

PLEASE SCROLL DOWN AND READ ALL OF THE FOLLOWING TERMS AND CONDITIONS OF THIS APPLE BETA SOFTWARE PROGRAM AGREEMENT (“AGREEMENT”) CAREFULLY. BY CLICKING ON THE “AGREE” BUTTON, YOU ARE AGREEING ON YOUR OWN BEHALF OR ON BEHALF OF YOUR LEGAL ENTITY (WHETHER A COMPANY, ORGANISATION, EDUCATIONAL INSTITUTION OR GOVERNMENTAL AGENCY, INSTRUMENTALITY OR DEPARTMENT) TO BE BOUND BY ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU DO NOT OR CANNOT AGREE TO BE BOUND BY ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT, THEN CLICK THE “DECLINE” BUTTON AND YOU WILL BE INELIGIBLE TO PARTICIPATE IN THE APPLE BETA SOFTWARE PROGRAM.

**APPLE BETA SOFTWARE AGREEMENT  
APPLE SOFTWARE ENGINEERING  
APPLE INC.**

**1. Participation in the Beta Program.** The purpose of the Apple Beta Software Program (“**Beta Program**”) is to make alpha, beta, seed and other pre-release software, pre-release services and related documentation, materials and information (collectively, the “**Pre-Release Software**”) available to Beta Program participants from time to time for the purpose of providing Apple with feedback on the quality and usability of the Pre-Release Software. You understand and agree that participation in the Beta Program is voluntary and does not create a legal partnership, agency or employment relationship between You and Apple, and neither You nor Apple has any authority to bind the other. You understand that Your participation in the Beta Program does not obligate Apple to provide You with any Pre-Release Software. Should Apple decide to provide You with Pre-Release Software, You agree to use and evaluate the Pre-Release Software diligently. Apple reserves the right to modify the terms, conditions and policies of this Beta Program at any time without notice, and to revoke Your participation in this Beta Program at any time. If Apple makes changes to the terms and conditions of this Agreement, then Apple will publish such revised terms and conditions on the Beta Program web portal.

As used in this Agreement, “Licensee” means the person who has accepted this Agreement on their own behalf or the legal entity (whether a company, organisation, educational institution or governmental agency, instrumentality or department) that has accepted this Agreement through its authorised representative. “Authorised End User” means Licensee’s employees and contractors, members of Licensee’s organisation or, if Licensee is an educational institution, Licensee’s faculty, staff and students who are authorised by Licensee to exercise rights under this Agreement. “You” and “Your” means Licensee and any Authorised End User. For avoidance of doubt, Licensee is responsible for compliance with this Agreement by its Authorised End Users.

By participating in the Beta Program, You certify that You and Your Authorised End Users are of the legal age of majority in the jurisdiction in which you reside (at least 18 years of age in many countries) and you represent that You and Your Authorised End Users are legally permitted to join the Beta Program. If Your Authorised End Users are not of legal age, You acknowledge and agree that You have obtained the permission of the parent or legal guardian of each Authorised

End User. This Agreement is void where prohibited by law, and the right to become a Beta Program participant is not granted in such jurisdictions. Unless otherwise agreed or permitted by Apple in writing, You cannot share or transfer any software or other materials you receive from Apple in connection with being a Beta Program participant. The Apple Account and password You use to log in as a Beta Program participant cannot be shared in any way or with anyone. You are responsible for maintaining the confidentiality of Your Apple Account and password and for any activity in connection with Your account.

Notwithstanding the foregoing restrictions in this Section 1, if You are the parent or legal guardian of individuals between the ages of 13 and the legal age of majority in the jurisdiction in which You reside, You may allow such individuals to share Your Apple Account and password for their use in connection with the Beta Program solely under Your supervision and only in accordance with this Agreement. You are responsible for such individuals' compliance with and violations of this Agreement and any other Apple agreements.

**2. Access to Pre-Release Software; Beta Tools; and Additional Terms.** You understand that Apple may make Pre-Release Software available to Beta Program participants for downloading online through the Mac App Store, through the Beta Program web portal, on physical media and/or as otherwise provided through the Beta Program (e.g. by manual download of a digital image, by providing software configuration profiles, etc.). From time to time, Apple, at its option, may also provide You with software or services as part of the Beta Program, including but not limited to scripts, code snippets, utilities, configuration profiles, sample code, troubleshooting applications and bug submission tools ("**Beta Tools**") as part of Your participation in the Beta Program. All use of such Pre-Release Software and Beta Tools shall be pursuant to the terms and conditions of this Agreement and/or another licence agreement accompanying such Pre-Release Software or Beta Tools (collectively, "**Pre-Release Software**" and "**Beta Tools**" shall be referred to as "**Apple Software**" for purposes of this Agreement).

If the Apple Software is accompanied by a separate licence agreement, You agree that the licence agreement accompanying such Apple Software, in addition to Sections 5 and 6 of this Agreement, shall govern Your use of the Apple Software. Any inconsistencies between the provisions of the licence agreement accompanying the Apple Software and Sections 5 and 6 of this Agreement shall be governed by this Agreement. If there is no licence agreement accompanying the Apple Software, Your use of the Apple Software will be subject to the provisions of this Agreement.

You acknowledge and agree that You are responsible (a) for ensuring that each Authorised End User is aware of and complies with the terms and conditions of the licence agreements for the Apple Software, (b) for obtaining any required consents for Your Authorised End Users' use of the Apple Software and to deploy Authorised Devices as permitted hereunder, and (c) to monitor and be fully responsible for all such use of the Apple Software by Your Authorised End Users. Furthermore, Apple Software may enable access to Apple and third-party services and websites (collectively and individually, "**Services**"). Use of these Services requires internet

access, and use of certain Services may require an Apple Account, may require you to accept additional terms and may be subject to additional fees.

**3. Licence Granting and Restrictions.** Subject to Your compliance with this Agreement, Apple hereby grants You a personal, limited licence to use the Apple Software on Authorised Devices (defined below) and deploy them to Authorised End Users solely for testing and evaluation purposes and only in connection with this Beta Program. For purposes of this Agreement, “Authorised Devices” means Apple-branded products that are owned or controlled by Licensee, that have been designated for use by Authorised End Users only and that are eligible for use in this Beta Program. Except as otherwise permitted under Section 16, this licence does not grant You the right to use the Apple Software for any other purpose, or to disclose, reproduce, distribute, modify or create derivative works of the Apple Software. You agree not to decompile, reverse-engineer, disassemble, decrypt or otherwise attempt to derive the source code of any Apple Software (except as and only to the extent that the foregoing restrictions are prohibited by applicable law or to the extent that may be permitted by licensing terms governing use of open-sourced components included with any such Apple Software). Unless otherwise permitted under Section 16 below, You certify that the Apple Software will only be used for testing and evaluation purposes in connection with the Beta Program, and will not be rented, sold, leased, sublicensed, assigned, distributed or otherwise transferred. Apple retains ownership of all Apple Software, and except as expressly set forth herein, no other rights or licences are granted or to be implied under any Apple intellectual property.

**4. Feedback; Contact from Apple.** As part of the Beta Program, Apple may provide You and certain of Your Authorised End Users with the opportunity to submit bug reports, questionnaires, enhancement requests, issue reports and/or support information (collectively, “**Feedback**”) to Apple. Authorised End Users who are students are not permitted to provide Feedback to Apple. Apple may request this information from You and non-student Authorised End Users through the Beta Tools as well as by phone, email, web questionnaires, bug forms and other mechanisms. By agreeing to this Agreement, You agree that Apple may contact You from time to time about the Beta Program, and You hereby consent to receive such communications. Except as otherwise set forth in Section 8, you agree that in the absence of a separate written agreement to the contrary, Apple will be free to use any Feedback You provide for any purpose.

**5. Definition of Confidential Information.** You agree that the Pre-Release Software and any information concerning the Pre-Release Software (including its nature and existence, features, functionality and screenshots), the Beta Tools and any other information disclosed by Apple to You in connection with this Agreement, including but not limited to information learned by You from Apple employees, agents or through inspection of Apple’s property, that relates to Apple’s products, designs, business plans, business opportunities, finances, research, development, know-how, personnel or third-party confidential information disclosed to You by Apple, will be considered and referred to collectively in this Agreement as “**Confidential Information**”. Information that otherwise would be deemed Confidential Information but (a) is generally and legitimately available to the public through no fault or breach of Yours, (b) is generally made

available to the public by Apple, (c) is independently developed by You without the use of any Confidential Information, (d) 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 will not be considered Confidential Information under this Agreement. All Confidential Information remains the sole property of Apple, and You have no implied licences or other rights in the Confidential Information not specified in this Agreement.

**6. Non-Use and Non-Disclosure of Confidential Information.** Except as expressly permitted in this Section 6, You agree that You will not disclose, publish or otherwise disseminate any Confidential Information to anyone other than Your Authorised End Users, or as otherwise expressly permitted or agreed to in writing by Apple. You further agree to take reasonable precautions to prevent any unauthorised use, disclosure, publication or dissemination of Confidential Information, including preventing access to or display of the Apple Software to third parties. You agree to use the Confidential Information solely for the permitted uses as set forth in this Agreement. You agree not to use Confidential Information otherwise for Your own or any third party's benefit without the prior written approval of an authorised representative of Apple in each instance. You hereby acknowledge that unauthorised disclosure or use of 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 obligations under this Agreement in addition to any other rights and remedies it may have.

**7. Precautions for the Use of Pre-Release Software.** You may need to provide Your own Apple-branded computer or device to be able to participate in seeds of certain Pre-Release Software, including, but not limited to, the iOS operating system software. If You participate in such seeds, You may need to register Your computer or device with Apple and provide Apple with certain necessary information from such device, including, without limitation, unique device identifier numbers. You understand that to participate in seeds of Pre-Release Software, You may need to remove certain pre-loaded, commercial Apple software from Your computer and/or device in order to load the Pre-Release Software. You further understand that once You have loaded such Pre-Release Software onto Your computer and/or device, You may be unable to revert to the pre-loaded, commercial release of the Apple software You were using prior to loading the Pre-Release Software or any earlier release of the Pre-Release Software. In addition, applications and services You have installed or been using may be unable to run or function in the same manner because of Your use of the Pre-Release Software. **YOU ACKNOWLEDGE THAT BY INSTALLING SUCH PRE-RELEASE SOFTWARE ON YOUR APPLE-BRANDED COMPUTERS AND/OR DEVICES, THESE COMPUTERS AND DEVICES MAY NOT BE CAPABLE OF BEING RESTORED TO THEIR ORIGINAL CONDITION, AND THAT APPLICATIONS AND SERVICES MAY BE AFFECTED BY YOUR USE OF PRE-RELEASE SOFTWARE. FURTHERMORE, YOU UNDERSTAND THAT DATA (INCLUDING DOCUMENTS) FROM SUCH APPLICATIONS OR SERVICES THAT YOU CREATE OR CHANGE WHILE USING THE PRE-RELEASE SOFTWARE MAY BE INCAPABLE OF BEING RESTORED OR RECOVERED. APPLE SHALL NOT BE RESPONSIBLE FOR ANY COSTS, EXPENSES OR**

**OTHER LIABILITIES YOU MAY INCUR AS A RESULT OF PROVISIONING YOUR DEVICES, YOUR TESTING, OR THE INSTALLATION OR USE OF PRE-RELEASE SOFTWARE, INCLUDING BUT NOT LIMITED TO ANY DAMAGE TO ANY EQUIPMENT, SOFTWARE OR DATA, OR ANY LOSS OF DATA OR INFORMATION ARISING FROM YOUR USE OF SUCH PRE-RELEASE SOFTWARE.** In addition, the Pre-Release Software may contain errors or inaccuracies that could cause failures, corruption or loss of data and/or information from Your computer and/or device or from Your peripherals (including, without limitation, servers and printers) connected thereto. **Apple strongly encourages You to back up all data and information on Your computer, devices and/or any peripherals prior to Your participation in the Beta Program and before any individual seeds. The Pre-Release Software is not intended for use, and should not be used, in production or business-critical systems.**

## **8. Consent to Collection and Use of Data.**

**8.1 Licensee's Obligations.** Licensee agrees to comply with all applicable laws and regulations, including all applicable privacy and data collection laws and regulations with respect to any use or collection of data and information through the use of the Apple Software and Licensee's deployment of Authorised Devices to its Authorised End Users. Licensee represents and warrants that it will provide sufficient notice and disclosure of the terms of the Agreement, and obtain all necessary rights and consents, either from the Authorised End User or, where necessary, the Authorised End User's parent or legal guardian, for the use, testing and evaluation of Apple Software and the direct and incidental collection of Authorised End User data that may arise, prior to deploying Authorised Devices to the Authorised End User.

**8.2 Pre-Release Software for Apple's Operating Systems (e.g. versions of iOS, watchOS, iPadOS, tvOS, macOS and visionOS).** In order to provide, test and help Apple, its partners and third-party developers improve their products and services, and unless You opt out in the pre-release versions of Apple's operating system software, as applicable, You acknowledge that Apple and its subsidiaries and agents will be collecting, using, storing, transmitting, processing and analysing (collectively, "Collecting") diagnostic, technical and usage logs and information from Your Authorised Devices that are running such pre-release versions of Apple's operating system software as part of this Beta Program. This information will be Collected in a form that does not personally identify the Authorised End User and may be Collected from such computers or devices at any time. The information that would be Collected includes, but is not limited to, general diagnostic and usage data, various unique device identifiers, various unique system or hardware identifiers, details of hardware and operating system specifications, performance statistics, and data about how Authorised End Users use Authorised Devices, system and application software, and peripherals, and, if Location Services is enabled, certain location information. You agree that Apple may share such diagnostic, technical and usage logs and information with partners and third-party developers for purposes of allowing them to improve their products and services that operate on or in connection with Apple-branded products. **By installing or using pre-release versions of Apple's operating system software on Your Authorised Devices, You acknowledge and agree that Apple and its subsidiaries and agents have Your permission and where necessary the permission of the parent or legal**

**guardian of each Authorised End User to Collect all such information and use it as set forth above.**

**8.3 Other Pre-Release Software and Services.** In order to test and improve Apple's products and services, and only if You choose to install or use other Pre-Release Software or Services (excluding Apple's operating system software) provided as part of the Beta Program, You acknowledge that Apple and its subsidiaries and agents may be Collecting diagnostic, technical, usage and related information from other Pre-Release Software or Services and from Your computer, devices, peripherals or other hardware that uses such Pre-Release Software. You should carefully review the release notes and other information disclosed to You by Apple as part of the Beta Program prior to choosing whether or not to install or use any such other Pre-Release Software or Services. **By installing or using such other Pre-Release Software or Services, You acknowledge and agree that Apple and its subsidiaries and agents have Your permission and, where necessary, the permission of the parent or legal guardian of each Authorised End User to Collect any and all such information and use it as set forth above.**

**8.4 System Logs and Diagnostic Files.** In addition, as part of Your participation in the Beta Program, You may have the option of manually attaching and/or using Apple's Beta Tools to gather detailed hardware and/or system diagnostic files (e.g. kernel logs, Apple System Profile logs, hang logs, crash logs, spin logs, installation logs, application logs, etc.) from Your computer and/or devices ("System Logs") to send to Apple. Such System Logs may include personally identifiable information, including, without limitation, Your account name, information regarding Your contacts, calendar events and email correspondence. **Providing these System Logs is voluntary, but if You do provide them to Apple, then You acknowledge and agree that You have obtained the necessary rights and consents to provide such information to Apple and that Apple may use them for Apple's diagnostic purposes and to improve the Beta Program and Apple's products and services.**

**8.5 Privacy Policy.** At all times, your information will be treated in accordance with Apple's Privacy Policy, which can be viewed at: <https://www.apple.com/legal/privacy>.

**9. No Support and Maintenance; Future Products.** During Your participation in the Beta Program or in a particular seed, Apple is not obligated to provide You with any maintenance, technical or other support for the Apple Software. If, at Apple's option, such support is provided, it will be provided in addition to Your normal warranty coverage for Your device or computer, as applicable, and will be available exclusively through the Beta Program while You are a participant for the applicable seed. You agree to abide by any support rules and policies that Apple provides to You in order to receive such support. You acknowledge that Apple has no express or implied obligation to announce or make available a commercial version of the Pre-Release Software to anyone in the future. Should a commercial version be made available, it may have features or functionality that are different from those found in the Pre-Release Software licensed hereunder.

**10. Discussion Forums.** As part of the Beta Program, You may have the ability to participate in discussion forums provided by Apple about the Pre-Release Software and other Confidential Information that Apple may make available to You. For purposes of such discussion forums, Apple is providing a limited exception to Section 6 by allowing You to discuss certain Apple Confidential Information received by You in connection with a particular seed with other seed participants who are in the same seed as You in the Apple-designated discussion forum for such seed, and only within this discussion forum. Except for the limited purpose of discussions with other seed participants within such forums, You acknowledge and agree that this Agreement does not grant You the right to copy, reproduce, publish, blog, disclose, transmit or otherwise disseminate any Apple Confidential Information.

**11. Indemnification.** To the extent permitted by applicable law, Licensee agrees to indemnify, defend and hold harmless Apple and, upon Apple's request, defend Apple, its directors, officers, employees, independent contractors and agents (each an "Apple Indemnified Party") from any and all claims, losses, liabilities, damages, expenses and costs, including without limitation attorneys' fees and court costs (collectively "Losses") incurred by an Apple Indemnified Party and arising from or related to Licensee's or its Authorised End User's breach of any certification, covenant, obligation, representation or warranty in this Agreement.

Licensee acknowledges that the Apple Software is not intended for use in situations in which errors or inaccuracies in the content, functionality, services, data or information provided by the Apple Software or the failure of the Apple Software could lead to death, personal injury, or severe physical or environmental damage, and, to the extent permitted by law, Licensee hereby agrees to indemnify, defend and hold harmless each Apple Indemnified Party from any Losses incurred by such Apple Indemnified Party by reason of any such use by Licensee or its Authorised End Users.

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

**12. No Warranty.** The Apple Software provided hereunder may be designated as alpha, beta, development, pre-release, untested or not fully tested versions. The Apple Software may be incomplete and may contain errors or inaccuracies that could cause failures, corruption and/or loss of data or information. You expressly acknowledge and agree that, to the extent permitted by applicable law, all use of the Apple Software is at Your sole risk and that the entire risk as to satisfactory quality, performance, accuracy and effort is with You. APPLE IS PROVIDING ALL CONFIDENTIAL INFORMATION, INCLUDING THE PRE-RELEASE SOFTWARE AND BETA TOOLS, TO YOU SOLELY ON AN "AS IS" BASIS AND WITHOUT ANY WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, ACCURACY, COMPLETENESS, PERFORMANCE AND FITNESS FOR A PARTICULAR PURPOSE. You acknowledge that Apple has not publicly announced the availability of the Pre-Release Software, that Apple has not promised or guaranteed to You that such Pre-Release Software will be announced or made available to anyone in the future, and that Apple has no express or implied obligation to You to announce or introduce the Pre-

Release Software or any similar or compatible product, or to continue to offer or support the Pre-Release Software in the future. For consumers in Australia, nothing in this licence affects, or is intended to affect, your statutory rights under the Australian Consumer Law (including the consumer guarantees).

**13. Disclaimer of Liability.** EXCEPT AS OTHERWISE PROVIDED IN THIS LICENCE, TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW, YOU ASSUME ALL RISKS AND ALL COSTS ASSOCIATED WITH TESTING, INSTALLATION OR USE OF THE PRE-RELEASE SOFTWARE AND BETA TOOLS PROVIDED UNDER THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY CARRIER BILLS, BACK-UP EXPENSES, COSTS INCURRED FOR THE USE OF THE PRE-RELEASE SOFTWARE ON YOUR COMPUTER, DEVICES AND/OR PERIPHERALS, AND ANY DAMAGE TO ANY EQUIPMENT, SOFTWARE, INFORMATION OR DATA, AND IN NO EVENT WILL APPLE BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, WHETHER ARISING IN TORT (INCLUDING NEGLIGENCE), CONTRACT OR OTHERWISE, ARISING OUT OF OR RELATED TO THIS AGREEMENT, INCLUDING ANY LIABILITY THAT STEMS FROM ANY USE OF THE PRE-RELEASE SOFTWARE ON YOUR COMPUTER, DEVICES AND/OR ANY PERIPHERALS CONNECTED THERETO, AND/OR FROM ANY OTHER CONFIDENTIAL INFORMATION, AND/OR APPLE'S PERFORMANCE OR FAILURE TO PERFORM UNDER THIS AGREEMENT, EVEN IF APPLE HAS BEEN ADVISED OR IS AWARE OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL APPLE'S TOTAL LIABILITY TO YOU FOR ALL DAMAGES (OTHER THAN AS MAY BE REQUIRED BY APPLICABLE LAW IN CASES INVOLVING PERSONAL INJURY) EXCEED THE AMOUNT OF FIFTY DOLLARS (\$50.00). THE FOREGOING LIMITATIONS WILL APPLY EVEN IF THE ABOVE-STATED REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

**14. Term and Termination.** This Agreement will continue in effect until terminated in accordance with this Section 14. You may terminate this Agreement or an individual seeding project at any time, for any reason, but only by returning or destroying any and all Confidential Information that is in Your possession or control (including, without limitation, any Pre-Release Software); provided, however, that if You are unable to purge certain Pre-Release Software from Your computer and/or devices, then You agree that You will not use such device (or any Pre-Release Software loaded thereon) unless or until Apple makes available a commercial version of the Pre-Release Software. At Apple's request, You agree to provide certification of Your compliance with the foregoing requirements upon any termination. Apple may terminate this Agreement or an individual seeding project at any time, with or without cause, immediately upon written notice to You, and may terminate this Agreement immediately for any breach of the confidentiality provisions set forth herein. Within seven (7) days of Your receipt of Apple's termination notice, or earlier if requested by Apple, You will return, cease all use of and/or destroy the Pre-Release Software and all other Confidential Information as stipulated in this Section. Following termination of this Agreement or an individual seeding project for any reason, the restrictions of Section 3, Sections 4 to 8, the last two sentences of Section 9, and Sections 11 to 20, inclusive, will continue to bind the parties. The term of your licence to use the Apple Software granted under Section 3 of this Agreement shall commence upon your installation or use of the Apple Software and will terminate automatically without notice from Apple upon the earlier of (a) the next commercial release of the Apple Software, (b) the

termination of the individual seeding project under which you obtained the Apple Software, (c) the termination of this Agreement, or (d) the date specified in the separate licence accompanying the Apple Software (if any).

**15. No Export.** You agree that You will not export or re-export any of the Pre-Release Software or Confidential Information received from Apple except as authorised by United States law and the laws of the jurisdiction in which the Apple Software was obtained. In particular, but without limitation, the Apple Software may not be exported or re-exported (a) into any US-embargoed countries or (b) to anyone on the US Treasury Department's list of Specially Designated Nationals or the US Department of Commerce Denied Person's List or Entity List or any other restricted party lists. By downloading and using the Apple Software, You represent and warrant that You are not located in any such country or on any such list. You also agree that You will not use the Apple Software for any purposes prohibited by United States law, including, without limitation, the development, design, manufacture or production of missiles, nuclear, chemical or biological weapons. You certify that this Apple Software will only be used for evaluation and testing purposes, and will not be rented, sold, leased, sublicensed, assigned or otherwise transferred. Further, You certify that You will not transfer or export any product, process or service that is a direct product of this Apple Software.

**16. Third-Party Software and Information.** Portions of the Apple Software may include third-party software and other copyrighted material. Acknowledgements, licensing terms and disclaimers for such material are contained in the electronic documentation for the Apple Software, and Your use of such material is governed by such respective terms. Mention of third parties and third-party products in any materials, advertising, promotions or coupons provided to Beta Program participants is for information 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.

**17. No Waiver or Assignment.** No delay or failure to take action under this Agreement will constitute a waiver unless expressly waived in writing, signed by a duly authorised representative of Apple, and no single waiver will constitute a continuing or subsequent waiver. This Agreement may not be assigned by You in whole or in part. Any contrary assignment shall be null and void.

**18. Governing Law.** Any litigation or dispute resolution between You and Apple arising out of or relating to this Agreement, the Apple Software or Your relationship with Apple will take place in the Northern District of California, and You and Apple hereby consent to the personal jurisdiction of and exclusive venue in the state and federal courts within that District with respect to any such litigation or dispute resolution. This Agreement will be governed by and construed in accordance with the laws of the United States and the State of California, except that body of California law concerning conflicts of law. Notwithstanding the foregoing, if You are

an individual entering into this Agreement solely as part of Your employment for one of the entities listed below, then the following exceptions shall apply:

- If You are employed by an agency, instrumentality or department of the federal government of the United States, then this Agreement shall be governed in accordance with the laws of the United States of America, and in the absence of applicable federal law, the laws of the State of California will apply. Furthermore, and notwithstanding anything to the contrary in this Agreement, all claims, demands, complaints and disputes will be subject to the Contract Disputes Act (41 U.S.C. §§601-613), the Tucker Act (28 U.S.C. § 1346(a) and § 1491) or the Federal Tort Claims Act (28 U.S.C. §§ 1346(b), 2401-2402, 2671-2672, 2674-2680), as applicable, or other applicable governing authority.
- If You are employed by a US public and accredited educational institution, then (a) this Agreement will be governed and construed in accordance with the laws of the state (within the US) in which Your educational institution is domiciled, except that body of state law concerning conflicts of law, and (b) any litigation or other dispute resolution between You and Apple arising out of or relating to this Agreement, the Apple Software or Your relationship with Apple will take place in federal court within the Northern District of California, and You and Apple hereby consent to the personal jurisdiction of and exclusive venue of such District unless such consent is expressly prohibited by the laws of the state in which Your educational institution is domiciled.
- If You are employed by an international, intergovernmental organisation that has been conferred immunity from the jurisdiction of national courts through Your intergovernmental charter or agreement, then any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be determined by arbitration administered by the International Centre for Dispute Resolution in accordance with its International Arbitration Rules. The place of arbitration shall be London, England; the language shall be English; and the number of arbitrators shall be three. Upon Apple's request, You agree to provide evidence of Your status as an intergovernmental organisation with such privileges and immunities.

This Agreement shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded.

**19. Government End Users.** The Apple Software and related documentation are "Commercial Products", as that term is defined in 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 to 227.7202-4, as applicable, the Commercial Computer Software and Commercial Computer Software Documentation are being licensed to US Government end users (a) only as Commercial Products 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.

**20. Severability; Complete Understanding.** If any provision of this Agreement 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, including any appendices made effective pursuant to this Agreement and any additional licences accompanying the Apple Software, constitutes the entire agreement with respect to the Confidential Information disclosed herein and supersedes all prior or contemporaneous oral or written agreements concerning such Confidential Information. Except to the extent provided under Section 2 above, any inconsistencies between this Agreement and any licence agreement accompanying the Apple Software will be governed by the licence agreement accompanying the Apple Software. Except as expressly set forth herein, any waiver or amendment of any provision of this Agreement shall be effective only if in writing and signed by authorised representatives of both parties. Any translation of this Agreement is done for local requirements, and in the event of a dispute between the English and any non-English versions, the English version of this Agreement shall govern, to the extent not prohibited by local law in Your jurisdiction.

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