

在使用本服务之前，请仔细阅读以下 **Apple** 商务管理条款和条件。这些条款和条件构成了贵机构与 **Apple** 之间的法律协议。点按“同意”按钮，即表示贵机构 (通过授权代表) 同意接受本协议的约束并成为本协议的一方。如果贵机构不同意或不能同意本协议，请点按“取消”按钮。如果贵机构不同意本协议，则不得参与这一计划。

# Apple 商务管理协议

## 目标

本协议允许你参与 **Apple** 商务管理，这使得你可以在贵机构内自动注册 **Apple** 品牌设备，以进行移动设备管理 (MDM)、为这类设备购买和管理内容、为你的用户创建管理式 **Apple** ID，以及访问相关服务的便利工具。

**注意：** 你需要先在贵机构内启用 **MDM** 解决方案 (例如来自 **macOS** 服务器或第三方开发者的描述文件管理器)，然后才能使用本服务的功能。**MDM** 解决方案让你可以配置、部署和管理 **Apple** 品设备。更多相关信息，请访问 <https://www.apple.com/business/resources/>。

## 1. 定义

本协议中出现的所有黑体术语所表示的含义如下：

**“管理员”**是指贵机构出于以下账户管理目的而添加到本服务中的员工或合同员工 (或服务提供商)：管理服务器、上传 **MDM** 预置设置、向你的账户中添加设备、购买内容以及执行其他相关服务等等。

**“协议”**是指本 **Apple** 商务管理协议。

**“Apple”**是指以下各方，除非本协议中另有说明：(a) **Apple Inc.**，地址为 One Apple Park Way, Cupertino, California 95014, U.S.A.，适用于位于以下地区的机构：北美、中美和南美 (加拿大除外) 以及美国领土和领地；以及法国和英国在北美、南美和加勒比海地区的领地；(b) **Apple Canada Inc.**，地址为 120 Bremner Blvd., Suite 1600, Toronto ON M5J 0A8, Canada，适用于位于加拿大或其领土和领地的机构；(c) **iTunes K.K.**，地址为 Roppongi Hills, 6-10-1 Roppongi, Minato-ku, Tokyo 106-6140, Japan，适用于位于日本的机构；(d) **Apple Pty Limited**，地址为 20 Martin Place, Sydney NSW 2000, Australia，适用于位于以下地区的机构：澳大利亚和新西兰，包括岛屿领土、领地和附属辖区；以及 (e) **Apple Distribution International Ltd.**，地址为 Hollyhill Industrial Estate, Hollyhill, Cork, Republic of Ireland，适用于提供本服务，但未在上文列出的所有其他国家/地区或领土中的机构。

**“Apple 服务”**是指根据本协议向你的授权用户提供的 **App Store**、**Apple Books**、**Apple Store** 在线商店、**AppleCare** 以及其他 **Apple** 服务。

**“Apple 软件”**是指 **iOS**、**iPadOS**、**macOS**、**Apple tvOS** 和 **watchOS** 操作系统软件，或是此类软件随后推出的任何版本。

**“授权设备”**是指由你拥有或控制、仅供授权用户或获准用户使用且符合本服务使用条件的 **Apple** 品牌设备。为避免疑义，除非 **Apple** 另行书面同意，否则由个人拥有的设备 (例如“**BYOD**”设备) 不得作为本服务的一部分通过受监管设备管理进行注册 (例如配置了设备注册设置)，而且并非所有设备都有资格添加到本服务中。

**“授权用户”**是指贵机构的员工和合同员工 (或服务提供商)；如果贵方是医院，“授权用户”还包括取得执业资格的医生、转荐医生和临床医生。为明确起见，你可以请求将其他类似用户加入到“授权

用户”中，且 Apple 有权自行决定是否予以批准；但是，未经 Apple 事先书面同意，任何其他方均不得纳入此定义。

“**内容**”是指作为本服务一部分而根据 Apple 批量内容条款许可或获得的任何材料或信息 (例如，来自 App Store 的 App)。

“**合同员工**”是指代表实体以非计件工资形式履行工作或提供服务的个人，以及对实体的专用信息技术系统 (例如，VPN) 和/或设门禁的物理场所具有内部使用访问权限 (例如，佩戴工牌进入公司设施) 的个人。

“**设备注册设置**”是指可作为本服务一部分进行配置和管理的 Apple 品牌设备的设置，包括但不限于：设备的初始注册流程，以及用于监管设备、强制执行配置或锁定 MDM 描述文件的设置。

“**文档**”是指 Apple 可能提供给你用于本服务的任何技术相关或其他方面的规格或者文档。

“**最终用户许可协议 (EULA)**”是指 Apple 软件的软件许可协议条款与条件。

“**管理式 Apple ID**”是指你通过使用本服务而创建和部署的用户账户 (包括但不限于存储、日历、备忘录和联系人)。

“**MDM 服务器**”是指由你 (或代表你的服务提供商) 拥有或控制并用来与本服务通信的电脑。

“**获准实体**”是指：(a) 对于车辆制造商，获准实体是指你的授权车辆经销商和认证服务合作伙伴；(b) 对于酒店控股公司，获准实体是指以你的名称、商标或品牌 (或由其所有或控制的名称、商标或品牌) 经营的酒店物业；或 (c) 对于以“受限 App 模式”在授权设备上部署 app 的服务提供商 (例如，在 iPad 上部署其基于 app 的支付系统的销售点提供商)，获准实体是指你的在授权设备上以“受限 App 模式”使用此类 app 的客户。此外，任何此类 app 都必须根据 Apple Developer Program 许可协议的条款进行开发和分发 (例如，自定 App 的分发)。为明确起见，你可以请求与上述 (a) 和 (b) 子部分中所指明的实体类似的其他实体加入，且 Apple 有权决定是否予以批准；但是，未经 Apple 事先书面同意，任何其他实体均不得纳入此定义。

“**获准用户**”是指获准实体的员工和合同员工。

“**个人数据**”是指可通过合理的方式用来识别个人身份的数据，该数据由贵机构依照本协议的规定加以控制。

“**受限 App 模式**”是指 Apple 品牌设备通过本服务受到监督和配置，例如 (a) 设备在激活后自动启动并锁定到单个应用程序，并且无法访问其他操作系统功能；或 (b) 最终用户无法对设备进行个性化设置 (例如，设备设置禁止使用个人凭证配置“邮件”app，无法使用个人 Apple ID 从 App Store 获取内容等)。

“**服务**”是指 Apple 商务管理服务 (及其任何组件、功能或特性)，用于移动设备管理的自动注册、内容的获取与管理、管理式 Apple ID 的创建、使用和管理、管理员账户的使用，以及本协议中规定的其他相关服务，包括门户网站以及本协议下提供的任何服务或工具。

“**服务提供商**”是指根据本协议的条款代表你提供服务的第三方。

“**服务器令牌**”是指你的公钥、Apple ID 和 Apple 提供的令牌的组合，你的 MDM 服务器可通过它注册到本服务。

“你”、“你的”和“贵机构”是指签订本协议的机构。为避免疑义，贵机构负责确保其员工、合同员工以及经授权代表其行使本协议下权利的服务提供商遵守本协议。

**注意：**如果你是第三方服务提供商，你需要让你合作的机构签订本协议并将你添加为管理员，因为拥有授权设备并计划将此类设备分发给授权用户的实体必须注册本服务。

## 2. 使用服务需满足的要求

### 2.1 使用本服务

作为使用本服务的条件，机构确认并同意：

- (a) 贵机构只能出于本协议中明确允许的目的，以本协议中明确允许的方式使用本服务，且使用服务的行为必须遵守所有适用法律和法规，以及本文档的规定；
- (b) 贵机构不得将本服务 (或其中的任何部分) 用于任何不合法、不当、不合适或非法活动；
- (c) 贵机构可以使用本服务来管理授权设备，但只能供授权用户和获准用户使用，而不得用于第三方常规部署 (除非本文中另有明确许可)；对于此类用户对授权设备的所有使用，贵机构都将承担相应责任，包括但不限于获取同意并为用户提供关于此类设备的管理式功能的相应信息；
- (d) 对于获准实体 (以及获准实体的任何获准用户) 对本服务的所有使用，贵机构都将承担相应责任，其获准实体的任何行为都将被视为机构的行为，且贵机构 (连带其获准实体) 应对 Apple 承担所有此类行为的责任。
- (e) 在按照本协议允许的条款部署其授权设备之前，贵机构应从其授权用户和获准用户那里获得所有必要的授权和同意。
- (f) 贵机构有权通过本服务购买和管理允许的内容并将遵守所有适用的内容使用条款；
- (g) 在必要情况下，贵机构将从其授权用户那里获取所有必要权利和同意，以创建管理式 Apple ID 并允许 Apple 为管理式 Apple ID 提供本服务 (包括使用和维护个人数据)；
- (h) 贵机构可将管理员添加到本服务，但前提条件是此类个人是机构的员工或合同员工，或是代表贵机构行事的服务提供商，且贵机构只能出于账户管理目的添加此类各方；并且
- (i) 贵机构只能出于自己 (及其获准实体) 内部业务运营和信息技术目的使用本服务，不得向第三方 (“获准实体”定义中第 (c) 子部分中所涵盖的获准实体除外) 提供集成或利用本服务所提供的服务或信息或是以任何方式使用本服务的设备或服务，除非 Apple 以书面形式同意。

### 2.2 无其他准许用途

贵机构同意不会以任何未经授权的方式使用本服务，包括但不限于攻击网络、导致网络不堪重负或上传恶意代码。任何此类尝试均视为侵犯 Apple 及其许可方的权利。除非本协议明确允许，否则贵机构不得向任何第三方许可、出售、共享、出租、租赁、让与、分发、托管、允许分时使用或免费使用本服务 (或其中的任何部分)，或者以其他方式向任何第三方提供本服务 (或其中的任何部分)。贵机构同意不会利用本服务来跟踪、骚扰、误导、虐待、威胁或伤害任何人，或者假装成已注册实体之外的任何人；如果任何账户可能被视为冒充或误导其他实体或个人的姓名或身份，Apple 保留拒绝或阻止相关账户的权利。贵机构不会干预本服务，也不会干预本服务、Apple 软件或任何其他相关 Apple 软件或技术所实施或其中实施的任何安全性、数字签名、数字版权管理、验证或认证机制，或者允许他人这样做。如果贵机构是上述范围内的实体、商业伙伴、上述范围内的实体或商业伙伴的代表 (具体条款定义见 45 C.F.R § 160.103)，或者是医疗服务提供商或实体，则贵机构同意其不得使用本服务的任何组件、功能或其他设施来创建、接收、维护或传输任何“受到保护的健康信息”(具体条款定义见 45 C.F.R § 160.103) 或是适用法律规定的同等健康数据，使用本服务的方式也不得使 Apple 成为贵机构或任何第三方的商业伙伴，或是通过其他方式使 Apple 直接受制于适用的健康隐私法律。Apple 保留所有本协议中未明确授予的权利，并且未以暗示、禁止或以其他方式授予任何其他许可、豁免或权利 (无论是明示还是暗示)。

### 2.3 服务器令牌使用

贵机构同意仅将服务器令牌用于通过本服务注册贵机构的 MDM 服务器和上传设备注册设置，这些设置将在授权用户和获准用户初次激活授权设备时发送到这些设备上。贵机构同意不向任何其他实体提供或转让服务器令牌，也不会与任何其他实体 (服务提供商除外) 共享服务器令牌。贵机构

同意采取必要的措施来保护此类服务器令牌的安全和隐私，并在服务器令牌被盗或贵机构有理由认为它已被盗时将它撤销。Apple 保留随时自行决定撤销或停用服务器令牌的权利。此外，贵机构还理解并同意，重新生成服务器令牌将影响贵机构对本服务的使用，直到新服务器令牌添加至 MDM 服务器为止。

## 2.4 最终用户许可协议条款和条件

作为本服务的一部分，贵机构可以选择让授权用户和获准用户在设备的正常初始激活流程之外接受 Apple 软件的条款和条件。只要贵机构同意以下要求，贵机构即可使用本服务的这项功能：

(a) 贵机构的授权代表必须在本服务门户网站上接受 Apple 软件的最终用户许可协议，然后才能为授权用户和获准用户部署运行此类 Apple 软件的授权设备；

(b) 如果 Apple 软件的最终用户许可协议发生变化，贵机构同意在接到 Apple 通知后立即让其授权代表返回本服务门户网站并接受此类最终用户许可协议，以继续使用服务。贵机构确认，在接受此类最终用户许可协议之前，贵机构无法使用本服务，包括额外的相关授权设备及其 MDM 服务器；

(c) 贵机构有责任确保将此类最终用户许可协议提供给授权用户和获准用户，并且每位授权用户和获准用户均知悉并遵守 Apple 软件最终用户许可协议的条款和条件；并且

(d) 对于授权用户和获准用户对 Apple 软件的使用，贵机构同意负责获取任何必要的同意。

## 2.5 设备转让

贵机构不得转售任何已启用设备注册设置的授权设备，并同意在转售或以其他方式将授权设备转让给第三方之前从本服务中删除此类设备。

## 2.6 购买内容

本服务中已自动停用购买内容的功能，你对本服务的使用需遵守本协议的限制以及用于监管在本服务中使用 App 和图书的条款（“批量内容条款”）。你可以选择向管理员授予购买权限并允许他们访问内容，让他们可以通过本服务访问内容。在遵守批量内容条款和本协议限制的前提下，你可以通过本服务使用设备分配将内容分配给授权设备，或使用用户分配和 Apple ID 将内容分配给授权用户或获准用户。你可以将 app 分配（或撤销并重新分配）给授权用户和授权设备，但要在此类 app 已在 App Store 中上架或以其他方式提供的国家/地区，且国家/地区列表可能会随时发生变化。关于图书，你理解并同意，一旦你将图书分配给授权用户或获准用户，此类图书是不可转让的，你将无法撤销或重新分配该图书。所有此类购买均由你自己独立承担责任，并且你自行负责遵守适用的条款。你同意，作为本服务的一部分，如果你（或你的管理员）购买或访问内容，你有权代表授权用户和获准用户接受这些适用的条款。你理解并同意，内容可能并非在所有国家或地区都提供。你同意不会将内容导出以供在你居住的国家/地区之外使用，也不得声明你有权或能够这样做。你同意不规避任何国家或地区的法律或内容提供商设定的限制。

## 2.7 管理员账户

你可以为管理员创建管理员账户，以便在管理本服务时使用，但要遵循 Apple 可能对管理员账户数量施加的限制。这些管理员账户要使用唯一的用户名和密码组合并归你所有。当你创建管理员账户时，系统将针对此类账户启用本服务中你所选的所有可用特性和功能，并且这些管理员账户的适当启用以及与这些账户相关的所有活动（例如，允许进行内容购买）都将由你负责。你确认并同意，此类管理员账户只能出于账户管理目的用于访问和管理本服务。如果你删除任何管理员账户，你和相应管理员将无法再访问该等管理员账户，并且你确认并同意此操作可能无法撤销。

## 2.8 管理式 Apple ID

作为本服务的一部分，你可以按照本协议和文档的规定创建管理式 Apple ID 以供你的授权用户访问和使用。你有责任决定要为你的授权用户启用本服务的哪些特性和功能，还需要为管理式 Apple ID 的创建、使用和管理承担责任。

要创建供授权用户使用的管理式 Apple ID，需要提供以下信息，其中可能包括个人数据：姓名、建议的角色、密码、电子邮件地址 (用于联系目的) 和电话号码。为保护授权用户账户的安全并让你能够轻松地在线重设授权用户的密码，你应当保持这些信息的机密性。你同意仅出于你自己的内部业务或信息技术目的，并且仅面向你的授权用户部署管理式 Apple ID。你同意不会通过共享、销售、转售、租借、租赁、借出或以其他方式向授权用户以外的任何人提供对管理式 Apple ID 的访问权限。你可以在本服务中停用、暂停或删除管理式 Apple ID (例如，在授权用户从贵机构离开时)。Apple 有权限制可以为你的授权用户创建的管理式 Apple ID 数量以及与其某个账户关联的授权设备数量。

如果你为管理员、经理或员工提供其他可登录使用的 Apple 服务，则你同意允许 Apple 服务将你和/或你的授权用户使用 Apple 服务的相关数据存储在与此类授权用户的管理式 Apple ID 关联的账户中，并允许 Apple 收集、存储和处理此类数据。对于每个管理式 Apple ID，你有责任确保你和你的授权用户遵守所有适用于你允许授权用户访问的 Apple 服务的法律。如果你的管理员、经理或员工访问某些 Apple 服务，则 Apple 可能会与你的授权用户就其对 Apple 服务的使用进行沟通。

### 2.9 获准实体和获准用户

在遵守本协议条款的前提下，获准实体和获准用户可以访问你账户下的本服务，不包括使用和部署管理式 Apple ID (除非另外获得 Apple 的事先书面批准)。你应负责确保获准实体和获准用户遵守本协议中的条款，并且应就你的获准实体和获准用户违反本协议的行为直接对 Apple 负责。如果你 (或代表你行事的服务提供商) 将获准实体拥有的 Apple 品牌设备添加到本服务中，则你向 Apple 声明并保证获准实体已授权你添加此类设备，你有权控制此类设备，并且有权代表获准实体 (及其获准用户 (如果适用)) 接受最终用户许可协议。Apple 保留以下权利：对机构可能允许其获准实体 (或获准用户) 访问或使用的本服务特性或功能设置限制，以及随时单方面要求你从你的账户中移除任何获准实体或获准用户。

### 2.10 更新；不支持或维护

Apple 可能随时扩展、增强、暂停、终止或以其他方式修改本协议下提供的本服务 (或其中的任何部分)，恕不另行通知，并且 Apple 在行使此类权利时不对你或任何第三方负责。Apple 没有义务向贵机构提供有关本服务的任何更新。如果 Apple 提供了更新，则本协议的条款将适用于此类更新，更新附带单独的协议时除外，在这种情况下将适用该单独协议的条款。若有更新推出，更新中的特性、服务或功能可能与本服务的特性、服务或功能有所不同。Apple 没有义务对本服务提供任何维护、技术或其他支持。

### 2.11 第三方服务提供商

你可以使用服务提供商，但前提是：该服务提供商是代表你访问和使用本服务并会遵守这些条款，并且你与该服务提供商之间达成了书面协议，而且该书面协议的条款应至少具有与本协议中规定的同等限制力和对 Apple 的保护性。任何此类服务提供商就本服务和/或本协议所采取的任何作为均应视为你采取的作为，并且你 (还有服务提供商) 应就所有此类作为 (或任何不作为) 对 Apple 负责。如果服务提供商的任何作为或不作为可能构成对本协议的违反或以其他方式造成任何损害，Apple 保留要求你停止使用此类服务提供商的权利。

## 3. 贵机构的义务

贵机构陈述并保证：

- (a) 贵机构的授权代表有权利和权限代表贵机构签署本协议，使贵机构在法律上受到本协议条款和义务的制约；
- (b) 由贵机构提供给 Apple (或者其授权用户或获准用户) 的与本协议或使用本服务 (包括 Apple 软件) 相关的所有信息都将是最新、真实、准确、有证据支持且完整的；并且，针对贵机构提供给 Apple 的信息，贵机构将及时向 Apple 告知此类信息的任何变更；

- (c) 贵机构将监督并负责其授权代表、管理员、服务提供商、授权用户、获准用户和获准实体对本服务的使用及其对本协议条款的遵循；
- (d) 对于贵机构、其授权代表、管理员、服务提供商、授权用户、获准用户、获准实体和授权设备就本服务而言产生的所有费用、开销、损失、责任和行为，贵机构都将自行承担相应责任；
- (e) 就使用本服务和使用或收集数据 (包括个人数据) 以及通过本服务获取信息而言，贵机构需自行承担相应责任，确保遵循与之相关的所有隐私和数据保护法律 (例如：欧洲议会和欧洲理事会于 2016 年 4 月 27 日就个人数据处理及此类数据的自由转移而通过的法规 (EU) 2016/679，用于取代指令 95/46/EC (以下简称“通用数据保护条例”))；
- (f) 对于与个人数据有关的活动，贵机构需承担相应责任 (例如：确保个人数据的安全，监控和限制对个人数据的访问，阻止和解决不当活动，等等)；并且
- (g) 贵机构将遵守本协议条款，并履行贵机构根据本协议规定所应履行的相关义务。

#### 4. 更改使用服务的要求或条款

Apple 可能会随时更改本服务或本协议条款。要继续使用本服务，贵机构 (通过授权代表) 必须接受并同意本协议的新要求或条款。如果你不同意新的要求或条款，Apple 可以暂停或终止你对本服务或其中的任何部分的使用。你同意你可以通过电子形式表示接受此类新协议条款，包括但不限于选中复选框或者点按“同意”或类似按钮。

#### 5. 赔偿

就法律允许的范围而言，你同意对于以下事项引起或者与以下事项相关的任何及所有索赔、损失、连带责任、损害、花销和费用 (包括但不限于律师费和法院费用，以下统称“损失”)，如果相关损失由 Apple、Apple 董事、高级职员、职员、附属公司、独立承包商及授权代表 (以下分别称为“Apple 豁免方”) 引起，则将对 Apple 豁免方做出赔偿并使其免受损害，并在 Apple 要求下为其进行抗辩：

- (a) 你违反本协议中的任何认证、契约、义务、陈述或担保；
- (b) 你 (包括但不限于你的服务提供商、管理员、授权用户、获准用户和/或获准实体) 对本服务的使用；
- (c) 有关你使用、部署或管理授权设备、设备注册设置和/或 MDM 服务器的任何索赔，包括但不限于任何最终用户索赔；
- (d) 有关预置、管理和/或使用授权设备、管理员账户、管理式 Apple ID，或内容和/或对本服务的任何其他使用的任何索赔，包括但不限于任何最终用户索赔；和/或
- (e) 针对你使用或管理个人数据而提出的任何索赔。未经 Apple 事先书面同意，你不得以任何方式与第三方达成影响到 Apple 权利的任何和解或类似协议，或以任何方式约束 Apple 或任何 Apple 免责方。

#### 6. 期限和终止

本协议自你首次在本服务中接受本协议之日开始生效，初始有效期为自 Apple 初次激活你的服务账户之日起 (1) 年。此后，在你遵守本协议条款的前提下，除非根据本协议提前终止，否则本协议的期限将自动延续 (1) 年。任何一方均可在向另一方书面通知后 30 天内，以任何理由或无理由终止本协议。

如果你未能遵守本协议的任何条款，或是 Apple 怀疑你未能遵守本协议的任何条款，Apple 将自行决定以下各项，而无需事先通知你：(a) 终止本协议和/或你的账户；以及/或者 (b) 暂停或冻结本服务 (或其中的任何部分) 访问权限。Apple 有权随时修改、暂停或终止本服务 (或其中的任何部分或内容)，恕不另行通知，并且 Apple 在行使此类权利时不对你或任何第三方负责。如果你不接受第 4 条中所述的任何新协议条款，Apple 也可以终止本协议，或暂停你使用本服务的权利。你确认并同意，在本协议到期或终止时，你可能无法访问本服务，并且 Apple 有权暂停你、你的管理员、授权用户、获准实体或获准用户通过使用本服务存储的数据或信息，或者删除此类数据或信息。在使用本服务的任何部分之前，你应该查阅文档，并对你的数据和信息进行适当的备份。Apple 在行使此类权利时不对你或任何第三方负责，也不对任何由此类终止或暂停而可能引发或产生的损害承担责任。即使本协议终止，以下条款仍将具有法律效力：第 1 条、第 2.9 条第二句、第 2.10 条、第 2.11 条第二句、第 3 条、第 5 条、第 6 条第二段，以及第 7、8、9、10 条。

## 7. 免责声明

你明确承认并同意，在适用法律允许的范围内，你将自行承担使用或者无法使用本服务或通过本服务访问的任何工具、特性或功能的对应风险，并且你将承担质量、性能、准确性和努力等方面的全部风险。

在适用法律允许的最大范围内，本服务系“按原样”和“按现状”提供，不保证没有瑕疵，也不作任何担保；Apple、Apple 董事、高级职员、职员、关联公司、授权代表、代理、承包商、经销商或许可人 (在第 7 和 8 条中统称为“Apple”) 特此否认就本服务提供任何明示、默示或法定担保和条件，这包括但不限于有关适销性、质量满意度、针对特定用途的适用性、准确性、不受干扰地使用及不侵害第三方权利的默示担保和/或条件。

Apple 不对你使用或享受本服务提供以下保证、声明或担保：本服务中包含的特性或功能，或者本服务所执行或提供的服务，能够满足你的要求且安全无虞；你在使用或运行本服务时不会有中断或错误；缺陷或错误会得到纠正；本服务将会继续可用；本服务可与任何第三方软件、应用程序、内容或第三方服务或者任何其他 Apple 产品或服务兼容或协同工作；通过本服务存储或传输的任何数据或信息不会丢失、破坏、损坏、受攻击、遭到黑客攻击、受干扰或受到任何其他任何安全入侵。你同意 Apple 可能会不定期移除本服务，或者随时暂停、终止或取消本服务，恕不另行通知。

另外你还确认本服务并非旨在用于或适合于符合以下条件的情况或环境：如果本服务出现故障或时间延误，或是所提供的内容、数据或信息存在错误或不准确之处，可能会导致死亡、人身伤害或严重的物理或环境破坏，包括但不限于核设施的运行、飞机导航或通信系统、空中交通管制、生命维持或武器系统。

Apple 或 Apple 授权代表提供的口头或书面信息或建议均不构成本协议未明确列出的保证。如发现本服务有缺陷，你须承担所有必要的检修、维修或纠正的全部费用。

## 8. 责任限制

在适用法律未禁止的范围内，在任何情况下，对于因本协议以及/或者你使用或无法使用本服务而引起的任何人身伤害或任何偶发、特殊、间接或继发的损失，包括但不限于利润损失、数据或信息损坏或丢失、无法传输或接收任何数据或信息、业务中断或任何其他商业损害或损失，无论其成因及基于何种责任理论 (合同、侵权或其他)，Apple 概不负责，即使是 Apple 已被告知或知悉可能发生上述损害的情况也是如此。在任何情况下，Apple 就所有损害赔偿对你承担的全部责任 (不包括在涉及人身伤害的情况下根据适用法律规定而作出的损害赔偿) 不应超过五十美元 (\$50.00)。即使上述救济未能实现其根本目的，上述限制仍然适用。

## 9. 数据隐私和安全

### 9.1 个人数据使用和披露

根据本协议的规定，Apple 将代表你对数据进行处理，可以接收或访问由你提供的个人数据。签署本协议即表示你指示 Apple 处理和使用此个人数据来根据适用法律提供和维护本服务，你通过使用本服务所提供的指示 (例如：通过本服务提供的指示) 以及由你提供的任何其他书面指示均由 Apple 以书面形式接受和确认。Apple 将遵循此类指示 (如情况适用)，除非法律禁止，在这种情况下，Apple 将在处理此类个人数据之前通知你 (除非出于公共利益考虑，法律禁止向你发出通知)。如果服务提供商 (以下简称“子处理方”) 向 Apple 提供与本服务有关的服务，则 Apple 可能会向其提供个人数据。你授权 Apple 使用“Apple”定义中规定的所有 Apple 实体作为子处理方并使用任何其他子处理方；前提条件是此类子处理方签署了相应合约，因此受到数据保护义务的制约，且此类合约条款所提供的保护至少与本协议中提供的保护相当，如果法律要求，将在对方要求的情况下提供此类子处理方的名单。如果 Apple 认定披露是执行 Apple 条款和条件或保护 Apple 经营或用户的合理必要条件，则 Apple 也可能披露关于你的个人数据。此外，如果发生重组、合并或出售，Apple 可将你提供的任何及所有个人数据转让给相关第三方。这份披露不适用于任何内容 (包括第三方 App) 的数据收集做法。作为本服务的一部分，在购买或下载内容之前，你应该查看此类内容适用的

条款、政策和做法。如果 Apple 收到第三方对个人数据的请求 (以下简称“第三方请求”), Apple 将在法律允许的范围内向你告知 Apple 收到了第三方请求, 并告知请求方向你提出此类第三方请求。除非法律或第三方请求另有要求, 否则将由你负责回应此类请求。

## 9.2 数据事件

如果 Apple 获知个人数据因任何未经授权访问本服务已被篡改、删除或丢失 (以下简称“数据事件”), Apple 将在法律要求的情况下立即通知贵机构, 而不会造成任何不必要的延误, 并且 Apple 将采取合理措施尽可能降低损失并确保数据安全。Apple 通知或响应数据事件的行为不得解释为 Apple 承认对数据事件承担任何责任或连带责任。贵机构有责任遵守适用的事件通知法律并履行与数据事件有关的任何第三方义务。Apple 将遵守所有具体的法律要求, 不会访问个人数据内容以进行信息识别。

## 9.3 安全规程; 合规

作为本服务的一部分, Apple 应采取行业标准措施来在个人数据的传输、处理和储存期间保护个人数据。作为上述措施的一部分, Apple 将尽到商业上的合理努力, 对静态和传输中的个人数据进行加密; 确保本服务始终保密、完整、可用和可靠; 如果出现问题, 将及时恢复个人数据的提供; 并定期测试、评测和评估此类措施的有效性。Apple 将采取适当的措施来确保员工、承包商和子处理方遵守安全规程, 并且 Apple 应确保所有获得相应授权, 可处理个人数据的人员均在本服务中相关个人数据的保密性和安全性方面遵守适用的法律。个人数据经加密后可存储在 Apple 单方确定的任何地理位置。在 Apple 担任数据处理方的责任范围内, Apple 将协助你确保你对以下各项的合规 (如情况适用): (a) 《通用数据保护条例》第 28 条 (通过允许和协助审计; 前提条件是 Apple 的 ISO 27001 和 ISO 27018 认证被视为足以满足此类要求的审计目的); (b) 《通用数据保护条例》第 32 条 (通过实施本第 9.3 条中规定的安全规程以及始终持有 ISO 27001 和 ISO 27018 认证); (c) 《通用数据保护条例》第 33 和 34 条或是法律规定的其他同等义务 (通过协助你向监管机构或数据主体提供数据事件的必需通知); (d) 法律要求贵机构执行数据保护影响评估或是在处理之前咨询监管机构; 以及 (e) 由数据保护监管人员或类似机构就个人数据开展调查。

## 9.4 数据访问和转移; 终止; 担任处理方的机构

如果法律有要求, Apple 将确保任何国际数据转移都仅涉及能够确保充足保护级别的国家/地区, 已根据适用法律中的规定提供适当的安全保护, 例如《通用数据保护条例》第 46 和 47 条中的规定 (例如: 标准数据保护条例), 或是遵守《通用数据保护条例》第 49 条中的减损条例。如果你应要求签署数据转移协议, 以将数据转移至第三国家/地区, 则你同意按照 Apple 在 <https://apple.com/legal/enterprise/datatransfer> 中的规定签署适用于你所在司法辖区的数据转移协议。

对于你存储或转移到 Apple 系统以外的数据, Apple 不承担任何责任。如果本协议出于任何原因终止, Apple 将在合理时间范围内以安全方式销毁由 Apple 存储的与你使用本服务有关的个人数据, 除非是为了预防欺诈或是法律另有要求。Apple 的隐私政策可通过 <https://www.apple.com.cn/legal/privacy> 查看, 此外, 与第 9 条相符的政策内容已包括在本协议中, 以便参考。如果 Apple 的隐私政策和第 9 条之间出现冲突, 则以本第 9 条的条款为准。

如果贵机构以获准实体数据处理方的身份签署本协议, 则贵机构在此陈述并保证, 贵机构代表其本身签署本协议, 并且, 就本协议的规定而言, 贵机构代表此类获准实体签署本协议。贵机构在此陈述, 贵机构已取得此类获准实体的相应许可, 可代表此类实体签署本协议, 并将 Apple 用作子处理方, 如果此类获准实体针对本协议提出任何索赔, 则贵机构应就此对 Apple 承担相应责任。



## 10. 一般法律条款

### 10.1 第三方通知

Apple 软件或本服务的组成部分可能会使用或包括第三方软件和其他受版权保护的材料。此类材料的致谢、许可条款和免责声明包含在本服务的电子文档或适用部分中，并且你在使用此类材料时应遵守相应的条款。

### 10.2 同意收集和使用数据

你确认并同意 Apple 及其附属公司和代理可以收集、维护、处理和使用诊断、技术、用法及相关信息，包括但不限于：系统或硬件的唯一标识符；有关你使用本服务、MDM 服务器、设备注册设置、电脑、设备、系统和应用软件以及其他软件和外围设备的信息；并且，定期收集这些信息是为了便于向你提供与本服务相关的服务；提供、测试和改进 Apple 的设备和服 务；用于内部目的（如审计、数据分析和研究，旨在改进 Apple 的设备、服务和顾客沟通）；便于为你提供与本服务或任何此类软件相关的软件或软件更新、设备支持以及其他服务（如果有）；用于安全和账户管理目的，以及验证是否遵守本协议的条款。依据本条所收集的数据将根据 Apple 的隐私政策进行处理，该政策可在以下网址查看：<https://www.apple.com.cn/legal/privacy>。

### 10.3 转让

未经 Apple 事先明确书面同意，你不得通过运用法律、合并或其他任何手段全部或部分转让本协议及本协议下的任何义务。未经同意而擅自试图转让的行为将被视为无效。

### 10.4 新闻稿及其他宣传；双方关系

未经 Apple 事先书面批准（Apple 有权单方面撤销此类书面批准），你不得发布任何有关本协议、其条款和条件或双方关系的新闻稿或其他任何公开声明。本协议不得被解释为你和 Apple 之间建立任何代理或合伙、合资、信托或其他形式的法律关系，并且你也不得以明示、暗示、表现或其他方式做出相对的陈述。本协议不是为了任何第三方的利益而订立的。

### 10.5. 通知

任何与本协议有关的通知都应采用书面形式。Apple 通过你在注册时提供的电子邮件地址或邮寄地址给你发送通知即被视为通知已成功送达。就本协议发送给 Apple 的所有通知将在以下情况下视为已成功送达：(a) 亲自递送；(b) 通过次日达商业快递寄送且出具递送成功的书面证明的三个工作日之后，以及 (c) 通过普通信函或挂号信（邮资预付）寄送至以下 Apple 地址的五个工作日之后：Apple Inc., App Store Legal (Apple Business Manager), One Apple Park, 169-4ISM, Cupertino, California 95014 U.S.A. 你同意通过电子邮件接收通知，并同意 Apple 以电子形式发送给你的任何此类通知都满足任何合法通信要求。一方在按照如上所述向另一方发出书面通知后，可以更改自己的电子邮件地址或邮寄地址。

### 10.6 可分割性

如果有合法管辖权的法院认定本协议的任何条款因任何原因而被视为不可执行，则本协议的该项条款应在允许的最大范围内强制执行，以达到双方的原本意图，而本协议的其余部分仍将具有完全效力。但是，如果适用法律禁止或限制你完全和明确地遵守本协议中标题为“服务要求”或“贵机构的义务”的条款，或阻止执行任何此类条款，本协议将立即终止，你必须立即停止使用本服务。

### 10.7 弃权 and 解释

即使 Apple 未执行本协议的任一条款，也不应被视为放弃未来执行该条款或任何其他条款的权利。任何规定合同语言将由起草人负责解释的法律或法规都不适用于本协议。条款标题仅为阅读方便而设，在解释本协议时不予考虑。

### 10.8 出口管制

除非得到美国法律、你获得本服务或 Apple 软件的管辖区法律以及/或者任何其他适用法律和法规的授权，否则你不得使用、出口、转口、进口、出售或转让本服务或 Apple 软件或其中的任何

部分。具体而言，包括但不限于：本服务和 Apple 软件不得出口或转口 (a) 到任何美国禁运的国家/地区，或 (b) 给美国财政部特别指定国家名单或美国商务部被禁人士或机构名单或任何其他被限制贸易方名单上的任何人士或机构。使用本服务或 Apple 软件，即表示你声明并保证你不位于任何此类国家或地区，也没有被列入任何此类名单。你还同意不会将本服务或 Apple 软件用于美国法律禁止的任何目的，包括但不限于开发、设计、制造或生产核武器、导弹、化学武器或生物武器。

### 10.9 政府最终用户

本服务、Apple 软件及有关文档均属“商业项目”(该词定义见 48 C.F.R. §2.101)，包含“商用电脑软件”和“商用电脑软件文档”(定义见 48 C.F.R. §12.212 或 48 C.F.R. §227.7202，以适用者为准)。与 48 C.F.R. §12.212 或 48 C.F.R. §227.7202-1 至 227.7202-4 (以适用者为准) 一致，“商用电脑软件”和“商用电脑软件文档”根据此处条款和条件按照如下方式被许可给美国政府最终用户：(a) 仅作为“商业项目”；并且 (b) 政府最终用户仅具有授予所有其他最终用户的那些权利。未公布的权利根据美国著作权法律予以保留。

### 10.10 争议解决；适用法律

你与 Apple 之间因本协议、Apple 软件或你与 Apple 之间的关系而产生或与之相关的任何诉讼或其他争议都将在加利福尼亚州北区法院解决；你和 Apple 特此同意该区的州和联邦法院享有此类诉讼或争议解决的属人管辖权且为专属管辖法院。本协议受美国和加利福尼亚州法律管辖并由这些法律进行解释，但加利福尼亚州法律中关于法律冲突的部分除外。尽管存在上述规定：

(a) 如果你属于美国联邦政府的机构、执行机关或部门，则本协议应受美国法律管辖，并且在没有适用联邦法律的情况下，将适用加利福尼亚州的法律。此外，如果本协议中有任何相反的规定(包括但不限于第 5 条“赔偿”)，所有索赔、要求、投诉和争议都受《合同争议法》(41 U.S.C. §§ 601-613)、《塔克法案》(28 U.S.C. § 1346(a) 和 § 1491) 或《联邦侵权赔偿法》(28 U.S.C. §§ 1346(b)、2401-2402、2671-2672、2674-2680) (如适用) 或其他适用监管机构的约束。为避免疑义，如果你是美国联邦、州或地方政府的机构、执行机关或部门，或是美国公共和被认可的教育机构，那么你的赔偿义务仅限于它们不会造成你违反任何适用法律(如《反超支法》) 的范围内，并且你有法律上要求的任何授权或授权法令。

(b) 如果你是美国公共和被认可的教育机构，或是美国州或地方政府的机构、执行机关或部门，则 (i) 本协议将受你所在州(在美国境内) 的法律管辖和解释，但州法律中关于法律冲突的部分除外；(ii) 你与 Apple 之间因本协议、Apple 软件或你与 Apple 之间的关系而产生或与之相关的任何诉讼或其他争议都将在加利福尼亚州北区法院解决；你和 Apple 特此同意该区的州和联邦法院享有此类诉讼或争议解决的属人管辖权且为专属管辖法院，除非你所在州的法律明确禁止此类同意。

(c) 如果你是通过你的政府间章程或协议获得国家法院管辖豁免的国际政府间组织，则由本协议所产生或与之相关的任何争议或索赔(或违约) 应通过仲裁来确定，此仲裁由国际争议解决中心根据它的国际仲裁规则进行管理。仲裁地点为英国伦敦；语言为英语；仲裁员人数应为三人。

在 Apple 要求时，你同意提供相关身份证据，证明你是享受此类特权和豁免权的政府间组织。

(d) 如果你居住在欧盟国家/地区，或是居住在冰岛、挪威、瑞士或英国，则视情况而定，适用法律及法庭为提供本服务的 Apple 实体所在国家/地区的法律及法庭，如“Apple”的定义中所述。

本协议不受到《联合国国际货物销售合同公约》的约束，已明确排除该公约的适用情况。

#### **10.11 完整协议；管辖语言**

本协议构成了双方就本协议中计划的服务达成的完整协议，并取代先前与该标的事项有关的所有谅解和协议。为避免疑义，本协议中的任何内容均不会取代 Apple 软件的最终用户许可协议。只有在以下情况下才可修改本协议：(a) 有双方签字的书面修订，或 (b) 在本协议明确许可的范围内 (例如 Apple 通知你)。本协议的任何翻译版本都是出于善意而提供给你的。如果英文版与任何非英文版之间存在争议，则在你所属司法管辖区的地方法律未禁止的范围内，应以本协议的英文版为准。如果你位于魁北克省、加拿大或是法国境内的政府组织，那么以下条款适用：此处涉及的各方确认，根据他们的要求，本协议以及所有相关文件均用英语起草。 *Les parties ont exigé que le présent contrat et tous les documents connexes soient rédigés en anglais.*

#### **10.12 接受**

贵机构确认并同意，点按“同意”或类似按钮或选中复选框，即表示贵机构 (通过授权代表) 接受并同意本协议的条款和条件。

LM1002  
10/27/2020

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