

使用本服務前，請仔細閱讀以下的 **Apple Business Manager** 條款和條件。本條款和條件構成機構與 **Apple** 之間的法律協議。按下「同意」鍵，即表示機構透過其授權代表人，同意接受本協議拘束並成為本協議當事人。若機構不同意或無法同意本協議，請按「取消」鍵。若機構不同意本協議，則機構不得參加。

# Apple Business Manager 協議

## 目標

本協議允許您參加 **Apple Business Manager**，此計畫可供您自動註冊貴機構的 **Apple** 品牌產品，使其加入行動裝置管理 (MDM)，進而購買和管理這些裝置之內容、為您的使用者建立管理式 **Apple ID**，並且存取相關服務的便捷工具。

**附註：** 您必須在貴機構啟用 **MDM** 解決方案 (例如，來自 **macOS** 伺服器或來自第三方開發人員的描述檔管理程式)，方可利用本服務的功能。**MDM** 解決方案可供你配置、部署和管理 **Apple** 品牌產品。更多資訊請參見 <https://www.apple.com/business/resources/>。

## 1. 定義

凡本協議之大寫名詞：

「**管理員**」係指貴機構中，為帳號管理之目的，例如管理伺服器、上傳 **MDM** 佈建設定、將裝置加入您的帳號、購買內容，以及執行其他相關服務，而加入本服務的僱員或約聘僱員 (或服務供應商)。

「**協議**」係指本 **Apple Business Manager** 協議。

除另有規定外，「**Apple**」意指：(a) 就北美洲、中美洲與南美洲 (不含加拿大)，以及美國領土與領地，以及法國和英國的北美洲、南美洲與加勒比海地區領地的機構而言，係指 **Apple Inc.**，其位於 One Apple Park Way, Cupertino, California 95014, U.S.A.；(b) 就加拿大或其領地與屬地的機構而言，係指 **Apple Canada Inc.**，其位於 120 Bremner Blvd., Suite 1600, Toronto ON M5J 0A8, Canada；(c) 就日本的機構而言，係指 **iTunes K.K.**，其位於 Roppongi Hills, 6-10-1 Roppongi, Minato-ku, Tokyo 106-6140, Japan；(d) 就澳洲、紐西蘭 (包括所屬島嶼、領地及附屬管轄區) 的機構而言，係指 **Apple Pty Limited**，其位於 20 Martin Place, Sydney NSW 2000, Australia；以及 (e) 就獲得本服務但未列於前項的其他所有國家或地區/領地之機構而言，係指 **Apple Distribution International Ltd.**，其位於 Hollyhill Industrial Estate, Hollyhill, Cork, Republic of Ireland。

「**Apple 服務**」係指 **App Store**、**Apple Books**、**Apple Online Store**、**AppleCare**，以及依本協議提供給您授權使用者之其他 **Apple** 服務。

「**Apple 軟體**」係指 **iOS**、**iPadOS**、**macOS**、**tvOS** 及 **watchOS** 作業系統軟體，或其任何後續版本。

「**授權裝置**」係指由您擁有或控制、被指定僅可由授權使用者或允許使用者使用，並且合乎在本服務中使用資格的 **Apple** 品牌裝置。為免疑義，除 **Apple** 另以書面同意外，個人擁有之裝置 (例如「**BYOD**」裝置) 不得註冊為本服務中受監管裝置管理 (例如配置於裝置註冊設定)，而且並非所有裝置皆有資格加入本服務。

「**授權使用者**」係指貴機構的僱員及約聘僱員 (或服務提供商)，如果您為醫院，所謂「授權使用者」也包含執業醫師、轉介醫師和臨床醫師。特此敘明，您得要求，且 **Apple** 得單方面決定核准

將其他類似使用者納為「授權使用者」；但未經 Apple 事前書面同意，「授權使用者」不得包含其他人員。

「內容」係指根據 Apple 大量內容條款授權或取得之任何資料或資訊 (例如從 App Store 取得應用程式)。

「約聘僱員」係指代表任一實體執行工作或提供服務、非按件計酬，並且得內部存取該實體私人資訊技術系統 (例如 VPN) 及/或進出受保護實體處所 (例如進出公司設施之識別證) 之自然人。

「裝置註冊設定」係指本服務中可配置和管理的 Apple 品牌裝置之設定，包括但不限於裝置的初始註冊流程，及監管裝置、制定強制組態或封鎖 MDM 描述檔的設定。

「文件」係指 Apple 可能就本服務為您提供的技術或其他規格書或文件。

「最終使用者授權合約」或「EULA」係指 Apple 軟體適用之軟體授權協議條款與約定。

「管理式 Apple ID」係指您透過本服務之使用建立與部署的使用者帳號 (包括但不限於儲存空間、行事曆、備忘錄與聯絡資訊)。

「MDM 伺服器」係指您 (或代表您的服務供應商) 所持有或控管，且已指定做為與本服務通訊之電腦。

「許可實體」係指：(a) 若您是汽車製造商，係指您的授權車輛經銷商和認證服務提供商；(b) 若您是旅館經營公司，係指以您名義、商標或品牌 (或是其擁有或控制之名義、商標或品牌) 營運的旅館財產；或 (c) 若您以受限應用程式模式在授權裝置上部署應用程式 (即銷售點提供商在 iPad 上部署以應用程式為基礎的付款系統)，係指在受限應用程式模式下，在授權裝置上使用這個應用程式的貴方客戶。此外，必須依據 Apple 開發人員程式授權協議開發與經銷此類應用程式 (例如經銷客製 app)。為清楚起見，您得要求而 Apple 得核准與上述 (a) 和 (b) 對象類似之其他實體；但是，未經 Apple 事前書面同意，不得將其他實體納入本定義內。

「許可使用者」係指您許可實體之僱員和約聘僱員。

「個人資料」係指可合理用以識別本協議下之機構管理之個人的資料。

「受限應用程式模式」係指透過服務監督和配置之 Apple 品牌裝置，以使 (a) 該裝置自動啟動，並於啟動後鎖定單一應用程式，而不得存取其他作業系統功能；或是 (b) 無法經由最終使用者自行個人化之裝置 (例如裝置設定禁止郵件應用程式配置個人認證，無法從 App Store 利用個人 Apple ID 取得內容等)。

「服務」係指 Apple Business Manager 服務 (及其任何元件、功能或特色)，其可用於行動裝置管理註冊自動化、內容的擷取和管理，以及管理式 Apple ID 的建立、使用、管理，以及管理員帳號的使用，以及其他本協議中擬議的相關服務，包括入口網站和依本協議提供的任何服務或工具。

「服務供應商」係指代表您按照本協議條款提供服務的第三人。

「伺服器權杖」係指您的公開金鑰、Apple ID 和 Apple 提供之權杖三者的結合，其可讓您的 MDM 伺服器註冊本服務。

「您」或「機構」係指簽訂本協議之機構。為免疑義，對於授權行使本協議權利之貴機構僱員、約聘僱員與服務供應商，其遵守本協議之情形，機構須負全責。

**附註：** 若您為第三方服務供應商，由於持有授權裝置並計畫將此類裝置發放給其授權使用者的實體必須註冊本服務，因此您必須令與您共事的機構訂立本協議，並將您加入為管理員。

## 2. 服務要求

### 2.1 服務之使用

做為使用本服務的條件，機構承認並同意：

- (a) 僅允許機構將本服務用於本協議明文允許之目的和方式，而且使用時必須遵循所有適用法律和法規，以及文件；
- (b) 機構不得將本服務 (或其任何部分) 用於任何不合法、不正當、不合宜或非法的活動；
- (c) 允許機構使用本服務管理授權裝置，但以供授權使用者和許可使用者使用為限，不得廣泛為第三人部署 (除本協議另有明文許可)，且機構應就此等使用者對授權裝置之所有使用 (包括但不限於取得內容，以及為使用者提供此裝置受管理功能的適當資訊) 負責；
- (d) 機構應就其許可實體 (以及許可實體之許可使用者) 對本服務之使用負責，且其許可實體執行的任何操作，皆應視為由機構執行，而機構 (以及其許可實體) 應就一切此類操作對 Apple 負責。
- (e) 機構需就在本協議許可下部署其授權裝置一事，獲取其授權使用者和許可使用者之所有必要權利和同意；
- (f) 機構應有權購買和管理透過服務可能許可之內容，並且將遵守使用該內容應適用之所有條款；
- (g) 必要時，機構應於取得其授權使用者之所有必要授權與同意，以便建立「管理式 Apple ID」，並允許 Apple 為「管理式 Apple ID」提供本服務 (包括使用和維護個人資料)；
- (h) 機構得為本服務加入管理員，但前提是此人員應為機構之雇員或約聘僱員，或代表機構行事之服務供應商，且機構僅得以管理帳號為目的而加入此類管理員；
- (i) 機構僅得將本服務用於自己之內部業務作業和資訊技術目的，不得提供第三方 (不包括第 (c) 項「許可實體」定義之許可實體) 整合或利用本服務提供之服務或資訊，或是以任何方式利用本服務的裝置或服務，或是 Apple 書面同意之其他情形。

### 2.2 無其他允許用途

機構同意不以任何未經授權的方式利用本服務，包括但不限於侵入、造成網路容量負擔，或上傳惡意程式碼。試圖為上述行為者，皆侵害 Apple 及其授權人的權利。除本協議明文許可外，機構不得授權、銷售、分享、出租、租賃、轉讓、發布或代管本服務，或允許對本服務進行分時共享或用於服務中心，或以其他方式使第三人使用本服務 (或其中任何元件)。機構同意不將本服務使用於跟蹤、騷擾、誤導、虐待、威脅或傷害他人，或假冒為任何其他非註冊實體的身分，且 Apple 保留退回或封鎖任何可視為冒用身分，或虛假陳述其他實體或人士姓名或身分之帳號的權利。機構不會干擾本服務，或干擾在本服務或由本服務實施，或由 Apple 軟體或任何其他 Apple 相關軟體或技術實施之任何安全性、數位簽章、數位權利管理、驗證或認證機制，或令他人為上述行為。若機構為適用實體、業務夥伴、適用實體或業務夥伴之代表人 (適用 45 C.F.R § 160.103 之定義)，或為醫療提供者或實體，則機構同意不將本服務的任何元件、功能或其他效能用於建立、接收、維護或傳輸「受保護的健康資訊」(適用 45 C.F.R § 160.103 之定義) 或適用法律下的同類健康資料，亦不以可能使 Apple 成為機構或第三人的業務夥伴，或直接使 Apple 受相關健康隱私法規約束之方式使用本服務。Apple 保留本協議未明文授予的一切權利，亦保留未以默示、禁反言或其他方式明示或默示授予之其他權限、豁免或權利。

### 2.3 伺服器權杖之使用

機構同意，伺服器權杖僅得用於註冊機構的 MDM 伺服器至本服務內，以及在授權使用者和許可使用者首次啟動授權裝置時，將裝置註冊設定上傳至授權裝置。機構同意不將其伺服器權杖提供或轉讓予其他實體，或與其他實體 (不包括其服務供應商) 共用。機構同意採取適當措施確保伺服器權杖的安全與隱私，並於其遭洩漏，或機構有理由相信它已遭洩漏時予以撤銷。Apple 保留隨時全權決定撤銷或停用伺服器權杖的權利。此外，機構理解並同意，將新的伺服器權杖加入 MDM 伺服器前，機構使用本服務的能力會因重新產生伺服器權杖而受到影響。

## 2.4 EULA 條款和條件

作為本服務的一部分，機構可選擇要求其授權使用者與許可使用者，在某裝置的正常初始啟動程序之外，接受 Apple 軟體的條款和條件。若機構同意以下要求，即得使用本服務的此項功能：

- (a) 在部署授權裝置為授權使用者與許可使用者執行此類 Apple 軟體之前，機構的授權代表須在本服務的入口網站，接受該 Apple 軟體的最終使用者授權合約；
- (b) 若 Apple 軟體的 EULA 出現變更，機構同意在收到 Apple 通知後，迅速令其授權代表人返回本服務的入口網站，接受其 EULA，方可繼續使用本服務。機構知悉，接受該 EULA 前，將無法使用本服務，包括將額外的授權裝置連結至其 MDM 伺服器；
- (c) 機構須負責確保將此最終使用者授權合約提供給授權使用者與許可使用者，以及每名授權使用者與許可使用者均知悉和遵守該 Apple 軟體之最終使用者授權合約條款和條件；
- (d) 機構同意負責取得供授權使用者與許可使用者使用 Apple 軟體之任何必要同意。

## 2.5 裝置轉讓

機構不得轉售任何已啟用裝置註冊設定的授權裝置，並同意轉售或以任何方式將其移轉給第三方之前，將裝置從本服務中移除。

## 2.6 購買內容

本服務預設禁止擷取內容，而您的使用應受到本協議以及本服務內應用程式和書籍使用規範條款（下稱「大量內容條款」）的限制。您可以選擇授予您的管理員購買權限並允許他們存取內容，以便您的管理員透過本服務存取內容。除大量內容條款和本協議限制外，本服務允許您利用裝置配置將內容分配給授權裝置，或利用使用者協議和 Apple ID 分配給授權使用者或許可使用者。在應用程式業已透過 App Store 或其他管道銷售之任何國家境內，均可將應用程式之使用權分配（或撤銷並重新分配）予指定授權使用者及授權裝置，唯日後仍可能變更。關於書籍，您理解並同意，一旦您將書籍分配給授權使用者或許可使用者，該書籍即不得轉讓，而您將無法撤銷或重新分配此書。您必須對所有此類購買，與遵循適用條款負全部責任。您同意，如果您（或您的管理員）購買或存取作為本服務一部分之內容，您有權並且將代表您的授權使用者和許可使用者接受此等適用條款。您理解並同意，並非所有國家或區域都可取得此內容。您同意不會為了在您居住國家外使用而輸出此內容，亦不會表示您有權利或能力如此。您同意不會規避任何國家法律或此內容提供者制定之限制。

## 2.7 管理員帳號

您可以為您的管理員建立管理員帳號，用於管理本服務，但應遵守 Apple 對管理員帳號數量的限制。此類管理員帳號為獨特的使用者名稱和密碼的組合，歸您所有。建立管理員帳號後，該帳號即可啟用您選擇提供的所有本服務特色和功能；您必須負責妥善啟用此類管理員帳號，並對所有與此類帳號有關的活動負責（例如允許內容採購）。您承認並同意，此類管理員帳號之使用目的，以存取並管理本服務以管理帳號為限。若您刪除任何管理員帳號，您或管理員將無法存取此管理員帳號，說您理解並同意此一行為是不可逆的。

## 2.8 管理式 Apple ID

您得根據本協議和文件為您的授權使用者建立「管理式 Apple ID」，以在本服務中進行存取與使用。您必須負責決定為您的授權使用者啟用本服務的哪些特色與功能，並在授權裝置上建立、使用「管理式 Apple ID」並進行管理。

欲建立授權使用者使用之管理式 Apple ID，需要以下資訊（可能包括個人資料）：姓名、建議角色、密碼、電子郵件地址（用於聯繫）及電話號碼。為保護授權使用者帳號的安全性，以及讓您能在線上輕鬆重設授權使用者密碼，您必須對該資訊保密。您同意僅出於您的內部業務或資訊技術目的部署管理式 Apple ID，並且僅得為您的授權使用者。您同意不會分享、出售、轉售、出租、租賃或以其他方式讓您的授權使用者以外之人存取管理式 Apple ID。您可以在本服務中禁用、暫停或刪除管理式 Apple ID（如果某一授權使用者離開機構時）。Apple 保留限制為您授權使用者設定管理式 Apple ID 數量，以及與該帳號相關之授權裝置數量。

若您為您的管理員、經理或工作人員登入其他 Apple 服務，您同意讓 Apple 服務儲存與這些授權使用者管理式 Apple ID 有關的儲存資料，並且讓 Apple 為了您及/或您的授權使用者使用 Apple 服務而收集、儲存和處理這些資料。您應負責確保您和您的授權使用者，遵守您允許該授權使用者存取 Apple 服務之各管理式 Apple ID 適用之所有法律。若您的管理員、經理或工作人員存取某些 Apple 服務，Apple 可能會為了使用 Apple 服務與您的授權使用者聯絡。

## 2.9 許可實體和許可使用者

根據本協議條款，許可實體和許可使用者得存取您帳號下的服務，但不得使用 and 部署管理式 Apple ID (除非事先取得 Apple 的書面批准)。您應對許可實體和許可使用者遵守本協議條款負責，並且應對您許可實體或許可使用者違反本協議之任何行為，對 Apple 負責。如果您 (或代表您的服務提供商) 在本服務加入許可實體擁有之 Apple 品牌裝置，則您向 Apple 聲明並保證，該許可實體已授權您加入該裝置，您能夠控制該裝置，並且您有代表許可實體 (及其許可使用者，如果適用) 接受 EULA 的權限。Apple 保留以下權利：限制機構得允許其許可實體 (或許可使用者) 存取或使用之本服務功能或特徵，以及全權決定，在任何時候要求從您的帳號中刪除任何許可實體或許可使用者。

## 2.10 更新；無支援或維保作業

Apple 得不經通知，隨時延長、增強、擱置、中斷或以其他方式修改根據本協議提供的本服務 (或其中任何部分)，且 Apple 行使此權利時，無需對您或第三人負任何責任。Apple 無義務為機構提供本服務的更新。若 Apple 提供更新，則本協議的條款適用於該更新；但該更新附帶獨立協議時，應適用該協議的條款。如有提供更新，該項更新可能具備與本服務不同的特色、服務或功能。Apple 無義務為本服務提供維保作業、技術或其他支援。

## 2.11 第三方服務供應商

您可以使用服務供應商，前提是此類服務供應商必須是代表您存取和使用本服務，且遵守本條款，並受您與該服務供應商的書面協議拘束；此書面協議之條款至少應與本協議條款一樣嚴格且保護 Apple。任何此類服務供應商與本服務有關及/或因本協議所生的任何行為，皆應視為您的行為，且您 (以及服務供應商) 應為所有此類行為 (或任何不作為) 對 Apple 負責。如果服務提供商之任何作為或不作為，可能構成違反本協議，或以其他方式造成任何傷害，則 Apple 保留要求您停止使用此服務提供商之權利。

## 3. 機構之義務

機構聲明並保證：

- (a) 機構的授權代表有權利和權力代表其自己訂立本協議，以及促使機構接受本協議的條款和義務之法律約束；
- (b) 機構就本協議或本服務之使用 (含 Apple 軟體) 提供給 Apple (或其授權使用者或許可使用者) 的所有資訊，將是最新、真實、準確、能證明且完整的；機構提供給 Apple 之資訊若有任何變更，機構將立即通知 Apple；
- (c) 對於授權代表人、管理員、服務供應商、授權使用者、許可使用者及許可實體使用本服務及遵守本協議條款之情形，機構將進行監控並為其負責；
- (d) 對於機構、其授權代表人、管理人、服務供應商、授權使用者、許可使用者、許可實體及授權裝置就本服務所產生的所有費用、開支、損失和責任及進行的活動，應由機構全權負責；
- (e) 針對本服務之使用，以及透過本服務進行的資料 (包括個人資料) 與資訊之使用或收集，機構應全權負責確保遵守所有隱私和資料保護法律 (例如歐洲議會及歐盟理事會於 2016 年 4 月 27 日為保護自然人之個人資料處理與自由流通而頒布、用以取代第 95/46/EC 號歐盟指令的歐盟第 2016/679 號規則，下稱「GDPR」)；
- (f) 機構應對其涉及個人資料的活動負責 (例如保護、監控與限制對個人資料的存取，防止並解決不適當的活動等)；且
- (g) 機構將遵守本協議條款並履行機構根據本協議所負的義務。

#### 4. 本服務要求或條款的變更

Apple 得隨時變更本服務或本協議的條款。為繼續使用本服務，機構必須透過其授權代表人，接受並同意本協議的新要求或條款。如果您不同意新的要求或條款，Apple 可暫停或終止您使用本服務或其任何部分。您同意得以電子簽署方式表示接受新協定條款，包括但不限於選定核取方塊或點擊「同意」或類似的按鈕。

#### 5. 賠償

若 Apple 及其董事、高階主管、雇員、關係企業、獨立承包商與授權代表人 (各稱「Apple 受償方」) 因下列事項而承擔索賠、損失、負債、損害、費用與成本，包括但不限於律師費與法院費用 (統稱「損失」)，於適用法律允許的範圍內，您同意賠償 Apple 受償方，使其不受損害，並於 Apple 要求時為其抗辯：(a) 您違反於本協議中做出的任何證明、承諾、義務、聲明或保證；(b) 您 (包括但不限於您的服務供應商、管理員、授權使用者、許可使用者及/或許可實體) 對本服務的使用情形；(c) 對於您使用、部署或管理授權裝置、裝置註冊設定及/或 MDM 伺服器的任何索賠 (包括但不限於最終使用者索賠)；(d) 對於提供、管理及/或使用授權裝置、管理員帳號、「管理式 Apple ID」或內容的任何索賠 (包括但不限於最終使用者索賠)；及/或 (e) 對於您 (包括您的許可實體或授權使用者) 使用或管理個人資料的任何索賠。未經 Apple 事前書面同意，您不得與第三人簽訂會影響 Apple 權利或以任何形式拘束 Apple 或任何 Apple 受償方之和解或訂立類似約定。

#### 6. 效期與終止

本協議期間將自您在服務內首次接受本協議之日開始，並在 Apple 首次啟動您的本服務帳號後，持續有效一 (1) 年。其後，視您是否遵守本協議條款，該本協議效期會自動延續一 (1) 年，除非依照本協議提前終止。任一方當事人得以任何理由或無理由逕行終止本協議，終止方式為以 30 日前之書面通知，告知他方其有意終止協議。

若您未遵守 (或 Apple 懷疑您未遵守) 本協議的任何規定，Apple 有權不經通知，全權決定：(a) 終止本協議及/或您的帳號；及/或 (b) 暫停或排除對本服務 (或其任一部分) 的存取權限。Apple 保留不經通知，隨時修改、暫停或終止本服務 (或其中任何部分或內容) 的權利，且 Apple 行使此權利時，無需對您或第三人負任何責任。若您未按第 4 節規定接受新的協議條款，Apple 亦得終止本協議，或暫停您使用本服務的權利。您認知並同意，本協議效期屆滿或終止後，您即不得存取本服務，且對於您或您的管理員、授權使用者、許可實體或許可使用人使用本服務儲存之資料或資訊，Apple 有權暫停其存取或刪除之。使用本服務的任一部分前，請務必詳細閱讀文件，並且妥善備份您的資料和資訊。Apple 如果行使這些權利，或是對於任何此類終止或暫停可能造成或因此產生的任何損害，將無須對您或任何第三方承擔責任或法律責任。以下條款於本協議終止後繼續有效：第 1 節、第 2.9 節第二段、第 2.10 節、第 2.11 節第二段、第 3 節、第 5 節、第 6 節第二段以及第 7、8、9、10 節。

#### 7. 免責聲明

您明確認知並同意，在適用法律允許的範圍內，就您使用或無法使用本服務，或任何透過本服務存取的任何工具、特色或功能，皆須由您自負風險；就品質、成效、準確性及勞力付出等方面是否符合需求，亦由您承擔全部風險。

在適用法律允許的最大範圍內，本服務是「按現狀」和「按可提供情況」提供的，帶有一切瑕疵但不附任何種類的擔保；Apple、其董事、主管、雇員、關係企業、授權代表人、代理人、承包商、轉售商或授權人 (於第 7 節及第 8 節通稱「Apple」)，特此排除對本服務的任何明示、默示或法定擔保和條件，包括但不限於關於適銷性、品質滿意度、適用特定用途、準確性、平靜享用權、所有權及不侵害第三人權利的默示擔保及/或條件。

Apple 並不保證、聲明或擔保您可不受干擾地使用或享用本服務；本服務包含的特點或功能，或是執行或提供的服務將符合您的要求；安全無虞；您使用本服務或本服務的運作將不受干擾或毫無錯誤；瑕疵或錯誤將被糾正；本服務將會持續提供；本服務將與任何第三方軟體、應用程式或第三方服務或任何其他 Apple 產品或服務相容或共同操作，或透過本服務儲存或傳送的任何資料或資訊不會遺失、損毀、遭到破壞、遭到攻擊、被駭客入侵、干擾或遭受任何其他安全侵入。您同意 Apple 得隨時不經通知，無限期移除本服務，或隨時修改、暫停、中斷或取消本服務。

您進一步承認，本服務之預定目的並非用於亦不適合用於透過本服務提供的內容、資料或資訊，一旦出現故障或時間遲延、錯誤或不精確，可能導致死亡、個人傷害或嚴重的身體上或環境上損害之情況或狀況，包含但不限於核子設施、航空器飛行或通訊系統、飛航管制、生命維持或武器系統之運作。

Apple 或 Apple 授權代表人給予的口頭或書面的資訊或意見，均不構成對本協議內未明文規定的任何擔保。如發現本服務有所瑕疵，您必須承擔所有必要維修、修理或修正的全部費用。

## 8. 責任限制

在適用法律未禁止的範圍內，無論任何情況，對由於本協議及/或您使用或無法使用本服務所引起的任何人身傷害，或任何附帶、特別、間接或衍生性的損害賠償，包括但不限於利潤損失、資料或資訊損壞或遺失、未能傳輸或接收任何資料或資訊、業務中斷的損害賠償或任何其他商業損害賠償或損失，無論其基於何種責任理論（協議、侵權行為或其他），Apple 概不負責，縱使 Apple 已獲知會或知悉可能發生上述損害賠償亦然。在任何情況下，Apple 就所有損害賠償對您承擔的全部法律責任（除在涉及人身傷害的情況中根據適用法律規定的損害賠償外）不得超過五十美元（US\$50.00）。縱使上述救濟無法達成根本目的，上述責任限制仍將適用。

## 9. 資料隱私及安全

### 9.1 個人資料之使用與揭露

根據本協議，Apple 代表您擔任資料處理者，得接收或存取您提供的個人資料。簽訂本協議，表示您指示 Apple 根據適用法律、您使用本服務時給予的指示（例如透過本服務給予的指示），以及您提供並經由 Apple 以書面接受並承認的書面指示，處理並使用此個人資料，以提供與維護本服務。Apple 應遵守此類指示（若適用），但遭法律禁止時，Apple 應於處理該個人資料前通知您（法律基於公共利益而禁止通知您時除外）。Apple 得向就本服務為 Apple 提供服務的服務供應商（「輔助處理者」）提供個人資料。您授權 Apple 以所有 Apple 實體（見「Apple」之定義）為輔助處理者，並使用其他輔助處理者；該輔助處理者須依契約負資料保護義務，且此義務的保護程度至少應與本協議相同；法律有此規定時，Apple 應根據要求提供該輔助處理者的列表。若 Apple 認為，為執行 Apple 的條款和條件或保護 Apple 的經營或使用者，有揭露個人資料的合理必要，則 Apple 得揭露您的個人資料。此外公司重整、合併或出售時，Apple 得將您提供的一切個人資料移轉予相關當事人。此類揭露不適用於任何內容之資料收集作業（含第三方應用程式）。購買或下載作為本服務一部分之內容前，您應審閱此等內容的條款、政策和作業。若第三人就個人資料對 Apple 提出要求（「第三人要求」），Apple 將於法律允許之範圍內告知您其接獲第三人要求之事，並通知要求者轉向您提出第三人要求。除法律另有規定或第三人另有要求外，應由您負責回覆第三人要求。

### 9.2 資料事件

若 Apple 知悉個人資料因未經授權之人存取本服務而遭篡改、刪除或遺失（「資料事件」），Apple 將按法律要求立即通知機構，不得有不當延誤，並採取合理措施減少損害並保護資料。Apple 通知或回應資料事件，不得解釋為 Apple 承認對資料事件負有責任或義務。機構必須遵守適用的事件通知法規，並履行涉及資料事件的第三人義務。Apple 不會為識別受特定法律規範的資訊而存取個人資料內容。

### 9.3 安全程序；合規

在本服務中移轉、傳輸與處理個人資料時，Apple 應使用業界標準措施保護個人資料。採取此類措施時，Apple 將盡商業上合理努力對靜態和傳輸中的個人資料進行加密，確保本服務的持續機密性、完整性、可用性和彈性，於出現問題時及時恢復個人資料的可用性，並定期測試、評估與評價此類措施的有效性。Apple 將採取適當措施，確保其雇員、承包商和輔助處理者遵循安全程序，且 Apple 應確保任何獲得授權處理本服務相關個人資料之人均遵循關於個人資料機密性與安全性的適用法律。Apple 得視各地區情況儲存加密個人資料。於 Apple 擔任資料處理者之範圍內，Apple 將協助您遵循以下規範：(a) GDPR 第 28 條 (透過允許實施並協助進行稽核；Apple 取得 ISO 27001 和 ISO 27018 認證，應視為足以滿足此稽核要求)；(b) GDPR 第 32 條 (透過實施第 9.3 節的安全程序並維持 ISO 27001 及 ISO 27018 認證)；(c) GDPR 第 33 與 34 條，或法律上其他同等義務 (透過協助您就資料事件對監管機關或資料當事人進行必要通知)；(d) 要求機構在處理資料前進行資料保護影響評估或諮詢監管機關之法律；(e) 資料保護監管機關或類似機構對個人資料的調查。

### 9.4 資料存取與傳輸；終止；機構為處理者之情形

若法律要求，Apple 將確保進行國際資料移轉時，僅移轉至具適當保護層級、已依適用法律 (例如 GDPR 第 46 條和第 47 條) 提供適當保護措施 (例如施行標準資料保護條款)，或受 GDPR 第 49 條限制的國家或地區。若您必須簽訂資料傳輸協議方可將資料移轉至第三國或地區，則您同意簽署 Apple 針對您的司法管轄區制定的資料傳輸協議，見 <https://apple.com/legal/enterprise/datatransfer>。

對於您在 Apple 系統之外儲存或傳輸的資料，Apple 概不負責。本協議基於任何原因終止後，除為防範詐欺或法律另有規定外，Apple 應於合理期間內安全地銷毀 Apple 所儲存、與您使用本服務有關的個人資料。Apple 的隱私權政策請參見 <http://www.apple.com/legal/privacy>；於不違反本協議第 9 節之範圍內，此隱私權政策經引用納入本協議。若 Apple 的隱私權政策與本協議第 9 節有所抵觸，應以本協議第 9 節為準。

機構以資料處理者身分為許可實體訂立本協議時，機構聲明並保證，機構乃代表自己以及 (於本文限制之範圍內) 該許可實體訂立本協議。機構特此聲明，其已取得該許可實體的適當同意，得代表該實體以輔助處理者身分簽訂本協議並委任 Apple，且該許可實體就此提出索賠時，機構應對 Apple 負責。

## 10. 一般法律條款

### 10.1 第三人通知

Apple 軟體或本服務的某些部分，可能使用或包含第三方軟體和其他享有著作權的資料。本服務或其中適用部分所附的電子文件中，載有關此類材料的確認、授權條款及免責聲明，您對這些材料的使用受到其各自的條款管轄。

### 10.2 收集與使用資料之同意

您認可並同意，Apple 及其關係企業和代理人得收集、維護、處理並使用診斷性、技術性、使用上及相關資訊，包括但不限於定期收集獨特的系統或硬體識別碼、cookie 或 IP 位址、您使用本服務的情況、您的 MDM 伺服器、裝置註冊設定、電腦、裝置、系統和應用程式軟體，以及其他軟體和周邊設備的資訊，以為您提供與本服務有關的服務，提供、測試及改善 Apple 的裝置與服務，用於稽核、資料分析和研究等內部用途以改善 Apple 的裝置、服務及與客戶的溝通，為您提供與本服務有關的軟體或其軟體更新、裝置支援和其他服務 (若有)，維護安全及進行帳號管理，以及驗證本協議的遵守情形。依照本節收集的資料，將會遵循 Apple 的隱私權政策進行處理，隱私權政策見於：<http://www.apple.com/legal/privacy>。



### 10.3 轉讓

未經 Apple 以書面明確表示同意，您不得透過法律運作、合併或以其他方式，全部或部分轉讓本協議或委託您在本協議下的全部或部分義務。任何未取得此等同意的意圖轉讓一概無效。

### 10.4 新聞稿及其他宣傳；當事人之關係

未經 Apple 以書面明確表示核可 (Apple 得全權決定是否拒絕)，您不得就本協議、本協議之條款和條件或與當事人之關係發布任何新聞稿或其他公開聲明。本協議不得解釋為您與 Apple 建立代理關係、合夥、合資企業、信託義務及其他任何形式的法律關係。您不得明示、默示、表現或以其他方式為相反的表示。本協議並非為第三人利益而立。

### 10.5 通知

本協議之所有通知皆應以書面為之。如 Apple 透過您註冊時提供的電子郵件或通信地址發送通知，則視為通知已送達。就本協議向 Apple 發出的所有通知應寄至以下地址，送達時點為：(a) 於專人親送時視為送達，(b) 以附書面寄件證明的商業次日快遞寄送時，視為三個營業日後送達，以及 (c) 以預付郵資的第一類郵件或掛號信寄送時，視為五個營業日後送達：Apple Inc., App Store Legal (Apple Business Manager), One Apple Park, 169-4ISM, Cupertino, California 95014 U.S.A. 您同意透過電子郵件接收通知，並同意 Apple 以電子方式對您發送通知時，即符合法律通訊要求。當事人得以上述方式透過書面通知其他方，更改電子郵件或通訊地址。

### 10.6 條款效力獨立

若管轄法院認定本協議有任一條款基於任何原因而無法執行，當事人應盡可能執行本協議該條款，使其實現當事人意圖，且本協議其他條款仍具完全效力。但若適用法律禁止或限制您完全具體遵循本協議的「服務要求」或「機構之義務」條款之規定，或禁止執行該條款，則本協議應立即終止，且您必須立即停止使用本服務。

### 10.7 棄權與解釋

縱使 Apple 未行使本協議的任何條款，亦不得視為放棄日後執行該條款或任何其他條款。規定契約內容應以不利於起草者之方式進行解釋的法律或規範，不適用於本協議。本協議之標題僅供檢索，不得據以詮釋或解釋本協議。

### 10.8 出口管制

您不得使用、出口、轉出口、進口、銷售或轉讓本服務或 Apple 軟體，或是其任何部分，除非受到美國法律、您取得本服務或 Apple 軟體的司法管轄區域法律，及/或任何其他適用法律和法規之授權。尤其不得將 (包括但不限於) 本服務及 Apple 軟體出口或轉出口：(a) 至任何美國禁運國家或地區，或 (b) 予美國財政部特定國家名單，或美國商務部拒絕出口對象或主體名單上的任何人。您一旦使用本服務或 Apple 軟體，即聲明和保證您非位於前述任何禁運國家/地區或列名於前述名單。您亦同意不會將本服務或 Apple 軟體，用於美國法律禁止之任何目的，包括但不限於開發、設計、製造或生產核子、飛彈、化學或生物武器。

### 10.9 政府最終使用者

本服務、Apple 軟體和文件屬於美國聯想法規 (C.F.R.) 第 48 篇 §2.101 「商業電腦軟體」和「商業電腦軟體說明文件」定義之「商業項目」，並視情況適用 C.F.R. 第 48 篇 §12.212 或第 48 篇 §227.7202。根據 48 C.F.R. §12.212 或 48 C.F.R. §227.7202-1 至 §227.7202-4 規定，對美國政府終端使用者授權商用電腦軟體和商用電腦軟體文件時，(a) 僅得做為商業品項；及 (b) 應根據本協議條款和條件對其他最終使用者授予相同權利。依美國著作權法保留未公開之權利。

### 10.10 爭端解決；準據法

您與 Apple 就本協議、Apple 軟體或您與 Apple 之關係所生或與之相關的任何訴訟或爭議應於加州北區解決。您與 Apple 特此同意該區州立及聯邦法院就此類訴訟或爭議具對人管轄權，且為專屬管轄法院。本協議以美國及加州法律為準據法，並從其解釋，但不適用加州法上就法律衝突之規定。儘管有上述規定：

- (a) 若您為美國聯邦政府之機構、單位或部門，本協議應受美國法律管轄，倘若無適用之聯邦法律，應適用美國加州法律。此外，不論本協議是否有其他相反規定 (包括但不限於第 5 節「賠償」)，所有索賠、請求、控訴及爭議應視情形受《契約糾紛法》(Contract Disputes Act (41 U.S.C. §§601-613))、《擴大權利申訴法院管轄權法》(Tucker Act (28 U.S.C. § 1346(a) and § 1491))、《聯邦侵權賠償法》(Federal Tort Claims Act (28 U.S.C. §§ 1346(b)、2401-2402、2671-2672、2674-2680)) 或其他適用之管轄權拘束。為免疑義，若您為美國聯邦、州級或地方政府之機構、單位或部門，或美國公營和認可之教育機構，則您的賠償責任之適用前提為此責任不致使您違反任何適用法律 (例如《反虧空法》(Anti-Deficiency Act))，且您具備法定權限或授權法；
- (b) 如果您是美國公立且受到認可的教育機構，或美國境內的聯邦、州或地方政府機構、部門或單位，則 (i) 本協議將由您所在的州 (美國境內) 法律管轄並按該等法律解釋，但該州法律關於衝突法的規定除外；及 (ii) 您和 Apple 就本協議、Apple 軟體或您與 Apple 的關係而產生或與此有關的任何訴訟或爭議，將在加利福尼亞州北區的聯邦法院解決，您和 Apple 特此同意該區對任何此等訴訟或爭議解決之屬人司法管轄權，和以此為專屬法院地點，除非您所在的州法律明確禁止此類同意；
- (c) 若您為國際性政府間組織，並已透過政府間憲章或協議獲得或國內法院之司法豁免權，則因本協議所生、與本協議有關或違反本協議所致的爭端或索賠，皆應交付國際紛爭解決中心，依其國際仲裁條款解決。仲裁地應為英國倫敦，使用語言為英文，仲裁人應有三名。Apple 要求時，您同意提供證據，證明您為具備該等特權及豁免權之政府間組織；且
- (d) 如果您位於歐盟國家，或在愛爾蘭、挪威、瑞士或大英國協，則應以提供本服務之 Apple 實體 (根據「Apple」之定義，若適用) 所在國家的法律及法院作為準據法和審判地。

本協議明確排除《聯合國國際貨品買賣契約公約》之適用。

### 10.11 完整合意；管轄語言

本協議構成雙方就本協議擬議服務的完整合意，取代先前或同時就該標之之一切共識與協議。為免疑慮，本協議內並無任何規定取代 Apple 軟體的最終使用者授權合約。本協議僅得透過以下方式修改：(a) 雙方簽署書面修訂版，或 (b) 經本協議明文允許 (例如由 Apple 通知您)。本協議之譯本僅供參考，若英文版與非英文版間有所歧異，在您的法律管轄區域之當地法律未禁止的範圍內，應以本協議英文版為準。若您位於加拿大魁北克省，或為法國境內的政府組織，則適用以下條款：雙方當事人特定確認，其要求本協議及所有相關文件以英文起擬。 *Les parties ont exigé que le présent contrat et tous les documents connexes soient rédigés en anglais.*

### 10.12 同意

機構承認並同意，點擊「同意」或類似的按鈕或勾選核取方塊，即表示機構透過其授權代表人接受並同意本協議的條款和條件。

LM1002  
2020 年 10 月 27 日

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 devices for Mobile Device Management (MDM) within Your Institution, to purchase and manage content for such devices, to create Managed Apple IDs for Your users, 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 devices. For more information, see <https://www.apple.com/business/resources/>.

### 1. Definitions

Whenever capitalized in this Agreement:

“**Administrators**” means employees or Contract Employees (or Service Providers) of Institution 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.

“**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 Services**” means the App Store, Apple Books, Apple Online Store, AppleCare, and other Apple services as available to Your Authorized Users under this Agreement.

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

“**Authorized Devices**” means Apple-branded devices that are owned or controlled by You, have

been designated for use by Authorized Users or Permitted Users only, and that are eligible for use in the Service. For the avoidance of doubt, devices that are personally-owned by an individual (e.g., “BYOD” devices) are not permitted to be enrolled in supervised device management (e.g., configured with Device Enrollment Settings) 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 Contract Employees (or Service Providers) of Your Institution, and 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 pursuant to Apple’s Volume Content Terms (e.g., Apps from the App Store).

“**Contract Employees**” means individuals who perform work or provide services on behalf of an entity on a non-piece-rate basis and who have internal use access to the entity’s private information technology systems (e.g., VPN) and/or secured physical premises (e.g., badge access to corporate facilities).

“**Device Enrollment Settings**” means settings for an Apple-branded device 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) if You deploy an app on Authorized Devices in Restricted App Mode (e.g., a point-of-sale provider who deploys its app-based payment system on iPads), Your customers who are using such app in Restricted App Mode on the Authorized Device. Further, any such app must be developed and distributed in accordance with the terms of the Apple Developer Program License Agreement (e.g., distribution of a Custom App). For clarity, You may request, and Apple may approve, other entities similar to those identified in subsections (a) and (b) above; however, no other entity shall be included in this definition without Apple’s prior written consent.

“**Permitted Users**” means employees and Contract Employees of Your Permitted Entity.

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

**“Restricted App Mode”** means when an Apple-branded device is supervised and configured through the Service such that (a) the device automatically launches and is locked into a single application upon activation and no other operating system functionality can be accessed; or (b) the device cannot be personalized by an end-user (e.g. the device settings prohibit the Mail app from configuration with personal credentials, Content cannot be acquired from the App Store with a personal Apple ID, etc.).

**“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 the avoidance of doubt, the Institution is responsible for compliance with this Agreement by its employees, Contract Employees, and Service Providers 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 Permitted Users and not for general deployment to third parties (except as otherwise expressly permitted herein), and Institution will be responsible for all use of the Authorized Devices by such users, including but not limited to obtaining consents and providing appropriate information to users about the managed features of such devices;
- (d) Institution will be responsible for all use of the Service by its Permitted Entities (and any Permitted Users of the 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.
- (e) Institution will obtain all necessary rights and consents from its Authorized Users and Permitted Users to deploy its Authorized Devices as permitted hereunder;
- (f) Institution will have the rights to purchase and manage Content as may be permitted through the Service and will comply with all applicable terms for the use of Content;
- (g) Institution will obtain all necessary rights and consents from its 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 Contract Employees 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 device or service to third parties (other than to a Permitted Entity that is covered under subsection (c) of the "Permitted Entity" definition) that integrates with or leverages services or information provided by the Service or uses the Service in any way, or as 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 and Permitted 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 its Authorized Users and Permitted 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 and Permitted 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 Permitted Users, and that each Authorized User and Permitted 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' and Permitted 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 third parties in any way.

## **2.6 Purchasing Content**

Acquisition of Content is automatically disabled in the Service, and Your use is subject to the restrictions of this Agreement and the terms governing the use of Apps and Books in the Service ("Volume Content Terms"). You may choose to enable Your Administrators to access Content through the Service by granting them purchasing authority and allowing them to access Content. Subject to the Volume Content Terms and the restrictions of this Agreement, the Service enables You to allocate Content to Authorized Devices using device assignment or to Authorized Users or Permitted Users using user assignment and Apple IDs. You may assign (or revoke and re-assign) apps to Authorized Users and Authorized Devices in any country where such app is commercially available on the App Store or otherwise, subject to change at any time. With respect to books, You understand and agree that once You have assigned a book to an Authorized User or a Permitted User, such book is non-transferable, and You will not be able to revoke or re-assign the book. You are solely responsible for all such purchases and compliance with the applicable terms. You agree that You have the authority to and will accept such applicable terms on behalf of Your Authorized Users and Permitted Users if You (or Your Administrators) purchase or access Content as part of the Service. You understand and agree that Content may not be available in all countries or regions. You agree not to export Content for use outside of the country in which You are domiciled nor represent that You have the right or ability to do so. You agree not to circumvent the laws of any country or restrictions set forth by providers of the Content.

## **2.7 Administrator Accounts**

You may create Administrator accounts for Your Administrators to use in administering the Service, subject to limits Apple may impose on the number of Administrator accounts. 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.

## **2.8 Managed Apple IDs**

You may create Managed Apple IDs for Your 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 Your Authorized Users and for the creation, use, and management of Managed Apple IDs.

To create a Managed Apple ID for use by an Authorized User the following information, which may include Personal Data, is needed: name, proposed role, password, email address (for contact purposes), and phone number. In order to protect the security of Authorized Users' accounts and preserve Your ability to easily reset Your Authorized Users' passwords online, You should keep this information confidential. You agree to deploy Managed Apple IDs only for Your own internal business or information technology purposes and only to Your Authorized Users. You agree not to share, sell, resell, rent, lease, lend, or otherwise provide access to Managed Apple IDs to anyone other than Your Authorized Users. You may disable, suspend, or delete Managed Apple IDs (e.g., if an Authorized User leaves the Institution) in the Service. Apple reserves the right to limit the number of Managed Apple IDs that may be created for Your Authorized Users and the number of Authorized Devices associated with an account.

If you make available other Apple Services for Your Administrators, managers or staff to sign into, You agree to allow the Apple Services to store data in the accounts associated with those Authorized User's Managed Apple IDs, and for Apple to collect, store and process such data in association with Your and/or Your Authorized User's use of the Apple Service. You are responsible for ensuring that You and Your Authorized Users are in compliance with all applicable laws for each Managed Apple ID based on the Apple Service You allow Your Authorized Users to access. If Your Administrators, managers or staff access certain Apple Services, Apple may communicate with Your Authorized Users about their use of the Apple Service.

## **2.9 Permitted Entities and Permitted Users**

Subject to the terms of this Agreement, Permitted Entities and Permitted Users may access the Service under Your account, excluding the use and deployment of Managed Apple IDs (unless otherwise separately approved in advance and in writing by Apple). You shall be responsible for compliance with the terms of this Agreement by the Permitted Entities and Permitted Users and shall be directly liable to Apple for any breach of this Agreement by Your Permitted Entities and Permitted Users. If You (or Service Provider acting on Your behalf) add Apple-branded devices to the Service that are owned by a Permitted Entity, You represent and warrant to Apple that the Permitted Entity has authorized You to add such devices, that You have control of such devices, and that You have the authority to accept EULAs on behalf of the Permitted Entity (and its Permitted Users, if applicable). Apple reserves the right to: set limitations on the Service features or functionality that Institution may allow its Permitted Entity (or Permitted Users) to access or use, and to require You to remove any Permitted Entities or Permitted Users from Your account at any time, in its sole discretion.

## **2.10 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.

## **2.11 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). In the event that any actions or inactions by the Service Provider could constitute a violation of this Agreement or otherwise cause any harm, Apple reserves the right to require You to cease using such Service Provider.

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

Institution represents and warrants that:

- (a) Institution's authorized representative 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 (or to its Authorized Users or Permitted Users) in connection with this Agreement or use of the Service (including the Apple Software) 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', Administrators', Service Providers', Authorized Users', Permitted Users', 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 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, or any part thereof, 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 but not limited to Your Service Provider's, Administrators', Authorized Users', Permitted Users', 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, and/or any other use of the Service; and/or (e) any claims regarding Your use or management of Personal Data. 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 and extend for an initial period of one (1) year following the initial activation date of Your Service account by Apple. Thereafter, subject to Your compliance with the terms of this Agreement, the term of this Agreement 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, Permitted Entities, or Permitted Users 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, the second sentence of Section 2.9, Section 2.10, the second sentence of Section 2.11, 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 Sub-processors 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. THIS DISCLOSURE DOES NOT APPLY TO THE DATA COLLECTION PRACTICES OF ANY CONTENT (INCLUDING THIRD-PARTY APPS). PRIOR TO PURCHASE OR DOWNLOAD OF CONTENT AS PART OF THE SERVICE, YOU SHOULD REVIEW THE TERMS, POLICIES, AND PRACTICES OF SUCH CONTENT. 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.

To the 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 Apple Software or 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 devices and services, for internal purposes such as auditing, data analysis, and research to improve Apple's devices, services, and customer communications, to facilitate the provision of software or software updates, device 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/or 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 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 You are 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 You are 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 are domiciled in a European Union country, or in Iceland, Norway, Switzerland, or the United Kingdom, the governing law and forum shall be the laws and courts of the country of domicile of the Apple entity providing the Service, as applicable, as set forth in the definition of "Apple".

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 the avoidance of doubt, nothing in this Agreement supersedes the EULAs for the Apple Software. 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 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.

LM1002  
10/27/2020