

# Apple Purchase Order Terms

These Purchase Order Terms (“**Terms**”) govern the provision of services (“**Services**”) and products (including Software, deliverables, and all other tangible results of services) (“**Products**”) provided by the entity identified as ‘Supplier’ (“**Supplier**”) on the purchase order (the “**PO**”) to the Apple entity identified on the PO (“**Apple**”).

## 1. General

1.1. Acceptance of Terms. Commencement of Services or delivery of Products by Supplier shall constitute agreement to the Terms.

1.2. Rejection of Inconsistent Supplier Terms. Apple rejects any terms contained in any proposal, quotation, acknowledgment, invoice, or other communication of Supplier inconsistent with these Terms.

## 2. Performance

2.1. On-Time Performance. Supplier shall provide the Services and deliver the Products on-time, in accordance with the volumes and delivery locations specified by Apple. Time is of the essence as to the provision of Services and delivery of Products. If Supplier is unable to provide the Services or deliver the Products on-time, Supplier will promptly notify Apple and assign additional resources as needed to meet the required date.

2.2. Delivery of Products.

(a) Expedited Delivery. With respect to Products that Supplier is unable to deliver on-time, upon Apple’s request, Supplier will deliver the affected Products using priority freight delivery (at Supplier’s expense).

(b) Delivery Terms. Products will be delivered DDP (designated location as specified by Apple), with title and risk of loss transferring from Supplier to Apple at the designated delivery location; provided, however, for Products delivered to an Apple-specified hub facility, title and risk of loss shall transfer from Supplier to Apple when Apple withdraws the Products from the hub. “**DDP**” means delivered duty paid as defined by the International Chamber of Commerce in its publication “*Incoterms 2010; ICC Official Rules for the Interpretation of Trade Terms*.”

(c) Importer of Record. Supplier shall, at no charge and upon request, promptly forward to Apple any documents Apple may reasonably require to allow Apple to clear Products through customs and obtain possession of Products at the port of entry.

2.3. Acceptance. If Apple determines, in its sole discretion, that the Services or Products do not comply with the Terms (including the Specifications), Apple may reject the non-conforming Services and Products. Upon rejection, Supplier will, at Apple’s option, promptly: (i) correct any failure as soon as practicable (or such other time period agreed in writing); (ii) refund the full amount paid for the rejected items, plus any inspection, test, and transportation charges paid by Apple; or (iii) replace such rejected items. Payment of invoices will not be deemed acceptance of Services or Products.

2.4. Adjustments and Cancellation. Apple may reschedule, redirect, or cancel all or part of the PO at any time without charge and without incurring any liability to Supplier. Upon cancellation, Supplier will, to the extent and at the times specified by Apple, stop all work on the Services or Products (or designated portions thereof) that have been cancelled, incur no further costs, and protect all property in which Apple has or may acquire an interest (and will provide all such property to Apple upon request). Apple will not be responsible for any costs in connection with cancelled Services or Products except for payment for the portion of Services provided and Products delivered, and accepted, in accordance with these Terms prior to notice of cancellation.

## 3. Personnel & Resources

3.1. Required Resources. Supplier will provide all personnel, equipment, software, materials, and other resources necessary to provide the Services and Products.

3.2. Management of Supplier Personnel. Supplier is solely responsible for managing any Supplier Personnel (e.g., hiring, firing, designating where and when Supplier Personnel perform Services, work assignments, practices, policies and procedures, and ensuring compliance with all applicable laws and regulations). “**Supplier Personnel**” means Supplier’s officers, directors, agents, consultants, contractors, and employees.

3.3. Support. Supplier shall provide, at no cost to Apple, all technical, operational, and informational support relating to the Services and Products that Apple deems necessary to use the Services or Products.

3.4. Subcontractors. Supplier may subcontract the performance of its obligations under the PO to an entity (a “**Subcontractor**”) provided that Supplier has entered into agreements sufficient to ensure such Subcontractor’s compliance with the Terms (including the confidentiality requirements in Section 5 (Confidentiality) and the obligation to ensure that all Project IPR is vested in and assigned to Apple) and identifies each Subcontractor to Apple upon Apple’s request. Supplier shall be directly liable for any liabilities, losses, damages, costs, and expenses, including reasonable attorneys’ fees, incurred by Apple related to any breach of these Terms by a Subcontractor.

#### **4. Payment**

##### **4.1. Pricing.**

(a) General. The price charged for Services or Products shall be the lowest of: (i) the price specified on the PO; (ii) the price agreed by Apple and Supplier in writing; or (iii) the lowest price otherwise proposed by Supplier to Apple (for example, Supplier’s quoted price on the date Apple submits the PO).

(b) Blanket Purchase Orders. If Apple issues Supplier a Blanket PO, Supplier shall provide the Services or Products subject to the pricing agreed in writing between Apple and Supplier at the time the Blanket PO is issued (e.g., in a corresponding rate card or price sheet, or the ‘Notes to Supplier’ section of the PO). Supplier is not authorized under any Blanket PO to modify the scope of Services, provide any additional Products, or to charge any more for Services or Products than as agreed in writing at the time the Blanket PO was issued, and Apple will not be required to pay any unauthorized amounts. “**Blanket PO**” means a PO that authorizes Supplier to provide recurring Services or Products resulting in multiple Apple payments over a period of time as may be specified on the PO.

4.2. Invoices. Supplier shall invoice Apple for Services that have been provided and Products that have been delivered in accordance with the Terms. Supplier shall ensure that invoices submitted include correct and complete information (including all supporting documentation Apple requests to substantiate payments). If Apple elects to receive invoices electronically, Supplier will comply with Apple’s instructions for electronic submission (and shall bear any reasonable related expenses).

4.3. Payment. Upon receipt of each valid, correct, and undisputed invoice, payment is due and payable for the invoiced amount within the timeframe identified on the PO. The Apple entity identified on the PO is the sole Apple entity responsible for payment.

4.4. Late Invoices. Failure to submit a correct invoice for amounts owed by Apple within sixty (60) days after the event giving rise to the payment is a waiver by Supplier of Apple’s liability for the amounts due.

4.5. Currency. All amounts payable will be in the currency designated by Apple (as may be identified on the PO).

4.6. Costs. Supplier is solely responsible for all costs incurred in connection with providing the Services and Products.

#### **5. Confidentiality**

5.1. General. Supplier shall maintain the confidentiality of Apple Confidential Information and may disclose Apple Confidential Information only to Supplier Personnel who have a need to know such Apple Confidential Information in order for Supplier to provide the Products and Services and who are bound by a written agreement with Supplier that is at least as protective of Apple’s Confidential Information as provided herein. Supplier shall use a reasonable degree of care to protect Apple Confidential Information and shall not disclose Apple Confidential Information to any third party without Apple’s prior written consent in each instance. Supplier shall not use Apple Confidential Information for any purpose except to provide the Products and Services and otherwise perform Supplier’s obligations hereunder. Supplier shall promptly notify Apple upon discovery of any unauthorized use or disclosure (or reasonably suspected unauthorized use or disclosure) of Apple Confidential Information by Supplier or any Subcontractor. Supplier shall return or destroy all Apple Confidential Information within three (3) days of Apple’s request. “**Apple Confidential Information**” means the existence and subject matter of the PO, all Personal Data collected, accessed, maintained, used, processed or transferred by Supplier under the PO, and any other nonpublic information or material disclosed by Apple to Supplier in connection with the PO, including information Supplier learns from Apple Personnel, through the inspection of Apple property, or that would reasonably under the circumstances be understood to be confidential information.

5.2. No Press Release or Publicity. Supplier shall not issue, procure, or permit any third party to issue a press release or other publicity regarding Apple or its Related Entities, or the PO or its subject matter, without Apple’s prior

written consent. “**Related Entities**” means any business entity that controls, is controlled by, or is under common control with an entity, where “control” means that the entity possesses, directly or indirectly, the power to direct the management policies of the other entity (whether through ownership of voting securities, an interest in registered capital, by contract, or otherwise).

## 6. **Software and Cloud Services**

6.1. License Grant. Supplier, on behalf of itself and its Related Entities, hereby grants to Apple and its Related Entities a nonexclusive, irrevocable, transferable (to Apple Related Entities), perpetual (except for Cloud Services where a specific term is identified on the PO), paid-up (subject to payment of fees in accordance with any payment schedule agreed in writing), royalty-free, worldwide license to use, import, reproduce, display, perform, distribute, modify, prepare derivative works of, disclose (as necessary), and otherwise exploit the Software and Documentation, and to have others exercise such rights on Apple’s behalf. “**Software**” means all software provided by Supplier in connection with the PO, including all firmware, scripts and Updates. “**Documentation**” means all user guides, manuals, installation instructions, and other written materials provided by Supplier in connection with the Software or the Cloud Services (defined below). “**Updates**” means updates, bug fixes, patches, enhancements, upgrades, and new versions of or to the Software or the Cloud Services. Apple and Supplier may modify Apple’s license under this Section in accordance with Section 12.10 (Modification).

6.2. Limitations. Apple shall not decompile, reverse engineer, disassemble, or otherwise attempt to derive Source Code for the Software, except as permitted by law. Apple shall not remove, obscure, or alter Supplier’s copyright notice, trademarks, or other proprietary rights notices affixed to or contained within the Software or Documentation and shall reproduce all titles, trademarks, and copyright and restricted rights notices in any copies of the Software and Documentation. “**Source Code**” means human-readable computer code, including related programmer comments and procedural language.

### 6.3. Cloud Services.

(a) General. All cloud services (including software-as-a-service, platform-as-a-service, and infrastructure-as-a-service), Updates, and Documentation that Supplier provides to Apple or any entity or individual authorized by Apple to use such services, Updates, and Documentation (the “**Cloud Services**”) will be provided in accordance with this Section 6.3. Each Cloud Service is a Service as defined in the Terms.

(b) Apple Data. All data entered, stored, transmitted, or processed by Apple using the Cloud Services and all data generated or derived from such data (collectively, the “**Apple Data**”) shall be deemed Apple Confidential Information. The Cloud Services shall not contain, and Supplier shall not insert into the Cloud Services, any software designed to damage, prevent Apple’s access to, or erase any Apple Data stored or contained in the Cloud Services or require action or intervention by Supplier to allow Apple’s use of the Cloud Services as permitted under the Terms. In addition, upon request by Apple at any time, including upon expiration or termination of the Cloud Services, Supplier will, at no charge to Apple, provide to Apple, or enable Apple itself to extract, all Apple Data contained in the Cloud Services in the form and format and with the technological means requested by Apple.

(c) Service Levels. Supplier shall provide the Cloud Services in accordance with the Specifications, including any uptime requirements, incident response times, maximum or average times to repair, reporting, or any other service levels set forth therein, or if not identified in the Specifications, in accordance with industry best practices.

(d) Maintenance and Support. In addition to Supplier’s general support obligations set forth in the Terms, Supplier will provide business continuity and disaster recovery for the Cloud Services in accordance with the Specifications, or if not identified in the Specifications, in accordance with industry best practices.

(e) Transition Services. At Apple’s request, Supplier will continue to provide, at a prorated fee not to exceed the relevant fees in effect at the time of termination of the Cloud Services by Apple (e.g., following a material breach of the Terms by Supplier), all licenses and support required for the Cloud Services, at no less than the levels provided immediately prior to termination, for a period of up to one (1) year following the date of termination.

6.4. Click-Wrap. Any “click-wrap” agreement, terms of use, electronic acceptance, order confirmation, or other terms that a user may be required to acknowledge or accept or that is otherwise displayed or accessible to a user when downloading, receiving, using, or otherwise accessing the Software or Services or any portion thereof, are of no force and effect as between Apple (and any entity or individual authorized by Apple to use the Services or Products) and Supplier.

## 7. **Intellectual Property**

### 7.1. Definitions.

(a) “**Intellectual Property Rights**” or “**IPR**” means any and all current and future rights in copyrights, trade secrets, trademarks, mask works, patents, design rights, trade dress, right of privacy or publicity, moral rights, and any other intellectual property rights that may exist anywhere in the world, including, in each case, whether unregistered, registered, or comprising an application for registration, and all rights and forms of protection of a similar nature or having equivalent or similar effect to any of the foregoing.

(b) “**Project IPR**” means all Intellectual Property Rights created, discovered, or developed in the performance of the Services or development of Products for Apple under the PO, or otherwise created, discovered, or developed using Apple Confidential Information.

(c) “**Supplier Background IPR**” means all rights, title, and interest in and to IPR that Supplier acquired, created, discovered, or developed at any time separately and independently of work performed for Apple (including under the PO).

7.2. Ownership of Project IPR. Apple shall own all right, title, and interest in and to any Project IPR, subject to any Supplier Background IPR embodied therein. Supplier hereby grants and assigns to Apple, without reservation, all ownership rights, title, and interest it may have in and to any Project IPR.

7.3. License. Supplier, on behalf of itself and its Related Entities, hereby grants to Apple a non-exclusive, irrevocable, perpetual, paid-up, royalty-free, worldwide license to use, sell, offer to sell, import, reproduce, display, perform, distribute, modify, prepare derivative works of, disclose (as necessary) and otherwise exploit the Products (including Software in the Products) and Services for any purpose, to practice any method or process in connection with the foregoing, and to have others exercise such rights on Apple’s behalf.

7.4. Restrictions. Supplier may only use Intellectual Property Rights owned by Apple and Apple Confidential Information to the extent required for the performance of Supplier’s obligations under the PO and in compliance with the Specifications.

7.5. Assistance. Supplier shall cooperate with Apple to ensure the timely and effective patent prosecution of Project IPR, and agrees to execute any documents, obtain all necessary rights from its Related Entities and Supplier Personnel, and at Apple’s expense, provide other assistance, reasonably requested by Apple to enable Apple to secure, perfect, register, or enforce any Intellectual Property Rights in such Project IPR. Apple and Supplier acknowledge and agree that they have a common legal interest in protection of the Project IPR and that neither party waives any privilege (or other applicable protection from disclosure) by sharing information pursuant to this provision.

### 7.6. Creative Works.

(a) Limitations. With respect to video content, audio content, graphic designs, artwork, and other similar creative content Products (excluding software and other underlying technology) (“**Creative Works**”) for which Supplier has retained ownership of the underlying copyright rights, Apple and Supplier may agree to limit Apple’s license under Section 7.3 (License), with respect to such copyright rights, regarding the duration of use, territory of use, type of use, or permitted media, solely by specifying limitations to the license in accordance with Section 12.10 (Modification).

(b) Releases and Clearances. Supplier shall obtain all third-party releases and licenses necessary for Apple to exploit the Creative Works consistent with the rights granted by Supplier under the Terms and shall pay all expenses, royalties, and fees in connection therewith (including as relates to any union or collective bargaining obligations).

(c) Moral Rights. Supplier acknowledges the existence of statutory moral rights under certain U.S. and foreign laws (e.g., 17 U.S.C. § 106(a) of the U.S. Copyright Act 1990 and *droits moraux* under laws of certain other nations). To the extent permitted by law, Supplier hereby waives, and to the extent required shall obtain third party waiver of, all such rights with regards to any and all use of Creative Works in connection with products or services of Apple and its Related Entities.

## 8. **Warranties**

8.1. General Warranties. Supplier represents and warrants that: (i) Supplier has the right to grant the rights and licenses contained herein and Supplier’s performance hereunder will not cause Supplier to breach any other agreements; (ii) all specifications and other documentation provided by Supplier are complete and accurate; (iii) the

Services and Supplier's performance under the PO will conform to all Specifications and will be conducted in a professional and workmanlike manner with a degree of skill and care no less than best commercial practices for the industry; and (iv) with respect to Project IPR, Supplier has entered into a binding contract with all employees, individuals, and Subcontractors involved in the development to enable the Project IPR to be vested in and assigned to Apple. "**Specifications**" means the most current version of all specifications and requirements (including schedules) applicable to any Service or Product that Apple may provide from time to time, and any other descriptions provided by Supplier and approved in writing by Apple.

8.2. **Product Warranties.** Supplier represents and warrants that: (i) prior to delivery, Supplier has full and warrantable title to the Products, which will be delivered free and clear of liens and encumbrances; (ii) the Products will not be misbranded or falsely labeled, advertised, or invoiced; (iii) the Products do not infringe any Intellectual Property Rights of a third party, and no fees or royalties shall be due from Apple with respect to use of such Products; (iv) the Products are new and comprised of new materials when delivered; (v) the Products are safe for any use that is consistent with the Specifications or that is reasonably foreseeable; (vi) during the Warranty Period, the Products will conform to the Specifications and be merchantable and free from defects; (vii) Supplier has, with respect to all third-party technology used in the Products, obtained all necessary rights from the third party to permit Apple to use such technology in accordance with the Terms, without payment of any royalties or other payments to such third party or any other restrictions; (viii) the Software does not contain any viruses, malware, or other harmful code; and (ix) the Software does not contain any Open Source Software that is subject to any third party encumbrances, royalties, restrictions or requirements (e.g., Affero GPL, LGPL). "**Warranty Period**" means the period that is three years from the date of delivery of the Products.

8.3. **Remedies.** For Services and Products that fail to comply with the warranties set forth in Section 8.1 (General Warranties) or Section 8.2 (Product Warranties) above, Supplier shall promptly, at Apple's option, and in addition to any other remedy available at law or equity: (i) correct or replace the Services or Products as soon as practicable (or such other time period agreed in writing); (ii) re-perform the Services; or (iii) accept the return of and refund any amounts paid for the defective or non-conforming Services and Products (plus any inspection, test, and transportation charges).

## **9. Indemnity**

9.1. **Indemnity.** Supplier shall indemnify and hold Apple, Apple Related Entities, and Apple Personnel harmless, and at Apple's request, defend Apple, Apple Related Entities, and Apple Personnel, from and against all costs, damages, and fees (including attorney and other professional fees) attributable to claims or allegations that: (i) the Services, Products, or other performance of obligations under the PO, or any portion thereof, on their own or in combination with other services and products, or the use of the foregoing by Apple, infringe any third-party's Intellectual Property Rights; (ii) the Services, Products, or other performance of obligations under the PO caused personal injury or property damage; (iii) arise or are alleged to have arisen as a result of negligent or intentional acts or omissions of Supplier or Supplier Personnel, or a breach by Supplier of any of these Terms; (iv) relate to the transfer of Supplier Personnel to Apple or any other future service provider pursuant to any provision implementing the Acquired Rights Amendment Directive (2001/23/EC) or similar legislation; or (v) relate to Supplier Personnel and results from an act or omission by Supplier, including that Supplier Personnel has not received the payment of any wages, statutory benefits, worker's compensation insurance (or the local equivalent), or other compensation, including statutory penalties or interest, or that Supplier Personnel are in any way employees of Apple ("**Covered Claims**").

9.2. **Assistance and Settlements.** Supplier shall provide all reasonable assistance, at Supplier's expense, to Apple or its counsel in relation to the defense, remedy, or mitigation of any Covered Claim. Supplier shall not, without Apple's prior written consent, make any admissions of liability, enter into any settlement that imposes any obligation on Apple, or publicize any settlement details relating to Apple.

9.3. **Duty to Correct.** If a third party claims that the Services or Products infringe any Intellectual Property Rights, Supplier shall, in addition to its other obligations under this Section 9, promptly notify Apple in writing of such claims and, at its own expense, exercise one or more of the following remedies in coordination with Apple and at a time and in a manner that will avoid any risk of interruption of Apple's business: (i) obtain from such third-party rights to enable Supplier to perform its obligations under the PO; (ii) modify the Services or Products so they are non-infringing and in compliance with the PO; (iii) replace the Products with non-infringing versions that comply with the requirements of the PO; or (iv) at Apple's request, accept the cancellation of infringing Services and Products and refund any amounts paid.

## 10. **Termination**

10.1. **Termination for Cause.** Either party may terminate the PO following written notice if the other party: (i) materially breaches any of its obligations hereunder and such breach is not cured (if capable of cure) within thirty (30) days after the date notice was provided; or (ii) becomes insolvent, makes an assignment for the benefit of creditors, or files for or is the subject of a petition in bankruptcy. If Supplier believes that it is about to become or becomes insolvent, is or is about to become subject to a petition in bankruptcy, or misses any debt payments, it shall provide immediate notice (a) by email and overnight courier to its Apple contact, and (b) by overnight courier to Apple Inc., Attn: General Counsel, One Apple Park Way, Cupertino, CA 95014, United States.

10.2. **Survival.** The provisions herein, which by their nature should remain in effect beyond termination of the PO, will survive until fulfilled, including Section 4 (to the extent payments are outstanding) and Sections 5-12.

## 11. **Additional Requirements**

11.1. **Compliance with Laws.** Supplier shall comply with all applicable laws and regulations in performing its obligations under the PO, including all applicable employment, labor, and human rights, data privacy, health and safety, tax, customs, import, export control, and environmental laws and regulations.

11.2. **Supplier Code of Conduct.** At all times while providing Services and Products, Supplier shall comply with the Apple Supplier Code of Conduct ("**Code of Conduct**") available at [www.apple.com/supplier-responsibility/](http://www.apple.com/supplier-responsibility/), as updated from time-to-time. Notwithstanding anything to the contrary in any other agreement between Apple and Supplier, Supplier shall: (i) allow and enable Apple and a third party representing Apple to assess Supplier's compliance with the Code of Conduct (an "**Assessment**") by inspecting and reviewing Supplier's facilities, practices, policies, and relevant records without notice and interviewing Supplier Personnel without disruption or monitoring; (ii) not request or encourage, directly or indirectly, any Supplier Personnel to furnish false or incomplete information; (iii) not take retaliatory action against any Supplier Personnel interviewed during an Assessment; (iv) promptly implement reasonable corrective action to remedy any material non-conformance with the Code of Conduct identified by an Assessment; and (v) hold the results and findings of any Assessment, which Supplier agrees shall be Apple Confidential Information, in the strictest confidence.

11.3. **Ethics and Business Conduct.** Supplier shall comply with Apple's Anti-Corruption Policy available on Apple's public website (as updated from time to time), and with all applicable laws and regulations enacted to combat bribery and corruption, including the United States Foreign Corrupt Practices Act, the U.K. Bribery Act, and the principles of the OECD Convention on Combating Bribery of Foreign Public Officials, and any corresponding laws in the country where business or Services are taking place pursuant to the PO. Supplier shall not, directly or indirectly through a third party, offer, pay, or promise to pay anything of value to any person, including any employee or official of a government, government-controlled enterprise or company, or political party, for the purpose of improperly influencing a decision, obtaining any improper benefit, or obtaining, retaining, or directing business.

11.4. **Personal Data.** In connection with the PO, Supplier and Supplier Personnel may obtain information relating to identified or identifiable individuals ("**Personal Data**"). Supplier and any Supplier Personnel providing Services or Products, will collect, access, maintain, use, process, and transfer Personal Data solely for the purpose of meeting Supplier's obligations under the PO and in compliance with the requirements specified in the latest version of Apple's Data Privacy and Information Security Requirements Document (available to Supplier in Apple's SupplierConnect system).

11.5. **Export Control.** In addition to complying with all applicable export laws and regulations, Supplier shall immediately notify Apple in writing of changes, if any, to classifications, export licenses, and any other determinations related to Products (including technical documentation) supplied to Apple and shall provide supporting information for such change(s).

11.6. **No Defense Articles or Covered Telecommunications Equipment.** Supplier shall not provide any 'defense articles' (as defined in 22 C.F.R. § 120.6) or 'covered telecommunications equipment or services' to Apple (as defined in the U.S. Federal Acquisition Regulation and further designated by the U.S. System for Award Management). To the extent any Products are specifically designed or modified for a military end-item or application, civilian spacecraft, or satellite-related application, Supplier shall notify Apple in writing and not provide such Products (including any related technical documentation) to Apple without Apple's prior written consent. Additionally, Supplier shall not release, export, re-export, or transfer any items (e.g., tangible products, software, source code, technology, or technical data), provided by Apple, to any military end-user or for any military end-use (as defined in 15 C.F.R. §744.21).

11.7. Import. Supplier shall implement and maintain in effect during the term of the PO, in all of Supplier's supply chains: (i) Minimum Security Criteria (as defined in the U.S. Customs Trade Partnership Against Terrorism (CTPAT) program) to the extent Products will be shipped into the U.S.; (ii) all Authorized Economic Operator (AEO) program requirements to the extent Products will be shipped into the E.U.; and (iii) all other supply chain security program requirements applicable to the shipment of Products into a region outside of the U.S. or E.U.

11.8. Insurance and Loss Prevention. Supplier shall maintain health, auto, workers' compensation, unemployment compensation, disability, general liability, errors and omissions, and other insurance, as required by law or common practice in Supplier's industry, whichever affords greater coverage, together with adequate coverage (on a replacement cost basis) for any Apple property under the care, custody, or control of Supplier. Upon request, Supplier shall provide Apple certificates of insurance or evidence of coverage.

11.9. Taxes.

(a) General. Apple is not liable for taxes that Supplier is legally obligated to pay (e.g., any applicable income taxes, withholding taxes, tax deductions, or the equivalent). Apple may withhold any taxes it is required by law to withhold and pay such taxes to the appropriate taxing authority. In the event a reduced withholding tax rate may apply, Supplier shall provide to Apple all documentation necessary to demonstrate that Supplier is qualified for the reduced rate. If the necessary documentation is not provided in a timely fashion before payment, Apple shall withhold at the full rate. Upon reasonable request by Supplier, Apple shall provide Supplier with documentation evidencing the payment of withholding tax. Apple will pay any sales tax, use tax, value added tax, products and services tax, consumption tax, or equivalent which Supplier is required by law to collect from Apple. If Apple provides Supplier a valid exemption certificate, Supplier will not collect the taxes covered by such certificate. Supplier will provide valid tax invoices to Apple to support any charges, consistent with the requirements of the relevant jurisdiction.

(b) Development Items. Services and Products that are provided during development and qualification have no intrinsic value in their tangible form. As such, no sales tax, use tax, value added tax, products and services tax, consumption tax, or equivalent have been assessed or are anticipated to be required as a result of the development or qualification of such Services and Products.

11.10. Information. Supplier shall provide to Apple reports and data (in the form and format, and containing the content and details, as requested by Apple) to enable Apple to (i) monitor the Services and Products and (ii) confirm compliance with all applicable laws and regulations.

11.11. Audits and Inspections. Supplier shall maintain all records, contracts, and accounts related to the Services and Products during the term of the PO and for three years thereafter. During the term of the PO and for three years thereafter, Apple or an independent certified public accountant reasonably acceptable to Supplier may, at any time, audit Supplier's records (including electronic records) and inspect Supplier's facilities to verify that Supplier has complied with its obligations under the PO. Supplier shall promptly provide to Apple or the auditor any information and documentation Apple or the auditor may reasonably request in connection with such audit or inspection in the format requested. Supplier shall make Supplier Personnel who are knowledgeable of the relevant records and business practices available for such audit.

11.12. Assignment. Supplier shall not assign or transfer the PO, or any rights or obligations or other interest under the PO, in-whole or in-part, whether directly, indirectly, voluntarily, or involuntarily ("**Assignment**") without Apple's prior written consent in each instance. Supplier shall promptly notify its Apple contact by email and overnight courier of any Assignment. Any Assignment in violation of this Section shall be voided upon Apple's request.

## **12. Miscellaneous**

12.1. Force Majeure. No party shall be liable for delay or failure to fulfill its obligations under the PO to the extent directly caused by an act of God that was unforeseeable, beyond its reasonable control, and not caused by its fault or negligence, so long as the non-performing party notifies the other party promptly, uses all reasonable efforts to avoid, remove, or mitigate the cause(s) of nonperformance, and suspends performance only for the period of time necessary. The doctrines of impossibility and impracticability shall not apply to the PO.

12.2. Bankruptcy. In the event of any proceeding by or against either party under any law relating to bankruptcy, insolvency, or reorganization or relief of the debtors, all rights, licenses, and covenants granted hereunder will continue without termination, rejection, or avoidance by virtue of such proceeding. If a proceeding is instituted by or against either party under any law relating to bankruptcy, insolvency, or reorganization or relief of the debtors, the other party

may retain and exercise all of its rights and elections under the U.S. Bankruptcy Code (including, to the extent applicable, the provisions of Section 365(n) of 11 U.S.C. § 101 (et seq.)).

12.3. Governing Law. The PO and the rights and obligations of the parties shall be governed by and construed and enforced under the laws of the State of Delaware, without regard to its choice of law principles. The Convention on Contracts for the International Sale of Goods shall not apply to the PO.

12.4. Dispute Resolution.

(a) Arbitration. If Supplier is domiciled outside of the People's Republic of China, any dispute arising out of or related to the PO shall be finally settled under the Expedited Procedure Provisions of the Rules of Arbitration of the International Chamber of Commerce. The place of arbitration shall be San Francisco, California, and the arbitration shall be conducted in English, without regard to conflict of laws principles. If Supplier is domiciled in the People's Republic of China, any dispute arising out of or related to the PO shall be submitted to the China International Economic and Trade Arbitration Commission ("**CIETAC**") in Beijing for arbitration which shall be conducted in English and in accordance with the 'Summary Procedure' of CIETAC's arbitration rules in effect at the time of applying for arbitration. Any arbitral award shall be final and binding upon both parties. The parties shall keep the arbitration and documents related to it confidential, and judgment on the award may be entered in any court having jurisdiction.

(b) Provisional Relief. Nothing in this Section 12.4 (Dispute Resolution) shall prevent either party from seeking provisional measures from any court of competent jurisdiction, and any such request shall not be deemed incompatible with the agreement to arbitrate or a waiver of the right to arbitrate; however, to the extent Supplier provides Creative Works, or marketing, promotion, or distribution Services in connection with Creative Works, Supplier on behalf of itself and its Related Entities, covenants not to seek or enforce injunctive relief against (i) any product or service of Apple or its Related Entities that incorporates or uses such Products or Services or (ii) any third party anywhere in the world to the extent that doing so would disrupt the development, production, marketing, promotion, or distribution of any product or service of Apple or its Related Entities. The parties hereby waive any requirements for security for obtaining any provisional relief.

12.5. Construction. The section headings in the Terms are for convenience only and are not to be considered in construing or interpreting the Terms. The words "will" and "shall" are used in a mandatory, not a permissive, sense, and the word "including" is intended to be exemplary, not exhaustive, and will be deemed followed by "without limitation." Unless explicitly stated otherwise, the phrase "in writing" may include email communication between authorized representatives of Apple and Supplier.

12.6. No Waiver. No delay or failure to act in the event of a breach of the Terms shall be a waiver of that or any subsequent breach of any provision of the Terms. In addition, no waiver will be implied from conduct or failure to enforce or exercise rights under the Terms, nor will any waiver be effective unless in a writing signed by a duly authorized representative of a party claimed to have waived.

12.7. Remedies. No remedy hereunder is intended to be exclusive of any other remedies available at law or equity.

12.8. Severability. If a court of competent jurisdiction finds any provision of the Terms unlawful or unenforceable, that provision will be enforced to the maximum extent permissible so as to effect the intent of the parties, and the remainder of the Terms will continue in full force and effect.

12.9. Complete Understanding. These Terms constitute the full and complete understanding and agreement of the parties relating to the subject matter hereof.

12.10. Modification. A modification of the Terms shall only be effective if (i) agreed in a writing signed by authorized representatives of Apple and Supplier, (ii) specified by Apple on the PO (including in the 'Notes to Supplier' section of the PO), or (iii) solely with respect to Software, Documentation and Creative Works, agreed by an Apple employee at Director-level or above in an email exchanged with Supplier.

12.11. Conflict. In the event of any conflict in the documents referred to herein, the order of precedence will be: (i) the payment, quantity and delivery terms identified on the PO; (ii) any other terms specified by Apple on the PO (including in the 'Notes to Supplier' section of the PO); (iii) any written agreement signed by authorized representatives of Apple and Supplier (or their Related Entities) that covers the same subject matter as the PO; and (iv) the provisions of these Terms (including as modified in accordance with Section 12.10 (Modification)).