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14 *APPLE INC.*

15 UNITED STATES DISTRICT COURT
16 NORTHERN DISTRICT OF CALIFORNIA
17 OAKLAND DIVISION
18

19 EPIC GAMES, INC.,

20
21 Plaintiff,

22 v.

23 APPLE INC.

24 Defendant.
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28

CASE NO. 4:20-cv-05640-YGR

**DEFENDANT AND COUNTER-
CLAIMANT APPLE INC.'S
ANSWER, DEFENSES, AND
COUNTERCLAIMS IN REPLY TO
EPIC GAMES, INC.'S COMPLAINT
FOR INJUNCTIVE RELIEF**

1 APPLE INC.,

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3 Counterclaimant,

4 v.

5 EPIC GAMES, INC.

6 Counter-defendant.
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INTRODUCTORY STATEMENT TO APPLE’S ANSWER AND COUNTERCLAIMS

1
2 Epic’s lawsuit is nothing more than a basic disagreement over money. Although Epic portrays
3 itself as a modern corporate Robin Hood, in reality it is a multi-billion dollar enterprise that simply
4 wants to pay nothing for the tremendous value it derives from the App Store. Epic’s demands for
5 special treatment and cries of “retaliation” cannot be reconciled with its flagrant breach of contract
6 and its own business practices, as it rakes in billions by taking commissions on game developers’
7 sales and charging consumers up to \$99.99 for bundles of “V-Bucks.”

8 For years, Epic took advantage of everything the App Store had to offer. It availed itself of the
9 tools, technology, software, marketing opportunities, and customer reach that Apple provided so that
10 it could bring games like *Infinity Blade* and *Fortnite* to Apple customers all over the world. It enjoyed
11 the tremendous resources that Apple pours into its App Store to constantly innovate and create new
12 opportunities for developers and experiences for customers, as well as to review and approve every
13 app, keeping the App Store safe and secure for customers and developers alike.

14 As a direct result of Apple’s investments, the App Store has grown into a diverse marketplace
15 with a community of 27 million app developers worldwide, with about 1 billion customers across 175
16 countries. And, by all accounts, Epic has taken advantage of Apple’s support and services more than
17 any other app developer for the past two years. *Fortnite* has only been in the App Store since 2018.
18 But in that short time, *Fortnite* (i) has used more than 400 of Apple’s unique Application
19 Programming Interface (API) frameworks and classes (such as Metal), as well as five different
20 versions of Apple’s Software Development Kit (SDK); (ii) has been reviewed more than 200 times
21 by Apple’s app reviewers; and (iii) has pushed more than 140 unique updates to Apple’s customers.
22 And each time Epic released a new season of *Fortnite*, Apple put it in the spotlight, providing free
23 promotion and favorable tweets, ultimately sending over 500 million marketing communications to
24 end users, and even paying for a billboard in Times Square to promote a particular *Fortnite* in-app
25 concert. With Apple’s support, in the space of two short years, *Fortnite* grew into an incredibly
26 successful iOS app, enjoying nearly 130 million downloads in 174 countries—and earning Epic more
27 than half a billion dollars. As recently as April 2020, Epic executives recognized and thanked Apple
28 for its support and promotion of *Fortnite* events.

1 But sometime before June 2020, things changed. Epic decided that it would like to reap the
2 benefits of the App Store without paying anything for them. Armed with the apparent view that Epic
3 is too successful to play by the same rules as everyone else—and notwithstanding a public
4 proclamation that Epic “w[ould] not accept special revenue sharing or payment terms just for
5 ourselves”¹—Epic CEO Tim Sweeney emailed Apple executives on June 30, 2020, requesting a “side
6 letter” that would exempt Epic from its existing contractual obligations, including the App Store
7 Review Guidelines (the “Guidelines”) that apply equally to all Apple developers. Among other
8 things, Mr. Sweeney demanded a complete end-run around “Apple’s fees”—specifically, Epic
9 wished to continue taking full advantage of the App Store while allowing consumers to pay Epic
10 instead, leaving Apple to receive no payment whatsoever for the many services it provides developers
11 and consumers. Mr. Sweeney also demanded the right to coopt the App Store to deliver “[a]
12 competing Epic Games Store app,” in another bid to line Epic’s pockets at Apple’s expense and
13 fundamentally change the way Apple has run its App Store business for over a decade on the iOS
14 operating system for iPhones and iPads. Mr. Sweeney expressly acknowledged that his proposed
15 changes would be in direct breach of multiple terms of the agreements between Epic and Apple.

16 When Apple rejected Epic’s request for a special deal, rather than abide by its long-running
17 contractual agreements pursuant to which it has earned over \$600 million, Epic resorted to self-help
18 and subterfuge. On August 3, 2020, Epic sent a Trojan horse to the App Store—a new version of
19 *Fortnite* that included what Epic has euphemistically described as a “hotfix” that allows Epic to
20 bypass Apple’s app review process and ability to collect commissions by directing app users to pay
21 Epic instead, cutting Apple out entirely.

22 Unbeknownst to Apple, Epic had been busy enlisting a legion of lawyers, publicists, and
23 technicians to orchestrate a sneak assault on the App Store. Shortly after 2:00 a.m. on August 13,
24 2020, the morning on which Epic would activate its hidden commission-theft functionality, Mr.
25 Sweeney again emailed Apple executives, declaring that “Epic will no longer adhere to Apple’s
26 payment processing restrictions.” According to Mr. Sweeney, Epic would continue to use Apple’s

27 _____
28 ¹ Tim Sweeney (@TimSweeneyEpic), Twitter (April 1, 2020),
<https://twitter.com/TimSweeneyEpic/status/1245522634114240512>.

1 App Store but would “offer[] customers the choice” to pay Epic instead of Apple, effectively
2 depriving Apple of any return on its innovation and investment in the App Store and placing Epic in
3 open breach of years-long contractual obligations to which Epic and all other Apple developers have
4 agreed.

5 Hours after Mr. Sweeney’s 2:00 a.m. email, Epic triggered the “hotfix” it previously planted
6 in *Fortnite* to push through a new external payment runaround—which Epic had deliberately
7 concealed from Apple’s app review process—that usurped Apple’s commission and brazenly flouted
8 its rules. This was little more than theft. Epic sought to enjoy all of the benefits of Apple’s iOS
9 platform and related services while its “hotfix” lined Epic’s pockets at Apple’s expense.

10 Following Epic’s open, admitted, and deliberate breach of its contractual obligations and the
11 cold-blooded launch of its “hotfix,” Apple rightfully enforced its rights under the contractual
12 agreements and the Guidelines by removing the non-compliant *Fortnite* app from the App Store. In
13 keeping with its self-serving narrative, Epic attempts to recast Apple’s conduct as “retaliation.” But
14 the exercise of a contractual right in response to an open and admitted breach is not “retaliation”; it is
15 the very thing to which the parties agreed ex ante.

16 Epic proceeded to launch a calculated and pre-packaged campaign against Apple “on a
17 multitude of fronts – creative, technical, business, and legal,” as Mr. Sweeney had previously
18 threatened. Epic filed its pre-drafted 56-page Complaint in this case mere hours after the removal of
19 *Fortnite* from the App Store. Epic then publicized its willful contractual breaches through an
20 animated *Fortnite* short film that mimicked Apple’s seminal 1984 Macintosh campaign and
21 villainized Apple for enforcing its contractual right to remove the non-compliant *Fortnite* from the
22 App Store. Epic’s wrongheaded Complaint is fatally flawed on the facts and law.

23 For starters, Apple is not a monopolist of any relevant market. Competition both inside and
24 outside the App Store is fierce at every level: for devices, platforms, and individual apps. *Fortnite*
25 users can dance their Floss, ride their sharks, and spend their V-Bucks in no fewer than six different
26 mobile, PC, and game-console platforms. And the business practices that Epic decries as
27 exclusionary and restrictive—including “technical restrictions” on the App Store that have existed
28 since it debuted in 2008—have vastly increased output and made the App Store an engine of

1 innovation, with the number and diversity of apps, the volume of app downloads, and the dollars
 2 earned by app developers increasing exponentially over time. All the while, Apple’s commission only
 3 decreased while software prices plummeted and barriers to entry evaporated.

4 Epic blasts as “pretext” the idea that Apple’s curation of the App Store is “necessary to
 5 enforce privacy and security safeguards.” Compl. ¶ 83. But Apple’s requirement that every iOS app
 6 undergo rigorous, human-assisted review—with reviewers representing 81 languages vetting on
 7 average 100,000 submissions per week—is critical to its ability to maintain the App Store as a secure
 8 and trusted platform for consumers to discover and download software. Epic knows this. Indeed,
 9 when Epic itself “sell[s] a product to customers, [it too] feel[s] [it] ha[s] a responsibility”—in Mr.
 10 Sweeney’s words—“to moderate for a reasonable level of quality, and also a reasonable level of
 11 decency.”² In the past, Epic has discharged that responsibility with mixed results.³ That Apple
 12 wishes to continue curating its own App Store—rather than outsource the safety and security of
 13 Apple’s users to Epic (or other third parties)—should come as no surprise, and it ensures that iOS
 14 apps meet Apple’s high standards for privacy, security, content, and quality.

15 Not content with attacking Apple’s app review process, Epic, backed by the tech giant
 16 Tencent (which has its own competing app store, one of the largest in the world), also seeks to
 17 dismantle the App Store’s entire business model to advance its own economic interests without
 18 regard to the effect on other developers and consumers. Under the current model, developers (like
 19 Epic) contractually agree to pay Apple a commission for its services. In this context, Apple’s In-App
 20 Purchase (IAP) function is not a “payment processor[.]” within some imagined “iOS In-App Payment
 21 Processing Market” (Compl. ¶¶ 10, 12); it is simply the practical, efficient, hardware-integrated, and
 22 consumer-friendly way by which Apple collects its contractually agreed-upon commission on paid
 23

24 ² *Tim Sweeney on Why Players Should Embrace the Epic Games Store*, Eurogamer (Mar. 21, 2019),
 25 <https://www.eurogamer.net/articles/2019-03-21-the-big-interview-tim-sweeney-on-why-players-should-embrace-epic-games-store>.

26 ³ *See, e.g., Epic Games Has Already Exposed Android Users To Unacceptable Fortnite Malware Risks*,
 27 *Forbes* (Aug. 25, 2018), <https://www.forbes.com/sites/ryanwhitwam/2018/08/25/epic-games-has-already-exposed-android-users-to-unacceptable-fortnite-malware-risks/#7a1bc9b8508c>; *Fortnite players using Android phones at risk of malware infections*, *The Guardian* (Aug. 10, 2018),
 28 <https://www.theguardian.com/games/2018/aug/10/fortnite-on-android-phones-risk-malware-infections>.

(Cont’d on next page)

1 transactions. That commission reflects the immense value of the App Store, which is more than the
2 sum of its parts and includes Apple’s technology, tools, software for app development and testing,
3 marketing efforts, platinum-level customer service, and distribution of developers’ apps and digital
4 content.

5 There is nothing anticompetitive about charging a commission for others to use one’s service.
6 Many platforms—including Epic’s own app marketplace and *Unreal Engine*—do just that.⁴ In
7 Apple’s case, that commission is not charged—and Apple earns nothing from its substantial
8 investment in the App Store—unless and until developers bill and collect funds from users who
9 engage in digital transactions. For the more than 80% of apps available to consumers for free on the
10 App Store, this means Apple earns no commission whatsoever. Epic wants to change that in ways
11 that would have dire consequences for the App Store ecosystem. In its Motion for a Preliminary
12 Injunction, Epic boldly suggests that Apple monetize the App Store by charging a regressive “per
13 download fee,” leaving consumers and developers on the hook to pay for what otherwise would be
14 billions of free app downloads.

15 Epic’s intention is thus straightforward: It seeks free access to the Apple-provided tools that it
16 uses and—worse yet—it wishes to then charge *others* for access to Apple’s intellectual property and
17 technologies. This is not something that Apple is willing to create a special “side letter” for Epic to
18 do.

19 While Epic and its CEO take issue with the terms on which Apple has since 2008 provided
20 the App Store to all developers, this does not provide cover for Epic to breach binding contracts, dupe
21 a long-time business partner, pocket commissions that rightfully belong to Apple, and then ask this
22 Court to take a judicial sledgehammer to one of the 21st Century’s most innovative business
23 platforms simply because it does not maximize Epic’s revenues. By any measure, the App Store has
24 revolutionized the marketplace and greatly benefitted consumers and app developers like Epic. Apple
25 looks forward to defending against Epic’s baseless claims.

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27
28 ⁴ See Welcome to Epic Games, <https://www.epicgames.com/store/en-US/about> (last visited Aug. 30, 2020)
(12% revenue share on Epic Games store); Frequently Asked Questions, <https://www.unrealengine.com/en-US/faq> (standard 5% royalty on games build with Unreal Engine).

1 Epic fired the first shot in this dispute, and its willful, brazen, and unlawful conduct cannot be
 2 left unchecked. Neither Mr. Sweeney’s self-righteous (and self-interested) demands nor the scale of
 3 Epic’s business can justify Epic’s deliberate contractual breaches, its tortious conduct, or its unfair
 4 business practices. This Court should hold Epic to its contractual promises, award Apple
 5 compensatory and punitive damages, and enjoin Epic from engaging in further unfair business
 6 practices.

7 **APPLE’S ANSWER TO PLAINTIFF’S COMPLAINT**

8 Pursuant to Rules 7 and 8 of the Federal Rules of Civil Procedure, Defendant Apple Inc.
 9 (“Apple”), by and through its undersigned counsel, hereby answers and asserts defenses to the claims
 10 and allegations made by plaintiff Epic Games, Inc. (“Epic” or “Plaintiff”) in the Complaint for
 11 Injunctive Relief (“Complaint”).

12 **RESPONSES TO INDIVIDUAL PARAGRAPHS**

13 Numbered paragraphs below correspond to the like-numbered paragraphs in the Complaint.
 14 Except as specifically admitted, Apple denies the allegations in the Complaint, including without
 15 limitation the Table of Contents, headings, subheadings, and illustrations contained within the
 16 Complaint. Plaintiff’s Complaint contains 36 footnotes. Any allegations contained therein do not
 17 comply with Federal Rule of Civil Procedure 10(b), providing that allegations be stated “in numbered
 18 paragraphs, each limited as far as practicable to a single set of circumstances.” Fed. R. Civ. P. 10(b);
 19 *see, e.g., Bernath v. YouTube LLC*, 2017 WL 1050070, at *2 (M.D. Fla. Mar. 20, 2017) (“Plaintiff
 20 also alleges facts in various and lengthy footnotes that will not be considered as they are not properly
 21 stated in numbered paragraphs pursuant to Fed. R. Civ. P. 10(b).”); *Holmes v. Gates*, 2010 WL
 22 956412, at *1 n.1 (M.D. Pa. Mar. 11, 2010) (“[T]he use of . . . footnotes run counter to the pleading
 23 requirements set forth by Federal Rule of Civil Procedure 10(b).”). No response is therefore required
 24 to the Complaint’s footnotes. In any event, except as expressly admitted, Apple denies any and all
 25 allegations contained in footnotes 1 through 36.

26 **NATURE OF THE ACTION**

27 1. Apple admits that it released the Macintosh computer in 1984 and that the
 28 Macintosh was the first mass-market home computer. Apple admits that its advertisement for the

1 Macintosh was “breathtaking” and that its product was a “beneficial, revolutionary force” in the
2 computing industry. Apple admits that its founder was Steve Jobs, and that Paragraph 1 selectively
3 quotes statements attributed to Mr. Jobs. Except to the extent expressly admitted, Apple denies the
4 allegations in Paragraph 1.

5 2. Apple denies the allegations in Paragraph 2.

6 3. To the extent the allegations in Paragraph 3 are legal conclusions and
7 characterizations, no responsive pleading is required. Insofar as any responsive pleading is required,
8 Apple denies the allegations in Paragraph 3.

9 4. Apple admits that users of its Mac or MacBook computers may obtain
10 software from online storefronts and websites. Apple admits that people may use a variety of
11 payment options online. Apple lacks knowledge or information sufficient to form a belief as to the
12 truth of the allegations in Paragraph 4 regarding the “processing fees” of third parties, and, on that
13 basis, denies them. Except to the extent expressly admitted, Apple denies the allegations in Paragraph
14 4, and specifically denies that Apple’s commission is a “processing fee[.]”

15 5. Apple admits that apps provide news, entertainment, business, social
16 networking, and other services. Except to the extent expressly admitted, Apple denies the allegations
17 in Paragraph 5, and specifically denies that its devices are “unfairly restricted” or “extortionately
18 ‘taxed.’”

19 6. To the extent the allegations in Paragraph 6 are legal conclusions and
20 characterizations, no responsive pleading is required. Insofar as any responsive pleading is required,
21 Apple admits that Paragraph 6 sets forth the relief that Plaintiff purports to seek, and that Plaintiff
22 purports not to seek damages in this case. Apple denies that Plaintiff is entitled to any such relief.
23 Apple denies any remaining allegations in Paragraph 6, and specifically denies that Epic is not
24 “seeking favorable treatment for itself.”

25 7. To the extent the allegations in Paragraph 7 are legal conclusions and
26 characterizations, no responsive pleading is required. Insofar as any responsive pleading is required,
27 Apple admits that, by launching the App Store in 2008, it opened up iOS and enabled third-party app
28 developers to develop a diversity of apps for the iOS platform. Apple further admits that third-party

1 apps “contribute immense value” to the iOS ecosystem. Except to the extent expressly admitted,
2 Apple denies the allegations in Paragraph 7, and specifically denies that it “bans innovation in a
3 central part of [its] ecosystem.”

4 8. Apple admits that it charges developers a 30% commission on paid
5 applications, specific in-app purchases, and initial-year subscriptions sold through the App Store, and
6 that the commission on subscriptions drops to 15% after one year. Apple further admits that
7 Paragraph 8 selectively quotes alleged statements by Representative Hank Johnson, which speak for
8 themselves. Except to the extent expressly admitted, Apple denies the allegations in Paragraph 8, and
9 specifically denies that “[t]here is no method app developers can use to avoid [Apple’s alleged]
10 tax”—Apple receives no revenue from 84% of apps distributed through the App Store, and billions of
11 apps are downloaded every day without Apple receiving a penny.

12 9. To the extent the allegations in Paragraph 9 are legal conclusions and
13 characterizations, no responsive pleading is required. Insofar as any responsive pleading is required,
14 Apple denies the allegations in Paragraph 9.

15 10. To the extent the allegations in Paragraph 10 are legal conclusions and
16 characterizations, no responsive pleading is required. Insofar as any responsive pleading is required,
17 Apple denies the allegations in Paragraph 10.

18 11. To the extent the allegations in Paragraph 11 are legal conclusions and
19 characterizations, no responsive pleading is required. Insofar as any responsive pleading is required,
20 Apple denies the allegations in Paragraph 11.

21 12. To the extent the allegations in Paragraph 12 are legal conclusions and
22 characterizations, no responsive pleading is required. Insofar as any responsive pleading is required,
23 Apple denies the allegations in Paragraph 12.

24 13. To the extent the allegations in Paragraph 13 are legal conclusions and
25 characterizations, no responsive pleading is required. Insofar as any responsive pleading is required,
26 Apple denies the allegations in Paragraph 13.

27 14. Apple denies the allegations in Paragraph 14.
28

1 15. Apple admits that Epic is a software developer and the developer of the game
2 *Fortnite*. Apple admits that *Fortnite* has achieved widespread popularity and that only a portion of
3 *Fortnite*'s hundreds of millions of users play the game through iOS. Apple lacks knowledge or
4 information sufficient to form a belief as to the truth of the allegations in Paragraph 15 regarding
5 *Fortnite*'s users and their perception of the game, and on that basis, denies them. Except as expressly
6 admitted, Apple denies the allegations in Paragraph 15.

7 16. Apple lacks knowledge or information sufficient to form a belief as to the truth
8 of the allegations in Paragraph 16 regarding Epic's hypothetical business plans and, on that basis,
9 denies them. Apple denies the remaining allegations in Paragraph 16.

10 17. Apple admits that users of its Mac and MacBook computers may obtain
11 software from the Mac App Store or sideloaded software, like Epic's *Fortnite*, from third-party stores
12 and through direct download from a developer's website. Apple admits that websites may offer
13 various different payment options. Except to the extent expressly admitted, Apple denies the
14 allegations in Paragraph 17.

15 18. To the extent the allegations in Paragraph 18 are legal conclusions and
16 characterizations, no responsive pleading is required. Insofar as any responsive pleading is required,
17 Apple admits that Epic demanded that Apple enter into a "side agreement" that would allow Epic to
18 circumvent the App Store Review Guidelines that apply to every app in the App Store. Apple further
19 admits that it rejected Epic's unreasonable demands. Except to the extent expressly admitted, Apple
20 denies the allegations in Paragraph 18.

21 19. Apple admits that on August 13, 2020, Epic activated hidden software in its
22 *Fortnite* app on iOS, thereby inviting Apple's iOS customers to use a direct payment option and
23 circumvent Apple's In-App Purchase. Apple admits that, to motivate consumers to use this direct
24 payment option and deny Apple any form of payment, Epic included a screen advising consumers
25 that its offerings could be purchased at a lower price from Epic than through Apple's In-App
26 Purchase. Apple avers that Epic's acts as just described were a deliberate breach of the contracts
27 between Apple and Epic. Except to the extent expressly admitted, Apple denies the allegations in
28 Paragraph 19, and specifically denies that Epic passed along any cost savings to consumers.

1 earned more than half a billion dollars in revenue through the App Store via the sale of in-app
2 purchases in *Fortnite* and other content. Apple lacks knowledge or information sufficient to form a
3 belief as to the truth of the allegations in Paragraph 25 regarding *Fortnite*'s gameplay and Epic's
4 business model, and, on that basis, denies them. Except to the extent expressly admitted, Apple
5 denies the allegations in Paragraph 25.

6 26. Apple admits that *Fortnite* purports to have hundreds of millions of users, and
7 had attracted more than 45 million players before it launched on iOS in 2018. Except to the extent
8 expressly admitted, Apple denies the allegations in Paragraph 26.

9 27. Apple admits that Plaintiff operates the Epic Games Store, where it distributes
10 Epic's and other developers' games to consumers for a fee. Apple admits the Epic Games Store is
11 accessible by Mac personal computers, and that *Fortnite* is also available for Mac users to download
12 outside of Apple's Mac App Store. Apple lacks knowledge or information sufficient to form a belief
13 as to the truth of the allegations in Paragraph 27 regarding the contents, availability, and popularity of
14 the Epic Games Store, and, on that basis, denies them. Except to the extent expressly admitted, Apple
15 denies the allegations in Paragraph 27.

16 28. Apple admits that Epic is the creator and distributor of the *Unreal Engine*.
17 Apple further admits that an Epic subsidiary is the developer of the social-networking app
18 *Houseparty*. Apple lacks knowledge or information sufficient to form a belief as to the truth of
19 remaining allegations in Paragraph 28, and, on that basis, denies them.

20 29. Apple admits the allegations in the first and third sentences of Paragraph 29.
21 Apple admits that it is a publicly traded company. Apple further admits that it owns and operates the
22 App Store and that app developers who wish to distribute their apps through the App Store can do so
23 by entering into an Apple Developer Program License Agreement. Except to the extent expressly
24 admitted, Apple denies the allegations in Paragraph 29.

25 JURISDICTION AND VENUE

26 30. To the extent that the allegations in Paragraph 30 are legal conclusions and
27 characterizations, no responsive pleading is required. Insofar as any response is required, Apple
28 admits that Plaintiff purports to plead jurisdiction pursuant to 15 U.S.C. § 26, and 28 U.S.C. §§ 1331,

1 1332, 1337, and 1367. Except to the extent expressly admitted, Apple denies the allegations in
2 Paragraph 30.

3 31. Apple admits that it is headquartered in this District. To the extent the other
4 allegations in Paragraph 31 are legal conclusions and characterizations, no responsive pleading is
5 required. Insofar as any response is required, except to the extent expressly admitted, Apple denies
6 the allegations in Paragraph 31.

7 32. Apple avers that its Apple Developer Program License Agreement (“License
8 Agreement”), attached as Exhibit A to the Complaint, speaks for itself. Apple denies the remaining
9 allegations in Paragraph 32.⁵

10 33. Apple admits that, taking Plaintiff’s venue-related allegations to be true, venue
11 in this District is proper pursuant to 28 U.S.C. § 1391 and 15 U.S.C. § 22. Except to the extent
12 expressly admitted, Apple denies the allegations in Paragraph 33.

13 **INTRADISTRICT ASSIGNMENT**

14 34. To the extent that the allegations in Paragraph 34 are legal conclusions and
15 characterizations, no responsive pleading is required. Insofar as any response is required, Apple
16 denies the allegations in Paragraph 34.

17 **RELEVANT FACTS**

18 35. To the extent the allegations in Paragraph 35 are legal conclusions and
19 characterizations, no responsive pleading is required. Insofar as any responsive pleading is required,
20 Apple denies the allegations in Paragraph 35.

21 36. Apple admits the allegations in Paragraph 36.

22 37. Apple admits that a mobile operating system (“OS”) provides functionality to
23 smartphone users, facilitates the basic operations of a smartphone, and may permit the installation
24 and operation of apps. Except to the extent expressly admitted, Apple denies the allegations in
25

26 ⁵ Epic refers to this agreement throughout its Complaint as the “Developer Agreement.” As explained in
27 Apple’s Counterclaims, Epic is party to a Developer Agreement, which, *inter alia*, grants access to Apple’s
28 online Developer Portal and certain development software and resources, and a Developer Program License
Agreement, which, *inter alia*, grants access to additional tools and software and governs distribution through
the App Store for certain apps that use Apple’s software. To avoid confusion, Apple refers to the former as the
“Developer Agreement” and the latter as the “License Agreement” in its Answer and Counterclaims.

1 Paragraph 37, and specifically denies that mobile devices are “similar to” or “just like” laptop and
2 desktop personal computers.

3 38. Apple admits that smartphones and tablets are typically sold with a preinstalled
4 OS. Apple lacks knowledge or information sufficient to form a belief as to the truth of the remaining
5 allegations in Paragraph 38 and, on that basis, denies them.

6 39. Apple admits that it has spent decades developing unique operating systems
7 that power customer experiences on Apple’s devices. Apple admits that its iPhone runs on Apple’s
8 iOS operating system and its iPad runs on Apple’s iPadOS operating system, and that these devices
9 are sold to consumers with iOS or iPadOS preinstalled. Apple admits that it does not license iOS to
10 other device manufacturers. Apple further admits that Google licenses a mobile OS called Android.
11 Except to the extent expressly admitted, Apple denies the allegations in Paragraph 39.

12 40. Apple denies the allegations in Paragraph 40.

13 41. Apple admits that its device customers use a number of apps on their devices,
14 for functions that include shopping, social networking, food ordering, drafting and sending emails,
15 newspaper subscriptions, video and music streaming, playing mobile games, and editing documents,
16 to name a few. Except to the extent expressly admitted, Apple denies the allegations in Paragraph 41.

17 42. Apple admits that it launched the first iPhone in 2007. Apple admits that in
18 March 2008 it released a software development kit to enable third-party software developers to
19 design applications for use on the iPhone. Apple admits that it opened the App Store in July 2008 to
20 distribute these “new and innovative applications” to iPhone users. Except to the extent expressly
21 admitted, Apple denies the allegations in Paragraph 42.

22 43. Apple admits that the vast majority of apps available to iOS users are
23 developed by third-party developers, not Apple. Except to the extent expressly admitted, Apple
24 denies the allegations in Paragraph 43, and specifically denies that developers need the iOS platform
25 to distribute their products to consumers.

26 44. Apple admits that app developers seek to update their apps from time to time
27 for various reasons, including to add new functions, to ensure compatibility with an OS, and to fix
28 technical issues. The App Store allows developers to provide unlimited, free, and automatic app

1 updates to consumers worldwide. Except to the extent expressly admitted, Apple denies the
2 allegations in Paragraph 44.

3 45. Apple admits that apps are designed to function on the specific OS on which
4 they will be downloaded and run. Except to the extent expressly admitted, Apple denies the
5 allegations in Paragraph 45.

6 46. Apple admits that its active installed base of devices has surpassed 1.5 billion,
7 more than 900 million of which are iPhones. Apple admits that the App Store connects developers
8 with an “enormous” community of consumers in 175 countries. Apple lacks knowledge or
9 information sufficient to form a belief as to the truth of the allegations in Paragraph 46 regarding
10 Epic’s experience with iOS and Android users, and, on that basis, denies them. Except to the extent
11 expressly admitted, Apple denies the allegations in Paragraph 46.

12 47. Apple denies the allegations in Paragraph 47.

13 48. Apple admits that its iPhone and iPad devices come preinstalled with a small
14 number of Apple apps and that users may choose to install additional third-party apps from the App
15 Store, most of which are free. Except to the extent expressly admitted, Apple denies the allegations in
16 Paragraph 48.

17 49. Apple admits that the App Store provides users a place to find and obtain apps
18 seamlessly. Except to the extent expressly admitted, Apple denies the allegations in Paragraph 49.

19 50. Apple admits that the allegations in Paragraph 50 purport to summarize the
20 contents of this Complaint, but otherwise denies the allegations in Paragraph 50.

21 51. Apple denies the allegations in Paragraph 51, and specifically denies the
22 existence of an “iOS App Distribution Market.”

23 52. Apple admits that app marketplaces, including the App Store, provide a
24 convenient place for consumers to discover and obtain apps. Apple further admits that app
25 marketplaces are just “one channel” for distributing products and services offered by developers.
26 Except to the extent expressly admitted, Apple denies the allegations in Paragraph 52.

27 53. Apple denies the allegations in Paragraph 53. Apple specifically denies that
28 “app developers cannot distribute their apps to iOS users on a non-iOS app store.” Apple avers that

1 Epic can and does distribute *Fortnite* and other products to Apple’s customers through numerous
2 channels.

3 54. Apple denies the allegations in Paragraph 54.

4 55. Apple denies the allegations in Paragraph 55.

5 56. Apple denies the allegations in Paragraph 56.

6 57. Apple denies the allegations in Paragraph 57.

7 58. To the extent the allegations in Paragraph 58 are legal conclusions and
8 characterizations, no responsive pleading is required. Insofar as any responsive pleading is required,
9 Apple denies the allegations in Paragraph 58. Apple specifically denies that it has a monopoly in any
10 market, and that the App Store is the “sole means” through which consumers may access apps,
11 including Epic’s apps.

12 59. Apple admits that the App Store comes preinstalled on iOS devices. Apple
13 denies the remaining allegations in Paragraph 59.

14 60. Apple denies the allegations in Paragraph 60.

15 61. To the extent the allegations in Paragraph 61 are legal conclusions and
16 characterizations, no responsive pleading is required. Insofar as any responsive pleading is required,
17 Apple denies the allegations in Paragraph 61.

18 62. Apple denies the allegations in Paragraph 62.

19 63. Apple denies the allegations in Paragraph 63.

20 64. To the extent the allegations in Paragraph 64 are legal conclusions and
21 characterizations, no responsive pleading is required. Insofar as any responsive pleading is required,
22 Apple denies the allegations in Paragraph 64.

23 65. Apple denies the allegations in Paragraph 65.

24 66. Apple denies the allegations in Paragraph 66.

25 67. Apple admits that the App Store comes preinstalled on iOS devices. Apple
26 denies the remaining allegations in Paragraph 67.

27 68. Apple denies the allegations in Paragraph 68.

28 69. Apple denies the allegations in Paragraph 69.

1 70. To the extent the allegations in Paragraph 70 are legal conclusions and
2 characterizations, no responsive pleading is required. Insofar as any responsive pleading is required
3 Apple avers that the License Agreement speaks for itself, and denies the allegations in Paragraph 70.

4 71. Apple admits that Paragraph 71 selectively quotes from Apple’s License
5 Agreement, which speaks for itself. Except to the extent expressly admitted, Apple denies the
6 allegations in Paragraph 71, and specifically denies that its License Agreement “requires that
7 developers distribute their apps only through the App Store.”

8 72. Apple admits that Custom App Distribution, beta distribution through
9 TestFlight, and Ad Hoc distribution are services Apple offers to app developers. Except to the extent
10 expressly admitted, Apple denies the allegations in Paragraph 72.

11 73. Apple admits that Custom App Distribution is a way for customers of its Apple
12 Business Manager and Apple School Manager programs to distribute custom apps within their
13 organizations or to select third parties. Apple admits that Paragraph 73 quotes selectively from
14 Apple’s License Agreement, which speaks for itself. Except to the extent expressly admitted, Apple
15 denies the allegations in Paragraph 73.

16 74. Apple admits that its TestFlight service allows developers to release non-final
17 versions of iOS apps to select users in order to build and test code to ensure high quality customer
18 experiences. Apple avers that Epic has taken advantage of TestFlight when developing multiple apps,
19 including *Fortnite*. Apple admits that Paragraph 74 cites provisions of Apple’s License Agreement,
20 which speaks for itself. Except to the extent expressly admitted, Apple denies the allegations in
21 Paragraph 74.

22 75. Apple admits that its Ad Hoc distribution service allows members of its
23 Developer Program to distribute iOS apps to a limited number of registered iOS devices. Apple avers
24 that Epic has taken advantage of Ad Hoc distribution and that Apple has repeatedly granted Epic
25 permission to exceed the number of Ad Hoc devices registered to Epic’s account. Apple admits that
26 Paragraph 75 cites provisions of Apple’s License Agreement, which speaks for itself. Except to the
27 extent expressly admitted, Apple denies the allegations in Paragraph 75.

28 76. Apple denies the allegations in Paragraph 76.

1 77. Apple denies the allegations in Paragraph 77.

2 78. Apple admits that Paragraph 78 selectively quotes from Apple’s License
3 Agreement, which speaks for itself. Except to the extent expressly admitted, Apple denies the
4 allegations in Paragraph 78.

5 79. Apple admits that Paragraph 79 selectively quotes from Apple’s App Store
6 Review Guidelines, which are attached as Exhibit B to the Complaint and speak for themselves.
7 Except to the extent expressly admitted, Apple denies the allegations in Paragraph 79.

8 80. Apple denies the allegations in Paragraph 80.

9 81. Apple admits that Epic has demanded to have an “Epic Games Store app
10 available through the iOS App Store and through direct installation,” even though this would violate
11 Apple’s longstanding App Store rules and jeopardize the security and privacy of its users. Apple
12 further admits that it refused Epic’s demand. Except to the extent expressly admitted, Apple denies
13 the allegations in Paragraph 81.

14 82. Apple denies the allegations in Paragraph 82.

15 83. To the extent the allegations in Paragraph 83 are legal conclusions and
16 characterizations, no responsive pleading is required. Insofar as any responsive pleading is required
17 Apple denies the allegations in Paragraph 83, and specifically denies that its efforts to “enforce
18 privacy and security safeguards” are “pretext.” Apple takes responsibility for ensuring that apps meet
19 industry-leading standards for privacy, security, and content.

20 84. Apple admits that it has the unique capability to screen apps built using its
21 technology for its devices. Except to the extent expressly admitted, Apple denies the allegations in
22 Paragraph 84.

23 85. Apple admits that Paragraph 85 selectively quotes from an Apple web page
24 about the App Store, which speaks for itself. Except to the extent expressly admitted, Apple denies
25 the allegations in Paragraph 85.

26 86. To the extent the allegations in Paragraph 86 are legal conclusions and
27 characterizations, no responsive pleading is required. Insofar as any responsive pleading is required,
28 Apple denies the allegations in Paragraph 86.

1 87. Apple denies the allegations in Paragraph 87.

2 88. Apple denies the allegations in Paragraph 88.

3 89. Apple denies the allegations in Paragraph 89.

4 90. Apple admits that Mac users can download software from online storefronts.

5 Apple lacks knowledge or information sufficient to form a belief as to the truth of the allegations in
6 Paragraph 90 regarding Steam and the Epic Games Store, and, on that basis, denies them. Except to
7 the extent expressly admitted, Apple denies the allegations in Paragraph 90.

8 91. To the extent the allegations in Paragraph 91 are legal conclusions and
9 characterizations, no responsive pleading is required. Insofar as any responsive pleading is required,
10 Apple admits that Paragraph 91 cites and selectively quotes an August 6, 2020, article from *The*
11 *Verge*, which speaks for itself. Except to the extent expressly admitted, Apple denies the allegations
12 in Paragraph 91.

13 92. Apple admits that Paragraph 92 cites and selectively quotes an August 7, 2020,
14 article from *The New York Times*, which speaks for itself. Except to the extent expressly admitted,
15 Apple denies the allegations in Paragraph 92.

16 93. Apple denies the allegations in Paragraph 93.

17 94. Apple denies the allegations in Paragraph 94.

18 95. Apple denies the allegations in Paragraph 95, and specifically denies the
19 alleged absence of “competitive pressure for Apple to innovate and improve its own App Store.”
20 Apple works constantly to make the App Store the best place to discover and obtain apps.

21 96. Apple denies the allegations in Paragraph 96.

22 97. Apple denies the allegations in Paragraph 97, and specifically denies that its
23 commission rate is “supra-competitive.”

24 98. Apple admits that Paragraph 98 selectively quotes from a document released
25 by the U.S. House of Representatives Committee on the Judiciary, which speaks for itself. Except to
26 the extent expressly admitted, Apple denies the allegations in Paragraph 98.

27 99. Apple denies the allegations in Paragraph 99.

28 100. Apple denies the allegations in Paragraph 100.

1 101. Apple denies the allegations in Paragraph 101. The App Store encourages
2 vigorous competition between apps and is an engine of innovation.

3 102. Apple denies the allegations in Paragraph 102. Since the App Store opened in
4 2008, software prices have decreased sharply and output has increased exponentially.

5 103. Apple admits that user downloads of paid apps and in-app purchases generate
6 revenue (net of commissions) for developers. Except to the extent expressly admitted, Apple denies
7 the allegations in Paragraph 103.

8 104. Apple admits that the iOS *Fortnite* app is currently an example of an app that,
9 by breaching contractual obligations, has increased its revenue by circumventing Apple’s platform
10 and appropriating commissions for in-app digital transactions that rightfully belong to Apple. Except
11 to the extent expressly admitted, Apple denies the allegations in Paragraph 104.

12 105. Apple admits that app developers and consumers benefit from being able to
13 transact seamlessly and efficiently within apps. Except to the extent expressly admitted, Apple denies
14 the allegations in Paragraph 105.

15 106. Apple admits that an application programming interface (“API”) such as
16 Apple’s In-App Purchase API can be used to enable additional content, functionality or services to be
17 delivered or made available for use within an app with or without an additional fee. Insofar as
18 Paragraph 106 refers to a hypothetical in-app purchase on an unidentified platform, Apple lacks
19 knowledge or information sufficient to form a belief about the truth of these allegations, and on that
20 basis denies them. Except to the extent expressly admitted, Apple denies the allegations in Paragraph
21 106.

22 107. Apple admits that third parties purport to offer services described as payment
23 processing in some circumstances. Insofar as Paragraph 107 refers to Epic’s alleged own “payment
24 processing solutions,” Apple lacks knowledge or information sufficient to form a belief about the
25 truth of these allegations, and on that basis denies them. Except to the extent expressly admitted,
26 Apple denies the allegations in Paragraph 107.

27 108. To the extent the allegations in Paragraph 108 are legal conclusions and
28 characterizations, no responsive pleading is required. Insofar as any responsive pleading is required,

1 Apple denies the allegations in Paragraph 108, and specifically denies that it “coerces developers”
2 into using In-App Purchase.

3 109. Apple denies the allegations in Paragraph 109, and specifically denies the
4 existence of an “iOS In-App Payment Processing Market.”

5 110. To the extent the allegations in Paragraph 110 are legal conclusions and
6 characterizations, no responsive pleading is required. Insofar as any responsive pleading is required,
7 Apple denies the allegations in Paragraph 110.

8 111. Apple admits that the In-App Purchase API can be used, among other things,
9 for the seamless purchase of digital content for use in an app. Except to the extent expressly admitted,
10 Apple denies the allegations in Paragraph 111.

11 112. Apple denies the allegations in Paragraph 112.

12 113. Apple lacks knowledge or information sufficient to form a belief as to the truth
13 of the allegations in Paragraph 113 regarding the purchase of “skins” in *Fortnite* and other in-game
14 products, and, on that basis, denies them. Apple denies the remaining allegations in Paragraph 113.

15 114. Apple lacks knowledge or information sufficient to form a belief as to the truth
16 of the allegations in Paragraph 114 regarding use of online dating apps, and, on that basis, denies
17 them. Apple denies the remaining allegations in Paragraph 114.

18 115. Apple denies the allegations in Paragraph 115.

19 116. Apple denies the allegations in Paragraph 116, and specifically denies the
20 existence of an “iOS Games Payment Processing Market.”

21 117. Apple lacks knowledge or information sufficient to form a belief as to the truth
22 of the allegations in Paragraph 117, and, on that basis, denies them.

23 118. Apple denies the allegations in Paragraph 118.

24 119. To the extent the allegations in Paragraph 119 are legal conclusions and
25 characterizations, no responsive pleading is required. Insofar as any responsive pleading is required,
26 Apple denies the allegations in Paragraph 119.

27
28

1 120. To the extent the allegations in Paragraph 120 are legal conclusions and
2 characterizations, no responsive pleading is required. Insofar as any responsive pleading is required,
3 Apple denies the allegations in Paragraph 120.

4 121. To the extent the allegations in Paragraph 121 are legal conclusions and
5 characterizations, no responsive pleading is required. Insofar as any responsive pleading is required,
6 Apple denies the allegations in Paragraph 121.

7 122. Apple denies the allegations in Paragraph 122.

8 123. Apple denies the allegations in Paragraph 123.

9 124. Apple denies the allegations in Paragraph 124.

10 125. Apple denies the allegations in Paragraph 125, and specifically denies that it
11 “charges a 30% fee for In-App Purchase.”

12 126. Apple lacks knowledge or information sufficient to form a belief as to the truth
13 of the allegations in Paragraph 126 regarding third parties’ payment processing fees, and, on that
14 basis, denies them. Apple denies the remaining allegations in Paragraph 126.

15 127. Apple denies the allegations in Paragraph 127.

16 128. To the extent the allegations in Paragraph 128 are legal conclusions and
17 characterizations, no responsive pleading is required. Insofar as any responsive pleading is required,
18 Apple denies the allegations in Paragraph 128.

19 129. To the extent the allegations in Paragraph 129 are legal conclusions and
20 characterizations, no responsive pleading is required. Insofar as any responsive pleading is required,
21 Apple denies the allegations in Paragraph 129.

22 130. Apple admits that Paragraph 130 cites a provision of Apple’s License
23 Agreement, which speaks for itself. Apple admits that Paragraph 130 selectively quotes from Apple’s
24 App Review Guidelines, which also speak for themselves. Except to the extent expressly admitted,
25 Apple denies the allegations in Paragraph 130.

26 131. Apple admits that Paragraph 131 selectively quotes from Apple’s App Review
27 Guidelines, which speak for themselves.

28

1 132. To the extent the allegations in Paragraph 132 are legal conclusions and
2 characterizations, no responsive pleading is required. Insofar as any responsive pleading is required,
3 Apple denies the allegations in Paragraph 132.

4 133. Apple admits that Paragraph 133 selectively quotes from a document released
5 by the U.S. House of Representatives Committee on the Judiciary, which speaks for itself. Except to
6 the extent expressly admitted, Apple denies the allegations in Paragraph 133.

7 134. Apple denies the allegations in Paragraph 134.

8 135. Apple denies the allegations in Paragraph 135.

9 136. Apple denies the allegations in Paragraph 136.

10 137. Apple denies the allegations in Paragraph 137.

11 138. Apple denies the allegations in Paragraph 138, and specifically denies that
12 Apple has “no . . . entitlement” to a return on its investment in the App Store business.

13 139. To the extent the allegations in Paragraph 139 are legal conclusions and
14 characterizations, no responsive pleading is required. Insofar as any responsive pleading is required,
15 Apple denies the allegations in Paragraph 139.

16 140. Apple denies the allegations in Paragraph 140.

17 141. Apple lacks knowledge or information sufficient to form a belief as to the truth
18 of the allegations in Paragraph 141 regarding supposed payment processing innovations, and, on that
19 basis, denies them. Apple denies the remaining allegations in Paragraph 141.

20 142. Apple lacks knowledge or information sufficient to form a belief as to the truth
21 of the allegations in the first two sentences of Paragraph 142, and, on that basis, denies them. Apple
22 denies the remaining allegations in Paragraph 142.

23 143. Apple denies the allegations in Paragraph 143.

24 144. Apple denies the allegations in Paragraph 144.

25 145. Apple denies the allegations in Paragraph 145.

26 146. Apple lacks knowledge or information sufficient to form a belief as to the truth
27 of the allegations in Paragraph 146 regarding Epic’s supposed “payment processing services,” and,
28 on that basis, denies them. Apple denies the remaining allegations in Paragraph 146.

1 147. Apple lacks knowledge or information sufficient to form a belief as to the truth
2 of the allegations in Paragraph 147 regarding the alleged complaints Epic receives from its
3 customers, and, on that basis, denies them. Apple denies the remaining allegations in Paragraph 147,
4 and specifically denies that Apple has “little incentive to compete through customer service.” Apple
5 provides peerless customer service through AppleCare, addressing more than 25 million customer
6 support cases and handling almost \$500 million in refunds per year.

7 148. Apple denies the allegations in Paragraph 148.

8 149. Apple lacks knowledge or information sufficient to form a belief as to the truth
9 of the allegations in Paragraph 149 regarding third parties’ rates for purported payment processing
10 services, and, on that basis, denies them. Apple avers that its App Store commission rate is similar or
11 identical to commission rates charged by other app marketplaces and digital platforms, including
12 Google Play, the Amazon Appstore, Steam, and Xbox. Apple denies the remaining allegations in
13 Paragraph 149.

14 150. Apple admits that Paragraph 150 cites and describes a July 28, 2020, article in
15 *The New York Times*, which speaks for itself. Except to the extent expressly admitted, Apple denies
16 the allegations in Paragraph 150.

17 151. Apple denies the allegations in Paragraph 151.

18 152. Apple denies the allegations in Paragraph 152.

19 153. Apple denies the allegations in Paragraph 153.

20 154. Apple denies the allegations in Paragraph 154.

21 155. Apple denies the allegations in Paragraph 155.

22 156. Apple admits that there is vigorous “[c]ompetition in the sale of mobile
23 devices.” Except to the extent expressly admitted, Apple denies the allegations in Paragraph 156.

24 157. Apple denies the allegations in Paragraph 157.

25 158. Apple denies the allegations in Paragraph 158.

26 159. Apple denies the allegations in Paragraph 159.

27 160. Apple admits that its products are user-friendly and enable customers to
28 operate seamlessly across different devices. Apple lacks knowledge or information sufficient to form

1 a belief as to the truth of the allegations in Paragraph 160 regarding the “key features” and
2 “functions” of Android OS devices, and, on that basis, denies them. Except to the extent expressly
3 admitted, Apple denies the allegations in Paragraph 160.

4 161. Apple denies the allegations in Paragraph 161.

5 162. Apple admits that its Family Sharing service lets customers share access to
6 various Apple services, including App Store purchases and subscriptions, with up to five other family
7 members. Apple admits that FaceTime, Find My, iMessage, and AirDrop are apps and features
8 designed by Apple and available on Apple devices. Except to the extent expressly admitted, Apple
9 denies the allegations in Paragraph 162.

10 163. Apple admits that its Continuity feature “make[s] it seamless to move between
11 [Apple] devices,” and that Handoff, Universal Clipboard, Instant Hotspot, and AirDrop are features
12 of Continuity. Apple lacks knowledge or information sufficient to form a belief as to the truth of the
13 allegations in Paragraph 163 regarding consumers’ “typical[]” ownership of Apple devices, and, on
14 that basis, denies them. Except to the extent expressly admitted, Apple denies the allegations in
15 Paragraph 163.

16 164. Apple admits that it offers an “iPhone Upgrade Program” and advertises that
17 members of this program may make recurring payments over the course of a year and “get a new
18 iPhone every year.” Apple admits that the third and fourth sentences of Paragraph 164 appear to
19 selectively quote from a July 23, 2019, article on *BGR*⁶ and an August 28, 2017, article on *ARN*⁷
20 respectively, which speak for themselves. Except to the extent expressly admitted, Apple denies the
21 allegations in Paragraph 164.

22 165. Apple admits that device users, app developers, hardware manufacturers, and
23 cellular carriers participate in and derive significant value from the iOS ecosystem. Apple lacks
24 knowledge or information sufficient to form a belief as to the truth of the remaining allegations in
25

26 ⁶ *Upgrading to iPhone 11 will be easier than ever with the new data migration feature in iOS 12.4*, *BGR*
27 (July 23, 2019), <https://bgr.com/2019/07/23/iphone-11-upgrade-transfer-data-from-old-iphone-via-wi-fi-or-cable/>.

28 ⁷ *iPhone to Android: The ultimate switching guide*, *ARN* (Aug. 28, 2017),
<https://www.arnnet.com.au/article/print/626556/iphone-android-ultimate-switching-guide/>.

1 Paragraph 165, and, on that basis, denies them. Except to the extent expressly admitted, Apple denies
2 the allegations in Paragraph 165.

3 166. Apple denies the allegations in Paragraph 166.

4 167. Apple denies the allegations in Paragraph 167, and specifically denies that it
5 possesses “dominance” in any relevant market.

6 168. Apple denies the allegations in Paragraph 168.

7 169. Apple admits that it has earned billions of dollars of revenue from its
8 distribution and sale of innovative products, including the iPhone. Apple lacks knowledge or
9 information sufficient to form a belief as to the truth of the allegations in the second sentence of
10 Paragraph 169, and, on that basis, denies them. Except to the extent expressly admitted, Apple denies
11 the allegations in Paragraph 169.

12 170. Apple lacks knowledge or information sufficient to form a belief as to the truth
13 of the allegations in Paragraph 170, and, on that basis, denies them.

14 171. Apple admits that its iPhone business is profitable. Apple lacks knowledge or
15 information sufficient to form a belief as to the truth of the allegations in Paragraph 171 regarding
16 Apple’s “share of smartphone operating profits among major smartphones [*sic*] companies,” and, on
17 that basis, denies them. Except to the extent expressly admitted, Apple denies the allegations in
18 Paragraph 171.

19 172. Apple lacks knowledge or information sufficient to form a belief as to the truth
20 of the allegations in Paragraph 172 regarding the “global average selling price of smartphones,” and,
21 on that basis, denies them. Apple denies the remaining allegations in Paragraph 172.

22 173. Apple lacks knowledge or information sufficient to form a belief as to the truth
23 of the allegations in Paragraph 173 regarding the percentage of iOS or iPhone users who upgraded or
24 intended to upgrade to iOS devices, and, on that basis, denies them. Apple denies the remaining
25 allegations in Paragraph 173.

26 174. Apple admits that the iPhone X cost \$999 when it was released in 2017. Apple
27 lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the third
28

1 sentence of Paragraph 174, and, on that basis, denies them. Except to the extent expressly admitted,
2 Apple denies the allegations in Paragraph 174.

3 175. Apple denies the allegations in Paragraph 175.

4 176. Apple admits that it has earned billions of dollars of revenue from its
5 distribution and sale of innovative products, including the iPad. Apple lacks knowledge or
6 information sufficient to form a belief as to the truth of the allegations in the second and third
7 sentences of Paragraph 176, and, on that basis, denies them. Except to the extent expressly admitted,
8 Apple denies the allegations in Paragraph 176.

9 177. Apple lacks knowledge or information sufficient to form a belief as to the truth
10 of the allegations in Paragraph 177 regarding the “average global selling price of tablets,” and, on
11 that basis, denies them. Apple denies the remaining allegations in Paragraph 177.

12 178. Apple denies the allegations in Paragraph 178.

13 179. Apple denies the allegations in Paragraph 179.

14 180. Apple denies the allegations in Paragraph 180.

15 181. To the extent the allegations in Paragraph 181 are legal conclusions and
16 characterizations, no responsive pleading is required. Insofar as any responsive pleading is required,
17 Apple admits that its iPhone 11, iPhone 11 Pro, and iPhone 11 Pro Max are presently listed for sale
18 on Apple’s website starting at \$699, \$999, and \$1099, respectively (not including trade-in). Except to
19 the extent expressly admitted, Apple denies the allegations in Paragraph 181, and specifically denies
20 that it imposes a “30% tax.”

21 182. Apple admits that the App Store is “the best place to discover new apps that let
22 [users] pursue [their] passions in ways [they] never thought possible.” Except to the extent expressly
23 admitted, Apple denies the allegations in Paragraph 182.

24 183. Apple lacks knowledge or information sufficient to form a belief as to the truth
25 of the allegations in Paragraph 183 regarding app downloads on Android OS devices and Google’s
26 alleged conduct, and, on that basis, denies them. Apple denies the remaining allegations in Paragraph
27 183.

28

COUNT 1: Sherman Act § 2

(Unlawful Monopoly Maintenance in the iOS App Distribution Market)

184. Apple reasserts and hereby incorporates by reference its responses to each Paragraph of Plaintiff's Complaint, as though fully set forth herein.

185. To the extent the allegations in Paragraph 185 are legal conclusions and characterizations, no responsive pleading is required. Insofar as any responsive pleading is required, Apple avers that 15 U.S.C. § 2 speaks for itself and denies the allegations in Paragraph 185.

186. Apple denies the allegations in Paragraph 186.

187. To the extent the allegations in Paragraph 187 are legal conclusions and characterizations, no responsive pleading is required. Insofar as any responsive pleading is required, Apple denies the allegations in Paragraph 187.

188. To the extent the allegations in Paragraph 188 are legal conclusions and characterizations, no responsive pleading is required. Insofar as any responsive pleading is required, Apple denies the allegations in Paragraph 188.

189. Apple denies the allegations in Paragraph 189.

190. Apple denies the allegations in Paragraph 190.

191. To the extent the allegations in Paragraph 191 are legal conclusions and characterizations, no responsive pleading is required. Insofar as any responsive pleading is required, Apple denies the allegations in Paragraph 191.

192. Apple denies that Plaintiff is entitled to the relief described in Paragraph 192, and denies the remaining allegations in Paragraph 192.

COUNT 2: Sherman Act § 2

(Denial of Essential Facility in the iOS App Distribution Market)

193. Apple reasserts and hereby incorporates by reference its responses to each Paragraph of Plaintiff's Complaint, as though fully set forth herein.

194. To the extent the allegations in Paragraph 194 are legal conclusions and characterizations, no responsive pleading is required. Insofar as any responsive pleading is required, Apple avers that 15 U.S.C. § 2 speaks for itself and denies the allegations in Paragraph 194.

1 195. Apple denies the allegations in Paragraph 195.

2 196. To the extent the allegations in Paragraph 196 are legal conclusions and
3 characterizations, no responsive pleading is required. Insofar as any responsive pleading is required,
4 Apple denies the allegations in Paragraph 196.

5 197. To the extent the allegations in Paragraph 197 are legal conclusions and
6 characterizations, no responsive pleading is required. Insofar as any responsive pleading is required,
7 Apple denies the allegations in Paragraph 197, and specifically denies that “access to iOS” is an
8 essential facility.

9 198. Apple denies the allegations in Paragraph 198.

10 199. Apple denies the allegations in Paragraph 199.

11 200. Apple denies the allegations in Paragraph 200.

12 201. To the extent the allegations in Paragraph 201 are legal conclusions and
13 characterizations, no responsive pleading is required. Insofar as any responsive pleading is required,
14 Apple denies the allegations in Paragraph 201.

15 202. To the extent the allegations in Paragraph 202 are legal conclusions and
16 characterizations, no responsive pleading is required. Insofar as any responsive pleading is required,
17 Apple denies the allegations in Paragraph 202.

18 203. Apple denies the allegations in Paragraph 203.

19 204. Apple denies the allegations in Paragraph 204.

20 205. To the extent the allegations in Paragraph 205 are legal conclusions and
21 characterizations, no responsive pleading is required. Insofar as any responsive pleading is required,
22 Apple denies the allegations in Paragraph 205.

23 206. Apple denies that Plaintiff is entitled to the relief described in Paragraph 206,
24 and denies the remaining allegations in Paragraph 206.

25 **COUNT 3: Sherman Act § 1**

26 **(Unreasonable Restraints of Trade in the iOS App Distribution Market)**

27 207. Apple reasserts and hereby incorporates by reference its responses to each
28 Paragraph of Plaintiff’s Complaint, as though fully set forth herein.

1 275. Apple denies the allegations in Paragraph 275.

2 276. To the extent the allegations in Paragraph 276 are legal conclusions and
3 characterizations, no responsive pleading is required. Insofar as any responsive pleading is required,
4 Apple denies the allegations in Paragraph 276.

5 277. Apple denies the allegations in Paragraph 277.

6 278. Apple denies the allegations in Paragraph 278.

7 279. To the extent the allegations in Paragraph 279 are legal conclusions and
8 characterizations, no responsive pleading is required. Insofar as any responsive pleading is required,
9 Apple denies the allegations in Paragraph 279.

10 280. Apple denies the allegations in Paragraph 280.

11 281. Apple denies the allegations in Paragraph 281.

12 282. Apple denies the allegations in Paragraph 282.

13 283. To the extent the allegations in Paragraph 283 are legal conclusions and
14 characterizations, no responsive pleading is required. Insofar as any responsive pleading is required,
15 Apple denies the allegations in Paragraph 283.

16 284. Apple admits that Paragraph 284 sets forth the relief that Plaintiff purports to
17 seek. Apple denies that Plaintiff is entitled to any such relief and denies the remaining allegations in
18 Paragraph 284.

19 **COUNT 10: California Unfair Competition Law**

20 285. Apple reasserts and hereby incorporates by reference its responses to each
21 Paragraph of Plaintiff's Complaint, as though fully set forth herein.

22 286. To the extent the allegations in Paragraph 286 are legal conclusions and
23 characterizations, no responsive pleading is required. Insofar as any responsive pleading is required,
24 Apple avers that Cal. Bus. & Prof. Code § 17200, *et seq.* speaks for itself, and denies the allegations
25 in Paragraph 286.

26 287. To the extent the allegations in Paragraph 287 are legal conclusions and
27 characterizations, no responsive pleading is required. Insofar as any responsive pleading is required,
28 Apple denies the allegations in Paragraph 287.

1 Plaintiff's claims are barred, in whole or in part, because Plaintiff has neither sustained nor is
2 threatened by any injury in fact or antitrust injury proximately caused by an act or omission by
3 Apple.

4 **Fourth Defense**

5 **(No Entitlement to Injunctive Relief)**

6 Plaintiff is not entitled to injunctive relief because any alleged injury to Plaintiff is not
7 immediate or irreparable, is entirely self-inflicted, and Plaintiff has an adequate remedy at law.

8 **Fifth Defense**

9 **(Causation)**

10 Plaintiff's claims are barred, in whole or in part, because of a lack of causation, including
11 without limitation because any injuries that may have been suffered were caused solely or
12 proximately by the intervening and superseding acts and omissions of others over whom Apple has
13 no power, authority, or control, including Plaintiff itself.

14 **Sixth Defense**

15 **(Foreign Trade Antitrust Improvements Act)**

16 Plaintiff's claims are barred, in whole or in part, by the Foreign Trade Antitrust Improvements
17 Act, 15 U.S.C. § 6a, insofar as Plaintiff makes claims concerning transactions or alleged conduct
18 involving trade or commerce with foreign nations outside U.S. jurisdiction.

19 **Seventh Defense**

20 **(Doctrine of International Comity)**

21 Plaintiff's claims are barred, in whole or in part, by the doctrine of international comity,
22 insofar as Plaintiff seeks injunctive relief affecting transactions and conduct occurring outside U.S.
23 jurisdiction.

24 **Eighth Defense**

25 **(Ratification/Agreement/Acquiescence/Consent)**

26 Plaintiff's claims are barred, in whole or in part, because of Plaintiff's ratification, agreement,
27 acquiescence, authorization, or consent to Apple's alleged conduct, including by renewing the term
28 of the License Agreement on June 30, 2020—the same day that its CEO Tim Sweeney contacted

1 Apple to request a “side letter” exempting Plaintiff from certain obligations under the License
2 Agreement. Apple denied the request, and Plaintiff continued to enjoy the benefits of the License
3 Agreement, thereby ratifying, agreeing to, acquiescing, authorizing, and/or consenting to Apple’s
4 alleged conduct.

5 **Ninth Defense**

6 **(Statute of Limitations)**

7 Plaintiff’s claims are barred in whole or in part by the statute of limitations applicable to its
8 respective claims.

9 **Tenth Defense**

10 **(Lack of Standing)**

11 Plaintiff’s claims are barred, in whole or in part, insofar as Plaintiff lacks standing to assert
12 any or all of the claims alleged in the Complaint, including any and all claims belonging to parties not
13 named as plaintiffs in the Complaint.

14 **Eleventh Defense**

15 **(Failure to Join an Indispensable Party)**

16 Plaintiff has failed to join all parties necessary for a just adjudication of their purported
17 claims.

18 **Twelfth Defense**

19 **(Due Process)**

20 Plaintiff’s California state law claims are barred, in whole or in part, by the Due Process
21 Clause of the United States Constitution, insofar as Plaintiff makes claims based on alleged conduct
22 occurring outside the state of California.

23 **Thirteenth Defense**

24 **(Indemnity)**

25 Plaintiff is a party to one or more agreements in which it has agreed to indemnify Apple for
26 any and all claims, losses, liabilities, damages, taxes, expenses, and costs arising from or related to
27 Plaintiff’s claims in the Complaint.

28 **Fourteenth Defense**

1 **(Protected Rights – Noerr-Pennington)**

2 Plaintiff’s claims are barred, in whole or in part, insofar as they challenge the exercise of
3 rights protected by the First Amendment of the United States Constitution, by Article I, Section 3 of
4 the California Constitution, and by the *Noerr-Pennington* doctrine.

5 **Fifteenth Defense**

6 **(Protected Rights – Intellectual Property & Other Statutes)**

7 Plaintiff’s claims are barred, in whole or in part, insofar as it makes claims or seek remedies
8 that conflict with Apple’s rights under intellectual property law or other statutes.

9 **Sixteenth Defense**

10 **(Protected Rights – Contract)**

11 Plaintiff’s claims are barred, in whole or in part, insofar as Plaintiff makes claims or seek
12 remedies that conflict with, are barred by, or are waived by the terms of Plaintiff’s agreements with
13 Apple.

14 **Seventeenth Defense**

15 **(Laches)**

16 Plaintiff’s claims are barred, in whole or in part, by the doctrine of laches.

17 **Eighteenth Defense**

18 **(Waiver)**

19 Plaintiff’s claims are barred, in whole or in part, by the doctrine of waiver, including because
20 Plaintiff renewed the term of the License Agreement on June 30, 2020—the same day that its CEO
21 Tim Sweeney contacted Apple to request a “side letter” exempting Plaintiff from certain obligations
22 under the License Agreement. Apple denied the request, and Plaintiff continued to enjoy the benefits
23 of the License Agreement. Thus, the doctrine of waiver bars Plaintiff’s claims, in whole or in part.

24 **Nineteenth Defense**

25 **(Estoppel)**

26 Plaintiff’s claims are barred, in whole or in part, by the doctrine of estoppel, including
27 because Plaintiff renewed the term of the License Agreement on June 30, 2020—the same day that its
28 CEO Tim Sweeney contacted Apple to request a “side letter” exempting Plaintiff from certain

1 obligations under the License Agreement. Apple denied the request, and Plaintiff continued to enjoy
2 the benefits of the License Agreement. Thus, the doctrine of estoppel bars Plaintiff's claims, in whole
3 or in part.

4 **Twentieth Defense**

5 **(Unclean Hands)**

6 Plaintiff's claims for injunctive relief are barred, in whole or in part, by the doctrine of
7 unclean hands.

8 **Twenty-First Defense**

9 **(Illegality)**

10 Plaintiff's claims for injunctive relief are barred, in whole or in part, by the doctrine of
11 illegality.

12 **Twenty-Second Defense**

13 **(Non-Justiciability)**

14 Plaintiff's claims are barred, in whole or in part, because they are non-justiciable.

15 **Twenty-Third Defense**

16 **(Not Unlawful, Unfair, or Fraudulent)**

17 Plaintiff's claims under California's Unfair Competition Law are barred in whole or in part
18 because the alleged business practices are not unlawful, unfair, fraudulent, or likely to mislead
19 consumers, within the meaning of Cal. Bus. & Prof. Code § 17200, or otherwise.

20 **Twenty-Fourth Defense**

21 **(Waiver of Damages)**

22 Plaintiff has waived any right to seek damages for its alleged injury by failing to assert a
23 claim for such relief in the Complaint.

24 **Twenty-Fifth Defense**

25 **(Election of Remedies)**

26 Any attempt by Plaintiff to seek damages for the injury alleged in the Complaint is barred, in
27 whole or in part, by the election of remedies doctrine.

28 **Twenty-Sixth Defense**

1 **(Effective Opt-Out)**

2 By filing this action, Epic has forfeited any recovery or remedies it may be entitled to as a
3 member of the putative class in *Cameron et al. v. Apple Inc.*, Civil Case No. 19-3074 (N.D. Cal.),
4 including monetary damages.

5 **Twenty-Seventh Defense**

6 **(No Entitlement to Interest, Attorney’s Fees or Costs)**

7 Plaintiff is not entitled to interest, attorney’s fees, or costs in connection with this action.

8 **Additional Defenses**

9 Apple presently has insufficient knowledge or information to determine whether it may have
10 additional, as yet unstated defenses. Apple has not knowingly and intentionally waived any
11 applicable defenses and reserves the right to assert additional defenses as they become known to it
12 through discovery in this matter. Apple reserves the right to amend this Answer to add, delete, or
13 modify defenses based upon legal theories that may be or will be divulged through clarification of
14 Plaintiff’s Complaint, through discovery, or through further legal analysis of Plaintiff’s position in
15 this litigation.

16 **APPLE’S COUNTERCLAIMS IN REPLY**

17 Defendant and Counter-plaintiff Apple Inc. (“Apple”), on personal knowledge as to its
18 own acts, and on information and belief as to all others based on its own and its attorneys’
19 investigation, alleges the following Counterclaims against Plaintiff and Counter-defendant Epic, Inc.
20 (“Epic”).

21 **I. JURISDICTIONAL STATEMENT**

22 **A. Jurisdiction**

23 1. The Court has subject matter jurisdiction over these claims pursuant to 28
24 U.S.C. § 1332 based on the diversity of citizenship between Epic and Apple. The amount in
25 controversy exceeds \$75,000. This court also has jurisdiction over Apple’s counterclaims pursuant to
26 28 U.S.C. § 1367, because each of Apple’s counterclaims arises out of the same factual nucleus as
27 Epic’s claims brought under 15 U.S.C. § 26 and 28 U.S.C. §§ 1331 and 1337.
28

III. BACKGROUND

A. The App Store

6. In 2007, Apple released the iPhone. Although not contemplated at first, Apple quickly realized that consumers would enjoy this breakthrough device even more if it unlocked the power of third-party app developers. So, in 2008, Apple launched the first-of-its kind App Store, and invited third-party app developers to develop and distribute a wide array of apps for the iOS ecosystem.

7. The App Store was designed to provide a safe and trusted platform for Apple's mobile consumers to discover and download apps. The App Store allows users to find and download apps that work seamlessly and securely on their iPhone and iPad devices. Before the App Store, typical distribution options for developers were physical retail stores with high distribution costs and limited reach.

8. The App Store—and the idea behind it—has succeeded beyond anyone's wildest expectations. In a little over a decade, the iOS app economy has become one of the fastest-growing sectors of the economy. The App Store ecosystem now supports more than 2.1 million US jobs across all 50 states — an increase of 15 percent since last year — as part of the 2.7 million jobs Apple supports across the country.

9. One reason for this success is Apple's investment in tools, services, and support to developers. Apple recognized very early on that third-party apps “add value to the iPhone”⁸; and still today, the success of the App Store platform depends on filling the store with fun, useful, high-quality, and innovative apps. To this end, there will be more than 250,000 Application Programming Interfaces (APIs) available to all developers in iOS 14; Apple provides developers with Test Flight, so they can test and refine their apps in a controlled environment; and creates programs like ARKit and Metal, which help developers to harness the power and innovation of Apple's hardware. And Apple's engineers and developer relations team work tirelessly and on a daily basis with developers to ensure that their apps are optimized to run seamlessly on Apple's devices, comply

⁸ *The Mobile Industry's Never Seen Anything Like This': An Interview With Steve Jobs at the App Store's Launch*, Wall St. J. (July 25, 2018), <https://www.wsj.com/articles/the-mobile-industrys-never-seen-anything-like-this-aninterview-with-steve-jobs-at-the-app-stores-launch-1532527201>.

1 with Apple’s security and privacy guidelines, and offer Apple’s customers the experience they expect
2 from the iOS platform.

3 10. The App Store is also a business. Through the App Store, Apple serves as the
4 platform that connects developers with the millions of iOS customers who rely on Apple to provide a
5 safe environment to download apps onto their Apple devices without compromising privacy, security,
6 or functionality. Apple manages all aspects of the transaction on behalf of the developer—from
7 offering an extensive library of tools for app development, to the promotion and marketing of apps
8 within the App Store, to providing customer support for app purchases, to collecting sales proceeds
9 from consumers for distribution to the developers. In order to publish their apps on the App Store,
10 developers pay a modest \$99 annual fee. Apple also charges a commission on the sale of apps and in-
11 app sales of digital goods and services.⁹ For developers who offer only free apps, Apple receives
12 nothing but the nominal annual fee. Indeed, of the almost \$140 billion in sales facilitated by the App
13 Store in 2019, more than \$116 billion went entirely into app developers’ back pockets.¹⁰

14 11. Apple’s in-app purchase mechanism (“IAP”) provides a digital checkout for
15 app downloads and in-app sales and is the means by which Apple collects its commission on eligible
16 transactions. When a customer pays to download an app or makes an in-app purchase via IAP, the
17 sales proceeds are transmitted directly to Apple. Apple deducts its commission and applicable taxes,
18 then remits the remainder to the developer. In this way, Apple takes direct possession of all sales
19 proceeds from consumers and avoids the costs of collection from thousands of developers and the
20 risk (as in this case) of a developer failing to meet its contractual obligations to pay the agreed
21 commissions. On the other hand, if a developer circumvents this digital checkout process and
22 redirects sale proceeds from Apple to itself in violation of the applicable contracts and app
23 development guidelines, Apple gets paid nothing (or, as here, must initiate litigation to obtain its
24 rightful compensation), despite all of its investments in the App Store and the entire ecosystem in
25 which it operates.

26
27 ⁹ Apple, App Store: Principles and Practices, available at <https://www.apple.com/ios/app-store/principles-practices/> (last accessed Aug. 20, 2020).

28 ¹⁰ Borck et al, *supra* n. __, at 3.

1 12. IAP is more than just necessary to implement Apple’s business model. IAP
2 provides immense benefit to consumers and developers by reducing contracting friction and enabling
3 a host of Apple services. Because of IAP, consumers need not provide their payment information to
4 each individual app developer, and developers are saved the hassle of setting up payment
5 infrastructure to handle transactions in 175 different countries across 45 different local currencies.
6 IAP also supports consumers’ ability to restore in-app purchases for a variety of reasons, including
7 setting up a new device and re-installing apps that were deleted, and helps them maintain a
8 comprehensive and easily accessible purchase history of every app and in-app purchase they have
9 acquired. And at the end of the year Apple will introduce the ability for customers to share IAP
10 through Family Sharing. In short, IAP is one of several features that helps make the App Store a
11 convenient, centralized, and trusted marketplace for apps and digital content.

12 **B. Apple’s Contracts with Epic**

13 13. Epic has been developing iOS games for many years. It has used Apple’s
14 proprietary tools, software, and services to bring its portfolio of games to iOS and it has taken
15 advantage of the App Store to market and distribute those games to hundreds of millions of iOS
16 customers.

17 14. Like all other Apple developers who publish apps to the App Store, Epic
18 entered into a number of contracts with Apple. At least two contracts are relevant here. First, Epic is
19 party to a Developer Agreement, which, *inter alia*, grants access to Apple’s online Developer Portal
20 and certain development software and resources, and is required to enter any other development
21 relationship with Apple. Second, Epic is party to a Developer Program License Agreement (“License
22 Agreement”), which, *inter alia*, grants access to additional tools and software and governs
23 distribution through the App Store for certain apps that use Apple’s software.

24 1. Apple’s Services under the Agreements

25 15. Upon its execution of the License Agreement, Epic received a license to access
26 and use the broad array of tools and services developed, maintained, and continuously refined by
27 Apple—including Apple’s Software Development Kits, the iOS platform, the iPadOS platform, and
28 other Apple intellectual property—to facilitate development of iOS-compatible apps.

1 16. Epic also received access to the extensive library of tools, software, and
2 technology developed by Apple to make it as easy as possible for developers to bring their ideas to
3 life on the iOS platform. For example, Apple now makes available over 150,000 APIs, which provide
4 developers with immediate access to technical tools that simplify and accelerate the development
5 process. Apple also employs a dedicated team of engineers to consult on app development and help
6 developers to troubleshoot bugs.

7 17. Upon app completion and approval, Apple also published Epic’s apps,
8 including *Fortnite*, to the App Store, connecting Epic to the millions of iOS consumers seeking to
9 download additional functionality onto their Apple devices. Under the terms of the License
10 Agreement, Apple served as Epic’s “agent for the marketing and delivery of the Licensed
11 Applications to end-users” in the App Store. License Agreement Schedule 2 (“Schedule 2”), ¶ 1.1
12 (Ex. A). Apple’s responsibilities as Epic’s agent included to:

- 13 a. market, solicit and obtain orders on Your behalf for Licensed Applications from
14 end-users . . .
- 15 b. provide hosting services to You subject to the terms of the Agreement, in order to
16 allow for the storage of, and end-user access to, the Licensed Applications . . .
- 17 c. make copies of, format, and otherwise prepare Licensed Applications for
18 acquisition and download by end-users, including adding the Security Solution;
- 19 d. allow end-users to access and re-access copies of the Licensed Applications . . .
- 20 [and]
- 21 e. issue invoices for the purchase price payable by end-users for the Licensed
22 Applications.

23 *Id.*, ¶ 1.2.

24 18. In other words, Apple managed all aspects of Epic’s transactions with
25 consumers—hosting *Fortnite* on the App Store and making it available for download by consumers,
26 promoting and marketing Epic’s apps in the App Store, collecting payment from consumers for in-
27 app purchases and issuing invoices for those purchases, and distributing the proceeds of the sale to
28 Epic. Post-sale, Apple also compiled and made available to Epic valuable “data concerning your

1 Licensed Applications’ financial performance and user engagement” via its App Analytics, Sales and
2 Trends, and Payments and Financial Reports tools. *Id.*, Ex. D, ¶ 2.

3 19. Since it joined the developer program, Epic has taken full advantage of both
4 Apple’s transaction platform and the software and technology resources made available to Epic under
5 the terms of the License Agreement. As just one example, for years, Epic has used Apple’s
6 groundbreaking graphics technology, Metal, which Epic has explained “revolutionized graphic
7 design” and “enable[d] developers like us to create richer 3D worlds.” And *Fortnite*, which launched
8 on the App Store in iOS in April 2018, has become a billion-dollar franchise and global phenomenon.

9 2. Epic’s Obligations under the Agreements

10 20. In exchange for the tremendous value brought by Apple to all of its developers,
11 Epic agreed in the License Agreement that: (a) it would “not provide, unlock or enable additional
12 features or functionality through distribution mechanisms other than the App Store,” License
13 Agreement ¶ 3.3.3 (Dkt. 1, Ex. A), and (b) it would pay a “commission equal to thirty percent (30%)
14 of all prices payable by each end-user” through the App Store, Schedule 2, ¶ 3.4(a).

15 21. These provisions work together to serve a dual purpose. First, they ensure that
16 Apple is paid for its services. Apple does not earn any money through the App Store on its substantial
17 investment in the tools, software and technology that it has developed to facilitate app development
18 on the App Store until a consumer makes a purchase. More than 80% of the apps in the App Store
19 pay no commission to Apple. If an app is available for free, then Apple makes nothing. Likewise, if
20 an app—like *Fortnite*—is free to download but allows for in-app purchases, Apple is paid nothing
21 through the App Store for the services it provides until a consumer makes an in-game purchase
22 through IAP. By prohibiting Epic from effectuating a transaction by means other than IAP, and
23 providing that Apple would be entitled to a commission of 30% on all paid transactions made through
24 IAP, the License Agreement guarantees Apple both the right and the means to collect the agreed
25 commission.

26 22. Second, the prohibition against unlocking features outside of the iOS
27 ecosystem is one of many provisions of the License Agreement designed to protect Apple’s
28 customers. In order to submit apps to the App Store and use the tools Apple provides, all

1 developers—from individuals innovating in their garages to multi-billion dollar game companies like
2 Epic—must agree with Apple to a set of contractual rules and guidelines (including the License
3 Agreement and the contractually accepted Guidelines). A dedicated App Store team at Apple reviews
4 every app for conformance with these contractual standards to ensure that the apps on the App Store
5 are safe, secure and reliable, that they work as intended, that they adhere to Apple’s rules on user
6 privacy, that they protect consumers from malware and threats, that they use appropriate business
7 models, and that they do not offer content such as pornography or real-money gambling.¹¹

8 23. Among other measures intended to preserve the system integrity of the iOS
9 environment and user experience in that environment, the License Agreement specifically prohibits
10 developers from (a) using Apple’s software to “directly or indirectly, commit any act intended to
11 interfere with . . . Apple’s business practices including, but not limited to, taking actions that may
12 hinder the performance or intended use of the App Store,” License Agreement, ¶ 3.2(f); (b)
13 downloading code that “change[s] the primary purpose of the Application by providing features or
14 functionality that are inconsistent with the intended and advertised purpose of the Application as
15 submitted to the App Store,” *id.* ¶ 3.3.2, or (c) “creat[ing] a store or storefront of other code or
16 applications” that could introduce security threats, *id.* ¶ 3.3.2.

17 24. The License Agreement also requires that developers, including Epic, submit
18 all apps and app updates to Apple’s human-assisted app review process to ensure compliance with the
19 Guidelines and fitness for distribution in the App Store. The License Agreement specifically states
20 that, “[i]f You make any changes to an Application (including to any functionality made available
21 through use of the In-App Purchase API) after submission to Apple, you must resubmit the
22 Application to Apple. Similarly, all bug fixes, updates, upgrades, modifications, enhancements,
23 supplements to, revisions, new releases and new versions of Your Application must be submitted to
24 Apple for review in order for them to be considered for distribution via the App Store” *Id.* ¶ 6.1.
25 Epic also specifically agreed in the License Agreement that it would “not attempt to hide,
26 misrepresent or obscure any features, content, services or functionality in [its] submitted Applications
27

28

¹¹ Apple, *App Store: Principles and Practices*, <https://www.apple.com/ios/app-store/principles-practices/>.

1 from Apple’s review or otherwise hinder Apple from being able to fully review such Applications.”

2 *Id.*

3 25. Likewise, the Guidelines prohibit apps that “include any hidden or
4 undocumented features” (Guidelines, ¶¶ 2.3.1, 2.3.12) (Dkt. 1, Ex. B) and/or “download, install, or
5 execute code which introduces or changes features or functionality of the app” (*id.* ¶¶ 2.5.2, 3.1.1,
6 3.2.2), and requires that developers do not “attempt to cheat the system” or “trick the review process”
7 (*id.* Introduction).

8 26. The App Store is the world’s most trusted marketplace for apps precisely
9 because of the standards and safeguards that apply equally to all developers, and the only way Apple
10 can ensure that it remains that way is through enforcement of the obligations set forth in the License
11 Agreement and the Guidelines. In the event that any developer violates the Guidelines and/or License
12 Agreement by engaging in “any misleading, fraudulent, improper, unlawful or dishonest act,” Apple
13 reserves the express right under the License Agreement to immediately terminate “all rights and
14 licenses granted by Apple hereunder and any services provided hereunder.” License Agreement,
15 ¶ 11.2. The Developer Agreement similarly provides that “Apple may terminate or suspend you as a
16 registered Apple Developer at any time in Apple’s sole discretion,” and “[u]pon any termination . . .
17 all rights and licenses granted to you by Apple will cease.” Developer Agreement, ¶ 10 (Ex. B).

18 **C. Epic’s Demand for an Exemption to Its Contractual Obligations**

19 27. Epic admits that, in order to gain access to Apple’s customers, it agreed to and
20 was bound by the contractual provisions in the License Agreement and the Guidelines. Dkt. 1, ¶ 210
21 (describing the Guidelines and the License Agreement as “contractual”); ¶ 32 (“Apple is party to an
22 Apple Developer Program License Agreement . . . with Epic.”).

23 28. On June 30, 2020, Epic renewed the License Agreement with Apple for
24 another one-year term—reaffirming Epic’s obligations under that agreement and accepting the
25 services and licenses provided by Apple under that agreement. That same day, just hours later, Epic’s
26 CEO emailed Apple, insisting that Apple: (a) allow Epic to introduce an external payment
27 mechanism to its apps outside of IAP that would allow Epic to circumvent Apple commissions on in-
28 app purchases and otherwise violate multiple provisions of the parties’ agreements; and (b) publish in

1 the App Store an Epic Games Store app that would enable Epic to introduce apps without going
2 through Apple’s app review process. Epic’s CEO expressly admitted that “Apple’s contracts and
3 standards documents . . . prohibit[ed] Epic” from the exact conduct it proposed to undertake. In spite
4 of his public tweet only weeks earlier that Epic “w[ould] not accept special revenue sharing or
5 payment terms just for ourselves,” Epic’s CEO did just that: he requested from Apple a “side
6 letter”—a special arrangement for Epic and no other developer—that would excuse Epic from the
7 contractual obligations and standards applicable to all developers who offer products in the App
8 Store.

9 29. Apple rightfully and unsurprisingly rejected this unreasonable demand in a
10 letter sent July 10, 2020. Regarding Epic’s request to introduce an external payment mechanism,
11 Apple reminded Epic of the terms of the parties’ contract: “IAP supports the seamless consumer
12 experience and is the means by which Apple gets paid for the valuable services and consumer base
13 that it provides. . . . To take advantage of Apple’s App Store, the bargain is simple: if you charge for
14 software purchased through the App Store, Apple takes a percentage of the charge as commission
15 . . . Without IAP, however, Apple would have no practical or reliable way of collecting its
16 commission on in-app digital sales.” Jul. 10, 2010 Ltr. from Douglas Vetter (Ex. C). Apple’s letter
17 explained that these commissions are the primary way in which Apple is paid for the “billions of
18 dollars [it has invested] to develop technologies and features that developers like Epic can use to
19 make great apps as well as a safe and secure place for users to download these apps.” *Id.* The letter
20 also reaffirmed what should have been obvious: “The App Store is not a public utility,” and Epic has
21 no right to reap “all the benefits Apple and the App Store provide without having to pay a penny.” *Id.*

22 30. Apple’s response also pointed out the hypocrisy of Epic’s request, observing:
23 “Surely Epic must understand that Apple is entitled to a return on its investment and the use of its
24 property. After all, Epic takes great pains to protect its own investments and intellectual property.”
25 Epic “rightly demands royalties from games built using its development software,” and “it tightly
26 controls how its games, designs, and content may be used.” *Id.* Apple’s response letter also quoted
27 Epic’s own Fan Content Policy, stating: “we spend a lot of time, thought, and money creating our
28

1 intellectual property and need to protect it.”¹² *Id.* This intellectual property constitutes nearly the
 2 entire value of Epic’s own business. Yet Epic’s request sought to take full advantage of Apple’s
 3 extensive library of intellectual property for the App Store without paying Apple anything.

4 31. Epic’s request to publish its own Epic Games Store within the App Store was
 5 similarly untenable—both because Epic apparently wanted to operate “a rent-free store within the
 6 trusted App Store that Apple has built” and because doing so “would undermine Apple’s carefully
 7 constructed privacy and security safeguards, and seriously degrade the consumer experience and put
 8 Apple’s reputation and business at risk.” *Id.* Despite Epic’s assurances that it would provide a secure
 9 environment, Apple could not be “confident that Epic or any developer would uphold the same
 10 rigorous standards of privacy, security, and content as Apple.” *Id.* Even more importantly, “since
 11 Apple treats all developers according to the same terms,” granting Epic’s request would mean that
 12 Apple would be “outsourc[ing] the safety and security of Apple’s users to hundreds of thousands of
 13 iOS developers” with differing standards and capabilities. *Id.* And “when it comes to striking the
 14 balance” between developer desires and creating a “safe, secure and reliable experience for users,”
 15 Apple’s letter made clear that it always “errs on the side of the consumer.” *Id.*

16 32. Apple’s concerns about Epic’s request were hardly theoretical. The experience
 17 of *Fortnite* outside of the iOS environment illustrates the importance of Apple’s approach to app
 18 review and security. In 2018, *Fortnite* announced that Android versions of the game would be
 19 available on the web, and immediately sites appeared that not only advertised Android *Fortnite* but
 20 also distributed malware in the game.¹³ As one commentator noted, “Unsurprisingly, malware
 21 versions of Fortnite targeted unsuspecting gamers in the months following the Android launch, which
 22 is what malicious individuals would do with any popular app that’s available from outside the app
 23 store.”¹⁴ By 2019, Epic acknowledged security vulnerabilities in non-iOS versions of *Fortnite* that
 24

25 _____
 26 ¹² Fan Content Policy, <https://www.epicgames.com/site/en-US/fan-art-policy>.

27 ¹³ Brian Barrett, *Imposter Fortnite Android Apps Are Already Spreading Malware*, Wired (Aug. 16, 2018),
 28 <https://www.wired.com/story/imposter-fortnite-android-apps-already-spreading-malware/>.

¹⁴ Chris Smith, *Epic Invented a Crisis So Fortnite Fans Would Support Its Lawsuits Against Apple and Google* (Aug. 14, 2020), <https://bgr.com/2020/08/14/fortnite-ban-iphone-android-apple-google-right-vs-epic/>.

(Cont’d on next page)

1 exposed hundreds of millions of players to being hacked.¹⁵ Although Apple does not leave it to any
2 developer to keep the iOS platform safe and secure, Epic in particular had demonstrated that it could
3 not be entrusted with this type of responsibility.

4 33. In spite of this prior experience, Epic’s CEO emailed Apple on July 17, 2020,
5 again demanding an App Store format in which “developers can reach consumers and do business
6 directly without intermediation”—in other words, in the precise manner that already exposed millions
7 of *Fortnite* players on Android to malware and security threats. Mr. Sweeney further stated that, until
8 Apple adopted his suggestion of fundamentally abandoning the security measures it employed to
9 keep the App Store safe for consumers, “Epic is in a state of substantial disagreement with Apple’s
10 policy and practices, and we will continue to pursue this.” Although Apple did not know it at the
11 time, Epic apparently intended to “pursue” its “disagreement” with Apple by simply disregarding its
12 obligations under the License Agreement and Guidelines.

13 **D. Epic’s Breach of Its Contractual Agreements**

14 34. On August 3, 2020, despite knowing that Apple had no intention to change the
15 terms of the parties’ agreements, Epic submitted Version 13.40 of *Fortnite* for review by Apple and
16 distribution through the App Store. Unlike prior versions of the game, Epic had hidden a new
17 payment interface via what Epic calls a “hotfix”—coding that queries and imports data directly from
18 Epic’s servers to the app—into this new version. As of the date Version 13.40 was submitted to
19 Apple for review and approval, Epic’s servers—and therefore the in-app payment screen in the
20 *Fortnite* app—reflected that IAP was the only available payment option for in-app purchases, as
21 required by the parties’ contractual agreements. And so Epic’s Trojan Horse was approved and
22 published to the App Store.

23 35. On August 13, 2020, in the dark hours of the night, Epic launched its
24 underhanded scheme to breach its agreements and free ride on Apple’s investments. Around 2 a.m.
25 on August 13, Mr. Sweeney wrote to Apple that Epic was planning to willfully breach its agreements
26 with Apple, declaring that, “Epic will no longer adhere to Apple’s payment processing restrictions.”
27

28 ¹⁵ Jason Silverstein, *Fortnite Security Flaw Exposed Millions of Users to Being Hacked* (Jan. 16, 2019),
<https://www.cbsnews.com/news/fortnite-security-flaw-exposed-millions-of-users-to-being-hacked/>.

1 36. Hours later, Epic changed the data on its own servers such that, when queried
2 by the *Fortnite* app, Epic’s server would direct the payment interface in the app to reflect two
3 different payment options—IAP, and Epic’s new direct payment system, which was not approved or
4 reviewed by Apple and allowed Epic to bypass payment to Apple and divert payments from
5 consumers to itself. *Id.* Epic thus was able to deliberately conceal its intentions from Apple and
6 implement its unauthorized and non-compliant external payment mechanism without Apple’s
7 permission—which it already knew from previous communications would not be granted.

8 37. Epic’s breach was flagrant and larcenous. Epic willfully “direct[ed] customers
9 to purchasing mechanisms other than in-app purchase” and created a new storefront in contravention
10 of the Guidelines and over Apple’s explicit objection. Guidelines, ¶¶ 3.1.1. Epic breached the
11 License Agreement by making changes without resubmission to Apple (License Agreement, ¶ 6.1),
12 installing a store or storefront (*Id.*, ¶ 3.3.2), enabling purchases without using the In-App Purchase
13 API (*Id.*, ¶ 3.3.25), and providing additional functionality through distribution mechanisms outside
14 the App Store (*Id.*, ¶ 3.3.3). Its breach was a calculated effort—accomplished over multiple steps
15 executed over the course of at least 10 days—designed to deprive Apple of its agreed-to commission
16 (Schedule 2, ¶ 3.4(a)) and to interfere with Apple’s business practices in maintaining the App Store
17 as a curated environment for its customers (License Agreement, ¶ 3.2(f)). *Id.*

18 **E. Apple’s Response to Epic’s Breach**

19 38. On August 13, 2020, Apple notified Epic that its app was “in violation of the
20 App Store Review Guidelines” and identified the specific guidelines that were violated, including the
21 use of external purchase mechanisms, “egregious” hidden features designed to evade Apple’s review,
22 and other changes in features and functionalities. The email informed Epic that Apple had suspended
23 marketing and distribution of *Fortnite* on the App Store “until we receive an update that is compliant
24 with the App Store Review Guidelines.” *Id.* Apple invited Epic to submit an updated version of
25 *Fortnite* for review “which addresses all these issues.”

26 39. Notwithstanding *Fortnite*’s removal from the App Store, the tens of millions of
27 iOS *Fortnite* players who previously downloaded the app continued to have access to the app and to
28 any available in-app purchase products on their devices. In fact, the customers who downloaded the

1 non-compliant version of *Fortnite* before its removal from the App Store are still today able to use
2 Epic’s concealed and unapproved external payment mechanism to make in-game purchases—
3 subjecting these customers to potential security risks and allowing Epic to evade its contractually
4 agreed commission to Apple for those purchases.

5 40. On August 14, 2020, Apple gave Epic notice that Epic also was in violation of
6 the License Agreement, specifying each breach. The breaches included the introduction of new
7 payment functionality with submission for App Review, downloading code to an app to add an
8 unauthorized payment system, and allowing users to purchase items without using IAP. Apple gave
9 Epic 14 calendar days to cure its breaches, after which Epic’s registration in the developer program
10 would be permanently terminated, along with the Developer Agreement by its terms.

11 41. Epic did not remedy its breach, and Apple terminated Epic’s Developer
12 Program account and terminated the License Agreement and Developer Agreement by their
13 respective terms on August 28. On the same day that it was terminated as a registered developer and
14 its Developer Agreement and License Agreement were terminated by their respective terms, Epic
15 removed IAP altogether from *Fortnite*’s payment interface—leaving Epic’s unauthorized external
16 payment mechanism as the *sole* means of making in-app purchases through the app, and diverting to
17 itself even more of the commissions to which Apple is contractually entitled. On information and
18 belief, Epic has consummated millions of dollars of transactions and has paid Apple nothing.

19 **F. Epic’s Orchestrated “Challenge” to the App Store**

20 42. Epic has not contested that it breached the License Agreement and the
21 Guidelines, or that the Apple had a contractual right to terminate the Developer Agreement, the
22 License Agreement, and Epic’s status as a registered developer. Instead, Epic’s apparent plan was to
23 violate the agreements intentionally as part of an orchestrated legal and public relations strategy to
24 avoid the commissions to which Apple is contractually entitled.

25 43. The moment *Fortnite* was removed from the App Store, Epic launched an
26 extensive smear campaign and litigation plan against Apple. Within hours of *Fortnite*’s removal, Epic
27 filed its 56-page complaint (Dkt. 1) with this Court, and released an animated video of a dystopian
28 scene inspired by George Orwell’s *1984*, featuring a rotten apple as its villain. Mere days later, Epic

1 filed nearly 200 pages of a pre-packaged “emergency” motion requesting that this Court reinstate
2 *Fortnite* to the App Store on terms that contravene the parties’ express contracts—a request that this
3 Court denied. On August 23, Epic even hosted a sales promotion, a “#FreeFortniteCup,” inviting
4 players for one last “Battle Royale” across “*all platforms*” this Sunday, with prizes targeting Apple.¹⁶

5 44. Some Epic customers, based on materials attached to Epic’s TRO motion, have
6 seen through Epic’s subterfuge to understand that Epic is using its own customers as pawns in its
7 orchestrated campaign against Apple. As one user asked Epic’s customer support team after the
8 takedown: “Did you guys just screw over all your mobile players?” Dkt. 17-9 at 2. One user predicted
9 Epic would “remove the illegal (according to Apple) update and be back to normal in no time.” *Id.* at
10 13.

11 45. On the other hand, Epic’s smear campaign has been successful in damaging
12 Apple’s reputation and goodwill with other customers, who blame Apple for the removal of the non-
13 compliant *Fortnite* from the App Store. As one user stated: “I paid moneyy [sic] and I got the battle
14 pass I need to finish it why the hell did you remove it . . .” Dkt. 17-4 at 10.

15 46. Epic’s flagrant disregard for its contractual commitments and other misconduct
16 has caused significant harm to Apple. Upon information and belief, Epic has reaped millions of
17 dollars in in-app purchases through its unauthorized external purchase mechanism,¹⁷ thereby
18 diverting to itself commissions that Apple was entitled to possess under the License Agreement. This
19 is theft, period. In addition to the loss of Apple’s contractual commissions, Epic’s actions have
20 caused Apple to suffer reputational harm and loss of goodwill with consumers who rely on Apple to
21 offer the apps they want to download, like *Fortnite*, with all of the safety, security, and privacy
22 protections that they expect from Apple. Left unchecked, Epic’s conduct threatens the very existence
23 of the iOS ecosystem and its tremendous value to consumers. Apple is entitled to relief for Epic’s
24 breaches of its contractual obligations and other unfair and tortious conduct.

25
26 _____
27 ¹⁶ Epic Games, *Join the Battle and Play in the #FreeFortniteCup on August 23*,
<https://www.epicgames.com/fortnite/en-US/news/freefortnite-cup-on-august-23-2020> (emphasis added).

28 ¹⁷ Investopedia, *How Does Fortnite Make Money?*, <https://www.investopedia.com/tech/how-does-fortnite-make-money/> (observing that *Fortnite* reportedly made \$2 million a day from iOS users when it was released in 2018).

1 of the condition. Beginning on August 13, 2020, Epic utilized the hotfix it embedded into the *Fortnite*
2 app to create a new external payment mechanism within the app, intentionally evading the use of
3 Apple's IAP system.

4 54. Epic therefore breached the License Agreement, Schedule 2, ¶ 3.4(a) by failing
5 to pay Apple agreed-to commissions on its in-app sales through *Fortnite*.

6 55. As a direct result of Epic's breach of contract, Apple has suffered injury,
7 including at least the loss of its contractually agreed commission.

8 56. Additionally, Epic's breaches of its contractual obligations are ongoing and
9 have, in fact, become more egregious over time. Consumers who downloaded the version of *Fortnite*
10 containing Epic's hotfix are currently only able to make in-app purchases using Epic's unauthorized
11 external payment mechanism and do not even have the option of using Apple's trusted IAP system.
12 Epic's breaches of its contractual obligations threaten Apple's reputation and goodwill with any such
13 customers, who are accustomed to the ease and security of using IAP for apps downloaded through
14 the App Store and who may now be exposed to additional security risks associated with Epic's hotfix
15 payment system. Pecuniary compensation would not afford Apple adequate relief for these harms. As
16 such, Apple requests that the Court permanently enjoin Epic, and all persons and entities in active
17 concert or participation with Epic, from facilitating, assisting, or participating in: (a) the continued
18 operation of Epic's unauthorized external payment mechanism in its apps, including *Fortnite*; (b) the
19 introduction of any further unauthorized external payment mechanisms into any iOS apps, including
20 *Fortnite*; and, (c) the removal of IAP as an available payment mechanism for in-app purchases
21 through any iOS apps, including *Fortnite*.

22 **COUNT II**

23 **Breach of Implied Covenant of Good Faith and Fair Dealing**

24 57. Apple realleges and incorporates by reference each of the allegations set forth
25 above.

26 58. Epic entered into valid contracts, including the License Agreement, with
27 Apple.

28

1 66. Apple realleges and incorporates by reference each of the allegations set forth
2 above.

3 67. Apple has an economic relationship with iOS users who make purchases
4 through the App Store, in particular those who have downloaded the *Fortnite* app onto their iOS
5 devices through the App Store. Apple has a reasonable expectation that it will profit from this
6 relationship.

7 68. Epic is aware of Apple's relationship with consumers, in particular those who
8 have downloaded the *Fortnite* app. The License Agreement specifically designates Apple as Epic's
9 agent for the marketing and delivery of *Fortnite* and all associated in-app purchases to these end-
10 users, who are customers of Apple.

11 69. Epic engaged in intentional and wrongful conduct designed to interfere with or
12 disrupt the relationship between Apple and its consumers, including by refusing to pay Apple's
13 contractually agreed commission for serving as Epic's agent in the marketing and delivery of *Fortnite*
14 and all associated in-app purchases to consumers.

15 70. Epic's conduct actually interfered with Apple's relationships with its
16 consumers, in particular those who made purchases through Epic's unauthorized external purchase
17 mechanism, by depriving Apple of the economic benefit that it reasonably expected to receive from
18 those relationships.

19 71. As a result of Epic's intentional interference, Apple has been injured in its
20 business and has suffered damages, loss of goodwill and product image, and other harm.

21 72. Additionally, Epic undertook its tortious conduct with malice and/or fraud.
22 Epic carefully concealed from Apple its plan to introduce an unauthorized and unapproved external
23 payment mechanism to *Fortnite* via hotfix, and it executed on this plan with a willful and knowing
24 disregard of Apple's rights. Mr. Sweeney's August 13, 2020 email to Apple confirms that Epic was
25 well aware of Apple's reasonable expectation that it would profit from its relationship with
26 consumers who made purchases through *Fortnite*, and Epic made the willful decision to interfere
27 with those relationships. Apple is therefore entitled to punitive damages to punish Epic for its
28 malicious and/or fraudulent misconduct.

1 determine the total amount Epic received via its external purchase mechanism that is subject to
2 Apple's commission, Apple will amend its pleadings.

3 78. As a result of Epic's conversion, Apple has been injured, at least in the amount
4 of the commission that was converted and reasonable compensation for the time and money spent by
5 Apple in attempting to recover the property.

6 79. Additionally, Epic undertook its tortious conduct with malice and/or fraud.
7 Epic carefully concealed from Apple its plan to introduce an unauthorized and unapproved external
8 payment mechanism to *Fortnite* via hotfix, and it executed on this plan with a willful and knowing
9 disregard of Apple's right to the possession of its contractually agreed commissions. Mr. Sweeney's
10 August 13, 2020 email to Apple confirms that Epic was well aware of Apple's right to possession of
11 the commission and that Epic made the willful decision to convert Apple's commissions by diverting
12 consumer payments through its unauthorized payment mechanism. Apple is therefore entitled to
13 punitive damages to punish Epic for its malicious and/or fraudulent misconduct.

14 **COUNT VI**

15 **Declaratory Judgment**

16 80. Apple realleges and incorporates by reference each of the allegations set forth
17 above.

18 81. There is an actual, substantial, continuing, and justiciable controversy between
19 Apple and Epic regarding their respective rights under both the Developer Agreement and the
20 License Agreement.

21 82. Under the express terms of the Developer Agreement, Apple has the right to
22 terminate Epic "as a registered Apple Developer at any time in Apple's sole discretion." Developer
23 Agreement, ¶ 10. And, "[u]pon any termination . . . all rights and licenses granted to you by Apple
24 will cease." *Id.* Likewise, Apple has the express right under the License Agreement to immediately
25 terminate the agreement "and all rights and licenses granted by Apple hereunder and any services
26 provided hereunder" if Epic engages "in any misleading, fraudulent, improper, unlawful or dishonest
27 act relating to this Agreement, including, but not limited to, misrepresenting the nature of [any]
28 submitted Application (e.g. hiding or trying to hide functionality from Apple's review . . .)." License

1 Agreement, ¶ 11.2. The License Agreement also provides that “[e]ither party may terminate this
2 Agreement for its convenience, for any reason or no reason, effective 30 days after providing the
3 other party with written notice of its intent to terminate.” *Id.*

4 83. In light of Epic’s express statement on August 13, 2020 that it would “no
5 longer adhere” to its obligations under the License Agreement, and Epic’s use of a “hotfix” to release
6 an unauthorized external payment mechanism to the Fortnite app in breach of the License Agreement,
7 on August 14, 2020, Apple sent Epic a letter notifying Epic of Apple’s intent to terminate Epic’s
8 License Agreement, Developer Agreement, and Program account within 14 days if Epic did not cure
9 its breaches.

10 84. On August 17, 2020, Epic filed a Motion for Temporary Restraining Order
11 before this Court requesting, among other things, that the Court restrain Apple from exercising its
12 contractual rights, including by “suspending or terminating any Epic entity from Apple’s Developer
13 Program.” The Court denied Epic’s request as to Epic Games, Inc., but restrained Apple from
14 “suspending or terminating any affiliate of Epic Games, such as Epic International, from Apple’s
15 Developer Program.”

16 85. On August 28, 2020, in accordance with the Court’s order, Apple exercised its
17 right to terminate Epic’s status as a registered Apple developer and terminated the Developer
18 Agreement and the License Agreement by their respective terms, including for Epic’s breaches of the
19 latter agreement. Apple continues to be restrained from exercising its contractual rights with respect
20 to Epic’s wholly owned subsidiaries, affiliates, and other entities under Epic’s control, including Epic
21 International.

22 86. On September 4, 2020, Epic filed a Motion for Preliminary Injunction,
23 characterizing Apple’s termination of Epic’s Developer Program account for cause as “unlawful” and
24 “retaliatory,” and renewing its request that the Court enjoin Apple from “restricting, suspending, or
25 terminating” Epic’s Apple Developer Program account based on its breaches of the License
26 Agreement described above. Epic seeks this relief on behalf of itself and “its affiliates,” including
27 Epic International—a wholly owned subsidiary of Epic under its sole control that continues to take
28

1 advantage of Apple’s intellectual property and services under the Developer Agreement and License
2 Agreement notwithstanding Epic’s breaches.

3 87. Apple therefore has standing to seek declaratory judgment of its rights under
4 the Developer Agreement and License Agreement with Epic and its affiliates.

5 88. Apple seeks and is entitled to a declaratory judgment that: (a) the Developer
6 Agreement and License Agreement are valid, lawful, and enforceable contracts; (b) Apple’s
7 termination of the Developer Agreement with Epic was valid, lawful, and enforceable; (c) Apple’s
8 termination of the License Agreement with Epic for cause was valid, lawful, and enforceable; (d)
9 Apple has the contractual right to terminate its Developer Agreement with any or all of Epic’s wholly
10 owned subsidiaries, affiliates, and/or other entities under Epic’s control, including Epic International
11 (collectively, “Epic Affiliates”), at any time and at Apple’s sole discretion; and (e) Apple has the
12 contractual right to terminate the License Agreement with any or all of the Epic Affiliates for any
13 reason or no reason upon 30 days written notice, or effective immediately for any “misleading
14 fraudulent, improper, unlawful or dishonest act relating to” the License Agreement.

15 **COUNT VII**

16 **Indemnification**

17 89. Apple realleges and incorporates by reference each of the allegations set forth
18 above.

19 90. The License Agreement between Apple and Epic provides, at paragraph 10:
20 “To the extent permitted by applicable law, You agree to indemnify and hold harmless . . . from any
21 and all claims, losses, liabilities, damages, taxes, expenses and costs, including without limitation,
22 attorneys’ fees and court costs . . . incurred by [Apple] and arising from or related to any of the
23 following . . . : (i) Your breach of any certification, covenant, obligation, representation or warranty
24 in this Agreement, including Schedule 2; . . . or (vi) Your use (including Your Authorized
25 Developers’ use) of the Apple Software or services, Your Licensed Application Information, Pass
26 Information, metadata, Your Authorized Test Units, Your Registered Devices, Your Covered
27 Products, or Your development and distribution of any of the foregoing.”

28

1 J. Award such other and further relief as the Court deems just and proper.
2

3 Dated: September 8, 2020

Respectfully submitted,

4 GIBSON, DUNN & CRUTCHER LLP
5

6 By /s/ Theodore J. Boutrous Jr.

Theodore J. Boutrous Jr.

7 Richard J. Doren

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11 Attorneys for Defendant and Counter-
12 Claimant APPLE INC.
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By clicking to agree to this Schedule 2, which is hereby offered to You by Apple, You agree with Apple to amend that certain Apple Developer Program License Agreement currently in effect between You and Apple (the "Agreement") to add this Schedule 2 thereto (supplanting any existing Schedule 2). Except as otherwise provided herein, all capitalized terms shall have the meanings set forth in the Agreement.

Schedule 2

1. Appointment of Agent and Commissionaire

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 countries listed on Exhibit A, Section 1 to this Schedule 2, subject to change; and (ii) Your commissionaire for the marketing and delivery of the Licensed Applications to End-Users located in those countries listed on Exhibit A, Section 2 to this Schedule 2, subject to change, during the Delivery Period. The most current list of App Store countries among which You may select shall be set forth in the App Store Connect tool 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, for You and on Your behalf. For purposes of this Schedule 2, the following definitions apply:

(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. For institutional customers, "End-User" shall mean the individual authorized to use the Licensed Application by the institutional purchaser, 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 2, the term "Licensed Application" shall include any content, functionality, extensions, stickers, or services offered in the software application.

1.2 In furtherance of Apple's appointment under Section 1.1 of this Schedule 2, 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 countries 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 Volume Content purchases, arrange for End-Users to access and re-access copies of the Licensed Applications, so that End-Users may acquire and electronically download those Licensed Applications developed by You, Licensed Application Information, and associated metadata through one or more App Stores, and You hereby authorize distribution of Your Licensed Applications under this Schedule 2 for use by multiple End-Users when the Licensed Application is purchased by an individual account associated with other family members via Family Sharing, including at Your election as indicated in the App Store Connect tool, purchases made prior to the execution of this Schedule 2, as well as a single institutional customer via the Volume Content Service for use by its End-Users and/or for installation on devices with no associated iTunes Account that are owned or controlled by that institutional customer in accordance with the Volume Content Terms, conditions, and program requirements;

(e) issue invoices for the purchase price payable by End-Users for the Licensed Applications;

(f) use (i) screen shots, 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 2, 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;

(g) 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 2. You agree that no royalty or other compensation is payable for the rights described above in Section 1.2 of this Schedule 2; and

(h) 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 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 use 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 2 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 2. The parties acknowledge and agree that Your appointment of Apple as Your agent or commissionaire, as the case may be, under this Schedule 2 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 2, 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 and commissionaire 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 2 shall survive termination or expiration of the Agreement unless You indicate otherwise pursuant to sections 5.1 and 7.2 of this Schedule 2.

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 2. Metadata You deliver to Apple under this Schedule 2 will include: (i) the title and version number of each of the Licensed Applications; (ii) the countries You designate, in which You wish Apple to allow End-Users to download those Licensed Applications; (iii) any copyright or other intellectual property rights notices; (iv) Your privacy policy; (v) Your End-User license agreement ("EULA"), if any, in accordance with Section 4.2 of this Schedule 2; and (vi) 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 of 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 2 are authorized for export from the United States to each of the countries listed on Exhibit A hereto, 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 and the International Traffic In Arms Regulations 22 C.F.R. Parts 120-130. 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, a PDF copy of Your Encryption Registration Number (ERN), or export classification ruling (CCATS) issued by the United States Commerce Department, Bureau of Industry and Security and PDF copies of appropriate authorizations from other countries 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 2. 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 2.

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. 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 2 may enable authorized third parties to host, the Licensed Applications, and is allowing the download of those Licensed Applications by End-Users, on Your behalf. However, You are responsible for hosting and delivering content or services sold 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 to the Agreement. All of the Licensed Applications shall be marketed by Apple, on Your behalf, to End-Users at prices identified in a price tier and designated by You, in Your sole discretion, from the pricing schedule attached to this Schedule 2 as Exhibit C, which may be updated from time to time by Apple on App Store Connect. In addition, You may, at Your election via App Store Connect, instruct Apple to market the Licensed Applications at a discount of 50% of Your established price tier for authorized institutional customers. You may change the price tier for any Licensed Application at any time, at Your discretion, in accordance with the pricing schedule set forth on that Exhibit C as updated from time to time, using tools provided on the App Store Connect tool. As Your agent and/or commissionaire, Apple shall be solely responsible for the collection of all prices payable by End-Users for Licensed Applications acquired by those End-Users under this Schedule 2.

3.2 In the event that the sale or delivery of any of the Licensed Applications to any End-User is subject to any sales, use, goods and services, value added, or other similar tax or levy, under applicable law, responsibility for the collection and remittance of that tax for sales of the Licensed Applications to End-Users will be determined in accordance with Exhibit B to this Schedule 2 as updated from time to time via the App Store Connect site. For the sake of clarity, Apple shall not be responsible for the collection and remittance of telecommunications and similar taxes. You shall indemnify and hold Apple harmless against any and all claims by any tax authority for any underpayment of any sales, use, goods and services, value added or other tax or levy, and any penalties and/or interest thereon.

3.3 In furtherance of the parties' respective tax compliance obligations, Apple requires that You comply with the requirements listed on Exhibit D to this Schedule 2 or on App Store Connect depending upon, among other things, (i) Your country of residence and (ii) the countries designated by You in which You wish Apple to allow access to the Licensed Applications. In the event that Apple collects any amounts corresponding to the purchase price for any of Your Licensed Applications before You have provided Apple with any tax documentation required under Exhibit D to this Schedule 2, Apple will not remit those amounts to You, but will hold those amounts in trust for You, until such time as You have provided Apple with the required tax documentation. Upon receipt of all required tax documents from You, Apple will remit to You any amounts held in trust by Apple for You, without interest, under this Section 3.3, in accordance with the provisions of this Schedule 2.

3.4 Apple shall be entitled to the following commissions in consideration for its services as Your agent and/or commissionaire under this Schedule 2:

(a) For sales of Licensed Applications to End-Users located in those countries listed in Exhibit B, Section 1 of this Schedule 2 as updated from time to time via the App Store Connect site, Apple shall be entitled to a

commission equal to thirty percent (30%) of all prices payable by each End-User. Solely for auto-renewing subscription purchases made by customers who have accrued greater than one year of paid subscription service within a Subscription Group (as defined below) and notwithstanding any Retention Grace Periods, Apple shall be entitled to a commission equal to fifteen percent (15%) of all prices payable by each End-User for each subsequent renewal. Retention Grace Period refers to the time period between the end of a customer's subscription (e.g. due to cancelation or non-payment) and the beginning of a new subscription within the same Subscription Group, provided that such time period is no greater than 60 days, subject to change. For purposes of determining the commissions to which Apple is entitled under this Section 3.4(a), the prices payable by End-Users shall be net of any and all taxes collected, as provided in Section 3.2 of this Schedule 2.

(b) For sales of Licensed Applications to End-Users located in those countries listed in Exhibit B, Section 2 of this Schedule 2 as updated from time to time via the App Store Connect site, Apple shall be entitled to a commission equal to thirty percent (30%) of all prices payable by each End-User. Solely for auto-renewing subscription purchases made by customers who have accrued greater than one year of paid subscription service within a Subscription Group (as defined below) and notwithstanding any Retention Grace Periods, Apple shall be entitled to a commission equal to fifteen percent (15%) of all prices payable by each End-User for each subsequent renewal.

Except as otherwise provided in Section 3.2 of this Schedule 2, Apple shall be entitled to the commissions specified in Sections 3.4(a) and 3.4(b) hereof without reduction for any taxes or other government levies, including any and all taxes or other, similar obligations of You, Apple or any End-User relating to the delivery or use of the Licensed Applications. For sales of Licensed Applications developed by Apple, Apple is not entitled to a commission.

3.5 Upon collection of any amounts from any End-User as the price for any Licensed Application delivered to that End-User hereunder, Apple shall deduct the full amount of its commission with respect to that Licensed Application, and any taxes collected by Apple under Section 3.2 and 3.4 hereof, and shall remit to You, or issue a credit in Your favor, as the case may be, the remainder of those prices in accordance with Apple standard business practices, including the following: remittance payments (i) are made by means of wire transfer only; (ii) are subject to minimum monthly remittance amount thresholds; (iii) require You to provide certain remittance-related information on the App Store Connect site; and (iv) subject to the foregoing requirements, will be made no later than forty-five (45) days following the close of the monthly period in which the corresponding amount was received by Apple from the End-User. No later than forty-five (45) days following the end of each monthly period, Apple will make available to You on the App Store Connect site a sales report in sufficient detail to permit You to identify the Licensed Applications sold in that monthly period and the total amount to be remitted to You by Apple. You hereby acknowledge and agree that Apple shall be entitled to a commission, in accordance with this Section 3.5 on the delivery of any Licensed Application to any End-User, even if Apple is unable to collect the price for that Licensed Application from that End-User. In the event that the purchase price received by Apple from any End-User for any Licensed Application is in a currency other than the remittance currency agreed between Apple and You, the purchase price for that Licensed Application shall be converted to the remittance currency, and the amount to be remitted by Apple to You shall be determined, in accordance with an exchange rate fixed for the Delivery Period, as reflected in Exhibit C attached hereto as updated from time to time pursuant to section 3.1 of this Schedule 2. Apple may provide a means on App Store Connect to enable You to designate a primary currency for the bank account designated by You for receiving remittances ("Designated Currency"). Apple may cause Apple's bank to convert all remittances in any remittance currency other than the Designated Currency into the Designated Currency prior to remittance to You. You agree that any resulting currency exchange differentials or fees charged by Apple's bank may be deducted from such remittances. You remain responsible for any fees (e.g., wire transfer fees) charged by Your bank or any intermediary banks between Your bank and Apple's bank.

3.6 In the event that any price payable by any End-User for any of the Licensed Applications is subject to (i) any withholding or similar tax; or (ii) any sales, use, goods and services, value added, or other tax or levy not collected by Apple under Section 3.2 hereof; or (iii) any other tax or other government levy of whatever nature, the full amount of that tax or levy shall be solely for Your account, and shall not reduce the commission to which Apple is entitled under this Schedule 2.

3.7 In the event that any remittance made by Apple to You is subject to any withholding or similar tax, the full amount of that withholding or similar tax shall be solely for Your account, and will not reduce the commission to which Apple is entitled on that transaction. If Apple reasonably believes that such tax is due, Apple will deduct the full amount of such withholding or similar tax from the gross amount owed to You, and will pay the full

amount withheld over to the competent tax authorities. Apple will apply a reduced rate of withholding tax, if any, provided for in any applicable income tax treaty only if You furnish Apple with such documentation required under that income tax treaty or otherwise satisfactory to Apple, sufficient to establish Your entitlement to the benefit of that reduced rate of withholding tax. Upon Your timely request to Apple in writing, using means reasonably designated by Apple, Apple will use commercially practical efforts to report to You the amount of Apple's payment of withholding or similar taxes to the competent tax authorities on Your behalf. You will indemnify and hold Apple harmless against any and all claims by any competent tax authority for any underpayment of any such withholding or similar taxes, and any penalties and/or interest thereon, including, but not limited to, underpayments attributable to any erroneous claim or representation by You as to Your entitlement to, or Your disqualification for, the benefit of a reduced rate of withholding tax.

3.8 You may offer auto-renewing subscriptions in select Territories using the In-App Purchase API subject to the terms of this Schedule 2, provided that:

(a) Auto-renew functionality must be on a weekly, monthly, bi-monthly, tri-monthly, semi-annual or annual basis at prices You select in the App Store Connect tool. You may offer multiple durations and service levels for Your subscription and will have the ability to associate and rank these subscription items within Subscription Groups, to enable customers to easily upgrade, downgrade, and crossgrade amongst the Subscription Group options. You understand and agree that when a subscriber upgrades or crossgrades (except for crossgrades of different durations), such service level will begin immediately and Your proceeds will be adjusted accordingly, and when a subscriber downgrades, the new service will begin at the end of the current subscription period.

(b) You clearly and conspicuously disclose to users the following information regarding Your auto-renewing subscription:

- Title of auto-renewing subscription, which may be the same as the in-app product name
- Length of subscription
- Price of subscription, and price per unit if appropriate

Links to Your Privacy Policy and Terms of Use must be accessible within Your Licensed Application.

(c) You must fulfill the offer during the entire subscription period, as marketed, including any Billing Grace Period You authorize, and, in the event You breach this section 3.8(c) of Schedule 2, You hereby authorize and instruct Apple to refund to the End-User the full amount, or any portion thereof in Apple's sole discretion, of the price paid by the End-User for that subscription. Billing Grace Period refers to the period during which Developers agree to provide paid service for free to users who do not recover from a billing error. In the event that Apple refunds any such price to an End-User, You shall reimburse, or grant Apple a credit for, an amount equal to the price for that subscription. Apple will have the right to retain its commission on the sale of that subscription, notwithstanding the refund of the price to the End-User. You acknowledge that Apple may exercise its rights under section 7.3 of this Schedule 2 for repeated violations of this provision.

3.9 When You make price changes to an existing subscription item, You may elect to retain current pricing for Your existing customers by indicating Your intent in the App Store Connect tool. When You increase pricing for existing subscribers in countries that require end-user consent, they will be prompted to review and agree to the new price, otherwise the auto-renewal feature will be disabled.

3.10 To the extent You promote and offer for sale auto-renewing subscriptions, within or outside of Your Licensed Application, You must do so in compliance with all legal and regulatory requirements.

3.11 Subscription services purchased within Licensed Applications must use In-App Purchase.

In addition to using the In-App Purchase API, 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.

3.12 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 purchase 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. You may offer a free incentive to extend the subscription if the user agrees to send this information.

3.13 Deleted

3.14 Where available, You may offer multiple Licensed Applications offered by You in a single collection (“Bundle”) to End-Users at a price tier designated by You as set forth in Exhibit C (“Bundle Price”). Furthermore, You hereby authorize and instruct Apple to enable users who have purchased some but not all Licensed Applications in a Bundle to access and download the remaining items in the Bundle (“Complete My Bundle” or “CMB”) for the CMB Price. You will receive proceeds for the CMB Price, which shall equal the Bundle Price set by You less the sum of the retail prices paid by the user for previously purchased Licensed Applications. In the event the CMB Price is less than Tier 1 and greater than zero under Exhibit C, You hereby authorize and instruct Apple to set the CMB Price for that user at Tier 1. In the event the CMB Price is less than zero, You hereby authorize and instruct Apple to provide the remaining Licensed Applications in the Bundle to the End-User without charge. Each CMB transaction will be reflected in Your statement as follows: (i) a new sale of the full Bundle at the price paid for the Bundle, identified as a CMB sale; and (ii) a return (i.e. a negative transaction) for each eligible purchased Licensed Application contained in the Bundle in the amount previously paid for the Licensed Application, each identified as a CMB return. Bundles offered at Tier 0 must offer an auto-renewing subscription service pursuant to Section 3.8 of this Schedule 2 in each Licensed Application included in the Bundle, and users who purchase such subscription service from within one app in the Bundle must be able to access that subscription service in each of the other Licensed Applications in the Bundle at no additional cost.

4. Ownership and End-User Licensing

4.1 The parties acknowledge and agree that Apple shall not acquire any ownership interest in or to any of the Licensed Applications or Licensed Application Information, and title, risk of loss, responsibility for, and control over the Licensed Applications shall, at all times, remain with You. Apple may not use any of the Licensed Applications or Licensed Application Information for any purpose, or in any manner, except as specifically authorized in the Agreement or this Schedule 2.

4.2 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 2; provided, however, that Your EULA must include and may not be inconsistent with the minimum terms and conditions specified on Exhibit E to this Schedule 2 and must comply with all applicable laws in all countries where You wish Apple to allow End-Users to download that Licensed Application. Apple shall 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).

4.3 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.

5. Content Restrictions and Software Rating

5.1 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; (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) each of the Licensed Applications is authorized for distribution, sale and use in, export to, and import into each of the countries designated by You under Section 2.1 of this Schedule 2, in accordance with the laws and regulations of those countries and all applicable export/import regulations; (d) none of the Licensed Applications contains any obscene, offensive or other materials that are prohibited or restricted under the laws

or regulations of any of the countries You designated under Section 2.1 of this Schedule 2; (e) all information You provided 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 (f) in the event a dispute arises over the content of Your Licensed Applications or use of Your intellectual property on the App Store, 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.

5.2 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 under this Schedule 2 in order to assign a rating to each such Licensed Application. For purposes of assigning a rating to each of the Licensed Applications, You shall use Your best efforts to provide correct and complete information about the content of that Licensed Application with the software rating tool. You acknowledge and agree that Apple is relying on: (i) Your good faith and diligence in accurately and completely providing requested information for each Licensed Application; and (ii) Your representations and warranties in Section 5.1 hereof, in making that Licensed Application available for download by End-Users in each of the countries You designated hereunder. Furthermore, You authorize Apple to correct the rating of any Licensed Application of Yours that has been assigned an incorrect rating; and You agree to any such corrected rating.

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

5.4 Licensed Applications that are targeted at children or otherwise likely to appeal to children, and which pressure children to make purchases (including, but not limited to, phrases such as "buy now" or "upgrade now") or persuade others to make purchases for them, should not be made available in any Territory that has deemed such marketing practices illegal. You expressly accept and agree to take full responsibility for Your Licensed Applications' compliance with applicable laws pursuant to Section 5.1(c) of this Schedule 2, including without limitation consumer protection, marketing, and gaming laws. For more information on legal requirements of countries in the European Union, see http://ec.europa.eu/justice/consumer-marketing/unfair-trade/index_en.htm

6. Responsibility and Liability

6.1 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.

6.2 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.

6.3 In the event that Apple receives any notice or claim from any End-User that: (i) the End-User wishes to cancel its license to any of the Licensed Applications within ninety (90) days of the date of download of that Licensed Application by that End-User or the end of the auto-renewing subscription period offered pursuant to section 3.8, if such period is less than ninety (90) days; or (ii) a Licensed Application fails to conform to Your specifications or Your product warranty or the requirements of any applicable law, Apple may refund to the End-User the full amount of the price paid by the End-User for that Licensed Application. In the event that Apple refunds any such price to an End-User, You shall reimburse, or grant Apple a credit for, an amount equal to the price for that Licensed Application. In the event that Apple receives any notice or claim from a payment provider that an End-User has obtained a refund for a Licensed Application, You shall reimburse, or grant Apple a credit for, an amount equal to the price for that Licensed Application. In such cases, Apple will have the right to retain its commission on the sale of that Licensed Application, notwithstanding the refund of the price to the End-User.

7. Termination

7.1 This Schedule 2, and all of Apple's obligations hereunder, shall terminate upon the expiration or termination of the Agreement. Notwithstanding any such termination, Apple shall be entitled to: (i) all commissions on all copies of the Licensed Applications downloaded by End-Users prior to the date of termination (including the phase-out period set forth in Section 1.4 hereof); and (ii) reimbursement from You of refunds paid by Apple to End-Users, whether before or after the date of termination, in accordance with Section 6.3 of this Schedule 2.

7.2 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 2, You shall promptly notify Apple and withdraw those Licensed Applications from the App Store using the tools provided on the App Store Connect site; provided, however, that such withdrawal by You under this Section 7.2 shall not relieve You of any of Your obligations to Apple under this Schedule 2, or any liability to Apple and/or any End-User with respect to those Licensed Applications.

7.3 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 7.3, You acknowledge that Apple may cease the marketing and 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 countries listed on Exhibit A, in accordance with the Export Administration Regulations; (ii) those Licensed Applications and/or any End-User's possession and/or use of those Licensed Applications, infringe patent, copyright, trademark, trade secret or other intellectual property rights of any third party; (iii) the distribution, sale and/or use of those Licensed Applications violates any applicable law in any country You designated under Section 2.1 of this Schedule 2; (iv) You have violated the terms of the Agreement, this Schedule 2, or other documentation including without limitation the App Review Guidelines; or (v) Your Licensed Applications violate Section 5.4 of this Schedule 2, including without limitation upon notice by a regulator of an alleged violation. An election by Apple to cease the marketing and allowing download of any Licensed Applications, pursuant to this Section 7.3, shall not relieve You of Your obligations under this Schedule 2.

7.4 You may withdraw any or all of the Licensed Applications from the App Store, 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 2, which shall survive termination or expiration of the Agreement unless You indicate otherwise pursuant to sections 5.1 and 7.2 of this Schedule 2.

8. Legal Consequences

The relationship between You and Apple established by this Schedule 2 may have important legal and/or tax consequences for You. You acknowledge and agree that it is Your responsibility to consult with Your own legal and tax advisors with respect to Your legal and tax obligations hereunder.

EXHIBIT A**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 country:

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 countries:

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 countries, as updated from time to time via the App Store Connect site:*

Argentina	Cayman Islands	Guatemala	St. Lucia
Anguilla	Chile	Honduras	St. Vincent & The Grenadines
Antigua & Barbuda	Colombia	Jamaica	Suriname
Bahamas	Costa Rica	Mexico	Trinidad & Tobago
Barbados	Dominica	Montserrat	Turks & Caicos
Belize	Dominican Republic	Nicaragua	Uruguay
Bermuda	Ecuador	Panama	Venezuela
Bolivia	El Salvador	Paraguay	United States
Brazil	Grenada	Peru	
British Virgin Islands	Guyana	St. Kitts & Nevis	

* Upon notice to You of the effective date by Apple, You shall 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 Applications by End-Users located in the countries identified above, except the United States, as updated from time to time via the App Store Connect site.

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 country:

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 countries, 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 his 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	Botswana	Cyprus	Guinea-Bissau
Albania	Brunei	Czech Republic	Hong Kong
Algeria	Bulgaria	Denmark	Hungary
Angola	Burkina-Faso	Egypt	Iceland
Armenia	Cambodia	Estonia	India
Austria	Cameroon	Fiji	Indonesia
Azerbaijan	Cape Verde	Finland	Iraq
Bahrain	Chad	France	Ireland
Belarus	China	Gabon	Israel
Belgium	Congo (Democratic Republic of)	Gambia	Italy
Benin	Congo (Republic of)	Georgia	Jordan
Bhutan	Cote d'Ivoire	Germany	Kazakhstan
Bosnia and Herzegovina	Croatia	Ghana	Kenya
		Greece	Korea

Kosovo	States of	Qatar	Taiwan
Kuwait	Moldova	Romania	Tajikistan
Kyrgyzstan	Mongolia	Russia	Tanzania
Laos	Montenegro	Rwanda	Thailand
Latvia	Morocco	Sao Tome e	Tonga
Lebanon	Mozambique	Principe	Tunisia
Liberia	Myanmar	Saudi Arabia	Turkey
Libya	Namibia	Senegal	Turkmenistan
Lithuania	Nauru	Serbia	UAE
Luxembourg	Nepal	Seychelles	Uganda
Macau	Netherlands	Sierra Leone	Ukraine
Macedonia	Niger	Singapore	United Kingdom
Madagascar	Nigeria	Slovakia	Uzbekistan
Malawi	Norway	Slovenia	Vanuatu
Malaysia	Oman	Solomon Islands	Vietnam
Maldives	Pakistan	South Africa	Yemen
Mali	Palau	Spain	Zambia
Malta, Republic of	Papua New Guinea	Sri Lanka	Zimbabwe
Mauritania	Philippines	Swaziland	
Mauritius	Poland	Sweden	
Micronesia, Fed	Portugal	Switzerland	

EXHIBIT B

1. Apple shall collect and remit to the competent tax authorities the taxes described in Section 3.2 of this Schedule 2 for sales of the Licensed Applications to End-Users located in the following countries, as updated from time to time via the App Store Connect site:

Albania	Czech Republic	Luxembourg	Slovenia
Armenia	Denmark	Malaysia	South Africa
Australia	Estonia	Malta, Republic of	Spain
Austria	Finland	Mexico	Sweden
Bahrain	France	Moldova	Switzerland
Belarus	Germany	Netherlands	Taiwan
Belgium	Greece	New Zealand	Turkey
Bosnia and Herzegovina	Hungary	Norway	United Arab Emirates
Bulgaria	Iceland	Poland	United Kingdom
Canada	India	Portugal	United States
Chile	Ireland	Romania	Uruguay ††
China*	Italy	Russia***	Uzbekistan†††
Colombia	Korea**	Saudi Arabia	
Croatia	Kosovo	Serbia	
Cyprus	Latvia	Singapore†	
	Lithuania	Slovakia	

2. Apple shall not collect and remit the taxes described in Section 3.2 of this Schedule 2 for sales of the Licensed Applications to End-Users located in the countries listed below as updated from time to time via the App Store Connect site. You shall be solely responsible for the collection and remittance of such taxes as may be required by local law.

Afghanistan	Dominican Republic	Madagascar	Sao Tome e Principe
Algeria	Ecuador	Malawi	Senegal
Angola	Egypt	Maldives	Seychelles
Anguilla	El Salvador	Mali	Sierra Leone
Antigua & Barbuda	Fiji	Mauritania	Solomon Islands
Argentina	Gabon	Mauritius	Sri Lanka
Azerbaijan	Gambia		St. Kitts and Nevis
Bahamas	Georgia	Micronesia (Fed States of)	St. Lucia
Barbados	Ghana	Mongolia	St. Vincent & The Grenadines
Belize	Grenada	Montenegro	Suriname
Benin	Guatemala	Montserrat	Swaziland
Bermuda	Guinea-Bissau	Morocco	Tajikistan
Bhutan	Guyana	Mozambique	Tanzania
Bolivia	Honduras	Myanmar	Thailand
Botswana	Hong Kong	Namibia	Tonga
Brazil	Indonesia	Nauru	Trinidad & Tobago
British Virgin Islands	Iraq	Nepal	Tunisia
Brunei	Israel	Nicaragua	Turkmenistan
Burkina-Faso	Jamaica	Niger	Turks & Caicos
Cameroon	Japan	Nigeria	Uganda
Cambodia	Jordan	Oman	Ukraine
Cape Verde	Kazakhstan	Pakistan	Venezuela
Cayman Islands	Kenya	Palau	Vanuatu
Chad	Kuwait	Panama	Vietnam
	Kyrgyzstan	Papua New Guinea	Yemen
Congo (Democratic Republic of)	Laos	Paraguay	Zambia
Congo (Republic of)	Lebanon	Peru	Zimbabwe
Costa Rica	Liberia	Philippines	
Cote d'Ivoire	Libya	Qatar	
Dominica	Macau	Rwanda	
	Macedonia		

* Except for certain taxes to be collected as required by the Chinese government, Apple shall not collect or remit additional taxes or levies in China. You understand and agree that You shall be solely responsible for the collection and remittance of any taxes as may be required by local law.

** Solely applicable to non-resident Developers. Apple shall not collect and remit taxes for Developers based in Korea, and such developers shall be solely responsible for the collection and remittance of such taxes as may be required by local law.

*** Solely applicable to non-resident Developers. Apple shall not collect and remit taxes for Developers based in Russia, and such developers shall be solely responsible for the collection and remittance of such taxes as may be required by local law.

† Solely applicable to non-resident Developers. Apple shall not collect and remit taxes for Developers based in Singapore, and such developers shall be solely responsible for the collection of such taxes as may be required by local law.

†† Except for certain taxes on digital transactions that Apple must collect as required by the Uruguayan government, Apple shall not collect or remit additional taxes or levies in Uruguay. You understand and agree that You shall be solely responsible for the collection and remittance of any taxes imposed on Your earnings as may be required by local law.

††† Solely applicable to non-resident Developers. Apple shall not collect and remit taxes for Developers based in Uzbekistan, and such developers shall be solely responsible for the collection and remittance of such taxes as may be required by local law.

EXHIBIT C

The list of available price tiers and proceeds is set forth in the App Store Connect tool and may be updated by Apple from time to time.

Customer Price is the price displayed to the End-User on the App Store. The agreed remittance currencies depend on the currency of the Customer Price, as indicated in this Exhibit C and as may be updated from time to time via the App Store Connect site. Customers are charged the following currencies in the following countries:

AED: United Arab Emirates

AUD: Australia

BGN: Bulgaria

BRL: Brazil

CAD: Canada

CHF: Switzerland

CLP: Chile

CNY: China

COP: Colombia

CZK: Czech Republic

DKK: Denmark

EGP: Egypt

Euro: Austria, Belgium, Bosnia and Herzegovina, Cyprus, Estonia, Finland, France, Germany, Greece, Ireland, Italy, Kosovo, Latvia, Lithuania, Malta (Republic of), Montenegro, Luxembourg, Netherlands, Portugal, Serbia, Slovakia, Slovenia, Spain

GBP: United Kingdom

HKD: Hong Kong

HRK: Croatia

HUF: Hungary

IDR: Indonesia

ILS: Israel

INR: India

JPY: Japan

KRW: Korea

KZT: Kazakhstan

MXN: Mexico

MYR: Malaysia

NGN: Nigeria

NOK: Norway

NZD: New Zealand

PEN: Peru

PHP: Philippines

PKR: Pakistan

PLN: Poland

QAR: Qatar

RON: Romania

RUB: Russia

SAR: Saudi Arabia

SEK: Sweden

SGD: Singapore

THB: Thailand

TRY: Turkey

TWD: Taiwan

TZS: Tanzania

VND: Vietnam

USD: Afghanistan, Albania, Algeria, Angola, Anguilla, Antigua & Barbuda, Argentina, Armenia, Azerbaijan, Bahamas, Bahrain, Barbados, Belarus, Belize, Benin, Bermuda, Bhutan, Bolivia, Botswana, British Virgin Islands, Brunei, Burkina-Faso, Cambodia, Cameroon, Cape Verde, Cayman Islands, Chad, Congo (Democratic Republic of), Congo (Republic of), Costa Rica, Cote d'Ivoire, Dominica, Dominican Republic, Ecuador, El Salvador, Fiji, Gabon, Gambia, Georgia, Ghana, Grenada, Guatemala, Guinea-Bissau, Guyana, Honduras,

Iceland, Iraq, Jamaica, Jordan, Kenya, Kuwait, Kyrgyzstan, Laos, Lebanon, Liberia, Libya, Macau, Macedonia, Madagascar, Malawi, Maldives, Mali, Mauritania, Mauritius, Micronesia (Fed States of), Moldova, Mongolia, Montserrat, Morocco, Mozambique, Myanmar, Namibia, Nauru, Nepal, Nicaragua, Niger, Oman, Palau, Panama, Papua New Guinea, Paraguay, Rwanda, Sao Tome e Principe, Senegal, Seychelles, Sierra Leone, Solomon Islands, Sri Lanka, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Suriname, Swaziland, Tajikistan, Tonga, Trinidad and Tobago, Tunisia, Turkmenistan, Turks and Caicos, Uganda, Ukraine, Uruguay, United States, Uzbekistan, Venezuela, Vanuatu, Yemen, Zambia, Zimbabwe
ZAR: South Africa

EXHIBIT D

1. Delivery of Licensed Applications to End-Users in Canada

Where You designate Apple Canada to allow access to the Licensed Applications to End-Users in Canada:

1.1 General

You shall indemnify and hold Apple harmless against any and all claims by the Canada Revenue Agency (the "CRA"), Ministère du Revenu du Québec (the "MRQ") and the tax authorities of any province that has a provincial retail sales tax ("PST") for any failure to pay, collect or remit any amount(s) of goods and services tax/harmonized sales tax ("GST/HST") imposed under the Excise Tax Act (Canada) (The "ETA"), Quebec Sales Tax ("QST") or PST and any penalties and/or interest thereon in connection with any supplies made by Apple Canada to End-Users in Canada on Your behalf and any supplies made by Apple Canada to You.

1.2 GST/HST

(a) This Section 1.2 of Exhibit D applies with respect to supplies made by You, through Apple Canada, as agent to End-Users in Canada. Terms defined in the ETA have the same meaning when used in this Section 1.2. Apple Canada is registered for GST/HST purposes, with GST/HST Registration No. R100236199.

(b) If You are a resident of Canada or are a non-resident of Canada that is required to register for GST/HST purposes pursuant to the ETA, it is a condition of this Schedule 2, that You are registered for GST/HST or have submitted an application to register for GST/HST to the CRA with an effective GST/HST registration date of no later than the date of this Schedule 2. You shall provide Apple Canada with satisfactory evidence of Your GST/HST registration (*e.g.*, a copy of Your CRA confirmation letter or print-out from the GST/HST Registry on the CRA web site) at Apple Canada's request. You warrant that You will notify Apple Canada if You cease to be registered for GST/HST.

(c) If You are registered for GST/HST purposes, You, by executing this Schedule 2, (i) agree to enter into the election pursuant to subsection 177(1.1) of the ETA to have Apple Canada collect, account for and remit GST/HST on sales of Licensed Applications made to End-Users in Canada on Your behalf and have completed (including entering its valid GST/HST registration number), signed and returned to Apple Canada Form GST506 (accessible on the App Store Connect site); and (ii) acknowledge that the commission payable by You to Apple Canada includes GST at a rate of 5% (or the GST rate as applicable from time to time).

(d) If You are not registered for GST/HST purposes, by executing this Schedule 2 and not completing, signing and returning Form GST506 to Apple Canada, You (i) certify that You are not registered for GST/HST purposes; (ii) certify that You are not resident in Canada and do not carry on business in Canada for purposes of the ETA; (iii) acknowledge that Apple Canada will charge, collect and remit GST/HST on sales of Licensed Applications to End-Users in Canada made on Your behalf; (iv) acknowledge that the commission payable by You to Apple Canada is zero-rated for GST/HST purposes (*i.e.*, GST/HST rate is 0%); and (v) agree to indemnify Apple for any GST/HST, interest and penalty assessed against Apple Canada if it is determined that You should have been registered for GST/HST purposes such that the commission fees charged by Apple Canada were subject to GST.

1.3 Quebec Sales Tax

Terms defined in an Act respecting the Quebec Sales Tax (the "QSTA") have the same meaning when used in this Section 1.3 of Exhibit D.

(a) If You are a resident of Quebec, it is a condition of this Schedule 2, that You are registered for QST or have submitted an application to register for QST to the MRQ with an effective QST registration date of no later than the date of this Schedule 2. You shall provide Apple Canada with satisfactory evidence of Your QST registration (*e.g.*, a copy of Your MRQ confirmation letter or print-out from the QST Registry on the MRQ web site) at Apple Canada's request. You warrant that You will notify Apple Canada if You cease to be registered for QST.

(b) If You are a resident of Quebec, You, by executing this Schedule 2, (i) certify that You are registered for QST; (ii) agree to enter into the election pursuant to section 41.0.1 of the QSTA to have Apple Canada collect,

account for and remit QST on sales of Licensed Applications to End-Users in Quebec made on Your behalf and have completed (including entering its valid QST registration number), signed and returned to Apple Canada Form FP2506-V; and (iii) acknowledge that Apple Canada will not charge, collect or remit QST on sales of Licensed Applications made on Your behalf to End-Users located outside Quebec on the assumption that the End-Users are not resident in Quebec and not registered for QST purposes such that the sales are zero-rated for QST purposes.

(c) If You are not resident in Quebec, by executing this Schedule 2 and not completing, signing and returning Form FP2506-V to Apple Canada, You (i) certify that You are not resident in Quebec; (ii) certify that You do not have a permanent establishment in Quebec; and (iii) acknowledge Apple will charge, collect and remit QST on sales of Licensed Applications to End-Users in Quebec made on Your behalf.

1.4 PST

This Section 1.4 of Exhibit D applies to supplies of Licensed Applications made by You, through Apple Canada, as agent, to End-Users in the provinces of British Columbia, Saskatchewan, Manitoba, Ontario, Prince Edward Island and any other province that has or that adopts a PST. You acknowledge and agree that Apple Canada will charge, collect and remit applicable PST on sales of Licensed Applications made to End-Users in these provinces by Apple Canada on Your behalf.

2. Delivery of Licensed Applications to End-Users in Australia

Where You designate APL to allow access to the Licensed Applications to End-Users in Australia:

2.1 You shall indemnify and hold Apple harmless against any and all claims by the Commissioner of Taxation ("Commissioner") for nonpayment or underpayment of GST under the *A New Tax System (Goods and Services Tax) Act 1999* ("GST Act") and for any penalties and/ or interest thereon. In addition, You shall indemnify and hold Apple harmless against any penalties imposed by the Commissioner for failing to register for GST in Australia.

2.2 Goods and Services Tax (GST)

(a) General

(i) This Section 2.2 of Exhibit D applies to supplies made by You, through APL, as agent, that are connected with Australia. Terms defined in the GST Act have the same meaning when used in this Section 2.2.

(ii) Unless expressly stated otherwise, any sum payable or amount used in the calculation of a sum payable under this Schedule 2 has been determined without regard to GST and must be increased on account of any GST payable under this Section 2.2.

(iii) If any GST is payable on any taxable supply made under this Schedule 2 by a supplier to a recipient, the recipient must pay the GST to the supplier at the same time and in the same manner as providing any monetary consideration. For the avoidance of doubt, this includes any monetary consideration that is deducted by APL as commission in accordance with Section 3.4 of this Schedule 2.

(iv) The amount recoverable on account of GST under this clause by APL will include any fines, penalties, interest and other charges.

(v) This Section 2 of Exhibit D survives the termination of the Agreement.

(b) Resident Developers or Non-resident GST-Registered Developers

(i) If You are a resident of Australia, it is a condition of this Schedule 2, that You have an Australian Business Number ("ABN") and are registered for GST or have submitted an application to register for GST to the Commissioner with an effective GST registration date of no later than the date of this Schedule 2. You will provide Apple with satisfactory evidence of Your ABN and GST registration (by uploading to Apple, using the App Store Connect site, a copy of Your GST registration or print-out from the Australian Business Register) within 30 days of this Schedule 2. You warrant that You will notify Apple if it ceases to hold a valid ABN or be registered for GST.

(ii) If You are a non-resident and are registered for GST, it is a condition of this Schedule 2 that You will provide Apple with satisfactory evidence of Your ABN and GST registration within 30 days of this Schedule 2. You warrant that You will notify Apple if You cease to be registered for GST.

(iii) You and Apple agree to enter into an arrangement for the purposes of s.153-50 of the GST Act. You and Apple further agree that for taxable supplies made by You, through APL as agent, to any End-User:

(A) APL will be deemed as making supplies to any End-User;

(B) You will be deemed as making separate, corresponding supplies to APL;

(C) APL will issue to any End-User, in APL's own name, all tax invoices and adjustment notes relating to supplies made under section (iii)(a);

(D) You will not issue to any End-User any tax invoices or adjustment notes relating to taxable supplies made under section (iii)(a);

(E) APL will issue a recipient created tax invoice to You in respect of any taxable supplies made by You to APL under this Schedule 2, including taxable supplies made under section (iii)(b); and

(F) You will not issue a tax invoice to Apple in respect of any taxable supplies made by You to Apple under this Schedule 2, including taxable supplies made under section (iii)(b).

(c) Non-resident, Non-GST-registered Developers

If You are a non-resident and are not registered for GST, then:

(i) APL will issue to any End-User, in APL's own name, all tax invoices and adjustment notes relating to taxable supplies made by You through APL as agent; and

(ii) You will not issue to any End-User any tax invoices or adjustment notes relating to taxable supplies made by You through APL as agent.

3. Delivery of Licensed Applications to End-Users in the United States

Where You designate Apple Inc. to allow access to the Licensed Applications to End-Users in the United States:

3.1 If You are not a resident of the United States for U.S. federal income tax purposes, You will complete Internal Revenue Service Form W-8BEN and/or any other required tax forms and provide Apple with a copy of such completed form(s), and any other information necessary for compliance with applicable tax laws and regulations, as instructed on the App Store Connect site.

3.2 If Apple, in its reasonable belief, determines that any state or local sales, use or similar transaction tax may be due from Apple or You in connection with the sale or delivery of any of the Licensed Applications, Apple will collect and remit those taxes to the competent tax authorities. To the extent that the incidence of any such tax, or responsibility for collecting that tax, falls upon You, You authorize Apple to act on Your behalf in collecting and remitting that tax, but to the extent that Apple has not collected any such tax, or has not received reimbursement for that tax, from End-Users, You shall remain primarily liable for the tax, and You will reimburse Apple for any tax payments that Apple is required to make, but is not otherwise able to recover.

3.3 In the event that You incur liability for income tax, franchise tax, business and occupation tax, or any similar taxes based on Your income, You shall be solely responsible for that tax.

4. Delivery of Licensed Applications to End-Users in Japan

Where You designate iTunes KK to allow access to the Licensed Applications to End-Users in Japan:

4.1 You acknowledge and agree that You have the sole responsibility for: (i) consumption tax output liability, if any, with respect to delivery on Your behalf of Your Licensed Applications to End-Users by iTunes KK; (ii)

filing of consumption tax returns and payment of consumption tax to the Japanese government, if applicable; and (iii) determining independently, in consultation with Your own tax advisor, Your taxpayer status and tax payment obligations for consumption tax purposes.

4.2 Commissions charged by iTunes KK to Japan resident developers will include consumption tax.

5. Delivery of Licensed Applications to End-Users in countries listed in Exhibit A, Section 2

Where You designate Apple Distribution International Ltd., located at Hollyhill Industrial Estate, Hollyhill, Cork, Republic of Ireland, to allow access to the Licensed Applications to End-Users in Exhibit A, Section 2:

You acknowledge that in the event Apple Distribution International Ltd. is subject to any sales, use, goods and services, value added, or other tax or levy with respect to any remittance to You, the full amount of such tax or levy shall be solely for Your account. For the avoidance of doubt, any invoice issued by You to Apple Distribution International Ltd. will be limited to amounts actually due to You, which amounts shall be inclusive of any value added or other tax or levy as set forth above. You will indemnify and hold Apple harmless against any and all claims by any competent tax authorities for any underpayment of any such sales, use, goods and services, value added, or other tax or levy, and any penalties and/or interest thereon.

6. Delivery of Licensed Applications to End-Users in New Zealand

Where You designate APL to allow access to the Licensed Applications to End-Users in New Zealand:

(A) General

(i) You shall indemnify and hold APL harmless against any and all claims by the Inland Revenue for nonpayment or underpayment of GST under the Goods and Services Tax Act 1985 ("GST Act 1985") and for any penalties and/or interest thereon.

(ii) This Section 6 of Exhibit D applies to supplies made by You, through APL as agent, to any End-User who is resident in New Zealand. Terms defined in the GST Act of 1985 have the same meaning when used in Section 6 of Exhibit D.

(iii) This Section 6 of Exhibit D survives the termination of the Agreement.

(iv) You and Apple agree that APL is the operator of the electronic marketplace in respect of supplies made by You, through APL as agent, to any End-User who is resident in New Zealand, and is treated as the supplier of those supplies under s. 60C of the GST Act 1985 for GST purposes.

(B) Resident Developers

(i) If You are a resident of New Zealand, You and Apple agree under s.60(1C) of the GST Act 1985 that supplies of services made by You through APL as agent to any End-User resident in New Zealand, are treated as 2 separate supplies for GST purposes, being—

(a) a supply of services from You to APL; and

(b) a supply of those services from APL to the End-User resident in New Zealand.

(ii) You and APL acknowledge that the supply of services from You to APL for GST purposes under Section 6(B)(i)(a) of this Exhibit D is not subject to GST under the GST Act 1985.

(C) Non Resident Developers

(i) If You are a non resident of New Zealand, You and Apple agree under s. 60(1B) of the GST Act 1985 that supplies of services made by You through APL as agent to any End-User resident in New Zealand, are treated as 2 separate supplies for GST purposes, being -

(a) a supply of services from You to APL; and

(b) a supply of those services from APL to the End-User resident in New Zealand.

(ii) You and APL acknowledge that the supply of services from You to APL for GST purposes under Section 6(C)(i)(a) of this Exhibit D is not subject to GST under the GST Act 1985.

(D) APL will issue to any End-User, in APL's own name, the required documentation relating to taxable supplies made under Section 6 of this Exhibit D.

(E) You will not issue to any End-User any documentation relating to taxable supplies made under Section 6 of this Exhibit D.

7. Delivery of Licensed Applications to End-Users in Brazil

Where You designate Apple Inc. to allow access to the Licensed Applications to End-Users in Brazil:

(A) General

7.1 You acknowledge and agree that You have the sole responsibility for: (i) any indirect taxes liability (including but not limited to goods and services taxes), with respect to delivery on Your behalf of Your Licensed Applications to End-Users by Apple; (ii) filing of indirect tax returns and payment of indirect taxes to the Brazilian government, if applicable; and (iii) determining independently, or in consultation with Your own tax advisor, Your taxpayer status and tax payment obligations for indirect tax purposes.

7.2 You authorize, consent to, and acknowledge that Apple may use a third party in Brazil, an Apple subsidiary and/or a third party vendor (the "Collecting Entity"), to collect any amounts from End-Users for the Licensed Applications and remit such amounts out of Brazil to Apple to enable the remittance of Your proceeds to You.

7.3 To the extent withholding taxes are applicable on remittances out of Brazil of the prices payable by End-Users for the Licensed Applications, the Collecting Entity will deduct the full amount of such withholding tax from the gross amount owed to You by Apple and will pay the amount withheld to the competent Brazilian tax authorities in Your name. The Collecting Entity will use commercially practical efforts to issue the respective withholding tax forms, which will be provided to You by Apple as provided in the Brazilian tax law. You are solely responsible for providing any additional documentation required by the tax authorities in Your country to be able to claim any foreign tax credits, if applicable.

(B) Non-Resident Developers

7.4 If You are not a resident of Brazil and to the extent withholding taxes are applicable on the remittances out of Brazil of the gross amount owed to You, You may provide to Apple Your country of residence certificate or equivalent documentation to claim a reduced rate of withholding tax under an applicable income tax treaty between Your country of residence and Brazil. The Collecting Entity will apply a reduced rate of withholding tax, if any, as provided in the applicable income tax treaty between Your country of residence and Brazil, only after You furnish Apple with the documentation as required under that income tax treaty or otherwise satisfactory to Apple, which is sufficient to establish Your entitlement to that reduced rate of withholding tax. You acknowledge that the reduced rate will only take effect after Apple approves and accepts the tax residence certificate or equivalent documentation provided by You. Notwithstanding section 3.3 of Schedule 2, if Your funds will be remitted out of Brazil prior to receipt and approval by Apple of such tax documentation, the Collecting Entity may withhold and remit to the competent tax authorities the full amount of withholding tax unreduced by any tax treaty, and Apple will not refund to You any amount of such taxes withheld and remitted.

You will indemnify and hold Apple and the Collecting Entity harmless against any and all claims by any competent tax authority for any underpayment of any such withholding or similar taxes, and any penalties and/or interest thereon, including, but not limited to, underpayments attributable to any erroneous claim or representation by You as to Your entitlement to, or Your actual disqualification for, the benefit of a reduced rate of withholding tax.

(C) Resident Developers

7.5 If You are a resident of Brazil, You must update Your account with Your respective Brazilian taxpayer number (CNPJ or CPF, as applicable). You acknowledge that by not providing the Your respective Brazilian

taxpayer number, Your Licensed Applications may be removed from the Brazilian Store until such time as Your Brazilian taxpayer number is provided.

8. Australian Developers – Delivery of Licensed Applications to End-Users Outside Australia

If You are a resident of Australia and You appoint Apple as Your agent or commissionaire for the marketing and End-User download of the Licensed Applications by End-Users located outside of Australia, it is a condition of this contract that You confirm that You have an Australian Business Number (“ABN”) and are registered for GST under the A New Tax System (Goods and Services Tax Act 1999 (“GST Act”). You will provide Apple with satisfactory evidence of Your ABN and GST registration (by uploading to Apple, using the App Store Connect site, a copy of Your GST registration or print-out from the Australian Business Register) within 30 days of this Schedule 2. You warrant that You will notify Apple if You cease to hold a valid ABN or be registered for GST.

9. New Zealand Developers – Delivery of Licensed Applications to End-Users Outside New Zealand

If You are a resident of New Zealand and You appoint Apple as Your agent or commissionaire for the marketing and End-User download of the Licensed Applications by End-Users located outside of New Zealand, You and Apple agree that under s.60C and 60(1C) of the GST Act 1985, supplies of services made by You through Apple as agent to any End-User resident outside of New Zealand are treated as 2 separate supplies for GST purposes under the GST Act 1985, being -

- (i) a supply of services from You to Apple; and
- (ii) a supply of those services from Apple to the End-User resident outside of New Zealand.

You and Apple acknowledge that the deemed supply of services from You to Apple under (i) above will not result in a GST cost to Apple under the GST Act 1985.

10. Japan Developers – Delivery of Licensed Applications to End-Users Outside Japan

If Your principal or headquarters’ office is located in Japan and You appoint Apple as Your agent or commissionaire for the marketing and End-User download of the Licensed Applications by End-Users located outside of Japan, You shall reverse charge any Japanese consumption tax that is payable on the commissions received by Apple in consideration for its services as Your agent or commissionaire under this Schedule 2.

11. Korean developers - Delivery of Licensed Applications to End-Users in Korea

If You are a resident of Korea and You appoint Apple Distribution International Ltd. as Your agent or commissionaire to deliver Licensed Applications to End-Users in Korea, it is a condition of this Schedule 2 that You have a Korean Business Registration Number (“BRN”) or a Registration Number with Korean National Tax Service (collectively “Korean Tax ID”).

You must update Your account with Your respective Korean Tax ID when prompted in App Store Connect. You acknowledge that by not providing Your respective Korean Tax ID, Your Licensed Applications may be removed from the Korean Store or Your remittance payment under section 3.5 of Schedule 2 may not be made for Your applicable Licensed Applications until such time as Your Korean Tax ID is provided.

At Apple Distribution International Ltd.’s request, You will provide Apple with satisfactory evidence of the Your Korean Tax ID (e.g., business registration certificate or print-out from the Korean National Tax Service’s HomeTax website). You warrant that You will notify Apple if You cease to hold a valid Korean Tax ID.

If You do not provide a valid Korean Tax ID to Apple, Apple reserves the right to charge Korean VAT on any services provided to You under this Agreement.

12. Singapore developers - Delivery of Licensed Applications to End-Users in or outside Singapore

If You are a resident of Singapore and You appoint Apple as Your agent or commissionaire to deliver Licensed Applications to End-Users in the jurisdictions specified in Exhibit A, it is a condition of this Schedule 2 that You confirm to Apple whether You are registered for Singapore GST. If You are registered for GST, You are required to provide Your Singapore GST registration number upon request.

If You are not registered for Singapore GST or do not provided Your Singapore GST registration number to

Apple, pursuant to Singapore tax regulations, Apple will apply Singapore GST on the commission payable by You to Apple to be deducted from Your remittance.

13. Malaysian developers - Delivery of Licensed Applications to End-Users in or outside Malaysia

If You are a resident of Malaysia and You appoint Apple as Your agent or commissionaire to deliver Licensed Applications to End-Users in the jurisdictions specified in Exhibit A, pursuant to Malaysian tax regulations, Apple will apply Malaysia Service Tax on the commission payable by You to Apple to be deducted from Your remittance.

14. Mexican developers - Delivery of Licensed Applications to End-Users in Mexico

If You are a resident of Mexico, Apple will apply VAT on the commission payable by You to Apple to be deducted from Your remittance, pursuant to Mexican tax regulations. Apple will issue the corresponding invoice for such commission.

Apple also will apply the withholding income tax rate applicable to individuals on remittances for sales of the Licensed Applications to End-Users located in Mexico, pursuant to Mexican tax regulations. Apple will deduct the full amount of such withholding income tax from the gross amount owed to You by Apple and will pay the amount withheld to the competent Mexican tax authorities. Apple will issue the respective withholding income tax certificate.

If You are registered and have a valid tax ID in Mexico (known as the R.F.C), You must provide Apple with a copy of Your Mexican tax ID registration by uploading it using the App Store Connect tool. You warrant that You will notify Apple if You cease to hold a valid tax ID. If You do not provide proof to Apple of Your Mexican tax ID, Apple will apply the highest income tax rate in accordance with Mexican tax regulations.

EXHIBIT E

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 App Store Terms of Service 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 App Store Terms of Service, except that such Licensed Application may be accessed and used by other accounts associated with the purchaser via Family Sharing or volume purchasing.

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, privacy, or similar legislation, including in connection with Your Licensed 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) he/she is not located in a country that is subject to a U.S. Government embargo, or that is on Title 15, Part 740 Supplement 1 Country Group E of the U.S. Code of Federal Regulations; and (ii) he/she is not listed on any U.S. Government list of prohibited or restricted parties.

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

9. Third Party Terms of Agreement: You must state in the EULA that the End-User must comply with applicable third party terms of agreement when using Your Application, 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 F 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 on the Search results page 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 for EU

These provisions become effective 12 July 2020.

Developers established in, and which offer goods or services to customer located in, the European Union may submit complaints pursuant to the Regulation of the European Parliament and of the Council on

promoting fairness and transparency for business users of online intermediation services (“P2B Regulation”) related to the following issues at developer.apple.com/contact: (a) Apple’s alleged non-compliance with any obligations set forth in the P2B Regulation which affect You in the European Union; (b) technological issues relating directly to distribution of Your Licensed Application on the App Store in the European Union that affect You; or (c) measures taken by or behavior of Apple relating directly to distribution of Your Licensed Application on the App Store in the European Union that affect You. Apple will consider and process such complaints and communicate the outcome to You.

Pursuant to the P2B Regulation, 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/>

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. In the absence of a separate written agreement to the contrary, Apple will be free to use any information, suggestions or recommendations you provide to Apple pursuant to this Agreement for any purpose, subject to any applicable patents or copyrights.

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. 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 (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 becoming an Apple Developer or using any Apple Confidential Information, 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 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.

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.*

EA1283
6/8/15



July 10, 2020

Via Email: canon.pence@epicgames.com

Canon Pence
General Counsel
Epic Games, Inc.
620 Crossroads Blvd
Cary, NC 27518

Dear Mr. Pence:

I am counsel in the Apple Legal Department and I am writing in response to Mr. Sweeney's email to Tim Cook, Phil Schiller, Craig Federighi, and Matt Fischer on June 30, 2020. The email was disappointing and requires a formal response.

The App Store is not simply a marketplace -- it is part of a larger bundle of tools, technologies and services that Apple makes available to developers to develop and create great applications for iPhone, iPad and other Apple products. We know Epic knows this. Epic has been a major beneficiary of this investment and support. Epic has made great use of Apple-provided tools, such as TestFlight, VOIP, Stickers, iCloud document storage, ARKit, Messages Extension, ReplayKit, and Push Notifications. To highlight one example, for years now, Epic has used Apple's groundbreaking graphics technology, Metal. When Apple launched Metal for Mac at WWDC in 2015, Mr. Sweeney's colleague Billy Bramer stood on stage and explained how Metal "revolutionized graphic design" and "enable[d] developers like us to create richer 3D worlds." *Apple – WWDC 2015*, Youtube (June 15, 2015), https://www.youtube.com/watch?v=_p8AsQhaVKI. Epic, like countless developers, continues to use Metal to make its games sharper, faster, and more responsive. Apple doesn't charge separately for the use of Metal or any of the other tools that Epic has used to develop great games on iOS.

Not only has Apple supplied tools and technologies for Epic to build its apps, but it also provided a marketplace—the App Store—to help make them a success. Because of the App Store, Epic has been able to get Fortnite and other apps into



the hands of millions instantly and at no cost, as Apple charges nothing upfront to distribute apps that are free to download. This exposure has earned Epic hundreds of millions of dollars from sales of in-app content, and brought with it lucrative brand partnerships and paid product placement. *See Fortnite Emerges as a Social Media Platform for Gen Z, AdAge* (June 10, 2019), <https://adage.com/article/digital/fortnite-emerges-social-media-platform-gen-z/2176301>. Of course, Epic could not have achieved this success without great apps, but it nonetheless underscores the value Apple brings to developers like Epic.

Still, Epic has many ways to reach consumers, including through Android stores, PC-based platforms, consoles (Xbox, Nintendo, Play Station) and its very own app marketplace. Public reports indicate that Fortnite alone “generated \$1.8 billion in revenue in 2019,” *Fortnite Creator Epic Games Raising \$750M at \$17B Valuation: Report*, *The Street* (June 15, 2020), <https://www.thestreet.com/investing/fortnite-creator-epic-games-raising-750m-at-17b-valuation>, or over seven times the \$245 million yielded by App Store receipts for all Epic apps. Epic made its own decision to utilize the App Store as another one of its channels and can hardly be surprised that this entails acceptance of a license agreement and related policies since Epic’s own developers must do the same. *See Epic Online Services Developer Agreement* <https://dev.epicgames.com/en-US/services/terms/agreements> (“If you do not or cannot agree to the terms of this Agreement, do not download or use the SDK or access any Services.”).

Apple has hundreds of thousands of developers distributing apps on the App Store, and Apple is proud that it offers them all, from the student in her living room to some of the largest companies in the world, the same terms and opportunities.

That brings us to the demands in Mr. Sweeney’s email. Epic requests the right to offer a “competing Epic Games Store app” through the App Store that would seemingly allow iOS device users to install apps from Epic directly. And Epic wants to offer “competing payment processing options” in Fortnite and other Epic apps instead of using Apple’s in-app purchase (IAP) system. As you know, Apple has never allowed this. Not when we launched the App Store in 2008. Not now. We understand this might be in Epic’s financial interests, but Apple



strongly believes these rules are vital to the health of the Apple platform and carry enormous benefits for both consumers and developers. The guiding principle of the App Store is to provide a safe, secure and reliable experience for users and a great opportunity for all developers to be successful but, to be clear, when it comes to striking the balance, Apple errs on the side of the consumer.

Epic Store Within The App Store. As for the first request, Apple designed the App Store to be a secure and trusted place for consumers to discover and download software. Central to this is Apple’s requirement that every iOS app undergo rigorous, human-assisted review. Apple invests significant resources to ensure that apps meet high standards for privacy, security, content, and quality; we have reviewers located on three continents, representing 81 languages, and reviewing on average 100,000 submissions per week.

That investment has paid off not just for Apple, but also for app developers large and small, including Epic. Because of Apple’s rules and efforts, iOS and the App Store are widely recognized as providing the most secure consumer technology on the planet. And as a result, consumers can download and pay for an app and in-app content without worrying that it might break their device, steal their information, or rip them off. This level of security benefits developers by providing them with an active and engaged marketplace for their apps.

One way Apple helps maintain the confidence of its users is by not approving apps that create “an interface for displaying third-party apps, extensions, or plug-ins similar to the App Store or as a general-interest collection.” App Store Review Guideline § 3.2.2. Absent this guideline, Apple would have no reliable way of delivering on its commitment to consumers that *every* app available via the App Store meets Apple’s exacting standards for security, privacy, and content. Consumers rightly rely on that commitment in buying Apple devices and in purchasing from the App Store. They will quite properly hold Apple to account for any shortfall in performance. The health of Apple’s ecosystem and the strength of its reputation as a maker of high-quality hardware accordingly depend upon rules like Guideline § 3.2.2.

Although Mr. Sweeney represented that, if Epic offered its own iOS app store, Epic would “protect device security, consumer privacy, and a high-quality user



experience,” we cannot be confident that Epic or any developer would uphold the same rigorous standards of privacy, security, and content as Apple. Indeed, since Apple treats all developers according to the same terms, Epic is essentially asking Apple to outsource the safety and security of Apple’s users to hundreds of thousands of iOS developers. Even if such a model were feasible (and it is not), we are simply unwilling to risk our users’ trust in such a way. Incorporating third party app stores into iOS would undermine Apple’s carefully constructed privacy and security safeguards, and seriously degrade the consumer experience and put Apple’s reputation and business at risk.

Circumventing IAP. Epic also requests to offer payment processing options within Epic’s apps other than via IAP. IAP is the App Store’s centralized payment system. It lets users purchase digital goods and services within apps without the inconvenience and security risks of registering their payment information with each developer. As you note, Apple’s App Review Guidelines require that apps use IAP to unlock additional features and functionalities. *See App Store Review Guideline § 3.1.1.*

Again, this rule is central to the App Store’s business model and successes. IAP supports the seamless consumer experience and is the means by which Apple gets paid for the valuable services and consumer base that it provides. To take advantage of Apple’s App Store, the bargain is simple: if you charge for software purchased through the App Store, Apple takes a percentage of the charge as commission. This business model has remained unchanged since the App Store launched.

Mr. Sweeney does not take issue with that model in his email—perhaps because Epic takes full advantage of it. Apple takes no cut from Epic’s in-app advertising, nor from sales of items, like skins and currency, that iOS app users obtain outside of the App Store. And, as already discussed, Apple charges nothing for enabling millions of iOS users to play Fortnite for free. Without IAP, however, Apple would have no practical or reliable way of collecting its commission on in-app digital sales. Indeed, the IAP requirement applies equally for the very same reason to the Mac App Store, which you regard as “open and competitive.”



* * *

Mr. Sweeney recently stated that “[i]t’s up to the creator of a thing to decide whether and how to sell their creation.” Tim Sweeney (@TimSweeneyEpic), Twitter (June 16, 2020, 11:53 PM), <https://twitter.com/TimSweeneyEpic/status/1273101468875329537>. We agree. It seems, however, that Epic wishes to make an exception for Apple and dictate the way that Apple designs *its* products, uses *its* property and serves *its* customers. Indeed, it appears that Mr. Sweeney wants to transform Apple’s iOS devices and ecosystem into “an open platform... like the first Apple computers, where users had the freedom to write or install any software they wished.” <https://twitter.com/TimSweeneyEpic/status/1273090414476738567>.

In the first place, this ignores the fundamental reality that the iPhone operates in an entirely different environment than a laptop or desktop computer and meets wholly different user expectations. As Steve Jobs explained in 2007, “[y]ou don’t want your phone to be like a PC. The last thing you want is to have loaded three apps on your phone and then you go to make a call and it doesn’t work anymore. These are more like iPods than they are like computers.” Steve Jobs Walks the Tightrope Again, N.Y. Times (Jan. 12, 2007), <https://www.nytimes.com/2007/01/12/technology/12apple.html>.

The App Store is not a public utility. Epic appears to want a rent-free store within the trusted App Store that Apple has built. Epic wants “equal access” to Apple’s operating system and “seamless” interaction between your store and iOS, without recognizing that the seamlessness of the Apple experience is built on Apple’s ingenuity, innovation, and investment. Epic wants access to all of the Apple-provided tools like Metal, ARKit and other technologies and features. But you don’t want to pay. In fact you want to take those technologies and then charge others for access. Apple has invested billions of dollars to develop technologies and features that developers like Epic can use to make great apps as well as a safe and secure place for users to download these apps. Apple designs its products and services to make developers successful through the use of custom chips, cameras, operating system features, APIs, libraries, compilers, development tools, testing, interface libraries, simulators, security features, developer services, cloud



services, and payment systems. These innovations are properly protected by intellectual property laws and Epic has no right to use them without a license from Apple. As a signatory to the Apple Developer Agreement and the Apple Developer Program License Agreement, Epic has acknowledged these IP rights (just as Epic's developers do the same with respect to Epic's intellectual property). *See* Apple Developer Program License Agreement § 2.5.

Surely Epic must understand that Apple is entitled to a return on its investment and the use of its property. After all, Epic takes great pains to protect *its own* investments and intellectual property. Epic rightly demands royalties from games built using its development software. *See* Unreal Engine End User Agreement § 5, <https://www.unrealengine.com/en-US/eula/publishing>. And it tightly controls how its games, designs, and content may be used, because, in its own words: “we spend a lot of time, thought, and money creating our intellectual property and need to protect it.” Fan Content Policy, <https://www.epicgames.com/site/en-US/fan-art-policy>. Plus, Mr. Sweeney recently suggested that it's reasonable for other industry players, such as console manufacturers, to charge for distributing software. Tim Sweeney (@TimSweeneyEpic), Twitter (June 17, 2020, 11:29 AM), <https://twitter.com/TimSweeneyEpic/status/1273276548569841667>. And Epic's major investor, China's Tencent, also charges developers to take advantage of its platform. *See* *Tencent opens up WeChat Mini-Games Platform to External Devs*, Pocket Gamer (Apr. 11, 2018), <https://www.pocketgamer.biz/asia/news/67901/tencent-opens-up-wechat-mini-games-platform-to-external-devs/>.

Yet somehow, you believe Apple has no right to do the same, and want all the benefits Apple and the App Store provide without having to pay a penny. Apple cannot bow to that unreasonable demand. We must therefore respectfully decline to make the changes you request.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Vetter", is written over a horizontal line.

Douglas G. Vetter
Vice President & Associate General Counsel