



Please read the following Apple Employee Portal Agreement carefully prior to agreeing to create an Apple Employee Portal. This Agreement constitutes a legal agreement between Apple Inc., a California corporation located at One Apple Park Way, Cupertino, CA 95014 ("Apple"), Apple Operations Europe, a company organized and existing under the laws of Ireland, with registered address at Hollyhill Industrial Estate, Hollyhill, Cork, Ireland ("AOE") and your Company. By clicking on the "Agree" button, your Company ("Company"), through its authorized representative, is agreeing to become a party to this Agreement and will be bound by and will comply with all terms and conditions contained in the Agreement.

## Apple Employee Portal Agreement

### 1. Background

The Apple Employee Portal (as defined below) is provided by Bridge2 Solutions, LLC, to Companies authorized by Apple, for provisioning of Apple Products to its employees through the Apple Employee Portal. Company agrees that the creation and operation of the Apple Employee Portal, by Company, is subject to the terms and conditions of this Agreement.

### 2. Definitions

**"Agreement"** means, collectively, this Apple Employee Portal Agreement, any additional documents made available by Apple from time to time, all of which are incorporated into and made part of the Agreement, and any updates to the Agreement.

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

**"Apple Content"** means: (i) literature, images, and other textual, graphical and/or multimedia content regarding Products that may contain Apple Marks; and/or (ii) materials and elements of any program, including but not limited to the design, layout and overall "look and feel", tangible displays and fixtures, merchandising materials, marketing collateral, signage, training programs or other materials made available to Company pursuant to the Agreement.

**"Apple Employee Portal"** means that certain digital storefront created that looks, feels and provides the user experience of the Apple Online Store.

**"Apple Entity"** means Apple or any Apple subsidiary or affiliate.

**"Apple Intellectual Property"** means all intellectual property rights directly or indirectly owned by or licensed to Apple or AOE, including but not limited to Apple Marks, Apple Content, Apple Works patents, design rights, service marks and copyrights, registered or unregistered, anywhere in the world.

**"Apple Marks"** means all trademarks, service marks, trade dress, logos, taglines, slogans, product names, any other word, phrase, symbol or design that identifies or distinguishes the source of goods or services from those of others, registered or unregistered, directly or indirectly owned by or licensed to Apple or AOE anywhere in the world, including but not limited to Apple, the Apple logo, and any channel designations, marks, or program identifiers.

**"Apple Products"** means hardware and software products manufactured, distributed, licensed or sold under an Apple owned or licensed brand name that a Company has paid to acquire, or has properly licensed from Apple, for corporate provisioning to its employees, but excluding any third party software and all other Third Party Products.

**"Apple Works"** means all works subject to copyright owned or controlled by or licensed to Apple or AOE and used in connection with the Apple Online Store, including but not limited to the look and feel of the Apple Online Store, product images and product descriptions, and all derivative works of such works created by Bridge2 Solutions, LLC for the Apple Employee Portal.



**"Customer Information"** means all of the information an Apple Entity collects from or about its customers or potential customers.

**"Effective Date"** means the date upon which Company's authorized representative accepts this Agreement.

**"Eligible Employees"** means employees of a Company that are permitted, by Company, to select Apple Products on an Apple Employee Portal.

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

**"Prohibited Products"** means non-genuine (counterfeit) Apple Products or products that infringe Apple's Intellectual Property.

**"Products"** means both Apple Products and Third Party Products.

**"Territory"** means Republic of South Africa.

**"Third Party Products"** means any type of hardware, software or services that are not manufactured, distributed, licensed or sold under an Apple owned or licensed brand name and that Apple supplies or arranges to be supplied pursuant to the Agreement.

### **3. Apple Employee Portal Authorization**

**3.1** Subject to the terms herein, Company is authorized to register for and create an Apple Employee Portal for the corporate provisioning of Products to its employees in the Territory. From a Product selection determined by Apple in its discretion, Company may select Products to include in the Apple Employee Portal.

**3.2** In its discretion, Apple may (i) terminate or modify (1) the foregoing authorizations, or (2) Company's or its employee's access to the Apple Employee Portal, and (ii) direct Bridge2 Solutions LLC to shut down the Apple Employee Portal.

**3.3** Bridge2 Solutions LLC is hosting and maintaining the Apple Employee Portal and related website. Apple is not obligated to provide any maintenance, technical or other support for the Apple Employee Portal.

**3.4** Apple is entitled in its absolute discretion to make variations and amendments to this Agreement without notice to Company, and such variations or amendments will be immediately binding on Company upon Apple's communicating such varied or amended version(s) to Company.

### **4. Rights Reserved to Apple**

**4.1** This Agreement is non-exclusive and grants Company only those rights specifically stated in this Agreement during the Term. All other rights, whether express or implied, are expressly reserved to Apple and AOE. Company acknowledges and agrees that as between Company, Apple and AOE, Apple and/or AOE retain ownership of all rights in and to the Apple Works, Apple Marks, Apple Content, and all other Apple Intellectual Property. Nothing in this Agreement limits Apple's authorizing other companies to register for a Portal or any other rights that Apple has or may have.

**4.2.** Apple will solely control the Apple Works displayed on the Apple Employee Portal.

**4.3.** Apple or the applicable Apple Entity fulfilling an order may allocate Products in its sole discretion and without liability to Company. Company acknowledges that Apple, or such applicable Apple Entity, may choose to allocate Products to or among its own retail and web-based stores, direct customers, education customers, sales territories, resellers, other companies, or other sales channels, and there may be delays in the fulfillment of orders made on the Apple Employee Portal.

**4.4** Apple does not guarantee that Products will be available at all times during the Term. With respect to orders that originate on the Apple Employee Portal, the applicable Apple Entity fulfilling an order reserves the right to accept or decline any related order ultimately placed with such applicable Apple Entity, in whole or in part.

**4.5** In its discretion, the applicable Apple Entity fulfilling an order may cease accepting orders, or cancel or refuse an order, originating from the Apple Employee Portal, including if such Apple Entity (i) determines that Company is not complying with its obligations under this Agreement, (ii) determines that such Apple Entity has insufficient inventory to fulfill such order, or (iii) if such applicable Apple Entity suspects Company or an Eligible Employee is purchasing for resale. The Apple Entity fulfilling an order may make partial shipments of such orders and will not be liable for any failure to ship complete orders.

### **5. Company's Obligations**



**5.1** Company will not sell, or offer for sale, the Apple Products purchased in connection with the Apple Employee Portal. Apple Products purchased in connection with the Apple Employee Portal are solely for Company's end use.

**5.2** Without limitation and throughout the Term, Company including its employees, contractors, third-party service providers, and agents who are authorized to exercise rights under this Agreement on its behalf will at its own expense: (i) comply with all terms set forth and incorporated by reference herein; (ii) promote Apple Products in a manner that maintains the good name, goodwill and reputation of Apple, its employees, directors, subsidiaries, affiliates, the Apple Products, the Apple brand and does not infringe any Apple Intellectual Property; (iii) conduct its activities in a professional and competent manner; (iv) actively promote Apple Products to Eligible Employees and maintain a high level of Eligible Employee satisfaction; (v) not promote any Prohibited Products, and will not allow any third party to promote any Prohibited Products; and (vi) not engage in any illegal, false or deceptive acts or practices in the course of its business activities or performance of the Agreement.

**5.3** Company represents and warrants that all information provided to Apple in connection with Company's selection and approval to register and create an Apple Employee Portal, including without limitation information provided during the enrollment process, is complete and true. Company further warrants that any information required or requested by Apple during the Term will be complete and true.

**5.4** Company shall provide a direct link to the Apple Employee Portal to its Eligible Employees from Company's internal secure portal/intranet. Company will clearly state at said link that it is for Eligible Employees only, and the selection of Product is for Eligible Employee's corporate use only and not for resale.

**5.5** Company shall ensure that only Eligible Employees are permitted to select Products through the Apple Employee Portal. Company shall be solely responsible for any unauthorized use of the Apple Employee Portal and/or loss resulting from the use of the Apple Employee Portal. Company shall comply with Apple's, and any other, applicable privacy policy and applicable privacy legislation and requirements, when directly or indirectly, distributing or performing any act in connection with Products or in the transfer of personal data to an Apple Entity, including but not limited to: (i) the purpose and manner of collection of personal data; (ii) the access provided; (iii) the retention of personal data; (iii) the use of personal data; and (iv) security of personal data when stored or transferred.

**5.6** At all time that Company is registered for an Apple Employee Portal, Company shall have an agreement with the applicable Apple Entity, or the applicable fulfillment partner, for the purchase of the Products selected on the Apple Employee Portal, and such purchases shall be subject to the terms and conditions set forth in such agreement. Company and Eligible Employees may be required to accept additional terms during the purchase process. Company shall ensure that there is an appropriate legal basis (including information and consent requirements, where applicable) to disclose Eligible Employee's end user information to an Apple Entity or another fulfillment partner in connection with the Apple Employee Portal.

**5.7** To the extent an order placed on the Apple Employee Portal is fulfilled by a party other than an Apple Entity, Company will engage with, and will direct Eligible Employees to engage with, such fulfillment partner with respect to the selection, and purchase of Products on the Apple Employee Portal, any subsequent returns, and any other customer service questions or inquiries.

## **6. Marketing Commitment and Limitations**

**6.1** Apple will provide Company with promotional material, messaging, product documentation, and other communications that Company may use to promote the Apple Employee Portal to its employees in the Territory; provided, however, that Company is prohibited from creating or using any other advertisement, marketing or promotional material or corporate communication in connection with the Apple Employee Portal without approval from Apple in writing. Company shall feature the provided marketing materials and a link to Apple Employee Portal on Company's platform prominently and separately from all other offered benefits unless otherwise approved by Apple in writing.

**6.2** Company will provide information about the Apple Employee Portal via email, newsletter, banners and/or other means of communications to Eligible Employees on an ongoing basis as authorized and provided by Apple.

**6.3** Company shall use Apple approved images, text, and the like in accordance with Apple's policies and guidelines and subject to the license set forth in Apple's Trademark Guidelines (available at <http://www.apple.com/legal/trademark/guidelinesfor3rdparties.html>). Company shall include any legal notices or disclaimers that Apple may provide for use in approved advertisements, marketing materials, and/or corporate communications.

**6.4** Company will not make or issue any representations, warranties, or guarantees through any medium with respect to the specifications, features, or capabilities of any Apple Products.

**6.5** Neither Apple or AOE nor Company shall make any press statement or distribute any press release mentioning this Agreement, its subject matter, any party to this Agreement or any of the such other parties' products without the such



other parties' prior written approval. Company is strictly prohibited from marketing itself as "Apple Authorized" or in any way that otherwise infers an endorsement by an Apple Entity, unless specifically authorized by Apple in writing.

## **7. Records, Inspections, and Audits**

**7.1** During the Term and for at least five (5) years after expiration or termination, or for any longer period of time as may be required by law, Company will maintain its records, contracts and accounts relating to the Apple Employee Portal and this Agreement. During the Term and for five (5) years after its expiration or termination, or for any longer period of time as may be required by law, Apple will have the right to audit and inspect during regular business hours Company's records, contracts and accounts relating to the Apple Employee Portal and this Agreement. Company will provide any information that Apple may reasonably request and will cooperate with any such audit or inspection.

**7.2** If Apple determines that Company has failed to maintain any documentation required by Apple or otherwise engaged in any wrongful conduct with respect to this Agreement, Apple may withhold any payments otherwise due from Apple to Company and may demand that Company pay to Apple all fees and other compensation wrongfully obtained by Company. If the wrongful activities discovered during Apple's inspection or audit exceed, in the aggregate, five thousand U.S. dollars (\$5,000) in value during the period under review, Company will reimburse Apple for its costs of conducting the inspection.

## **8. Compliance with Law; Export Obligations**

**8.1.** Company will comply with all applicable laws and regulations, including all anti-corruption and anti-bribery laws, the United States Foreign Corrupt Practices Act, the UK Bribery Act, the principles of the OECD Convention on Combating Bribery of Foreign Public Officials and any corresponding laws where business or services will be conducted or performed pursuant to this Agreement.

**8.2** This Agreement is subject to all applicable laws, regulations, orders and other limitations on the export and re-export of commodities, technical data and software. COMPANY SHALL BE SOLELY RESPONSIBLE FOR COMPLIANCE WITH ALL APPLICABLE EXPORT AND REEXPORT CONTROL RULES THAT APPLY TO ITS RESALE ACTIVITIES AND further agrees that it will not export, re-export, resell or transfer any export-controlled commodity, technical data or software: (i) in violation of such limitations imposed by the United States, or any other relevant national government authority; (ii) to any country for which an export license or other governmental approval is required at the time of export, without first obtaining all necessary licenses or other approvals; (iii) to any country or national or resident of a country to which trade is embargoed by the United States, or any other relevant national authority; (iv) to any person or firm on any relevant government agency restricted party lists, (examples: United Nations Sanctions list, United States Denial Lists, Office of Foreign Assets Control Specially Designated Nationals List, etc.); or (v) for use in, or to an entity that might engage in, any sensitive nuclear, chemical or biological weapons, or missile technology end-uses unless authorized by the United States Government, the member states of the European Union, the European Free Trade Association, and any other relevant government agency by regulation or specific license.

## **9. Proprietary Rights**

### **9.1 Apple Marks**

Company agrees that Apple and AOE own all rights in the Apple Marks and Apple Works. Company agrees not to use any Apple Content, Apple Marks, Apple Works, or other Apple Intellectual Property in any manner whatsoever, or act in any manner that implies an endorsement of Company by Apple or AOE, or their respective subsidiaries or affiliates. Company will not remove, obfuscate or add any mark to any materials provided by Apple or AOE.

### **9.2 Apple Proprietary Customer Information**

Notwithstanding anything to the contrary herein, Company acknowledges that: (i) Apple maintains Customer Information derived from sources other than Company, including but not limited to Apple Product registration and use of Apple's web sites; (ii) such Customer Information may be identical to information contained in any reports or sales data furnished by Company or that Company has developed, maintains, or collects; and (iii) Apple owns its Customer Information and all proprietary interests therein, whether or not Company has derived or maintains identical information or has or asserts any rights therein. Company hereby disclaims any right or interest whatsoever in Customer Information and agrees not to contest Apple's rights therein.

### **9.3 Apple Content**

Apple and AOE may make certain Apple Content available to Company. Subject to the terms of this Agreement, Apple and AOE grant Company a non-exclusive, non-sublicensable, non-transferable, revocable, limited license, during the Term, to use, reproduce, perform (as applicable) and display Apple Content and Apple Marks provided by Apple or AOE solely for the purpose of advertising and promoting the Apple Employee Portal in the Territory. Company understands that its access to all or any Apple Content and Apple Marks may be at a charge to Company. Company agrees to remove or substitute any or all Apple Content immediately and at Company's expense, if required by Apple or AOE. Company agrees that all Apple Content (and all Apple Intellectual Property in and to the Apple Content), Apple Marks and other Apple Intellectual Property shall remain the sole and exclusive property of Apple. Upon termination of this Agreement pursuant to Section 13, Company will immediately cease all use of the Apple Intellectual Property.



**9.4** Company agrees to protect Apple's and AOE's proprietary rights, including Apple Intellectual Property, and to cooperate without charge in Apple's and AOE's efforts to protect its proprietary rights, including efforts to prevent the sale and distribution of Prohibited Products.

## **10. Confidentiality**

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

## **11. Indemnification**

Apple and AOE disclaim any and all liability that arises out of or is related to the Apple Employee Portal, its creation or use, and the purchases made by Company in relation thereto. To the extent permitted by applicable law, Company will defend, hold harmless and indemnify Apple, AOE and their respective officers, directors, employees and agents from and against any claim or threat of a claim brought by a third party against Apple or AOE arising out of the acts and/or omissions of Company (including its subsidiaries or affiliates and their officers, directors, employees, agents or contractors), including without limitation any alleged violation by Company of its obligations under the Agreement, or any claim that arises out of Company's creation of or Eligible Employees' use of the Apple Employee Portal.

## **12. Limitation of Liability and Remedies**

**12.1** The maximum aggregate liability by Company against Apple or AOE in the aggregate (including any liability for the acts or omissions of Apple's employees, agents and subcontractors) for any and all claims of any kind arising out of or in connection with the Agreement, whether in contract, warranty, tort (including negligence), misrepresentation, strict liability, statute, or otherwise, shall be limited to one thousand dollars (\$1,000).

**12.2** IN NO EVENT, WHETHER AS A RESULT OF BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), MISREPRESENTATION, STRICT LIABILITY, STATUTE OR OTHERWISE, SHALL APPLE OR AOE BE LIABLE TO COMPANY FOR ANY LOSS OF PROFIT OR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, INDIRECT LOSSES (INCLUDING LOSS OF DATA, INTERRUPTION IN USE, UNAVAILABILITY OF DATA, UNAVAILABILITY OR INTERRUPTION IN AVAILABILITY OF APPLE PRODUCTS, OR OTHER ECONOMIC ADVANTAGE) OR FOR PUNITIVE OR EXEMPLARY DAMAGES. For purposes of this provision, all damages under the indemnification obligations of Company are to be considered direct damages and not subject to this exclusion of damages.

**12.3** The remedies set forth in this Agreement will be Company's sole and exclusive remedies for any claim against Apple or AOE under or related to the Agreement.

**12.4** THE PARTIES AGREE THAT THE TERMS OF THE AGREEMENT, INCLUDING THOSE CONCERNING INDEMNITY AND LIMITATIONS OF LIABILITY, REPRESENT A FAIR ALLOCATION OF RISK AMONGST THE PARTIES (INCLUDING AOE) WITHOUT WHICH THEY WOULD NOT HAVE ENTERED INTO THIS AGREEMENT. LIABILITY FOR DAMAGES WILL BE LIMITED AND EXCLUDED, EVEN IF ANY EXCLUSIVE REMEDY PROVIDED FOR IN THE AGREEMENT FAILS OF ITS ESSENTIAL PURPOSE.

## **13. Term and Termination**

### **13.1 Term**

Unless terminated earlier as provided in this Agreement, the initial term of this Agreement shall be from the Effective Date until the following April 30 ("**Initial Term**"). This Agreement shall automatically renew for successive twelve (12) month periods (each a "**Renewal Term**"). Apple (on behalf of itself and AOE) may terminate this Agreement immediately in its discretion. Company must provide written notice to Apple of its election not to renew this Agreement at least thirty (30) days prior to the end of the Initial Term or then-current Renewal Term. The Initial Term and all Renewal Terms are referred to as the "**Term**").

### **13.2 Survival**

All defined terms and the following Sections of this Agreement shall survive expiration or any termination of the Agreement: 7 (Records, Inspection, and Audits); 9 (Proprietary Rights, excluding any licenses granted therein, all of which shall terminate upon expiration or termination of this Agreement), 10 (Confidentiality); 11 (Indemnification); 12 (Limitation of Liability and Remedies); 13.2 (Survival); 14 (General Terms), and any other Sections that by their nature would reasonably be expected to survive expiration or termination.



## **14. General Terms**

### **14.1 Governing Law**

This Agreement will be governed by the laws of the State of Delaware, without regard to its conflict of laws provisions.

### **14.2 Dispute Resolution**

**14.2.1** All disputes or claims (including but not limited to, third party claims) arising out of or in connection with this Agreement, including but not limited to, disputes related to its formation, validity, interpretation, execution, non-execution or interruption, whether this dispute or claim is contractual, based on tort, public policy rules, commercial law, data privacy law, publicity rights and/or competition law (including but not limited to Articles 101, 102 and 107 of the Treaty on the Functioning of the European Union or any other text amending and replacing it and/or any national statute law based on, or implementing, these or similar rules) shall be finally settled under the Rules of Arbitration ("**Rules**") of the International Chamber of Commerce ("**ICC**") by three arbitrators appointed in accordance with said Rules. The law of this arbitration clause shall be Delaware law.

**14.2.2** The place of arbitration shall be San Francisco, California, USA. The language of the arbitration shall be English. In addition to the ICC Rules, the Parties agree that the arbitration shall be conducted according to the International Bar Association Rules on the Taking of Evidence in International Arbitration.

**14.2.3** The Parties and AOE recognize that any arbitration proceedings and all awards in arbitration, together with all materials in the proceedings created for the purpose of the arbitration and all other documents produced by another party in the proceedings will be confidential.

**14.2.4** In addition to what is provided in Article 37 of the ICC Arbitration Rules, the prevailing party shall also be entitled to its attorney's fees and costs in any action to confirm and/or enforce any arbitral award in any judicial proceedings.

**14.2.5** Nothing in this Agreement shall prevent either Party or AOE from seeking provisional measures from any court or competent jurisdiction, and any such request shall not be deemed incompatible with the agreement to arbitrate or regarded as a waiver of the right to arbitrate.

Any action arising out of or related to this Agreement must be brought within one (1) year from the first date such action could have been brought. If a longer period is provided by statute, the Parties hereby expressly waive it.

### **14.3 Notice under the Agreement**

Any notices relating to this Agreement shall be in writing. Notices will be deemed given by Apple (on behalf of itself and/or AOE) when sent to Company at the email address or mailing address that was provided during the enrollment process. Company consents to receive notices by email and agrees that any electronic notices shall satisfy any legal communication requirements. All notices to Apple or AOE relating to this Agreement will be deemed given five (5) business days after having been sent by first class or certified mail, postage prepaid, to this Apple address: Apple Inc., U.S. Contracts Operations, One Apple Park Way, M/S 318-6OPS, Cupertino, California 95014 U.S.A.

### **14.4 Entire Agreement**

Apple, AOE and Company acknowledge that the Agreement supersedes and extinguishes all previous agreements and representations (whether oral or written), between or on behalf of the Parties with respect to its subject matter. The Agreement contains all of Apple's, AOE's and Company's agreements, warranties, understandings, conditions, covenants, promises and representations with respect to its subject matter. Apple, AOE and Company acknowledge and agree that they have not relied on any other agreements, warranties, understandings, conditions, covenants, promises or representations in entering into this Agreement. None of Apple, AOE or Company will be liable for any agreements, warranties, understandings, conditions, covenants, promises or representations not expressly stated or referenced in this Agreement. Each of Apple and AOE is deemed to have refused any provisions in purchase orders, invoices or other documents or statements from Company that purport to alter or have the effect of altering any provision of the Agreement and such refused provisions will be unenforceable.

### **14.5 Severability**

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

### **14.6 Waivers**

Apple's (on behalf of itself and/or AOE) or Company's waiver of any breach by the any other party hereto or failure to enforce a remedy will not be considered a waiver of subsequent breaches of the same or of a different kind.

### **14.7 Headings and Construction**

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



**14.8 Acceptance**

Company acknowledges and agrees that by clicking on the "Agree" or similar button or by checking a box, Company, through its authorized representative, is accepting and agreeing to the terms and conditions of this Agreement.