

ATTACHMENT A
CONTRACT
FOR
KETS INSTRUCTIONAL DEVICES

BETWEEN

THE COMMONWEALTH OF KENTUCKY
Kentucky Department of Education (KDE)

AND

Apple

MA 758 1600000421

Vendor Contact Information:

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This Master Agreement (“Contract”, “Award” or “Agreement”) is entered into, by and between the Commonwealth of Kentucky, Kentucky Department of Education (“the Commonwealth” or “Customer” or “KDE”) and Apple Incorporated (“Contractor” or “Vendor” or “Apple”) as the Prime Vendor.

The Commonwealth and Contractor agree to the following:

I. Scope of Contract

The purpose of this Contract is to provide **KETS Instructional Devices and related services** for usage by Kentucky public school districts, the Kentucky School for the Blind (KSB), the Kentucky School for the Deaf (KSD) and the Kentucky Education and Workforce Development Cabinet which includes but is not limited to the Kentucky Department of Education (KDE), the Education

Professional Standards Board (EPSB), Kentucky Educational Television (KET) and the Council on Postsecondary Education (CPE).

II. Negotiated Items

1. Revision to Section 40.5 Type of Contract in order to better reflect the Contract pricing structure

Original Language

This Contract shall be on the basis of a **firm fixed unit price**.

Negotiated Language

This Contract shall be on the basis of a **firm fixed percentage discount off MSRP**.

2. Section 40.10 Contract Conformance

Original Language

If the Commonwealth Buyer determines that deliverables due under the Contract are not in conformance with the terms and conditions of the Contract and the mutually agreed-upon project plan, the Buyer may request the Contractor to deliver assurances in the form of additional Contractor resources and to demonstrate that other major schedules will not be affected. The Commonwealth shall determine the quantity and quality of such additional resources and failure to comply may constitute default by the Contractor.

Negotiated Language

If the Commonwealth Buyer determines that deliverables due under the Contract are not in conformance with the terms and conditions of the Contract and the mutually agreed-upon project plan, the Buyer may request the Contractor to deliver assurances in the form of additional Contractor resources and to demonstrate that other major schedules will not be affected. The Commonwealth shall determine the quantity and quality of such additional resources and failure to comply may constitute default by the Contractor. Notwithstanding the aforementioned, the Commonwealth can only return Apple Products that do not meet the specifications on Apple's website or as specified in the Statement of Work that has been mutually agreed to by the parties.

3. Section 40.31 Limitation of Liability

Original Language

The liability of the Commonwealth related to contractual damages is set forth in KRS 45A.245. The Vendor's liability for damages to the Commonwealth should be limited to the greater of \$1,000,000 or two times the contract

purchase. The foregoing limitation of liability should not apply to claims covered by other specific provisions calling for liquidated damages or specifying a different limitation of liability, or to claims for injury to persons or damage to property caused by the Vendor's negligence or willful or wanton conduct. In no event should the Vendor be liable for any indirect, special, punitive or consequential damages unless otherwise specified in the Contract.

Negotiated Language

The liability of the Commonwealth related to contractual damages is set forth in KRS 45A.245. The Vendor's liability for damages to the Commonwealth should be limited to the greater of \$1,000,000 or two times the contract purchase. The foregoing limitation of liability should not apply to claims covered by other specific provisions calling for liquidated damages or specifying a different limitation of liability, or to claims for injury to persons or damage to property caused by the Vendor's negligence or willful or wanton conduct. In no event should the Vendor be liable for any indirect, special, punitive or consequential damages unless otherwise specified in the Contract. In no event shall Vendor's total liability exceed \$5,000,000 in the aggregate, for the term of the contract.

4. Section 50.4 Basis of Price Revisions A

Original Language

PRICE ADJUSTMENTS: Unless otherwise specified, the prices established by this Contract shall remain firm for the contract period subject to the following:

A: Price Increases: A price increase shall not occur during the first twelve (12) months of the contract. A vendor may request a price increase after twelve (12) months of the contract, which may be granted or denied by the Commonwealth. The Contract holder must request in writing a price increase at least thirty (30) days prior to the effective date, and shall provide firm proof that the price increase(s) is justified. The Office of Procurement Services may request additional information or justification. If the price increase is denied, the Contract holder may withdraw from the Contract without prejudice upon written notice. Provided, however, that the Vendor must continue service, at the Contract prices, until a new Contract can be established usually within sixty (60) days).

Negotiated Language

PRICE ADJUSTMENTS: Unless otherwise specified, the prices established by this Contract shall remain firm for the contract period subject to the following:

A: Price Increases: A price increase shall not occur during the first twelve (12) months of the contract. A vendor may request a price increase after twelve (12) months of the contract, which may be granted or denied by the Commonwealth. The Contract holder must request in writing a price increase at least thirty (30) days prior to the effective date, and shall provide firm proof that the price increase(s) is justified. The Office of Procurement Services may request additional information or justification. If the price increase is denied, the Contract holder may withdraw from the Contract without prejudice upon written notice. Provided, however, that the Vendor must continue service, at the Contract prices, until a new Contract can be established (not to exceed sixty (60) days).

5. Section 50.4 Basis of Price Revisions B

Original Language

B: Price Decreases: The Contract price should be reduced to reflect any industry wide price decreases. The Contract holder is required to furnish the Office of Procurement Services with notice of any price decreases as soon as such decreases are available.

Negotiated Language

B: Price Decreases: The Contract holder is required to furnish the Office of Procurement Services with notice of any price decreases as soon as such decreases are available.

6. Section 50.8 Scope of Work Subsection 1-Vendor Single Point of Contact

Original Language

The vendor should name a person that will be the single point of contact (SPOC) for contract issues.

The SPOC should be aggressive in sharing contract information, including but not limited to solution roadmaps, pricing and other strategic information to the KDE and KETS customers.

The contract holder should ensure that this person and all salespersons of their product will be knowledgeable in:

- All the details of the KETS contract.
- The Kentucky school, district office and KDE customer base.
- *The most current KETS Master Plan on our Web site and year round current events in KETS.*

Upon contract award, the Vendor's SPOC should provide a description of a copy of procedures for requesting escalation, complaint resolution and

identify the staff available for installations, billing problems, etc. The Vendor should update this information annually at a minimum.

Negotiated Language

The vendor should name a person that will be the single point of contact (SPOC) for contract issues.

The SPOC should be aggressive in sharing contract information, including but not limited to current solution, offerings, pricing and other strategic information to the KDE and KETS customers.

The contract holder should ensure that this person and all salespersons of their product will be knowledgeable in:

- All the details of the KETS contract.
- The Kentucky school, district office and KDE customer base.
- The most current KETS Master Plan on our Web site and year round current events in KETS.

Upon contract award, the Vendor's SPOC should provide a description of a copy of procedures for requesting escalation, complaint resolution and identify the staff available for installations, billing problems, etc. The Vendor should update this information annually at a minimum.

7. Section 50.8 Scope of Work Subsection 3-New/Revised Products

Original Language

Vendors are encouraged to update their product lines and solutions as quickly as possible. As new models of products and/or updates to solutions within the scope and spirit of the solicitation and resulting contracts become available the vendor will notify the KIDS vendor manager. KIDS reserve the right to approve all new and revised products and solutions, including pricing prior to the vendor being able to include it in the KETS contract. The vendor should provide an evaluation unit of all hardware included on the contract unless waived by the KDE.

Negotiated Language

Vendors are encouraged to update their product lines and solutions as quickly as possible. As new models of products and/or updates to solutions listed in the KETS Configuration List become available the vendor will notify the KIDS vendor manager. KIDS reserve the right to approve all new and revised products and solutions, including pricing prior to the vendor being able to include it in the KETS Configuration List . The vendor should provide an evaluation unit of all hardware included on the contract unless waived by the KDE. KDE shall complete and sign the Apple Equipment Loan Agreement for

any evaluation units Apple agrees to provide. This Agreement can be found at <http://seed.apple.com/docs/hlatemplate.pdf>.

8. Section 50.8 Scope of Work Subsection 4-Pricing Original Language

Contract Pricing: Equitable pricing shall be offered to all KETS customers. Kentucky public school districts, the Kentucky school for the Blind and the Kentucky School for the Deaf may qualify for discounts including but not limited to operating system or other education discounts. The Commonwealth of Kentucky's public school districts shall purchase from the KETS Master Agreements for the instructional device solutions and categories that have been approved by KDE. Vendors shall be able to effectively handle this magnitude of sales, meet delivery deadlines with quality Enterprise (not Consumer) hardware and support equitably across every county in our state while meeting the performance standards for the life of the contract. The Commonwealth requests hardware that has consistency in parts and has undergone testing of internal components to the Enterprise level versus the consumer level. It is mandatory that vendors have capacity to provide contract management and support across every county in the Commonwealth. The vendor shall provide on-site support to **every school in every county** with the same timelines and costs with no exceptions for location.

Promotional Pricing: The Kentucky Department of Education may identify set dates where promotional pricing is encouraged by contract holders to KETS customers. During the promotional period(s) deeper discounts which are available regardless of quantities purchased may be set by the contract holder. This promotional pricing must be submitted and approved by the KETS vendor manager and be available to all KETS customers. At the close of a promotion period the discounts would return to the discount off MSRP approved prior to the promotional period. Any promotional discount must be equitable and offered to all KETS customers during that period.

Operating System Pricing: Vendors awarded a contract as a result of this solicitation may offer the best operating system pricing available to the KETS customer. This may include but is not limited to OEM pricing and National Academic (Shape the Future) pricing.

Negotiation of Price: During the life of the contract, KETS customers are encouraged to negotiate a better price for items or a better discount for product categories available for purchase from the KETS Master Agreement(s). However, once a lower price or better discount has been negotiated with one district, it becomes the new statewide price/discount for

that solution/product category for the duration of the KETS contract. Typically, vendors have special offers to quickly get rid of inventory that didn't sell as well as anticipated or is outdated. If a vendor offers a special price for any time period (e.g. Offer ends August 12), that price for that model for all districts does not end on August 12. Instead, it has now become the new price for the duration that the model is on contract. The exception to this is the promotional pricing period set by the Kentucky Department of Education. Example: If a large district like Jefferson County negotiates a lower price for a specific model from a vendor, it now becomes the new price for every district statewide for that model from that vendor.

Negotiated Language

Contract Pricing: Equitable pricing for the solutions listed in the KETS Configuration list shall be offered to all KETS customers. Kentucky public school districts, the Kentucky school for the Blind and the Kentucky School for the Deaf may qualify for discounts including but not limited to operating system or other education discounts. The Commonwealth of Kentucky's public school districts shall purchase from the KETS Master Agreements for the instructional device solutions and categories that have been approved by KDE. Vendors shall be able to effectively handle this magnitude of sales, meet mutually agreed upon delivery deadlines Apple Products and support equitably across every county in our state while meeting the performance standards for the life of the contract. It is mandatory that vendors have capacity to provide contract management and support across every county in the Commonwealth. For solutions listed in the KETS Configuration List, the vendor shall provide on-site support to **every school** in **every county** with the same timelines and costs with no exceptions for location.

Promotional Pricing: The Kentucky Department of Education may identify set dates where promotional pricing is encouraged by contract holders to KETS customers. During the promotional period(s) deeper discounts which are available regardless of quantities purchased may be set by the contract holder. This promotional pricing must be submitted and approved by the KETS vendor manager and be available to all KETS customers. At the close of a promotion period the prices would return to the prices prior to the promotional period. Any promotional pricing must be equitable and offered to all KETS customers during that period.

Operating System Pricing: Vendor may offer the best operating system pricing available to the KETS customer. This may include but is not limited to OEM pricing and National Academic (Shape the Future) pricing.

Negotiation of Price: During the life of the contract, KETS customers are encouraged to negotiate a better price for solutions listed in the KETS Configuration List. However, once a lower price or better discount has been negotiated with one district, for products listed in the KETS Configuration List it becomes the new statewide price/discount for device configuration for the duration of the KETS contract.

9. Section 50.8 Subsection 5-Personal Purchases

Original Language

All staff of KETS customers, including public school staff and students, may purchase from this contract for their personal use. This specifically includes certified teachers as mandated by KRS 156.690. On-site warranty service for personal purchases from this contract will take place at the staff member's school or district office. Applicable taxes and/or shipping charges may apply to personal purchases.

Negotiated Language

All staff of KETS customers, including public school staff and students, may purchase from this contract for their personal use. All personal use purchases must be from KETS Configuration List and facilitated through KETS. This specifically includes certified teachers as mandated by KRS 156.690. On-site warranty service for personal purchases from this contract will take place at the staff member's school or district office. Applicable taxes and/or shipping charges may apply to personal purchases.

10. Section 50.8 Scope of Work Subsection 7-Leasing

Original Language

Leasing should be made available as an option to KETS customers. Leasing agreements shall meet all legal requirements for the Commonwealth of Kentucky and the Kentucky Department of Education. The Vendor shall quote hardware warranty coverage for the duration of the lease period. The Commonwealth Lease Agreement is attached to this solicitation as Attachment J. No changes or substitutions to the Commonwealth Lease Agreement may be made without the approval of the Kentucky Department of Education and the Finance Cabinet Office of Procurement Services. Lessee shall not be penalized for failure to return copies of device technical documentation such as CDs if reasonable efforts have been made to store, track and return them at the end of a lease. Information provided by the Vendor of leased items on any Lease quote or schedule of equipment shall include the following: description (including model name and number where applicable), price, quantity, total quantity price, and the KETS contract number. When there is a residual lease value the Vendor shall clearly identify the residual value per unit and the total quantity residual value. The residual

value must be clearly identified in the lease quote and lease agreement. Lease payments will be addressed to the contract holder.

Negotiated Language

Appendix A should be used for Leasing only to the extent the terms are not in conflict with the Commonwealth of Kentucky's applicable law. Financing is not allowed on this Master Agreement.

11. Section 50.8 Scope of Work Subsection 9-Warranty

Original Language

The Vendor should be able to provide various levels of warranty service for all hardware offered on the contract. Vendor shall be required to include three (3) years of onsite warranty coverage in the initial purchase cost of desktops and three (3) years of depot warranty coverage in the initial purchase cost of laptops. Vendor may offer optional upgrades at an additional fee to four (4) or five (5) year on-site and depot warranty and faster repair times such as next business day no troubleshooting if available. After the initial three (3) year period, if hardware maintenance is desired, it will be the responsibility of the customer to procure from either this contract or other approved sources.

Depot and on-site warranty shall meet the following criteria:

- The KETS customer's primary period of service (PPS) falls between the hours of 8:00am and 5:00pm customer's local time, Monday through Friday, excluding state observed holidays. The vendor shall be available to provide warranty service during the KETS's customer's primary period of service;
- Vendor shall have a toll-free number for all calls and a call tracking system);
- The vendor shall call/email the customer back within one (1) hour of placing call to provide applicable information including ticket number;
- The three (3) year warranty coverage included in the initial purchase shall be either Depot or on-site and is defined as:
 - Depot Warranty: Depot warranty means that upon determining the hardware requires service, the vendor will provide to the customer a shipping container by the close of the customer's next business day for the customer to package and ship the hardware to the manufacturer's authorized repair facility. Hardware being serviced through depot warranty must be fully operational and returned to the customer within forty (40) business hours upon receipt of the depot shipment from the customer. Depot warranty periods begin at the time of delivery of the equipment. The vendor shall be responsible for all shipping costs.

- On-site Warranty: On-site warranty means that the vendor goes to the location of the equipment purchased, in a school, district office, state agency, etc. On-site warranty shall be a full on-site service, parts and labor warranty to begin at the time of delivery of equipment to the customer's site. Hardware being serviced through on-site warranty must be fully operational within forty-eight (48) working hours.
- All technicians shall be properly certified and or licensed to service the hardware;
- The vendor may perform diagnostics and repair remotely if applicable with the customer's prior approval;
- Vendor is not responsible for disaster recovery;
- Products that are delivered but defective "out of the box" shall be replaced with new replacements versus initiating warranty service.
- Replacement parts shall be new or reconditioned, and of equal or better quality than original parts;
- There shall be no charge for any shipping and handling of parts or labor charges for troubles or issues with the equipment;
- The vendor shall ensure the cost is the same throughout the state for installation or warranty services;
- The vendor shall be provided access to the customer's building where the equipment is located as required to fulfill customer service requests in the event of onsite service.
- Warranty does not extend to hardware that has been damaged or rendered defective due to:
 - a result of accident, misuse or abuse;
 - a result of an act of God;
 - Operation outside the usage parameters stated in the products user manual;
 - modification of the product
 - A result of service by anyone other than (manufacturer), contract agent who is authorized to provide service, or authorized service provider. Expendable parts, such as non-rechargeable batteries, carrying cases, etc. are not covered. Damage due to loss of any programs, data or removable storage media is not covered.

Self Maintainer

The vendor must be able to facilitate the customer to become a self-maintainer of hardware that is purchased from the contract. Being a self-maintainer allows the customer to have staff certified on the manufacturer's brand of hardware to provide in-house servicing for hardware programs. Several districts within the Commonwealth currently are manufacturer certified to perform such service, which provides for cost savings as well as the opportunity within some districts for the Student Technology Leadership

Program (STLP) to gain hands-on experience that can be invaluable educational experience.

Warranty Penalties

There shall be a complaint desk at KDE site so our customers can quickly document vendors that are failing to meet the service requirements of the contract. Quarterly reports will be prepared and submitted by the vendor to the KETS Vendor Manager which will assist us in identifying vendors whom have not successfully met service response times. The vendor shall meet service specifications for a minimum of 97% of total annual service calls. The vendor is allowed this three percent (3%) failure rate based on total service calls they receive annually due to vehicle break down, parts that get lost, addresses being difficult to find, etc.

Vendors who exceed the three percent (3%) failure rate during the 1st quarter shall be required to meet with the KIDS Vendor Manager to establish a corrective plan for warranty service. Vendors who exceed the three percent (3%) failure rate for two (2) consecutive quarters shall be required to meet with the KIDS Vendor Manager to establish a corrective plan for warranty service and the KIDS may recommend a two (2) week suspension of the vendor contract to the OPS. Vendors who exceed the three percent (3%) failure rate for three (3) consecutive quarters shall be required to meet with the KIDS Vendor Manager to establish a corrective plan for warranty service and the KIDS may recommend a three (3) week suspension of the vendor contract to the OPS. Vendors who exceed the three percent (3%) failure rate for four (4) consecutive quarters shall be required to meet with the KIDS Vendor Manager to establish a corrective plan for warranty service and the KIDS may recommend termination of the vendor contract to the OPS.

The contract holder shall be held solely accountable for all services conducted under the terms and conditions specified in this warranty. Service calls taken by any technical support center(s) shall be quickly turned over to second and third levels of support for quick resolution rather than attempts to resolve issues at that point. All support personnel shall be certified by the manufacturer of equipment (for example, if this vendor supplies Vendor X equipment, support staff shall hold a manufacturer's certification and be certified by Vendor X to perform service on Vendor X equipment).

Negotiated Language

The Vendor should be able to provide various levels of warranty service for all hardware offered on the contract. Vendor shall be required to include three (3) years of onsite warranty coverage in the initial purchase cost of desktops and three (3) years of depot warranty coverage in the initial purchase cost of

laptops. Vendor may offer optional upgrades at an additional fee to four (4) or five (5) year on-site and depot warranty and faster repair times such as next business day no troubleshooting if available. After the initial three (3) year period, if hardware maintenance is desired, it will be the responsibility of the customer to procure from either this contract or other approved sources.

Depot and on-site warranty shall meet the following criteria:

- The KETS customer's primary period of service (PPS) falls between the hours of 8:00am and 5:00pm customer's local time, Monday through Friday, excluding state observed holidays. The vendor shall be available to provide warranty service during the KETS's customer's primary period of service;
- Vendor shall have a toll-free number for all calls and a call tracking system);
- The vendor shall call/email the customer back within one (1) hour of placing call to provide applicable information including ticket number;
- The three (3) year warranty coverage included for the solutions listed in the KETS Configuration List shall be either Depot or on-site and is defined as:
 - Depot Warranty: Depot warranty means that upon determining the hardware requires service, the vendor will provide to the customer a shipping container by the close of the customer's next business day for the customer to package and ship the hardware to the manufacturer's authorized repair facility. Hardware being serviced through depot warranty must be fully operational and returned to the customer within forty (40) business hours upon receipt of the depot shipment from the customer. Depot warranty periods begin at the time of delivery of the equipment. The vendor shall be responsible for all shipping costs.
 - On-site Warranty: On-site warranty means that the vendor goes to the location of the equipment purchased, in a school, district office, state agency, etc. On-site warranty shall be a full on-site service, parts and labor warranty to begin at the time of delivery of equipment to the customer's site. Hardware being serviced through on-site warranty must be fully operational within forty-eight (48) working hours.
- All technicians shall be properly certified to service the hardware;
- The vendor may perform diagnostics and repair remotely if applicable;
- Vendor is not responsible for disaster recovery;
- Products that are delivered but defective "out of the box" shall be processed per Apple's then current return policy
- Replacement parts shall be new or reconditioned, and of equal or better quality than original parts;

- There shall be no charge for any shipping and handling of parts or labor charges for equipment under warranty;
- The vendor shall ensure the cost is the same throughout the state for warranty services;
- The vendor shall be provided access to the customer's building where the equipment is located as required to fulfill customer service requests in the event of onsite service.
- Warranty does not extend to hardware that has been damaged or rendered defective due to:
 - a result of accident, misuse or abuse;
 - a result of an act of God;
 - Operation outside the usage parameters stated in the products user manual;
 - modification of the product
 - A result of service by anyone other than (manufacturer), contract agent who is authorized to provide service, or authorized service provider. Expendable parts, such as non-rechargeable batteries, carrying cases, etc. are not covered. Damage due to loss of any programs, data or removable storage media is not covered.

Self Maintainer

The vendor must be able to facilitate the customer to become a self-maintainer of hardware that is purchased from the contract. Being a self-maintainer allows the customer to have staff certified on the manufacturer's brand of hardware to provide in-house servicing for hardware programs. Several districts within the Commonwealth currently are manufacturer certified to perform such service, which provides for cost savings as well as the opportunity within some districts for the Student Technology Leadership Program (STLP) to gain hands-on experience that can be invaluable educational experience.

Warranty Penalties

There shall be a complaint desk at KDE site so our customers can quickly document vendors that are failing to meet the service requirements of the contract. Quarterly reports will be prepared and submitted by the vendor to the KETS Vendor Manager which will assist us in identifying vendors whom have not successfully met service response times. The vendor shall meet service specifications for a minimum of 97% of total annual service calls. The vendor is allowed this three percent (3%) failure rate based on total service calls they receive annually due to vehicle break down, parts that get lost, addresses being difficult to find, etc.

Vendors who exceed the three percent (3%) failure rate during the 1st quarter shall be required to meet with the KIDS Vendor Manager to establish a corrective plan for warranty service. Vendors who exceed the three percent (3%) failure rate for two (2) consecutive quarters shall be required to meet with the KIDS Vendor Manager to establish a corrective plan for warranty service and the KIDS may recommend a two (2) week suspension of the vendor contract to the OPS. Vendors who exceed the three percent (3%) failure rate for three (3) consecutive quarters shall be required to meet with the KIDS Vendor Manager to establish a corrective plan for warranty service and the KIDS may recommend a three (3) week suspension of the vendor contract to the OPS. Vendors who exceed the three percent (3%) failure rate for four (4) consecutive quarters shall be required to meet with the KIDS Vendor Manager to establish a corrective plan for warranty service and the KIDS may recommend termination of the vendor contract to the OPS.

The contract holder shall be held solely accountable for all services conducted under the terms and conditions specified in this warranty. Service calls taken by any technical support center(s) shall be quickly turned over to second and third levels of support for quick resolution rather than attempts to resolve issues at that point. All support personnel shall be certified by the manufacturer of equipment (for example, if this vendor supplies Vendor X equipment, support staff shall hold a manufacturer's certification and be certified by Vendor X to perform service on Vendor X equipment).

12. Attachment I – Compliance with Federal School Lunch Administration subsection N.

Original Language

The vendor is fully knowledgeable of KRS [45a.335- 45a.490](#), Kentucky Model Procurement Code, including the provisions for violation of the Code.

Negotiated Language

To the best of our knowledge, the vendor is fully knowledgeable of KRS 45a.335-45a.490, Kentucky Model Procurement Code, including the provisions for violation of the Code.

III. Terms and Conditions (Per Section 30 – 50 of RFP 758 1500000349)

SECTION 30 – COMMONWEALTH OFFICE OF TECHNOLOGY (COT) REQUIREMENTS

30.1 Commonwealth Information Technology Policies and Standards

The Vendor and any subcontractors shall be required to adhere to applicable Commonwealth policies and standards related to technology use and security.

30.2 Compliance with Commonwealth IT Enterprise Architecture and Standards

The Commonwealth IT Enterprise Architecture and Standards reflect a set of principles for information, technology, applications, and organization. These standards provide guidelines, policies, directional statements and sets of standards for information technology. It defines, for the Commonwealth, functional and information needs so that technology choices can be made based on business objectives and service delivery. The Vendor shall stay knowledgeable and shall abide by these standards for all related work.

<http://technology.ky.gov/governance/Pages/architecture.aspx>

30.3 Compliance with Commonwealth Security Standards

The software deployment and all Vendor services shall abide by security standards as outlined in the Commonwealth's Enterprise Information Technology Policies.

Enterprise Policies

<http://technology.ky.gov/ciso/Pages/InformationSecurityPolicies,StandardsandProcedures.aspx>

**Finance and Administration Cabinet Commonwealth Office of Technology
Enterprise IT Policies**

<http://finance.ky.gov/services/policies/Pages/default.aspx>

30.4 Compliance with Industry Accepted Reporting Standards Based on Security Controls and Trust Principles

The vendor must employ a comprehensive risk and threat management approach based on defined industry standards for service organizations such as the Statement on Standards for Attestation Engagements (SSAE 16). The vendor must undergo annual controls reviews based on these standards and have the ability to demonstrate compliance through the applicable reporting mechanisms associated with these reviews. This shall include providing access to any publicly available reports (i.e. SSAE 16 SOC 3) as well as on site reviews of reports available specifically for business partners (i.e. SSAE 16 SOC 2).

30.5 System Vulnerability and Security Assessments

The Commonwealth reserves the right to conduct external non-invasive vulnerability and security assessments of the software and infrastructure used to provide services prior to implementation and periodically thereafter. Upon completion of these assessments, the Commonwealth will communicate any findings to the vendor for action. Any cost relating to the alleviation of the

findings will be the responsibility of the vendor. Mitigations will be subject to re-evaluation after completion. In cases where direct mitigation cannot be achieved, the vendor shall communicate this and work closely with the Commonwealth to identify acceptable compensating controls that will reduce risk to an acceptable and agreed upon level. An accredited third party source may be selected by the vendor to address findings, provided they will acknowledge all cost and provide valid documentation of mitigation strategies in an agreed upon timeframe.

30.6 Privacy, Confidentiality and Ownership of Information

The Commonwealth Office of Technology (COT) is the designated owner of all data and shall approve all access to that data. The Vendor shall not have ownership of Commonwealth data at any time. The Vendor shall be in compliance with privacy policies established by governmental agencies or by state or federal law. Privacy policy statements may be developed and amended from time to time by the Commonwealth and will be appropriately displayed on the Commonwealth portal (Ky.gov). The Vendor should provide sufficient security to protect the Commonwealth and COT data in network transit, storage, and cache. **All sensitive data, as defined in Enterprise Standards, must be encrypted in-transit.**

30.7 Software Development

If applicable, source code for software developed or modified by the Vendor specifically for the Commonwealth shall become property of the Commonwealth. This is not meant to include minor modifications to the vendor software to configure the software for Commonwealth use. This is meant to include software written to add functionality to the vendor product specifically to meet the requirements of the Commonwealth where the Commonwealth bears the entire cost of creating that functionality.

30.8 License Agreements

If applicable, software provided by the Vendor to the Commonwealth should contain a provision for perpetual licensing with all upgrade options. License agreements should also contain a provision for the Commonwealth to maintain a version of the software in escrow in the event the Vendor is unable to continue business for financial or other business reasons.

30.9 Software Version Requirements

All commercially supported and Commonwealth approved software components such as Operating system (OS), Database software, Application software, Web Server software, Middle Tier software, and other ancillary software must be kept current. In the event that a patch interferes with the solution, the vendor must present a plan for compliance to the Commonwealth outlining the constraints and

an appropriate plan of action to bring the solution in to compliance to allow this patch to be applied in the shortest timeframe possible, not to exceed three months, unless otherwise negotiated with the Commonwealth.

The vendors shall keep software in compliance with industry standards to support third party dependencies such as Java, Adobe Flash, Internet Explorer, Mozilla Firefox, Google Chrome, etc. at currently supported version, release, and patch levels. In the event that a third party dependency interferes with the solution, the vendor must present a plan for compliance to the Commonwealth outlining the constraints and an appropriate plan of action to bring the solution into compliance to allow this third party dependency to be updated in the shortest timeframe possible, not to exceed three months, unless otherwise negotiated with the Commonwealth.

30.10 Section 508 Compliance

All user interfaces to the solution(s) provided, shall be warranted by the vendor to comply with Section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d) and the World Wide Web Consortium's (W3C) Web Content Accessibility Guidelines (WCAG) 1.0, conformance level Double-A or greater.

30.11 No Surreptitious Code Warranty

The Contractor represents and warrants that no copy of licensed Software provided to the Commonwealth contains or will contain any Self-Help Code or any Unauthorized Code as defined below. This warranty is referred to in this Contract as the "No Surreptitious Code Warranty".

As used in this Contract, "Self-Help Code" means any back door, time bomb, drop dead device, or other software routine designed to disable a computer program automatically with the passage of time or under the positive control of a person other than the licensee of the software. Self-Help Code does not include Software routines in a computer program, if any, designed to permit an owner of the computer program (or other person acting by authority of the owner) to obtain access to a licensee's computer system(s) (e.g. remote access) for purposes of maintenance or technical support.

As used in this Contract, "Unauthorized Code" means any virus, Trojan horse, spyware, worm or other Software routines or components designed to permit unauthorized access to disable, erase, or otherwise harm software, equipment, or data; or to perform any other such actions. The term Unauthorized Code does not include Self-Help Code.

In addition, Contractor will use up-to-date commercial virus detection software to detect and remove any viruses from any software prior to delivering it to the Commonwealth.

The Vendor shall defend the Commonwealth against any claim, and indemnify the Commonwealth against any loss or expense arising out of any breach of the No Surreptitious Code Warranty.

30.12 **Applicable Security Control Framework Compliance**

The vendor must have an awareness and understanding of the NIST Special Publication 800-53 Security Control Framework and employ safeguards that meet or exceed the moderate level controls as defined within the standard. These controls must provide sufficient safeguards to provide reasonable protections around the Commonwealth's data to ensure that the confidentiality, integrity, and availability is maintained at an appropriate level. These include but are not limited to:

- *Access Control*
The vendor must employ policy and process that provide for stringent control to limit physical and logical access to systems that house Commonwealth data to a need to know basis and provide clear separation of duties.
- *Awareness and Training*
The vendor must provide the appropriate role specific training for staff to ensure that there is awareness and understanding of roles and responsibilities as they relate to the protections around the Commonwealth's data.
- *Audit and Accountability*
There must be sufficient auditing capability to ensure that actions are tracked and there is individual accountability for all actions taken by vendor staff.
- *Configuration Management*
The vendor must work within established baselines that provide minimal functionality needed to ensure service delivery without exposing unnecessary risk. The vendor must also employ structured change control processes that provide a level of coordination with the client agreed upon in a Service Level Agreement (SLA).
- *Contingency Planning*
The vendor must employ contingent planning policy and procedures that ensure service delivery based on agreed SLA levels while maintaining all Commonwealth data within the continental United States.
- *Identification and Authorization*
The vendor must employ appropriate identity and access management policies and procedures to ensure that access is appropriately authorized and managed at a level to ensure that access is provisioned and de-provisioned in a timely and efficient manner.

- *Incident Response*
The vendor must employ policy and procedures to ensure that an appropriate response to all identified security incidents are addressed in a timely manner and are reported to the appropriate parties in an agreed upon SLA timeframe. The vendor must also ensure that all staff are sufficient trained to ensure that they can identify situations that are classified as security incidents.
- *Maintenance*
The vendor must employ policy and procedures that ensure that all maintenance activities are conducted only by authorized maintenance staff leveraging only authorized maintenance tools.
- *Media Protection*
The vendor must employ policy and procedure to ensure that sufficient protections exist to protect Commonwealth data on all storage media throughout the media lifecycle and maintain documentation from media creation through destruction.
- *Physical and Environmental Controls*
The vendor must employ physical and environmental policies and procedures that ensure that the service and delivery infrastructure are located in a physically secure and environmentally protected environment to ensure the confidentiality, integrity, and availability of Commonwealth data.
- *Personnel Security*
The vendor must employ policies and procedures to ensure that all staff that have access to systems that house, transmit, or process Commonwealth data have been appropriate vetted and have been through a background check at the time of hire and periodically thereafter.
- *System and Communications Protections*
The vendor must employ physical and logical protection that protect system communications and communication media from unauthorized access and to ensure adequate physical protections from damage.

SECTION 40 – PROCUREMENT REQUIREMENTS

40.1 **Procurement Requirements**

Procurement requirements are listed under “**Procurement Laws, Preference, Regulations and Policies**” and “**Response to Solicitation**” located on the eProcurement Web page at <http://eprocurement.ky.gov> and <http://finance.ky.gov/services/eprocurement/Pages/VendorServices.aspx> respectively. The vendor must comply with all applicable statutes, regulations and policies related to this procurement.

40.2 **Contract Components and Order of Precedence**

The Commonwealth's acceptance of the Contractor's offer in response to the Solicitation RFP 758 1500000349, indicated by the issuance of a Contract Award by the Office of Procurement Services, shall create a valid Contract between the Parties consisting of the following:

1. Any written Agreement between the Parties;
2. Any Addenda to the Solicitation RFP 758 1500000349;
3. The Solicitation RFP 758 1500000349 and all attachments
4. Procurement Statutes, Regulations and Policies
5. Any Best and Final Offer;
6. Any clarifications concerning the Contractor's proposal in response to the Solicitation RFP 758 1500000349;
7. The Contractor's proposal in response to the Solicitation RFP 758 1500000349.

In the event of any conflict between or among the provisions contained in the Contract, the order of precedence shall be as enumerated above.

40.3 Final Agreement

This Contract represents the entire agreement between the parties with respect to the subject matter hereof. Prior negotiations, representations, or agreements, either written or oral, between the parties hereto relating to the subject matter hereof shall be of no effect upon this Contract.

40.4 Contract Provisions

If any provision of this Contract (including items incorporated by reference) is declared or found to be illegal, unenforceable, or void, then both the Commonwealth and the Contractor shall be relieved of all obligations arising under such provision. If the remainder of this Contract is capable of performance, it shall not be affected by such declaration or finding and shall be fully performed.

40.5 Type of Contract

This Contract shall be on the basis of a **firm fixed percentage discount off MSRP.**

40.6 Contract Usage

The contractual agreement with the Vendor will in no way obligate the Commonwealth of Kentucky to purchase any services or equipment under this Contract. The Commonwealth agrees, in entering into any contract, to purchase only such services in such quantities as necessary to meet the actual requirements as determined by the Commonwealth.

40.7 Addition or Deletion of Items or Services

The Office of Procurement Services reserves the right to add new and similar items, by issuing a Contract Modification, to this Contract with the consent of the Vendor. Until such time as the Vendor receives a Modification, the Vendor shall not accept Delivery Orders from any agency referencing such items or services.

40.8 Changes and Modifications to the Contract

Pursuant to KRS 45A.210 (1) and 200 KAR 5:311, no modification or change of any provision in the Contract shall be made, or construed to have been made, unless such modification is mutually agreed to in writing by the Contractor and the Commonwealth, and incorporated as a written amendment to the Contract and processed through the Office of Procurement Services and approved by the Finance and Administration Cabinet prior to the effective date of such modification or change pursuant to KRS 45A.210(1) and 200 KAR 5:311. Memorandum of understanding, written clarification, and/or correspondence shall not be construed as amendments to the Contract.

If the Contractor finds at any time that existing conditions made modification of the Contract necessary, it shall promptly report such matters to the Commonwealth Buyer for consideration and decision.

40.9 Changes in Scope

The Commonwealth may, at any time by written order, make changes within the general scope of the Contract. No changes in scope are to be conducted except at the approval of the Commonwealth.

40.10 Contract Conformance

If the Commonwealth Buyer determines that deliverables due under the Contract are not in conformance with the terms and conditions of the Contract and the mutually agreed-upon project plan, the Buyer may request the Contractor to deliver assurances in the form of additional Contractor resources and to demonstrate that other major schedules will not be affected. The Commonwealth shall determine the quantity and quality of such additional resources and failure to comply may constitute default by the Contractor. Notwithstanding the aforementioned, the Commonwealth can only return Apple Products that do not meet the specifications on Apple's website or as specified in the Statement of Work that has been mutually agreed to by the parties.

40.11 Assignment

The Contract shall not be assigned in whole or in part without the prior written consent of the Commonwealth Buyer.

40.12 Payment

The Commonwealth will make payment within thirty (30) working days of receipt of Contractor's invoice or of acceptance of goods and/or services in accordance with KRS 45.453 and KRS 45.454.

Payments are predicated upon successful completion and acceptance of the described work, services, supplies, or commodities, and delivery of the required documentation. Invoices for payment shall be submitted to the Agency Contact Person or his representative.

40.13 Contractor Cooperation in Related Efforts

The Commonwealth of Kentucky may undertake or award other contracts for additional or related work, services, supplies, or commodities, and the Contractor shall fully cooperate with such other contractors and Commonwealth employees. The Contractor shall not commit or permit any act that will interfere with the performance of work by any other contractor or by Commonwealth employees.

40.14 Contractor Affiliation

"Affiliate" shall mean a branch, division or subsidiary that is effectively controlled by another party. If any affiliate of the Contractor shall take any action that, if done by the Contractor, would constitute a breach of this agreement, the same shall be deemed a breach by such party with like legal effect.

40.15 Commonwealth Property

The Contractor shall be responsible for the proper custody and care of any Commonwealth-owned property furnished for Contractor's use in connections with the performance of this Contract. The Contractor shall reimburse the Commonwealth for its loss or damage, normal wear and tear excepted.

40.16 Confidentiality of Contract Terms

The Contractor and the Commonwealth agree that all information communicated between them before the effective date of the Contract shall be received in strict confidence and shall not be necessarily disclosed by the receiving party, its agents, or employees without prior written consent of the other party. Such material will be kept confidential subject to Commonwealth and Federal public information disclosure laws.

Upon signing of the Contract by all Parties, terms of the Contract become available to the public, pursuant to the provisions of the Kentucky Revised Statutes.

The Contractor shall have an appropriate agreement with its Subcontractors extending these confidentiality requirements to all Subcontractors' employees.

40.17 Confidential Information

The Contractor shall comply with the provisions of the Privacy Act of 1974 and instruct its employees to use the same degree of care as it uses with its own data to keep confidential information concerning client data, the business of the Commonwealth, its financial affairs, its relations with its citizens and its employees, as well as any other information which may be specifically classified as confidential by the Commonwealth in writing to the Contractor. All Federal and State Regulations and Statutes related to confidentiality shall be applicable to the Contractor. The Contractor shall have an appropriate agreement with its employees, and any subcontractor employees, to that effect, provided however, that the foregoing will not apply to:

- A. Information which the Commonwealth has released in writing from being maintained in confidence;
- B. Information which at the time of disclosure is in the public domain by having been printed and published and available to the public in libraries or other public places where such data is usually collected; or
- C. Information, which, after disclosure, becomes part of the public domain as defined above, through no act of the Contractor.

40.18 Advertising Award

The Contractor shall not refer to the Award of Contract in commercial advertising in such a manner as to state or imply that the firm or its services are endorsed or preferred by the Commonwealth of Kentucky without the expressed written consent of the Agency Technical Contact person listed in Section 50.5.

40.19 Patent or Copyright Infringement

The Contractor shall report to the Commonwealth promptly and in reasonable written detail, each notice of claim of patent or copyright infringement based on the performance of this Contract of which the Contractor has knowledge.

The Commonwealth agrees to notify the Contractor promptly, in writing, of any such claim, suit or proceeding, and at the Contractor's expense give the Contractor proper and full information needed to settle and/or defend any such claim, suit or proceeding.

If, in the Contractor's opinion, the equipment, materials, or information mentioned in the paragraphs above is likely to or does become the subject of a claim or infringement of a United States patent or copyright, then without diminishing the Contractor's obligation to satisfy any final award, the Contractor may, with the

Commonwealth's written consent, substitute other equally suitable equipment, materials, and information, or at the Contractor's options and expense, obtain the right for the Commonwealth to continue the use of such equipment, materials, and information.

The Commonwealth agrees that the Contractor has the right to defend, or at its option, to settle and the Contractor agrees to defend at its own expense, or at its option to settle, any claim, suit or proceeding brought against the Commonwealth on the issue of infringement of any United States patent or copyright or any product, or any part thereof, supplied by the Contractor to the Commonwealth under this agreement. The Contractor agrees to pay any final judgment entered against the Commonwealth on such issue in any suit or proceeding defended by the Contractor.

If principles of governmental or public law are involved, the Commonwealth may participate in the defense of any such action, but no costs or expenses shall be incurred for the account of the Contractor without the Contractor's written consent.

The Contractor shall have no liability for any infringement based upon:

- A. the combination of such product or part with any other product or part not furnished to the Commonwealth by the Contractor
- B. the modification of such product or part unless such modification was made by the Contractor
- C. the use of such product or part in a manner for which it was not designed

40.20 **Permits, Licenses, Taxes and Commonwealth Registration**

The Contractor shall procure all necessary permits and licenses and abide by all applicable laws, regulations, and ordinances of all Federal, State, and local governments in which work under this Contract is performed.

The Contractor shall maintain certification of authority to conduct business in the Commonwealth of Kentucky during the term of this Contract. Such registration is obtained from the Secretary of State, who will also provide the certification thereof. Additional local registration or license may be required.

The Contractor shall pay any sales, use, and personal property taxes arising out of this Contract and the transaction contemplated hereby. Any other taxes levied upon this Contract, the transaction, or the equipment or services delivered pursuant hereto shall be borne by the Contractor.

40.21 **EEO Requirements**

The Equal Employment Opportunity Act of 1978 applies to All State government projects with an estimated value exceeding \$500,000. The Contractor shall comply with all terms and conditions of the Act.

<http://finance.ky.gov/services/eprocurement/Pages/VendorServices.aspx>.

40.22 **Provisions for Termination of the Contract**

This Contract shall be subject to the termination provisions set forth in 200 KAR 5:312.

40.23 **Bankruptcy**

In the event the Contractor becomes the subject debtor in a case pending under the Federal Bankruptcy Code, the Commonwealth's right to terminate this Contract may be subject to the rights of a trustee in bankruptcy to assume or assign this Contract. The trustee shall not have the right to assume or assign this Contract unless the trustee (a) promptly cures all defaults under this Contract; (b) promptly compensates the Commonwealth for the monetary damages incurred as a result of such default, and (c) provides adequate assurance of future performance, as determined by the Commonwealth.

40.24 **Conformance with Commonwealth & Federal Laws/Regulations**

This Contract is subject to the laws of the Commonwealth of Kentucky and where applicable Federal law. Any litigation with respect to this Contract shall be brought in state or federal court in **Franklin County, Kentucky in accordance with KRS 45A.245.**

40.25 **Accessibility**

Vendor hereby warrants that the products or services to be provided under this Contract comply with the accessibility requirements of Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794d), and its implementing regulations set forth at Title 36, Code of Federal Regulations, part 1194. Vendor further warrants that the products or services to be provided under this Contract comply with existing federal standards established under Section 255 of the Federal Telecommunications Act of 1996 (47 U.S.C. § 255), and its implementing regulations set forth at Title 36, Code of Federal Regulations, part 1193, to the extent the Vendor's products or services may be covered by that act. Vendor agrees to promptly respond to and resolve any complaint regarding accessibility of its products or services which is brought to its attention.

40.26 Access to Records

The contractor, as defined in KRS 45A.030 (9) agrees that the contracting agency, the Finance and Administration Cabinet, the Auditor of Public Accounts, and the Legislative Research Commission, or their duly authorized representatives, shall have access to any books, documents, papers, records, or other evidence, which are directly pertinent to this contract for the purpose of financial audit or program review. Records and other prequalification information confidentially disclosed as part of the bid process shall not be deemed as directly pertinent to the contract and shall be exempt from disclosure as provided in KRS 61.878(1)(c). The contractor also recognizes that any books, documents, papers, records, or other evidence, received during a financial audit or program review shall be subject to the Kentucky Open Records Act, KRS 61.870 to 61.884.

In the event of a dispute between the contractor and the contracting agency, Attorney General, or the Auditor of Public Accounts over documents that are eligible for production and review, the Finance and Administration Cabinet shall review the dispute and issue a determination, in accordance with Secretary's Order 11-004. (See Attachment E).

40.27 Prohibitions of Certain Conflicts of Interest

In accordance with KRS 45A.340, the contractor represents and warrants, and the Commonwealth relies upon such representation and warranty, that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services. The contractor further represents and warrants that in the performance of the contract, no person, including any subcontractor, having any such interest shall be employed.

In accordance with KRS 45A.340 and KRS 11A.040 (4), the contractor agrees that it shall not knowingly allow any official or employee of the Commonwealth who exercises any function or responsibility in the review or approval of the undertaking or carrying out of this contract to voluntarily acquire any ownership interest, direct or indirect, in the contract prior to the completion of the contract.

40.28 No Contingent Fees

No person or selling agency shall be employed or retained or given anything of monetary value to solicit or secure this contract, excepting bona fide employees of the Offeror or bona fide established commercial or selling agencies maintained by the Offeror for the purpose of securing business. For breach or violation of this provision, the Commonwealth shall have the right to reject the proposal or cancel the contract without liability.

40.29 **Intentionally Left Blank**

40.30 **Contract Claims**

The Parties acknowledge that KRS 45A.225 to 45A.290 governs contract claims.

40.31 **Limitation of Liability**

The liability of the Commonwealth related to contractual damages is set forth in KRS 45A.245. The Vendor's liability for damages to the Commonwealth should be limited to the greater of \$1,000,000 or two times the contract purchase. The foregoing limitation of liability should not apply to claims covered by other specific provisions calling for liquidated damages or specifying a different limitation of liability, or to claims for injury to persons or damage to property caused by the Vendor's negligence or willful or wanton conduct. In no event should the Vendor be liable for any indirect, special, punitive or consequential damages unless otherwise specified in the Contract. In no event shall Vendor's total liability exceed \$5,000,000 in the aggregate, for the term of the contract.

40.32 **Discrimination (Effective April 8, 2015)**

Discrimination (because of race, religion, color, national origin, sex, sexual orientation, gender identity, age, or disability) is prohibited. This section applies only to contracts utilizing federal funds, in whole or in part. 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, national origin, sex, sexual orientation, gender identity, or age. The contractor further agrees to comply with the provisions of the Americans with Disabilities Act (ADA), Public Law 101-336, and applicable federal regulations relating thereto prohibiting discrimination against otherwise qualified disabled individuals under any program or activity. The contractor agrees to provide, upon request, needed reasonable accommodations. The contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, national origin, sex, sexual orientation, gender identity, age or disability. Such action shall include, but not be limited to the following; employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensations; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.
2. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive

consideration for employment without regard to race, religion, color, national origin, sex, sexual orientation, gender identity, age or disability.

3. The contractor will send to each labor union or representative or workers with which he has a collective bargaining agreement or other contract or understanding, a notice advising the said labor union or workers' representative of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance.
4. The contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965 as amended, and of the rules, regulations and relevant orders of the Secretary of Labor.
5. The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, as amended, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.
6. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations or orders, this contract may be cancelled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further government contracts or federally-assisted construction contractors in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, as amended, and such other sanctions may be imposed and remedies invoked as provided in or as otherwise provided by law.
7. The contractor will include provisions of paragraphs (1) through (7) of section 202 of Executive Order 11246 in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor, issued pursuant to section 204 of Executive Order No. 11246 of September 24, 1965, as amended, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontractor or purchase order as the administering agency may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a

result of such direction by the agency the contractor may request the United States to enter into such litigation to protect the interests of the United States.

- 40.33 **Minimum Wage for the Commonwealth's Service Providers** (Effective July 1, 2015)
The offeror shall pay to any worker directly performing a service called for in the contract, and to any person who provides a service ancillary thereto for at least 20% of his or her working time in any given work week, a minimum of \$10.10 per hour, or \$4.90 per hour for tipped employees, for those hours worked in connection with the contract.

SECTION 50 – SCOPE OF WORK

50.1 **Agencies to Be Served**

This contract shall be for use by **Kentucky public school districts, the Kentucky School for the Blind (KSB), the Kentucky School for the Deaf (KSD) and the Kentucky Education and Workforce Development Cabinet which includes but is not limited to the Kentucky Department of Education (KDE), the Education Professional Standards Board (EPSB), Kentucky Educational Television (KET) and the Council on Postsecondary Education (CPE).** No shipments shall be made except upon receipt by Vendor of an official Delivery Order from a using agency.

50.2 **Extending the Contract Use to Other Agencies**

The Office of Procurement Services reserves the right, with the consent of the Vendor, to offer the Master Agreement to other state agencies requiring the product(s) or service(s).

50.3 **Term of Contract and Renewal Options**

The initial term of the Contract shall be for valid through **June 30, 2016.**

This Contract may be renewed at the completion of the initial Contract period for **two (2) additional two-year** periods upon the mutual agreement of the Parties. Such mutual agreement shall take the form of a Contract Modification as described in Section 40.8.

At the end of the contract the Vendor shall provide all agency data in a form that can be converted to any subsequent system of the agency's choice. The Vendor shall cooperate to this end with the Vendor of the agency's choice, in a timely and efficient manner.

The Commonwealth reserves the right not to exercise any or all renewal options. The Commonwealth reserves the right to extend the contract for a period less than the length of the above-referenced renewal period if such an extension is determined by the Commonwealth Buyer to be in the best interest of the Commonwealth.

The Commonwealth reserves the right to renegotiate any terms and/or conditions as may be necessary to meet requirements for the extended period. In the event proposed revisions cannot be agreed upon, either party shall have the right to withdraw without prejudice from either exercising the option or continuing the contract in an extended period.

50.4 **Basis of Price Revisions**

PRICE ADJUSTMENTS: Unless otherwise specified, the prices established by this Contract shall remain firm for the contract period subject to the following:

A: **Price Increases:** A price increase shall not occur during the first twelve (12) months of the contract. A vendor may request a price increase after twelve (12) months of the contract, which may be granted or denied by the Commonwealth. The Contract holder must request in writing a price increase at least thirty (30) days prior to the effective date, and shall provide firm proof that the price increase(s) is justified. The Office of Procurement Services may request additional information or justification. If the price increase is denied, the Contract holder may withdraw from the Contract without prejudice upon written notice. Provided, however, that the Vendor must continue service, at the Contract prices, until a new Contract can be established (not to exceed sixty (60) days).

B: **Price Decreases:** The Contract holder is required to furnish the Office of Procurement Services with notice of any price decreases as soon as such decreases are available.

C: **Extended Contract Periods:** If the Contract provides for an optional renewal period, a price adjustment may be granted at the time the Contract is renewed, subject to price increase justification as required in Paragraph A "Price Increases" as stated above.

50.5 **Notices**

After the Award of Contract, all programmatic communications with regard to day-to-day performance under the contract are to be made to the Agency technical contact(s) identified during the negotiation phase of this procurement.

Agency Technical Contact Information
Jessica Abbott

Commonwealth of Kentucky
Kentucky Department of Education (KDE)
Office of Knowledge Information Data Services
500 Mero Street, 21st Floor CPT
Frankfort, KY 40601
Phone: (502) 564-2020 x 2448
Email: Jessica.Abbott@education.ky.gov

After the Award of Contract, all communications of a contractual or legal nature are to be made to the Commonwealth Buyer.

Commonwealth Buyer
Susan S. Noland
Commonwealth of Kentucky
Finance and Administration Cabinet
Office of Procurement Services
702 Capitol Avenue, Room 096
Frankfort, KY 40601
Phone: (502) 564-5951
Email: Susan.Noland@ky.gov

50.6 Subcontractors

The Contractor is permitted to make subcontract(s) with any other party for furnishing any of the work or services herein. The Contractor shall be solely responsible for performance of the entire Contract whether or not subcontractors are used. The Commonwealth shall not be involved in the relationship between the prime contractor and the subcontractor. Any issues that arise as a result of this relationship shall be resolved by the prime contractor. All references to the Contractor shall be construed to encompass both the Contractor and any subcontractors of the Contractor. Payments for services performed by subcontractors shall be addressed to the contract holder.

50.7 Qualified Vendors

A qualified vendor is an original equipment manufacturer (OEM) of enterprise level instructional devices and related services that meets or exceeds all technical specifications.

The manufacturer may propose the usage of up to three (3) agents. The Kentucky Department of Education reserves the right to review and give final approval to the proposed agents and/or any change in agents after the initial contract award. The manufacturer is still responsible for ALL aspects of the

contract requirements regardless of the usage of an agent(s). A manufacturer SHALL NOT be allowed to have more than three (3) agents.

For this Contract, an agent is defined as a company or individual that represents the manufacturer in marketing, quoting items from contract, purchase order review & acceptance, delivery and/or warranty and support services of the manufacturer's product(s). Payment for invoices from contract purchases may be addressed to either the contract holder or an agent if the KETS customer is working directly with an approved agent.

50.8 **Scope of Work**

Provide enterprise instructional device hardware and related services that at a minimum includes the following:

1. **Vendor Single Point of Contact**

The vendor should name a person that will be the single point of contact (SPOC) for contract issues.

The SPOC should be aggressive in sharing contract information, including but not limited to current solution, offerings, pricing and other strategic information to the KDE and KETS customers.

The contract holder should ensure that this person and all salespersons of their product will be knowledgeable in:

- All the details of the KETS contract.
- The Kentucky school, district office and KDE customer base.
- The most current KETS Master Plan on our Web site and year round current events in KETS.

Upon contract award, the Vendor's SPOC should provide a description of a copy of procedures for requesting escalation, complaint resolution and identify the staff available for installations, billing problems, etc. The Vendor should update this information annually at a minimum.

2. **Categories**

The following categories should be established KETS Instructional Devices:

- Enterprise Desktops
- Enterprise Laptops
- Instructional Device Maintenance/Warranty Support
- Enterprise Tablets (Optional)
- Monitors (Optional)
- Instructional Device Accessories (Optional)
- Instructional Device Installation/Initial Configuration (Optional)

- **Services (Optional)**

Services should include but not be limited to: de-installation, training, migration, and optimization of products offered or supplied under the Master Price Agreement. These types of services may include, but are not limited to: de-installation, factory integration (software or equipment components), asset management, recycling/disposal, training and certification, pre-implementation design, disaster recovery planning and support, service desk/helpdesk, and any other directly related technical support service required for the effective operation of a product offered or supplied.

Consumer grade devices, which are defined as devices that are not included in the manufacturer's enterprise line of devices are not included in this Contract.

Minimum technical specifications are included for enterprise desktops and laptops in Attachment H.

Categories including tablets, instructional device accessories and services are optional. Vendors may include these optional categories if available. KETS customers may purchase products or services included in the optional categories from either this KETS contract or other approved sources.

3. New/Revised Products

Vendors are encouraged to update their product lines and solutions as quickly as possible. As new models of products and/or updates to solutions listed in the KETS Configuration List become available the vendor will notify the KIDS vendor manager. KIDS reserve the right to approve all new and revised products and solutions, including pricing prior to the vendor being able to include it in the KETS Configuration List . The vendor should provide an evaluation unit of all hardware included on the contract unless waived by the KDE. KDE shall complete and sign the Apple Equipment Loan Agreement for any evaluation units Apple agrees to provide. This Agreement can be found at <http://seed.apple.com/docs/hlatemplate.pdf>.

4. Pricing

Contract Pricing: Equitable pricing for the solutions listed in the KETS Configuration list shall be offered to all KETS customers. Kentucky public school districts, the Kentucky school for the Blind and the Kentucky School for the Deaf may qualify for discounts including but not limited to operating system or other education discounts. The Commonwealth of Kentucky's public school districts shall purchase from the KETS Master Agreements for the instructional device solutions and categories that have been approved by

KDE. Vendors shall be able to effectively handle this magnitude of sales, meet mutually agreed upon delivery deadlines Apple Products and support equitably across every county in our state while meeting the performance standards for the life of the contract. It is mandatory that vendors have capacity to provide contract management and support across every county in the Commonwealth. For solutions listed in the KETS Configuration List, he vendor shall provide on-site support to **every school** in **every county** with the same timelines and costs with no exceptions for location.

Promotional Pricing: The Kentucky Department of Education may identify set dates where promotional pricing is encouraged by contract holders to KETS customers. During the promotional period(s) deeper discounts which are available regardless of quantities purchased may be set by the contract holder. This promotional pricing must be submitted and approved by the KETS vendor manager and be available to all KETS customers. At the close of a promotion period the prices would return to the prices prior to the promotional period. Any promotional pricing must be equitable and offered to all KETS customers during that period.

Operating System Pricing: Vendor may offer the best operating system pricing available to the KETS customer. This may include but is not limited to OEM pricing and National Academic (Shape the Future) pricing.

Negotiation of Price: During the life of the contract, KETS customers are encouraged to negotiate a better price for solutions listed in the KETS Configuration List. However, once a lower price or better discount has been negotiated with one district, for products listed in the KETS Configuration List it becomes the new statewide price/discount for device configuration for the duration of the KETS contract.

5. Personal Purchases

All staff of KETS customers, including public school staff and students, may purchase from this contract for their personal use. All personal use purchases must be from KETS Configuration List and facilitated through KETS. This specifically includes certified teachers as mandated by KRS 156.690. On-site warranty service for personal purchases from this contract will take place at the staff member's school or district office. Applicable taxes and/or shipping charges may apply to personal purchases.

6. Contract Quotes and Invoicing

Vendor quotes and invoices shall be submitted to the customer. Vendor shall submit invoices only for items ordered, delivered and accepted by the customer. Each quote and invoice should include at a minimum:

- State/KETS contract number
- Customer purchase order number
- Customer name and address
- Date of Order
- Date of Installation (if applicable)
- Detailed equipment charges
- Hourly rate, if applicable
- Grand total for the quote or invoice

7. Leasing

Appendix A should be used for Leasing only to the extent the terms are not in conflict with the Commonwealth of Kentucky's applicable law. Financing is not allowed on this Master Agreement.

8. Web site

The contract holder shall maintain their own Web site where solutions and prices offered on the KETS contract may be easily/quickly viewed. The web site should allow KETS customers to place and view orders. This information must be easily accessible and easily recognized as "KETS Master Agreement" pricing. The vendor Web site shall also clearly identify the contract number and vendor contact information. The vendor shall work with the KIDS Vendor Manager to satisfy the Web site requirements within (90) ninety days of a contract award.

9. Warranty

The Vendor should be able to provide various levels of warranty service for all hardware offered on the contract. Vendor shall be required to include three (3) years of onsite warranty coverage in the initial purchase cost of desktops and three (3) years of depot warranty coverage in the initial purchase cost of laptops. Vendor may offer optional upgrades at an additional fee to four (4) or five (5) year on-site and depot warranty and faster repair times such as next business day no troubleshooting if available. After the initial three (3) year period, if hardware maintenance is desired, it will be the responsibility of the customer to procure from either this contract or other approved sources.

Depot and on-site warranty shall meet the following criteria:

- The KETS customer's primary period of service (PPS) falls between the hours of 8:00am and 5:00pm customer's local time, Monday through Friday, excluding state observed holidays. The vendor shall be available to provide warranty service during the KETS's customer's primary period of service;

- Vendor shall have a toll-free number for all calls and a call tracking system);
- The vendor shall call/email the customer back within one (1) hour of placing call to provide applicable information including ticket number;
- The three (3) year warranty coverage included for the solutions listed in the KETS Configuration List shall be either Depot or on-site and is defined as:
 - Depot Warranty: Depot warranty means that upon determining the hardware requires service, the vendor will provide to the customer a shipping container by the close of the customer's next business day for the customer to package and ship the hardware to the manufacturer's authorized repair facility. Hardware being serviced through depot warranty must be fully operational and returned to the customer within forty (40) business hours upon receipt of the depot shipment from the customer. Depot warranty periods begin at the time of delivery of the equipment. The vendor shall be responsible for all shipping costs.
 - On-site Warranty: On-site warranty means that the vendor goes to the location of the equipment purchased, in a school, district office, state agency, etc. On-site warranty shall be a full on-site service, parts and labor warranty to begin at the time of delivery of equipment to the customer's site. Hardware being serviced through on-site warranty must be fully operational within forty-eight (48) working hours.
- All technicians shall be properly certified to service the hardware;
- The vendor may perform diagnostics and repair remotely if applicable;
- Vendor is not responsible for disaster recovery;
- Products that are delivered but defective "out of the box" shall be processed per Apple's then current return policy
- Replacement parts shall be new or reconditioned, and of equal or better quality than original parts;
- There shall be no charge for any shipping and handling of parts or labor charges for equipment under warranty;
- The vendor shall ensure the cost is the same throughout the state for warranty services;
- The vendor shall be provided access to the customer's building where the equipment is located as required to fulfill customer service requests in the event of onsite service.
- Warranty does not extend to hardware that has been damaged or rendered defective due to:
 - a result of accident, misuse or abuse;
 - a result of an act of God;
 - Operation outside the usage parameters stated in the products user

- manual;
- modification of the product
- A result of service by anyone other than (manufacturer), contract agent who is authorized to provide service, or authorized service provider. Expendable parts, such as non-rechargeable batteries, carrying cases, etc. are not covered. Damage due to loss of any programs, data or removable storage media is not covered.

Self Maintainer

The vendor must be able to facilitate the customer to become a self-maintainer of hardware that is purchased from the contract. Being a self-maintainer allows the customer to have staff certified on the manufacturer's brand of hardware to provide in-house servicing for hardware programs. Several districts within the Commonwealth currently are manufacturer certified to perform such service, which provides for cost savings as well as the opportunity within some districts for the Student Technology Leadership Program (STLP) to gain hands-on experience that can be invaluable educational experience.

Warranty Penalties

There shall be a complaint desk at KDE site so our customers can quickly document vendors that are failing to meet the service requirements of the contract. Quarterly reports will be prepared and submitted by the vendor to the KETS Vendor Manager which will assist us in identifying vendors whom have not successfully met service response times. The vendor shall meet service specifications for a minimum of 97% of total annual service calls. The vendor is allowed this three percent (3%) failure rate based on total service calls they receive annually due to vehicle break down, parts that get lost, addresses being difficult to find, etc.

Vendors who exceed the three percent (3%) failure rate during the 1st quarter shall be required to meet with the KIDS Vendor Manager to establish a corrective plan for warranty service. Vendors who exceed the three percent (3%) failure rate for two (2) consecutive quarters shall be required to meet with the KIDS Vendor Manager to establish a corrective plan for warranty service and the KIDS may recommend a two (2) week suspension of the vendor contract to the OPS. Vendors who exceed the three percent (3%) failure rate for three (3) consecutive quarters shall be required to meet with the KIDS Vendor Manager to establish a corrective plan for warranty service and the KIDS may recommend a three (3) week suspension of the vendor contract to the OPS. Vendors who exceed the three percent (3%) failure rate for four (4) consecutive quarters shall be required to meet with the KIDS

Vendor Manager to establish a corrective plan for warranty service and the KIDS may recommend termination of the vendor contract to the OPS.

The contract holder shall be held solely accountable for all services conducted under the terms and conditions specified in this warranty. Service calls taken by any technical support center(s) shall be quickly turned over to second and third levels of support for quick resolution rather than attempts to resolve issues at that point. All support personnel shall be certified by the manufacturer of equipment (for example, if this vendor supplies Vendor X equipment, support staff shall hold a manufacturer's certification and be certified by Vendor X to perform service on Vendor X equipment).

10. Vendor's Contract Reporting

The vendor shall submit the following reports quarterly to the Kentucky Department of Education KETS Vendor Manager:

- A. Sales Report - The vendor shall maintain accurate records indicating sales from the KETS contract. Reports will contain the following fields: contract number, invoice date, customer name, product number, description (must include model name and number), unit price, list price, quantity purchased, total price, discount off MSRP.
- B. Warranty/Maintenance Report - The vendor shall maintain accurate records indicating service performance of hardware purchased from the KETS contract. Reports will contain the following fields: Customer name, service call date, Hardware & Service Description including models and versions respectively, Warranty or SLA Coverage, and Service Completion Date.

The vendor shall prepare and submit electronically this information no later than ten (10) business days after the end of each quarter to the KETS Vendor Manager. It will be responsibility of the vendor to submit the quarterly sales reports. The KETS vendor manager or the KDE shall not be responsible for reminders to submit reports. The KDE Office of KIDS shall report any failure to submit and/or late submissions of sales reports on the annual contract review.

11. Delivery, Delivery Penalties, Delivery Penalty Waiver

A. Delivery

All deliveries of equipment shall be provided within thirty (30) calendar days of the vendor's receipt of the purchase order from the customer, unless otherwise requested by the purchasing agency in writing. Delivery

is defined as the receipt of goods and completion of installation, if required.

Customers purchasing from this Contract shall have thirty (30) calendar days from the date the customer receives a complete order to notify the vendor of any issues with the order (i.e. missing or damaged parts). The vendor may consider the order accepted by the customer after the close of the thirty (30) calendar day window.

B. Delivery Penalties

The Vendor agrees that when delivery is not made within the contracted due date, five percent (5%) per calendar week may be deducted from the Vendor's invoice for each calendar week the Vendor fails to meet the contracted delivery date.

The Vendor agrees that when delivery and/or installation is not made within the contracted timeframes, five percent (5%) per calendar week from the total invoice amount may be deducted from the vendor's invoice for each day the Vendor fails to meet the contracted timeframe. Penalties may continue to be charged to the vendor until the delivery and installation if applicable is complete.

The five percent (5%) per calendar week penalty will only apply when delivery and/or installation is delayed a complete 7-day calendar week (and not partial calendar weeks).

C. Delivery Penalty Waiver

The vendor shall not be penalized if within the thirty (30) day delivery period, they have supplied KIDS and the customer with a written notice indicating the particular model ordered is not available in inventory anymore and a newer different model will be shipped in its place. In this case, the vendor should have submitted the new model to KIDS for approval and evaluation testing unless the evaluation of that model is waived by KIDS. The new model should not be shipped to the customer until which time the model has been added to the KETS contract. The vendor should not use this penalty waiver to notify customers falsely with intentions to stall and send the same unit originally ordered. This conduct may result in termination of contract. Once the vendor receives notification their new model is now available for sales; the thirty (30) day clock starts again.

12. National School Lunch Program Compliance

This Contract shall meet the requirements of the National School Lunch Program (NSLP) per Attachment I.

IV. Pricing

Instructional Device Categories	Discount off MSRP
Enterprise Desktops	4%
Enterprise Laptops	4%
Instructional Device Maintenance/Warranty Support	0%

Instructional Device Categories	Discount off MSRP
Enterprise Tablets	0%
Monitors	4%
Instructional Device Accessories	4%
Instructional Device Installation/Initial Configuration	0%
Services	0%

Enterprise Desktop includes Mac Pro, iMac and Mac mini

Enterprise Laptop includes MacBook Pro and MacBook Air

V. Approvals

This Contract is subject to the terms and conditions as stated. By executing this Contract, the parties verify that they are authorized to bind this agreement and that they accept the terms of this agreement.

This Contract may be executed electronically in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same Contract.

This Contract is invalid until properly approved and executed by the Finance and Administration Cabinet.

1st Party: Apple Incorporated, as Contracting Agent (“Contractor” or “Vendor” or “Apple”)

Printed name Title

Signature Date

2nd Party: Kentucky Department of Education, (“the Commonwealth” or “Customer” or “KDE”)

Printed name Title

Signature Date

**Approved by the Finance and Administration Cabinet
Office of Procurement Services**

Donald R. Speer _____
Printed name Title

Signature Date

Attachment B – Intentionally Left Blank
Attachment C – Intentionally Left Blank
Attachment D – Intentionally Left Blank
Attachment E – Secretary’ Order
Attachment F – Intentionally Left Blank
Attachment G – Personal Information Security and Breach Investigation Procedures and Practices Act (KRS 61.931, ET SEQ.)
Attachment H – KETS Instructional Device Hardware Minimum Specifications
Attachment I – Compliance with Federal School Lunch Administration
Attachment J – Intentionally Left Blank
Attachment K – Data Security and Breach Protocols
Attachment L – Executive Order for Minimum Wage for the Commonwealth’s Service Providers
Appendix A – Apple Lease Agreement

ATTACHMENT E

SECRETARY'S ORDER 11-004

FINANCE AND ADMINISTRATION CABINET

Vendor Document Disclosure

WHEREAS, in order to promote accountability and transparency in governmental operations, the Finance and Administration Cabinet believes that a mechanism should be created which would provide for review and assistance to an Executive Branch agency if said agency cannot obtain access to documents that it deems necessary to conduct a review of the records of a private vendor that holds a contract to provide goods and/or services to the Commonwealth; and

WHEREAS, in order to promote accountability and transparency in governmental operations, the Finance and Administration Cabinet believes that a mechanism should be created which would provide for review and assistance to an Executive Branch agency if said agency cannot obtain access to documents that it deems necessary during the course of an audit, investigation or any other inquiry by an Executive Branch agency that involves the review of documents; and

WHEREAS, KRS 42.014 and KRS 12.270 authorizes the Secretary of the Finance and Administration Cabinet to establish the internal organization and assignment of functions which are not established by statute relating to the Finance and Administration Cabinet; further, KRS Chapter 45A.050 and 45A.230 authorizes the Secretary of the Finance and Administration Cabinet to procure, manage and control all supplies and services that are procured by the Commonwealth and to intervene in controversies among vendors and state agencies; and

NOW, THEREFORE, pursuant to the authority vested in me by KRS 42.014, KRS 12.270, KRS 45A.050, and 45A.230, I, Lori H. Flanery, Secretary of the Finance and Administration Cabinet, do hereby order and direct the following:

- I. Upon the request of an Executive Branch agency, the Finance and Administration Cabinet ("FAC") shall formally review any dispute arising where the agency has requested documents from a private vendor that holds a state contract and the vendor has refused access to said documents under a claim that said documents are not directly pertinent or relevant to the agency's inquiry upon which the document request was predicated.
- II. Upon the request of an Executive Branch agency, the FAC shall formally review any situation where the agency has requested documents that the agency deems necessary to conduct audits, investigations or any other formal inquiry where a dispute has arisen as to what documents are necessary to conclude the inquiry.

- III. Upon receipt of a request by a state agency pursuant to Sections I & II, the FAC shall consider the request from the Executive Branch agency and the position of the vendor or party opposing the disclosure of the documents, applying any and all relevant law to the facts and circumstances of the matter in controversy. After FAC's review is complete, FAC shall issue a Determination which sets out FAC's position as to what documents and/or records, if any, should be disclosed to the requesting agency. The Determination shall be issued within 30 days of receipt of the request from the agency. This time period may be extended for good cause.
- IV. If the Determination concludes that documents are being wrongfully withheld by the private vendor or other party opposing the disclosure from the state agency, the private vendor shall immediately comply with the FAC's Determination. Should the private vendor or other party refuse to comply with FAC's Determination, then the FAC, in concert with the requesting agency, shall effectuate any and all options that it possesses to obtain the documents in question, including, but not limited to, jointly initiating an action in the appropriate court for relief.
- V. Any provisions of any prior Order that conflicts with the provisions of this Order shall be deemed null and void.

ATTACHMENT G
**PERSONAL INFORMATION SECURITY AND BREACH INVESTIGATION
PROCEDURES
AND PRACTICES ACT (KRS 61.931, ET SEQ.)**

Vendors that receive Personal Information as defined by and in accordance with Kentucky's Personal Information Security and Breach Investigation Procedures and Practices Act, KRS 61.931, et seq., (the "Act"), shall secure and protect the Personal Information by, without limitation, complying with all requirements applicable to non-affiliated third parties set forth in the Act.

"Personal Information" is defined in accordance with KRS 61.931(6) as "an individual's first name or first initial and last name; personal mark; or unique biometric or genetic print or image, in combination with one (1) or more of the following data elements:

- a) An account number, credit card number, or debit card number that, in combination with any required security code, access code or password, would permit access to an account;
- b) A Social Security number;
- c) A taxpayer identification number that incorporates a Social Security number;
- d) A driver's license number, state identification card number or other individual identification number issued by an agency;
- e) A passport number or other identification number issued by the United States government; or
- f) Individually Identifiable Information as defined in 45 C.F.R. sec. 160.013 (of the Health Insurance Portability and Accountability Act), except for education records covered by the Family Education Rights and Privacy Act, as amended 20 U.S.C. sec 1232g."

As provided in KRS 61.931(5), a "non-affiliated third party" means "any person or entity that has a contract or agreement with the Commonwealth and receives (accesses, collects or maintains) personal information from the Commonwealth pursuant to the contract or agreement."

The vendor hereby agrees to cooperate with the Commonwealth in complying with the response, mitigation, correction, investigation, and notification requirements of the Act.

The vendor shall immediately notify as soon as possible, but not to exceed seventy-two (72) hours, the contracting agency, the Office of Procurement Services, the Commonwealth Office of Technology and the NG-KIH Program Office of a determination of or knowledge of a breach, unless the exception set forth in KRS 61.932(2)(b)2 applies and the vendor abides by the requirements set forth in that exception.

The vendor hereby agrees that the Commonwealth may withhold payment(s) owed to the vendor for any violation of the Identity Theft Prevention Reporting Requirements.

The vendor hereby agrees to undertake a prompt and reasonable investigation of any breach as required by KRS 61.933.

Upon conclusion of an investigation of a security breach of Personal Information as required by KRS 61.933, the vendor hereby agrees to an apportionment of the costs of the notification, investigation, and mitigation of the security breach.

In accordance with KRS 61.932(2)(a) the vendor shall implement, maintain, and update security and breach investigation procedures that are appropriate to the nature of the information disclosed, that are at least as stringent as the security and breach investigation procedures and practices established by the Commonwealth Office of Technology:

<http://technology.ky.gov/ciso/Pages/InformationSecurityPolicies.StandardsandProcedures.aspx>

ATTACHMENT H
KETS Instructional Device Hardware Minimum Specifications

KETS Instructional Device Hardware Minimum Specifications		
	ENTERPRISE DESKTOP SOLUTION	ENTERPRISE LAPTOP SOLUTION
Processor	Intel or AMD	Intel or AMD
Installed Memory	4GB (1x4GB DIMM)	4GB (1x4GB DIMM)
Memory Expansion	16 GB	8 GB
Cache	2 MB, Integrated L2 Cache	2 MB, Integrated L2 Cache
Slots	2 PCI/PCI X/PCI Express slots	
Hard Drive	Internal persistent storage	Internal persistent storage
Audio	Audio out and microphone	Audio out and microphone
Video	Integrated/shared video	Integrated/shared video
Graphics Support	Graphics support 1280 x 1024 @ 75Hz	
Ports - VGA Graphics	1 VGA Video Port	1 VGA Video Port or HDMI capable
Ports - Universal Serial Bus (USB)	4 USB (2.0 and 2 USB 3.0)	1 USB Ports (powered or USB 3.0)
CD/Rom	Need in remarks "Does not come with CD RW/DVD ROM"	Need in remarks "Does not come with CD RW/DVD ROM"
Display		1024 x 768
Battery	N/A	4.5-hour usage without plug in
Input Devices - Mouse	2 Button Optical Mouse – USB	
Input Devices - Keyboard	101 Key Keyboard - USB	
Operating System	Licensed for latest Apple or Windows OS	Laptop - Licensed for latest Windows OS or Apple OS
Drivers	Shall have all standard drivers installed on each unit	Shall have all standard drivers installed on each unit
Driver - Network Interface	Include, at a minimum, network interface, hard disk, video, etc.	Include, at a minimum, network interface, hard disk, video, etc.
Network	Configured with one (1) Ethernet network adapter (10/100/1000)	Configured Ethernet network adapter (10/100/1000) or Internal wireless (802.11 b/g/n)
Energy Star Compliant	Yes	Yes
EPEAT Compliant	Yes	Yes
Warranty	3 years	3 years

ATTACHMENT I COMPLIANCE WITH FEDERAL SCHOOL LUNCH ADMINISTRATION

This Contract shall be governed in all respects as to validity, construction, capacity, performance, or otherwise by the laws of the Commonwealth of Kentucky.

Vendors providing service under this contract assure the Commonwealth that they are conforming to and otherwise complying with the following:

- A. Vendors providing services under this Contract assure the Commonwealth they are conforming to the provisions of the Civil Rights Act of 1964 as amended.
- B. Vendors shall comply with the Executive Order 11246 of September 24, 1965, entitled, "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60). Labor regulations (41 CFR Part 60). (all construction contracts awarded in excess of \$10,000 by grantees and their contractors or subgrantees).
- C. Vendor shall comply with the Copeland "Anti-Kickback" Act ([18 U.S.C. 874](#)) as supplemented in Department of Labor regulations (29 CFR Part 3). (All contracts and subgrants for construction or repair
- D. Vendors shall comply with the Davis-Bacon Act ([40 U.S.C. 276a](#) to [276a-7](#)) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts in excess of \$2000 awarded by grantees and subgrantees when required by Federal grant program legislation)
- E. Vendor shall grant access by the grantee, the subgrantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.
- F. Vendor shall retain all records for three years after grantees or subgrantees make final payments and all other pending matters are closed.
- G. Vendor shall comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act ([40 U.S.C. 327-330](#)) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts awarded by grantees and subgrantees in excess of \$2000, and in excess of \$2500 for other contracts which involve the employment of mechanics or laborers)
- H. Vendors shall comply with applicable federal, state, and local laws and regulations pertaining to wages, hours, and conditions of employment. In accordance with Federal Law and U.S. Department of Agriculture policy, this institution is prohibited from discriminating on the basis of race, color, national origin, sex, age, or disability.

The contractor further agrees to comply with the provisions of the Americans with Disabilities Act (ADA), Public Law 101-336, and applicable federal regulations relating thereto prohibiting discrimination against otherwise qualified disabled individuals under any program or activity. The contractor agrees to provide, upon request, needed reasonable accommodations. The contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, national origin, sex, age or disability. Such action shall include, but not be limited to the following; employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensations; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.

- I. State sales and use tax certificates of exemption forms will be issued upon request. No tax fee shall be included in prices.
- J. As required by The Jessica Lunsford Act [s.21 of Ch.2005-28, L.O.F.] if any Contractor's employees/independent Contractors or Subcontractors' employees/independent Contractors will have access to school grounds when students are present, have direct contact with students, or have access to control of school funds, such personnel are required to be screened at Level 2, to include fingerprints, statewide criminal and juvenile justice records checks through the Kentucky Department of Law Enforcement and federal criminal records checks through the Federal Bureau of Investigation.
- K. Any entity or affiliate who has been placed on the Kentucky State's discriminatory vendor list may not submit a bid on a contract to provide goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not award or perform work as a contractor, supplier, subcontractor, or consultant under contract with any public entity, and may not transact business with any public entity.
- L. Any employee or official of Commonwealth or KETS school districts, elective or appointive, who shall take, receive, or offer to take or receive, either directly or indirectly, any rebate, percentage of contract, money, or things of value as an inducement or intended inducement, or in the procurement of business, or the giving of business, for or to or from, any person, or in open market seeking to make sales to the school district shall be deemed guilty of a felony and upon conviction such person or persons shall be subject to punishment or fine in accord with state and/or federal laws.
- M. The vendor is legally entitled to enter into contracts with agencies of the Commonwealth of Kentucky and is not in violation of any prohibited conflict of

interest, including those prohibited by provisions of KRS 164.390, KRS 61.092-61.096, and KRS 42.990.

- N. To the best of our knowledge, the vendor is fully knowledgeable of KRS 45a.335-45a.490, Kentucky Model Procurement Code, including the provisions for violation of the Code.
- O. The vendor shall comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 187(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (contracts, subcontracts, and subgrants of amounts in excess of \$100,000).

ATTACHMENT K

DATA SECURITY AND BREACH PROTOCOLS

Vendors that receive Personal Information as defined by and in accordance with Kentucky's Personal Information Security and Breach Investigation Procedures and Practices Act, KRS 61.931, et seq., (the "Act"), shall secure and protect the Personal Information by, without limitation, complying with all requirements applicable to non-affiliated third parties set forth in the Act.

"Personal Information" is defined in accordance with KRS 61.931(6) as "an individual's first name or first initial and last name; personal mark; or unique biometric or genetic print or image, in combination with one (1) or more of the following data elements:

- a) An account, credit card number, or debit card number that, in combination with any required security code, access code or password, would permit access to an account;
- b) A Social Security number;
- c) A taxpayer identification number that incorporates a Social Security number;
- d) A driver's license number, state identification card number or other individual identification number issued by an agency;
- e) A passport number or other identification number issued by the United States government; or
- f) Individually Identifiable Information as defined in 45 C.F.R. sec. 160.013 (of the Health Insurance Portability and Accountability Act), except for education records covered by the Family Education Rights and Privacy Act, as amended 20 U.S.C. sec 1232g."

As provided in KRS 61.931(5), a "non-affiliated third party" means "any person or entity that has a contract or agreement with the Commonwealth and receives (accesses, collects or maintains) personal information from the Commonwealth pursuant to the contract or agreement."

The vendor hereby agrees to cooperate with the Commonwealth in complying with the response, mitigation, correction, investigation, and notification requirements of the Act.

The vendor shall notify as soon as possible, but not to exceed seventy-two (72) hours, the contracting agency, the Commissioner of the Kentucky State Police, the Auditor of Public Accounts, and the Commonwealth Office of Technology of a determination of or knowledge of a breach, unless the exception set forth in KRS 61.932(2)(b)2 applies and the vendor abides by the requirements set forth in that exception. If the agency is a unit of government listed in KRS 61.931(1)(b), the vendor shall notify the Commissioner of the Department of Local Government in the same manner as above. If the agency is a public school district listed in KRS 61.931(1)(d), the vendor shall notify the Commissioner of the Department of Education in the same manner as above. If the

agency is an educational entity listed under KRS 61.931(1)(e), the vendor shall notify the Council on Postsecondary Education in the same manner as above. Notification shall be in writing on a form developed by the Commonwealth Office of Technology.

The vendor hereby agrees to report, immediately and within twenty-four (24) hours, any known reasonably believed instances of missing data, data that has been inappropriately shared, or data taken off site

- to my immediate supervisor, Associate Commissioner, and
- to the KDE Office for whom I perform work under the contract with KDE.

The vendor hereby agrees that the Commonwealth may withhold payment(s) owed to the vendor for any violation of the Identity Theft Prevention Reporting Requirements.

The vendor hereby agrees to undertake a prompt and reasonable investigation of any breach as required by KRS 61.933.

Upon conclusion of an investigation of a security breach of Personal Information as required by KRS 61.933, the vendor hereby agrees to an apportionment of the costs of the notification, investigation, and mitigation of the security breach.

In accordance with KRS 61.932(2)(a) the vendor shall implement, maintain, and update security and breach investigation procedures that are appropriate to the nature of the information disclosed, that are at least as stringent as the security and breach investigation procedures and practices established by the Commonwealth Office of Technology:

<http://technology.ky.gov/ciso/Pages/InformationSecurityPolicies,StandardsandProcedures.aspx>

Student Data Security

Pursuant to KRS 365.734 (House Bill 232 (2014)), if contractor is a known cloud computing service provider (as defined in KRS 365.734(1)(b) as “any person or entity other than an educational institution that operates cloud computing services”), or, through service to agency, becomes the equivalent of a cloud computing service provider, contractor does further agree that:

- Contractor shall not process student data for any purpose other than providing, improving, developing, or maintaining the integrity of its cloud computing services, unless the provider receives express permission from the student’s parent. The contractor shall work with the student’s school and district to determine the best method of collecting parental permission. KRS 365.734 defines “process” and “student data”.

- With a written agreement for educational research, contractor may assist an educational institution to conduct educational research as permitted by the Family Education Rights and Privacy Act of 1974, as amended, 20 U.S.C.sec.1232g.
- Pursuant to KRS 365.734, contractor shall not in any case process student data to advertise or facilitate advertising or to create or correct an individual or household profile for any advertisement purposes.
- Pursuant to KRS 365.734, contractor shall not sell, disclose, or otherwise process student data for any commercial purpose.
- Pursuant to KRS 365.734, contractor shall certify in writing to the agency that it will comply with KRS 365.734(2).

**ATTACHMENT L - Executive Order for Minimum Wage for the
Commonwealth's Service Providers**



STEVEN L. BESHEAR
GOVERNOR

EXECUTIVE ORDER

Secretary of State
Frankfort
Kentucky

2015-370
June 8, 2015

**MINIMUM WAGE FOR STATE EMPLOYEES AND THE
COMMONWEALTH'S SERVICE PROVIDERS**

WHEREAS, it is indisputable that all citizens and residents of the Commonwealth of Kentucky have the inherent and inalienable rights to enjoy their lives and liberty and to seek and pursue their safety and happiness; and

WHEREAS, the current required minimum wage of \$7.25 per hour for hourly workers and \$2.13 for tipped employees as established by state and federal law for all the employers in the Commonwealth is no longer sufficient to provide workers the means to achieve those inherent and inalienable rights; and

WHEREAS, studies consistently and overwhelmingly show that an increase in the minimum wage does not negatively impact collective employment, but instead results in faster job growth; and

WHEREAS, minimum wage workers are not typically teenagers working part-time but are adults trying to make ends meet – statistics show that 87.5% of minimum wage workers are adults over the age of 20 and that nearly the same percentage work at least 20 hours a week; and

WHEREAS, the Commonwealth of Kentucky commits significant resources to its employees and to the acquisition of services to be performed under contract; and

WHEREAS, it is the policy of this administration to increase efficiency and cost savings in work performed for the Commonwealth of Kentucky; and



STEVEN L. BESHEAR
GOVERNOR

EXECUTIVE ORDER

Secretary of State

Frankfort
Kentucky

WHEREAS, requiring a higher wage to be paid to those working for and on behalf of the Commonwealth of Kentucky will lead to increased morale, productivity, and quality of the work performed and an accompanying decrease in turnover, training, and supervisory costs; and

WHEREAS, increasing the pay of the lowest-paid workers will enable them to be more self-sufficient and to move toward realizing the dream of a better life which is too often unachievable with their current wages; and

WHEREAS, economic forces necessitate a more competitive wage to attract and retain the best workers in the improved Kentucky job market; and

WHEREAS, Federal contracting rules now require that workers under certain federally funded state contracts be paid a minimum wage of \$10.10 per hour and \$4.90 per hour for tipped workers; and

WHEREAS, all individuals providing services to the Commonwealth should be paid the same minimum wage regardless of the identity of his or her employer:

NOW, THEREFORE, I, Steven L. Beshear, Governor of the Commonwealth of Kentucky, by virtue of the authority vested in me by Sections 69 and 81 of the Constitution of Kentucky and by Chapter 12 of the Kentucky Revised Statutes, do hereby **DECLARE, ORDER and DIRECT** that:

1. As of the effective date of this order, all Executive Branch employees shall be paid no less than \$10.10 per hour, or \$4.90 per hour for those workers who are "tipped employees" as defined by KRS 337.010(2)(d).
2. All contracts entered into or renewed by Executive Branch agencies with effective dates on or after the effective date of this order shall provide for a minimum wage of:
 - A. \$10.10 per hour for ordinary workers; and
 - B. \$4.90 per hour for workers who are "tipped employees" as defined by KRS 337.010(2)(d).



STEVEN L. BESHEAR
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3. The increased minimum wage requirements of this order shall apply to any worker directly performing the service called for in a contract and shall also apply to any person who spends at least 20% of his or her working time in a given work week providing a service ancillary to the services called for in a contract.
4. Nothing in this order shall excuse noncompliance with any other Federal or State law, including prevailing wage laws, or any applicable law or municipal ordinance establishing a minimum wage higher than the minimum wage established under this order.
5. This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the Commonwealth of Kentucky, its agencies, officers, or employees, and is not applicable to public universities.
6. All employers in the Commonwealth, both public and private, are strongly encouraged to implement policies consistent with the terms of this order.
7. All Executive Branch agencies, in conjunction with the Governor's Executive Cabinet, shall take all steps necessary to implement this order.

This order is effective July 1, 2015.


STEVEN L. BESHEAR, GOVERNOR
Commonwealth of Kentucky


ALISON LUNDERGAN GRIMES
Secretary of State

Appendix A – Apple Lease Agreement



Appendix A - Apple
Lease Agreement.pdf



This Master Lease Purchase Agreement dated as of <MLA DATE> (this "Master Lease") is entered into by and between Apple Inc. ("Lessor") and <LESSEE NAME> ("Lessee").

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

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

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

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

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

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shall anything contained in this Master Lease or in any Lease constitute a pledge of the general tax revenues, funds or monies of Lessee.

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

7. UNCONDITIONAL OBLIGATION. UPON THE COMMENCEMENT DATE OF A LEASE PURSUANT TO SECTION 5 OF THIS MASTER LEASE, AND EXCEPT AS PROVIDED IN SECTION 6, "NON-APPROPRIATION OF FUNDS," THE OBLIGATIONS OF LESSEE TO MAKE LEASE PAYMENTS AND TO PERFORM AND OBSERVE THE OTHER COVENANTS AND AGREEMENTS CONTAINED IN EACH LEASE SHALL BE ABSOLUTE AND UNCONDITIONAL IN ALL EVENTS WITHOUT ABATEMENT, DIMINUTION, DEDUCTION, SET-OFF OR DEFENSE, FOR ANY REASON INCLUDING, WITHOUT LIMITATION, ANY FAILURE OF THE EQUIPMENT TO BE DELIVERED OR INSTALLED, ANY DISPUTES WITH LESSOR OR ANY VENDOR OF ANY EQUIPMENT, DEFECTS, MALFUNCTIONS OR BREAKDOWNS IN THE EQUIPMENT, ANY ACCIDENT, CONDEMNATION, DAMAGE, DESTRUCTION, OR UNFORESEEN CIRCUMSTANCE, OR ANY TEMPORARY OR PERMANENT LOSS OF ITS USE.

8. DISCLAIMER OF WARRANTIES. THE SOLE WARRANTY FOR THE EQUIPMENT IS THE APPLICABLE PRODUCT WARRANTY (DEFINED BELOW). LESSOR MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, WHATSOEVER, INCLUDING WITHOUT LIMITATION, AS TO THE EQUIPMENT'S MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SUITABILITY, DESIGN, CONDITION, DURABILITY, OPERATION, QUALITY OF MATERIALS OR WORKMANSHIP, NON-INFRINGEMENT, OR COMPLIANCE WITH SPECIFICATIONS OR APPLICABLE LAW, OR THAT THE OPERATION OR USE OF THE EQUIPMENT WILL BE UNINTERRUPTED, SECURE OR FREE OF ERRORS, DEFECTS, VIRUSES, MALFUNCTIONS, AND LESSEE, AS OF THE DATE OF LESSEE'S ACCEPTANCE AS SET FORTH IN SECTION 4, ACCEPTS SUCH EQUIPMENT AS IS AND WITH ALL FAULTS. LESSEE ACKNOWLEDGES THAT LESSEE HAS SELECTED THE EQUIPMENT BASED UPON LESSEE'S OWN JUDGMENT. Lessee acknowledges that the Equipment was manufactured and/or assembled, or in the case of software was developed and licensed, by the applicable Vendor and that any warranty rights with respect to such Equipment shall be provided by the applicable Vendor (the "Product Warranty"). Lessee agrees to settle any dispute it may have regarding performance of the Equipment directly with the applicable Vendor and not to make any claim against the Lease Payments due Lessor or any Assignee (as hereinafter defined). Lessee agrees to continue to pay Lessor, or such Assignee (as applicable), all Lease Payments and other payments without abatement or set off for any dispute with a Vendor regarding the Equipment. Nothing in this Master Lease or in any Lease shall relieve Apple Inc. of its obligations under the Product Warranty offered by Apple Inc. for applicable Apple-branded Equipment. Lessee acknowledges and agrees that the Product Warranty is a separate agreement between Lessee and the applicable Vendor and that such Product Warranty is not a part of this Master Lease or any Lease.

9. TITLE AND SECURITY INTEREST. Unless otherwise required by the laws of the state where Lessee is located, during each Lease Term, title to the Equipment shall be vested in Lessee, subject to the rights of Lessor under such Lease. In the event Lessor terminates a Lease pursuant to Section 17 of this Master Lease or an Event of Non-Appropriation occurs under a Lease, title to the related Equipment shall immediately vest in Lessor free and clear of any rights, title or interests of Lessee. Lessee, at its expense, shall protect and defend Lessee's title to the Equipment and Lessor's rights and interests therein and keep the Equipment free and clear from any and all claims, liens, encumbrances and legal processes of Lessee's creditors and other persons.

To secure the payment of all of Lessee's obligations under each Lease, Lessee hereby grants to Lessor a first priority purchase money security interest in the Equipment subject to each such Lease, anything attached or added to the Equipment by Lessee at any time, Lessee's rights under each agreement for the licensing of software to the extent that a security interest therein may be granted without violating the terms of such agreement, and on all proceeds, including proceeds from any insurance claims for loss or damage, from such Equipment. Lessee authorizes Lessor to file a financing statement perfecting Lessor's security interest under the laws of Lessee's state. Lessee agrees to promptly execute such additional documents, in a form satisfactory to Lessor, which Lessor deems necessary or appropriate to establish and maintain its security interest in the Equipment. The Equipment is and will remain personal property and will not be deemed to be affixed to or a part of the real estate on which it may be situated. If applicable, as further security therefor, Lessee hereby grants to Lessor a first priority security interest in the cash and negotiable instruments from time to time comprising each Escrow Account and all proceeds (cash and non-cash) thereof, and agrees with

respect thereto that Lessor shall have all the rights and remedies of a secured party under the applicable Uniform Commercial Code.

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

11. LIENS; TAXES. LESSEE WILL NOT SELL, TRANSFER, ASSIGN, PLEDGE, SUB-LEASE OR PART WITH POSSESSION OF THE EQUIPMENT, OR FILE OR PERMIT A LIEN TO BE FILED AGAINST THE EQUIPMENT, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED UNDER THIS MASTER LEASE AND THE RELATED LEASE. The parties to this Master Lease intend that the Equipment will be used for governmental or proprietary purposes of Lessee and that the Equipment will be exempt from all property taxes. Lessee shall timely pay all assessments, license and filing fees, taxes (including sales, use, excise, personal property, ad valorem, stamp, documentary and other taxes) and all other governmental charges, fees, fines or penalties whatsoever, whether payable by Lessor or Lessee, now or hereafter imposed by any governmental body or agency on or relating to the Equipment or the Lease Payments or the use, registration, rental, shipment, transportation, delivery, ownership or operation of the Equipment and on or relating to this Master Lease or any Lease; *provided, however*, that the foregoing shall not include any federal, state or local income or franchise taxes of Lessor.

12. LIMITATION OF LIABILITY. NOTWITHSTANDING ANYTHING TO THE CONTRARY, LESSOR SHALL NOT BE LIABLE FOR ANY DIRECT DAMAGES OF LESSEE RESULTING FROM, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, WHETHER ARISING IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, REGARDLESS OF THE THEORY OF LIABILITY. FURTHER, NOTWITHSTANDING ANYTHING TO THE CONTRARY, with respect to each Lease, Lessee agrees that (a) Lessor shall have no liability, cost or expense with respect to transportation, installation, selection, purchase, lease, ownership, possession, modification, maintenance, condition, operation, use, return or disposition of the Equipment, and (b) Lessor shall have no responsibility in connection with the selection of the Equipment, the ordering of the Equipment, its suitability for the use intended by Lessee, Lessee's compliance or non-compliance with competitive pricing and/or bidding requirements, the acceptance by the Vendor of the order submitted, if applicable, or any delay or failure by the Vendor or its sales representative to, deliver, install, or maintain the Equipment for Lessee's use. IN NO EVENT SHALL LESSOR BE LIABLE FOR ANY INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES IN CONNECTION WITH OR ARISING OUT OF ANY LEASE OR THE EXISTENCE, FURNISHING, FUNCTIONING OR LESSEE'S USE OF ANY ITEM OF EQUIPMENT PROVIDED FOR IN ANY LEASE, WHETHER IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, REGARDLESS OF THE THEORY OF LIABILITY AND REGARDLESS OF WHETHER LESSOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE PARTIES AGREE THAT THE PROVISIONS IN THIS MASTER LEASE FAIRLY ALLOCATE THE RISKS BETWEEN THE PARTIES WITHOUT WHICH THEY WOULD NOT HAVE ENTERED INTO THIS MASTER LEASE.

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

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

Lessee's use in the repair or replacement of the damaged Equipment, unless there has been an Event of Default or an Event of Non-appropriation by Lessee, in which event Lessor will apply any insurance proceeds received to reduce Lessee's obligations under Section 17 of this Master Lease.

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

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

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

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

19. RETURN OF EQUIPMENT. In the case of an Event of Default under a Lease or an Event of Non-appropriation by Lessee with respect to a Lease in accordance with Section 6, Lessee will, at Lessee's sole cost and expense, immediately return the Equipment (including all copies of any software free of any proprietary data), manuals, and accessories to any location and aboard any carrier Lessor may designate in the continental United States. The Equipment must be properly packed for shipment in accordance with the manufacturer's recommendations or specifications, freight prepaid and insured, and maintained in accordance with the terms of the related Lease. All Equipment must be free of markings. Lessee will pay Lessor for any missing or defective parts or accessories. Lessee will continue to pay Lease Payments until the Equipment is accepted by Lessor, which

acceptance shall be deemed to occur fifteen (15) days after delivery unless Lessor rejects the Equipment for good cause within such fifteen (15) day period. Notwithstanding anything in this Section 19 to the contrary, any amounts to be paid by Lessee as provided in this Section 19 shall be payable solely from funds legally available for the purpose.

20. LESSEE'S REPRESENTATIONS AND WARRANTIES. Lessee hereby represents, covenants and warrants for the benefit of Lessor that as of the date hereof and as of Commencement Date for each Lease, and throughout each Lease Term: (a) Lessee is a state or political subdivision thereof within the meaning of Section 103 of the Internal Revenue Code of 1986, as amended (the "Code"); (b) Lessee is duly organized and existing under the Constitution and laws of the state in which Lessee is located; (c) Lessee is authorized to enter into and carry out its obligations under this Master Lease and each Lease and every other document required to be delivered in connection with this Master Lease and a Lease; (d) this Master Lease and each Lease have been duly authorized, executed and delivered by Lessee in accordance with all applicable laws, codes, ordinances, regulations, and policies; (e) any person signing the Master Lease and each Lease has the authority to do so, is acting with the full express authorization of Lessee's governing body, and holds the office indicated below his or her signature, which is genuine; (f) the Equipment is essential to the immediate performance of a governmental or proprietary function by Lessee within the scope of Lessee's authority and shall be used during the Lease Term only by Lessee and only to perform such function; (g) Lessee intends to use the Equipment for the entire Lease Term and shall take such action, in accordance with Section 6, to include in its annual budget request, for submission to Lessee's governing body, any funds required to fulfill Lessee's obligations for each succeeding fiscal period during the applicable Lease Term; (h) Lessee has complied fully with all applicable laws, codes, ordinances, regulations, and policies, governing open meetings, competitive pricing and/or public bidding and appropriations required in connection with each Lease, the selection and acquisition of the Equipment and the selection of Vendor; (i) all payments due and to become due during Lessee's current fiscal period under a Lease are within the fiscal budget of such fiscal period, and are or will be included within an unrestricted and unencumbered appropriation currently available for the lease/purchase of the Equipment under the related Lease; (j) Lessee shall not do or cause to be done any act which shall cause, or by omission of any act allow, the interest portion of any Lease Payment to become includible in Lessor's gross income for Federal income taxation purposes under the Code; (k) Lessee shall comply with the information reporting requirements of Section 149(e) of the Code with respect to each Lease (such compliance shall include, but not be limited to, the execution of Form 8038-G or 8038-GC information reporting returns as appropriate); (l) all financial information provided by Lessee is true and accurate and fairly represents Lessee's financial condition; (m) Lessee has not for at least its most recent ten fiscal periods failed to appropriate or otherwise make available funds sufficient to pay rental or other payments coming due under any lease purchase, installment sale or other similar agreement; (n) there is no litigation, pending or threatened that would materially adversely affect the transactions contemplated by this Master Lease, any Lease or the financial condition of Lessee; and (o) any and all Equipment that Lessee leases, purchases and/or acquires pursuant to this Master Lease and any Lease hereunder is for Lessee's internal purposes only and Lessee is not and will not lease, purchase or acquire the Equipment for resale.

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

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

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

24. MISCELLANEOUS. Each Lease, together with this Master Lease, contains the entire agreement of the parties regarding the subject matter hereof which is limited to lease financing. TIME IS OF THE ESSENCE IN EACH LEASE. If a court of competent jurisdiction finds any provision of any Lease to be unenforceable, the remaining terms of such Lease shall remain in full force and effect. Each Lease may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument; provided, however, that only counterpart one of each Lease (including the terms and conditions of this Master Lease incorporated therein by reference) shall constitute the original for such Lease for purposes of the sale or transfer of such Lease as chattel paper. References herein to "Lessor" shall be deemed to include each of its Assignees from and after the effective date of each assignment; references herein to "Lessor" shall not refer to Apple Inc. in its

capacity as a Vendor or in any capacity other than as a lessor hereunder. The captions or heading in this Master Lease and in each Lease are for convenience only and in no way define, limit or describe the scope or intent of any provisions. This Master Lease and each Lease will be governed by the laws of the state where Lessee is located without regard to the conflict of law principles thereof. Lessor and Lessee both intend to comply with all applicable laws. If it is determined that Lessee's payments under the Lease result in an interest payment higher than allowed by applicable law, then any excess interest collected will be applied to the repayment of principal, and interest will be charged at the highest rate allowed by law.

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

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

LESSOR: APPLE INC.

LESSEE: <LESSEE NAME>
<Lessee Address>
<Lessee City, State ZIP>

BY: _____

BY: _____

TITLE: _____

TITLE: _____

FED TAX ID#: _____

EXHIBIT A

Schedule No. <SCH#> Dated <SCH DATE> to Master Lease Purchase Agreement Dated <MLA DATE>

This Schedule No. <SCH#> ("Schedule") is entered into pursuant to that Master Lease Purchase Agreement dated <MLA DATE> ("Master Lease"), and is effective as of <SCH DATE>. All of the terms and conditions of the Master Lease, including Lessee's representations and warranties, are incorporated herein by reference. Unless otherwise indicated, all capitalized terms used but not otherwise defined herein shall have the same meaning as set forth in the Master Lease.

To the extent that less than all of the Equipment subject to this Schedule has been installed and accepted by Lessee on or prior to the date hereof, Lessee hereby acknowledges that a portion of the Equipment has not been delivered, installed and accepted by Lessee for purposes of this Lease. In consideration of the foregoing, Lessee hereby acknowledges and agrees that its obligation to make Lease Payments as set forth in this Schedule is absolute and unconditional as of the date hereof and on each date and in the amounts as set forth in the Lease Payment Schedule, subject to the terms and conditions of the Lease.

Lessee expressly represents that at least ninety-five percent (95%) of the financing cost set forth in this Schedule is being used to acquire Equipment that will be capitalizable for federal income tax purposes

EQUIPMENT LOCATION			
EQUIPMENT LOCATION (NUMBER AND STREET)			
<Lessee Address>			
CITY	COUNTY	STATE	ZIP CODE
<Lessee City, State ZIP>			

EQUIPMENT INFORMATION	
QTY	EQUIPMENT DESCRIPTION
	Computer Hardware--See attached Exhibit 1.

LEASE PAYMENT SCHEDULE						
Pmt #	Payment Date	Payment Amount	Interest	Principal	Purchase Price after scheduled payment(s)	Outstanding Balance
Totals:					<Lessee Rate>	

Lessee acknowledges that the discounted purchase price for the Lease is \$<OID Purchase Price> and that such amount is the Issue Price for the Lease for federal income tax purposes. The difference between the principal amount of this Lease and the Issue Price is Original Issue Discount ("OID") for federal income tax purposes. The Yield for this Lease for federal income tax purposes is <OID Rate>% per annum. Such Issue Price and Yield will be stated in the Form 8038-G or 8038-GC, as applicable.

IMPORTANT: Read before signing. The terms of the Master Lease should be read carefully because only those terms in writing are enforceable. Terms or oral promises which are not contained in this written agreement may not be legally enforced. The terms of the Master Lease or Lease may only be changed by another written agreement between Lessor and Lessee. Lessee agrees to comply with the terms and conditions of the Master Lease and this Lease.

Commencement Date: <SCH DATE>

LESSOR: APPLE INC.

LESSEE: <LESSEE NAME>

SIGNATURE: X _____

SIGNATURE: X _____

NAME / TITLE: X _____

NAME / TITLE: X _____

DATE: X _____

DATE: X _____

EXHIBIT 1 – EQUIPMENT INFORMATION to Schedule No. <SCH#>
under Master Lease Purchase Agreement dated <MLA DATE>

[illegible]

The above Equipment includes all attachments and accessories attached thereto and made a part thereof.

EXHIBIT B

ACCEPTANCE CERTIFICATE

Re: Schedule No. <SCH#>, dated <SCH DATE>, (the "Schedule") to Master Lease Purchase Agreement, dated as of <MLA DATE>, between Apple Inc., as Lessor, and <LESSEE NAME>, as Lessee.

Apple Inc. is hereby requested to pay the person or entity designated below as Payee, the sum set forth below in payment of a portion or all of the cost of the acquisition described below. The amount shown below is due and payable under the invoice of the Payee attached hereto with respect to the cost of the acquisition of the equipment and has not formed the basis of any prior request for payment. The equipment described below is part or all of the "Equipment" listed in the Schedule to the Master Lease Purchase Agreement referenced above.

Payee Name: _____

Description or Invoice #

\$ Amount

Lessee hereby certifies and represents to and agrees with Lessor as follows:

- (1) The Equipment described above has been delivered, installed and accepted on the date hereof.
- (2) Lessee has conducted such inspection and/or testing of the Equipment listed in the Schedule as it deems necessary and appropriate and hereby acknowledges that it accepts the Equipment for all purposes.
- (3) Lessee is currently maintaining the insurance coverage required by Section 15 of the Master Lease.
- (4) No event or condition that constitutes, or with notice or lapse of time or both would constitute, an Event of Default or Event of Non-appropriation (each as defined in the Master Lease) under any Lease exists at the date hereof.

PARTIAL ACCEPTANCE CERTIFICATE (Only a portion of Equipment Has Been Accepted)

LESSEE: <LESSEE NAME>

Signature: X _____

Printed Name/Title: X _____

Date: X _____

FINAL ACCEPTANCE CERTIFICATE (All Equipment Has Been Accepted)

LESSEE: <LESSEE NAME>

Signature: X _____

Printed Name/Title: X _____

Date: X _____

PLEASE RETURN PAYMENT REQUEST TO:
APPLE INC. ~ 216 West Jackson Blvd., Suite 200A ~ Chicago, IL 60606

EXHIBIT C

INCUMBENCY CERTIFICATE

Schedule No. <SCH#> to Master Lease Purchase Agreement dated <MLA DATE>

Being a knowledgeable and authorized agent of the Lessee, I hereby certify to Lessor that the person(s) who executed the Master Lease and this Schedule are legally authorized to do so on behalf of the Lessee and that the signatures that appear on the Master Lease and Schedule are genuine.

LESSEE: <LESSEE NAME>

Signature: X _____

Printed Name/Title: X _____

Date: X _____

**(THE INCUMBENCY IS TO BE EXECUTED BY A PERSON OTHER THAN THE SIGNER
OF THIS SCHEDULE AND RELATED DOCUMENTS. THIS MAY BE A BOARD
CLERK/SECRETARY, BOARD MEMBER OR SUPERINTENDENT.)**


EXHIBIT D

BANK QUALIFIED DESIGNATION

Schedule No. <SCH#> to Master Lease Purchase Agreement Dated <MLA DATE>


Lessee hereby represents and certifies the following (please check one):

Bank Qualified

 Lessee has designated, and hereby designates, this Lease as a "qualified tax-exempt obligation" for the purposes and within the meaning of Section 265(b)(3) of the Internal Revenue Code of 1986, as amended (the "Code"). In making that designation, Lessee hereby certifies and represents that:

- As of the date hereof in the current calendar year, neither Lessee nor any other issuer on behalf of Lessee has designated more than \$10,000,000 of obligations (including this Lease) as "qualified tax-exempt obligations";
- Lessee reasonably anticipates that the total amount of tax-exempt obligations (including this Lease) to be issued by or on behalf of Lessee (or allocated to Lessee) during the current calendar year will not exceed \$10,000,000;
- The Lease will not be at any time a "private activity bond" as defined in Section 141 of the Code;
- The Lease is not subject to control by any entity and there are no entities subject to control by Lessee; and
- Not more than \$10,000,000 of obligations of any kind (including the Lease) issued by, on behalf of or allocated to Lessee will be designated for purposes of Section 265(b)(3) of the Code during the current calendar year.

Non-Bank Qualified

 Lessee has not designated this Lease as a "qualified tax-exempt obligation" for the purposes and within the meaning of Section 265(b)(3) of the Code.

LESSEE: <LESSEE NAME>

Signature: X _____

Printed Name/Title: X _____

Date: X _____

EXHIBIT E

LEASE PAYMENT INSTRUCTIONS

Pursuant to the Master Lease Purchase Agreement dated <MLA DATE> (the "Master Lease"), Schedule No. <SCH#>, between Apple Inc. (the "Lessor") and <LESSEE NAME> (the "Lessee"), Lessee hereby acknowledges the obligations to make Lease Payments promptly when due in accordance with the Lease.

LESSEE NAME: _____

TAX ID#: _____

INVOICE MAILING ADDRESS: _____

Mail invoices to the attention of: _____

Phone (____) _____

Fax (____) _____

Email: _____

Approval of Invoices required by: _____

Phone (____) _____

Fax (____) _____

Email: _____

Accounts Payable Contact: _____

Phone (____) _____

Fax (____) _____

Email: _____

Processing time for Invoices: _____ Approval: _____ Checks: _____

Do you have a Purchase Order Number that you would like included on the invoice? No ___ Yes ___ PO# _____

Do your Purchase order numbers change annually? No ___ Yes ___ Processing time for new purchase orders: _____

LESSEE: <LESSEE NAME>

SIGNATURE: **X** _____

NAME / TITLE: **X** _____

DATE: **X** _____

EXHIBIT F

INSURANCE COVERAGE REQUIREMENTS

<LESSEE NAME>

- 1) Insurance Agency - Name of Agency, Phone Number, Fax Number, and Contact Name

- 2) Property Damage & Loss Coverage -

- a) "All Risk" Physical Damage & Loss Insurance
- b) Include: Policy Number, Effective Date and Expiration Date
- c) **APPLE INC. and its Assigns** named "Loss Payee"
- d) Endorsement giving 30 days written notice of any changes or cancellation.

LIMITS: The full replacement value of the equipment.

- 3) General Liability Coverage -

- a) Include: Policy Number, Effective Date and Expiration Date
- b) **APPLE INC. and its Assigns** named "Additionally Insured"
- c) Endorsement giving 30 days written notice of any changes or cancellation

LIMITS: Bodily Injury - \$1,000,000.00 per occurrence
Property Damage - \$250,000.00 per occurrence
Combined Single Limit - \$1,000,000.00 per occurrence

Include: Product and/or completed operations, and blanket contractual liability

- 4) The Certificate Holder should be named as follows:

APPLE INC. and its assigns
216 West Jackson Blvd., Suite 200A
Chicago, Illinois 60606

FOR SELF INSURANCE:

A letter needs to be prepared on Lessee's Letterhead and addressed to **APPLE INC. and its Assigns** and signed by an authorized official of the Lessee. The letter must refer to the Master Lease, and include information regarding the statute authorizing this form of insurance (with a copy of the statute attached to the letter).

EXHIBIT G

(To be printed on Attorney's Letterhead for Transactions \$500,000 and above)

Apple Inc.
216 West Jackson Blvd., Suite 200A
Chicago, IL 60606

Re: Schedule No. <SCH#>, dated <SCH DATE> to Master Lease Purchase Agreement dated as of <MLA DATE> between Apple Inc., as Lessor, and <LESSEE NAME>, as Lessee.

Ladies and Gentlemen:

As legal counsel to <LESSEE NAME> (the "Lessee"), I have examined (a) an executed counterpart of a certain Master Lease Purchase Agreement dated as of <MLA DATE> and Exhibits thereto (collectively, the "Agreement") by and between Apple Inc. (the "Lessor") and the Lessee, and an executed counterpart of Schedule No. <SCH#> dated <SCH DATE> (the "Schedule") to the Agreement, by and between the Lessor and the Lessee, which, among other things, provides for the lease with option to purchase to the Lessee of certain property listed in the Schedule (the "Equipment"), (b) a certified copy of the resolution (the "Authorizing Resolution") of the governing body of the Lessee which, among other things, authorizes the Lessee to enter into the Agreement and the Schedule and (c) such other opinions, documents and matters of law as I have deemed necessary in connection with the following opinion. The Schedule and the terms and provisions of the Agreement incorporated therein by reference together with the Lease Payment Schedule attached to the Schedule are herein referred to collectively as the "Lease".

Based on the foregoing, I am of the following opinion:

- (1) Lessee is duly organized and legally existing as a city, county, school district, special district or other local government unit under the laws of the State of <Lessee State>, with full power and authority to enter into, and perform its obligations under, the Lease;
- (2) The Lease has been duly authorized, executed, and delivered by Lessee. Assuming due authorization, execution and delivery thereof by Lessor, the Lease is a legal, valid and binding obligation of Lessee, enforceable against Lessee in accordance with its terms, except to the extent limited by State and federal laws affecting creditors' remedies and by bankruptcy, reorganization, moratorium or other laws of general application relating to or affecting the enforcement of creditors' rights;
- (3) Lessee has complied with any applicable property acquisition laws and public bidding requirements in connection with the Lease and the transactions contemplated thereby, and the Authorizing Resolution was duly adopted at a meeting that was held in compliance with all applicable laws relating to the holding of open and public meetings.
- (4) There is no proceeding pending or, to the best of my knowledge (after diligent inquiry), threatened in any court or before any governmental authority or arbitration board or tribunal that, if adversely determined, would adversely affect the transactions contemplated by the Lease or the security interest of Lessor or its assigns, as the case may be, in the Equipment thereunder.

All capitalized terms herein shall have the same meanings as in the Lease unless otherwise provided herein. Lessor, its successors and assigns, and any counsel rendering an opinion on the tax-exempt status of the interest components of the Lease Payments, are entitled to rely on this opinion.

Printed Name
Signature



K-12 Essential Use Audit

(the Lessee's Technology Coordinator and the Lessee's Finance Manager should complete the Essential Use Audit.)

1) Is the equipment replacing any existing equipment? ☐ NO ☐ YES If YES, how long has the existing equipment been in use?

☐ 1-3 years ☐ 3-5 years ☐ 5-7 years ☐ 7+ years

Why is the existing equipment being replaced? _____

What will be done with the replaced equipment? _____

2) What grade levels, locations, and departments will utilize the equipment to be leased?

☐ K-4 ☐ Math ☐ Computer Lab

☐ 5-6 ☐ Science ☐ Classroom

☐ 7-8 ☐ Language Arts ☐ Other: _____

☐ 9-12 ☐ Social Sciences ☐ Other: _____

Who will be the principle users of the equipment? (Total of all users below equals 100%)

☐ Students: _____% ☐ Classified Faculty: _____% ☐ Other: _____%

☐ Certified Faculty: _____% ☐ Administrative: _____% ☐ Other: _____%

What applications will the equipment be used for and what benefits will the equipment provide?

(use additional pages if necessary)

3) What is/are the source(s) of funding for repayment of the lease?

☐ Local Tax Revenues

☐ State Unrestricted Aid

☐ State Categorical Revenues for Technology

☐ General Fund

☐ Other: _____

Federal Financial Assistance Programs:

☐ Title I

☐ Other: _____

Are the funds to the payment(s) due in the first fiscal year of the lease appropriated and encumbered in the Lessee's approved budget? ☐ YES ☐ NO IF NO, why are the funds not appropriated and encumbered in an approved budget? _____

4) Has the Lessee's governing Board approved entering into the lease? ☐ YES If YES, please provide a copy of Board minutes or resolution. ☐ NO If NO, why is a board approval not required or when will the board approve entering into the lease? _____

5) Has the Lessee ever non-appropriated funds? ☐ NO ☐ YES If YES, please provide details regarding any non-appropriation: _____

6) Has Lessee issued or does the Lessee intend to issue more than \$10 million in tax-exempt debt during the current year? ☐ NO ☐ YES

Completed/Signature By: _____ Title: _____ Date: _____

Completed/Signature By: _____ Title: _____ Date: _____

Re: Schedule No. <SCH#>, dated <SCH DATE> to Master Lease Purchase Agreement dated as of <MLA DATE> between Apple Inc., as Lessor, and <LESSEE NAME>, as Lessee.

[ATTACH I.R.S. FORM 8038-G OR 8038-GC, AS APPROPRIATE]

APPLE FINANCIAL SERVICES

216 W. Jackson Blvd., Suite 200A
Chicago, IL 60606
Tel (877) 327-1727
Tel (312) 706-1730



INVOICE NO.: <Agreement#>-1

INVOICE DATE

DUE DATE

<INV DATE>

<DUE DATE>

INVOICE TO: <LESSEE NAME>
Attn: Accounts Payable
<Lessee Address>
<Lessee City, State ZIP>

REMIT TO: Apple Financial Services
216 W. Jackson Blvd, Suite 200A
Chicago, IL 60606

DESCRIPTION		AMOUNT
Agreement Number:	<Agreement#>	Payment Number 1 of <# of Pmts>
PO Number:	<PO#>	
DESCRIPTION OF EQUIPMENT: Schedule No. <SCH#>, dated <SCH DATE> to Master Lease Purchase Agreement dated as of <MLA DATE> between Apple Inc., as Lessor, and <LESSEE NAME>, as Lessee.		
Past Due Balance:		\$0.00
Late Fee:		\$0.00
Documentation Fee:		\$0.00
Maintenance Fee:		\$0.00
Other Fee:		\$0.00
Payment Amount:		\$<Pmt Amt>
Terms: NET CASH ON DUE DATE Please refer to our invoice no. on remittance		TOTAL DUE \$<Pmt Amt>