

**PLEASE READ THE FOLLOWING LICENSE AGREEMENT TERMS AND CONDITIONS CAREFULLY BEFORE DOWNLOADING OR USING THE APPLE SOFTWARE. THESE TERMS AND CONDITIONS CONSTITUTE A LEGAL AGREEMENT BETWEEN YOU AND APPLE.**

## **Mac Developer Program License Agreement**

### **Purpose**

You would like to use Apple Software for testing and/or development of products designed to operate on or in combination with Apple-branded products running Mac OS X. Apple is willing to grant You a limited license to use the Apple Software provided to You under this Program to develop and test Your products on the terms and conditions set forth in this Agreement.

This Agreement also sets forth the terms and conditions for the use of Apple Certificates to digitally sign Applications that meet Apple's Documentation and Program Requirements for submission to Apple for distribution via the Mac App Store.

Distribution of free (no charge) Applications by Apple on the Mac App Store will be subject to the distribution terms contained in Schedule 1 to this Agreement. If You would like to distribute fee-based Applications through the Mac App Store, then You must enter into a separate agreement with Apple ("Schedule 2").

### **1. Accepting this Agreement; Definitions**

#### **1.1 Acceptance**

In order to use the Apple Software and related services, You must first agree to this License Agreement. If You do not or cannot agree to this License Agreement, You are not permitted to use the Apple Software or related services. Do not download or use the Apple Software or any related services in that case.

You accept and agree to the terms of this License Agreement on Your own behalf and/or on behalf of Your company, organization, educational institution, or agency, instrumentality, or department of the federal government as its authorized legal representative, by doing either of the following:

- (a) checking the box displayed at the end of this Agreement if You are reading this on an Apple website; or
- (b) clicking an "Agree" or similar button, where this option is provided by Apple.

#### **1.2 Definitions**

Whenever capitalized in this Agreement:

"Agreement" means this Mac Developer Program License Agreement, including any attachments, Schedule 1 and any exhibits thereto which are hereby incorporated by this reference.

"Apple" means Apple Inc., a California corporation with its principal place of business at One Infinite Loop, Cupertino, California 95014, U.S.A.

"Apple Certificates" means the Apple-issued digital certificates provided to You by Apple under this Agreement.

"Apple Software" means software that Apple provides to You under the Program, including any updates thereto.

"Apple Subsidiary" means a corporation at least fifty percent (50%) of whose outstanding shares or securities (representing the right to vote for the election of directors or other managing

authority) are owned or controlled, directly or indirectly, by Apple, and that is involved in the operation of or otherwise affiliated with the Mac App Store, including without limitation Apple Pty Limited, iTunes S.à.r.l., and iTunes K.K.

“Application” means one or more software programs developed by You under this Agreement, under Your own trademark or brand, including Updates (if any).

“Application Program Interface(s)” (API(s)) means the public interfaces which are designed to provide application access to certain features and functionality of Mac OS X.

“Authorized Developers” means Your employees and contractors, members of Your organization or, if You are an educational institution, Your faculty and staff who (a) each have an active and valid Registered Apple Developer account with Apple, (b) have a demonstrable need to know or use the Apple Software in order to develop and test Applications, and (c) to the extent such individuals will have access to Apple Confidential Information, each have written and binding agreements with You to protect the unauthorized use and disclosure of such Apple Confidential Information.

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

“FOSS” (Free and Open Source Software) means any software that is subject to terms that, as a condition of use, copying, modification or redistribution, require such software and/or derivative works thereof to be disclosed or distributed in source code form, to be licensed for the purpose of making derivative works, or to be redistributed free of charge, including without limitation software distributed under the GNU General Public License or GNU Lesser/Library GPL.

“Mac App Store” means an electronic store and its storefronts branded, and owned and/or controlled by Apple or an Apple Subsidiary.

“Mac OS X” means the Mac OS X operating system software provided by Apple for use by You under this Agreement in connection with Your Application development and testing, which, from time to time during the Term, may consist of an Apple confidential, pre-release version of the Mac OS X operating system software or a gold master “GM” production, non-Apple confidential, commercially-available version of the Mac OS X operating system software (or any successor thereto).

“Mac Product” means an Apple-branded product that runs Mac OS X.

“iTunes Connect” means Apple’s proprietary online content management tool for Applications submitted to the Mac App Store.

“Licensed Application” means an Application that (a) meets and complies with all of the Documentation and Program Requirements, and (b) has been selected and digitally signed by Apple for distribution via the Mac App Store.

“Licensed Application Information” means screen shots, images, artwork, icons and/or any other copyrighted text, descriptions, representations or information relating to a Licensed Application that You provide to Apple for use in accordance with Schedule 1, or, if applicable, Schedule 2.

“Program” means the overall Mac OS X application development, testing, digital signing, and/or distribution program contemplated in this Agreement.

“Program Requirements” mean the technical, human interface, design, product category, security, performance, and other criteria and requirements specified by Apple for Applications submitted to Apple for potential distribution via the Mac App Store, including but not limited to the current set of

requirements set forth in Section 3.3, as they may be modified from time to time by Apple in accordance with this Agreement.

“Term” means the period described in Section 12.

“Updates” means any new releases or new versions of Your Application, such as a change in a decimal release from 4.0 to 4.1 or 4.0 to 5.0.

“Xcode” means Apple’s development tools software.

“You”, “Your” and “Licensee” means and refers to the person(s) or legal entity using the Apple Software or otherwise exercising rights under this Agreement. If You are entering into this Agreement on behalf of Your company, organization, educational institution, or an agency, instrumentality, or department of the federal government, “You” or “Your” refers to such entity or organization as well.

## **2. Internal Use License and Restrictions**

### **2.1 Permitted Uses and Restrictions**

Subject to the terms and conditions of this Agreement, Apple hereby grants You during the Term, a limited, non-exclusive, personal, revocable, non-sublicensable and non-transferable license to:

(a) Install a reasonable number of copies of the Apple Software on Apple-branded computers owned or controlled by You, to be used internally by You or Your Authorized Developers solely for purposes of developing or testing Applications designed to operate on or in combination with Mac OS X; provided however that if the Apple Software is accompanied by a separate license agreement, then you agree that the license agreement accompanying such materials shall govern Your use of such materials;

(b) Make and distribute a reasonable number of copies of the Documentation to Authorized Developers for their internal use only and for the sole purpose of developing or testing Applications; and

(c) Incorporate the Apple Certificates issued to You pursuant to this Agreement solely for purposes of digitally signing Your Applications for submission to Apple pursuant to Section 6.

### **2.2 Confidential Nature of Pre-Release Apple Software and services**

From time to time during the Term, Apple may provide You with pre-release versions of the Apple Software or related services that constitute Apple Confidential Information and are subject to the confidentiality obligations of this Agreement. Such pre-release Apple Software and related services should not be relied upon to perform in the same manner as a final-release commercial-grade product, nor used with data that is not sufficiently and regularly backed up, and may include features, functionality or APIs for software or services that are not yet available. You acknowledge that Apple may not have publicly announced the availability of such pre-release Apple Software or related services, that Apple has not promised or guaranteed to You that such pre-release software or services will be announced or made available to anyone in the future, and that Apple has no express or implied obligation to You to announce or commercially introduce such software or services or any similar or compatible technology. You expressly acknowledge and agree that any research or development that You perform with respect to pre-release versions of the Apple Software or related services is done entirely at Your own risk. Further, any use of any pre-release Apple Software or services is for testing and development purposes only, and You should not use any pre-release Apple Software or services in a commercial operating environment or with important data. You should back up any data prior to using the pre-release Apple Software or services. Apple will not be responsible for any costs, expenses or other liabilities You may incur as a result of Your Application testing or development or the installation or use of the pre-release Apple Software or services, including but not limited to any damage to any equipment, software or data.

## **2.3 Copies**

You agree to retain and reproduce in full the Apple copyright, disclaimers and other proprietary notices (as they appear in the Apple Software and related services and Documentation provided) in all copies of the Apple Software and Documentation that You are permitted to make under this Agreement.

## **2.4 Ownership**

Apple retains all rights, title, and interest in and to the Apple Software and Apple Certificates and any updates it may make available to You under this Agreement. You agree to cooperate with Apple to maintain Apple's ownership of the Apple Software and Apple Certificates and, to the extent that You become aware of any claims relating to the Apple Software or Apple Certificates, You agree to use reasonable efforts to promptly provide notice of any such claims to Apple. The parties acknowledge that this Agreement does not give Apple any ownership interest in Your Applications.

## **2.5 No Other Permitted Uses**

Except as otherwise set forth in this Agreement, You agree not to rent, lease, lend, upload to or host on any website or server, sell, redistribute, or sublicense the Apple Software, Apple Certificates or any services, in whole or in part, or to enable others to do so. You may not use the Apple Software, Apple Certificates or any services provided hereunder for any purpose not expressly permitted by this Agreement. You agree not to install, use or run the Apple Software, including Mac OS X, on any non Apple-branded computer, or to enable others to do so, with the exception of Apple Software not designed to be run on Mac OS X. You may not and You agree not to, or to enable others to, copy (except as expressly permitted under this Agreement), decompile, reverse engineer, disassemble, attempt to derive the source code of, modify, decrypt, or create derivative works of the Apple Certificates, Apple Software, or any services provided by the Apple Software, or otherwise provided hereunder, or any part thereof (except as and only to the extent any foregoing restriction is prohibited by applicable law or to the extent as may be permitted by licensing terms governing use of open-sourced components or sample code included with the Apple Software). You agree not to exploit any services provided hereunder in any unauthorized way whatsoever, including but not limited to, by trespass or burdening network capacity. Any attempt to do so is a violation of the rights of Apple and its licensors of the Apple Software or services. If You breach any of the foregoing restrictions, You may be subject to prosecution and damages. All licenses 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. This Agreement does not grant You any rights to use any trademarks, logos or service marks belonging to Apple, including but not limited to the Mac word marks. If You make reference to any Apple products or technology or use Apple's trademarks, You agree to comply with the published guidelines at <http://www.apple.com/legal/trademark/guidelinesfor3rdparties.html>, as modified by Apple from time to time.

## **2.6 No Support or Maintenance; No Guarantee of updates**

Apple is not obligated to provide any maintenance, technical or other support for the Apple Software or services. Apple may extend, enhance, or otherwise modify the Apple Software or services provided hereunder at any time without notice, but Apple will not be obligated to provide You with any updates to such Apple Software or services. You acknowledge that Apple has no express or implied obligation to announce or make available any updates to the Apple Software or to any services to anyone in the future. Should an update be made available, it may have APIs, features, services or functionality that are different from those found in the Apple Software or the services provided hereunder.

# **3. Your Obligations**

## **3.1 General**

You certify to Apple and agree that:

- (a) You are of the legal age of majority in the jurisdiction in which You reside (at least 18 years of age in many countries) and have the right and authority to enter into this Agreement on Your own behalf, or if You are entering into this Agreement on behalf of Your company, organization, educational institution, or agency, instrumentality, or department of the federal government, that You have the right and authority to legally bind such entity or organization to the terms and obligations of this Agreement;
- (b) If You submit Your Application for distribution via the Mac App Store, then all information provided by You to Apple or Your end-users in connection with Your Application, including without limitation Licensed Application Information, will be current, true, accurate, supportable and complete and, with regard to information You provide to Apple, You will promptly notify Apple of any changes to such information. Further, You agree that Apple may share such information (including email address and mailing address) with third parties who have a need to know for purposes related to Your Application (e.g., intellectual property questions, customer service inquiries, etc.);
- (c) You will comply with the terms of and fulfill Your obligations under this Agreement and You agree to monitor and be responsible for Your Authorized Developers' use of the Apple Software and services and their compliance with the terms of this Agreement;
- (d) You will be solely responsible for all costs, expenses, losses and liabilities incurred, and activities undertaken by You and Authorized Developers in connection with the Apple Software and services, the Apple Certificates, Your Applications and Your related development and distribution efforts, including, but not limited to, any related development efforts, network and server equipment, Internet service(s), or any other hardware, software or services used by You in connection with Your use of any services;
- (e) For the purposes of Schedule 1(if applicable), You represent and warrant that You own or control the necessary rights in order to appoint Apple and Apple Subsidiaries as Your worldwide agent for the delivery of Your Licensed Applications, and that the fulfillment of such appointment by Apple and Apple Subsidiaries shall not violate or infringe the rights of any third party; and
- (f) You will not act in any manner which conflicts or interferes with any existing commitment or obligation You may have and no agreement previously entered into by You will interfere with Your performance of Your obligations under this Agreement.

### **3.2 Use of the Apple Software and Apple Certificates**

As a condition to using the Apple Software, Apple Certificates and any services, You agree that:

- (a) You will only use the Apple Software, Apple Certificates and any services for the purposes and in the manner expressly permitted by this Agreement and in accordance with all applicable laws and regulations;
- (b) You will not use the Apple Software, Apple Certificates or any services for any unlawful or illegal activity, nor to develop any Application which would commit or facilitate the commission of a crime, or other tortious, unlawful or illegal act;
- (c) If You submit Your Application for distribution via the Mac App Store, then Your Application will be developed in compliance with the Documentation and the Program Requirements, and, to the best of Your knowledge and belief, Your Application and Licensed Application Information do not and will not violate, misappropriate, or infringe any Apple or third party copyrights, trademarks, rights of privacy and publicity, trade secrets, patents, or other proprietary or legal rights (e.g. musical composition or performance rights, video rights, photography or image rights, logo rights, third party data rights, etc. for content and materials that may be included in Your Application);
- (d) You will not, through use of the Apple Software, services or otherwise, create any Application or other program that would disable, hack or otherwise interfere with the security, digital signing, digital rights management, verification or authentication mechanisms implemented in or by the Apple Software or Apple Certificates; and
- (e) If You submit Your Application for distribution via the Mac App Store, then You agree that You will not, directly or indirectly, commit any act intended to interfere with the Mac App Store or Apple's business practices including, but not limited to, taking actions that may hinder the performance or intended use of the Mac App Store, Apple Software or the Program (e.g., submitting fraudulent reviews of Your own Application or any third party application, choosing a

name for Your Application that is substantially similar to the name of a third party application in order to create consumer confusion, or squatting on application names to prevent legitimate third party use).

### **3.3 Program Requirements for Applications submitted to the Mac App Store**

If You submit Your Application for distribution via the Mac App Store, Your Application must meet all of the following criteria and requirements, as they may be modified by Apple from time to time:

#### **APIs and Functionality:**

3.3.1 Applications may only use public APIs and frameworks included in the default installation of Mac OS X or as bundled with Xcode as provided by Apple, deprecated technologies (such as Java) may not be used.

3.3.2 An Application may install or run additional interpreted or executable code (e.g., plug-ins and extensions) for use in conjunction with the Application as long as such code:

- does not change the Application's submitted binary or would not otherwise be considered an Update (as determined in Apple's sole discretion); and

- does not change the primary purpose of the Application by providing features or functionality that are inconsistent with the intended and advertised purpose of the Application as submitted to the Mac App Store.

3.3.3 An Application itself may not function as a distribution mechanism for software and may not include features or functionality that create or enable a software store, distribution channel or other mechanism for software delivery within the Application. For example, an audio application may not include an audio filter plug-in store within the Application.

3.3.4 All files necessary for the Application to execute must be in the Application bundle submitted to Apple and must be installed by the Mac App Store.

3.3.5 Applications may not alter, modify or otherwise change the native user interface elements or behaviors of Mac OS X (e.g., the system menu, window sizes, colors, etc.).

3.3.6 An Application may not include a suite or collection of independent applications within a single Application bundle.

3.3.7 You may not use any digital rights management or other copy or access control mechanisms in Your Application without Apple's express written permission or as approved and specified by Apple in the Documentation.

#### **User Interface, Data Collection, Local Laws and Privacy:**

3.3.8 Applications must comply with the Human Interface Guidelines and other Documentation provided by Apple.

3.3.9 Any form of user or system data collection, or image, picture or voice capture or recording (collectively "Recordings"), and any form of data, content or information collection, processing, maintenance, uploading, syncing, storage, transmission, sharing, disclosure or use performed by, through or in connection with Your Application must comply with all applicable privacy laws and regulations as well as any related Program Requirements, including but not limited to any notice or consent requirements. In particular, a reasonably conspicuous audio, visual or other indicator must be displayed to the user as part of the Application to indicate that a Recording is taking place.

3.3.10 You and Your Applications may not collect user or system data without prior user consent, and then only to provide a service or function that is directly relevant to the use of the Application, or to serve advertising. You may not use analytics software in Your Application to collect and send system data to a third party.

3.3.11 You must provide clear and complete information to users regarding Your collection, use and disclosure of user or system data. Furthermore, You must take appropriate steps to protect such data from unauthorized use, disclosure or access by third parties. If a user ceases to consent or affirmatively revokes consent for Your collection, use or disclosure of his or her user or system data, You must promptly cease all such use.

3.3.12 Applications must comply with all applicable criminal, civil and statutory laws and regulations, including those in any jurisdictions in which Your Applications may be offered or made available. Further, You and the Application must comply with all applicable privacy and data collection laws and regulations with respect to any collection, use or disclosure of user or system data. In addition:

- Applications may not be designed or marketed for the purpose of harassing, abusing, spamming, stalking, threatening or otherwise violating the legal rights (such as the rights of privacy and publicity) of others.
- Applications may not engage in behavior that in Apple's judgment is inconsistent with their submitted and advertised purpose or is otherwise misleading to consumers.
- Neither You nor Your Application may perform any functions or link to any content, services, information or data or use any robot, spider, site search or other retrieval application or system to scrape, mine, retrieve, cache, analyze or index software, data or services provided by Apple or its licensors, or obtain (or try to obtain) any such data, except the data that Apple expressly provides or makes available to You in connection with such services. You agree that You will not collect, disseminate or use any such data for any unauthorized purpose.

3.3.13 For Applications that use location-based APIs or otherwise provide location-based services, such Applications may not be designed or marketed for automatic or autonomous control of vehicles, aircraft, or other mechanical devices; dispatch or fleet management; or emergency or life-saving purposes. In addition:

- Applications that offer location-based services or functionality must notify and obtain consent from an individual before his or her location data is collected, transmitted or otherwise used by the Application.

3.3.14 For Applications that use location-based APIs for real-time route guidance (including, but not limited to, turn-by-turn route guidance and other routing that is enabled through the use of a sensor), You must have an end-user license agreement that includes the following notice: YOUR USE OF THIS REAL TIME ROUTE GUIDANCE APPLICATION IS AT YOUR SOLE RISK. LOCATION DATA MAY NOT BE ACCURATE.

3.3.15 Applications must not disable, override or otherwise interfere with any Apple-implemented system alerts, warnings, display panels, consent panels and the like, including, but not limited to, those that are intended to notify the user that the user's location data is being collected, transmitted, maintained, processed or used, or intended to obtain consent for such use. If consent is denied or withdrawn, Applications may not collect, transmit, maintain, process or utilize the user's location data or perform any other actions for which the user's consent has been denied or withdrawn.

#### **Languages, Content and Materials:**

3.3.16 An Application must contain all foreign language versions of the same Application within the Application bundle. For example, You may not provide a separate French version of Your Application, but instead must provide one international version that includes all supported languages in a single bundle.

3.3.17 Any master recordings and musical compositions embodied in Your Application must be wholly-owned by You or licensed to You on a fully paid-up basis and in a manner that will not require the payment of any fees, royalties and/or sums by Apple to You or any third party. In addition, if Your Application will be distributed outside of the United States, any master recordings and musical compositions embodied in Your Application (a) must not fall within the repertoire of any mechanical or performing/communication rights collecting or licensing organization now or in the future and (b) if licensed, must be exclusively licensed to You for Your Application by each applicable copyright owner.

3.3.18 If Your Application includes or will include any other content, You must either own all such content or have permission from the content owner to use it in Your Application.

3.3.19 Applications may be rejected if they contain content or materials of any kind (text, graphics, images, photographs, sounds, etc.) that in Apple's reasonable judgment may be found objectionable, for example, materials that may be considered obscene, pornographic, or defamatory.

3.3.20 Applications must not contain any malware, malicious or harmful code, program, or other internal component (e.g. computer viruses, trojan horses, "backdoors") which could damage, destroy, or adversely affect Apple hardware, software or services, or other third party software, firmware, hardware, data, systems, services, or networks.

3.3.21 If Your Application includes any FOSS, You agree to comply with all applicable FOSS licensing terms. You also agree not to use any FOSS in the development of Your Application in such a way that would cause the non-FOSS portions of the Apple Certificates or any Apple Software or services to be subject to any FOSS licensing terms or obligations.

3.3.22 Your Application may include promotional sweepstake or contest functionality provided that You are the sole sponsor of the promotion and that You and Your Application comply with any applicable laws and fulfill any applicable registration requirements in the country or territory where You make Your Application available and the promotion is open. You agree that You are solely responsible for any promotion and any prize, and also agree to clearly state in binding official rules for each promotion that Apple is not a sponsor of, or responsible for conducting, the promotion.

3.3.23 Your Application may include a direct link to a page on Your web site where you include the ability for an end-user to make a charitable contribution, provided that You comply with any applicable laws (which may include providing a receipt), and fulfill any applicable regulation or registration requirements, in the country or territory where You enable the charitable contribution to be made. You also agree to clearly state that Apple is not the fundraiser.

#### **Regulatory Compliance for Health, Medical and Related Apps:**

3.3.24 You will fulfill any applicable regulatory requirements, including full compliance with all applicable laws, regulations, and policies related to the manufacturing, marketing, sale and distribution of Your Application in the United States, and in particular the requirements of the U.S. Food and Drug Administration ("FDA"), and the laws, regulations and policies of any other applicable regulatory bodies in any countries or territories where You use or make Your Application available. However, You agree that you will not seek any regulatory marketing permissions or make any determinations that may result in any Apple products being deemed regulated or that may impose any obligations or limitations on Apple. By submitting Your



Application to Apple for selection for distribution via the Mac App Store, You represent and warrant that You are in full compliance with any applicable laws, regulations, and policies, including but not limited to all FDA laws, regulations and policies, related to the manufacturing, marketing, sale and distribution of Your Application in the United States, as well as in other countries or territories where You plan to make Your Application available via the Mac App Store. You also represent and warrant that You will market Your Application only for its cleared or approved intended use/indication for use, and only in strict compliance with applicable regulatory requirements. Upon Apple's request, You agree to promptly provide any such clearance documentation to support the marketing of Your Application. You agree to promptly notify Apple in accordance with the procedures set forth in Section 15.6 of any complaints or threats of complaints regarding Your Application in relation to any such regulatory requirements, in which case Apple may remove Your Application from the Mac App Store.

#### **Additional Services:**

3.3.25 From time to time, Apple may provide access to additional services for You to use in connection with Your Applications. Some of these additional services may be subject to separate terms and conditions in addition to this Agreement. If You elect to use such services, Your usage will also be subject to those separate terms and conditions. In addition, such services may not be available in all languages or in all countries. Apple makes no representation that such services are appropriate or available for use in any particular location. To the extent You choose to access such services, You do so at Your own initiative and are responsible for compliance with any applicable laws, including but not limited to applicable local laws. Certain services made accessible to You through the Apple Software may be provided by third parties. You acknowledge that Apple will not have any liability or responsibility to You or any other person (including to any end-user) for any third-party services or for any Apple services. Apple and its licensors reserve the right to change, suspend, remove, or disable access to any services at any time. In no event will Apple be liable for the removal of or disabling of access to any such services.

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

Apple may change the Program Requirements or the terms of this Agreement at any time. New or modified Program Requirements will not retroactively apply to Licensed Applications already in distribution via the Mac App Store; provided however that You agree that Apple reserves the right to remove Licensed Applications that are not in compliance with the new or modified Program Requirements at any time. In order to continue using the Apple Software, Apple Certificates or any services, You must accept and agree to the new terms of this Agreement. If You do not agree to the new terms, Your use of the Apple Software, Apple Certificates and any services 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 Your checking a box or clicking on an "agree" or similar button. Nothing in this Section shall affect Apple's rights under Section 8 below (Revocation).

#### **5. Digital Signing; Apple Certificate Restrictions**

You understand that Applications cannot be submitted to the Mac App Store unless they are signed with an Apple Certificate.

In relation to this, You represent and warrant to Apple that: (a) You will not take any action to interfere with the normal operation of any Apple Certificates; (b) You are solely responsible for preventing any unauthorized person from having access to Your Apple Certificates, and You will safeguard Your Apple Certificates from compromise; (c) You agree to immediately notify Apple in writing if You have any reason to believe there has been a compromise of Your Apple Certificates; (d) You will not provide or transfer Apple Certificates provided under this Agreement to any third party, nor use Your Apple Certificate to sign a third party's Applications; and (e) You will use Apple Certificates provided under this Agreement exclusively for purposes of digital signing Your Applications for submission to the Mac App Store as contemplated under this

Agreement, and only in accordance with this Agreement.

You further represent and warrant to Apple that the licensing terms governing Your Application or governing any third party code or FOSS included in Your Application, will be consistent with and not conflict with the digital signing contemplated hereunder or any of the terms, conditions or requirements of this Agreement. In particular, such licensing terms will not purport to require Apple (or its agents) to disclose or make available any of the keys, authorization codes, methods, procedures, data or other information related to digital signing mechanisms utilized as part of Mac OS X. If You discover any such inconsistency or conflict, You agree to immediately notify Apple of it and will cooperate with Apple to resolve such matter. You understand and agree that Apple may revoke Your Apple Certificates until such matter is resolved to Apple's reasonable satisfaction.

## **6. Application Submission and Selection for the Mac App Store**

### **6.1 Submission to Apple: Updates**

You may submit Your Application for consideration by Apple for distribution via the Mac App Store once You decide that Your Application has been adequately tested and is complete. Your Application must be complete when packaged and submitted to the Mac App Store and must use Xcode for bundling and submission. By submitting Your Application, You represent and warrant that Your Application complies with the Documentation and Program Requirements then in effect as well as with any additional guidelines that Apple may post on the Program web portal. You further agree that You will not attempt to hide, misrepresent or obscure any features, content, services or functionality in Your submitted Applications from Apple's review or otherwise hinder Apple from being able to fully review such Applications. You agree to cooperate with Apple in this submission process and to answer questions and provide information and materials reasonably requested by Apple regarding Your submitted Application, including insurance information You may have relating to Your Application, the operation of Your business, or Your obligations under this Agreement. Apple may require You to carry certain levels of insurance for certain types of Applications and name Apple as an additional insured.

If You would like to change the binary of Your Licensed Application or otherwise release an Update to Your Licensed Application, You must resubmit the Licensed Application to Apple for review in order for it to be considered for distribution via the Mac App Store. You understand and agree that the Mac App Store is the sole delivery mechanism for all binary changes or Updates to a Licensed Application for as long as such Licensed Application is distributed through the Mac App Store. Further, if Your Application is accepted for distribution via the Mac App Store, You agree that Apple may use Your Application for the limited purpose of compatibility testing of Your Application with Mac OS X, for finding and fixing bugs in Mac OS X and for purposes of providing other information to You (e.g. crash logs).

### **6.2 Compatibility Requirement with Current Shipping Version of Mac OS X**

Applications that are selected for distribution via the Mac App Store must be compatible with the currently shipping version of Mac OS X at the time of submission to Apple, and such Applications must stay current and maintain compatibility with each new release of Mac OS X for as long as such Application is distributed through the Mac App Store. You understand and agree that Apple may remove Licensed Applications from the Mac App Store that are not compatible with the then-current shipping release of Mac OS X at any time in its sole discretion.

### **6.3 Selection by Apple for Distribution via the Mac App Store**

You understand and agree that Apple may, in its sole discretion:

- (a) determine that Your Application does not meet all or any part of the Documentation or Program Requirements then in effect;
- (b) reject Your Application for distribution for any reason, even if Your Application meets the Documentation and Program Requirements; or
- (c) select and digitally sign Your Application for distribution via the Mac App Store.

Apple shall not be responsible for any costs, expenses, damages, losses (including without limitation lost business opportunities or lost profits) or other liabilities You may incur as a result of Your Application development, use of this Apple Software, use of any services, or participation in the Program, including without limitation the fact that Your Application may not be selected for distribution via the Mac App Store. You will be solely responsible for developing Applications that are safe, free of defects in design and operation, and comply with applicable laws and regulations. You will also be solely responsible for any documentation and end-user customer support and warranty of Your Applications. The fact that Apple may have reviewed, tested, approved or selected an Application will not relieve You of any of these responsibilities.

## **7. Distribution via the Mac App Store**

If Your Application qualifies as a Licensed Application, it is eligible for delivery to end-users via the Mac App Store by Apple and/or an Apple Subsidiary. If You would like Apple and/or an Apple Subsidiary to deliver Your Licensed Application to end-users for free (no charge), then You appoint Apple and Apple Subsidiaries as Your legal agent pursuant to the terms of Schedule 1, for Licensed Applications designated by You as free of charge applications.

If Your Application qualifies as a Licensed Application and You intend to charge end-users a fee of any kind for Your Licensed Application, You must enter into a separate agreement (Schedule 2) with, and provided by, Apple and/or an Apple Subsidiary before any such commercial distribution of Your Licensed Application may take place via the Mac App Store. To the extent that You enter (or have previously entered) into Schedule 2 with Apple and/or an Apple Subsidiary, the terms of Schedule 2 will be deemed incorporated into this Agreement by this reference.

## **8. Revocation**

You understand and agree that Apple may cease distribution of Your Licensed Application(s) and/or Licensed Application Information or revoke Your Apple Certificates at any time. By way of example only, Apple might choose to do this if at any time:

- (a) Your Apple Certificate has been compromised or Apple has reason to believe that it has been compromised;
- (b) Apple has been notified or otherwise has reason to believe that Your Licensed Application violates, misappropriates, or infringes the rights of a third party or of Apple;
- (c) Apple has reason to believe that Your Licensed Application contains malicious or harmful code, malware, programs or other internal components (e.g. software virus);
- (d) Apple has reason to believe that Your Licensed Application damages, corrupts, degrades, destroys or otherwise adversely affects the systems it operates on, or any other software, firmware, hardware, data, systems, or networks accessed or used by the Application;
- (e) You breach any term or condition of this Agreement or the Registered Apple Developer terms and conditions;
- (f) Any information or documents provided by You to Apple for the purpose of verifying Your identity or obtaining Apple Certificates is false or inaccurate;
- (g) Any representation, warranty or certification provided by You to Apple in this Agreement is untrue or inaccurate;
- (h) Apple is required by law, regulation or other governmental or court order to take such action;
- (i) You request that Apple take such action in accordance with Schedule 1;
- (j) You misuse or overburden any services provided hereunder;
- (k) You fail to renew this Agreement and pay the applicable Program renewal fee; or
- (l) Apple has reason to believe that such action is prudent or necessary.

You understand and agree that Apple may also notify end-users of Your Licensed Application when Apple believes such action is necessary to protect the privacy, safety or security of end-users, or is otherwise prudent or necessary as determined in Apple's reasonable judgment. You acknowledge and agree that Apple shall not be responsible for any costs, expenses or other liabilities incurred, and activities undertaken by You in connection with Apple Certificates, Your

Licensed Applications and Your related development efforts.

## **9. Program Fees**

As consideration for the rights and licenses granted to You under this Agreement and Your participation in the Program, You agree to pay Apple the requisite annual program fees as set forth on the Program website. The fees are non-refundable. Any taxes that may be levied on the Apple Software or Your use of it shall be Your responsibility. Your program fees must be paid up and not in arrears at the time You submit (or resubmit) Applications to Apple for Mac App Store distribution under this Agreement, and Your continued use of the Program web portal is subject to Your payment of such fees.

## **10. Confidentiality**

### **10.1 Information Deemed Apple Confidential**

You agree that all pre-release versions of the Apple Software (including pre-release Documentation) and services, any terms and conditions contained herein that disclose pre-release features of the Apple Software or services, and the terms and conditions of Schedule 2 (available separately to cover distribution of paid-for Licensed Applications via the Mac App Store) will be deemed "Apple Confidential Information"; provided however that upon the commercial release of the Apple Software the terms and conditions that disclose pre-release features of the Apple Software or services will no longer be confidential. Notwithstanding the foregoing, Apple Confidential Information will not include: (i) information that is generally and legitimately available to the public through no fault or breach of Yours, (ii) information that is generally made available to the public by Apple, (iii) information that is independently developed by You without the use of any Apple Confidential Information, (iv) information that was rightfully obtained from a third party who had the right to transfer or disclose it to You without limitation, or (v) any FOSS included in the Apple Software and accompanied by licensing terms that do not impose confidentiality obligations on the use or disclosure of such FOSS.

### **10.2 Obligations Regarding Apple Confidential Information**

You agree to protect Apple Confidential Information using at least the same degree of care that You use to protect Your own confidential information of similar importance, but no less than a reasonable degree of care. You agree to use Apple Confidential Information solely for the purpose of exercising Your rights and performing Your obligations under this Agreement and agree not to use Apple Confidential Information for any other purpose, for Your own or any third party's benefit, without Apple's prior written consent. You further agree not to disclose or disseminate Apple Confidential Information to anyone other than: (i) those of Your employees and contractors, or those of Your faculty and staff if You are an educational institution, who have a need to know and who are bound by a written agreement that prohibits unauthorized use or disclosure of the Apple Confidential Information; or (ii) except as otherwise agreed or permitted in writing by Apple. You may disclose Apple Confidential Information to the extent required by law, provided that You take reasonable steps to notify Apple of such requirement before disclosing the Apple Confidential Information and to obtain protective treatment of the Apple Confidential Information. You acknowledge that damages for improper disclosure of Apple Confidential Information may be irreparable; therefore, Apple is entitled to seek equitable relief, including injunction and preliminary injunction, in addition to all other remedies.

### **10.3 Information Submitted to Apple Not Deemed Confidential**

Apple works with many application and software developers and some of their products may be similar to or compete with Your Applications. Apple may also be developing its own similar or competing applications and products or may decide to do so in the future. To avoid potential misunderstandings, Apple cannot agree, and expressly disclaims, any confidentiality obligations or use restrictions, express or implied, with respect to any information that You may provide in connection with this Agreement or the Program, including information about Your Application, Licensed Application Information and metadata (such disclosures will be referred to as "Licensee Disclosures"). You agree that any such Licensee Disclosures will be **non-confidential**. Apple will be free to use and disclose any Licensee Disclosures on an unrestricted basis without notifying or

compensating You. You release Apple from all liability and obligations that may arise from the receipt, review, use, or disclosure of any portion of any Licensee Disclosures. Any physical materials You submit to Apple will become Apple property and Apple will have no obligation to return those materials to You or to certify their destruction.

#### **10.4 Press Releases and Other Publicity**

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.

### **11. Indemnification for Licensed Applications**

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, independent contractors and agents (each an "Apple Indemnified Party") from any and all claims, losses, liabilities, damages, taxes, 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 Your Licensed Application, Licensed Application Information, or metadata, including but not limited to any of the following: (i) Your breach of any certification, covenant, obligation, representation or warranty in this Agreement with respect to Your Licensed Application, including Schedule 2 (if applicable); (ii) any claims that Your Licensed Application or the distribution, sale, offer for sale, use or importation of Your Licensed Application (whether alone or as an essential part of a combination), Licensed Application Information or metadata, violate or infringe any third party intellectual property or proprietary rights; (iii) Your breach of any of Your obligations under the EULA (as defined in Schedule 1 or Schedule 2 (if applicable)) for Your Licensed Application; or (iv) Apple's permitted use, promotion or delivery of Your Licensed Application, Licensed Application Information, metadata, related trademarks and logos, or images and other materials that You provide to Apple under this Agreement, including Schedule 2 (if applicable).

You acknowledge that neither the Apple Software nor any services are intended for use in the development of Applications in which errors or inaccuracies in the content, functionality, services, data or information provided by the Application or the failure of the Application, could lead to death, personal injury, or severe physical or environmental damage, and, to the extent permitted by law, You hereby agree to indemnify, defend and hold harmless each Apple Indemnified Party from any Losses incurred by such Apple Indemnified Party by reason of any such use in a Licensed Application.

In no event may You enter into any settlement or like agreement with a third party that affects Apple's rights or binds Apple in any way, without the prior written consent of Apple.

### **12. Term and Termination**

#### **12.1 Term**

The Term of this Agreement shall extend until the one (1) year anniversary of the original activation date of Your Program account ("Effective Date"). Thereafter, subject to Your payment of annual renewal fees and 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.

#### **12.2 Termination**

This Agreement and all rights and licenses granted by Apple hereunder and any services provided hereunder will terminate, effective immediately upon notice from Apple:

- (a) if You or any of Your Authorized Developers fail to comply with any term of this Agreement other than those contained in Section 10 (Confidentiality) and fail to cure such breach within 30 days after becoming aware of or receiving notice of such breach;
- (b) if You or any of Your Authorized Developers fail to comply with the terms of Section 10;
- (c) in the event of the circumstances described in the subsection entitled "Severability" below;
- (d) if You, at any time during the Term, commence an action for patent infringement against Apple;

(e) if You become insolvent, fail to pay Your debts when due, dissolve or cease to do business, file for bankruptcy, or have filed against You a petition in bankruptcy; or  
(f) if You engage, or encourage others to engage, in any misleading, fraudulent, improper, unlawful or dishonest act relating to this Agreement, including, but not limited to, misrepresenting the nature of Your submitted Application (e.g., hiding or trying to hide functionality from Apple's review, falsifying consumer reviews for Your Application, etc.).

Apple may also terminate this Agreement, or suspend Your rights to use the Apple Software or services, if You fail to accept any new Agreement terms as described in Section 4.

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.

### **12.3 Effect of Termination**

Upon the termination of this Agreement for any reason, You agree to immediately cease all use of the Apple Software and services and erase and destroy all copies, full or partial, of the Apple Software and all copies of Apple Confidential Information in Your and Your Authorized Developers' possession or control. At Apple's request, You agree to provide written certification of such destruction to Apple. Upon the expiration of the Delivery Period defined and set forth in Schedule 1, all Licensed Applications and Licensed Application Information in Apple's possession or control shall be deleted or destroyed within a reasonable time thereafter, excluding any archival copies maintained in accordance with Apple's standard business practices or required to be maintained by applicable law, rule or regulation. The following provisions shall survive any termination of this Agreement: Sections 1, 2.4, 2.5, 3.1(d), 3.1(e), 3.1(f), 3.2(c), 3.2(d), 3.2(e), 3.3, 5 (second and third paragraphs), the third sentence of the first paragraph of Section 6.1, the last sentence of the second paragraph of Section 6.1, the second paragraph of Section 6.3, 7 (Schedule 1 for the Delivery Period), 8, and 10 through 15 inclusive. Apple will not be liable for compensation, indemnity, or damages of any sort as a result of terminating this Agreement in accordance with its terms, and termination of this Agreement will be without prejudice to any other right or remedy Apple may have, now or in the future.

### **13. NO WARRANTY**

The Apple Software may contain inaccuracies or errors that could cause failures or loss of data and it may be incomplete. Apple or its licensors may provide or make available through the Apple Software or as part of the Program, certain web-based applications, certificate-issuance services, Mac App Store services or other services for Your use (collectively the "Services" for purposes of this Section 13 and 14). Apple and its licensors reserve the right to change, suspend, remove, or disable access to any Services at any time without notice. In no event will Apple or its licensors be liable for the removal of or disabling of access to any such Services. Apple or its licensors may also impose limits on the use of or access to certain Services, in any case and without notice or liability. YOU EXPRESSLY ACKNOWLEDGE AND AGREE THAT USE OF THE APPLE SOFTWARE, SERVICE-RELATED SOFTWARE AND ANY SERVICES IS AT YOUR SOLE RISK AND THAT THE ENTIRE RISK AS TO SATISFACTORY QUALITY, PERFORMANCE, ACCURACY AND EFFORT IS WITH YOU. THE APPLE SOFTWARE, SERVICE-RELATED SOFTWARE AND ANY SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE", WITH ALL FAULTS AND WITHOUT WARRANTY OF ANY KIND, AND APPLE, APPLE'S AGENTS AND APPLE'S LICENSORS (COLLECTIVELY REFERRED TO AS "APPLE" FOR THE PURPOSES OF SECTIONS 13 AND 14) HEREBY DISCLAIM ALL WARRANTIES AND CONDITIONS WITH RESPECT TO THE APPLE SOFTWARE, SERVICE-RELATED SOFTWARE AND SERVICES, EITHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, TIMELINESS, AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS. APPLE DOES NOT WARRANT AGAINST INTERFERENCE WITH YOUR ENJOYMENT OF THE APPLE SOFTWARE, SERVICE-RELATED SOFTWARE OR SERVICES, THAT THE APPLE SOFTWARE, SERVICE-RELATED SOFTWARE OR SERVICES WILL MEET YOUR REQUIREMENTS, THAT THE OPERATION

OF THE APPLE SOFTWARE, SERVICE-RELATED SOFTWARE OR THE PROVISION OF SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE OR ERROR-FREE, THAT DEFECTS OR ERRORS IN THE APPLE SOFTWARE, SERVICE-RELATED SOFTWARE OR SERVICES WILL BE CORRECTED, OR THAT THE APPLE SOFTWARE, SERVICE-RELATED SOFTWARE OR SERVICES WILL BE COMPATIBLE WITH FUTURE APPLE PRODUCTS, SERVICES OR SOFTWARE, OR THAT ANY INFORMATION STORED OR TRANSMITTED THROUGH ANY APPLE SOFTWARE, SERVICE-RELATED SOFTWARE OR SERVICES WILL NOT BE LOST, CORRUPTED OR DAMAGED. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY APPLE OR AN APPLE AUTHORIZED REPRESENTATIVE WILL CREATE A WARRANTY NOT EXPRESSLY STATED IN THIS AGREEMENT. SHOULD THE APPLE SOFTWARE, SERVICE-RELATED SOFTWARE OR SERVICES PROVE DEFECTIVE, YOU ASSUME THE ENTIRE COST OF ALL NECESSARY SERVICING, REPAIR OR CORRECTION. Location data provided by any Services is for basic navigational purposes only and is not intended to be relied upon in situations where precise location information is needed or where erroneous, inaccurate or incomplete location data may lead to death, personal injury, property or environmental damage. Neither Apple nor any of its licensors guarantees the availability, accuracy, completeness, reliability, or timeliness of location data or any other data or information displayed by any Services.

#### **14. LIMITATION OF LIABILITY**

TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW, IN NO EVENT WILL APPLE BE LIABLE FOR PERSONAL INJURY, OR ANY INCIDENTAL, SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES WHATSOEVER, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS, LOSS OF DATA, BUSINESS INTERRUPTION OR ANY OTHER COMMERCIAL DAMAGES OR LOSSES, ARISING OUT OF OR RELATED TO THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO, YOUR USE OR INABILITY TO USE THE APPLE SOFTWARE OR SERVICES, FAILURE OR DELAYS IN APPROVAL OF YOUR SUBMITTED APPLICATION OR APPLICATION UPDATES, YOUR DEVELOPMENT EFFORTS OR PARTICIPATION IN THE PROGRAM, HOWEVER CAUSED, WHETHER UNDER A THEORY OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), PRODUCTS LIABILITY, OR OTHERWISE, EVEN IF APPLE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY. In no event shall Apple's total liability to You under this Agreement 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).

#### **15. General Legal Terms**

**15.1 Third Party Notices.** Portions of the Apple Software or services 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 Apple Software and services, and Your use of such material is governed by their respective terms.

**15.2 Consent to Collection and Use of Non-Personal Data.** You agree that Apple and its subsidiaries may collect and use technical and related information, including but not limited to information about Your Applications, computer, system software, other software and peripherals, that is gathered periodically to facilitate the provision of software updates and other services to You (if any) related to the Apple Software, and to verify compliance with the terms of this Agreement. Apple may use this information, as long as it is in a form that does not personally identify You, to improve the Apple Software, our products or to provide services or technologies to You and our customers.

**15.3 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.

**15.4 Relationship of Parties.** Except for the agency appointment as specifically set forth in Schedule 1 (if applicable), this Agreement will not be construed as creating any other 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.

**15.5 Independent Development.** Nothing in this Agreement will impair Apple's right to develop, acquire, license, market, promote, or distribute products or technologies that perform the same or similar functions as, or otherwise compete with, Applications, Licensed Applications or any other products or technologies that You may develop, produce, market, or distribute.

**15.6 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: Mac Developer Program Licensing, Apple Inc., 12545 Riata Vista Circle, MS 198-3SW, Austin, TX 78727, 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.

**15.7 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 effect 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, or appointing Apple and Apple Subsidiaries as Your agent under, Schedule 1 or the Sections of this Agreement entitled "Internal Use License and Restrictions", "Your Obligations" or "Digital Signing; Restrictions on Apple Certificates", or prevents the enforceability of any of those Sections or Schedule 1, this Agreement will immediately terminate and You must immediately discontinue any use of the Apple Software as described in the Section entitled "Term and Termination."

**15.8 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.

**15.9 Export Control.** You may not use, export, re-export, import, sell or transfer the Apple Software except as authorized by United States law, the laws of the jurisdiction in which You obtained the Apple Software, and any other applicable laws and regulations. In particular, but without limitation, 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 Denied Person's List or Entity List. By using the 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 Apple Software for any purposes prohibited by United States law, including, without limitation, the development, design, manufacture or production of nuclear, missiles, or chemical or biological weapons. You certify that pre-release versions of the Apple Software will only be used for development and testing purposes, and will not be rented, sold, leased, sublicensed, assigned, or otherwise transferred. Further, You certify that You will not transfer or export any product, process or service that is a direct product of such pre-release Apple Software.

**15.10 Government End-Users.** The 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.

**15.11 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, 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 11 (Indemnification for Licensed Applications)), 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.

If You (as an entity entering into this Agreement) are a U.S. public and accredited educational institution, then (a) this Agreement will be governed and construed in accordance with the laws of the state (within the U.S.) in which Your educational institution is domiciled, except that body of state law concerning conflicts of law; and (b) 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 educational institution is domiciled.

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.

**15.12 Entire Agreement; Governing Language.** This Agreement constitutes the entire agreement between the parties with respect to the use of the Apple Certificates and Apple Software licensed hereunder and supersedes all prior understandings and agreements regarding such subject matter, unless the Apple Software is accompanied by a separate license agreement. This Agreement may be modified only: (a) by a written amendment signed by both parties, or (b) to the extent expressly permitted by this Agreement (for example, by Apple by written or email notice to You). Any translation of this Agreement is done for local requirements and in the event of a dispute between the English and any non-English version, the English version of this Agreement shall govern. If You are located in the province of Quebec, Canada, 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.

# Schedule 1

## 1. Appointment of Agent

- 1.1 You hereby appoint Apple and Apple Subsidiaries (collectively “Apple”) as Your worldwide agent for the delivery of the Licensed Applications to end-users, during the Delivery period. You hereby acknowledge that Apple will deliver the Licensed Applications to end users in Apple’s own name, through one or more Mac App Stores, but for You and on Your behalf.
- 1.2 In furtherance of Apple’s appointment under Section 1.1 of this Schedule 1, You hereby authorize and instruct Apple to:
- (a) solicit and obtain orders on Your behalf for Licensed Applications from end-users located in the countries You designate under Section 2.1 hereof;
  - (b) provide hosting services to You, in order to allow for the storage of, and end-user access to, the Licensed Applications;
  - (c) make copies of, format, and otherwise prepare Licensed Applications for acquisition and download by end-users, including adding the Security Solution;
  - (d) allow end-users to access copies of the Licensed Applications, so that end-users may acquire from You and electronically download those Licensed Applications, Licensed Application Information, and associated metadata to end-users through one or more Mac App Stores;
  - (e) use (i) screen shots and/or up to 30 second excerpts of the Licensed Applications; (ii) trademarks and logos associated with the Licensed Applications; and (iii) Licensed Application Information, for promotional purposes in marketing materials and gift cards, excluding those portions of the Licensed Applications, trademarks or logos, or Licensed Application Information which You do not have the right to use for promotional purposes, and which You identify in writing at the time that the Licensed Applications are delivered by You to Apple under Section 2.1 of this Schedule 1, and use images and other materials that You may provide to Apple, at Apple’s reasonable request, for promotional purposes in marketing materials and gift cards; and
  - (f) otherwise use Licensed Applications, Licensed Application Information and associated metadata as may be reasonably necessary in the marketing and delivery of the Licensed Applications in accordance with this Schedule 1. You agree that no royalty or other compensation is payable for the rights described above in Section 1.2 of this Schedule 1.
- 1.3 The parties acknowledge and agree that their relationship under this Schedule 1 is, and shall be, that of principal and agent, and that You, as principal, are, and shall be, solely responsible for any and all claims and liabilities involving or relating to, the Licensed Applications, as provided in this Schedule 1. The parties acknowledge and agree that Your appointment of Apple as Your agent under this Schedule 1 is non-exclusive.
- 1.4 For purposes of this Schedule 1, the “Delivery Period” shall mean the period beginning on the Effective Date of the Agreement, and expiring on the last day of the Agreement or any renewal thereof; provided, however, that Apple’s appointment as Your agent shall survive expiration of the Agreement for a reasonable phase-out period not to exceed thirty (30) days.
- 1.5 All of the Licensed Applications delivered by You to Apple under Section 2.1 of this Schedule 1 shall be made available by Apple for download by end-users at no charge. Apple shall have no duty to collect any fees for the Licensed Applications for any end-user and shall have no payment obligation to You with respect to any of those Licensed Applications under this Schedule 1. In the event that You intend to charge end-users a

fee for any Licensed Application, You must enter (or have previously entered) into a separate agreement (Schedule 2) with Apple with respect to that Licensed Application.

## **2. Delivery of the Licensed Applications to Apple**

2.1 You will deliver to Apple, at Your sole expense, using the iTunes Connect site, the Licensed Applications, Licensed Application Information and associated metadata, in a format and manner prescribed by Apple, as required for the delivery of the Licensed Applications to end-users in accordance with this Schedule 1. Metadata You deliver to Apple under this Schedule 1 will include: (i) the title and version number of each of the Licensed Applications; (ii) the countries You designate, in which You wish Apple to allow end-users to download those Licensed Applications; (iii) any copyright or other intellectual property rights notices; and (iv) Your end-user license agreement ("EULA"), if any, in accordance with Section 3.2 of this Schedule 1.

2.2 All Licensed Applications will be delivered by You to Apple using software tools, a secure FTP site address and/or such other delivery methods as prescribed by Apple.

2.3 You hereby certify that all of the Licensed Applications You deliver to Apple under this Schedule 1 are authorized for export from the United States to each of the countries designated by You under Section 2.1 hereof, in accordance with the requirements of the United States Export Administration Regulations, 15 C.F.R. Parts 730-774. Without limiting the generality of this Section 2.3, You certify that (i) none of the Licensed Applications contains, uses or supports any data encryption or cryptographic functions; or (ii) in the event that any Licensed Application contains, uses or supports any such data encryption or cryptographic functionality, You have qualified that Licensed Application for export as a "mass market encryption item" in accordance with section 742.15(b)(2) of the Export Administration Regulations, and You will provide Apple with a PDF copy of the mass market export classification ruling (CCATS) issued by the United States Commerce Department, Bureau of Industry and Security for that Licensed Application. For purposes of determining the proper export classification and export control status of each Licensed Application, You should consult the export compliance decision tree in the iTunes Connect tool. You acknowledge that Apple is relying upon Your certification in this Section 2.3 in allowing end-users to access and download the Licensed Applications under this Schedule 1. Except as provided in this Section 2.3, Apple will be responsible for compliance with the requirements of the Export Administration Regulations in allowing end-users to access and download the Licensed Applications under this Schedule 1.

## **3. Ownership and End-User Licensing**

3.1 The parties acknowledge and agree that Apple shall not acquire any ownership interest in or to any of the Licensed Applications or Licensed Application Information, and title, risk of loss, responsibility for, and control over the Licensed Applications shall, at all times, remain with You. Apple may not use any of the Licensed Applications or Licensed Application Information for any purpose, or in any manner, except as specifically authorized in this Schedule 1.

3.2 You may deliver to Apple Your own EULA for any Licensed Application at the time that You deliver that Licensed Application to Apple, in accordance with Section 2.1 of this Schedule 1; provided, however, that Your EULA must include and may not be inconsistent with the minimum terms and conditions specified on Exhibit A to this Schedule 1 and must comply with all applicable laws in all countries where You wish Apple to allow end-users to download that Licensed Application. Apple shall allow each end-user to which Apple allows access to any such Licensed Application to review Your EULA (if any) at the time that Apple delivers that Licensed Application to that end-user, and Apple shall notify each end-user that the end-user's use of that Licensed Application is subject to the terms and conditions of Your EULA (if any). In the event that You do not furnish Your own EULA for any Licensed Application to Apple, You acknowledge and agree that each end-user's use of that Licensed Application shall be subject to Apple's standard EULA (which is part of the terms of service applicable to the Mac App Store).

3.3 You hereby acknowledge that the EULA for each of the Licensed Applications is solely between You and the end-user and conforms to applicable law, and Apple shall not be responsible for, and shall not have any liability whatsoever under, any EULA or any breach by You or any end-user of any of the terms and conditions of any EULA.

#### **4. Content Restrictions and Software Rating**

4.1 You represent and warrant that: (a) You have the right to enter into this Agreement, to reproduce and distribute each of the Licensed Applications, and to authorize Apple to permit end-users to download and use each of the Licensed Applications through one or more Mac App Stores; (b) none of the Licensed Applications, or Apple's or end-users' permitted uses of those Licensed Applications, violate or infringe any patent, copyright, trademark, trade secret or other intellectual property or contractual rights of any other person, firm, corporation or other entity; (c) each of the Licensed Applications is authorized for distribution, sale and use in, export to, and import into each of the countries designated by You under Section 2.1 of this Schedule 1, in accordance with the laws and regulations of those countries and all applicable export/import regulations; (d) none of the Licensed Applications contains any obscene, offensive or other materials that are prohibited or restricted under the laws or regulations of any of the countries You designated under Section 2.1 of this Schedule 1; and (e) all information You provided using the iTunes Connect tool, including any information relating to the Licensed Applications, is accurate and that, if any such information ceases to be accurate, You will promptly update it to be accurate using the iTunes Connect tool.

4.2 You shall use the software rating tool set forth on iTunes Connect to supply information regarding each of the Licensed Applications delivered by You for marketing and fulfillment by Apple through the Mac App Store under this Schedule 1 in order to assign a rating to each such Licensed Application. For purposes of assigning a rating to each of the Licensed Applications, You shall use Your best efforts to provide correct and complete information about the content of that Licensed Application with the software rating tool. You acknowledge and agree that Apple is relying on: (i) Your good faith and diligence in accurately and completely providing requested information for each Licensed Application; and (ii) Your representations and warranties in Section 4.1 hereof, in making that Licensed Application available for download by end-users in each of the countries You designated hereunder. Furthermore, You authorize Apple to correct the rating of any Licensed Application of Yours that has been assigned an incorrect rating; and You agree to any such corrected rating.

4.3 In the event that any country You designated hereunder requires the approval of, or rating of, any Licensed Application by any government or industry regulatory agency as a condition for the distribution, sale and/or use of that Licensed Application, You acknowledge and agree that Apple may elect not to make that Licensed Application available for download by end-users in that country from any Mac App Store.

#### **5. Responsibility and Liability**

5.1 Apple shall have no responsibility for the installation and/or use of any of the Licensed Applications by any end-user. You shall be solely responsible for any and all product warranties, end-user assistance and product support with respect to each of the Licensed Applications.

5.2 You shall be solely responsible for, and Apple shall have no responsibility or liability whatsoever with respect to, any and all claims, suits, liabilities, losses, damages, costs and expenses arising from, or attributable to, the Licensed Applications and/or the use of those Licensed Applications by any end-user, including, but not limited to: (i) claims of breach of warranty, whether specified in the EULA or established under applicable law; (ii) product liability claims; and (iii) claims that any of the Licensed Applications and/or the end-user's possession or

use of those Licensed Applications infringes the copyright or other intellectual property rights of any third party.

## **6. Termination**

6.1 This Schedule 1, and all of Apple's obligations hereunder, shall terminate upon the expiration or termination of the Agreement.

6.2 In the event that You no longer have the legal right to distribute the Licensed Applications, or to authorize Apple to allow access to those Licensed Applications by end-users, in accordance with this Schedule 1, You shall promptly withdraw those Licensed Applications from the Mac App Store using the tools provided on the iTunes Connect site; provided, however, that such withdrawal by You under this Section 6.2 shall not relieve You of any of Your obligations to Apple under this Schedule 1, or any liability to Apple and/or any end-user with respect to those Licensed Applications.

6.3 Apple reserves the right to cease marketing and allowing download by end-users of the Licensed Applications at any time, with or without cause, by providing notice of termination to You. Without limiting the generality of this Section 6.3, You acknowledge that Apple may cease the marketing and allowing download by end-users of some or all of the Licensed Applications if Apple reasonably believes that: (i) those Licensed Applications are not authorized for export to one or more of the countries designated by You under Section 2.1 hereof, in accordance with the Export Administration Regulations; (ii) those Licensed Applications and/or any end-user's possession and/or use of those Licensed Applications, infringe patent, copyright, trademark, trade secret or other intellectual property rights of any third party; or (iii) the distribution and/or use of those Licensed Applications violates any applicable law in any country You designate under Section 2.1 of this Schedule 1. An election by Apple to cease the marketing and allowing download of any Licensed Applications, pursuant to this Section 6.3, shall not relieve You of Your obligations under this Schedule 1.

6.4 You may withdraw any or all of the Licensed Applications from the Mac App Store, at any time, and for any reason, by using the tools provided on the iTunes Connect site.

## **7. Legal Consequences**

The relationship between You and Apple established by this Schedule 1 may have important legal consequences for You. You acknowledge and agree that it is Your responsibility to consult with Your legal advisors with respect to Your legal obligations hereunder.

**EXHIBIT A**  
**(to Schedule 1)**  
**Instructions for Minimum Terms of Developer's**  
**End-User License Agreement**

**1. Acknowledgement:** You and the end-user must acknowledge that the EULA is concluded between You and the end-user only, and not with Apple, and You, not Apple, are solely responsible for the Licensed Application and the content thereof. The EULA may not provide for usage rules for Licensed Applications that are less restrictive than the Usage Rules set forth for Licensed Applications in, or otherwise be in conflict with, the terms of service applicable to the Mac App Store as of the Effective Date (which You acknowledge You have had the opportunity to review).

**2. Scope of License:** The license granted to the end-user for the Licensed Application must be limited to a non-transferable license to use the Licensed Application on a Mac Product that the end-user owns or controls and as permitted by the Usage Rules set forth in the terms of service applicable to the Mac App Store.

**3. Maintenance and Support:** You must be solely responsible for providing any maintenance and support services with respect to the Licensed Application, as specified in the EULA, or as required under applicable law. You and the end-user must acknowledge that Apple has no obligation whatsoever to furnish any maintenance and support services with respect to the Licensed Application.

**4. Warranty:** You must be solely responsible for any product warranties, whether express or implied by law, to the extent not effectively disclaimed. The EULA must provide that, in the event of any failure of the Licensed Application to conform to any applicable warranty, the end-user may notify Apple, and Apple will refund the purchase price for the Licensed Application to that end-user; and that, to the maximum extent permitted by applicable law, Apple will have no other warranty obligation whatsoever with respect to the Licensed Application, and any other claims, losses, liabilities, damages, costs or expenses attributable to any failure to conform to any warranty will be Your sole responsibility.

**5. Product Claims:** You and the end-user must acknowledge that You, not Apple, are responsible for addressing any claims of the end-user or any third party relating to the Licensed Application or the end-user's possession and/or use of that Licensed Application, including, but not limited to: (i) product liability claims; (ii) any claim that the Licensed Application fails to conform to any applicable legal or regulatory requirement; and (iii) claims arising under consumer protection or similar legislation. The EULA may not limit Your liability to the end-user beyond what is permitted by applicable law.

**6. Intellectual Property Rights:** You and the end-user must acknowledge that, in the event of any third party claim that the Licensed Application or the end-user's possession and use of that Licensed Application infringes that third party's intellectual property rights, You, not Apple, will be solely responsible for the investigation, defense, settlement and discharge of any such intellectual property infringement claim.

**7. Legal Compliance:** The end-user must represent and warrant that (i) he/she is not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a "terrorist supporting" country; and (ii) he/she is not listed on any U.S. Government list of prohibited or restricted parties.

**8. Developer Name and Address:** You must state in the EULA Your name and address, and the contact information (telephone number; E-mail address) to which any end-user questions, complaints or claims with respect to the Licensed Application should be directed.

**9. Third Party Terms of Agreement:** You must state in the EULA that the end-user must comply with applicable third party terms of agreement when using Your Application.

**10. Third Party Beneficiary:** You and the end-user must acknowledge and agree that Apple, and Apple's subsidiaries, are third party beneficiaries of the EULA, and that, upon the end-user's acceptance of the terms and conditions of the EULA, Apple will have the right (and will be deemed to have accepted the right) to enforce the EULA against the end-user as a third party beneficiary thereof.

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