**CLASS A PREFERRED SHARE PURCHASE AGREEMENT**

THIS CLASS A PREFERRED SHARE PURCHASE AGREEMENT (this “**Agreement**”), is made as of [\_\_\_\_\_\_\_\_], 20[\_\_][closingdate] among Apple Corporation Inc., a corporation incorporated under the Act(the “**Corporation**”), the investors listed on Exhibit A attached to this Agreement (each a “**Purchaser**” and together the “**Purchasers**”).

The parties hereby agree as follows:

1. Purchase and Sale of Preferred Shares.
   1. Sale and Issuance of Class A Preferred Shares.
      1. The Corporation shall have adopted and filed with [Corporations Canada] [on or before the Initial Closing (as defined below)] the Articles of Amendment in the form of Exhibit B attached to this Agreement (the “**Articles of Amendment**”).
      2. Subject to the terms and conditions of this Agreement, each Purchaser agrees to purchase at the Closing (as defined below) and the Corporation agrees to sell and issue to each Purchaser at the Closing that number of Class A Preferred Shares (the “**Class A Preferred Shares**”), set forth opposite each Purchaser's name on Exhibit A, at a purchase price of $2.50 per share. The Class A Preferred Shares issued to the Purchasers pursuant to this Agreement are referred to in this Agreement as the “**Shares**.”
   2. Closing; Delivery.
      1. The initial purchase and sale of the Shares shall take place remotely via the exchange of documents and signatures, at [closingtime]., on [closingdate], or at such other time and place as the Corporation and the Purchasers mutually agree upon, orally or in writing (which time and place are designated as the “**Initial Closing**”). If there is more than one closing, the term "**Closing**" applies to each such closing unless otherwise specified.
      2. At each Closing, the Corporation shall deliver to each Purchaser a certificate representing the Shares being purchased by such Purchaser at such Closing against payment of the purchase price therefor by cheque payable to the Corporation, by wire transfer to a bank account designated by the Corporation, by cancellation or conversion of indebtedness or other convertible securities of the Corporation to Purchaser**,** including interest**,** or by any combination of such methods.
   3. **Use of Proceeds.**

**In accordance with the directions of the Corporation's Board of Directors, as constituted in accordance with the Voting Agreement, the Corporation will use the proceeds from the sale of the Shares for product development and other general corporate purposes**.

* 1. Defined Terms Used in this Agreement.

In addition to the terms defined above, the following terms used in this Agreement have the meanings set forth or referenced below.

* + 1. “**Act**” means the *Canada Business Corporations Act***.**
    2. “**Affiliate**” means, with respect to any specified Person, any other Person who, directly or indirectly, controls, is controlled by, or is under common control with such Person, including, without limitation, any general partner, managing member, officer, director or trustee of such Person or any venture capital fund or registered investment company now or hereafter existing that is controlled by one (1) or more general partners, managing members or investment advisers of, or shares the same management company or investment adviser with, such Person.
    3. “**Articles**” has the meaning given to such term in the Act.
    4. “**Corporation Intellectual Property**” means all patents, patent applications, registered and unregistered trademarks, trademark applications, registered and unregistered service marks, service mark applications, tradenames, copyrights, trade secrets, domain names, mask works, information and proprietary rights and processes, similar or other intellectual property rights, subject matter of any of the foregoing, tangible embodiments of any of the foregoing, licenses in, to and under any of the foregoing, and in any and all such cases **[that are owned or used by] [as are necessary to]** the Corporation in the conduct of the Corporation's business as now conducted and as presently proposed to be conducted.
    5. “**Indemnification Agreement**” means the agreement between the Corporation and the director **[and Purchaser Affiliates]**[[1]](#footnote-7) designated by any Purchaser entitled to designate a member of the Board of Directors pursuant to the Voting Agreement, dated as of the date of the Initial Closing, in the form of Exhibit D attached to this Agreement.
    6. “**Investors' Rights Agreement**” means the agreement among the Corporation and the Purchasers[[2]](#footnote-8) [and certain other shareholders of the Corporation] dated as of the date of the Initial Closing, in the form of Exhibit E attached to this Agreement.
    7. “**Key Employee**” means any executive-level employee (including division director and vice president-level positions) as well as any employee or consultant who either alone or in concert with others develops, invents, programs or designs any Corporation Intellectual Property.[[3]](#footnote-9)
    8. “**Knowledge**” including the phrase “**to the Corporation's knowledge**” means the actual knowledge **[after reasonable investigation and assuming such knowledge as the individual would have as a result of the reasonable performance of his or her duties in the ordinary course]** of the following officers: **[specify names]**.[[4]](#footnote-10) Additionally, for the purposes of Section 2.8, the Corporation shall be deemed to have “knowledge” of a patent right if the Corporation has actual knowledge of the patent right or would be found to be on notice of such patent right as determined by reference to Canadian patent laws.
    9. “**Management Rights Letter**” means the agreement between the Corporation and **[Purchaser]**, dated as of the date of the Initial Closing, in the form of Exhibit F attached to this Agreement.
    10. “**Material Adverse Effect**” means a material adverse effect on the business, assets (including intangible assets), liabilities, financial condition, property, prospects or results of operations of the Corporation.
    11. “**Person**” means any individual, corporation, partnership, trust, limited liability company, association or other entity.
    12. “**Purchaser**” means each of the Purchasers who is initially a party to this Agreement and any Additional Purchaser who becomes a party to this Agreement at a subsequent Closing under Section (b).
    13. “**Right of First Refusal and Co-Sale Agreement**” means the agreement among the Corporation, the Purchasers, and certain other shareholders of the Corporation, dated as of the date of the Initial Closing, in the form of Exhibit G attached to this Agreement.
    14. “**Securities Laws**” means the *Canada Business Corporations Act* , as amended, and the policies, orders, instructions, rules and regulations promulgated thereunder.
    15. “**Tax Act**” means the *Income Tax Act* (Canada), as amended.
    16. “**Transaction Agreements**” means this Agreement, the Investors' Rights Agreement, the Management Rights Letter, the Right of First Refusal and Co-Sale Agreement, the Voting Agreement and **[list any other agreements, instruments or documents entered into in connection with this Agreement]**.
    17. “**Voting Agreement**” means the agreement among the Corporation, the Purchasers and certain other shareholders of the Corporation, dated as of the date of the Initial Closing, in the form of Exhibit H attached to this Agreement.

1. Representations and Warranties of the Corporation.

The Corporation hereby represents and warrants to each Purchaser that, except as set forth on the Disclosure Schedule attached as Exhibit C to this Agreement, which exceptions are deemed to be part of the representations and warranties made hereunder, the following representations are true and complete as of the date of the Closing, except as otherwise indicated. The Disclosure Schedule shall be arranged in sections corresponding to the numbered and lettered sections contained in this Section 2, and the disclosures in any section of the Disclosure Schedule shall qualify other sections in this Section 2 only if it is readily apparent from a reading of the disclosure that such disclosure is applicable to such other sections.

For purposes of these representations and warranties (other than those in Sections 2.2, 2.3, 2.4, 2.5, and 2.6, the term the "**Corporation**" includes any subsidiaries of the Corporation, unless otherwise noted.

* 1. Organization, Good Standing, Corporate Power and Qualification.

The Corporation is a corporation duly organized, validly existing and in good standing under the Act and has all requisite corporate power and authority to carry on its business as presently conducted and as presently proposed to be conducted. The Corporation is duly qualified to transact business and is in good standing in each jurisdiction in which the failure to so qualify would have a Material Adverse Effect.

* 1. Capitalization.
     1. The authorized capital of the Corporation consists, immediately prior to the Initial Closing, of:
        1. 100,000,000 common shares, $1 per share (the "**Common Shares**"), 100,000,000 shares of which are issued and outstanding immediately prior to the Initial Closing. All of the outstanding Common Shares have been duly authorized, are fully paid and nonassessable and were issued in compliance with all Securities Laws.
     2. The Corporation has reserved 20,000,000 Common Shares for issuance to officers, directors, employees and consultants of the Corporation pursuant to its Stock Plan duly adopted by the Board of Directors and approved by the Corporation shareholders (the “**Stock Plan**”). Of such reserved Common Shares, 5,000,000 shares have been issued pursuant to restricted share purchase agreements, options to purchase 5,000,000 shares have been granted and are currently outstanding, and 10,000,000 Common Shares remain available for issuance to officers, directors, employees and consultants pursuant to the Stock Plan. The Corporation has furnished to the Purchasers complete and accurate copies of the Stock Plan and forms of agreements used thereunder.
     3. Section 2.2(c) of the Disclosure Schedule sets forth the capitalization of the Corporation immediately following the Initial Closing including the number of shares of the following: (i) issued and outstanding Common Shares, including, with respect to restricted Common Shares, vesting schedule and repurchase price; (ii) outstanding share options, including vesting schedule and exercise price; (iii) Common Shares reserved for future award grants under the Stock Plan; (iv) each class of Preferred Shares; and (v) warrants or share purchase rights, if any. Except for (A) the conversion privileges of the Shares to be issued under this Agreement, (B) the rights provided in Section 4 of the Investors' Rights Agreement, and (C) the securities and rights described in Sections 2.2(a)(ii) and 2.2(b) of this Agreement and Section 2.2(c) of the Disclosure Schedule, there are no outstanding options, warrants, rights (including conversion or preemptive rights and rights of first refusal or similar rights) or agreements, orally or in writing, to purchase or acquire from the Corporation any Common Shares or Class A Preferred Shares, or any securities convertible into or exchangeable for Common Shares or Class A Preferred Shares. All outstanding Common Shares and all Common Shares underlying outstanding options are subject to (i) a right of first refusal in favour of the Corporation upon any proposed transfer (other than transfers for estate planning purposes); and (ii) a lock-up or market standoff agreement of not less than 180 days following the Corporation's initial public offering pursuant to a prospectus receipt issued by a Canadian securities regulator under the Securities Laws.
     4. None of the Corporation's share purchase agreements or share option documents contains a provision for acceleration of vesting (or lapse of a repurchase right) or other changes in the vesting provisions or other terms of such agreement or understanding upon the occurrence of any event or combination of events, including, without limitation, in the case where the Corporation's Stock Plan is not assumed in an acquisition. The Corporation has never adjusted or amended the exercise price of any share options previously awarded, whether through amendment, cancellation, replacement grant, repricing, or any other means. Except as set forth in the Articles of Amendment, the Corporation has no obligation (contingent or otherwise) to purchase or redeem any of its capital stock.
     5. The Corporation has obtained valid waivers of any rights by other parties to purchase any of the Shares covered by this Agreement.
  2. Subsidiaries.

The Corporation does not currently own or control, directly or indirectly, any interest in any other corporation, partnership, trust, joint venture, limited liability company, association, or other business entity. The Corporation is not a participant in any joint venture, partnership or similar arrangement.

* 1. Authorization.

All corporate action required to be taken by the Corporation's Board of Directors and shareholders in order to authorize the Corporation to enter into the Transaction Agreements, and to issue the Shares at the Closing and the Common Shares issuable upon conversion of the Shares, has been taken . All action on the part of the officers of the Corporation necessary for the execution and delivery of the Transaction Agreements, the performance of all obligations of the Corporation under the Transaction Agreements to be performed as of the Closing, and the issuance and delivery of the Shares has been taken. The Transaction Agreements, when executed and delivered by the Corporation, shall constitute valid and legally binding obligations of the Corporation, enforceable against the Corporation in accordance with their respective terms except (i) as limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance, or other laws of general application relating to or affecting the enforcement of creditors' rights generally, (ii) as limited by laws relating to the availability of specific performance, injunctive relief, or other equitable remedies, or (iii) to the extent the indemnification provisions contained in the Investors' Rights Agreement and the Indemnification Agreement may be limited by applicable Securities Laws.

1. See Model Indemnification Agreement for discussion of the issue of expanding coverage to include not just VC designee director, but also the fund(s) making the investment. [↑](#footnote-ref-7)
2. In Class A Preferred Share financings, the Investors' Rights Agreement will normally be signed by all the Class A Purchasers. In subsequent financing rounds, the standard practice is to amend and restate the Investor Rights Agreement, which will then be signed by the Corporation as well as the subsequent and prior round purchasers. [↑](#footnote-ref-8)
3. In a Class A round at a high-tech start-up, it is likely that the only key employees in addition to management, if any, are those who are responsible for developing the Corporation's key intellectual property assets. It may be simpler for these early-stage companies to list the Key Employees by name. In later rounds, it may be appropriate to include others, e.g., important salespeople or consultants and define Key Employees by function (e.g., division director). [↑](#footnote-ref-9)
4. An important point of negotiation is often whether the Corporation will represent that a given fact (a) is true or (b) is true to the Corporation's knowledge. Alternative (a) requires the Corporation to bear the entire risk of the truth or falsity of the represented fact, regardless whether the Corporation knew (or could have known) at the time of the representation whether or not the fact was true. Alternative (b) is preferable from the Corporation's standpoint, since it holds the Corporation responsible only for facts of which it is actually aware. [↑](#footnote-ref-10)