apple. The limitation of liability language contained herein will apply to Purchaser to the extent it is permitted and not prohibited by the laws or constitution of Mississippi. Further, the parties understand and agree that Apple is precluded from relying on any contractual damages limitation language within this article where Apple acts fraudulently or in bad faith.

For the faithful performance of the terms of this Master Agreement, the parties have caused this Master Agreement to be executed by their undersigned representatives.

State of Mississippi, Department of  
Information Technology Services, on  
behalf of the agencies and institutions  
of the State of Mississippi

Apple, Inc.

By:   
Authorized Signature

By:   
Authorized Signature

Printed Name: Craig P. Orgeron, Ph.D.

Printed Name: Lynn Nelson

Title: Executive Director

Title: Sr. Mgr U.S. Bids + Contracts

Date: 3/9/15

Date: 03/06/2015

**EXHIBIT A**  
**Apple EPL Terms & Conditions**

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1. Per Section VII, Item 9 of General RFP 3774, ITS is authorizing the creation of an Express Products List (3774-A) from Apple's response to said General RFP.
2. The Apple EPL 3774-A will be valid for a period of three years from the execution of this agreement.
3. Apple EPL Instructions for Use will be published on the ITS website authorizing Mississippi governmental and educational entities to purchase Apple-branded products (hardware and software) and Apple services using the Apple Web Site pricing up to a specified dollar limitation.
4. Procurements may not be made using the Apple EPL until the Instructions for Use have been published on the ITS website.
5. Apple understands that only products that contain the Apple brand may be included on the Apple EPL. Third party products must be obtained using other procurement methods.
6. ITS will publish language warning customers regarding the potential of third party products appearing on the website. However, it is Apple's responsibility to clearly designate third party items separately on any EPL quotes.
7. Apple confirms that the educational pricing on the Apple Website represents their standard prices quoted to education customers. Educational pricing will be available to both Mississippi educational and governmental entities at the same not-to-exceed price.
8. Should ITS customers need specialized configurations or quantity discounts exceeding those on the Apple website, or should the customer prefer not to use the website, Apple will provide written quotations for the specific project.
9. Apple agrees to honor the pricing on their website or written quotations as a not-to-exceed price for a period of thirty (30) days from when the website quote or written quotation was obtained. Should Apple pricing be reduced from the EPL pricing, Apple agrees to extend the lower price to Mississippi customers.
10. Express Products List (EPL) Administrative Fees:
  - a. Overview
    - i. Apple, whose products are ordered under this contract, **MUST** maintain a record of sales to be reported on a quarterly basis to ITS.
    - ii. Within fifteen (15) calendar days following the completion of each quarter, Apple must submit a Shipping Report identifying all Apple Branded Products/Services EPL sales, minus the returns and credits, to ITS. Upon receipt of the report, ITS will review the Shipping Report and assess a one percent (1%) EPL Administrative Fee based on the total amount of sales that are reported, in accordance with Mississippi Code Section 25-53-29 (4).
    - iii. The EPL Administrative Fee is used by the State to defray the costs associated with soliciting, awarding and administering EPLs, and is referenced in the Master Purchase Agreement for Apple Branded Products and Services.
    - iv. The EPL Administrative Fee is the responsibility of Apple. The EPL Administrative Fee will not be charged directly to the customer in the form of a separate line item.
  - b. Fee Amount

- i. The EPL Administrative Fee shall be one percent (1.0%) of quarterly sales receipts of all Apple Branded Products and Services, minus the returns and credits, under this active Master Purchase Agreement.
  - ii. The EPL Administrative Fee percentage is applicable to amounts where Apple has shipped Apple Branded Products.
- c. Method of Assessment
  - i. At the completion of each quarter Apple will review all sales in preparation for submission of their Shipping Report.
  - ii. Apple will identify all sales receipts transacted by customers using the EPL as their procurement instrument.
  - iii. After receiving Apple's Shipping Report, ITS will review said report and assess the one percent (1.0 %) EPL Administrative Fee based on the total amount of sales of all Apple Branded Products, minus the returns and credits, listed in the Shipping Report.
- d. Submission Schedule
  - i. Within fifteen (15) days following the end of the quarter, Apple must submit their Shipping Report to ITS.
  - ii. Apple will be invoiced by the end of the month following the EPL Quarter with payment of the EPL Administrative Fee due by the last day of the following month. A sample of the Fee Submission schedule is as follows:
    - 1. EPL Quarter 1 (July 1<sup>st</sup> – September 30th)
    - 2. Marketing/Sales Report Due by October 15th
    - 3. Invoice Received from ITS by November 1st
    - 4. Payment Due by November 30th
- e. Vendor Penalties
  - i. Apple's failure to submit a Shipping Report within 3 working days after the due date will result in a suspension of the EPL. Apple is subject to reinstatement after sending in the delinquent Shipping Report and making payment for the quarterly administrative fees.
  - ii. Apple's failure to submit payment of the EPL quarterly administrative fees by the due date will result in an immediate suspension of the Apple EPL until all outstanding fees are paid in full. Apple is subject to reinstatement after all delinquent fees are bought current.
- f. Report Format
  - i. The report must be submitted by e-mail as an Excel spreadsheet.
  - ii. Apple must include the following fields in the Shipping Report submitted at the completion of each quarter:
    - 1. Purchase Order Date
    - 2. Client Name
    - 3. Purchase Order Number
    - 4. Total
- g. Report Information
  - i. If there were no sales during a reporting period, Apple must submit a Shipping Report showing "No Sales".
  - ii. ITS reserves the right to request more detailed sales information on an individual basis as outlined in Article 24 of this active Master Purchase Agreement.