

AGENDA
General Policy Committee Meeting
September 14, 2022
9:00 AM

Location

San Bernardino County Transportation Authority
First Floor Lobby Board Room
1170 W. 3rd Street, San Bernardino, CA 92410

VIDEO CONFERENCING WILL BE AVAILABLE AT THE FOLLOWING LOCATION:

City Council Chambers
1111 Bailey Ave.
Needles, CA 92363

General Policy Committee Membership

Chair – Vice President

Supervisor Dawn Rowe
County of San Bernardino

President

Mayor Pro Tem Art Bishop
Town of Apple Valley

Past President

Supervisor Curt Hagman
County of San Bernardino

West Valley Representatives

Mayor Ray Marquez
City of Chino Hills, *TC Chair*

Mayor Acquanetta Warren
City of Fontana

Mayor Pro Tem Alan Wapner
City of Ontario

Mt./Desert Representatives

Vice Mayor Edward Paget
City of Needles

Mayor Debra Jones
City of Victorville

East Valley Representatives

Mayor Frank Navarro
City of Colton

Mayor Larry McCallon
City of Highland

Mayor Darcy McNaboe
City of Grand Terrace

Supervisor Joe Baca, Jr.
County of San Bernardino

**San Bernardino County Transportation Authority
San Bernardino Council of Governments**

AGENDA

General Policy Committee Meeting

September 14, 2022

9:00 AM

Location

SBCTA

**First Floor Lobby Board Room
1170 W. 3rd Street, San Bernardino, CA 92410**

VIDEO CONFERENCING WILL BE AVAILABLE AT THE FOLLING LOCATION:

City Council Chambers
1111 Bailey Ave.
Needles, CA 92363

Items listed on the agenda are intended to give notice to members of the public of a general description of matters to be discussed or acted upon. The posting of the recommended actions does not indicate what action will be taken. The Board may take any action that it deems to be appropriate on the agenda item and is not limited in any way by the notice of the recommended action.

To obtain additional information on any items, please contact the staff person listed under each item. You are encouraged to obtain any clarifying information prior to the meeting to allow the Board to move expeditiously in its deliberations. Additional *“Meeting Procedures”* and agenda explanations are attached to the end of this agenda.

CALL TO ORDER

(Meeting Chaired by Dawn Rowe)

- i. Pledge of Allegiance
- ii. Attendance
- iii. Announcements
- iv. Agenda Notices/Modifications - Ashley Izard

Possible Conflict of Interest Issues

Note agenda item contractors, subcontractors and agents which may require member abstentions due to conflict of interest and financial interests. Board Member abstentions shall be stated under this item for recordation on the appropriate item.

1. Information Relative to Possible Conflict of Interest

Note agenda items and contractors/subcontractors, which may require member abstentions due to possible conflicts of interest.

This item is prepared monthly for review by Board and Committee members.

CONSENT CALENDAR

Items listed on the Consent Calendar are expected to be routine and non-controversial. The Consent Calendar will be acted upon as a single motion. Items on the Consent Calendar may be removed for discussion by Board Members.

Consent - Administrative Matters

2. August 2022 Procurement Report

Pg. 12

Receive the August 2022 Procurement Report.

Presenter: Shaneka Morris

This item is not scheduled for review by any other policy committee or technical advisory committee.

DISCUSSION ITEMS

Discussion - Administrative Matters

3. Fiscal Year 2022/2023 Budget Action Plan - First Quarter Report

Pg. 22

Receive the Fiscal Year 2022/2023 Budget Action Plan - First Quarter Report.

Presenter: Raymond Wolfe

This item is not scheduled for review by any other policy committee or technical advisory committee.

4. Appointment to the Independent Taxpayer Oversight Committee

Pg. 32

That the General Policy Committee recommend the Board, acting as the San Bernardino County Transportation Authority:

Approve the appointment of Cole Jackson, Certified Public Accountant, to the Independent Taxpayer Oversight Committee, with a term ending October 31, 2024.

Presenter: Hilda Flores

This item is not scheduled for review by any other policy committee or technical advisory committee. The application has been reviewed by the Executive Board on August 10, 2022.

5. Sole Source Click Wrap Agreements with Google LLC and Apple, Inc. for Mobile Application Developer Accounts

Pg. 33

That the General Policy Committee recommend the Board, acting as the San Bernardino County Transportation Authority (SBCTA):

A. Approve a click wrap **sole source** agreement (Contract No. 23-1002829) with Google LLC (Google), consisting of Google's privacy policies, terms of service, and other user policies, for a Google Play Console developer account, effective upon execution of an online application and payment of a one-time \$25 registration fee, continuing perpetually, and terminating only when SBCTA suspends all use of Google's developer services and removes its applications from the Google Play application store.

Agenda Item 5 (cont.)

B. Approve a click wrap sole source agreement (Contract No. 23-1002830) with Apple, Inc. (Apple), in an amount not-to-exceed \$99 annually, continuing perpetually, and terminating only when SBCTA suspends all use of Apple's developer services and removes its applications from the Apple application store, consisting of Apple's privacy policies, terms of service, and other user policies, for an Apple developer account, effective upon execution of an online application.

C. Designate the Chief of Information Technology as authorized to execute both Google's and Apple's online applications and agreements, on behalf of SBCTA, subject to review and approval by General Counsel.

Presenter: Matt Farokhmanesh

This item is not scheduled for review by any other policy committee or technical advisory committee. SBCTA General Counsel, Procurement Manager and Risk Manager have reviewed this item and the draft agreements.

6. Agreement No. 23-1002865 with Omnitrans for Implementation of Disadvantaged Business Enterprise Program for Federal Transit Administration Subrecipients Pg. 267

That the General Policy Committee recommend the Board, acting as the San Bernardino County Transportation Authority:

Approve Agreement No. 23-1002865 with Omnitrans for Disadvantaged Business Enterprise Implementation for Federal Transit Administration Subrecipients.

Presenter: Shaneka Morris

This item is not scheduled for review by any other policy committee or technical advisory committee. SBCTA General Counsel, Procurement Manager and Risk Manager have reviewed this item and the draft agreement.

Discussion - Air Quality/Traveler Services

7. Release of Request for Proposals No. 22-1002819 Freeway Service Patrol for I-10 Express Lanes Pg. 279

That the General Policy Committee recommend the Board, acting as the San Bernardino County Transportation Authority:

Approve the release of Request for Proposals No. 22-1002819 for the procurement of tow operator services for the Freeway Service Patrol Beat on Interstate 10 Express Lanes Segment 1.

Presenter: Cheryl Wilson

This item is not scheduled for review by any other policy committee or technical advisory committee. SBCTA Procurement Manager, Risk Manager and General Counsel have reviewed the item and the draft RFP.

Discussion - Regional/Subregional Planning

8. Transportation Development Act Article 3: Victorville Old Town Phase I Extension & Scope Change Pg. 302

That the General Policy Committee recommend the Board, acting as the San Bernardino County Transportation Authority:

Approve the City of Victorville's Transportation Development Act Article 3: Old Town Phase I award scope change request to remove construction of a retaining wall on "B" Street at Hesperia Road from the project Scope of Work and to extend the project deadline from December 31, 2022 to June 30, 2023.

Presenter: Ginger Koblasz

This item is not scheduled for review by any other policy committee or technical advisory committee.

Discussion - Council of Governments

9. Equity Focus Group Report Pg. 337

Receive information and provide comment on Equity Focus Groups report.

Presenter: Monique Reza-Arellano

This item was received by the City/County Manager's Technical Advisory Committee on September 1, 2022. This item is not scheduled for review by any other policy committee.

10. Public Outreach for Cucamonga Canyon Management Plan Pg. 356

That the General Policy Committee recommend the Board, acting as the San Bernardino Associated Governments (SBCOG) and the San Bernardino County Transportation Authority (SBCTA):

A. Approve Cooperative Agreement No. 23-1002846 with the Rancho Cucamonga Fire Protection District (District) to reimburse SBCOG in the amount of \$23,620.20 for the District's portion of a Public Outreach Plan for the Cucamonga Canyon Forest Management Plan.

B. Approve Cooperative Agreement No. 23-1002847 with the County of San Bernardino (County) to reimburse SBCOG in the amount of \$2,959.90 for the County's portion of the Public Outreach Plan for the Cucamonga Canyon Forest Management Plan.

C. Approve a budget amendment to increase the Fiscal Year 2022/2023 budget for Task No. 501 Intergovernmental – Council of Governments in the amount of \$26,580.10 to be funded by the Council of Governments Fund through the contributions in Recommendations A and B.

Presenter: Monique Reza-Arellano

This item is not scheduled for review by any other policy committee or technical advisory committee. SBCTA General Counsel and Risk Manager have reviewed this item and the draft cooperative agreements.

Public Comment

Brief Comments from the General Public

Comments from Board Members

Brief Comments from Board Members

ADJOURNMENT

Additional Information

Attendance

Acronym List

Mission Statement

Pg. 375

Pg. 376

Pg. 378

The next General Policy Committee meeting is scheduled for October 12, 2022

Meeting Procedures and Rules of Conduct

Meeting Procedures - The Ralph M. Brown Act is the state law which guarantees the public's right to attend and participate in meetings of local legislative bodies. These rules have been adopted by the Board of Directors in accordance with the Brown Act, Government Code 54950 et seq., and shall apply at all meetings of the Board of Directors and Policy Committees.

Accessibility - The meeting facility is accessible to persons with disabilities. If assistive listening devices or other auxiliary aids or services are needed in order to participate in the public meeting, requests should be made through the Clerk of the Board at least three (3) business days prior to the Board meeting. The Clerk can be reached by phone at (909) 884-8276 or via email at clerkoftheboard@gosbcta.com and office is located at 1170 W. 3rd Street, 2nd Floor, San Bernardino, CA.

Agendas – All agendas are posted at www.gosbcta.com/board/meetings-agendas/ at least 72 hours in advance of the meeting. Staff reports related to agenda items may be reviewed online at that web address. Agendas are also posted at 1170 W. 3rd Street, 1st Floor, San Bernardino at least 72 hours in advance of the meeting.

Agenda Actions – Items listed on both the “Consent Calendar” and “Discussion” contain recommended actions. The Board of Directors will generally consider items in the order listed on the agenda. However, items may be considered in any order. New agenda items can be added and action taken by two-thirds vote of the Board of Directors or unanimous vote of members present as provided in the Ralph M. Brown Act Government Code Sec. 54954.2(b).

Closed Session Agenda Items – Consideration of closed session items excludes members of the public. These items include issues related to personnel, pending litigation, labor negotiations and real estate negotiations. Prior to each closed session, the Chair will announce the subject matter of the closed session. If action is taken in closed session, the Chair may report the action to the public at the conclusion of the closed session.

Public Testimony on an Item – Members of the public are afforded an opportunity to speak on any listed item. Individuals wishing to address the Board of Directors or Policy Committee Members should complete a “Request to Speak” form, provided at the rear of the meeting room, and present it to the Clerk prior to the Board's consideration of the item. A "Request to Speak" form must be completed for each item an individual wishes to speak on. When recognized by the Chair, speakers should be prepared to step forward and announce their name and address for the record. In the interest of facilitating the business of the Board, speakers are limited to three (3) minutes on each item. Additionally, a twelve (12) minute limitation is established for the total amount of time any one individual may address the Board at any one meeting. The Chair or a majority of the Board may establish a different time limit as appropriate, and parties to agenda items shall not be subject to the time limitations. Members of the public requesting information be distributed to the Board of Directors must provide 40 copies of such information in advance of the meeting, except for noticed public hearings. Information provided as public testimony is not read into the record by the Clerk.

The Consent Calendar is considered a single item, thus the three (3) minute rule applies. Consent Calendar items can be pulled at Board member request and will be brought up individually at the specified time in the agenda allowing further public comment on those items.

Agenda Times – The Board is concerned that discussion take place in a timely and efficient manner. Agendas may be prepared with estimated times for categorical areas and certain topics to be discussed. These times may vary according to the length of presentation and amount of resulting discussion on agenda items.

Public Comment – At the end of the agenda, an opportunity is also provided for members of the public to speak on any subject within the Board’s authority. Matters raised under “Public Comment” may not be acted upon at that meeting. “Public Testimony on any Item” still applies.

Disruptive or Prohibited Conduct – If any meeting of the Board is willfully disrupted by a person or by a group of persons so as to render the orderly conduct of the meeting impossible, the Chair may recess the meeting or order the person, group or groups of person willfully disrupting the meeting to leave the meeting or to be removed from the meeting. Disruptive or prohibited conduct includes without limitation addressing the Board without first being recognized, not addressing the subject before the Board, repetitiously addressing the same subject, failing to relinquish the podium when requested to do so, bringing into the meeting any type of object that could be used as a weapon, including without limitation sticks affixed to signs, or otherwise preventing the Board from conducting its meeting in an orderly manner. Your cooperation is appreciated!

General Practices for Conducting Meetings of Board of Directors and Policy Committees

Attendance.

- The Chair of the Board or a Policy Committee (Chair) has the option of taking attendance by Roll Call or Self-Introductions. If attendance is taken by Roll Call, the Clerk of the Board will call out by jurisdiction or supervisorial district. The Member or Alternate will respond by stating his/her name. If attendance is by Self-Introduction, the Member or Alternate will state his/her name and jurisdiction or supervisorial district.
- A Member/Alternate, who arrives after attendance is taken, shall announce his/her name prior to voting on any item.
- A Member/Alternate, who wishes to leave the meeting after attendance is taken but before remaining items are voted on, shall announce his/her name and that he/she is leaving the meeting.

Basic Agenda Item Discussion.

- The Chair announces the agenda item number and states the subject.
- The Chair calls upon the appropriate staff member or Board Member to report on the item.
- The Chair asks members of the Board/Committee if they have any questions or comments on the item. General discussion ensues.
- The Chair calls for public comment based on “Request to Speak” forms which may be submitted.
- Following public comment, the Chair announces that public comment is closed and asks if there is any further discussion by members of the Board/Committee.
- The Chair calls for a motion from members of the Board/Committee.
- Upon a motion, the Chair announces the name of the member who makes the motion. Motions require a second by a member of the Board/Committee. Upon a second, the Chair announces the name of the Member who made the second, and the vote is taken.
- The “aye” votes in favor of the motion shall be made collectively. Any Member who wishes to oppose or abstain from voting on the motion, shall individually and orally state the Member’s “nay” vote or abstention. Members present who do not individually and orally state their “nay” vote or abstention shall be deemed, and reported to the public, to have voted “aye” on the motion.

The Vote as specified in the SANBAG Bylaws.

- Each Member of the Board of Directors shall have one vote. In the absence of the official representative, the alternate shall be entitled to vote. (Board of Directors only.)
- Voting may be either by voice or roll call vote. A roll call vote shall be conducted upon the demand of five official representatives present, or at the discretion of the presiding officer.

Amendment or Substitute Motion.

- Occasionally a Board Member offers a substitute motion before the vote on a previous motion. In instances where there is a motion and a second, the maker of the original motion is asked if he or she would like to amend his or her motion to include the substitution or withdraw the motion on the floor. If the maker of the original motion does not want to amend or withdraw, the substitute motion is voted upon first, and if it fails, then the original motion is considered.
- Occasionally, a motion dies for lack of a second.

Call for the Question.

- At times, a Member of the Board/Committee may “Call for the Question.”
- Upon a “Call for the Question,” the Chair may order that the debate stop or may allow for limited further comment to provide clarity on the proceedings.
- Alternatively and at the Chair’s discretion, the Chair may call for a vote of the Board/Committee to determine whether or not debate is stopped.
- The Chair re-states the motion before the Board/Committee and calls for the vote on the item.

The Chair.

- At all times, meetings are conducted in accordance with the Chair’s direction.
- These general practices provide guidelines for orderly conduct.
- From time-to-time circumstances require deviation from general practice.
- Deviation from general practice is at the discretion of the Chair.

Courtesy and Decorum.

- These general practices provide for business of the Board/Committee to be conducted efficiently, fairly and with full participation.
- It is the responsibility of the Chair and Members to maintain common courtesy and decorum.

Adopted By SANBAG Board of Directors January 2008

Revised March 2014

Revised May 4, 2016

Minute Action

AGENDA ITEM: 1

Date: September 14, 2022

Subject:

Information Relative to Possible Conflict of Interest

Recommendation:

Note agenda items and contractors/subcontractors, which may require member abstentions due to possible conflicts of interest.

Background:

In accordance with California Government Code 84308, members of the Board may not participate in any action concerning a contract where they have received a campaign contribution of more than \$250 in the prior twelve months from an entity or individual, except for the initial award of a competitively bid public works contract. This agenda contains recommendations for action relative to the following contractors:

| Item No. | Contract No. | Principals & Agents | Subcontractors |
|----------|--------------|---|----------------|
| 5 | 23-1002829 | Google LLC <i>Sundar Pichai</i> | None |
| 5 | 23-1002830 | Apple, Inc. <i>Tim Cook</i> | None |
| 6 | 23-1002865 | Omnitrans | None |
| 10 | 23-1002846 | Rancho Cucamonga Fire Protection District | None |
| 10 | 23-1002847 | County of San Bernardino | None |

Financial Impact:

This item has no direct impact on the Budget.

Reviewed By:

This item is prepared monthly for review by Board and Committee members.

Responsible Staff:

Carrie Schindler, Deputy Executive Director

Approved
General Policy Committee
Date: September 14, 2022

Witnessed By:

Entity: San Bernardino Council of Governments, San Bernardino County Transportation Authority

Minute Action

AGENDA ITEM: 2

Date: September 14, 2022

Subject:

August 2022 Procurement Report

Recommendation:

Receive the August 2022 Procurement Report.

Background:

The Board of Directors adopted the Procurement and Special Risk Assessment Policy (Policy No. 11000) on January 3, 1997, and approved the last revision on October 6, 2021. The Board of Directors authorized the Executive Director, or his designee, to approve: a) contracts and purchase orders up to \$100,000; b) Contract Task Orders (CTO) up to \$500,000 and for CTOs originally \$500,000 or more, increasing the CTO amount up to \$250,000; c) amendments with a zero dollar value; d) amendments to exercise the option term if the option term was approved by the Board of Directors in the original contract; e) amendments that cumulatively do-not-exceed 50% of the original contract or purchase order value or \$100,000, whichever is less; f) amendments that do-not-exceed contingency amounts authorized by the Board of Directors; and g) release Request for Proposals (RFP), Request for Qualifications (RFQ), and Invitation for Bids (IFB) for proposed contracts from which funding has been approved in the Annual Budget, and are estimated not-to-exceed \$1,000,000.

The Board of Directors further authorized General Counsel to award and execute legal services contracts up to \$100,000 with outside counsel as needed, and authorized Department Directors to approve and execute Contingency Amendments that do-not-exceed contingency amounts authorized by the Board of Directors. Below is a summary of the actions taken:

- No New Contracts.
- Three (3) contract amendments were executed for a total cost of \$50,200.00.
- Five (5) contract CTOs were executed for a total cost of \$64,475.00.
- No Contingency Releases.
- Three (3) Purchase Orders were executed for a total cost of \$44,259.29.
- No Purchase Order Amendments.
- One (1) Request for Proposal was released.

A list of all Contracts and Purchase Orders that were executed by the Executive Director, Department Director and/or General Counsel during the month of August 2022 are presented herein as Attachment A, and all RFPs and IFBs are presented in Attachment B.

Financial Impact:

This item is consistent with the Fiscal Year 2022/2023 Budget. Presentation of the monthly procurement report demonstrates compliance with the Procurement and Special Risk Assessment Policy.

Reviewed By:

This item is not scheduled for review by any other policy committee or technical advisory committee.

Entity: San Bernardino Council of Governments, San Bernardino County Transportation Authority

General Policy Committee Agenda Item
September 14, 2022
Page 2

Responsible Staff:

Shaneka Morris, Procurement Manager

Approved
General Policy Committee
Date: September 14, 2022

Witnessed By:

San Bernardino Council of Governments
San Bernardino County Transportation Authority

Attachment A

August Contract Actions

New Contracts Executed:

| Contract No. | Description of Services | Vendor Name | Contract Amount |
|--------------|-------------------------|-------------|-----------------|
| None | | | |

Attachment A

August Amendment Actions

Contract Amendments Executed:

| Contract No. & Amendment No. | Reason for Amendment (Include a Description of the Amendment) | Vendor Name | Contract History | Contract Amount |
|------------------------------|--|---|--------------------------|--------------------|
| 16-1001507 No. 2 | Increase contract amount by \$4,000 to pay vendor for interest earnings related to funds withheld and to modify insurance. | BYD Motors LLC | Original | \$7,554,000.00 |
| | | | Prior Amendments(CTOs) | \$15,000.00 |
| | | | Current Amendment | \$4,000.00 |
| | | | Total Contract Amount | \$7,573,000.00 |
| 22-1002671 No. 1 | Extend contract for six months to allow sufficient time for a new procurement. | Agiline Software LLC | Original | \$14,400.00 |
| | | | Prior Amendments | \$0.00 |
| | | | Current Amendment | \$7,200.00 |
| | | | Total Contract Amount | \$21,600.00 |
| 20-1002323 No. 3 | Increase contract amount by \$39,000 to provide Construction Freeway Service Patrol (CFSP) support services. | Carpe Carma LLC, DBA Pomona Valley Towing | Original | \$2,196,291.00 |
| | | | Prior Amendments | \$54,916.00 |
| | | | Current Amendment | \$39,000.00 |
| | | | Total Contract Amount | \$2,290,207.00 |

Attachment: Procurement Report Attachment A (8256 : August 2022 Procurement Report)

Attachment A

August Contract Task Order Actions

Contract Task Order (CTO) Executed:

| Contract No. & CTO No. | Description of CTO | Vendor Name | Contract Amount | CTO History | CTO Amount |
|---------------------------|--|--------------------------------------|--|------------------------------|---------------|
| 23-1002832 No. 2 | Labor compliance for I-10 Express Lanes Contract 1. | Gafcon Inc. | \$500,000.00 (available \$500,000) Shared with GCAP Services Inc. (22- 1002768) and Cumming Management Group Inc. (22-1002769) | Original | \$3,000.00 |
| | | | | Prior Amendments | \$0.00 |
| | | | | Current Amendment | \$0.00 |
| | | | | Total CTO Amount | \$3,000.00 |
| 23-1002832 No. 4 | Labor compliance services for the on-call maintenance of way contract. | Gafcon Inc. | \$500,000.00 (available \$475,500) Shared with GCAP Services Inc.(22- 1002768) and Cumming Management Group Inc. (22-1002769) | Original | \$3,000.00 |
| | | | | Prior Amendments | \$0.00 |
| | | | | Current Amendment | \$0.00 |
| | | | | Total CTO Amount | \$3,000.00 |
| 20-1002377 No. 9 | Environmental services for the I-15 and I-215 Expansion. | Vandermost Consulting Services | \$3,000,000 (available \$2,278,190.84) | Original | \$4,475.00 |
| | | | | Prior Amendments | \$0.00 |
| | | | | Current Amendment | \$0.00 |
| | | | | Total CTO Amount | \$4,475.00 |

Attachment: Procurement Report Attachment A (8256 : August 2022 Procurement Report)

Attachment A

August Contract Task Order Actions

Contract Task Order (CTO) Executed (continued):

| Contract No. & CTO No. | Vendor Name | Description of Services | Contract Amount | CTO History | CTO Amount |
|---------------------------|--|--|--|--------------------------|---------------|
| 20-1002768 No. 1 | GCAP Services Inc. | Labor compliance for multiple Project Delivery projects. | \$500,000 (available \$493,500) Shared with Gafcon Inc. (23- 1002832) and Cumming Management Group Inc. (22-1002769) | Original | \$15,000.00 |
| | | | | Prior Amendments | \$0.00 |
| | | | | Current Amendment | \$0.00 |
| | | | | Total CTO Amount | \$15,000.00 |
| 20-1002323 No.2 | Carpe Carma LLC, DBA Pomona Valley Towing | Construction Freeway Service Patrol (CFSP) State Route 60 at Ramona in Ontario. | \$2,290,207 | Original | \$39,000.00 |
| | | | | Prior Amendments | \$0.00 |
| | | | | Current Amendment | \$0.00 |
| | | | | Total CTO Amount | \$39,000.00 |

Attachment: Procurement Report Attachment A (8256 : August 2022 Procurement Report)

Attachment A

August Contingency Released Actions

Contingency Released Executed:

| Contract No. & Contingency No. | Reason for Contingency Amendment (Include a Description of the Contingency Amendment) | Vendor Name | Contract History | Contract Amount |
|--------------------------------------|--|-------------|----------------------------|-----------------|
| None | | | Original | \$0.00 |
| | | | Prior Amendments | \$0.00 |
| | | | Prior Contingencies | \$0.00 |
| | | | Current Contingency | \$0.00 |
| | | | Amended Contract Amount | \$0.00 |

Attachment A

August Purchase Order Actions

Purchase Orders Executed:

| PO No. | PO Posting Date | Vendor Name | Description of Services | PO Dollar Amount |
|---------|-----------------|------------------------------|---|------------------|
| 4002292 | 8/5/2022 | DPE Systems, Inc. | Unitrends backup and disaster recovery system | \$31,503.29 |
| 4002293 | 8/10/2022 | Citycom Real Estate Services | Alarm badge system install | \$10,260.00 |
| 4002296 | 8/17/2022 | Wavelength Automation, Inc. | Legislative bill tracking system | \$2,496.00 |

Attachment: Procurement Report Attachment A (8256 : August 2022 Procurement Report)

Attachment A

August Purchase Order Amendment Actions

Purchase Order Amendments Executed:

| Purchase Order No. & Amendment No. | Description of Services and Reason for Amendment | Vendor Name | Purchase Order History | Purchase Order Amount |
|------------------------------------|--|-------------|--------------------------|-----------------------|
| None | | | Original | \$0.00 |
| | | | Prior Amendments | \$0.00 |
| | | | Current Amendment | \$0.00 |
| | | | Amended PO Amount | \$0.00 |

Attachment: Procurement Report Attachment A (8256 : August 2022 Procurement Report)

Attachment B**August RFP's, RFQ's and IFB's****Release of RFP's, RFQ's and IFB's**

| Release Date | RFP/RFQ/IFB No. | Anticipated Dollar Amount | Anticipated Award Date | Description of Overall Program and Program Budget |
|---------------------|------------------------|----------------------------------|-------------------------------|--|
| 8/23/2022 | 23-1002833 | \$191,460 | 1/4/2023 | To develop an operations model to support the reporting of the TIFIA loan. |

Minute Action

AGENDA ITEM: 3

Date: September 14, 2022

Subject:

Fiscal Year 2022/2023 Budget Action Plan - First Quarter Report

Recommendation:

Receive the Fiscal Year 2022/2023 Budget Action Plan - First Quarter Report.

Background:

The San Bernardino County Transportation Authority's (SBCTA) Fiscal Year 2022/2023 Budget Action Plan (BAP) establish the Board of Directors priorities for the year. The Executive Director uses this as a tool with the Executive Management Team to evaluate SBCTA's progress in achieving the Board's priorities. The Executive Director or his designee will provide quarterly updates on the status of the goals as listed in the attached BAP.

Financial Impact:

This item is consistent with the Adopted Fiscal Year 2022/2023 Budget.

Reviewed By:

This item is not scheduled for review by any other policy committee or technical advisory committee.

Responsible Staff:

Raymond Wolfe, Executive Director

Approved
General Policy Committee
Date: September 14, 2022

Witnessed By:

Entity: San Bernardino County Transportation Authority

San Bernardino County Transportation Authority
Fiscal Year (FY) 2022/2023 Budget Action Plan Quarterly Update

3.a

| Initiative #1: Transparent and Accountable Allocation Strategies | | | | |
|--|---|--|---|--|
| Division Strategy: Complete timely audits of Measure I and Transportation Development Act recipients | | | | |
| 1A | Action Plan | Milestones | Milestone Status | Responsibility |
| | Manage and communicate with Audit firm to plan and complete annual audits. | Q2 | On Schedule | Finance |
| | Monitor progress of audits. | Q2 | On Schedule | |
| | Inform Committees and Board of status of audits. | Q3 | Audits will be reported to General Policy Committee by March 2023 and Board in April 2023. | |
| | Manage Transportation Development Act (TDA) triennial performance audits of SBCTA and transit operators. | Board approval to release request for proposals for audit services - Q4 | RFP is scheduled to be released by Q4. | Fund Administration |
| | Notes | | | |
| | | | | |
| Division Strategy: Update construction in progress and conduct annual inventory of capital assets | | | | |
| 1B | Action Plan | Milestones | Milestone Status | Responsibility |
| | Conduct biannual inventory of capital and inventorial assets, including updates to construction in progress (CIP). | Q2 | CIP on schedule, inventory delayed to Q4. | Finance |
| | Notes | | | |
| | | | | |
| Division Strategy: Use strategic programming to ensure that no funds are lost | | | | |
| 1C | Action Plan | Milestones | Milestone Status | Responsibility |
| | Manage projects closely with California Department of Transportation (Caltrans) to ensure adequate resources are available when projects are ready. | May 1 is Caltrans' deadline for guaranteed access to federal Obligation Authority – Q4 | Staff will monitor the progress of projects scheduled for obligation in Federal Fiscal Year (FFY) 22/23 to encourage delivery prior to May 1. | Fund Administration, Project Delivery, Transit |
| | | June 30 is California Transportation Commission (CTC) deadline for project allocation or extension requests – Q4 | Staff will monitor the progress of projects scheduled for allocation in FY 22/23 to ensure either allocation or extension occurs prior to July 2023. Actual CTC deadline for submittal is by May 2023. | |
| | Manage projects to ensure funds are not lost. | Request allocation of competitive grant funds for I-10 Truck Climbing Plan project - Q3 | Staff will monitor the progress of the I-10 Truck Climbing Lane project to ensure allocation request is submitted before end Q3. Actual CTC deadline for submittal is by May 2023. | Fund Administration |
| | | Request allocation of competitive grant funds for West Valley Connector project - Q3 | Staff will monitor the progress of the West Valley Connector project to ensure allocation request is submitted before end Q3. Actual CTC deadline for submittal is by May 2023. | |
| | | Request allocation of Planning, Programming and Monitoring funds for Fiscal Year 2023/2024 - Q4 | Staff will request allocation of these funds in June 2023. Actual CTC deadline for submittal is by May 2023. | |
| | | Program Local Partnership Program formula share funds on I-15 Express Lanes Contract 1 - Q4 | Local Partnership Program formula funds were approved for programming on the I-15 Express Lanes Contract 1 project by the CTC at their August 2022 meeting. | |
| | | Request allocation or extension of competitive grant funds awards and State Transportation Improvement Program (STIP) for I-15 Express Lanes Contract 1 - Q4 | Staff will monitor the progress of the I-15 Express Lanes Contract 1 project to ensure either an allocation request or allocation extension is submitted before Q4. Actual CTC deadline for submittal is by May 2023. | |
| | Notes | | | |
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Attachment: FY 22_23 Budget Action Plan Quarterly Update -Q1 (8803 : Fiscal Year 2022/2023 Budget

San Bernardino County Transportation Authority
Fiscal Year (FY) 2022/2023 Budget Action Plan Quarterly Update

3.a

| | | | | |
|---|---|--|---|--|
| Division Strategy: Protect San Bernardino County’s equitable share of available state and federal funds | | | | |
| 1D | Action Plan | Milestones | Milestone Status | Responsibility |
| | Develop funding strategies that maximize resources available and result in opportunities to seize additional state and federal funds. | Ensure Obligation Authority and apportionment are available as new projects are ready while planning for implementation of the zero emission bus mandate - Q4 | Staff will monitor the progress of projects scheduled for obligation in FFY 22/23 and FFY 23/24 to encourage delivery ahead of schedule while protecting funds available for future projects. | Fund Administration, Project Delivery, Transit |
| | Notes | | | |
| | | | | |
| Division Strategy: Develop long-term bonding needs to help leverage other funds and deliver projects | | | | |
| 1E | Action Plan | Milestones | Milestone Status | Responsibility |
| | Establish plan for 2024 sales tax revenue bond program through development of the 2023 Update to the 10-Year Delivery Plan. | Monitor implementation of the 2021 Update to the 10-Year Delivery Plan and Measure I revenue receipts to identify need for short-term borrowing – Ongoing | Ongoing. Staff monitors project cost increases and reports the expected impact of these increases to the Board as contracts are approved. | Fund Administration (Finance, Project Delivery, Transit, Planning) |
| | | Begin process of development of the 2023 Update to the 10-Year Delivery Plan for adoption by the Board in December 2023 - Q3 | On Schedule | |
| | Notes | | | |
| | | | | |
| Division Strategy: Manage geographic equity in fund distribution across the County | | | | |
| 1F | Action Plan | Milestones | Milestone Status | Responsibility |
| | Manage long-term strategy for ensuring geographic equity in fund distribution over the life of the Measure. | Work with Victor Valley Transit Authority to identify Federal funds required for implementation of the zero emission bus mandate in the North Desert and Victor Valley Subareas - Q2 | On Schedule | Fund Administration (Transit) |
| | Notes | | | |
| | | | | |
| Division Strategy: Manage SBCTA railroad right-of-way in an efficient and comprehensive fashion | | | | |
| 1G | Action Plan | Milestones | Milestone Status | Responsibility |
| | Manage SBCTA railroad right of way in an efficient and comprehensive fashion. | Ongoing | | Transit |
| | Notes | | | |
| | | | | |
| Initiative #2: Engender Public Trust | | | | |
| Division Strategy: Secure an unmodified opinion of Comprehensive Annual Financial Report (CAFR) | | | | |
| 2A | Action Plan | Milestones | Milestone Status | Responsibility |
| | Plan audit meeting with Executive Board officers and Certified Public Accountant (CPA) firm. | Meet with Executive Board - Q2 | Complete | Finance |
| | Notes | | | |
| Meeting was held in July 2022. | | | | |

San Bernardino County Transportation Authority
Fiscal Year (FY) 2022/2023 Budget Action Plan Quarterly Update

| Division Strategy: Obtain Certificate of Achievement for Excellence in Financial Reporting | | | | |
|---|--|---|--|---|
| 2B | Action Plan | Milestones | Milestone Status | Responsibility |
| | Apply for Government Finance Officers Association (GFOA) award for the Annual Financial Report (Annual Report). | Q3 | On Schedule | Finance |
| | Notes | | | |
| | | | | |
| Division Strategy: Obtain Distinguished Budget Presentation Award | | | | |
| 2C | Action Plan | Milestones | Milestone Status | Responsibility |
| | Apply for GFOA award for annual budget. | Q1 | Complete | Finance |
| | Notes | | | |
| | | | | |
| Division Strategy: Complete internal control self-assessment to identify areas of improvement. | | | | |
| 2D | Action Plan | Milestones | Milestone Status | Responsibility |
| | Complete review of annual internal control self-assessment (AICA). | Q3 | On Schedule | Finance |
| | Notes | | | |
| | | | | |
| Division Strategy: Implement the Records Retention Schedule | | | | |
| 2E | Action Plan | Milestones | Milestone Status | Responsibility |
| | Continue with the implementation of the Records Retention Program, including establishing quarterly meetings with records coordinators, an annual clean up day and implementing a system that will automate disposition of documents that have passed retention. | Clean up day - Q1 | Complete | Special Projects and Strategic Initiatives and Executive Administration and Support |
| | | Identify the retention period for boxes located at SBCTA offsite storage for at least four (4) departments, one department per quarter. | Delayed until a revised retention schedule is presented for Board approval in November. Two departments will be completed in Q2. | |
| | | Automate at least four (4) records series - Q4 | On Schedule | |
| | Notes | | | |
| | | | | |
| | Initiative #3: Focus on Creating and Strengthening Collaborative Partnerships with Governmental and Business Entities | | | |
| Division Strategy: Work with other governments and business groups to leverage resources for our region's benefit | | | | |
| 3A | Action Plan | Milestones | Milestone Status | Responsibility |
| | Prepare tools to assist local agencies with changes to statewide housing policies and environmental regulations. | Continue to explore a Housing Trust for our region as a way to leverage additional funds for affordable housing. Work with City/County Manager Technical Advisory Committee in Q1/Q2 and report to Board on possible actions and funding. | On Schedule | COG |
| | Partner with local and government agencies to improve opportunities in workforce development. | Work with state, County and cities to expand participation of our Business to Business event as a tool for improving access for smaller businesses - Event scheduled in Q2. | Delayed. This has been pushed out to 2023 Business to Business event. | |
| | Continue close coordination with Brightline West to support their construction along the San Gabriel Subdivision between I-15 and Cucamonga Station, as well as coordinated development of the Cucamonga Station. | Present Disposition and Development Agreement (DDA) and Associated Aerial Platform easement to Board for approval in October 2022. | On Schedule | Transit |
| | Notes | | | |
| | | | | |

San Bernardino County Transportation Authority
Fiscal Year (FY) 2022/2023 Budget Action Plan Quarterly Update

3.a

Division Strategy: Enhance COG role

| | | | | |
|----|--|---|---|----------------|
| 3B | Action Plan | Milestones | Milestone Status | Responsibility |
| | Organize annual City/County Conference. | In person conference set for Spring 2023. | Ongoing | COG |
| | Collaborate with Member Agencies through the COG Advisory Group during the decision-making process on items related to the COG work plan and any items related to the Countywide Vision. | Ongoing quarterly meetings with COG Advisory Group and periodic updates to City Managers. | Ongoing. COG Advisory Group is obsolete. The SBCOG decision-making process on items related to the COG work plan and Countywide Vision are undertaken by the CCMTAC directly. | |
| | Notes | | | |
| | | | | |

Division Strategy: Enhance SBCOG’s and the region’s ability to compete for grant funding

| | | | | |
|----|--|--|------------------|----------------|
| 3C | Action Plan | Milestones | Milestone Status | Responsibility |
| | Host grant writing workshop for our members and other local government partners. | Q3 | On Schedule | COG |
| | Better communicate grant opportunities to member agencies. | Provide monthly updates to member agencies on new grant opportunities. | Ongoing | |
| | Notes | | | |
| | | | | |

Division Strategy: Assist local governments with environmental and efficiency initiatives

| | | | | |
|----|---|--|-----------------------|----------------------|
| 3D | Action Plan | Milestones | Milestone Status | Responsibility |
| | Work with local agencies with Zero Emission Vehicle (ZEV) readiness plan and assist in identifying grant opportunities for charging infrastructure. | Include EV charging infrastructure grants when available in monthly grant updates. | Ongoing | Air Quality/Mobility |
| | Assist local agencies with reducing energy consumption and achieving savings through formation of a Regional Energy Network (REN). | Adopt formal REN governing documents in Q1 and begin to implement programs in three focus areas of Public Sector, Workforce Education and Training, and Codes and Standards in Q2. | Delayed to Q2 and Q3. | |
| | Notes | | | |
| | Adopting I-REN governing documents to occur in Q1/Q2. Change in status due to additional review of documents/agreements required by project partners. Implementation of programs likely to begin in Q3. | | | |

Initiative #4: Accelerate Delivery of Capital Projects

Division Strategy: Deliver the Redlands Passenger Rail Project & Implement Arrow Service

| | | | | |
|----|------------------------|------------|------------------|----------------|
| 4A | Action Plan | Milestones | Milestone Status | Responsibility |
| | Start revenue service. | Q2 | On Schedule | Transit |
| | Notes | | | |

Attachment: FY 22_23 Budget Action Plan Quarterly Update -Q1 (8803 : Fiscal Year 2022/2023 Budget

San Bernardino County Transportation Authority
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| Division Strategy: Support Delivery the West Valley Connector Phase I | | | | |
|---|--|---------------------|---|------------------|
| 4B | Action Plan | Milestones | Milestone Status | Responsibility |
| | Execute full funding grant agreement with the Federal Transit Administration (FTA) for the Small Starts funding and supplemental American Recovery Plan funding. | Q1 | Delayed to Q3 | Transit |
| | Issue Invitation for Bids (IFB) for construction. | Q3 | On Schedule | |
| | Notes | | | |
| | Final application package scheduled for Q2 and anticipate final grant to be in place by Q3. | | | |
| Division Strategy: Produce Zero Emission Multiple Unit | | | | |
| 4C | Action Plan | Milestones | Milestone Status | Responsibility |
| | Begin dynamic testing in Europe. | Q2 | On Schedule | Transit |
| | Notes | | | |
| Dynamic testing in Europe is scheduled to start in October 2022. | | | | |
| Division Strategy: Deliver the Tunnel to ONT Project | | | | |
| 4D | Action Plan | Milestones | Milestone Status | Responsibility |
| | Draft Environmental Document prepared. | Q4 | Delayed to Q1 FY 23/24. | Transit |
| | Notes | | | |
| Environmental technical studies are currently on-going as well as coordination with FTA. FTA is slow to start the NEPA process. | | | | |
| Division Strategy: Delivery of Capital Projects - Project Approval and Environmental Document (PA/ED) Milestones: | | | | |
| 4E | Action Plan | Milestones | Milestone Status | Responsibility |
| | SR-210 Waterman Ave Interchange | PA/ED approval - Q4 | Delayed to FY 23/24 Q1 - Due to contract cost negotiations. | Project Delivery |
| | Notes | | | |
| Note that the Budget Action Plan incorrectly identified Q1 as the milestone for PA/ED approval for the SR-210 Waterman Ave Interchange, however, the Budget Master Scheduled correctly identified it as Q4. | | | | |
| Division Strategy: Delivery of Capital Projects - Plans, Specifications and Estimate (PS&E); Engineering Reports Milestones: | | | | |
| 4F | Action Plan | Milestones | Milestone Status | Responsibility |
| | ATP Metrolink Phase II | PS&E approval - Q1 | Delayed to Q2 - Due to delays in processing the Construction and Maintenance Agreement with Southern California Regional Railroad Authority (SCRRA) and License Maintenance Agreement with the City of Montclair. | Project Delivery |
| | I-215 Bi-County Landscaping | PS&E approval - Q1 | Delayed to FY 23/24 Q2 - Due to design revisions required to meet the newly adopted Landscape Design Policy No. 34502. | |
| | I-10 Eastbound Truck Climbing Lane | PS&E approval - Q1 | On Schedule | |
| | I-215 University Parkway IC | PS&E approval - Q2 | On Schedule | |
| | I-15 Corridor Freight and Express Lanes Contract 1 | PS&E approval - Q4 | On Schedule | |
| | Notes | | | |
| | | | | |

San Bernardino County Transportation Authority
Fiscal Year (FY) 2022/2023 Budget Action Plan Quarterly Update

Division Strategy: Delivery of Capital Projects - Construction Milestones:

| | | | | |
|----|-------------------------------------|----------------------------------|---|------------------|
| 4G | Action Plan | Milestones | Milestone Status | Responsibility |
| | North First Avenue Bridge over BNSF | Start construction - Q1 | Delayed to Q2 - Extended bid duration due to additional efforts to protect Security Sensitive Information (SSI) and address additional bidder inquiries. | Project Delivery |
| | I-10 Cedar Avenue Interchange | Start construction - Q1 | Delayed to Q2 - Delay in approval of Right of Way Certification due to coordination with UPRR on railroad Construction and Maintenance Agreement (CMA). | |
| | I-215 Bi-County Landscaping | Start construction - Q3 | Delayed to FY 23/24 Q4 - Due to incorporation of construction phase with I-215 Segment-5 Landscape Project. | |
| | ATP Metrolink Phase II | Start construction - Q3 | Delayed to Q4 - Due to delays in processing the Construction and Maintenance Agreement with Southern California Regional Railroad Authority (SCRRA) and License Maintenance Agreement with the City of Montclair. | |
| | I-10 Eastbound Truck Climbing Lane | Start construction - Q3 | Delayed to Q4 - Due to delays of processing of regulatory permits by California Department of Fish and Wildlife (CDFW) and Regional Water Quality Control Board (RWQCB). | |
| | SR-60 Central Avenue Interchange | Complete for Beneficial Use - Q1 | Delayed to Q3 | |
| | I-10 Alabama Street Interchange | Complete for Beneficial Use - Q2 | On Schedule | |
| | SR-210 Base line Interchange | Complete for Beneficial Use - Q4 | On Schedule | |
| | SR-210 Lane Addition | Complete for Beneficial Use - Q4 | On Schedule | |
| | Notes | | | |

Initiative #5: Maximize Funding Opportunities and Cost-Effectiveness of Investments

Division Strategy: Conduct regional forums to discuss issues of importance across our region

| | | | | |
|-------|---|---|------------------|----------------------------|
| 5A | Action Plan | Milestones | Milestone Status | Responsibility |
| | Advocate for policies and funding formulas at the state and federal levels that are favorable for SBCTA to construct and deliver transportation projects. | Advocate for legislation regarding increase in federal funding for local bridges (AB 2120), CEQA exemptions for transportation projects (SB 922), and flexible use of state funds for discounted transit fares, as well as Brown Act revisions providing for remote participation. Build coalitions in support of state and federal transportation grant applications and budget items. Maintain good working relationships and communication with state and federal officials. | Ongoing | Legislative/Public Affairs |
| Notes | | | | |

Initiative #6: Awareness of SBCTA Programs, Services, and Transit Options

Division Strategy: Build awareness of SBCTA programs and services

| | | | | |
|-------|--|---|--|---|
| 6A | Action Plan | Milestones | Milestone Status | Responsibility |
| | Highlight Measure I's contributions to the region's transportation system. | Annual state of transportation event; monthly blog series "Measure I (Impact)". | Continue Blog Series to illustrate Measure I's influence on county's growth. State of Transportation (B2B) event is scheduled for September 29th | Legislative/Public Affairs, Fund Administration |
| | Market SBCTA identity, promote awareness of programs and services. | Employee spotlight blog series. | Ongoing | Legislative/Public Affairs |
| Notes | | | | |

San Bernardino County Transportation Authority
Fiscal Year (FY) 2022/2023 Budget Action Plan Quarterly Update

3.a

| Division Strategy: Leverage and grow public outreach and communication services | | | | |
|--|---|---|---|---|
| 6B | Action Plan | Milestones | Milestone Status | Responsibility |
| | Continue to enhance traditional and social media presence. | Provide project updates, alerts, and information. | Ongoing | Legislative/Public Affairs |
| | Utilize On-Call Public Outreach Contracts, On-Call Graphic Design Services Contracts, Marketing & Branding Services Contract, and Redlands Passenger Rail Project Outreach Contract to utilize new tools and capitalize on communication opportunities throughout the region. | Provide services for Mt. Vernon Viaduct, I-10 Express Lanes, 210 freeway, Redlands Passenger Rail Project. | Ongoing | Legislative/Public Affairs, Transit |
| | Utilize On-Call Graphic Design Services Contracts & Marketing and Branding Services Contract to support each department in their efforts to communicate internally and externally. | Provide assistance with presentations, graphics (i.e. Budget Book), and collateral materials. | Ongoing | Legislative/Public Affairs, Fund Administration |
| | Notes | | | |
| | | | | |
| Division Strategy: Highlight transit options in San Bernardino County | | | | |
| 6C | Action Plan | Milestones | Milestone Status | Responsibility |
| | In partnership with transit operators, highlight transit connectivity options in the region. | Provide legislative information and updates, advocate at the state and federal levels for transit maintenance and operations funding. | Ongoing | Legislative/Public Affairs, Transit |
| | Support Omnitrans with implementation of pilot programs first/last mile shuttles from the Cucamonga Station and San Bernardino Transit Center that are coordinated with the Metrolink service schedule. | Q2 | On Schedule | Transit |
| | Notes | | | |
| | ONT Shuttle (Cucamonga Station to ONT Airport) began service on 08/08/2022. SB Shuttle (SBTC to Downtown San Bernardino) will start service in mid-October to coincide with the start of Arrow Service. | | | |
| Initiative #7: Long Range Strategic Planning | | | | |
| Division Strategy: Analyze long range transportation strategy in a financially constrained framework | | | | |
| 7A | Action Plan | Milestones | Milestone Status | Responsibility |
| | Prepare a Long Range Multimodal Transportation Plan (LRMTP). | Complete bus rapid transit study for Valley - Q2 | On schedule. Was determined that best path is to incorporate recommendations into SCAG Dedicated Transit Lanes Study. Initial SBCTA and Omnitrans input was provided to SCAG in July. | Planning, Transit, Fund Administration |
| | | Initiate full LRMTP - Q3 | On Schedule | |
| | Complete San Bernardino County input on growth and projects to the Southern California Association of Governments (SCAG) Regional Transportation Plan/Sustainable Communities Strategy (RTP/SCS). | Assist SCAG with local growth distribution update - Q3 | On Schedule | Planning, Fund Administration |
| | | Provide updated list of RTP projects to SCAG - Q3 | On Schedule | |
| | Notes | | | |
| | | | | |
| Division Strategy: Conduct strategic planning of Measure I projects and update policies to be consistent with practice | | | | |
| 7B | Action Plan | Milestones | Milestone Status | Responsibility |
| | Maintain Measure I Strategic Plan Parts 1 and 2. | No updates in Q1. | Ongoing | Planning, Fund Administration |
| | Notes | | | |
| | | | | |

Attachment: FY 22_23 Budget Action Plan Quarterly Update -Q1 (8803 : Fiscal Year 2022/2023 Budget

San Bernardino County Transportation Authority
Fiscal Year (FY) 2022/2023 Budget Action Plan Quarterly Update

Division Strategy: Provide current, quality planning data

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|----|---|--|---|----------------|
| 7C | Action Plan | Milestones | Milestone Status | Responsibility |
| | Support other departments with data analysis and mapping/Geographic Information System (GIS). | Multiple analysis/mapping efforts conducted for Project Delivery, Transit, and Air Quality/Mobility. | Ongoing | Planning |
| | Update SBTAM modeling system. | Complete updated SBTAM for testing - Q3 | On Schedule | |
| | | Complete Model Validation - Q4 | On Schedule | |
| | Upgrade to new Congestion Monitoring System. | Initiate operation - Q1 | Completed. Now operational on newest ClearGuide system and being applied in projects. | |
| | | Prepare documentation - Q2 | On Schedule | |
| | Incrementally implement an SBCTA agency-wide data and analytics dashboard. | Ongoing | Ongoing | |
| | Notes | | | |

Division Strategy: Conduct subarea and modal studies

| | | | | |
|----|--|---------------------------|--|----------------|
| 7D | Action Plan | Milestones | Milestone Status | Responsibility |
| | Update Comprehensive Multimodal Corridor Plans with RCTC and Caltrans, to address SB 1 Solutions for Congested Corridors requirements. | Complete update - Q1 | On schedule - Edits by RCTC and SBCTA completed in September. | Planning |
| | Conduct SR-18/138 Corridor Study with Metro and Caltrans. | Prepare final report - Q3 | On schedule - Draft PSR-PDS completed in July and presented to Mountain/Desert Committee on August 12. | |
| | Notes | | | |

Initiative #8: Environmental Stewardship, Sustainability, and Grant Applications

Division Strategy: Monitor and Provide Input to State, Federal, and Regional Plans and Guidelines

| | | | | |
|----|---|--|---|-------------------------------|
| 8A | Action Plan | Milestones | Milestone Status | Responsibility |
| | Provide technical comments on draft reports, plans, and guidelines from Caltrans, CTC, OPR, CARB, CalSTA, and other state agencies. | Comments provided in July on Final Tier 1 EIS/EIR for the RCTC Coachella Valley Rail Project | Ongoing | Planning, COG |
| | Prepare Grant Applications for SB1 and other funding. | Senate Bill 1 (SB1) Grants submitted - Q2 | On schedule - SBCTA working with Caltrans on partnerships for SB 1 projects. Primarily Metrolink Double Track and US 395. | Planning, Fund Administration |
| | | Award announcements - Q4 | On Schedule | |
| | Notes | | | |

Division Strategy: Assist jurisdictions, developers, and other stakeholders with area-wide sustainability studies

| | | | | |
|----|---|---|--|----------------|
| 8B | Action Plan | Milestones | Milestone Status | Responsibility |
| | Begin development of Vehicle Miles Traveled (VMT) mitigation bank and/or approaches to mitigation under SB 743. | Initiation of VMT mitigation bank - Q4 (conditioned on REAP funding and Board approval) | On schedule | Planning |
| | Complete updated draft of the Regional Conservation Investment Strategy (RCIS). | Updated draft - Q3 | On schedule. SBCTA coordinating with County on submittal of draft RCIS to California Department of Fish and Wildlife. | |
| | Assist local agencies with housing initiatives under Regional Early Action Plan (REAP) 2.0. | Work with SCAG on REAP 2.0 application to California Housing and Community Development - Q2 | Ongoing. Continuing assistance to local jurisdictions on Housing Elements and related matters using supplemental REAP 1.0 funds. | |
| | Notes | | | |

San Bernardino County Transportation Authority
Fiscal Year (FY) 2022/2023 Budget Action Plan Quarterly Update

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| Division Strategy: Prepare effective active transportation plans | | | | |
|---|---|--|--|--|
| 8C | Action Plan | Milestones | Milestone Status | Responsibility |
| | Prepare Active Transportation Plans: Safe Routes to School Program (with County). | Restart plan development following COVID - Q2 | On Schedule | Planning |
| | Manage Transit Development Act (TDA) Article 3 bike/ped project invoicing. | Progress continuing. | Ongoing | |
| | Conduct Countywide Sidewalk Inventory, Phase 2. | Complete inventory, documentation, and update active transportation website with added data - Q3 | On Schedule | |
| | Notes | | | |
| | | | | |
| Division Strategy: Implement components of ATP Metrolink Station Accessibility Grant | | | | |
| 8D | Action Plan | Milestones | Milestone Status | Responsibility |
| | Implementation of Phase 2 of the Bicycle and Pedestrian improvements around the Metrolink Stations on the San Bernardino and Riverside Lines. | Complete final design - Q4 | On Schedule | Planning, Project Delivery |
| | Notes | | | |
| | | | | |
| Division Strategy: Develop and administer programs to improve the efficient use of our existing freeway network | | | | |
| 8E | Action Plan | Milestones | Milestone Status | Responsibility |
| | Implement a mobile call box program. | Release RFP for call handling for program - Q3 | On schedule | Air Quality/Mobility |
| | | Target for program implementation - Q2 | Delayed to FY 23/24. Needs to occur after call handling contractor has been secured and able to implement systems/program. | |
| | Administer Freeway Service Patrol (FSP) and call box system to improve traffic safety, reduce congestion and traffic delays. | Ongoing. Present annual report on programs to Board - Q4 | Ongoing. | |
| | Merge IE 511 with a regional SoCal 511. | Merger expected - Q1 | Delayed. The transition to merge the two systems has begun and scheduled to be completed by Q2. | Transit |
| | Merge the regional rideshare database with OCTA, LA Metro, RCTC, and VCTC enhancing ride matching functionality and customer experience. | Q2 | On Schedule | |
| | Notes | | | |
| | | | | |
| Division Strategy: Support access to jobs, healthcare, and education while reducing roadway congestion. | | | | |
| 8F | Action Plan | Milestones | Milestone Status | Responsibility |
| | Administer multi-modal programs to reduce congestion and improve quality of life including coordination with transit providers and Consolidated Transportation Service Agencies (CTSA) serving San Bernardino County. | Work with the transit providers and CTSA's, to identify key activities for inclusion in the SBCTA LRMTF, and proposed SBCTA budgets, based on the approved Public Transit-Human Services Transportation Coordination Plan – Q3 | | Transit, Fund Administration, Legislative/Public Affairs |
| | Notes | | | |
| | | | | |

Attachment: FY 22_23 Budget Action Plan Quarterly Update -Q1 (8803 : Fiscal Year 2022/2023 Budget

Minute Action

AGENDA ITEM: 4

Date: September 14, 2022

Subject:

Appointment to the Independent Taxpayer Oversight Committee

Recommendation:

That the General Policy Committee recommend the Board, acting as the San Bernardino County Transportation Authority:

Approve the appointment of Cole Jackson, Certified Public Accountant, to the Independent Taxpayer Oversight Committee, with a term ending October 31, 2024.

Background:

The Independent Taxpayer Oversight Committee (ITOC) was authorized as part of the Measure I Ordinance approved by the voters. The ITOC is a five-member body with particular experience and expertise that would aid them in reviewing the implementation of the Measure I expenditure plan. The current vacancy on the ITOC is for a professional in the field of municipal audit, finance, and/or budgeting with at least five (5) years of experience in a relevant and senior decision making position in the public or private sector.

Staff received one (1) application from Cole Jackson, Certified Public Accountant (CPA). Mr. Cole is a partner with Reiss, Jackson, & Jamison LLP in the City of Redlands. Mr. Cole has been providing accounting, taxation, and business advisory services for more than 30 years. His clients include manufacturing, real estate, and medical businesses of varying sizes and complexities. Mr. Cole holds a Bachelor's of Science from California State Polytechnic University in Pomona in Business Administration, with an emphasis in Accounting, and is a licensed CPA in the state of California. He is on the executive boards of both the Redlands Art Association and the California State University, San Bernardino Philanthropic Fund.

Normally the General Policy Committee would appoint an ad hoc committee to select ITOC member(s), but since only one application was received, staff instead conferred with the San Bernardino County Transportation Authority Executive Board.

Financial Impact:

This item has no financial impact on the Fiscal Year 2022/2023 Budget.

Reviewed By:

This item is not scheduled for review by any other policy committee or technical advisory committee. The application has been reviewed by the Executive Board on August 10, 2022.

Responsible Staff:

Hilda Flores, Chief Financial Officer

Approved
General Policy Committee
Date: September 14, 2022

Witnessed By:

Entity: San Bernardino County Transportation Authority

Minute Action

AGENDA ITEM: 5

Date: September 14, 2022

Subject:

Sole Source Click Wrap Agreements with Google LLC and Apple, Inc. for Mobile Application Developer Accounts

Recommendation:

That the General Policy Committee recommend the Board, acting as the San Bernardino County Transportation Authority (SBCTA):

A. Approve a click wrap **sole source** agreement (Contract No. 23-1002829) with Google LLC (Google), consisting of Google's privacy policies, terms of service, and other user policies, for a Google Play Console developer account, effective upon execution of an online application and payment of a one-time \$25 registration fee, continuing perpetually, and terminating only when SBCTA suspends all use of Google's developer services and removes its applications from the Google Play application store.

B. Approve a click wrap **sole source** agreement (Contract No. 23-1002830) with Apple, Inc. (Apple), in an amount not-to-exceed \$99 annually, continuing perpetually, and terminating only when SBCTA suspends all use of Apple's developer services and removes its applications from the Apple application store, consisting of Apple's privacy policies, terms of service, and other user policies, for an Apple developer account, effective upon execution of an online application.

C. Designate the Chief of Information Technology as authorized to execute both Google's and Apple's online applications and agreements, on behalf of SBCTA, subject to review and approval by General Counsel.

Background:

San Bernardino County Transportation Authority (SBCTA), in partnership with the Riverside County Transportation Commission, operates the IE Commuter rideshare program, offering residents of San Bernardino County and Western Riverside County rideshare incentives and rewards and free rideshare program support to employers within San Bernardino and Riverside Counties. In addition, SBCTA operates the SB Loop vanpool program, offering to participants commuting to worksites in San Bernardino County a subsidy towards the cost of a vanpool vehicle.

SBCTA is seeking to enhance both the rideshare and vanpool programs by launching a mobile application for commuters to manage their accounts and to assist vanpool coordinators in recording data for program reporting. SBCTA has contracted with Trapeze Software Group, Inc., dba TripSpark Technologies (Trapeze), whose mobile application for Apple, Inc. (Apple) iOS and Google LLC (Google) Android are included in SBCTA's existing license and maintenance cost. In order to launch a mobile application, SBCTA needs to establish both a Google Play Console developer and Apple developer accounts to access developer services, associated software, and to have the ability to publish the application in the Google and Apple mobile application stores.

Entity: San Bernardino County Transportation Authority

The use of Google's developer services and associated software are subject to the Google click wrap agreement consisting of the Google Controller-Controller Data Protection Terms, Google Play Developer API Terms of Service, Google Play Developer Distribution Agreement, and Play Console Terms of Service. Collectively, these terms are the Google Developer Distribution Agreement (Google Agreement). The Google Agreement is effective upon execution of an online application and is perpetual; therefore, it will terminate only when SBCTA suspends usage of all Google developer services and associated software and removes any published application from the Google Play mobile application store. There is a one-time \$25 registration fee to set up a Google developer account. The maximum term for software license agreements under Policy No. 11000 IV.B.4 is ten (10) years, and therefore SBCTA Board of Directors (Board) approval is required to enter the Google Agreement.

The use of Apple's developer services and associated software are subject to the Apple click wrap agreement consisting of the Apple application store (App Store) Connect Terms of Service, Apple Developer Agreement, Apple Developer Enterprise Program License, Apple Developer Forums Agreement, Apple Developer Program License Agreement, TestFlight Terms and Conditions, and Xcode and Apple Software Development Kits (SDKs) Agreement. Collectively, these terms are the Apple Developer Agreement (Apple Agreement). The Apple Agreement is effective upon execution of an online application. Portions of the Apple Agreement (App Store Connect Terms of Service, Apple Developer Agreement, Apple Developer Forums Agreement, TestFlight Terms and Conditions, and Xcode and Apple SDKs Agreement) are perpetual; therefore, will terminate only when SBCTA suspends usage of all Apple developer services and associated software and removes any published application from the Apple Store. Certain terms within the Apple Agreement (Xcode and SDKs Agreement) will survive termination. There is a \$99 annual registration fee to maintain an Apple developer account. The maximum term for software license agreements under Policy No. 11000 IV.B.4 is ten (10) years and therefore Board approval is required to accept the Apple Agreement.

Executing these agreements requires an online application to be completed and submitted by an individual with full legal authority to contractually bind SBCTA. Approval of Recommendation C will authorize the Chief of Information Technology to complete the online application and accept the Agreement on behalf of SBCTA.

Financial Impact:

This item is consistent with the Fiscal Year 2022/2023 Budget.

Reviewed By:

This item is not scheduled for review by any other policy committee or technical advisory committee. SBCTA General Counsel, Procurement Manager and Risk Manager have reviewed this item and the draft agreements.

Responsible Staff:

Matt Farokhmanesh, Chief of Information Technology

Approved
General Policy Committee
Date: September 14, 2022

Witnessed By:

Contract Summary Sheet

5.a

General Contract Information

Contract No: 23-1002829 Amendment No.: _____Contract Class: Payable Department: Management ServicesVendor No.: TBD Vendor Name: Google LLCDescription: Google Play Console Developer Account

List Any Related Contract Nos.: _____

| Dollar Amount | | | | | | | |
|------------------------------|---|----|-------|--------------------------------|--|----|-------|
| Original Contract | | \$ | 25.00 | Original Contingency | | \$ | - |
| Prior Amendments | | \$ | - | Prior Amendments | | \$ | - |
| Prior Contingency Released | | \$ | - | Prior Contingency Released (-) | | \$ | - |
| Current Amendment | | \$ | - | Current Amendment | | \$ | - |
| Total/Revised Contract Value | | \$ | 25.00 | Total Contingency Value | | \$ | - |
| | Total Dollar Authority (Contract Value and Contingency) | | | | | \$ | 25.00 |

Contract Authorization

Board of Directors _____ Date: 10/05/2022 _____ Committee _____ Item # _____

Contract Management (Internal Purposes Only)

Other Contracts _____ Sole Source? Yes _____ N/A _____

Federal/Local _____ Services _____ N/A _____

Accounts Payable

Estimated Start Date: 10/05/2022 Expiration Date: 12/31/2039 Revised Expiration Date: _____NHS: N/A OMP/QAP: N/A Prevailing Wage: No

| | | | | | | | Total Contract Funding: | | Total Contingency: | |
|-----|------|----|------|------|-------|----------|-------------------------|-------|--------------------|---|
| | | | | | | | \$ | 25.00 | \$ | - |
| GL: | 2122 | 30 | 0383 | 0000 | 52001 | 42107020 | | 12.50 | | - |
| GL: | 4180 | 30 | 0314 | 0320 | 52001 | 41100000 | | 9.37 | | - |
| GL: | 4280 | 30 | 0314 | 0320 | 52001 | 41100000 | | 3.13 | | - |
| GL: | | | | | | | | - | | - |
| GL: | | | | | | | | - | | - |
| GL: | | | | | | | | - | | - |
| GL: | | | | | | | | - | | - |
| GL: | | | | | | | | - | | - |
| GL: | | | | | | | | - | | - |
| GL: | | | | | | | | - | | - |

Matt Farokhmanesh

Colleen Franco

Project Manager (Print Name)

Task Manager (Print Name)

Additional Notes:

Attachment: 23-1002829 CSS [Revision 1] (8673 : Sole Source Click Wrap Agreements with Google LLC and Apple, Inc.)

Business Data Responsibility

Google Controller-Controller Data Protection Terms

Google and the other party agreeing to these terms (“**Partner**”) have entered into an agreement for the provision of the Controller Services (as amended from time to time, the “**Agreement**”).

These Google Controller-Controller Data Protection Terms (including its appendix(es), the “**Controller Terms**”) are entered into by Google and Partner and supplement the Agreement. These Controller Terms will be effective, and replace any previously applicable terms relating to their subject matter, from the Terms Effective Date.

If you are accepting these Controller Terms on behalf of Partner, you warrant that: (a) you have full legal authority to bind Partner to these Controller Terms; (b) you have read and understand these Controller Terms; and (c) you agree, on behalf of Partner, to these Controller Terms. If you do not have the legal authority to bind Partner, please do not accept these Controller Terms.

1. Introduction

These Controller Terms reflect the parties’ agreement on the processing of certain data in connection with the European Data Protection Legislation and Non-European Data Protection Legislation.

2. Definitions and Interpretation

2.1 In these Controller Terms:

“**Additional Terms for Non-European Data Protection Legislation**” means the

additional terms referred to in Appendix 1, which reflect the parties' agreement on the terms governing the processing of certain data in connection with certain Non-European Data Protection Legislation.

“Adequate Country” means:

- (a) for data processed subject to the EU GDPR: the EEA, or a country or territory that is the subject of an adequacy decision by the Commission under Article 45(1) of the EU GDPR;
- (b) for data processed subject to the UK GDPR: the UK or a country or territory that is the subject of the adequacy regulations under Article 45(1) of the UK GDPR and Section 17A of the Data Protection Act 2018; and/or
- (c) for data processed subject to the Swiss FDPA: Switzerland, or a country or territory that (i) is included in the list of the states whose legislation ensures an adequate level of protection as published by the Swiss Federal Data Protection and Information Commissioner, or (ii) is the subject of an adequacy decision by the Swiss Federal Council under the Swiss FDPA.

“Affiliate” means an entity that directly or indirectly controls, is controlled by, or is under common control with, a party.

“Alternative Transfer Solution” means a solution, other than the Controller SCCs, that enables the lawful transfer of personal data to a third country in accordance with the European Data Protection Legislation.

“Controller Data Subject” means a data subject to whom Controller Personal Data relates.

“Controller Personal Data” means any personal data that is processed by a party under the Agreement in connection with its provision or use (as applicable) of the Controller Services.

“Controller SCCs” means, as applicable: (a) the SCCs (EU Controller-to-Controller); and/or (b) the SCCs (UK Controller-to-Controller), which are standard contractual clauses for the transfer of personal data to controllers established in third countries that do not ensure an adequate level of data protection, as described in Article 46 of the EU GDPR and UK GDPR.

“**Controller Services**” means the Google products or services that incorporate these Controller Terms by reference in their terms of service or other agreements, including the “Controller Services” listed at business.safety.google/services/.

“**EEA**” means the European Economic Area.

“**End Controller**” means, for each party, the ultimate controller of Controller Personal Data.

“**EU GDPR**” means 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.

“**European Controller Personal Data**” means Controller Personal Data of Controller Data Subjects located in the EEA or Switzerland.

“**European Data Protection Legislation**” means, as applicable: (a) the GDPR; and/or (b) the Swiss FDPA.

“**GDPR**” means, as applicable: (a) the EU GDPR; and/or (b) the UK GDPR.

“**Google**” means the Google Entity that is party to the Agreement.

“**Google End Controllers**” means the End Controllers of Controller Personal Data processed by Google.

“**Google Entity**” means Google LLC (formerly known as Google Inc.), Google Ireland Limited, or any other Affiliate of Google LLC.

“**Non-European Data Protection Legislation**” means data protection or privacy laws in force outside the EEA, Switzerland, and the UK.

“**Permitted Transfers**” means the processing of Controller Personal Data in, or the transfer of Controller Personal Data to, an Adequate Country.

“**Restricted Transfer(s)**” means transfer(s) of Controller Personal Data that are (a) subject to the European Data Protection Legislation; and (b) not Permitted Transfers.

“**SCCs (EU Controller-to-Controller)**” means the European Commission’s standard contractual clauses for data controllers at

business.safety.google/gdprcontrollerterms/sccs/eu-c2c.

“**SCCs (UK Controller-to-Controller)**” means the UK government’s standard contractual clauses for data controllers at business.safety.google/gdprcontrollerterms/sccs/uk-c2c.

“**Swiss FDPA**” means the Federal Data Protection Act of 19 June 1992 (Switzerland).

“**Terms Effective Date**” means, as applicable:

- (a) 25 May 2018, if Partner clicked to accept or the parties otherwise agreed to these Controller Terms before or on such date; or
- (b) the date on which Partner clicked to accept or the parties otherwise agreed to these Controller Terms, if such date is after 25 May 2018.

“**UK Controller Personal Data**” means Controller Personal Data of Controller Data Subjects located in the UK.

“**UK GDPR**” means the EU GDPR as amended and incorporated into UK law under the UK European Union (Withdrawal) Act 2018, and applicable secondary legislation made under that Act.

- 2.2 The terms “**controller**”, “**data subject**”, “**personal data**”, “**processing**” and “**processor**” as used in these Controller Terms have the meanings given in the GDPR, and the terms “data importer” and “data exporter” have the meanings given in the Controller SCCs.
- 2.3 The words “**include**” and “**including**” mean “including but not limited to”. Any examples in these Controller Terms are illustrative and not the sole examples of a particular concept.
- 2.4 Any reference to a legal framework, statute or other legislative enactment is a reference to it as amended or re-enacted from time to time.
- 2.5 To the extent any translated version of these Controller Terms is inconsistent with the English version, the English version will govern.

3. Application of these Controller Terms

- 3.1 **Application of European Data Protection Legislation.** Sections 4 (Roles and Restrictions

on Processing) to 6 (Controller SCCs) (inclusive) will only apply to the extent that the European Data Protection Legislation applies to the processing of Controller Personal Data.

- 3.2 **Application to Controller Services.** These Controller Terms will only apply to the Controller Services for which the parties agreed to these Controller Terms (for example: (a) the Controller Services for which Partner clicked to accept these Controller Terms; or (b) if the Agreement incorporates these Controller Terms by reference, the Controller Services that are the subject of the Agreement).
- 3.3 **Incorporation of Additional Terms for Non-European Data Protection Legislation .** The Additional Terms for Non-European Data Protection Legislation supplement these Controller Terms.

4. Roles and Restrictions on Processing

- 4.1 **Independent Controllers.** Subject to Section 4.3 (End Controllers), each party:
- (a) is an independent controller of Controller Personal Data under the European Data Protection Legislation;
 - (b) will individually determine the purposes and means of its processing of Controller Personal Data; and
 - (c) will comply with the obligations applicable to it under the European Data Protection Legislation regarding the processing of Controller Personal Data.
- 4.2 **Restrictions on Processing.** Section 4.1 (Independent Controllers) will not affect any restrictions on either party's rights to use or otherwise process Controller Personal Data under the Agreement.
- 4.3 **End Controllers.** Without reducing either party's obligations under these Controller Terms, each party acknowledges that: (a) the other party's Affiliates or clients may be End Controllers; and (b) the other party may act as a processor on behalf of its End Controllers. The Google End Controllers are: (i) for European Controller Personal Data processed by Google, Google Ireland Limited and, where the Agreement is with a different Google Affiliate, that Affiliate will be the Google End Controller responsible for processing European Controller Personal Data in connection with billing for the Controller Services

only (collectively, the “European End Controller(s)”); and (ii) for UK Controller Personal Data processed by Google, Google LLC. Each party will ensure that its End Controllers comply with the Controller Terms, including (where applicable) the Controller SCCs.

5. Data Transfers

- 5.1 **Restricted Transfers.** Either party may make Restricted Transfers if it complies with the provisions on Restricted Transfers in the European Data Protection Legislation.
- 5.2 **Alternative Transfer Solution.** If Google announces its adoption of an Alternative Transfer Solution for any Restricted Transfers, then: (a) Google will ensure that such Restricted Transfers are made in accordance with that Alternative Transfer Solution; and (b) Section 6 (Controller SCCs) will not apply to such Restricted Transfers.

6. Controller SCCs

- 6.1 **Transfers of European Controller Personal Data to Partner.** To the extent that:
- (a) Google transfers European Controller Personal Data to Partner, and
 - (b) the transfer is a Restricted Transfer,
- the parties will be deemed to have entered into the SCCs (EU Controller-to-Controller) for such transfers, with Partner as data importer and Google Ireland Limited (the applicable Google End Controller) as data exporter, unless otherwise specified in the Agreement.
- 6.2 **Transfers of UK Controller Personal Data to Partner.** To the extent that:
- (a) Google transfers UK Controller Personal Data to Partner, and
 - (b) the transfer is a Restricted Transfer,
- the parties will be deemed to have entered into the SCCs (UK Controller-to-Controller) for such transfers, with Partner as data importer and Google LLC (the applicable Google End Controller) as data exporter.

- 6.3 **Transfers of European Controller Personal Data to Google.** The parties acknowledge that to the extent that Partner transfers European Controller Personal Data to Google, the Controller SCCs are not required if the address of the Google End Controller is in an Adequate Country (for example, if the Google End Controller is Google Ireland Limited). This does not affect Google's obligations under Section 5.1 (Restricted Transfers).
- 6.4 **Transfers of UK Controller Personal Data to Google.** To the extent that Partner transfers UK Controller Personal Data to Google, the parties will be deemed to have entered into the SCCs (UK Controller-to-Controller) for such transfers, with Partner as data exporter and Google LLC (the applicable Google End Controller) as data importer, because Google LLC's address is not in an Adequate Country.
- 6.5 **Contacting Google; Partner Information.**
- (a) Partner may contact Google Ireland Limited and/or Google LLC in connection with the Controller SCCs at legal-notice@google.com or through such other means as may be provided by Google from time to time, including for the purposes of requesting an Audit under Section 6.7(a) below, to the extent applicable under the relevant Controller SCCs.
 - (b) Partner acknowledges that Google is required under the SCCs (EU Controller-to-Controller) to record certain information, including (i) the identity and contact details of the data importer (including any contact person with responsibility for data protection); and (ii) the technical and organisational measures implemented by the data importer. Accordingly, Partner will provide such information as requested by Google, and will ensure that such information is kept accurate and up-to-date.
- 6.6 **Responding to Data Subject Enquiries.** The applicable data importer will be responsible for responding to enquiries from data subjects and the supervisory authority concerning the processing of applicable Controller Personal Data by the data importer.
- 6.7 **Reviews, Audits and Certifications of Compliance.**
- (a) If the Controller SCCs apply under Section 6 (Controller SCCs), the applicable data importer will allow the applicable data exporter (or a third-party inspection agent or auditor appointed by the data exporter) to request reasonable certification, or conduct a reasonable review or audit, as described in the Controller SCCs

(“Audit”), in accordance with this Section 6.7 (Reviews, Audits and Certifications of Compliance).

- (b) Following receipt by the data importer of a request for an Audit, the data importer and the data exporter will discuss and agree in advance on the scope and rules of the Audit, including reasonable: start date, scope and duration, use of security certifications, cost allocation and reimbursement schedule, and security and confidentiality controls applicable to the Audit. The Audit will be conducted by mutually-agreed Audit members with a strict need-to-know and who have no conflicts-of-interest. The Audit will not require any party to disclose trade secrets, internal financial information, customer or partner data, data protected from disclosure by applicable laws, or out-of-scope information.

6.8 **Third-Party Controllers.** To the extent Google LLC acts as data importer and Partner acts as data exporter under the SCCs (UK Controller-to-Controller) under Section 6.4 (Transfers of UK Controller Personal Data to Google), Google notifies Partner for the purpose of Clause II(i) of the SCCs (UK Controller-to-Controller) that UK Controller Personal Data may be transferred to the third-party data controllers where requested by Partner, including through its use of or integration with the Controller Services.

7. Liability

7.1 **Liability Cap.** If the Agreement is governed by the laws of:

- (a) a state of the United States of America, then, regardless of anything else in the Agreement, the total liability of either party towards the other party under or in connection with these Controller Terms will be limited to the maximum monetary or payment-based amount at which that party’s liability is capped under the Agreement (and therefore any exclusion of indemnification claims from the Agreement’s limitation of liability will not apply to indemnification claims under the Agreement relating to the European Data Protection Legislation or the Non-European Data Protection Legislation); or
- (b) a jurisdiction that is not a state of the United States of America, then the liability of the parties under or in connection with these Controller Terms will be subject

to the exclusions and limitations of liability in the Agreement.

- 7.2 **Liability if the Controller SCCs Apply.** If the Controller SCCs apply under Section 6 (Controller SCCs), then the total combined liability of each party and its Affiliates towards the other party and its Affiliates under or in connection with the Agreement and the Controller SCCs combined will be subject to Section 7.1 (Liability Cap). Clause 12 of the SCCs (EU Controller-to-Controller) and Clause III(a) of the SCCs (UK Controller-to-Controller) will not affect the previous sentence.

8. Third-Party Beneficiaries

If a party's Affiliate is a party to the Controller SCCs that apply under Section 6 (Controller SCCs), then that Affiliate will be a third-party beneficiary of Sections 4.3 (End Controllers), 6 (Controller SCCs), and 7.2 (Liability if the Controller SCCs Apply). To the extent this Section 8 (Third-Party Beneficiaries) conflicts or is inconsistent with any other clause in the Agreement, this Section 8 (Third-Party Beneficiaries) will apply.

9. Effect of Controller Terms

- 9.1 **Order of Precedence.** If there is any conflict or inconsistency between the Controller SCCs, the Additional Terms for Non-European Data Protection Legislation, and the remainder of these Controller Terms and/or the remainder of the Agreement then, subject to Sections 4.2 (Restrictions on Processing) and 9.4 (No Effect on Processor Terms), the following order of precedence will apply:

- (a) the Controller SCCs (if applicable);
- (b) the Additional Terms for Non-European Data Protection Legislation (if applicable);
- (c) the remainder of these Controller Terms; and
- (d) the remainder of the Agreement.

- 9.2 **Additional Commercial Clauses.** Subject to the amendments in these Controller Terms,

the Agreement remains in full force and effect. Sections 6.5 (Contacting Google; Partner Information) to 6.8 (Third-Party Controllers), and Section 7.2 (Liability if Controller SCCs Apply) are additional commercial clauses relating to the Controller SCCs as permitted by Clause 2(a) (Effect and invariability of the Clauses) of the SCCs (EU Controller-to-Controller), and Clause VII (Variation of these Clauses) of the SCCs (UK Controller-to-Controller), as applicable.

- 9.3 **No Modification of Controller SCCs.** Nothing in the Agreement (including these Controller Terms) is intended to modify or contradict any Controller SCCs or prejudice the fundamental rights or freedoms of data subjects under the European Data Protection Legislation.
- 9.4 **No Effect on Processor Terms.** These Controller Terms will not affect any separate terms between Google and Partner reflecting a controller-processor, processor-processor, or processor-controller relationship for a service other than the Controller Services.

10. Changes to these Controller Terms

- 10.1 **Changes to Controller Services in Scope.** Google may only change the list of potential Controller Services at business.safety.google/services/:
- (a) to reflect a change to the name of a service;
 - (b) to add a new service; or
 - (c) to remove a service where either: (i) all contracts for the provision of that service are terminated; or (ii) Google has Partner's consent.
- 10.2 **Changes to Controller Terms.** Google may change these Controller Terms if the change:
- (a) is as described in Section 10.1 (Changes to Controller Services in Scope);
 - (b) is required to comply with applicable law, applicable regulation, a court order, or guidance issued by a governmental regulator or agency, or reflects Google's adoption of an Alternative Transfer Solution; or
 - (c) does not: (i) seek to alter the categorisation of the parties as independent controllers of Controller Personal Data under the European Data Protection

Legislation; (ii) expand the scope of, or remove any restrictions on, either party's rights to use or otherwise process (x) in the case of the Additional Terms for Non-European Data Protection Legislation, the data in scope of the Additional Terms for Non-European Data Protection Legislation or (y) in the case of the remainder of these Controller Terms, Controller Personal Data; or (iii) have a material adverse impact on Partner, as reasonably determined by Google.

- 10.3 **Notification of Changes.** If Google intends to change these Controller Terms under Section 10.2(b) and such change will have a material adverse impact on Partner, as reasonably determined by Google, then Google will use commercially reasonable efforts to inform Partner at least 30 days (or such shorter period as may be required to comply with applicable law, applicable regulation, a court order, or guidance issued by a governmental regulator or agency) before the change will take effect. If Partner objects to any such change, Partner may terminate the Agreement by giving written notice to Google within 90 days of being informed by Google of the change.

Appendix 1: Additional Terms for Non-European Data Protection Legislation

The following Additional Terms for Non-European Data Protection Legislation supplement these Controller Terms:

- CCPA Addendum at business.safety.google/controllerterms/ccpa/ (dated 27 August 2020)
- LGPD Controller Addendum at business.safety.google/controllerterms/lgpd/ (dated 27 August 2020)

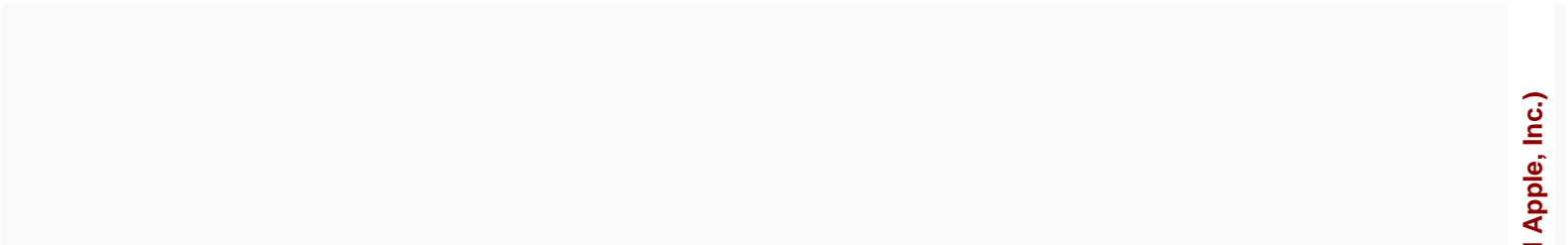
Google Controller-Controller Data Protection Terms, Version 3.0

27 September 2021

Previous Versions

- [15 June 2021](#)
- [27 August 2020](#)

- [31 October 2019](#)
- [25 May 2018](#)



Attachment: 23-1002829 (8673 : Sole Source Click Wrap Agreements with Google LLC and Apple, Inc.)

Google Play Developer API Terms of Service

Last modified: March 15, 2022 ([see previous version](#)) (/android-publisher/terms-2019)

By using this API, you consent to be bound by these terms in addition to the Google APIs Terms of Service ("API ToS") at <https://developers.google.com/terms> (/terms).

Additional Prohibitions

In addition to Section 4 (Prohibitions) of the API ToS, the following terms apply:

- **Publishing API:** You will only use the Publishing API for your own activities related to your distribution of products under the Google Play Developer Distribution Agreement. You will not utilize a third party's Developer Account to access the Publishing API, use the Publishing API to publish apps on behalf of a third party through a developer tool or service, or share your own Developer Account to allow a third party to access the Publishing API on your behalf. A violation of this provision may result in suspension, termination of access to the Publishing API, your Developer Account, and/or suspension or termination of third-party apps created, uploaded, published, distributed or updated in violation of this provision.
- **voidedPurchases API:** You will only use the voidedPurchases API and any data obtained to revoke access to voided purchases (refunded by Google or charged back by the issuer) and to mitigate fraud. The data shared via the voidedPurchases API is considered Google confidential information under the API TOS and may not be disclosed except as expressly permitted. In addition, any user data obtained through the voidedPurchases API is governed by the [Google Controller-Controller Data Protection Terms](https://privacy.google.com/businesses/gdprcontrollerterms/) (https://privacy.google.com/businesses/gdprcontrollerterms/). A violation of this provision may result in suspension or termination of access to the voidedPurchases API or your Developer Account.

- Play Developer Reporting API: You will only use the Play Developer Reporting API for your own activities related to your distribution of products under the Google Play Developer Distribution Agreement. You will not utilize a third party's Developer Account to access the Play Developer Reporting API, or use the Play Developer Reporting API to access information about apps other than your products. You will not use the Play Developer Reporting API to reidentify users. A violation of this provision may result in suspension, termination of access to the Play Developer Reporting API, your Developer Account, and/or suspension or termination of third-party apps created, uploaded, published, distributed or updated in violation of this provision.

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Last updated 2022-03-15 UTC.



Google Play Developer Distribution Agreement

Effective as of November 17, 2020 ([view archived version](#))

1. Definitions

Authorized Provider: An entity authorized to receive a distribution fee for Products that are sold to users of Devices.

Brand Features: The trade names, trademarks, service marks, logos, domain names, and other distinctive brand features of each party, respectively, as owned (or licensed) by such party from time to time.

Developer or You: Any person or company who provides Products for distribution through Google Play in accordance with the terms of this Agreement.

Developer Account: A publishing account issued to a Developer in connection with the distribution of Developer Products via Google Play.

Device: Any device that can access Google Play.

Google: Google LLC, a Delaware limited liability company with principal place of business at 1600 Amphitheatre Parkway, Mountain View, CA 94043, United States; Google Ireland Limited, a company incorporated in Ireland with principal place of business at Gordon House, Barrow Street, Dublin 4, Ireland; Google Commerce Limited, a company incorporated in Ireland with principal place of business at Gordon House, Barrow Street, Dublin 4, Ireland; or Google Asia Pacific Pte. Limited, a company incorporated in Singapore with principal place of business at 70 Pasir Panjang Road, #03-71, Mapletree Business City, Singapore 117371. Google may update the Google entities and their addresses from time to time.

Google Play: The software and services, including the Play Console, which allow Developers to distribute Products to users of Devices.

Intellectual Property Rights: All patent rights, copyrights, trademark rights, rights in trade secrets, database rights, moral rights, and any other intellectual property rights (registered or unregistered) throughout the world.

Payment Account: A financial account issued by a Payment Processor to a Developer that authorizes the Payment Processor to collect and remit payments on the Developer's behalf for Products sold via Google Play.

Payment Processor(s): The entity authorized by Google to provide services that enable Developers with Payment Accounts to be paid for Products distributed via Google Play.

Play Console: The Google Play Console and other online tools or services provided by Google to developers at <https://play.google.com/apps/publish>, as may be updated from time to time. The Play Console is also available through an app to developers.

Products: Software, content, digital materials, and other items and services as made available by Developers via the Play Console.

Tax: Any Federal, state, or local sales, use, value added, goods and services, or other similar transaction taxes. This term excludes telecommunication taxes and similar tax types, property taxes, and taxes based on Your income, including, Withholding Taxes, income, franchise, business and occupation, and other similar tax types.

2. Accepting this Agreement

2.1 This agreement ("**Agreement**") forms a legally binding contract between You and Google in relation to Your use of Google Play to distribute Products. You are contracting with the applicable Google entity based on where You have selected to distribute Your Product (as set forth [here](#)). You acknowledge that Google will, solely at Your direction, and acting pursuant to the relationship identified in Section 3.1, display and make Your Products available for viewing, download, and purchase by users. In order to use Google Play to distribute Products, You accept this Agreement and will provide and maintain complete and accurate information in the Play Console.

2.2 Google will not permit the distribution of Your Products through Google Play, and You may not accept the Agreement, unless You are verified as a Developer in good standing.

2.3 If You are agreeing to be bound by this Agreement on behalf of Your employer or other entity, You represent and warrant that You have full legal authority to bind Your employer or such entity to this Agreement. If You do not have the requisite authority, You may not accept the Agreement or use Google Play on behalf of Your employer or other entity.

3. Commercial Relationship, Pricing, Payments, and Taxes

3.1 You hereby appoint Google as Your agent or marketplace service provider as outlined here to make Your Products available in Google Play.

3.2 This Agreement covers both Products that users can access for free and Products that users pay a fee to access. In order for You to charge a fee for Your Products and to be paid for Products distributed via Google Play, You must have a valid Payment Account under a separate agreement with a Payment Processor, be approved by a Payment Processor for a Payment Account, and maintain that account in good standing. If there is a conflict between Your Payment Processor agreement and this Agreement, the terms of this Agreement will apply.

3.3 Products are displayed to users at prices You establish in Your sole discretion. If Google believes that Taxes may be owed by You or Google on the sale of Products, You grant Google permission to include any such Taxes in the price charged to users. You may set the price for Your Products in the currencies permitted by the Payment Processor. Google may display the price of Products to users in their native currency, but Google is not responsible to You for the accuracy of currency rates or currency conversion.

3.4 Acting as Your agent, and with You acting as a principal, Google is the merchant of record for Products sold or made available to users in the countries/territories described here. You are the merchant of record for Products You sell or make available via Google Play to all other users. The price You set for Products will determine the amount of payment You will receive. A "**Service Fee**", as set forth here and as may be revised by Google from time to time with notice to Developer as described in Section 15, will be charged on the sales price and apportioned to the Payment Processor and, if one exists, the Authorized Provider.

3.5 In certain countries/territories as described here, Google will determine if a Product is taxable and if so, the applicable Tax rate will be collected either by Google, the Payment Processor, or the Authorized Provider, and remitted to the appropriate taxing authority

for Products sold to users. Google may update the countries/territories where it will determine and remit the Taxes with notice to You. In all other countries/territories, You are responsible for determining if a Product is taxable, the applicable rate of Tax to be collected, and for remitting the Taxes to the appropriate taxing authority. All Taxes will be deducted from the sales price of Products sold and the remainder (sales price less Service Fee and Taxes, if any) will be remitted to You. Where Google collects and remits Taxes in applicable countries/territories, You and Google will recognize a supply from You to Google solely for Tax purposes to the extent required by local laws, and You will comply with the relevant Tax obligations arising from this additional supply.

3.6 Where either the Payment Processor, or the Authorized Provider notifies Google that it is required by applicable (local) legislation or by the applicable governmental tax authority to withhold any taxes, or where Google reasonably determines that it is required by applicable (local) legislation or by the applicable governmental tax authority to withhold any taxes (in each case, "**Withholding Taxes**"), Google will also deduct an amount equal to such Withholding Taxes from the amount Google remits to You. Withholding Taxes include, but are not limited to, withholding tax obligations on cross-border payments or imposed by telecommunications taxes. You agree to timely provide, as soon as reasonably practicable, any tax documentation or certification requested by Google.

3.7 You may also choose to make Products available for free. If the Product is free, You will not be charged a Service Fee. To avoid unexpected fees for users, You agree that Products that were initially offered free of charge to users will remain free of charge. Any additional charges will correlate with an alternative or supplemental version of the Product.

3.8 You authorize Google to give users refunds in accordance with the Google Play refund policies as located [here](#) or the local versions made available to You, and You agree that Google may deduct the amount of those refunds from payments to You. In all other respects, the Payment Processor's standard terms and conditions regarding refunds will apply. User refunds may be exclusive of taxes previously charged to users for Product purchases.

3.9 Users are allowed unlimited reinstalls of each Product distributed via Google Play without any additional fee, provided however, that if You remove any Product from Google Play due to a Legal Takedown (as defined in Section 8.2), that Product will be removed from all portions of Google Play, and users will no longer have a right or ability to reinstall the affected Product.

4. Use of Google Play by You

4.1 You and Your Product(s) must adhere to the [Developer Program Policies](#).

4.2 You are responsible for uploading Your Products to Google Play, providing required Product information and support to users, and accurately disclosing the permissions necessary for the Product to function on user Devices.

4.3 You are responsible for maintaining the confidentiality of any developer credentials that Google may issue to You or that You may choose Yourself, and You are solely responsible for all Products that are developed under Your developer credentials. Google may limit the number of Developer Accounts issued to You or to the company or organization You work for.

4.4 Except for the license rights granted by You in this Agreement, Google agrees that it obtains no right, title, or interest from You (or Your licensors) under this Agreement in or to any of Your Products, including any Intellectual Property Rights in those Products.

4.5 You may not use Google Play to distribute or make available any Product that has a purpose that facilitates the distribution of software applications and games for use on Android devices outside of Google Play.

4.6 You agree to use Google Play only for purposes that are permitted by this Agreement and any applicable law, regulation, or generally accepted practices or guidelines in the relevant jurisdictions (including any laws regarding the export of data or software to and from the United States or other relevant countries).

4.7 Users are instructed to contact You concerning any defects or performance issues in Your Products. As between You and Google, You will be solely responsible, and Google will have no responsibility, for undertaking or handling the support and maintenance of Your Products and any complaints about Your Products. You agree to supply and maintain valid and accurate contact information that will be displayed in each of Your Products' detail page and made available to users for customer support and legal purposes. For Your paid Products or in-app transactions, You agree to respond to customer support inquiries within 3 business days, and within 24 hours to any support or Product concerns stated to be urgent by Google.

4.8 You agree that if You make Your Products available through Google Play, You will protect the privacy and legal rights of users. If the users provide You with, or Your Product accesses or uses, usernames, passwords, or other login information or personal information, You agree to make the users aware that the information will be available to Your Product, and You agree to provide legally adequate privacy notice and protection for those users. Further, Your Product may only use that information for the limited purposes for which the user has given You permission to do so. If Your Product stores personal or sensitive information provided by users, You agree to do so securely and only for as long as it is needed. However, if the user has opted into a separate agreement with You that allows You or Your Product to store or use personal or sensitive information directly related to Your Product (not including other products or applications), then the terms of that separate agreement will govern Your use of such information. If the

user provides Your Product with Google Account information, Your Product may only use that information to access the user's Google Account when, and for the limited purposes for which, the user has given You permission to do so.

4.9 You will not engage in any activity with Google Play, including making Your Products available via Google Play, that interferes with, disrupts, damages, or accesses in an unauthorized manner the devices, servers, networks, or other properties or services of any third party including, but not limited to, Google or any Authorized Provider. You may not use user information obtained via Google Play to sell or distribute Products outside of Google Play.

4.10 You are solely responsible for, and Google has no responsibility to You for, Your Products, including use of any Google Play APIs and for the consequences of Your actions, including any loss or damage which Google may suffer.

4.11 Google Play allows users to rate and review Products. Only users who download the applicable Product will be able to rate and review it on Google Play. For new Developers without Product history, Google may use or publish performance measurements such as uninstall and/or refund rates to identify or remove Products that are not meeting acceptable standards, as determined by Google. Google reserves the right to display Products to users in a manner that will be determined at Google's sole discretion. Your Products may be subject to user ratings and reviews to which You may not agree. If you have concerns regarding such ratings and reviews, you may report it via the Play Console.

5. Authorizations

5.1 You authorize Google on a non-exclusive, worldwide, and royalty-free basis to: reproduce, perform, display, analyze, and use Your Products in connection with (a) the operation and marketing of Google Play; (b) the marketing of devices and services that support the use of the Products and the marketing of the Products on Google Play and Devices; (c) the provision of hosting services to You and on Your behalf to allow for the storage of and user access to the Products and to enable third -party hosting of such Products; (d) making improvements to Google Play, Play Console, and Android platform; and (e) checking for compliance with this Agreement and the Developer Program Policies. The authorization in clause (e) is sublicensable to application security partners. You also authorize such application security partners to use the results of their review in their products and research that may be publicly available.

5.2 You authorize Google to perform the acts described in this section subject to Your control and direction in the manner indicated in the Play Console.

5.3 You grant to the user a nonexclusive, worldwide, and perpetual license to perform, display, and use the Product. The user may include, but is not limited to, a family group and family members whose accounts are joined together for the purpose of creating a family group. Family groups on Google Play will be subject to reasonable limits designed to prevent abuse of family sharing features. Users in a family group may purchase a single copy of the Product (unless otherwise prohibited, as for in-app and subscription Products) and share it with other family members in their family group. If, in the Play Console, You opt in to allowing users to share previously purchased Products, Your authorization of sharing of those purchases by those users is subject to this Agreement. If You choose, You may include a separate end user license agreement (“**EULA**”) in Your Product that will govern the user’s rights to the Product, but, to the extent that EULA conflicts with this Agreement, this Agreement will supersede the EULA. You acknowledge that the EULA for each of the Products is solely between You and the user. Google will not be responsible for, and will not have any liability whatsoever under, any EULA.

6. Brand Features and Publicity

6.1 Each party will own all right, title, and interest, including, without limitation, all Intellectual Property Rights, relating to its Brand Features. Except to the limited extent expressly provided in this Agreement, neither party grants, nor will the other party acquire, any right, title, or interest (including, without limitation, any implied license) in or to any Brand Features of the other party.

6.2 Subject to the terms and conditions of this Agreement, Developer grants to Google and its affiliates a limited, nonexclusive, royalty-free license during the term of this Agreement to display Developer Brand Features, submitted by Developer to Google, for use solely within Google Play, online or on Devices and in each case solely in connection with the distribution and sale of Developer's Product via Google Play or to otherwise fulfill its obligations under this Agreement.

6.3 In addition to the license granted in Section 6.2 above, for purposes of marketing the presence, distribution, and sale of Your Product via Google Play and its availability for use on Devices and through other Google services, Google and its affiliates may include visual elements from Your Product (including characters and videos of game play) and Developer Brand Features (a) within Google Play, on Devices, and in any Google-owned online or mobile properties; (b) in online, mobile, television, out of home (e.g. billboard), and print advertising formats outside Google Play; (c) when making announcements of the availability of the Product; (d) in presentations; and (e) in customer lists which appear either online or on mobile devices (which includes, without limitation, customer lists posted on Google websites).

6.4 Google grants to Developer a limited, nonexclusive, worldwide, royalty- free license to use the Android Brand Features for the term of this Agreement solely for marketing purposes and only in accordance with the Android Brand Guidelines.

6.5 If Developer discontinues the distribution of specific Products via Google Play, Google will cease use of the discontinued Products' Brand Features pursuant to this Section 6, except as necessary to allow Google to effectuate reinstalls by users.

7. Promotional Activities

7.1 Google may run promotional activities offering coupons, credits, and/or other promotional incentives for paid transactions and/or user actions for Your Products and in-app transactions solely in connection with Google Play promotions and, for gift card promotions, also on Google authorized third-party channels ("**Promotion(s)**"), provided that (a) amounts payable to You will not be impacted; (b) there will be clear communication to users that the Promotion is from Google and not You; (c) the prices You establish will be clearly communicated to users; (d) any redemption of the Promotion will be fulfilled by Google or, for gift card Promotions, through a Google authorized third party; and (e) Google will be responsible for compliance with applicable law for the Promotion.

7.2 In addition to the rights granted in Section 6, You grant Google the right to use Your Brand Features (in the form and manner provided by You) for purposes of marketing Promotions in connection with Google Play and, for gift card Promotions, on Google authorized third-party channels; provided however, that Google will only use Brand Features owned by You on authorized third- party channels.

8. Product Takedowns

8.1 You may remove Your Products from future distribution via Google Play at any time, but You agree to comply with this Agreement and the Payment Processor's Payment Account terms of service for any Products distributed via Google Play prior to removal, including, but not limited to, refund requirements. Removing Your Products from future distribution via Google Play does not (a) affect the rights of users who have previously purchased or downloaded Your Products; (b) remove Your Products from Devices or from any part of Google Play where previously purchased or downloaded applications are stored on behalf of users; or (c) change Your obligation to deliver or support Products or services that have been previously purchased or downloaded by users.

8.2 Notwithstanding Section 8.1, in no event will Google maintain on any portion of Google Play (including, without limitation, the part of Google Play where previously purchased or downloaded applications are stored on behalf of users) any Product that You have removed from Google Play and provided written notice to Google that such removal was due to (a) an allegation of infringement, or actual infringement, of any third party Intellectual Property Right; (b) an allegation of, or actual violation of, third party rights; or (c) an allegation or determination that such Product does not comply with applicable law (collectively "**Legal Takedowns**"). If a Product is removed from Google Play due to a Legal Takedown and an end user purchased such Product within a year (or a longer period as local consumer law mandates) before the date of takedown, at Google's request, You agree to refund to the end user all amounts paid by such end user for such Product.

8.3 Google does not undertake an obligation to monitor the Products or their content. If Google becomes aware and determines in its sole discretion that a Product or any portion thereof (a) violates any applicable law; (b) violates this Agreement, applicable policies, or other terms of service, as may be updated by Google from time to time; (c) violates terms of distribution agreements with device manufacturers and Authorized Providers; or (d) creates potential liability for, or may have an adverse impact on, Google or Authorized Providers (for example, if a Product has an adverse economic, reputational or security-related impact); then Google may reject, remove, suspend, limit the visibility of a Product on Google Play, or reclassify the Product from Google Play or from Devices. Google reserves the right to suspend and/or bar any Product and/or Developer from Google Play or from Devices as described in this Section. If Your Product contains elements that could cause serious harm to user devices or data, Google reserves the right to disable the Product or remove it from Devices on which it has been installed. If Your Product is rejected, removed, or suspended from Google Play or from Devices pursuant to this Section 8.3, then Google may withhold payments due to Developer.

8.4 Google enters into distribution agreements with device manufacturers and Authorized Providers to place the Google Play software client application(s) on Devices. These distribution agreements may require the involuntary removal of Products in violation of the Device manufacturer's or Authorized Provider's terms of service.

9. Privacy and Information

9.1 Any data collected or used pursuant to this Agreement is in accordance with Google's [Privacy Policy](#).

9.2 In order to continually innovate and improve Google Play, related products and services, and the user and Developer experience across Google products and services, Google may collect certain usage statistics from Google Play and Devices including, but not

limited to, information on how the Product, Google Play, and Devices are being used.

9.3 The data collected is used in the aggregate to improve Google Play, related products and services, and the user and Developer experience across Google products and services. Developers have access to certain data collected by Google via the Play Console and certain Google Play APIs. Google relies on the European Commission's Standard Contractual Clauses for transfers of personal data out of the European Economic Area, Switzerland, and the United Kingdom to countries which are not covered by an adequacy decision (e.g., the United States). By using Google Play, you agree to the [Google Controller-Controller Data Protection Terms](#). Your use of certain Google Play APIs may be subject to additional data transfer provisions or the specific, prevailing terms of service of Google Play APIs, such as the [Google Play Developer API Terms of Service](#).

10. Terminating this Agreement

10.1 This Agreement will continue to apply until terminated, subject to the terms that survive pursuant to Section 16.9, by either You or Google as set forth below.

10.2 If You want to terminate this Agreement, You will unpublish all of Your Products and cease Your use of the Play Console and any relevant developer credentials.

10.3 Google may terminate this Agreement with You immediately upon written notice or with thirty (30) days prior written notice if required under applicable law if (a) You have breached any provision of this Agreement, any non-disclosure agreement, or other agreement relating to Google Play or the Android platform; (b) Google is required to do so by law; (c) You cease being an authorized developer, a developer in good standing, or are barred from using Android software; (d) Google decides to no longer provide Google Play; or (e) You or Your Product pose a potential risk for economic, reputational, or security-related harm to Google, users, or other third-party partners. Where allowed under applicable law, Google may also terminate this Agreement with You for any reason with thirty (30) days prior written notice. If Google terminates this Agreement, You will no longer have access to the Play Console. More information on account termination is located [here](#).

10.4 After termination of this Agreement, Google will not distribute Your Product, but may retain and use copies of the Product for support of Google Play and the Android platform.

11. Representations and Warranties

11.1 You represent and warrant that You have all Intellectual Property Rights in and to Your Product(s).

11.2 If You use third-party materials, You represent and warrant that You have the right to distribute the third-party material in the Product. You agree that You will not submit material to Google Play that is subject to third -party Intellectual Property Rights unless You are the owner of such rights or have permission from their rightful owner to submit the material.

11.3 You represent and warrant that, as the principal to the transaction with the user, You are solely responsible for compliance worldwide with all applicable laws and other obligations.

11.4 You represent and warrant that all information that You provide to Google or users in connection with this Agreement or Your Products will be current, true, accurate, supportable and complete.

12. DISCLAIMER OF WARRANTIES

12.1 TO THE MAXIMUM EXTENT PERMITTED BY LAW, YOU UNDERSTAND AND EXPRESSLY AGREE THAT YOUR USE OF THE PLAY CONSOLE AND GOOGLE PLAY IS AT YOUR SOLE RISK AND THAT THE PLAY CONSOLE AND GOOGLE PLAY ARE PROVIDED "AS IS" AND "AS AVAILABLE" WITHOUT WARRANTY OF ANY KIND.

12.2 YOUR USE OF THE PLAY CONSOLE AND GOOGLE PLAY AND ANY MATERIAL DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE PLAY CONSOLE AND GOOGLE PLAY IS AT YOUR OWN DISCRETION AND RISK AND YOU ARE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR OTHER DEVICE OR LOSS OF DATA THAT RESULTS FROM SUCH USE.

12.3 GOOGLE FURTHER EXPRESSLY DISCLAIMS ALL WARRANTIES AND CONDITIONS OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT.

13. LIMITATION OF LIABILITY

TO THE MAXIMUM EXTENT PERMITTED BY LAW, YOU UNDERSTAND AND EXPRESSLY AGREE THAT GOOGLE, ITS SUBSIDIARIES AND AFFILIATES, AND ITS LICENSORS WILL NOT BE LIABLE TO YOU UNDER ANY THEORY OF LIABILITY

FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR EXEMPLARY DAMAGES THAT MAY BE INCURRED BY YOU, INCLUDING ANY LOSS OF DATA, WHETHER OR NOT GOOGLE OR ITS REPRESENTATIVES HAVE BEEN ADVISED OF OR SHOULD HAVE BEEN AWARE OF THE POSSIBILITY OF ANY SUCH LOSSES ARISING.

14. Indemnification

14.1 To the maximum extent permitted by law, You agree to defend, indemnify, and hold harmless Google, its affiliates, and their respective directors, officers, employees and agents, and Authorized Providers from and against any and all third party claims, actions, suits, or proceedings, as well as any and all losses, liabilities, damages, costs, and expenses (including reasonable attorneys' fees) arising out of or accruing from (a) Your use of the Play Console and Google Play in violation of this Agreement; (b) infringement or violation by Your Product(s) of any Intellectual Property Right or any other right of any person; or (c) You or Your Product(s)' violation of any law.

14.2 To the maximum extent permitted by law, You agree to defend, indemnify, and hold harmless the applicable Payment Processors (which may include Google and/or third parties) and the Payment Processors' affiliates, directors, officers, employees, and agents from and against any and all third party claims, actions, suits, or proceedings, as well as any and all losses, liabilities, damages, costs, and expenses (including reasonable attorneys' fees) arising out of or accruing from Your distribution of Products via Google Play.

15. Changes to the Agreement

15.1 Google may make changes to this Agreement at any time with notice to Developer and the opportunity to decline further use of Google Play. You should look at the Agreement and check for notice of any changes regularly.

15.2 Changes will not be retroactive. They will become effective, and will be deemed accepted by Developer, (a) immediately for those who become Developers after the notification is posted; or (b) for pre-existing Developers, on the date specified in the notice, which will be no sooner than 30 days after the changes are posted (except changes required by law which will be effective immediately).

15.3 If You do not agree with the modifications to the Agreement, You may terminate Your use of Google Play, which will be Your sole and exclusive remedy. You agree that Your continued use of Google Play constitutes Your agreement to the modified terms of this Agreement.

16. General Legal Terms

16.1 This Agreement, including any addenda You may have agreed to separately, constitutes the entire legal agreement between You and Google and governs Your use of Google Play and completely replaces any prior agreements between You and Google in relation to Google Play. The English language version of this Agreement will control and translations, if any, are non-binding and for reference only.

16.2 You agree that if Google does not exercise or enforce any legal right or remedy contained in this Agreement (or which Google has the benefit of under any applicable law), this will not be taken to be a formal waiver of Google's rights and that those rights or remedies will still be available to Google.

16.3 If any court of law having the jurisdiction to decide on this matter rules that any provision of this Agreement is invalid, then that provision will be removed from this Agreement without affecting the rest of this Agreement. The remaining provisions of this Agreement will continue to be valid and enforceable.

16.4 You acknowledge and agree that each member of the group of companies comprising Google will be a third -party beneficiary to this Agreement and that such other companies will be entitled to directly enforce, and rely upon, any provision of this Agreement that confers a benefit on (or rights in favor of) them. Other than this, no other person or company will be a third -party beneficiary to this Agreement.

16.5 PRODUCTS ON GOOGLE PLAY MAY BE SUBJECT TO UNITED STATES' AND OTHER JURISDICTIONS' EXPORT CONTROL AND SANCTIONS LAWS AND REGULATIONS. YOU AGREE TO COMPLY WITH ALL EXPORT CONTROL AND SANCTIONS LAWS AND REGULATIONS THAT APPLY TO YOUR DISTRIBUTION OR USE OF PRODUCTS, INCLUDING BUT NOT LIMITED TO (A) THE EXPORT ADMINISTRATION REGULATIONS MAINTAINED BY THE U.S. DEPARTMENT OF COMMERCE, (B) TRADE AND ECONOMIC SANCTIONS MAINTAINED BY THE U.S. TREASURY DEPARTMENT'S OFFICE OF FOREIGN ASSETS CONTROL, AND (C) THE INTERNATIONAL TRAFFIC IN ARMS REGULATIONS MAINTAINED BY THE U.S.

DEPARTMENT OF STATE. THESE LAWS AND REGULATIONS INCLUDE RESTRICTIONS ON DESTINATIONS, USERS, AND END USE.

16.6 Except in the case of a change of control (for example, through a stock purchase or sale, merger, or other form of corporate transaction), the rights granted in this Agreement may not be assigned or transferred by either You or Google without the prior approval of the other party. Any other attempt to assign is void.

16.7 If You experience a change of control, Google may, at its discretion, elect to immediately terminate this Agreement.

16.8 All claims arising out of or relating to this Agreement or Your relationship with Google under this Agreement will be governed by the laws of the State of California, excluding California's conflict of laws provisions. You and Google further agree to submit to the exclusive jurisdiction of the federal or state courts located within the county of Santa Clara, California to resolve any legal matter arising from or relating to this Agreement or Your relationship with Google under this Agreement, except that You agree that Google will be allowed to apply for injunctive relief in any jurisdiction. To the extent required under applicable law, You may have other ways to resolve disputes with Google as described in the [Developer Program Policies](#). If You are accepting the Agreement on behalf of a United States government entity or a United States city, county, or state government entity, then the following applies instead of the foregoing: the parties agree to remain silent regarding governing law and venue.

16.9 Sections 1 (Definitions), 6.5, 10.4, 11 (Representations and Warranties), 12 (Disclaimer of Warranties), 13 (Limitation of Liability), 14 (Indemnification), and 16 (General Legal Terms) will survive any expiration or termination of this Agreement.

GOOGLE PRIVACY POLICY

When you use our services, you're trusting us with your information. We understand this is a big responsibility and work hard to protect your information and put you in control.

This Privacy Policy is meant to help you understand what information we collect, why we collect it, and how you can update, manage, export, and delete your information.



Privacy Checkup

Looking to change your privacy settings?

[Take the Privacy Checkup](#)

Effective February 10, 2022

[Archived versions](#)

We build a range of services that help millions of people daily to explore and interact with the world in new ways. Our services include:

- Google apps, sites, and devices, like Search, YouTube, and Google Home
- Platforms like the Chrome browser and Android operating system
- Products that are integrated into third-party apps and sites, like ads, analytics, and embedded Google Maps

You can use our services in a variety of ways to manage your privacy. For example, you can sign up for a Google Account if you want to create and manage content like emails and photos, or see more relevant search results. And you can use many Google services when you're signed out or without creating an account at all, like searching on Google or watching YouTube videos. You can also choose to browse the web in a private mode, like Chrome Incognito mode. And across our services, you can adjust your privacy settings to control what we collect and how your information is used.

To help explain things as clearly as possible, we've added examples, explanatory videos, and definitions for [key terms](#). And if you have any questions about this Privacy Policy, you can [contact us](#).

INFORMATION GOOGLE COLLECTS

We want you to understand the types of information we collect as you use our services

We collect information to provide better services to all our users — from figuring out basic stuff like which language you speak, to more complex things like which [ads you'll find most useful](#), [the people who matter most to you online](#), or which YouTube videos you might like. The information Google collects, and how that information is used, depends on how you use our services and how you manage your privacy controls.

When you're not signed in to a Google Account, we store the information we collect with [unique identifiers](#) tied to the browser, application, or [device](#) you're using. This allows us to do things like maintain your preferences across browsing sessions, such as your preferred language or whether to show you more relevant search results or ads based on your activity.

When you're signed in, we also collect information that we store with your Google Account, which we treat as [personal information](#).

Things you create or provide to us

When you create a Google Account, you provide us with [personal information](#) that includes your name and a password. You can also choose to add a [phone number](#) or [payment information](#) to your account. Even if you aren't signed in to a Google Account, you might choose to provide us with information — like an email address to receive updates about our services.

We also collect the content you create, upload, or receive from others when using our services. This includes things like email you write and receive, photos and videos you save, docs and spreadsheets you create, and comments you make on YouTube videos.

Information we collect as you use our services

Your apps, browsers & devices

We collect information about the apps, browsers, and [devices](#) you use to access Google services, which helps us provide features like automatic product updates and dimming your screen if your battery runs low.

The information we collect includes [unique identifiers](#), browser type and settings, device type and settings, operating system, mobile network information including carrier name and phone number, and application version number. We also collect information about the interaction of your apps, browsers, and devices with our services, including [IP address](#), crash reports, system activity, and the date, time, and [referrer URL](#) of your request.

We collect this information when a Google service on your device contacts our servers — for example, when you install an app from the Play Store or when a service checks for automatic updates. If you're using an [Android device with Google apps](#), your device periodically contacts Google servers to provide information about your device and connection to our services. This information includes things like your [device type and carrier name](#), crash reports, which apps you've installed, and, depending on your device settings, [other information about how you're using your Android device](#).

Your activity

We collect information about your activity in our services, which we use to do things like recommend a YouTube video you might like. The activity information we collect may include:

- Terms you search for
- Videos you watch
- [Views and interactions with content and ads](#)
- [Voice and audio information](#)
- Purchase activity
- People with whom you communicate or share content
- Activity on third-party sites and apps that use our services
- Chrome browsing history you've [synced with your Google Account](#)

If you use our [services to make and receive calls or send and receive messages](#), we may collect call and message log information like your phone number, calling-party number, receiving-party number, forwarding numbers, sender and recipient email address, time and date of calls and messages, duration of calls, routing information, and types and volumes of calls and messages.

You can visit your Google Account to find and manage activity information that's saved in your account.



[Go to Google Account](#)

Your location information

We collect information about your location when you use our services, which helps us offer features like driving directions, search results for things near you, and ads based on your general location.

Your location can be determined with varying degrees of accuracy by:

- GPS and other [sensor data from your device](#)
- [IP address](#)
- Activity on Google services, such as your searches and places you label like home or work
- [Information about things near your device](#), such as Wi-Fi access points, cell towers, and Bluetooth-enabled devices

The types of location data we collect and how long we store it depend in part on your device and account settings. For example, you can [turn your Android device's location on or off](#) using the device's settings app. You can also turn on [Location History](#) if you want to create a private map of where you go with your signed-in devices. And if your Web & App Activity setting is enabled, your searches and other activity from Google services, which may also include location information, is saved to your Google Account. Learn more about [how we use location information](#).

In some circumstances, Google also collects information about you from [publicly accessible sources](#). For example, if your name appears in your local newspaper, Google's Search engine may index that article and display it to other people if they search for your name. We may also collect information about you from trusted partners, such as directory services who provide us with business information to be displayed on

Google's services, marketing partners who provide us with information about potential customers of our business services, and security partners who provide us with information to [protect against abuse](#). We also receive information from advertising partners to provide [advertising and research services on their behalf](#).

We use various technologies to collect and store information, including [cookies](#), [pixel tags](#), local storage, such as [browser web storage](#) or [application data caches](#), databases, and [server logs](#).

WHY GOOGLE COLLECTS DATA

We use data to build better services

We use the information we collect from all our services for the following purposes:

Provide our services

We use your information to [deliver our services](#), like processing the terms you search for in order to return results or helping you share content by suggesting recipients from your contacts.

Maintain & improve our services

We also use your information to [ensure our services are working as intended](#), such as tracking outages or troubleshooting issues that you report to us. And we use your information to [make improvements](#) to our services — for example, understanding which search terms are most frequently misspelled helps us improve spell-check features used across our services.

Develop new services

We use the information we collect in existing services to help us develop new ones. For example, understanding how people organized their photos in Picasa, Google's first photos app, helped us design and launch Google Photos.

Provide personalized services, including content and ads

We use the information we collect to customize our services for you, including providing recommendations, personalized content, and [customized search results](#). For example, [Security Checkup](#) provides security tips adapted to how you use Google products. And Google Play uses information like apps you've already installed and videos you've watched on YouTube to suggest new apps you might like.

Depending on your settings, we may also show you [personalized ads](#) based on your interests. For example, if you search for "mountain bikes," you may see an ad for sports equipment when you're browsing a site that shows ads served by Google. You can control what information we use to show you ads by visiting your ad settings.

- We don't show you personalized ads based on [sensitive categories](#), such as race, religion, sexual orientation, or health.
- We don't show you personalized ads based on your content from Drive, Gmail, or Photos.
- We don't share information that personally identifies you with advertisers, such as your name or email, unless you ask us to. For example, if you see an ad for a nearby flower shop and select the "tap to call" button, we'll connect your call and may share your phone number with the flower shop.



[Go to Ad Settings](#)

Measure performance

We use data for analytics and measurement to understand how our services are used. For example, we analyze data about your visits to our sites to do things like optimize product design. And we also use data about the ads you interact with to help advertisers understand the performance of their ad campaigns. We use a variety of tools to do this, including Google Analytics. When you visit sites or use apps that use Google Analytics, a Google Analytics customer may choose to enable Google to [link information](#) about your activity from that site or app with activity from other sites or apps that use our ad services.

Communicate with you

We use information we collect, like your email address, to interact with you directly. For example, we may send you a notification if we detect suspicious activity, like an attempt to sign in to your Google Account from an unusual location. Or we may let you know about upcoming changes or improvements to our services. And

if you contact Google, we'll keep a record of your request in order to help solve any issues you might be facing.

Protect Google, our users, and the public

We use information to help improve the [safety and reliability](#) of our services. This includes detecting, preventing, and responding to fraud, abuse, security risks, and technical issues that could harm Google, our users, or the public.

We use different technologies to process your information for these purposes. We use automated systems that analyze your content to provide you with things like customized search results, personalized ads, or other features tailored to how you use our services. And we analyze your content to help us [detect abuse](#) such as spam, malware, and illegal content. We also use [algorithms](#) to recognize patterns in data. For example, Google Translate helps people communicate across languages by detecting common language patterns in phrases you ask it to translate.

We may [combine the information we collect](#) among our services and across your devices for the purposes described above. For example, if you watch videos of guitar players on YouTube, you might see an ad for guitar lessons on a site that uses our ad products. Depending on your account settings, [your activity on other sites and apps](#) may be associated with your personal information in order to improve Google's services and the ads delivered by Google.

If other users already have your email address or other information that identifies you, we may show them your publicly visible Google Account information, such as your name and photo. This helps people identify an email coming from you, for example.

We'll ask for your consent before using your information for a purpose that isn't covered in this Privacy Policy.

YOUR PRIVACY CONTROLS

You have choices regarding the information we collect and how it's used

This section describes key controls for managing your privacy across our services. You can also visit the [Privacy Checkup](#), which provides an opportunity to review and adjust important privacy settings. In addition

to these tools, we also offer specific privacy settings in our products — you can learn more in our [Product Privacy Guide](#).



[Go to Privacy Checkup](#)

Managing, reviewing, and updating your information

When you're signed in, you can always review and update information by visiting the services you use. For example, Photos and Drive are both designed to help you manage specific types of content you've saved with Google.

We also built a place for you to review and control information saved in your Google Account. Your [Google Account](#) includes:

Privacy controls



Activity Controls

Decide what types of activity you'd like saved in your account. For example, if you have YouTube History turned on, the videos you watch and the things you search for are saved in your account so you can get better recommendations and remember where you left off. And if you have Web & App Activity turned on, your searches and activity from other Google services are saved in your account so you can get more personalized experiences like faster searches and more helpful app and content recommendations. Web & App Activity also has a subsetting that lets you control whether [information about your activity on other sites, apps, and devices that use Google services](#), such as apps you install and use on Android, is saved in your Google Account and used to improve Google services.

[Go to Activity Controls](#)



Ad settings

Manage your preferences about the ads shown to you on Google and on sites and apps that [partner with Google](#) to show ads. You can modify your interests, choose whether your personal information is used to make ads more relevant to you, and turn on or off certain advertising services.

[Go to Ad Settings](#)**About you**

Manage personal info in your Google Account and control who can see it across Google services.

[Go to About You](#)**Shared endorsements**

Choose whether your name and photo appear next to your activity, like reviews and recommendations, that appear in ads.

[Go to Shared Endorsements](#)**Sites and apps that use Google services**

Manage information that websites and apps using Google services, like Google Analytics, may share with Google when you visit or interact with their services.

[Go to How Google uses information from sites or apps that use our services](#)

Ways to review & update your information

**My Activity**

My Activity allows you to review and control data that's saved to your Google Account when you're signed in and using Google services, like searches you've done or your visits to Google Play. You can browse by date and by topic, and delete part or all of your activity.

[Go to My Activity](#)**Google Dashboard**

Google Dashboard allows you to manage information associated with specific products.

[Go to Dashboard](#)

Your personal information



Manage your contact information, such as your name, email, and phone number.

[Go to Personal Info](#)

When you're signed out, you can manage information associated with your browser or device, including:

- Signed-out search personalization: [Choose](#) whether your search activity is used to offer you more relevant results and recommendations.
- YouTube settings: Pause and delete your [YouTube Search History](#) and your [YouTube Watch History](#).
- Ad Settings: [Manage](#) your preferences about the ads shown to you on Google and on sites and apps that partner with Google to show ads.

Exporting, removing & deleting your information

You can export a copy of content in your Google Account if you want to back it up or use it with a service outside of Google.



[Export your data](#)

You can also [request to remove content](#) from specific Google services based on applicable law.

To delete your information, you can:

- Delete your content from [specific Google services](#)
 - Search for and then delete specific items from your account using [My Activity](#)
 - [Delete specific Google products](#), including your information associated with those products
 - [Delete your entire Google Account](#)
-



[Delete your information](#)

And finally, [Inactive Account Manager](#) allows you to give someone else access to parts of your Google Account in case you're unexpectedly unable to use your account.

There are other ways to control the information Google collects whether or not you're signed in to a Google Account, including:

- **Browser settings:** For example, you can configure your browser to indicate when Google has set a [cookie](#) in your browser. You can also configure your browser to block all cookies from a specific domain or all domains. But remember that our services [rely on cookies to function properly](#), for things like remembering your language preferences.
 - **Device-level settings:** Your device may have controls that determine what information we collect. For example, you can [modify location settings](#) on your Android device.
-

SHARING YOUR INFORMATION

When you share your information

Many of our services let you share information with other people, and you have control over how you share. For example, you can share videos on YouTube publicly or you can decide to keep your videos private. Remember, when you share information publicly, your content may become accessible through search engines, including Google Search.

When you're signed in and interact with some Google services, like leaving comments on a YouTube video or reviewing an app in Play, your name and photo appear next to your activity. We may also display this information in [ads depending on your Shared endorsements setting](#).

When Google shares your information

We do not share your personal information with companies, organizations, or individuals outside of Google except in the following cases:

With your consent

We'll share personal information outside of Google when we have your consent. For example, if you [use Google Home to make a reservation](#) through a booking service, we'll get your permission before sharing your name or phone number with the restaurant. We'll ask for your explicit consent to share any [sensitive personal information](#).

With domain administrators

If you're a student or work for an organization that uses Google services, your [domain administrator](#) and resellers who manage your account will have access to your Google Account. They may be able to:

- Access and retain information stored in your account, like your email
- View statistics regarding your account, like how many apps you install
- Change your account password
- Suspend or terminate your account access
- Receive your account information in order to satisfy applicable law, regulation, legal process, or enforceable governmental request
- Restrict your ability to delete or edit your information or your privacy settings

For external processing

We provide personal information to our [affiliates](#) and other trusted businesses or persons to process it for us, based on our instructions and in compliance with our Privacy Policy and any other appropriate confidentiality and security measures. For example, we use service providers to help operate our data centers, deliver our products and services, improve our internal business processes, and offer additional support to customers and users. We also use service providers to help review YouTube video content for public safety and analyze and listen to samples of saved user audio to help improve Google's audio recognition technologies.

For legal reasons

We will share personal information outside of Google if we have a good-faith belief that access, use, preservation, or disclosure of the information is reasonably necessary to:

- Meet any applicable law, regulation, [legal process](#), or [enforceable governmental request](#). We share information about the number and type of requests we receive from governments in our [Transparency](#)

[Report](#).

- Enforce applicable Terms of Service, including investigation of potential violations.
- Detect, prevent, or otherwise address fraud, security, or technical issues.
- Protect against harm to the rights, property or safety of Google, our users, or the public as required or permitted by law.

We may share [non-personally identifiable information](#) publicly and with our partners — like publishers, advertisers, developers, or rights holders. For example, we share information publicly to [show trends](#) about the general use of our services. We also allow [specific partners](#) to collect information from your browser or device for advertising and measurement purposes using their own cookies or similar technologies.

If Google is involved in a merger, acquisition, or sale of assets, we'll continue to ensure the confidentiality of your personal information and give affected users notice before personal information is transferred or becomes subject to a different privacy policy.

KEEPING YOUR INFORMATION SECURE

We build security into our services to protect your information

All Google products are built with strong security features that continuously protect your information. The insights we gain from maintaining our services help us detect and automatically block security threats from ever reaching you. And if we do detect something risky that we think you should know about, we'll notify you and help guide you through steps to stay better protected.

We work hard to protect you and Google from unauthorized access, alteration, disclosure, or destruction of information we hold, including:

- We use encryption to keep your data private while in transit
- We offer a range of security features, like [Safe Browsing](#), Security Checkup, and [2 Step Verification](#) to help you protect your account
- We review our information collection, storage, and processing practices, including physical security measures, to prevent unauthorized access to our systems

- We restrict access to personal information to Google employees, contractors, and agents who need that information in order to process it. Anyone with this access is subject to strict contractual confidentiality obligations and may be disciplined or terminated if they fail to meet these obligations.

EXPORTING & DELETING YOUR INFORMATION

You can export a copy of your information or delete it from your Google Account at any time

You can export a copy of content in your Google Account if you want to back it up or use it with a service outside of Google.



Export your data

To delete your information, you can:

- Delete your content from [specific Google services](#)
- Search for and then delete specific items from your account using [My Activity](#)
- [Delete specific Google products](#), including your information associated with those products
- [Delete your entire Google Account](#)



Delete your information

RETAINING YOUR INFORMATION

We retain the data we collect for different periods of time depending on what it is, how we use it, and how you configure your settings:

- Some data you can delete whenever you like, such as the content you create or upload. You can also delete [activity information](#) saved in your account, or [choose to have it deleted automatically](#) after a set

period of time.

- Other data is deleted or anonymized automatically after a set period of time, such as [advertising data](#) in server logs.
- We keep some data until you delete your Google Account, such as information about how often you use our services.
- And some data we retain for longer periods of time when necessary for legitimate business or legal purposes, such as security, fraud and abuse prevention, or financial record-keeping.

When you delete data, we follow a deletion process to make sure that your data is safely and completely removed from our servers or retained only in anonymized form. We try to ensure that our services protect information from accidental or malicious deletion. Because of this, there may be delays between when you delete something and when copies are deleted from our active and backup systems.

You can read more about Google's [data retention periods](#), including how long it takes us to delete your information.

COMPLIANCE & COOPERATION WITH REGULATORS

We regularly review this Privacy Policy and make sure that we process your information in ways that comply with it.

Data transfers

We maintain [servers around the world](#) and your information may be processed on servers located outside of the country where you live. Data protection laws vary among countries, with some providing more protection than others. Regardless of where your information is processed, we apply the same protections described in this policy. We also comply with certain [legal frameworks](#) relating to the transfer of data.

When we receive formal written complaints, we respond by contacting the person who made the complaint. We work with the appropriate regulatory authorities, including local data protection authorities, to resolve any complaints regarding the transfer of your data that we cannot resolve with you directly.

California requirements

The California Consumer Privacy Act (CCPA) requires specific disclosures for California residents.

This Privacy Policy is designed to help you understand how Google handles your information:

- We explain the categories of information Google collects and the sources of that information in [Information Google collects](#).
- We explain how Google uses information in [Why Google collects data](#).
- We explain when Google may share information in [Sharing your information](#). Google does not sell your personal information.

The CCPA also provides the right to request information about how Google collects, uses, and discloses your personal information. And it gives you the right to access your information and request that Google delete that information. Finally, the CCPA provides the right to not be discriminated against for exercising your privacy rights.

We describe the choices you have to manage your privacy and data across Google's services in [Your privacy controls](#). You can exercise your rights by using these controls, which allow you to access, review, update and delete your information, as well as [export and download](#) a copy of it. When you use them, we'll validate your request by verifying that you're signed in to your Google Account. If you have questions or requests related to your rights under the CCPA, you (or your authorized agent) can also [contact Google](#). You can also find [more information](#) on Google's handling of CCPA requests.

The CCPA requires a description of data practices using specific categories. This table uses these categories to organize the information in this Privacy Policy.

Categories of personal information we collect

Identifiers such as your [name](#), [phone number](#), and address, as well as [unique identifiers](#) tied to the browser, application, or device you're using.

Demographic information, such as your [age](#), [gender](#) and [language](#).

Commercial information such as your [payment information](#) and a history of [purchases](#) you make on Google's services.

Biometric information if you choose to provide it, such as fingerprints in Google's product development studies

Internet, network, and other activity information such as your search terms; views and interactions with content and ads; Chrome browsing history you've synced with your Google Account; information about the interaction of your apps, browsers, and devices with our services (like IP address, crash reports, and system activity); and activity on third-party sites and apps that use our services. You can review and control activity data stored in your Google Account in [My Activity](#).

Geolocation data, such as may be determined by GPS, IP address, and other data from sensors on or around your device, depending in part on your device and account settings. Learn more about [Google's use of location information](#).

Audio, electronic, visual, and similar information, such as [voice and audio information](#).

Professional, employment, and education information, such as information [you provide](#) or that is maintained through an organization using Google services at which you study or work.

Other information you create or provide, such as the content you create, upload, or receive (like photos and videos or emails, docs and spreadsheets). [Google Dashboard](#) allows you to manage information associated with specific products.

Inferences drawn from the above, like your [ads interest categories](#).

Business purposes for which information may be used or disclosed

Protecting against security threats, abuse, and illegal activity: Google uses and may disclose information to detect, prevent and respond to security incidents, and for protecting against other malicious, deceptive, fraudulent, or illegal activity. For example, to protect our services, Google may receive or disclose information about IP addresses that malicious actors have compromised.

Auditing and measurement: Google uses information for analytics and measurement to understand how our services are used, as well as to fulfill obligations to our partners like publishers, advertisers, developers, or rights holders. We may disclose non-personally identifiable information publicly and with these partners, including for auditing purposes.

Maintaining our services: Google uses information to ensure our services are working as intended, such as tracking outages or troubleshooting bugs and other issues that you report to us.

Research and development: Google uses information to improve our services and to develop new products, features and technologies that benefit our users and the public. For example, we use publicly available information to help train Google's language models and build features like Google Translate.

Use of service providers: Google shares information with service providers to perform services on our behalf, in compliance with our Privacy Policy and other appropriate confidentiality and security measures. For example, we may rely on service providers to help provide customer support.

Advertising: Google processes information to provide advertising, including online identifiers, browsing and search activity, and information about your location and interactions with advertisements. This keeps Google's services and many of the websites and services you use free of charge. You can control what information we use to show you ads by visiting your [ad settings](#).

Legal reasons: Google also uses information to satisfy applicable laws or regulations, and discloses information in response to legal process or enforceable government requests, including to law enforcement. We provide information about the number and type of requests we receive from governments in our [Transparency Report](#).

Parties with whom information may be shared

Other people with whom you choose to share your information, like docs or photos, and videos or comments on YouTube.

Third parties to whom you consent to sharing your information, such as services that integrate with Google's services. You can [review and manage third party apps and sites](#) with access to data in your Google Account.

Service providers, trusted businesses or persons that process information on Google's behalf, based on our instructions and in compliance with our Privacy Policy and any other appropriate confidentiality and security measures.

Domain administrators, if you work or study at an organization that uses Google services.

Law enforcement or other third parties, for the legal reasons described in [Sharing your information](#).

ABOUT THIS POLICY

When this policy applies

This Privacy Policy applies to all of the services offered by Google LLC and its [affiliates](#), including YouTube, Android, and services offered on third-party sites, such as advertising services. This Privacy Policy doesn't apply to services that have separate privacy policies that do not incorporate this Privacy Policy.

This Privacy Policy doesn't apply to:

- The information practices of other companies and organizations that advertise our services
- Services offered by other companies or individuals, including products or sites they offer that may include Google services to which the policy applies, or products or sites displayed to you in search results, or linked from our services

Changes to this policy

We change this Privacy Policy from time to time. We will not reduce your rights under this Privacy Policy without your explicit consent. We always indicate the date the last changes were published and we offer access to [archived versions](#) for your review. If changes are significant, we'll provide a more prominent notice (including, for certain services, email notification of Privacy Policy changes).

RELATED PRIVACY PRACTICES

Specific Google services

The following privacy notices provide additional information about some Google services:

- [Chrome & the Chrome Operating System](#)
- [Payments](#)
- [Fiber](#)
- [Google Fi](#)
- [Google Workspace for Education](#)

- [Read Along](#)
- [YouTube Kids](#)
- [Google Accounts Managed with Family Link, for Children under 13 \(or applicable age in your country\)](#)
- [Family Link privacy guide for children & teens](#)
- [Voice and Audio Collection from Children's Features on the Google Assistant](#)

If you're a member of an organization that uses Google Workspace or Google Cloud Platform, learn how these services collect and use your personal information in the [Google Cloud Privacy Notice](#).

Other useful resources

The following links highlight useful resources for you to learn more about our practices and privacy settings.

- [Your Google Account](#) is home to many of the settings you can use to manage your account
- [Privacy Checkup](#) guides you through key privacy settings for your Google Account
- [Google's safety center](#) helps you learn more about our built-in security, privacy controls, and tools to help set digital ground rules for your family online
- [Google's Teen Privacy Guide](#) provides answers to some of the top questions we get asked about privacy
- [Privacy & Terms](#) provides more context regarding this Privacy Policy and our Terms of Service
- [Technologies](#) includes more information about:
 - [How Google uses cookies](#)
 - Technologies used for [Advertising](#)
 - [How Google uses pattern recognition](#) to recognize things like faces in photos
 - [How Google uses information from sites or apps that use our services](#)

Key terms

Affiliates

An affiliate is an entity that belongs to the Google group of companies, including the following companies that provide consumer services in the EU: Google Ireland Limited, Google Commerce Ltd, Google Payment Corp, and Google Dialer Inc. Learn more about the [companies providing business services in the EU](#).

Algorithm

A process or set of rules followed by a computer in performing problem-solving operations.

Application data cache

An application data cache is a data repository on a device. It can, for example, enable a web application to run without an internet connection and improve the performance of the application by enabling faster loading of content.

Browser web storage

Browser web storage enables websites to store data in a browser on a device. When used in "local storage" mode, it enables data to be stored across sessions. This makes data retrievable even after a browser has been closed and reopened. One technology that facilitates web storage is HTML 5.

Cookies

A cookie is a small file containing a string of characters that is sent to your computer when you visit a website. When you visit the site again, the cookie allows that site to recognize your browser. Cookies may store user preferences and other information. You can configure your browser to refuse all cookies or to indicate when a cookie is being sent. However, some website features or services may not function properly without cookies. Learn more about [how Google uses cookies](#) and how Google uses data, including cookies, [when you use our partners' sites or apps](#).

Device

A device is a computer that can be used to access Google services. For example, desktop computers, tablets, smart speakers, and smartphones are all considered devices.

Google Account

You may access some of our services by signing up for a [Google Account](#) and providing us with some personal information (typically your name, email address, and a password). This account information is used to authenticate you when you access Google services and protect your account from unauthorized access by others. You can edit or delete your account at any time through your Google Account settings.

IP address

Every device connected to the Internet is assigned a number known as an Internet protocol (IP) address. These numbers are usually assigned in geographic blocks. An IP address can often be used to identify the location from which a device is connecting to the Internet.

Non-personally identifiable information

This is information that is recorded about users so that it no longer reflects or references an individually-identifiable user.

Personal information

This is information that you provide to us which personally identifies you, such as your name, email address, or billing information, or other data that can be reasonably linked to such information by Google, such as information we associate with your Google Account.

Pixel tag

A pixel tag is a type of technology placed on a website or within the body of an email for the purpose of tracking certain activity, such as views of a website or when an email is opened. Pixel tags are often used in combination with cookies.

Referrer URL

A Referrer URL (Uniform Resource Locator) is information transmitted to a destination webpage by a web browser, typically when you click a link to that page. The Referrer URL contains the URL of the last webpage the browser visited.

Sensitive personal information

This is a particular category of personal information relating to topics such as confidential medical facts, racial or ethnic origins, political or religious beliefs, or sexuality.

Server logs

Like most websites, our servers automatically record the page requests made when you visit our sites. These “server logs” typically include your web request, Internet Protocol address, browser type, browser language, the date and time of your request, and one or more cookies that may uniquely identify your browser.

A typical log entry for a search for “cars” looks like this:

```
123.45.67.89 - 25/Mar/2003 10:15:32 -  
http://www.google.com/search?q=cars -  
Firefox 1.0.7; Windows NT 5.1 -  
740674ce2123e969
```

- `123.45.67.89` is the Internet Protocol address assigned to the user by the user’s ISP. Depending on the user’s service, a different address may be assigned to the user by their service provider each time they connect to the Internet.
- `25/Mar/2003 10:15:32` is the date and time of the query.
- `http://www.google.com/search?q=cars` is the requested URL, including the search query.
- `Firefox 1.0.7; Windows NT 5.1` is the browser and operating system being used.
- `740674ce2123a969` is the unique cookie ID assigned to this particular computer the first time it visited Google. (Cookies can be deleted by users. If the user has deleted the cookie from the computer since the last time they’ve visited Google, then it will be the unique cookie ID assigned to their device the next time they visit Google from that particular device).

Unique identifiers

A unique identifier is a string of characters that can be used to uniquely identify a browser, app, or device. Different identifiers vary in how permanent they are, whether they can be reset by users, and how they can be accessed.

Unique identifiers can be used for various purposes, including security and fraud detection, syncing services such as your email inbox, remembering your preferences, and providing personalized advertising. For example, unique identifiers stored in cookies help sites display content in your browser in your preferred language. You can configure your browser to refuse all cookies or to indicate when a cookie is being sent. Learn more about [how Google uses cookies](#).

On other platforms besides browsers, unique identifiers are used to recognize a specific device or app on that device. For example, a unique identifier such as the Advertising ID is used to provide relevant advertising on Android devices, and can be [managed](#) in your device's settings. Unique identifiers may also be incorporated into a device by its manufacturer (sometimes called a universally unique ID or UUID), such as the IMEI-number of a mobile phone. For example, a device's unique identifier can be used to customize our service to your device or analyze device issues related to our services.

Additional Context

ads you'll find most useful

For example, if you watch videos about baking on YouTube, you may see more ads that relate to baking as you browse the web. We also may use your IP address to determine your approximate location, so that we can serve you ads for a nearby pizza delivery service if you search for "pizza." Learn more [about Google ads](#) and [why you may see particular ads](#).

advertising and research services on their behalf

For example, advertisers may upload data from their loyalty-card programs so that they can better understand the performance of their ad campaigns. We only provide aggregated reports to advertisers that don't reveal information about individual people.

Android device with Google apps

Android devices with Google apps include devices sold by Google or one of our partners and include phones, cameras, vehicles, wearables, and televisions. These devices use Google Play Services and other pre-installed apps that include services like Gmail, Maps, your phone's camera and phone dialer, text-to-speech conversion, keyboard input, and security features. Learn more about [Google Play Services](#).

combine the information we collect

Some examples of how we combine the information we collect include:

- When you're signed in to your Google Account and search on Google, you can see search results from the public web, along with relevant information from the content you have in other Google products, like Gmail or Google Calendar. This can include things like the status of your upcoming flights, restaurant, and hotel reservations, or your photos. [Learn more](#)
- If you have communicated with someone via Gmail and want to add them to a Google Doc or an event in Google Calendar, Google makes it easy to do so by autocompleting their email address when you start to type in their name. This feature makes it easier to share things with people you know. [Learn more](#)
- The Google app can use data that you have stored in other Google products to show you personalized content, depending on your settings. For example, if you have searches stored in your Web & App Activity, the Google app can show you news articles and other information about your interests, like sports scores, based your activity. [Learn more](#)
- If you link your Google Account to your Google Home, you can manage your information and get things done through the Google Assistant. For example, you can add events to your Google Calendar or get your schedule for the day, ask for status updates on your upcoming flight, or send information like driving directions to your phone. [Learn more](#)

customized search results

For example, when you're signed in to your Google Account and have the Web & App Activity control enabled, you can get more relevant search results that are based on your previous searches and activity from other Google services. You can [learn more here](#). You may also get customized search results even when you're signed out. If you don't want this level of search customization, you can [search and browse privately](#) or turn off [signed-out search personalization](#).

deliver our services

Examples of how we use your information to deliver our services include:

- We use the IP address assigned to your device to send you the data you requested, such as loading a YouTube video
- We use unique identifiers stored in cookies on your device to help us authenticate you as the person who should have access to your Google Account
- Photos and videos you upload to Google Photos are used to help you create albums, animations, and other creations that you can share. [Learn more](#)
- A flight confirmation email you receive may be used to create a “check-in” button that appears in your Gmail
- When you purchase services or physical goods from us, you may provide us information like your shipping address or delivery instructions. We use this information for things like processing, fulfilling, and delivering your order, and to provide support in connection with the product or service you purchase.

detect abuse

When we detect spam, malware, illegal content, and other forms of abuse on our systems in violation of our policies, we may disable your account or take other appropriate action. In certain circumstances, we may also report the violation to appropriate authorities.

devices

For example, we can use information from your devices to help you decide which device you’d like to use to install an app or view a movie you buy from Google Play. We also use this information to help protect your account.

ensure and improve

For example, we analyze how people interact with advertising to improve the performance of our ads.

ensure our services are working as intended

For example, we continuously monitor our systems to look for problems. And if we find something wrong with a specific feature, reviewing activity information collected before the problem started allows us to fix things more quickly.

Information about things near your device

If you use Google's Location services on Android, we can improve the performance of apps that rely on your location, like Google Maps. If you use Google's Location services, your device sends information to Google about its location, sensors (like accelerometer), and nearby cell towers and Wi-Fi access points (like MAC address and signal strength). All these things help to determine your location. You can use your device settings to enable Google Location services. [Learn more](#)

legal process, or enforceable governmental request

Like other technology and communications companies, Google regularly receives requests from governments and courts around the world to disclose user data. Respect for the privacy and security of data you store with Google underpins our approach to complying with these legal requests. Our legal team reviews each and every request, regardless of type, and we frequently push back when a request appears to be overly broad or doesn't follow the correct process. Learn more in our [Transparency Report](#).

make improvements

For example, we use cookies to analyze how people interact with our services. And that analysis can help us build better products. For example, it may help us discover that it's taking people too long to complete a certain task or that they have trouble finishing steps at all. We can then redesign that feature and improve the product for everyone.

may link information

Google Analytics relies on first-party cookies, which means the cookies are set by the Google Analytics customer. Using our systems, data generated through Google Analytics can be linked by the Google Analytics customer and by Google to third-party cookies that are related to visits to other websites. For example, an advertiser may want to use its Google Analytics data to create more relevant ads, or to further analyze its traffic. [Learn more](#)

partner with Google

There are over 2 million non-Google websites and apps that partner with Google to show ads. [Learn more](#)

payment information

For example, if you add a credit card or other payment method to your Google Account, you can use it to buy things across our services, like apps in the Play Store. We may also ask for other information, like a business tax ID, to help process your payment. In some cases, we may also need to verify your identity and may ask you for information to do this.

We may also use payment information to verify that you meet age requirements, if, for example, you enter an incorrect birthday indicating you're not old enough to have a Google Account. [Learn more](#)

personalized ads

You may also see personalized ads based on information from the advertiser. If you shopped on an advertiser's website, for example, they can use that visit information to show you ads. [Learn more](#)

phone number

If you add your phone number to your account, it can be used for different purposes across Google services, depending on your settings. For example, your phone number can be used to help you access your account if you forget your password, help people find and connect with you, and make the ads you see more relevant to you. [Learn more](#)

protect against abuse

For example, information about security threats can help us notify you if we think your account has been compromised (at which point we can help you take steps to protect your account).

publicly accessible sources

For example, we may collect information that's publicly available online or from other public sources to help train Google's language models and build features like Google Translate. Or, if your business's information appears on a website, we may index and display it on Google services.

rely on cookies to function properly

For example, we use a cookie called 'lbc's' that makes it possible for you to open many Google Docs in one browser. Blocking this cookie would prevent Google Docs from working as expected. [Learn more](#)

safety and reliability

Some examples of how we use your information to help keep our services safe and reliable include:

- Collecting and analyzing IP addresses and cookie data to protect against automated abuse. This abuse takes many forms, such as sending spam to Gmail users, stealing money from advertisers by fraudulently clicking on ads, or censoring content by launching a Distributed Denial of Service (DDoS) attack.
- The "last account activity" feature in Gmail can help you find out if and when someone accessed your email without your knowledge. This feature shows you information about recent activity in Gmail, such as the IP addresses that accessed your mail, the associated location, and the date and time of access. [Learn more](#)

sensitive categories

When showing you personalized ads, we use topics that we think might be of interest to you based on your activity. For example, you may see ads for things like "Cooking and Recipes" or "Air Travel." We don't use topics or show personalized ads based on sensitive categories like race, religion, sexual orientation, or health. And we [require the same from advertisers](#) that use our services.

Sensor data from your device

Your device may have sensors that can be used to better understand your location and movement. For example, an accelerometer can be used to determine your speed and a gyroscope to figure out your direction of travel.

servers around the world

For example, we operate data centers located [around the world](#) to help keep our products continuously available for users.

services to make and receive calls or send and receive messages

Examples of these services include:

- Google Voice, for making and receiving calls, sending text messages, and managing voicemail
- Google Meet, for making and receiving video calls
- Gmail, for sending and receiving emails
- Google Chat, for sending and receiving messages
- Google Duo, for making and receiving video calls and sending and receiving messages
- Google Fi, for a phone plan

show trends

When lots of people start searching for something, it can provide useful information about particular trends at that time. Google Trends samples Google web searches to estimate the popularity of searches over a certain period of time and shares those results publicly in aggregated terms. [Learn more](#)

specific Google services

For example, you can delete [your blog](#) from Blogger or [a Google Site you own](#) from Google Sites. You can also delete [reviews](#) you've left on apps, games, and other content in the Play Store.

specific partners

For example, we allow YouTube creators and advertisers to work with measurement companies to learn about the audience of their YouTube videos or ads, using cookies or similar technologies. Another example is

merchants on our shopping pages, who use cookies to understand how many different people see their product listings. [Learn more](#) about these partners and how they use your information.

synced with your Google Account

Your Chrome browsing history is only saved to your account if you've enabled Chrome synchronization with your Google Account. [Learn more](#)

the people who matter most to you online

For example, when you type an address in the To, Cc, or Bcc field of an email you're composing, Gmail will suggest addresses based on the people you [contact most frequently](#).

third parties

For example, we process your information to report use statistics to rights holders about how their content was used in our services. We may also process your information if people search for your name and we display search results for sites containing publicly available information about you.

Views and interactions with content and ads

For example, we collect information about views and interactions with ads so we can provide aggregated reports to advertisers, like telling them whether we served their ad on a page and whether the ad was likely seen by a viewer. We may also measure other interactions, such as how you move your mouse over an ad or if you interact with the page on which the ad appears.

Voice and audio information

For example, you can choose whether you want Google to save an audio recording to your Google Account when you interact with Google Search, Assistant, and Maps. When your device detects an audio activation command, like "Hey Google," Google records your voice and audio plus a few seconds before the activation. [Learn more](#)

your activity on other sites and apps

This activity might come from your use of Google services, like from syncing your account with Chrome or your visits to sites and apps that partner with Google. Many websites and apps partner with Google to improve their content and services. For example, a website might use our advertising services (like AdSense) or analytics tools (like Google Analytics), or it might embed other content (such as videos from YouTube). These services may share information about your activity with Google and, depending on your [account settings](#) and the products in use (for instance, when a partner uses Google Analytics in conjunction with our advertising services), this data may be associated with your personal information.

[Learn more](#) about how Google uses data when you use our partners' sites or apps.



Play Console Terms of Service

Effective as of April 29, 2020

1. Applicable Terms

1.1 Thanks for using the Play Console. The Play Console is a service provided to developers at <https://play.google.com/apps/publish> by Google LLC, a Delaware limited liability company with principal place of business at 1600 Amphitheatre Parkway, Mountain View, CA 94043, United States; Google Ireland Limited, a company incorporated in Ireland with principal place of business at Gordon House, Barrow Street, Dublin 4, Ireland; Google Commerce Limited, a company incorporated in Ireland with principal place of business at Gordon House, Barrow Street, Dublin 4, Ireland; or Google Asia Pacific Pte. Limited, a company incorporated in Singapore with principal place of business at 70 Pasir Panjang Road, #03-71, Mapletree Business City, Singapore 117371. Google may update the Google entities and their addresses from time to time (collectively, herein, referred to as "Google", "we" or "us"). Your use, as an individual, of the Google Play Console is subject to these Google Play Console Terms of Service (the "Terms").

1.2 In order to accept the Terms and use the Play Console You must be at least 18 years of age and of legal age in Your country to form a binding contract with Google.

1.3 These Terms form a legally binding contract between You and Google in relation to Your use of the Play Console.

1.4 These Terms are additional terms to the Google Play Developer Distribution Agreement currently available at <https://play.google.com/about/developer-distribution-agreement.html> (the "DDA"). You must accept the DDA in order to use the Play Console.

1.5 The Play Console includes web, mobile web, and app versions of the Play Console that Google may make available to You. These include management, publishing, and listing tools as well as metrics and insights based on data derived from the performance, on Google Play and the Android operating system, of app(s) associated with the Developer Account.

2. Definitions

Capitalized terms that are not defined in these Terms have the meaning given to them in the DDA.

Account Owner: The user who initially created the Developer Account.



You: Any individual user of the Play Console, either as an Account Owner or as a Console User.

3. Privacy and Information

3.1. Any data collected or used pursuant to Your use of the Play Console is in accordance with Google's Privacy Policy. Additionally, there are some special cases explained below applicable to data that Google collects in connection with the Play Console.

3.2 When You are using the Play Console or the Google Play Developer APIs (available at <https://developer.android.com/google/play/developer-api>), Google collects certain "Usage Information." "Usage Information" means information about Your use of the Play Console such as Your page visits and data viewed, Your interactions with the Play Console's features and functionality (including those related to the management of the Developer Account's app(s)), Your actions when using the Google Play Developer APIs, and Your login email to the Play Console, the IP addresses, and timestamps associated with these activities. Google will associate this Usage Information with the Developer Account.

3.3 All Usage Information Google collects may be shared with the Account Owner, among other things, to enable their management of the Developer Account, including to audit actions and monitor potential abuse.

3.4 In the event any apps are transferred to a new Developer Account, all Usage Information related to these apps will be associated with the new Developer Account and may be shared with the Account Owner of the new Developer Account as described in Section 3.3.

3.5 Google will retain the Usage Information as long as its associated Developer Account is active. Any changes in Your ability to access the Play Console or the status of Your user login (including its deactivation) will not affect this retention period.

4. Restrictions on Use

You may not use the Play Console:

- beyond the intended Play Console functionality outlined in the Terms and other Play Console documentation;
- to engage in, promote or encourage illegal activity or abusive behavior;
- to disable, interfere with, reverse engineer, or circumvent any aspect of the Play Console; or
- to access any other Google product or service in a manner that violates the terms of service of such other Google product or service.



Console feature or functionality, including reporting metrics, for any reason at any time without liability to You or the Account Owner.

5.2 If Google discontinues the Play Console, where reasonably possible, Google will give You reasonable advance notice. If Google discontinues any top-level metric or reporting feature, Google will endeavor to provide at least thirty (30) days prior written notice via in-product messaging, email, blog posts, or through other reasonable means.

5.3 Google may make changes to the Terms at any time with notice and the opportunity to decline further use of the Play Console. Google will post notice of modifications to the Terms on the Play Console (play.google.com/console) and by emailing Your contact email. Changes will not be retroactive. They will become effective, and will be deemed accepted by You, (a) immediately for those who become Account Owners or Console Users after the notification is posted; or (b) for pre-existing Account Owner and Console Users, on the date specific in the notice, which will be no sooner than thirty (30) days after the changes are posted (except changes addressing new functions of the Play Console or changes required by law will be effective immediately).

5.4 If You do not agree with the modifications to the Terms, You may terminate Your use of the Play Console, which will be Your sole and exclusive remedy. You agree that Your continued use of the Play Console constitutes Your agreement to the modifications of the Terms.

5.5 If You violate any of the Terms, Google may terminate Your access to the Play Console. Additionally, to the maximum extent permitted by law, Google may terminate with Your access for any reason with thirty (30) days prior written notice.

6. General Legal Terms

6.1 The governing law and jurisdiction set forth in the DDA applies to all claims arising out of or relating to the Terms or Your relationship with Google under the Terms.

6.2 The Terms, the Google Play Developer API Terms of Service (if You are using the Google Play Developer APIs), and the DDA constitute the entire legal agreement between You and Google and govern Your use of the Play Console and completely replace any prior agreements between You and Google in relation to the Play Console. The English language version of the Terms will control and translations, if any, are non-binding and for reference purposes only. If there is a conflict between the Terms, the Google Play Developer API Terms of Service, and the DDA, the Terms will apply.

6.3 Sections 2 (Definitions), 3 (Privacy and Information), and 6 (General Legal Terms) will survive any expiration or termination of the Terms.



[Privacy](#) [Terms](#) [About Google](#) [Help](#)

Select language

Contract Summary Sheet

5.c

General Contract Information

Contract No: 23-1002830 Amendment No.: _____Contract Class: Payable Department: Management ServicesVendor No.: TBD Vendor Name: Apple, Inc.Description: Apple Developer Account

List Any Related Contract Nos.: _____

| Dollar Amount | | | | | | | |
|------------------------------|---|----|-------|--------------------------------|--|----|-------|
| Original Contract | | \$ | 99.00 | Original Contingency | | \$ | - |
| Prior Amendments | | \$ | - | Prior Amendments | | \$ | - |
| Prior Contingency Released | | \$ | - | Prior Contingency Released (-) | | \$ | - |
| Current Amendment | | \$ | - | Current Amendment | | \$ | - |
| Total/Revised Contract Value | | \$ | 99.00 | Total Contingency Value | | \$ | - |
| | Total Dollar Authority (Contract Value and Contingency) | | | | | \$ | 99.00 |

Contract Authorization

Board of Directors _____ Date: 10/05/2022 _____ Committee _____ Item # _____

Contract Management (Internal Purposes Only)

Other Contracts _____ Sole Source? Yes _____ N/A _____

Federal/Local _____ Services _____ N/A _____

Accounts Payable

Estimated Start Date: 10/05/2022 Expiration Date: 12/31/2039 Revised Expiration Date: _____NHS: N/A OMP/QAP: N/A Prevailing Wage: No

| | | | | | | | Total Contract Funding: | | Total Contingency: | |
|-----|------|----|------|------|-------|----------|-------------------------|-------|--------------------|---|
| | | | | | | | \$ | 99.00 | \$ | - |
| GL: | 2122 | 30 | 0383 | 0000 | 52001 | 42107020 | | 50.00 | | - |
| GL: | 4180 | 30 | 0314 | 0320 | 52001 | 41100000 | | 37.00 | | - |
| GL: | 4280 | 30 | 0314 | 0320 | 52001 | 41100000 | | 12.00 | | - |
| GL: | | | | | | | | - | | - |
| GL: | | | | | | | | - | | - |
| GL: | | | | | | | | - | | - |
| GL: | | | | | | | | - | | - |
| GL: | | | | | | | | - | | - |
| GL: | | | | | | | | - | | - |
| GL: | | | | | | | | - | | - |

Matt Farokhmanesh

Project Manager (Print Name)

Colleen Franco

Task Manager (Print Name)

Additional Notes: The annual renewal is \$99 per year. This is an evergreen contract and with no specified end date. Staff will review and renew annually until the app is no longer utilized.

Attachment: 23-1002830 CSS [Revision 1] (8673 : Sole Source Click Wrap Agreements with Google LLC and Apple, Inc.)

THIS IS A LEGAL AGREEMENT BETWEEN YOU AND APPLE INC. ("APPLE") STATING THE TERMS THAT GOVERN YOUR PARTICIPATION AS AN APPLE DEVELOPER. PLEASE READ THIS APPLE DEVELOPER AGREEMENT ("AGREEMENT") BEFORE PRESSING THE "AGREE" BUTTON AND CHECKING THE BOX AT THE BOTTOM OF THIS PAGE. BY PRESSING "AGREE," YOU ARE AGREEING TO BE BOUND BY THE TERMS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, PRESS "CANCEL".

Apple Developer Agreement

1. Relationship With Apple; Apple ID and Password. You understand and agree that by registering with Apple to become an Apple Developer ("**Apple Developer**"), no legal partnership or agency relationship is created between you and Apple. You agree not to represent otherwise. You also certify that you are at least thirteen years of age and you represent that you are legally permitted to register as an Apple Developer. This Agreement is void where prohibited by law and the right to register as an Apple Developer is not granted in such jurisdictions. Unless otherwise agreed or permitted by Apple in writing, you cannot share or transfer any benefits you receive from Apple in connection with being an Apple Developer. The Apple ID and password you use to log into your Apple Developer account cannot be shared in any way or with anyone. You are responsible for maintaining the confidentiality of your Apple ID and password and for any activity in connection with your account.

2. Developer Benefits. As an Apple Developer, you may have the opportunity to attend certain Apple developer conferences, technical talks, and other events (including online or electronic broadcasts of such events) ("**Apple Events**"). In addition, Apple may offer to provide you with certain services ("**Services**"), as described more fully herein and on the Apple Developer web pages ("**Site**"), solely for your own use in connection with your participation as an Apple Developer. Services may include, but not be limited to, any services Apple offers at Apple Events or on the Site as well as the offering of any content or materials displayed on the Site ("**Content**"). Apple may change, suspend or discontinue providing the Services, Site and Content to you at any time, and may impose limits on certain features and materials offered or restrict your access to parts or all of such materials without notice or liability.

3. Restrictions. You agree not to exploit the Site, or any Services, Apple Events or Content provided to you by Apple as an Apple Developer, in any unauthorized way, including but not limited to, by trespass, burdening network capacity or using the Services, Site or Content other than for authorized purposes. Copyright and other intellectual property laws protect the Site and Content provided to you, and you agree to abide by and maintain all notices, license information, and restrictions contained therein. Unless expressly permitted herein or otherwise permitted in a separate agreement with Apple, you may not modify, publish, network, rent, lease, loan, transmit, sell, participate in the transfer or sale of, reproduce, create derivative works based on, redistribute, perform, display, or in any way exploit any of the Site, Content or Services. You may not decompile, reverse engineer, disassemble, or attempt to derive the source code of any software or security components of the Services, Site, or Content (except as and only to the extent any foregoing restriction is prohibited by applicable law or to the extent as may be permitted by any licensing terms accompanying the foregoing). Use of the Site, Content or Services to violate, tamper with, or circumvent the security of any computer network, software, passwords, encryption codes, technological protection measures, or to otherwise engage in any kind of illegal activity, or to enable others to do so, is expressly prohibited. Apple retains ownership of all its rights in the Site, Content, Apple Events and Services, and except as expressly set forth herein, no other rights or licenses are granted or to be implied under any Apple intellectual property.

4. Confidentiality. Except as otherwise set forth herein, you agree that any Apple pre-release software, services, and/or hardware (including related documentation and materials) provided to you as an Apple Developer ("**Pre-Release Materials**") and any information disclosed

by Apple to you in connection with Apple Events will be considered and referred to as "**Apple Confidential Information**".

Notwithstanding the foregoing, Apple Confidential Information will not include: (a) information that is generally and legitimately available to the public through no fault or breach of yours; (b) information that is generally made available to the public by Apple; (c) information that is independently developed by you without the use of any Apple Confidential Information; (d) information that was rightfully obtained from a third party who had the right to transfer or disclose it to you without limitation; or (e) any third party software and/or documentation provided to you by Apple and accompanied by licensing terms that do not impose confidentiality obligations on the use or disclosure of such software and/or documentation. Further, Apple agrees that you will not be bound by the foregoing confidentiality terms with regard to technical information about Apple pre-release software, services and/or hardware disclosed by Apple at WWDC (Apple's Worldwide Developers Conference), except that you may not post screen shots of, write public reviews of, or redistribute any such materials.

5. Nondisclosure and Nonuse of Apple Confidential Information. Unless otherwise expressly agreed or permitted in writing by Apple, you agree not to disclose, publish, or disseminate any Apple Confidential Information to anyone other than to other Apple Developers who are employees and contractors working for the same entity as you and then only to the extent that Apple does not otherwise prohibit such disclosure. Except for your authorized purposes as an Apple Developer or as otherwise expressly agreed or permitted by Apple in writing, you agree not to use Apple Confidential Information in any way, including, without limitation, for your own or any third party's benefit without the prior written approval of an authorized representative of Apple in each instance. You further agree to take reasonable precautions to prevent any unauthorized use, disclosure, publication, or dissemination of Apple Confidential Information. You acknowledge that unauthorized disclosure or use of Apple Confidential Information could cause irreparable harm and significant injury to Apple that may be difficult to ascertain. Accordingly, you agree that Apple will have the right to seek immediate injunctive relief to enforce your obligations under this Agreement in addition to any other rights and remedies it may have. If you are required by law, regulation or pursuant to the valid binding order of a court of competent jurisdiction to disclose Apple Confidential Information, you may make such disclosure, but only if you have notified Apple before making such disclosure and have used commercially reasonable efforts to limit the disclosure and to seek confidential, protective treatment of such information. A disclosure pursuant to the previous sentence will not relieve you of your obligations to hold such information as Apple Confidential Information.

6. Confidential Pre-Release Materials License and Restrictions. If Apple provides you with Pre-Release Materials, then subject to your compliance with the terms and conditions of this Agreement, Apple hereby grants you a nonexclusive, nontransferable, right and license to use the Pre-Release Materials only for the limited purposes set forth in this Section 6; provided however that if such Pre-Release Materials are subject to a separate license agreement, you agree that the license agreement accompanying such materials in addition to Sections 4 and 5 of this Agreement shall also govern your use of the Pre-Release Materials. You further agree that in the event of any inconsistency between Section 4 and 5 of this Agreement and the confidentiality restrictions in the license agreement, the license agreement shall govern. You agree not to use the Pre-Release Materials for any purpose other than testing and/or development by you of a product designed to operate in combination with the same operating system for which the Pre-Release Materials are designed. This Agreement does not grant you any right or license to incorporate or make use of any Apple intellectual property (including for example and without limitation, trade secrets, patents, copyrights, trademarks and industrial designs) in any product. Except as expressly set forth herein, no other rights or licenses are granted or to be implied under any Apple intellectual property. You agree not to decompile, reverse engineer, disassemble, or otherwise reduce the Pre-Release Materials to a human-perceivable form, and you will not modify, network, rent, lease, transmit, sell, or loan the Pre-Release Materials in whole or in part.

7. Developer Content License and Restrictions. As an Apple Developer, you may have access to certain proprietary content (including, without limitation, video presentations and audio recordings) that Apple may make available to you from time to time ("**Content**"). Content shall be considered Apple Confidential Information, unless otherwise agreed or permitted in writing by Apple. You may not share the Content with anyone, including, without limitation, employees and contractors working for the same entity as you, regardless of whether they are Apple Developers, unless otherwise expressly permitted by Apple.

Subject to these terms and conditions, Apple grants you a personal and nontransferable license to access and use the Content for authorized purposes as an Apple Developer; provided that you may only download one (1) copy of the Content and such download must be completed within the time period specified by Apple for such download. Except as expressly permitted by Apple, you shall not modify, translate, reproduce, distribute, or create derivative works of the Content or any part thereof. You shall not rent, lease, loan, sell, sublicense, assign or otherwise transfer any rights in the Content. Apple and/or Apple's licensor(s) retain ownership of the Content itself and any copies or portions thereof. The Content is licensed, not sold, to you by Apple for use only under this Agreement, and Apple reserves all rights not expressly granted to you. Your rights under this license to use and access the Content will terminate automatically without notice from Apple if you fail to comply with any of these provisions.

8. Compatibility Labs; Developer Technical Support (DTS). As an Apple Developer, you may have access to Apple's software and/or hardware compatibility testing and development labs ("**Labs**") and/or developer technical support incidents ("**DTS Services**") that Apple may make available to you from time to time as an Apple developer benefit or for a separate fee. You agree that all use of such Labs and DTS Services will be in accordance with Apple's usage policies for such services, which are subject to change from time to time, with or without prior notice to you. Without limiting the foregoing, Apple may post on the Site and/or send an email to you with notices of such changes. It is your responsibility to review the Site and/or check your email address registered with Apple for any such notices. You agree that Apple shall not be liable to you or any third party for any modification or cessation of such services. As part of the DTS Services, Apple may supply you with certain code snippets, sample code, software, and other materials ("**Materials**"). You agree that any Materials that Apple provides as part of the DTS Services are licensed to you and shall be used by you only in accordance with the terms and conditions accompanying the Materials. Apple retains ownership of all of its right, title and interest in such Materials and no other rights or licenses are granted or to be implied under any Apple intellectual property. You have no right to copy, decompile, reverse engineer, sublicense or otherwise distribute such Materials, except as may be expressly provided in the terms and conditions accompanying the Materials. **YOU AGREE THAT WHEN REQUESTING AND RECEIVING TECHNICAL SUPPORT FROM DTS SERVICES, YOU WILL NOT PROVIDE APPLE WITH ANY INFORMATION, INCLUDING THAT INCORPORATED IN YOUR SOFTWARE, THAT IS CONFIDENTIAL TO YOU OR ANY THIRD PARTY. YOU AGREE THAT ANY NOTICE, LEGEND, OR LABEL TO THE CONTRARY CONTAINED IN ANY SUCH MATERIALS PROVIDED BY YOU TO APPLE SHALL BE WITHOUT EFFECT. APPLE SHALL BE FREE TO USE ALL SUCH INFORMATION IT RECEIVES FROM YOU IN ANY MANNER IT DEEMS APPROPRIATE, SUBJECT TO ANY APPLICABLE PATENTS OR COPYRIGHTS.** Apple reserves the right to reject a request for access to Labs or for DTS Services at any time and for any reason, in which event Apple may credit you for the rejected lab or support request. You shall be solely responsible for any restoration of lost or altered files, data, programs or other materials provided.

9. Amendment; Communication. Apple reserves the right, at its discretion, to modify this Agreement, including any rules and policies at any time. You will be responsible for reviewing and becoming familiar with any such modifications (including new terms, updates, revisions, supplements, modifications, and additional rules, policies, terms and conditions)("Additional Terms") communicated to you by Apple. All Additional Terms are hereby incorporated into this Agreement by this reference and your continued use of the Site will indicate your acceptance of any Additional Terms. In addition, Apple may be sending communications to you from time to time. Such communications may be in the form of phone calls and/or emails and may include, but not be limited to, membership information, marketing materials, technical information, and updates and/or changes regarding your participation as an Apple Developer. By agreeing to this Agreement, you consent that Apple may provide you with such communications.

10. Term and Termination. Apple may terminate or suspend you as a registered Apple Developer at any time in Apple's sole discretion. If Apple terminates you as a registered Apple Developer, Apple reserves the right to deny your reapplication at any time in Apple's sole discretion. You may terminate your participation as a registered Apple Developer at any time, for any reason, by notifying Apple in writing of your intent to do so. Upon any termination or, at Apple's discretion, suspension, all rights and licenses granted to you by Apple will cease, including your right to access the Site, and you agree to destroy any

and all Apple Confidential Information that is in your possession or control. At Apple's request, you agree to provide certification of such destruction to Apple. No refund or partial refund of any fees paid hereunder or any other fees will be made for any reason. Following termination of this Agreement, Sections 1, 3-5, 7 (but only for so long as the duration specified by Apple for such usage), 10-19 shall continue to bind the parties.

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

12. Use Of Apple Trademarks, Logos, etc. You agree to follow Apple's trademark and copyright guidelines as published at: www.apple.com/legal/guidelinesfor3rdparties.html ("**Guidelines**") and as may be modified from time to time. You agree not to use the marks "Apple," the Apple Logo, "Mac", "iPhone," "iPod touch" or any other marks belonging or licensed to Apple in any way except as expressly authorized in writing by Apple in each instance or as permitted in Apple's Guidelines. You agree that all goodwill arising out of your authorized use of Apple's marks shall inure to the benefit of and belong to Apple.

13. No Warranty. APPLE AND ITS AFFILIATES, SUBSIDIARIES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, PARTNERS, AND LICENSORS (COLLECTIVELY, "**APPLE**" FOR PURPOSES OF THIS SECTION 13 AND 14) DO NOT PROMISE THAT THE SITE, CONTENT, SERVICES (INCLUDING, FUNCTIONALITY OR FEATURES OF THE FOREGOING), LABS, DTS SERVICES, OR ANY OTHER INFORMATION OR MATERIALS THAT YOU RECEIVE HEREUNDER AS AN APPLE DEVELOPER (COLLECTIVELY, THE "**SERVICE**" FOR PURPOSES OF THIS SECTION 13 AND 14) WILL BE ACCURATE, RELIABLE, TIMELY, SECURE, ERROR- FREE OR UNINTERRUPTED, OR THAT ANY DEFECTS WILL BE CORRECTED. THE SERVICE IS PROVIDED ON AN "AS-IS" AND "AS-AVAILABLE" BASIS AND THE SERVICE IS SUBJECT TO CHANGE WITHOUT NOTICE. APPLE CANNOT ENSURE THAT ANY CONTENT (INCLUDING FILES, INFORMATION OR OTHER DATA) YOU ACCESS OR DOWNLOAD FROM THE SERVICE WILL BE FREE OF VIRUSES, CONTAMINATION OR DESTRUCTIVE FEATURES. FURTHER, APPLE DOES NOT GUARANTEE ANY RESULTS OR IDENTIFICATION OR CORRECTION OF PROBLEMS AS PART OF THE SERVICE AND APPLE DISCLAIMS ANY LIABILITY RELATED THERETO. APPLE DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF ACCURACY, NON- INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. APPLE DISCLAIMS ANY AND ALL LIABILITY FOR THE ACTS, OMISSIONS AND CONDUCT OF ANY THIRD PARTIES IN CONNECTION WITH OR RELATED TO YOUR USE OF THE SERVICE. YOU ASSUME TOTAL RESPONSIBILITY AND ALL RISKS FOR YOUR USE OF THE SERVICE, INCLUDING, BUT NOT LIMITED TO, ANY INFORMATION OBTAINED THEREON. YOUR SOLE REMEDY AGAINST APPLE FOR DISSATISFACTION WITH THE SERVICE IS TO STOP USING THE SERVICE. THIS LIMITATION OF RELIEF IS A PART OF THE BARGAIN BETWEEN THE PARTIES. TO THE EXTENT THAT APPLE MAKES ANY PRE-RELEASE SOFTWARE, HARDWARE OR OTHER PRODUCTS, SERVICES OR INFORMATION RELATED THERETO AVAILABLE TO YOU AS AN APPLE DEVELOPER, YOU UNDERSTAND THAT APPLE IS UNDER NO OBLIGATION TO PROVIDE UPDATES, ENHANCEMENTS, OR CORRECTIONS, OR TO NOTIFY YOU OF ANY PRODUCT OR SERVICES CHANGES THAT APPLE MAY MAKE, OR TO PUBLICLY ANNOUNCE OR INTRODUCE THE PRODUCT(S) OR SERVICE AT ANY TIME IN THE FUTURE.

14. Disclaimer of Liability. TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW, IN NO EVENT WILL APPLE BE LIABLE FOR PERSONAL INJURY, OR ANY INCIDENTAL, SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES WHATSOEVER, INCLUDING, WITHOUT LIMITATION, DAMAGES RESULTING FROM DELAY OF DELIVERY, FOR LOSS OF PROFITS, DATA, BUSINESS OR GOODWILL, FOR BUSINESS INTERRUPTION OR ANY OTHER COMMERCIAL DAMAGES OR LOSSES, ARISING OUT OF OR RELATED TO THIS AGREEMENT OR YOUR USE OR INABILITY TO USE THE SERVICE, HOWEVER CAUSED, WHETHER UNDER A THEORY OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), PRODUCTS LIABILITY, OR OTHERWISE, EVEN IF

APPLE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY. IN NO EVENT SHALL APPLE'S TOTAL LIABILITY TO YOU UNDER THIS AGREEMENT FOR ALL DAMAGES (OTHER THAN AS MAY BE REQUIRED BY APPLICABLE LAW IN CASES INVOLVING PERSONAL INJURY) EXCEED THE AMOUNT OF FIFTY DOLLARS (\$50.00).

15. Third-Party Notices and Products. Third-party software provided by Apple to you as an Apple Developer may be accompanied by its own licensing terms, in which case such licensing terms will govern your use of that particular third-party software. Mention of third-parties and third-party products in any materials, documentation, advertising, or promotions provided to you as an Apple Developer is for informational purposes only and constitutes neither an endorsement nor a recommendation. All third-party product specifications and descriptions are supplied by the respective vendor or supplier, and Apple shall have no responsibility with regard to the selection, performance, or use of these vendors or products. All understandings, agreements, or warranties, if any, take place directly between the vendors and the prospective users.

16. Export Control.

A. You may not use or otherwise export or re-export any Apple Confidential Information received from Apple except as authorized by United States law and the laws of the jurisdiction in which the Apple Confidential Information was obtained. In particular, but without limitation, the Apple Confidential Information may not be exported or re-exported (a) into any U.S. embargoed countries or regions or (b) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Department of Commerce Denied Person's List or any other restricted party lists without required approvals from applicable authorities. By becoming an Apple Developer or using any Apple Confidential Information, you represent and warrant that you are not located in any such country and region or on any such list. You also agree that you will not use any Apple Confidential Information for any purposes prohibited by United States law, including, without limitation, the development, design, manufacture or production of nuclear, chemical or biological weapons or any other military end uses.

B. You represent and warrant that You and any entity or person that directly or indirectly controls You, or is under common control with You, are not: (a) on any sanctions lists, (b) doing business in any of the U.S. embargoed countries, or (c) a military end user as defined and scoped in 15 C.F.R. § 744. As used in this Section 16, "control" means that an entity or person possesses, directly or indirectly, the power to direct or cause the direction of the management policies of the other entity, whether through ownership of voting securities, an interest in registered capital, by contract, or otherwise.

17. Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of California, excluding its conflict of law provisions. The parties further submit to and waive any objections to personal jurisdiction of and venue in any of the following forums: U.S. District Court for the Northern District of California, California Superior Court for Santa Clara County, Santa Clara County Municipal Court, or any other forum in Santa Clara County, for any disputes arising out of this Agreement.

18. Government End Users. Certain Apple Confidential Information may be considered "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.

19. Miscellaneous. No delay or failure to take action under this Agreement will constitute a waiver unless expressly waived in writing, signed by a duly authorized representative of Apple, and no single waiver will

constitute a continuing or subsequent waiver. This Agreement will bind your successors but may not be assigned, in whole or part, by you without the written approval of an authorized representative of Apple. Any non-conforming assignment shall be null and void. If any provision is found to be unenforceable or invalid, that provision shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and enforceable. This Agreement constitutes the entire agreement between the parties with respect to its subject matter and supersedes all prior or contemporaneous understandings regarding such subject matter. No addition to or removal or modification of any of the provisions of this Agreement will be binding upon Apple unless made in writing and signed by an authorized representative of Apple. The parties hereto confirm that they have requested that this Agreement and all attachments and related documents be drafted in English. *Les parties ont exigé que le présent contrat et tous les documents connexes soient rédigés en anglais.*

LYL105 12/13/21

PLEASE READ THE FOLLOWING LICENSE AGREEMENT TERMS AND CONDITIONS CAREFULLY BEFORE DOWNLOADING OR USING THE APPLE SOFTWARE. THESE TERMS AND CONDITIONS CONSTITUTE A LEGAL AGREEMENT BETWEEN YOUR COMPANY/ORGANIZATION AND APPLE.

Apple Developer Enterprise Program License Agreement

(for in-house, internal use applications for employees)

Purpose

Your company, organization or educational institution would like to use the Apple Software (as defined below) to develop one or more Internal Use Applications (as defined below) for Apple-branded products running iOS, watchOS, tvOS, iPadOS, and/or macOS, and to deploy these Applications only for internal use by employees within Your company, organization or educational institution or for limited use as expressly set forth herein. Apple is willing to grant You a limited license to use the Apple Software to develop and test Your Internal Use Applications, and to deploy such Applications internally and as otherwise permitted herein on the terms and conditions set forth in this Agreement. You may also create Passes (as defined below) for use on Apple-branded products running iOS or watchOS under this Agreement. Internal Use Applications developed for macOS can be distributed under this Agreement using an Apple Certificate or may be separately distributed.

Note: This Program is for internal use, custom applications that are developed by You for Your specific business purposes and only for use by Your employees and, in limited cases, by certain other parties as set forth herein. If You want to distribute applications for iOS, watchOS, or tvOS to third parties or obtain an application from a third party, then You must use the App Store or Custom App Distribution for distribution.

1. Accepting this Agreement; Definitions

1.1 Acceptance

In order to use the Apple Software and Services, You must first accept this Agreement. If You do not or cannot accept this Agreement, You are not permitted to use the Apple Software or Services. Do not download or use the Apple Software or Services in that case. You accept and agree to the terms of this Agreement on Your company's, organization's, educational institution's, or agency, instrumentality, or department of the federal government's behalf, as its authorized legal representative, by doing either of the following:

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

1.2 Definitions

Whenever capitalized in this Agreement:

"Ad Network APIs" means the Documented APIs that provide a way to validate the successful conversion of advertising campaigns on supported Apple-branded products using a combination of cryptographic signatures and a registration process with Apple.

"Ad Support APIs" means the Documented APIs that provide the Advertising Identifier and Advertising Preference.

"Advertising Identifier" means a unique, non-personal, non-permanent identifier provided through the Ad Support APIs that are associated with a particular Apple-branded device and are

to be used solely for advertising purposes, unless otherwise expressly approved by Apple in writing.

“Advertising Preference” means the Apple setting that enables an end-user to set an ad tracking preference.

“Agreement” means this Apple Developer Enterprise Program License Agreement, including any attachments which are hereby incorporated by this reference. For clarity, this Agreement supersedes the iOS Developer Enterprise Program License Agreement (including any attachments thereto) and the Mac Developer Program License Agreement.

“Apple” means Apple Inc., a California corporation with its principal place of business at One Apple Park Way, Cupertino, California 95014, U.S.A.

“Apple Certificates” means the Apple-issued digital certificates provided to You by Apple under the Program.

“Apple Maps Service” means the mapping platform and Map Data provided by Apple via the MapKit API for use by You only in connection with Your Internal Use Applications, or the mapping platform and Map Data provided by Apple via MapKit JS and related map content tools (e.g., MapSnapshotter) for use by You only in connection with Your Internal Use Applications, websites, or web applications.

“Apple Push Notification Service” or **“APN”** means the Apple Push Notification service that Apple may provide to You to enable You to transmit Push Notifications to Your Internal Use Applications or via the MDM Protocol or for use as otherwise permitted herein.

“APN API” means the Documented API that enables You to use the APN to deliver a Push Notification to Your Internal Use Application or for use as otherwise permitted herein.

“Apple Services” or **“Services”** means the developer services that Apple may provide or make available through the Apple Software or as part of the Program for use with Your Covered Products or development, including any Updates thereto (if any) that may be provided to You by Apple under the Program.

“Apple Software” means Apple SDKs, iOS, watchOS, tvOS, iPadOS, and/or macOS, the Provisioning Profiles, and any other software that Apple provides to You under the Program, including any Updates thereto (if any) that may be provided to You by Apple under the Program.

“Apple SDKs” means the Apple-proprietary Software Development Kits (SDKs) provided hereunder, including but not limited to header files, APIs, libraries, simulators, and software (source code and object code) labeled as part of the iOS, watchOS, tvOS, iPadOS, or Mac SDK and included in the Xcode Developer Tools package for purposes of targeting Apple-branded products running iOS, watchOS, tvOS, iPadOS, and/or macOS, respectively.

“Apple Subsidiary” means a corporation at least fifty percent (50%) of whose outstanding shares or securities (representing the right to vote for the election of directors or other managing authority) are owned or controlled, directly or indirectly, by Apple, and that is involved in the operation of or otherwise affiliated with the App Store, and as otherwise referenced herein (e.g., Attachment 3).

“Apple TV” means an Apple-branded product that runs the tvOS.

“Apple Watch” means an Apple-branded product that runs the watchOS.

“Authorized Developers” means Your employees and contractors, members of Your

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

“Authorized Test Units” means Apple-branded hardware units owned or controlled by You that have been designated by You for Your own testing and development purposes under this Program, and if You permit, Apple-branded hardware units owned or controlled by Your Authorized Developers so long as such units are used for testing and development purposes on Your behalf and only as permitted hereunder.

“ClassKit APIs” means the Documented APIs that enable You to send student progress data for use in a school-managed environment.

“CloudKit APIs” means the Documented APIs that enable Your Internal Use Applications, Web Software and/or Your end-users (if You permit them) to read, write, query and/or retrieve structured data from public and/or private containers in iCloud.

“Compatible Products” means enterprise server software products that enable management of supported Apple-branded products through the use of the MDM Protocol (which Apple may provide to You at its option), and whose primary purpose is enterprise device management. For clarity, products that are for consumer or personal use are excluded from Compatible Products, except as otherwise expressly permitted in writing by Apple.

“Configuration Profile(s)” means an XML file that allows You to distribute configuration information (e.g., VPN or Wi-Fi settings) and restrictions on device features (e.g., disabling the camera) to compatible Apple-branded products through Apple Configurator or other similar Apple-branded software tools, email, a webpage, or over-the-air deployment, or via MDM.

“Contract Employees” means individuals who perform work or provide services on Your (or Your Permitted Entity’s) behalf on a non-piece-rate basis, and who have internal use access to Your (or Your Permitted Entity’s) private information technology systems (e.g., VPN) and/or secured physical premises (e.g., badge access to corporate facilities). For clarity, “gig workers” who perform work or provide services in the form of piece-rate or task-based transactions are not included in this definition.

“Covered Products” means Your Internal Use Applications, Libraries, Passes, and/or Safari Push Notifications developed under this Agreement.

“Demo Recipient” means a current user of Your products or services or a user to whom You are providing a demonstration of Your products or services.

“Deployment Devices” collectively means (a) Authorized Test Units, and (b) other supported Apple-branded products owned or controlled by: (i) You or Your Permitted Entity, and/or (ii) Your Employees or Permitted Users but only to the extent that You (or Your Permitted Entity) have the ability to remove or disable Your Internal Use Application from such devices.

“DeviceCheck APIs” means the set of APIs, including server-side APIs, that enable You to set and query two bits of data associated with a device and the date on which such bits were last updated.

“DeviceCheck Data” means the data stored and returned through the DeviceCheck APIs.

“Documentation” means any technical or other specifications or documentation that Apple may

provide to You for use in connection with the Apple Software, Apple Services, Apple Certificates, or otherwise as part of the Program, including the App Store Review Guidelines.

“Documented API(s)” means the Application Programming Interface(s) documented by Apple in published Apple Documentation and which are contained in the Apple Software.

“Employees” means employees (as legally defined) of Your company or organization, or of Your MDM Customer’s company or organization.

“Face Data” means information related to human faces (e.g., face mesh data, facial map data, face modeling data, facial coordinates or facial landmark data, including data from an uploaded photo) that is obtained from a user’s device and/or through the use of the Apple Software (e.g., through ARKit, the Camera APIs, or the Photo APIs), or that is provided by a user in or through an Internal Use Application (e.g., uploads for a facial analysis service).

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

“HealthKit APIs” means the Documented APIs that enable reading, writing, queries and/or retrieval of an end-user’s health and/or fitness information in Apple’s Health application.

“HomeKit Accessory Protocol” means the proprietary protocol licensed by Apple under the MFi Program that enables home accessories designed to work with the HomeKit APIs (e.g., lights, locks) to communicate with supported Apple-branded products.

“HomeKit APIs” means the Documented APIs that enable reading, writing, queries and/or retrieval of an end-user’s home configuration or home automation information from that end-user’s designated area of Apple’s HomeKit Database.

“HomeKit Database” means Apple’s repository for storing and managing information about an end-user’s Licensed HomeKit Accessories and associated information.

“iCloud” or **“iCloud service”** means the iCloud online service provided by Apple that includes remote online storage.

“iCloud Storage APIs” means the Documented APIs that allow storage and/or retrieval of user-generated documents and other files, and allow storage and/or retrieval of key value data (e.g., a list of stocks in a finance App, settings for an App) for Internal Use Applications and Web Software through the use of iCloud.

“Internal Use Application” means a software program (including extensions, fonts, media, and Libraries that are enclosed in a single software bundle) that is developed by You on a custom basis for Your own in-house business purposes (e.g., an inventory app specific to Your business) for specific use with an Apple-branded product running iOS, watchOS, tvOS, iPadOS, and/or macOS, as applicable, and solely for internal use (e.g., not downloadable on a public website) by Your Employees or Permitted Users (and Authorized Developers for testing and development only), or as otherwise expressly permitted in **Section 2.1(f)**. Except as otherwise expressly permitted herein, specifically excluded from Internal Use Applications are any programs or applications that may be used, distributed, or otherwise made available to other companies, contractors (except for contractors who are developing the Internal Use Application for You on a custom basis and therefore need to use or have access to such Application), distributors, vendors, resellers, end-users or members of the general public. For the sake of clarity, Internal Use Applications do not include third-party applications even if some customization has been

done and Internal Use Applications may not be made publicly available.

“iOS” means the iOS operating system software provided by Apple for use by You only in connection with Your Internal Use Application development and testing, including any successor versions thereof.

“iOS Product” means an Apple-branded product that runs iOS or iPadOS.

“iPadOS” means the iPadOS operating system software provided by Apple for use by You only in connection with Your Internal Use Application development and testing, including any successor versions thereof.

“iPod Accessory Protocol” or **“iAP”** means Apple’s proprietary protocol for communicating with supported Apple-branded products and which is licensed under the MFi Program.

“Library” means a code module that cannot be installed or executed separately from an Internal Use Application and that is developed by You in compliance with the Documentation and Program Requirements only for use with iOS Products, Apple Watch, or Apple TV.

“Licensed HomeKit Accessories” means hardware accessories licensed under the MFi Program that support the HomeKit Accessory Protocol.

“Local Notification” means a message, including any content or data therein, that Your Internal Use Application delivers to end-users at a pre-determined time or when Your Internal Use Application is running in the background and another application is running in the foreground.

“macOS” means the macOS operating system software provided by Apple for use by You, including any successor versions thereof.

“macOS Product” means an Apple-branded product that runs macOS.

“MFi Accessory” means a non-Apple branded hardware device that interfaces, communicates, or otherwise interoperates with or controls an Apple-branded product using technology licensed under the MFi Program (e.g., the ability to control a supported Apple-branded product through the iPod Accessory Protocol).

“MFi Licensee” means a party who has been granted a license by Apple under the MFi Program.

“MFi Program” means a separate Apple program that offers developers, among other things, a license to incorporate or use certain Apple technology in or with hardware accessories or devices for purposes of interfacing, communicating or otherwise interoperating with or controlling select Apple-branded products.

“Map Data” means any content, data or information provided through the Apple Maps Service including, but not limited to, imagery, terrain data, latitude and longitude coordinates, transit data, points of interest and traffic data.

“MapKit API” means the Documented API that enables You to add mapping features or functionality to Internal Use Applications.

“MapKit JS” means the JavaScript library that enables You to add mapping features or functionality to Your Internal Use Applications, websites, or web applications.

“Mobile Device Management” (MDM) means the device management functionality and related APIs provided by Apple that enable remote management and configuration of supported Apple-branded products through the use of the MDM Protocol and Apple-issued certificates.

“MDM Certificate” means the Apple-issued digital certificate that is made available either at identity.apple.com to MDM Customers who provide Apple with a validated request, or within the Developer Program portal in connection with the use of a Push Application ID.

“MDM Customer” means a commercial enterprise, such as a business organization, educational institution, or government agency that is a customer of Your Compatible Products. For avoidance of doubt, MDM Customer specifically excludes consumers or personal users, except as otherwise expressly permitted in writing by Apple.

“MDM Protocol” means the proprietary protocol documentation that Apple, at its option, may provide to You under this Agreement to enable You to interact with, manage, configure and query supported Apple-branded products as expressly permitted herein.

“MDM Signing Certificate” means the Apple-issued digital certificate that Apple, at its option, may provide to You under this Agreement to enable You to authenticate Your MDM Customers to Apple.

“Motion & Fitness APIs” means the Documented APIs that are controlled by the Motion & Fitness privacy setting in a compatible Apple-branded product and that enable access to motion and fitness sensor data (e.g., body motion, step count, stairs climbed), unless the end-user has disabled access to such data.

“Multitasking” means the ability of Internal Use Applications to run in the background while other Applications are also running.

“MusicKit APIs” means the set of APIs that enable Apple Music users to access their subscription through Your Internal Use Application or as otherwise permitted by Apple in the Documentation.

“MusicKit Content” means music, video, and/or graphical content rendered through the MusicKit APIs.

“MusicKit JS” means the JavaScript library that enables Apple Music users to access their subscription through Your Internal Use Applications, websites, or web applications.

“Network Extension Framework” means the Documented APIs that provide Applications with the ability to customize certain networking features of compatible Apple-branded products (e.g., customizing the authentication process for WiFi Hotspots, VPN features, and content filtering mechanisms).

“Pass(es)” means one or more digital passes (e.g., movie tickets, coupons, loyalty reward vouchers, boarding passes, membership cards, etc.) developed by You under this Agreement, under Your own trademark or brand, and which are signed with Your Pass Type ID.

“Pass Type ID” means the combination of an Apple Certificate and Push Application ID that is used by You to sign Your Passes and/or communicate with the APN.

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

“Permitted Users” means employees of Your Permitted Entity, Contract Employees of You or Your Permitted Entity, and other authorized users approved by Apple in advance and in writing, all of whom have written and binding agreements with You or Your Permitted Entity to protect

Your Internal Use Application from unauthorized use in accordance with the terms of this Agreement. In addition, the term “Permitted Users” shall include the following additional parties only: if You are an educational institution, the term “Permitted Users” also includes faculty, staff and students of Your institution, and if You are a hospital, the term “Permitted Users” also includes credentialed physicians, referring physicians and clinicians.

“**Program**” means the overall development, testing, digital signing, and limited distribution program contemplated in this Agreement.

“**Program Requirements**” mean the technical, human interface, design, product category, security, performance, and other criteria and requirements specified by Apple, including but not limited to the current set of requirements set forth in **Section 3.3**, as they may be modified from time to time by Apple in accordance with this Agreement.

“**Provisioning Profiles**” means the files (including applicable entitlements or other identifiers) that are provided by Apple for use by You in connection with Your Internal Use Application development and testing, and limited distribution of Your Internal Use Applications as permitted hereunder.

“**Push Application ID**” means the unique identification number or other identifier that Apple assigns to an Internal Use Application, Pass or Site in order to permit it to access and use the APN, or for use with MDM or to deliver Configuration Profiles.

“**Push Notification**” or “**Safari Push Notification**” means a notification, including any content or data therein, that You transmit to end-users for delivery in Your Internal Use Application, Your Pass, and/or in the case of macOS, to the macOS desktop of users of Your Site who have opted in to receive such messages through Safari on macOS, and/or that is delivered through the use of MDM or to deliver Configuration Profiles.

“**ShazamKit APIs**” means the Documented APIs that enable You to add audio-based recognition features or functionality to Your Internal Use Application.

“**ShazamKit Content**” means metadata, music, and/or graphical content provided by Apple and rendered through the ShazamKit APIs, including but not limited to MusicKit Content.

“**SiriKit**” means the set of APIs that allow Your Application to access or provide SiriKit domains, intents, shortcuts, donations, and other related functionality, as set forth in the Documentation.

“**Site**” means a website provided by You under Your own name, trademark or brand.

“**Term**” means the period described in **Section 11**.

“**tvOS**” means the tvOS operating system software, including any successor versions thereof.

“**Updates**” means bug fixes, updates, upgrades, modifications, enhancements, supplements, and new releases or versions of the Apple Software or Services, or to any part of the Apple Software or Services.

“**Wallet**” means Apple’s application that has the ability to store and display Passes for use on iOS Products, Apple Watch, or Safari on macOS.

“**WatchKit Extension**” means an extension bundled as part of Your Internal Use Application that accesses the WatchKit framework on iOS to run and display a WatchKit app on the watchOS.

“**watchOS**” means the watchOS operating system software, including any successor versions thereof.

“Web Software” means web-based versions of Your software applications that have the same title and substantially equivalent features and functionality as Your Internal Use Application (e.g., feature parity).

“Website Push ID” means the combination of an Apple Certificate and Push Application ID that is used by You to sign Your Site’s registration bundle and/or communicate with the APN

“You” and **“Your”** means and refers to the legal entity (whether the company, organization, educational institution, or governmental agency, instrumentality, or department) that has accepted this Agreement under its own developer account and is using the Apple Software or otherwise exercising rights under this Agreement.

Note: For the sake of clarity, You may authorize contractors to develop Internal Use Applications on Your behalf, but any such Internal Use Applications must be owned by You, developed under Your own developer account, and deployed as Internal Use Applications only as expressly permitted herein. You are responsible to Apple for Your contractors’ activities under Your account (e.g., adding them to Your team to perform development work for You) and their compliance with this Agreement. Any actions undertaken by Your contractors arising out of this Agreement shall be deemed to have been taken by You, and You (in addition to Your contractors) shall be responsible to Apple for all such actions.

2. Internal Use License and Restrictions

2.1 Permitted Uses and Restrictions; Program services

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

- (a) Install a reasonable number of copies of the Apple Software on Apple-branded computers owned or controlled by You, to be used internally by You or Your Authorized Developers for the sole purpose of developing or testing Your Covered Products, except as otherwise expressly permitted in this Agreement;
- (b) Make and distribute a reasonable number of copies of the Documentation to Authorized Developers for their internal use only and for the sole purpose of developing or testing Your Covered Products, except as otherwise expressly permitted in this Agreement;
- (c) Install Provisioning Profiles on each of Your Authorized Test Units, up to the number of Authorized Test Units that You have acquired licenses for, to be used internally by You or Your Authorized Developers for the sole purpose of developing and testing Your Covered Products, except as otherwise expressly permitted in this Agreement;
- (d) Distribute Provisioning Profiles only to Your Authorized Developers and only in conjunction with Your Internal Use Applications for the purpose of developing and testing Your Internal Use Applications on Authorized Test Devices;
- (e) Distribute Provisioning Profiles only to Your Employees and/or Permitted Users in conjunction with Your deployment of Your Internal Use Applications on Deployment Devices for internal use by Your Employees and/or Permitted Users;
- (f) Allow Your Demo Recipients to use Your Internal Use Applications on Deployment Devices, but only (i) on Your physical premises and/or on Your Permitted Entity’s physical premises while under the direct supervision of Your Employees or Permitted Users (e.g., a user study conducted in a lab on Your premises), or (ii) in other locations, provided all such use is while under the direct supervision and physical control of Your Employees or Permitted Users (e.g., a sales presentation by an Employee); and
- (g) Incorporate the Apple Certificates issued to You pursuant to this Agreement for purposes of digitally signing Your Internal Use Applications, Passes, Safari Push Notifications, and as otherwise expressly permitted by this Agreement.

Except as set forth in **Section 2.1**, You may not use, distribute or otherwise make Your Internal

Use Applications available to any third parties in any way. You may permit Your Permitted Entity to deploy Your Internal Use Applications to Permitted Users on Your behalf, provided that such deployment is at least as restrictive and protective of Apple as the terms of this Agreement (e.g., posting the App on a public website or non-authenticated server would be prohibited). Any actions undertaken by Your Permitted Entity in relation to such deployment and/or arising out of this Agreement shall be deemed to have been taken by You, and You (in addition to Your Permitted Entity) shall be responsible to Apple for all such actions. Apple reserves the right to set the limited number of devices that each Licensee may register as an Authorized Test Unit and obtain licenses for under this Program.

Apple may provide access to services by or through the Program for You to use with Your developer account (e.g., device or app provisioning, managing teams or other account resources). You agree to access such services only through the Program web portal (which is accessed through Apple's developer website) or through Apple-branded products that are designed to work in conjunction with the Program (e.g., Xcode) and only as authorized by Apple. If You (or Your Authorized Developers) access Your developer account through these other Apple-branded products, You acknowledge and agree that this Agreement shall continue to apply to any use of Your developer account and to any features or functionality of the Program that are made available to You (or Your Authorized Developers) in this manner (e.g., Apple Certificates and Provisioning Profiles can be used only in the limited manner permitted herein, etc.). You agree not to create or attempt to create a substitute or similar service through use of or access to the services provided by or through the Program. If Apple provides power and performance metrics for Your Internal Use Application, You agree that such metrics may be used solely for Your own internal use and may not be provided to any third party (except as set forth in Section 2.9). Further, You may only access such services using the Apple ID associated with Your developer account or authentication credentials (e.g., keys, tokens, password) associated with Your developer account, and You are fully responsible for safeguarding Your Apple ID and authentication credentials from compromise and for using them only as authorized by Apple and in accordance with the terms of this Agreement, including but not limited to **Section 2.8** and **5**. Except as otherwise expressly permitted herein, You agree not to share, sell, resell, rent, lease, lend, or otherwise provide access to Your developer account or any services provided therewith, in whole or in part, to anyone who is not an Authorized Developer on Your team, and You agree not to solicit or request Apple Developer Program members to provide You with their Apple IDs, authentication credentials, and/or related account information and materials (e.g., Apple Certificates used for distribution). You understand that each team member must have their own Apple ID or authentication credentials to access Your account, and You shall be fully responsible for all activity performed through or in connection with Your account. To the extent that You own or control an Apple-branded computer running Apple's macOS Server or Xcode Server ("**Server**") and would like to use it for Your own development purposes in connection with the Program, You agree to use Your own Apple ID or other authentication credentials for such Server, and You shall be responsible for all actions performed by such Server.

2.2 Authorized Test Units and Pre-Release Apple Software

As long as an Authorized Test Unit contains any pre-release versions of the Apple Software or uses pre-release versions of Services, You agree to restrict access to such Authorized Test Unit to Your Authorized Developers and to not disclose, show, rent, lease, lend, sell or otherwise transfer such Authorized Test Unit to any third party. You further agree to take reasonable precautions to safeguard, and to instruct Your Authorized Developers to safeguard, all Authorized Test Units from loss or theft.

You acknowledge that by installing any pre-release Apple Software or using any pre-release Services on Your Authorized Test Units, these Units may be "locked" into testing mode and may not be capable of being restored to their original condition. Any use of any pre-release Apple Software or pre-release Services are for evaluation and development purposes only, and You should not use any pre-release Apple Software or pre-release Services in a commercial operating environment or with important data. You should back up any data prior to

using the pre-release Apple Software or pre-release Services. Apple shall not be responsible for any costs, expenses or other liabilities You may incur as a result of provisioning Your Deployment Devices or Authorized Test Units, Your Covered Product development or the installation or use of this Apple Software or any pre-release Apple Services, including but not limited to any damage to any equipment, or any damage, loss, or corruption of any software, information or data.

2.3 Confidential Nature of Pre-Release Apple Software and Services

From time to time during the Term, Apple may provide You with pre-release versions of the Apple Software or Services that constitute Apple Confidential Information and are subject to the confidentiality obligations of this Agreement, except as otherwise set forth herein. Such pre-release Apple Software and Services should not be relied upon to perform in the same manner as a final-release, commercial-grade product, nor used with data that is not sufficiently and regularly backed up, and may include features, functionality or APIs for software or services that are not yet available. You acknowledge that Apple may not have publicly announced the availability of such pre-release Apple Software or Services, that Apple has not promised or guaranteed to You that such pre-release software or services will be announced or made available to anyone in the future, and that Apple has no express or implied obligation to You to announce or commercially introduce such software or services or any similar or compatible technology. You expressly acknowledge and agree that any research or development that You perform with respect to pre-release versions of the Apple Software or Services is done entirely at Your own risk. You agree not to provide any pre-release versions of the Apple Software or Services to anyone other than Your Authorized Developers.

2.4 Copies

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

2.5 Ownership

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

2.6 No Other Permitted Uses

Except as otherwise set forth in this Agreement, You agree not to rent, lease, lend, upload to or host on any website or server, sell, redistribute, or sublicense the Apple Software, Apple Certificates, or any Services, in whole or in part, or to enable others to do so. You may not use the Apple Software, Apple Certificates, or any Services provided hereunder for any purpose not expressly permitted by this Agreement, including any applicable Attachments. You agree not to install, use or run the Apple SDKs on any non-Apple-branded computer, and not to install, use or run iOS, watchOS, tvOS, iPadOS, macOS and Provisioning Profiles on or in connection with devices other than Apple-branded products, or to enable others to do so. You may not and You agree not to, or to enable others to, copy (except as expressly permitted under this Agreement), decompile, reverse engineer, disassemble, attempt to derive the source code of, modify, decrypt, or create derivative works of the Apple Software, Apple Certificates or any Services provided by the Apple Software or otherwise provided hereunder, or any part thereof (except as and only to the extent any foregoing restriction is prohibited by applicable law or to the extent as may be permitted by licensing terms governing use of open-sourced components or sample code included with the Apple Software). You agree not to exploit any Apple Software, Apple Certificates, or Services provided hereunder in any unauthorized way whatsoever, including but not limited to, by trespass or burdening network capacity, or by harvesting or misusing data provided by such Apple Software, Apple Certificates, or Services. Any attempt to do so is a

violation of the rights of Apple and its licensors of the Apple Software or Services. If You breach any of the foregoing restrictions, You may be subject to prosecution and damages. All licenses not expressly granted in this Agreement are reserved and no other licenses, immunity or rights, express or implied are granted by Apple, by implication, estoppel, or otherwise. This Agreement does not grant You any rights to use any trademarks, logos or service marks belonging to Apple, including but not limited to the iPhone or iPod word marks. If You make reference to any Apple products or technology or use Apple's trademarks, You agree to comply with the published guidelines at <https://www.apple.com/legal/intellectual-property/guidelinesfor3rdparties.html>, as they may be modified by Apple from time to time.

2.7 Updates; No Support or Maintenance

Apple may extend, enhance, or otherwise modify the Apple Software or Services (or any part thereof) provided hereunder at any time without notice, but Apple shall not be obligated to provide You with any Updates to the Apple Software or Services. If Updates are made available by Apple, the terms of this Agreement will govern such Updates, unless the Update is accompanied by a separate license in which case the terms of that license will govern. You understand that such modifications may require You to change or update Your Covered Products. Further, You acknowledge and agree that such modifications may affect Your ability to use, access, or interact with the Apple Software and Services. Apple is not obligated to provide any maintenance, technical or other support for the Apple Software or Services. You acknowledge that Apple has no express or implied obligation to announce or make available any Updates to the Apple Software or to any Services to anyone in the future. Should an Update be made available, it may have APIs, features, services or functionality that are different from those found in the Apple Software licensed hereunder or the services provided hereunder.

2.8 Use of Apple Services

Apple may provide access to Apple Services that Your Covered Products may call through APIs in the Apple Software and/or that Apple makes available to You through other mechanisms, e.g., through the use of keys that Apple may make accessible to You under the Program. You agree to access such Apple Services only through the mechanisms provided by Apple for such access and only for use on Apple-branded products. Except as permitted in **Section 2.9 (Third-Party Service Providers)** or as otherwise set forth herein, You agree not to share access to mechanisms provided to You by Apple for the use of the Services with any third party. Further, You agree not to create or attempt to create a substitute or similar service through use of or access to the Apple Services.

You agree to access and use such Services only as necessary for providing services and functionality for Your Covered Products that are eligible to use such Services and only as permitted by Apple in writing, including in the Documentation. You may not use the Apple Services in any manner that is inconsistent with the terms of this Agreement or that infringes any intellectual property rights of a third party or Apple, or that violates any applicable laws or regulations. You agree that the Apple Services contain proprietary content, information and material owned by Apple and its licensors, and protected by applicable intellectual property and other laws. You may not use such proprietary content, information or materials in any way whatsoever, except for the permitted uses of the Apple Services under this Agreement, or as otherwise agreed by Apple in writing.

You understand there may be storage capacity, transmission, and/or transactional limits for the Apple Services both for You as a developer and for Your end-users. If You reach or Your end-user reaches such limits, then You or Your end-user may be unable to use the Apple Services or may be unable to access or retrieve data from such Services through Your Covered Products or through the applicable end-user accounts. You agree not to charge any fees to end-users solely for access to or use of the Apple Services through Your Covered Products or for any content, data or information provided therein, and You agree not to sell access to the Apple Services in any way. You agree not to fraudulently create any end-user accounts or induce any end-user to violate the terms of their applicable end-user terms or service agreement with Apple or to violate

any Apple usage policies for such end-user services. Except as expressly set forth herein, You agree not to interfere with an end-user's ability to access or use any such services.

Apple reserves the right to change, suspend, deprecate, deny, limit, or disable access to the Apple Services, or any part thereof, at any time without notice (including but not limited to revoking entitlements or changing any APIs in the Apple Software that enable access to the Services or not providing You with an entitlement). In no event will Apple be liable for the removal of or disabling of access to any of the foregoing. Apple may also impose limits and restrictions on the use of or access to the Apple Services, may remove the Apple Services for indefinite time periods, may revoke Your access to the Apple Services, or may cancel the Apple Services (or any part thereof) at any time without notice or liability to You and in its sole discretion.

Apple does not guarantee the availability, accuracy, completeness, reliability, or timeliness of any data or information displayed by any Apple Services. To the extent You choose to use the Apple Services with Your Covered Products, You are responsible for Your reliance on any such data or information. You are responsible for Your use of the Apple Software and Apple Services, and if You use such Services, then it is Your responsibility to maintain appropriate alternate backup of all Your content, information and data, including but not limited to any content that You may provide to Apple for hosting as part of Your use of the Services. You understand and agree that You may not be able to access certain Apple Services upon expiration or termination of this Agreement and that Apple reserves the right to suspend access to or delete content, data or information that You or Your Covered Product have stored through Your use of such Services provided hereunder. You should review the Documentation and policy notices posted by Apple prior to using any Apple Services.

Apple Services may not be available in all languages or in all countries, and Apple makes no representation that any such Services would be appropriate, accurate or available for use in any particular location or product. To the extent You choose to use the Apple Services with Your Applications, You do so at Your own initiative and are responsible for compliance with any applicable laws. Apple reserves the right to charge fees for Your use of the Apple Services. Apple will inform You of any Apple Service fees or fee changes by email and information about such fees will be posted in the Program web portal or the CloudKit console. Apple Service availability and pricing are subject to change. Further, Apple Services may not be made available for all Covered Products and may not be made available to all developers. Apple reserves the right to not provide (or to cease providing) the Apple Services to any or all developers at any time in its sole discretion.

2.9 Third-Party Service Providers

Unless otherwise prohibited by Apple in the Documentation or this Agreement, You are permitted to employ or retain a third party ("**Service Provider**") to assist You in using the Apple Software and Services provided pursuant to this Agreement, including, but not limited to, engaging any such Service Provider to maintain and administer Your Internal Use Applications' servers on Your behalf, provided that any such Service Provider's use of the Apple Software and Services or any materials associated therewith is done solely on Your behalf and only in accordance with these terms. You agree to have a binding written agreement with Your 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 Your Internal Use Applications or use of the Apple Software or Apple Services 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 of any actions or inactions by the Service Provider that would 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. Your Obligations

3.1 General

You certify to Apple and agree that:

- (a) You are of the legal age of majority in the jurisdiction in which You reside (at least 18 years of age in many countries) and have the right and authority to enter into this Agreement on behalf of Your company, organization, educational institution, or agency, instrumentality, or department of the federal government and to legally bind such entity or organization to the terms and obligations of this Agreement;
- (b) All information provided by You to Apple or Your end-users in connection with this Agreement or Your Covered Products will be current, true, accurate, supportable and complete and, with regard to information You provide to Apple, You will promptly notify Apple of any changes to such information. It is Your responsibility to inform Apple of any such changes so that Apple may contact You regarding Your Program account;
- (c) You will comply with the terms of and fulfill Your obligations under this Agreement;
- (d) You agree to monitor and be responsible for Your Authorized Developers', Employees', Permitted Users', and Demo Recipients' use of the Apple Software, Services and Deployment Devices, including but not limited to obtaining any required consents for Your Employees' use of the Apple Software and Services, and You agree to monitor and be fully responsible for use of Your Internal Use Applications by Your Authorized Developers, Employees, Permitted Users and Demo Recipients;
- (e) You will be solely responsible for all costs, expenses, losses and liabilities incurred, and activities undertaken by You, Your Permitted Entity, Your Authorized Developers, Employees, Your Permitted Users, and Your Demo Recipients in connection with the Apple Software, Services, the Deployment Devices, Your Covered Products and Your related development and deployment efforts pursuant to this Agreement; and
- (f) You will not act in any manner which conflicts or interferes with any existing commitment or obligation You may have and no agreement previously entered into by You will interfere with Your performance of Your obligations under this Agreement.

3.2 Use of the Apple Software and Apple Services

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

- (a) You will use the Apple Software and any services only for the purposes and in the manner expressly permitted by this Agreement and in accordance with all applicable laws and regulations;
- (b) You will not use the Apple Software or any Services for any unlawful or illegal activity, nor to develop any Covered Product, which would commit or facilitate the commission of a crime, or other tortious, unlawful or illegal act;
- (c) Your Internal Use Application, Library and/or Pass will be developed in compliance with the Documentation and the Program Requirements, the current set of which is set forth in **Section 3.3** below;
- (d) To the best of Your knowledge and belief, Your Covered Products do not and will not violate, misappropriate, or infringe any Apple or third party copyrights, trademarks, rights of privacy and publicity, trade secrets, patents, or other proprietary or legal rights (e.g., musical composition or performance rights, video rights, photography or image rights, logo rights, third party data rights, etc. for content and materials that may be included in Your Internal Use Application or Pass);
- (e) You will not, through use of the Apple Software, Apple Certificates, Services or otherwise, create any Covered Product or other code or program that would disable, hack or otherwise interfere with any security, digital signing, digital rights management, verification or authentication mechanisms implemented in or by iOS, watchOS, iPadOS, tvOS, the Apple Software, or any Services, or other Apple software or technology, or enable others to do so (except to the extent expressly permitted by Apple in writing);
- (f) You will not, directly or indirectly, commit any act intended to interfere with the Apple Software or Services, the intent of this Agreement, or Apple's business practices including, but not limited to, taking actions that may hinder the performance or intended use of the Apple Software, or the Program. Further, You will not engage, or encourage others to engage, in any unlawful, unfair, misleading, fraudulent, improper, or dishonest acts or business practices relating to Your Covered Products (e.g., deceptive business practices, unfair competition); and

(g) Except for testing and development purposes as expressly permitted herein, Internal Use Applications or Passes developed using the Apple Software may only be deployed to and used by Your Employees or Permitted Users for internal use purposes or for limited use by Demo Recipients on Deployment Devices on Your (or Your Permitted Entity's) physical premises or in other locations, but in both cases only when the use is under Your (or Your Permitted Entity's) direct supervision and physical control as set forth in **Section 2.1(f)**. Except as expressly set forth herein, Internal Use Applications or Passes shall not be used, distributed or made available to other companies, customers, consumers, contractors (except for contractors who are developing the Internal Use Application or Pass for You on a custom basis and therefore need to use or have access to such Internal Use Application or Pass), distributors, vendors, resellers, end-users or members of the general public in any manner. Further, You may not host Internal Use Applications in any locations that are accessible to anyone other than Your Authorized Developers, Employees, and Permitted Users (e.g. not on a public website, repository, file hosting service, etc.) and must take all reasonable steps to prevent Internal Use Applications from being downloaded and accessed by anyone other than such parties.

3.3 Program Requirements for Internal Use Applications, Libraries and Passes

Any Internal Use Application for an iOS Product, Apple Watch, or Apple TV that will be distributed as permitted herein must be developed in compliance with the Documentation and the Program Requirements, the current set of which is set forth below in this **Section 3.3**. Libraries and Passes are subject to the same criteria:

APIs and Functionality:

3.3.1 Internal Use Applications may only use Documented APIs in the manner prescribed by Apple and must not use or call any private APIs.

3.3.2 Except as set forth in the next paragraph, an Internal Use Application may not download or install executable code. Interpreted code may be downloaded to an Internal Use Application but only so long as such code: (a) does not change the primary purpose of the Internal Use Application by providing features or functionality that are inconsistent with the intended purpose of the Internal Use Application, (b) does not create a store or storefront for other code or applications, and (c) does not bypass signing, sandbox, or other security features of the OS.

An Internal Use Application that is a programming environment intended for use in learning how to program may download and run executable code so long as the following requirements are met: (i) no more than 80 percent of such Internal Use Application's viewing area or screen may be taken over with executable code, except as otherwise permitted in the Documentation, (ii) such Internal Use Application must present a reasonably conspicuous indicator to the user within the Application to indicate that the user is in a programming environment, (iii) such Internal Use Application must not create a store or storefront for other code or applications, and (iv) the source code provided by such Internal Use Application must be completely viewable and editable by the user (e.g., no pre-compiled libraries or frameworks may be included with the code downloaded).

3.3.3 An Internal Use Application that will be used by Demo Recipient may not permit commerce, credits or purchases of any kind to be made through the use of such Application, without Apple's express prior written consent. Further, You may not charge Your Permitted Entity, or any Demo Recipients, Employees, or Permitted Users, in any way for the use of such Application. An Internal Use Application that will be used by Employees and Permitted Users may permit commerce, credits or purchases, but solely for purchases of goods or services used by or consumed within Your organization (e.g., a cafeteria app can permit transactions).

3.3.4 An Internal Use Application may only read data from or write data to the Internal Use Application's designated container area on the device, except as otherwise specified by Apple.

3.3.5 An Internal Use Application for an iOS Product must have at least the same features and functionality when run by a user in compatibility mode on an iPad (e.g., an iPhone app running in an equivalent iPhone-size window on an iPad must perform in substantially the same manner as when run on the iPhone; provided that this obligation will not apply to any feature or functionality that is not supported by a particular hardware device, such as a video recording feature on a device that does not have a camera). Further, You agree not to interfere or attempt to interfere with the operation of Your Internal Use Application in compatibility mode.

3.3.6 You may use the Multitasking services only for their intended purposes as described in the Documentation.

User Interface, Data Collection, Local Laws and Privacy:

3.3.7 Internal Use Applications must comply with the Human Interface Guidelines (HIG) and other Documentation provided by Apple. You agree to follow the HIG to develop an appropriate user interface and functionality for Your Internal Use Application that is compatible with the design of Apple-branded products (e.g., a watch App should have a user interface designed for quick interactions in accordance with the HIG's watchOS design themes).

3.3.8 If Your Internal Use Application captures or makes any video, microphone, screen recording, or camera recordings, whether saved on the device or sent to a server (e.g., an image, photo, voice or speech capture, or other recording) (collectively "**Recordings**"), a reasonably conspicuous audio, visual or other indicator must be displayed to the user as part of the Internal Use Application to indicate that a Recording is taking place.

- In addition, any form of data, content or information collection, processing, maintenance, uploading, syncing, storage, transmission, sharing, disclosure or use performed by, through or in connection with Your Internal Use Application must comply with all applicable privacy laws and regulations as well as any related Program Requirements, including but not limited to any notice or consent requirements.

3.3.9 You and Your Internal Use Applications (and any third party with whom You have contracted to serve advertising) may not collect user or device data without prior user consent, whether such data is obtained directly from the user or through the use of the Apple Software, Apple Services, or Apple SDKs, and then only to provide a service or function that is directly relevant to the use of the Internal Use Application, or to serve advertising in accordance with **Sections 3.3.12**. You may not broaden or otherwise change the scope of usage for previously collected user or device data without obtaining prior user consent for such expanded or otherwise changed data collection. You may not use analytics software in Your Internal Use Application to collect and send device data to a third party. Further, neither You nor Your Internal Use Application will use any permanent, device-based identifier, or any data derived therefrom, for purposes of uniquely identifying a device.

3.3.10 You must provide clear and complete information to users regarding Your collection, use and disclosure of user or device data, e.g., a description of Your use of user and device data in the Your Internal Use Application. Furthermore, You must take appropriate steps to protect such data from unauthorized use, disclosure or access by third parties. If a user ceases to consent or affirmatively revokes consent for Your collection, use or disclosure of such user's device or user data, You (and any third party with whom You have contracted to serve advertising) must promptly cease all such use. You must provide a privacy policy in Your Internal Use Application, or to Your end-users in another manner explaining Your collection, use, disclosure, sharing, retention, and deletion of user or device data. You agree to notify Your users, in accordance with applicable law, in the event of a data breach in which user data collected from Your Internal Use Application is compromised (e.g., You will send an email notifying Your users if there has been an unintentional disclosure or misuse of their user data).

3.3.11 Internal Use Applications must comply with all applicable criminal, civil and statutory laws and regulations, including those in any jurisdictions in which Your Internal Use Applications may be offered or made available. In addition:

- You and the Internal Use Application must comply with all applicable privacy and data collection laws and regulations with respect to any collection, use or disclosure of user or device data (e.g., a user's IP address, the name of the user's device, and any installed apps associated with a user);
- Internal Use Applications may not be designed or marketed for the purpose of harassing, abusing, spamming, stalking, threatening or otherwise violating the legal rights (such as the rights of privacy and publicity) of others;
- Neither You nor Your Internal Use Applications may perform any functions or link to any content, services, information or data or use any robot, spider, site search or other retrieval application or device to scrape, mine, retrieve, cache, analyze or index software, data or services provided by Apple or its licensors, or obtain (or try to obtain) any such data, except the data that Apple expressly provides or makes available to You in connection with such services. You agree that You will not collect, disseminate or use any such data for any unauthorized purpose; and
- If Your Internal Use Application is intended for human subject research or uses the HealthKit APIs for clinical health-related uses which may involve personal data (e.g., storage of health records), then You agree to inform participants of the intended uses and disclosures of their personally identifiable data as part of such research or clinical health uses and to obtain consent from such participants (or their guardians) who will be using Your Internal Use Application for such research or clinical health purposes. Further, You shall prohibit third parties to whom You provide any de-identified or coded data from re-identifying (or attempting to re-identify) any participants using such data without participant consent, and You agree to require that such third parties pass the foregoing restriction on to any other parties who receive such de-identified or coded data.

Advertising Identifier and Preference; Ad Network APIs:

3.3.12 You and Your Internal Use Applications (and any third party with whom You have contracted to serve advertising) may use the Advertising Identifier, and any information obtained through the use of the Advertising Identifier, only for the purpose of serving advertising. If a user resets the Advertising Identifier, then You agree not to combine, correlate, link or otherwise associate, either directly or indirectly, the prior Advertising Identifier and any derived information with the reset Advertising Identifier. For Internal Use Applications compiled for any iOS version or tvOS version providing access to the Ad Support APIs, You agree to check a user's Advertising Preference prior to serving any advertising using the Advertising Identifier, and You agree to abide by a user's setting in the Advertising Preference in Your use of the Advertising Identifier. In addition, You may request to use the Ad Network APIs to track application advertising conversion events. If You are granted permission to use the Ad Network APIs, You agree not to use such APIs, or any information obtained through the use of the Ad Network APIs, for any purpose other than verifying ad validation information as part of an advertising conversion event. You agree not to combine, correlate, link, or otherwise associate, either directly or indirectly, information that is provided as part of the ad validation through the use of the Ad Network APIs with other information You may have about a user. Apple reserves the right to reject any requests to use the Ad Network APIs, in its sole discretion.

Location and Maps; User Consents:

3.3.13 Internal Use Applications that use location-based APIs (e.g., Core Location, MapKit API) or otherwise provide location-based services may not be designed or marketed for automatic or autonomous control of vehicle behavior, or for emergency or life-saving purposes.

3.3.14 Internal Use Applications that offer location-based services or functionality, or that otherwise obtain, or attempt to obtain, a user's location through the use of the Apple Software or Apple Services, must notify and obtain consent from a user before a user's location data is collected, transmitted or otherwise used by the Internal Use Application and then such data must be used only as consented to by the user and as permitted herein. For example, if You use the "Always" location option in Your Internal Use Application for the purpose of continuous collection and use of a user's location data, You should provide a clearly defined justification and user benefit that is presented to the user at the time the permission.

3.3.15 If You choose to provide Your own location-based service, data and/or information in conjunction with the Apple maps provided through the Apple Maps Service (e.g., overlaying a map or route You have created on top of an Apple map), You are solely responsible for ensuring that Your service, data and/or information correctly aligns with any Apple maps used. For Internal Use Applications that use location-based APIs for real-time navigation (including, but not limited to, turn-by-turn route guidance and other routing that is enabled through the use of a sensor), You must have an end-user license agreement that includes the following notice: YOUR USE OF THIS REAL TIME ROUTE GUIDANCE APPLICATION IS AT YOUR SOLE RISK. LOCATION DATA MAY NOT BE ACCURATE.

3.3.16 Internal Use Applications must not disable, override or otherwise interfere with any Apple-implemented system alerts, warnings, display panels, consent panels and the like, including, but not limited to, those that are intended to notify the user that the user's location data, address book data, calendar, photos, audio data, and/or reminders are being collected, transmitted, maintained, processed or used, or intended to obtain consent for such use. Further, if You have the ability to add a description in such alerts, warnings, and display panels (e.g., information in the purpose strings for the Camera APIs), any such description must be accurate and not misrepresent the scope of use. If consent is denied or withdrawn, Internal Use Applications may not collect, transmit, maintain, process or utilize such data or perform any other actions for which the user's consent has been denied or withdrawn.

3.3.17 If Your Internal Use Application (or Your website or web application, as applicable) uses or accesses the MapKit API or MapKit JS from a device running iOS version 6 or later, Your Internal Use Application (or Your website or web application, as applicable) will access and use the Apple Maps Service. All use of the MapKit API, MapKit JS, and Apple Maps Service must be in accordance with the terms of this Agreement (including the Program Requirements) and Attachment 5 (Additional Terms for the use of the Apple Maps Service).

Content and Materials:

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

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

3.3.20 Internal Use Applications may not contain content or materials of any kind (text, graphics, images, photographs, etc.) that in Apple's reasonable judgment may be found objectionable or inappropriate, for example, materials that may be considered obscene, pornographic, or

defamatory.

3.3.21 Internal Use Applications must not contain any malware, malicious or harmful code, program, or other internal component (e.g., computer viruses, trojan horses, “backdoors”) which could damage, destroy, or adversely affect the Apple Software, Services, Apple-branded products or other software, firmware, hardware, data, systems, services, or networks.

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

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

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

MFi Accessories:

3.3.25 Your Internal Use Application may interface, communicate, or otherwise interoperate with or control an MFi Accessory (as defined above) through wireless transports or through Apple's lightning or 30-pin connectors only if (i) such MFi Accessory is licensed under the MFi Program at the time that You initially submit Your Internal Use Application, (ii) the MFi Licensee has added Your Internal Use Application to a list of those approved for interoperability with their MFi Accessory, and (iii) the MFi Licensee has received approval from the MFi Program for such addition.

Regulatory Compliance:

3.3.26 You will fulfill any applicable regulatory requirements, including full compliance with all applicable laws, regulations, and policies related to the manufacturing and use of Your Internal Use Application in the United States pursuant to this Agreement, and in particular the requirements of the U.S. Food and Drug Administration (“FDA”) as well as other U.S. regulatory bodies such as the FAA, HHS, FTC, and FCC, and the laws, regulations and policies of any other applicable regulatory bodies in any countries or territories where Your Internal Use Application is made available, e.g. MHRA, CFDA. However, You agree that You will not seek any regulatory permissions or make any determinations that may result in any Apple products being deemed regulated or that may impose any obligations or limitations on Apple. You represent and warrant that You will fully comply with any applicable laws, regulations, and policies, including but not limited to all FDA laws, regulations and policies, related to the use of Your Internal Use Application in the United States, as well as in other countries or territories where You plan to make Your Internal Use Application available in accordance with the terms and conditions of this Agreement. You also represent and warrant that You will only use Your Internal Use Application for its cleared or approved intended use/indication for use, and only in strict compliance with applicable regulatory requirements. Upon Apple’s request, You agree to promptly provide any such clearance documentation. If requested by the FDA or by another government body that has a need to review or test Your Internal Use Application as part of its regulatory review process,

You may provide Your Internal Use Application to such entity for review purposes. Further, You agree to promptly notify Apple in accordance with the procedures set forth in **Section 14.5** of any complaints or threats of complaints regarding Your Internal Use Application in relation to any such regulatory requirements.

Cellular Network:

3.3.27 If an Internal Use Application requires or will have access to the cellular network, then additionally such Internal Use Application:

- Must comply with Apple's best practices and other guidelines on how Internal Use Applications should access and use the cellular network; and
- Must not in Apple's reasonable judgment excessively use or unduly burden network capacity or bandwidth.

3.3.28 Because some mobile network operators may prohibit or restrict the use of Voice over Internet Protocol (VoIP) functionality over their network, such as the use of VoIP telephony over a cellular network, and may also impose additional fees, or other charges in connection with VoIP, You agree to inform Your Employees and/or Permitted Users, prior to use, to check the terms of agreement with their operator. In addition, if Your Internal Use Application allows such parties to send SMS messages, or make cellular voice calls, then You must inform such users, prior to use of such functionality, that standard text messaging rates or other carrier charges may apply to such use.

Apple Push Notification Service or Local Notifications:

3.3.29 All use of Push Notifications via the Apple Push Notification Service or Local Notifications must be in accordance with the terms of this Agreement (including the Program Requirements) and Attachment 1 (Additional Terms for Apple Push Notification Service and Local Notifications).

Mobile Device Management and Configuration Profiles:

3.3.30 All use of MDM and Configuration Profiles must be in accordance with the terms of this Agreement (including the Program Requirements) and Attachment 2 (Additional Terms for the use of MDM and Configuration Profiles). Use of MDM and Configuration Profiles under this Agreement is only for commercial enterprises (such as business organizations, educational institutions, or government agencies) and not for any consumer or personal use (except as otherwise expressly permitted in writing by Apple). You must make a clear declaration of what user data will be collected and how it will be used on an app screen or other notification mechanism prior to any user action to use a Configuration Profile. You may not share or sell user data obtained through a Configuration Profile to advertising platforms, data brokers, or information resellers. In addition, You may not override the consent panel for a Configuration Profile or any other mechanisms of a Configuration Profile.

iCloud:

3.3.31 All use of the iCloud Storage APIs and CloudKit APIs, as well as Your use of the iCloud service under this Agreement, must be in accordance with the terms of this Agreement (including the Program Requirements) and Attachment 3 (Additional Terms for the use of iCloud).

Wallet:

3.3.32 Your development of Passes, and use of the Pass Type ID and Wallet under this Agreement, must be in accordance with the terms of this Agreement (including the Program Requirements) and Attachment 4 (Additional Terms for Passes).

Additional Services or End-User Pre-Release Software:

3.3.33 From time to time, Apple may provide access to additional Services or pre-release Apple Software for You to use in connection with Your Internal Use Applications, or as an end-user for evaluation purposes. Some of these may be subject to separate terms and conditions in addition to this Agreement, in which case Your usage will also be subject to those terms and conditions. Such services or software may not be available in all languages or in all countries, and Apple makes no representation that they will be appropriate or available for use in any particular location. To the extent You choose to access such services or software, You do so at Your own initiative and are responsible for compliance with any applicable laws, including but not limited to applicable local laws. To the extent any such software includes Apple's FaceTime or Messages feature, You acknowledge and agree that when You use such features, the telephone numbers and device identifiers associated with Your Authorized Test Units, as well as email addresses and/or Apple ID information You provide, may be used and maintained by Apple to provide and improve such software and features. Certain services made accessible to You through the Apple Software may be provided by third parties. You acknowledge that Apple will not have any liability or responsibility to You or any other person (including to any end-user) for any third-party services or for any Apple services. Apple and its licensors reserve the right to change, suspend, remove, or disable access to any services at any time. In no event will Apple be liable for the removal or disabling of access to any such services. Further, upon any commercial release of such software or services, or earlier if requested by Apple, You agree to cease all use of the pre-release Apple Software or Services provided to You as an end-user for evaluation purposes under this Agreement.

3.3.34 If Your Internal Use Application accesses the Google Safe Browsing service through the Apple Software such access is subject to Google's terms of service set forth at: <https://developers.google.com/safe-browsing/terms>. If You do not accept such terms of service, then You may not use the Google Safe Browsing Service in Your Internal Use Application, and You acknowledge and agree that such use will constitute Your acceptance of such terms of service.

3.3.35 If Your Internal Use Application accesses data from an end-user's Address Book through the Address Book API, You must notify and obtain consent from the user before a user's Address Book data is accessed or used by Your Internal Use Application. Further, Your Internal Use Application may not provide an automated mechanism that transfers only the Facebook Data portions of the end-user's Address Book altogether to a location off of the end-user's device. For the sake of clarity, this does not prohibit an automated transfer of the user's entire Address Book as a whole, so long as user notification and consent requirements have been fulfilled; and does not prohibit enabling users to transfer any portion of their Address Book data manually (e.g., by cutting and pasting) or enabling them to individually select particular data items to be transferred.

Extensions:

3.3.36 Internal Use Applications that include extensions in the Internal Use Application bundle must provide some functionality beyond just the extensions (e.g., help screens, additional settings), unless Your Internal Use Application includes a WatchKit Extension. In addition:

- Extensions (excluding WatchKit Extensions) may not include advertising, product promotion, direct marketing, or In-App Purchase Offers in their extension view;
- Extensions may not block the full screen of an iOS Product or Apple TV, or redirect, obstruct or interfere in an undisclosed or unexpected way with a user's use of another developer's application or any Apple-provided functionality or service;

- Extensions may operate only in Apple-designated areas of iOS, watchOS, iPadOS, or tvOS as set forth in the Documentation;
- Extensions that provide keyboard functionality must be capable of operating independent of any network access and must include Unicode characters (vs. pictorial images only);
- Any keystroke logging done by any such extension must be clearly disclosed to the end-user prior to any such data being sent from an iOS Product, and notwithstanding anything else in **Section 3.3.9**, such data may be used only for purposes of providing or improving the keyboard functionality of Your Internal Use Application (e.g., not for serving advertising);
- Any message filtering done by an extension must be clearly disclosed to the end-user, and notwithstanding anything else in **Section 3.3.9**, any SMS or MMS data (whether accessed through a message filtering extension or sent by iOS to a messaging extension's corresponding server) may be used only for purposes of providing or improving the message experience of the user by reducing spam or messages from unknown sources, and must not be used for serving advertising or for any other purpose. Further, SMS or MMS data from a user that is accessed within the extension may not be exported from the extension's designated container area in any way; and
- Your Internal Use Application must not automate installation of extensions or otherwise cause extensions to be installed without the user's knowledge, and You must accurately specify to the user the purpose and functionality of the extension.

HealthKit APIs and Motion & Fitness APIs:

3.3.37 Your Internal Use Application must not access the HealthKit APIs or Motion & Fitness APIs unless the use of such APIs is for health, motion, and/or fitness purposes, and this usage is clearly evident in Your marketing text and user interface. In addition:

- Notwithstanding anything to the contrary in **Section 3.3.9**, You and Your Internal Use Application may not use the HealthKit APIs or the Motion & Fitness APIs, or any information obtained through the HealthKit APIs or the Motion & Fitness APIs, for any purpose other than providing health, motion, and/or fitness services in connection with Your Internal Use Application (e.g., not for serving advertising);
- You must not use the HealthKit APIs or the Motion & Fitness APIs, or any information obtained through the HealthKit APIs or the Motion & Fitness APIs, to disclose or provide an end-user's health, motion, and/or fitness information to a third party without prior express end-user consent, and then only for purposes of enabling the third party to provide health, motion, and/or fitness services as permitted herein. For example, You must not share or sell an end-user's health information collected through the HealthKit APIs or Motion & Fitness APIs to advertising platforms, data brokers or information resellers. For clarity, You may allow end-users to consent to share their data with third-parties for medical research purposes; and
- You agree to clearly disclose to end-users how You and Your Internal Use Application will be using their health, motion, and/or fitness information and to use it only as expressly consented to by the end-user and as expressly permitted herein.

3.3.8. Reserved

HomeKit APIs:

3.3.39 Your Internal Use Application must not access the HomeKit APIs unless it is primarily designed to provide home configuration or home automation services (e.g., turning on a light, lifting a garage door) for Licensed HomeKit Accessories and this usage is clearly evident in Your

marketing text and user interface. You agree not to use the HomeKit APIs for any purpose other than interfacing, communicating, interoperating with or otherwise controlling a Licensed HomeKit Accessory or for using the HomeKit Database, and then only for home configuration or home automation purposes in connection with Your Internal Use Application. In addition:

- Your Internal Use Application may use information obtained from the HomeKit APIs and/or the HomeKit Database only on a compatible Apple-branded product and may not export, remotely access or transfer such information off product (e.g., a lock password cannot be sent off an end-user's device to be stored in an external non-Apple database), unless otherwise expressly permitted in the Documentation; and
- Notwithstanding anything to the contrary in **Section 3.3.9**, You and Your Internal Use Application may not use the HomeKit APIs, or any information obtained through the HomeKit APIs or through the HomeKit Database, for any purpose other than providing or improving home configuration or home automation services in connection with Your Internal Use Application (e.g., not for serving advertising).

Network Extension Framework:

3.3.40 Your Internal Use Application must not access the Network Extension Framework unless Your Internal Use Application is primarily designed for providing networking capabilities, and You have received an entitlement from Apple for such access. You agree to the following if You receive such entitlement:

- You agree to clearly disclose to end-users how You and Your Internal Use Application will be using their network information and, if applicable, filtering their network data, and You agree to use such data and information only as expressly consented to by the end-user and as expressly permitted herein;
- You agree to store and transmit network information or data from an end-user in a secure and appropriate manner;
- You agree not to divert an end-user's network data or information through any undisclosed, improper, or misleading processes, e.g., to filter it through a website to obtain advertising revenue or spoof a website;
- You agree not to use any network data or information from end-users to bypass or override any end-user settings, e.g., You may not track an end-user's WiFi network usage to determine their location if they have disabled location services for Your Internal Use Application; and
- Notwithstanding anything to the contrary in **Section 3.3.9**, You and Your Internal Use Application may not use the Network Extension Framework, or any data or information obtained through the Network Extension Framework, for any purpose other than providing networking capabilities in connection with Your Internal Use Application (e.g., not for using an end-user's Internet traffic to serve advertising or to otherwise build user profiles for advertising).

Apple reserves the right to not provide You with an entitlement to use the Network Extension Framework in its sole discretion and to revoke such entitlement at any time. In addition, if You would like to use the Access WiFi Information APIs (which provide the WiFi network to which a device is connected), then You must request an entitlement from Apple for such use, and, notwithstanding anything to the contrary in **Section 3.3.9**, You may use such APIs only for providing a service or function that is directly relevant to the Internal Use Application (e.g., not for serving advertising).

SiriKit:

3.3.41 Your Internal Use Application may register as a destination to use the Apple-defined SiriKit domains, but only if Your Internal Use Application is designed to provide relevant responses to a user, or otherwise carry out the user's request or intent, in connection with the applicable SiriKit domain (e.g., ride sharing) that is supported by Your Internal Use Application and this usage is clearly evident in Your marketing text and user interface. In addition, Your Internal Use Application may contribute actions to SiriKit, but only if such actions are tied to user behavior or activity within Your Internal Use Application and for which You can provide a relevant response to the user. You agree not to submit false information through SiriKit about any such user activity or behavior or otherwise interfere with the predictions provided by SiriKit (e.g., SiriKit donations should be based on actual user behavior).

3.3.42 Your Internal Use Application may use information obtained through SiriKit only on supported Apple products and may not export, remotely access or transfer such information off a device except to the extent necessary to provide or improve relevant responses to a user or carry out a user's request or in connection with Your Internal Use Application. Notwithstanding anything to the contrary in **Section 3.3.9**, You and Your Internal Use Application may not use SiriKit, or any information obtained through SiriKit, for any purpose other than providing relevant responses to a user or otherwise carrying out a user's request or intent in connection with an SiriKit domain, intent, or action supported by Your Internal Use Application and/or for improving Your Internal Use Application's responsiveness to user requests (e.g., not for serving advertising).

3.3.43 If Your Internal Use Application uses SiriKit to enable audio data to be processed by Apple, You agree to clearly disclose to end-users that You and Your Internal Use Application will be sending their recorded audio data to Apple for speech recognition, processing and/or transcription purposes, and that such audio data may be used to improve and provide Apple products and services. You further agree to use such audio data, and recognized text that may be returned from SiriKit, only as expressly consented to by the end-user and as expressly permitted herein.

Single Sign-On API:

3.3.44 Your Internal Use Application must not access or use the Single Sign-On API unless You are a Multi-channel Video Programming Distributor (MVPD) or unless Your Internal Use Application is primarily designed to provide subscription-based video programming and You have received an entitlement from Apple or otherwise have received Apple's written permission to do so. Any such use must be in compliance with the Documentation for the Single Sign-On API. You acknowledge that Apple reserves the right to not provide You such an entitlement or permission, and to revoke such entitlement or permission, at any time, in its sole discretion.

Spotlight-Image-Search Service:

3.3.45 To the extent that You provide Apple's spotlight-image-search service with access to any of Your domains that are associated with Your Licensed Applications (the "Associated Domain(s)"), You hereby grant Apple permission to crawl, scrape, copy, transmit and/or cache the content found in the Associated Domain(s) (the "Licensed Content") for the purposes set forth in this section. The Licensed Content shall be considered Licensed Application Information under this Agreement. You hereby further grant Apple a license to use, make, have made, reproduce, crop and/or modify the file format, resolution and appearance of the Licensed Content (for the purposes of reducing file size, converting to a supported file type and/or displaying thumbnails), and to publicly display, publicly perform, integrate, incorporate and distribute the Licensed Content to enhance search, discovery, and end-user distribution of the Licensed Content in Apple's Messages feature. Upon the termination of this Agreement for any reason, end users of Apple-branded products will be permitted to continue using and distributing all Licensed Content that they obtained through the use of Apple-branded products prior to such termination.

MusicKit:

3.3.46 You agree not to call the MusicKit APIs or use MusicKit JS (or otherwise attempt to gain information through the MusicKit APIs or MusicKit JS) for purposes unrelated to facilitating access to Your end users' Apple Music subscriptions. If You access the MusicKit APIs or MusicKit JS, then You must follow the Apple Music Identity Guidelines. You agree not to require payment for or indirectly monetize access to the Apple Music service (e.g. in-app purchase, advertising, requesting user info) through Your use of the MusicKit APIs, MusicKit JS, or otherwise in any way. In addition:

- If You choose to offer music playback through the MusicKit APIs or MusicKit JS, full songs must be enabled for playback, and users must initiate playback and be able to navigate playback using standard media controls such as “play,” “pause,” and “skip”, and You agree to not misrepresent the functionality of these controls;
- You may not, and You may not permit Your end users to, download, upload, or modify any MusicKit Content and MusicKit Content cannot be synchronized with any other content, unless otherwise permitted by Apple in the Documentation;
- You may play MusicKit Content only as rendered by the MusicKit APIs or MusicKit JS and only as permitted in the Documentation (e.g., album art and music-related text from the MusicKit API may not be used separately from music playback or managing playlists);
- Metadata from users (such as playlists and favorites) may be used only to provide a service or function that is clearly disclosed to end users and that is directly relevant to the use of Your Internal Use Application, website, or web application, as determined in Apple's sole discretion; and
- You may use MusicKit JS only as a stand-alone library in Your Internal Use Application, website, or web application and only as permitted in the Documentation (e.g., You agree not to recombine MusicKit JS with any other JavaScript code or separately download and re-host it).

DeviceCheck APIs:

3.3.47 If You use DeviceCheck APIs to store DeviceCheck Data, then You must provide a mechanism for customers to contact You to reset those values, if applicable (e.g. resetting a trial subscription or re-authorizing certain usage when a new user acquires the device). You may not rely on the DeviceCheck Data as a single identifier of fraudulent conduct and must use the DeviceCheck Data only in connection with other data or information, e.g., the DeviceCheck Data cannot be the sole data point since a device may have been transferred or resold. Apple reserves the right to delete any DeviceCheck Data at any time in its sole discretion, and You agree not to rely on any such Data. Further, You agree not to share the DeviceCheck tokens You receive from Apple with any third party, except a Service Provider acting on Your behalf.

Face Data:

3.3.48 If Your Internal Use Application accesses Face Data, then You must do so only to provide a service or function that is directly relevant to the use of the Internal Use Application, and You agree to inform users of Your intended uses and disclosures of Face Data by Your Internal Use Application and to obtain clear and conspicuous consent from such users before any collection or use of Face Data. Notwithstanding anything to the contrary in **Section 3.3.9**, neither You nor Your Internal Use Application (nor any third party with whom You have contracted to serve advertising) may use Face Data for serving advertising or for any other unrelated purposes. In addition:

- You may not use Face Data in a manner that will violate the legal rights of Your users (or any

third parties) or to provide an unlawful, unfair, misleading, fraudulent, improper, exploitative, or objectionable user experience and then only in accordance with the Documentation;

- You may not use Face Data for authentication, advertising, or marketing purposes, or to otherwise target an end-user in a similar manner;
- You may not use Face Data to build a user profile, or otherwise attempt, facilitate, or encourage third parties to identify anonymous users or reconstruct user profiles based on Face Data;
- You agree not to transfer, share, sell, or otherwise provide Face Data to advertising platforms, analytics providers, data brokers, information resellers or other such parties; and
- Face Data may not be shared or transferred off the user's device unless You have obtained clear and conspicuous consent for the transfer and the Face Data is used only in fulfilling a specific service or function for Your Internal Use Application (e.g., a face mesh is used to display an image of the user within the Internal Use Application) and only in accordance with these terms and the Documentation. You agree to require that Your service providers use Face Data only to the limited extent consented to by the user and only in accordance with these terms.

ClassKit APIs:

3.3.49 Your Internal Use Application must not include the ClassKit APIs unless it is primarily designed to provide educational services, and this usage is clearly evident in Your marketing text and user interface. You agree not to submit false or inaccurate data through the ClassKit APIs or to attempt to redefine the assigned data categories for data submitted through the ClassKit APIs (e.g., student location data is not a supported data type and should not be submitted).

ShazamKit:

3.3.50 All use of the ShazamKit APIs must be in accordance with the terms of this Agreement (including the Apple Music Identity Guidelines and Program Requirements) and the Documentation. If You choose to display ShazamKit Content corresponding to songs available on Apple Music, then You must provide a link to the respective content within Apple Music in accordance with the Apple Music Identity Guidelines. Except to the extent expressly permitted herein, You agree not to copy, modify, translate, create a derivative work of, publish or publicly display ShazamKit Content in any way. Further, You may not use or compare the data provided by the ShazamKit APIs for the purpose of improving or creating another audio recognition service. Internal Use Applications that use the ShazamKit APIs may not be designed or marketed for compliance purposes (e.g., music licensing and royalty auditing).

4. Changes to Program Requirements or Terms

Apple may change the Program Requirements or the terms of this Agreement at any time. New or modified Program Requirements will not retroactively apply to Internal Use Applications already in deployment. In order to continue using the Apple Software or any services, You must accept and agree to the new Program Requirements and/or new terms of this Agreement. If You do not agree to new Program Requirements or new terms, Your use of the Apple Software and any services will be suspended or terminated by Apple. You agree that Your acceptance of such new Agreement terms or Program Requirements may be signified electronically, including without limitation, by Your checking a box or clicking on an "agree" or similar button. Nothing in this Section shall affect Apple's rights under **Section 5 (Apple Certificates; Revocation)** below.

5. Apple Certificates; Revocation

5.1 Certificate Requirements

All Internal Use Applications must be signed with an Apple Certificate in order to be installed on Authorized Test Units or Deployment Devices. Similarly, all Passes must be signed with a Pass

Type ID to be recognized and accepted by Wallet, and for Your Sites, You must use a Website ID to send Safari Push Notifications to the macOS Desktop of users who have opted in to receive such Notifications through Safari on macOS. In addition, Apple may provide You with certificates for use with MDM and other Apple Services. You may also obtain other Apple Certificates and keys for other purposes as set forth herein and in the Documentation.

In relation to this, You represent and warrant to Apple that:

- (a) You will not take any action to interfere with the normal operation of any Apple-issued digital certificates or Provisioning Profiles;
- (b) You are solely responsible for preventing any unauthorized person or organization from having access to Your Provisioning Profiles, Apple Certificates and corresponding private keys, and You will use Your best efforts to safeguard Your Apple Certificates, keys, and Provisioning Profiles from compromise;
- (c) You agree to immediately notify Apple in writing if You have any reason to believe there has been a compromise of any of Your Provisioning Profiles, Apple Certificates, or keys;
- (d) You will not provide or transfer Apple Certificates or Provisioning Profiles provided under this Program to any third party, except to a contractor who is developing an Internal Use Application, Pass, or Site for You in compliance with the terms of this Agreement and only to the limited extent expressly permitted by Apple in the Documentation or this Agreement;
- (e) You will not use Your Apple Certificates (whether development or deployment) to sign anything other than Your Internal Use Applications, Passes, or Sites;
- (f) You will only use the Provisioning Profiles in conjunction with Your Internal Use Applications and not with or for any other programs or applications;
- (g) You will only use Your MDM Certificate, MDM Signing Certificate or other certificates provided by Apple in connection with MDM as expressly permitted herein; and
- (h) You will use the Apple Certificates exclusively for the purpose of signing Your Internal Use Applications for testing and internal deployment within Your company, organization or educational institution or as otherwise permitted by Apple, and only in accordance with this Agreement.

You further represent and warrant to Apple that the licensing terms governing Your Internal Use Application, Your Site's registration bundle and/or Your Pass, or governing any third party code or FOSS included therein, will be consistent with and not conflict with the digital signing aspects of the Program or any of the terms, conditions or requirements of the Program or this Agreement. In particular, such licensing terms will not purport to require Apple (or its agents) to disclose or make available any of the keys, authorization codes, methods, procedures, data or other information related to the digital signing mechanisms utilized as part of the Program. If You discover any such inconsistency or conflict, You agree to immediately notify Apple of it and will cooperate with Apple to resolve such matter.

5.2 Notarized Applications for macOS

To have Your Internal Use Application for macOS notarized, You may request a digital file for authentication of Your Internal Use Application from Apple's digital notary service (a "**Ticket**"). You can use this Ticket with Your Apple Certificate to receive an improved developer signing and user experience for Your Internal Use Application on macOS. To request this Ticket from Apple's digital notary service, You must upload Your Internal Use Application to Apple through Apple's developer tools (or other requested mechanisms) for purposes of continuous security checking. This continuous security checking will involve automated scanning, testing, and analysis of Your Internal Use Application by Apple for malware or other harmful or suspicious code or components or security flaws, and, in limited cases, a manual, technical investigation of Your Internal Use Application by Apple for such purposes. By uploading Your Internal Use Application to Apple for this digital notary service, You agree that Apple may perform such security checks on Your Internal Use Application for purposes of detecting malware or other harmful or suspicious code or components, and You agree that Apple may retain and use Your Internal Use Application for subsequent security checks for the same purposes.

If Apple authenticates Your developer signature and Your Internal Use Application passes the

initial security checks, Apple may provide You with a Ticket to use with Your Apple Certificate. Apple reserves the right to issue Tickets in its sole discretion, and Apple may revoke Tickets at any time in its sole discretion in the event that Apple has reason to believe, or has reasonable suspicions, that Your Internal Use Application contains malware or malicious, suspicious or harmful code or components or that Your developer identity signature has been compromised. You may request that Apple revoke Your Ticket at any time by emailing: product-security@apple.com. If Apple revokes Your Ticket or Your Apple Certificate, then Your Internal Use Application may no longer run on macOS.

You agree to cooperate with Apple regarding Your Ticket requests and to not hide, attempt to bypass, or misrepresent any part of Your Internal Use Application from Apple's security checks or otherwise hinder Apple from being able to perform such security checks. You agree not to represent that Apple has performed a security check or malware detection for Your Internal Use Application or that Apple has reviewed or approved Your Internal Use Application for purposes of issuing a Ticket to You from Apple's digital notary service. You acknowledge and agree that Apple is performing security checks solely in connection with Apple's digital notary service and that such security checks should not be relied upon for malware detection or security verification of any kind. You are fully responsible for Your own Internal Use Application and for ensuring that Your Internal Use Application is safe, secure, and operational for Your end-users (e.g., informing Your end-users that Your Internal Use Application may cease to run if there is an issue with malware). You agree to comply with export requirements in Your jurisdiction when uploading Your Internal Use Application to Apple, and You agree not to upload any Internal Use Application that is: (a) subject to the United States Export Administration Regulations, 15 C.F.R. Parts 730-774 or to the International Traffic in Arms Regulations, 22 C.F.R. Parts 120-130; or (b) that cannot be exported without prior written government authorization, including, but not limited to, certain types of encryption software and source code, without first obtaining that authorization. Apple will not be liable to You or any third-party for any inability or failure to detect any malware or other suspicious, harmful code or components in Your Internal Use Application or other security issues, or for any ticket issuance or revocation. Apple shall not be responsible for any costs, expenses, damages, losses or other liabilities You may incur as a result of Your Internal Use Application development, use of the Apple Software, Apple Services (including this digital notary service), or Apple Certificates, tickets, or participation in the Program, including without limitation the fact that Apple performs security checks on Your Internal Use Application.

5.3 Certificate Revocation

Except as otherwise set forth herein, You may revoke Apple Certificates issued to You at any time. If You want to revoke the Apple Certificates used to sign Your Passes and/or issued to You for use with Your macOS Applications, You may request that Apple revoke these Apple Certificates at any time by emailing: product-security@apple.com. Apple also reserves the right to revoke any Apple Certificates at any time, in its sole discretion. By way of example only, Apple may choose to do this if: (a) any of Your Apple Certificates or corresponding private keys have been compromised or Apple has reason to believe that either have been compromised; (b) Apple has reason to believe or has reasonable suspicions that Your Covered Products contain malware or malicious, suspicious or harmful code or components (e.g., a software virus); (c) Apple has reason to believe that Your Covered Products adversely affect the security of Apple-branded products, or any other software, firmware, hardware, data, systems, or networks accessed or used by such products; (d) Apple's certificate issuance process is compromised or Apple has reason to believe that such process has been compromised; (e) You breach any term or condition of this Agreement; (f) Apple ceases to issue the Apple Certificates for the Covered Product under the Program; (g) Your Covered Product misuses or overburdens any Services provided hereunder; or (h) Apple has reason to believe that such action is prudent or necessary.

Further, You understand and agree that Apple may notify end-users of Covered Products that are signed with Apple Certificates when Apple believes such action is necessary to protect the privacy, safety or security of end-users, or is otherwise prudent or necessary as determined in Apple's reasonable judgment. Apple's Certificate Policy and Certificate Practice Statements may

be found at: <http://www.apple.com/certificateauthority>.

6. Deployment

Internal Use Applications:

Subject to Apple's right to review and approve any deployments as set forth herein, Internal Use Applications developed under this Agreement for iOS, watchOS, iPadOS, or tvOS may be deployed on Deployment Devices in two ways: (1) deployment for internal use by Employees or Permitted Users, and (2) deployment to the limited extent permitted in **Section 2.1(f)**. For clarity, Internal Use Applications for macOS may be signed with Your Apple Certificate, or may be separately distributed without an Apple Certificate.

6.1 General

You agree to be solely responsible for determining which Employees and Permitted Users should have access to and use of Your Internal Use Applications and Deployment Devices, and for managing and monitoring their use of and access to such Applications and Devices on an ongoing basis (and/or requiring Your Permitted Entity to monitor such access and use on an ongoing basis). This includes, without limitation, responsibility for promptly retrieving Deployment Devices (including Authorized Test Units) from, and removing access to the Apple Software, Apple-issued digital certificates and Provisioning Profiles by individuals who are no longer employed or engaged by Your company or who are no longer a part of Your Permitted Entity's organization or institution.

By deploying Your Internal Use Applications or authorizing Your Permitted Entity to deploy such Applications on Your behalf, You represent and warrant to Apple that Your Internal Use Applications comply with the Documentation and Program Requirements then in effect and that such Internal Use Applications are only being developed and deployed as expressly permitted herein. Apple shall not be responsible for any costs, expenses, damages, losses (including without limitation lost business opportunities or lost profits) or other liabilities You may incur as a result of deploying Your Internal Use Applications, or for Your failure to adequately manage, monitor, limit or otherwise control the access to and use of Your Internal Use Applications and Deployment Devices. You will be fully responsible for any violations of the terms of this Agreement by Your Permitted Entity, Your Authorized Developers, Employees, Your Permitted Users, Your Demo Recipients, and any contractors that You may employ to develop such Internal Use Applications on Your behalf.

6.2 Apple's Right to Review and Approve Internal Use Applications

You understand and agree that Apple reserves the right to review and approve, or reject, any Internal Use Application that You would like to deploy (or that is already in use) under the Program at any time during the Term of this Agreement. If requested by Apple, You agree to fully cooperate with Apple and promptly provide such Internal Use Application to Apple for such review, unless otherwise separately agreed in advance and in writing by Apple. You agree not to attempt to hide, misrepresent, mislead, or obscure any features, content, services or functionality in Your submitted Internal Use Application from Apple's review or otherwise hinder Apple from being able to fully review such Applications. You agree to inform Apple in writing if Your Internal Use Application connects to a physical device, and You agree to cooperate with Apple and answer questions and provide information and materials reasonably requested by Apple regarding such Internal Use Application. If You make any changes to such Internal Use Application after such submission to Apple, You agree to notify Apple and, if requested by Apple, resubmit such Internal Use Application prior to any deployment of such modified Internal Use Application. Apple reserves the right to reject Your Internal Use Application for deployment for any reason and at any time, even if Your Internal Use Application meets the Documentation and Program Requirements; and, in that event, You agree that You may not deploy such Internal Use Application.

6.3 Ownership of Internal Use Applications; Usage Terms; Liability

You will retain Your right, title and interest in and to Your Internal Use Applications. You will be responsible for attaching or otherwise including, at Your discretion, any relevant usage terms with Your Internal Use Application. Apple will not be responsible for any violations of Your usage terms. You will be solely responsible for all user assistance, warranty and support of Your Internal Use Applications. The fact that Apple may have reviewed, tested, or approved of an Internal Use Application, if applicable, will not relieve You of any of these responsibilities.

Apple shall not be responsible for any costs, expenses, damages, losses (including without limitation lost business opportunities or lost profits) or other liabilities You may incur as a result of Your Internal Use Application development, use of this Apple Software, use of any services, or participation in the Program, including without limitation the fact that Your Internal Use Application may not be approved for deployment or may be subsequently rejected for continued deployment. You will be solely responsible for developing Internal Use Applications that are safe, free of defects in design and operation, and comply with applicable laws and regulations.

Libraries:

6.4 Distribution of Libraries

You can develop Libraries using the Apple Software. Notwithstanding anything to the contrary in the Xcode and Apple SDKs Agreement, under this Agreement You may develop Libraries for iOS watchOS, iPadOS, and tvOS using the applicable Apple SDKs that are provided as part of the Xcode and Apple SDKs license, provided that any such Libraries are developed and distributed solely for use with an iOS Product, Apple Watch or Apple TV and that You limit use of such Libraries only to use with such products. If Apple determines that Your Library is not designed for use only with an iOS Product, Apple Watch, or Apple TV, then Apple may require You to cease distribution of Your Library at any time, and You agree to promptly cease all distribution of such Library upon notice from Apple and cooperate with Apple to remove any remaining copies of such Library. For clarity, the foregoing limitation is not intended to prohibit the development of libraries for macOS.

7. No Other Distribution

Except for internal deployment of Your Internal Use Application to Employees or Permitted Users, the distribution of Passes as set forth herein, the Distribution of Libraries in accordance with **Section 6.4**, the delivery of Safari Push Notifications, the distribution of libraries and Internal Use Applications for macOS, and/or as set forth herein, or as otherwise expressly permitted herein, no other distribution of programs or applications developed using the Apple Software is authorized or permitted hereunder. You agree to distribute Your Covered Products only in accordance with the terms of this Agreement.

8. Program Fees

As consideration for the rights and licenses granted to You under this Agreement and Your participation in the Program, You agree to pay Apple the annual Program fee set forth on the Program website. Such fee is non-refundable, and any taxes that may be levied on the Apple Software, Apple Services or Your use of the Program shall be Your responsibility. Your Program fees must be paid up and not in arrears at the time You submit (or resubmit) Applications to Apple under this Agreement (if applicable), and Your continued use of the Program web portal and Services is subject to Your payment of such fees, where applicable. If You opt-in to have Your annual Program fees paid on an auto-renewing basis, then You agree that Apple may charge the credit card that You have on file with Apple for such fees, subject to the terms You agree to on the Program web portal when You choose to enroll in an auto-renewing membership.

9. Confidentiality

9.1 Information Deemed Apple Confidential

You agree that all pre-release versions of the Apple Software and Apple Services (including pre-release Documentation), pre-release versions of Apple hardware, and any terms and conditions

contained herein that disclose pre-release features of the Apple Software or services will be deemed "Apple Confidential Information"; provided however that upon the commercial release of the Apple Software or services the terms and conditions that disclose pre-release features of the Apple Software or services will no longer be confidential. Notwithstanding the foregoing, Apple Confidential Information will not include: (i) information that is generally and legitimately available to the public through no fault or breach of Yours, (ii) information that is generally made available to the public by Apple, (iii) information that is independently developed by You without the use of any Apple Confidential Information, (iv) information that was rightfully obtained from a third party who had the right to transfer or disclose it to You without limitation, or (v) any FOSS included in the Apple Software and accompanied by licensing terms that do not impose confidentiality obligations on the use or disclosure of such FOSS. Further, Apple agrees that You will not be bound by the foregoing confidentiality terms with regard to technical information about pre-release Apple Software and services disclosed by Apple at WWDC (Apple's Worldwide Developers Conference), except that You may not post screenshots of, write public reviews of, or redistribute any pre-release Apple Software, Apple Services or hardware.

9.2 Obligations Regarding Apple Confidential Information

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

9.3 Information Submitted to Apple Not Deemed Confidential

Apple works with many application and software developers and some of their products may be similar to or compete with Your Internal Use Applications. Apple may also be developing its own similar or competing applications and products or may decide to do so in the future. To avoid potential misunderstandings, Apple cannot agree, and expressly disclaims, any confidentiality obligations or use restrictions, express or implied, with respect to any information that You may provide in connection with this Agreement or the Program, including information about Your Internal Use Application and metadata (such disclosures will be referred to as "Licensee Disclosures"). You agree that any such Licensee Disclosures will be **non-confidential**. Apple will be free to use and disclose any Licensee Disclosures on an unrestricted basis without notifying or compensating You. You release Apple from all liability and obligations that may arise from the receipt, review, use, or disclosure of any portion of any Licensee Disclosures. Any physical materials You submit to Apple will become Apple property and Apple will have no obligation to return those materials to You or to certify their destruction.

9.4 Press Releases and Other Publicity

You may not issue any press releases or make any other public statements regarding this Agreement, its terms and conditions, or the relationship of the parties without Apple's express prior written approval, which may be withheld at Apple's discretion.

10. Indemnification

To the extent permitted by applicable law, You agree to indemnify, defend and hold harmless

Apple, and upon Apple's request, defend Apple, its directors, officers, employees, independent contractors and agents (each an "Apple Indemnified Party") from any and all claims, losses, liabilities, damages, 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 (but excluding for purposes of this Section, any Internal Use Application for macOS that does not use any Apple Services or Certificates): (i) Your breach of any certification, covenant, obligation, representation or warranty in this Agreement; (ii) any claims that Your Covered Product or metadata or the deployment, delivery, use or importation of Your Covered Product (whether alone or as an essential part of a combination) violate or infringe any third party intellectual property or proprietary rights; (iii) any Employee, Customer, Permitted Entity, or Permitted User claims about Your Covered Product, including, but not limited to, a breach of any of Your obligations under any end-user license that You include for Your Covered Product; (iv) Your use of the Apple Software, certificates or services (including, but not limited to, use of MDM, Configuration Profiles, and certificates), Your Covered Product, metadata, Deployment Devices, or Your development and deployment of any Covered Product; and/or (v) any MDM Customer claims about Your Compatible Products, as well as any claims that Your Compatible Products violate or infringe any third party intellectual property or proprietary rights.

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

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

11. Term and Termination

11.1 Term

The Term of this Agreement shall extend until the next anniversary of the original activation date of Your Program account, and, subject to Your payment of annual renewal fees and compliance with the terms of this Agreement, will automatically renew for successive one year terms, unless sooner terminated in accordance with this Agreement.

11.2 Termination

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

- (a) if You or any of Your Employees or Permitted Users fail to comply with any term of this Agreement other than those set forth below in this **Section 11.2** and fail to cure such breach within 30 days after becoming aware of or receiving notice of such breach;
- (b) if You or any of Your Employees fail to comply with the terms of **Section 9 (Confidentiality)**;
- (c) in the event of the circumstances described in the subsection entitled "Severability" below;
- (d) if You, at any time during the Term, commence an action for patent infringement against Apple;
- (e) if You become insolvent, fail to pay Your debts when due, dissolve or cease to do business, file for bankruptcy, or have filed against You a petition in bankruptcy;
- (f) if You or any entity or person that directly or indirectly controls You, or is under common control with You (where "control" has the meaning defined in Section 14.8) are or become subject to sanctions or other restrictions in the countries in which the App Store is available; or
- (g) if You engage, or encourage others to engage, in any misleading, fraudulent, improper, unlawful or dishonest act relating to this Agreement, including, but not limited to, alteration or falsification of documents, inappropriate use of computer systems or other misrepresentation of facts.

Apple may also terminate this Agreement, or suspend Your rights to use the Apple Software or services, if You fail to accept any new Program Requirements or Agreement terms as described in **Section 4**. In addition, Apple may suspend Your rights to use the Apple Software or services (including disabling Your Internal Use Applications) in the event Apple suspects that Your account has been compromised or that Your account has been used to distribute applications in violation of the terms of this Agreement (e.g., posting an Internal Use Applications on a public website, distributing an Internal Use Application to consumers). Either party may terminate this Agreement for its convenience, for any reason or no reason by giving the other party at least 30 days written notice of its intent to terminate.

11.3 Effect of Termination

Upon the termination of this Agreement for any reason, You agree to immediately cease all use of the Apple Software and services and erase and destroy all copies, full or partial, of the Apple Software and any information pertaining to the services (including Your Push Application ID) and all copies of Apple Confidential Information in Your and Your Employees' possession or control. At Apple's request, You agree to provide written certification of such destruction to Apple. The following provisions shall survive any termination of this Agreement: Sections 1, 2.3, 2.5, 2.6, 3.1(d), 3.1(e), 3.1(f), 3.2(d), 3.2(e), 3.2(f), 3.3, 5.1 (second and third paragraphs), the last sentence of the first paragraph of Section 5.2 and the limitations and restrictions of Section 5.2, 5.3, the limitations and disclaimers of Sections 6.1, 6.2, and 6.3, the second sentence of Section 6.4, Sections 7, 8, and 10 through 15 inclusive of the Agreement; within Attachment 1, the last sentence of Section 1.1, Section 2, the second and third sentences of Section 4, Section 5, and Section 6; within Attachment 2, the last sentence of Section 1.1, the third and fourth sentence of Section 1.3, Sections 1.4, 1.5, 1.6, 2.3, 2.4, 3.3, 3.4, the second and last sentence of Section 4.2, Sections 4.3, 4.4, 4.5, 5, and Section 6, and within Attachment 3, Section 1.2, Sections 1.5, 1.6, 2, 3, and 4; within Attachment 4, Sections 2.2, 2.3, 3.3, and 5; and within Attachment 5, Sections 1.2, 1.3, 2, 3, and 4. Apple will not be liable for compensation, indemnity, or damages of any sort as a result of terminating this Agreement in accordance with its terms, and termination of this Agreement will be without prejudice to any other right or remedy Apple may have, now or in the future.

12. NO WARRANTY

The Apple Software or Services may contain inaccuracies or errors that could cause failures or loss of data and it may be incomplete. Apple and its licensors reserve the right to change, suspend, remove, or disable access to any Services (or any part thereof) at any time without notice. In no event will Apple or its licensors be liable for the removal of or disabling of access to any such Services. Apple or its licensors may also impose limits on the use of or access to certain Services, or may remove the Services for indefinite time periods, or cancel the Services at any time, and in any case and without notice or liability. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, YOU EXPRESSLY ACKNOWLEDGE AND AGREE THAT USE OF THE APPLE SOFTWARE AND ANY SERVICES IS AT YOUR SOLE RISK AND THAT THE ENTIRE RISK AS TO SATISFACTORY QUALITY, PERFORMANCE, ACCURACY AND EFFORT IS WITH YOU. THE APPLE SOFTWARE AND ANY SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE", WITH ALL FAULTS AND WITHOUT WARRANTY OF ANY KIND, AND APPLE, APPLE'S AGENTS AND APPLE'S LICENSORS (**COLLECTIVELY REFERRED TO AS "APPLE" FOR THE PURPOSES OF SECTIONS 12 AND 13**) HEREBY DISCLAIM ALL WARRANTIES AND CONDITIONS WITH RESPECT TO THE APPLE SOFTWARE AND SERVICES, EITHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, TIMELINESS, AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS. APPLE DOES NOT WARRANT AGAINST INTERFERENCE WITH YOUR ENJOYMENT OF THE APPLE SOFTWARE OR SERVICES, THAT THE APPLE SOFTWARE OR SERVICES WILL MEET YOUR REQUIREMENTS, THAT THE OPERATION OF THE APPLE SOFTWARE OR THE PROVISION OF SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE OR ERROR-FREE, THAT DEFECTS OR ERRORS IN THE APPLE SOFTWARE OR SERVICES WILL BE

CORRECTED, OR THAT THE APPLE SOFTWARE OR SERVICES WILL BE COMPATIBLE WITH FUTURE APPLE PRODUCTS, SERVICES OR SOFTWARE OR ANY THIRD PARTY SOFTWARE, APPLICATIONS, OR SERVICES, OR THAT ANY INFORMATION STORED OR TRANSMITTED THROUGH ANY APPLE SOFTWARE OR SERVICES WILL NOT BE LOST, CORRUPTED OR DAMAGED. YOU ACKNOWLEDGE THAT THE APPLE SOFTWARE AND SERVICES ARE NOT INTENDED OR SUITABLE FOR USE IN SITUATIONS OR ENVIRONMENTS WHERE ERRORS, DELAYS, FAILURES OR INACCURACIES IN THE TRANSMISSION OR STORAGE OF DATA OR INFORMATION BY OR THROUGH THE APPLE SOFTWARE OR SERVICES COULD LEAD TO DEATH, PERSONAL INJURY, OR FINANCIAL, PHYSICAL, PROPERTY 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 WILL CREATE A WARRANTY NOT EXPRESSLY STATED IN THIS AGREEMENT. SHOULD THE APPLE SOFTWARE OR SERVICES PROVE DEFECTIVE, YOU ASSUME THE ENTIRE COST OF ALL NECESSARY SERVICING, REPAIR OR CORRECTION. Location data as well as any maps data provided by any Services or software is for basic navigational purposes only and is not intended to be relied upon in situations where precise location information is needed or where erroneous, inaccurate or incomplete location data may lead to death, personal injury, property or environmental damage. Neither Apple nor any of its licensors guarantees the availability, accuracy, completeness, reliability, or timeliness of location data or any other data or information displayed by any Services or software.

13. LIMITATION OF LIABILITY

TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW, IN NO EVENT WILL APPLE BE LIABLE FOR PERSONAL INJURY, OR ANY INCIDENTAL, SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES WHATSOEVER, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS, LOSS OF DATA, BUSINESS INTERRUPTION OR ANY OTHER COMMERCIAL DAMAGES OR LOSSES, ARISING OUT OF OR RELATED TO THIS AGREEMENT, YOUR USE OR INABILITY TO USE THE APPLE SOFTWARE, APPLE SERVICES, OR APPLE CERTIFICATES, OR YOUR DEVELOPMENT EFFORTS, INTERNAL DEPLOYMENT EFFORTS OR PARTICIPATION IN THE PROGRAM, HOWEVER CAUSED, WHETHER UNDER A THEORY OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), PRODUCTS LIABILITY, OR OTHERWISE, EVEN IF APPLE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY. In no event shall Apple's total liability to You under this Agreement for all damages (other than as may be required by applicable law in cases involving personal injury) exceed the amount of fifty dollars (\$50.00).

14. General Legal Terms

14.1 Third Party Notices

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

14.2 Consent to Collection and Use of Data

A. Pre-Release Versions of iOS, watchOS, tvOS, iPadOS, and macOS

In order to provide, test and help Apple, its partners, and third party developers improve their products and services, and unless You or Your Authorized Developers opt out in the pre-release versions of iOS, watchOS, tvOS, iPadOS, or macOS, as applicable, You acknowledge that Apple and its subsidiaries and agents will be collecting, using, storing, transmitting, processing and analyzing (collectively, "**Collecting**") diagnostic, technical, and usage logs and information from Your Authorized Test Units (that are running pre-release versions of the Apple Software and services) as part of the developer seeding process. This information will be Collected in a form

that does not personally identify You or Your Authorized Developers and may be Collected from Your Authorized Test Units at any time. The information that would be Collected includes, but is not limited to, general diagnostic and usage data, various unique device identifiers, various unique system or hardware identifiers, details about hardware and operating system specifications, performance statistics, and data about how You use Your Authorized Test Unit, system and application software, and peripherals, and, if Location Services is enabled, certain location information. You agree that Apple may share such diagnostic, technical, and usage logs and information with partners and third-party developers for purposes of allowing them to improve their products and services that operate on or in connection with Apple-branded products. **By installing or using pre-release versions of iOS, watchOS, tvOS, iPadOS, or macOS on Your Authorized Test Units, You acknowledge and agree that Apple and its subsidiaries and agents have Your permission to Collect all such information and use it as set forth above in this Section.**

B. Other Pre-Release Apple Software and Services

In order to test, provide and improve Apple's products and services, and only if You choose to install or use other pre-release Apple Software or Services provided as part of the developer seeding process or Program, You acknowledge that Apple and its subsidiaries and agents may be Collecting diagnostic, technical, usage and related information from other pre-release Apple Software and Services. Apple will notify You about the Collection of such information on the Program web portal, and You should carefully review the release notes and other information disclosed by Apple in such location prior to choosing whether or not to install or use any such pre-release Apple Software or Services. **By installing or using such pre-release Apple Software and Services, You acknowledge and agree that Apple and its subsidiaries and agents have Your permission to Collect any and all such information and use it as set forth above.**

C. Device Deployment Services

In order to set up and use the device provisioning, account authentication, and deployment features of the Apple Software and Services, certain unique identifiers for Your computer, iOS Products, watchOS devices, tvOS devices, and account information may be needed. These unique identifiers may include Your email address, Your Apple ID, a hardware identifier for Your computer, and device identifiers entered by You into the Apple Software or Services for such Apple-branded products. Such identifiers may be logged in association with Your interaction with the Service and Your use of these features and the Apple Software and Services. **By using these features, You agree that Apple and its subsidiaries and agents may Collect this information for the purpose of providing the Apple Software and Services, including using such identifiers for account verification and anti-fraud measures.** If You do not want to provide this information, do not use the provisioning, deployment or authentication features of the Apple Software or Services.

D. Apple Services

In order to test, provide and improve Apple's products and services, and only if You choose to use the Services provided hereunder (and except as otherwise provided herein), You acknowledge that Apple and its subsidiaries and agents may be Collecting diagnostic, technical, usage and related information from the Apple Services. Some of this information will be Collected in a form that does not personally identify You. However, in some cases, Apple may need to Collect information that would personally identify You, but only if Apple has a good faith belief that such Collection is reasonably necessary to: (a) provide the Apple Services; (b) comply with legal process or request; (c) verify compliance with the terms of this Agreement; (d) prevent fraud, including investigating any potential technical issues or violations; or (e) protect the rights, property, security or safety of Apple, its developers, customers or the public as required or permitted by law. **By installing or using such Apple Services, You acknowledge and agree that Apple and its subsidiaries and agents have Your permission to Collect any and all such information and use it as set forth in this Section.** Further, You agree that Apple may share the diagnostic, technical, and usage logs and information (excluding personally identifiable

information) with partners and third-party developers for purposes of allowing them to improve their products and services that operate on or in connection with Apple-branded products.

E. Privacy Policy

Data collected pursuant to this **Section 14.2** will be treated in accordance with Apple's Privacy Policy which can be viewed at <http://www.apple.com/legal/privacy>.

14.3 Assignment; Relationship of the Parties

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. To submit a request for Apple's consent to assignment, please log into your account at developer.apple.com and follow the steps under Membership. This Agreement will not be construed as creating 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.

14.4 Independent Development

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

14.5 Notices

Any notices relating to this Agreement shall be in writing, except as set forth in **Section 14.3**. 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. Except as set forth in **Section 14.3**, 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: Developer Relations Legal, Apple Inc., One Apple Park Way, MS 37-2ISM, 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.

14.6 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 effect the intent of the parties, and the remainder of this Agreement shall continue in full force and effect. However, if applicable law prohibits or restricts You from fully and specifically complying with the Sections of this Agreement entitled "Internal Use License and Restrictions", "Your Obligations", "Apple Certificates; Revocation" or "Deployment", or prevents the enforceability of any of those Sections, this Agreement will immediately terminate and You must immediately discontinue any use of the Apple Software as described in the Section entitled "Term and Termination."

14.7 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.

14.8 Export Control

A. You may not use, export, re-export, import, sell, release, or transfer the Apple Software, Services, or Documentation except as authorized by United States law, the laws of the jurisdiction in which You obtained the Apple Software, and any other applicable laws and regulations. In particular, but without limitation, the Apple Software, Services, source code, technology, and Documentation (collectively referred to as “Apple Technology” for purposes of this Section 14.8) may not be exported, re-exported, transferred, or released (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 on any other restricted party lists. By using the Apple Technology, You represent and warrant that You are not located in any such country or on any such list. You also agree that You will not use the Apple Technology for any purposes prohibited by United States law, including, without limitation, the development, design, manufacture or production of nuclear, missile, chemical or biological weapons or any other military end uses as defined in 15 C.F.R § 744. You certify that pre-release versions of the Apple Technology will only be used for development and testing purposes, and will not be rented, sold, leased, sublicensed, assigned, or otherwise transferred. Further, You certify that You will not sell, transfer or export any product, process or service that is a direct product of such pre-release Apple Technology.

B. You represent and warrant that You and any entity or person that directly or indirectly controls You, or is under common control with You, are not: (a) on any sanctions lists in the countries in which the App Store is available, (b) doing business in any of the US embargoed countries, and (c) a military end user as defined and scoped in 15 C.F.R § 744. As used in this Section 14.8, “control” means that an entity or person possesses, directly or indirectly, the power to direct or cause the direction of the management policies of the other entity, whether through ownership of voting securities, an interest in registered capital, by contract, or otherwise.

14.9 Government End Users

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

14.10 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 10 (Indemnification)**), all claims, demands, complaints and disputes will be subject to the Contract Disputes Act (41 U.S.C. §§601-613), the Tucker Act (28 U.S.C. § 1346(a) and § 1491), or the Federal Tort Claims Act (28 U.S.C. §§ 1346(b), 2401-2402, 2671-2672, 2674-2680), as applicable, or other applicable governing authority. For the avoidance of doubt, if You are an agency, instrumentality, or department of the federal, state or local government of the U.S. or a U.S. public and accredited educational institution, then Your indemnification obligations are only applicable to the extent they would not cause You to violate any applicable law (e.g., the

Anti-Deficiency Act), and You have any legally required authorization or authorizing statute;

(b) If You (as an entity entering into this Agreement) are a U.S. public and accredited educational institution or an agency, instrumentality, or department of a state or local government within the United States, then (a) this Agreement will be governed and construed in accordance with the laws of the state (within the U.S.) in which Your entity is domiciled, except that body of state law concerning conflicts of law; and (b) any litigation or other dispute resolution between You and Apple arising out of or relating to this Agreement, the Apple Software, or Your relationship with Apple will take place in federal court within the Northern District of California, and You and Apple hereby consent to the personal jurisdiction of and exclusive venue of such District unless such consent is expressly prohibited by the laws of the state in which Your entity is domiciled; and

(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.

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.

14.11 Entire Agreement; Governing Language

This Agreement constitutes the entire agreement between the parties with respect to the use of the Apple Software, Apple Services and Apple Certificates licensed hereunder and, except as otherwise set forth herein, supersedes all prior understandings and agreements regarding its subject matter. Notwithstanding the foregoing, to the extent that You are provided with pre-release materials under the Program and such pre-release materials are subject to a separate license agreement, You agree that the license agreement accompanying such materials in addition to **Section 9 (Confidentiality)** of this Agreement shall also govern Your use of such materials. If You have entered or later enter into the Xcode and Apple SDKs Agreement, this Apple Developer Enterprise Program License Agreement will govern in the event of any inconsistencies between the two with respect to the same subject matter; provided, however, that this Apple Developer Enterprise Program License Agreement is not intended to prevent You from exercising any rights granted to You in the Xcode and Apple SDKs Agreement in accordance with the terms and conditions set forth therein. This Agreement may be modified only: (a) by a written amendment signed by both parties, or (b) to the extent expressly permitted by this Agreement (for example, by Apple by written or email notice to You). Any translation 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, then the following clause applies to You: 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.*

Attachment 1 (to the Agreement)

Additional Terms for Apple Push Notification service and Local Notifications

The following terms are in addition to the terms of the Agreement and apply to any use of the APN (Apple Push Notification service):

1. Use of the APN

1.1 You may use the APN only in Your Internal Use Applications, Your Passes, and/or for sending Safari Push Notifications to the macOS desktop of users of Your Site who have opted in to receive Notifications through Safari on macOS. You, Your Internal Use Application, and/or Your Pass may access the APN only via the APN API and only if You have been assigned a Push Application ID by Apple. Except for a Service Provider who is assisting You with using the APN, You agree not to share Your Push Application ID with any third party. You understand that You will not be permitted to access or use the APN after expiration or termination of Your Agreement.

1.2 You are permitted to use the APN and the APN APIs only for the purpose of sending Push Notifications to Your Internal Use Application, Your Pass, or to the macOS desktop of users of Your Site who have opted in to receive Safari Push Notifications through Safari on macOS or for use as part of MDM or for sending Configuration Profiles as permitted by the Agreement (including but not limited to Attachment 2), the APN Documentation and all applicable laws and regulations (including all intellectual property laws).

1.3 You understand that before You send an end-user any Push Notifications through the APN, the end-user must consent to receive such notifications. You agree not to disable, override or otherwise interfere with any Apple-implemented consent panels or any Apple system preferences for enabling or disabling Notification functionality. If the end-user's consent to receive Push Notifications is denied or later withdrawn, You may not send the end-user Push Notifications.

2. Additional Requirements

2.1 You may not use the APN or Local Notifications for the purpose of sending unsolicited messages to end-users or for the purpose of phishing or spamming, including, but not limited to, engaging in any types of activities that violate anti-spamming laws and regulations, or that are otherwise improper, inappropriate or illegal. The APN and Local Notifications should be used for sending relevant messages to a user that provide a benefit (e.g., a response to an end-user request for information, provision of pertinent information relevant to the Internal Use Application).

2.2 You may not use the APN or Local Notifications for the purposes of advertising, product promotion, or direct marketing of any kind (e.g., up-selling, cross-selling, etc.), including, but not limited to, sending any messages to promote the use of Your Internal Use Application or advertise the availability of new features or versions. Notwithstanding the foregoing, You may use the APN or Local Notifications for promotional purposes in connection with Your Pass so long as such use is directly related to the Pass, e.g., a store coupon may be sent to Your Pass in Wallet.

2.3 You may not excessively use the overall network capacity or bandwidth of the APN, or unduly burden an iOS Product, Apple Watch, Apple TV, macOS or an end-user with excessive Push Notifications or Local Notifications, as may be determined by Apple in its reasonable discretion. In addition, You agree not to harm or interfere with Apple's networks or servers, or any third party servers or networks connected to the APN, or otherwise disrupt other developers' use of the APN.

2.4 You may not use the APN or Local Notifications to send material that contains any obscene, pornographic, offensive or defamatory content or materials of any kind (text, graphics, images, photographs, sounds, etc.), or other content or materials that may be found objectionable

by the end-user of Your Internal Use Application, Your Pass, or Your Site.

2.5 You may not transmit, store or otherwise make available any material that contains viruses or any other computer code, files or programs that may harm, disrupt or limit the normal operation of the APN or an iOS Product, Apple Watch, Apple TV, or macOS, and You agree not to disable, spoof, hack or otherwise interfere with any security, digital signing, verification or authentication mechanisms that are incorporated in or used by the APN, or enable others to do so.

3. Additional Terms for Website Push IDs. Subject to the terms of this Agreement, You understand and agree that Safari Push Notifications that You send using Your Website Push ID must be sent under Your own name, trademark or brand (e.g., a user should know that the communication is coming from Your Site) and must include an icon, trademark, logo or other identifying mark for Your Site. You agree not to misrepresent or impersonate another Site or entity or otherwise mislead users about the originator of the Safari Push Notification. To the extent that You reference a third party's trademark or brand within Your Safari Push Notification, You represent and warrant that You have any necessary rights.

4. Delivery by the APN or via Local Notifications. You understand and agree that in order to provide the APN and make Your Push Notifications available on iOS Products, Apple Watch, Apple TV, or macOS, Apple may transmit Your Push Notifications across various public networks, in various media, and modify or change Your Push Notifications to comply with the technical and other requirements for connecting to networks or devices. You acknowledge and agree that the APN is not, and is not intended to be, a guaranteed or secure delivery service, and You shall not use or rely upon it as such. Further, as a condition to using the APN or delivering Local Notifications, You agree not to transmit sensitive personal or confidential information belonging to an individual (e.g., a social security number, financial account or transactional information, or any information where the individual may have a reasonable expectation of secure transmission) as part of any such notification, and You agree to comply with any applicable notice or consent requirements with respect to any collection, transmission, maintenance, processing or use of an end-user's personal information.

5. Your Acknowledgements. You acknowledge and agree that:

5.1 Apple may at any time, and from time to time, with or without prior notice to You (a) modify the APN, including changing or removing any feature or functionality, or (b) modify, deprecate, reissue or republish the APN APIs. You understand that any such modifications may require You to change or update Your Internal Use Applications, Your Passes or Your Sites at Your own cost. Apple has no express or implied obligation to provide, or continue to provide, the APN and may suspend or discontinue all or any portion of the APN at any time. Apple shall not be liable for any losses, damages or costs of any kind incurred by You or any other party arising out of or related to any such service suspension or discontinuation or any such modification of the APN or APN APIs.

5.2 The APN is not available in all languages or in all countries and Apple makes no representation that the APN is appropriate or available for use in any particular location. To the extent You choose to access and use the APN, You do so at Your own initiative and are responsible for compliance with any applicable laws, including but not limited to any local laws.

5.3 Apple provides the APN to You for Your use with Your Internal Use Application, Your Pass, or Your Site and does not provide the APN directly to any end-user. You acknowledge and agree that any Push Notifications are sent by You, not Apple, to the end-user of Your Internal Use Application, Pass or Site, and You are solely liable and responsible for any data or content transmitted therein and for any such use of the APN. Further, You acknowledge and agree that any Local Notifications are sent by You, not Apple, to the user of Your Internal Use Application, and You are solely liable and responsible for any data or content transmitted therein.

5.4 Apple makes no guarantees to You in relation to the availability or uptime of the APN and

is not obligated to provide any maintenance, technical or other support for the APN.

5.5 Apple reserves the right to remove Your access to the APN, limit Your use of the APN, or revoke Your Push Application ID at any time in its sole discretion.

5.6 Apple may monitor and collect information (including but not limited to technical and diagnostic information) about Your usage of the APN to aid Apple in improving the APN and other Apple products or services and to verify Your compliance with this Agreement; provided however that Apple will not access or disclose the content of any Push Notification unless Apple has a good faith belief that such access or disclosure is reasonably necessary to: (a) comply with legal process or request; (b) enforce the terms of this Agreement, including investigation of any potential violation hereof; (c) detect, prevent or otherwise address security, fraud or technical issues; or (d) protect the rights, property or safety of Apple, its developers, customers or the public as required or permitted by law. Notwithstanding the foregoing, You acknowledge and agree that iOS, iPadOS, macOS, and watchOS may access Push Notifications locally on a user's device solely for the purposes of responding to user requests and personalizing user experience and suggestions on device.

6. Additional Liability Disclaimer. APPLE SHALL NOT BE LIABLE FOR ANY DAMAGES OR LOSSES ARISING FROM ANY USE OF THE APN, INCLUDING ANY INTERRUPTIONS TO THE APN OR ANY USE OF NOTIFICATIONS, INCLUDING, BUT NOT LIMITED TO, ANY POWER OUTAGES, SYSTEM FAILURES, NETWORK ATTACKS, SCHEDULED OR UNSCHEDULED MAINTENANCE, OR OTHER INTERRUPTIONS.

Attachment 2 (to the Agreement)

Additional Terms for the use of MDM and Configuration Profiles

The following terms are in addition to the terms of the Agreement and apply to Your use of MDM and Configuration Profiles.

1. Use of MDM and Configuration Profiles

1.1 You may use MDM only for Your own internal, in-house management of Your Employees' or Your Permitted Users' Deployment Devices, or, if You are selected by Apple as a third-party MDM developer, solely to provide access to MDM to Your MDM Customers as part of a Compatible Product. You or Your MDM Customer may only use MDM with an MDM Certificate and Configuration Profile that are configured to respond to the MDM Certificate that has been assigned to You or such Customer for Your Compatible Products. All use of MDM is only permitted as expressly authorized by Apple in this Agreement and within the MDM Protocol and Documentation and in accordance with all applicable laws and regulations. You understand that neither You nor Your MDM Customer will be permitted to access or use MDM after expiration or termination of Your Agreement; provided however that Your MDM Customer may continue to use MDM if they enter into a separate MDM agreement with Apple.

1.2 You are only permitted to access or use MDM for purposes of managing Your Employees' or Permitted Users' Deployment Devices or, if You are selected by Apple as a third-party MDM developer, for purposes of developing Compatible Products for distribution and use by Your MDM Customers. You understand that a Configuration Profile must be installed on each supported Apple-branded product before the use of MDM or of any device configurations with any such Product. You may distribute the Configuration Profiles to supported Apple-branded products using email or a web page, over the air distribution, through the use of MDM, Apple Configurator, or other Apple-provided installation utilities, or through Compatible Products. You may remove any Configuration Profiles that You have installed at any time.

1.3 To use MDM, You must maintain a secure server to interact with Apple's APN and/or other Apple web services, and You agree that all communications between You and Apple's APN and/or other Apple web services and MDM must be in accordance with the terms of this Agreement. You may not excessively use the overall network capacity or bandwidth of such servers or services as may be determined by Apple in its reasonable discretion. In addition, You agree not to harm or interfere with Apple's networks or servers, any third party networks or servers connected to the APN, other Apple web services, or MDM, or otherwise disrupt the use of any of the foregoing.

1.4 Apple makes no guarantees to You in relation to the availability or uptime of MDM or other Apple web services and is not obligated to provide any maintenance, technical or other support for MDM or other related Apple Services. Apple does not guarantee that communications to Deployment Devices, MDM Customers' Apple-branded products, or Compatible Products through the use of MDM will be uninterrupted or error free. Further, network conditions as well as an Employee's or MDM Customer's use of an Apple-branded product may result in delays in commands or responses.

1.5 Apple reserves the right to require You to cease all use of the MDM Protocol and Configuration Profiles, and to remove Your access to MDM and/or revoke Your MDM Certificate (and any MDM Signing Certificate provided to You) at any time in its sole discretion. Except as expressly set forth herein, You will not share materials or documentation provided by Apple as a part of MDM with any third party, and You will only use MDM and Configuration Profiles as expressly permitted herein. Except as expressly authorized herein, You agree not to sell, resell, lease, or otherwise provide access or use of MDM, in whole or in part, to a third party or attempt to create a substitute or similar service through use of, or access to, MDM, or use MDM with products other than compatible Apple-branded products.

1.6 Apple shall not be responsible for any costs, expenses, damages, losses (including without limitation lost business opportunities or lost profits) or other liabilities You may incur as a result of any use of Configuration Profiles or MDM by You, including but not limited to any in-house deployment or any use by Your MDM Customers in connection with Your Compatible Products.

2. Additional Requirements For In-House Deployment

2.1 If You are using MDM for Your own in-house deployment, You agree to inform Your Employees and/or Permitted Users prior to installation of Configuration Profiles, that You will be able to interact with their Deployment Devices remotely, including but not limited to by inspecting, installing or removing profiles, viewing which applications are installed, using secure erase functions, and enforcing device passcodes. As a condition to using the MDM Protocol for such purposes, You represent and warrant to Apple that You have all the necessary rights and consents to collect, use and manage any information You obtain through the use of the MDM Protocol in this manner.

2.2 You may not use MDM for the purpose of monitoring Your Employees, Your Permitted Users, or any Deployment Devices in an undisclosed way or for phishing, harvesting or otherwise collecting unauthorized information, including, but not limited to, engaging in any activity that violates user privacy, or that is improper, inappropriate or illegal.

2.3 You may not use MDM in any way to transmit, incorporate or otherwise make available any material that contains viruses or any other computer code, files or programs that may harm, disrupt or limit the normal operation of MDM. Further, You agree not to disable, spoof, hack or otherwise interfere with any security, certificate verification or authentication mechanism incorporated in or used by MDM, or enable others to do so.

2.4 If You are using MDM for in-house deployment, then all information that You obtain through the use of MDM may only be used for Your internal information technology and device management purposes (e.g., locking the device for security purposes, remotely wiping a lost device, etc.). For example, You and Your Service Provider are prohibited from aggregating Your device data with another company's device data or using it for any purpose other than Your own internal information technology and device management purposes. You must treat all such information in accordance with all applicable laws and regulations (including privacy and data collection laws).

3. Additional Requirements for Compatible Products

3.1 Except as otherwise set forth above in **Section 2**, You may only use MDM for purposes of developing and distributing Compatible Products to Your MDM Customers **if** You have been selected by Apple as a third-party developer for such Compatible Products. You may not use MDM, in whole or in part, to provide Compatible Products to consumers or individuals for non-commercial, personal use, unless otherwise expressly permitted in writing by Apple. Further, You may not license, sell or otherwise provide MDM, in whole or in part, independent from its use within a Compatible Product. For example, You may not charge separate fees to Your MDM Customers for use of MDM, nor may You sell access to MDM apart from bundling it with Your Compatible Product.

3.2 You agree that Your Compatible Products that use MDM may not be designed or marketed to monitor end-users or compatible Apple-branded products in any unauthorized way, e.g., such Compatible Products may not phish, harvest or engage in activities that violate user privacy, or that are otherwise improper, inappropriate or illegal.

3.3 You agree that Your Compatible Products may not disable, spoof, hack or otherwise interfere with any security, certificate verification or authentication mechanism incorporated in or used by MDM, or enable others to do so. Further, neither You nor Your Compatible Products will knowingly transmit, incorporate or otherwise make available any material that contains viruses or any other computer code, files or programs that may harm, disrupt or limit the normal operation of MDM.

3.4 Except as otherwise set forth herein, all information that You obtain through the use of MDM may only be used to develop or deploy Compatible Products for Your MDM Customers. You may not share information obtained through the use of MDM with any third parties (except for Service Providers acting on Your behalf) in accordance with this Agreement. For example, neither You nor Your Service Provider may aggregate data from multiple MDM Customers' Compatible Products in order to post which iOS versions or iOS applications are most widely deployed by MDM Customers on a public website, etc.

4. Certificate Usage for Compatible Products

4.1 You understand that Your MDM Customers must obtain an MDM Certificate from Apple prior to any use of MDM with Your Compatible Products. Your MDM Customers can apply for such Certificates if You have signed their certificate-signing request (CSR), whether manually or automatically. Apple will provide You with an MDM Signing Certificate to enable You to sign such CSRs. You agree to inform Your MDM Customers of this requirement and to provide adequate support and documentation in connection therewith.

4.2 You agree to only sign CSRs for MDM Customers of Your Compatible Products and only if such MDM Customers have provided You with, and You have verified, their company name and individual contact information. You agree to provide such information to Apple upon Apple's request and to cooperate with Apple in connection with their use of MDM. You understand that Apple may require You to contact such company, e.g., if there is a problem with their use of MDM or application for an MDM Certificate.

4.3 Apple reserves the right to revoke or disable Your MDM Signing Certificate and Your MDM Customers' MDM Certificates in its sole discretion.

4.4 You agree to only use Your MDM Signing Certificate as set forth herein. For avoidance of doubt, You may not provide, share or transfer Your MDM Signing Certificate to any other entity, including Your MDM Customers or any of Your resellers. You may not include such MDM Signing Certificate within Your Compatible Product. You agree to take appropriate measures to safeguard the security and privacy of such Certificate. For the avoidance of doubt, You may use the MDM Protocol to develop Your Compatible Product to assist Your MDM Customers in the process of generating keys and sending a CSR to You for signing with Your MDM Signing Certificate. You may not generate or have any access to Your MDM Customer's private key, and You may not interfere with Apple's processes for providing MDM Certificates to Your MDM Customers. Further, You will not induce any end-user to violate the terms of the MDM Certificate service agreement with Apple or to violate any Apple usage policies for use of MDM, Configuration Profiles, or any Apple certificates.

4.5 You are solely responsible for providing Your MDM Customers with support and assistance for the use MDM in Your Compatible Products, including but not limited to any documentation and end-user customer support and warranties.

5. Your Acknowledgements: You acknowledge and agree that:

5.1 Apple may at any time, and from time to time, with or without prior notice to You (a) modify MDM, including changing or removing any feature or functionality, or (b) modify, reissue or republish the MDM Protocol. You understand that any such modifications may require You to

change or update Your servers, Configuration Profiles, MDM Certificates, Compatible Products and use of MDM at Your own cost. Apple has no express or implied obligation to provide, or continue to provide, MDM and may suspend or discontinue all or any portion of MDM at any time. Apple shall not be liable for any losses, damages or costs of any kind incurred by You or any other party arising out of or related to any such service suspension or discontinuation or any such modification of MDM or any part thereof.

5.2 MDM is not available in all languages or in all countries and Apple makes no representation that MDM is appropriate or available for use in any particular location. To the extent You choose to access and use MDM, You do so at Your own initiative and are responsible for compliance with any applicable laws, including but not limited to any local laws.

5.3 Apple provides MDM to You for Your use in mobile device management and information technology for Your Employees, Permitted Users or for use in Compatible Products by MDM Customers. Apple does not provide MDM directly to any end-user. You acknowledge and agree that any Configuration Profiles that are sent via MDM or through other approved mechanisms are sent by You, not Apple, to authorized Apple-branded products, and You are solely liable and responsible for Your use of MDM and for Your installation and use of Configuration Profiles whether by You, Your Employees, and/or Your Permitted Users, or by You and Your MDM Customers.

5.4 Apple makes no guarantees to You in relation to the availability of MDM and is not obligated to provide any maintenance, technical or other support for MDM.

5.5 Apple reserves the right to remove Your access to MDM at any time in its sole discretion. If Apple removes Your access, then You will lose the ability to use MDM to manage Deployment Devices and Apple-branded products that are configured to work with Your MDM Certificate, including the ability to remotely wipe such devices.

6. Additional Liability Disclaimer. APPLE SHALL NOT BE LIABLE FOR ANY DAMAGES OR LOSSES ARISING FROM OR RELATED TO YOUR USE OF MDM OR CONFIGURATION PROFILES, INCLUDING, BUT NOT LIMITED TO, ANY SCHEDULED OR UNSCHEDULED MAINTENANCE, SERVICE INTERRUPTIONS, LOST OR STOLEN DATA, ANY LIABILITY FROM YOUR ACCESS TO DEPLOYMENT DEVICES THROUGH THE USE OF MDM OR CONFIGURATION PROFILES (INCLUDING ANY PRIVACY VIOLATIONS RELATED THERETO) OR FOR APPLE'S PERFORMANCE OR FAILURE TO PERFORM UNDER THIS AGREEMENT.

Attachment 3
(to the Agreement)
Additional Terms for the use of iCloud

The following terms are in addition to the terms of the Agreement and apply to Your use of the iCloud service for software development and testing in connection with Your Internal Use Application and Web Software.

1. Use of iCloud

1.1 Your Internal Use Applications and/or Web Software may access the iCloud service only if You have been assigned an entitlement by Apple. You agree not to access the iCloud service, or any content, data or information contained therein, other than through the iCloud Storage APIs, CloudKit APIs, or via the CloudKit console provided as part of the Program. You agree not to share Your entitlement with any third party or use it for any purposes not expressly permitted by Apple. You agree to use the iCloud service, the iCloud Storage APIs, and the CloudKit APIs only as expressly permitted by this Agreement and the iCloud Documentation, and in accordance with all applicable laws and regulations. Further, Your Web Software is permitted to access and use the iCloud service (e.g., to store the same type of data that is retrieved or updated in Your Internal Use Application) only so long as Your use of the iCloud service in such Web Software is comparable to Your use in Your corresponding Internal Use Application, as determined in Apple's sole discretion. In the event Apple Services permit You to use more than Your allotment of storage containers in iCloud in order to transfer data to another container for any reason, You agree to only use such additional container(s) for a reasonable limited time to perform such functions and not to increase storage and transactional allotments.

1.2 You understand that You will not be permitted to access or use the iCloud service for software development or testing after expiration or termination of Your Agreement; however end-users who have Your Internal Use Applications or Web Software installed and who have a valid end-user account with Apple to use iCloud may continue to access their user-generated documents, private containers and files that You have chosen to store in such end-user's account via the iCloud Storage APIs or the CloudKit APIs in accordance with the applicable iCloud terms and conditions and these terms. You agree not to interfere with a user's ability to access iCloud (or the user's own user-generated documents, private containers and files) or to otherwise disrupt their use of the iCloud service in any way and at any time. With respect to data You store in public containers through the CloudKit APIs (whether generated by You or the end-user), Apple reserves the right to suspend access to or delete such data, in whole or in part, upon expiration or termination of Your Agreement, or as otherwise specified by Apple in the CloudKit console.

1.3 Your Internal Use Application is permitted to use the iCloud Storage APIs only for the purpose of storage and retrieval of key value data (e.g., a list of stocks in a finance App, settings for an App) for Your Internal Use Applications and Web Software and for purposes of enabling Your end-users to access user-generated documents and files through the iCloud service. Your Internal Use Application or Web Software is permitted to use the CloudKit APIs for storing, retrieving, and querying of structured data that You choose to store in public or private containers in accordance with the iCloud Documentation. You agree not to knowingly store any content or materials via the iCloud Storage APIs or CloudKit APIs that would cause Your Internal Use Application to violate any of the iCloud terms and conditions or the Program Requirements for Your Internal Use Applications (e.g., Your Internal Use Application may not store illegal or infringing materials).

1.4 You may allow a user to access their user-generated documents and files from iCloud through the use of Your Internal Use Applications as well as from Web Software. However, You may not share key value data from Your Internal Use Application with other Internal Use Applications or Web Software, unless You are sharing such data among different versions of the same title, or You have user consent.

1.5 You are responsible for any content and materials that You store in iCloud through the use of the CloudKit APIs and iCloud Storage APIs and must take reasonable and appropriate

steps to protect information You store through the iCloud service. With respect to third party claims related to content and materials stored by Your end-users in Your Internal Use Applications through the use of the iCloud Storage APIs or CloudKit APIs (e.g., user-generated documents, end-user posts in public containers), You agree to be responsible for properly handling and promptly processing any such claims, including but not limited to Your compliance with notices sent pursuant to the Digital Millennium Copyright Act (DMCA).

1.6 Unless otherwise expressly permitted by Apple in writing, You will not use iCloud, the iCloud Storage APIs, CloudKit APIs, or any component or function thereof, to create, receive, maintain or transmit any sensitive, individually-identifiable health information, including “protected health information” (as such term is defined at 45 C.F.R § 160.103), or use iCloud in any manner that would make Apple (or any Apple Subsidiary) Your or any third party’s “business associate” as such term is defined at 45 C.F.R. § 160.103. You agree to be solely responsible for complying with any reporting requirements under law or contract arising from Your breach of this Section.

2. Additional Requirements

2.1 You understand there are storage capacity, transmission, and transactional limits for the iCloud service, both for You as a developer and for Your end-users. If You reach or Your end-user reaches such limits, then You or Your end-user may be unable to use the iCloud service until You or Your end-user have removed enough data from the service to meet the capacity limits, increased storage capacity or otherwise modified Your usage of iCloud, and You or Your end-user may be unable to access or retrieve data from iCloud during this time.

2.2 You may not charge any fees to users for access to or use of the iCloud service through Your Internal Use Applications or Web Software, and You agree not to sell access to the iCloud service in any other way, including but not limited to reselling any part of the Services. You will only use the iCloud service in Your Internal Use Application or Web Software to provide storage for an end-user who has a valid end-user iCloud account with Apple and only for use in accordance with the terms of such user account, except that You may use the CloudKit APIs to store of data in public containers for access by end-users regardless of whether such users have iCloud accounts. You will not induce any end-user to violate the terms of their applicable iCloud service agreement with Apple or to violate any Apple usage policies for data or information stored in the iCloud service.

2.3 You may not excessively use the overall network capacity or bandwidth of the iCloud service or otherwise burden such service with unreasonable data loads or queries. You agree not to harm or interfere with Apple’s networks or servers, or any third party servers or networks connected to the iCloud, or otherwise disrupt other developers’ or users’ use of the iCloud service.

2.4 You will not disable or interfere with any warnings, system settings, notices, or notifications that are presented to an end-user of the iCloud service by Apple.

3. Your Acknowledgements

You acknowledge and agree that:

3.1 Apple may at any time, with or without prior notice to You (a) modify the iCloud Storage APIs or the CloudKit APIs, including changing or removing any feature or functionality, or (b) modify, deprecate, reissue or republish such APIs. You understand that any such modifications may require You to change or update Your Internal Use Applications or Web Software at Your own cost. Apple has no express or implied obligation to provide, or continue to provide, the iCloud service and may suspend or discontinue all or any portion of the iCloud service at any time. Apple shall not be liable for any losses, damages or costs of any kind incurred by You or

any other party arising out of or related to any such service suspension or discontinuation or any such modification of the iCloud service, iCloud Storage APIs or the CloudKit APIs.

3.2 The iCloud service is not available in all languages or in all countries and Apple makes no representation that the iCloud service is appropriate or available for use in any particular location. To the extent You choose to provide access to the iCloud service in Your Internal Use Applications or Web Software through the iCloud Storage APIs or CloudKit APIs (e.g., to store data in a public or private container), You do so at Your own initiative and are responsible for compliance with any applicable laws or regulations.

3.3 Apple makes no guarantees to You in relation to the availability or uptime of the iCloud service and is not obligated to provide any maintenance, technical or other support for the iCloud service. Apple is not responsible for any expenditures, investments, or commitments made by You in connection with the iCloud service, or for any use of or access to it.

3.4 Apple reserves the right to suspend or revoke Your access to the iCloud service or impose limits on Your use of the iCloud service at any time in Apple's sole discretion. In addition, Apple may impose or adjust the limit of transactions Your Internal Use Applications or Web Software may send or receive through the iCloud service or the resources or capacity that they may use at any time in Apple's sole discretion.

3.5 Apple may monitor and collect information (including but not limited to technical and diagnostic information) about usage of the iCloud service through the iCloud Storage APIs, CloudKit APIs, or CloudKit console, in order to aid Apple in improving the iCloud service and other Apple products or services; provided however that Apple will not access or disclose any end-user data stored in a private container through CloudKit, any Internal Use Application data stored in a public container through CloudKit, or any user-generated documents, files or key value data stored using the iCloud Storage APIs and iCloud service, unless Apple has a good faith belief that such access, use, preservation or disclosure is reasonably necessary to comply with a legal or regulatory process or request, or unless otherwise requested by an end-user with respect to data stored via the iCloud Storage APIs in that end-user's iCloud account or in that end-user's private container via the CloudKit APIs.

3.6 Further, to the extent that You store any personal information relating to an individual or any information from which an individual can be identified (collectively, "Personal Data") in the iCloud service through the use of the iCloud Storage APIs or CloudKit APIs, You agree that Apple (and any applicable Apple Subsidiary for purposes of this Section 3.6) will act as Your agent for the processing, storage and handling of any such Personal Data. Apple agrees to ensure that any persons authorized to process such Personal Data have agreed to maintain confidentiality (whether through terms or under an appropriate statutory obligation). Apple shall have no right, title or interest in such Personal Data solely as a result of Your use of the iCloud service. You agree that You are solely liable and responsible for ensuring Your compliance with all applicable laws, including privacy and data protection laws, regarding the use or collection of data and information through the iCloud service. You are also responsible for all activity related to such Personal Data, including but not limited to, monitoring such data and activity, preventing and addressing inappropriate data and activity, and removing and terminating access to data. Further, You are responsible for safeguarding and limiting access to such Personal Data by Your personnel and for the actions of Your personnel who are permitted access to use the iCloud service on Your behalf. Personal Data provided by You and Your users to Apple through the iCloud service may be used by Apple only as necessary to provide and improve the iCloud service and to perform the following actions on Your behalf. Apple shall:

(a) use and handle such Personal Data only in accordance with the instructions and permissions from You set forth herein, as well as applicable laws, regulations, accords, or treaties. In the EEA and Switzerland, Personal Data will be handled by Apple only in accordance with the instructions and permissions from You set forth herein unless otherwise required by European Union or

Member State Law, in which case Apple will notify You of such other legal requirement (except in limited cases where Apple is prohibited by law from doing so);

(b) provide You with reasonable means to manage any user access, deletion, or restriction requests as defined in applicable law. In the event of an investigation of You arising from Your good faith use of the iCloud service by a data protection regulator or similar authority regarding such Personal Data, Apple shall provide You with reasonable assistance and support;

(c) notify You by any reasonable means Apple selects, without undue delay and taking account of applicable legal requirements applying to You which mandate notification within a specific timeframe, if Apple becomes aware that Your Personal Data has been altered, deleted or lost as a result of any unauthorized access to the Service. You are responsible for providing Apple with Your updated contact information for such notification purposes in accordance with the terms of this Agreement;

(d) make available to You the information necessary to demonstrate compliance obligations set forth in Article 28 of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 (GDPR) and to allow for and contribute to audits required under these provisions; provided however that You agree that Apple's ISO 27001 and 27018 certifications shall be considered sufficient for such required audit purposes;

(e) assist You, by any reasonable means Apple selects, in ensuring compliance with its obligations pursuant to Articles 33 to 36 of the GDPR. If Apple receives a third party request for information You have stored in the iCloud service, then unless otherwise required by law or the terms of such request, Apple will notify You of its receipt of the request and notify the requester of the requirement to address such request to You. Unless otherwise required by law or the request, You will be responsible for responding to the request;

(f) use industry-standard measures to safeguard Personal Data during the transfer, processing and storage of Personal Data. Encrypted Personal Data may be stored at Apple's geographic discretion; and

(g) ensure that where Personal Data, arising in the context of this Agreement, is transferred from the EEA or Switzerland it is only to a third country that ensures an adequate level of protection or using the Model Contract Clauses/Swiss Transborder Data Flow Agreement which will be provided to You upon request if you believe that Personal Data is being transferred.

4. Additional Liability Disclaimer. NEITHER APPLE NOR ITS SERVICE PROVIDERS SHALL BE LIABLE FOR ANY DAMAGES OR LOSSES ARISING FROM ANY USE, MISUSE, RELIANCE ON, INABILITY TO USE, INTERRUPTION, SUSPENSION OR TERMINATION OF iCloud, iCloud STORAGE APIS, OR CLOUDKIT APIS, OR FOR ANY UNAUTHORIZED ACCESS TO, ALTERATION OF, OR DELETION, DESTRUCTION, DAMAGE, LOSS OR FAILURE TO STORE ANY OF YOUR DATA OR ANY END-USER DATA OR ANY CLAIMS ARISING FROM ANY USE OF THE FOREGOING BY YOUR END-USERS, INCLUDING ANY CLAIMS REGARDING DATA PROCESSING OR INAPPROPRIATE OR UNAUTHORIZED DATA STORAGE OR HANDLING BY YOU IN VIOLATION OF THIS AGREEMENT.

Attachment 4 (to the Agreement) Additional Terms for Passes

The following terms are in addition to the terms of the Agreement and apply to Your development and distribution of Passes:

1. Pass Type ID Usage and Restrictions

You may use the Pass Type ID only for purposes of digitally signing Your Pass for use with Wallet and/or for purposes of using the APN service with Your Pass. You may distribute Your Pass Type ID as incorporated into Your Pass in accordance with **Section 2** below only so long as such distribution is under Your own trademark or brand. To the extent that You reference a third party's trademark or brand within Your Pass (e.g., a store coupon for a particular good), You represent and warrant that You have any necessary rights. You agree not to share, provide or transfer Your Pass Type ID to any third party (except to a Service Provider), nor use Your Pass Type ID to sign a third party's pass.

2. Pass Distribution; Marketing Permissions

2.1 Subject to the terms of this Agreement, You may distribute Your Passes only to Your Employees and/or Permitted Users for internal use purposes or for limited use by Demo Recipients on Deployment Devices on Your own (or Your Permitted Entity's) physical premises or in other locations when the use is under Your direct supervision and physical control as set forth in **Section 2.1(f)** of the Agreement. You understand that Passes must be accepted by such users before they will be loaded into Wallet and that Passes can be removed or transferred by such users at any time.

2.2 By distributing Your Passes in this manner, You represent and warrant to Apple that Your Passes comply with the Documentation and Program Requirements then in effect, and the terms of this Attachment 4. Apple shall not be responsible for any costs, expenses, damages, losses (including without limitation lost business opportunities or lost profits) or other liabilities You may incur as a result of distributing Your Passes in this manner.

2.3 You agree to state on the Pass Your name and address, and the contact information (telephone number; email address) to which any end-user questions, complaints, or claims with respect to Your Pass should be directed. You will be responsible for attaching or otherwise including, at Your discretion, any relevant end-user usage terms with Your Pass. Apple will not be responsible for any violations of Your end-user usage terms. You will be solely responsible for all user assistance, warranty and support of Your Pass. You may not charge any fees to end-users in order to use Wallet to access Your Pass.

3. Additional Pass Requirements

3.1 Apple may provide You with templates to use in creating Your Passes, and You agree to choose the relevant template for Your applicable use (e.g., You will not use the boarding pass template for a movie ticket).

3.2 Passes may only operate and be displayed in Wallet, which is Apple's designated container area for the Pass, through Wallet on the lock screen of a compatible Apple-branded product in accordance with the Documentation.

3.3. Notwithstanding anything else in **Section 3.3.9** of the Agreement, with prior user consent, You and Your Pass may share user and/or device data with Your Internal Use Application so long as such sharing is for the purpose of providing a service or function that is directly relevant to the use of the Pass and/or Internal Use Application, or to serve advertising in accordance with **Sections 3.3.12** of the Agreement.

4. Apple's Right to Review Your Pass; Revocation. You understand and agree that Apple reserves the right to review and approve or reject any Pass that You would like to distribute for use by Your end-users, or that is already in use by Your end-users, at any time during the Term of this Agreement. If requested by Apple, You agree to promptly provide such Pass to Apple. You agree not to attempt to hide, misrepresent, mislead, or obscure any features, content, services or functionality in Your Pass from Apple's review or otherwise hinder Apple from being able to fully review such Pass, and, You agree to cooperate with Apple and answer questions and provide information and materials reasonably requested by Apple regarding such Pass. If You make any changes to Your Pass after submission to Apple, You agree to notify Apple and, if requested by Apple, resubmit Your Pass prior to any distribution of the modified Pass. Apple reserves the right to revoke Your Pass Type ID and reject Your Pass for distribution to Your end-users for any reason and at any time in its sole discretion, even if Your Pass meets the Documentation and Program Requirements and terms of this Attachment 4; and, in that event, You agree that You may not distribute such Pass to Your end-users.

5. Additional Liability Disclaimer. APPLE SHALL NOT BE LIABLE FOR ANY DAMAGES OR LOSSES ARISING FROM ANY USE, DISTRIBUTION, MISUSE, RELIANCE ON, INABILITY TO USE, INTERRUPTION, SUSPENSION, OR TERMINATION OF WALLET, YOUR PASS TYPE ID, YOUR PASSES, OR ANY SERVICES PROVIDED IN CONNECTION THEREWITH, INCLUDING BUT NOT LIMITED TO ANY LOSS OR FAILURE TO DISPLAY YOUR PASS IN WALLET OR ANY END-USER CLAIMS ARISING FROM ANY USE OF THE FOREGOING BY YOUR END-USERS.

Attachment 5
(to the Agreement)
Additional Terms for the use of the Apple Maps Service

The following terms are in addition to the terms of the Agreement and apply to any use of the Apple Maps Service in Your Internal Use Application, website, or web application.

1. Use of the Maps Service

1.1 Your Internal Use Application may access the Apple Maps Service only via the MapKit API or through MapKit JS, and Your website or web application may access the Apple Maps Service only via MapKit JS. You agree not to access the Apple Maps Service or the Map Data other than through the MapKit API or MapKit JS, as applicable, and You agree that Your use of the Apple Maps Service in Your Internal Use Applications, websites, or web applications must comply with the Program Requirements.

1.2 You will use the Apple Maps Service and Map Data only as necessary for providing services and functionality for Your Internal Use Application, website, or web application. You agree to use the Apple Maps Service, MapKit API and MapKit JS only as expressly permitted by this Agreement (including but not limited to this Attachment 6) and the MapKit and MapKit JS Documentation, and in accordance with all applicable laws and regulations. MapKit JS may not be used in Your website and/or application running on non-Apple hardware for the following commercial purposes: fleet management (including dispatch), asset tracking, enterprise route optimization, or where the primary purpose of such website and/or application is to assess vehicle insurance risk.

1.3 You acknowledge and agree that results You receive from the Apple Maps Service may vary from actual conditions due to variable factors that can affect the accuracy of the Map Data, such as weather, road and traffic conditions, and geopolitical events.

2. Additional Restrictions

2.1 Neither You nor Your Internal Use Application, website or web application may remove, obscure or alter Apple's or its licensors' copyright notices, trademarks, logos, or any other proprietary rights or legal notices, documents or hyperlinks that may appear in or be provided through the Apple Maps Service.

2.2 You will not use the Apple Maps Service in any manner that enables or permits bulk downloads or feeds of the Map Data, or any portion thereof, or that in any way attempts to extract, scrape or reutilize any portions of the Map Data. For example, neither You nor Your Internal Use Application may use or make available the Map Data, or any portion thereof, as part of any secondary or derived database.

2.3 Except to the extent expressly permitted herein, You agree not to copy, modify, translate, create a derivative work of, publish or publicly display the Map Data in any way. Further, You may not use or compare the data provided by the Apple Maps Service for the purpose of improving or creating another mapping service. You agree not to create or attempt to create a substitute or similar service through use of or access to the Apple Maps Service.

2.4 Your Internal Use Application, website, or web application may display the Map Data only as permitted herein, and when displaying it on a map, You agree that it will be displayed only on an Apple map provided through the Apple Maps Service. Further, You may not surface Map Data within Your Internal Use Application, website, or web application without displaying the corresponding Apple map (e.g., if You surface an address result through the Apple Maps Service, You must display the corresponding map with the address result).

2.5 Unless otherwise expressly permitted in the MapKit Documentation or MapKit JS Documentation, Map Data may not be cached, pre-fetched, or stored by You or Your Internal Use Application, website, or web application other than on a temporary and limited basis solely to improve the performance of the Apple Maps Service with Your Internal Use Application, website, or web application.

2.6 You may not charge any fees to end-users solely for access to or use of the Apple Maps Service through Your Internal Use Application, website, or web application, and You agree not to sell access to the Apple Maps Service in any other way.

2.7 You acknowledge and agree that Apple may impose restrictions on Your usage of the Apple Maps Service (e.g., limiting the number of transactions Your Internal Use Application can make through the MapKit API) or may revoke or remove Your access to the Apple Maps Service (or any part thereof) at any time in its sole discretion. Further, You acknowledge and agree that results You may receive from the Apple Maps Service may vary from actual conditions due to variable factors that can affect the accuracy of Map Data, such as road or weather conditions.

3. Your Acknowledgements. You acknowledge and agree that:

3.1 Apple may at any time, with or without prior notice to You (a) modify the Apple Maps Service and/or the MapKit API, including changing or removing any feature or functionality, or (b) modify, deprecate, reissue or republish the MapKit API. You understand that any such modifications may require You to change or update Your Internal Use Applications at Your own cost. Apple has no express or implied obligation to provide, or continue to provide, the Apple Maps Service and may suspend or discontinue all or any portion of the Apple Maps Service at any time. Apple shall not be liable for any losses, damages or costs of any kind incurred by You or any other party arising out of or related to any such service suspension or discontinuation or any such modification of the Apple Maps Service or MapKit API.

3.2 The Apple Maps Service may not be available in all countries or languages, and Apple makes no representation that the Apple Maps Service is appropriate or available for use in any particular location. To the extent You choose to provide access to the Apple Maps Service in Your Internal Use Applications or through the MapKit API, You do so at Your own initiative and are responsible for compliance with any applicable laws.

4. Apple's Right to Review Your MapKit JS Implementation. You understand and agree that Apple reserves the right to review and approve or reject Your implementation of MapKit JS in Your Application, website, or web applications, at any time during the Term of this Agreement. If requested by Apple, You agree to promptly provide information regarding Your implementation of MapKit JS to Apple. You agree to cooperate with Apple and answer questions and provide information and materials reasonably requested by Apple regarding such implementation. Apple reserves the right to revoke Your MapKit JS keys and similar credentials at any time in its sole discretion, even if Your use of MapKit JS meets the Documentation and Program Requirements and terms of this Attachment. By way of example only, Apple may do so if Your MapKit JS implementation places an excessive and undue burden on the Apple Maps Service, obscures or removes the Apple Maps logo or embedded links when displaying a map, or uses the Apple Maps Service with corresponding offensive or illegal map content.

5. Additional Liability Disclaimer. NEITHER APPLE NOR ITS LICENSORS OR SERVICE PROVIDERS SHALL BE LIABLE FOR ANY DAMAGES OR LOSSES ARISING FROM ANY USE, MISUSE, RELIANCE ON, INABILITY TO USE, INTERRUPTION, SUSPENSION OR TERMINATION OF THE APPLE MAPS SERVICE, INCLUDING ANY INTERRUPTIONS DUE TO SYSTEM FAILURES, NETWORK ATTACKS, OR SCHEDULED OR UNSCHEDULED MAINTENANCE.

LYL107
12/13/2021

PLEASE READ THE FOLLOWING APPLE DEVELOPER FORUMS TERMS AND CONDITIONS CAREFULLY BEFORE DOWNLOADING OR USING THE APPLE DEVELOPER FORUMS. THESE TERMS AND CONDITIONS CONSTITUTE A LEGAL AGREEMENT BETWEEN YOU AND APPLE. BY CHECKING THE BOX AND CLICKING “AGREE”, YOU ARE AGREEING TO BE BOUND BY THE TERMS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, PRESS “DISAGREE” AND YOU WILL BE UNABLE TO USE THE APPLE DEVELOPER FORUMS.

Apple Developer Forums Agreement

1. License and Account

1.1 License

This Apple Developer Forums Agreement (the “**Agreement**”) allows You to access and use one or more discussion forums that are hosted and made available by Apple to Apple developers through <http://developer.apple.com/forums> (the “**Apple Developer Forums**”). Apple is providing the Apple Developer Forums to You for the purpose of allowing You to engage in technical and other related developer discussions with other Apple developers (“**Participants**”) and in some cases with Apple employees, related to development for Apple platforms and technology only. Subject to the terms and conditions of this Agreement, Apple grants You a non-exclusive, non-transferable, revocable right to access and use the Apple Developer Forums. No licenses to any Apple intellectual property rights, expressly or by implication, estoppel or otherwise, are granted by Apple under this Agreement.

1.2 Account

To use the Apple Developer Forums, You will need to create an account, including a username and password (“**Account**”). The username You create may not be inappropriate or offensive (e.g., impersonations of other users, persons or entities), may not contain website, email addresses or other contact information, or otherwise be inconsistent with the terms of this Agreement. You are responsible for all activity occurring under Your Account, and You agree to keep Your Account password confidential and not share it with others. When You sign in to Your Account and use various features of the Developer Forums, certain information may be collected by Apple. You can learn more by visiting the About Apple Developer Forums & Privacy. At all times Your information will be treated in accordance with Apple’s Privacy Policy, which can be viewed at: <https://www.apple.com/legal/privacy/>.

2. Restrictions

You acknowledge and agree that You will not access, or attempt to access, the Apple Developer Forums other than through Your Account. You will not, and will not assist another person with, circumventing or otherwise tampering with security components (if any) of the Apple Developer Forums. Your use of the Developer Forums, including any Content submitted or posted by You, will be Your sole responsibility. You will comply with all applicable laws in Your use of the Apple Developer Forums. You will not submit or post Content that is libelous, defamatory, indecent, harmful, harassing, intimidating, threatening, discriminatory, inflammatory, or offensive, or that is intended to promote or commit an illegal act. You agree not to exploit the Apple Developer Forums in any unauthorized way, including but not limited to, by trespass or burdening network capacity.

3. Usage Guidelines

Apple is committed to providing a respectful and harassment-free experience for everyone on the Developer Forums. You agree to comply with the Apple Developer Forum Usage Guidelines at <https://developer.apple.com/support/forums/> in connection with Your use of the Apple Developer Forums. Apple reserves the right to suspend or remove any Participant from the Developer Forums (or any part thereof) at any time in its sole discretion and without notice to You, including but not limited to Participants behaving in an inappropriate or disrespectful manner. Apple

reserves the right, at any time and from time to time, to update, revise, supplement, and otherwise modify the Apple Developer Forum Usage Guidelines and Your continued use of the Apple Developer Forums will constitute Your acceptance of such updated Apple Developer Forum Usage Guidelines.

4. Content

The Apple Developer Forums may allow You to submit or post information, materials, data, text, images, documents, code, content or links to third party sites or third party content ("**Content**"). By posting Content, You grant Apple and its affiliates a perpetual, royalty-free, non-exclusive worldwide right and license to use, reproduce, modify, adapt, publish, translate, create derivative works from, distribute, perform, play, make available to the public, and exercise all copyright and publicity rights with respect to the Content. If You provide any ideas, suggestions, or recommendations on this site regarding Apple's products, technologies or services ("**Feedback**"), Apple may use such Feedback and incorporate it in Apple products, technologies, and services without paying royalties and without any other obligations or restrictions. If You do not want to grant Apple the rights set out above, do not submit Your Content to the Developer Forums.

Apple retains the right, but not the responsibility, to edit or remove any Content, including those submissions or posts deemed by Apple to violate this Agreement. Apple will have no liability for editing, moving, removing, or continuing to permit the display of any Content. Apple may monitor Content posted by You or otherwise available on the Apple Developer Forums to investigate any reported or apparent violation of this Agreement, and may take any action that Apple deems appropriate, including, without limitation, under Apple's Intellectual Property policies (<http://www.apple.com/legal/intellectual-property/>). However, Apple makes no warranty to You that it will edit, remove, or continue to permit the display of any specific Content, whether or not subject to such allegations, and will have no liability whatsoever for editing, removing, or continuing to permit the display of any Content.

5. Confidential Forums; Restricted Forums

Apple may provide You with access to confidential or private restricted forums within the Apple Developer Forums for discussion of certain Apple Confidential Information or other information, such as the discussion of features or technical information about pre-release software or the discussion of pre-announced Apple products. For purposes of such confidential forums, Apple is providing a limited exception to Your Apple Developer Agreement(s) (as defined below) by allowing You to discuss Apple Confidential Information that You have obtained from Apple under such agreement(s) with other Participants who are also on such confidential forums, but only within these confidential forums. Except for the limited purpose of discussions with other Participants within these confidential forums, You acknowledge and agree that this Agreement does not grant You the right to copy, reproduce, publish, blog, disclose, transmit, or otherwise disseminate any Apple Confidential Information. In addition, You acknowledge and agree that certain Participants may not have access to the same Apple Confidential Information as You may have access to, and You agree not to disclose Apple Confidential Information on non-confidential Apple Developer Forums. For purposes of this **Section 5** and **Section 6**, "**Apple Developer Agreement(s)**" means the Apple Developer Agreement, Xcode and Apple SDK Agreement, Apple Developer Program License Agreement, Apple Developer Enterprise Program License Agreement, any applicable MFi agreements, and any other Apple developer agreements.

6. Term and Termination

This Agreement will commence on the date You first accept this Agreement and will continue to apply until terminated as set forth in this Section. If: (a) You fail, or Apple suspects that You have failed, to comply with any of the provisions of this Agreement or any of the Apple Developer Agreements, (b) there has been an extended period of inactivity in Your account, or (c) Your Account is used by any third parties, then Apple may, in its sole discretion and effective immediately upon notice from Apple: (i) terminate this Agreement; (ii) suspend or remove Your access to the Developer Forums (or any part thereof); and (iii) delete Your Account and/or all related information and Content associated with Your Account (or any part thereof). Apple may

also terminate this Agreement for its convenience, for any reason or no reason, upon written notice of its intent to terminate. Apple will not be liable to You or any third party for any termination of Your Account, or access to the Apple Developer Forums and Content. If You want to terminate the Agreement, You may do so by notifying Apple at any time, closing Your Account and ceasing all use of the Apple Developer Forums. Upon any termination of this Agreement, You shall promptly discontinue use of the Apple Developer Forums. The following sections of this Agreement shall survive any expiration or termination of the Agreement: the restrictions of **Section 2** and **Sections 4** through **10**.

7. Disclaimers

APPLE DOES NOT PROMISE THAT THE APPLE DEVELOPER FORUMS, OR ANY INFORMATION, CONTENT, SERVICE OR FEATURE OF THE FOREGOING (COLLECTIVELY, THE “**SERVICE**” FOR PURPOSES OF **SECTIONS 7** AND **8**) WILL BE ERROR-FREE OR UNINTERRUPTED, THAT ANY DEFECTS WILL BE CORRECTED, OR THAT YOUR USE OF THE SERVICE WILL PROVIDE SPECIFIC RESULTS. THE SERVICE IS DELIVERED ON AN “AS-IS” AND “AS-AVAILABLE” BASIS. APPLE CANNOT ENSURE THAT ANY FILES OR OTHER DATA YOU DOWNLOAD FROM THE SERVICE WILL BE FREE OF VIRUSES OR CONTAMINATION OR DESTRUCTIVE FEATURES OR THAT ANY CONTENT POSTED WILL NOT BE OFFENSIVE, INDECENT OR OBJECTIONABLE. APPLE DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF ACCURACY, NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. APPLE DISCLAIMS ANY AND ALL LIABILITY FOR THE ACTS, OMISSIONS AND CONDUCT OF ANY THIRD PARTIES IN CONNECTION WITH OR RELATED TO YOUR USE OF THE SERVICE. YOU ASSUME TOTAL RESPONSIBILITY FOR YOUR USE OF SERVICE AND ANY LINKED SITES. YOUR SOLE REMEDY AGAINST APPLE FOR DISSATISFACTION WITH THE SERVICE IS TO STOP USING THE SERVICE. THIS LIMITATION OF RELIEF IS A PART OF THE BARGAIN BETWEEN THE PARTIES. Apple reserves the right to modify, suspend, or discontinue the Developer Forums (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, including for removing access to any Content.

8. Limitation of Liability

TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW, IN NO EVENT WILL APPLE BE LIABLE FOR PERSONAL INJURY, OR ANY INCIDENTAL, SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES WHATSOEVER, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS, LOSS OF DATA, BUSINESS INTERRUPTION OR ANY OTHER COMMERCIAL DAMAGES OR LOSSES, ARISING OUT OF OR RELATED TO THIS AGREEMENT OR YOUR USE OR INABILITY TO USE THE SERVICE, HOWEVER CAUSED, WHETHER UNDER A THEORY OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), PRODUCTS LIABILITY, OR OTHERWISE, EVEN IF APPLE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY. In no event shall Apple’s total liability to You under this Agreement for all damages (other than as may be required by applicable law in cases involving personal injury) exceed the amount of fifty dollars (\$50.00).

9. Governing Law

Any litigation or other dispute resolution between You and Apple arising out of or relating to this Agreement, the Developer Forums, or Your relationship with Apple will take place in the Northern District of California, and You and Apple hereby consent to the personal jurisdiction of and exclusive venue in the state and federal courts within that District with respect any such litigation or dispute resolution. This Agreement will be governed by and construed in accordance with the laws of the United States and the State of California, except that body of California law concerning conflicts of law. Notwithstanding the foregoing, if You are an individual entering into this Agreement solely as part of Your employment for one of the entities listed below, then the following exceptions shall apply:

(a) If You are employed by 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, 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. §01346(a) and §31491), or the Federal Tort Claims Act (28 U.S.C. §§91346(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 employed by 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 (a) this Agreement will be governed and construed in accordance with the laws of the state (within the U.S.) in which Your entity is domiciled, except that body of state law concerning conflicts of law; and (b) any litigation or other dispute resolution between You and Apple arising out of or relating to this Agreement, the Apple Software, or Your relationship with Apple will take place in federal court within the Northern District of California, and You and Apple hereby consent to the personal jurisdiction of and exclusive venue of such District unless such consent is expressly prohibited by the laws of the state in which Your entity is domiciled; and

(c) If You are employed by 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.

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. Miscellaneous

This Agreement constitutes the entire agreement between the parties with respect to Your participation in the Apple Developer Forums, unless otherwise agreed in by Apple in writing. Apple may send You notice with respect to the Apple Developer Forums by sending an email message to the email address listed in Your Account or by a posting on the Apple Developer Forums. You consent to receive notices by email and agree that any such notices that Apple sends You electronically will satisfy any legal communication requirements. Notices will be deemed given when sent to You at the email address listed in Your account or when posted on the Apple Developer Forums. No delay or failure to take action under this Agreement will constitute a waiver unless expressly waived in writing, signed by a duly authorized representative of Apple, and no single waiver will constitute a continuing or subsequent waiver. This Agreement will bind Your successors but may not be assigned, in whole or part, by You without the written approval of an authorized representative of Apple. Any non-conforming assignment shall be null and void. If any provision is found to be unenforceable or invalid, that provision shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and enforceable. No addition to or removal or modification of any of the provisions of this Agreement will be binding upon Apple unless made in writing and signed by an authorized representative of Apple.

EP5610
June 18, 2020

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

Apple Developer Program License Agreement

Purpose

You would like to use the Apple Software (as defined below) to develop one or more Applications (as defined below) for Apple-branded products. Apple is willing to grant You a limited license to use the Apple Software and Services provided to You under this Program to develop and test Your Applications on the terms and conditions set forth in this Agreement.

Applications developed under this Agreement for iOS Products, Apple Watch, or Apple TV can be distributed in four ways: (1) through the App Store, if selected by Apple, (2) through the Custom App Distribution, if selected by Apple, (3) on a limited basis for use on Registered Devices (as defined below), and (4) for beta testing through TestFlight. Applications developed for macOS can be distributed: (a) through the App Store, if selected by Apple, (b) for beta testing through TestFlight, or (c) separately distributed under this Agreement.

Applications that meet Apple's Documentation and Program Requirements may be submitted for consideration by Apple for distribution via the App Store, Custom App Distribution, or for beta testing through TestFlight. If submitted by You and selected by Apple, Your Applications will be digitally signed by Apple and distributed, as applicable. Distribution of free (no charge) Applications (including those that use the In-App Purchase API for the delivery of free content) via the App Store or Custom App Distribution will be subject to the distribution terms contained in Schedule 1 to this Agreement. If You would like to distribute Applications for which You will charge a fee or would like to use the In-App Purchase API for the delivery of fee-based content, You must enter into a separate agreement with Apple ("Schedule 2"). If You would like to distribute paid Applications via Custom App Distribution, You must enter into a separate agreement with Apple ("Schedule 3"). You may also create Passes (as defined below) for use on Apple-branded products running iOS or watchOS under this Agreement and distribute such Passes for use by Wallet.

1. Accepting this Agreement; Definitions

1.1 Acceptance

In order to use the Apple Software and Services, You must first accept this Agreement. If You do not or cannot accept this Agreement, You are not permitted to use the Apple Software or Services. Do not download or use the Apple Software or Services in that case. You accept and agree to the terms of this Agreement on Your own behalf and/or on behalf of Your company, organization, educational institution, or agency, instrumentality, or department of the federal government as its authorized legal representative, by doing either of the following:

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

1.2 Definitions

Whenever capitalized in this Agreement:

"Ad Network APIs" means the Documented APIs that provide a way to validate the successful conversion of advertising campaigns on supported Apple-branded products using a combination of cryptographic signatures and a registration process with Apple.

“Ad Support APIs” means the Documented APIs that provide the Advertising Identifier and Advertising Preference.

“Advertising Identifier” means a unique, non-personal, non-permanent identifier provided through the Ad Support APIs that are associated with a particular Apple-branded device and are to be used solely for advertising purposes, unless otherwise expressly approved by Apple in writing.

“Advertising Preference” means the Apple setting that enables an end-user to set an ad tracking preference.

“Agreement” means this Apple Developer Program License Agreement, including any attachments, Schedule 1 and any exhibits thereto which are hereby incorporated by this reference. For clarity, this Agreement supersedes the iOS Developer Program License Agreement (including any attachments, Schedule 1 and any exhibits thereto), the Safari Extensions Digital Signing Agreement, the Safari Extensions Gallery Submission Agreement, and the Mac Developer Program License Agreement.

“App Store” means an electronic store and its storefronts branded, owned, and/or controlled by Apple, or an Apple Subsidiary or other affiliate of Apple, through which Licensed Applications may be acquired.

“App Store Connect” means Apple’s proprietary online content management tool for Applications.

“Apple” means Apple Inc., a California corporation with its principal place of business at One Apple Park Way, Cupertino, California 95014, U.S.A.

“Apple Certificates” means the Apple-issued digital certificates provided to You by Apple under the Program.

“Apple Maps Service” means the mapping platform and Map Data provided by Apple via the MapKit API for use by You only in connection with Your Applications, or the mapping platform and Map Data provided by Apple via MapKit JS and related tools for capturing map content (e.g., MapSnapshotter) for use by You only in connection with Your Applications, websites, or web applications.

“Apple Pay APIs” means the Documented APIs that enable end-users to send payment information they have stored on a supported Apple-branded product to an Application to be used in payment transactions made by or through the Application, and includes other payment-related functionality as described in the Documentation.

“Apple Pay Payload” means a customer data package passed through the Apple Software and Apple Pay APIs as part of a payment transaction (e.g., name, email, billing address, shipping address, and device account number).

“Apple Push Notification Service” or **“APN”** means the Apple Push Notification service that Apple may provide to You to enable You to transmit Push Notifications to Your Application or for use as otherwise permitted herein.

“APN API” means the Documented API that enables You to use the APN to deliver a Push Notification to Your Application or for use as otherwise permitted herein.

“Apple Services” or **“Services”** means the developer services that Apple may provide or make available through the Apple Software or as part of the Program for use with Your Covered

Products or development, including any Updates thereto (if any) that may be provided to You by Apple under the Program.

“Apple Software” means Apple SDKs, iOS, watchOS, tvOS, iPadOS, and/or macOS, the Provisioning Profiles, FPS SDK, FPS Deployment Package, and any other software that Apple provides to You under the Program, including any Updates thereto (if any) that may be provided to You by Apple under the Program.

“Apple SDKs” means the Apple-proprietary Software Development Kits (SDKs) provided hereunder, including but not limited to header files, APIs, libraries, simulators, and software (source code and object code) labeled as part of iOS, watchOS, tvOS, iPadOS, or Mac SDK and included in the Xcode Developer Tools package and Swift Playgrounds for purposes of targeting Apple-branded products running iOS, watchOS, tvOS, iPadOS, and/or macOS, respectively.

“Apple Subsidiary” means a corporation at least fifty percent (50%) of whose outstanding shares or securities (representing the right to vote for the election of directors or other managing authority) are owned or controlled, directly or indirectly, by Apple, and that is involved in the operation of or otherwise affiliated with the App Store, Custom App Distribution, TestFlight, and as otherwise referenced herein (e.g., Attachment 4).

“Apple TV” means an Apple-branded product that runs the tvOS.

“Apple Watch” means an Apple-branded product that runs the watchOS.

“Application” means one or more software programs (including extensions, media, and Libraries that are enclosed in a single software bundle) developed by You in compliance with the Documentation and the Program Requirements, for distribution under Your own trademark or brand, and for specific use with an Apple-branded product running iOS, iPadOS, watchOS, tvOS, or macOS, as applicable, including bug fixes, updates, upgrades, modifications, enhancements, supplements to, revisions, new releases and new versions of such software programs.

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

“Authorized Test Units” means Apple-branded hardware units owned or controlled by You that have been designated by You for Your own testing and development purposes under this Program, and if You permit, Apple-branded hardware units owned or controlled by Your Authorized Developers so long as such units are used for testing and development purposes on Your behalf and only as permitted hereunder.

“Beta Testers” means end-users whom You have invited to sign up for TestFlight in order to test pre-release versions of Your Application and who have accepted the terms and conditions of the TestFlight Application.

“ClassKit APIs” means the Documented APIs that enable You to send student progress data for use in a school-managed environment.

“CloudKit APIs” means the Documented APIs that enable Your Applications, Web Software, and/or Your end-users (if You permit them) to read, write, query and/or retrieve structured data from public and/or private containers in iCloud.

“Configuration Profile(s)” means an XML file that allows You to distribute configuration information (e.g., VPN or Wi-Fi settings) and restrictions on device features (e.g., disabling the camera) to compatible Apple-branded products through Apple Configurator or other similar Apple-branded software tools, email, a webpage, or over-the-air deployment, or via Mobile Device Management (MDM). For the sake of clarity, unless otherwise expressly permitted by Apple in writing, MDM is available only for enterprise use and is separately licensed for under the Apple Developer Enterprise Program License Agreement.

“Corresponding Products” means web-based or other versions of Your software applications that have the same title and substantially equivalent features and functionality as Your Licensed Application (e.g., feature parity).

“Covered Products” means Your Applications, Libraries, Passes, Safari Extensions, Safari Push Notifications, and/or FPS implementations developed under this Agreement.

“Custom App Distribution” means the store or storefront functionality that enables users to obtain Licensed Applications through the use of Apple Business Manager, Apple School Manager, or as otherwise permitted by Apple.

“DeviceCheck APIs” means the set of APIs, including server-side APIs, that enable You to set and query two bits of data associated with a device and the date on which such bits were last updated.

“DeviceCheck Data” means the data stored and returned through the DeviceCheck APIs.

“Documentation” means any technical or other specifications or documentation that Apple may provide to You for use in connection with the Apple Software, Apple Services, Apple Certificates, or otherwise as part of the Program.

“Documented API(s)” means the Application Programming Interface(s) documented by Apple in published Apple Documentation and which are contained in the Apple Software.

“Face Data” means information related to human faces (e.g., face mesh data, facial map data, face modeling data, facial coordinates or facial landmark data, including data from an uploaded photo) that is obtained from a user’s device and/or through the use of the Apple Software (e.g., through ARKit, the Camera APIs, or the Photo APIs), or that is provided by a user in or through an Application (e.g., uploads for a facial analysis service).

“FPS” or “FairPlay Streaming” means Apple’s FairPlay Streaming Server key delivery mechanism as described in the FPS SDK.

“FPS Deployment Package” means the D Function specification for commercial deployment of FPS, the D Function reference implementation, FPS sample code, and set of unique production keys specifically for use by You with an FPS implementation, if provided by Apple to You.

“FPS SDK” means the FPS specification, FPS server reference implementation, FPS sample code, and FPS development keys, as provided by Apple to You.

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

“Game Center” means the gaming community service and related APIs provided by Apple for use by You in connection with Your Applications that are associated with Your developer account.

“HealthKit APIs” means the Documented APIs that enable reading, writing, queries and/or retrieval of an end-user’s health and/or fitness information in Apple’s Health application.

“HomeKit Accessory Protocol” means the proprietary protocol licensed by Apple under the MFi Program that enables home accessories designed to work with the HomeKit APIs (e.g., lights, locks) to communicate with compatible iOS Products, Apple Watch and other supported Apple-branded products.

“HomeKit APIs” means the Documented APIs that enable reading, writing, queries and/or retrieval of an end-user’s home configuration or home automation information from that end-user’s designated area of Apple’s HomeKit Database.

“HomeKit Database” means Apple’s repository for storing and managing information about an end-user’s Licensed HomeKit Accessories and associated information.

“iCloud” or **“iCloud service”** means the iCloud online service provided by Apple that includes remote online storage.

“iCloud Storage APIs” means the Documented APIs that allow storage and/or retrieval of user-generated documents and other files, and allow storage and/or retrieval of key value data (e.g., a list of stocks in a finance App, settings for an App) for Applications and Web Software through the use of iCloud.

“In-App Purchase API” means the Documented API that enables additional content, functionality or services to be delivered or made available for use within an Application with or without an additional fee.

“Intermediary Party” means a party that passes an Apple Pay end-user’s Apple Pay Payload to a Merchant for processing such end-user’s payment transaction outside of an Application.

“iOS” means the iOS operating system software provided by Apple for use by You only in connection with Your Application development and testing, including any successor versions thereof.

“iOS Product” means an Apple-branded product that runs iOS or iPadOS.

“iPadOS” means the iPadOS operating system software provided by Apple for use by You only in connection with Your Application development and testing, including any successor versions thereof.

“iPod Accessory Protocol” or **“iAP”** means Apple’s proprietary protocol for communicating with supported Apple-branded products and which is licensed under the MFi Program.

“Library” means a code module that cannot be installed or executed separately from an Application and that is developed by You in compliance with the Documentation and Program Requirements only for use with iOS Products, Apple Watch, or Apple TV.

“Licensed Application” means an Application that (a) meets and complies with all of the Documentation and Program Requirements, and (b) has been selected and digitally signed by Apple for distribution, and includes any additional permitted functionality, content or services provided by You from within an Application using the In-App Purchase API.

“Licensed Application Information” means screenshots, images, artwork, previews, icons and/or any other text, descriptions, representations or information relating to a Licensed

Application that You provide to Apple for use in accordance with Schedule 1, or, if applicable, Schedule 2 or Schedule 3.

“Licensed HomeKit Accessories” means hardware accessories licensed under the MFi Program that support the HomeKit Accessory Protocol.

“Local Notification” means a message, including any content or data therein, that Your Application delivers to end-users at a pre-determined time or when Your Application is running in the background and another application is running in the foreground.

“macOS” means the macOS operating system software provided by Apple for use by You, including any successor versions thereof.

“MFi Accessory” means a non-Apple branded hardware device that interfaces, communicates, or otherwise interoperates with or controls an Apple-branded product using technology licensed under the MFi Program (e.g., the ability to control a supported Apple-branded product through the iPod Accessory Protocol).

“MFi Licensee” means a party who has been granted a license by Apple under the MFi Program.

“MFi Program” means a separate Apple program that offers developers, among other things, a license to incorporate or use certain Apple technology in or with hardware accessories or devices for purposes of interfacing, communicating or otherwise interoperating with or controlling select Apple-branded products.

“Map Data” means any content, data or information provided through the Apple Maps Service including, but not limited to, imagery, terrain data, latitude and longitude coordinates, transit data, points of interest and traffic data.

“MapKit API” means the Documented API that enables You to add mapping features or functionality to Applications.

“MapKit JS” means the JavaScript library that enables You to add mapping features or functionality to Your Applications, websites, or web applications.

“Merchant” means a party who processes Apple Pay payment transactions under their own name, trademark, or brand (e.g., their name shows up on the end-user's credit card statement).

“Motion & Fitness APIs” means the Documented APIs that are controlled by the Motion & Fitness privacy setting in a compatible Apple-branded product and that enable access to motion and fitness sensor data (e.g., body motion, step count, stairs climbed), unless the end-user has disabled access to such data.

“Multitasking” means the ability of Applications to run in the background while other Applications are also running.

“MusicKit APIs” means the set of APIs that enable Apple Music users to access their subscription through Your Application or as otherwise permitted by Apple in the Documentation.

“MusicKit Content” means music, video, and/or graphical content rendered through the MusicKit APIs.

“MusicKit JS” means the JavaScript library that enables Apple Music users to access their subscription through Your Applications, websites, or web applications.

“Network Extension Framework” means the Documented APIs that provide Applications with the ability to customize certain networking features of compatible Apple-branded products (e.g., customizing the authentication process for WiFi Hotspots, VPN features, and content filtering mechanisms).

“Pass(es)” means one or more digital passes (e.g., movie tickets, coupons, loyalty reward vouchers, boarding passes, membership cards, etc.) developed by You under this Agreement, under Your own trademark or brand, and which are signed with Your Pass Type ID.

“Pass Information” means the text, descriptions, representations or information relating to a Pass that You provide to or receive from Your end-users on or in connection with a Pass.

“Pass Type ID” means the combination of an Apple Certificate and Push Application ID that is used by You to sign Your Passes and/or communicate with the APN.

“Program” means the overall Apple development, testing, digital signing, and distribution program contemplated in this Agreement.

“Program Requirements” mean the technical, human interface, design, product category, security, performance, and other criteria and requirements specified by Apple, including but not limited to the current set of requirements set forth in **Section 3.3**, as they may be modified from time to time by Apple in accordance with this Agreement.

“Provisioning Profiles” means the files (including applicable entitlements or other identifiers) that are provided by Apple for use by You in connection with Your Application development and testing, and limited distribution of Your Applications for use on Registered Devices and/or on Authorized Test Units.

“Push Application ID” means the unique identification number or other identifier that Apple assigns to an Application, Pass or Site in order to permit it to access and use the APN.

“Push Notification” or **“Safari Push Notification”** means a notification, including any content or data therein, that You transmit to end-users for delivery in Your Application, Your Pass, and/or in the case of macOS, to the macOS desktop of users of Your Site who have opted in to receive such messages through Safari on macOS.

“Registered Devices” means Apple-branded hardware units owned or controlled by You, or owned by individuals who are affiliated with You, where such Products have been specifically registered with Apple under this Program.

“Safari Extensions” means one or more software extensions developed by You under this Agreement only for use with Safari in compliance with this Agreement.

“Security Solution” means the proprietary Apple content protection system marketed as Fairplay, to be applied to Licensed Applications distributed on the App Store to administer Apple's standard usage rules for Licensed Applications, as such system and rules may be modified by Apple from time to time.

“ShazamKit APIs” means the Documented APIs that enable You to add audio-based recognition features or functionality to Your Application and Corresponding Products.

“ShazamKit Content” means metadata, music, and/or graphical content provided by Apple and rendered through the ShazamKit APIs, including but not limited to MusicKit Content.

“Sign In with Apple” means the Documented APIs and JavaScript libraries that allow You to log users into Your Application (and Corresponding Products) with their Apple ID or anonymized credentials.

“SiriKit” means the set of APIs that allow Your Application to access or provide SiriKit domains, intents, shortcuts, donations, and other related functionality, as set forth in the Documentation.

“Site” means a website provided by You under Your own name, trademark or brand.

“Single Sign-on Specification” means the Documentation provided by Apple hereunder for the Single Sign-On API, as updated from time to time.

“Term” means the period described in **Section 11**.

“TestFlight” means Apple’s beta testing service for pre-release Applications made available through Apple’s TestFlight Application.

“TestFlight Application” means Apple’s application that enables the distribution of pre-release versions of Your Applications to a limited number of Your Authorized Developers and to a limited number of Beta Testers (as specified in App Store Connect) through TestFlight.

“TV App API” means the API documented in the TV App Specification that enables You to provide Apple with TV App Data.

“TV App Data” means the data described in the TV App Specification to be provided to Apple through the TV App API.

“TV App Features” means functionality accessible via the TV App and/or tvOS, iOS, iPadOS, and/or macOS devices, which functionality provides the user the ability to view customized information and recommendations regarding content and to access such content through the user’s apps, and/or provides the user the ability to continue play of previously viewed content.

“TV App Specification” means the Documentation provided by Apple hereunder for the TV App API, as updated from time to time.

“tvOS” means the tvOS operating system software, including any successor versions thereof.

“Updates” means bug fixes, updates, upgrades, modifications, enhancements, supplements, and new releases or versions of the Apple Software or Services, or to any part of the Apple Software or Services.

“Wallet” means Apple’s application that has the ability to store and display Passes for use on iOS Products, Apple Watch, or Safari on macOS.

“WatchKit Extension” means an extension bundled as part of Your Application that accesses the WatchKit framework on iOS to run and display a WatchKit app on the watchOS.

“watchOS” means the watchOS operating system software, including any successor versions thereof.

“Web Software” means web-based versions of Your software applications that have the same title and substantially equivalent features and functionality as Your Licensed Application (e.g., feature parity).

“Website Push ID” means the combination of an Apple Certificate and Push Application ID that is used by You to sign Your Site’s registration bundle and/or communicate with the APN.

“Xcode Cloud” or “Xcode Cloud Service” means Apple’s cloud hosted continuous integration and delivery service and related technologies.

“Xcode Cloud Content” means the software, tests, scripts, data, information, text, graphics, videos, or other content that You post or make available when accessing or using the Xcode Cloud Service (including any software residing in source code repositories to which You provide log-in credentials), excluding any Apple materials licensed to You.

“You” and “Your” means and refers to the person(s) or legal entity (whether the company, organization, educational institution, or governmental agency, instrumentality, or department) that has accepted this Agreement under its own developer account and that is using the Apple Software or otherwise exercising rights under this Agreement.

Note: For the sake of clarity, You may authorize contractors to develop Applications on Your behalf, but any such Applications must be owned by You, submitted under Your own developer account, and distributed as Applications only as expressly permitted herein. You are responsible to Apple for Your contractors’ activities under Your account (e.g., adding them to Your team to perform development work for You) and their compliance with this Agreement. Any actions undertaken by Your contractors arising out of this Agreement shall be deemed to have been taken by You, and You (in addition to Your contractors) shall be responsible to Apple for all such actions.

2. Internal Use License and Restrictions

2.1 Permitted Uses and Restrictions; Program services

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

- (a) Install a reasonable number of copies of the Apple Software provided to You under the Program on Apple-branded products owned or controlled by You, to be used internally by You or Your Authorized Developers for the sole purpose of developing or testing Covered Products designed to operate on the applicable Apple-branded products, except as otherwise expressly permitted in this Agreement;
- (b) Make and distribute a reasonable number of copies of the Documentation to Authorized Developers for their internal use only and for the sole purpose of developing or testing Covered Products, except as otherwise expressly permitted in this Agreement;
- (c) Install a Provisioning Profile on each of Your Authorized Test Units, up to the number of Authorized Test Units that You have registered and acquired licenses for, to be used internally by You or Your Authorized Developers for the sole purpose of developing and testing Your Applications, except as otherwise expressly permitted in this Agreement;
- (d) Install a Provisioning Profile on each of Your Registered Devices, up to the limited number of Registered Devices that You have registered and acquired licenses for, for the sole purpose of enabling the distribution and use of Your Applications on such Registered Devices; and
- (e) Incorporate the Apple Certificates issued to You pursuant to this Agreement for purposes of digitally signing Your Applications, Passes, Safari Extensions, Safari Push Notifications, and as otherwise expressly permitted by this Agreement.

Apple reserves the right to set the limited number of Apple-branded products that each Licensee may register with Apple and obtain licenses for under this Program (a **“Block of Registered Device Licenses”**). For the purposes of limited distribution on Registered Devices under **Section 7.3 (Ad Hoc distribution)**, each company, organization, educational institution or affiliated group may only acquire one (1) Block of Registered Device Licenses per company, organization, educational institution or group, unless otherwise agreed in writing by Apple. You agree not to knowingly acquire, or to cause others to acquire, more than one Block of Registered Device Licenses for the same company, organization, educational institution or group.

Apple may provide access to services by or through the Program for You to use with Your developer account (e.g., device or app provisioning, managing teams or other account resources). You agree to access such services only through the Program web portal (which is accessed through Apple's developer website) or through Apple-branded products that are designed to work in conjunction with the Program (e.g., Xcode, App Store Connect, Swift Playgrounds) and only as authorized by Apple. If You (or Your Authorized Developers) access Your developer account through these other Apple-branded products, You acknowledge and agree that this Agreement shall continue to apply to any use of Your developer account and to any features or functionality of the Program that are made available to You (or Your Authorized Developers) in this manner (e.g., Apple Certificates and Provisioning Profiles can be used only in the limited manner permitted herein, etc.). You agree not to create or attempt to create a substitute or similar service through use of or access to the services provided by or through the Program. If Apple provides power and performance metrics for Your Application, You agree that such metrics may be used solely for Your own internal use and may not be provided to any third party (except as set forth in **Section 2.9**). Further, You may only access such services using the Apple ID associated with Your developer account or authentication credentials (e.g., keys, tokens, password) associated with Your developer account, and You are fully responsible for safeguarding Your Apple ID and authentication credentials from compromise and for using them only as authorized by Apple and in accordance with the terms of this Agreement, including but not limited to **Section 2.8** and **5**. Except as otherwise expressly permitted herein, You agree not to share, sell, resell, rent, lease, lend, or otherwise provide access to Your developer account or any services provided therewith, in whole or in part, to anyone who is not an Authorized Developer on Your team, and You agree not to solicit or request Apple Developer Program members to provide You with their Apple IDs, authentication credentials, and/or related account information and materials (e.g., Apple Certificates used for distribution or submission to the App Store or TestFlight). You understand that each team member must have their own Apple ID or authentication credentials to access Your account, and You shall be fully responsible for all activity performed through or in connection with Your account. To the extent that You own or control an Apple-branded computer running Apple's macOS Server or Xcode Server ("**Server**") and would like to use it for Your own development purposes in connection with the Program, You agree to use Your own Apple ID or other authentication credentials for such Server, and You shall be responsible for all actions performed by such Server.

2.2 Authorized Test Units and Pre-Release Apple Software

As long as an Authorized Test Unit contains any pre-release versions of the Apple Software or uses pre-release versions of Services, You agree to restrict access to such Authorized Test Unit to Your Authorized Developers and to not disclose, show, rent, lease, lend, sell or otherwise transfer such Authorized Test Unit to any third party. You further agree to take reasonable precautions to safeguard, and to instruct Your Authorized Developers to safeguard, all Authorized Test Units from loss or theft. Further, subject to the terms of this Agreement, You may deploy Your Applications to Your Authorized Developers for use on a limited number of Authorized Test Units for Your own internal testing and development purposes.

You acknowledge that by installing any pre-release Apple Software or using any pre-release Services on Your Authorized Test Units, these Units may be "locked" into testing mode and may not be capable of being restored to their original condition. Any use of any pre-release Apple Software or pre-release Services are for evaluation and development purposes only, and You should not use any pre-release Apple Software or pre-release Services in a commercial operating environment or with important data. You should back up any data prior to using the pre-release Apple Software or pre-release Services. Apple shall not be responsible for any costs, expenses or other liabilities You may incur as a result of provisioning Your Authorized Test Units and Registered Devices, Your Covered Product development or the installation or use of this Apple Software or any pre-release Apple Services, including but not limited to any damage to any equipment, or any damage, loss, or corruption of any software, information or data.

2.3 Confidential Nature of Pre-Release Apple Software and Services

From time to time during the Term, Apple may provide You with pre-release versions of the Apple Software or Services that constitute Apple Confidential Information and are subject to the confidentiality obligations of this Agreement, except as otherwise set forth herein. Such pre-release Apple Software and Services should not be relied upon to perform in the same manner as a final-release, commercial-grade product, nor used with data that is not sufficiently and regularly backed up, and may include features, functionality or APIs for software or services that are not yet available. You acknowledge that Apple may not have publicly announced the availability of such pre-release Apple Software or Services, that Apple has not promised or guaranteed to You that such pre-release software or services will be announced or made available to anyone in the future, and that Apple has no express or implied obligation to You to announce or commercially introduce such software or services or any similar or compatible technology. You expressly acknowledge and agree that any research or development that You perform with respect to pre-release versions of the Apple Software or Services is done entirely at Your own risk.

2.4 Copies

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

2.5 Ownership

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

2.6 No Other Permitted Uses

Except as otherwise set forth in this Agreement, You agree not to rent, lease, lend, upload to or host on any website or server, sell, redistribute, or sublicense the Apple Software, Apple Certificates, or any Services, in whole or in part, or to enable others to do so. You may not use the Apple Software, Apple Certificates, or any Services provided hereunder for any purpose not expressly permitted by this Agreement, including any applicable Attachments and Schedules. You agree not to install, use or run the Apple SDKs on any non-Apple-branded computer, and not to install, use or run iOS, watchOS, tvOS, iPadOS, macOS and Provisioning Profiles on or in connection with devices other than Apple-branded products, or to enable others to do so. You may not and You agree not to, or to enable others to, copy (except as expressly permitted under this Agreement), decompile, reverse engineer, disassemble, attempt to derive the source code of, modify, decrypt, or create derivative works of the Apple Software, Apple Certificates or any Services provided by the Apple Software or otherwise provided hereunder, or any part thereof (except as and only to the extent any foregoing restriction is prohibited by applicable law or to the extent as may be permitted by licensing terms governing use of open-sourced components or sample code included with the Apple Software). You agree not to exploit any Apple Software, Apple Certificates, or Services provided hereunder in any unauthorized way whatsoever, including but not limited to, by trespass or burdening network capacity, or by harvesting or misusing data provided by such Apple Software, Apple Certificates, or Services. Any attempt to do so is a violation of the rights of Apple and its licensors of the Apple Software or Services. If You breach any of the foregoing restrictions, You may be subject to prosecution and damages. All licenses not expressly granted in this Agreement are reserved and no other licenses, immunity or rights, express or implied are granted by Apple, by implication, estoppel, or otherwise. This Agreement does not grant You any rights to use any trademarks, logos or service marks belonging to Apple, including but not limited to the iPhone or iPod word marks. If You make reference to any Apple products or technology or use Apple's trademarks, You agree to comply

with the published guidelines at <https://www.apple.com/legal/intellectual-property/guidelinesfor3rdparties.html>, as they may be modified by Apple from time to time.

2.7 FPS SDK and FPS Deployment Package

You may use the FPS SDK to develop and test a server-side implementation of FPS, solely for use with video streamed by You (or on Your behalf) through Your Applications, or video downloaded for viewing through Your Applications, on iOS Products and/or Apple TV, through Safari on macOS, or as otherwise approved by Apple in writing (collectively, “**Authorized FPS Applications**”). You understand that You will need to request the FPS Deployment Package on the Program web portal prior to any production or commercial use of FPS. As part of such request, You will need to submit information about Your requested use of FPS. Apple will review Your request and reserves the right to not provide You with the FPS Deployment Package at its sole discretion, in which case You will not be able to deploy FPS. Any development and testing You perform with the FPS SDK is at Your own risk and expense, and Apple will not be liable to You for such use or for declining Your request to use FPS in a production or commercial environment.

If Apple provides You with the FPS Deployment Package, You agree to use it solely as approved by Apple and only in connection with video content streamed by You (or on Your behalf) to Authorized FPS Applications or downloaded for viewing through Your Authorized FPS Applications. Except as permitted in **Section 2.9 (Third-Party Service Providers)**, You will not provide the FPS Deployment Package to any third party or sublicense, sell, resell, lease, disclose, or re-distribute the FPS Deployment Package or FPS SDK to any third party (or any implementation thereof) without Apple’s prior written consent.

You acknowledge and agree that the FPS Deployment Package (including the set of FPS production keys) is Apple Confidential Information as set forth in **Section 9 (Confidentiality)**. Further, such FPS keys are unique to Your company or organization, and You are solely responsible for storing and protecting them. You may use such FPS keys solely for the purpose of delivering and protecting Your content key that is used to decrypt video content streamed by You to Authorized FPS Applications or downloaded for viewing through Your Authorized FPS Applications. Apple will have no liability or responsibility for unauthorized access to or use of any FPS key or any content streamed or otherwise delivered under this Agreement in connection with FPS. In the event that Your FPS key is disclosed, discovered, misappropriated or lost, You may request that Apple revoke it by emailing product-security@apple.com, and You understand that Apple will have no obligation to provide a replacement key. Apple reserves the right to revoke Your FPS key at any time if requested by You, in the event of a breach of this Agreement by You, if otherwise deemed prudent or reasonable by Apple, or upon expiration or termination of this Agreement for any reason.

You acknowledge and agree that Apple reserves the right to revoke or otherwise remove Your access to and use of FPS (or any part thereof) at any time in its sole discretion. Further, Apple will have no obligation to provide any modified, updated or successor version of the FPS Deployment Package or the FPS SDK to You and will have no obligation to maintain compatibility with any prior version. If Apple makes new versions of the FPS Deployment Package or FPS SDK available to You, then You agree to update to them within a reasonable time period if requested to do so by Apple.

2.8 Use of Apple Services

Apple may provide access to Apple Services that Your Covered Products may call through APIs in the Apple Software and/or that Apple makes available to You through other mechanisms, e.g., through the use of keys that Apple may make accessible to You under the Program. You agree to access such Apple Services only through the mechanisms provided by Apple for such access and only for use on Apple-branded products. Except as permitted in **Section 2.9 (Third-Party Service Providers)** or as otherwise set forth herein, You agree not to share access to mechanisms provided to You by Apple for the use of the Services with any third party. Further,

You agree not to create or attempt to create a substitute or similar service through use of or access to the Apple Services.

You agree to access and use such Services only as necessary for providing services and functionality for Your Covered Products that are eligible to use such Services and only as permitted by Apple in writing, including in the Documentation. You may not use the Apple Services in any manner that is inconsistent with the terms of this Agreement or that infringes any intellectual property rights of a third party or Apple, or that violates any applicable laws or regulations. You agree that the Apple Services contain proprietary content, information and material owned by Apple and its licensors, and protected by applicable intellectual property and other laws. You may not use such proprietary content, information or materials in any way whatsoever, except for the permitted uses of the Apple Services under this Agreement, or as otherwise agreed by Apple in writing.

You understand there may be storage capacity, transmission, and/or transactional limits for the Apple Services both for You as a developer and for Your end-users. If You reach or Your end-user reaches such limits, then You or Your end-user may be unable to use the Apple Services or may be unable to access or retrieve data from such Services through Your Covered Products or through the applicable end-user accounts. You agree not to charge any fees to end-users solely for access to or use of the Apple Services through Your Covered Products or for any content, data or information provided therein, and You agree not to sell access to the Apple Services in any way. You agree not to fraudulently create any end-user accounts or induce any end-user to violate the terms of their applicable end-user terms or service agreement with Apple or to violate any Apple usage policies for such end-user services. Except as expressly set forth herein, You agree not to interfere with an end-user's ability to access or use any such services.

Apple reserves the right to change, suspend, deprecate, deny, limit, or disable access to the Apple Services, or any part thereof, at any time without notice (including but not limited to revoking entitlements or changing any APIs in the Apple Software that enable access to the Services or not providing You with an entitlement). In no event will Apple be liable for the removal of or disabling of access to any of the foregoing. Apple may also impose limits and restrictions on the use of or access to the Apple Services, may remove the Apple Services for indefinite time periods, may revoke Your access to the Apple Services, or may cancel the Apple Services (or any part thereof) at any time without notice or liability to You and in its sole discretion.

Apple does not guarantee the availability, accuracy, completeness, reliability, or timeliness of any data or information displayed by any Apple Services. To the extent You choose to use the Apple Services with Your Covered Products, You are responsible for Your reliance on any such data or information. You are responsible for Your use of the Apple Software and Apple Services, and if You use such Services, then it is Your responsibility to maintain appropriate alternate backup of all Your content, information and data, including but not limited to any content that You may provide to Apple for hosting as part of Your use of the Services. You understand and agree that You may not be able to access certain Apple Services upon expiration or termination of this Agreement and that Apple reserves the right to suspend access to or delete content, data or information that You or Your Covered Product have stored through Your use of such Services provided hereunder. You should review the Documentation and policy notices posted by Apple prior to using any Apple Services.

Apple Services may not be available in all languages or in all countries, and Apple makes no representation that any such Services would be appropriate, accurate or available for use in any particular location or product. To the extent You choose to use the Apple Services with Your Applications, You do so at Your own initiative and are responsible for compliance with any applicable laws. Apple reserves the right to charge fees for Your use of the Apple Services. Apple will inform You of any Apple Service fees or fee changes by email and information about such fees will be posted in the Program web portal, App Store Connect, or the CloudKit console.

Apple Service availability and pricing are subject to change. Further, Apple Services may not be made available for all Covered Products and may not be made available to all developers. Apple reserves the right to not provide (or to cease providing) the Apple Services to any or all developers at any time in its sole discretion.

2.9 Third-Party Service Providers

Unless otherwise prohibited by Apple in the Documentation or this Agreement, You are permitted to employ or retain a third party ("**Service Provider**") to assist You in using the Apple Software and Services provided pursuant to this Agreement, including, but not limited to, engaging any such Service Provider to maintain and administer Your Applications' servers on Your behalf, provided that any such Service Provider's use of the Apple Software and Services or any materials associated therewith is done solely on Your behalf and only in accordance with these terms. Notwithstanding the foregoing, You may not use a Service Provider to submit an Application to the App Store or use TestFlight on Your behalf. You agree to have a binding written agreement with Your 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 Your Applications or use of the Apple Software or Apple Services 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 of any actions or inactions by the Service Provider that would constitute a violation of this Agreement or otherwise cause any harm, Apple reserves the right to require You to cease using such Service Provider.

2.10 Updates; No Support or Maintenance

Apple may extend, enhance, or otherwise modify the Apple Software or Services (or any part thereof) provided hereunder at any time without notice, but Apple shall not be obligated to provide You with any Updates to the Apple Software or Services. If Updates are made available by Apple, the terms of this Agreement will govern such Updates, unless the Update is accompanied by a separate license in which case the terms of that license will govern. You understand that such modifications may require You to change or update Your Covered Products. Further, You acknowledge and agree that such modifications may affect Your ability to use, access, or interact with the Apple Software and Services. Apple is not obligated to provide any maintenance, technical or other support for the Apple Software or Services. You acknowledge that Apple has no express or implied obligation to announce or make available any Updates to the Apple Software or to any Services to anyone in the future. Should an Update be made available, it may have APIs, features, services or functionality that are different from those found in the Apple Software licensed hereunder or the Services provided hereunder.

3. Your Obligations

3.1 General

You certify to Apple and agree that:

- (a) You are of the legal age of majority in the jurisdiction in which You reside (at least 18 years of age in many countries) and have the right and authority to enter into this Agreement on Your own behalf, or if You are entering into this Agreement on behalf of Your company, organization, educational institution, or agency, instrumentality, or department of the federal government, that You have the right and authority to legally bind such entity or organization to the terms and obligations of this Agreement;
- (b) All information provided by You to Apple or Your end-users in connection with this Agreement or Your Covered Products, including without limitation Licensed Application Information or Pass Information, will be current, true, accurate, supportable and complete and, with regard to information You provide to Apple, You will promptly notify Apple of any changes to such information. Further, You agree that Apple may share such information (including email address and mailing address) with third parties who have a need to know for purposes related thereto (e.g., intellectual property questions, customer service inquiries, etc.);
- (c) You will comply with the terms of and fulfill Your obligations under this Agreement, including

obtaining any required consents for Your Authorized Developers' use of the Apple Software and Services, and You agree to monitor and be fully responsible for all such use by Your Authorized Developers and their compliance with the terms of this Agreement;

(d) You will be solely responsible for all costs, expenses, losses and liabilities incurred, and activities undertaken by You and Your Authorized Developers in connection with the Apple Software and Apple Services, the Authorized Test Units, Registered Devices, Your Covered Products and Your related development and distribution efforts, including, but not limited to, any related development efforts, network and server equipment, Internet service(s), or any other hardware, software or services used by You in connection with Your use of any services;

(e) For the purposes of Schedule 1 (if applicable), You represent and warrant that You own or control the necessary rights in order to appoint Apple and Apple Subsidiaries as Your worldwide agent for the delivery of Your Licensed Applications, and that the fulfillment of such appointment by Apple and Apple Subsidiaries shall not violate or infringe the rights of any third party; and

(f) You will not act in any manner which conflicts or interferes with any existing commitment or obligation You may have and no agreement previously entered into by You will interfere with Your performance of Your obligations under this Agreement.

3.2 Use of the Apple Software and Apple Services

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

(a) You will use the Apple Software and any services only for the purposes and in the manner expressly permitted by this Agreement and in accordance with all applicable laws and regulations;

(b) You will not use the Apple Software or any Apple Services: (1) for any unlawful or illegal activity, nor to develop any Covered Product, which would commit or facilitate the commission of a crime, or other tortious, unlawful or illegal act; (2) to threaten, incite, or promote violence, terrorism, or other serious harm; or (3) to create or distribute any content or activity that promotes child sexual exploitation or abuse.

(c) Your Application, Library and/or Pass will be developed in compliance with the Documentation and the Program Requirements, the current set of which is set forth in **Section 3.3** below;

(d) To the best of Your knowledge and belief, Your Covered Products, Licensed Application Information, Xcode Cloud Content, and Pass Information do not and will not violate, misappropriate, or infringe any Apple or third party copyrights, trademarks, rights of privacy and publicity, trade secrets, patents, or other proprietary or legal rights (e.g., musical composition or performance rights, video rights, photography or image rights, logo rights, third party data rights, etc. for content and materials that may be included in Your Application);

(e) You will not, through use of the Apple Software, Apple Certificates, Apple Services or otherwise, create any Covered Product or other code or program that would: (1) disable, hack or otherwise interfere with the Security Solution, or any security, digital signing, digital rights management, verification or authentication mechanisms implemented in or by iOS, watchOS, iPadOS, tvOS, the Apple Software, or any Services, or other Apple software or technology, or enable others to do so (except to the extent expressly permitted by Apple in writing); or (2) violate the security, integrity, or availability of any user, network, computer or communications system;

(f) You will not, directly or indirectly, commit any act intended to interfere with any of the Apple Software or Services, the intent of this Agreement, or Apple's business practices including, but not limited to, taking actions that may hinder the performance or intended use of the App Store, Custom App Distribution, TestFlight, Xcode Cloud, Ad Hoc distribution, or the Program (e.g., submitting fraudulent reviews of Your own Application or any third party application, choosing a name for Your Application that is substantially similar to the name of a third party application in order to create consumer confusion, or squatting on application names to prevent legitimate third party use). Further, You will not engage, or encourage others to engage, in any unlawful, unfair, misleading, fraudulent, improper, or dishonest acts or business practices relating to Your Covered Products (e.g., engaging in bait-and-switch pricing, consumer misrepresentation, deceptive business practices, or unfair competition against other developers); and

(g) Applications for iOS Products, Apple Watch, or Apple TV developed using the Apple Software may be distributed only if selected by Apple (in its sole discretion) for distribution via the App Store, Custom App Distribution, for beta distribution through TestFlight, or through Ad Hoc

distribution as contemplated in this Agreement. Passes developed using the Apple Software may be distributed to Your end-users via email, a website or an Application in accordance with the terms of this Agreement, including Attachment 5. Safari Extensions signed with an Apple Certificate may be distributed to Your end-users in accordance with the terms of this Agreement, including Attachment 7. Applications for macOS may be distributed outside of the App Store using Apple Certificates and/or tickets as set forth in **Section 5.3** and **5.4**.

3.3 Program Requirements

Any Application that will be submitted to the App Store, Custom App Distribution, or TestFlight, or that will be distributed through Ad Hoc distribution, must be developed in compliance with the Documentation and the Program Requirements, the current set of which is set forth below in this **Section 3.3**. Libraries and Passes are subject to the same criteria:

APIs and Functionality:

3.3.1 Applications may only use Documented APIs in the manner prescribed by Apple and must not use or call any private APIs. Further, macOS Applications submitted to Apple for distribution on the App Store may use only Documented APIs included in the default installation of macOS, as bundled with Xcode and the Mac SDK, or as bundled with Swift Playgrounds; deprecated technologies (such as Java) may not be used.

3.3.2 Except as set forth in the next paragraph, an Application may not download or install executable code. Interpreted code may be downloaded to an Application but only so long as such code: (a) does not change the primary purpose of the Application by providing features or functionality that are inconsistent with the intended and advertised purpose of the Application as submitted to the App Store, (b) does not create a store or storefront for other code or applications, and (c) does not bypass signing, sandbox, or other security features of the OS.

An Application that is a programming environment intended for use in learning how to program may download and run executable code so long as the following requirements are met: (i) no more than 80 percent of the Application's viewing area or screen may be taken over with executable code, except as otherwise permitted in the Documentation, (ii) the Application must present a reasonably conspicuous indicator to the user within the Application to indicate that the user is in a programming environment, (iii) the Application must not create a store or storefront for other code or applications, and (iv) the source code provided by the Application must be completely viewable and editable by the user (e.g., no pre-compiled libraries or frameworks may be included with the code downloaded).

3.3.3 Without Apple's prior written approval or as permitted under **Section 3.3.25 (In-App Purchase API)**, an Application may not provide, unlock or enable additional features or functionality through distribution mechanisms other than the App Store, Custom App Distribution or TestFlight.

3.3.4 An Application for iOS, watchOS, iPadOS, or tvOS may only read data from or write data to an Application's designated container area on the device, except as otherwise specified by Apple. For macOS Applications submitted to Apple for distribution on the App Store: (a) all files necessary for the Application to execute on macOS must be in the Application bundle submitted to Apple and must be installed by the App Store; (b) all localizations must be in the same Application bundle and may not include a suite or collection of independent applications within a single Application bundle; (c) native user interface elements or behaviors of macOS (e.g., the system menu, window sizes, colors, etc.) may not be altered, modified or otherwise changed; (d) You may not use any digital rights management or other copy or access control mechanisms in such Applications without Apple's written permission or as specified in the Documentation; and (e) except as otherwise permitted by **Section 3.3.25 (In-App Purchase API)**, such Applications may not function as a distribution mechanism for software and may not include features or functionality that create or enable a software store, distribution channel or other mechanism for

software delivery within such Applications (e.g., an audio application may not include an audio filter plug-in store within the Application).

3.3.5 An Application for an iOS Product must have at least the same features and functionality when run by a user in compatibility mode on an iPad (e.g., an iPhone app running in an equivalent iPhone-size window on an iPad must perform in substantially the same manner as when run on the iPhone; provided that this obligation will not apply to any feature or functionality that is not supported by a particular hardware device, such as a video recording feature on a device that does not have a camera). Further, You agree not to interfere or attempt to interfere with the operation of Your Application in compatibility mode.

3.3.6 You may use the Multitasking services only for their intended purposes as described in the Documentation.

User Interface, Data Collection, Local Laws and Privacy:

3.3.7 Applications must comply with the Human Interface Guidelines (HIG) and other Documentation provided by Apple. You agree to follow the HIG to develop an appropriate user interface and functionality for Your Application that is compatible with the design of Apple-branded products (e.g., a watch App should have a user interface designed for quick interactions in accordance with the HIG's watchOS design themes).

3.3.8 If Your Application captures or makes any video, microphone, screen recordings, or camera recordings, whether saved on the device or sent to a server (e.g., an image, photo, voice or speech capture, or other recording) (collectively "**Recordings**"), a reasonably conspicuous audio, visual or other indicator must be displayed to the user as part of the Application to indicate that a Recording is taking place.

- In addition, any form of data, content or information collection, processing, maintenance, uploading, syncing, storage, transmission, sharing, disclosure or use performed by, through or in connection with Your Application must comply with all applicable privacy laws and regulations as well as any related Program Requirements, including but not limited to any notice or consent requirements.

3.3.9 You and Your Applications (and any third party with whom You have contracted to serve advertising) may not collect user or device data without prior user consent, whether such data is obtained directly from the user or through the use of the Apple Software, Apple Services, or Apple SDKs, and then only to provide a service or function that is directly relevant to the use of the Application, or to serve advertising in accordance with **Sections 3.3.12**. You may not broaden or otherwise change the scope of usage for previously collected user or device data without obtaining prior user consent for such expanded or otherwise changed data collection. You may not use analytics software in Your Application to collect and send device data to a third party. Further, neither You nor Your Application will use any permanent, device-based identifier, or any data derived therefrom, for purposes of uniquely identifying a device.

3.3.10 You must provide clear and complete information to users regarding Your collection, use and disclosure of user or device data, e.g., a description of Your use of user and device data in the App Description on the App Store. Furthermore, You must take appropriate steps to protect such data from unauthorized use, disclosure or access by third parties. If a user ceases to consent or affirmatively revokes consent for Your collection, use or disclosure of such user's device or user data, You (and any third party with whom You have contracted to serve advertising) must promptly cease all such use. You must provide a privacy policy in Your Application, on the App Store, and/or on Your website explaining Your collection, use, disclosure, sharing, retention, and deletion of user or device data. You agree to notify Your users, in accordance with applicable law, in the event of a data breach in which user data collected from

Your Application is compromised (e.g., You will send an email notifying Your users if there has been an unintentional disclosure or misuse of their user data).

3.3.11 Applications must comply with all applicable criminal, civil and statutory laws and regulations, including those in any jurisdictions in which Your Applications may be offered or made available. In addition:

- You and the Application must comply with all applicable privacy and data collection laws and regulations with respect to any collection, use or disclosure of user or device data (e.g., a user's IP address, the name of the user's device, and any installed apps associated with a user);
- Applications may not be designed or marketed for the purpose of harassing, abusing, spamming, stalking, threatening or otherwise violating the legal rights (such as the rights of privacy and publicity) of others;
- Neither You nor Your Application may perform any functions or link to any content, services, information or data or use any robot, spider, site search or other retrieval application or device to scrape, mine, retrieve, cache, analyze or index software, data or services provided by Apple or its licensors, or obtain (or try to obtain) any such data, except the data that Apple expressly provides or makes available to You in connection with such services. You agree that You will not collect, disseminate or use any such data for any unauthorized purpose; and
- If Your Application is intended for human subject research or uses the HealthKit APIs for clinical health-related uses which may involve personal data (e.g., storage of health records), then You agree to inform participants of the intended uses and disclosures of their personally identifiable data as part of such research or clinical health uses and to obtain consent from such participants (or their guardians) who will be using Your Application for such research or clinical health purposes. Further, You shall prohibit third parties to whom You provide any de-identified or coded data from re-identifying (or attempting to re-identify) any participants using such data without participant consent, and You agree to require that such third parties pass the foregoing restriction on to any other parties who receive such de-identified or coded data.

Advertising Identifier and Preference; Ad Network APIs:

3.3.12 You and Your Applications (and any third party with whom You have contracted to serve advertising) may use the Advertising Identifier, and any information obtained through the use of the Advertising Identifier, only for the purpose of serving advertising. If a user resets the Advertising Identifier, then You agree not to combine, correlate, link or otherwise associate, either directly or indirectly, the prior Advertising Identifier and any derived information with the reset Advertising Identifier. For Applications compiled for any Apple-branded product providing access to the Ad Support APIs, You agree to check a user's Advertising Preference prior to serving any advertising using the Advertising Identifier, and You agree to abide by a user's setting in the Advertising Preference in Your use of the Advertising Identifier. In addition, You may request to use the Ad Network APIs to track application advertising conversion events. If You are granted permission to use the Ad Network APIs, You agree not to use such APIs, or any information obtained through the use of the Ad Network APIs, for any purpose other than verifying ad validation information as part of an advertising conversion event. You agree not to combine, correlate, link, or otherwise associate, either directly or indirectly, information that is provided as part of the ad validation through the use of the Ad Network APIs with other information You may have about a user. Apple reserves the right to reject any requests to use the Ad Network APIs, in its sole discretion.

Location and Maps; User Consents:

3.3.13 Applications that use location-based APIs (e.g., Core Location, MapKit API) or otherwise provide location-based services may not be designed or marketed for automatic or autonomous control of vehicle behavior, or for emergency or life-saving purposes.

3.3.14 Applications that offer location-based services or functionality, or that otherwise obtain a user's location through the use of the Apple Software or Apple Services, must notify and obtain consent from a user before a user's location data is collected, transmitted or otherwise used by the Application and then such data must be used only as consented to by the user and as permitted herein. For example, if You use the "Always" location option in Your Application for the purpose of continuous collection and use of a user's location data, You should provide a clearly defined justification and user benefit that is presented to the user at the time of the permission.

3.3.15 If You choose to provide Your own location-based service, data and/or information in conjunction with the Apple maps provided through the Apple Maps Service (e.g., overlaying a map or route You have created on top of an Apple map), You are solely responsible for ensuring that Your service, data and/or information correctly aligns with any Apple maps used. For Applications that use location-based APIs for real-time navigation (including, but not limited to, turn-by-turn route guidance and other routing that is enabled through the use of a sensor), You must have an end-user license agreement that includes the following notice: YOUR USE OF THIS REAL TIME ROUTE GUIDANCE APPLICATION IS AT YOUR SOLE RISK. LOCATION DATA MAY NOT BE ACCURATE.

3.3.16 Applications must not disable, override or otherwise interfere with any Apple-implemented system alerts, warnings, display panels, consent panels and the like, including, but not limited to, those that are intended to notify the user that the user's location data, address book data, calendar, photos, audio data, and/or reminders are being collected, transmitted, maintained, processed or used, or intended to obtain consent for such use. Further, if You have the ability to add a description in such alerts, warnings, and display panels (e.g., information in the purpose strings for the Camera APIs), any such description must be accurate and not misrepresent the scope of use. If consent is denied or withdrawn, Applications may not collect, transmit, maintain, process or utilize such data or perform any other actions for which the user's consent has been denied or withdrawn.

3.3.17 If Your Application (or Your website or web application, as applicable) uses or accesses the MapKit API or MapKit JS from a device running iOS version 6 or later, Your Application (or Your website or web application, as applicable) will access and use the Apple Maps Service. All use of the MapKit API, MapKit JS, and Apple Maps Service must be in accordance with the terms of this Agreement (including the Program Requirements) and Attachment 6 (Additional Terms for the use of the Apple Maps Service).

Content and Materials:

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

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

3.3.20 Applications may be rejected if they contain content or materials of any kind (text, graphics, images, photographs, sounds, etc.) that in Apple's reasonable judgment may be found

objectionable or inappropriate, for example, materials that may be considered obscene, pornographic, or defamatory.

3.3.21 Applications must not contain any malware, malicious or harmful code, program, or other internal component (e.g., computer viruses, trojan horses, “backdoors”) which could damage, destroy, or adversely affect the Apple Software, services, Apple-branded products, or other software, firmware, hardware, data, systems, services, or networks.

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

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

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

In-App Purchase API:

3.3.25 All use of the In-App Purchase API and related services must be in accordance with the terms of this Agreement (including the Program Requirements) and Attachment 2 (Additional Terms for Use of the In-App Purchase API).

Network Extension Framework:

3.3.26 Your Application must not access the Network Extension Framework unless Your Application is primarily designed for providing networking capabilities, and You have received an entitlement from Apple for such access. You agree to the following if You receive such entitlement:

- You agree to clearly disclose to end-users how You and Your Application will be using their network information and, if applicable, filtering their network data, and You agree to use such data and information only as expressly consented to by the end-user and as expressly permitted herein;
- You agree to store and transmit network information or data from an end-user in a secure and appropriate manner;
- You agree not to divert an end-user's network data or information through any undisclosed, improper, or misleading processes, e.g., to filter it through a website to obtain advertising revenue or spoof a website;
- You agree not to use any network data or information from end-users to bypass or override any end-user settings, e.g., You may not track an end-user's WiFi network usage to determine their location if they have disabled location services for Your Application; and

- Notwithstanding anything to the contrary in **Section 3.3.9**, You and Your Application may not use the Network Extension Framework, or any data or information obtained through the Network Extension Framework, for any purpose other than providing networking capabilities in connection with Your Application (e.g., not for using an end-user's Internet traffic to serve advertising or to otherwise build user profiles for advertising).

Apple reserves the right to not provide You with an entitlement to use the Network Extension Framework in its sole discretion and to revoke such entitlement at any time. In addition, if You would like to use the Access WiFi Information APIs (which provide the WiFi network to which a device is connected), then You must request an entitlement from Apple for such use, and, notwithstanding anything to the contrary in **Section 3.3.9**, You may use such APIs only for providing a service or function that is directly relevant to the Application (e.g., not for serving advertising).

MFi Accessories:

3.3.27 Your Application may interface, communicate, or otherwise interoperate with or control an MFi Accessory (as defined above) through wireless transports or through Apple's lightning or 30-pin connectors only if (i) such MFi Accessory is licensed under the MFi Program at the time that You initially submit Your Application, (ii) the MFi Licensee has added Your Application to a list of those approved for interoperability with their MFi Accessory, and (iii) the MFi Licensee has received approval from the MFi Program for such addition.

Regulatory Compliance:

3.3.28 You will fulfill any applicable regulatory requirements, including full compliance with all applicable laws, regulations, and policies related to the manufacturing, marketing, sale and distribution of Your Application in the United States, and in particular the requirements of the U.S. Food and Drug Administration (FDA) as well as other U.S. regulatory bodies such as the FAA, HHS, FTC, and FCC, and the laws, regulations and policies of any other applicable regulatory bodies in any countries or territories where You use or make Your Application available, e.g., MHRA, CFDA. However, You agree that You will not seek any regulatory marketing permissions or make any determinations that may result in any Apple products being deemed regulated or that may impose any obligations or limitations on Apple. By submitting Your Application to Apple for selection for distribution, You represent and warrant that You are in full compliance with any applicable laws, regulations, and policies, including but not limited to all FDA laws, regulations and policies, related to the manufacturing, marketing, sale and distribution of Your Application in the United States, as well as in other countries or territories where You plan to make Your Application available. You also represent and warrant that You will market Your Application only for its cleared or approved intended use/indication for use, and only in strict compliance with applicable regulatory requirements. Upon Apple's request, You agree to promptly provide any such clearance documentation to support the marketing of Your Application. If requested by the FDA or by another government body that has a need to review or test Your Application as part of its regulatory review process, You may provide Your Application to such entity for review purposes. You agree to promptly notify Apple in accordance with the procedures set forth in **Section 14.5** of any complaints or threats of complaints regarding Your Application in relation to any such regulatory requirements, in which case Apple may remove Your Application from distribution.

Cellular Network:

3.3.29 If an Application requires or will have access to the cellular network, then additionally such Application:

- Must comply with Apple's best practices and other guidelines on how Applications should access and use the cellular network; and

- Must not in Apple's reasonable judgment excessively use or unduly burden network capacity or bandwidth.

3.3.30 Because some mobile network operators may prohibit or restrict the use of Voice over Internet Protocol (VoIP) functionality over their network, such as the use of VoIP telephony over a cellular network, and may also impose additional fees, or other charges in connection with VoIP. You agree to inform end-users, prior to purchase, to check the terms of agreement with their operator, for example, by providing such notice in the marketing text that You provide accompanying Your Application on the App Store. In addition, if Your Application allows end-users to send SMS messages or make cellular voice calls, then You must inform the end-user, prior to use of such functionality, that standard text messaging rates or other carrier charges may apply to such use.

Apple Push Notification Service and Local Notifications:

3.3.31 All use of Push Notifications via the Apple Push Notification Service or Local Notifications must be in accordance with the terms of this Agreement (including the Program Requirements) and Attachment 1 (Additional Terms for Apple Push Notification Service and Local Notifications).

Game Center:

3.3.32 All use of the Game Center must be in accordance with the terms of this Agreement (including the Program Requirements) and Attachment 3 (Additional Terms for the Game Center).

iCloud:

3.3.33 All use of the iCloud Storage APIs and CloudKit APIs, as well as Your use of the iCloud service under this Agreement, must be in accordance with the terms of this Agreement (including the Program Requirements) and Attachment 4 (Additional Terms for the use of iCloud).

Wallet:

3.3.34 Your development of Passes, and use of the Pass Type ID and Wallet under this Agreement, must be in accordance with the terms of this Agreement (including the Program Requirements) and Attachment 5 (Additional Terms for Passes).

Additional Services or End-User Pre-Release Software:

3.3.35 From time to time, Apple may provide access to additional Services or pre-release Apple Software for You to use in connection with Your Applications, or as an end-user for evaluation purposes. Some of these may be subject to separate terms and conditions in addition to this Agreement, in which case Your usage will also be subject to those terms and conditions. Such services or software may not be available in all languages or in all countries, and Apple makes no representation that they will be appropriate or available for use in any particular location. To the extent You choose to access such services or software, You do so at Your own initiative and are responsible for compliance with any applicable laws, including but not limited to applicable local laws. To the extent any such software includes Apple's FaceTime or Messages feature, You acknowledge and agree that when You use such features, the telephone numbers and device identifiers associated with Your Authorized Test Units, as well as email addresses and/or Apple ID information You provide, may be used and maintained by Apple to provide and improve such software and features. Certain services made accessible to You through the Apple Software may be provided by third parties. You acknowledge that Apple will not have any liability or responsibility to You or any other person (including to any end-user) for any third-party services or for any Apple services. Apple and its licensors reserve the right to change, suspend, remove, or disable access to any services at any time. In no event will Apple be liable for the removal or

disabling of access to any such services. Further, upon any commercial release of such software or services, or earlier if requested by Apple, You agree to cease all use of the pre-release Apple Software or Services provided to You as an end-user for evaluation purposes under this Agreement.

3.3.36 If Your Application accesses the Google Safe Browsing service through the Apple Software such access is subject to Google's terms of service set forth at: <https://developers.google.com/safe-browsing/terms>. If You do not accept such terms of service, then You may not use the Google Safe Browsing Service in Your Application, and You acknowledge and agree that such use will constitute Your acceptance of such terms of service.

3.3.37 If Your Application accesses data from an end-user's Address Book through the Address Book API, You must notify and obtain consent from the user before a user's Address Book data is accessed or used by Your Application. Further, Your Application may not provide an automated mechanism that transfers only the Facebook Data portions of the end-user's Address Book altogether to a location off of the end-user's device. For the sake of clarity, this does not prohibit an automated transfer of the user's entire Address Book as a whole, so long as user notification and consent requirements have been fulfilled; and does not prohibit enabling users to transfer any portion of their Address Book data manually (e.g., by cutting and pasting) or enabling them to individually select particular data items to be transferred.

Extensions:

3.3.38 Applications that include extensions in the Application bundle must provide some functionality beyond just the extensions (e.g., help screens, additional settings), unless an Application includes a WatchKit Extension. In addition:

- Extensions (excluding WatchKit Extensions) may not include advertising, product promotion, direct marketing, or In-App Purchase offers in their extension view;
- Extensions may not block the full screen of an iOS Product or Apple TV, or redirect, obstruct or interfere in an undisclosed or unexpected way with a user's use of another developer's application or any Apple-provided functionality or service;
- Extensions may operate only in Apple-designated areas of iOS, watchOS, iPadOS, or tvOS as set forth in the Documentation;
- Extensions that provide keyboard functionality must be capable of operating independent of any network access and must include Unicode characters (vs. pictorial images only);
- Any keystroke logging done by any such extension must be clearly disclosed to the end-user prior to any such data being sent from an iOS Product, and notwithstanding anything else in **Section 3.3.9**, such data may be used only for purposes of providing or improving the keyboard functionality of Your Application (e.g., not for serving advertising);
- Any message filtering done by an extension must be clearly disclosed to the end-user, and notwithstanding anything else in **Section 3.3.9**, any SMS or MMS data (whether accessed through a message filtering extension or sent by iOS to a messaging extension's corresponding server) may be used only for purposes of providing or improving the message experience of the user by reducing spam or messages from unknown sources, and must not be used for serving advertising or for any other purpose. Further, SMS or MMS data from a user that is accessed within the extension may not be exported from the extension's designated container area in any way; and

- Your Application must not automate installation of extensions or otherwise cause extensions to be installed without the user's knowledge, and You must accurately specify to the user the purpose and functionality of the extension.

HealthKit APIs and Motion & Fitness APIs:

3.3.39 Your Application must not access the HealthKit APIs or Motion & Fitness APIs unless the use of such APIs is for health, motion, and/or fitness purposes, and this usage is clearly evident in Your marketing text and user interface. In addition:

- Notwithstanding anything to the contrary in **Section 3.3.9**, You and Your Application may not use the HealthKit APIs or the Motion & Fitness APIs, or any information obtained through the HealthKit APIs or the Motion & Fitness APIs, for any purpose other than providing health, motion, and/or fitness services in connection with Your Application (e.g., not for serving advertising);
- You must not use the HealthKit APIs or the Motion & Fitness APIs, or any information obtained through the HealthKit APIs or the Motion & Fitness APIs, to disclose or provide an end-user's health, motion, and/or fitness information to a third party without prior express end-user consent, and then only for purposes of enabling the third party to provide health, motion, and/or fitness services as permitted herein. For example, You must not share or sell an end-user's health information collected through the HealthKit APIs or Motion & Fitness APIs to advertising platforms, data brokers, or information resellers. For clarity, You may allow end-users to consent to share their data with third parties for medical research purposes; and
- You agree to clearly disclose to end-users how You and Your Application will be using their health, motion, and/or fitness information and to use it only as expressly consented to by the end-user and as expressly permitted herein.

Configuration Profiles:

3.3.40 Configuration Profiles cannot be delivered to consumers other than for the purposes of configuration of WiFi, APN, or VPN settings, or as otherwise expressly permitted by Apple in the then-current Configuration Profile Reference Documentation. You must make a clear declaration of what user data will be collected and how it will be used on an app screen or other notification mechanism prior to any user action to use a Configuration Profile. You may not share or sell user data obtained through a Configuration Profile to advertising platforms, data brokers, or information resellers. In addition, You may not override the consent panel for a Configuration Profile or any other mechanisms of a Configuration Profile.

HomeKit APIs:

3.3.41 Your Application must not access the HomeKit APIs unless it is primarily designed to provide home configuration or home automation services (e.g., turning on a light, lifting a garage door) for Licensed HomeKit Accessories and this usage is clearly evident in Your marketing text and user interface. You agree not to use the HomeKit APIs for any purpose other than interfacing, communicating, interoperating with or otherwise controlling a Licensed HomeKit Accessory or for using the HomeKit Database, and then only for home configuration or home automation purposes in connection with Your Application. In addition:

- Your Application may use information obtained from the HomeKit APIs and/or the HomeKit Database only on a compatible Apple-branded product and may not export, remotely access or transfer such information off of the applicable product (e.g., a lock password cannot be sent off an end-user's device to be stored in an external non-Apple database), unless otherwise expressly permitted by Apple in the Documentation; and

- Notwithstanding anything to the contrary in **Section 3.3.9**, You and Your Application may not use the HomeKit APIs, or any information obtained through the HomeKit APIs or through the HomeKit Database, for any purpose other than providing or improving home configuration or home automation services in connection with Your Application (e.g., not for serving advertising).

Apple Pay APIs:

3.3.42 Your Application may use the Apple Pay APIs solely for the purpose of facilitating payment transactions that are made by or through Your Application, and only for the purchase of goods and services that are to be used outside of any iOS Product or Apple Watch, unless otherwise permitted by Apple in writing. For clarity, nothing in this **Section 3.3.42** supplants any of the rules or requirements for the use of the In-App Purchase API, including but not limited to **Section 3.3.3** and the guidelines. In addition:

- You acknowledge and agree that Apple is not a party to any payment transactions facilitated through the use of the Apple Pay APIs and is not responsible for any such transactions, including but not limited to the unavailability of any end-user payment cards or payment fraud. Such payment transactions are between You and Your bank, acquirer, card networks, or other parties You utilize for transaction processing, and You are responsible for complying with any agreements You have with such third parties. In some cases, such agreements may contain terms specifying specific rights, obligations or limitations that You accept and assume in connection with Your decision to utilize the functionality of the Apple Pay APIs;
- You agree to store any private keys provided to You as part of Your use of the Apple Pay APIs in a secure manner (e.g., encrypted on a server) and in accordance with the Documentation. You agree not to store any end-user payment information in an unencrypted manner on an iOS Product. For clarity, You may not decrypt any such end-user payment information on an iOS Product;
- You agree not to call the Apple Pay APIs or otherwise attempt to gain information through the Apple Pay APIs for purposes unrelated to facilitating end-user payment transactions; and
- If You use Apple Pay APIs in Your Application, then You agree to use commercially reasonable efforts to include Apple Pay Cash as a payment option with Your use of the Apple Pay APIs in accordance with the Documentation and provided that Apple Pay Cash is available in the jurisdiction in which the Application is distributed.

3.3.43 As part of facilitating an end-user payment transaction through the Apple Pay APIs, Apple may provide You (whether You are acting as the Merchant or as an Intermediary Party) with an Apple Pay Payload. If You receive an Apple Pay Payload, then You agree to the following:

- If You are acting as the Merchant, then You may use the Apple Pay Payload to process the end-user payment transaction and for other uses that You disclose to the end-user, and only in accordance with applicable law; and
- If You are acting as an Intermediary Party, then:
 - (a) You may use the Apple Pay Payload only for purposes of facilitating the payment transaction between the Merchant and the end-user and for Your own order management purposes (e.g., customer service) as part of such transaction;
 - (b) You agree that You will not hold the Apple Pay Payload data for any longer than necessary to fulfill the payment transaction and order management purposes for which it was collected;
 - (c) You agree not to combine data obtained through the Apple Pay APIs, including but not limited to, the Apple Pay Payload with any other data that You may have about such end-user (except to the limited extent necessary for order management purposes). For clarity, an Intermediary Party

may not use data obtained through the Apple Pay APIs for advertising or marketing purposes, for developing or enhancing a user profile, or to otherwise target end-users;

(d) You agree to disclose to end-users that You are an Intermediary Party to the transaction and to provide the identity of the Merchant for a particular transaction on the Apple Pay Payment Sheet (in addition to including Your name as an Intermediary Party); and

(e) If You use a Merchant, then You will be responsible for ensuring that the Merchant You select uses the Apple Pay Payload provided by You only for purposes of processing the end-user payment transaction and for other uses they have disclosed to the end-user, and only in accordance with applicable law. You agree to have a binding written agreement with such Merchant with terms at least as restrictive and protective of Apple as those set forth herein. Any actions undertaken by any such Merchant in relation to such Apple Pay Payload or the payment transaction shall be deemed to have been taken by You, and You (in addition to such Merchant) shall be responsible to Apple for all such actions (or any inactions). In the event of any actions or inactions by such Merchant that would constitute a violation of this Agreement or otherwise cause any harm, Apple reserves the right to require You to cease using such Merchant.

SiriKit:

3.3.44 Your Application may register as a destination to use the Apple-defined SiriKit domains, but only if Your Application is designed to provide relevant responses to a user, or otherwise carry out the user's request or intent, in connection with the applicable SiriKit domain (e.g., ride sharing) that is supported by Your Application and this usage is clearly evident in Your marketing text and user interface. In addition, Your Application may contribute actions to SiriKit, but only if such actions are tied to user behavior or activity within Your Application and for which You can provide a relevant response to the user. You agree not to submit false information through SiriKit about any such user activity or behavior or otherwise interfere with the predictions provided by SiriKit (e.g., SiriKit donations should be based on actual user behavior).

3.3.45 Your Application may use information obtained through SiriKit only on supported Apple products and may not export, remotely access or transfer such information off a device except to the extent necessary to provide or improve relevant responses to a user or carry out a user's request or in connection with Your Application. Notwithstanding anything to the contrary in **Section 3.3.9**, You and Your Application may not use SiriKit, or any information obtained through SiriKit, for any purpose other than providing relevant responses to a user or otherwise carrying out a user's request or intent in connection with an SiriKit domain, intent, or action supported by Your Application and/or for improving Your Application's responsiveness to user requests (e.g., not for serving advertising).

3.3.46 If Your Application uses SiriKit to enable audio data to be processed by Apple, You agree to clearly disclose to end-users that You and Your Application will be sending their recorded audio data to Apple for speech recognition, processing and/or transcription purposes, and that such audio data may be used to improve and provide Apple products and services. You further agree to use such audio data, and recognized text that may be returned from SiriKit, only as expressly consented to by the end-user and as expressly permitted herein.

Single Sign-On API:

3.3.47 You must not access or use the Single Sign-On API unless You are a Multi-channel Video Programming Distributor (MVPD) or unless Your Application is primarily designed to provide authenticated video programming via a subscription-based MVPD service, and You have received an entitlement from Apple to use the Single Sign-On API. If You have received such an entitlement, You are permitted to use the Single Sign-On API solely for the purpose of authenticating a user's entitlement to access Your MVPD content for viewing on an Apple Product, in accordance with the Single Sign-on Specification. Any such use must be in compliance with the Documentation for the Single Sign-On Specification. You acknowledge that Apple reserves the right to not provide You such an entitlement, and to revoke such entitlement,

at any time, in its sole discretion.

If You use the Single Sign-On API, You will be responsible for providing the sign-in page accessed by users via the Single Sign-On API where users sign in to authenticate their right to access Your MVPD content. You agree that such sign-in page will not display advertising, and that the content and appearance of such page will be subject to Apple's prior review and approval. If You use the Single Sign-On API and Apple provides an updated version of such API and/or the Single Sign-on Specification, You agree to update Your implementation to conform with the newer version and specification within 3 months after receiving the update from Apple.

You authorize Apple to use, reproduce, and display the trademarks provided by You for use in connection with the Single-Sign-On feature, including use in the user interface screens in Apple products where the user selects the provider and authenticates through Single Sign-on, and/or to provide the user with a list of apps that are accessible to such user through Single Sign-On. You also grant Apple the right to use screenshots and images of such user interface, including but not limited to use in instructional materials, training materials, marketing materials, and advertising in any medium. Data provided via the Single Sign-On API will be considered Licensed Application Information hereunder, but will be subject to the use limitations set forth in this Section.

You must not collect, store or use data provided via the Single Sign-On API for any purpose other than to authenticate a user's entitlement to access Your MVPD content on an Apple product, to provide the user access to Your MVPD content, and/or to address performance and technical problems with Your MVPD service. You will not provide or disclose data, content or information obtained from use of the Single Sign-On API to any other party except for authentication information provided to a video programming provider whose programming is offered as part of an MVPD subscription offered by You, and solely for the purpose of authenticating the user's entitlement to access such video programming on an Apple product under the user's MVPD subscription.

TV App API:

3.3.48 You may not use the TV App API unless (a) Your Application is primarily designed to provide video programming, (b) You have received an entitlement from Apple, and (c) Your use is in accordance with the TV App Specification. To the extent that You provide TV App Data to Apple, Apple may store, use, reproduce and display such data solely for the purposes of: (a) providing information and recommendations to users of TV App Features, (b) enabling users to link from such recommendations and/or information to content for viewing via Your Licensed Application, and/or (c) servicing, maintenance, and optimization of TV App Features. With respect to any TV App Data that has been submitted by You prior to termination of this Agreement, Apple may continue to use such data in accordance with this **Section 3.3.48** after termination of this Agreement. TV App Data will be considered Licensed Application Information under this Agreement, but will be subject to the use limitations set forth in this Section. You acknowledge that Apple reserves the right to not include Your Licensed Application in the TV App Features, in its sole discretion.

Apple will obtain user consent based on the user's Apple ID before including Your Licensed Application in the TV App Features displayed under that Apple ID. Apple will also provide users with the ability to withdraw such consent at any time thereafter and to delete their TV App Data from Apple's systems. In addition, You may solicit user consent based upon Your own subscriber ID system. You are responsible for Your compliance with all applicable laws, including any applicable local laws for obtaining user consent with respect to Your provision of TV App Data to Apple.

Spotlight-Image-Search Service:

3.3.49 To the extent that You provide Apple's spotlight-image-search service with access to any of Your domains that are associated with Your Licensed Applications (the "Associated Domain(s)"), You hereby grant Apple permission to crawl, scrape, copy, transmit and/or cache the content found in the Associated Domain(s) (the "Licensed Content") for the purposes set forth in this section. The Licensed Content shall be considered Licensed Application Information under this Agreement. You hereby further grant Apple a license to use, make, have made, reproduce, crop and/or modify the file format, resolution and appearance of the Licensed Content (for the purposes of reducing file size, converting to a supported file type and/or displaying thumbnails), and to publicly display, publicly perform, integrate, incorporate and distribute the Licensed Content to enhance search, discovery, and end-user distribution of the Licensed Content in Apple's Messages feature. Upon the termination of this Agreement for any reason, end users of Apple-branded products will be permitted to continue using and distributing all Licensed Content that they obtained through the use of Apple-branded products prior to such termination.

MusicKit:

3.3.50 You agree not to call the MusicKit APIs or use MusicKit JS (or otherwise attempt to gain information through the MusicKit APIs or MusicKit JS) for purposes unrelated to facilitating access to Your end users' Apple Music subscriptions. If You access the MusicKit APIs or MusicKit JS, then You must follow the Apple Music Identity Guidelines. You agree not to require payment for or indirectly monetize access to the Apple Music service (e.g. in-app purchase, advertising, requesting user info) through Your use of the MusicKit APIs, MusicKit JS, or otherwise in any way. In addition:

- If You choose to offer music playback through the MusicKit APIs or MusicKit JS, full songs must be enabled for playback, and users must initiate playback and be able to navigate playback using standard media controls such as "play," "pause," and "skip", and You agree to not misrepresent the functionality of these controls;
- You may not, and You may not permit Your end users to, download, upload, or modify any MusicKit Content and MusicKit Content cannot be synchronized with any other content, unless otherwise permitted by Apple in the Documentation;
- You may play MusicKit Content only as rendered by the MusicKit APIs or MusicKit JS and only as permitted in the Documentation (e.g., album art and music-related text from the MusicKit API may not be used separately from music playback or managing playlists);
- Metadata from users (such as playlists and favorites) may be used only to provide a service or function that is clearly disclosed to end users and that is directly relevant to the use of Your Application, website, or web application, as determined in Apple's sole discretion; and
- You may use MusicKit JS only as a stand-alone library in Your Application, website, or web application and only as permitted in the Documentation (e.g., You agree not to recombine MusicKit JS with any other JavaScript code or separately download and re-host it).

DeviceCheck APIs:

3.3.51 If You use DeviceCheck APIs to store DeviceCheck Data, then You must provide a mechanism for customers to contact You to reset those values, if applicable (e.g. resetting a trial subscription or re-authorizing certain usage when a new user acquires the device). You may not rely on the DeviceCheck Data as a single identifier of fraudulent conduct and must use the DeviceCheck Data only in connection with other data or information, e.g., the DeviceCheck Data cannot be the sole data point since a device may have been transferred or resold. Apple reserves the right to delete any DeviceCheck Data at any time in its sole discretion, and You agree not to rely on any such Data. Further, You agree not to share the DeviceCheck tokens You receive from Apple with any third party, except a Service Provider acting on Your behalf.

Face Data:

3.3.52 If Your Application accesses Face Data, then You must do so only to provide a service or function that is directly relevant to the use of the Application, and You agree to inform users of Your intended uses and disclosures of Face Data by Your Application and to obtain clear and conspicuous consent from such users before any collection or use of Face Data. Notwithstanding anything to the contrary in **Section 3.3.9**, neither You nor Your Application (nor any third party with whom You have contracted to serve advertising) may use Face Data for serving advertising or for any other unrelated purposes. In addition:

- You may not use Face Data in a manner that will violate the legal rights of Your users (or any third parties) or to provide an unlawful, unfair, misleading, fraudulent, improper, exploitative, or objectionable user experience and then only in accordance with the Documentation;
- You may not use Face Data for authentication, advertising, or marketing purposes, or to otherwise target an end-user in a similar manner;
- You may not use Face Data to build a user profile, or otherwise attempt, facilitate, or encourage third parties to identify anonymous users or reconstruct user profiles based on Face Data;
- You agree not to transfer, share, sell, or otherwise provide Face Data to advertising platforms, analytics providers, data brokers, information resellers or other such parties; and
- Face Data may not be shared or transferred off the user's device unless You have obtained clear and conspicuous consent for the transfer and the Face Data is used only in fulfilling a specific service or function for Your Application (e.g., a face mesh is used to display an image of the user within the Application) and only in accordance with these terms and the Documentation. You agree to require that Your service providers use Face Data only to the limited extent consented to by the user and only in accordance with these terms.

ClassKit APIs:

3.3.53 Your Application must not include the ClassKit APIs unless it is primarily designed to provide educational services, and this usage is clearly evident in Your marketing text and user interface. You agree not to submit false or inaccurate data through the ClassKit APIs or to attempt to redefine the assigned data categories for data submitted through the ClassKit APIs (e.g., student location data is not a supported data type and should not be submitted).

Sign In with Apple:

3.3.54 You may use Sign In with Apple in Your Corresponding Products only so long as Your use is comparable to including Sign In with Apple in Your Application. You may not share or sell user data obtained through Sign In with Apple to advertising platforms, data brokers, or information resellers. If a user has chosen to anonymize their user data as part of Sign In with Apple, You agree not to attempt to link such anonymized data with information that directly identifies the individual and that is obtained outside of Sign In with Apple without first obtaining user consent.

ShazamKit:

3.3.55 All use of the ShazamKit APIs must be in accordance with the terms of this Agreement (including the Apple Music Identity Guidelines and Program Requirements) and the Documentation. If You choose to display ShazamKit Content corresponding to songs available on Apple Music, then You must provide a link to the respective content within Apple Music in accordance with the Apple Music Identity Guidelines. Except to the extent expressly permitted

herein, You agree not to copy, modify, translate, create a derivative work of, publish or publicly display ShazamKit Content in any way. Further, You may not use or compare the data provided by the ShazamKit APIs for the purpose of improving or creating another audio recognition service. Applications that use the ShazamKit APIs may not be designed or marketed for compliance purposes (e.g., music licensing and royalty auditing).

Xcode Cloud:

3.3.56 To the extent that You use the Xcode Cloud Service to manage Your Xcode Cloud Content and build Your Applications, You hereby grant to Apple, its affiliates and agents, a non-exclusive, worldwide, fully paid-up, royalty-free license to reproduce, host, process, display, transmit, modify, create derivative works of, and otherwise use Your Xcode Cloud Content solely in order for Apple to provide the Xcode Cloud Service. You acknowledge and agree that: (a) You are solely responsible for such Xcode Cloud Content, in which Apple has no ownership rights, (b) if You choose to use a third party service (e.g., source code hosting, artifact storage, messaging, or testing services) with the Xcode Cloud Service, You are responsible for Your compliance with the terms and conditions governing such third party service, (c) the provision of user generated content (e.g., builds) by the Xcode Cloud Service shall not be considered a distribution for contractual or licensing obligations, (d) any execution of Your Xcode Cloud Content within Xcode Cloud shall be limited to testing of Your Xcode Cloud Content, (e) You shall not mine cryptocurrencies using Xcode Cloud, and (f) Your Xcode Cloud Content complies with the requirements set forth for Applications in 3.3.21 and 3.3.22.

3.3.57 While in no way limiting Apple's other rights under this Agreement, Apple reserves the right to take action if in its sole discretion, Apple determines or has reason to believe You have violated a term of this Agreement. These actions may include limiting, suspending, or revoking your access to the Xcode Cloud Service, or terminating your build.

4. Changes to Program Requirements or Terms

Apple may change the Program Requirements or the terms of this Agreement at any time. New or modified Program Requirements will not retroactively apply to Applications already in distribution via the App Store or Custom App Distribution; provided however that You agree that Apple reserves the right to remove Applications from the App Store or Custom App Distribution that are not in compliance with the new or modified Program Requirements at any time. In order to continue using the Apple Software, Apple Certificates or any Services, You must accept and agree to the new Program Requirements and/or new terms of this Agreement. If You do not agree to new Program Requirements or new terms, Your use of the Apple Software, Apple Certificates and any Services will be suspended or terminated by Apple. You agree that Your acceptance of such new Agreement terms or Program Requirements may be signified electronically, including without limitation, by Your checking a box or clicking on an "agree" or similar button. Nothing in this Section shall affect Apple's rights under **Section 5 (Apple Certificates; Revocation)**.

5. Apple Certificates; Revocation

5.1 Certificate Requirements

All Applications must be signed with an Apple Certificate in order to be installed on Authorized Test Units, Registered Devices, or submitted to Apple for distribution via the App Store, Custom App Distribution, or TestFlight. Similarly, all Passes must be signed with an Apple Certificate to be recognized and accepted by Wallet. Safari Extensions must be signed with an Apple Certificate to run in Safari on macOS. You must use a Website ID to send Safari Push Notifications to the macOS desktop of users who have opted in to receive such Notifications for Your Site through Safari on macOS. You may also obtain other Apple Certificates and keys for other purposes as set forth herein and in the Documentation.

In relation to this, You represent and warrant to Apple that:

- (a) You will not take any action to interfere with the normal operation of any Apple Certificates, keys, or Provisioning Profiles;
- (b) You are solely responsible for preventing any unauthorized person or organization from having access to Your Apple Certificates and keys, and You will use Your best efforts to safeguard Your Apple Certificates and keys from compromise (e.g., You will not upload Your Apple Certificate for App Store distribution to a cloud repository for use by a third-party);
- (c) You agree to immediately notify Apple in writing if You have any reason to believe there has been a compromise of any of Your Apple Certificates or keys;
- (d) You will not provide or transfer Apple Certificates or keys provided under this Program to any third party (except for a Service Provider who is using them on Your behalf in compliance with this Agreement and only to the limited extent expressly permitted by Apple in the Documentation or this Agreement (e.g., You are prohibited from providing or transferring Your Apple Certificates that are used for distribution or submission to the App Store to a Service Provider), and You will not use Your Apple Certificates to sign any third party's application, pass, extension, notification, implementation, or site;
- (e) You will use any Apple Certificates or keys provided under this Agreement solely as permitted by Apple and in accordance with the Documentation; and
- (f) You will use Apple Certificates provided under this Program exclusively for the purpose of signing Your Passes, signing Your Safari Extensions, signing Your Site's registration bundle, accessing the APN service, and/or signing Your Applications for testing, submission to Apple and/or for limited distribution for use on Registered Devices or Authorized Test Units as contemplated under this Program, or as otherwise permitted by Apple, and only in accordance with this Agreement. As a limited exception to the foregoing, You may provide versions of Your Applications to Your Service Providers to sign with their Apple-issued development certificates, but solely for purposes of having them perform testing on Your behalf of Your Applications on Apple-branded products running iOS, watchOS, iPadOS, and/or tvOS and provided that all such testing is conducted internally by Your Service Providers (e.g., no outside distribution of Your Applications) and that Your Applications are deleted within a reasonable period of time after such testing is performed. Further, You agree that Your Service Provider may use the data obtained from performing such testing services only for purposes of providing You with information about the performance of Your Applications (e.g., Your Service Provider is prohibited from aggregating Your Applications' test results with other developers' test results).

You further represent and warrant to Apple that the licensing terms governing Your Application, Your Safari Extension, Your Site's registration bundle, and/or Your Pass, or governing any third party code or FOSS included in Your Covered Products, will be consistent with and not conflict with the digital signing or content protection aspects of the Program or any of the terms, conditions or requirements of the Program or this Agreement. In particular, such licensing terms will not purport to require Apple (or its agents) to disclose or make available any of the keys, authorization codes, methods, procedures, data or other information related to the Security Solution, digital signing or digital rights management mechanisms or security utilized as part of any Apple software, including the App Store. If You discover any such inconsistency or conflict, You agree to immediately notify Apple of it and will cooperate with Apple to resolve such matter. You acknowledge and agree that Apple may immediately cease distribution of any affected Licensed Applications or Passes, and may refuse to accept any subsequent Application or Pass submissions from You until such matter is resolved to Apple's reasonable satisfaction.

5.2 Relying Party Certificates

The Apple Software and Services may also contain functionality that permits digital certificates, either Apple Certificates or other third-party certificates, to be accepted by the Apple Software or Services (e.g., Apple Pay) and/or to be used to provide information to You (e.g., transaction receipts, App Attest receipts). It is Your responsibility to verify the validity of any certifications or receipts You may receive from Apple prior to relying on them (e.g., You should verify that the receipt came from Apple prior to any delivery of content to an end-user through the use of the In-App Purchase API). You are solely responsible for Your decision to rely on any such certificates and receipts, and Apple will not be liable for Your failure to verify that any such certificates or

receipts came from Apple (or third parties) or for Your reliance on Apple Certificates or other digital certificates.

5.3 Notarized Applications for macOS

To have Your macOS Application notarized, You may request a digital file for authentication of Your Application from Apple's digital notary service (a "**Ticket**"). You can use this Ticket with Your Apple Certificate to receive an improved developer signing and user experience for Your Application on macOS. To request this Ticket from Apple's digital notary service, You must upload Your Application to Apple through Apple's developer tools (or other requested mechanisms) for purposes of continuous security checking. This continuous security checking will involve automated scanning, testing, and analysis of Your Application by Apple for malware or other harmful or suspicious code or components or security flaws, and, in limited cases, a manual, technical investigation of Your Application by Apple for such purposes. By uploading Your Application to Apple for this digital notary service, You agree that Apple may perform such security checks on Your Application for purposes of detecting malware or other harmful or suspicious code or components, and You agree that Apple may retain and use Your Application for subsequent security checks for the same purposes.

If Apple authenticates Your developer signature and Your Application passes the initial security checks, Apple may provide You with a Ticket to use with Your Apple Certificate. Apple reserves the right to issue Tickets in its sole discretion, and Apple may revoke Tickets at any time in its sole discretion in the event that Apple has reason to believe, or has reasonable suspicions, that Your Application contains malware or malicious, suspicious or harmful code or components or that Your developer identity signature has been compromised. You may request that Apple revoke Your Ticket at any time by emailing: product-security@apple.com. If Apple revokes Your Ticket or Your Apple Certificate, then Your Application may no longer run on macOS.

You agree to cooperate with Apple regarding Your Ticket requests and to not hide, attempt to bypass, or misrepresent any part of Your Application from Apple's security checks or otherwise hinder Apple from being able to perform such security checks. You agree not to represent that Apple has performed a security check or malware detection for Your Application or that Apple has reviewed or approved Your Application for purposes of issuing a Ticket to You from Apple's digital notary service. You acknowledge and agree that Apple is performing security checks solely in connection with Apple's digital notary service and that such security checks should not be relied upon for malware detection or security verification of any kind. You are fully responsible for Your own Application and for ensuring that Your Application is safe, secure, and operational for Your end-users (e.g., informing Your end-users that Your Application may cease to run if there is an issue with malware). You agree to comply with export requirements in Your jurisdiction when uploading Your Application to Apple, and You agree not to upload any Application that is: (a) subject to the United States Export Administration Regulations, 15 C.F.R. Parts 730-774 or to the International Traffic in Arms Regulations, 22 C.F.R. Parts 120-130; or (b) that cannot be exported without prior written government authorization, including, but not limited to, certain types of encryption software and source code, without first obtaining that authorization. Apple will not be liable to You or any third-party for any inability or failure to detect any malware or other suspicious, harmful code or components in Your Application or other security issues, or for any ticket issuance or revocation. Apple shall not be responsible for any costs, expenses, damages, losses or other liabilities You may incur as a result of Your Application development, use of the Apple Software, Apple Services (including this digital notary service), or Apple Certificates, tickets, or participation in the Program, including without limitation the fact that Apple performs security checks on Your Application.

5.4 Certificate Revocation

Except as otherwise set forth herein, You may revoke Apple Certificates issued to You at any time. If You want to revoke the Apple Certificates used to sign Your Passes and/or issued to You for use with Your macOS Applications distributed outside of the App Store, You may request that Apple revoke these Apple Certificates at any time by emailing: product-security@apple.com.

Apple also reserves the right to revoke any Apple Certificates at any time, in its sole discretion. By way of example only, Apple may choose to do this if: (a) any of Your Apple Certificates or corresponding private keys have been compromised or Apple has reason to believe that either have been compromised; (b) Apple has reason to believe or has reasonable suspicions that Your Covered Products contain malware or malicious, suspicious or harmful code or components (e.g., a software virus); (c) Apple has reason to believe that Your Covered Products adversely affect the security of Apple-branded products, or any other software, firmware, hardware, data, systems, or networks accessed or used by such products; (d) Apple's certificate issuance process is compromised or Apple has reason to believe that such process has been compromised; (e) You breach any term or condition of this Agreement; (f) Apple ceases to issue the Apple Certificates for the Covered Product under the Program; (g) Your Covered Product misuses or overburdens any Services provided hereunder; or (h) Apple has reason to believe that such action is prudent or necessary. Further, You understand and agree that Apple may notify end-users of Covered Products that are signed with Apple Certificates when Apple believes such action is necessary to protect the privacy, safety or security of end-users, or is otherwise prudent or necessary as determined in Apple's reasonable judgment. Apple's Certificate Policy and Certificate Practice Statements may be found at: <http://www.apple.com/certificateauthority>.

6. Application Submission and Selection

6.1 Submission to Apple for App Store or Custom App Distribution

You may submit Your Application for consideration by Apple for distribution via the App Store or Custom App Distribution once You decide that Your Application has been adequately tested and is complete. By submitting Your Application, You represent and warrant that Your Application complies with the Documentation and Program Requirements then in effect as well as with any additional guidelines that Apple may post on the Program web portal or in App Store Connect. You further agree that You will not attempt to hide, misrepresent or obscure any features, content, services or functionality in Your submitted Applications from Apple's review or otherwise hinder Apple from being able to fully review such Applications. In addition, You agree to inform Apple in writing through App Store Connect if Your Application connects to a physical device, including but not limited to an MFi Accessory, and, if so, to disclose the means of such connection (whether iAP, Bluetooth Low Energy (BLE), the headphone jack, or any other communication protocol or standard) and identify at least one physical device with which Your Application is designed to communicate. If requested by Apple, You agree to provide access to or samples of any such devices at Your expense (samples will not be returned). You agree to cooperate with Apple in this submission process and to answer questions and provide information and materials reasonably requested by Apple regarding Your submitted Application, including insurance information You may have relating to Your Application, the operation of Your business, or Your obligations under this Agreement. Apple may require You to carry certain levels of insurance for certain types of Applications and name Apple as an additional insured. If You make any changes to an Application (including to any functionality made available through use of the In-App Purchase API) after submission to Apple, You must resubmit the Application to Apple. Similarly all bug fixes, updates, upgrades, modifications, enhancements, supplements to, revisions, new releases and new versions of Your Application must be submitted to Apple for review in order for them to be considered for distribution via the App Store or Custom App Distribution, except as otherwise permitted by Apple.

6.2 App Thinning and Bundled Resources

As part of Your Application submission to the App Store or Custom App Distribution, Apple may optimize Your Application to target specific devices by repackaging certain functionality and delivered resources (as described in the Documentation) in Your Application so that it will run more efficiently and use less space on target devices ("**App Thinning**"). For example, Apple may deliver only the 32-bit or 64-bit version of Your Application to a target device, and Apple may not deliver icons or launch screens that would not render on the display of a target device. You agree that Apple may use App Thinning to repackage Your Application in order to deliver a more optimized version of Your Application to target devices.

As part of App Thinning, You can also request that Apple deliver specific resources for Your Application (e.g., GPU resources) to target devices by identifying such bundled resources as part of Your code submission ("**Bundled Resources**"). You can define such Bundled Resources to vary the timing or delivery of assets to a target device (e.g., when a user reaches a certain level of a game, then the content is delivered on-demand to the target device). App Thinning and Bundled Resources are not available for all Apple operating systems, and Apple may continue to deliver full Application binaries to some target devices.

6.3 iOS and iPadOS apps on Mac

If You compile Your Application for iOS or iPadOS (collectively "iOS" for purposes of this Section 6.3) and submit such Application for distribution on the App Store, You agree that Apple will make Your Application available on both iOS and macOS via the App Store, unless You choose to opt out of making Your Application available on macOS by following the opt out process in App Store Connect. You agree that the foregoing applies to an Application for iOS submitted by You and currently available on the App Store and to any future Application compiled for iOS and submitted by You to the App Store. Notwithstanding the foregoing, such availability on the App Store will apply only if such Application has been selected by Apple for distribution on the App Store pursuant to Section 7 and only if such Application can function appropriately on, and be compatible with, macOS, as determined in Apple's sole discretion. You are responsible for obtaining and determining if You have appropriate rights for Your Application to operate on macOS. If You do not have such rights, You agree to opt out of making such Application available on macOS. You are responsible for testing such Application on macOS.

6.4 Bitcode Submissions

For Application submissions to the App Store or Custom App Distribution for some Apple operating systems (e.g., for watchOS), Apple may require You to submit an intermediate representation of Your Application in binary file format for the LLVM compiler ("**Bitcode**"). You may also submit Bitcode for other supported Apple operating systems. Such Bitcode submission will allow Apple to compile Your Bitcode to target specific Apple-branded devices and to recompile Your Bitcode for subsequent releases of Your Application for new Apple hardware, software, and/or compiler changes. When submitting Bitcode, You may choose whether or not to include symbols for Your Application in the Bitcode; however, if You do not include symbols, then Apple will not be able to provide You with symbolicated crash logs or other diagnostic information as set forth in **Section 6.6 (Improving Your Application)** below. Further, You may be required to submit a compiled binary of Your Application with Your Bitcode.

By submitting Bitcode to Apple, You authorize Apple to compile Your Bitcode into a resulting binary that will be targeted for specific Apple-branded devices and to recompile Your Bitcode for subsequent rebuilding and recompiling of Your Application for updated hardware, software, and/or compiler changes (e.g., if Apple releases a new device, then Apple may use Your Bitcode to update Your Application without requiring resubmission). You agree that Apple may compile such Bitcode for its own internal use in testing and improving Apple's developer tools, and for purposes of analyzing and improving how applications can be optimized to run on Apple's operating systems (e.g., which frameworks are used most frequently, how a certain framework consumes memory, etc.). You may use Apple's developer tools to view and test how Apple may process Your Bitcode into machine code binary form. Bitcode is not available for all Apple operating systems.

6.5 TestFlight Submission

If You would like to distribute Your Application to Beta Testers outside of Your company or organization through TestFlight, You must first submit Your Application to Apple for review. By submitting such Application, You represent and warrant that Your Application complies with the Documentation and Program Requirements then in effect as well as with any additional guidelines that Apple may post on the Program web portal or in App Store Connect. Thereafter, Apple may permit You to distribute updates to such Application directly to Your Beta Testers

without Apple's review, unless such an update includes significant changes, in which case You agree to inform Apple in App Store Connect and have such Application re-reviewed. Apple reserves the right to require You to cease distribution of Your Application through TestFlight, and/or to any particular Beta Tester, at any time in its sole discretion.

6.6 Improving Your Application

Further, if Your Application is submitted for distribution via the App Store, Custom App Distribution or TestFlight, You agree that Apple may use Your Application for the limited purpose of compatibility testing of Your Application with Apple products and services, for finding and fixing bugs and issues in Apple products and services and/or Your Applications, for internal use in evaluating iOS, watchOS, tvOS, iPadOS, and/or macOS performance issues in or with Your Application, for security testing, and for purposes of providing other information to You (e.g., crash logs). Except as otherwise set forth herein, You may opt in to send app symbol information for Your Application to Apple, and if You do so, then You agree that Apple may use such symbols to symbolicate Your Application for purposes of providing You with symbolicated crash logs and other diagnostic information, compatibility testing of Your Application with Apple products and services, and for finding and fixing bugs and issues in Apple products and services and/or Your Application. In the event that Apple provides You with crash logs or other diagnostic information for Your Application, You agree to use such crash logs and information only for purposes of fixing bugs and improving the performance of Your Application and related products. You may also collect numeric strings and variables from Your Application when it crashes, so long as You collect such information only in an anonymous, non-personal manner and do not recombine, correlate, or use such information to attempt to identify or derive information about any particular end-user or device.

6.7 App Analytics

To the extent that Apple provides an Analytics service through App Store Connect for Applications distributed through the App Store, You agree to use any data provided through such App Analytics service solely for purposes of improving Your Applications and related products. Further, You agree not to provide such information to any third parties, except for a Service Provider who is assisting You in processing and analyzing such data on Your behalf and who is not permitted to use it for any other purpose or disclose it to any other party. For clarity, You must not aggregate (or permit any third-party to aggregate) analytics information provided to You by Apple for Your Applications as part of this App Analytics service with other developers' analytics information, or contribute such information to a repository for cross-developer analytics. You must not use the App Analytics service or any analytics data to attempt to identify or derive information about any particular end-user or device.

6.8 Compatibility Requirement with Current Shipping OS Version

Applications that are selected for distribution via the App Store must be compatible with the currently shipping version of Apple's applicable operating system (OS) software at the time of submission to Apple, and such Applications must stay current and maintain compatibility with each new release of the applicable OS version so long as such Applications are distributed through the App Store. You understand and agree that Apple may remove Applications from the App Store when they are not compatible with the then-current shipping release of the OS at any time in its sole discretion.

6.9 Selection by Apple for Distribution

You understand and agree that if You submit Your Application to Apple for distribution via the App Store, Custom App Distribution, or TestFlight, Apple may, in its sole discretion:

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

Distribution, or TestFlight.

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

7. Distribution of Applications and Libraries

Applications:

Applications developed under this Agreement for iOS, watchOS, iPadOS, or tvOS may be distributed in four ways: (1) through the App Store, if selected by Apple, (2) through the Custom App Distribution, if selected by Apple, (3) through Ad Hoc distribution in accordance with **Section 7.3**, and (4) for beta testing through TestFlight in accordance with **Section 7.4**. Applications for macOS may be distributed: (a) through the App Store, if selected by Apple, (b) separately distributed under this Agreement, and (c) for beta testing through TestFlight in accordance with **Section 7.4**.

7.1 Delivery of Free Licensed Applications via the App Store or Custom App Distribution

If Your Application qualifies as a Licensed Application, it is eligible for delivery to end-users via the App Store or Custom App Distribution by Apple and/or an Apple Subsidiary. If You would like Apple and/or an Apple Subsidiary to deliver Your Licensed Application or authorize additional content, functionality or services You make available in Your Licensed Application through the use of the In-App Purchase API to end-users for free (no charge) via the App Store or Custom App Distribution, then You appoint Apple and Apple Subsidiaries as Your legal agent and/or commissionaire pursuant to the terms of Schedule 1 for Licensed Applications designated by You as free-of-charge applications.

7.2 Schedule 2 and Schedule 3 for Fee-Based Licensed Applications; Receipts

If Your Application qualifies as a Licensed Application and You intend to charge end-users a fee of any kind for Your Licensed Application or within Your Licensed Application through the use of the In-App Purchase API, You must enter into a separate agreement (Schedule 2) with Apple and/or an Apple Subsidiary before any such commercial distribution of Your Licensed Application may take place via the App Store or before any such commercial delivery of additional content, functionality or services for which You charge end-users a fee may be authorized through the use of the In-App Purchase API in Your Licensed Application. If You would like Apple to sign and distribute Your Application for a fee through Custom App Distribution, then You must enter into a separate agreement (Schedule 3) with Apple and/or an Apple Subsidiary before any such distribution may take place. To the extent that You enter (or have previously entered) into Schedule 2 or Schedule 3 with Apple and/or an Apple Subsidiary, the terms of Schedule 2 or 3 will be deemed incorporated into this Agreement by this reference.

When an end-user installs Your Licensed Application, Apple will provide You with a transaction receipt signed with an Apple Certificate. It is Your responsibility to verify that such certificate and receipt were issued by Apple, as set forth in the Documentation. You are solely responsible for Your decision to rely on any such certificates and receipts. YOUR USE OF OR RELIANCE ON SUCH CERTIFICATES AND RECEIPTS IN CONNECTION WITH A PURCHASE OF A LICENSED APPLICATION IS AT YOUR SOLE RISK. APPLE MAKES NO WARRANTIES OR

REPRESENTATIONS, EXPRESS OR IMPLIED, AS TO MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, ACCURACY, RELIABILITY, SECURITY, OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS WITH RESPECT TO SUCH APPLE CERTIFICATES AND RECEIPTS. You agree that You will only use such receipts and certificates in accordance with the Documentation, and that You will not interfere or tamper with the normal operation of such digital certificates or receipts, including but not limited to any falsification or other misuse.

7.3 Distribution on Registered Devices (Ad Hoc Distribution)

Subject to the terms and conditions of this Agreement, You may also distribute Your Applications for iOS, watchOS, iPadOS, and tvOS to individuals within Your company, organization, educational institution, group, or who are otherwise affiliated with You for use on a limited number of Registered Devices (as specified in the Program web portal), if Your Application has been digitally signed using Your Apple Certificate as described in this Agreement. By distributing Your Application in this manner on Registered Devices, You represent and warrant to Apple that Your Application complies with the Documentation and Program Requirements then in effect and You agree to cooperate with Apple and to answer questions and provide information about Your Application, as reasonably requested by Apple. You also agree to be solely responsible for determining which individuals within Your company, organization, educational institution or affiliated group should have access to and use of Your Applications and Registered Devices, and for managing such Registered Devices. Apple shall not be responsible for any costs, expenses, damages, losses (including without limitation lost business opportunities or lost profits) or other liabilities You may incur as a result of distributing Your Applications in this manner, or for Your failure to adequately manage, limit or otherwise control the access to and use of Your Applications and Registered Devices. You will be responsible for attaching or otherwise including, at Your discretion, any relevant usage terms with Your Applications. Apple will not be responsible for any violations of Your usage terms. You will be solely responsible for all user assistance, warranty and support of Your Applications.

7.4 TestFlight Distribution

A. Internal Distribution to Authorized Developers and App Store Connect users

You may use TestFlight for internal distribution of pre-release versions of Your Applications to a limited number (as specified on the TestFlight developer website) of Your Authorized Developers or Your App Store Connect users who are members of Your company or organization, but solely for their internal use in testing, evaluating and/or developing Your Applications. Apple reserves the right to require You to cease distribution of such Applications to Your Authorized Developers or Your App Store Connect users through TestFlight, or to any particular Authorized Developer or App Store Connect user, at any time in its sole discretion.

B. External Distribution to Beta Testers

You may also use TestFlight for external distribution of pre-release versions of Your Applications to a limited number of Beta Testers (as specified on the TestFlight developer website), but solely for their testing and evaluation of such pre-release versions of Your Applications and only if Your Application has been approved for such distribution by Apple as set forth in **Section 6.5 (TestFlight Submission)**. You may not charge Your Beta Testers fees of any kind to participate in Apple's TestFlight or for the use of any such pre-release versions. You may not use TestFlight for purposes that are not related to improving the quality, performance, or usability of pre-release versions of Your Application (e.g., continuous distribution of demo versions of Your Application in an attempt to circumvent the App Store or providing trial versions of Your Applications for purposes of soliciting favorable App Store ratings are prohibited uses). Further, if Your Application is primarily intended for children, You must verify that Your Beta Testers are of the age of majority in their jurisdiction. If You choose to add Beta Testers to TestFlight, then You are assuming responsibility for any invitations sent to such end-users and for obtaining their consent to contact them. Apple will use the email addresses that You provide through TestFlight only for purposes of sending invitations to such end-users via TestFlight. By uploading email addresses for the purposes of sending invites to Beta Testers, You warrant that You have an appropriate

legal basis for using such emails addresses for the purposes of sending invites. If a Beta Tester requests that You stop contacting them (either through TestFlight or otherwise), then You agree to promptly do so.

C. Use of TestFlight Information

To the extent that TestFlight provides You with beta analytics information about Your end-user's use of pre-release versions of Your Application (e.g., installation time, frequency of an individual's use of an App, etc.) and/or other related information (e.g. tester suggestions, feedback, screenshots), You agree to use such data solely for purposes of improving Your Applications and related products. You agree not to provide such information to any third parties, except for a Service Provider who is assisting You in processing and analyzing such data on Your behalf and who is not permitted to use it for any other purpose or disclose it to any other party (and then only to the limited extent not prohibited by Apple). For clarity, You must not aggregate (or permit any third-party to aggregate) beta analytics information provided to You by Apple for Your Applications as part of TestFlight with other developers' beta analytics information, or contribute such information to a repository for cross-developer beta analytics information. Further, You must not use any beta analytics information provided through TestFlight for purposes of de-anonymizing information obtained from or regarding a particular device or end-user outside of TestFlight (e.g., You may not attempt to connect data gathered through TestFlight for a particular end-user with information that is provided in an anonymized form through Apple's analytics service).

Libraries:

7.5 Distribution of Libraries

You can develop Libraries using the Apple Software. Notwithstanding anything to the contrary in the Xcode and Apple SDKs Agreement or the Swift Playgrounds Agreement, under this Agreement You may develop Libraries for iOS, watchOS, iPadOS, and tvOS using the applicable Apple SDKs that are provided as part of the Xcode and Apple SDKs license or Swift Playgrounds license, provided that any such Libraries are developed and distributed solely for use with an iOS Product, Apple Watch, or Apple TV and that You limit use of such Libraries only to use with such products. If Apple determines that Your Library is not designed for use with an iOS Product, Apple Watch, or Apple TV, then Apple may require You to cease distribution of Your Library at any time, and You agree to promptly cease all distribution of such Library upon notice from Apple and cooperate with Apple to remove any remaining copies of such Library. For clarity, the foregoing limitation is not intended to prohibit the development of libraries for macOS.

7.6 No Other Distribution Authorized Under this Agreement

Except for the distribution of freely available Licensed Applications through the App Store or Custom App Distribution in accordance with **Sections 7.1** and **7.2**, the distribution of Applications for use on Registered Devices as set forth in **Section 7.2** (Ad Hoc Distribution), the distribution of Applications for beta testing through TestFlight as set forth in **Section 7.4**, the distribution of Libraries in accordance with **Section 7.5**, the distribution of Passes in accordance with Attachment 5, the delivery of Safari Push Notifications on macOS, the distribution of Safari Extensions on macOS, the distribution of Applications and libraries developed for macOS, and/or as otherwise permitted herein, no other distribution of programs or applications developed using the Apple Software is authorized or permitted hereunder. In the absence of a separate agreement with Apple, You agree not to distribute Your Application for iOS Products, Apple Watch, or Apple TV to third parties via other distribution methods or to enable or permit others to do so. You agree to distribute Your Covered Products only in accordance with the terms of this Agreement.

8. Program Fees

As consideration for the rights and licenses granted to You under this Agreement and Your participation in the Program, You agree to pay Apple the annual Program fee set forth on the

Program website, unless You have received a valid fee waiver from Apple. Such fee is non-refundable, and any taxes that may be levied on the Apple Software, Apple Services or Your use of the Program shall be Your responsibility. Your Program fees must be paid up and not in arrears at the time You submit (or resubmit) Applications to Apple under this Agreement, and Your continued use of the Program web portal and Services is subject to Your payment of such fees, where applicable. If You opt-in to have Your annual Program fees paid on an auto-renewing basis, then You agree that Apple may charge the credit card that You have on file with Apple for such fees, subject to the terms You agree to on the Program web portal when You choose to enroll in an auto-renewing membership.

9. Confidentiality

9.1 Information Deemed Apple Confidential

You agree that all pre-release versions of the Apple Software and Apple Services (including pre-release Documentation), pre-release versions of Apple hardware, the FPS Deployment Package, and any terms and conditions contained herein that disclose pre-release features will be deemed "Apple Confidential Information"; provided however that upon the commercial release of the Apple Software the terms and conditions that disclose pre-release features of the Apple Software or services will no longer be confidential. Notwithstanding the foregoing, Apple Confidential Information will not include: (i) information that is generally and legitimately available to the public through no fault or breach of Yours, (ii) information that is generally made available to the public by Apple, (iii) information that is independently developed by You without the use of any Apple Confidential Information, (iv) information that was rightfully obtained from a third party who had the right to transfer or disclose it to You without limitation, or (v) any FOSS included in the Apple Software and accompanied by licensing terms that do not impose confidentiality obligations on the use or disclosure of such FOSS. Further, Apple agrees that You will not be bound by the foregoing confidentiality terms with regard to technical information about pre-release Apple Software and services disclosed by Apple at WWDC (Apple's Worldwide Developers Conference), except that You may not post screenshots of, write public reviews of, or redistribute any pre-release Apple Software, Apple Services or hardware.

9.2 Obligations Regarding Apple Confidential Information

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

9.3 Information Submitted to Apple Not Deemed Confidential

Apple works with many application and software developers and some of their products may be similar to or compete with Your Applications. Apple may also be developing its own similar or competing applications and products or may decide to do so in the future. To avoid potential misunderstandings and except as otherwise expressly set forth herein, Apple cannot agree, and expressly disclaims, any confidentiality obligations or use restrictions, express or implied, with respect to any information that You may provide in connection with this Agreement or the

Program, including but not limited to information about Your Application, Licensed Application Information, and metadata (such disclosures will be referred to as “**Licensee Disclosures**”). You agree that any such Licensee Disclosures will be **non-confidential**. Except as otherwise expressly set forth herein, Apple will be free to use and disclose any Licensee Disclosures on an unrestricted basis without notifying or compensating You. You release Apple from all liability and obligations that may arise from the receipt, review, use, or disclosure of any portion of any Licensee Disclosures. Any physical materials You submit to Apple will become Apple property and Apple will have no obligation to return those materials to You or to certify their destruction.

9.4 Press Releases and Other Publicity

You may not issue any press releases or make any other public statements regarding this Agreement, its terms and conditions, or the relationship of the parties without Apple’s express prior written approval, which may be withheld at Apple’s discretion.

10. 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, independent contractors and agents (each an “Apple Indemnified Party”) from any and all claims, losses, liabilities, damages, taxes, expenses and costs, including without limitation, attorneys’ fees and court costs (collectively, “Losses”), incurred by an Apple Indemnified Party and arising from or related to any of the following (but excluding for purposes of this Section, any Application for macOS that is distributed outside of the App Store and does not use any Apple Services or Certificates): (i) Your breach of any certification, covenant, obligation, representation or warranty in this Agreement, including Schedule 2 and Schedule 3 (if applicable); (ii) any claims that Your Covered Product or the distribution, sale, offer for sale, use or importation of Your Covered Product (whether alone or as an essential part of a combination), Licensed Application Information, metadata, or Pass Information violate or infringe any third party intellectual property or proprietary rights; (iii) Your breach of any of Your obligations under the EULA (as defined in Schedule 1 or Schedule 2 or Schedule 3 (if applicable)) for Your Licensed Application; (iv) Apple’s permitted use, promotion or delivery of Your Licensed Application, Licensed Application Information, Safari Push Notification, Safari Extension (if applicable), Pass, Pass Information, metadata, related trademarks and logos, or images and other materials that You provide to Apple under this Agreement, including Schedule 2 or Schedule 3 (if applicable); (v) any claims, including but not limited to any end-user claims, regarding Your Covered Products, Licensed Application Information, Pass Information, or related logos, trademarks, content or images; or (vi) Your use (including Your Authorized Developers’ use) of the Apple Software or services, Your Licensed Application Information, Pass Information, metadata, Your Authorized Test Units, Your Registered Devices, Your Covered Products, or Your development and distribution of any of the foregoing.

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

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

11. Term and Termination

11.1 Term

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

fees and compliance with the terms of this Agreement, the Term will automatically renew for successive one (1) year terms, unless sooner terminated in accordance with this Agreement.

11.2 Termination

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

- (a) if You or any of Your Authorized Developers fail to comply with any term of this Agreement other than those set forth below in this **Section 11.2** and fail to cure such breach within 30 days after becoming aware of or receiving notice of such breach;
- (b) if You or any of Your Authorized Developers fail to comply with the terms of **Section 9 (Confidentiality)**;
- (c) in the event of the circumstances described in the subsection entitled “Severability” below;
- (d) if You, at any time during the Term, commence an action for patent infringement against Apple;
- (e) if You become insolvent, fail to pay Your debts when due, dissolve or cease to do business, file for bankruptcy, or have filed against You a petition in bankruptcy;
- (f) if You or any entity or person that directly or indirectly controls You, or is under common control with You (where “control” has the meaning defined in Section 14.8), are or become subject to sanctions or other restrictions in the countries available in App Store Connect; or
- (g) if You engage, or encourage others to engage, in any misleading, fraudulent, improper, unlawful or dishonest act relating to this Agreement, including, but not limited to, misrepresenting the nature of Your Application (e.g., hiding or trying to hide functionality from Apple’s review, falsifying consumer reviews for Your Application, engaging in payment fraud, etc.).

Apple may also terminate this Agreement, or suspend Your rights to use the Apple Software or services, if You fail to accept any new Program Requirements or Agreement terms as described in **Section 4**. Either party may terminate this Agreement for its convenience, for any reason or no reason, effective 30 days after providing the other party with written notice of its intent to terminate.

11.3 Effect of Termination

Upon the termination of this Agreement for any reason, You agree to immediately cease all use of the Apple Software and services and erase and destroy all copies, full or partial, of the Apple Software and any information pertaining to the services (including Your Push Application ID) and all copies of Apple Confidential Information in Your and Your Authorized Developers' possession or control. At Apple’s request, You agree to provide written certification of such destruction to Apple. Upon the expiration of the Delivery Period defined and set forth in Schedule 1, all Licensed Applications and Licensed Application Information in Apple’s possession or control shall be deleted or destroyed within a reasonable time thereafter, excluding any archival copies maintained in accordance with Apple’s standard business practices or required to be maintained by applicable law, rule or regulation. The following provisions shall survive any termination of this Agreement: Sections 1, 2.3, 2.5, 2.6, 3.1(d), 3.1(e), 3.1(f), 3.2(d), 3.2(e), 3.2(f), 3.2(g), and 3.3, the second paragraph of Section 5.1 (excluding the last two sentences other than the restrictions, which shall survive), the third paragraph of Section 5.1, the last sentence of the first paragraph of Section 5.3 and the limitations and restrictions of Section 5.3, Section 5.4, the first sentence of and the restrictions of Section 6.6, the restrictions of Section 6.7, the second paragraph of Section 6.9, Section 7.1 (Schedule 1 for the Delivery Period), the restrictions of Section 7.3, 7.4, and 7.5, Section 7.6, Section 9 through 14 inclusive; within Attachment 1, the last sentence of Section 1.1, Section 2, Section 3.2 (but only for existing promotions), the second and third sentences of Section 4, Section 5, and Section 6; within Attachment 2, Sections 1.3, 2, 3, 4, 5, 6, and 7; within Attachment 3, Sections 1, 2 (except the second sentence of Section 2.1), 3 and 4; within Attachment 4, Sections 1.2, 1.5, 1.6, 2, 3, and 4; within Attachment 5, Sections 2.2, 2.3, 2.4 (but only for existing promotions), 3.3, and 5; within Attachment 6, Sections 1.2, 1.3, 2, 3, and 4; and within Attachment 7, Section 1.1 and Section 1.2. Apple will not be liable for compensation, indemnity, or damages of any sort as a result of terminating this Agreement in accordance with its

terms, and termination of this Agreement will be without prejudice to any other right or remedy Apple may have, now or in the future.

12. NO WARRANTY

The Apple Software or Services may contain inaccuracies or errors that could cause failures or loss of data and it may be incomplete. Apple and its licensors reserve the right to change, suspend, remove, or disable access to any Services (or any part thereof) at any time without notice. In no event will Apple or its licensors be liable for the removal of or disabling of access to any such Services. Apple or its licensors may also impose limits on the use of or access to certain Services, or may remove the Services for indefinite time periods, or cancel the Services at any time, and in any case and without notice or liability. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, YOU EXPRESSLY ACKNOWLEDGE AND AGREE THAT USE OF THE APPLE SOFTWARE, SECURITY SOLUTION, AND ANY SERVICES IS AT YOUR SOLE RISK AND THAT THE ENTIRE RISK AS TO SATISFACTORY QUALITY, PERFORMANCE, ACCURACY AND EFFORT IS WITH YOU. THE APPLE SOFTWARE, SECURITY SOLUTION, AND ANY SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE", WITH ALL FAULTS AND WITHOUT WARRANTY OF ANY KIND, AND APPLE, APPLE'S AGENTS AND APPLE'S LICENSORS (**COLLECTIVELY REFERRED TO AS "APPLE" FOR THE PURPOSES OF SECTIONS 12 AND 13**) HEREBY DISCLAIM ALL WARRANTIES AND CONDITIONS WITH RESPECT TO THE APPLE SOFTWARE, SECURITY SOLUTION, AND SERVICES, EITHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, TIMELINESS, AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS. APPLE DOES NOT WARRANT AGAINST INTERFERENCE WITH YOUR ENJOYMENT OF THE APPLE SOFTWARE, SECURITY SOLUTION, OR SERVICES, THAT THE APPLE SOFTWARE, SECURITY SOLUTION, OR SERVICES WILL MEET YOUR REQUIREMENTS, THAT THE OPERATION OF THE APPLE SOFTWARE, SECURITY SOLUTION, OR THE PROVISION OF SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE OR ERROR-FREE, THAT DEFECTS OR ERRORS IN THE APPLE SOFTWARE, SECURITY SOLUTION, OR SERVICES WILL BE CORRECTED, OR THAT THE APPLE SOFTWARE, SECURITY SOLUTION, OR SERVICES WILL BE COMPATIBLE WITH FUTURE APPLE PRODUCTS, SERVICES OR SOFTWARE OR ANY THIRD PARTY SOFTWARE, APPLICATIONS, OR SERVICES, OR THAT ANY INFORMATION STORED OR TRANSMITTED THROUGH ANY APPLE SOFTWARE OR SERVICES WILL NOT BE LOST, CORRUPTED OR DAMAGED. YOU ACKNOWLEDGE THAT THE APPLE SOFTWARE AND SERVICES ARE NOT INTENDED OR SUITABLE FOR USE IN SITUATIONS OR ENVIRONMENTS WHERE ERRORS, DELAYS, FAILURES OR INACCURACIES IN THE TRANSMISSION OR STORAGE OF DATA OR INFORMATION BY OR THROUGH THE APPLE SOFTWARE OR SERVICES COULD LEAD TO DEATH, PERSONAL INJURY, OR FINANCIAL, PHYSICAL, PROPERTY 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 WILL CREATE A WARRANTY NOT EXPRESSLY STATED IN THIS AGREEMENT. SHOULD THE APPLE SOFTWARE, SECURITY SOLUTION, OR SERVICES PROVE DEFECTIVE, YOU ASSUME THE ENTIRE COST OF ALL NECESSARY SERVICING, REPAIR OR CORRECTION. Location data as well as any maps data provided by any Services or software is for basic navigational purposes only and is not intended to be relied upon in situations where precise location information is needed or where erroneous, inaccurate or incomplete location data may lead to death, personal injury, property or environmental damage. Neither Apple nor any of its licensors guarantees the availability, accuracy, completeness, reliability, or timeliness of location data or any other data or information displayed by any Services or software.

13. LIMITATION OF LIABILITY

TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW, IN NO EVENT WILL APPLE BE LIABLE FOR PERSONAL INJURY, OR ANY INCIDENTAL, SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES WHATSOEVER, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS, LOSS OF DATA, BUSINESS INTERRUPTION OR ANY OTHER COMMERCIAL DAMAGES OR LOSSES, ARISING OUT OF OR RELATED TO THIS AGREEMENT, YOUR USE OR INABILITY TO USE THE APPLE SOFTWARE, SECURITY SOLUTION, SERVICES, APPLE CERTIFICATES, OR YOUR DEVELOPMENT EFFORTS OR PARTICIPATION IN THE PROGRAM, HOWEVER CAUSED, WHETHER UNDER A THEORY OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), PRODUCTS LIABILITY, OR OTHERWISE, EVEN IF APPLE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY. In no event shall Apple's total liability to You under this Agreement for all damages (other than as may be required by applicable law in cases involving personal injury) exceed the amount of fifty dollars (\$50.00).

14. General Legal Terms

14.1 Third Party Notices

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

14.2 Consent to Collection and Use of Data

A. Pre-Release Versions of iOS, watchOS, tvOS, iPadOS, and macOS

In order to provide, test and help Apple, its partners, and third party developers improve their products and services, and unless You or Your Authorized Developers opt out in the pre-release versions of iOS, watchOS, tvOS, iPadOS, or macOS, as applicable, You acknowledge that Apple and its subsidiaries and agents will be collecting, using, storing, transmitting, processing and analyzing (collectively, "**Collecting**") diagnostic, technical, and usage logs and information from Your Authorized Test Units (that are running pre-release versions of the Apple Software and services) as part of the developer seeding process. This information will be Collected in a form that does not personally identify You or Your Authorized Developers and may be Collected from Your Authorized Test Units at any time. The information that would be Collected includes, but is not limited to, general diagnostic and usage data, various unique device identifiers, various unique system or hardware identifiers, details about hardware and operating system specifications, performance statistics, and data about how You use Your Authorized Test Unit, system and application software, and peripherals, and, if Location Services is enabled, certain location information. You agree that Apple may share such diagnostic, technical, and usage logs and information with partners and third-party developers for purposes of allowing them to improve their products and services that operate on or in connection with Apple-branded products. **By installing or using pre-release versions of iOS, watchOS, tvOS, iPadOS, or macOS on Your Authorized Test Units, You acknowledge and agree that Apple and its subsidiaries and agents have Your permission to Collect all such information and use it as set forth above in this Section.**

B. Other Pre-Release Apple Software and Services

In order to test, provide and improve Apple's products and services, and only if You choose to install or use other pre-release Apple Software or Services provided as part of the developer seeding process or Program, You acknowledge that Apple and its subsidiaries and agents may be Collecting diagnostic, technical, usage and related information from other pre-release Apple Software and Services. Apple will notify You about the Collection of such information on the Program web portal, and You should carefully review the release notes and other information disclosed by Apple in such location prior to choosing whether or not to install or use any such pre-release Apple Software or Services. **By installing or using such pre-release Apple Software**

and Services, You acknowledge and agree that Apple and its subsidiaries and agents have Your permission to Collect any and all such information and use it as set forth above.

C. Device Deployment Services

In order to set up and use the device provisioning, account authentication, and deployment features of the Apple Software and Services, certain unique identifiers for Your computer, iOS Products, watchOS devices, tvOS devices, and account information may be needed. These unique identifiers may include Your email address, Your Apple ID, a hardware identifier for Your computer, and device identifiers entered by You into the Apple Software or Services for such Apple-branded products. Such identifiers may be logged in association with Your interaction with the Service and Your use of these features and the Apple Software and Services. **By using these features, You agree that Apple and its subsidiaries and agents may Collect this information for the purpose of providing the Apple Software and Services, including using such identifiers for account verification and anti-fraud measures.** If You do not want to provide this information, do not use the provisioning, deployment or authentication features of the Apple Software or Services.

D. Apple Services

In order to test, provide and improve Apple's products and services, and only if You choose to use the Services provided hereunder (and except as otherwise provided herein), You acknowledge that Apple and its subsidiaries and agents may be Collecting diagnostic, technical, usage and related information from the Apple Services. Some of this information will be Collected in a form that does not personally identify You. However, in some cases, Apple may need to Collect information that would personally identify You, but only if Apple has a good faith belief that such Collection is reasonably necessary to: (a) provide the Apple Services; (b) comply with legal process or request; (c) verify compliance with the terms of this Agreement; (d) prevent fraud, including investigating any potential technical issues or violations; or (e) protect the rights, property, security or safety of Apple, its developers, customers or the public as required or permitted by law. **By installing or using such Apple Services, You acknowledge and agree that Apple and its subsidiaries and agents have Your permission to Collect any and all such information and use it as set forth in this Section.** Further, You agree that Apple may share the diagnostic, technical, and usage logs and information (excluding personally identifiable information) with partners and third-party developers for purposes of allowing them to improve their products and services that operate on or in connection with Apple-branded products.

E. Privacy Policy

Data collected pursuant to this **Section 14.2** will be treated in accordance with Apple's Privacy Policy which can be viewed at <http://www.apple.com/legal/privacy>.

14.3 Assignment; Relationship of the Parties

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. To submit a request for Apple's consent to assignment, please log into your account at developer.apple.com and follow the steps under Membership. Except for the agency appointment as specifically set forth in Schedule 1 (if applicable), this Agreement will not be construed as creating any other agency relationship, or a partnership, joint venture, fiduciary duty, or any other form of legal association between You and Apple, and You will not represent to the contrary, whether expressly, by implication, appearance or otherwise. This Agreement is not for the benefit of any third parties.

14.4 Independent Development

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

14.5 Notices

Any notices relating to this Agreement shall be in writing, except as otherwise set forth in **Section 14.3**. 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. Except as set forth in **Section 14.3**, 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: Developer Relations Legal, Apple Inc., One Apple Park Way, 37-2ISM, 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.

14.6 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 effect the intent of the parties, and the remainder of this Agreement shall continue in full force and effect. However, if applicable law prohibits or restricts You from fully and specifically complying with, or appointing Apple and Apple Subsidiaries as Your agent under Schedule 1 or the Sections of this Agreement entitled "Internal Use License and Restrictions", "Your Obligations" or "Apple Certificates; Revocation", or prevents the enforceability of any of those Sections or Schedule 1, this Agreement will immediately terminate and You must immediately discontinue any use of the Apple Software as described in the Section entitled "Term and Termination."

14.7 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.

14.8 Export Control

A. You may not use, export, re-export, import, sell, release, or transfer the Apple Software, Services, or Documentation except as authorized by United States law, the laws of the jurisdiction in which You obtained the Apple Software, and any other applicable laws and regulations. In particular, but without limitation, the Apple Software, Services, source code, technology, and Documentation (collectively referred to as "Apple Technology" for purposes of this Section 14.8) may not be exported, or re-exported, transferred, or released (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 on any other restricted party lists. By using the Apple Technology, You represent and warrant that You are not located in any such country or on any such list. You also agree that You will not use the Apple Technology, including any pre-release versions thereof, for any purposes prohibited by United States law, including, without limitation, the development, design, manufacture or production of nuclear, missile, chemical or biological weapons or any other military end uses as defined in 15 C.F.R. § 744. You certify that pre-release versions of the Apple Technology will only be used for development and testing purposes, and will not be rented, sold, leased, sublicensed, assigned, or otherwise transferred. Further, You certify that You will not sell, transfer or export any product, process or service that is a direct product of such pre-release Apple Technology.

B. You represent and warrant that You and any entity or person that directly or indirectly controls You, or is under common control with You, are not: (a) on any sanctions lists in the countries available in App Store Connect, (b) doing business in any of the US embargoed countries, and (c) a military end user as defined and scoped in 15 C.F.R § 744. As used in this Section 14.8,

“control” means that an entity or person possesses, directly or indirectly, the power to direct or cause the direction of the management policies of the other entity, whether through ownership of voting securities, an interest in registered capital, by contract, or otherwise.

14.9 Government End-users

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

14.10 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 10 (Indemnification)**), all claims, demands, complaints and disputes will be subject to the Contract Disputes Act (41 U.S.C. §§601-613), the Tucker Act (28 U.S.C. § 1346(a) and § 1491), or the Federal Tort Claims Act (28 U.S.C. §§ 1346(b), 2401-2402, 2671-2672, 2674-2680), as applicable, or other applicable governing authority. For the avoidance of doubt, if You are an agency, instrumentality, or department of the federal, state or local government of the U.S. or a U.S. public and accredited educational institution, then Your indemnification obligations are only applicable to the extent they would not cause You to violate any applicable law (e.g., the Anti-Deficiency Act), and You have any legally required authorization or authorizing statute;
- (b) If You (as an entity entering into this Agreement) are a U.S. public and accredited educational institution or an agency, instrumentality, or department of a state or local government within the United States, then (a) this Agreement will be governed and construed in accordance with the laws of the state (within the U.S.) in which Your entity is domiciled, except that body of state law concerning conflicts of law; and (b) any litigation or other dispute resolution between You and Apple arising out of or relating to this Agreement, the Apple Software, or Your relationship with Apple will take place in federal court within the Northern District of California, and You and Apple hereby consent to the personal jurisdiction of and exclusive venue of such District unless such consent is expressly prohibited by the laws of the state in which Your entity is domiciled; and
- (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.

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.

14.11 Entire Agreement; Governing Language

This Agreement constitutes the entire agreement between the parties with respect to the use of the Apple Software, Apple Services and Apple Certificates licensed hereunder and, except as otherwise set forth herein, supersedes all prior understandings and agreements regarding its subject matter. Notwithstanding the foregoing, to the extent that You are provided with pre-release materials under the Program and such pre-release materials are subject to a separate license agreement, You agree that the license agreement accompanying such materials in addition to **Section 9 (Confidentiality)** of this Agreement shall also govern Your use of such materials. If You have entered or later enter into the Xcode and Apple SDKs Agreement, this Apple Developer Program License Agreement will govern in the event of any inconsistencies between the two with respect to the same subject matter; provided, however, that this Apple Developer Program License Agreement is not intended to prevent You from exercising any rights granted to You in the Xcode and Apple SDKs Agreement in accordance with the terms and conditions set forth therein. If You have entered or later enter into the Swift Playgrounds Agreement, this Apple Developer Program License Agreement will govern in the event of any inconsistencies between the two with respect to the same subject matter; provided, however, that this Apple Developer Program License Agreement is not intended to prevent You from exercising any rights granted to You in the Swift Playgrounds Agreement in accordance with the terms and conditions set forth therein. This Agreement may be modified only: (a) by a written amendment signed by both parties, or (b) to the extent expressly permitted by this Agreement (for example, by Apple by written or email notice to You). Any translation 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, then the following clause applies to You: 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.*

Attachment 1 (to the Agreement)

Additional Terms for Apple Push Notification Service and Local Notifications

The following terms are in addition to the terms of the Agreement and apply to any use of the APN (Apple Push Notification Service):

1. Use of the APN and Local Notifications

1.1 You may use the APN only in Your Applications, Your Passes, and/or in sending Safari Push Notifications to the macOS desktop of users of Your Site who have opted in to receive Notifications through Safari on macOS. You, Your Application and/or Your Pass may access the APN only via the APN API and only if You have been assigned a Push Application ID by Apple. Except for a Service Provider who is assisting You with using the APN, You agree not to share Your Push Application ID with any third party. You understand that You will not be permitted to access or use the APN after expiration or termination of Your Agreement.

1.2 You are permitted to use the APN and the APN APIs only for the purpose of sending Push Notifications to Your Application, Your Pass, and/or to the macOS desktop of users of Your Site who have opted in to receive Notifications through Safari on macOS as expressly permitted by the Agreement, the APN Documentation and all applicable laws and regulations (including all intellectual property laws). You further agree that You must disclose to Apple any use of the APN as part of the submission process for Your Application.

1.3 You understand that before You send an end-user any Push Notifications through the APN, the end-user must consent to receive such Notifications. You agree not to disable, override or otherwise interfere with any Apple-implemented consent panels or any Apple system preferences for enabling or disabling Notification functionality. If the end-user's consent to receive Push Notifications is denied or later withdrawn, You may not send the end-user Push Notifications.

2. Additional Requirements

2.1 You may not use the APN or Local Notifications for the purpose of sending unsolicited messages to end-users or for the purpose of phishing or spamming, including, but not limited to, engaging in any types of activities that violate anti-spamming laws and regulations, or that are otherwise improper, inappropriate or illegal. The APN and Local Notifications should be used for sending relevant messages to a user that provide a benefit (e.g., a response to an end-user request for information, provision of pertinent information relevant to the Application).

2.2 You may not use the APN or Local Notifications for the purposes of advertising, product promotion, or direct marketing of any kind (e.g., up-selling, cross-selling, etc.), including, but not limited to, sending any messages to promote the use of Your Application or advertise the availability of new features or versions. Notwithstanding the foregoing, You may use the APN or Local Notifications for promotional purposes in connection with Your Pass so long as such use is directly related to the Pass, e.g., a store coupon may be sent to Your Pass in Wallet.

2.3 You may not excessively use the overall network capacity or bandwidth of the APN, or unduly burden an iOS Product, Apple Watch, macOS or an end-user with excessive Push Notifications or Local Notifications, as may be determined by Apple in its reasonable discretion. In addition, You agree not to harm or interfere with Apple's networks or servers, or any third party servers or networks connected to the APN, or otherwise disrupt other developers' use of the APN.

2.4 You may not use the APN or Local Notifications to send material that contains any obscene, pornographic, offensive or defamatory content or materials of any kind (text, graphics,

images, photographs, sounds, etc.), or other content or materials that in Apple's reasonable judgment may be found objectionable by the end-user of Your Application, Pass or Site.

2.5 You may not transmit, store or otherwise make available any material that contains viruses or any other computer code, files or programs that may harm, disrupt or limit the normal operation of the APN or an iOS Product, Apple Watch, or macOS, and You agree not to disable, spoof, hack or otherwise interfere with any security, digital signing, verification or authentication mechanisms that are incorporated in or used by the APN, or enable others to do so.

3. Additional Terms for Website Push IDs

3.1 Subject to the terms of this Agreement, You understand and agree that Safari Push Notifications that You send using Your Website Push ID must be sent under Your own name, trademark or brand (e.g., a user should know that the communication is coming from Your Site) and must include an icon, trademark, logo or other identifying mark for Your Site. You agree not to misrepresent or impersonate another Site or entity or otherwise mislead users about the originator of the Safari Push Notification. To the extent that You reference a third party's trademark or brand within Your Safari Push Notification, You represent and warrant that You have any necessary rights.

3.2 By enabling the APN and sending Safari Push Notifications for Your Site as permitted in this Agreement, You hereby permit Apple to use (i) screenshots of Your Safari Push Notifications on macOS; and (ii) trademarks and logos associated with such Notifications, for promotional purposes in Apple's marketing materials, excluding those portions which You do not have the right to use for promotional purposes and which You identify in writing to Apple. You also permit Apple to use images and other materials that You may provide to Apple, at Apple's reasonable request, for promotional purposes in marketing materials.

4. Delivery by the APN or via Local Notifications. You understand and agree that in order to provide the APN and make Your Push Notifications available on iOS Products, Apple Watch, or macOS, Apple may transmit Your Push Notifications across various public networks, in various media, and modify or change Your Push Notifications to comply with the technical and other requirements for connecting to networks or devices. You acknowledge and agree that the APN is not, and is not intended to be, a guaranteed or secure delivery service, and You shall not use or rely upon it as such. Further, as a condition to using the APN or delivering Local Notifications, You agree not to transmit sensitive personal or confidential information belonging to an individual (e.g., a social security number, financial account or transactional information, or any information where the individual may have a reasonable expectation of secure transmission) as part of any such Notification, and You agree to comply with any applicable notice or consent requirements with respect to any collection, transmission, maintenance, processing or use of an end-user's personal information.

5. Your Acknowledgements. You acknowledge and agree that:

5.1 Apple may at any time, and from time to time, with or without prior notice to You (a) modify the APN, including changing or removing any feature or functionality, or (b) modify, deprecate, reissue or republish the APN APIs. You understand that any such modifications may require You to change or update Your Applications, Passes or Sites at Your own cost. Apple has no express or implied obligation to provide, or continue to provide, the APN and may suspend or discontinue all or any portion of the APN at any time. Apple shall not be liable for any losses, damages or costs of any kind incurred by You or any other party arising out of or related to any such service suspension or discontinuation or any such modification of the APN or APN APIs.

5.2 The APN is not available in all languages or in all countries and Apple makes no representation that the APN is appropriate or available for use in any particular location. To the

extent You choose to access and use the APN, You do so at Your own initiative and are responsible for compliance with any applicable laws, including but not limited to any local laws.

5.3 Apple provides the APN to You for Your use with Your Application, Pass, or Site, and does not provide the APN directly to any end-user. You acknowledge and agree that any Push Notifications are sent by You, not Apple, to the end-user of Your Application, Pass or Site, and You are solely liable and responsible for any data or content transmitted therein and for any such use of the APN. Further, You acknowledge and agree that any Local Notifications are sent by You, not Apple, to the end-user of Your Application, and You are solely liable and responsible for any data or content transmitted therein.

5.4 Apple makes no guarantees to You in relation to the availability or uptime of the APN and is not obligated to provide any maintenance, technical or other support for the APN.

5.5 Apple reserves the right to remove Your access to the APN, limit Your use of the APN, or revoke Your Push Application ID at any time in its sole discretion.

5.6 Apple may monitor and collect information (including but not limited to technical and diagnostic information) about Your usage of the APN to aid Apple in improving the APN and other Apple products or services and to verify Your compliance with this Agreement; provided however that Apple will not access or disclose the content of any Push Notification unless Apple has a good faith belief that such access or disclosure is reasonably necessary to: (a) comply with legal process or request; (b) enforce the terms of this Agreement, including investigation of any potential violation hereof; (c) detect, prevent or otherwise address security, fraud or technical issues; or (d) protect the rights, property or safety of Apple, its developers, customers or the public as required or permitted by law. Notwithstanding the foregoing, You acknowledge and agree that iOS, iPadOS, macOS, and watchOS may access Push Notifications locally on a user's device solely for the purposes of responding to user requests and personalizing user experience and suggestions on device.

6. Additional Liability Disclaimer. APPLE SHALL NOT BE LIABLE FOR ANY DAMAGES OR LOSSES ARISING FROM ANY USE OF THE APN, INCLUDING ANY INTERRUPTIONS TO THE APN OR ANY USE OF NOTIFICATIONS, INCLUDING, BUT NOT LIMITED TO, ANY POWER OUTAGES, SYSTEM FAILURES, NETWORK ATTACKS, SCHEDULED OR UNSCHEDULED MAINTENANCE, OR OTHER INTERRUPTIONS.

Attachment 2 (to the Agreement) Additional Terms for Use of the In-App Purchase API

The following terms are in addition to the terms of the Agreement and apply to any use of the In-App Purchase API in Your Application:

1. Use of the In-App Purchase API

1.1 You may use the In-App Purchase API only to enable end-users to access or receive content, functionality, or services that You make available for use within Your Application (e.g., digital books, additional game levels, access to a turn-by-turn map service). You may not use the In-App Purchase API to offer goods or services to be used outside of Your Application.

1.2 You must submit to Apple for review and approval all content, functionality, or services that You plan to provide through the use of the In-App Purchase API in accordance with these terms and the processes set forth in **Section 6 (Application Submission and Selection)** of the Agreement. For all submissions, You must provide the name, text description, price, unique identifier number, and other information that Apple reasonably requests (collectively, the **"Submission Description"**). Apple reserves the right to review the actual content, functionality or service that has been described in the Submission Descriptions at any time, including, but not limited to, in the submission process and after approval of the Submission Description by Apple. If You would like to provide additional content, functionality or services through the In-App Purchase API that are not described in Your Submission Description, then You must first submit a new or updated Submission Description for review and approval by Apple prior to making such items available through the use of the In-App Purchase API. Apple reserves the right to withdraw its approval of content, functionality, or services previously approved, and You agree to stop making any such content, functionality, or services available for use within Your Application.

1.3 All content, functionality, and services offered through the In-App Purchase API are subject to the Program Requirements for Applications, and after such content, services or functionality are added to a Licensed Application, they will be deemed part of the Licensed Application and will be subject to all the same obligations and requirements. For clarity, Applications that provide keyboard extension functionality may not use the In-App Purchase API within the keyboard extension itself; however, they may continue to use the In-App Purchase API in separate areas of the Application.

2. Additional Restrictions

2.1 You may not use the In-App Purchase API to enable an end-user to set up a pre-paid account to be used for subsequent purchases of content, functionality, or services, or otherwise create balances or credits that end-users can redeem or use to make purchases at a later time.

2.2 You may not enable end-users to purchase Currency of any kind through the In-App Purchase API, including but not limited to any Currency for exchange, gifting, redemption, transfer, trading or use in purchasing or obtaining anything within or outside of Your Application. "Currency" means any form of currency, points, credits, resources, content or other items or units recognized by a group of individuals or entities as representing a particular value and that can be transferred or circulated as a medium of exchange.

2.3 Content and services may be offered through the In-App Purchase API on a subscription basis (e.g., subscriptions to newspapers and magazines). Rentals of content, services or functionality through the In-App Purchase API are not allowed (e.g., use of particular content may not be restricted to a pre-determined, limited period of time).

2.4 You may not use the In-App Purchase API to send any software updates to Your Application or otherwise add any additional executable code to Your Application. An In-App Purchase item must either already exist in Your Application waiting to be unlocked, be streamed to Your Application after the In-App Purchase API transaction has been completed, or be downloaded to Your Application solely as data after such transaction has been completed.

2.5 You may not use the In-App Purchase API to deliver any items that contain content or materials of any kind (text, graphics, images, photographs, sounds, etc.) that in Apple's reasonable judgment may be found objectionable or inappropriate, for example, materials that may be considered obscene, pornographic, or defamatory.

2.6 With the exception of items of content that an end-user consumes or uses up within Your Application (e.g., virtual supplies such as construction materials) (a "Consumable"), any other content, functionality, services or subscriptions delivered through the use of the In-App Purchase API (e.g., a sword for a game) (a "Non-Consumable") must be made available to end-users in accordance with the same usage rules as Licensed Applications (e.g., any such content, services or functionality must be available to all of the devices associated with an end-user's account). You will be responsible for identifying Consumable items to Apple and for disclosing to end-users that Consumables will not be available for use on other devices.

3. Your Responsibilities

3.1 For each successfully completed transaction made using the In-App Purchase API, Apple will provide You with a transaction receipt. It is Your responsibility to verify the validity of such receipt prior to the delivery of any content, functionality, or services to an end-user and Apple will not be liable for Your failure to verify that any such transaction receipt came from Apple.

3.2 Unless Apple provides You with user interface elements, You are responsible for developing the user interface Your Application will display to end-users for orders made through the In-App Purchase API. You agree not to misrepresent, falsely claim, mislead or engage in any unfair or deceptive acts or practices regarding the promotion and sale of items through Your use of the In-App Purchase API, including, but not limited to, in the Licensed Application Information and any metadata that You submit through App Store Connect. You agree to comply with all applicable laws and regulations, including those in any jurisdictions in which You make content, functionality, services or subscriptions available through the use of the In-App Purchase API, including but not limited to consumer laws and export regulations.

3.3 Apple may provide hosting services for Non-Consumables that You would like to provide to Your end-users through the use of the In-App Purchase API. Even if Apple hosts such Non-Consumables on Your behalf, You are responsible for providing items ordered through the In-App Purchase API in a timely manner (i.e., promptly after Apple issues the transaction receipt, except in cases where You have disclosed to Your end-user that the item will be made available at a later time) and for complying with all applicable laws in connection therewith, including but not limited to, laws, rules and regulations related to cancellation or delivery of ordered items. You are responsible for maintaining Your own records for all such transactions.

3.4 You will not issue any refunds to end-users of Your Application, and You agree that Apple may issue refunds to end-users in accordance with the terms of Schedule 2.

3.5 You may provide Apple, its subsidiaries, and agents with end-user consumption information from Your Application in order to inform and improve the refund process. You shall provide notice to the user and/or obtain consent from the user in compliance with the Documentation and applicable laws.

4. Apple Services

4.1 From time to time, Apple may choose to offer additional services and functionality relating to In-App Purchase API transactions. Apple makes no guarantees that the In-App Purchase API or any Services will continue to be made available to You or that they will meet Your requirements, be uninterrupted, timely, secure or free from error, that any information that You obtain from the In-App Purchase API or any Services will be accurate or reliable or that any defects will be corrected.

4.2 You understand that You will not be permitted to access or use the In-App Purchase API after expiration or termination of Your Agreement.

5. Your Acknowledgements. You acknowledge and agree that: Apple may at any time, and from time to time, with or without prior notice to You (a) modify the In-App Purchase API, including changing or removing any feature or functionality, or (b) modify, deprecate, reissue or republish the In-App Purchase API. You understand that any such modifications may require You to change or update Your Applications at Your own cost in order to continue to use the In-App Purchase API. Apple has no express or implied obligation to provide, or continue to provide, the In-App Purchase API or any services related thereto and may suspend or discontinue all or any portion of thereof at any time. Apple shall not be liable for any losses, damages or costs of any kind incurred by You or any other party arising out of or related to any suspension, discontinuation or modification of the In-App Purchase API or any services related thereto. Apple makes no guarantees to You in relation to the availability or uptime of the In-App Purchase API or any other services that Apple may provide to You in connection therewith, and Apple is not obligated to provide any maintenance, technical or other support related thereto. Apple provides the In-App Purchase API to You for Your use with Your Application, and may provide services to You in connection therewith (e.g., hosting services for Non-Consumable items). Apple is not responsible for providing or unlocking any content, functionality, services or subscriptions that an end-user orders through Your use of the In-App Purchase API. You acknowledge and agree that any such items are made available by You, not Apple, to the end-user of Your Application, and You are solely liable and responsible for such items ordered through the use of the In-App Purchase API and for any such use of the In-App Purchase API in Your Application or for any use of services in connection therewith.

6. Use of Digital Certificates for In-App Purchase. When an end-user completes a transaction using the In-App Purchase API in Your Application, Apple will provide You with a transaction receipt signed with an Apple Certificate. It is Your responsibility to verify that such certificate and receipt were issued by Apple, as set forth in the Documentation. You are solely responsible for Your decision to rely on any such certificates and receipts. YOUR USE OF OR RELIANCE ON SUCH CERTIFICATES AND RECEIPTS IN CONNECTION WITH THE IN-APP PURCHASE API IS AT YOUR SOLE RISK. APPLE MAKES NO WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, AS TO MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, ACCURACY, RELIABILITY, SECURITY, OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS WITH RESPECT TO SUCH APPLE CERTIFICATES AND RECEIPTS. You agree that You will only use such receipts and certificates in accordance with the Documentation, and that You will not interfere or tamper with the normal operation of such digital certificates or receipts, including but not limited to any falsification or other misuse.

7. Additional Liability Disclaimer. APPLE SHALL NOT BE LIABLE FOR ANY DAMAGES OR LOSSES ARISING FROM THE USE OF THE IN-APP PURCHASE API AND ANY SERVICES, INCLUDING, BUT NOT LIMITED TO, (I) ANY LOSS OF PROFIT (WHETHER INCURRED DIRECTLY OR INDIRECTLY), ANY LOSS OF GOODWILL OR BUSINESS REPUTATION, ANY LOSS OF DATA SUFFERED, OR OTHER INTANGIBLE LOSS, (II) ANY CHANGES WHICH APPLE MAY MAKE TO THE IN-APP PURCHASE API OR ANY SERVICES, OR FOR ANY PERMANENT OR TEMPORARY CESSATION IN THE PROVISION OF THE IN-APP PURCHASE API OR ANY SERVICES (OR ANY FEATURES WITHIN THE SERVICES) PROVIDED THEREWITH, OR (III) THE DELETION OF, CORRUPTION OF, OR FAILURE TO

PROVIDE ANY DATA TRANSMITTED BY OR THROUGH YOUR USE OF THE IN-APP PURCHASE API OR SERVICES. It is Your responsibility to maintain appropriate alternate backup of all Your information and data, including but not limited to any Non-Consumables that You may provide to Apple for hosting services.

Attachment 3 (to the Agreement) Additional Terms for the Game Center

The following terms are in addition to the terms of the Agreement and apply to any use of the Game Center service by You or Your Application.

1. Use of the Game Center service

1.1 You and Your Application may not connect to or use the Game Center service in any way not expressly authorized by Apple. You agree to only use the Game Center service in accordance with this Agreement (including this Attachment 3), the Game Center Documentation and in accordance with all applicable laws. You understand that neither You nor Your Application will be permitted to access or use the Game Center service after expiration or termination of Your Agreement.

1.2 Apple may provide You with a unique identifier which is associated with an end-user's alias as part of the Game Center service (the "Player ID"). You agree to not display the Player ID to the end-user or to any third party, and You agree to only use the Player ID for differentiation of end-users in connection with Your use of the Game Center. You agree not to reverse look-up, trace, relate, associate, mine, harvest, or otherwise exploit the Player ID, aliases or other data or information provided by the Game Center service, except to the extent expressly permitted herein. For example, You will not attempt to determine the real identity of an end-user.

1.3 You will only use information provided by the Game Center service as necessary for providing services and functionality for Your Applications. For example, You will not host or export any such information to a third party service. Further, You agree not to transfer or copy any user information or data (whether individually or in the aggregate) obtained through the Game Center service to a third party except as necessary for providing services and functionality for Your Applications, and then only with express user consent and only if not otherwise prohibited in this Agreement.

1.4 You will not attempt to gain (or enable others to gain) unauthorized use or access to the Game Center service (or any part thereof) in any way, including but not limited to obtaining information from the Game Center service using any method not expressly permitted by Apple. For example, You may not use packet sniffers to intercept any communications protocols from systems or networks connected to the Game Center, scrape any data or user information from the Game Center, or use any third party software to collect information through the Game Center about players, game data, accounts, or service usage patterns.

2. Additional Restrictions

2.1 You agree not to harm or interfere with Apple's networks or servers, or any third party servers or networks connected to the Game Center service, or otherwise disrupt other developers' or end-users' use of the Game Center. You agree that, except for testing and development purposes, You will not create false accounts through the use of the Game Center service or otherwise use the Game Center service to misrepresent information about You or Your Application in a way that would interfere with an end-users' use of the Game Center service, e.g., creating inflated high scores through the use of cheat codes or falsifying the number of user accounts for Your Application.

2.2 You will not institute, assist, or enable any disruptions of the Game Center, such as through a denial of service attack, through the use of an automated process or service such as a spider, script, or bot, or through exploiting any bug in the Game Center service or Apple Software. You agree not to probe, test or scan for vulnerabilities in the Game Center service. You further

agree not to disable, spoof, hack, undermine or otherwise interfere with any data protection, security, verification or authentication mechanisms that are incorporated in or used by the Game Center service, or enable others to do so.

2.3 You will not transmit, store or otherwise make available any material that contains viruses or any other computer code, files or programs that may harm, disrupt or limit the normal operation of the Game Center or an iOS Product.

2.4 You agree not to use any portion of the Game Center service for sending any unsolicited, improper or inappropriate messages to end-users or for the purpose of poaching, phishing or spamming of Game Center users. You will not reroute (or attempt to reroute) users of the Game Center to another service using any information You obtain through the use of the Game Center service.

2.5 You shall not charge any fees to end-users for access to the Game Center service or for any data or information provided therein.

2.6 To the extent that Apple permits You to manage certain Game Center features and functionality for Your Application through App Store Connect (e.g., the ability to block fraudulent users or eliminate suspicious leaderboard scores from Your Application's leaderboard), You agree to use such methods only when You have a reasonable belief that such users or scores are the result of misleading, fraudulent, improper, unlawful or dishonest acts.

3. Your Acknowledgements. You acknowledge and agree that:

3.1 Apple may at any time, and from time to time, with or without prior notice to You (a) modify the Game Center service, including changing or removing any feature or functionality, or (b) modify, deprecate, reissue or republish the Game Center APIs or related APIs. You understand that any such modifications may require You to change or update Your Applications at Your own cost. Apple has no express or implied obligation to provide, or continue to provide, the Game Center service and may suspend or discontinue all or any portion of the Game Center service at any time. Apple shall not be liable for any losses, damages or costs of any kind incurred by You or any other party arising out of or related to any such service suspension or discontinuation or any such modification of the Game Center service or Game Center APIs.

3.2 Apple makes no guarantees to You in relation to the availability or uptime of the Game Center service and is not obligated to provide any maintenance, technical or other support for such service. Apple reserves the right to remove Your access to the Game Center service at any time in its sole discretion. Apple may monitor and collect information (including but not limited to technical and diagnostic information) about Your usage of the Game Center service to aid Apple in improving the Game Center and other Apple products or services and to verify Your compliance with this Agreement.

4. Additional Liability Disclaimer. APPLE SHALL NOT BE LIABLE FOR ANY DAMAGES OR LOSSES ARISING FROM ANY INTERRUPTIONS TO THE GAME CENTER OR ANY SYSTEM FAILURES, NETWORK ATTACKS, SCHEDULED OR UNSCHEDULED MAINTENANCE, OR OTHER INTERRUPTIONS.

Attachment 4
(to the Agreement)
Additional Terms for the use of iCloud

The following terms are in addition to the terms of the Agreement and apply to Your use of the iCloud service for software development and testing in connection with Your Application, or Web Software.

1. Use of iCloud

1.1 Your Applications and/or Web Software may access the iCloud service only if You have been assigned an entitlement by Apple. You agree not to access the iCloud service, or any content, data or information contained therein, other than through the iCloud Storage APIs, CloudKit APIs or via the CloudKit console provided as part of the Program. You agree not to share Your entitlement with any third party or use it for any purposes not expressly permitted by Apple. You agree to use the iCloud service, the iCloud Storage APIs, and the CloudKit APIs only as expressly permitted by this Agreement and the iCloud Documentation, and in accordance with all applicable laws and regulations. Further, Your Web Software is permitted to access and use the iCloud service (e.g., to store the same type of data that is retrieved or updated in a Licensed Application) only so long as Your use of the iCloud service in such Web Software is comparable to Your use in the corresponding Licensed Application, as determined in Apple's sole discretion. In the event Apple Services permit You to use more than Your allotment of storage containers in iCloud in order to transfer data to another container for any reason, You agree to only use such additional container(s) for a reasonable limited time to perform such functions and not to increase storage and transactional allotments.

1.2 You understand that You will not be permitted to access or use the iCloud service for software development or testing after expiration or termination of Your Agreement; however end-users who have Your Applications or Web Software installed and who have a valid end-user account with Apple to use iCloud may continue to access their user-generated documents, private containers and files that You have chosen to store in such end-user's account via the iCloud Storage APIs or the CloudKit APIs in accordance with the applicable iCloud terms and conditions and these terms. You agree not to interfere with an end-user's ability to access iCloud (or the end-user's own user-generated documents, private containers and files) or to otherwise disrupt their use of iCloud in any way and at any time. With respect to data You store in public containers through the CloudKit APIs (whether generated by You or the end-user), Apple reserves the right to suspend access to or delete such data, in whole or in part, upon expiration or termination of Your Agreement, or as otherwise specified by Apple in the CloudKit console.

1.3 Your Application is permitted to use the iCloud Storage APIs only for the purpose of storage and retrieval of key value data (e.g., a list of stocks in a finance App, settings for an App) for Your Applications and Web Software and for purposes of enabling Your end-users to access user-generated documents and files through the iCloud service. Your Application or Web Software application is permitted to use the CloudKit APIs for storing, retrieving, and querying of structured data that You choose to store in public or private containers in accordance with the iCloud Documentation. You agree not to knowingly store any content or materials via the iCloud Storage APIs or CloudKit APIs that would cause Your Application to violate any of the iCloud terms and conditions or the Program Requirements for Your Applications (e.g., Your Application may not store illegal or infringing materials).

1.4 You may allow a user to access their user-generated documents and files from iCloud through the use of Your Applications as well as from Web Software. However, You may not share key value data from Your Application with other Applications or Web Software, unless You are sharing such data among different versions of the same title, or You have user consent.

1.5 You are responsible for any content and materials that You store in iCloud through the use of the CloudKit APIs and iCloud Storage APIs and must take reasonable and appropriate steps to protect information You store through the iCloud service. With respect to third party claims related to content and materials stored by Your end-users in Your Applications through the use of the iCloud Storage APIs or CloudKit APIs (e.g., user-generated documents, end-user posts in public containers), You agree to be responsible for properly handling and promptly processing any such claims, including but not limited to Your compliance with notices sent pursuant to the Digital Millennium Copyright Act (DMCA).

1.6 Unless otherwise expressly permitted by Apple in writing, You will not use iCloud, the iCloud Storage APIs, CloudKit APIs, or any component or function thereof, to create, receive, maintain or transmit any sensitive, individually-identifiable health information, including “protected health information” (as such term is defined at 45 C.F.R § 160.103), or use iCloud in any manner that would make Apple (or any Apple Subsidiary) Your or any third party’s “business associate” as such term is defined at 45 C.F.R. § 160.103. You agree to be solely responsible for complying with any reporting requirements under law or contract arising from Your breach of this Section.

2. Additional Requirements

2.1 You understand there are storage capacity, transmission, and transactional limits for the iCloud service, both for You as a developer and for Your end-users. If You reach or Your end-user reaches such limits, then You or Your end-user may be unable to use the iCloud service until You or Your end-user have removed enough data from the service to meet the capacity limits, increased storage capacity or otherwise modified Your usage of iCloud, and You or Your end-user may be unable to access or retrieve data from iCloud during this time.

2.2 You may not charge any fees to users for access to or use of the iCloud service through Your Applications or Web Software, and You agree not to sell access to the iCloud service in any other way, including but not limited to reselling any part of the service. You will only use the iCloud service in Your Application or Web Software to provide storage for an end-user who has a valid end-user iCloud account with Apple and only for use in accordance with the terms of such user account, except that You may use the CloudKit APIs to store data in public containers for access by end-users regardless of whether such users have iCloud accounts. You will not induce any end-user to violate the terms of their applicable iCloud service agreement with Apple or to violate any Apple usage policies for data or information stored in the iCloud service.

2.3 You may not excessively use the overall network capacity or bandwidth of the iCloud service or otherwise burden such service with unreasonable data loads or queries. You agree not to harm or interfere with Apple’s networks or servers, or any third party servers or networks connected to the iCloud, or otherwise disrupt other developers’ or users’ use of the iCloud service.

2.4 You will not disable or interfere with any warnings, system settings, notices, or notifications that are presented to an end-user of the iCloud service by Apple.

3. Your Acknowledgements

You acknowledge and agree that:

3.1 Apple may at any time, with or without prior notice to You (a) modify the iCloud Storage APIs or the CloudKit APIs, including changing or removing any feature or functionality, or (b) modify, deprecate, reissue or republish such APIs. You understand that any such modifications may require You to change or update Your Applications or Web Software at Your own cost. Apple has no express or implied obligation to provide, or continue to provide, the iCloud service and may suspend or discontinue all or any portion of the iCloud service at any time. Apple shall

not be liable for any losses, damages or costs of any kind incurred by You or any other party arising out of or related to any such service suspension or discontinuation or any such modification of the iCloud service, iCloud Storage APIs or the CloudKit APIs.

3.2 The iCloud service is not available in all languages or in all countries and Apple makes no representation that the iCloud service is appropriate or available for use in any particular location. To the extent You choose to provide access to the iCloud service in Your Applications or Web Software through the iCloud Storage APIs or CloudKit APIs (e.g., to store data in a public or private container), You do so at Your own initiative and are responsible for compliance with any applicable laws or regulations.

3.3 Apple makes no guarantees to You in relation to the availability or uptime of the iCloud service and is not obligated to provide any maintenance, technical or other support for the iCloud service. Apple is not responsible for any expenditures, investments, or commitments made by You in connection with the iCloud service, or for any use of or access to the iCloud service.

3.4 Apple reserves the right to suspend or revoke Your access to the iCloud service or impose limits on Your use of the iCloud service at any time in Apple's sole discretion. In addition, Apple may impose or adjust the limit of transactions Your Applications or Web Software may send or receive through the iCloud service or the resources or capacity that they may use at any time in Apple's sole discretion.

3.5 Apple may monitor and collect information (including but not limited to technical and diagnostic information) about usage of the iCloud service through the iCloud Storage APIs, CloudKit APIs, or CloudKit console, in order to aid Apple in improving the iCloud service and other Apple products or services; provided however that Apple will not access or disclose any end-user data stored in a private container through CloudKit, any Application data stored in a public container through CloudKit, or any user-generated documents, files or key value data stored using the iCloud Storage APIs and iCloud service, unless Apple has a good faith belief that such access, use, preservation or disclosure is reasonably necessary to comply with a legal or regulatory process or request, or unless otherwise requested by an end-user with respect to data stored via the iCloud Storage APIs in that end-user's iCloud account or in that end-user's private container via the CloudKit APIs.

3.6 Further, to the extent that You store any personal information relating to an individual or any information from which an individual can be identified (collectively, "Personal Data") in the iCloud service through the use of the iCloud Storage APIs or CloudKit APIs, You agree that Apple (and any applicable Apple Subsidiary for purposes of this Section 3.6) will act as Your agent for the processing, storage and handling of any such Personal Data. Apple agrees to ensure that any persons authorized to process such Personal Data have agreed to maintain confidentiality (whether through terms or under an appropriate statutory obligation). Apple shall have no right, title or interest in such Personal Data solely as a result of Your use of the iCloud service. You agree that You are solely liable and responsible for ensuring Your compliance with all applicable laws, including privacy and data protection laws, regarding the use or collection of data and information through the iCloud service. You are also responsible for all activity related to such Personal Data, including but not limited to, monitoring such data and activity, preventing and addressing inappropriate data and activity, and removing and terminating access to data. Further, You are responsible for safeguarding and limiting access to such Personal Data by Your personnel and for the actions of Your personnel who are permitted access to use the iCloud service on Your behalf. Personal Data provided by You and Your users to Apple through the iCloud service may be used by Apple only as necessary to provide and improve the iCloud service and to perform the following actions on Your behalf. Apple shall:

(a) use and handle such Personal Data only in accordance with the instructions and permissions from You set forth herein, as well as applicable laws, regulations, accords, or treaties. In the EEA

and Switzerland, Personal Data will be handled by Apple only in accordance with the instructions and permissions from You set forth herein unless otherwise required by European Union or Member State Law, in which case Apple will notify You of such other legal requirement (except in limited cases where Apple is prohibited by law from doing so);

(b) provide You with reasonable means to manage any user access, deletion, or restriction requests as defined in applicable law. In the event of an investigation of You arising from Your good faith use of the iCloud service by a data protection regulator or similar authority regarding such Personal Data, Apple shall provide You with reasonable assistance and support;

(c) notify You by any reasonable means Apple selects, without undue delay and taking account of applicable legal requirements applying to You which mandate notification within a specific timeframe, if Apple becomes aware that Your Personal Data has been altered, deleted or lost as a result of any unauthorized access to the Service. You are responsible for providing Apple with Your updated contact information for such notification purposes in accordance with the terms of this Agreement;

(d) make available to You the information necessary to demonstrate compliance obligations set forth in Article 28 of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 (GDPR) and to allow for and contribute to audits required under these provisions; provided however that You agree that Apple's ISO 27001 and 27018 certifications shall be considered sufficient for such required audit purposes;

(e) assist You, by any reasonable means Apple selects, in ensuring compliance with its obligations pursuant to Articles 33 to 36 of the GDPR. If Apple receives a third party request for information You have stored in the iCloud service, then unless otherwise required by law or the terms of such request, Apple will notify You of its receipt of the request and notify the requester of the requirement to address such request to You. Unless otherwise required by law or the request, You will be responsible for responding to the request;

(f) use industry-standard measures to safeguard Personal Data during the transfer, processing and storage of Personal Data. Encrypted Personal Data may be stored at Apple's geographic discretion; and

(g) ensure that where Personal Data, arising in the context of this Agreement, is transferred from the EEA or Switzerland it is only to a third country that ensures an adequate level of protection or using the Model Contract Clauses/Swiss Transborder Data Flow Agreement which will be provided to You upon request if you believe that Personal Data is being transferred.

4. Additional Liability Disclaimer. NEITHER APPLE NOR ITS SERVICE PROVIDERS SHALL BE LIABLE FOR ANY DAMAGES OR LOSSES ARISING FROM ANY USE, MISUSE, RELIANCE ON, INABILITY TO USE, INTERRUPTION, SUSPENSION OR TERMINATION OF iCloud, iCloud STORAGE APIS, OR CLOUDKIT APIS, OR FOR ANY UNAUTHORIZED ACCESS TO, ALTERATION OF, OR DELETION, DESTRUCTION, DAMAGE, LOSS OR FAILURE TO STORE ANY OF YOUR DATA OR ANY END-USER DATA OR ANY CLAIMS ARISING FROM ANY USE OF THE FOREGOING BY YOUR END-USERS, INCLUDING ANY CLAIMS REGARDING DATA PROCESSING OR INAPPROPRIATE OR UNAUTHORIZED DATA STORAGE OR HANDLING BY YOU IN VIOLATION OF THIS AGREEMENT.

Attachment 5 (to the Agreement) Additional Terms for Passes

The following terms are in addition to the terms of the Agreement and apply to Your development and distribution of Passes:

1. Pass Type ID Usage and Restrictions

You may use the Pass Type ID only for purposes of digitally signing Your Pass for use with Wallet and/or for purposes of using the APN service with Your Pass. You may distribute Your Pass Type ID as incorporated into Your Pass in accordance with **Section 2** below only so long as such distribution is under Your own trademark or brand. To the extent that You reference a third party's trademark or brand within Your Pass (e.g., a store coupon for a particular good), You represent and warrant that You have any necessary rights. You agree not to share, provide or transfer Your Pass Type ID to any third party (except for a Service Provider and only to the limited extent permitted herein), nor use Your Pass Type ID to sign a third party's pass.

2. Pass Distribution; Marketing Permissions

2.1 Subject to the terms of this Agreement, You may distribute Your Passes to end-users by the web, email, or an Application. You understand that Passes must be accepted by such users before they will be loaded into Wallet and that Passes can be removed or transferred by such users at any time.

2.2 By distributing Your Passes in this manner, You represent and warrant to Apple that Your Passes comply with the Documentation and Program Requirements then in effect and the terms of this Attachment 5. Apple shall not be responsible for any costs, expenses, damages, losses (including without limitation lost business opportunities or lost profits) or other liabilities You may incur as a result of distributing Your Passes in this manner.

2.3 You agree to state on the Pass Your name and address, and the contact information (telephone number; email address) to which any end-user questions, complaints, or claims with respect to Your Pass should be directed. You will be responsible for attaching or otherwise including, at Your discretion, any relevant end-user usage terms with Your Pass. Apple will not be responsible for any violations of Your end-user usage terms. You will be solely responsible for all user assistance, warranty and support of Your Pass. You may not charge any fees to end-users in order to use Wallet to access Your Pass.

2.4 By distributing Your Passes as permitted in this Agreement, You hereby permit Apple to use (i) screenshots of Your Pass; (ii) trademarks and logos associated with Your Pass; and (iii) Pass Information, for promotional purposes in marketing materials and gift cards, excluding those portions which You do not have the right to use for promotional purposes and which You identify in writing to Apple. You also permit Apple to use images and other materials that You may provide to Apple, at Apple's reasonable request, for promotional purposes in marketing materials and gift cards.

3. Additional Pass Requirements

3.1 Apple may provide You with templates to use in creating Your Passes, and You agree to choose the relevant template for Your applicable use (e.g., You will not use the boarding pass template for a movie ticket).

3.2 Passes may only operate and be displayed in Wallet, which is Apple's designated container area for the Pass, through Wallet on the lock screen of a compatible Apple-branded product in accordance with the Documentation.

3.3. Notwithstanding anything else in **Section 3.3.9** of the Agreement, with prior user consent, You and Your Pass may share user and/or device data with Your Application so long as such sharing is for the purpose of providing a service or function that is directly relevant to the use of the Pass and/or Application, or to serve advertising in accordance with **Sections 3.3.12** of the Agreement.

3.4 If You would like to use embedded Near Field Communication (NFC) technology with Your Pass, then You may request an Apple Certificate for the use of NFC with a Pass from the Developer web portal. Apple will review Your request and may provide You with a separate agreement for the use of such Apple Certificate. Apple reserves the right to not provide You with such Apple Certificate.

4. Apple's Right to Review Your Pass; Revocation. You understand and agree that Apple reserves the right to review and approve or reject any Pass that You would like to distribute for use by Your end-users, or that is already in use by Your end-users, at any time during the Term of this Agreement. If requested by Apple, You agree to promptly provide such Pass to Apple. You agree not to attempt to hide, misrepresent, mislead, or obscure any features, content, services or functionality in Your Pass from Apple's review or otherwise hinder Apple from being able to fully review such Pass, and, You agree to cooperate with Apple and answer questions and provide information and materials reasonably requested by Apple regarding such Pass. If You make any changes to Your Pass after submission to Apple, You agree to notify Apple and, if requested by Apple, resubmit Your Pass prior to any distribution of the modified Pass to Your end-users. Apple reserves the right to revoke Your Pass Type ID and reject Your Pass for distribution to Your end-users for any reason and at any time in its sole discretion, even if Your Pass meets the Documentation and Program Requirements and terms of this Attachment 5; and, in that event, You agree that You may not distribute such Pass to Your end-users.

5. Additional Liability Disclaimer. APPLE SHALL NOT BE LIABLE FOR ANY DAMAGES OR LOSSES ARISING FROM ANY USE, DISTRIBUTION, MISUSE, RELIANCE ON, INABILITY TO USE, INTERRUPTION, SUSPENSION, OR TERMINATION OF WALLET, YOUR PASS TYPE ID, YOUR PASSES, OR ANY SERVICES PROVIDED IN CONNECTION THEREWITH, INCLUDING BUT NOT LIMITED TO ANY LOSS OR FAILURE TO DISPLAY YOUR PASS IN WALLET OR ANY END-USER CLAIMS ARISING FROM ANY USE OF THE FOREGOING BY YOUR END-USERS.

Attachment 6
(to the Agreement)
Additional Terms for the use of the Apple Maps Service

The following terms are in addition to the terms of the Agreement and apply to any use of the Apple Maps Service in Your Application, website, or web application.

1. Use of the Maps Service

1.1 Your Application may access the Apple Maps Service only via the MapKit API or through MapKit JS, and Your website or web application may access the Apple Maps Service only via MapKit JS. You agree not to access the Apple Maps Service or the Map Data other than through the MapKit API or MapKit JS, as applicable, and You agree that Your use of the Apple Maps Service in Your Applications, websites, or web applications must comply with the Program Requirements.

1.2 You will use the Apple Maps Service and Map Data only as necessary for providing services and functionality for Your Application, website, or web application. You agree to use the Apple Maps Service, MapKit API and MapKit JS only as expressly permitted by this Agreement (including but not limited to this Attachment 6) and the MapKit and MapKit JS Documentation, and in accordance with all applicable laws and regulations. MapKit JS may not be used in Your website and/or application running on non-Apple hardware for the following commercial purposes: fleet management (including dispatch), asset tracking, enterprise route optimization, or where the primary purpose of such website and/or application is to assess vehicle insurance risk.

1.3 You acknowledge and agree that results You receive from the Apple Maps Service may vary from actual conditions due to variable factors that can affect the accuracy of the Map Data, such as weather, road and traffic conditions, and geopolitical events.

2. Additional Restrictions

2.1 Neither You nor Your Application, website or web application may remove, obscure or alter Apple's or its licensors' copyright notices, trademarks, logos, or any other proprietary rights or legal notices, documents or hyperlinks that may appear in or be provided through the Apple Maps Service.

2.2 You will not use the Apple Maps Service in any manner that enables or permits bulk downloads or feeds of the Map Data, or any portion thereof, or that in any way attempts to extract, scrape or reutilize any portions of the Map Data. For example, neither You nor Your Application may use or make available the Map Data, or any portion thereof, as part of any secondary or derived database.

2.3 Except to the extent expressly permitted herein, You agree not to copy, modify, translate, create a derivative work of, publish or publicly display the Map Data in any way. Further, You may not use or compare the data provided by the Apple Maps Service for the purpose of improving or creating another mapping service. You agree not to create or attempt to create a substitute or similar service through use of or access to the Apple Maps Service.

2.4 Your Application, website, or web application may display the Map Data only as permitted herein, and when displaying it on a map, You agree that it will be displayed only on an Apple map provided through the Apple Maps Service. Further, You may not surface Map Data within Your Application, website, or web application without displaying the corresponding Apple map (e.g., if You surface an address result through the Apple Maps Service, You must display the corresponding map with the address result).

2.5 Unless otherwise expressly permitted in the MapKit Documentation or MapKit JS

Documentation, Map Data may not be cached, pre-fetched, or stored by You or Your Application, website, or web application other than on a temporary and limited basis solely to improve the performance of the Apple Maps Service with Your Application, website, or web application.

2.6 You may not charge any fees to end-users solely for access to or use of the Apple Maps Service through Your Application, website, or web application, and You agree not to sell access to the Apple Maps Service in any other way.

2.7 You acknowledge and agree that Apple may impose restrictions on Your usage of the Apple Maps Service (e.g., limiting the number of transactions Your Application can make through the MapKit API) or may revoke or remove Your access to the Apple Maps Service (or any part thereof) at any time in its sole discretion. Further, You acknowledge and agree that results You may receive from the Apple Maps Service may vary from actual conditions due to variable factors that can affect the accuracy of Map Data, such as road or weather conditions.

3. Your Acknowledgements. You acknowledge and agree that:

3.1 Apple may at any time, with or without prior notice to You (a) modify the Apple Maps Service and/or the MapKit API or MapKit JS, including changing or removing any feature or functionality, or (b) modify, deprecate, reissue or republish the MapKit API or MapKit JS. You understand that any such modifications may require You to change or update Your Applications, website, or web applications at Your own cost. Apple has no express or implied obligation to provide, or continue to provide, the Apple Maps Service and may suspend or discontinue all or any portion of the Apple Maps Service at any time. Apple shall not be liable for any losses, damages or costs of any kind incurred by You or any other party arising out of or related to any such service suspension or discontinuation or any such modification of the Apple Maps Service, MapKit API, or MapKit JS.

3.2 The Apple Maps Service may not be available in all countries or languages, and Apple makes no representation that the Apple Maps Service is appropriate or available for use in any particular location. To the extent You choose to provide access to the Apple Maps Service in Your Applications, website, or web applications or through the MapKit API or MapKit JS, You do so at Your own initiative and are responsible for compliance with any applicable laws.

4. Apple's Right to Review Your MapKit JS Implementation. You understand and agree that Apple reserves the right to review and approve or reject Your implementation of MapKit JS in Your Application, website, or web applications, at any time during the Term of this Agreement. If requested by Apple, You agree to promptly provide information regarding Your implementation of MapKit JS to Apple. You agree to cooperate with Apple and answer questions and provide information and materials reasonably requested by Apple regarding such implementation. Apple reserves the right to revoke Your MapKit JS keys and similar credentials at any time in its sole discretion, even if Your use of MapKit JS meets the Documentation and Program Requirements and terms of this Attachment. By way of example only, Apple may do so if Your MapKit JS implementation places an excessive and undue burden on the Apple Maps Service, obscures or removes the Apple Maps logo or embedded links when displaying a map, or uses the Apple Maps Service with corresponding offensive or illegal map content.

5. Additional Liability Disclaimer. NEITHER APPLE NOR ITS LICENSORS OR SERVICE PROVIDERS SHALL BE LIABLE FOR ANY DAMAGES OR LOSSES ARISING FROM ANY USE, MISUSE, RELIANCE ON, INABILITY TO USE, INTERRUPTION, SUSPENSION OR TERMINATION OF THE APPLE MAPS SERVICE, INCLUDING ANY INTERRUPTIONS DUE TO SYSTEM FAILURES, NETWORK ATTACKS, OR SCHEDULED OR UNSCHEDULED MAINTENANCE.

Attachment 7 (to the Agreement) Additional Terms for Safari Extensions

The following terms are in addition to the terms of the Agreement and apply to Safari Extensions signed with an Apple Certificate:

1.1 Safari Extension Requirements

If You would like to distribute Your Safari Extension signed with an Apple Certificate, then You agree to abide by the following requirements for such Safari Extensions, as they may be modified by Apple from time to time:

- Your Safari Extension must not contain any malware, malicious or harmful code, or other internal component (e.g. computer viruses, trojan horses, "backdoors"), which could damage, destroy, or adversely affect Apple hardware, software or services, or other third party software, firmware, hardware, data, systems, services, or networks;
- Your Safari Extensions must not be designed or marketed for the purpose of harassing, abusing, stalking, spamming, misleading, defrauding, threatening or otherwise violating the legal rights (such as the rights of privacy and publicity) of others. Further, You may not create a Safari Extension that tracks the behavior of a user (e.g., their browsing sites) without their express consent;
- Your Safari Extension must only operate in the designated container area for the Safari Extension, and must not disable, override or otherwise interfere with any Apple-implemented system alerts, warnings, display panels, consent panels and the like;
- Your Safari Extension must have a single purpose and updates must not change the single purpose of Your Safari Extension. You agree to accurately represent the features and functionality of Your Safari Extension to the user and to act in accordance with such representations. For example, You must not redirect user searches to a different search provider than the one previously selected by the user in Safari without their express consent. In addition, Your Safari Extension may not redirect a link (or any affiliate link) on a website unless that behavior is disclosed to the user. You agree not to conceal the features or functionality of Your Safari Extension (e.g., containing obfuscated code);
- Your Safari Extension must not be bundled with an app that has a different purpose than the Safari Extension. Your Safari Extension must not inject ads into a website and may not display pop up ads. You must not script or automate turning on Your Safari Extension or enable others to do so; and
- Safari Extensions must not interfere with security, user interface, user experience, features or functionality of Safari, macOS, iOS, or other Apple-branded products.

1.2 Compliance; Certificates. Your Safari Extensions must comply with the Documentation and all applicable laws and regulations, including those in any jurisdictions in which such Safari Extensions may be offered or made available. You understand that Apple may revoke the Apple Certificates used to sign Your Safari Extensions at any time, in its sole discretion. Further, You acknowledge and agree that Apple may block Your Safari Extension (such that it may be unavailable or inaccessible to Safari users) if it does not comply with the requirements set forth above in this **Section 1.1** or otherwise adversely affects users of Safari or Apple-branded products.

Schedule 1

1. Appointment of Agent

1.1 You hereby appoint Apple and Apple Subsidiaries (collectively “Apple”) as: (i) Your agent for the marketing and delivery of the Licensed Applications to end-users located in those regions listed on Exhibit A, Section 1 to this Schedule 1, subject to change; and (ii) Your commissionaire for the marketing and delivery of the Licensed Applications to end-users located in those regions listed on Exhibit A, Section 2 to this Schedule 1, subject to change, during the Delivery Period. The most current list of App Store regions among which You may select shall be set forth in the App Store Connect tool and the Custom App Distribution Site and may be updated by Apple from time to time. You hereby acknowledge that Apple will market and make the Licensed Applications available for download by end-users, through one or more App Stores or the Custom App Distribution Site, for You and on Your behalf. For purposes of this Schedule 1, the following terms apply:

“Custom App” or “Custom Application” means a Licensed Application custom developed by You for use by specific organizations or third-party business customers, including proprietary Licensed Applications developed for Your organization’s internal use.

(a) “You” shall include App Store Connect users authorized by You to submit Licensed Applications and associated metadata on Your behalf; and

(b) “end-user” includes individual purchasers as well as eligible users associated with their account via Family Sharing or Legacy Contacts. For institutional customers, “end-user” shall mean the individual authorized to use the Licensed Application, the institutional administrator responsible for management of installations on shared devices, as well as authorized institutional purchasers themselves, including educational institutions approved by Apple, which may acquire the Licensed Applications for use by their employees, agents, and affiliates.

(c) For the purposes of this Schedule 1, the term “Licensed Application” shall include any content, functionality, extensions, stickers, or services offered in the software application.

“Volume Content Service” means an Apple service that offers the ability to obtain Custom Applications and make purchases of Licensed Applications in bulk subject to the Volume Content Terms, conditions, and requirements.

1.2 In furtherance of Apple’s appointment under Section 1.1 of this Schedule 1, You hereby authorize and instruct Apple to:

(a) market, solicit and obtain orders on Your behalf for Licensed Applications from end-users located in the regions identified by You in the App Store Connect tool;

(b) provide hosting services to You subject to the terms of the Agreement, in order to allow for the storage of, and end-user access to, the Licensed Applications and to enable third party hosting of such Licensed Applications solely as otherwise licensed or authorized by Apple;

(c) make copies of, format, and otherwise prepare Licensed Applications for acquisition and download by end-users, including adding the Security Solution and other optimizations identified in the Agreement;

(d) allow or, in the case of cross-border assignments of certain purchases, arrange for end-users to access and re-access copies of the Licensed Applications, so that end-users may acquire from You and electronically download those Licensed Applications, Licensed Application Information,

and associated metadata through one or more App Stores or the Custom App Distribution Site. In addition, You hereby authorize distribution of Your Licensed Applications under this Schedule 1 for use by: (i) end-users with accounts associated with another end-user's account via Family Sharing; (ii) eligible Legacy Contacts of an end-user to access Your Licensed Application along with associated information and metadata stored in iCloud as described in <https://support.apple.com/kb/HT212360>; (iii) multiple end users under a single Apple ID when the Licensed Application is provided to such end-users through Apple Configurator in accordance with the Apple Configurator software license agreement; and (iv) a single institutional customer via Custom App Distribution for use by its end-users and/or for installation on devices with no associated Apple IDs that are owned or controlled by that institutional customer in accordance with the Volume Content Terms, conditions, and program requirements;

(e) use (i) screenshots, previews, and/or up to 30 second excerpts of the Licensed Applications; (ii) trademarks and logos associated with the Licensed Applications; and (iii) Licensed Application Information, for promotional purposes in marketing materials and gift cards and in connection with vehicle displays, excluding those portions of the Licensed Applications, trademarks or logos, or Licensed Application Information which You do not have the right to use for promotional purposes, and which You identify in writing at the time that the Licensed Applications are delivered by You to Apple under Section 2.1 of this Schedule 1, and use images and other materials that You may provide to Apple, at Apple's reasonable request, for promotional purposes in marketing materials and gift cards and in connection with vehicle displays. In addition, and subject to the limitation set forth above, You agree that Apple may use screenshots, icons, and up to 30 second excerpts of Your Licensed Applications for use at Apple Developer events (e.g., WWDC, Tech Talks) and in developer documentation;

(f) otherwise use Licensed Applications, Licensed Application Information and associated metadata as may be reasonably necessary in the marketing and delivery of the Licensed Applications in accordance with this Schedule 1. You agree that no royalty or other compensation is payable for the rights described above in Section 1.2 of this Schedule 1; and

(g) facilitate distribution of pre-release versions of Your Licensed Applications ("Beta Testing") to end-users designated by You in accordance with the Agreement, availability, and other program requirements as updated from time to time in the App Store Connect tool. For the purposes of such Beta Testing, You hereby waive any right to collect any purchase price, proceeds or other remuneration for the distribution and download of such pre-release versions of Your Licensed Application. You further agree that You shall remain responsible for the payment of any royalties or other payments to third parties relating to the distribution and user of Your pre-release Licensed Applications, as well as compliance with any and all laws for territories in which such Beta Testing takes place. For the sake of clarity, no commission shall be owed to Apple with respect to such distribution.

1.3 The parties acknowledge and agree that their relationship under this Schedule 1 is, and shall be, that of principal and agent, or principal and commissionaire, as the case may be, as described in Exhibit A, Section 1 and Exhibit A, Section 2 respectively, and that You, as principal, are, and shall be, solely responsible for any and all claims and liabilities involving or relating to, the Licensed Applications, as provided in this Schedule 1. The parties acknowledge and agree that Your appointment of Apple as Your agent or commissionaire, as the case may be, under this Schedule 1 is non-exclusive. You hereby represent and warrant that You own or control the necessary rights in order to appoint Apple and Apple Subsidiaries as Your worldwide agent and/or commissionaire for the delivery of Your Licensed Applications, and that the fulfillment of such appointment by Apple and Apple Subsidiaries shall not violate or infringe the rights of any third party.

1.4 For purposes of this Schedule 1, the "Delivery Period" shall mean the period beginning on the Effective Date of the Agreement, and expiring on the last day of the Agreement or any renewal thereof; provided, however, that Apple's appointment as Your agent shall survive

expiration of the Agreement for a reasonable phase-out period not to exceed thirty (30) days and further provided that, solely with respect to Your end-users, subsections 1.2(b), (c), and (d) of this Schedule 1 shall survive termination or expiration of the Agreement unless You indicate otherwise pursuant to sections 4.1 and 6.2 of this Schedule 1.

1.5 All of the Licensed Applications delivered by You to Apple under Section 2.1 of this Schedule 1 shall be made available by Apple for download by end-users at no charge. Apple shall have no duty to collect any fees for the Licensed Applications for any end-user and shall have no payment obligation to You with respect to any of those Licensed Applications under this Schedule 1. In the event that You intend to charge end-users a fee for any Licensed Application or In-App Purchase, You must enter (or have previously entered) into a separate extension of this agreement (Schedule 2) with Apple with respect to that Licensed Application. In the event that You intend to charge end-users a fee for any Custom Apps, You must enter (or have previously entered) into a separate extension of this agreement (Schedule 3) with Apple with respect to that Custom App.

2. Delivery of the Licensed Applications to Apple

2.1 You will deliver to Apple, at Your sole expense, using the App Store Connect tool or other mechanism provided by Apple, the Licensed Applications, Licensed Application Information and associated metadata, in a format and manner prescribed by Apple, as required for the delivery of the Licensed Applications to end-users in accordance with this Schedule 1. Metadata You deliver to Apple under this Schedule 1 will include: (i) the title and version number of each of the Licensed Applications; (ii) the regions You designate, in which You wish Apple to allow end-users to download those Licensed Applications; (iii) the end-users You designate as authorized downloaders of the Custom App; (iv) any copyright or other intellectual property rights notices; (v) Your privacy policy; (vi) Your end-user license agreement ("EULA"), if any, in accordance with Section 3.2 of this Schedule 1; and (vii) any additional metadata set forth in the Documentation and/or the App Store Connect Tool as may be updated from time to time, including metadata designed to enhance search and discovery for content on Apple-branded hardware.

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

2.3 You hereby certify that all of the Licensed Applications You deliver to Apple under this Schedule 1 are authorized for export from the United States to each of the regions designated by You under Section 2.1 hereof, in accordance with the requirements of all applicable laws, including but not limited to the United States Export Administration Regulations, 15 C.F.R. Parts 730-774. You further represent and warrant that all versions of the Licensed Applications You deliver to Apple are not subject to the International Traffic in Arms Regulations 22 C.F.R. Parts 120-130 and are not designed, made, modified or configured for any military end users or end uses as defined and scoped in 15 C.F.R § 744. Without limiting the generality of this Section 2.3, You certify that (i) none of the Licensed Applications contains, uses or supports any data encryption or cryptographic functions; or (ii) in the event that any Licensed Application contains, uses or supports any such data encryption or cryptographic functionality, You certify that You have complied with the United States Export Administration Regulations, and are in possession of, and will, upon request, provide Apple with PDF copies of export classification ruling (CCATS) issued by the United States Commerce Department, Bureau of Industry and Security ("BIS") or any self-classification reports submitted to the BIS, and appropriate authorizations from other regions that mandate import authorizations for that Licensed Application, as required. You acknowledge that Apple is relying upon Your certification in this Section 2.3 in allowing end-users to access and download the Licensed Applications under this Schedule 1. Except as provided in this Section 2.3, Apple will be responsible for compliance with the requirements of the Export Administration Regulations in allowing end-users to access and download the Licensed Applications under this Schedule 1.

2.4 You shall be responsible for determining and implementing any age ratings or parental advisory warnings required by the applicable government regulations, ratings board(s), service(s), or other organizations (each a “Ratings Board”) for any video, television, gaming or other content offered in Your Licensed Application for each locality in the Territory. Where applicable, you shall also be responsible for providing any content restriction tools or age verification functionality before enabling end-users to access mature or otherwise regulated content within Your Licensed Application.

3. Ownership and End-User Licensing and Delivery of the Licensed Applications to End Users

3.1 You acknowledge and agree that Apple, in the course of acting as agent and/or commissionaire for You, is hosting, or pursuant to Section 1.2(b) of this Schedule 1 may enable authorized third parties to host, the Licensed Application(s), and is allowing the download of those Licensed Application(s) by end-users, on Your behalf. However, You are responsible for hosting and delivering content or services sold or delivered by You using the In-App Purchase API, except for content that is included within the Licensed Application itself (i.e., the In-App Purchase simply unlocks the content) or content hosted by Apple pursuant to Section 3.3 of Attachment 2 of the Agreement. The parties acknowledge and agree that Apple shall not acquire any ownership interest in or to any of the Licensed Applications or Licensed Applications Information, and title, risk of loss, responsibility for, and control over the Licensed Applications shall, at all times, remain with You. Apple may not use any of the Licensed Applications or Licensed Application Information for any purpose, or in any manner, except as specifically authorized in the Agreement or this Schedule 1.

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

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

3.4 A Licensed Application may read or play content (magazines, newspapers, books, audio, music, video) that is offered outside of the Licensed Application (such as, by way of example, through Your website) provided that You do not link to or market external offers for such content within the Licensed Application. You are responsible for authentication access to content acquired outside of the Licensed Application.

3.5 To the extent You promote and offer in-app subscriptions, You must do so in compliance with all legal and regulatory requirements.

3.6 If Your Licensed Application is periodical content-based (e.g., magazines and newspapers), Apple may provide You with the name, email address, and zip code associated with an end-user’s account when they request an auto-renewing subscription via the In-App Purchase API, provided that such user consents to the provision of data to You, and further provided that You may only use such data to promote Your own products and do so in strict

compliance with Your publicly posted Privacy Policy, a copy of which must be readily viewed and is consented to in Your Licensed Application.

4. Content Restrictions and Software Rating

4.1 You represent and warrant that: (a) You have the right to enter into this Agreement, to reproduce and distribute each of the Licensed Applications, and to authorize Apple to permit end-users to download and use each of the Licensed Applications through one or more App Stores or the Custom App Distribution Site; (b) none of the Licensed Applications, or Apple's or end-users' permitted uses of those Licensed Applications, violate or infringe any patent, copyright, trademark, trade secret or other intellectual property or contractual rights of any other person, firm, corporation or other entity and that You are not submitting the Licensed Applications to Apple on behalf of one or more third parties; (c) none of the Custom Apps, or Apple's or end-users' permitted uses of those Custom Apps, violate or infringe any patent, copyright, trademark, trade secret or other intellectual property or contractual rights of any other person, firm, corporation or other entity and that You are not submitting the Custom Apps to Apple on behalf of one or more third parties other than under license grant from one or more third parties subject to Apple's Volume Content Terms and/or Custom App Distribution; (d) each of the Licensed Applications is authorized for distribution, sale and use in, export to, and import into each of the regions designated by You under Section 2.1 of this Schedule 1, in accordance with the laws and regulations of those regions and all applicable export/import regulations; (e) none of the Licensed Applications contains any obscene, offensive or other materials that are prohibited or restricted under the laws or regulations of any of the regions You designate under Section 2.1 of this Schedule 1; (f) all information You provide using the App Store Connect tool, including any information relating to the Licensed Applications, is accurate and that, if any such information ceases to be accurate, You will promptly update it to be accurate using the App Store Connect tool; and (g) in the event a dispute arises over the content of Your Licensed Applications or use of Your intellectual property on the App Store or the Custom App Distribution Site, You agree to permit Apple to share Your contact information with the party filing such dispute and to follow Apple's app dispute process on a non-exclusive basis and without any party waiving its legal rights.

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

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

5. Responsibility and Liability

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

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

6. Termination

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

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

6.3 Apple reserves the right to cease marketing, offering, and allowing download by end-users of the Licensed Applications at any time, with or without cause, by providing notice of termination to You. Without limiting the generality of this Section 6.3, You acknowledge that Apple may cease allowing download by end-users of some or all of the Licensed Applications, or take other interim measures in Apple's sole discretion, if Apple reasonably believes that: (i) those Licensed Applications are not authorized for export to one or more of the regions designated by You under Section 2.1 hereof, in accordance with the Export Administration Regulations or other restrictions; (ii) those Licensed Applications and/or any end-user's possession and/or use of those Licensed Applications, infringe patent, copyright, trademark, trade secret or other intellectual property rights of any third party; (iii) the distribution and/or use of those Licensed Applications violates any applicable law in any region You designate under Section 2.1 of this Schedule 1; (iv) You have violated the terms of the Agreement, this Schedule 1, or other documentation including without limitation the App Store Review Guidelines; or (v) You or anyone representing You or Your company are subject to sanctions of any region in which Apple operates. An election by Apple to cease allowing download of any Licensed Applications, pursuant to this Section 6.3, shall not relieve You of Your obligations under this Schedule 1.

6.4 You may withdraw any or all of the Licensed Applications from the App Store or the Custom App Distribution Site, at any time, and for any reason, by using the tools provided on the App Store Connect site, except that, with respect to Your end-users, You hereby authorize and instruct Apple to fulfill sections 1.2(b), (c), and (d) of this Schedule 1, which shall survive termination or expiration of the Agreement unless You indicate otherwise pursuant to sections 4.1 and 6.2 of this Schedule 1.

7. Legal Consequences

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

EXHIBIT A (to Schedule 1)

1. Apple as Agent

You appoint Apple Canada, Inc. ("Apple Canada") as Your agent for the marketing and end-user download of the Licensed Applications by end-users located in the following region:

Canada

You appoint Apple Pty Limited ("APL") as Your agent for the marketing and end-user download of the Licensed Applications by end-users located in the following regions:

Australia
New Zealand

You appoint Apple Inc. as Your agent pursuant to California Civil Code §§ 2295 *et seq.* for the marketing and end-user download of the Licensed Applications by end-users located in the following regions:

United States

You appoint Apple Services LATAM LLC as Your agent pursuant to California Civil Code §§ 2295 *et seq.* for the marketing and end-user download of the Licensed by end-users located in the following regions:

| | | | |
|------------------------|---------------------|------------|------------------------------|
| Argentina* | Cayman Islands | Guatemala* | St. Kitts & Nevis |
| Anguilla | Chile* | Honduras* | St. Lucia |
| Antigua & Barbuda | Colombia* | Jamaica | St. Vincent & The Grenadines |
| Bahamas | Costa Rica* | Mexico* | Suriname |
| Barbados | Dominica | Montserrat | Trinidad & Tobago |
| Belize | Dominican Republic* | Nicaragua* | Turks & Caicos |
| Bermuda | Ecuador* | Panama* | Uruguay |
| Bolivia* | El Salvador* | Paraguay* | Venezuela* |
| Brazil* | Grenada | Peru* | |
| British Virgin Islands | Guyana | | |

* Custom Applications are only available in these regions.

You appoint iTunes KK as Your agent pursuant to Article 643 of the Japanese Civil Code for the marketing and end-user download of the Licensed Applications by end-users located in the following region:

Japan

2. Apple as Commissionaire

You appoint Apple Distribution International Ltd. as Your commissionaire for the marketing and end-user download of the Licensed Applications by end-users located in the following regions, as updated from time to time via the App Store Connect site. For the purposes of this Agreement, "commissionaire" means an agent who purports to act on their own behalf and concludes

agreements in his own name but acts on behalf of other persons, as generally recognized in many Civil Law legal systems

| | | | |
|--------------------------------|---------------|---------------------------|-----------------|
| Afghanistan | Gabon | Malawi | Saudi Arabia* |
| Albania | Gambia | Malaysia* | Senegal |
| Algeria | Georgia | Maldives | Serbia |
| Angola | Germany* | Mali | Seychelles |
| Armenia | Ghana | Malta, Republic of* | Sierra Leone |
| Austria | Greece* | Mauritania | Singapore* |
| Azerbaijan | Guinea-Bissau | Mauritius | Slovakia* |
| Bahrain* | Hong Kong* | Micronesia, Fed States of | Slovenia* |
| Belarus | Hungary | Moldova | Solomon Islands |
| Belgium* | Iceland* | Mongolia | South Africa |
| Benin | India | Montenegro | Spain* |
| Bhutan | Indonesia | Morocco | Sri Lanka |
| Bosnia and Herzegovina | Iraq | Mozambique | Swaziland |
| Botswana | Ireland* | Myanmar | Sweden* |
| Brunei | Israel* | Namibia | Switzerland* |
| Bulgaria* | Italy* | Nauru | Taiwan* |
| Burkina-Faso | Jordan | Nepal | Tajikistan |
| Cambodia | Kazakhstan | Netherlands* | Tanzania |
| Cameroon | Kenya | Niger | Thailand* |
| Cape Verde | Korea* | Nigeria | Tonga |
| Chad | Kosovo | Norway* | Tunisia |
| China* | Kuwait | Oman | Turkey* |
| Congo (Democratic Republic of) | Kyrgyzstan | Pakistan | Turkmenistan |
| Congo (Republic of) | Laos | Palau | UAE* |
| Cote d'Ivoire | Latvia* | Papua New Guinea | Uganda |
| Croatia | Lebanon | Philippines* | Ukraine* |
| Cyprus* | Liberia | Poland | United Kingdom* |
| Czech Republic | Libya | Portugal | Uzbekistan |
| Denmark* | Lithuania* | Qatar* | Vanuatu |
| Egypt* | Luxembourg* | Romania* | Vietnam* |
| Estonia* | Macau | Russia* | Yemen |
| Fiji | Macedonia | Rwanda | Zambia |
| Finland* | Madagascar | Sao Tome e Principe | Zimbabwe |
| France* | | | |

*Custom Applications are only available in these regions.

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

- 1. Acknowledgement:** You and the end-user must acknowledge that the EULA is concluded between You and the end-user only, and not with Apple, and You, not Apple, are solely responsible for the Licensed Application and the content thereof. The EULA may not provide for usage rules for Licensed Applications that are in conflict with, the Apple Media Services Terms and Conditions or the Volume Content Terms as of the Effective Date (which You acknowledge You have had the opportunity to review).
- 2. Scope of License:** The license granted to the end-user for the Licensed Application must be limited to a non-transferable license to use the Licensed Application on any Apple-branded Products that the end-user owns or controls and as permitted by the Usage Rules set forth in the Apple Media Services Terms and Conditions, except that such Licensed Application may be accessed, acquired, and used by other accounts associated with the purchaser via Family Sharing, volume purchasing, or Legacy Contacts.
- 3. Maintenance and Support:** You must be solely responsible for providing any maintenance and support services with respect to the Licensed Application, as specified in the EULA, or as required under applicable law. You and the end-user must acknowledge that Apple has no obligation whatsoever to furnish any maintenance and support services with respect to the Licensed Application.
- 4. Warranty:** You must be solely responsible for any product warranties, whether express or implied by law, to the extent not effectively disclaimed. The EULA must provide that, in the event of any failure of the Licensed Application to conform to any applicable warranty, the end-user may notify Apple, and Apple will refund the purchase price for the Licensed Application to that end-user; and that, to the maximum extent permitted by applicable law, Apple will have no other warranty obligation whatsoever with respect to the Licensed Application, and any other claims, losses, liabilities, damages, costs or expenses attributable to any failure to conform to any warranty will be Your sole responsibility.
- 5. Product Claims:** You and the end-user must acknowledge that You, not Apple, are responsible for addressing any claims of the end-user or any third party relating to the Licensed Application or the end-user's possession and/or use of that Licensed Application, including, but not limited to: (i) product liability claims; (ii) any claim that the Licensed Application fails to conform to any applicable legal or regulatory requirement; and (iii) claims arising under consumer protection or similar legislation, including in connection with Your Licensed or Custom Application's use of the HealthKit and HomeKit frameworks. The EULA may not limit Your liability to the end-user beyond what is permitted by applicable law.
- 6. Intellectual Property Rights:** You and the end-user must acknowledge that, in the event of any third party claim that the Licensed Application or the end-user's possession and use of that Licensed Application infringes that third party's intellectual property rights, You, not Apple, will be solely responsible for the investigation, defense, settlement and discharge of any such intellectual property infringement claim.
- 7. Legal Compliance:** The end-user must represent and warrant that (i) the end-user is not located in a region that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a "terrorist supporting" region; and (ii) the end-user is not listed on any U.S. Government list of prohibited or restricted parties.
- 8. Developer Name and Address:** You must state in the EULA Your name and address,

and the contact information (telephone number; E-mail address) to which any end-user questions, complaints or claims with respect to the Licensed Application should be directed.

9. Third Party Terms of Agreement: You must state in the EULA that the end-user must comply with applicable third party terms of agreement when using Your Application, e.g., if You have a VoIP application, then the end-user must not be in violation of their wireless data service agreement when using Your Application.

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

EXHIBIT C
(to Schedule 1)
App Store Promo Codes Terms

Notwithstanding any other provisions of the Agreement or this Schedule 1, You hereby agree that the following terms shall apply to all App Store Promo Codes ("Promo Codes") requested by You via the App Store Connect tool. For the purposes of this Exhibit C, "You" shall include additional members of Your App Store Connect team (e.g., individuals in the marketing and technical roles).

Except as otherwise expressed in writing herein, nothing in this Exhibit C shall be construed to modify the Agreement or this Schedule 1 in any way, and all capitalized terms not defined below shall have the meanings set forth in the Program Agreement.

1. DEFINITIONS:

"Holder" means an individual located in a Territory to whom You provide one or more Promo Codes;

"Promo Code" means a unique alphanumeric code generated and provided to You by Apple pursuant to this Exhibit C which allows a Holder who is an App Store customer to download or access for free from the App Store the Licensed Application for which You have requested such code via the App Store Connect tool, whether offered for free or for a fee on the App Store (the "Promo Content"); and

"Effective Period" means the period between the Promo Code Activation Date and the Promo Code Expiration Date.

2. AUTHORIZATION AND OBLIGATIONS: You hereby authorize and instruct Apple to provide You with Promo Codes upon request, pursuant to the terms of this Exhibit C, and You take full responsibility for ensuring that any team member that requests such codes shall abide by the terms of this Exhibit C. You shall be responsible for securing all necessary licenses and permissions relating to use of the Promo Codes and the Licensed Application, including any uses by You of the name(s) or other indicia of the Licensed Application, or name(s) or likenesses of the person(s) performing or otherwise featured in the Licensed Application, in any advertising, marketing, or other promotional materials, in any and all media. Apple reserves the right to request and receive copies of such licenses and permissions from You, at any time, during the Effective Period.

3. NO PAYMENT: Except for Your obligations set forth in Section 10 of this Exhibit C, You are not obligated to pay Apple any commission for the Promo Codes.

4. DELIVERY: Upon request by You via the App Store Connect tool, Apple shall provide the Promo Codes electronically to You via App Store Connect, email, or other method as may be indicated by Apple.

5. PROMO CODE ACTIVATION DATE: Promo Codes will become active for use by Holders upon delivery to You.

6. PROMO CODE EXPIRATION DATE: All unused Promo Codes, whether or not applied to an Apple ID, expire at midnight 11:59 PT on the earlier of: (a) the date that is twenty-eight (28) days after the delivery of the Promo Codes; or (b) the termination of the Agreement.

7. PERMITTED USE: You may distribute the Promo Codes until that date which is ten (10) calendar days prior to the Promo Code Expiration Date solely for the purpose of offering instances of the app for media review or promotional purposes. You may not distribute the

Promo Codes to Holders in any Territory in which You are not permitted to sell or distribute Your Licensed Application.

8. ADDITIONAL MATERIALS: Apple shall not be responsible for developing and producing any materials in relation to the Promo Codes other than the Promo Codes themselves.

9. REPRESENTATIONS, WARRANTIES, AND INDEMNIFICATION: You represent and warrant that: (i) You own or control all rights necessary to make the grant of rights, licenses, and permissions listed in Section 2, and that the exercise of such rights, licenses, and permissions shall not violate or infringe the rights of any third party, and (ii) any use of the Promo Codes shall be in accordance with the terms of this Exhibit C and shall not infringe any third party rights or violate any applicable laws, directives, rules, and regulations of any governmental authority in the Territory or anywhere else in the world. You agree to indemnify and hold Apple, its subsidiaries and affiliates (and their respective directors, officers, and employees) harmless from all losses, liabilities, damages, or expenses (including reasonable attorneys' fees and costs) resulting from any claims, demands, actions, or other proceedings arising from a breach of the representations and warranties set forth in this Section, or a breach of any other term of the Agreement and this Schedule 1.

10. PAYMENT WAIVER: You hereby waive any right to collect any royalties, proceeds, or remuneration for the distribution and download of the Licensed Application via the Promo Codes, regardless of whether any remuneration would otherwise be payable under the Agreement, including Schedule 1 thereto, if applicable. The parties acknowledge that, as between Apple and You, the parties' respective responsibilities for the payment of any royalties or other similar payments to third parties with respect to distribution and download of the Licensed Application via the Promo Codes shall be as set forth in the Agreement.

11. TERMS AND CONDITIONS: You further agree to the following terms:

(a) You shall not sell the Promo Codes or accept any form of payment, trade-in-kind, or other compensation in connection with the distribution of the Promo Codes and You shall prohibit third parties from doing so.

(b) Nothing in this Exhibit C shall cause the parties to become partners, joint venturers or co-owners, nor shall either party constitute an agent, employee, or representative of the other, or empower the other party to act for, bind, or otherwise create or assume any obligation on its behalf, in connection with any transaction under this Exhibit C; provided, however, that nothing in this Section 11(b) shall affect, impair, or modify either of the Parties' respective rights and obligations, including the agency or commissionaire relationship between them under Schedules 1, 2, and 3 of the Agreement.

(c) You shall prominently disclose any content age restrictions or warnings legally required in the Territories and ensure that Promo Codes are distributed only to persons of an age appropriate and consistent with the App Store rating for the associated Licensed Application.

(d) You shall conduct Yourself in an honest and ethical manner and shall not make any statement, orally or in writing, or do any act or engage in any activity that is obscene, unlawful, or encourages unlawful or dangerous conduct, or that may disparage, denigrate, or be detrimental to Apple or its business.

(e) Apple shall not be responsible for providing any technical or customer support to You or Holders above what Apple provides to standard or ordinary App Store users.

(f) You agree to the additional Promo Code Terms and Conditions attached hereto as Attachment 1.

(g) YOU SHALL INCLUDE THE REGION SPECIFIC HOLDER TERMS & CONDITIONS AS WELL AS THE EXPIRATION DATE OF THE PROMO CODE ON ANY INSTRUMENT USED TO DISTRIBUTE THE PROMO CODE TO HOLDERS (E.G., CERTIFICATE, CARD, EMAIL, ETC). YOU MAY ACCESS THIS INFORMATION LOCALIZED FOR EACH TERRITORY UPON REQUESTING THE PROMO CODES IN THE APP STORE CONNECT TOOL.

(h) You shall be solely responsible for Your use of the Promo Codes, including any use by other members of Your App Store Connect team, and for any loss or liability to You or Apple therefrom.

(i) In the event Your Licensed Application is removed from the App Store for any reason, You agree to cease distribution of the Promo Codes and that Apple may deactivate such Promo Codes.

(j) You agree that Apple shall have the right to deactivate the Promo Codes, even if already delivered to Holders, in the event You violate any of the terms of this Exhibit C, the Agreement, or Schedules 1, 2, or 3 thereto.

(k) You may distribute the Promo Codes within the Territories, but agree that You shall not export any Promo Code for use outside the Territories nor represent that You have the right or ability to do so. Risk of loss and transfer of title for the Promo Codes pass to You upon delivery to You within App Store Connect, via email, or other method provided by Apple.

12. APPLE TRADEMARKS: Your use of Apple trademarks in connection with the Promo Codes is limited only to “iTunes” and “App Store” (the “Marks”) subject to the following and any additional guidelines Apple may issue from time to time:

(a) You may use the Marks only during the Effective Period

(b) You shall submit any advertising, marketing, promotional or other materials, in any and all media now known or hereinafter invented, incorporating the Marks to Apple prior to use for written approval. Any such materials not expressly approved in writing by Apple shall be deemed disapproved by Apple.

(c) You may only use the Marks in a referential manner and may not use the Marks as the most prominent visual element in any materials. Your company name, trademark(s), or service mark(s) should be significantly larger than any reference to the Marks.

(d) You may not directly or indirectly suggest Apple’s sponsorship, affiliation, or endorsement of You, Your Licensed Applications, or any promotional activities for which You are requesting the Promo Codes.

(e) You acknowledge that the Marks are the exclusive property of Apple and agree not to claim any right, title, or interest in or to the Marks or at any time challenge or attack Apple’s rights in the Marks. Any goodwill resulting from Your use of the Marks shall inure solely to the benefit of Apple and shall not create any right, title, or interest for You in the Marks.

13. GOVERNING LAW: Any litigation or other dispute resolution between You and Apple arising out of or relating to this Exhibit C or facts relating thereto shall be governed by Section 14.10 of the Agreement.

Attachment 1
(to Exhibit C of Schedule 1)
App Store Promo Codes Terms and Conditions

1. All Promo Codes delivered pursuant to this Exhibit C, whether or not applied to an App Store account, expire as indicated in this Exhibit C.
2. Promo Codes, and unused balances, are not redeemable for cash and cannot be returned for a cash refund, exchanged, or used to purchase any other merchandise, or provide allowances or iTunes or App Store Gifts by either You or Holder. This includes Promo Codes that have expired unused.
3. Promo Codes may only be redeemed through the App Store in the Territory, open only to persons in the Territory with a valid Apple ID. Not all App Store products may be available in all Territories. Internet access (fees may apply), the latest version of Apple software, and other compatible software and hardware are required.
4. Access to, redemption of Promo Codes on, or purchases from, and use of products purchased on, the App Store, are subject to acceptance of its Terms of Service presented at the time of redemption or purchase, and found at <http://www.apple.com/legal/itunes/ww/>.
5. Promo Codes will be placed in the Holder's applicable Apple ID and are not transferable.
6. If a Holder's order exceeds the amount available on the Promo Codes, Holder must establish an Apple ID and pay for the balance with a credit card.
7. Except as stated otherwise, data collection and use are subject to Apple's Privacy Policy, which can be found at <http://www.apple.com/legal/privacy>.
8. Apple is not responsible for lost or stolen Promo Codes. If Holders have any questions, they may visit Apple Support at <https://support.apple.com/apps>.
9. Apple reserves the right to close Holder accounts and request alternative forms of payment if Promo Codes are fraudulently obtained or used on the App Store.
10. APPLE AND ITS LICENSEES, AFFILIATES, AND LICENSORS MAKE NO WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO PROMO CODES OR THE APP STORE, INCLUDING WITHOUT LIMITATION, ANY EXPRESS OR IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. IN THE EVENT A PROMO CODE IS NON-FUNCTIONAL, HOLDER'S OR COMPANY'S SOLE REMEDY, AND APPLE'S SOLE LIABILITY, SHALL BE THE REPLACEMENT OF SUCH PROMO CODE. THESE LIMITATIONS MAY NOT APPLY. CERTAIN LOCAL AND TERRITORY LAWS DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES OR THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES. IF THESE LAWS APPLY, SOME OR ALL OF THE ABOVE DISCLAIMERS, EXCLUSIONS, OR LIMITATIONS MAY NOT APPLY, AND YOU OR HOLDER MAY ALSO HAVE ADDITIONAL RIGHTS.
11. Apple reserves the right to change any of the terms and conditions set forth in this Attachment 1 from time to time without notice.
12. Any part of these terms and conditions may be void where prohibited or restricted by law.

EXHIBIT D
(to Schedule 1)
Additional App Store Terms

1. Discoverability on the App Store: The discoverability of Your Licensed Application in the App Store depends on several factors, and Apple is under no obligation to display, feature, or rank Your Licensed Application in any particular manner or order in the App Store.

(a) The main parameters used for app ranking and discoverability are text relevance, such as using an accurate title, adding relevant keywords/metadata, and selecting descriptive categories in the Licensed Application; customer behavior relating to the number and quality of ratings and reviews and application downloads; date of launch in the App Store may also be considered for relevant searches; and whether You have violated any rules promulgated by Apple. These main parameters deliver the most relevant results to customer search queries.

(b) When considering apps to feature in the App Store, our editors look for high-quality apps across all categories, with a particular focus on new apps and apps with significant updates. The main parameters that our editors consider are UI design, user experience, innovation and uniqueness, localizations, accessibility, App Store product page screenshots, app previews, and descriptions; and additionally, for games, gameplay, graphics and performance, audio, narrative and story depth, ability to replay, and gameplay controls. These main parameters showcase high-quality, well-designed, and innovative apps.

(c) If You use an Apple service for paid promotion of Your app on the App Store, Your app may be presented in a promotional placement and designated as advertising content.

To learn more about app discoverability, visit <https://developer.apple.com/app-store/discoverability/>.

2. Access to App Store Data

You can access data concerning your Licensed Application's financial performance and user engagement in App Store Connect by using App Analytics, Sales and Trends, and Payments and Financial Reports. Specifically, You can obtain all of Your Licensed Application's financial results for individual app sales and in-app purchases (including subscriptions) in Sales and Trends, or download the data from Financial Reports; and You can view App Analytics for non-personally identifiable data that allows You to understand how consumers engage with your Licensed Applications. More information can be found at <https://developer.apple.com/app-store/measuring-app-performance/>. App Analytics data is provided only with the consent of our customers. For more information, see <https://developer.apple.com/app-store-connect/analytics/>. Apple does not provide You with access to personal or other data provided by or generated through use of the App Store by other developers; nor does Apple provide other developers with access to personal or other data provided by or generated through Your use of the App Store. Such data sharing would conflict with Apple's Privacy Policy, and with our customers' expectations about how Apple treats their data. You can seek to collect information from customers directly, so long as such information is collected in a lawful manner, and You follow the App Store Review Guidelines.

Apple handles personal and non-personal information as outlined in Apple's Privacy Policy. Information about Apple's access to and practices concerning developer and customer data can be found in "App Store & Privacy," accessible at <https://support.apple.com/en-us/HT210584>. Apple may provide some non-personal information to strategic partners that work with Apple to provide our products and services, help Apple market to customers, and sell ads on Apple's behalf to display in the App Store and Apple News and Stocks. Such partners are obligated to protect that information and may be located wherever Apple operates.

3. P2B Regulation Complaints and Mediation

Developers established in, and which offer goods or services to customer located in, a region subject to a platform-to-business regulation ("P2B Regulation"), such as the Regulation of the European Parliament and of the Council on promoting fairness and transparency for business users of online intermediation services may submit complaints pursuant to such P2B Regulation related to the following issues at <https://developer.apple.com/contact/p2b/>: (a) Apple's alleged non-compliance with any obligations set forth in the P2B Regulation which affect You in the region in which you are established; (b) technological that affect You and relate directly to distribution of Your Licensed Application on the App Store in the region in which you are established; or (c) measures taken by or behavior of Apple that affect You and relate directly to distribution of Your Licensed Application on the App Store in the region in which you are established. Apple will consider and process such complaints and communicate the outcome to You.

For Developers established in, and which offer goods or services to customer located in, the European Union, Apple identifies the following panel of mediators with which Apple is willing to engage to attempt to reach an agreement with developers established in, and which offer goods or services to customer located in, the European Union on the settlement, out of court, of any disputes between Apple and You arising in relation to the provision of the App Store services concerned, including complaints that could not be resolved by means of our complaint-handling system:

Centre for Effective Dispute Resolution
P2B Panel of Mediators
70 Fleet Street
London
EC4Y 1EU
United Kingdom
<https://www.cedr.com/p2bmediation/>

LYL106
12/13/2021

United States, English Choose your country/region ›

TestFlight Terms of Service

Summary of Key Terms:

- Crash logs and statistical information related to your use of each Beta App will automatically be provided to Apple and the Application Provider as part of TestFlight.
- You may submit suggestions and ideas to the Application Provider of the Beta App.
- Beta Apps may crash and result in data loss in those Beta Apps.
- If you already have the full version of an app, installation of a Beta App may result in data loss.
- You can stop participating in a beta test for a Beta App by deleting the Beta App from your device.

Your use of the TestFlight service ("TestFlight"), including any beta testing of any pre-release Mac, iPhone, iPad, Apple Watch, and Apple TV applications downloaded through TestFlight ("Beta Apps"), is governed by the following terms and conditions ("TestFlight Terms of Service"). Except as specifically amended below, full Apple Media Services Terms and Conditions for your region apply and are hereby incorporated by reference, and defined terms shall have the meanings set forth in the Apple Media Services Terms and Conditions, except as noted herein. For the purpose of these TestFlight Terms of Service, the term "Licensed Application" shall include Beta Apps. See Apple Media Services Terms and Conditions: <https://www.apple.com/legal/internet-services/itunes/>

Specific Terms for Beta-Testers

Children under the age of 13, or equivalent minimum age in the relevant jurisdiction, are not permitted to use TestFlight. If you are 13 or the equivalent minimum age in the relevant jurisdiction or older, but under the age of 18, you should review this Agreement with your parent or guardian to make sure that you and your parent or guardian understand and agree to the following terms.

TestFlight is designed to help third-party developers ("Application Providers") beta-test and improve the performance of their pre-release Mac, iPhone, iPad, Apple Watch, and Apple TV applications and to provide beta-testers with Beta Apps. If an Application Provider authorizes you as a beta-tester and you choose to download the corresponding Beta App from the Application Provider via TestFlight, then conditioned on your compliance with these TestFlight Terms of Service, the Application Provider grants you a limited, non-exclusive, non-assignable, non-sublicensable license to access, download and use the Beta App for which you have been selected as a beta-tester and any related documentation available online, solely for beta-testing purposes for a limited time and subject to these TestFlight Terms of Service.

As between you and the Application Provider, and aside from the limited license set forth above, the Application Provider owns all right, title and interest in the Beta App, including but not limited to intellectual property rights. To the maximum extent permitted by law, you may not: (a) modify, reverse engineer, decompile, or disassemble any Beta App; (b) rent, lease, loan, sell, sublicense, distribute, transmit, or otherwise transfer any Beta App; (c) make any copy of or otherwise reproduce any Beta App; or (d) display any Beta App to unauthorized third parties without the Application Provider's authorization.

You agree to use reasonable efforts to beta-test any Beta App.

You acknowledge that you understand that Beta Apps are pre-release, alpha, or beta software and may be incomplete or could contain errors or inaccuracies. You should not use Beta Apps in a commercial operating environment or with important data. You should back up any data prior to using any Beta App on your Apple-branded device. Neither Apple nor the Application Provider shall be responsible for any costs, expenses or other liabilities you may incur as a result of using any Beta Apps, including but not limited to any damage, loss, or corruption of any software, information or data. Further, Beta Apps may not be compatible with production Apps. If you have a production version of a Beta App already installed on your Apple-branded device, you should back-up any data associated with such app prior to installing a beta version since data may be corrupted or lost between different versions of the same app. **You expressly acknowledge and agree that any use of Beta Apps is done entirely at your own risk.**

In addition, if you have the full version of an app installed on your device and you install the same Beta App, your app data may be corrupted or lost and may not be recoverable. You should back up your information before installing a Beta App. Solely for the purposes of testing a Beta App and only for the duration of such test, any in-app purchases made within the Beta App will be made available to you at no cost and such purchases will not be charged to your Account. If you purchase or download the App from the App Store, your data may not remain available from within the full version. We recommend that you back up your data before deleting the Beta App or purchasing the full version from the App Store.

Beta Apps provided by Apple and/or third-party developers may not be available in all languages or in all countries, and Apple makes no representation that the Beta Apps are appropriate or available for use in any particular location. To the extent you choose to access and use the Beta Apps through TestFlight, you do so at your own initiative and are responsible for compliance with any applicable laws. Beta Apps are time-limited and TestFlight may change, limit, or cease providing access to Beta Apps any time without notice or liability to you. You further understand and agree that certain information about a Beta App downloaded via TestFlight may not be available to you prior to download, including without limitation the Beta App's age rating, minimum hardware requirements, and the availability of items available for purchase within the Beta App (i.e. in-app purchases). By downloading a Beta App, you consent to using the Beta App without such information and disclosures.

You acknowledge and agree that you will not be compensated for evaluating any Beta App or for any Beta Input, and you will bear all of your own costs from using TestFlight and any Beta Apps (e.g., mobile carrier and data costs). Further, you hereby acknowledge and agree that the content contained in, and your use of, any Beta App that is not already publicly available shall be considered confidential unless the Application Provider explicitly authorizes public disclosure. You agree to hold the Beta App in confidence and to treat it as confidential, e.g., not share it with others who do not have the Beta App installed.

If you have a complaint about a Beta App, you should send it directly to the Application Provider. You acknowledge and agree that the Application Provider, not Apple, is fully responsible for any Beta App, unless Apple is the licensor of such Beta App.

Beta Testing Data and Beta Feedback

When you use a Beta App through TestFlight, Apple and the Application Provider will automatically collect crash logs and usage data ("Beta Testing Data") and you may not opt-out of the collection of Beta Testing Data.

TestFlight will also provide you with the ability to submit written or visual feedback (e.g., screenshots and comments) about the Beta Apps to Apple and/or Application Providers ("Beta Feedback"). If you submit Beta Feedback, you acknowledge and agree that you do so at your own initiative and that the Application Provider (including Apple, if it is Apple's Beta App) will have the right to use your Beta Feedback as set forth below. You represent to the Application Provider that you have all the necessary rights to give the Beta Feedback and to grant the rights to the Application Provider.

The Application Provider may use the Beta Testing Data and Beta Feedback to improve their App and related products, and may contact you regarding your use of their Beta App. The Application Provider's use of Beta Testing Data and Beta Feedback is subject to limitations and requirements set forth by Apple in the Apple Developer Program License Agreement and to the Application Provider's Privacy Policy. Apple may use the Beta Testing Data to improve its products and services.

Beta Testing Data and Beta Feedback may include personally identifying information, including in the screenshots you provide, such as when a screenshot includes your photos or image and likeness, and information about your device, including but not limited to various unique device identifiers, hardware and operating system specifications, performance statistics, and data about how you use your device, system and application software, networking information, and peripherals. When you use TestFlight and the Beta App, details will be provided regarding what data is sent to Apple and the Application Provider, and how the information may be used. **You can learn more by visiting** <https://testflight.apple.com/#privacy-data> . At all times, Apple will handle your information in accordance with our Privacy Policy, which can be viewed at <https://www.apple.com/legal/privacy/>.

Apple is committed to diversity and to providing a safe, harassment-free experience for everyone. Beta Feedback should be respectful and should not include offensive, malicious, or derogatory writing, images, or screenshots.

NO WARRANTY

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Termination

To terminate your participation in beta-testing a particular Beta App, delete the Beta App from your device. Deleting the Beta App from your device will also delete any data you have generated within that Beta App, and may delete any data created in a previously installed full version of the App. Deleting the Beta App will not delete Beta Testing Data or Beta Input that you, TestFlight, or the Beta App have already provided to

the Application Provider and Apple. To request deletion of your personal information, contact the Application Provider or Apple directly. Apple and/or the Application Provider reserve the right to terminate your participation in the beta testing of any Beta App at any time, in their sole discretion. By way of example, this termination may occur if you provide Beta Feedback that contains offensive and inappropriate images to the Application Provider.

08/24/2021

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Xcode and Apple SDKs Agreement

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1. Definitions

Whenever capitalized in this Agreement:

“**Agreement**” means this Xcode and Apple SDKs Agreement.

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

“**Apple Developer Program License Agreement**” means a separate agreement that may be entered into between You and Apple regarding the development and submission of Applications to the App Store for approval and digital signing by Apple, development of libraries for iOS, watchOS, iPadOS, and/or tvOS, and the use of Apple services such as the Apple Push Notification Service, In-App Purchase, and iCloud, among other things.

“**Apple Maps Service**” means the mapping platform and Map Data provided by Apple via the MapKit API (which is the documented API that enables You to add mapping features or functionality to Applications).

“**Apple Services**” or “**Services**” means the developer services that Apple provides to You under this Agreement solely for use with Your Applications and not for use by You as an end-user (e.g., Game Center, Apple Maps Service, any Apple-certificate issuance services, etc.), including any Updates thereto (if any) that may be provided to You by Apple.

“**Apple Software**” means the Xcode Developer Tools and the Apple SDKs, including any Updates thereto (if any) that may be provided to You by Apple.

“**Apple SDKs**” means the macOS SDK, and the Apple-proprietary Software Development Kits (SDKs) provided hereunder, including but not limited to header files, APIs, libraries, simulators, and software (source code and object code) labeled as part of the iOS SDK, watchOS SDK, iPadOS SDK, and/or tvOS SDK and included in the Xcode Developer Tools package for purposes of targeting Apple-branded products running iOS, watchOS, iPadOS, or tvOS.

“**Application**” means a software program (including extensions and media that are enclosed in a single software bundle) developed by You hereunder, for use under Your own name, trademark or brand, and specifically for use on Apple-branded products running macOS, iOS, watchOS, iPadOS, tvOS, as applicable, including new releases and new versions of such software program, but excluding libraries for iOS, watchOS, iPadOS, or tvOS applications.

For clarity, the term Application as used in this Agreement excludes libraries that are for use in Applications designed for iOS, watchOS, iPadOS, or tvOS. Such libraries can be developed by You only under the terms of the Apple Developer Program License Agreement.

“Authorized Developers” means Your employees and contractors, members of Your organization or, if You are an educational institution, Your faculty, staff and students, who: (a) have a demonstrable need to know or use the Apple Software or Apple Services in order to develop and test Applications, and (b) to the extent they will access Apple Confidential Information, have written and binding agreements with You that prohibit the unauthorized use and disclosure of such confidential information.

“Authorized Test Units” means Apple-branded hardware units owned or controlled by You that have been designated by You for Your own testing and development purposes, and, if You permit, Apple-branded hardware units owned or controlled by Your Authorized Developers so long as such units are used for testing and development purposes on Your behalf and only as permitted hereunder.

“Documentation” means the technical or other specifications or documentation that Apple may provide to You for use in connection with the Apple Software, Apple Services, Apple certificates, or as otherwise provided hereunder.

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

“macOS SDK” means the Apple-proprietary Software Development Kits (SDKs) provided hereunder, including but not limited to header files, APIs, libraries, simulators, and software (source code and object code) labeled as part of the macOS SDK and included in the Xcode Developer Tools package for purposes of targeting Apple-branded products running macOS.

“Map Data” means any content, data or information provided through the Apple Maps Service including, but not limited to, imagery, terrain data, latitude and longitude coordinates, transit data, points of interest and traffic data.

“Program Requirements” mean the technical, human interface, design, product category, security, performance, and other criteria and requirements for Applications specified by Apple in the Apple Developer Program License Agreement.

“Provisioning Profiles” means the time-limited files (including applicable entitlements, certificates or other identifiers) that may be provided by Apple for use by You in connection with Your Application development and testing.

“Updates” means bug fixes, updates, upgrades, modifications, enhancements and supplements to the Apple Software or Apple Services, and any new releases or versions thereof.

“Xcode Developer Tools” means the Apple-proprietary development platform, including but not limited to software tools, compilers, sample code, Documentation, programming languages, and overall design package provided by Apple hereunder, excluding the Apple SDKs.

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

2. Internal Use License and Restrictions

2.1 Authority to Enter into Agreements

You certify to Apple that You have the right and authority to enter into this Agreement on Your own behalf, or if You are entering into this Agreement on behalf of Your company, organization, educational institution, or agency, instrumentality, or department of the federal government, that You have the right and authority to legally bind such entity or organization to the terms and obligations of this Agreement. Further, You agree to comply with the terms of and fulfill Your obligations under this Agreement, including obtaining any required consents for Your Authorized Developers' use of the Apple Software and Services (e.g., as part of Your Applications), and You agree to monitor and be fully responsible for all such use by Your Authorized Developers and their compliance with the terms of this Agreement. You acknowledge that You will be solely responsible for all costs, expenses, losses and liabilities incurred, and activities undertaken by You and Your Authorized Developers in connection with the Apple Software and Apple Services, Your Applications and Your related development and limited distribution efforts.

2.2 Permitted Uses and Restrictions

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

A. Install a reasonable number of copies of the Apple Software on Apple-branded computers that are owned or controlled by You to be used internally by You or Your Authorized Developers only as follows:

- (i) You may use the Xcode Developer Tools to test and develop application and other software;
- (ii) You may use the macOS SDKs to test and develop application and other software;
- (iii) You may use the Apple SDKs (excluding the macOS SDK) solely to test and develop Applications that are specifically for use with the applicable Apple-branded products for which the SDK is targeted, unless otherwise permitted by Apple in writing; and
- (iv) You may use the Apple Services solely to test and develop Applications that are specifically for use on Apple-branded products, unless otherwise permitted by Apple in writing.

Except as otherwise expressly set forth in **Section 2.2.B.**, You may not distribute any Applications developed using the Apple SDKs (excluding the macOS SDK) absent entering into a separate written agreement with Apple.

B. Use Provisioning Profiles to install Your Applications onto a reasonable, limited number of Authorized Test Units solely for use by You and/or Your Authorized Developers and only for internal testing and development of Your Applications, or for Your own personal, non-commercial use.

Apple reserves the right to limit the number of Authorized Test Units that You may provision for iOS, watch OS, iPadOS, and tvOS as well as the number of Authorized Developers (and Apple IDs) that You may register with the Apple Software for such provisioning. You agree to be solely responsible for determining which Authorized Developers in Your company or organization should have access to and use of Your Applications and such Authorized Test Units. You agree to clearly inform Your Authorized Developers that Your Applications that are deployed using Your Provisioning Profiles are to be used only by them (and not by any third parties) and are solely for use for internal testing and development purposes on Your behalf. You will be responsible for attaching or otherwise including, at Your discretion, any relevant usage terms for such Applications. Apple will not be responsible for any

violations of Your usage terms. You will be solely responsible for all user assistance, warranty and support of Your Applications that are deployed by You under this Agreement.

2.3 Apple IDs

You agree to register only a reasonable number of Apple IDs in the Apple Software and Apple Services for deployment and provisioning purposes. You agree to ensure that such Apple IDs are associated with You or Your Authorized Developers. You agree that all information provided to Apple by You or Your Authorized Developers in obtaining such Apple IDs or entering them into the Apple Software or Services will be current, true, accurate, supportable and complete. You agree not to fraudulently misrepresent or improperly acquire more Apple IDs than are necessary for Your own reasonable testing and development purposes. You understand that Apple may disable Your right to use Apple IDs within the Apple Software or may revoke Your Provisioning Profiles at any time in its sole discretion (e.g., if Apple suspects fraudulent or malicious activity with Your use of the Apple Software or Services).

2.4 Apple Developer Program

If You would like a third-party to use Your Application for iOS, watchOS, iPadOS, or tvOS, or You would like to distribute Your Application for macOS through the App Store, then You must enter into a separate written agreement with Apple (the Apple Developer Program License Agreement) and Your Application must comply with the Program Requirements and Documentation. Information regarding the Program Requirements is available at: <http://developer.apple.com/programs/ios/information/index.html>. Apple reserves the right to change the Program Requirements and/or the terms of the Apple Developer Program License Agreement from time to time. You are fully responsible for any and all costs, expenses or other liabilities You may incur as a result of Your development or use of the Apple Software or Services. For clarity, macOS applications and libraries may be distributed without entering into a separate written agreement with Apple so long as such applications and libraries comply with the terms of this Agreement.

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2.6 Ownership

Apple retains all rights, title, and interest in and to the Apple Software and Apple Services. The parties acknowledge that this Agreement does not give Apple any ownership interest in Your Applications.

2.7 Restrictions; No Other Permitted Uses

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You agree to access and use such Services only as necessary for providing services and functionality for Your Applications that are eligible to use such Services and only as permitted by Apple in writing, including in the Documentation. You may not use the Apple Services in any manner that is inconsistent with the terms of this Agreement or that infringes any intellectual property rights of a third party or Apple, or that violates any applicable laws or regulations. You agree that the Apple Services contain proprietary content, information and material owned by Apple and its licensors, and protected by applicable intellectual property and other laws. You may not use such proprietary content, information or materials in any way whatsoever, except for the permitted uses of the Apple Services under this Agreement, or as otherwise separately and expressly permitted by Apple in writing.

You acknowledge that there may be storage capacity, transmission, and/or transactional limits for the Apple Services both for You as a developer and for Your Authorized Developers. If You reach or Your Authorized Developers reach such limits, then You or Your Authorized Developer may be unable to use the Apple Services or may be unable to access or retrieve data from Your Applications or through the applicable end-user accounts. You agree not to charge any fees to Your Authorized Developers solely

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2.10 Xcode Server

If You access the Xcode Server feature of the Apple Software (e.g., via the command line tools), then You may use the Xcode Server feature for Your own personal use or within Your company or organization, but solely for Your own internal testing and development purposes. You may not provide a service to any other party that integrates with or leverages services or information provided by Xcode Server or uses the Xcode Server feature in any way. As a condition of using the Xcode Server feature of the Apple Software, You represent and warrant to Apple that You (and any user of a client-computer that You permit to access Xcode Server on Your behalf) are appropriately licensed to use the applicable services, features or functionality of the Xcode Developer Tools, the Apple SDKs and/or the Apple Developer Program account and associated resources accessed through Xcode Server (e.g., anyone attempting to gain access to Your Apple Developer certificates stored on Xcode Server must be a member of Your paid Apple Developer Program account team). You agree to monitor and will be responsible for all such use by any user of a client-computer that You permit to access Xcode Server and their compliance with the terms of this Agreement and other applicable license agreements.

2.11 QuickTime Development Software

You may use the QuickTime development software only to develop application software that is compatible with, and runs only on supported macOS and/or Windows platforms with QuickTime installed. Your software application may not interfere with the functionality of QuickTime Player or the QuickTime Plug-in, including but not limited to file type or MIME type associations that are registered to QuickTime.

2.12 Digital Materials and Reality Composer Software

A. The Reality Composer software (“**Composer Software**”) that is included with the Apple Software contains, displays and provides access to certain content, photographs, text, images, graphics,

artwork, audio, video, augmented reality or similar assets (collectively, the “**Digital Materials**”). Title and intellectual property rights in the Digital Materials belong to Apple or the respective content owner, and such Digital Materials may be protected by copyright or other intellectual property laws and treaties, or subject to terms of use of the third party providing such Digital Materials. Apple is not obligated to provide for, and does not guarantee, the availability of any specific Digital Materials, and any Updates to the Composer Software may therefore contain some Digital Materials different from the previous versions.

B. Automatic Updates of the Composer Software may also include updates to the library of Digital Materials that are provided as part of the Composer Software. Regardless of whether automatic updates are enabled or not, when the Composer Software is in use, the Composer Software will automatically check with Apple for Updates to the Digital Materials. If an Update is available, You will be prompted to download the updated or new Digital Materials. **Apple reserves the right to automatically modify, remove, or delete any Digital Materials on Your Apple-branded computer from time to time if Apple becomes aware of or has reason to believe that it is necessary to cease the distribution and use of such Digital Materials, due to reasons such as legal or regulatory requirements, public morals, or technical considerations. By using the Apple Software, You understand and agree that Apple may automatically modify, remove or delete any Digital Materials.**

C. Except as otherwise provided in this Agreement, You may use the Digital Materials, on a royalty-free basis, to create your own original content for your game, application, or other audiovisual project (“**User Content**”) subject to Apple’s right to modify, remove or delete specific Digital Materials on Your Apple-branded computer as set forth in Section 2.12B above. You may display and distribute User Content that was created using the Digital Materials as part of or in connection with Your game, application or other audiovisual project; however, individual Digital Materials may not be commercially or otherwise distributed on a standalone basis, or repackaged in whole or in part as audio clips, visual content, or asset packs.

D. Except as otherwise provided in this Agreement, (i) this Agreement does not grant You any rights to use such Digital Materials, nor does it obligate Apple to make any such Digital Materials available to You continually or for any specific term, and (ii) You may not use the Digital Materials outside the context of their intended use as part of the Apple Software. Without prejudice to Section 2.14C below, You agree not to use the Composer Software, including any Digital Materials, for any unlawful or illegal activity or to create User Content or assets that are offensive or inappropriate. You further agree not to interfere with, disrupt, or create an undue burden on servers or networks connected to Your Apple-branded computer or Apple Software or violate the regulations, policies or procedures of such networks.

2.13 System-Provided Images

The system-provided images and symbols owned by Apple and documented as such in Apple's Human Interface Guidelines for iOS, watchOS, iPadOS, tvOS, and/or macOS (“**System-Provided Images**”) are licensed to You solely for the purpose of developing Applications for Apple-branded products that run on the system for which the image was provided. You agree that you shall not use or incorporate the System-Provided Images or any substantially or confusingly similar images into app icons, logos or make any other trademark use of the System-Provided Images. Your use of the System-Provided Images shall also be subject to any specific use restrictions with respect thereto as set forth in the Apple Software or Apple’s Human Interface Guidelines. Apple reserves the right to review and, in its sole discretion, require modification or discontinuance of use of any System-Provided images used in violation of the foregoing restrictions, and you agree to promptly comply with any such request. Upon termination of this Agreement, You may continue to distribute the System-Provided Images as used within Applications You developed using the Apple Software.

2.14 Additional Restrictions for Applications

A. Use of the Apple Maps Service; Location

If Your Application uses or accesses the Map Kit API from a device running iOS version 6 or later, Your Application will access and use the Apple Maps Service. All use of the Map Kit API and Apple Maps Service must be in accordance with the terms of this Agreement, and You agree that the Apple Maps Service is solely for use by Applications running on Apple-branded products. Your Application may use the MapKit API only to access the Apple Maps Service and/or Map Data in Your Applications (except as otherwise set forth below).

As part of such access to the Apple Maps Service and/or Map Data through the MapKit API:

- Your Application must not remove, obscure or alter Apple's or its licensors' copyright notices, trademarks, or any other proprietary rights or legal notices, documents or hyperlinks that may appear in or be provided through the Apple Maps Service;
- You must not use the Apple Maps Service in any manner that enables or permits bulk downloads or feeds of the Map Data, or any portion thereof, or that in any way attempts to extract, scrape or reutilize any portions of the Map Data. For example, neither You nor Your Application may use or make available the Map Data, or any portion thereof, as part of any secondary or derived database;
- Your Application may display the Map Data only as permitted herein, and when displaying it on a map, You agree that it will be displayed only on an Apple map provided through the Apple Maps Service;
- Except to the extent expressly permitted herein, You agree not to copy, modify, translate, create a derivative work of, publish or publicly display the Map Data in any way. Further, You may not use or compare the data provided by the Apple Maps Service for the purpose of improving or creating another mapping service;
- Unless otherwise expressly permitted in the MapKit Documentation for the Apple Maps Service, Map Data may not be cached, pre-fetched, or stored by You or Your Application, other than on a temporary and limited basis solely to improve the performance of the Apple Maps Service with Your Application;
- You acknowledge and agree that results You may receive from the Apple Maps Service may vary from actual conditions due to variable factors that can affect the accuracy of Map Data, such as road or weather conditions; and
- If Your Application accesses the MapKit API from a device running iOS version 5 or earlier, Your Application will access and use only the Google Mobile Maps (GMM) service. Such use of the GMM is subject to the following terms: <http://code.google.com/apis/maps/terms/iphone.html>. If You do not accept such terms, You may not use the GMM service in Your Application, and You acknowledge and agree that such use will constitute Your acceptance of such terms.

Applications that use location-based APIs (e.g., Core Location, MapKit API) or otherwise provide location-based services may not be designed or marketed for automatic or autonomous control of vehicle behavior, or for emergency or life-saving purposes. Map Data and other location data provided by Apple is not intended to be relied upon in situations where precise location information is needed or where erroneous, delayed, non-existent, inaccurate or incomplete location data may lead to death, personal injury, property or environmental damage.

If You choose to provide Your own location-based service, data and/or information in conjunction with the Apple maps provided through the Apple Maps Service (e.g., overlaying a map or route You have created on top of an Apple map), You are solely responsible for ensuring that Your service, data and/or information correctly aligns with any Apple maps used. For Applications that use location-based APIs for real-time navigation (including, but not limited to, turn-by-turn route guidance and other routing that is enabled through the use of a sensor), You must have an end-user license agreement that includes the

following notice: YOUR USE OF THIS REAL TIME ROUTE GUIDANCE APPLICATION IS AT YOUR SOLE RISK. LOCATION DATA MAY NOT BE ACCURATE. Further, any Applications that offer location-based services or location-based functionality must notify and obtain consent from an individual before his or her location data is collected, transmitted or otherwise used by the Application.

B. Use of the HealthKit APIs and the HomeKit APIs

You may use the HealthKit APIs only for internal testing and development purposes for Your Application. Your Application must not access the HealthKit APIs unless it is primarily designed to provide health and/or fitness services. You must not use the HealthKit APIs, or any information obtained through the HealthKit APIs, to disclose or provide an end-user's health and/or fitness information to any third party and may only use such APIs for internal testing and development purposes for Your Application. If Your Application accesses NikeFuel points information through the HealthKit APIs, then Your use of the NikeFuel points information is subject to the NikeFuel points terms of service set forth at: <https://developer.nike.com/healthkit/nikefuel-use-agreement.html>. If You do not accept such NikeFuel points terms of service, including, but not limited to all limitations and restrictions therein, You may not use such NikeFuel points information in Your Application, and You acknowledge and agree that such use will constitute Your acceptance of such terms of service.

You may use the HomeKit APIs only for internal testing and development purposes for Your Application. Your Application must not access the HomeKit APIs unless it is primarily designed to provide home configuration or home automation services (e.g., turning on a light, lifting a garage door) for hardware accessories licensed under Apple's MFi Program. You agree not to use the HomeKit APIs for any purpose other than interfacing, communicating, interoperating with or otherwise controlling hardware accessories licensed under Apple's MFi Program or for using the HomeKit database, and then only for home configuration or home automation purposes in connection with Your Application. Your Application may use information obtained from the HomeKit APIs and/or the HomeKit database only on supported Apple-branded products. You agree not to export, remotely access, or transfer such information off such device (e.g., a lock password cannot be sent off an end-user's device to be stored in an external non-Apple database).

C. Compliance with Laws

You agree that neither You nor Your Applications will disable, override or otherwise interfere with any Apple-implemented system alerts, warnings, display panels, consent panels and the like. You understand and agree that You and Your Applications must comply with all applicable criminal, civil and statutory laws and regulations (including privacy, data collection and location service laws and regulations) in any jurisdictions in which Your Applications may be delivered. You shall be solely responsible for, and Apple shall have no responsibility or liability whatsoever with respect to, any and all claims, suits, liabilities, losses, damages, costs and expenses arising from, related or attributable to, or otherwise involving Your Application.

You agree not to use the Apple Software and Services for any unlawful or illegal activity, nor to develop any Application that would commit or facilitate the commission of a crime, or other tortious, unlawful, or illegal act. You agree that, to the best of Your knowledge and belief, Your Applications will not violate, misappropriate, or infringe any Apple or third party copyrights, trademarks, rights of privacy and publicity, trade secrets, patents, or other proprietary or legal rights (e.g. musical composition or performance rights, video rights, photography or image rights, logo rights, third party data rights, etc. for content and materials that may be included in Your Application). Further, You agree not to use the Apple Software or Apple Services to create any Application or other software program that would disable, hack or otherwise interfere with any security, digital signing, digital rights management, content protection, verification or authentication mechanisms implemented in or by the Apple Software or the Apple Services, or by other Apple software, services or technology, or enable others to do so, unless otherwise permitted by Apple in writing.

Applications must not contain any malware, malicious or harmful code, program, or other internal component (e.g. computer viruses, trojan horses, “backdoors”) and may not use any Apple Software or services in a way that could damage, destroy, or adversely affect Apple hardware, software or services, or any other software, firmware, hardware, data, systems, services, or networks. If Your Application includes any FOSS, You agree to comply with all applicable FOSS licensing terms, and You agree not to use any FOSS in the development of Your Application in such a way that would cause the non-FOSS portions of the Provisioning Profiles, Apple Software, Services, or any Apple-issued certificates to be subject to any FOSS licensing terms or obligations.

3. Pre-Release Software and Services

Note: This Agreement applies to both the commercial release versions of the Apple Software and pre-release versions of the Apple Software, as applicable. You should review the release notes provided with the Apple Software if You are uncertain about Your confidentiality obligations or visit developer.apple.com for more information about pre-release versions.

3.1 Using Pre-Release Apple Software and Services

Pre-release versions of the Apple Software or Apple Services should not be relied upon to perform in the same manner as a final-release, commercial-grade product, nor should they be used with data that is not sufficiently and regularly backed up. The pre-release Apple Software and Apple Services may contain inaccuracies or errors that could cause failures or loss of data and may be incomplete. You should back up Your data prior to using any pre-release Apple Software and Apple Services and not rely on them to perform in the same way as a commercial release of the Apple Software and Services.

3.2 Confidentiality

You agree that pre-release versions of the Apple Software and Apple Services (including pre-release Documentation) will be deemed “**Apple Confidential Information**”; provided however that upon the commercial release of the Apple Software and Apple Services, such pre-release versions of the Apple Software and Apple Services will no longer be confidential. Notwithstanding the foregoing, Apple Confidential Information will not include: (i) information that is generally and legitimately available to the public through no fault or breach of Yours, (ii) information that is generally made available to the public by Apple, (iii) information that is independently developed by You without the use of any Apple Confidential Information, (iv) information that was rightfully obtained from a third party who had the right to transfer or disclose it to You without limitation, or (v) any FOSS included in the Apple Software and Apple Services and accompanied by licensing terms that do not impose confidentiality obligations on the use or disclosure of such FOSS. Further, Apple agrees that You will not be bound by the foregoing confidentiality terms with regard to technical information about pre-release Apple Software or Apple Services disclosed by Apple at WWDC (Apple’s Worldwide Developers Conference), except that You may not post screen shots of, write public reviews of, or redistribute any pre-release Apple Software or Services.

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

4. Indemnification

To the extent permitted by applicable law, You agree to indemnify, defend and hold harmless Apple, its directors, officers, employees, independent contractors and agents (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 as a result of Your breach of this Agreement, a breach of any certification, covenant, representation or warranty made by You in this Agreement, any claims that Your Applications violate or infringe any third party intellectual property or proprietary rights, or otherwise related to or arising from Your use of the Apple Software and Apple Services, Your Applications, Your development of Applications, or Your loading of Applications and limited distribution as permitted hereunder. You acknowledge that the Apple Software and Apple Services is not intended for use in the development of Applications in which errors or inaccuracies in the content, functionality, services, data or information provided by the Application or the failure of the Application could lead to death, personal injury, or severe physical or environmental damage, and, to the extent permitted by law, You hereby agree to indemnify, defend and hold harmless each Apple Indemnified Party from any Losses incurred by such Apple Indemnified Party by reason of any such use. In no event may You enter into any settlement or like agreement with a third party that affects Apple's rights or binds Apple in any way, without the prior written consent of Apple.

5. Term and Termination

The license to use this version of the Apple Software and Apple Services is effective until terminated as set forth herein.

This Agreement and all rights under this Agreement will terminate automatically or cease to be effective without notice from Apple if You or any of Your Authorized Developers fail to comply with any term(s) of this Agreement. All rights hereunder in any beta or pre-release versions of the Apple Software for a particular release will terminate upon the commercial release of such Apple Software.

Upon the termination of this Agreement for any reason, You agree to immediately cease all use of the Apple Software and Apple Services and erase and destroy all copies, full or partial, of the Apple Software and Apple Services and all copies of Apple Confidential Information in Your and Your Authorized Developers' possession or control. At Apple's request, You agree to provide written certification of such destruction to Apple.

Apple reserves the right to revoke, disable or suspend any Provisioning Profiles or any access to the device deployment and provisioning features of the Apple Software and Services at any time, in its sole discretion. By way of example, Apple may do this if Apple has reason to believe that Apple IDs were fraudulently obtained, that an unreasonable number of devices have been entered into the Apple Software, and/or that the Services are being used in a fraudulent, suspicious, or improper manner.

The following terms shall survive termination: Section 1, the last sentence of Section 2.1, the last two sentences of Section 2.2B., the second to last sentence of Section 2.4, Section 2.6, Section 2.7, Section 2.12B, 2.12D, the last sentence of 2.13, and Sections 3, 4, 5, 6, 7, and 8. Apple will not be liable for compensation, indemnity, or damages of any sort as a result of terminating this Agreement in accordance with its terms, and termination of this Agreement will be without prejudice to any other right or remedy Apple may have, now or in the future.

6. NO WARRANTY

A. YOU EXPRESSLY ACKNOWLEDGE AND AGREE THAT, TO THE EXTENT PERMITTED BY APPLICABLE LAW, USE OF THE APPLE SOFTWARE AND APPLE SERVICES IS AT YOUR SOLE RISK

AND THAT THE ENTIRE RISK AS TO SATISFACTORY QUALITY, PERFORMANCE, ACCURACY AND EFFORT IS WITH YOU.

B. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE APPLE SOFTWARE AND APPLE SERVICES ARE PROVIDED “**AS IS**” AND “**AS AVAILABLE**”, WITH ALL FAULTS AND WITHOUT WARRANTY OF ANY KIND, AND APPLE AND APPLE'S LICENSORS (COLLECTIVELY REFERRED TO AS “**APPLE**” FOR THE PURPOSES OF SECTIONS 6 AND 7) HEREBY DISCLAIM ALL WARRANTIES AND CONDITIONS WITH RESPECT TO THE APPLE SOFTWARE AND APPLE SERVICES, EITHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, TIMELINESS, AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS.

C. APPLE DOES NOT WARRANT AGAINST INTERFERENCE WITH YOUR ENJOYMENT OF THE APPLE SOFTWARE AND APPLE SERVICES, THAT THE APPLE SOFTWARE AND APPLE SERVICES WILL MEET YOUR REQUIREMENTS, THAT THE OPERATION OF THE APPLE SOFTWARE AND APPLE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE, THAT DEFECTS IN THE APPLE SOFTWARE AND APPLE SERVICES WILL BE CORRECTED, OR THAT THE APPLE SOFTWARE AND APPLE SERVICES WILL BE COMPATIBLE WITH FUTURE APPLE PRODUCTS OR SOFTWARE. INSTALLATION OF THIS APPLE SOFTWARE AND USE OF THE APPLE SERVICES MAY AFFECT THE USABILITY OF THIRD PARTY SOFTWARE, APPLICATIONS OR THIRD PARTY SERVICES AS WELL AS OTHER APPLE PRODUCTS OR SERVICES.

D. YOU FURTHER ACKNOWLEDGE THAT THE APPLE SOFTWARE AND APPLE SERVICES ARE 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, THE APPLE SOFTWARE OR APPLE SERVICES 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.

E. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY APPLE OR AN APPLE AUTHORIZED REPRESENTATIVE WILL CREATE A WARRANTY. SHOULD THE APPLE SOFTWARE AND APPLE SERVICES PROVE DEFECTIVE, YOU ASSUME THE ENTIRE COST OF ALL NECESSARY SERVICING, REPAIR OR CORRECTION. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES OR LIMITATIONS ON APPLICABLE STATUTORY RIGHTS OF A CONSUMER, SO THE ABOVE EXCLUSION AND LIMITATIONS MAY NOT APPLY TO YOU.

7. LIMITATION OF LIABILITY

TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW, IN NO EVENT WILL APPLE BE LIABLE FOR PERSONAL INJURY, OR ANY INCIDENTAL, SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES WHATSOEVER, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS, CORRUPTION OR LOSS OF DATA, FAILURE TO TRANSMIT OR RECEIVE ANY DATA OR INFORMATION, BUSINESS INTERRUPTION OR ANY OTHER COMMERCIAL DAMAGES OR LOSSES, ARISING OUT OF OR RELATED TO THIS AGREEMENT, YOUR USE OF OR INABILITY TO USE THE APPLE SOFTWARE AND APPLE SERVICES, OR YOUR DEVELOPMENT EFFORTS, HOWEVER CAUSED, WHETHER UNDER A THEORY OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), PRODUCTS LIABILITY, OR OTHERWISE, EVEN IF APPLE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR PERSONAL INJURY, OR OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THIS LIMITATION MAY NOT APPLY TO YOU. **In no event shall Apple's total liability to You under this Agreement for all damages (other than as may be required by applicable law in cases involving personal injury) exceed the amount of fifty dollars (\$50.00).**

8. General Legal Terms

8.1 Third Party Notices

Portions of the Apple Software and Apple Services utilize or include third party software and other copyrighted material. Acknowledgements, licensing terms and disclaimers for such material are contained in the electronic documentation for the Apple Software and Apple Services, and Your use of such material is governed by their respective terms. Further, certain software libraries and other third party software included with the Apple Software are free software and licensed under the terms of the GNU General Public License (GPL) or the GNU Library/Lesser General Public License (LGPL), as the case may be. You may obtain a complete machine-readable copy of the source code for such free software under the terms of the GPL or LGPL, as the case may be, without charge except for the cost of media, shipping, and handling, upon written request to Apple at opensource@apple.com. The GPL/LGPL software is distributed in the hope that it will be useful, but WITHOUT ANY WARRANTY, without even the implied warranty of MERCHANTABILITY or FITNESS FOR A PARTICULAR PURPOSE. A copy of the GPL and LGPL is included with the Apple Software.

8.2 Consent to Collection and Use of Data

A. Diagnostic and Usage Data

- If You are running a pre-release version of the Apple Software and Services, then unless You opt out of diagnostic and usage collection, You agree that Apple and its subsidiaries and agents will collect, maintain, process and use diagnostic, technical, usage and related information, including but not limited to unique system or hardware identifiers, information about Your computer, system and application software, and peripherals, that is gathered periodically and automatically as part of the pre-release seeding process to test, provide and improve Apple's products and services, facilitate the provision of software updates, product support and other services to You (if any) related to the Apple Software, and to verify compliance with the terms of this Agreement.
- If You are running a commercial version of the Apple Software and Services, then if You choose to allow diagnostic and usage collection, You agree that Apple and its subsidiaries and agents may collect, maintain, process and use diagnostic, technical, usage and related information, including but not limited to unique system or hardware identifiers, information about Your computer, system and application software, and peripherals, that is gathered periodically to provide and improve Apple's products and services, facilitate the provision of software updates, product support and other services to You (if any) related to the Apple Software, and to verify compliance with the terms of this Agreement.
- You may change Your preferences for Diagnostics & Usage collection at any time by going to the Diagnostics & Usage setting in Your system software and deselecting the checkbox. The Diagnostics & Usage setting is found in the Security & Privacy pane within System Preferences. Apple may use this information, so long as it is collected in a form that does not personally identify You, for the purposes described above. To enable Apple's partners and third party developers to improve their software, hardware and services designed for use with Apple products, Apple may also provide any such partner or third party developer with a subset of diagnostic information that is relevant to that partner's or developer's software, hardware and/or services, so long as the diagnostic information is in a form that does not personally identify You.

B. Device Provisioning Data

In order to set up and use the device provisioning, account authentication, and deployment features of the Apple Software and Services, certain unique identifiers for Your computer, iOS devices, watchOS devices, iPadOS devices, tvOS devices, and account information may be needed. These unique identifiers may include Your email address, Your Apple ID, a hardware identifier for Your computer, and device identifiers entered by You into the Apple Software for Apple-branded products running iOS, watchOS, iPadOS, or tvOS. Such identifiers and information may be logged in association with Your interaction with the Service and Your use of these features and the Apple Software and Services. **By**

using the Apple Software or Services, You agree that Apple may transmit, collect, maintain, process and use these identifiers and information for the purpose of providing the Apple Software and Services, including using such identifiers for account verification and anti-fraud measures. If You do not want to provide this information, do not use the device deployment and provisioning features of the Apple Software or Services.

C. Privacy Policy

At all times Your information will be treated in accordance with Apple's Privacy Policy, which can be viewed at: <http://www.apple.com/legal/privacy/>.

8.3 Severability; Waiver

If a court of competent jurisdiction finds any clause of this Agreement to be unenforceable for any reason, that clause of this Agreement shall be enforced to the maximum extent permissible so as to effect the intent of the parties, and the remainder of this Agreement shall continue in full force and effect. However, if applicable law prohibits or restricts You from fully and specifically complying with the Sections of this Agreement entitled "**Internal Use License and Restrictions**" or prevents the enforceability of either of those Sections, this Agreement will immediately terminate and You must immediately discontinue any use of the Apple Software and Apple Services as described in the Section entitled "**Term and Termination.**" 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.

8.4 Export Control

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

8.5 Government End Users

The Apple Software and Apple Services 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.

8.6 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 and/or Apple Services 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,

the following shall apply as exceptions to You, but solely to the limited extent that You are entering into this Agreement for the sole purpose of acting on behalf of Your entity:

A. If You (as an entity entering into this Agreement) 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 4 (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;

B. If You (as an entity entering into this Agreement) are a U.S. public and accredited educational institution, then (a) this Agreement will be governed and construed in accordance with the laws of the state (within the U.S.) in which Your educational institution is domiciled, except that body of state law concerning conflicts of law; and (b) any litigation or other dispute resolution between You and Apple arising out of or relating to this Agreement, the Apple Software and Apple Services, or Your relationship with Apple will take place in federal court within the Northern District of California, and You and Apple hereby consent to the personal jurisdiction of and exclusive venue of such District unless such consent is expressly prohibited by the laws of the state in which Your educational institution is domiciled; and

C. If You (as an entity entering into this Agreement) 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.

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.

8.7 Entire Agreement; Governing Language

This Agreement constitutes the entire agreement between the parties with respect to the use of the Apple Software and Apple Services licensed hereunder and supersedes all prior understandings regarding such subject matter. Notwithstanding the foregoing, to the extent that You have entered into the Apple Developer Program License Agreement (PLA) with Apple and are validly licensed by Apple to exercise additional rights, or to use additional features or functionality of the Apple Software or Apple Services under the PLA, You acknowledge and agree that the PLA shall govern Your use of such additional rights and privileges. No amendment to or modification of this Agreement will be binding unless in writing and signed by Apple. The parties hereto 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.

EA1647
8/7/2019

App Store Connect

TERMS OF SERVICE

THESE TERMS OF SERVICE CONSTITUTE A LEGAL AGREEMENT BETWEEN YOU AND APPLE INC. ("APPLE") AND GOVERN YOUR USE OF THE APP STORE CONNECT SITE AND THE PRODUCTS AND SERVICES OFFERED THROUGH IT ("APP STORE CONNECT"). TO AGREE TO THESE TERMS OF SERVICE, CLICK "AGREE." IF YOU DO NOT AGREE TO THESE TERMS OF SERVICE, DO NOT CLICK "AGREE," AND DO NOT USE APP STORE CONNECT. YOU MUST ACCEPT AND ABIDE BY THESE TERMS OF SERVICE AS PRESENTED TO YOU: CHANGES, ADDITIONS, OR DELETIONS ARE NOT ACCEPTABLE, AND APPLE MAY REFUSE ACCESS TO APP STORE CONNECT FOR NONCOMPLIANCE WITH ANY PART OF THESE TERMS OF SERVICE.

1. Access. Access to App Store Connect is provided solely as an accommodation and at Apple's sole discretion, and is available only to (a) authorized representatives of a person or entity with a valid membership in the Apple Developer Program (an "Apple Developer") that has signed the Apple Developer Program License Agreement (the "Agreement") (such representatives, "Developer Representative(s)") who have been granted access to App Store Connect by the Apple Developer or Apple solely for purposes of uploading and/or managing Licensed Applications, associated metadata, or other related tasks and services. In addition, limited access to App Store Connect for certain purposes (including delivery of materials to be offered for potential distribution pursuant to a future Agreement) is available to authorized representatives of entities that have applied, and have been invited by Apple, to enter into an Agreement. Your access to particular App Store Connect services may be further limited by the App Store Connect administrative user(s) for the Licensed Developer with which you are associated.
2. System Requirements. Use of App Store Connect requires compatible hardware (fees may apply), Internet access (fees may apply), and certain software (fees may apply), and may require obtaining updates or upgrades from time to time. Because use of App Store Connect involves hardware, software, and Internet access, your ability to use App Store Connect may be affected by the performance of these factors. High speed Internet access is strongly recommended. You acknowledge and agree that such system requirements, which may be changed from time to time, are your responsibility.
3. Confidentiality. You acknowledge that, in the course of your use of App Store Connect, you may have access to certain information and materials that are confidential and are of substantial value to Apple, including, but not limited to, any proposed Agreement you download from App Store Connect or you otherwise receive from Apple, which value would be impaired if such information were disclosed to third parties or used for purposes other than expressly permitted by any Agreement, or as set forth herein ("Apple Confidential Information"). You agree to maintain any Apple Confidential Information in confidence, and not disclose or otherwise make available Apple Confidential Information to any third party without the prior written consent of Apple. In the event either party chooses not to enter into an Agreement, you agree to destroy all copies of any Apple Confidential Information in your possession, including any proposed Agreement(s).
4. Agreement. Your use of App Store Connect is, if applicable, subject to the terms of the Agreement, including, without limitation, its confidentiality provisions. In the event of

any conflict between these Terms of Service or any information provided on App Store Connect, on the one hand, and the Agreement, on the other hand, the terms of the Agreement shall govern.

5. **Your Information.** You agree to provide accurate, current, and complete information required to register with App Store Connect and at other points as may be required in the course of using App Store Connect ("User Data"). You hereby confirm that any User Data you already have provided to Apple (including, without limitation, in the iTunes application process or through prior use of App Store Connect) has been accurate, current and complete. You further agree to maintain and update your User Data as required to keep it accurate, current, and complete.
6. **Account and Password.** As a registered user of App Store Connect, you must establish an account ("Account"). You are solely responsible for maintaining the confidentiality and security of your Account. You may not reveal your Account information to anyone else, allow anyone else to use your Account, or use anyone else's Account. You are entirely responsible for all activities that occur on or through your Account, and you agree to immediately notify Apple of any unauthorized use of your Account or any other breach of security. Apple shall not be responsible for any losses arising out of the unauthorized or other improper use of your Account.
7. **Particular App Store Connect Services.**
 1. **iTunes Producer** (if applicable). Use of iTunes Producer software, available for download through App Store Connect, is subject to the license agreement presented in connection therewith, as well as these Terms of Service. In the event of any conflict between the iTunes Producer license agreement or these Terms of Service, the license agreement shall govern.
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 - you have cleared all worldwide rights, including, without limitation, any rights of publicity of any person depicted in the Licensed Application Information, any copyrights of photographers, artists, or other third parties, and any trademark rights in marks featured in the Licensed Application Information, that may be necessary for the use of Licensed Application Information as set forth herein and in the Agreement;
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 - the Licensed Application Information does not violate any applicable laws or regulations; and
 - you have the authority to make the foregoing representations and warranties on behalf of yourself and any entity on behalf of which you are uploading the Licensed Application Information,
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10. Indemnity. BY USING THE APP STORE CONNECT SERVICE, YOU AGREE, TO THE EXTENT PERMITTED BY LAW, TO INDEMNIFY AND HOLD APPLE, ITS DIRECTORS, OFFICERS, EMPLOYEES, AFFILIATES, AGENTS, CONTRACTORS, AND LICENSORS HARMLESS WITH RESPECT TO ANY CLAIMS ARISING OUT OF YOUR BREACH OF THESE TERMS OF SERVICE, ANY REPRESENTATIONS OR WARRANTIES MADE BY YOU HEREIN, OR YOUR OTHER IMPROPER, UNAUTHORIZED OR UNLAWFUL USE OF APP STORE CONNECT.
11. Notices. Apple may send you notice with respect to App Store Connect by sending an email message to the email address listed in your Account contact information, by sending a letter via postal mail to the contact address listed in your Account contact

information, or by a posting on App Store Connect. Notices shall become effective immediately.

12. Governing Law. You expressly agree that the laws of the State of California, excluding its conflicts of law rules, govern these Terms of Service and your use of App Store Connect, and that the exclusive jurisdiction for any proceeding relating in any way to your use of App Store Connect will be the Northern District of California. You hereby waive the right to object to the foregoing choice of law, personal jurisdiction or venue.
13. These Terms of Service constitute the entire agreement between you and Apple governing your use of App Store Connect, superseding any prior agreements between you and Apple governing your use of App Store Connect or iTunes Connect. If any part of these Terms of Service is held invalid or unenforceable, that portion shall be construed in a manner consistent with applicable law to reflect, as nearly as possible, the original intentions of the parties, and the remaining portions shall remain in full force and effect. Apple's failure to enforce any right or provisions in these Terms of Service will not constitute a waiver of such provision, or any other provision of these Terms of Service. Apple will not be responsible for failures to fulfill any obligations due to causes beyond its control.

V100

Last updated: 04 June 2018

Minute Action

AGENDA ITEM: 6

Date: September 14, 2022

Subject:

Agreement No. 23-1002865 with Omnitrans for Implementation of Disadvantaged Business Enterprise Program for Federal Transit Administration Subrecipients

Recommendation:

That the General Policy Committee recommend the Board, acting as the San Bernardino County Transportation Authority:

Approve Agreement No. 23-1002865 with Omnitrans for Disadvantaged Business Enterprise Implementation for Federal Transit Administration Subrecipients.

Background:

San Bernardino County Transportation Authority (SBCTA) intends to receive federal financial assistance from the Federal Transit Administration (FTA) through Omnitrans for various transit projects. As a condition of receiving this financial assistance, SBCTA must sign the Disadvantaged Business Enterprise (DBE) Implementation Agreement for Subrecipients. The agreement lays out the terms for subrecipients and what DBE language must be incorporated in FTA-funded contracts. SBCTA currently includes all the requirements in the FTA Invitation for Bids (IFB) template and draft contract. Agreement No. 23-1002865 reflects SBCTA's Procurement Manager as the DBE program administrator and replaces previous Agreement No. 20-1002349.

Financial Impact:

This item is consistent with the Fiscal Year 2022/2023 Budget.

Reviewed By:

This item is not scheduled for review by any other policy committee or technical advisory committee. SBCTA General Counsel, Procurement Manager and Risk Manager have reviewed this item and the draft agreement.

Responsible Staff:

Shaneka Morris, Procurement Manager

Approved
General Policy Committee
Date: September 14, 2022

Witnessed By:

Entity: San Bernardino County Transportation Authority

General Contract Information

Contract No: 23-1002865 Amendment No.: _____

Contract Class: Payable Department: Special Projects

Vendor No.: 01568 Vendor Name: Omnitrans

Description: DBE implementation agreement for FTA subrecipients

List Any Related Contract Nos.: _____

| Dollar Amount | | | | | | | |
|------------------------------|---|----|---|--------------------------------|--|----|---|
| Original Contract | | \$ | - | Original Contingency | | \$ | - |
| Prior Amendments | | \$ | - | Prior Amendments | | \$ | - |
| Prior Contingency Released | | \$ | - | Prior Contingency Released (-) | | \$ | - |
| Current Amendment | | \$ | - | Current Amendment | | \$ | - |
| Total/Revised Contract Value | | \$ | - | Total Contingency Value | | \$ | - |
| | Total Dollar Authority (Contract Value and Contingency) | | | | | \$ | - |

Contract Authorization

Board of Directors Date: 10/05/2022 Committee _____ Item # _____

Contract Management (Internal Purposes Only)

Zero Dollar Contracts Sole Source? N/A N/A

Zero Dollar MOU/COOP/JPA N/A

Accounts Payable

Estimated Start Date: 10/05/2022 Expiration Date: 12/31/2039 Revised Expiration Date: _____

NHS: N/A QMP/QAP: N/A Prevailing Wage: N/A

| Fund | Prog | Task | Sub-Task | Object | Revenue | PA Level | Revenue Code Name | Total Contract Funding: | Total Contingency: |
|------|------|------|----------|--------|---------|----------|-------------------|-------------------------|--------------------|
| | | | | | | | | \$ | \$ |
| GL | | | | | | | | - | - |
| GL | | | | | | | | - | - |
| GL | | | | | | | | - | - |
| GL | | | | | | | | - | - |
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| GL | | | | | | | | - | - |
| GL | | | | | | | | - | - |
| GL | | | | | | | | - | - |
| GL | | | | | | | | - | - |
| GL | | | | | | | | - | - |
| GL | | | | | | | | - | - |

Shaneka Morris

Project Manager (Print Name)

Beatriz Valdez

Task Manager (Print Name)

Additional Notes:

Attachment: CSS - Revised - 10-05-2021 1.23pm - Blank [Revision 1] (8713 : Agreement No. 23-1002865 with Omnitrans for DBE program)



DISADVANTAGED BUSINESS ENTERPRISE
(DBE)

IMPLEMENTATION AGREEMENT

FOR

SUBRECIPIENTS

SBCTA CONTRACT NUMBER 20-1002349

*Applicable to Omnitrans' U.S. Federal Transit Administration (FTA)-assisted
Race-Neutral DBE Program*

Attachment: 23-1002865 Subrecipient Implementation Agreement with Omnitrans (8713 : Agreement No. 23-1002865 with Omnitrans for DBE

DISADVANTAGED BUSINESS ENTERPRISE IMPLEMENTATION AGREEMENT

For the San Bernardino County Transportation Authority (Agency), hereinafter referred to as "Subrecipient."

I Definition of Terms

The terms used in this agreement are defined in 49 Code of Federal Regulations (CFR) § 26.5.

II Objective/Policy Statement (§26.1, 26.23)

The Subrecipient intends to receive federal financial assistance from the U. S. Department of Transportation (DOT) through Omnitrans, and as a condition of receiving this assistance, the Subrecipient will execute the Omnitrans (Recipient) Disadvantaged Business Enterprise (DBE) Implementation Agreement (hereinafter referred to as "Agreement"). The Subrecipient agrees to implement the Omnitrans DBE Program as it pertains to Subrecipients. The DBE Program is based on U.S. Department of Transportation (DOT), 49 CFR, Part 26 requirements.

The Subrecipient is required to ensure that DBEs, as defined in 49 CFR Part 26, have an equal opportunity to receive and participate in FTA-assisted contracts. Subrecipient shall:

- Ensure nondiscrimination in the award and administration of FTA-assisted contracts.
- Create a level playing field on which DBEs can compete fairly for FTA-assisted contracts.
- Ensure that DBE participation is narrowly tailored, in accordance with applicable law.
- Ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs.
- Remove barriers to the participation of DBEs in FTA-assisted contracts.
- Assist in the development of firms that can compete successfully in the marketplace outside the DBE Program.

III Nondiscrimination (§26.7)

Subrecipient(s) shall not exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR Part 26 on the basis of race, color, sex, or national origin. In administering the DBE Program, the Subrecipient shall not, directly, or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE Program with respect to individuals of a particular race, color, sex, or national origin.

IV Overall DBE Goal (§26.45)

In accordance with the DOT DBE Program requirements, Omnitrans, as the Recipient of the Federal Transit Administration (FTA) funds who reasonably anticipates awarding \$250,000 or more in prime contracts (excluding transit vehicle purchases) and including all pass through funds to Subrecipients, is required to develop a triennial overall goal for the participation of DBEs in FTA-assisted contracts. The overall DBE goal shall be attained through race neutral measures. The overall goal is effective from October 1 through September 30. The goal is recalculated every three years. If the overall goal is not met annually, the Recipient must prepare a shortfall analysis describing why the goal was not met and what corrective actions will be taken to improve goal achievement for the upcoming year. The Subrecipient is not required to establish an overall goal unless the Subrecipient is also a direct recipient to FTA and has received approval from the Recipient and FTA to submit an overall goal directly to FTA for pass through funds.

Recipient may require Subrecipient to utilize an overall project goal for larger projects. Recipient shall notify Subrecipient when an FTA-assisted project will require an overall project goal and provide the Subrecipient a separate project goal prior to any solicitations being issued for such a project. The Subrecipient shall calculate

the project specific DBE goal and submit necessary information for Recipient's review and approval. Recipient will prepare, submit and administer overall project goals in accordance with §26.45(e)(3).

The Recipient will notify the Subrecipient within 30 days when the goal is revised or updated based on the Goal Setting Methodology.

V Race-Neutral Means of Meeting the Overall DBE Goal (§26.51)

Subrecipient will assist Omnitrans to achieve its Overall DBE Goal by using race-neutral means of facilitating DBE participation in the award of contracts assisted with FTA pass through funds. Race-neutral DBE participation includes any time a DBE is awarded a prime contract through customary competitive procurement procedures and/or is awarded a subcontract on a prime contract that does not carry a DBE contract-specific goal.

Recipient's Race-neutral program includes, but is not limited to the following:

1. Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate DBE, and other small businesses, participation (e.g., unbundling large contracts to make awards more accessible to small businesses, requiring or encouraging prime contractors to subcontract portions of work that they might otherwise perform with their own forces);
2. Providing assistance in overcoming limitations such as inability to obtain bonding or financing (e.g., by such means as simplifying the bonding process, reducing bonding requirements, eliminating the impact of surety costs from bids, and providing services to assist DBEs, and other small businesses, obtain bonding and financing);
3. Providing technical assistance and other services;
4. Carrying out informational and communication programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs, and other small businesses, on recipient distribution lists of bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors; provision of information in languages other than English, where appropriate);
5. Implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs and other small businesses;
6. Providing services to assist DBEs, and other small businesses, to improve long-term development, increase opportunities to participate in a variety of types of work, manage increasingly significant projects, and achieve eventual self-sufficiency;
7. Establishing a program to assist new, start-up firms, particularly in fields in which DBE participation has historically been low;
8. Ensuring distribution of Recipient's DBE directory, through print or electronic means, to the widest feasible universe of potential prime contractors; and
9. Assisting DBEs, and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media.

VI Monitoring and Enforcement Mechanisms (§26.37)

Subrecipient certifies that it will take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 26.

1. Subrecipient shall bring to the attention of Omnitrans any false or fraudulent conduct in connection with the program, so that Omnitrans can take the steps (e.g., referral to the Department of Transportation, Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 49 CFR Part 26, Section 26.109.

Omnitrans DBE Implementation Agreement for Subrecipients

2. Subrecipient shall consider similar action under its legal authorities, including responsibility determinations in future awards/contracts.
3. Subrecipient shall also provide a monitoring and enforcement mechanism to verify that work committed to DBEs at contract award or subsequently (*e.g.*, as the result of modification to the contract) is actually performed by the DBEs to which the work was committed.

VII Fostering Small Business Participation (§26.39)

Subrecipient shall include an element to structure contracting requirements to facilitate competition by small business concerns, taking all reasonable steps to eliminate obstacles to their participation, including unnecessary and unjustified bundling of contract requirements that may preclude small business participation in procurements as prime contractors or subcontractors. Subrecipient must implement one or more of the following:

1. On prime contracts not having DBE contract specific goals, encourage the prime contractor to provide subcontracting opportunities of a size that small businesses, including DBEs, can reasonably perform, rather than self-performing all the work involved.
2. Identifying alternative acquisition strategies and structuring procurements to facilitate the ability of consortia or joint ventures consisting of small businesses, including DBEs, to compete for and perform prime contracts.

VIII Quotas (§26.43)

Subrecipient shall not use quotas or DBE set-asides in any way in the administration of the Omnitrans DBE Program.

IX DBE Liaison Officer (DBELO) (§26.25)

Subrecipient has designated a DBE Liaison Officer. The DBELO is responsible for implementing the DBE Program, as it pertains to the Recipient, and ensures that the Subrecipient is fully and properly advised concerning DBE Program matters.

Subrecipient Disadvantaged Business Enterprise Liaison Officer (DBELO)

List name, address, telephone number and, electronic mail address of the DBELO herein:

Name: Shaneka M. Morris

Address: 1170 W. 3rd Street, 2nd Floor, San Bernardino, CA 92410-1715

Telephone: (909) 884-8276

Email: smorris@gosbcta.com

The DBELO is responsible for developing, implementing, and monitoring the Subrecipient's requirements of the DBE Program Plan in coordination with other appropriate officials and staff. Duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required.
2. Ensures that bid notices and requests for proposals are made available to DBEs in a timely manner.

Omnitrans DBE Implementation Agreement for Subrecipients

3. Analyzes DBE participation and identifies ways to encourage participation through race-neutral means.
4. Participates in pre-bid meetings.
5. Informs Omnitrans of DBE matters and DBE race-neutral issues.
6. Provides DBEs with information and recommends sources to assist in preparing bids, obtaining bonding and insurance.
7. Plans and participates in DBE training seminars.
8. Provides outreach to DBEs and community organizations to fully advise them of contracting opportunities.

X Federal Financial Assistance Agreement Assurance (§26.13)

By executing this Agreement, Subrecipient shall make the following assurance, which is applicable to all FTA-assisted contracts and their administration. Similarly, Subrecipient will require the same assurance from all contractors in each FTA-assisted prime contract.

The Subrecipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any FTA-assisted contract, or in the administration of its DBE Program, or the requirements of 49 CFR Part 26. The Subrecipient shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of FTA-assisted contracts. The Omnitrans DBE Program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this Agreement.

Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Subrecipient of its failure to carry out Omnitrans' approved DBE Program, Omnitrans may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.). [Note – this language is to be used verbatim, as it is stated in §26.13(a).]

Each FTA-assisted contract Subrecipient signs with a contractor (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance: The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of the contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of FTA-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of the contract, which may result in the termination of this contract or such other remedy as the Subrecipient deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;*
- (2) Assessing sanctions;*
- (3) Liquidated damages; and/or*
- (4) Disqualifying the contractor from future bidding as non-responsible.*

XI DBE Financial Institutions (§26.27)

The Recipient shall investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community to make reasonable efforts to use these institutions, and to encourage prime contractors on FTA-assisted contracts to make use of these institutions.

A listing of minority-owned banks can be obtained from the Federal Reserve Bank website: <https://www.fdic.gov/regulations/resources/minority/mdi.html>, or the U.S. Department of the Treasury, Minority Bank Deposit Program website: <https://www.publicdebt.treas.gov/mbdp/participants.html>.

XII Directory (§26.31)

Subrecipient will refer interested persons to the California Unified Certification Program (CUCP) DBE directory available from the Caltrans Disadvantaged Business Enterprise Program's website at <https://dot.ca.gov/programs/civil-rights/dbe-search>.

XIII Required Contract Clauses (§§26.13, 26.29)

Subrecipient shall be required to utilize the Omnitrans provided contract clauses as an attachment to their FTA-assisted solicitation documents. Subrecipient shall ensure that the following clauses or equivalent will be included in each FTA-assisted prime contract:

A. Contract Assurance

The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of FTA-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the contractor from future bidding as non-responsible.

[Note – This language is to be used verbatim, as is stated in §26.13(b).]

B. Prompt Payment

Prompt Payment of Subcontractors

Subrecipient must establish a contract clause to require prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment Subrecipient makes to the prime contractor for professional services contracts and other contracts not considered public works contracts.

For public works contracts, a prime contractor or subcontractor shall pay to any subcontractor not later than 7 days after receipt of each progress payment, in accordance with the provision in Section 7108.5 of the California Business and Professions Code concerning prompt payment to subcontractors. The 7 days are applicable unless a longer period is agreed to in writing. Any delay or postponement of payment over 7 days may take place only for good cause and with the agency's prior written approval.

Subrecipient may also establish any of the following additional mechanisms to ensure prompt payment:

- (1) A contract clause that requires prime contractors to include in their subcontracts language providing that prime contractors and subcontractors will use appropriate alternative dispute resolution mechanisms to resolve payment disputes. Subrecipient may specify the nature of such mechanisms.

Omnitrans DBE Implementation Agreement for Subrecipients

(2) A contract clause providing that the prime contractor will not be reimbursed for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed.

(3) Other mechanisms, consistent with this part and applicable state and local law, to ensure that DBEs and other contractors are fully and promptly paid.

Subrecipient must ensure prompt and full payment of retainage from the prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed.

Subrecipient shall also select whether retainage will be held and if so, how it will ensure full payment of retainage. See Section XVIII Prompt Payment of Withheld Funds to Subcontractors for provision to be selected by Subrecipient.

Additional Solicitation and Contract Language Requirements

The following items shall be included in FTA-assisted Subrecipient solicitations and contracts:

1. Subrecipient must include in FTA-assisted contracts that failure to carry out DBE requirements is a material breach of the contract;
2. FTA-assisted contracts awarded by Subrecipients must include a clause stating that unless consent is provided by the Subrecipient, the Contractor shall not be entitled to any payment for work or supplies unless it is performed by listed DBE, and
3. Contractor must make DBE subcontracts available to Subrecipient when requested by Subrecipient.
4. Subrecipient shall include reference to Recipient's overall DBE goal or specific overall project goal, if applicable, and provide that contractor is highly encouraged to utilize DBE subcontractors when possible on all FTA-assisted contracts.

XIV Transit Vehicle Manufacturers (§26.49)

Transit vehicle manufacturer means any manufacturer whose primary business purpose is to manufacture vehicles specifically built for public mass transportation. Such vehicles include, but are not limited to: Buses, rail cars, trolleys, ferries, and vehicles manufactured specifically for paratransit purposes. Producers of vehicles that receive post-production alterations or retrofitting to be used for public transportation purposes (e.g., so-called cutaway vehicles, vans customized for service to people with disabilities) are also considered transit vehicle manufacturers. Businesses that manufacture, mass-produce, or distribute vehicles solely for personal use and for sale "off the lot" are not considered transit vehicle manufacturers.

Subrecipient shall require each Transit Vehicle Manufacturer (TVM), as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, to complete a TVM Certification Form acknowledging that it has complied with the requirements of 49 CFR 26.49 section. Subrecipient shall maintain the TVM Certification Form on file for DBE Program compliance. Subrecipient shall check the FTA Civil Rights webpage (<https://www.transit.dot.gov/regulations-and-guidance/civil-rights-ada/eligible-tvms-list>) to validate TVMs that have an FTA approved DBE program and overall goal submissions. Subrecipient is required to submit TVM certification with its Semi-Annual Report when there is a TVM award during the reporting period.

Subrecipients are required to notify Recipient within 20 days of making an award, the name of the successful bidder, and the total dollar value of the contract in the manner prescribed in the grant agreement. Subrecipient must provide TVM purchase data for Omnitrans to submit using the FTA Vehicle Award Form at the following website link: <https://www.surveymonkey.com/r/vehicleawardreportsurvey>. Omnitrans shall print out the completed survey form prior to submission and keep a copy of the TVM information submitted to the FTA and provide a copy to the subrecipient within 3 business days from submitting data to the FTA.

XV Bidders List (§26.11)

The Subrecipient shall maintain a bidders list, consisting of information about all DBE and non-DBE firms that bid or quote on its FTA-assisted contracts.

XVI Reporting to Omnitrans

For all FTA-assisted contracts, Subrecipient shall monitor subcontractor payments on a monthly basis. The Subrecipient shall use a Monthly Subcontractor Paid Report (Form 103) that collects paid amounts to each subcontractor, including the total subcontract amount, payments made to each subcontractor in the previous month, paid to date amount, date subcontractor was paid and other items, or utilize an electronic software system to track contractor and subcontractor payments in conformance with the DBE requirements.

Subrecipient shall promptly submit a final Summary Subcontractor Paid Report (Form 103), reporting final utilization of DBE participation to Omnitrans within 15-days of contract completion. The Final Summary Subcontractor Paid Report will not be required if an electronic reporting system is used to report monthly subcontractor payments.

Appendix B – Part 26 – Uniform Report (Semi-Annual)

Subrecipient shall promptly submit the data for the *Uniform Report of DBE Awards or Commitments and Payments* to Omnitrans biannually on the Federal fiscal year calendar (i.e., October 1 – September 30). The First Semi-Annual Report data confirmation shall be submitted to Omnitrans by May 1, data should cover October 1 – March 31. The Second Semi-Annual Report data confirmation shall be submitted to Omnitrans by November 1; data should cover April 1 – September 30. Subrecipient shall submit semi-annual reports for all contracts at any dollar amount awarded with pass through funds. For each semi-annual reporting period, Recipient will provide Subrecipient with schedule as to when Subrecipient is to submit its semi-annual reports to Recipient. Subrecipient monthly reports will be incorporated into Recipient's submission to FTA.

XVII Certification (§26.83(a))

Subrecipient ensures that only DBE firms currently certified by the California Unified Certification Program (CUCP) will participate as DBEs on FTA-assisted contracts. Subrecipient shall utilize and refer contractors and consultants to the CUCP DBE directory at: <https://dot.ca.gov/programs/civil-rights/dbe-search> to identify certified DBE firms for the performance of work on FTA-assisted contracts. Subrecipients may refer firms interested in becoming certified DBEs to the California Unified Certification Program (CUCP) certifying agencies at <https://dot.ca.gov/programs/civil-rights/dbe-certification-information>.

XVIII Prompt Payment of Withheld Funds to Subcontractors

Federal regulation (49 CFR 26.29) requires one of the following three methods be used in federal-assisted contracts to ensure prompt and full payment of any retainage kept by the prime contractor or subcontractor to a subcontractor.

Please check the box of the method chosen by the local agency to ensure prompt and full payment of any retainage.

- ☒ No retainage will be held by the agency from progress payments due to the prime contractor. Prime contractors and subcontractors are prohibited from holding retainage from subcontractors. Any delay or postponement of payment may take place only for good cause and with the agency's prior written approval. Any violation of these provisions shall subject the violating contractor or subcontractor to the

Omnitrans DBE Implementation Agreement for Subrecipients

penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the contractor, deficient subcontractor performance, and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

- ☐ No retainage will be held by the agency from progress payments due the prime contractor. Any retainage kept by the prime contractor or by a subcontractor must be paid in full to the earning subcontractor in 7 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment may take place only for good cause and with the agency's prior written approval. Any violation of these provisions shall subject the violating contractor or subcontractor to the penalties, sanctions, and remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the contractor, deficient subcontractor performance, and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.
- ☒ The agency shall hold retainage from the prime contractor and shall make prompt and regular incremental acceptances of portions, as determined by the agency of the contract work and pay retainage to the prime contractor based on these acceptances. The prime contractor or subcontractor shall return all monies withheld in retention from all subcontractors within 7 days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the agency. Any delay or postponement of payment may take place only for good cause and with the agency's prior written approval. Any violation of these provisions shall subject the violating prime contractor to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the contractor or subcontractor in the event of: a dispute involving late payment or nonpayment by the contractor; deficient subcontractor performance and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

XIX Enforcement

Failure of the Subrecipient to comply with any requirement of this Agreement or 49 CFR Part 26, as amended, may cause Subrecipient to be subject to formal enforcement action under appropriate program sanctions by Omnitrans, such as the suspension or termination of Federal funds, or refusal to approve projects, grants or contracts until deficiencies are remedied to include any additional enforcement provided in the Grant Agreement.

XX Confidentiality

Subrecipient will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information consistent with federal, state, and local laws.

XXI Terms and Conditions

Terms and Conditions of this agreement shall supersede DBE Implementation Agreement No. 20-1002349, which was executed by SBCTA's Executive Director on May 6, 2020 and Omnitrans' Chief Executive Officer on May 28, 2020.

Omnitrans DBE Implementation Agreement for Subrecipients

The Subrecipient agrees to implement the Omnitrans DBE Program as it pertains to Subrecipients. The DBE Program is based on U.S. Department of Transportation (DOT), 49 CFR, Part 26 requirements and all requirements stated herewith:

Subrecipient Agency

By _____

Date:

(Signature)

Art Bishop, SBCTA Board President _____

Approved as to Form:

Julianna K. Tillquist, SBCTA General Counsel

Date: _____

This DBE Implementation Agreement for Subrecipient is accepted by:

[Signature of Omnitrans Grant Administrator]

Date: _____

[Print Name of Omnitrans Grant Administrator]

[Signature of Omnitrans DBE Liaison Officer]

Date: _____

[Print Name of Omnitrans DBE Liaison Officer]

[Signature of Omnitrans CEO/General Manager]

Date: _____

[Print Name of Omnitrans CEO/General Manager]

Minute Action

AGENDA ITEM: 7

Date: September 14, 2022

Subject:

Release of Request for Proposals No. 22-1002819 Freeway Service Patrol for I-10 Express Lanes

Recommendation:

That the General Policy Committee recommend the Board, acting as the San Bernardino County Transportation Authority:

Approve the release of Request for Proposals No. 22-1002819 for the procurement of tow operator services for the Freeway Service Patrol Beat on Interstate 10 Express Lanes Segment 1.

Background:

The Freeway Service Patrol (FSP) consists of a fleet of tow trucks that patrol selected San Bernardino County freeways during peak periods of congestion to assist motorists with their disabled vehicles. The segment of highway that the tow trucks patrol is referred to as a “Beat.” Over the years, the FSP program has demonstrated many benefits to the motoring public by reducing the amount of time a motorist is in an unsafe situation, reducing traffic congestion, and decreasing fuel consumption, vehicular emissions and secondary incidents.

San Bernardino County Transportation Authority (SBCTA) began FSP operations on January 3, 2006, and now has 19 primary tow trucks in operation, on nine (9) separate Beats. The FSP program is managed through SBCTA staff and is supervised in the field by the California Highway Patrol (CHP). On October 3, 2018, Construction FSP Support Services were approved for the Interstate 10 (I-10) Express Lanes construction project. The construction for the I-10 Express Lanes is scheduled to be complete in June 2023. The SBCTA toll administration division has requested FSP support services for the I-10 Express Lanes Segment 1, once it is open and available to the public. The purpose of the Express Lanes FSP Program is to provide trucks that are strategically placed to patrol the Beat area on an hourly basis, as well as communicate with CHP dispatch and toll operations regarding assists within the toll corridor to deploy and provide the rapid removal of disabled vehicles from the toll lanes and perform minor services.

The following service areas are available for procurement at this time:

- Beat I-10 Express Lanes Segment 1: from Mills Avenue (Los Angeles County line) to Interstate 15 (I-15).

The draft Scope of Work is included with this item as Attachment A. The estimate for the contract is between \$1,523,500 to \$3,185,500 (depending on if one or two primary trucks are selected) for a five (5) year term. The successful proposer(s) will have approximately 150 days from the date of award to purchase tow trucks. The contract is scheduled to begin on August 1, 2023. Staff recommends approval to release Request for Proposals (RFP) No. 20-1002819 for procurement of FSP Beat I-10 Express Lanes Segment 1; timely procurement will enable continued service on the I-10 Express Lanes with no service interruption to the motoring public.

Entity: San Bernardino County Transportation Authority

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Financial Impact:

This item is consistent with the Fiscal Year 2022/2023 Budget.

Reviewed By:

This item is not scheduled for review by any other policy committee or technical advisory committee. SBCTA Procurement Manager, Risk Manager and General Counsel have reviewed the item and the draft RFP.

Responsible Staff:

Cheryl Wilson, Management Analyst II

Approved
General Policy Committee
Date: September 14, 2022

Witnessed By:

San Bernardino County Transportation Authority

ATTACHMENT A
SCOPE OF WORK
FREEWAY SERVICE PATROL (FSP)
Beat Interstate 10 (I-10) Express Lanes Segment 1:
From Mills Avenue (Los Angeles County line) to Interstate 15 (I-15)

1.0 SUMMARY OF SCOPE OF WORK

NOTICE TO PROCEED NO. 1 NTP NO. 1 ESTIMATED SPRING/SUMMER 2023:

The deliverables associated with NTP No. 1 of this CONTRACT include the project ramp-up/preparation, the purchase of the required number of FSP flatbed tow trucks, optional mobilization costs payment, and equipment installations in accordance with section 4.0 "Equipment Requirements". Moreover driver trainings, and inspections in accordance with section 5.0 "Drivers."

NTP NO. 2 ESTIMATED SUMMER/FALL 2023):

The purpose of the I-10 Express Lanes Freeway Service Patrol (Express Lanes FSP) program is to provide tow services within a designated toll facility to ensure the lanes operate in a free-flow state and facilitate the rapid removal of disabled vehicles. Express Lanes FSP provides flatbed Express Lanes FSP tow truck(s) that are strategically semi-staged within the corridor to deploy and provide for the rapid removal of disabled vehicles and perform minor mechanical services. CONTRACTOR shall provide the rapid removal of disabled vehicles and those involved in minor accidents along the San Bernardino I-10 Express Lanes.

The CONTRACTOR's Express Lanes FSP primary truck(s) shall be exclusively dedicated to providing Express Lanes FSP services during the designated hours of operation. All Express Lanes FSP tow truck maintenance activities for the primary and back-up tow trucks shall be conducted during non-designated service hours.

CONTRACTOR's Express Lanes FSP Certified Tow Truck Drivers ("Driver or Drivers") shall assist motorists involved in minor accidents and those with disabled vehicles. When and where conditions warrant, service may take place on the freeway shoulders. Where conditions do not warrant, Drivers will move the vehicles from the freeway to provide services pursuant to the Standard Operating Procedures (SOP) Manual. The Driver(s) shall patrol the I-10 Express Lanes Beat a minimum of once an hour (please note this is subject to change), respond to California Highway Patrol (CHP) dispatched calls for service, as well as possible toll operations communication for service, and use the designated turnaround locations and designated drop locations assigned by CHP.

Where traffic conditions permit, safe removal of small debris will be required. The I-10 Express Lanes tow operator will perform a sweep of the entire length of the Beat at the start of the shift, end of shift, and once every hour in between at minimum (please note, subject to change), or less frequently as determined by FSP CHP and SBCTA. Due to I-10 Express Lanes FSP tow truck(s) being somewhat staged rather than roving, the I-10 Express Lanes tow operator shall mobilize immediately upon receiving notification from the Traffic Operations Center (TOC) or CHP or the CONTRACTOR shall be fined five (5) times the hourly contract rate in one (1) minute increments for the amount of time it takes the vehicle operator to mobilize. Mobilize is defined as an I-10 Express Lanes FSP Certified Tow Truck being en route to a call for service.

Vehicle operators shall be responsible for clearing the toll lanes of automobiles, small trucks, motorcycles, and small debris. When and where conditions warrant, service may be executed on toll lane shoulders. Where conditions do not warrant, the I-10 Express Lanes tow operator will remove the vehicles from the express lanes and off the highway to provide service. During service hours, an I-10 Express Lanes FSP tow truck(s) shall always be prepared to respond to CHP calls for service, respond to calls for service from toll operations, use the CHP designated drop locations for vehicles, and use the designated turnaround locations.

The Express Lanes FSP tow operator may be required to change flat tires, provide "jump" starts, provide one gallon of gasoline or diesel fuel, temporarily tape cooling system hoses, and refill radiators. These services are not all-inclusive. Where conditions permit, safe removal of small debris may also be required. The Drivers are to spend a maximum of ten (10) minutes per disablement in attempting to mobilize a vehicle. If the vehicle is not mobile and able to drive away on its own within ten (10) minutes, the FSP Driver shall contact one of the FSP CHP Officers and advised them of the situation immediately.

If a disabled vehicle cannot be mobilized or relocated within ten (10) minutes, the FSP Driver will offer to tow the vehicle to a designated drop located identified by the FSP CHP. The motorist can also request the Express Lanes FSP tow operator to call the CHP Communications Center to request a CHP Rotation Tow or other service. The I-10 Express Lanes FSP tow operator shall not be allowed to tow as an independent contractor from an incident or assist that occurred during the I-10 Express Lanes FSP shift unless called as a Rotation Tow by CHP after the shift has ended. If called as a Rotation Tow after an I-10 Express Lanes FSP shift, the vehicle operator must first remove all I-10

There may be some instances when the FSP Driver may be requested to provide assistance to CHP Officers in the field. When a CHP Officer in the field directs a Driver to complete a task, the Driver shall follow those directions provided, given the task does not endanger the Driver or the public and is within the Driver's skills and training. The Driver shall only advise the officer of the possible dangers. If the task is not within the FSP policy, an FSP CHP Officer should be notified of the incident. Drivers should not tell the CHP Officer they will not perform the task requested UNLESS they believe they are unable to perform the task safely. Afterwards, CHP will take the necessary steps to avoid future misunderstandings between the Officer and the I-10 Express Lanes FSP Program.

All Express Lanes FSP services shall be provided at no cost to the motorist. The Drivers shall not accept any gratuities, gifts or money to perform any other services, recommend secondary tows, or recommend repair/body shop businesses. The CONTRACTOR shall follow the SOP Manual. The CHP is responsible for the day-to-day field supervision of the Express Lanes FSP Program; therefore, policies and procedures are outlined in the SOP Manual. To promote a safe work environment and to maintain a high level of professionalism, the CONTRACTOR and their Drivers must follow the SOP Manual as this document and all updates will be incorporated into the CONTRACTOR's agreement. Please note that the SOP Manual is updated as needed, and that the CONTRACTOR is responsible to operate and adhere to the most recent version of the SOP Manual at all times.

FSP HOURS OF OPERATION

I-10 Express Lanes FSP standard hours of operation are:

- Monday through Friday morning shift hours are scheduled from 5:30 am to 8:30 am;
- Monday through Thursday afternoon shift hours are slated from 2:00 pm to 6:30 pm;
- Friday afternoon shift is scheduled from 12:00 pm to 6:30 pm;
- Saturday and Sunday shifts are scheduled from 10:00 am to 6:00 pm.

I-10 Express Lanes “Ramp-Up” Schedule: the I-10 Express Lanes “Ramp-Up” hours for FSP support service will be required for the first three (3) months of the contract. The “Ramp-Up” hours are slated as follows:

- Monday through Friday “Ramp-Up” morning shift hours are from 4:00 am to 11:00 am;
- Monday through Wednesday afternoon “Ramp-Up” shift hours are scheduled from 12:00 pm to 7:00 pm;
- Thursday through Friday afternoon “Ramp-Up” shift hours are slated from 12:00 pm to 8:00 pm;
- Saturday and Sunday “Ramp-Up” shift hours are scheduled from 1:00 pm to 7:00 pm.

FSP TECHNICAL ADVISORY COMMITTEE MEETING

CONTRACTOR or its designated management-level representative shall attend the required FSP Technical Advisory Committee (TAC) meetings scheduled every other month. The FSP TAC will encompass focused and informal/formal discussions concerning but not limited to: scope, services, schedule, safety and current progress of services, relevant cost issues, and future project objectives. CONTRACTOR shall be responsible for having a representative attend all FSP TAC meetings who have the ability to make management-level decisions on the behalf of the CONTRACTOR while at the meeting. If the CONTRACTOR cannot have a management-level representative at a FSP TAC meeting, CONTRACTOR shall notify SBCTA and FSP CHP at least two (2) business days prior to the meeting. Management-level attendance at these meetings shall be considered part of the CONTRACTOR’s contractual responsibility. Meetings are scheduled for the entire calendar year; FSP CHP provides the schedule via email.

Please refer to Contract Exhibit “C” for further details on violations and penalties.

2.0 DELAY IN START OF SERVICES FEE

If SBCTA fails to issue a Notice to Proceed No. 2 (NTP No. 2) within 180 days from the issuance of NTP No. 1 SBCTA shall pay CONTRACTOR up to, but not to exceed, the amount of TWO HUNDRED FIFTY DOLLARS AND NO CENTS (\$250.00) per day per FSP Certified Tow Truck to off-set a portion of the CONTRACTOR’s cost for each FSP certified tow truck required under this CONTRACT.

No “Delay in Start of Services” Fee shall be paid for any CONTRACTOR caused or concurrent delay. The “Delay in Start of Services” Fee shall be limited to off-setting a portion of the CONTRACTOR's truck payments (e.g., lease or purchase payments) and insurance costs for all (depending on if Scenario One or Scenario Two is selected by the evaluation committee) trucks during the delay and shall be calculated on a pro rata basis for each day of the delay (“Permitted Costs”).

The “Delay in Start of Services” Fee shall not include CONTRACTOR's costs and expenses related to storage, maintenance or repair of damage to the trucks during the delay, which costs shall be borne solely by CONTRACTOR. The “Delay in Start of Services” Fee set forth herein is an estimated not

to exceed daily rate. However, the exact “Delay in Start of Services” Fee to be paid by SBCTA shall be calculated based on CONTRACTOR invoices for the Permitted Costs described herein up to \$250.00 per day for each tow truck.

If applicable, SBCTA shall pay the “Delay in Start of Services” monthly in arrears and CONTRACTOR shall submit an invoice to SBCTA for its “Delay in Start of Services” costs for the trucks during the delay on a form approved by SBCTA. CONTRACTOR shall include proof of costs and a cover sheet bearing a certification as to the accuracy of the invoice signed by CONTRACTOR's Representative. In no case shall CONTRACTOR's invoice reflect a “Delay in Start of Services” in excess of the not to exceed daily rate set forth herein. Upon receipt of an invoice from CONTRACTOR, SBCTA may request additional documentation or explanation of the costs for which reimbursement is sought. SBCTA shall pay any undisputed invoice within forty-five (45) days of approval of the invoice. The “Delay in Start of Services” shall be CONTRACTOR's sole remedy for any delay in the commencement of Services or issuance of NTP No. 2, and CONTRACTOR shall not be entitled to any other damages or compensation related thereto. CONTRACTOR hereby waives any claim for such damages or compensation.

3.0 CONTRACT REPRESENTATIVES

SBCTA, Caltrans, and the CHP will jointly oversee the Express Lanes FSP services (referred to, singularly or jointly, as “Express Lanes FSP Management”). CHP is responsible for dispatch services to incident locations within the tow truck's patrol limits, otherwise referred to as “Beats”. The dispatching will be done in accordance with the contract for the service. An SOP Manual will be provided to the successful CONTRACTOR explaining the types of incidents to which a Driver may be dispatched. Please note that this SOP Manual is updated as needed and that the CONTRACTOR is responsible to adhere to the most current version of the SOP Manual at all times. Also note that SBCTA’s contract with the successful Proposer(s) will incorporate the SOP Manual and any updates; thus, adhering to the SOP Manual is a contractual requirement.

4.0 SERVICE LOCATION

The I-10 Express Lanes FSP operates on a selected freeway segment referred to as the “I-10 Express Lanes Beat”. This Beat has specific turnaround locations and designated drop locations identified by the FSP CHP. The Beat limits for the I-10 Express Lanes are from Mills Avenue (Los Angeles County line) to Interstate 15 (I-15). Additional information regarding the service location is identified in section 9.0 Beat Description and section 10.0 Beat Map of the SOW.

SBCTA reserves the right, at any time during the contract's term, to adjust Beat specifications (length of the Beat for example) and Beat hours to better accommodate demand for the service. These changes can occur during the course of the contract through written direction by SBCTA (e.g., email). The CONTRACTOR may be requested by CHP to go beyond the limits of its assigned Beat area to assist a motorist in an adjacent Beat area. Drivers may be permitted to do this only upon CHP request. SBCTA reserves the right to add or delete holidays to the work schedule. Travel time to and from the Beat will be at the expense of the CONTRACTOR.

5.0 TOW YARD LOCATION AND SECURITY

The CONTRACTOR shall be responsible for the security of vehicles and property at their facility. At a minimum, must have a secure area to store FSP tow vehicles at their facility, including CONTRACTOR controlled access, fencing or physical barrier separating public access from tow yard, security system, sufficient lighting, and security cameras to where vehicles are stored such as a fenced or enclosed area. The CONTRACTOR is responsible for the reasonable care, custody, and control of any property contained in its facility.

The CONTRACTOR will be responsible for assuring that all SBCTA FSP related equipment is contained in a secure environment and protected from theft or damage. The CONTRACTOR will be responsible for any replacement or repair cost for SBCTA provided equipment that is not considered normal wear and tear.

6.0 EQUIPMENT REQUIREMENTS

A. Tow Truck Requirements.

There will be two (2) tow truck requirement scenarios for the RFP. Both scenarios are required to be filled out by all potential CONTRACTORS when submitting a proposal for this RFP. If a CONTRACTOR does not address and submit pricing/information for both scenarios/options, their proposal may be deemed non-responsive. The scenarios are as follows:

- Scenario 1: One (1) primary flatbed tow truck, and one (1) back-up flatbed tow truck.
- Scenario 2: Two (2) primary flatbed tow trucks, and one (1) flatbed back up tow truck.

Final determination on which scenario will be chosen will be made by the evaluation committee. SBCTA reserves the right to change Beat hours and operational requirements (i.e. length of Beat) during the course of the Contract.

Primary Express Lanes FSP Tow Trucks will be exclusively dedicated to the Express Lanes FSP services during the hours of Express Lanes FSP operations. They are not required to be exclusive during non-Express Lanes FSP hours.

The Express Lanes FSP will use conventional two-vehicle car carrier/flatbed Class A tow trucks with seating capacity for five (5). The tow trucks will have a minimum gross vehicle weight rating of 21,000 pounds and a rear gross adjusted weight rating of 15,000 pounds. All trucks proposed for use in the Express Lanes FSP Program should be less than a year old with a maximum of 50,000 miles on the chassis and working parts of the truck at the onset of the contract, free of any mechanical defects or physical damage and have a clear (non-salvage) title. Extenuating circumstances dictating departure from this specification should be at the consensus of the local Express Lanes FSP partners. The CHP, in conjunction with Caltrans and SBCTA, should verify the original purchase dates to ensure Express Lanes FSP compliance.

All Express Lanes FSP flatbed tow trucks must be Department of Transportation (DOT) compliant, as well as California Air Resources Board (CARB) compliant. This includes an engine that has been certified by CARB, as required by law in the State of California. Any flatbed tow truck that is utilized for the Express Lanes FSP Program must comply with emission standards set forth by DOT and CARB, as well as all Local, State and Federal laws applicable to that truck, and as outlined in the RFP.

Prior to commencement of service, the CONTRACTOR will need to provide the License plate number(s) for each primary and back-up flatbed tow truck to SBCTA and FSP CHP. CHP will inspect each tow truck designated for the Express Lanes FSP Program in San Bernardino County to ensure that it meets the tow truck specifications and to ensure that it meets or exceeds safety requirements. These inspections will occur prior to the start of service. Succeeding inspections will occur periodically as determined by the FSP CHP officers. Documentation of the vehicle identification number and successful completion of the inspection will be kept on file at the CHP office and CONTRACTOR's local office. Any unsafe, poorly maintained Express Lanes FSP Certified Tow Truck(s) or improperly equipped Express Lanes FSP Certified Tow Truck(s) shall not be allowed into service, and if discovered during the shift, shall be removed from service or repaired as directed by the CHP. The CONTRACTOR shall be fined **five (5)** times the hourly contract rate in one (1) minute increments for ALL service time lost. The CONTRACTOR will be required to have an Express Lanes FSP Certified Back-Up Tow Truck available for service during their Express Lanes FSP Beat shift(s).

Please note that Express Lanes FSP Certified Back-Up Tow Trucks for existing Express Lanes FSP tow operator contracts with other Express Lanes FSP agencies (i.e., not with SBCTA) do not qualify as meeting the certified SBCTA Express Lanes FSP Back-Up truck requirement(s).

Express Lanes FSP tow trucks bearing the service patrol title, FSP logo, and the vehicle identification number shall be painted all white (includes the hood, fenders, doors, boom and bed area). No trim will be allowed. Lettering shall be in block lettering and shall be no less than two inches by two inches and no greater than four inches in height. Lettering can **ONLY** be black in color and will be bold style parallel to the ground. Letters shall be placed on the lower body of the truck toward the cab. Please note that the boom must be solid white with no names, phone numbers, and advertising of any kind. The overall look of the truck must be approved by FSP CHP prior to service implementation; therefore, any questions regarding this policy is highly recommended to be discussed with the FSP CHP officers prior to implementing, as truck compliance with current State and SBCTA Express Lanes FSP standards is required. No other accessory equipment or signage (bumper stickers, employment advertisement, and so forth) shall be mounted or installed without prior FSP CHP officer approval. This includes but is not limited to brass, chrome wheel covers, window tint, etc.

All Express Lane tow trucks are required to have three FSP signs affixed to them. One magnetic FSP sign is required to be on each front door of each of the trucks, along with a third FSP sign on the left side of each tow truck bed during all FSP shifts, unless authorized otherwise by an FSP CHP Supervisor. The FSP sign depicts the three different governmental agencies responsible for the program in San Bernardino County (SBCTA, CHP and Caltrans). In addition, the Express Lane tow trucks shall also have three magnetic "EXPRESS LANE" signs affixed to it. One magnetic EXPRESS LANE sign is required to be on each rear door of each truck, along with a third EXPRESS LANE sign on the right side of each tow truck bed during all FSP shifts, unless authorized otherwise by an FSP CHP Supervisor.

Please refer to Contract Exhibit "C" for further details on violations and penalties.

SBCTA follows and relies on the policies and procedures set forth in the SOP Manual developed by the County of San Bernardino Express Lanes FSP CHP Program. Please note that the SBCTA Express Lanes FSP equipment list is subject to change at any time, and may be different from Express Lanes FSP Program equipment lists found in other counties.

Each Express Lanes FSP tow truck shall be equipped in accordance with the SOP Manual and shall include the following equipment, please note that if a company decides to add on any of the OPTIONAL equipment, and is something CHP would test for proficiency, they will do so for every driver that is tested from that company.

| <u>Express Lanes FSP Equipment List</u> | |
|---|---|
| Current Registration/ Insurance | Fire Extinguisher: 4BC Rating, new or exp: |
| Paint: White Only, 4" max black lettering | Broom: 24 inches wide, coarse bristle |
| Rubber faced push bumper(s) | Shovel: Square point |
| Vehicle numbers on both sides | Large Pry Bar: Minimum 36 inch length |
| Three (3) FSP signs and Express Lanes FSP signage | Wood Crossbeams: 1 ea., 4"x4"x48" and 4"x4"x60" |
| Headlights | Hydraulic Floor Jack: 2-Ton capacity |
| Turn Signals | Jack stand: 2-Ton capacity |
| Reflectors, Front and Side | Portable air tank: 80 psi. min, or compressor w/ 50' min hose |
| Clearance Lamps (>80" Wide) | Bolt Cutters |
| Amber Warning Lights: Front/rear selectable, in- cab controls | One 4 - Ton snatch block |
| License Plate Lamp | Flares: Total burn time of 360 minutes |
| Tail Lamps | Metric and Standard 4-way Lug Wrenches |
| Stop Lamps | Sledge Hammer: 4 pound |
| Backup Lamps | Utility/ Motorcycle Straps |
| Rear work lights | Steering Wheel Securement Device |
| Reflectors, Rear | Funnel with flexible spout |
| Extension Tail/ Stop Lamps | Water Container: Plastic, 5 gallon |
| Fenders / Mudguards | Fuel in Approved Plastic Containers: Gas/Diesel, 5 gal. each |
| Windshield | Absorbent Can with lid: 5 gal. of clean absorbent |
| Windshield Wipers | Trash Can with lid: 5 gal., empty |
| Spotlight: Body mounted, front to rear coverage | Cones: 6 ea., 18 inch height, reflectorized w/ tape |
| Service Brakes | Booster cables: 3 ga. Cu., 25 ft., H-D clamps, fit truck |
| Parking Brake | Booster Cable Connectors: mounted front and rear |
| Mirrors | Battery Rating: 60 Amp-hour or greater |
| Horn | Tire Tread |
| Beam Indicator | Wheels |
| Cab interior lighting suitable for reading and writing | Suspension |
| Truck to Shop Communications System | Steering |
| FSP Two-Way Radios / Terminals | Frame |
| Scanner: Operating and properly programmed | Exhaust System |

| | |
|--|---|
| Public Address System | Fuel Cap(s) |
| Flashlight | |
| Spare flashlight batteries/ Charger for rechargeable | <p>Tool Kit</p> <p>Each FSP Certified Tow Truck will be required to have a toolbox with the following minimum number of tools/supplies. A tool kit for small equipment items is required. The list may be supplemented at the CONTRACTOR's option and expense.</p> |
| First Aid kit: 5"x9" | Screwdrivers: 1/8", 3/16", 1/4", 5/16" Flat; #1, #2 Philips |
| Lockout Tool Set | Adjustable Wrenches: 8" and 12" |
| Warning Devices (Reflectors) | Pliers: Needle nose and adjustable rib joint, 2 inch capacity |
| | Duct tape, Electrical tape, mechanics wire: 1 roll each |
| | Rubber Mallet |
| | Tire Pressure Gauge |

WRECKER - GENERAL

| | |
|---|--|
| Manufacturer Rating Plates | Throttle Control |
| Wrecker Controls on both sides of vehicle | Hydraulic Rams, Hoses, Valves |
| Control Labels | Winch: Type: |
| Body and Towing Equipment Mounting Bolts | Winch: Rated 8,000 pounds on first cable layer |
| Cable Sheaves | Safety chain D-ring or eyelet mounted on rear of truck |
| | |

WHEEL LIFT

| | Minimum GVWR: 14,000 lbs. | "L" Arms |
|--|--|---|
| | Wheel Lift Assembly; Rated 4,000 Pounds- Extended, with Wheel Lift | Cradle / Straps/ Chains |
| | Pivot Pin | Claw |
| | (2) Wheel Tie Down Safety Straps with ratchets | 100' 3/8" 6x19 Wire rope or OEM Specifications |
| | 4-Ton Boom Assembly | (2) Tow Chains 5/16" Grade 70 with J/T Hooks |
| | Sling Assembly; Rating: 3,000 Pounds (if equipped) | Tow Dolly (with wheel tie down straps), minimum rating of 3,900 pounds. Steel Pry Bar (1) |
| | One pair of spacer blocks or 2 wood blocks 4"x6"x12" | (2) Safety Chains: 5/16" Alloy or OEM Specifications 5 foot min. length |

CAR CARRIER / TWO VEHICLE

| | Minimum seating capacity for five (5)adults | 50' 3/8" 6X19 Wire rope or OEM Specifications |
|--|--|--|
| | GVWR: Minimum. 21,000 lbs.; Rear GAWR 15,000 min. | J/T Hook Loading Bridle Chains |
| | Carrier Bed Frame | 4 Safety Chains 5/16" Alloy or OEM Specifications |
| | Bed Material: Steel or Aluminum | Wheel Lift Assembly; Rated 4,000 Pounds- Extended, with Wheel Lift Extended. |
| | Bed Length: 19.5 ft. minimum | (2) Wheel Tie Down Safety Straps with ratchets |
| | Bed Hinges | One pair of spacer blocks or 2 wood blocks 4"x6"x12" |
| | Bed Safety Lock | Motorcycle loader for flatbeds |
| | Tie Downs: 8 each, one near each corner of the bed, two each side of bed distributed between corner tie downs, each must accommodate snatch blocks | (2) Safety Chains: 5/16" Alloy or OEM Specifications 5 foot min. length |

The Driver shall be required to complete a pre-operation shift inspection log of the tow vehicle as well as inventory of the required equipment prior to the start of each shift. An Inspection form, which is in the tablet data collection software, shall be completed by the Driver prior to the start of each shift and be available for inspection by the FSP CHP and/or SBCTA. Any equipment that is malfunctioning or missing must be replaced prior to the start of the shift. All equipment on the truck(s) shall be secured.

Installation of Express Lanes FSP related equipment:

Upon execution of the contract, SBCTA will designate and cover the cost of the selected installer for the SBCTA Express Lanes FSP digital radio equipment and SBCTA's Automatic Vehicle Locator (AVL) equipment. SBCTA covers the initial cost of the Express Lanes FSP digital radio and the AVL equipment as well. Please note that SBCTA, along with the installer, must be able to access the required primary and back-up Express Lanes FSP tow trucks no later than ten (10) business (Monday through Friday) days prior to the start date of the Beat. No exceptions. If SBCTA is not able to access the required primary and back-up Express Lanes FSP tow trucks by the tenth (10th) business day deadline, the CONTRACTOR shall be assessed a fine as detailed in Exhibit "C" of the contract.

At times, equipment such as an "outside speaker", or a handheld "mic," and/or "Express Lanes FSP Tablet" for example, may need to be replaced due to normal wear and tear. If SBCTA-provided equipment needs to be replaced due to normal wear and tear, SBCTA will provide the CONTRACTOR with replacement equipment at no charge. However, please note that if Express Lanes FSP-related equipment needs to be replaced due to negligence by the CONTRACTOR or any of its staff, including Drivers, the cost of the equipment and the installation expense will be deducted from the CONTRACTOR'S invoice/payment that same month or the following month (depending on when the incident occurred). CONTRACTORS, Supervisors/Managers and Drivers are required to contact SBCTA and one of the Express Lanes FSP CHP officers immediately when any SBCTA Express Lanes FSP equipment is damaged, failing or has failed, and the CONTRACTOR will be provided with a replacement part by SBCTA or by one of the Express Lanes FSP CHP officers. If a replacement part is not immediately available, then the CONTRACTOR will be asked to have their "Express Lanes FSP Certified Back-Up Tow Truck" on the Beat to cover the shift.

With the written permission of SBCTA (email is allowed), the CONTRACTOR may install some replacement equipment (e.g., an "outside speaker" or a "mic") as long as the CONTRACTOR installs the equipment per SBCTA and SBCTA standards. If a CONTRACTOR is given the authorization to install Express Lanes FSP-related equipment, and has any questions regarding "installation standards", the CONTRACTOR is to contact SBCTA or one of the Express Lanes FSP CHP officers for further instructions/information. If provided the authorization by SBCTA or FSP CHP, the CONTRACTOR must install equipment in the safest possible manner, and the installation of the equipment must comply with all Express Lanes FSP equipment guidelines and San Bernardino Express Lanes FSP installation standards for safety reasons.

Please note that equipment requirements are subject to change at any time. For the most updated equipment list, please refer to the latest SOP Manual.

B. Express Lanes FSP Certified Back-Up Tow Truck.

The CONTRACTOR shall be required to have one Express Lanes FSP Certified Flatbed Back-Up Tow Truck available for the I-10 Express Lanes Beat during Express Lanes FSP service hours. The I-10 Express Lanes Flatbed truck must be in full compliance with this Contract, unless otherwise authorized by SBCTA in writing. The Express Lanes FSP Certified Back-Up Tow Truck should be used when a primary Express Lanes FSP Certified Tow Truck is unavailable. The Express Lanes FSP Certified Back-Up Tow Truck shall meet the same requirements for equipment, set-up and color as a primary Certified Express Lanes FSP Tow Truck. It shall meet all the vehicle equipment specifications. Please refer to Exhibit "C" of the contract for further details on violations and penalties. Express Lanes FSP Certified Tow Trucks are subject to inspections during Express Lanes services hours and non-Express Lanes FSP service hours by CHP.

If an Express Lanes FSP Certified Back-Up Tow Truck is needed to replace one of the primary Express Lanes FSP Certified Tow Trucks on Beat, the CONTRACTOR shall meet all Contract obligations as outlined, which includes the vehicle's availability to work the Beat area within the 30 (thirty) minute time period (after which penalties begin to accrue).

C. Vehicle Breakdown and Other Missed Service.

An Express Lanes FSP Certified Back-Up Tow Truck must be in service on the Beat within thirty (30) minutes of the time when a primary Express Lanes FSP Tow Truck is taken out of service for any reason. The CONTRACTOR shall not be paid for the time period that the contractually required trucks are not in service. If a vehicle is not made available within the 30 minute time period, the CONTRACTOR shall be fined **five (5)** times the hourly contract rate in one (1) minute increments until an Express Lanes FSP Certified Back-Up Tow Truck is provided. This 30 minute period prior to the imposition of fines shall not apply to trucks removed from service for failure to meet specifications or safety requirements as set forth in accordance with section 4.0 "Equipment Requirements" paragraph A "Tow Truck Requirements", in which case fines shall begin immediately. If an Express Lanes FSP Certified Tow Truck is not ready due to a breakdown at the start of a shift, the fine time will be calculated from the start of the shift. If the entire shift is missed, the CONTRACTOR shall be fined for the entire shift at **five (5)** times the hourly rate. Express Lanes FSP tow truck maintenance shall be performed during non-Express Lanes FSP service hours.

In the event that an Express Lanes FSP Certified Back-Up Tow Truck is required to continue the shift, the Driver must complete a new inspection worksheet and mileage log prior to the commencement of driving the tow truck and notify one of the FSP CHP Officers/Supervisors immediately. In addition, the Driver must indicate in the "notes" section of the FSP Tablet (per section 4.0 "Equipment Requirements" paragraph E "Communications Equipment") that the CONTRACTOR has switched to an Express Lanes FSP Certified Back-Up Tow Truck.

In addition, failure to have an FSP Express Lanes FSP Certified Back-Up Tow Truck Driver available is not an allowable excuse for failing to have a FSP Express Lanes FSP Certified Back-Up Tow Truck on the Beat within the 30 (thirty) minute time period.

Please refer to Contract Exhibit "C" for further details on violations and penalties.

Please note: Existing FSP tow operator contracts with the Riverside County Transportation Commission (RCTC) or any other FSP service do not qualify as meeting the Back-Up tow truck requirement noted above.

D. Vehicle Identification.

It shall be the Driver's sole responsibility to place detachable FSP markings on each vehicle during the service hours and to remove or cover the FSP markings immediately upon completion of each shift. SBCTA will supply the CONTRACTOR with the appropriate number of detachable markings for the Beat). If a marking is lost or damaged, the CONTRACTOR shall be responsible for the cost of the replacement markings. All FSP markings shall be returned immediately at the termination of the contract. The cost of any item or equipment supplied by SBCTA, Caltrans or CHP that is not returned shall be deducted from the CONTRACTOR's final payment.

All Express Lane tow trucks are required to have three FSP signs affixed to them. One magnetic FSP sign is required to be on each front door of each of the trucks, along with a third FSP sign on the left side of each tow truck bed during all FSP shifts, unless authorized otherwise by an FSP CHP Supervisor. The FSP sign depicts the three different governmental agencies responsible for the program in San Bernardino County (SBCTA, CHP and Caltrans). In addition, the Express Lane tow trucks shall also have three magnetic "EXPRESS LANE" signs affixed to it. One magnetic EXPRESS LANE sign is required to be on each rear door of each truck, along with a third EXPRESS LANE sign on the right side of each tow truck bed during all FSP shifts, unless authorized otherwise by an FSP CHP Supervisor. The Driver shall be required to keep the title and logos clean, straight and in readable condition throughout the service patrol's operation. The CONTRACTOR is also required to keep all FSP- related signage completely flat, clean, out of direct sunlight and out of public view when being stored.

E. Communications Equipment.

Each Express Lanes FSP vehicle shall be equipped with various communication devices that will enable the Driver to communicate with the CHP Communications Center and FSP CHP Officers. All vehicles shall be equipped with an AVL system, radios, and handheld Tablet Computers for data collection. The AVL system, radio system, and handheld Tablet Computers shall be purchased, owned, supplied, and installed by SBCTA only. SBCTA shall select the equipment installation vendor.

The CONTRACTOR shall be responsible for maintaining the security of the SBCTA-owned vehicle communication equipment. The CONTRACTOR shall be liable for any damage other than normal wear and tear to the communication equipment. The CONTRACTOR shall also be liable for the full replacement value of the communication equipment installed in the trucks while in the care, custody and control of the equipment. SBCTA shall pay for repair of normal wear and tear to equipment. However, SBCTA will deduct from CONTRACTOR's monthly invoice, any repair fees and/or the full replacement cost of any SBCTA equipment damaged or altered due to CONTRACTOR's improper use or negligence. SBCTA-supplied vehicle equipment shall be returned immediately (within one to three business days – pursuant to direction by SBCTA Express Lanes FSP staff) upon contract termination. The cost of any equipment not returned shall be deducted from the CONTRACTOR's final payment.

Programmable scanners capable of scanning between the 39 and 48 MHz used by CHP shall be supplied by the CONTRACTOR and shall be installed and securely mounted in all Express Lanes FSP Certified Tow Trucks by the CONTRACTOR.

The CONTRACTOR is also required to use Push to Talk Plus for Verizon Wireless (or equivalent direct connect device that will pair with Verizon Push to Talk Plus CHP devices). ***Special Note: If you are considering purchasing something else other than a Verizon Push to Talk Plus device, please confirm with SBCTA and/or FSP CHP as to whether or not the device will be compatible with existing CHP equipment. Equipment purchased for the Express Lanes FSP Program must be compatible with FSP CHP officer devices which are currently Verizon Push to Talk Plus devices***

in order to facilitate proper communication with the CHP Communications Center and FSP CHP field supervisors. Verizon phones shall be purchased, owned, maintained, and paid for by the CONTRACTOR. The CONTRACTOR will also be responsible for all operating costs of the Verizon cell phones. In addition, Drivers are not permitted to take pictures or video, or to capture any other images while performing FSP duties during Express Lanes FSP operational hours, or capture any FSP-related images during non-Express Lanes FSP service hours. These actions will not be tolerated and a Driver that is found doing this will not be permitted to work in the Express Lanes FSP and FSP Program. Drivers are not permitted to download or share any data or images related to the FSP Program. If any FSP related data or images are found on any social media outlet or networks not authorized by SBCTA, the driver or drivers associated with the incident will be removed from the program.

Data input to the Tablet Computer shall not be allowed while the vehicle is being operated/driven. Use of other devices, such as cellphones, while driving/operating a vehicle is subject to California State Law.

The Express Lanes FSP vehicles shall be equipped with a public address system. The public address system shall have the capability to audibly transmit instructions from the cab of the Express Lanes FSP vehicle to the motorist of the disabled vehicle when the Express Lanes FSP vehicle is directly to the rear of the disabled vehicle.

The CONTRACTOR shall purchase and maintain a computer workstation (not a laptop) with high speed internet access and email to communicate with SBCTA, staff, and FSP CHP officers. Please note email is the primary means by which FSP Management (SBCTA, CHP, and Caltrans) communicate various operations messages. It is essential that a representative of the CONTRACTOR check the email throughout each day. It is the CONTRACTOR's responsibility to ensure that all Tablet Computers are operational at all times. The exterior protective case of the Tablet Computer shall be cleaned regularly, and the screen protector shall be inspected for functionality and serviceability. **Damaged/Worn items shall be reported to SBCTA within three (3) hours of identification of a problem.** All Tablet Computers must be kept in a secure location. Tablet Computers shall not be left in any tow truck or during non-Express Lanes FSP operational hours. During Express Lanes FSP operational hours, Tablet Computers must be with the Driver in their Express Lanes FSP Tow Truck; at all other times, Tablet Computers must be connected to a battery charger in the designated secure workstation of the CONTRACTOR'S facility. Any other location is not permitted.

CONTRACTOR shall immediately report any issues with the Tablet Computers to SBCTA or the FSP CHP Officers. CONTRACTOR is responsible for ensuring its Tablet Computers are operating at all times. The CONTRACTOR shall provide SBCTA, FSP CHP Officers, and their designees, access to the Tablet Computers at any time during the course of the contract. If upon inspection SBCTA determines that the Tablet Computers are not being properly charged/stored, the CONTRACTOR will be subject to fines as outlined in Exhibit "C" of the Contract.

The CONTRACTOR shall provide a quarterly inspection report to SBCTA indicating the status of all equipment. SBCTA will provide the quarterly report submittal form to the CONTRACTOR. Accurate completion and timely return of this form is a contract requirement.

F. Equipment Modifications.

Modifying FSP communication/tracking equipment so that it does not function properly to SBCTA's specifications, is disconnected, or is moved (without FSP Management authorization) from its original installed location is strictly prohibited. This includes, but is not limited to: breaking

evidence/tamper tape/connection sealer on equipment connections, cutting wires or cable, moving mounted equipment (speakers, microphones, antennas, etc.), rerouting any wiring, not putting radio equipment back in its original installed location, disconnecting any connectors, etc. Interfering with the operations of the equipment is strictly prohibited. If modification and/or interference is suspected, SBCTA shall conduct an inspection of the equipment on/near the Beat area or the tow vehicle may be sent to a designated location determined by SBCTA. CONTRACTOR shall not access the AVL equipment in any way until SBCTA has arranged an inspection.

- 1) If any alterations are found with AVL-related equipment owned by SBCTA, the CONTRACTOR shall be fined, at a minimum, two complete Express Lanes FSP shifts (approximately seven (7) to approximately nine and a half (9.5) hours) at **five (5)** times the hourly penalty rate. The final penalty shall be determined and assessed by FSP Management.
- 2) SBCTA shall designate the AVL installer and technician that will review and repair the AVL systems.
- 3) In the event of alterations, CONTRACTOR is responsible for any expenses, including but not limited to transportation, labor, repair, and replacement, incurred to repair the AVL equipment/system for the SBCTA Express Lanes FSP tow operations. Costs incurred to repair and document the equipment will be deducted from payment of the CONTRACTORS monthly invoice.

Please refer to Contract Exhibit "C" for further details on violations and penalties.

7.0 DRIVERS

All Drivers shall be required to have a safe driving record and valid California Class C driver's license. All Drivers shall be at least 18 years of age at the time of background check. All Drivers shall be subject to driving record and criminal background checks through the CHP.

Driver Certification Requirements

The following are required to be completed before the issuing of a California Tow Truck FSP driver Certificate DL64:

1. CHP 234F Form (Tow FSP Driver/ FSP Driver Information) submitted to CHP.
2. Successfully pass a driving record and criminal history check.
3. Pay all processing fees.
4. Submit to fingerprinting.
5. Successfully pass a CHP-administered Proficiency Test.
6. Complete a SHRP 2 /TIMS training course and provide a certificate of completion.
7. Attend and pass a FSP Driver certification class.
8. Obtain a Medical Examiner's Certificate (MEC) MCSA-5875.
9. Issued a FSP Driver Identification Card.
10. Successfully complete ten (10) shifts of ride-a-longs with an approved FSP Driver trainer.

Drivers shall be sufficiently experienced in the tasks of tow truck operations and proficient with all required Express Lanes FSP equipment to provide safe and proper service. Drivers from other Express Lanes FSP service areas will be evaluated by the CHP on a case-by-case basis. All Drivers must be capable of demonstrating their tow operating abilities prior to formal CHP training. Additionally, the Drivers will be required to exercise good, sound judgment in carrying out their duties. The CONTRACTOR's Drivers shall be required to inform the CHP Communications Center at any time they leave the assigned Beat, whether to replenish expendable items such as gasoline or fire extinguisher, to take breaks, etc. The Driver shall be required to immediately notify the CHP Communications Center upon a tow truck breakdown.

Each Driver shall be responsible for accurately entering the following into their Tablet Computer:

- Inspection worksheet prior to the commencement of driving the tow truck. This must be completed at the tow yard, prior to leaving the yard and driving to the Beat.
- Log of mileage prior to commencement of driving the tow truck on the Beat. This must be completed in a safe location at or near the Beat location, prior to beginning the shift.

The Driver shall also be required to complete an assist record, on the Tablet Computer, for each incident.

Driver will be required to utilize a Tablet Computer to input the mileage log, inspection worksheet, and each assist, which will include location, vehicle make, model, license number, type of assistance provided, etc. Driver will be trained to use the Tablet Computers to enter accurate data using SBCTA data collection software.

Other important forms Driver must complete and turn in when assisting motorists are the Damage Release Forms. It is critical these forms are completed in a clear and accurate manner and returned to SBCTA as quickly as possible and no longer than a maximum of thirty (30) business days from the date of the assist. Any CONTRACTOR who fails to complete and turn in these required forms may be subject to penalties as outlined in Exhibit "C" of the contract.

The CONTRACTOR is required to participate in the California Department of Motor Vehicles (DMV) Pull Notice Program. If a Driver is convicted of a crime listed in California Public Resources Code Section 5164 or California Vehicle Code 13377, the CONTRACTOR may be required to remove that Driver from the Express Lanes FSP and FSP program. If a Driver is charged with any such crimes, the CONTRACTOR may be required to suspend that Driver from duties under this Contract pending the outcome of the criminal case. If the Driver is not convicted, or is ultimately convicted of a lesser crime not described above, CHP may direct SBCTA to have the CONTRACTOR remove that Driver from the duties under the Express Lanes FSP and FSP program.

Mandatory CHP refresher training classes/meetings shall be scheduled during non-Express Lanes FSP hours. A minimum of four (4) hours refresher training per year is required. The SBCTA FSP Program conducts a one hour refresher training class/meeting each quarter, for a total of four hours of on-going training each year. CONTRACTOR shall pay all Drivers and Back-Up Drivers for attendance at the required training.

As required by California Vehicle Code Sections 2430.5 and 2431, all applicants and owners are required to have a driver's license and criminal history check. After CHP receives and accepts a completed CHP 234F, CHP will perform a driver's license and criminal history check. CHP will perform background checks ONLY upon acceptance of a CHP 234F.

The driver's license check will consist of confirming that the applicant has a valid driver's license and the applicant's point count is within standards set forth in the SOP.

The criminal history check will consist of a livescan background check to determine whether the applicant meets the criteria for a Driver Certificate, as outlined in California Vehicle Code Section 13377 and the Express Lanes FSP contract. **The cost of the livescan will be at the CONTRACTOR's expense.**

If the applicant passes the preliminary check, then the applicant shall submit to fingerprinting to complete the background check at the CONTRACTOR's expense.

In addition, SBCTA and/or CHP may, in their sole discretion, require a CONTRACTOR to replace any Driver or potential Driver who is determined not to be a suitable representative of the FSP Program to the public based on the background check or any other reason.

Driver Equipment.

CONTRACTOR is responsible for providing Drivers with specified uniforms, black protective toe boots, nameplates, and other equipment. The equipment includes navy blue jump suits or shirts and pants. If coveralls are worn, they shall have a collar with a zipper. Optionally, drivers may wear a standard navy blue (long-sleeve only) uniform shirt, with a fluorescent orange (must be only 2.5" wide) trim, with a ½" silver reflective tape down the middle. This allowed reflective tape must be on both sleeves as indicated in the updated contractor exhibit. The only approved trim color is fluorescent orange with a ½" silver reflective tape in the middle. The fluorescent tape cannot be wider than the allowed 2.5" wide. All uniforms shall be clean, properly maintained, and replaced whenever excessively worn.

A detachable brass or gold nameplate shall be worn with the first initial of the first name and full last name of the Driver. Letters shall not exceed ½" tall; nameplate must be approved by an FSP CHP officer. The nameplate shall be worn above the right chest pocket on the vest.

A safety vest with reflective stripes shall be worn; SBCTA will supply vests. A small FSP logo shall be sewn/silkscreened on the front of the safety vest over the left front pocket of the uniform, and a small FSP logo shall be applied on the left sleeve of the vest. A large FSP logo shall be applied across the middle portion of the back of each safety vest. SBCTA will supply vests to the CONTRACTOR with the FSP logos already applied per CHP's required FSP logo placement locations. The brass or gold nameplate with the Driver's first initial of first name and full last name shall be displayed on the front of the safety vest over the right front pocket. **The CONTRACTOR is responsible for obtaining FSP CHP officer approval of the Driver nameplates, and the CONTRACTOR is responsible for the purchase and placement of the Driver nameplate.** An FSP logo is not required to be sewn/applied on the navy blue Driver uniform.

All Drivers shall wear black work boots with protective (steel or composite) toe.

During cold weather, a navy blue jacket may also be worn at the Driver's option, if it meets all the uniform specifications. The CONTRACTOR and/or the Driver may contact FSP CHP for any uniform questions or clarifications. Rain gear shall be waterproofed material, navy blue or yellow in color.

Hats, if worn, shall be baseball type cap, navy blue in color. An "FSP" logo may be applied on the hat above the brim. No other logos/names shall be accepted. A beanie may also be worn which must be navy blue in color and worn only with a jacket or long sleeve shirt under the vest. A picture of the uniform is provided toward the end of this scope of work.

CONTRACTOR should refer to the most current SOP Manual in making sure it is following the most recent Driver equipment requirements.

FSP UNIFORM PHOTO EXAMPLES



FSP UNIFORM STRIPE EXAMPLES:



8.0 LOCAL OFFICE

The CONTRACTOR shall provide a local office for contract administration purposes. This office shall be staffed by either the CONTRACTOR or its representative, who is authorized to conduct business and make decisions on behalf of the CONTRACTOR. The office shall have business hours coinciding with CONTRACTOR's Beat(s) hours of operation. The office shall be established within close proximity to the CONTRACTOR's Beat(s) and shall be located in Riverside, San Bernardino, and Los Angeles or Orange counties. An Express Lanes FSP Certified Back-Up Tow Truck and an Express Lanes FSP Certified Back-Up Tow Truck Driver must be available within a 30 minute request regardless of the CONTRACTOR's office location.

The CONTRACTOR shall also provide telephone, scanner and email through which they, or a responsible representative authorized to conduct business and make decisions on behalf of the CONTRACTOR, can be reached during the non-service hours of operation for the length of the contract. During non-business hours, an answering machine, provided at the CONTRACTOR'S expense, shall be available to log calls, take complaints, etc. An email address that is monitored throughout each day shall be provided for "noticing" purposes during operational and non-service hours. The CONTRACTOR will be responsible for having a company representative monitor and review messages/notices on a daily basis and respond in a timely manner. Please see Exhibit "C" of this contract for penalties associated with failure to respond to communications from CHP and/or SBCTA.

9.0 BEAT DESCRIPTIONS

SAN BERNARDINO COUNTY FREEWAY SERVICE PATROL BEAT DESCRIPTIONS

| Beat No. | Beat Description | One-Way Centerline Length in Miles | No. of Primary Certified Express Lanes FSP Tow Trucks for both AM | No. of Express Lanes FSP Certified Back-Up Tow |
|---|--|------------------------------------|---|--|
| Beat Interstate 10 (I-10) Express Lanes Segment 1 | From Mills Avenue (Los Angeles County line) to Interstate 15 (I-15). | 10.4 | 1 or 2 | 1 |

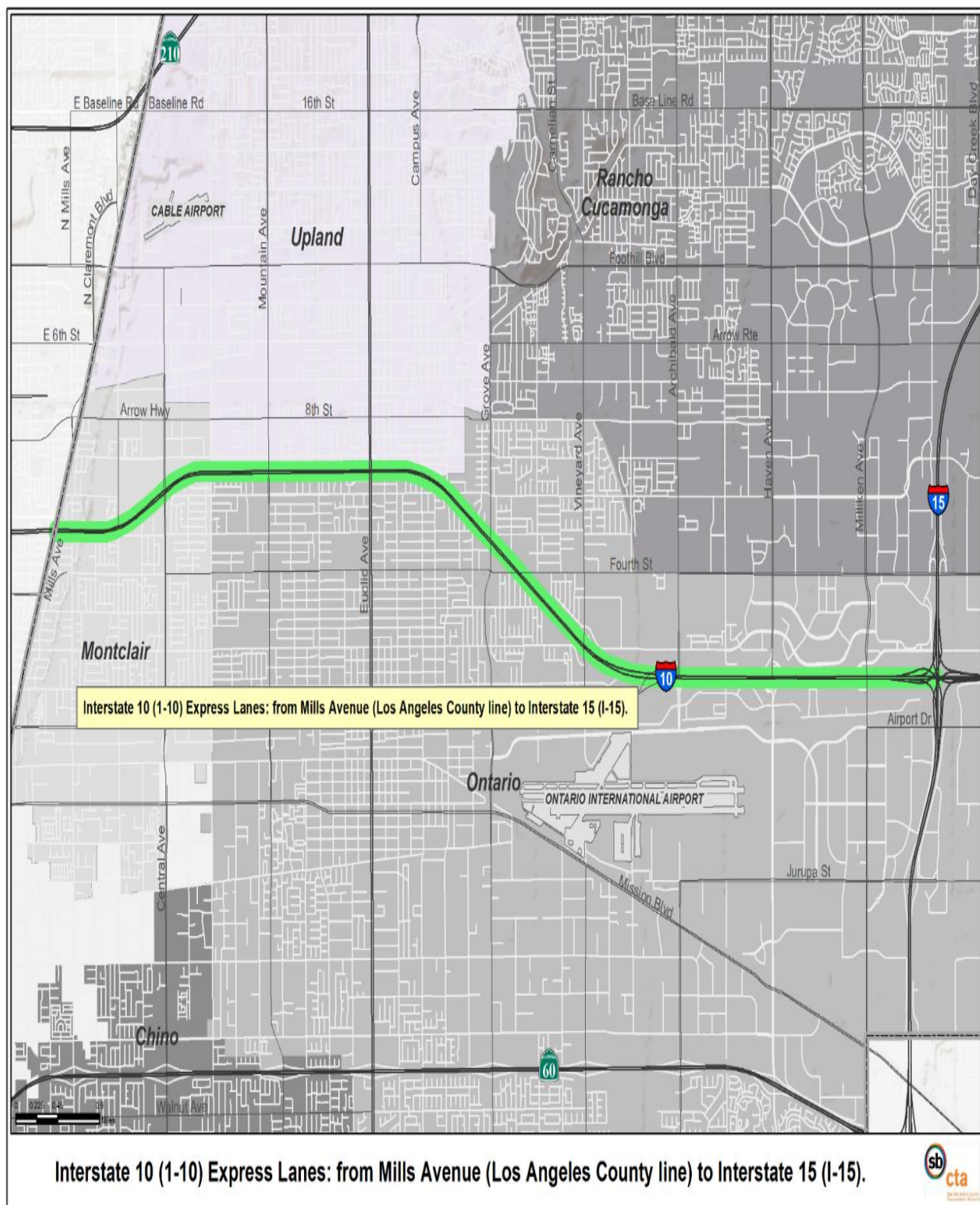
Please refer to section 10.0 for a Map of the I-10 Express Lanes Beat area

There will be two scenarios for the RFP. The scenarios are as follows:

- Scenario 1: One (1) primary flatbed tow truck, and one (1) backup flatbed tow truck
- Scenario 2: Two (2) primary flatbed tow trucks, and one (1) back-up flatbed tow truck

Final determination on which scenario will be determined by the RFP evaluation committee.

10.0 FSP Beat Map



FSPbea_I10_220414_CM

11.0 FSP SERVICE HOURS AND EXTRA WORK HOURS

Approximate total service hours per primary vehicle per year is estimated to be as follows:

- Approximate Ramp Up Hours in first three months of contract per primary vehicle: 1,020 hours
- Approximate Service Hours (Monday-Friday) per primary vehicle per year: 1,910 hours
- Approximate “Extra Work” Contingency weekend hours (Saturday- Sunday) per primary vehicle per year: 750 hours

Please note “Extra Work” contingency hours are **not guaranteed**.

Beat I-10 Express Lanes is- the priority Beat for this RFP, which means that should a primary truck go down; the “Extra Work” Beat truck shall be deployed back to the primary Beat. SBCTA shall evaluate all travel times made from the “Extra Work” Beat to the primary Beat in a penalty time situation on a monthly basis. Final penalty determination shall be made by CHP and SBCTA.

SBCTA reserves the right to change Beat operating times and operational requirements (i.e., length of Beat and hours of operation) during the course of the Contract.

“Extra Work” for emergency coverage may be assigned for any of the nine (9) SBCTA FSP service areas:

1. Beat 5: SR-60 from Milliken Avenue to Reservoir Street (Los Angeles County line)
2. Beat 9: I-10 from Indian Hill Boulevard (Los Angeles County line) to Haven Avenue
3. Beat 10: I-10 from Haven Avenue to Sierra Avenue
4. Beat 11: I-10 from Sierra Avenue to Waterman Avenue
5. Beat 14: I-215 Center Street from the Riverside County line to Devore Road
6. Beat 23: I-15 from the Riverside County line to Sierra Avenue
7. Beat 29: I-10 from Waterman Avenue to County Line Road (Riverside County line)
8. Beat 27: I-15 from Sierra Avenue to Oak Hill Road
9. Beat 31: SR-210 from the Los Angeles County line to Citrus Avenue

The contractor shall hold to all required standards addressing truck image and maintenance for the Express Lanes FSP Certified Back-Up Tow Truck being used during “Extra Work”, as CHP shall retain all rights to inspect and put the trucks out of service for non-compliance. Penalties shall still apply. In the event that the “Extra Work” Beat truck must be sent to cover the primary Beat, no penalty time shall be assessed for not having that Back-Up truck on the “Extra Work” Beat.

SBCTA reserves the right to change Beat hours and operational requirements during the course of the Contract. Written notice from SBCTA (email is acceptable) shall be required for commencement and termination of “Extra Work”.

All Beats may be asked to participate in possible SBCTA’s “FSP Extra Work weekend contingency services”, on an as needed basis. Possible hours of operation may include Saturdays and Sundays from 10:00 a.m. to 6:00 p.m. Extra Work is not guaranteed and can be terminated anytime. The actual amount of weekend hours or number of weekend trucks are not guaranteed. Written notice (email is acceptable) from SBCTA shall be required for commencement and termination of “FSP Extra Work weekend contingency services”.

Each SBCTA tow operator agreement contains a clause regarding Construction Freeway Service Patrol (CFSP). The goal of CFSP is to assist in construction zones outside of regular Express Lanes FSP hours or locations. The work is provided as “Extra Work” due to the uncertainty of the hours related to CFSP “Extra Work” projects.

12.0 FSP HOLIDAYS

PRELIMINARY LIST OF FSP HOLIDAYS

Services are to be provided on the days and hours designated in the Contract with the exception of the following holidays:

1. Martin Luther King, Jr. Day (Monday)
2. Presidents’ Day (Monday)
3. Memorial Day (Monday)
4. Independence Day (July 4 - varies)
5. Labor Day (Monday)
6. Veterans Day (varies)
7. Thanksgiving Day (Thursday)
8. Day after Thanksgiving (Friday)
9. Christmas Day (December 25 - varies)
10. New Year’s Day (January 1 – varies)

In addition to the above service hours, at the discretion of SBCTA and the CHP, additional service may be requested on certain “high traffic days” prior to or following certain holidays (e.g., July 4th, Labor Day, Sunday following Thanksgiving Day, Memorial Day). CONTRACTORS will be notified at least one week prior if/when I-10 Express Lanes service hours are altered due to when certain holidays fall on the calendar. Each year could be different. Please note that Express Lanes FSP service hours can be altered for other unforeseen purposes as well.

Minute Action

AGENDA ITEM: 8

Date: September 14, 2022

Subject:

Transportation Development Act Article 3: Victorville Old Town Phase I Extension & Scope Change

Recommendation:

That the General Policy Committee recommend the Board, acting as the San Bernardino County Transportation Authority:

Approve the City of Victorville's Transportation Development Act Article 3: Old Town Phase I award scope change request to remove construction of a retaining wall on "B" Street at Hesperia Road from the project Scope of Work and to extend the project deadline from December 31, 2022 to June 30, 2023.

Background:

San Bernardino County Transportation Authority (SBCTA) oversees the disbursement of 2% of the Local Transportation Funds (LTF) made available to counties and cities for facilities for exclusive use by pedestrians and bicyclists, known as the Transportation Development Act (TDA) Article 3 Program. In August 1999, the SBCTA Board of Directors (Board) approved a policy that 80% of the Article 3 program would be made available for projects that improve bicycle and pedestrian facilities. The remaining 20% would be available for projects that improve access to transit stops for pedestrians and persons with disabilities.

On July 10, 2019, the Board awarded the City of Victorville (City) TDA Article 3 funding in the amount of \$244,000 with a local match of \$244,000 to complete the City's Old Town Connectivity project. At that time, the Engineer's Estimate for this project was \$488,000; however, the lowest viable bid was \$901,585.36 (the lowest bid was withdrawn by the proposing firm due to a tabulation error on their part). The City respectfully requests permission to omit construction of a retaining wall on "B" Street (Site 9) from the Scope of Work as a cost savings measure that would enable them to complete the bulk of this project within budget constraints while still achieving the overall goal of improving contiguous pedestrian access in the Old Town Victorville area.

The City is also requesting an extension from the current deadline of December 31, 2022 to June 30, 2023 due to delays caused by this funding issue and COVID-19 restrictions and limitations placed upon the workforce in 2020.

Financial Impact:

This item is consistent with the Fiscal Year 2022/2023 Budget.

Reviewed By:

This item is not scheduled for review by any other policy committee or technical advisory committee.

Responsible Staff:

Ginger Koblasz, Senior Planner

Entity: San Bernardino County Transportation Authority

Approved
General Policy Committee
Date: September 14, 2022

Witnessed By:



July 21, 2022

Ginger Koblasz
Senior Planner
SBCTA

RE: 2019 TDA Article 3 Grant Extension – Old Town Sidewalk Connectivity Project (L20-0702-0751-00).

Dear Ms. Koblasz:

The City of Victorville was pleased to receive bids for construction of the 2019 TDA Article 3 – Old Town Sidewalk Connectivity Project from bidders Thursday, 7/14/22. The City to award a construction contract and complete the planned scope of work before the December deadline in compliance with TDA Article 3 grant provisions. Immediately it became apparent the bid proposals received significantly exceeded the estimated construction cost of the project.

In 2019, the Engineer's Estimate was \$488,000. The lowest bid was \$763,285.00, but the bidder requested to withdraw the bid the following day due to a reported \$96,950.00 error in unit costs and tabulations in the bid form. The next lowest bid (corrected) was \$901,585.36. Overall, the average of the six bids received was approximately \$1,067,000.00. Please refer to the attached bid results memorandum.

In the past year, material shortages and inflation rates associated with labor and materials have significantly increased costs since the original estimate was prepared and submitted with the grant application. I have decided to recommend that City Council reject the bids. I plan to re-advertise the project with a reduced scope.

Engineering is proposing a change in scope of work to delete one of the project locations that requires the construction of a retaining wall on "B" Street (Site 9) for the proposed sidewalk shown in the original application. Of the six bids received, the average cost of work on "B" Street at Hesperia Rd associated with the retaining wall is approximately \$175,000, which is \$130,000 more than the original estimate. Other accessory work associated with the construction of the sidewalks, ramps and drive approaches for the remaining sites will undergo value engineering in attempt to reduce construction costs. No other changes in the scope of work are proposed.

Due to COVID-19 restrictions and limitations placed upon labor in the workplace beginning in 2020, the preparation of plans and specifications for this project was significantly delayed. In order for the City to have adequate time to reject all bids, prepare revised plans, specifications, and estimates, re-advertise, award a contract, and complete the work, a time extension will be needed. The City is requesting a time extension of six months from the current deadline to complete construction of December 31, 2022, until June 30, 2023.

The City of Victorville is committed to completing this project and respectfully requests that SBCTA approve this time extension and scope change request.

Sincerely,



Brian Gengler, PE
City Engineer



MEMORANDUM

DATE: July 15, 2022

FROM: Pearl Bandringa
Finance Manager

TO: Brian Gengler
City Engineer

SUBJECT: Bid Results for “Old Town Sidewalk Connectivity Project”, CC23-008

Six informal bids were received by 2:30 p.m. on **July 14, 2022** for the above referenced project. The Bid Document was posted on the city’s website and on ebidboard June 9, 2022. and was emailed to (44) forty-four potential bidders on June 9, 2022. A non-mandatory pre-bid meeting was held June 28, 2022. The following bidders responded:

| Company | City | Total Bid Amount |
|-----------------------------|------------------|------------------|
| Gentry General Engineering | Rancho Cucamonga | \$1,129,577.00 |
| LCR Earthwork & Engineering | Ontario | \$1,197,350.28 |
| DM Contracting, Inc | Colton | \$1,372,550.00 |
| DOD Construction | Bakersfield | \$1,014,761.00 |
| Jergensen Construction | Oak Hills | \$ 924,585.96 |
| S & H Civilworks** | Colton | \$ 763,285.00 |

** Withdrew bid due to mathematical miscalculations

Copies of the submitted Bid Proposal Forms are attached for analysis; each contractor is CSLB-licensed, DIR-Registered, not debarred federally or by the state or on the Russian Sanctions listing. All bidders acknowledged Addenda #1. Bid bonds were required and were submitted

Please provide your recommendation as soon as possible.

Submitted by Pearl Bandringa, Finance Manager

* * * * *

Recommendation:

Contract Award to: _____

Other: _____

City Engineer Signature

Date

TRANSPORTATION DEVELOPMENT ACT ARTICLE 3 CALL FOR PROJECTS

CITY OF VICTORVILLE



OLD TOWN SIDEWALK CONNECTIVITY PROJECT

May 3, 2019



CITY OF VICTORVILLE

OLD TOWN SIDEWALK CONNECTIVITY PROJECT

Project Description

This project will construct missing sidewalk connections on several street segments in Old Town Victorville that do not have continuous sidewalk on either side of the street. The project scope includes 2,285 lineal feet sidewalk, 38 curb ramps and 25 driveway approaches with pedestrian by passes.

Please refer to the Attachment 1, a vicinity map showing the Old Town Area.

Project Location and Limits

The table below shows the street name, limits, length of missing sidewalk, number of curb ramps and number of drive approaches needed for each street segment.

| Segment | Street | Limits | Side of Street | Missing Sidewalk (LF) | Curb Ramps (EA) | Drive Approach (EA) |
|---------------|-------------|------------------------|----------------|-----------------------|-----------------|---------------------|
| 1 | 2nd St | B St to C St | W | 240 | 2 | 3 |
| 2 | 4th St | C St to D St | W | 110 | 2 | 2 |
| 3 | 5th St | B St to C St | W | 270 | 2 | 5 |
| 4 | Forrest Ave | 4th St to 5th St | N | 85 | 2 | 3 |
| 5 | A St | 4th St to 5th St | S | 225 | 4 | 2 |
| 6 | A St | 5th St to 6th St | S | 105 | 1 | 1 |
| 7 | A St | 6th St to 7th St | S | 10 | 4 | 3 |
| 8 | B St | 4th St to 5th St | S | 300 | 4 | 2 |
| 9 | B St | Hesperia Rd to 10th St | N | 120 | 4 | 1 |
| 10 | C St | 2nd St to 3rd St | N | 130 | 2 | 1 |
| 11 | C St | 4th St to 5th St | N | 280 | 4 | 0 |
| 12 | C St | Hesperia Rd to 10th St | N | 205 | 3 | 2 |
| 13 | C St | 10th St to 11th St | S | 205 | 4 | 0 |
| Totals | | | | 2,285 | 38 | 25 |

Please refer to the Attachment 2, the project location map. Attachment 3 has photos of the sidewalk locations.

Project Purpose and Need

The purpose of the project is to provide pedestrian accessible paths of travel at missing sidewalk locations in Old Town Victorville. The project will meet American Disabilities Act requirements at all locations where feasible. Pedestrians in this area that will be served include walkers of various ages, including school children, the physically disabled and people using baby strollers.

The **SBCTA Points of Interest Pedestrian Plan**, prepared in 2017, identified Old Town as a priority point of interest. There is a clear need for the project due to high pedestrian activity in the Old Town area. Please refer to Attachment 4, two pages from the Plan for Old Town Victorville. The Plan identified pedestrian opportunities, key connections, circulation challenges and constraints in Old Town. Pedestrian counts at 7th St. / C St. averaged 24, 39 and 38, respectively, for 2-hour morning, midday and afternoon periods. Suggested improvements included the following:

- B St & C St Pedestrian Improvements – **suggested sidewalks on B St. and C St. are included in this project.** Shifting stop bars at B St. Hesperia Rd. and C St. / Hesperia Rd. will be implemented by Victorville Traffic staff. Crosswalk infrastructure across Hesperia Rd. has been considered but it not recommended at this time.
- 6th & 7th St. Connections to 6th St. Primary School – City Staff worked with School District staff and installed a mid-block high visibility crosswalk with rectangular rapid flashing beacon (RRFB) signs. Crossing guards assist students with crossing 6th St.
- Old Town Victorville Station – At D St. / 6th St. a visibility crosswalk with rectangular rapid flashing beacon (RRFB) and fluorescent yellow green crossing signage was suggested. This intersection is on State Route 18 and is under Caltrans jurisdiction Staff does not recommend any changes to Caltrans at his time.

Disadvantaged Community Area

The missing sidewalk locations are along street frontages that are 90% developed. Old Town Victorville has been designated by the State of California as an SB 535 Disadvantaged Community (DAC) Area. Please refer to Attachment 5, a map of the DAC area. From the CalEnviroScreen data, Old Town has the next to highest scoring category (81% to 90%). The census tract that contains Old Town (No. 6071009800) has the highest score (81.27) out of 16 census tracts that cover Victorville. This census tract has the second highest poverty percentile (93.35) of the 16 census tracts. It is reasonable to conclude that because of the high poverty percentile fewer people in Old Town have access to an automobile compared to other areas in Victorville and depend more on walking to reach a destination.

Old Town Specific Plan

The Old Town Specific Plan was updated in December of 2018. Section 7.2 of the Plan discusses the pedestrian and bicycle network. Section 7.2.1, Sidewalks, is quoted as follows: "Pedestrian facilities are provided throughout the majority of the Specific Plan area. Sidewalks, crosswalks, and pedestrian-actuated traffic signals create a pedestrian-friendly environment, particularly through the 7th Street and 6th Street corridor. Implementation of the roadway cross sections should improve the environment by providing safe, shaded walking areas in the Old Town core." This project is consistent with the Specific Plan. The City's roadway cross sections include sidewalks for pedestrian travel.

Destinations Served

This project will serve the following destinations (among others) in Old Town. Attachment 6 has photos of the destinations.

1. 6th Street Prep School (6th St. between Forrest Ave. and A St.) The school is K-6 and serves the Old Town Area. There is high pedestrian activity to and from the school in the area.
2. 5th Street Park (5th St. between Forrest Ave. and A St.) The park utilized by the school as is part of the school campus.
3. St. Joan of Arc Catholic Church (6th St. between A St. and B St.) The church has daily services that attract pedestrians.
4. High Desert Chinese Church (6th St. at B St.)
5. Victorville Transportation Center (D St. between 4th St. and 6th St.). There are several VVTA bus route connections and an Amtrack stop at the Transportation Center.
6. Businesses (4th St between C St. and D St.) There are several businesses located on this block that serve the local community.
7. Mobile Home Park (C St between 2nd St. and 3rd St.).

Safety Benefits

This project will provide sidewalk on several streets segments that currently do not have continuous sidewalk on either side of the street. This project will provide an ADA compliant continuous path of travel along the streets, separate from motor vehicle traffic. This will encourage pedestrians to utilize the sidewalk instead of street pavement for walking.

Project Connectivity

This project connects missing sidewalk segments to the existing sidewalk system in Old Town. The project also connects to VVTA bus stops located at: B St. / 4th St.; B St. / 7th St.; B St. / 11th St.; and the Transportation Center. Please refer to the Attachment 7, a map of VVTA bus stops and routes in the project area. This project also connects to the Mojave Riverwalk Project which traverses through Old Town on Forrest Ave., 6th St., C St. and 4th St.

Previous TDA Article 3 Awards and Project Status

The Mojave Riverwalk Project, which was awarded \$180,428 from TDA Article 3 funds, is currently under construction. Construction is scheduled for completion by July 13, 2019.

Project Cost Estimate

A cost estimate has been prepared using unit costs from recently bid projects. The cost estimate for the project is \$487,255. Attachment 8 is the Engineer's estimate for the project. Unit costs were taken from recent road projects advertised by the City of Victorville. The costs include a 10 percent construction contingency and materials testing.

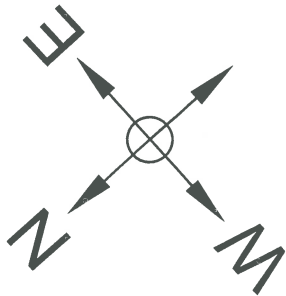
Fund Request and Local Matching Funds

The fund request is \$243,627 for the construction phase of the project. 50% of the project cost will be matched from the City's Local Transportation Fund. The design and construction management of the project will be funded by the City.

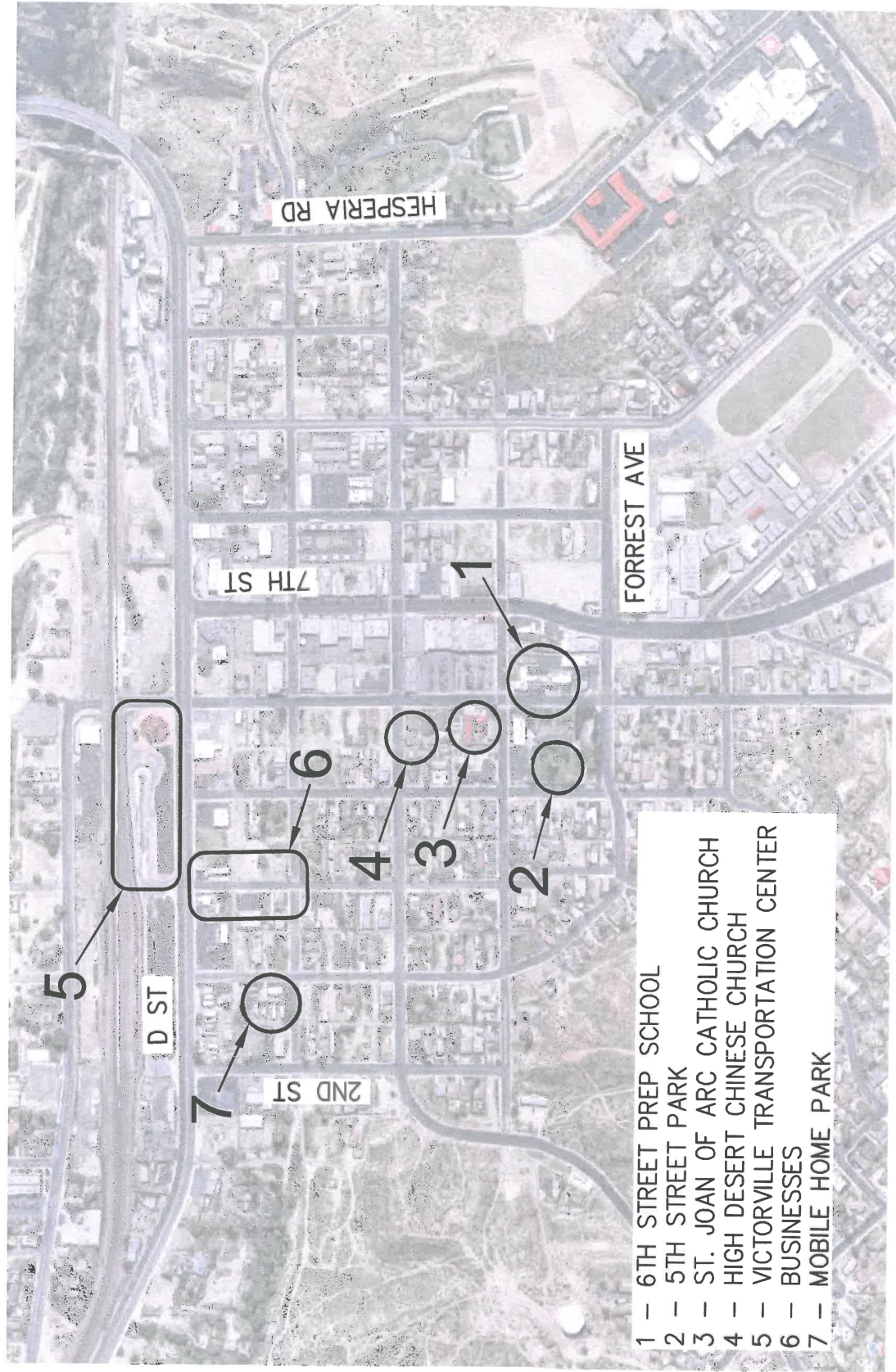
Project Readiness

This project can be ready to advertise for construction with minimal effort.

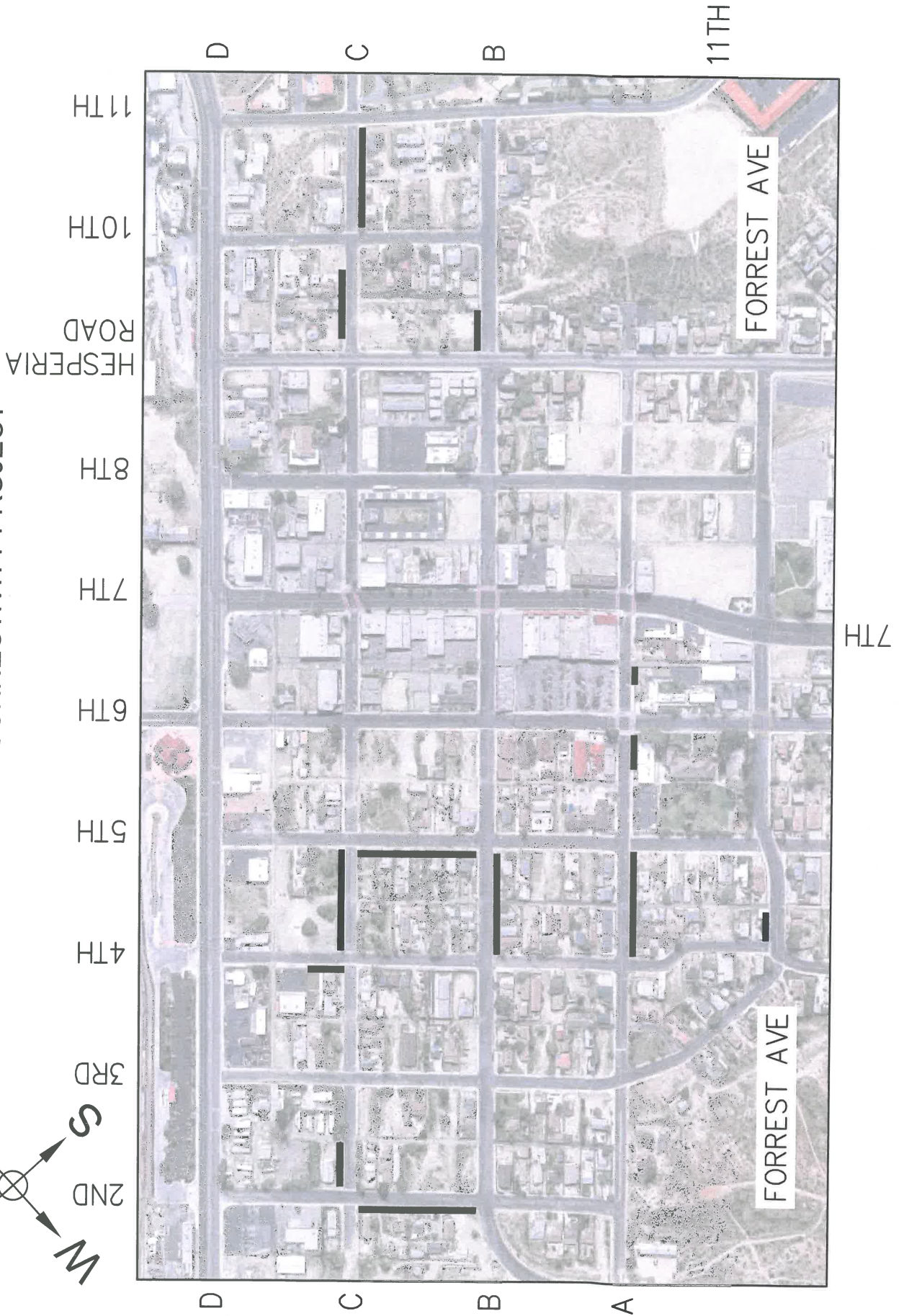
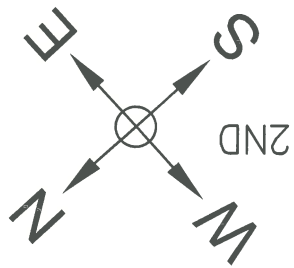
- Existing Infrastructure – All sidewalk, access ramps and driveway approaches to be constructed are adjacent to existing curb and gutter.
- Environmental Clearance – This project is categorically exempt under CEQA and only requires a notice of exemption.
- Right of Way – The project will be constructed within existing City street right of way.
- Permits – No permits from outside agencies are required.
- Design – The design effort is relatively easy. Surveying, plans, specifications and estimates will be completed in-house. Access ramps and driveway by passes will require some design to meet ADA requirements and this is a routine procedure for Victorville Engineering staff.



ATTACHMENT 1
VICINITY LOCATION MAP
OLD TOWN

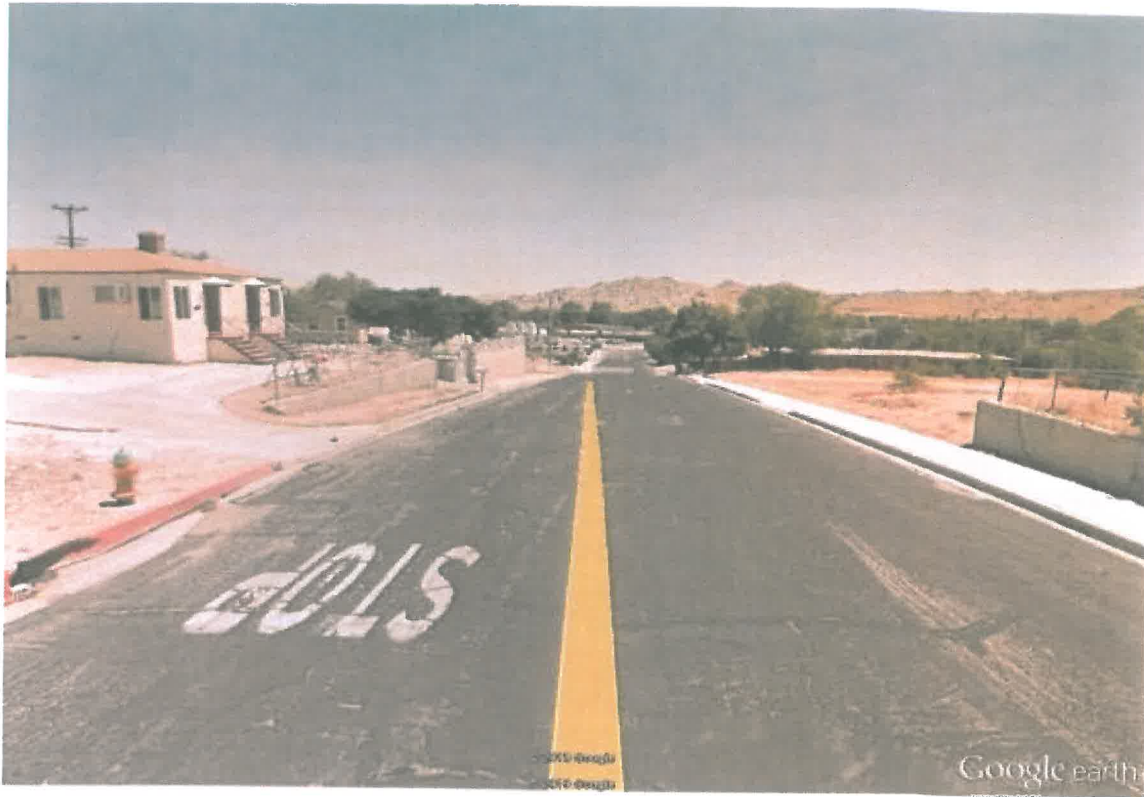


ATTACHMENT 2 PROJECT LOCATION MAP OLD TOWN SIDEWALK CONNECTIVITY PROJECT



Attachment 3

Photos of Sidewalk Locations



1 - 2nd Street (B Street to C Street)



2 - 4th Street (C Street to D Street)



3 - 5th Street (B Street to C Street)



4 - Forrest Avenue (4th Street to 5th Street)



5 - A Street (4th Street to 5th Street)



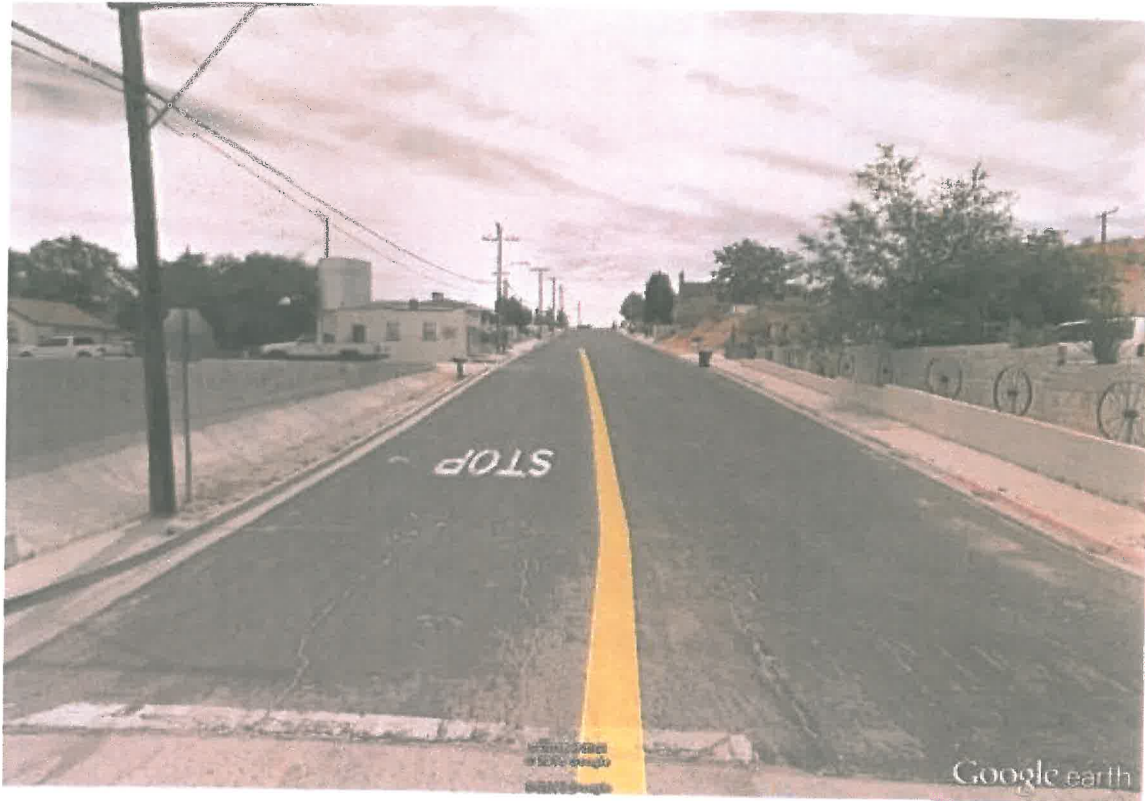
6 - A Street (5th Street to 6th Street)



7 - A Street (5th Street to 6th Street)



8 - B Street (4th Street to 5th Street)



9 - B Street (Hesperia Road to 10th Street)



10 - C Street (2nd Street to 3rd Street)



11 - C Street (4th Street to 5th Street)



12 - C Street (Hesperia Road to 10th Street)



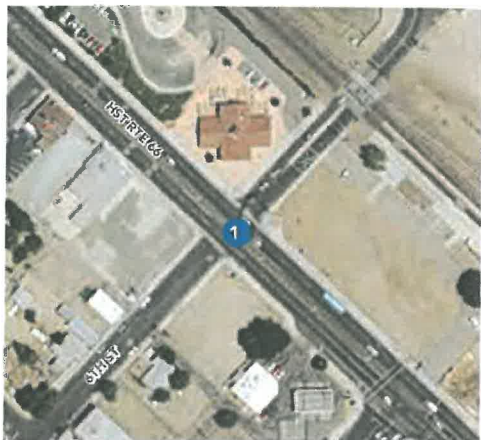
13 - C Street (10th Street to 11th Street)

Attachment 4

Pedestrian Points of Interest Plan

City of Victorville Suggested Improvements: Old Town Victorville

Old Town Victorville Station



1) Consider adding a high-visibility pedestrian crossing, with push-activated RRFB, yield lines, and FYC crossing signage to connect Old Town Victorville to Amtrak station building. Consider the addition of a traffic signal, if approved by Caltrans.

6th & 7th St Connections to Sixth St Prep School



3a) Replace existing crosswalks with highly visible, horizontal pattern appropriate for school zone as done at Forrest Ave & 6th St along with the installation of a mid-block crosswalk in front of the school.

3b) Consider the installation of yield lines and a RRFB or in-road signage, for this high-speed, high-volume crossing.

3c) Paint crossings with consistent striping pattern, construct ADA compliant curbs, and consider realigning off-set crosswalks with bulbouts.

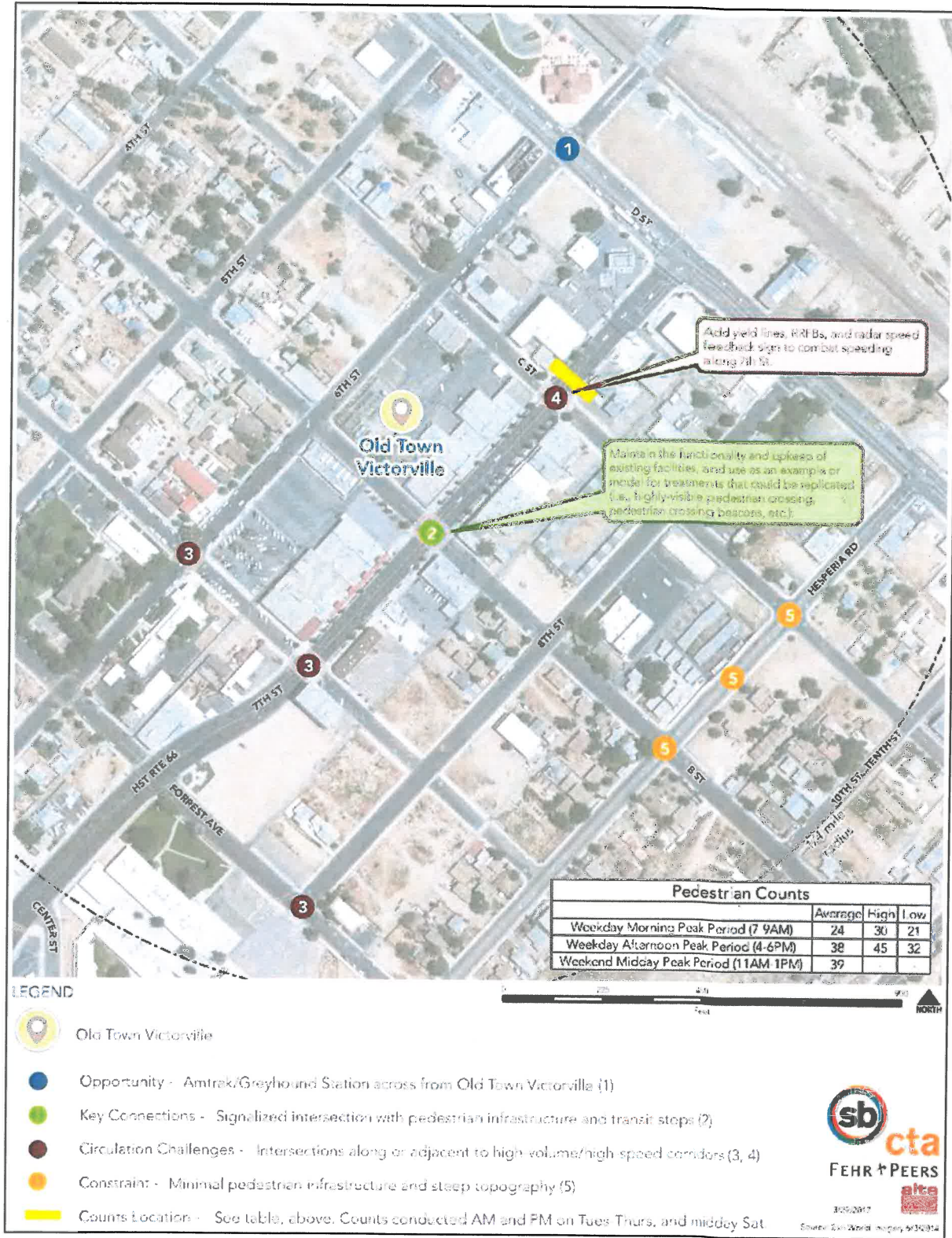
B St & C St Pedestrian Improvements



5a) Shift stop bars so they occur before reaching the curb cuts to help reduce vehicle and pedestrian conflicts.

5b) If sidewalks are built along B & C St towards the direction of Victor Valley Memorial Park, consider implementing crosswalk infrastructure across Hesperia Rd.

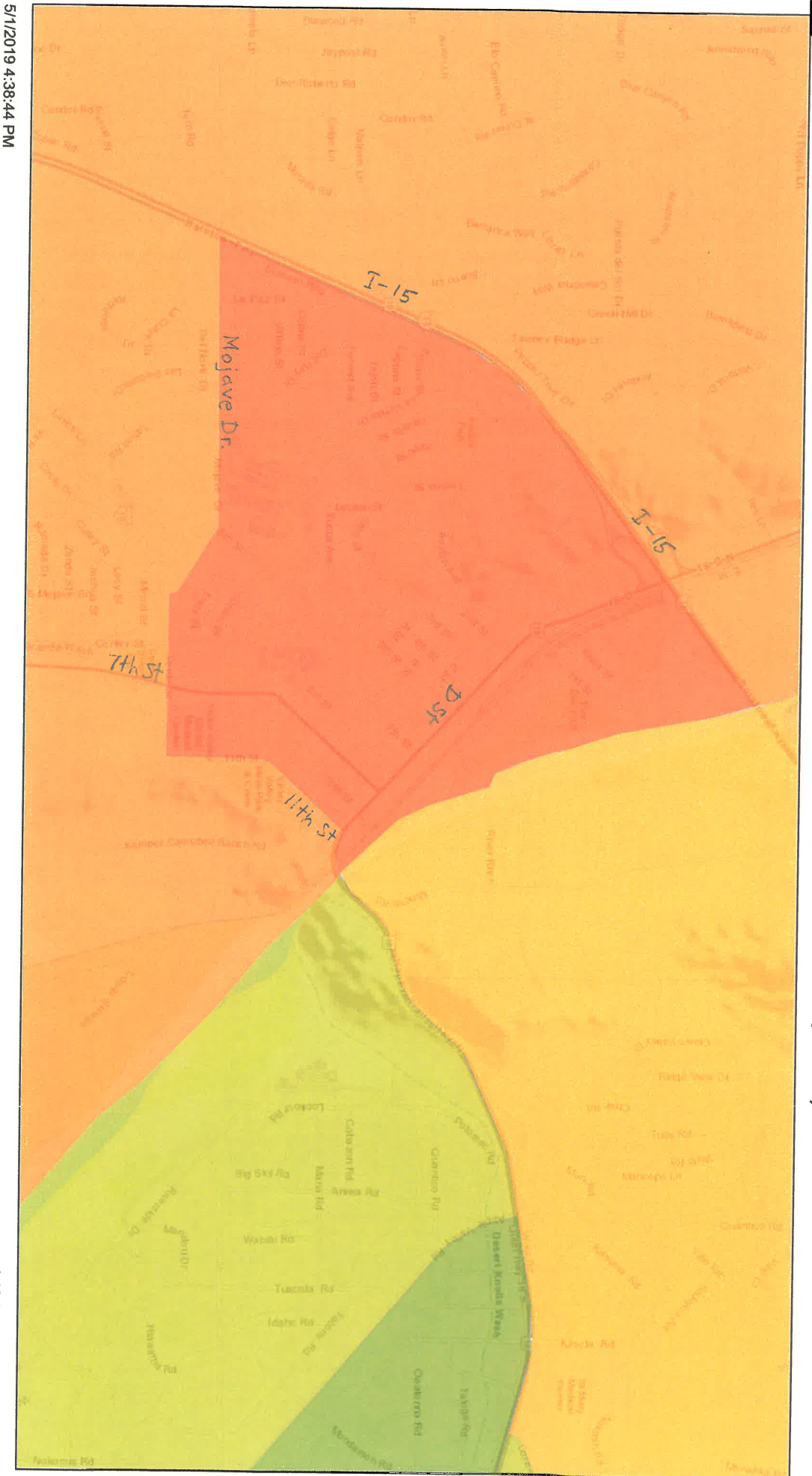
City of Victorville Priority Point of Interest: Old Town Victorville



Attachment 5

Disadvantaged Community Map Area Map

CalEnviroScreen 3.0 Results (June 2018 Update)

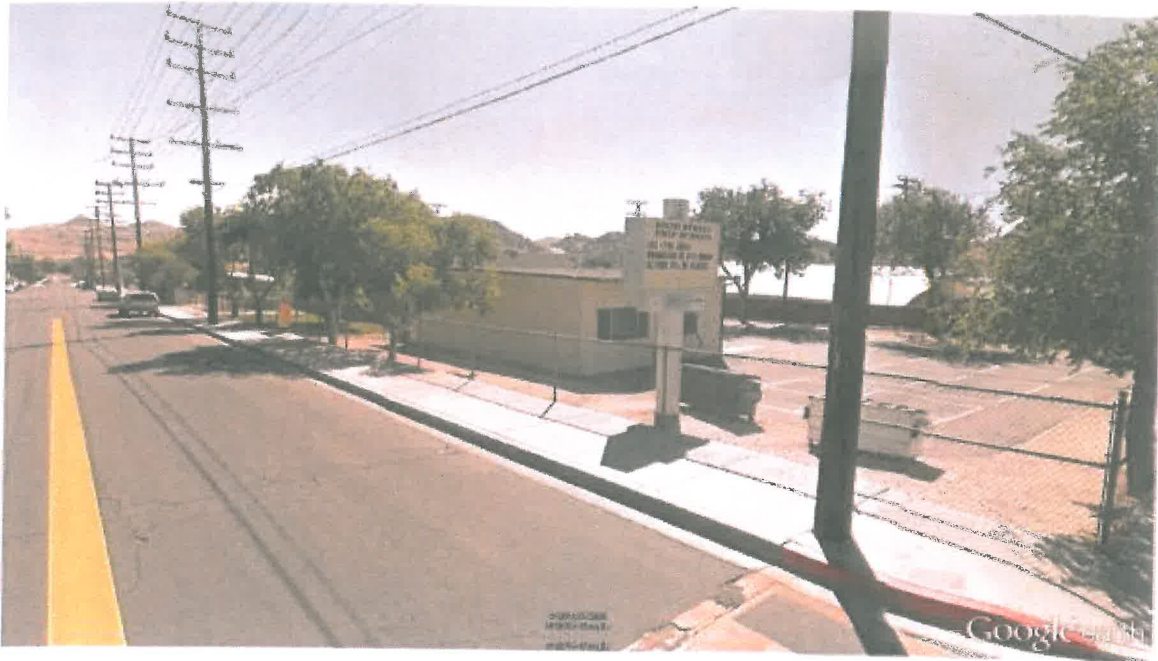


5/1/2019 4:38:44 PM
 CalEnviroScreen 3.0 Results (June 2018 Update)
 21 - 30%
 61 - 70%
 71 - 80%

1:18,056
 0 0.17 0.35 0.7 mi
 0 0.28 0.55 1.1 km
 USGS, FAO, NPS, NRCAN, Geobase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), (c) OpenStreetMap contributors, and the GIS User Community

Attachment 6

Destination Photos



1 - 6th Street Preparatory School
at 6th Street/Forrest Avenue



1 - 6th Street Preparatory School
at 6th Street/A Street



1 – 6th Street Pedestrian Crossing at 6th Street Preparatory School



2 - 5th Street Park



3 - St. Joan of Arc Catholic Church



4 - High Desert Chinese Church



5 - Victorville Transportation Center
at 4th Street



5 - Victorville Transportation Center
at 6th Street

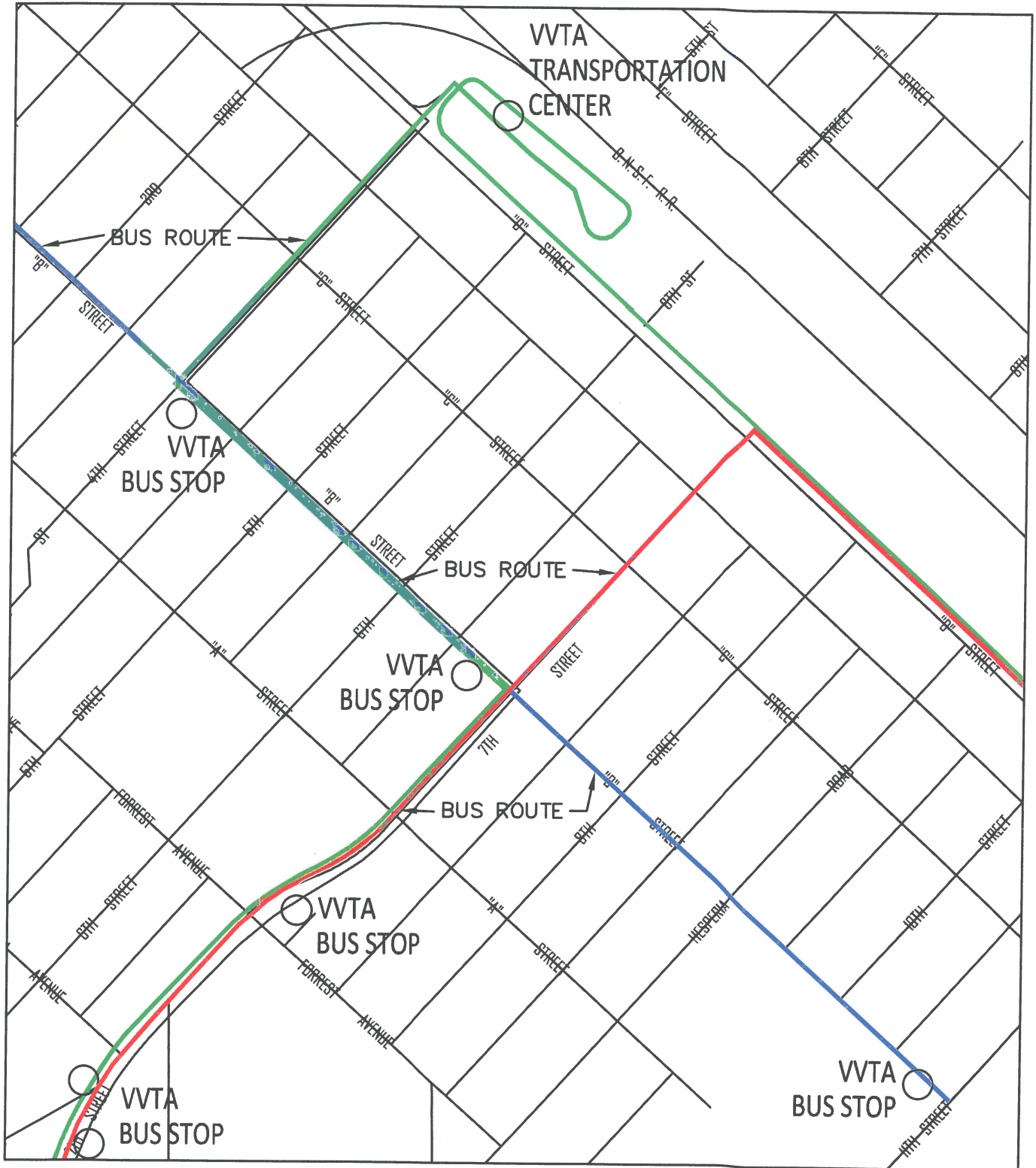


6 - Businesses on 4th Street



7 - C Street Mobile Home Park

ATTACHMENT 7 BUS ROUTE MAP OLD TOWN



Attachment 8

Engineer's Estimate

| Segment | Street | Limits | Side of Street | Missing Sidewalk (LF) | Curb Ramps (EA) | Drive Approach (EA) | 12" A Curb (LF) | Block Retaining Wall (SF) | % Undeveloped | Est. LF Undeveloped | Est. Cost | Comments |
|---------------|-------------|------------------------|----------------|-----------------------|-----------------|---------------------|-----------------|---------------------------|---------------|---------------------|-------------------|--|
| 1 | 2nd St | B St to C St | W | 240 | 2 | 3 | | | 0 | 0 | \$ 42,870 | Leads to D St and businesses. |
| 2 | 4th St | C St to D St | W | 110 | 2 | 2 | | | 0 | 0 | \$ 29,230 | Leads to businesses and transportation center. |
| 3 | 5th St | B St to C St | W | 270 | 2 | 5 | 295 | | 17 | 60 | \$ 77,960 | Leads to bus stop at B St / 4th St. |
| 4 | Forrest Ave | 4th St to 5th St | N | 85 | 2 | 3 | | | 0 | 0 | \$ 36,205 | Leads to school. |
| 5 | A St | 4th St to 5th St | S | 225 | 4 | 2 | | | 0 | 0 | \$ 42,575 | Leads to school and churches. |
| 6 | A St | 5th St to 6th St | S | 105 | 1 | 1 | | | 0 | 0 | \$ 16,765 | Adjacent to school and churches. |
| 7 | A St | 6th St to 7th St | S | 10 | 4 | 3 | | | 0 | 0 | \$ 41,380 | Leads to school and churches |
| 8 | B St | 4th St to 5th St | S | 300 | 4 | 2 | | | 0 | 0 | \$ 45,800 | Leads to bus stop at B St / 4th St |
| 9 | B St | Hesperia Rd to 10th St | N | 120 | 4 | 1 | | 190 | 0 | 0 | \$ 40,460 | Recommended in SBCTA Pedestrian Plan |
| 10 | C St | 2nd St to 3rd St | N | 130 | 2 | 1 | | | 0 | 0 | \$ 22,040 | Adjacent to mobile home park. |
| 11 | C St | 4th St to 5th St | N | 280 | 4 | 0 | | | 100 | 280 | \$ 28,840 | Leads to businesses and transportation center. |
| 12 | C St | Hesperia Rd to 10th St | N | 205 | 3 | 2 | | | 0 | 0 | \$ 37,515 | Recommended in SBCTA Pedestrian Plan |
| 13 | C St | 10th St to 11th St | S | 205 | 4 | 0 | | | 0 | 0 | \$ 25,615 | Recommended in SBCTA Pedestrian Plan |
| Totals | | | | 2,285 | 38 | 25 | | | 14.9% | 340 | \$ 487,255 | |

Funding Request \$ 243,627

50% City Match \$ 243,628

Notes:

Estimated costs include a 10% construction contingency and material testing.

| Item Description | Unit Costs | Unit |
|------------------------|------------|------|
| Curb Ramp | \$4,200.00 | EA |
| Driveway Approach | \$8,050.00 | EA |
| Sidewalk (5.5 ft wide) | \$43.00 | LF |
| 12" A Curb | \$60.00 | LF |
| Block Retaining Wall | \$55.00 | SF |



July 12, 2019

Brian Gengler
City of Victorville
14343 Civic Dr.
Victorville, CA 92393

Dear Mr. Gengler:

Congratulations, it is our pleasure to inform you that on July 10, 2019, the San Bernardino County Transportation Authority (SBCTA) Board of Directors approved funding from the Transportation Development Act (TDA), Article 3 Bicycle and Pedestrian Facilities Program, for the Victorville Old Town Sidewalk Connectivity Project in an amount of \$244,000.

The TDA Article 3 award is considered a grant and is paid through a reimbursement process and the filing of a TDA claim, including proper documentation of project expenditure. The award is for a maximum reimbursable amount. Should your project exceed the maximum reimbursable amount, SBCTA will not provide any additional reimbursement. For projects completed under the awarded amount, SBCTA will reimburse your agency for the LTF share of the project using the match percentage of 50% identified in your grant application. The SBCTA Board also set the period of time for completion of your project to comply with TDA provisions, therefore the project funded under this letter of award must be completed by December 31, 2022.

Your grant allocation amount has been submitted to the auditor controller. At the time of reimbursement request, a completed claim form must be submitted to SBCTA as well as additional documentation supporting your request. Progress payments may be requested for all projects regardless of the total project cost or the amount of the reimbursement. For questions on reimbursement and next steps for obtaining your allocation and claim form instructions, please contact Vanessa Schoenewald at vschoenewald@gosbcta.com

We look forward to the rapid implementation of your project. Should you have any questions please contact me at (909) 884-8276 or cbrown@gosbcta.com.

Sincerely,

Cameron Brown
Senior Planner

Minute Action

AGENDA ITEM: 9

Date: September 14, 2022

Subject:

Equity Focus Group Report

Recommendation:

Receive information and provide comment on Equity Focus Groups report.

Background:

On October 7, 2020, the San Bernardino County Transportation Authority (SBCTA) Board of Directors (Board) approved the San Bernardino Council of Governments' (SBCOG) Regional Early Action Planning Grant (REAP 1.0) application and its submittal through the Southern California Association of Governments (SCAG). REAP funding was disbursed as a part of Assembly Bill (AB) 101 with the goal of providing housing planning and process improvement services to cities and counties. These funds were made available through Councils of Governments through the Subregional Partnership Program.

SBCOG was awarded \$2.4 million, which included funds to complete a Senate Bill (SB) 1000 Environmental Justice Toolkit. SB 1000 is "...an effort to address the inequitable distribution of pollution and associated health effects in low-income communities and communities of color." SB 1000, passed in 2016, requires local governments to identify environmental justice communities in their jurisdictions and address environmental justice in their General Plans. The goal of the SBCTA/SBCOG Toolkit is to provide guidance for local jurisdictions to come into compliance regarding environmental justice in local land use planning. Public outreach for this toolkit is a key component for completion of the project.

Concurrently, the Board passed a resolution and directed SBCTA/SBCOG to begin identifying opportunities in which to ensure Equity is a lens through which we are looking when doing business. Through the Equity Ad Hoc Committee and ultimately the Board, SBCOG began the Regional Equity Study (RES), which meshed well with the SB 1000 Toolkit, and staff maximized both efforts by combining elements of the outreach to benefit both the toolkit and the equity study.

It was clear that in order to complete the Equity Study and the SB 1000 Toolkit, input and feedback from community stakeholders was necessary to understand the impacts of the existing conditions and their vision for moving forward with regard to the built-environment and providing input on minimizing barriers to equity as they have been defined for both the study and the toolkit. Yet, in reviewing the feedback from the focus groups, some commentary received was beyond the study and the toolkit. This commentary is extraordinarily helpful and will be of use in providing guidance for recommendations beyond the projects for which the feedback was sought. Staff will be utilizing the information found in Attachment 1 to shape the upcoming SBCOG Work Plan and Equity Framework and Policies, which is the next step beyond the RES. The findings of these discussions are in the draft report and presentation that are attached to this item.

Entity: San Bernardino Council of Governments, San Bernardino County Transportation Authority

General Policy Committee Agenda Item
September 14, 2022
Page 2

Financial Impact:

This item has no financial impact on the Fiscal Year 2022/2023 Budget.

Reviewed By:

This item was received by the City/County Manager's Technical Advisory Committee on September 1, 2022. This item is not scheduled for review by any other policy committee.

Responsible Staff:

Monique Reza-Arellano, Council of Governments and Equity Programs Manager

Approved
General Policy Committee
Date: September 14, 2022

Witnessed By:

San Bernardino Council of Governments
San Bernardino County Transportation Authority

Focus Group Outreach for Equity Program

Monique Reza-Arellano
SBCOG and Equity Manager

Monica Guerra
National Core



cog

San Bernardino
Council of Governments

Focus Group Feedback

- Funded through REAP
 - SB 1000
 - Regional Equity Study
- Community Input
 - Existing condition
 - Vision for improvement



Equity Focus Groups

- Engage Key Partners in Various Sectors:
 - Health
 - Equity
 - Environmental Justice
- Goal: to inform
 - Regional Equity Study
 - Equity Data Dashboard
 - SB 1000 Toolkit
 - Overall Equity Effort

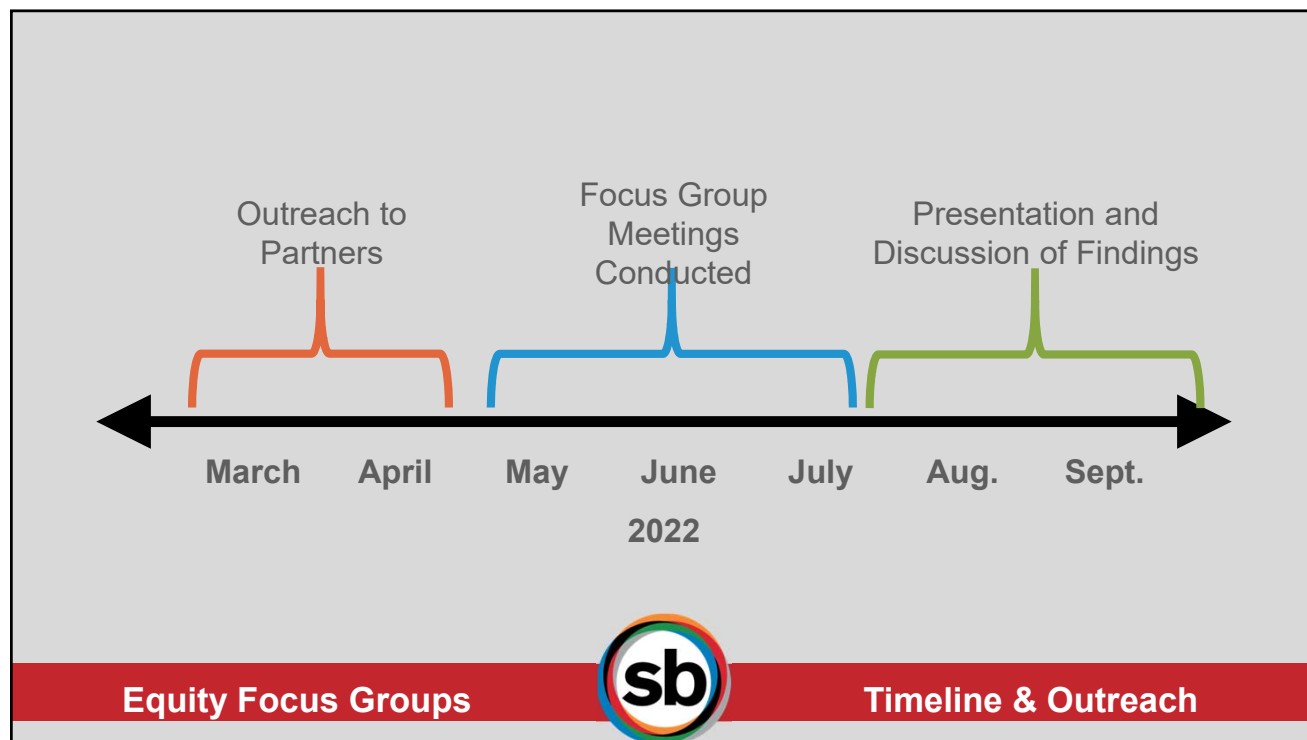


Purpose

Timeline and Outreach



Equity Focus Groups



Focus Group participants were selected through a collaborative process with SBCTA/SBCOG staff, members, and consultants.

Together we:

- Co-developed a list of over 70 Community-Based and Institutional Partners,
- Sought feedback on draft list from members of the Planning and Development Technical Forum (PDTF), and
- Invited participants via email to participate in separate focus groups based on service/focus areas (countywide service area, high desert region, tribal partners)

At the bottom of the slide is a red banner with the text "Equity Focus Groups" on the left and "Outreach" on the right, separated by the "sb" logo in the center.

Stakeholders

- Cal State University San Bernardino, Re-Entry Operations
- Loma Linda University Health System
- Common Spirit Health (St. Bernardine's Medical Center)
- Making Hope Happen Foundation
- SoCal Black Chamber of Commerce
- Community Health Action Network
- People's Collective for Environmental Justice
- Arts Connection Network
- Inland Empire Health Partnership
- IE United
- High Roads Training Partnership
- NALEO Educational Fund
- Young Visionaries Youth Leadership Academy Inland Empire
- Reach Out 29
- El Sol Neighborhood Educational Center
- Step Up
- Riverside San Bernardino County Indian Health
- San Bernardino County Sheriff's Department
- San Bernardino County Department of Public Health
- PDTF Members:
 - City of Big Bear Lake
 - City of Chino
 - City of Highland
 - City of Rancho Cucamonga
 - City of San Bernardino
 - City of Twentynine Palms
 - City of Victorville
 - County of San Bernardino

Equity Focus Groups



Participants

What We Heard

Equity Focus Groups



Built Environment and Public Health

- Across all focus groups, participants expressed concern with environmental justice issues in the built environment and public health impacts in San Bernardino County. These concerns centered around:
 - Exposure to high levels of air pollution from the expansion of the logistics industry (warehousing and distribution)
 - High concentration of unhealthy food options in low-income communities
 - Inadequate transportation infrastructure
 - Lack of healthcare providers

Equity Focus Groups



Area of Concern #1

Local Community Capacity Building

- A second area of concern centered around the public decision-making process and the need for community capacity building and civic engagement resources. Participants noted the following issues related to this area:
 - Language barriers
 - Complex systems that are difficult to navigate, leading to a lack of transparency around public decisions
 - Lack of trust in policymakers and decisionmakers – do not feel like they are a part of the process

Equity Focus Groups



Area of Concern #2

Wealth Building Opportunities

- A third area of concern identified by participants focused on limited jobs and access to high growth and high pay industries, posing barriers to economic mobility for many San Bernardino County residents. Relevant to this category, participants cited the following as barriers to wealth building:
 - “Brain Drain”: Limited, local opportunities for young and educated residents, leading them to move to other areas
 - Poor job quality in the rapidly expanding logistics (warehousing and distribution) industry
 - Lack of homeownership and business ownership opportunities in the County

Equity Focus Groups



Area of Concern #3

Opportunities

Equity Focus Groups



Need for Regional Collaboration

- A major theme across all focus groups was the regional, interconnected nature of equity and environmental justice issues. These are not issues that can be solved by one entity or jurisdiction.
- Participants emphasized the need for increased collaboration throughout the region around these issues.

Equity Focus Groups



Opportunity

Opportunities Moving Forward

1. Develop a Regional Equity Forum
2. Increase Community-Based Contracting Opportunities
3. Create User Friendly Data Equity Dashboard

Equity Focus Groups



Opportunities

Wrap Up, Discussion, and Next Steps

Equity Focus Groups



Current Equity Work

1. Transportation and Transit
 - Metrolink to launch Low-Income Fare is Easy (LIFE) - Reduced cost for low-income riders
 - Clean Truck Program
 - Toll Lane Equity Program in Development
 - Carpool/Vanpool Services
2. Workforce Development through SB County Programming
 - Business Capacity Enhancement
 - Job Training/Apprenticeships
3. Regional Equity Study Dashboard

Equity Focus Groups



What's Happening Now

Moving Forward

1. Updated SBCOG Work Plan to include recommendations addressing these concerns, potentially including:
 - Regional CBO/NGO/Non-Profit Forum to inform SBCOG work
2. Next Steps in Equity Work to include
 - Completing the Equity Dashboard
 - Equity Policy/Procedure Framework
 - Planning and project prioritization based on the Regional Equity Study

Equity Focus Groups



Next Steps

SBCTA/SBCOG Equity and Environmental Justice Focus Groups *Round 1 Memo*

In May-July of 2022, National Community Renaissance (National CORE) and staff from the San Bernardino County Transit Authority and San Bernardino Council of Governments (SBCTA/SBCOG) conducted a series of focus group meetings with community-based organizations, government agencies, and other stakeholders interested in promoting favorable health, equity, and/or environmental justice outcomes in communities across San Bernardino County. The purpose of the focus groups was to engage key partners in informing the ongoing work of SBCTA/SBCOG to study, track, and improve equity outcomes for communities across the County, including a Regional Equity Study, Equity Data Dashboard, and SB1000 toolkit.

A total of 6 focus group meetings were held over Zoom: two focus groups included community partners with a Countywide service area; one focus group was conducted with the SBCTA/SBCOG Planning Directors Technical Forum (PDTF); two focus groups included stakeholders directly serving the County's High Desert region, along with one additional focus group focused on tribal health.

Key Equity and Environmental Justice Concerns

All participants were asked to identify the most pressing environmental justice and equity issues facing communities across San Bernardino County. Based on responses, three broad areas of concern emerged: 1) built environment and public health, 2) local community capacity building, and 3) wealth building opportunities.

Built Environment and Public Health

Across all focus groups, participants expressed concern with environmental justice issues in the built environment and public health impacts in San Bernardino County, particularly for low-income communities and people of color. Participants cited disproportionate exposure to unhealthy and polluting land uses, resulting in poor air quality and negative health outcomes. A report on racial equity conditions across the Southern California Associated Governments (SCAG) region, explains that a "disproportionate share of people of color and low-income communities live near freeways and industry, exposing communities to higher rates of exposure to all sources of air pollution." High levels of air pollution are linked to serious health issues, including asthma, heart disease, cancer, and premature death (SCAG 2021).

The logistics and distribution industry was prominently cited by participants as a main driver of poor air quality. Warehousing and distribution centers, often located in industrial zones, contribute to air pollution with truck traffic, truck idling, and warehousing construction operations (CA DOT 2009). The logistics industry can also create negative noise and traffic impacts to communities surrounding these sites. Participants noted that a lack of access to green infrastructure, such as solar technology and electric vehicles, compounds air quality issues in low-income communities and communities of color.

Participants also expressed concern with a lack of access to healthy food in low-income communities. Fast food restaurants, liquor stores, and lower-quality grocery stores tend to concentrate in low-income communities, while higher resource communities enjoy access to healthy food at full-service grocery stores (Hilmers, Hilmers, and Dave 2012). A lack of access to fresh and healthy food is linked to a host of health complications, including diabetes, obesity, and high calorie diets.

In addition to neighborhood-scale concerns, participants cited existing transportation infrastructure as an issue impacting the built environment and public health, particularly in remote areas of the County (e.g., high desert and tribal communities). Participants noted that public transportation infrastructure is either non-existent or not accessible for remote communities. Local organizations have piloted alternative transportation models (e.g., carpools, van shares, etc.), ensuring access to critical services (e.g., medical care, grocery stores, mental health services) with success and recommend supporting these models with public funding. Additionally, the lack of active transportation infrastructure across the region reinforces dependence on GHG-emitting vehicles, resulting in poor air quality and negative health outcomes (SBAG and SCAG 2015).

Moreover, participants identified the lack of access to quality and culturally competent healthcare as a third issue. The County is underserved by medical professionals. According to the 2020 San Bernardino County Indicators Report (2021), the County is served by one primary care physician per 1,710 residents. This ratio is less favorable than the State ratio. The lack of health providers requires residents to travel outside of their communities to see healthcare providers and are constrained by the lack of public transportation infrastructure. Focus group participants also cited positive examples of service providers in the region overcoming barriers to healthcare access. For example, Riverside San Bernardino County Indian Health and Reach 29 both identified success with on-demand transportation services for their service populations.

Local Community Capacity Building

A second area of concern centered around the public decision-making process and the need for community capacity and civic engagement resources. Participants pointed to language barriers, “codeswitching,” and complex public systems as factors that discourage public participation and

limit the impacts of public outreach. Additionally, participants across all groups raised concerns with the lack of trust in the public decision-making process and provision of public information and resources. Participants identified the need for transparency in decision-making and more equitable approaches to investments (e.g., street infrastructure). During the planning director's focus group, there was support for engaging community members in ways that both provide feedback and encourage co-designed solutions to priority issues in the community.

During the focus groups, reasons identified for community distrust included: 1) disconnect between what community members want and need and what policymakers and other decisionmakers are focusing on, 2) perception that decisionmakers were not acting in the best interest of their communities; for example, participants questioned the approval of warehouses across the County and wondered whether decisionmakers were acting in the best interest of the health and wellness of residents, 3) inadequate communication between public agencies and communities, and 4) a lack of political representation by people of color. Few public agencies appear to be centering equity in their decision-making processes, according to participants. As such, there is an opportunity to educate community and local city leaders around equity and environmental justice issues by making connections to pressing issues in the community, such as housing, climate vulnerability, and air pollution.

Participants emphasized the importance of *how* information is communicated (such as notices of availability of public resources or opportunities to engage in public meetings/workshops), but also *who* was doing the communicating. Participants elevated the work of *promotoras* in connecting and informing community members, including local examples of success from healthcare and educational systems. Faith-based leaders were also called out as community-based partners that are seen as trusted messengers in the community.

There is an opportunity for government leaders to collaborate and pay trusted, culturally competent messengers or "embedded partners" to deliver information to the community, educate community members about health and equity, and develop more culturally relevant marketing. Participants pointed to the success of private-public partnerships rolled out for COVID-19 vaccinations as a potential model for engaging community partners to disseminate information and increase community engagement. Potential sources of funding to engage community partners include: CDBG funding, general funds, ARPA funding, and grants.

Wealth Building Opportunities

A third area of concern focused on limited jobs and access to high growth and high pay industries, posing barriers to economic mobility for many San Bernardino County residents. Participants described the phenomenon of "brain drain" as a detrimental impact to the county's employment

market - there are limited, local opportunities for young and educated residents, forcing them to leave the region for areas with better, higher-paying jobs.

While there have been job gains in the logistics and distribution industry, the industry tends to provide low paying jobs and contributes to the aforementioned negative environmental impacts. The logistics industry has seen a 95% increase in employment in San Bernardino County since 2010 (San Bernardino County 2021). As noted in the San Bernardino County Labor Market Intelligence Report (San Bernardino Workforce Development Board 2019), “employment gains in any one industry don’t always translate into wage gains. County workers logistics/warehousing, a backbone industry, saw wages decrease by 7% [between 2012 and 2017].” There was strong consensus among participants that the region should invest in cleaner, better-paying industries.

Additionally, the lack of available affordable housing and homeownership opportunities in the County further limit residents’ ability to build wealth. The lack of affordable rental housing means that residents pay a disproportionately high percentage of their income on housing costs, leaving little left over to cover basic needs and making the prospect of saving for a down payment on a home even more difficult (County of San Bernardino 2021). Focus group participants identified potential solutions to reduce the cost of developing housing, such as smaller unit sizes and alternative product types, and increasing funding for affordable housing through a regional housing trust.

Participants also cited a lack of local business ownership in the community as a barrier to building wealth. Many residents lack the resources to launch their own businesses. Participants maintained that local business ownership, like homeownership, can provide community members with an opportunity to establish economic security and build wealth for their families. While resources for small businesses may exist across the County, residents are often unaware of where or how to access them.

Racial inequities carry a high price tag. According to a study by the National Equity Atlas, San Bernardino’s County’s gross domestic product would have been \$29 billion higher in 2019 if its racial gaps were closed.¹ Although San Bernardino County has made improvements in the local economy, its population has grown and diversified over the last fifty years, and inequities in income and opportunity have also increased.

¹ Retrieved from [nationalequityatlas.org: https://nationalequityatlas.org/indicators/Racial-equity-in-income#](https://nationalequityatlas.org/indicators/Racial-equity-in-income#)

Opportunities for Advancing Equity and Environmental Justice in San Bernardino County

Participants provided examples and feedback for how concerns could be addressed by SBCTA/SBCOG. A common response from participants was that equity and environmental justice are not issues that can be solved by one entity or jurisdiction. **Participants emphasized the need for increased collaboration throughout the region around these issues.** Three high level recommendations were developed, based on participant input:

Recommendations

1. **Develop a Regional Equity Forum.** Collaborate with systems regional partners (e.g., school district, non-profit hospital network, etc.) to lead a regional equity forum and identify shared priorities that promote equity across the region. These priority areas may include community and economic development, housing, transit, education, health, and environment. The goal of the forum is to collaboratively identify strategic actions for regional issues that require regional solutions (e.g., air quality, concentration of warehouses, low wages, poor health outcomes). Many of these issues are longstanding and require political will and coordinated investments to make transformational change in communities.

A regional equity forum would build on the foundation set by Resolution Number 21-037, approved, and adopted by SBCTA/SBCOG in May 2021. In this resolution, SBCTA/SBCOG resolves to further its commitment to regional equity by

“providing the regional forum where efforts that work toward promoting a fair and just region; eliminating barriers that reduce opportunities for residents; and meaningfully advancing justice, equity, diversity, and inclusion can be discussed” (SBCTA/SBCOG, 2021).

As part of the forum, partners would develop shared definitions, identify thought partners, and elevate best practices that promote equity. As part of this effort, it is strongly suggested that senior leadership and staff at both SBCTA/SBCOG and systems regional partners participate in training/s to proactively sharpen skills and identify strategies to advance equity; establish regional tables with local partners that meet regularly (e.g., biannually, annually) to identify and prioritize strategic actions; and find opportunities to leverage investments and resources.

2. **Community-Based Contracting Opportunities.** Develop vendor relationships with local community-based organizations (CBOs) to engage and educate community members

about SBCTA/SBCOG (and other relevant) programs, resources, and initiatives. CBOs would lead engagement efforts that reach diverse people and groups, while building and maintaining trust and strong working relationships with partners across the region. It is strongly suggested that CBOs are embedded in communities across the region; promote transparency about activities and resources; and enable deep engagement with local governments and communities.

Based on the success of various community health worker programs and *promotoras* (“CHW/Ps”) across the region, it is recommended that SBCTA/SBCOG pilot a program that scales existing models to connect trusted community members as ambassadors that communicate health and social services in the community. The preferred model for compensation should be discussed with potential CHW/Ps, including mini-grants, supplier diversity programs, and small business programs that would facilitate vendor opportunities for these groups.

3. **User Friendly Data Equity Dashboard.** Develop a data dashboard that is user-friendly, visually rich, and inclusive of equity metrics and information on relevant community impacts. This may include: historical factors driving equity at the local level; census-tract-level data and neighborhood-level data, where available; health disparities by race and/or ethnicity; and step by step instructions for using the data. Potential indicators include:
 - Pollution impacts, cancer rates, and hospitalizations
 - City and/or Community Profiles
 - Regional zoning/land use map
 - Age of infrastructure (e.g., bridges, streets, freeways)
 - Dollars spent on infrastructure (e.g., street improvements)
 - Homeownership rates
 - Workforce training
 - Tribe-specific data

Appendix I: Stakeholder Analysis

Approximately thirty-five (35) people representing a wide array of community-based organizations, local jurisdictions, and other important public and private institutions in the County attended the first round of focus group meetings. The following stakeholders were represented:

1. Making Hope Happen Foundation
2. San Bernardino County Sheriff's Department
3. SoCal Black Area Chamber of Commerce
4. Loma Linda University Health System
5. Community Health Action Network
6. San Bernardino County Department of Public Health
7. People's Collective for Environmental Justice
8. Arts Connection Network
9. TODEC Legal Center
10. Inland Empire Health Partnership
11. Cal State University San Bernardino, Re-Entry Operations
12. IE United
13. High Roads Training Partnership
14. NALEO Educational Fund
15. Young Visionaries Youth Leadership Academy Inland Empire
16. Common Spirit Health (St. Bernardine's Medical Center)
17. Reach Out 29
18. El Sol Neighborhood Educational Center
19. Step Up
20. Riverside San Bernardino County Indian Health
21. Staff from the following jurisdictions:
 - a. City of Big Bear Lake
 - b. City of Chino
 - c. City of Highland
 - d. City of Rancho Cucamonga
 - e. City of San Bernardino
 - f. City of Twentynine Palms
 - g. City of Victorville
 - h. County of San Bernardino

Appendix II: References

References

- California DOT, LACMTA, RCTC, SANBAG. (2009). *Healthy Communities and Healthy Economies - A toolkit for good movement*. Retrieved from: https://www.rctc.org/wp-content/uploads/media_items/8-tl-revised-comm-environmental-justice-grant.original.pdf
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- National Equity Atlas. (n.d.). *Indicators: Income Growth, San Bernardino County*. Retrieved from: nationalequityatlas.org: https://nationalequityatlas.org/indicators/Income_growth
- San Bernardino County. (2021). *2020 Community Indicators Report*.
- San Bernardino County Workforce Development Board. (2019). *San Bernardino County Labor Market Intelligence Report*. San Bernardino, CA. Retrieved August 1, 1, from <https://wp.sbcounty.gov/workforce/wp-content/uploads/sites/5/2019/02/San-Bernardino-County-Labor-Market-Intelligence-Report.pdf>
- SBCTA/SBCOG. (2021). *RESOLUTION NO. 21-037 A Resolution of the San Bernardino County Transportation Authority and San Bernardino Associated Governments on Regional Equity*.
- SBAG and SCAG. (2015). *San Bernardino Associated Governments Complete Streets Strategy*. Retrieved from: https://www.gosbcta.com/wp-content/uploads/2022/02/Complete_Streets_Strategy_Final_2015-05-18_2.pdf
- SCAG. (2021). *Racial Equity: Baseline Conditions Report*. Retrieved from: https://scag.ca.gov/sites/main/files/fileattachments/racialequitybaselineconditionsreport_03242021revision.pdf?1616695824

Minute Action

AGENDA ITEM: 10

Date: September 14, 2022

Subject:

Public Outreach for Cucamonga Canyon Management Plan

Recommendation:

That the General Policy Committee recommend the Board, acting as the San Bernardino Associated Governments (SBCOG) and the San Bernardino County Transportation Authority (SBCTA):

A. Approve Cooperative Agreement No. 23-1002846 with the Rancho Cucamonga Fire Protection District (District) to reimburse SBCOG in the amount of \$23,620.20 for the District's portion of a Public Outreach Plan for the Cucamonga Canyon Forest Management Plan.

B. Approve Cooperative Agreement No. 23-1002847 with the County of San Bernardino (County) to reimburse SBCOG in the amount of \$2,959.90 for the County's portion of the Public Outreach Plan for the Cucamonga Canyon Forest Management Plan.

C. Approve a budget amendment to increase the Fiscal Year 2022/2023 budget for Task No. 501 Intergovernmental – Council of Governments in the amount of \$26,580.10 to be funded by the Council of Governments Fund through the contributions in Recommendations A and B.

Background:

On July 1, 2015, San Bernardino Associated Governments (SBCOG) entered into agreements with the United States Department of Agriculture (USDA), United States Forest Service (USFS), the County of San Bernardino, and the Rancho Cucamonga Fire Protection District to complete Forest Management Plans for the Cucamonga Canyon and Lytle Creek recreation areas. Since that time, the plans have been completed, and public outreach was completed for the Lytle Creek Recreation Area. The time has come to complete the outreach for the Cucamonga Canyon Forest Management Plan public outreach.

On November 30, 2020, the Executive Director approved Contract Task Orders (CTOs) No. 19 and 20 under Contract No. 19-1002000 with Costin Public Outreach Group, for a total cost of \$53,960, for the creation and implementation of a Public Outreach Plan for Cucamonga Canyon and Lytle Creek Management Plans, with \$19,928.01 to be funded by SBCOG with Property Assessed Clean Energy funds, \$21,575 to be reimbursed by Rancho Cucamonga Fire Protection District under Contract No. 21-1002475, and \$12,456.99 to be reimbursed by the County of San Bernardino under Contract No. 21-1002476. The Public Outreach Plan for Lytle Creek Management Plan was completed at this time; however, the Public Outreach Plan for Cucamonga Canyon was put on hold at the request of the City of Rancho Cucamonga and the County of San Bernardino. The reason for this was that while the Forest Management Plan was complete, the improvements necessary to open the facility were not yet in place, and there was no timeline for completion in 2021. Meanwhile, the contract expired. Now, the path forward has been settled along with budgets and timelines. Public outreach is key to educating the public on which improvements will be implemented and their timeline.

Entity: San Bernardino Council of Governments, San Bernardino County Transportation Authority

General Policy Committee Agenda Item

September 14, 2022

Page 2

The cost for the public outreach will be borne by and shared among the partnering agencies. Recommendations A and B are for approval of cooperative agreements with the Rancho Cucamonga Fire Protection District and the County of San Bernardino to reimburse SBCOG for their shares of the \$29,540.00 required to complete the Public Outreach Plan for Cucamonga Canyon. Cost breakdowns are noted as Exhibit B to the agreements and are as follows:

| Agencies | Cucamonga Canyon |
|-----------------------------------|--------------------|
| SBCOG | \$2,959.90 |
| County | \$2,959.90 |
| RC Fire | \$23,620.20 |
| Total Public Outreach Cost | \$29,540.00 |

This cost breakdown mirrors the percentage split from the original Public Outreach contracts, No. 21-1002475 and No. 21-1002476. These dollar amounts are what remains of the original cost of the Forest Management Plans from 2015. As a large portion of the cost for the Cucamonga Canyon Forest Management Plan was not collected by the USFS, it was agreed the remaining balance would be used to complete the public outreach. Since 2020 (when the initial public outreach contracts were executed), the cost has escalated, but the percentage breakdown is the same. Recommendation C is a budget amendment to include the revenues for the contributions. Sufficient budget authority exists for the SBCOG share.

Public outreach for the Cucamonga Canyon Forest Management Plan will be completed by June 30, 2023 when the contracts expire.

Financial Impact:

This item is not consistent with the Fiscal Year 2022/2023 Budget. Approval of this item will authorize a budget amendment to the Fiscal Year 2022/2023 Budget for Task No. 501 Intergovernmental – Council of Governments in the amount of \$26,580.10 to be funded by the Council of Governments Fund through contributions of \$23,620.20 from the Rancho Cucamonga Fire Protection District and \$2,959.90 from San Bernardino County.

Reviewed By:

This item is not scheduled for review by any other policy committee or technical advisory committee. SBCTA General Counsel and Risk Manager have reviewed this item and the draft cooperative agreements.

Responsible Staff:

Monique Reza-Arellano, Council of Governments and Equity Programs Manager

Approved
General Policy Committee
Date: September 14, 2022

Witnessed By:

San Bernardino Council of Governments
San Bernardino County Transportation Authority

Contract Summary Sheet

10.a

General Contract Information

Contract No: 23-1002846 Amendment No.: _____
 Contract Class: Receivable Department: Council of Governments
 Customer ID: RC CI Customer Name: Rancho Cucamonga Fire Protection District
 Description: Public Outreach for Cucamonga Management Plan

List Any Accounts Payable Related Contract Nos.: 19-1002000 (CTO 27)

| Dollar Amount | | | | | | | |
|------------------------------|--|---|-----------|--------------------------------|--|----|----------|
| Original Contract | | \$ | 23,620.20 | Original Contingency | | \$ | - |
| Prior Amendments | | \$ | - | Prior Amendments | | \$ | - |
| Prior Contingency Released | | \$ | - | Prior Contingency Released (-) | | \$ | - |
| Current Amendment | | \$ | - | Current Amendment | | \$ | - |
| Total/Revised Contract Value | | \$ | 23,620.20 | Total Contingency Value | | \$ | - |
| | | Total Dollar Authority (Contract Value and Contingency) | | | | \$ | 23,620.2 |

Contract Authorization

Board of Directors Date: 10/05/2022 Committee _____ Item # _____

Contract Management (Internal Purposes Only)

Local Professional Services (Non-A&E) N/A

Accounts Receivable

Total Contract Funding: \$ 23,620.20 Funding Agreement No: 23-1002846
 Beginning POP Date: 10/05/2022 Ending POP Date: 06/30/2023 Final Billing Date: 06/30/2023
 Expiration Date: 06/30/2023 Fund Admin: Yes
 Parent Contract 23-1002846 PM Description Cucamonga Canyon Mgmt Plan Outreach RC Fire District Funds
 Z-Related Contracts 23-1002846

| Fund | Prog | Task | Sub-Task | Revenue | Total Contract Funding: |
|----------|------|------|----------|----------|-------------------------|
| GL: 6001 | 01 | 0501 | 0000 | 42417009 | 23,620.20 |
| GL: - | - | - | - | - | - |
| GL: - | - | - | - | - | - |
| GL: - | - | - | - | - | - |

| Fund | Prog | Task | Sub-Task | Revenue | Total Contract Funding: |
|-------|------|------|----------|---------|-------------------------|
| GL: - | - | - | - | - | - |
| GL: - | - | - | - | - | - |
| GL: - | - | - | - | - | - |
| GL: - | - | - | - | - | - |

Monique Reza-Arellano

Project Manager (Print Name)

Steve Smith

Task Manager (Print Name)

Additional Notes:

Attachment: CSS 23-1002846 Rancho Cucamonga Fire Protection District [Revision 2] (8764 : Public Outreach for Cucamonga Canyon

COOPERATIVE AGREEMENT NO. 23-1002846

BY AND BETWEEN

SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY,

SAN BERNARDINO ASSOCIATED GOVERNMENTS

AND

RANCHO CUCAMONGA FIRE PROTECTION DISTRICT

FOR

CUCAMONGA CANYON FOREST MANAGEMENT PLAN PUBLIC OUTREACH

THIS COOPERATIVE AGREEMENT ("Contract") is made and entered into by and between the San Bernardino County Transportation Authority ("SBCTA"), San Bernardino Associated Governments, known as San Bernardino Council of Governments ("SBCOG"), whose address is 1170 W. 3rd Street, 2nd Floor, San Bernardino, California 92410-1715, and the Rancho Cucamonga Fire Protection District ("FIRE DISTRICT"), whose address is 10500 Civic Center Drive, Rancho Cucamonga, California 91730. SBCTA, SBCOG and FIRE DISTRICT are each a "Party" and are collectively referred to as the "Parties."

RECITALS:

WHEREAS, SBCTA and SBCOG propose to engage Costin Public Outreach Group ("CONSULTANT") to prepare and implement a public outreach plan for the Cucamonga Canyon Management Plan in accordance with the terms of this Contract, including Attachment A; and

WHEREAS, proposed work is described in Attachment A and is defined as the "PROJECT"; and

WHEREAS, the Parties wish to enter into this Contract to delineate roles, responsibilities, and funding commitments relative to the PROJECT; and

NOW, THEREFORE, the Parties agree as follows:

I. SBCTA/SBCOG RESPONSIBILITIES:

- A. SBCTA shall, in accordance with its procurement policy and applicable law, contract with CONSULTANT to prepare and implement the Project.
- B. SBCOG shall designate a Project Manager to represent SBCOG, through whom all communications between the Parties shall be channeled.
- C. SBCOG shall provide the FIRE DISTRICT with a proposed project schedule, prepared by CONSULTANT, to complete the PROJECT.
- D. SBCOG to include FIRE DISTRICT in Project Development Team (PDT) meetings and related communications on PROJECT progress, and shall further provide FIRE DISTRICT with copies of PDT meeting minutes and action items.
- E. SBCOG shall make all PROJECT work performed by CONSULTANT available for review and comment by the FIRE DISTRICT.
- F. SBCOG to invoice FIRE DISTRICT on a quarterly basis for funds sufficient to cover the costs for the invoices submitted by CONSULTANT for the specific payment period (copies of which shall be provided to FIRE DISTRICT), up to a total of Twenty-Three Thousand, Six Hundred Twenty Dollars and Twenty Cents (\$23,620.20).

II. FIRE DISTRICT RESPONSIBILITIES:

- A. FIRE DISTRICT shall designate a responsible staff member to be FIRE DISTRICT's representative attending the PDT meetings, receive day-to-day communications, and review PROJECT documents. The responsible staff member will provide FIRE DISTRICT's comments and any requested information or documents to SBCOG.
- B. FIRE DISTRICT shall be responsible for payment of a total amount not to exceed Twenty-Three Thousand, Six Hundred Twenty Dollars and Twenty Cents (\$23,620.20) for FIRE DISTRICT's portion of the PROJECT, and shall pay SBCOG's invoices within sixty days of receipt.

III. MUTUAL RESPONSIBILITIES:

- A. CONSULTANT's Scope of Work for the PROJECT is set forth in Attachment A, attached hereto.
- B. SBCTA and SBCOG shall be responsible for coordinating completion of PROJECT by CONSULTANT. Estimated costs to complete the PROJECT are shown in Attachment B, attached hereto.
- C. Neither FIRE DISTRICT, nor its officers, directors, employees or agents, are responsible for any injury, damage or liability occurring or arising by reason of anything done or omitted to be done by SBCTA or SBCOG under or in connection with any work, authority or jurisdiction delegated to SBCTA and/or SBCOG under this Contract. It is understood and agreed that, pursuant to Government Code Section 895.4, SBCTA and SBCOG shall fully defend, indemnify and save harmless FIRE DISTRICT, its officers, directors, employees and agents from all claims, suits or actions of every name, kind and description, brought for or on account of injury (as defined by Government Code Section 810.8) occurring by reason of anything done or omitted to be done by SBCTA or SBCOG under or in connection with any work, authority or jurisdiction delegated to SBCTA or SBCOG under this Contract. This provision shall survive termination of this contract.
- D. Neither SBCTA, SBCOG, nor their officers, directors, employees or agents, are responsible for any injury, damage or liability occurring or arising by reason of anything done or omitted to be done by FIRE DISTRICT under or in connection with any work, authority or jurisdiction delegated to FIRE DISTRICT under this Contract. It is understood and agreed that, pursuant to Government Code Section 895.4, FIRE DISTRICT shall fully defend, indemnify and save harmless SBCTA, SBCOG, and their officers, directors, employees and agents from all claims, suits or actions of every name, kind and description, brought for or on account of injury (as defined by Government Code Section 810.8) occurring by reason of anything done or omitted to be done by FIRE DISTRICT under or in connection with any work, authority or jurisdiction delegated to FIRE DISTRICT under this Contract. This provision shall survive termination of this contract.
- E. The term of the Contract shall continue in full force and effect through June 30, 2023, except as otherwise expressly stated herein.
- F. FIRE DISTRICT is a self-insured public entity for purposes of Professional Liability, General Liability, Automobile Liability and Workers' Compensation and warrants that through its program of self-insurance, it has adequate coverage or resources to protect against liabilities arising out of the performance of the terms, conditions or obligations of this Contract.
- G. SBCTA and SBCOG are insured for Commercial General Liability, Professional Liability, Auto Liability and Workers Compensation in amounts believed to be adequate to protect against liabilities arising out of the performance of the terms, conditions or obligations of this Contract.
- H. The Parties hereto warrant that they are duly authorized to execute this Contract on behalf of said Parties and that, by so executing this Contract, the Parties hereto are formally bound to this Contract.
- I. Except on subjects preempted by Federal law, this Contract shall be governed and construed in accordance with the laws of the State of California. All Parties agree to follow all local, state, FIRE DISTRICT and federal laws and ordinances with respect to the performance under this Contract.

- J. The Parties agree that they shall maintain and make available for inspection all books, records, papers, accounting records, or other documents pertaining to the performance of the PROJECT, including but not limited to, the costs associated with the PROJECT. The Parties shall make such books, records, etc., available at their respective offices at reasonable times during the Contract term and for three years from the date of PROJECT completion. The Parties agree that all duly authorized representatives shall have access to the documents during normal business hours.
- K. If any clause or provision of this Contract is illegal, invalid or unenforceable under applicable present or future laws, then it is the intention of the PARTIES that the remainder of this Contract shall not be affected but shall remain in full force and effect.
- L. This Contract can be amended with a written amendment when agreed upon and duly authorized to be executed by all Parties.
- M. In the event of litigation arising from this Contract, each Party to this Contract shall bear its own costs, including attorney(s) fees.
- N. This Contract may be signed in counterparts, each of which shall constitute an original.
- O. Any notice required or authorized to be given hereunder or any other communications between the Parties provided for under the terms of this Contract shall be in writing, unless otherwise provided for herein, and shall be served personally or by reputable courier or by facsimile addressed to the relevant party at the address/fax number stated below or by electronic mail at the email address stated below.
- P. Notice given under or regarding this Contract shall be deemed given (a) upon actual delivery, if delivery is personally made or by private courier, including overnight delivery services; or (b) upon delivery into the United States Mail if delivery is by postage paid certified mail (return receipt requested), fax or private courier including overnight delivery services; or (c) if given by electronic mail during regular business hours (i.e., 8:00 am to 5:00 pm, Monday through Friday, excluding holidays), on the date of delivery, and if outside of regular business hours, then on the next business day. Notice shall be sent to the respective Party at the address indicated below or to any other address as a Party may designate from time to time by a notice given in accordance with this paragraph.

| | |
|---------------------------------|---|
| To FIRE DISTRICT | To SBCTA/SBCOG |
| 10500 Civic Center Dr. | 1170 W. 3rd Street, 2 nd Floor |
| Rancho Cucamonga, CA 91729 | San Bernardino, CA 92410-1715 |
| Attn: Mike McCliman, Fire Chief | Attn: Monique Reza-Arellano |
| (909)477-2770 ext. 3000 | Cc: Procurement Manager |
| | Phone: (909) 884-8276 |
| Email: | Email: mreza-arellano@gosbcta.com |

- Q. The Recitals stated above are true and correct and are incorporated by this reference into the Contract.
- R. Attachment A and Attachment B are attached to this Contract and by this reference are incorporated herein.
- S. The date that this Contract is executed by SBCTA and SBCOG shall be the Effective Date of the Contract.

----- SIGNATURES ON THE FOLLOWING PAGE -----

IN WITNESS WHEREOF, the Parties have executed this Contract on the day and year written below.

**RANCHO CUCAMONGA FIRE
DISTRICT**

**SAN BERNARDINO COUNTY
TRANSPORTATION AUTHORITY**

By:

John Gillison
City Manager

By:

Art Bishop
Board President

Date:

Date:

**SAN BERNARDINO ASSOCIATED
GOVERNMENTS**

By:

Art Bishop
Board President

Date:

**APPROVED AS TO FORM FOR
RANCHO CUCAMONGA FIRE
DISTRICT**

**APPROVED AS TO FORM FOR SAN
BERNARDINO COUNTY
TRANSPORTATION AUTHORITY AND
SAN BERNARDINO ASSOCIATED
GOVERNMENTS**

By:

By:

Julianna K. Tillquist
General Counsel

Date:

**ATTACHMENT A
PROJECT DESCRIPTION**

CONSULTANT to conduct all outreach for the virtual public hearing for PROJECT including strategy and reporting, development of project collaterals including direct mailer and PPT presentation, social media outreach, stakeholder outreach, and media relations. Full scope attached.

DRAFT



SBCOG Cucamonga Canyon Task Order Estimate - Virtual Public Meeting

Costin Public Outreach Group, Inc. will conduct all outreach for the virtual public meeting for the SBCOG Cucamonga Canyon project including strategy and reporting, development of project collaterals including direct mailer and PPT for presentation, social media outreach, stakeholder outreach, and media relations.

| | Project Manager | Community Liaisons | Community Liaisons | Support |
|--|-----------------|--------------------|--------------------|-------------|
| Rates | \$150 | \$135 | \$120 | \$90 |
| Strategy and reporting: Develop public hearing (meeting) Plan, Team meetings and coordination (SBCOG, USFS, 2nd District SB County, City of Rancho Cucamonga/Cucamonga Fire District, Flood Control SB County, Cucamonga Valley Water District), Outreach summary report for public meeting reporting, Virtual hearing rehearsals | 4 | 20 | 24 | 12 |
| Collaterals: Copywriting and design coordination: Fact sheet/FAQ, PPT, Postcard Mailer | 4 | 8 | 12 | 12 |
| Digital/Social, Website: Copywriting and execution: goSBCTA.com website updates, Eblast template/eblasts, social media engagement/ geotargeting | 4 | 8 | 12 | 12 |
| Stakeholder Outreach/Media: Zoom set up and meeting facilitation; database creation, response to stakeholders via hotline/email; coordinate with the local cities, elected offices, chambers, etc.; Media outreach (alert and coordination with media consultant) | 4 | 24 | 24 | 24 |
| | 16 | 60 | 72 | 60 |
| TOTAL per staff | \$ 2,400.00 | \$ 8,100.00 | \$ 8,640.00 | \$ 5,400.00 |
| TOTAL COST per staff | \$ 24,540.00 | | | |
| ODCs* | \$ 5,000.00 | | | |
| TOTAL | \$ 29,540.00 | | | |

*ODCs is estimate only, ODCs will be paid by actuals based on documentation.

**ATTACHMENT B
PROJECT COST ESTIMATE**

| Agencies | Cucamonga Canyon |
|-----------------------------------|--------------------|
| SBCOG | \$2,959.90 |
| County | \$2,959.90 |
| RC Fire | \$23,620.20 |
| Total Public Outreach Cost | \$29,540.00 |

DRAFT

Contract Summary Sheet

10.d

General Contract Information

Contract No: 23-1002847 Amendment No.: _____

Contract Class: Receivable Department: Council of Governments

Customer ID: SB CO Customer Name: County of San Bernardino

Description: Public Outreach for Cucamonga Canyon Management Plan

List Any Accounts Payable Related Contract Nos.: 19-1002000 (CTO 27)

| Dollar Amount | | | | | | | |
|------------------------------|---|----|----------|--------------------------------|--|----|----------|
| Original Contract | | \$ | 2,959.90 | Original Contingency | | \$ | - |
| Prior Amendments | | \$ | - | Prior Amendments | | \$ | - |
| Prior Contingency Released | | \$ | - | Prior Contingency Released (-) | | \$ | - |
| Current Amendment | | \$ | - | Current Amendment | | \$ | - |
| Total/Revised Contract Value | | \$ | 2,959.90 | Total Contingency Value | | \$ | - |
| | Total Dollar Authority (Contract Value and Contingency) | | | | | \$ | 2,959.90 |

Contract Authorization

Board of Directors Date: 10/05/2022 Committee _____ Item # _____

Contract Management (Internal Purposes Only)

Local Professional Services (Non-A&E) N/A

Accounts Receivable

Total Contract Funding: \$ 2,959.90 Funding Agreement No: 23-1002847

Beginning POP Date: 10/05/2022 Ending POP Date: 06/30/2023 Final Billing Date: 06/30/2023

Expiration Date: 06/30/2023 Fund Admin: Yes

Parent Contract 23-1002847 PM Description Cucamonga Canyon Mgmt Plan Outreach SB County Funds

Z-Related Contracts 23-1002847

| Sub- | | | | | | Sub- | | | | | |
|----------|------|------|------|----------|-------------------------|-------|------|------|------|---------|-------------------------|
| Fund | Prog | Task | Task | Revenue | Total Contract Funding: | Fund | Prog | Task | Task | Revenue | Total Contract Funding: |
| GL: 6001 | 01 | 0501 | 0000 | 42340019 | 2,959.90 | GL: - | - | - | - | - | - |
| GL: - | - | - | - | - | - | GL: - | - | - | - | - | - |
| GL: - | - | - | - | - | - | GL: - | - | - | - | - | - |
| GL: - | - | - | - | - | - | GL: - | - | - | - | - | - |

Monique Reza-Arellano

Project Manager (Print Name)

Steve Smith

Task Manager (Print Name)

Additional Notes:

Attachment: CSS 23-1002847 County of SB [Revision 3] (8764 : Public Outreach for Cucamonga Canyon Management Plan)

COOPERATIVE AGREEMENT NO. 23-1002847

BY AND BETWEEN

SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY,

SAN BERNARDINO ASSOCIATED GOVERNMENTS

AND

COUNTY OF SAN BERNARDINO

FOR

CUCAMONGA CANYON FOREST MANAGEMENT PLAN PUBLIC OUTREACH

THIS COOPERATIVE AGREEMENT ("Contract") is made and entered into by and between the San Bernardino County Transportation Authority ("SBCTA"), San Bernardino Associated Governments, known as San Bernardino Council of Governments ("SBCOG"), whose address is 1170 W. 3rd Street, 2nd Floor, San Bernardino, California 92410-1715, and the County of San Bernardino ("COUNTY"), whose address is 385 N. Arrowhead Avenue, 5th Floor, San Bernardino, California 92415-0120. SBCTA, SBCOG and COUNTY are each a "Party" and are collectively referred to as the "Parties."

RECITALS:

WHEREAS, SBCTA and SBCOG propose to engage Costin Public Outreach Group ("CONSULTANT") to prepare and implement a public outreach plan for the Cucamonga Canyon Management Plan in accordance with the terms of this Contract, including Attachment A; and

WHEREAS, proposed work is described in Attachment A and is defined as the "PROJECT"; and

WHEREAS, the Parties wish to enter into this Contract to delineate roles, responsibilities, and funding commitments relative to the PROJECT; and

NOW, THEREFORE, the Parties agree as follows:

I. SBCTA AND SBCOG RESPONSIBILITIES:

- A. SBCTA shall, in accordance with its procurement policy and applicable law, engage CONSULTANT, pursuant to their existing contract, to prepare and implement the PROJECT.
- B. SBCOG shall designate a Project Manager to represent SBCOG, through whom all communications between the Parties shall be channeled.
- C. SBCOG shall provide the COUNTY with a proposed project schedule, prepared by CONSULTANT, to complete the PROJECT.
- D. SBCOG shall include COUNTY in Project Development Team (PDT) meetings and related communications on PROJECT progress, and shall further provide COUNTY with copies of PDT meeting minutes and action items.
- E. SBCOG shall make all PROJECT work performed by CONSULTANT available for review and comment by the COUNTY.
- F. SBCOG shall invoice COUNTY, on a quarterly basis, for funds sufficient to cover the costs for the invoices submitted by CONSULTANT for the specific payment period (copies of which shall be provided to COUNTY), up to a total of Two Thousand, Nine Hundred Fifty-Nine Dollars and Ninety Cents (\$2,959.90).

II. COUNTY RESPONSIBILITIES:

- A. COUNTY shall designate a responsible staff member to be COUNTY's representative attending the PDT meetings, receive day-to-day communications, and review PROJECT documents. The responsible staff member will provide COUNTY's comments and any requested information or documents to SBCOG.
- B. COUNTY shall be responsible for payment of a total amount not to exceed Two Thousand Nine Hundred Fifty-Nine Dollars and Ninety Cents (\$2,959.90) for COUNTY's portion of the PROJECT, and shall pay SBCOG's invoices within sixty days of receipt.

III. MUTUAL RESPONSIBILITIES:

- A. CONSULTANT's Scope of Work for the PROJECT is set forth in Attachment A, attached hereto.
- B. SBCTA and SBCOG shall be responsible for coordinating CONSULTANT's completion of PROJECT. Estimated costs to complete the PROJECT are shown in Attachment B, attached hereto.
- C. Neither COUNTY, nor its officers, directors, employees or agents, are responsible for any injury, damage or liability occurring or arising by reason of anything done or omitted to be done by SBCTA or SBCOG under or in connection with any work, authority or jurisdiction delegated to SBCTA and/or SBCOG under this Contract. It is understood and agreed that, pursuant to Government Code Section 895.4, SBCTA and SBCOG shall fully defend, indemnify and save harmless COUNTY, its officers, directors, employees and agents, from all claims, suits or actions of every name, kind and description, brought for or on account of injury (as defined by Government Code Section 810.8) occurring by reason of anything done or omitted to be done by SBCTA or SBCOG under or in connection with any work, authority or jurisdiction delegated to SBCTA or SBCOG under this Contract. This provision shall survive termination of this contract.
- D. Neither SBCTA, SBCOG, nor their officers, directors, employees or agents, are responsible for any injury, damage or liability occurring or arising by reason of anything done or omitted to be done by COUNTY under or in connection with any work, authority or jurisdiction delegated to COUNTY under this Contract. It is understood and agreed that, pursuant to Government Code Section 895.4, COUNTY shall fully defend, indemnify and save harmless SBCTA, SBCOG, and their officers, directors, employees and agents, from all claims, suits or actions of every name, kind and description, brought for or on account of injury (as defined by Government Code Section 810.8) occurring by reason of anything done or omitted to be done by COUNTY under or in connection with any work, authority or jurisdiction delegated to COUNTY under this Contract. This provision shall survive termination of this contract.
- E. The term of the Contract shall continue in full force and effect through June 30, 2023, except as otherwise expressly provided herein.
- F. COUNTY is a self-insured public entity for purposes of Professional Liability, General Liability, Automobile Liability and Workers' Compensation and warrants that through its program of self-insurance, it has adequate coverage or resources to protect against liabilities arising out of the performance of the terms, conditions or obligations of this Contract.
- G. SBCTA and SBCOG are insured for Commercial General Liability, Professional Liability, Auto Liability and Workers Compensation in amounts believed to be adequate to protect against liabilities arising out of the performance of the terms, conditions or obligations of this Contract.
- H. The Parties hereto warrant that they are duly authorized to execute this Contract on behalf of said Parties and that, by so executing this Contract, the Parties hereto are formally bound to this Contract.
- I. Except on subjects preempted by Federal law, this Contract shall be governed and construed in accordance with the laws of the State of California. All Parties agree to follow all local, state, COUNTY and federal laws and ordinances with respect to the performance under this Contract.
- J. The Parties agree that they shall maintain and make available for inspection all books, records, papers, accounting records, or other documents pertaining to the performance of the PROJECT, including but not limited to, the costs associated with the PROJECT. The Parties shall make such

books, records, etc., available at their respective offices, at reasonable times, during the Contract term and for three years from the date of PROJECT completion. The Parties agree that all duly authorized representatives shall have access to the documents during normal business hours.

- K. If any clause or provision of this Contract is illegal, invalid or unenforceable under applicable present or future laws, then it is the intention of the PARTIES that the remainder of this Contract shall not be affected but shall remain in full force and effect.
- L. This Contract can be amended with a written amendment when agreed upon and duly authorized to be executed by all Parties.
- M. In the event of litigation arising from this Contract, each Party to this Contract shall bear its own costs, including attorney(s) fees.
- N. This Contract may be signed in counterparts, each of which shall constitute an original.
- O. Any notice required or authorized to be given hereunder or any other communications between the Parties provided for under the terms of this Contract shall be in writing, unless otherwise provided for herein, and shall be served personally or by reputable courier or by facsimile addressed to the relevant party at the address/fax number stated below or by electronic mail at the email address stated below.
- P. Notice given under or regarding this Contract shall be deemed given (a) upon actual delivery, if delivery is personally made or by private courier, including overnight delivery services; (b) upon delivery into the United States Mail if delivery is by postage paid certified mail (return receipt requested); or (c) if given by electronic mail during regular business hours (i.e., 8:00 am to 5:00 pm, Monday through Friday, excluding holidays), on the date of delivery, and if outside of regular business hours, then on the next business day. Notice shall be sent to the respective Party at the address indicated below or to any other address as a Party may designate from time to time by a notice given in accordance with this paragraph.

| | |
|-------------------------------|---|
| To COUNTY | To SBCTA/SBCOG |
| 825 E. 3 rd Street | 1170 W. 3rd Street, 2 nd Floor |
| | San Bernardino, CA 92410-1715 |
| San Bernardino, CA 92410-1715 | Attn: Monique Reza-Arellano |
| Attn: Brendon Biggs | Cc: Procurement Manager |
| (909)387-7906 | Phone: (909) 884-8276 |
| Email: | Email: mreza-arellano@gosbcta.com |

- Q. The Recitals stated above are true and correct and are incorporated by this reference into the Contract.
- R. Attachment A and Attachment B are attached to this Contract and by this reference are incorporated herein.
- S. The date that this Contract is executed by SBCTA and SBCOG shall be the Effective Date of the Contract.

----- SIGNATURES ON THE FOLLOWING PAGE-----

IN WITNESS WHEREOF, the Parties have executed this Contract on the day and year written below.

COUNTY OF SAN BERNARDINO

**SAN BERNARDINO COUNTY
TRANSPORTATION AUTHORITY**

By: _____

Curt Hagman
Chair, Board of Supervisors

By: _____

Art Bishop
Board President

Date: _____

Date: _____

**SAN BERNARDINO ASSOCIATED
GOVERNMENTS**

By: _____

Art Bishop
Board President

Date: _____

**APPROVED AS TO FORM FOR
COUNTY OF SAN BERNARDINO**

**APPROVED AS TO FORM FOR SAN
BERNARDINO COUNTY
TRANSPORTATION AUTHORITY AND
SAN BERNARDINO ASSOCIATED
GOVERNMENTS**

By: _____

Aaron Gest
Deputy County Counsel

By: _____

Julianna K. Tillquist
General Counsel

Date: _____

**ATTACHMENT A
PROJECT DESCRIPTION**

CONSULTANT to conduct all outreach for the virtual public hearing for PROJECT including strategy and reporting, development of project collaterals including direct mailer and PPT presentation, social media outreach, stakeholder outreach, and media relations. Full scope attached.

DRAFT



SBCOG Cucamonga Canyon Task Order Estimate - Virtual Public Meeting

Costin Public Outreach Group, Inc. will conduct all outreach for the virtual public meeting for the SBCOG Cucamonga Canyon project including strategy and reporting, development of project collaterals including direct mailer and PPT for presentation, social media outreach, stakeholder outreach, and media relations.

| | Project Manager | Community Liaisons | Community Liaisons | Support |
|--|-----------------|--------------------|--------------------|-------------|
| Rates | \$150 | \$135 | \$120 | \$90 |
| Strategy and reporting: Develop public hearing (meeting) Plan, Team meetings and coordination (SBCOG, USFS, 2nd District SB County, City of Rancho Cucamonga/Cucamonga Fire District, Flood Control SB County, Cucamonga Valley Water District), Outreach summary report for public meeting reporting, Virtual hearing rehearsals | 4 | 20 | 24 | 12 |
| Collaterals: Copywriting and design coordination: Fact sheet/FAQ, PPT, Postcard Mailer | 4 | 8 | 12 | 12 |
| Digital/Social, Website: Copywriting and execution: goSBCTA.com website updates, Eblast template/eblasts, social media engagement/ geotargeting | 4 | 8 | 12 | 12 |
| Stakeholder Outreach/Media: Zoom set up and meeting facilitation; database creation, response to stakeholders via hotline/email; coordinate with the local cities, elected offices, chambers, etc.; Media outreach (alert and coordination with media consultant) | 4 | 24 | 24 | 24 |
| | 16 | 60 | 72 | 60 |
| TOTAL per staff | \$ 2,400.00 | \$ 8,100.00 | \$ 8,640.00 | \$ 5,400.00 |
| TOTAL COST per staff | \$ 24,540.00 | | | |
| ODCs* | \$ 5,000.00 | | | |
| TOTAL | \$ 29,540.00 | | | |

*ODCs is estimate only, ODCs will be paid by actuals based on documentation.

**ATTACHMENT B
PROJECT COST ESTIMATE**

| Agencies | Cucamonga Canyon |
|-----------------------------------|-------------------------|
| SBCOG | \$2,959.90 |
| County | \$2,959.90 |
| RC Fire | \$23,620.20 |
| Total Public Outreach Cost | \$29,540.00 |

DRAFT

Additional Information

GENERAL POLICY COMMITTEE ATTENDANCE RECORD – 2022

| Name | Jan | Feb | March | April | May | June | July | Aug | Sept | Oct | Nov | Dec |
|---|-----|-----|-------|-------|-----|------|------|-----|------|-----|-----|-----|
| Paul Cook Board of Supervisors | X | X | X | X | X | X | | | | | | |
| Dawn Rowe Board of Supervisors | X | | X | X | X | X | | X | | | | |
| Curt Hagman Board of Supervisors | X | X | X | X | X | X | | X | | | | |
| Joe Baca, Jr. Board of Supervisors | | | | | | | | X | | | | |
| Art Bishop Town of Apple Valley | X | X | X | X | X | X | | X | | | | |
| Ray Marquez City of Chino Hills | X | X | X | | | X | | X | | | | |
| Frank Navarro City of Colton | X | X | X | X | X | X | | X | | | | |
| Acquanetta Warren City of Fontana | X | X | X | X | | X | | | | | | |
| Darcy McNaboe City of Grand Terrace | X | X | X | X | X | X | | X | | | | |
| Larry McCallon City of Highland | X | X | X | | X | X | | X | | | | |
| Edward Paget City of Needles | | X | | X | X | X | | X | | | | |
| Alan Wapner City of Ontario | X | X | | X | X | | | X | | | | |
| Debra Jones City of Victorville | X | X | X | X | | X | | | | | | |

Communication: Attendance (Additional Information)

X = Member attended meeting.
Shaded box = No meeting.

* = Alternate member attended meeting.

Empty box = Member did not attend meeting.

Crossed out box = Not a Board Member at the time.

This list provides information on acronyms commonly used by transportation planning professionals. This information is provided in an effort to assist Board Members and partners as they participate in deliberations at Board meetings. While a complete list of all acronyms which may arise at any given time is not possible, this list attempts to provide the most commonly-used terms. Staff makes every effort to minimize use of acronyms to ensure good communication and understanding of complex transportation processes.

| | |
|----------|--|
| AB | Assembly Bill |
| ACE | Alameda Corridor East |
| ACT | Association for Commuter Transportation |
| ADA | Americans with Disabilities Act |
| ADT | Average Daily Traffic |
| APTA | American Public Transportation Association |
| AQMP | Air Quality Management Plan |
| ARRA | American Recovery and Reinvestment Act |
| ATMIS | Advanced Transportation Management Information Systems |
| BAT | Barstow Area Transit |
| CALACT | California Association for Coordination Transportation |
| CALCOG | California Association of Councils of Governments |
| CALSAFE | California Committee for Service Authorities for Freeway Emergencies |
| CARB | California Air Resources Board |
| CEQA | California Environmental Quality Act |
| CMAQ | Congestion Mitigation and Air Quality |
| CMIA | Corridor Mobility Improvement Account |
| CMP | Congestion Management Program |
| CNG | Compressed Natural Gas |
| COG | Council of Governments |
| CPUC | California Public Utilities Commission |
| CSAC | California State Association of Counties |
| CTA | California Transit Association |
| CTC | California Transportation Commission |
| CTC | County Transportation Commission |
| CTP | Comprehensive Transportation Plan |
| DBE | Disadvantaged Business Enterprise |
| DEMO | Federal Demonstration Funds |
| DOT | Department of Transportation |
| EA | Environmental Assessment |
| E&D | Elderly and Disabled |
| E&H | Elderly and Handicapped |
| EIR | Environmental Impact Report (California) |
| EIS | Environmental Impact Statement (Federal) |
| EPA | Environmental Protection Agency |
| FHWA | Federal Highway Administration |
| FSP | Freeway Service Patrol |
| FRA | Federal Railroad Administration |
| FTA | Federal Transit Administration |
| FTIP | Federal Transportation Improvement Program |
| GFOA | Government Finance Officers Association |
| GIS | Geographic Information Systems |
| HOV | High-Occupancy Vehicle |
| ICTC | Interstate Clean Transportation Corridor |
| IEEP | Inland Empire Economic Partnership |
| ISTEA | Intermodal Surface Transportation Efficiency Act of 1991 |
| IIP/ITIP | Interregional Transportation Improvement Program |
| ITS | Intelligent Transportation Systems |
| IVDA | Inland Valley Development Agency |
| JARC | Job Access Reverse Commute |
| LACMTA | Los Angeles County Metropolitan Transportation Authority |
| LNG | Liquefied Natural Gas |
| LTF | Local Transportation Funds |

Acronym List

| | |
|------------|--|
| MAGLEV | Magnetic Levitation |
| MARTA | Mountain Area Regional Transportation Authority |
| MBTA | Morongo Basin Transit Authority |
| MDAB | Mojave Desert Air Basin |
| MDAQMD | Mojave Desert Air Quality Management District |
| MOU | Memorandum of Understanding |
| MPO | Metropolitan Planning Organization |
| MSRC | Mobile Source Air Pollution Reduction Review Committee |
| NAT | Needles Area Transit |
| NEPA | National Environmental Policy Act |
| OA | Obligation Authority |
| OCTA | Orange County Transportation Authority |
| PA&ED | Project Approval and Environmental Document |
| PASTACC | Public and Specialized Transportation Advisory and Coordinating Council |
| PDT | Project Development Team |
| PNRS | Projects of National and Regional Significance |
| PPM | Planning, Programming and Monitoring Funds |
| PSE | Plans, Specifications and Estimates |
| PSR | Project Study Report |
| PTA | Public Transportation Account |
| PTC | Positive Train Control |
| PTMISEA | Public Transportation Modernization, Improvement and Service Enhancement Account |
| RCTC | Riverside County Transportation Commission |
| RDA | Redevelopment Agency |
| RFP | Request for Proposal |
| RIP | Regional Improvement Program |
| RSTIS | Regionally Significant Transportation Investment Study |
| RTIP | Regional Transportation Improvement Program |
| RTP | Regional Transportation Plan |
| RTPA | Regional Transportation Planning Agencies |
| SB | Senate Bill |
| SAFE | Service Authority for Freeway Emergencies |
| SAFETEA-LU | Safe Accountable Flexible Efficient Transportation Equity Act – A Legacy for Users |
| SCAB | South Coast Air Basin |
| SCAG | Southern California Association of Governments |
| SCAQMD | South Coast Air Quality Management District |
| SCRRA | Southern California Regional Rail Authority |
| SHA | State Highway Account |
| SHOPP | State Highway Operations and Protection Program |
| SOV | Single-Occupant Vehicle |
| SRTP | Short Range Transit Plan |
| STAF | State Transit Assistance Funds |
| STIP | State Transportation Improvement Program |
| STP | Surface Transportation Program |
| TAC | Technical Advisory Committee |
| TCIF | Trade Corridor Improvement Fund |
| TCM | Transportation Control Measure |
| TCRP | Traffic Congestion Relief Program |
| TDA | Transportation Development Act |
| TEA | Transportation Enhancement Activities |
| TEA-21 | Transportation Equity Act for the 21 st Century |
| TMC | Transportation Management Center |
| TMEE | Traffic Management and Environmental Enhancement |
| TSM | Transportation Systems Management |
| TSSDRA | Transit System Safety, Security and Disaster Response Account |
| USFWS | United States Fish and Wildlife Service |
| VCTC | Ventura County Transportation Commission |
| VVTA | Victor Valley Transit Authority |
| WRCOG | Western Riverside Council of Governments |



MISSION STATEMENT

Our mission is to improve the quality of life and mobility in San Bernardino County. Safety is the cornerstone of all we do.

We achieve this by:

- Making all transportation modes as efficient, economical, and environmentally responsible as possible.
- Envisioning the future, embracing emerging technology, and innovating to ensure our transportation options are successful and sustainable.
- Promoting collaboration among all levels of government.
- Optimizing our impact in regional, state, and federal policy and funding decisions.
- Using all revenue sources in the most responsible and transparent way.

Approved December 4, 2019