

EBOOK AGENCY/COMMISSIONAIRE DISTRIBUTION AGREEMENT

This Agreement is between, on the one hand, the Apple entities appointed as agent or commissionaire on Exhibit A hereto (collectively and individually, as the context requires, “Apple”), and, on the other hand, the legal entity associated with the iTunes Connect account through which this Agreement is executed (“Publisher”), and is effective as of the date it is electronically signed through iTunes Connect (the “Effective Date”).

Apple desires to be appointed as Publisher’s agent (in those countries listed in Exhibit A, Section 1) or commissionaire (in those countries listed in Exhibit A, Section 2) for the sale and delivery of digital books under certain conditions as set out in this Agreement and Publisher is willing to appoint Apple as its agent or commissionaire, as the case may be, under such conditions.

In consideration of mutual promises, Apple and Publisher (each a “Party” and collectively, “Parties”) hereby agree as follows:

1. Definitions.

The following terms shall have the following meanings for purposes of this Agreement:

- (a) “Artwork” means book covers, photos, drawings, and illustrations associated with Publisher Content, including any artwork that is included in copies of Publisher Content in digital format, and which has been provided by or on behalf of Publisher to Apple. All Artwork provided to Apple shall have been cleared for Apple’s use for the purposes of performing its functions under this Agreement.
- (b) “Commissionaire” means that a non-risk bearing agent acts in its own name but on the account of a principal.
- (c) “Content File” means a digital file comprising at least an item of Publisher Content, associated Artwork, metadata and/or Insert Content and Extras.
- (d) “Customer Price” means the actual customer-facing retail price displayed to the end-user on the Online Store, as set and designated by Publisher for each eBook in accordance with Exhibit C. For avoidance of doubt, this Customer Price is not synonymous with “digital list price” or “publisher list price” as such terms may customarily be used in the book publishing industry.
- (e) “eBook” means an individual Content File containing Publisher Content, Artwork, Insert Content (if any), Extras (if any) and metadata in a form authorized by Publisher for download on the Online Store. Each eBook available for sale hereunder will be designated by its International Standard Book Number (ISBN) in the metadata.
- (f) “Enhanced eBook” means an eBook that contains additional interactive/multimedia material (including, e.g. video, audio,

- interactive maps, PDFs, etc) or functionality (including e.g. voting, quizzes, links, etc) beyond the text and images found in the book. Although this content is primarily multimedia in nature, it may also include supplemental text (e.g. author notes, additional chapters) or photographs/illustrations. Publisher shall not make an Enhanced eBook available for sale unless Publisher has provided Apple with a standard edition of such book, to the extent that such standard version exists and Publisher holds the rights to digital distribution of that standard version.
- (g) “Insert Content” means promotional content provided by or on behalf of Publisher and associated with Publisher Content, such as book reviews, author bios, forewords and similar content.
- (h) “iTunes Connect” means the proprietary content and account management tool known as iTunes Connect, made available by Apple to Publisher during the Term.
- (i) “New Release” means any adult trade fiction or nonfiction book during the seven (7) month period following its first publication, regardless of format (i.e. physical or digital).
- (j) “Online Store” means the electronic eBook store owned or controlled by Apple or an Apple affiliate.
- (k) “Preview” means an excerpt from each item of Publisher Content (e.g., 10% of the book or as provided with Publisher Materials as long as it is at least 5% of the book) used to promote the corresponding Publisher Content, as selected by Publisher in the metadata. The Parties agree that Previews need not be protected using the Security Solution or be subject to any content usage rules other than limited for personal, non-commercial use.
- (l) “Publisher Content” means publishable textual and graphical book content owned or controlled by Publisher that has been cleared for distribution in digital form.
- (m) “Publisher Materials” means, collectively, all materials furnished by or on behalf of Publisher to Apple in furtherance of its appointment, including any Publisher Content, Artwork, metadata, Insert Content, Previews and any extra bonus-type text, audio, video or audio-visual content (“Extras”).
- (n) “Security Solution” means Apple’s proprietary digital rights management solution marketed as “FairPlay.”
- (o) “Term” means the period beginning on the Effective Date and continuing for one year followed by automatic monthly renewal periods, unless terminated pursuant to Section 13(a) or, after the first anniversary of the Effective Date, for any or no reason by either Party upon advance written notice of not less than thirty (30) days.

- (p) “Territory” means those countries set forth in Exhibit A. For the sake of clarity, Publisher shall select the particular countries in which Apple may make eBooks available, on a title-by-title basis, using iTunes Connect or via other technical means provided and approved by Apple.

2. Agency / Commissionaire Appointment.

- (a) Publisher hereby appoints Apple (i) in those countries listed in Exhibit A, Section 1 as its non-exclusive agent for the sale and delivery of eBooks through the Online Store, on Publisher’s behalf, to end-users for their personal, non-commercial use, and Apple accepts such appointment; and (ii) in those countries listed in Exhibit A, Section 2 as its non-exclusive Commissionaire for the sale and delivery of eBooks through the Online Store, on Publisher’s behalf but in Apple’s own name, to end-users for their personal, non-commercial use, and iTunes accepts such appointment.
- (b) In furtherance of such appointment, Publisher hereby authorizes and instructs Apple to:
- (i) Market and solicit to end-users, and obtain and fulfill orders from end-users for, eBooks on Publisher’s behalf, including delivery of copies of Previews for free to potential eBook customers, in those countries listed in Exhibit A, Section 1;
 - (ii) Market and solicit to end-users, and obtain and fulfill orders from end-users for, eBooks in Apple’s own name but on Publisher’s behalf, including delivery of copies of Previews for free to potential eBook customers, in those countries listed in Exhibit A, Section 2;
 - (iii) Make copies of, format, store in databases and data networks and otherwise prepare Content Files as necessary to make them publicly available for download by end-users as eBooks, including book cover Artwork, via any transmission method, system or network;
 - (iv) Provide storage, searching, and hosting services so end-users may search for, obtain recommendations for, and acquire eBooks by electronic download through the Online Store;
 - (v) Provide receipts for the purchase price and any applicable sales, use, goods and services, value added or similar taxes payable by end-users for eBooks;
 - (vi) Provide customer support to end-users, including providing "re-downloads" to end-users in the event that an eBook previously purchased by the end-user is lost or becomes unusable;
 - (vii) Use and modify, such modification to be limited to resizing or cropping but only for the purpose of fitting the Artwork into the space allotted in any promotional materials, Artwork, Insert Content and

metadata, and trademarks and logos associated with eBooks, as well as other images and materials provided by Publisher to Apple, for promotional purposes in marketing materials and gift cards; and

- (viii) Do all other things reasonably necessary for Apple to fulfill Apple's obligations to Publisher under this appointment, such as modify metadata as reasonably necessary to correct errors in metadata.

3. Publisher Obligations.

- (a) Publisher acknowledges that the breadth of eBook offerings on the Online Store is of the essence of the Agreement and the successful appointment. Publisher shall endeavor to make all Publisher Content (including revisions, re-printings, updates etc.) available to Apple under its appointment, and, subject to the terms of this appointment, in no event less than the Publisher Content it provides to any other electronic distributor, agent, commissionaire, or other representative of Publisher's content in digital form.
- (b) Publisher shall not discriminate against Apple with respect to the permitted usage rules, functionality, and quality of any Publisher Content, as compared to the terms under which such Publisher Content is supplied to any other electronic distributor, agent, commissionaire, or other representative of Publisher's content in digital form.
- (c) Except for a limited-time, one-off promotion for a particular item of Publisher Content, or in the event of a specific objection by an author as to a specific New Release, Publisher shall provide and make available New Releases to Apple under its appointment on the same day and date as Publisher makes any New Release otherwise available to end-users in any format, including physical copies.
- (d) Publisher shall deliver Content Files to Apple, at Publisher's expense, in the delivery format and using the delivery method reasonably specified by Apple on iTunes Connect, e.g., ePub format. Publisher Content will be delivered to a server in California by means of telecommunications or via "load & leave" per California State Board of Equalization Regulation 1502.
- (e) Publisher shall not include any digital watermark or similar technologies in the Content File without Apple's approval, which approval shall not be unreasonably withheld.
- (f) Publisher shall deliver an Enhanced eBook only if it delivers the standard version, if any, of such Enhanced eBook prior to or at the same time as the delivery of such Enhanced eBook provided that Publisher has digital distribution rights for the standard edition.

- (g) Publisher shall promptly notify Apple in writing of any potential copyright infringements with respect to Publisher's eBooks of which Publisher becomes aware, including any Clearance Issues as defined under Section 6 below.

4. Royalties.

Publisher shall be responsible for and timely pay any royalties or license fees owed to authors, illustrators, artists, talent and other rights holders or contributors (if any) arising from the use of any Publisher Materials in furtherance of Apple's appointment as provided herein, including any payments required under collective bargaining agreements. For the sake of clarity, Publisher acknowledges and agrees that no royalty, fees, or other compensation is payable by Apple to Publisher or any third party for the rights described in Section 2(b)(vii) and 8(a). Publisher shall indemnify and hold harmless Apple for any claims of authors, illustrators, artists, talent and other rightsholders or contributors (if any) against Apple for additional remuneration or participation in the exploitation of the eBooks under applicable law.

5. Commission; Tax; and Reporting.

(a) For sales of eBooks to those Customers located in the countries listed in Exhibit B of this Agreement, Apple shall be entitled to a commission of thirty (30%) of the Customer Price payable by eBook purchasers less of any and all taxes collected ("eBook Proceeds"). Except for the taxes to be collected by Apple as set forth in Section 5(f) hereunder, Apple shall be entitled to the commission specified in the foregoing without reduction for any taxes or other government levies, including any and all taxes or other similar obligations of Publisher, Apple or any eBook purchaser relating to the delivery or use of the eBook. Publisher hereby acknowledges and agrees that Apple shall be entitled to a commission, in accordance with this Section 5(a) on the delivery of any eBook to any eBook purchaser, even if Apple is unable to collect the Customer Price for that eBook from that eBook purchaser. The "sale" of an eBook shall occur when an eBook is first delivered to an end-user.

(b) If, for any given eBook New Release, the then-current Customer Price in a particular country in the Territory is materially higher than its customer price offered by any other eBook distributor to consumers in such country ("Other Customer Price"), then, Publisher shall, within two days following Publisher becoming aware of such Other Customer Price, set a new Customer Price for such country not to exceed the lowest known Other Customer Price. Publisher shall not be required to set a new lower Customer Price for a particular country more than once in any fifteen (15) day period. Publisher shall use commercially reasonable efforts to comply with the foregoing requirement as of the Effective Date, but Apple agrees that Publisher may have up to a ninety-day (90) phase-in period from the First Effective Date towards full compliance with such obligation. For the purposes of this section 5(b), the "First Effective Date" shall be the effective date of the first eBook Distribution Agency/Commissionaire Agreement

entered into by Publisher with Apple for a particular country in the Territory, regardless of whether that eBook Distribution Agency/Commissionaire Agreement has been terminated, renewed or restated per Section 19 hereunder, or any similar clause in previous eBook Distribution Agency/Commissionaire Agreements.

- (c) After deducting Apple's commission from eBook Proceeds, Apple shall either remit to Publisher, or issue a credit in Publisher's favor, subject to Apple's standard business practices, including minimum monthly remittance amount thresholds determined by Apple (e.g., \$150), the remaining balance by electronic funds transfer ("EFT") no later than forty-five (45) days following the close of the previous monthly sales period. Payment shall be made in the currency set forth in Exhibit C for the applicable country within the Territory; provided that Apple may provide a means on iTunes Connect to enable Publisher to designate a primary currency for the bank account designated by Publisher for receiving remittances ("Designated Currency"), and 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 Publisher. Publisher agrees that any resulting currency exchange differentials or fees charged by Apple's bank may be deducted from such remittances.
- (d) No later than forty-five (45) days following the end of each monthly period, Apple will make available to Publisher on the iTunes Connect site a sales report in sufficient detail to permit Publisher to identify the eBooks sold in that monthly period and the total amount to be remitted to Publisher by Apple.
- (e) Publisher is responsible for any fees (e.g., wire transfer and EFT fees) charged by Publisher's bank or any intermediary banks. Publisher shall provide Apple with Publisher's banking information using iTunes Connect.
- (f) Subject to the specific provisions of Exhibit D applicable to particular countries in the Territory, in the event that the sale or delivery of any of the eBooks to any end-user is subject to any sales, use, goods and services, value added, or other similar tax, under applicable law, responsibility for the collection and remittance of that tax for sales of the eBooks to end-users will be determined in accordance with Exhibit B of this Agreement. Upon Publisher's request, Apple will provide confirmation, using means reasonably designated by Apple, that Apple has collected and remitted any taxes required under this Section 5(f) to the appropriate tax authorities.
- (g) If a purchase is subject to withholding or similar tax, or any sales, use, goods and services, value added, or other tax or levy not collected by Apple hereunder, or any other tax or other government levy of whatever nature, the full amount of that tax or levy shall be solely for Publisher's account, and shall not reduce the commission to which Apple is entitled.

- (h) Apple may withhold any taxes, duties, charges or levies on payments by Apple to Publisher that Apple, in its discretion, determines are required by applicable law, rule or regulation, and Apple shall remit any such withholding to the appropriate tax authority. Apple will apply a reduced rate of withholding tax, if any, provided for in any applicable income tax treaty only if Publisher furnishes Apple with such documentation required under that income tax treaty or otherwise satisfactory to Apple, sufficient to establish Publisher's entitlement to the benefit of that reduced rate of withholding tax. Upon Publisher's timely request to Apple in writing, using means reasonably designated by Apple, Apple will use commercially practical efforts to report to Publisher the amount of Apple's payment of withholding or similar taxes to the competent tax authorities on Publisher's behalf. Publisher 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 Publisher as to Publisher's entitlement to, or Publisher's disqualification for, the benefit of a reduced rate of withholding tax.
- (i) Publisher 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.
- (j) In furtherance of the Parties' respective tax compliance obligations, Publisher agrees to comply with the requirements listed on Exhibit D or on iTunes Connect depending upon, among other things, (i) Publisher's country of residence and (ii) the countries designated by Publisher in which Publisher wishes Apple to allow access to eBooks hereunder. In the event that Apple collects any amounts corresponding to the purchase price for any of Publisher's eBooks before Publisher has provided Apple with any tax documentation required under this Agreement, Apple will not remit those amounts to Publisher, but will hold those amounts in trust for Publisher, until such time as Publisher has provided Apple with the required tax documentation. Upon receipt of all required tax documents from Publisher, Apple will remit to Publisher any amounts held in trust by Apple for Publisher, without interest, under this Section 5(j) in accordance with the terms of the Agreement.

6. Apple Obligations.

- (a) Apple shall condition use of eBooks on an end-user's acknowledgement of terms of use, which terms shall state that any use of eBooks is for personal and non-commercial use only, and that the sale of eBooks does not provide any commercial or promotional use rights in any eBook.
- (b) The commission provided for in Section 5(a) above shall constitute Apple's reimbursement for all marketing, storage, hosting, and delivery costs associated

with Apple's appointment activities, except as otherwise agreed by the Parties in writing.

- (c) If Publisher notifies Apple that, for reasons beyond its control, it is no longer able to authorize Apple to use certain rights permitted under its appointment, if Apple's exercise of its rights will cause Publisher to violate the rights of a third party, or if an author or heirs object to Apple's exercise of its authorization under its appointment (each a "Clearance Issue"), then Publisher may withhold or withdraw such authorization, in which case Apple shall cease promotion and sales of eBooks using such withdrawn rights within three (3) business days of such notice (for the avoidance of doubt, Apple may continue to provide re-downloads of previously purchased eBooks). Publisher shall not discriminate against Apple regarding any withdrawal requests.

7. Parental Advisory.

In furtherance of enabling end-users to make informed purchasing decisions, Publisher may provide Apple with appropriate content ratings for corresponding Publisher Content.

8. Names and Likenesses; Promotional Use and Opportunities.

- (a) Apple may use the names and authorized likenesses of, and biographical material for, any eBook author, illustrator or other talent, as well as Previews, Insert Content, or Artwork, in furtherance of its appointment. Further written approval from Publisher shall be required if any name, likeness or identifying material is otherwise used as an endorsement of Apple, the Online Store, or other products.
- (b) For the avoidance of doubt, generally, Apple may promote the Online Store and content on the Online Store in its sole discretion.

9. Copyright Notices; Ownership.

- (a) Publisher shall provide an appropriate copyright notice in the Content File, or as reasonably requested by Apple, which Apple shall display for each eBook.
- (b) As between the Parties, subject to any pre-existing rights of Apple, all right, title and interest in and to (i) Publisher Content, (ii) Artwork, (iii) Previews, (iv) Insert Content, (v) all copyrights and equivalent rights embodied therein, and (vi) any other materials furnished by Publisher, shall remain the property of Publisher; nonetheless, Apple shall not have any lesser rights than it would otherwise have as a member of the public.

10. Press Release.

Neither Party shall make or issue any public statement or press release regarding this Agreement or its subject matter without prior written approval from the other Party.

11. Content Protection.

- (a) Apple shall protect materials furnished by Publisher in a manner no less restrictive than Apple protects materials furnished by any other book publisher, including the use of the Security Solution, and the implementation and enforcement of Content Usage Rules, as set forth in Exhibit E, except as otherwise agreed by Publisher and Apple. Notwithstanding the foregoing, on a title-by-title and country-by-country basis, using iTunes Connect or via other technical means provided and approved by Apple, Publisher may instruct Apple to make eBooks available hereunder without the Security Solution. If the Security Solution is compromised such that eBooks are being made widely available without restriction, having a material adverse effect on the commercial purpose of the appointment and this Agreement, then Apple shall use commercially reasonable efforts to cure such compromise. If the breach is not substantially cured within thirty (30) days, then Publisher may stop providing additional New Releases to Apple, and if the breach is not substantially cured within sixty (60) days, then Publisher may suspend Apple's appointment until cured.
- (b) In the event of a security breach of the Online Store servers such that unauthorized access to Publisher Content becomes available, then Apple will disable all access to such servers or destroy content on such servers within twenty-four (24) hours.
- (c) Publisher Materials in Apple's control or possession shall reside only on secure network servers or equivalent devices owned or controlled by Apple or its contractors with restricted access.

12. Record-Keeping and Audit.

- (a) Apple shall maintain complete records regarding sales of eBooks and proceeds payable to Publisher for at least three (3) years following the applicable monthly sales period.
- (b) Upon no less than thirty (30) days advance written notice, and within two (2) years following the applicable monthly sales period (the "Audit Period"), Publisher, at its expense, may appoint an independent certified public accountant to audit directly applicable records of Apple at Apple's principal place of business in the United States for the sole purpose of verifying proceeds due Publisher. An audit shall take place during regular business hours, and shall not occur more than once during any twelve (12) month period. The certified public accountant should not be engaged in an audit of Apple or Publisher, or on a contingency-fee basis, and must provide to Apple a confidentiality agreement that protects Apple's

confidential information no less than the terms of this Agreement or Publisher protects its own similar information. Publisher may audit a record only once, and no audit shall be conducted for a period spanning less than six (6) months.

- (c) Unless Publisher provides a detailed objection within two (2) years following the applicable monthly sales period, Publisher shall be deemed to consent to all reports, and reports shall not be subject to objection by Publisher for any reason. Publisher agrees that Apple's books and records contain "Confidential Information" (as defined below).

13. Termination and Effect of Termination.

- (a) Subject to mandatory local law, either Party shall have the right to terminate this Agreement prior to the expiration of the Term if the other Party (i) becomes insolvent, (ii) files a petition in bankruptcy, (iii) makes an assignment for the benefit of creditors, or (iv) breaches a material term of this Agreement, unless such breach is cured within thirty (30) days from notice, or if not able to be so cured, then resolved to the other Party's reasonable satisfaction.
- (b) Sections 1, 4, 5, 6(b), 9(b), 10, 12, 13, 14, 15, 16, and 17 shall remain in full force and effect following the termination or expiration of this Agreement.
- (c) If this Agreement terminates or expires, then Publisher Materials in Apple's possession or control shall be promptly destroyed, excluding copies necessary for Apple's standard customer support practices, e.g., re-downloads (subject to applicable terms in this Agreement), or required to be maintained by applicable law, rule or regulation.

14. Indemnification and Limitation of Liability.

- (a) Apple shall have no product liability for any eBook. Publisher shall be solely responsible for any and all product warranties.
- (b) Publisher 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, Publisher Materials and/or use by any end-user, including, but not limited to: (i) claims of breach of warranty; (ii) product liability claims; and (iii) claims that any of the Publisher Materials and/or the end-user's possession or use of those materials infringes the copyright or other intellectual property rights of any third party.
- (c) In the event that Apple receives any notice or claim from any end-user arising from a product liability issue for Publisher Content, Apple may refund the end-user the full amount of the price paid by the end-user. In the event that Apple refunds any such price to an end-user, Publisher shall reimburse, or grant Apple a credit for, an amount equal to the price for that eBook. Apple will nonetheless

have the right to retain its earned commission on the eBook, notwithstanding the refund of the price to the end-user.

- (d) Apple will indemnify and hold harmless, and upon Publisher's request, defend, Publisher and its affiliates (and their respective directors, officers and employees) from and against any and all losses, liabilities, damages, costs and expenses (including reasonable attorneys' fees and costs) arising out of a claim by a third party by reason of a breach of any warranty, representation, covenant or obligation of Apple under this Agreement; or any claim that the technology used by Apple in its appointment infringes the intellectual property rights of another party. Publisher shall promptly notify Apple of any such claim, and Apple may assume control of the defense or settlement of such claim. Publisher shall have the right, at its expense, to participate in the defense thereof under Apple's direction.
- (e) To the extent permitted by applicable law, Publisher will indemnify and hold harmless, and upon Apple's request, defend, Apple and its affiliates (and their respective directors, officers and employees) from and against any and all losses, liabilities, damages, costs and expenses (including reasonable attorneys' fees and costs) arising out of a claim by a third party by reason of a breach of any warranty, representation, covenant or obligation of Publisher under this Agreement; or any claim that Publisher Materials infringe the intellectual property rights of another party. Apple shall promptly notify Publisher of any such claim, and Publisher may assume control of the defense or settlement of such claim, provided that Publisher shall not take any position adverse to Apple's interests, and shall meaningfully consult with Apple, with respect to such defense or settlement. Apple shall have the right, at its expense and with its chosen counsel, to participate in the defense of any such claim and/or, at its discretion, to settle any such claim at its expense.
- (f) EXCEPT PURSUANT TO AN EXPRESS INDEMNITY OBLIGATION, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, SUCH AS LOSS OF PROFITS OR PUNITIVE DAMAGES, EVEN IF ADVISED OF THEIR POSSIBILITY.
- (g) NO WARRANTY OR TERM, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, AS TO THE CONDITION, QUALITY, DURABILITY, PERFORMANCE, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE ONLINE STORE OR ANY ELEMENTS THEREOF IS GIVEN TO, OR SHOULD BE ASSUMED BY, PUBLISHER, AND ANY SUCH WARRANTIES AND TERMS ARE HEREBY EXCLUDED.

15. Confidentiality.

Each Party acknowledges that by reason of this Agreement it may have access to certain information and materials concerning the other Party's business plans,

customers, technology and products that are confidential and of substantial value to such Party, which value would be impaired if such information were disclosed to third parties or used for purposes other than as expressly permitted by this Agreement (referred to in this Agreement as “Confidential Information”). Each Party agrees to maintain any and all Confidential Information received from the other, in confidence, and agrees not to disclose or otherwise make available such Confidential Information to any third party without the prior written consent of the disclosing Party. Each Party agrees that Confidential Information shall be disclosed to its employees and other personnel under its control and supervision for purposes of performing under this Agreement solely on a need-to-know basis in furtherance of this Agreement, and solely to those individuals who are bound by a written non-disclosure agreement having terms no less restrictive than the non-disclosure terms of this Section, unless required by law, or court or governmental order. To the extent Publisher’s disclosure of Confidential Information is required by law, Publisher shall take reasonable steps to notify Apple of such requirement before disclosing said Confidential Information and shall take reasonable steps to obtain protective treatment of said Confidential Information. Confidential Information shall be deemed to include (i) information marked confidential, if conveyed in writing, and (ii) information identified orally as confidential, if conveyed orally. Confidential Information shall not be deemed to include any information which (a) is publicly known at the time of the disclosure, (b) becomes publicly known other than by breach of the terms of this Section, (c) becomes known to the receiving Party, without restriction, from a source free of any obligation of confidentiality and without breach of this Section, or (d) is independently developed by the receiving Party.

16. Additional Representations and Warranties of the Parties.

- (a) The Parties agree that the nature of their relationship is that of Publisher as principal and Apple as agent or Publisher as principal and Apple as Commissionaire, as set forth on Exhibit A.
- (b) Apple shall not pledge, mortgage or otherwise encumber any part of the Publisher Materials.
- (c) Each Party agrees that it has full authority to enter into this Agreement, and to fully perform in a professional and competent manner.
- (d) Each Party agrees that it owns or controls the necessary rights in order to make the grant of rights herein, and that the exercising such rights shall not violate or infringe the rights of any third party.
- (e) Each Party agrees to perform in compliance with any applicable law, rule and regulation.

17. General Provisions.

- (a) *Contractors.* Apple may contract with third parties in furtherance of Apple's appointment, provided such third parties are subject to terms no less restrictive than the terms Apple is subject to under this Agreement. Apple shall be responsible for the performance of such third parties while under Apple's control and supervision.
- (b) *Entire Agreement; Modification; Waiver.* This Agreement, including any schedules and exhibits, contains the entire understanding of the Parties relating to its subject matter, and supersedes all previous understandings between the Parties relating to the subject matter hereof. This Agreement cannot be changed or modified except by a writing signed by the Parties. A waiver by either Party of any term or condition of this Agreement in any instances shall not be deemed or construed as a waiver of such term or condition for the future, or of any subsequent breach thereof. If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable, such determination shall not affect any other provision hereof, and the unenforceable provision shall be replaced by an enforceable provision that most closely meets the commercial intent of the Parties.
- (c) *Binding on Successors.* This Agreement shall be binding on the assigns, heirs, executors, administrators, and successors (whether through merger, operation of law, or otherwise) of the Parties. Apple may assign or transfer any part of this Agreement to an affiliate of Apple without Publisher's consent.
- (d) *Notices.* Any notice under this Agreement shall be given in writing and shall be deemed to have been delivered and given: (i) on the delivery date if delivered personally; (ii) upon delivery by confirmed-receipt facsimile; (iii) one (1) business day after deposit with a commercial overnight carrier, with written verification of receipt; or (iv) five (5) business days after the mailing date, whether or not actually received, if sent by certified mail, return receipt requested, postage and charges prepaid.

If to Publisher, to the contact specified by Publisher via iTunes Connect, with a courtesy copy by email or facsimile, which copy shall not constitute notice, to the Legal contact specified by Publisher via iTunes Connect.

If to Apple, to:
Division Counsel, Internet Services/iBooks
Apple Inc.
1 Infinite Loop, MS 36-4ISM
Cupertino, CA 95014
Fax: 408-974-9105

- (e) *Governing Law.* This Agreement shall be governed and interpreted in accordance with the laws of the State of California, without regard to principles of conflict of laws. The Parties agree that any proceeding relating to this Agreement will take

place in the No. District of California; and both Parties hereby waive the right to object to that choice of law, personal jurisdiction or venue. Notwithstanding the foregoing, if Publisher (as an entity entering into this Agreement) is a United States public and accredited educational institution, then (i) this Agreement will be governed and construed in accordance with the laws of the state (within the United States) in which Publisher's educational institution is domiciled, except that body of state law concerning conflicts of law; and (ii) any litigation or other dispute resolution between Publisher and Apple arising out of or relating to this Agreement or Publisher's relationship with Apple will take place in federal court within the Northern District of California, and Publisher 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 Publisher's educational institution is domiciled.

- (f) *Counterparts.* This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same document.
- (g) *Remedies.* To the extent permitted by applicable law, the rights and remedies of the Parties provided under this Agreement are cumulative and in addition to any other rights and remedies of the Parties at law or equity.
- (h) *Headings.* The titles used in this Agreement are for convenience only and are not to be considered in construing or interpreting the Agreement.
- (i) *No Third-Party Beneficiaries.* This Agreement is for the sole benefit of the Parties and their authorized successors and permitted assigns. Nothing is intended to confer upon any person or entity, other than the Parties and their authorized successors and permitted assigns, any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

18. Legal Consequences.

The relationship between Publisher and Apple established by this Agreement may have important legal and/or tax consequences for Publisher. Publisher acknowledges that it is Publisher's responsibility to consult with Publisher's legal and tax advisors with respect to Publisher's legal and tax obligations hereunder.

19. Termination of Any Prior Agreements.

If the Parties have previously entered into any eBook Distribution Agreement that is in effect as of the Effective Date and the territory of which includes any part of the Territory (each, if any, a "Prior Agreement"), the Parties hereby terminate each such Prior Agreement as of the Effective Date.

EXHIBIT A

1. Apple as Agent

Publisher appoints Apple Inc. as Publisher's agent pursuant to California Civil Code §§ 2295 *et seq.* for the sale and delivery of eBooks to end-users located in the following country:

United States

Publisher appoints Apple Pty Limited ("Apple Australia") as Publisher's agent for the sale and delivery of eBooks to end-users located in the following countries:

Australia

Publisher appoints Apple Canada, Inc. ("Apple Canada") as Publisher's agent for the sale and delivery of eBooks to end-users located in the following country:

Canada

2. Apple as Commissionaire

Publisher appoints iTunes S.a.r.l. ("iTunes") as Publisher's commissionaire pursuant to Article 91 of the Luxembourg Code de commerce for the sale and delivery of eBooks to end-users located in the following countries:

Austria	Greece	Poland
Belgium	Hungary	Portugal
Bulgaria	Ireland	Romania
Cyprus	Italy	Slovakia
Czech Republic	Latvia	Slovenia
Estonia	Lithuania	Spain
Finland	Luxembourg	United Kingdom
France	Malta, Republic of	
Germany	Netherlands	

EXHIBIT B

Apple shall collect and remit to the competent tax authorities the taxes described in Section 5(f) of this Agreement for sales of eBooks to end-users located in the following countries:

Australia
Austria
Belgium
Bulgaria
Canada
Cyprus
Czech Republic
Estonia
Finland
France

Germany
Greece
Hungary
Ireland
Italy
Latvia
Lithuania
Luxembourg
Malta, Republic of
Netherlands

Poland
Portugal
Romania
Slovakia
Slovenia
Spain
United Kingdom
United States

EXHIBIT C

Customer Pricing

1. United States (all prices in US dollars)

For New Release titles with list prices of \$40 or less, Publisher shall determine in its discretion a Customer Price not greater than the Maximum Customer Price from among the following corresponding price bands:

Publisher Hardcover List Price	Maximum Customer Price
\$0.01-9.99	\$100% of Publisher Hardcover List Price
\$10.00-21.00	\$9.99
\$21.01-\$22.50	\$10.99
\$22.51-\$25.00	\$11.99
\$25.01-\$27.50	\$12.99
\$27.51-\$30.00	\$14.99
\$30.01-\$35.00	\$16.99
\$35.01-\$40.00	\$19.99

Maximum Customer Price means the highest price band for that range of list price, provided that Publisher can set a lower Customer Price in its discretion.

For books then-currently on the NYT Bestseller List that list for \$30 or less, the Customer Price will be no greater than \$12.99; and that list between \$30.01-35, the Customer Price will be no greater than \$14.99. "NYT Bestseller List" means the Hardcover Adult Fiction, Hardcover Adult Nonfiction and Hardcover Advice bestseller lists as published on the New York Times website, excluding the below-the-line "Also Selling" titles also known as the "Expanded List".

For all books published in mass market or trade paperback with a list price of \$22.00 or less, the Customer Price set by Publisher shall not be greater than \$9.99 during the first twelve (12) months after publication in those formats. Thereafter, Publisher may set whatever Customer Price it deems appropriate in its discretion, provided that Apple does not have to make such eBooks available if Apple determines the price is unrealistic. For any such book with a list price greater than \$40.00, Publisher may set whatever Customer Price it deems appropriate at its discretion, provided that such prices are realistic.

For eBooks for which there is no corresponding physical product, and eBooks that are (i) not adult fiction or nonfiction and not primarily text for reading, (ii) Enhanced eBooks (provided Publisher provides Apple with the standard version), (iii) New Release books that lists for more than \$40, or (iv) not a New Release book, Publisher may set whatever Customer Price it deems appropriate in its discretion, provided that Apple does not have to make such eBooks available if Apple determines the price is unrealistic.

All prices set by Publisher hereunder for any eBooks must be in dollar increments that end in "--.99," except if Publisher sets the price for a particular eBook at \$0 (i.e., free).

2. Canada (all prices in Canadian dollars)

For New Release titles with List Prices of \$42.00 or less, Publisher may designate a Customer Price from among the following price bands for the corresponding eBook:

Publisher List Price (CAD\$)	Maximum Customer Price (CAD\$)
\$0.01 - \$24.00	\$11.99
\$24.01 - \$27.00	\$13.99
\$27.01 - \$30.00	\$14.99
\$30.01 - \$32.00	\$15.99
\$32.01 - \$33.50	\$16.99
\$33.51 - \$37.00	\$17.99
\$37.01 - \$42.00	\$20.99

“Maximum Customer Price” means the highest permitted Customer Price for the range of List Prices in a given price band above, provided that Publisher can set a lower Customer Price in its discretion. “List Price” means Publisher’s suggested retail price for the corresponding physical book.

For all mass market or trade paperback editions of adult fiction or nonfiction books consisting primarily of text for reading with a List Price of \$24.00 or less, the Customer Price for the corresponding eBook shall be no greater than \$11.99 during the first twelve (12) months after the generally available commercial publication of the applicable title in such format.

For all other eBooks (i.e., except as set forth above), Publisher may set whatever Customer Price it deems appropriate at its discretion, provided that Apple does not have to make such eBooks available if Apple determines that the price is unrealistic. For any such book with a list price greater than \$42.00, Publisher may set whatever Customer Price it deems appropriate in its discretion, provided that such prices are realistic.

All prices set by Publisher hereunder for any eBooks must be in dollar increments that end in “-.99,” except if Publisher sets the price for a particular eBook at \$0 (i.e., free).

3. United Kingdom (all prices in British Pounds)

For New Release titles Publisher shall determine in its discretion a Customer Price not greater than the Maximum Customer Price (as defined below) from among the following corresponding price bands:

Lowest Available Publisher List Price	Maximum Customer Price
£0.01-5.49	100% of Lowest Available Print Price
£5.50-7.00	£5.49
£7.01-8.00	£6.49

£8.01-9.00	£6.99
£9.01-11.00	£7.49
£11.01-13.00	£8.99
£13.01-15.00	£9.99
£15.01-17.00	£10.99
£17.01-19.00	£11.99
£19.01-21.00	£12.99
£21.01-25.00	£15.99

The foregoing Maximum Customer Price does not apply to New Release titles (w) with Lowest Available Publisher List Prices of £25.01 or higher, (x) for which there is no corresponding physical product, (y) to New Release titles that are Enhanced eBooks (for avoidance of doubt this does not apply to the standard version of such Enhanced eBook), or (z) eBooks published in a language other than a language commonly spoken in the United Kingdom.

Publisher may set whatever Customer Price it deems appropriate in its discretion for all other eBooks to which the Maximum Customer Price does not apply, provided Apple does not have to make such eBooks available if Apple determines that the price is unrealistic. For any such book with a list price greater than £25.00, Publisher may set whatever Customer Price it deems appropriate in its discretion, provided that such prices are realistic.

“Maximum Customer Price” means a price set by the Publisher which meets the applicable discount on the Lowest Available Publisher List Price according to the table above, provided that (i) the Customer Price must end in “--.99” in relation to Customer Prices greater than £10.00 and / or “-.49” in relation to Customer Prices lower than £10.00, except if Publisher sets the price for a particular eBook at £0 (i.e., free), and (ii) Publisher can set a lower Customer Price in its discretion.

“Lowest Available Publisher List Price” means the lowest retail price recommended by Publisher for any currently available print edition of the eBook.

4. Countries in the European Union (excluding the United Kingdom) (all prices in Euros)

For New Release titles Publisher shall determine in its discretion a Customer Price not greater than the Maximum Customer Price (as defined below) from among the following corresponding price bands:

Lowest Available Print Price	Maximum Customer Price
€0.01-2.00	1,49 €
€2.01-2.50	1,99 €
€2.51-3.00	2,49 €
€3.01-4.00	2,99 €

€4.01-4.50	3,49 €
€4.51-5.00	3,99 €
€5.01-5.50	4,49 €
€5.51-6.00	4,99 €
€6.01-6.50	5,49 €
€6.51-7.50	5,99 €
€7.51-8.00	6,49 €
€8.01-8.50	6,99 €
€8.51-9.00	7,49 €
€9.01-9.50	7,99 €
€9.51-11.00	8,49 €
€11.01-11.50	8,99 €
€11.51-12.00	9,49 €
€12.01-13.50	9,99 €
€13.51-14.50	10,99 €
€14.51-16.00	11,99 €
€16.01-17.00	12,99 €
€17.01-18.50	13,99 €
€18.51-19.50	14,99 €
€19.51-21.50	15,99 €
€21.51-23.00	16,99 €
€23.01-24.00	17,99 €
€24.01-25.50	18,99 €
€25.51-26.50	19,99 €
€26.51-28.00	20,99 €

The foregoing Maximum Customer Price does not apply to New Release titles (w) with Publisher List Prices of € 28.01 or higher, (x) for which there is no corresponding physical product, (y) to New Release titles that are Enhanced eBooks (for avoidance of doubt this does not apply to the standard version of such Enhanced eBook), or (z) eBooks published in a language other than a language commonly spoken in that country in the Territory in which such eBook is sold.

Subject to Section 5(b) Publisher may set whatever Customer Price it deems appropriate in its discretion for all other eBooks to which the Maximum Customer Price does not apply, provided that Apple shall have no obligation to make such eBooks available if Apple determines the price is unrealistic.

“Maximum Customer Price” means a price set by the Publisher which meets the applicable discount on the Lowest Available Publisher List Price according to the table above, provided that (i) the Customer Price must end in “--.99” in relation to Customer Prices greater than €10.00 and / or “-.49” in relation to Customer Prices lower than €10.00, except if Publisher sets the price for a particular eBook at 0 € (i.e., free), and (ii) Publisher can set a lower Customer Price in its discretion.

“Lowest Available Publisher List Price” means the lowest retail price recommended by Publisher for any currently available print edition of the eBook.

For the avoidance of doubt, the parties acknowledge and agree that the Publisher is solely responsible for ensuring compliance with and warrants that it will comply with the German Book Resale Price Fixing Act (“Buchpreisbindungsgesetz” - BRPFA), or any other equivalent legislation in any other country in the Territory, when setting the Customer Price.

5. Australia (all prices in Australian dollars)

For New Release titles with Publisher List Prices of \$60.00 or less, Publisher may designate a Customer Price from among the following price bands for the corresponding eBook:

Publisher List Price (AUD\$)	Maximum Customer Price (AUD\$)
\$0.01 - \$25.00	\$13.99 or 100% of list price
\$25.01 - \$30.00	\$16.99
\$30.01 - \$35.00	\$19.99
\$35.01 - \$40.00	\$22.99
\$40.01 - \$45.00	\$24.99
\$45.01 - \$50.00	\$26.99
\$50.01 - \$60.00	\$29.99

“Maximum Customer Price” means the highest permitted Customer Price for the range of Publisher List Prices in a given price band above, provided that Publisher can set a lower Customer Price in its discretion. “Publisher List Price” means Publisher’s suggested retail price for the corresponding physical book.

For all other eBooks (i.e., except as set forth above), Publisher may set whatever Customer Price it deems appropriate in its discretion, provided that Apple does not have to make such eBooks available if Apple determines the price is unrealistic. For any such book with a list price greater than \$60.00, Publisher may set whatever Customer Price it deems appropriate in its discretion, provided that such prices are realistic.

All prices set by Publisher hereunder for any eBooks must be in dollar increments that end in “-.99,” except if Publisher sets the price for a particular eBook at \$0 (i.e., free).

EXHIBIT D

1. Delivery of eBooks to end-users in Canada.

Where Publisher designates Apple Canada to allow access to eBooks to end-users in Canada, the following provisions shall apply:

(a) GST/HST. Terms defined in the Excise Tax Act (Canada) (the “ETA”) have the same meaning when used in this section.

(i) If Publisher is a resident of Canada or a non-resident of Canada that is required to register for GST/HST pursuant to the ETA, Publisher (A) shall have registered (or submitted an application to register) for GST/HST to the CRA, with an effective GST/HST registration date of no later than the effective date of this Agreement, shall provide Apple Canada with satisfactory evidence thereof, and shall remain so registered throughout the Term; (B) agrees to enter into the election pursuant to subsection 177(1.1) of the ETA to have Apple collect, account for and remit GST/HST on sales of eBooks made to end-users in Canada on Publisher’s behalf hereunder, and to complete Form GST506 (accessible on the iTunes Connect site); and (C) acknowledges that the commission payable by Publisher to Apple hereunder includes GST/HST at the Ontario rate as applicable from time to time.

(ii) If Publisher is not registered for GST/HST, Publisher (A) certifies that Publisher is not resident in Canada and does not carry on business in Canada for purposes of the ETA; (B) acknowledges that Apple will charge, collect and remit GST/HST on sales of eBooks to end-users in Canada made on Publisher’s behalf hereunder; and (iii) acknowledges that the commission payable by Publisher to Apple hereunder is zero-rated for GST/HST purposes.

(b) Quebec Sales Tax. Terms defined in an Act respecting the Quebec Sales Tax (the “QSTA”) have the same meaning when used in this section.

(i) If Publisher is a resident of Quebec or a non-resident of Quebec that is required to register for QST pursuant to the QSTA, Publisher (A) shall have registered (or submitted an application to register) for QST to the MRQ with an effective QST registration date of no later than the effective date of this Agreement, shall provide Apple with satisfactory evidence thereof, and shall remain so registered throughout the Term; (B) agrees to enter into the election pursuant to section 41.0.1 of the QSTA to have Apple collect, account for and remit QST on sales of eBooks to end-users in Quebec made on Publisher’s behalf hereunder, and to complete, sign and return to Apple Form FP2506-V; and (C) acknowledges that Apple will not charge, collect or remit QST on sales of eBooks made on Publisher’s behalf hereunder 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.

(ii) If Publisher is not registered for QST, Publisher (A) certifies that Publisher is not resident in Quebec and does not have a permanent

establishment in Quebec; and (B) acknowledges that Apple will charge, collect and remit QST on sales of eBooks hereunder to end-users in Quebec made on Publisher's behalf.

(c) PST. Publisher acknowledges and agrees that Apple will charge, collect and remit any applicable PST on sales of eBooks made on Publisher's behalf hereunder to end-users in Canada.

2. Delivery of eBooks to end-users in Australia.

Where Publisher designates Apple Australia to allow access to eBooks to end-users in Australia, the following provisions shall apply:

(a) Publisher 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, Publisher shall indemnify and hold Apple harmless against any penalties imposed by the Commissioner for failing to register for GST in Australia.

(b) Goods and Services Tax (GST).

(i) This Section 2(b) of Exhibit D applies to supplies made by Publisher, through Apple, as agent, that are connected with Australia. Terms defined in the GST Act have the same meaning when used in this section 2(b).

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

(iii) If any GST is payable on any taxable supply made under this Agreement 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 Apple as commission in accordance with Section 5 of this Agreement.

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

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

(c) Resident Publishers or Non-resident GST-Registered Publishers

(i) If Publisher is a resident of Australia, it is a condition of this Agreement that Publisher have an Australian Business Number ("ABN") and is 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 Agreement. Publisher will provide Apple with satisfactory evidence of Publisher's ABN

and GST Registration (by uploading to Apple, using the iTunes Connect site, a copy of Publisher's GST Registration or print-out from the Australian Business Register) within thirty (30) days of this Agreement. Publisher warrants that Publisher will notify Apple if it ceases to hold a valid ABN or be registered for GST.

(ii) If Publisher is a non-resident and is registered for GST, it is a condition of this Agreement that Publisher will provide Apple with satisfactory evidence of Publisher's ABN and GST registration within thirty (30) days of this Agreement. Publisher warrants that it will notify Apple if Publisher ceases to be registered for GST.

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

- a. Apple will be deemed as making supplies to any end-user;
- b. Publisher will be deemed as making separate, corresponding supplies to Apple;
- c. Apple will issue to any end-user, in Apple's own name, all tax invoices and adjustment notes made under paragraph (iii)(a);
- d. Publisher will not issue to any end-user any tax invoices or adjustment notes relating to taxable supplies made under paragraph (iii)(a);
- e. Apple will issue a recipient created tax invoice to Publisher in respect of any taxable supplies made by Publisher to Apple under this Agreement, including taxable supplies made under paragraph (iii)(b); and
- f. Publisher will not issue a tax invoice to Apple in respect of any taxable supplies made by Publisher to Apple under this Agreement, including taxable supplies made under paragraph (iii)(b).

(d) Non-resident, Non-GST-registered Publishers.

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

(i) Apple will issue to any end-user, in Apple's own name, all tax invoices and adjustment notes relating to taxable supplies made by Publisher through Apple as agent; and

(ii) Publisher will not issue to any end-user tax invoices or adjustment notes relating to taxable supplies made by Publisher through Apple as agent.

EXHIBIT E

Content Usage Rules

1. Definitions.

(a) “Non-Transfer Device” means a device (including, without limitation, a digital content rendering device or mobile phone) that uses the Security Solution, but cannot transfer an eBook along with their usage rights keys to any other device, except if that other device is already authorized for the Online Store account used to acquire that eBook.

(b) “Transfer Device” means a computer that uses the Security Solution, and can transfer eBooks along with their usage rights keys to any other device.

2. Usage Rules.

End-users acquiring eBooks may:

- Use eBooks on up to five (5) Transfer Devices and an unlimited number of Non-Transfer Devices at the same time;
- Use eBooks solely for end-user’s personal and non-commercial use; and
- Re-download previously acquired eBooks from the Online Store.
- Copy/paste and print no more than 2 pages at a time (no burning to disk)**

** Provided that, Apple shall not require Publisher to authorize more permissive copy/paste and print usage rules for Publisher Content than Apple allows for Publisher Content from any other provider of similar Publisher Content on the Online Store.