

MEMORANDUM OF AGREEMENT

This Memorandum of Agreement (this “**Agreement**”) is made effective as of June 10, 2022 (the “**Effective Date**”), by and between the State of California acting by and through the California Department of Technology (collectively the “**Agency**”) and Apple Inc., with offices at One Apple Park Way, Cupertino, California, United States (“**Apple**”; each a “**Party**” and together, the “**Parties**”) for the purpose of establishing and achieving various goals and objectives relating to the Program(as defined below).

AGREEMENT

In consideration of the mutual promises and covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Apple and Agency hereby agree as follows:

1. **PROGRAM OBJECTIVES**. Subject to the terms and conditions of this Agreement, the Parties shall explore the development of a Digital Identity Credential, defined below, to be (a) provisioned onto Eligible Devices (as defined below), and (b) used as a means of verifying an individual’s identity in a variety of in-person and remote use cases authorized by Item 7502-001-0001 of the Budget Act of 2021 (the “**Digital ID Program**”). One potential Digital Identity Credential that could be a component of the Digital ID Program is a pilot program funded and authorized by Vehicle Code section 13020. (the “**Mobile DL**”). In performing its responsibilities with respect to the Program, each Party shall be guided by the following objectives (collectively, the “**Program Objectives**”): (i) to maintain a “digital first” orientation in all aspects of the Program, focused on delivering an experience superior to physical cards; (ii) to ensure a superior customer experience under the Program, with a focus on privacy and security; (iii) to accelerate (to the extent practicable) the adoption and acceptance of Digital Identity credentials under the Program as a means of verifying an individual’s identity in a variety of in-person and remote use cases; (iii) to continually evolve the features and functionalities made available in connection with the Program; and (iv) to manage the Program in accordance with applicable law, including but not limited to the California Vehicle Code and the Information Practices Act where applicable. For purposes of this Agreement, “**Digital Identity Credential**” means a set of attributes or credential that is associated with a user’s State of California identification card, which may include a State of California issued driver’s license (an “**Identification Document**”). Agency will be responsible for obtaining any agreements or approvals from other State of California agencies necessary to meet the agreed upon Launch Date. For avoidance of doubt, if the Parties decide to launch the Program, such launch will be subject to mutually acceptable agreement around the scope of the Program.

2. **LAUNCH TIMELINE**. The Parties shall work in good faith to agree to the tasks, timelines, responsibilities, due dates, and milestones to be accomplished in all areas (including without limitation coordinating with each Party’s service providers and implementing any necessary policies and procedures necessary to complete the timely launch of the Program. Agency must (through itself or in coordination with other State agencies where necessary) successfully complete readiness and quality testing in accordance with Apple’s certification requirements for each type of Digital Identity Credential and each type of eligible device (the “**Certification Testing**”) prior to the Launch Date (as defined below) or the introduction of new types of Digital Identity Credentials, existing Digital Identity Credentials on new eligible devices, or the introduction of product features during the Term. The Parties shall allocate reasonably sufficient personnel and resources (e.g., staff, project management and funding), including without limitation, those within Agency and within other State agencies, to support the launch of the Program on a timeline to be mutually agreed upon between Apple and Agency. Should Agency require input on timeline from other State agencies, Agency shall be responsible for ensuring that such input is incorporated into a joint timeline to be mutually agreed upon between Agency and Apple. If requested by Apple, Agency will designate one or more project manager(s) who shall be responsible for responding to

Apple's questions and issues relating to the Program. If either Party becomes aware of any circumstances that may affect its ability to perform its obligations to meet the launch date, each Party shall immediately (i) notify the other Party, (ii) provide all information reasonably requested by the other Party to understand the nature of the circumstances; and (iii) work with the other Party in good faith to resolve the issue as promptly as practicable.

3. **PROGRAM FEATURES.** Subject to compliance with applicable law, Apple will provide the technical and functional specifications, the required Program related features and functionality, including those capabilities associated with proofing, presentment, and lifecycle management.

4. **APPLE RESPONSIBILITIES.** Apple shall, at its own expense, either itself or through its service providers be responsible for: (i) the design, development and operation of the user interface, software applications, services and technology on Apple-designated devices ("**Eligible Devices**") necessary to operate the Program in the manner contemplated by this Agreement; (ii) providing the technical and functional specifications for the Program, including provisioning, authentication, presentment, verification and lifecycle management; (iii) providing customer support regarding Eligible Devices (including Apple software and services operating on such devices) for the duration of the Program; and (iv) deleting a user's data associated with the Program in response to a user deletion request.

5. **AGENCY RESPONSIBILITIES.** Agency shall, at its own expense, either itself or through its service providers be responsible for: (i) maintaining adequate computer and communications systems, and other equipment and facilities necessary or appropriate for issuing and servicing Digital Identity Credentials in connection with the Program; (ii) monitoring and notifying Apple of changes in applicable law that will affect the Program, and ensuring that all aspects of the Program comply with applicable law; (iii) the decision to approve or deny provisioning of a Digital Identity Credential to an Eligible Device; (iv) the on-going lifecycle management and operation of the Digital Identity Credential, including whether any Digital Identity Credential should be suspended or revoked at any time; (v) providing customer support regarding Digital Identity Credentials (including those provisioned to an Eligible Device) in relation to the use and status of Identification Documents; (vi) responding to a user deletion request with respect to data associated with the Program, including, as applicable, directing such user to Apple to request deletion of such data held by Apple; and (vii) ensuring that any of its personnel and service providers performing its obligations under this Agreement do so in compliance with the terms of this Agreement, for the duration of the Program. In performing its obligations under this Agreement, Agency may use its Affiliates, service providers or other State agencies to fulfill its performance hereunder, provided that Agency remains responsible for the functions performed by such Affiliates, service providers or other State agencies to the same extent Agency would be responsible if it performed such obligations itself.

After the launch of the Program, and subject to additional authorization and funding if necessary, Agency will offer a Digital Identity Credential to all users who: (i) presently hold a physical Identification Document issued by Agency; (ii) offered at the time of issuance of a physical Identification Document newly issued by Agency, and (iii) offered proactively as an option at the time a user receives a new or replacement physical Identification Document.

6. **JOINT RESPONSIBILITIES.** The Parties shall (through itself or in coordination with other State agencies where necessary) be jointly responsible for: (i) developing the approach to integration and testing of each Party's systems, software and hardware necessary to operate the Program in accordance with this Agreement; (ii) aligning on the approach to customer support and dispute resolution for the Program; (iii) providing reports in form and format set forth in Apple's requirements and specifications for the purpose of monitoring and improving the performance of the Program; (iv) developing a robust plan for education and marketing; (v) ongoing operations throughout the term of this Agreement; and (vi) responsible for collaborating on a future roadmap for the Program. The Parties shall cooperate in good

faith and use all commercially reasonable efforts to provide assistance in each other's fraud detection and prevention efforts.

7. **NO ADDITIONAL CHARGES.** For the avoidance of doubt, each Party agrees that it will not impose any fees on users, except as required by law, for the issuance, re-issuance, proofing, provisioning, re-provisioning, use or other access of a Digital Identity Credential on Eligible Devices. For the avoidance of doubt, nothing herein shall prevent Agency from charging users (i) a fee for the original issuance, update to, or reissuance of a physical Identification Document; or (ii) a bundled fee for both the physical Identification Document and Digital Identity Credential.

8. **COOPERATION.** The Parties shall work in good faith to identify (i) key stakeholders in federal and state government (e.g., Taxation, Secretary of State); (ii) state and local law enforcement; and (iii) key partners in the industry (e.g., age-restricted businesses) in each case, that are critical to the success of the Program.

9. **NON-DISCRIMINATION.** Agency shall, and shall require its service providers to, treat Digital Identity Credentials used in connection with the Program on parity with physical credentials or Digital Identity Credentials used on other apps, devices or platforms with respect to issuance, acceptance, feature support and customer service. Subject to applicable law or authorization, Agency will use best efforts to establish rules, policies and procedures that do not discriminate against digital identity credentials as compared to physical identity credentials.

10. **MARKETING; PRESS RELEASES.** To support the launch, Agency shall prominently feature the Program in all public-facing communications relating to Digital Identity Credentials, subject to Apple's prior review and approval. Neither Party may issue a press release or make any public communication regarding Agency's participation in the Program without the other Party's prior written consent.

11. **NO APPLE LIABILITY FOR VERIFICATION RESULTS.** Agency acknowledges and agrees that it is responsible for checking that the data (including without limitation, all images and assessments) (collectively, "Verification Results") furnished by Apple to the Agency in connection with the Program (including through an Eligible Device) is sufficient to verify a user's identity. For the avoidance of doubt, nothing in this Section 11 shall relieve Apple of its responsibilities under Section 4 hereof. Apple shall not be liable for any Verification Results, and Agency acknowledges that all Verification Results are provided "AS IS" and without any warranty, express, implied or otherwise, regarding its accuracy or performance.

12. **CONFIDENTIALITY.** The Parties shall comply with the terms of the Apple Discloses Confidentiality Agreement executed by the Parties as of May 28, 2021 (the "NDA"), the provisions of which are incorporated by reference herein.

13. **DATA PROTECTION; SECURITY.** The Program will be designed with the highest global standards of security and privacy in mind. The Parties will explore the feasibility and applicability of development of the Program in compliance with the security standards set forth in California Vehicle Code section 13020 (as such Code may be amended from time to time). The Program will be reasonably designed to comply with NIST 800-171 to the extent applicable to the transmission of Personal Data in the clear in connection with the Program, and Eligible Devices will be reasonably designed to comply with FIPS 140-2 validated hardware and software modules where appropriate. Prior to testing and launch, the Parties shall mutually agree on additional privacy, data protection and security provisions as appropriate.

13.1. **Security.** Each Party shall implement reasonable and appropriate administrative, technical, and organizational measures designed to help ensure and protect the security, integrity, and

confidentiality of Confidential Information, and information relating to identified or identifiable individuals collected, used, disclosed, stored, or otherwise processed (“**Processed**”) in connection with this Agreement (“**Personal Data**”); protect against any unauthorized Processing of Confidential Information or Personal Data; conduct development and the Program, to the extent feasible, in compliance with the security standards of the National Institute of Standards and Technology and ISO-18013-5; protect Digital Identity Credentials provisioned to an Eligible Device using encryption; and use biometric or other secure means of authentication to control access to Digital Identity Credentials. The Parties agree that properly secured Eligible Devices, protected by a passcode, FaceID, or TouchID, shall be considered to be protected with reasonable and appropriate security measures pursuant to this Agreement.

13.2. **Principles of Processing.** The Parties shall minimize the collection and use of Personal Data from users to that necessary for the operation of the Program and the fulfillment of the purposes of this Agreement; provide user transparency regarding the Processing of Personal Data in connection with the Program; and enable user control over the collection of Personal Data, and the further Processing of Personal Data in connection with the Program to the extent feasible, including user control over the presentment of the Digital Identity Credential.

14. **TERM; TERMINATION.**

14.1. **Term.** The term of this Agreement shall commence on the Effective Date, and shall continue until terminated by: (i) mutual Agreement of the Parties, or (ii) either Party under Section 14.2 (Termination for Cause) below. Additionally, either Party may suspend or terminate this Agreement upon thirty (30) days’ prior written notice to the other Party.

14.2. **Termination for Cause.** Either Party may terminate this Agreement at any time, upon written notice, if the other Party materially breaches any of its obligations under this Agreement and such breach is not remedied within 30 days after such notice. In addition, a party may terminate this Agreement immediately upon written notice to the other Party if the other Party becomes insolvent, makes an assignment for the benefit of creditors, or files or is the subject of a petition in bankruptcy.

14.3. **Survival.** The provisions in this Agreement, which by their nature should remain in effect beyond termination of this Agreement, will survive until fulfilled, including Sections 11 (No Apple Liability for Verification Results); 12 (Confidentiality); 13.2 (Survival); 14 (Limitation of Liability); and 16 (Miscellaneous).

15. **LIMITATION OF LIABILITY.** Except with respect to a Party’s breach of Section 12 (Confidentiality) and 13 (Data Protection; Security), under no circumstances will either Party be liable to the other Party for indirect, incidental, consequential, special or punitive damages or for loss of revenue or anticipated profits or lost business, even if the Party has been advised of the possibility of such damages (whether in contract, tort (including negligence) or otherwise).

16. **NOTICES.** All notices, requests, or other communications to be given by a Party hereto shall be in writing (including email, facsimile or similar writing) and shall be given:

If to Apple:
Vice President, Internet Services
Apple Inc.
One Apple Park Way, MS 66-1PAY
Cupertino, California 95014

With a copy, not to constitute notice, to:
General Counsel
Apple Inc.
One Apple Park Way, MS 66-1PAY
Cupertino, California 95014

If to Agency:
Name: Greg Fair
Director, Digital Id
California Department of Technology
Email:greg.fair@state.ca.gov
Address:

or such other address as such Party may hereafter specify by written notice to the other Party. Each such notice, request, or other communication shall be effective when delivered at the specified address.

17. **MISCELLANEOUS.**

17.1. **Governing Law.** This Agreement will be governed by the laws of the State of California with venue and jurisdiction located in Sacramento County.

17.2. **Relationship of the Parties.** The Parties agree that they are dealing with each other as independent contractors. Nothing contained herein shall be construed as placing the Parties in the relationship of partners, joint ventures, principal-agent, or employer-employee and neither Party shall have any right to obligate or bind the other in any manner whatsoever.

17.3. **Assignment.** The rights and obligations of the Parties under this Agreement shall be binding upon and inure to the benefit of the Parties' respective successors, executors and administrators, as the case may be. Neither Party may assign, delegate or otherwise transfer its rights or obligations under this Agreement without the other Party's prior written consent; provided, however, that Agency may assign this Agreement to any other California state agency upon prior written notice to Apple. Notwithstanding the foregoing, either Party, in its sole discretion, may assign this Agreement to an Affiliate of such Party (provided that the assigning Party gives the non-assigning Party prior written notice), or a third party in connection with the sale of all or substantially all of the assigning Party's business and assets whether by merger, sale of assets, sale of stock or otherwise; *provided, however*, the foregoing assignment right will not apply in the event the third party is a competitor of Apple. Any attempted transfer or assignment of this Agreement in violation of the foregoing will be null and void.

17.4. **Amendment.** This Agreement, including any schedules or exhibits hereto, may not be amended or supplemented except by a written instrument executed by both Parties hereto.

17.5. **Severability.** If any provision hereof is held to be invalid or unenforceable by an authority vested with jurisdiction, such holding shall not affect the validity or enforceability of such provision in any other jurisdiction and shall not affect the validity or enforceability of any other provision hereto. If any provision of this Agreement is found to be invalid or unenforceable, but would be enforceable in a reduced form (in terms of scope or duration), the provision shall have effect in such reduced form.

17.6. **Counterparts.** This Agreement and any amendments hereto may be executed in two or more counterparts, all of which together shall be considered one and the same agreement, and shall become effective when one or more such counterparts have been signed by each of the Parties and delivered to the other Party, including by facsimile or electronic transmission.

17.7. **Entire Agreement.** This Agreement sets forth the entire agreement between the Parties, superseding any and all prior verbal or written communications with respect to the subject matter and the terms hereof, and may be altered, modified or changed only by a writing signed by the Parties. No consent to or waiver of any breach or default in the performance of any obligations hereunder shall be deemed or construed to be a consent to or waiver of any other breach or default of the performance of any of the same or other obligations hereunder. Failure on the part of any Party to complain of any act or failure of any Party to act or to declare any Party in default irrespective of the duration of such failure, shall not constitute a waiver of rights hereunder and no waiver hereunder shall be effective unless it is in writing and executed by the Party waiving the breach or default hereunder.

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IN WITNESS WHEREOF, the Parties have caused this Agreement to be signed by persons authorized to contractually bind them as of the Effective Date.

Apple Inc. By: <u><i>Jennifer Bailey</i></u> Name: <u>Jennifer Bailey</u> Title: <u>VP, Internet Services</u> Date: <u>5/24/2022</u>	California Department of Technology By: <u><i>Greg Fair</i></u> Name: <u>Greg Fair</u> Title: <u>Director, Digital Id Program</u> Date: <u>6/10/2022</u>
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