



Contract Number  
~~19-734 A-1~~ 20-884

SAP Number



### Registrar of Voters

Department Contract Representative Bob Page  
Telephone Number 909-387-2100

Contractor Apple, Inc.  
Contractor Representative \_\_\_\_\_  
Telephone Number \_\_\_\_\_  
Contract Term \_\_\_\_\_  
Original Contract Amount Non-Financial  
Amendment Amount Non-Financial  
Total Contract Amount Non-Financial  
Cost Center 6800001000

**Briefly describe the general nature of the contract:** *Updated terms of the non-financial Apple Business Manager Agreement with Apple, Inc. to enroll Apple-branded products for mobile device management.*

**FOR COUNTY USE ONLY**

Approved as to Legal Form  Bonnie Uphoff, Deputy County Counsel	Reviewed for Contract Compliance  	Reviewed/Approved by Department  Bob Page, Registrar of Voters
Date <u>8-13-20</u>	Date _____	Date <u>8/13/2020</u>

**PLEASE READ THE FOLLOWING APPLE BUSINESS MANAGER TERMS AND CONDITIONS CAREFULLY BEFORE USING THE SERVICE. THESE TERMS AND CONDITIONS CONSTITUTE A LEGAL AGREEMENT BETWEEN INSTITUTION AND APPLE. BY CLICKING ON THE “AGREE” BUTTON, INSTITUTION, THROUGH ITS AUTHORIZED REPRESENTATIVE, IS AGREEING TO BE BOUND BY AND IS BECOMING A PARTY TO THIS AGREEMENT. IF INSTITUTION DOES NOT OR CANNOT AGREE TO THIS AGREEMENT, THEN CLICK THE “CANCEL” BUTTON. IF INSTITUTION DOES NOT AGREE TO THIS AGREEMENT, THEN INSTITUTION IS NOT PERMITTED TO PARTICIPATE.**

## **Apple Business Manager Agreement**

### **Purpose**

This Agreement permits You to participate in Apple Business Manager, which allows You to automate enrollment of Apple-branded products for Mobile Device Management (MDM) within Your Institution, to purchase and manage content for such products, to create Managed Apple IDs, and to access facilitation tools for related services.

**Note:** You will need to have an MDM solution (e.g., Profile Manager from macOS Server or from a third-party developer) enabled within Your Institution so that you can utilize the features of this Service. An MDM solution enables You to configure, deploy, and manage Apple-branded products. For more information, see <https://www.apple.com/business/resources/>.

### **1. Definitions**

Whenever capitalized in this Agreement:

**“Administrators”** means employees or contractors (or Service Providers) of Your company or organization who have been added to the Service for purposes of account management, e.g., administering servers, uploading MDM provisioning settings, adding devices to Your account, purchasing content, and performing other related services.

**“Agreement”** means this Apple Business Manager Agreement. For clarity, this Apple Business Manager Agreement is a successor to the Apple Device Enrollment Program Agreement.

**“Apple”** means the following, unless otherwise specified herein: (a) **Apple Inc.**, located at One Apple Park Way, Cupertino, California 95014, U.S.A., for Institutions in North, Central, and South America (excluding Canada), as well as United States territories and possessions; and French and British possessions in North America, South America, and the Caribbean; (b) **Apple Canada Inc.**, located at 120 Bremner Blvd., Suite 1600, Toronto ON M5J 0A8, Canada, for Institutions in Canada or its territories and possessions; (c) **iTunes K.K.**, located at Roppongi Hills, 6-10-1 Roppongi, Minato-ku, Tokyo 106-6140, Japan, for Institutions in Japan; (d) **Apple Pty Limited**, located at 20 Martin Place, Sydney NSW 2000, Australia, for Institutions in Australia and New Zealand, including island possessions, territories, and affiliated jurisdictions; and (e) **Apple Distribution International Ltd.**, located at Hollyhill Industrial Estate, Hollyhill, Cork, Republic of Ireland, for Institutions in all other countries or territories not specified above in which the Service is offered.

**“Apple Software”** means the iOS, iPadOS, macOS, tvOS, and watchOS operating system software, or any successor versions thereof.

**“Authorized Devices”** means Apple-branded products that are owned or controlled by You, have been designated for use by Authorized Users (or Service Providers) only, and that are eligible for use in the Service. Notwithstanding the foregoing, devices that are personally-owned by an Authorized User (e.g., “BYOD” devices) or devices that are owned or controlled by a Permitted Entity are not permitted to be enrolled in supervised device management (e.g., automated device management) as part of the Service, unless otherwise agreed by Apple in writing, and not all devices are eligible to be added to the Service.

**“Authorized Users”** means employees and contractors (or Service Providers) of Your company or organization, employees and contractors of Your Permitted Entity, or if You are a hospital, the term “Authorized Users” also includes credentialed physicians, referring physicians and clinicians. For clarity, You may request, and Apple may approve, in its sole discretion, other similar users to be included as “Authorized Users”; however, no other parties shall be included in this definition without Apple’s prior written consent.

**“Content”** means any material or information that may be licensed or acquired as part of the Service through Apple’s Volume Content terms.

**“Device Enrollment Settings”** means settings for an Apple-branded product that can be configured and managed as part of the Service, including but not limited to the initial enrollment flow for a device, and settings to supervise a device, make configuration mandatory, or lock an MDM profile.

**“Documentation”** means the technical or other specifications or documentation that Apple may provide to You for use in connection with the Service.

**“End User License Agreement” or “EULA”** means the software license agreement terms and conditions for the Apple Software.

**“Managed Apple ID(s)”** means a user account (including but not limited to storage, calendar, notes, and contacts) that You create and deploy through the use of the Service.

**“MDM Server(s)”** means computers owned or controlled by You (or a Service Provider acting on Your behalf) that have been designated to communicate with the Service.

**“Permitted Entity(ies)”** means: (a) if You are a vehicle manufacturer, Your authorized vehicle dealerships and certified service partners; (b) if You are a hotel holding company, hotel properties operating under Your name, trademark or brand (or a name, trademark or brand it owns or controls); or (c) other similar entities that Apple may approve in writing in its sole discretion.

**“Personal Data”** means data that can be reasonably used to identify an individual that is under the control of the Institution under this Agreement.

**“Service”** means the Apple Business Manager service (and any components, functionality or features thereof) for automated mobile device management enrollment, acquisition and management of Content, the creation, use, and management of Managed Apple IDs, the use of Administrator accounts, and other related services as contemplated in this Agreement, including the web portal and any services or tools provided hereunder.

**“Service Provider”** means a third-party who provides a service on Your behalf in accordance with the terms of this Agreement.

**“Server Token”** means the combination of Your public key, Apple ID and a token provided by Apple that permits Your MDM Server(s) to be registered with the Service.

**“You,” “Your,” and “Institution”** means the institution entering into this Agreement. For avoidance of doubt, the Institution is responsible for compliance with this Agreement by its employees, contractors, third-party service providers, and agents who are authorized to exercise rights under this Agreement on its behalf.

**Note:** If you are a third-party service provider, you need to have the Institution with whom you are working enter into this Agreement and add you as an Administrator since the entity that owns the Authorized Devices and plans to distribute such Devices to its Authorized Users must enroll in the Service.

## **2. Service Requirements**

### **2.1 Use of the Service**

As a condition to using the Service, Institution acknowledges and agrees that:

- (a) Institution is permitted to use the Service only for the purposes and in the manner expressly permitted by this Agreement and in accordance with all applicable laws and regulations, and the Documentation;
- (b) Institution is not permitted to use the Service (or any part thereof) for any unlawful, improper, inappropriate, or illegal activity;
- (c) Institution is permitted to use the Service to manage Authorized Devices for use only by Authorized Users and not for general deployment to third parties, and Institution will be responsible for all use of the Authorized Devices by Authorized Users (e.g., obtaining consents and providing appropriate information to users about the managed features of devices);
- (d) Institution will be responsible for all use of the Service by its Permitted Entity (and any Authorized Users of such Permitted Entity), and any actions undertaken by its Permitted Entity shall be deemed to have been taken by Institution, and Institution (in addition to its Permitted Entity) shall be responsible to Apple for all such actions. Apple reserves the right to set limitations on the features or functionality of the Service that Institution may allow its Permitted Entity (or Authorized Users of its Permitted Entity) to access or use, and Institution will be responsible for its Permitted Entity and be directly liable to Apple for any breach of this Agreement by its Permitted Entity (and any Authorized Users of such Permitted Entity);
- (e) Institution will obtain all necessary rights and consents from Authorized Users to deploy Authorized Devices as permitted hereunder;
- (f) Institution will have the rights to purchase and manage Content as may be permitted through the Service;
- (g) Institution will obtain all necessary rights and consents from Authorized Users where necessary to create Managed Apple IDs and to allow Apple to provide the Service for Managed Apple IDs (including using and maintaining Personal Data);
- (h) Institution may add Administrators to the Service, but only if such individuals are employees or contractors of Institution or are Service Providers acting on Institution’s behalf, and Institution may add such parties only for account management purposes; and
- (i) Institution is permitted to use the Service only for its own (and its Permitted Entity’s) internal business operations and information technology purposes and is not permitted to provide a product or service to third parties that integrates with or leverages services or information provided by the Service or uses the Service in any way, unless otherwise agreed by Apple in writing.

### **2.2 No Other Permitted Uses**

Institution agrees not to exploit the Service in any unauthorized way whatsoever, including, but not limited to, by trespass, burdening network capacity, or uploading malicious code. Any attempt

to do so is a violation of the rights of Apple and its licensors. Institution may not license, sell, share, rent, lease, assign, distribute, host, permit timesharing or service bureau use, or otherwise make the Service (or any components thereof) available to any third-party, except as expressly permitted in this Agreement. Institution agrees that it will not use the Service to stalk, harass, mislead, abuse, threaten or harm or pretend to be anyone other than the entity that has enrolled, and Apple reserves the right to reject or block any accounts that could be deemed to be an impersonation or misrepresentation of another entity or person's name or identity. Institution will not interfere with the Service, or with any security, digital signing, digital rights management, verification or authentication mechanisms implemented in or by the Service or by the Apple Software or any other related Apple software or technology, or enable others to do so. If Institution is a covered entity, business associate, representative of a covered entity or business associate (as those terms are defined at 45 C.F.R § 160.103), or otherwise a health care provider or entity, Institution agrees that it will not use any component, function or other facility of the Service to create, receive, maintain or transmit any "protected health information" (as such term is defined at 45 C.F.R § 160.103) or equivalent health data under applicable law, or use the Service in any manner that would make Apple a business associate of Institution or any third-party or otherwise directly subject Apple to applicable health privacy laws. All rights not expressly granted in this Agreement are reserved and no other licenses, immunity or rights, express or implied are granted by Apple, by implication, estoppel, or otherwise.

### **2.3 Server Token Usage**

Institution agrees to use the Server Token only for purposes of enrolling Institution's MDM Server into the Service and uploading Device Enrollment Settings that will be sent to Authorized Devices when they are initially activated by Authorized Users. Institution agrees not to provide or transfer its Server Token to any other entity or share it with any other entity, excluding its Service Provider. Institution agrees to take appropriate measures to safeguard the security and privacy of such Server Token and to revoke it if it has been compromised or Institution has reason to believe it has been compromised. Apple reserves the right to revoke or disable Server Tokens at any time in its sole discretion. Further, Institution understands and agrees that regenerating the Server Token will affect Institution's ability to use the Service until a new Server Token has been added to the MDM Server.

### **2.4 EULAs Term and Conditions**

As part of the Service, Institution may elect to have Authorized Users accept the terms and conditions for the Apple Software outside of the normal initial activation process on a device. Institution may use this feature of the Service as long as Institution agrees to the following requirements:

- (a) Institution's authorized representative must accept the EULAs for the Apple Software on the Service web portal prior to deploying Authorized Devices running such Apple Software to Authorized Users;
- (b) If the EULAs for the Apple Software have changed, Institution agrees to have its authorized representative return to the Service web portal and accept such EULAs promptly upon notice from Apple in order to continue using the Service. Institution acknowledges that it will not be able to use the Service, including associating additional Authorized Devices with its MDM Server, until such EULAs have been accepted;
- (c) Institution is responsible for ensuring that such EULAs are provided to Authorized Users, and that each Authorized User is aware of and complies with the terms and conditions of the EULAs for the Apple Software; and
- (d) Institution agrees to be responsible for obtaining any required consents for Authorized Users' use of the Apple Software.

## **2.5 Device Transfer**

Institution will not resell any Authorized Devices with Device Enrollment Settings enabled and agrees to remove such Devices from the Service prior to reselling them or transferring them to non-Authorized Users in any way.

## **2.6 Purchasing Content**

Acquisition of Content is automatically disabled in the Service, and Your use is subject to the requirements and terms for the use of Volume Content presented in the Service prior to the use of Apps and Books. You may choose to enable Your Administrators to access Content through the Service by granting them purchasing authority and allowing them to access Apple's Volume Content terms to purchase Content for use and management as part of the Service. You are solely responsible for all such purchases and compliance with the applicable terms. If You purchase Content as part of the Service, You agree that You have the authority to and will accept such applicable terms on behalf of Your Authorized Users. To the extent that You receive a VPP token, You may use it to manage Content as part of the Service in accordance with the Documentation.

## **2.7 Administrator Accounts**

You may create Administrator accounts for Your Administrators to use in administering the Service. These Administrator accounts will be a combination of a unique user name and password, which will be owned by You. When You create Administrator accounts, all features and functionality of the Service that You select to be available will be enabled for such accounts, and You are responsible for appropriately enabling these Administrator accounts and for all activity in connection with these accounts (e.g., permitting Content purchases). You acknowledge and agree that these Administrator accounts may be used only to access and manage the Service for account management purposes. If You delete any Administrator accounts, then neither You nor the Administrator will have access to such Administrator accounts, and You acknowledge and agree that this action may not be reversible, and that Apple shall not be liable to You for any discontinuation of Service (including data loss).

## **2.8 Managed Apple IDs**

You may create Managed Apple IDs for Authorized Users to access and use as part of the Service in accordance with this Agreement and the Documentation. You are responsible for deciding which features and functionality of the Service to enable for Authorized Users and for the creation, use, and management of Managed Apple IDs on Authorized Devices.

## **2.9 Updates; No Support or Maintenance**

Apple may extend, enhance, suspend, discontinue, or otherwise modify the Service (or any part thereof) provided hereunder at any time without notice, and Apple will not be liable to You or to any third-party should it exercise such rights. Apple will not be obligated to provide Institution with any updates to the Service. If Apple makes updates available, the terms of this Agreement will govern such updates, unless the update is accompanied by a separate agreement in which case the terms of that agreement will govern. Should an update be made available, it may have features, services or functionality that are different from those found in the Service. Apple is not obligated to provide any maintenance, technical or other support for the Service.

## **2.10 Third-Party Service Providers**

You are permitted to use a Service Provider only if the Service Provider's access to and use of the Service is done on Your behalf and in accordance with these terms, and is subject to a binding written agreement between You and the Service Provider with terms at least as restrictive and protective of Apple as those set forth herein. Any actions undertaken by any such Service Provider in relation to the Service and/or arising out of this Agreement shall be deemed to have

been taken by You, and You (in addition to the Service Provider) shall be responsible to Apple for all such actions (or any inactions).

### **3. Institution's Obligations**

Institution represents and warrants that:

- (a) Institution's authorized representative or agent has the right and authority to enter into this Agreement on its behalf and to legally bind Institution to the terms and obligations of this Agreement;
- (b) All information provided by Institution to Apple in connection with this Agreement will be current, true, accurate, supportable and complete; and, with regard to information Institution provides to Apple, Institution will promptly notify Apple of any changes to such information;
- (c) Institution will monitor and be responsible for its authorized representatives, Service Providers, Authorized Users, Administrators', and Permitted Entities' use of the Service and their compliance with the terms of this Agreement;
- (d) Institution will be solely responsible for all costs, expenses, losses and liabilities incurred, and activities undertaken by Institution, its authorized representatives, Administrators, Service Providers, Authorized Users, Permitted Entities, and Authorized Devices, in connection with the Service;
- (e) Institution is solely liable and responsible for ensuring compliance with all privacy and data protection laws (e.g., Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of Personal Data and on the free movement of such data, and repealing directive 95/46/EC ("GDPR")) regarding the use of the Service and use or collection of data, including Personal Data, and information through the Service;
- (f) Institution is responsible for its activity related to Personal Data (e.g., safeguarding, monitoring, and limiting access to Personal Data, preventing and addressing inappropriate activity, etc.); and
- (g) Institution will comply with the terms of and fulfill Institution's obligations under this Agreement.

### **4. Changes to Service Requirements or Terms**

Apple may change the Service or the terms of this Agreement at any time. In order to continue using the Service, Institution, through its authorized representative, must accept and agree to the new requirements or terms of this Agreement. If You do not agree to the new requirements or terms, Your use of the Service may be suspended or terminated by Apple. You agree that Your acceptance of such new Agreement terms may be signified electronically, including without limitation, by checking a box or clicking on an "agree" or similar button.

### **5. Indemnification**

To the extent permitted by applicable law, You agree to indemnify and hold harmless, and upon Apple's request, defend, Apple, its directors, officers, employees, affiliates, independent contractors and authorized representatives (each an "Apple Indemnified Party") from any and all claims, losses, liabilities, damages, expenses and costs, including without limitation attorneys' fees and court costs, (collectively, "Losses") incurred by an Apple Indemnified Party and arising from or related to any of the following: (a) Your breach of any certification, covenant, obligation, representation or warranty made in this Agreement; (b) Your use (including Your Service Provider's, Administrator's, Authorized User's, and/or Permitted Entity's use) of the Service; (c) any claims, including but not limited to any end user claims, about Your use, deployment or management of Authorized Devices, Device Enrollment Settings, and/or MDM Servers; (d) any claims, including but not limited to any end user claims, about the provision, management, and/or use of Authorized Devices, Administrator accounts, Managed Apple IDs, or Content licensed or

purchased through the Service, and/or any other use of the Service; and/or (e) any claims regarding Your use or management of Personal Data (including use by Your Permitted Entity or Authorized Users). In no event may You enter into any settlement or like agreement with a third party that affects Apple's rights or binds Apple or any Apple Indemnified Party in any way, without the prior written consent of Apple.

## **6. Term and Termination**

The term of this Agreement shall commence on the date You first accept this Agreement in the Service web portal and extend for an initial period of one (1) year following the initial activation date of Your Service account by Apple ("Term"). Thereafter, subject to Your compliance with the terms of this Agreement, the Term will automatically renew for successive one (1) year terms, unless sooner terminated in accordance with this Agreement. Either party may terminate this Agreement for its convenience, for any reason or no reason, effective 30 days after providing the other party with written notice of its intent to terminate.

If You fail, or Apple suspects that You have failed, to comply with any of the provisions of this Agreement, Apple, at its sole discretion, without notice to You may: (a) terminate this Agreement and/or Your account; and/or (b) suspend or preclude access to the Service (or any part thereof). Apple reserves the right to modify, suspend, or discontinue the Service (or any part or content thereof) at any time without notice to You, and Apple will not be liable to You or to any third-party should it exercise such rights. Apple may also terminate this Agreement, or suspend Your rights to use the Services, if You fail to accept any new Agreement terms as described in Section 4. You acknowledge and agree that You may not be able to access the Service upon expiration or termination of this Agreement and that Apple reserves the right to suspend access to or delete data or information that You, Your Administrators, Authorized Users, or Permitted Entities have stored through Your use of the Service. You should review the Documentation prior to using any part of the Service and make appropriate back-ups of Your data and information. Apple will not be liable or responsible to You or to any third-party should it exercise such rights or for any damages that may result or arise out of any such termination or suspension. The following provisions shall survive the termination of this Agreement: Section 1, Section 2.9, the second sentence of Section 2.10, Section 3, Section 5, the second paragraph of Section 6, and Sections 7, 8, 9, and 10.

## **7. DISCLAIMER OF WARRANTIES**

YOU EXPRESSLY ACKNOWLEDGE AND AGREE THAT, TO THE EXTENT PERMITTED BY APPLICABLE LAW, YOUR USE OF, OR INABILITY TO USE, THE SERVICE, OR ANY TOOLS OR FEATURES OR FUNCTIONALITY ACCESSED BY OR THROUGH THE SERVICE, IS AT YOUR SOLE RISK AND THAT THE ENTIRE RISK AS TO SATISFACTORY QUALITY, PERFORMANCE, ACCURACY AND EFFORT IS WITH YOU.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SERVICE IS PROVIDED "AS IS" AND "AS AVAILABLE" WITH ALL FAULTS AND WITHOUT WARRANTY OF ANY KIND, AND APPLE, ITS DIRECTORS, OFFICERS, EMPLOYEES, AFFILIATES, AUTHORIZED REPRESENTATIVES, AGENTS, CONTRACTORS, RESELLERS, OR LICENSORS (COLLECTIVELY REFERRED TO AS "APPLE" FOR THE PURPOSES OF **SECTIONS 7 AND 8**) HEREBY DISCLAIM ALL WARRANTIES AND CONDITIONS WITH RESPECT TO THE SERVICE, EXPRESS, IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES AND/OR CONDITIONS OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, QUIET ENJOYMENT, TITLE, AND NON-INFRINGEMENT OF THIRD-PARTY RIGHTS.



APPLE DOES NOT GUARANTEE, REPRESENT OR WARRANT AGAINST INTERFERENCE WITH YOUR USE OR ENJOYMENT OF THE SERVICE, THAT THE FEATURES OR FUNCTIONALITY CONTAINED IN, OR SERVICES PERFORMED OR PROVIDED BY, THE SERVICE WILL MEET YOUR REQUIREMENTS, WILL BE SECURE, THAT YOUR USE OF OR THAT THE OPERATION OF THE SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE, THAT DEFECTS OR ERRORS WILL BE CORRECTED, THAT THE SERVICE WILL CONTINUE TO BE MADE AVAILABLE, THAT THE SERVICE WILL BE COMPATIBLE OR WORK WITH ANY THIRD-PARTY SOFTWARE, APPLICATIONS, CONTENT, OR THIRD-PARTY SERVICES OR ANY OTHER APPLE PRODUCTS OR SERVICES, OR THAT ANY DATA OR INFORMATION STORED OR TRANSMITTED THROUGH THE SERVICE WILL NOT BE LOST, CORRUPTED, DAMAGED, ATTACKED, HACKED, INTERFERED WITH OR SUBJECT TO ANY OTHER SECURITY INTRUSION. YOU AGREE THAT FROM TIME TO TIME APPLE MAY REMOVE THE SERVICE FOR INDEFINITE PERIODS OF TIME OR MODIFY, SUSPEND, DISCONTINUE, OR CANCEL THE SERVICE AT ANY TIME, WITHOUT NOTICE TO YOU.

YOU FURTHER ACKNOWLEDGE THAT THE SERVICE IS NOT INTENDED OR SUITABLE FOR USE IN SITUATIONS OR ENVIRONMENTS WHERE THE FAILURE OR TIME DELAYS OF, OR ERRORS OR INACCURACIES IN THE CONTENT, DATA OR INFORMATION PROVIDED BY OR THROUGH THE SERVICE COULD LEAD TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL OR ENVIRONMENTAL DAMAGE, INCLUDING WITHOUT LIMITATION THE OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR COMMUNICATION SYSTEMS, AIR TRAFFIC CONTROL, LIFE SUPPORT, OR WEAPONS SYSTEMS.

NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY APPLE OR AN APPLE AUTHORIZED REPRESENTATIVE SHALL CREATE A WARRANTY NOT EXPRESSLY STATED IN THIS AGREEMENT. SHOULD THE SERVICE PROVE DEFECTIVE, YOU ASSUME THE ENTIRE COST OF ALL NECESSARY SERVICING, REPAIR, OR CORRECTION.

## **8. LIMITATION OF LIABILITY**

TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW, IN NO EVENT SHALL APPLE BE LIABLE FOR PERSONAL INJURY, OR ANY INCIDENTAL, SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES WHATSOEVER, INCLUDING WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS, CORRUPTION OR LOSS OF DATA OR INFORMATION, FAILURE TO TRANSMIT OR RECEIVE ANY DATA OR INFORMATION, BUSINESS INTERRUPTION OR ANY OTHER COMMERCIAL DAMAGES OR LOSSES ARISING OUT OF THIS AGREEMENT AND/OR YOUR USE OR INABILITY TO USE THE SERVICE, EVEN IF APPLE HAS BEEN ADVISED OR IS AWARE OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF THE THEORY OF LIABILITY (CONTRACT, TORT, OR OTHERWISE), AND EVEN IF APPLE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL APPLE'S TOTAL LIABILITY TO YOU FOR ALL DAMAGES (OTHER THAN AS MAY BE REQUIRED BY APPLICABLE LAW IN CASES INVOLVING PERSONAL INJURY) EXCEED THE AMOUNT OF FIFTY DOLLARS (\$50.00). THE FOREGOING LIMITATIONS WILL APPLY EVEN IF THE ABOVE STATED REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

## **9. Data Privacy and Security**

### **9.1 Personal Data Usage and Disclosure**

Under this Agreement, Apple, acting as a data processor on Your behalf, may receive or have access to Personal Data, if provided by You. By entering into this Agreement, You instruct Apple to process and use this Personal Data to provide and maintain the Service in accordance with applicable law, Your instructions given through the use of the Service (e.g., instructions given

through the Service), and any other written instructions given by You that are accepted and acknowledged in writing by Apple. Apple shall comply with such instructions, if applicable, and unless prohibited by law, in which case Apple will inform You before processing such Personal Data (unless prohibited by law from informing You on grounds of public interest). Apple may provide Personal Data to service providers who provide services to Apple in connection with the Service ("Sub-processors"). You authorize Apple to use all the Apple entities set forth in the definition of "Apple" as Sub-processors and to use any other Sub-processors; provided such Subprocessors are contractually bound by data protection obligations at least as protective as those in this Agreement, and a list of such Sub-processors will be available upon request, if required by law. Apple may disclose Personal Data about You if Apple determines that disclosure is reasonably necessary to enforce Apple's terms and conditions or protect Apple's operations or users. Additionally, in the event of a reorganization, merger, or sale, Apple may transfer any and all Personal Data You provide to the relevant party. In the event Apple receives a third-party request for Personal Data ("Third-Party Request"), Apple will notify You, to the extent permitted by law, of its receipt of the Third-Party Request, and notify the requester to address such Third Party Request to You. Unless otherwise required by law or the Third-Party Request, You will be responsible for responding to the Request.

## **9.2 Data Incidents**

If Apple becomes aware that Personal Data has been altered, deleted, or lost as a result of any unauthorized access to the Service (a "Data Incident"), Apple will notify Institution without undue delay if required by law, and Apple will take reasonable steps to minimize harm and secure the data. Notification of, or response to, a Data Incident by Apple will not be construed as an acknowledgment by Apple of any responsibility or liability with respect to a Data Incident. Institution is responsible for complying with applicable incident notification laws and fulfilling any third-party obligations related to Data Incident(s). Apple will not access the contents of Personal Data in order to identify information subject to any specific legal requirements.

## **9.3 Security Procedures; Compliance**

Apple shall use industry-standard measures to safeguard Personal Data during the transfer, processing, and storage of Personal Data as part of the Service. As part of these measures, Apple will use commercially reasonable efforts to encrypt Personal Data at rest and in transit; ensure the ongoing confidentiality, integrity, availability and resilience of the Service; in the event of an issue, restore the availability of Personal Data in a timely manner; and regularly test, assess, and evaluate the effectiveness of such measures. Apple will take appropriate steps to ensure compliance with security procedures by its employees, contractors and Sub-processors, and Apple shall ensure that any persons authorized to process such Personal Data comply with applicable laws regarding the confidentiality and security of Personal Data with regards to the Service. Encrypted Personal Data may be stored at Apple's geographic discretion. To the extent Apple is acting as a data processor, Apple will assist You with ensuring Your compliance, if applicable, with the following: (a) Article 28 of the GDPR (by allowing for and contributing to audits; provided, that Apple's ISO 27001 and ISO 27018 certifications shall be considered sufficient for such required audit purposes); (b) Article 32 of the GDPR (by implementing the security procedures set forth in this Section 9.3 and by maintaining the ISO 27001 and ISO 27018 Certifications); (c) Articles 33 and 34 of the GDPR or other equivalent obligations under law (by assisting You with providing required notice of a Data Incident to a supervisory authority or data subjects); (d) laws requiring Institution to conduct data protection impact assessments or to consult with a supervisory authority prior to processing; and (e) an investigation by a data protection regulator or similar authority regarding Personal Data.

#### **9.4 Data Access and Transfer; Termination; Institution as Processor**

If required by law, Apple will ensure that any international data transfer is done only to a country that ensures an adequate level of protection, has provided appropriate safeguards as set forth in applicable law, such as those in Articles 46 and 47 of the GDPR (e.g., standard data protection clauses), or is subject to a derogation in Article 49 of the GDPR. If You are required to enter a data transfer agreement to transfer data to a third country, You agree to enter into the applicable data transfer agreement for Your jurisdiction as executed by Apple at <https://apple.com/legal/enterprise/datatransfer>.

Apple is not responsible for data You store or transfer outside of Apple's system. Upon termination of this Agreement for any reason, Apple shall securely destroy Personal Data stored by Apple in connection with Your use of the Service within a reasonable period of time, except to prevent fraud or as otherwise required by law. Apple's Privacy Policy is available at <http://www.apple.com/legal/privacy>, and, to the extent consistent with this Section 9, is incorporated herein by reference. If there is a conflict between Apple's Privacy Policy and this Section 9, the terms of this Section 9 shall take precedence. extent that Institution enters into this Agreement as a data processor for a Permitted

Entity, Institution represents and warrants that Institution is entering into this Agreement on behalf of itself, and, to the limited extent set forth herein, such Permitted Entity. Institution represents that it has the applicable consents from such Permitted Entity to enter into this Agreement and to engage Apple as a sub-processor on such entity's behalf, and is responsible to Apple for any claims from such Permitted Entities with respect thereto.

### **10. General Legal Terms**

#### **10.1 Third-Party Notices**

Portions of the Service may utilize or include third-party software and other copyrighted material. Acknowledgements, licensing terms and disclaimers for such material are contained in the electronic documentation for the Service or applicable part thereof, and Your use of such material is governed by their respective terms.

#### **10.2 Consent to Collection and Use of Data**

You acknowledge and agree that Apple and its affiliates and agents may collect, maintain, process and use diagnostic, technical, usage and related information, including but not limited to unique system or hardware identifiers, cookies or IP addresses, information about Your use of the Service, Your MDM Server, Device Enrollment Settings, computers, devices, system and application software, and other software and peripherals, that is gathered periodically to facilitate the provision of services to You related to the Service, to provide, test and improve Apple's products and services, for internal purposes such as auditing, data analysis, and research to improve Apple's products, services, and customer communications, to facilitate the provision of software or software updates, product support and other services to You (if any) related to the Service or any such software, for security and account management purposes, and to verify compliance with the terms of this Agreement. Data collected pursuant to this Section will be treated in accordance with Apple's Privacy Policy, which can be viewed at: <http://www.apple.com/legal/privacy>.

#### **10.3 Assignment**

This Agreement may not be assigned, nor may any of Your obligations under this Agreement be delegated, in whole or in part, by You by operation of law, merger, or any other means without Apple's express prior written consent and any attempted assignment without such consent will be null and void.

#### **10.4 Press Releases and Other Publicity; Relationship of Parties**

You may not issue any press releases or make any other public statements regarding this Agreement, its terms and conditions, or the relationship of the parties without Apple's express prior written approval, which may be withheld at Apple's discretion. This Agreement will not be construed as creating any agency relationship, or a partnership, joint venture, fiduciary duty, or any other form of legal association between You and Apple, and You will not represent to the contrary, whether expressly, by implication, appearance or otherwise. This Agreement is not for the benefit of any third parties.

#### **10.5 Notices**

Any notices relating to this Agreement shall be in writing. Notices will be deemed given by Apple when sent to You at the email address or mailing address You provided during the sign-up process. All notices to Apple relating to this Agreement will be deemed given (a) when delivered personally, (b) three business days after having been sent by commercial overnight carrier with written proof of delivery, and (c) five business days after having been sent by first class or certified mail, postage prepaid, to this Apple address: Apple Inc., App Store Legal (Apple Business Manager), One Apple Park, 169-4ISM, Cupertino, California 95014 U.S.A. You consent to receive notices by email and agree that any such notices that Apple sends You electronically will satisfy any legal communication requirements. A party may change its email or mailing address by giving the other written notice as described above.

#### **10.6 Severability**

If a court of competent jurisdiction finds any clause of this Agreement to be unenforceable for any reason, that clause of this Agreement shall be enforced to the maximum extent permissible so as to affect the intent of the parties, and the remainder of this Agreement shall continue in full force and effect. However, if applicable law prohibits or restricts You from fully and specifically complying with the Sections of this Agreement entitled "Service Requirements", or "Institution's Obligations" or prevents the enforceability of any of those Sections, this Agreement will immediately terminate and You must immediately discontinue any use of the Service.

#### **10.7 Waiver and Construction**

Failure by Apple to enforce any provision of this Agreement shall not be deemed a waiver of future enforcement of that or any other provision. Any laws or regulations that provide that the language of a contract will be construed against the drafter will not apply to this Agreement. Section headings are for convenience only and are not to be considered in construing or interpreting this Agreement.

#### **10.8 Export Control**

You may not use, export, re-export, import, sell or transfer the Service or Apple Software, or any part thereof, except as authorized by United States law, the laws of the jurisdiction in which You obtained the Service or Apple Software, and any other applicable laws and regulations. In particular, but without limitation, the Service and the Apple Software may not be exported or re-exported (a) into any U.S. embargoed countries or (b) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Department of Commerce's Denied Persons List or Entity List or any other restricted party lists. By using the Service or Apple Software, You represent and warrant that You are not located in any such country or on any such list. You also agree that You will not use the Service or Apple Software for any purposes prohibited by United States law, including, without limitation, the development, design, manufacture or production of nuclear, missile, chemical or biological weapons.

### **10.9 Government End-users**

The Service, Apple Software and Documentation are “Commercial Items”, as that term is defined at 48 C.F.R. §2.101, consisting of “Commercial Computer Software” and “Commercial Computer Software Documentation”, as such terms are used in 48 C.F.R. §12.212 or 48 C.F.R. §227.7202, as applicable. Consistent with 48 C.F.R. §12.212 or 48 C.F.R. §227.7202-1 through 227.7202-4, as applicable, the Commercial Computer Software and Commercial Computer Software Documentation are being licensed to U.S. Government end-users (a) only as Commercial Items and (b) with only those rights as are granted to all other end-users pursuant to the terms and conditions herein. Unpublished-rights reserved under the copyright laws of the United States.

### **10.10 Dispute Resolution; Governing Law**

Any litigation or other dispute resolution between You and Apple arising out of or relating to this Agreement, the Apple Software, or Your relationship with Apple will take place in the Northern District of California, and You and Apple hereby consent to the personal jurisdiction of and exclusive venue in the state and federal courts within that District with respect any such litigation or dispute resolution. This Agreement will be governed by and construed in accordance with the laws of the United States and the State of California, except that body of California law concerning conflicts of law. Notwithstanding the foregoing:

- (a) If You are an agency, instrumentality or department of the federal government of the United States, then this Agreement shall be governed in accordance with the laws of the United States of America, and in the absence of applicable federal law, the laws of the State of California will apply. Further, and notwithstanding anything to the contrary in this Agreement (including but not limited to Section 5 (Indemnification)), all claims, demands, complaints and disputes will be subject to the Contract Disputes Act (41 U.S.C. §§601-613), the Tucker Act (28 U.S.C. § 1346(a) and § 1491), or the Federal Tort Claims Act (28 U.S.C. §§ 1346(b), 2401-2402, 2671-2672, 2674-2680), as applicable, or other applicable governing authority. For the avoidance of doubt, if You are an agency, instrumentality, or department of the federal, state or local government of the U.S. or a U.S. public and accredited educational institution, then Your indemnification obligations are only applicable to the extent they would not cause You to violate any applicable law (e.g., the Anti-Deficiency Act), and You have any legally required authorization or authorizing statute;
- (b) If You (as an entity entering into this Agreement) are a U.S. public and accredited educational institution or an agency, instrumentality, or department of a state or local government within the United States, then (i) this Agreement will be governed and construed in accordance with the laws of the state (within the U.S.) in which Your entity is domiciled, except that body of state law concerning conflicts of law; and (ii) any litigation or other dispute resolution between You and Apple arising out of or relating to this Agreement, the Apple Software, or Your relationship with Apple will take place in federal court within the Northern District of California, and You and Apple hereby consent to the personal jurisdiction of and exclusive venue of such District unless such consent is expressly prohibited by the laws of the state in which Your entity is domiciled;
- (c) If You are an international, intergovernmental organization that has been conferred immunity from the jurisdiction of national courts through Your intergovernmental charter or agreement, then any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be determined by arbitration administered by the International Centre for Dispute Resolution in accordance with its International Arbitration Rules. The place of arbitration shall be London, England; the language shall be English; and the number of arbitrators shall be three. Upon Apple’s request, You agree to provide evidence of Your status as an intergovernmental organization with such privileges and immunities; and
- (d) If You (as an entity entering into this Agreement) are in the European Union, or in Iceland, Norway, Switzerland, or the United Kingdom, the governing law and forum shall be the laws and courts of the Republic of Ireland.

This Agreement shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded.

**10.11 Entire Agreement; Governing Language**

This Agreement constitutes the entire agreement between the parties with respect to the Service contemplated hereunder and supersedes all prior understandings and agreements regarding its subject matter. For avoidance of doubt, nothing in this Agreement supersedes the EULAs for the Apple Software. This Agreement may be modified only: (a) by an amendment signed by both parties, or (b) to the extent expressly permitted by this Agreement (for example, by Apple by notice to You). Any translation of this Agreement is provided as a courtesy to You, and in the event of a dispute between the English and any non-English version, the English version of this Agreement shall govern, to the extent not prohibited by local law in Your jurisdiction. If You are located in the province of Quebec, Canada, or are a government organization within France, the following clause applies: The parties hereby confirm that they have requested that this Agreement and all related documents be drafted in English. *Les parties ont exigé que le présent contrat et tous les documents connexes soient rédigés en anglais.*

**10.12 Acceptance**

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