

**Case AT.40452 – Mobile Payments**  
**Proposal of Commitments to the European Commission**

**1. Introduction**

- 1.1. In accordance with Article 9 of Regulation 1/2003, Apple offers the following voluntary commitments (the “Commitments”) to the Commission.
- 1.2. Consistent with Article 9 of Regulation 1/2003, these Commitments are given on the understanding that the Commission will close the proceedings opened on June 16, 2020 under Case AT.40452. Nothing in these Commitments may be construed as implying that Apple agrees with any preliminary views expressed by the Commission in Case AT.40452. The Commitments should not be construed as an admission by Apple that any of its conduct infringed Articles 101 or 102 of the Treaty on the Functioning of the European Union or Articles 53 or 54 of the EEA Agreement.
- 1.3. These Commitments cover In-Store Payments using Near Field Communication (“NFC”) with iOS smart mobile phones. Nothing in these Commitments may be construed as implying that Apple considered that it had an obligation to provide the elements set out in the Commitments under the Digital Markets Act (“DMA”), including Apple’s commercial decision to offer the NFC Technical Solution set forth herein free-of-charge. These Commitments are without prejudice to Apple’s current or future obligations under other regulations, in particular relating to other use cases and functionalities within the scope of the DMA and the implementation of the Digital Euro.
- 1.4. The Commitments intend to fully address the Commission’s preliminary concerns by providing HCE Developers with the option to access and interoperate with the NFC Controller and deploy HCE Payment Applications on iOS. Eligible HCE Payment Applications will be able to operate without the involvement of Apple Pay or Wallet.
- 1.5. These Commitments are without prejudice to Apple’s position should the Commission or any other party conduct proceedings or commence other legal action against Apple in a matter covered by these Commitments.

**2. Definitions**

- 2.1. “**Account-based payments**” means payments which use bank accounts or an account with the payment provider as funding mechanism.
- 2.2. “**APDU**” means an application protocol data unit as defined by ISO/IEC 7816-4.
- 2.3. “**Apple**” means Apple Inc., a corporation organized under the laws of California, United States, with its principal place of business at One Apple Park Way, Cupertino, CA 95014, United States and Apple Distribution International Limited, a company organized under the laws of Ireland, with its principal place of business at Hollyhill Industrial Estate, Hollyhill Cork, T23 YK84, Ireland.
- 2.4. “**Apple SDK**” means the Apple-proprietary Software Development Kits (SDKs) provided

- to the Developer under the Apple Developer Program License Agreement as applicable under the eligibility criterion at para. 3.14(1) of these Commitments, including but not limited to header files, APIs, libraries, simulators, and software (source code and object code) labeled as part of iOS SDK and included in Xcode.
- 2.5. **“Apple Watch”** means Apple’s smartwatches capable of upgrading to the latest versions of WatchOS (currently v. 10).
- 2.6. **“Application”** or **“App”** means one or more software programs (including extensions, media, and code modules that are enclosed in a single software bundle), developed by the Developer in compliance with the Documentation and the Program Requirements, for distribution under the Developer’s own trademark or brand, and for specific use with an Eligible Device, including bug fixes, updates, upgrades, modifications, enhancements, supplements to, revisions, new releases and new versions of such software programs.
- 2.7. **“Application Processor”** means the processor in iPhone on which third-party Applications are executed.
- 2.8. **“Application Programming Interface”** or **“API”** means a set of functions and procedures allowing the creation of Applications that access certain features or data of iOS, Applications, or other services.
- 2.9. **“Card-based payments”** means payments which use payment cards as funding mechanism.
- 2.10. **“Commission”** means the European Commission.
- 2.11. **“Developer”** means and refers to a) the person(s) or legal entity (whether the company, organization, or any applicable legal form) that has accepted the terms of the Apple Developer Program License Agreement under its own developer account and that is using the software provided to the Developer under the Apple Developer Program License Agreement as applicable under the eligibility criterion at para. 3.14(1) of these Commitments or otherwise exercising rights under the Apple Developer Program License Agreement; b) providers of technical solutions that have accepted the terms of the Apple Developer Program License Agreement under their own developer account, that are using the software provided to them under the Apple Developer Program License Agreement and that have been granted a development entitlement for purposes of developing technology for Eligible HCE Payment Applications; or c) the person(s) or legal entity that will use any other software application distribution channel that is allowed and which is operating on iOS in the EEA for its HCE Payment Application and has accepted the terms of the Apple Developer Program License Agreement under its own developer account solely for access to the developer environment without obligation to distribute their HCE Payment Application through Apple’s App Store.
- 2.12. **“Developer Applicant”** is a Developer which intends to be authorized under the NFC Entitlement Program.

- 2.13. **“Digital Markets Act”** or **“DMA”** means Regulation (EU) 2022/1925 of the European Parliament and of the Council of September 14, 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828.
- 2.14. **“Documentation”** means any technical or other specifications or documentation that Apple may provide to the Developer under the Apple Developer Program License Agreement as applicable under the eligibility criterion at para. 3.14(1) of these Commitments.
- 2.15. **“Documented API(s)”** means the Application Programming Interface(s) documented by Apple in the Documentation defined at para. 2.14 of these Commitments and contained in the software provided to the Developer under the Apple Developer Program License Agreement as applicable under the eligibility criterion at para. 3.14(1) of these Commitments.
- 2.16. **“Double-click”** refers to a physical gesture of double-clicking the side button (for Face ID devices) or the home button (for Touch ID devices) to launch the default Payment Application and have it ready for contactless payment.
- 2.17. **“EEA”** means those countries participating in the European Economic Area as of the Effective Date of these Commitments and at any time thereafter during the term of these Commitments.
- 2.18. **“EEA iOS user”** means an iOS user who has an Apple ID registered in the EEA and is using iOS within the EEA (or while traveling temporarily, without change of residence, outside the EEA).
- 2.19. **“Effective Date”** means the date upon which Apple receives formal notification of a Commitment Decision by which the Commission makes the Commitments binding on Apple.
- 2.20. **“Eligible Credential”** means a payment card credential or an account-based payment credential based on the NFC-Forum ISO-DEP specification based on ISO/IEC 14443-4 for both TYPE-A/TYPE-B cards and current or future standards and specifications which are compatible with the NFC Technical Solution pursuant to paras. 3.10 and 3.11 of these Commitments.
- 2.21. **“Eligible Device”** means iPhone devices capable of upgrading to the latest and any future versions of iOS (at the time of the adoption of the Commitments, iPhone XS and above).
- 2.22. **“Eligible HCE Payment Application”** is an HCE Payment Application which an HCE Developer intends to offer to EEA iOS users through an app store storefront located and limited to the distribution of Apps in the EEA.
- 2.23. **“Field Detect”** refers to a functionality where a user presents a locked iPhone to an NFC reader, and the iPhone presents the user with the default Payment Application for contactless presentment upon detecting an NFC field.
- 2.24. **“General Data Protection Regulation”** or **“GDPR”** means Regulation (EU) 2016/679 of

the European Parliament and of the Council of April 27, 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of data, and repealing Directive 95/46/EC.

- 2.25. **“HCE Developer”** is a Developer that meets the eligibility criteria defined at para. 3.14.
- 2.26. **“HCE Payment Application”** is a Payment Application which will utilize HCE technology to facilitate NFC In-Store Payments on Eligible Devices.
- 2.27. **“Host Card Emulation”** or **“HCE”** is a technology which will allow HCE Payment Applications located in the Application Processor (or host CPU) to emulate an Eligible Credential, communicate directly with a compatible NFC reader, and securely store host card data or account-based payment credential data. The NFC Technical Solution will enable Eligible HCE Payment Applications to facilitate card-based and account-based NFC In-Store Payments.
- 2.28. **“In-store Payment”** means any payment made at a merchant’s industry-certified physical point-of-sale payment terminal, including terminals that accept EMVCo payments, such as SoftPOS terminals based on industry-standard NFC protocols. This is without prejudice to the DMA or other regulations.
- 2.29. **“iOS”** means the iOS operating system software provided by Apple for use by the Developer only in connection with the development, testing, and distribution of the Developer’s HCE Payment Application, including any successor versions thereof.
- 2.30. **“Near Field Communication”** or **“NFC”** is a standardized wireless connectivity technology that enables devices to exchange information wirelessly within a few centimeters range.
- 2.31. **“NFC Controller”** is a chip integrated in an Eligible Device which includes an NFC front-end and a microcontroller capable of running application logic which ensures the communication between the device and the payment terminal through their antennas.
- 2.32. **“NFC Interface”** is a set of iOS APIs that enable communication with the NFC Controller.
- 2.33. **“NFC Entitlement Program”** means the Apple program under which access to the NFC Technical Solution will be accessible to HCE Developers.
- 2.34. **“NFC In-Store Payment”** is an In-store Payment using NFC technology to initiate the payment process at a merchant’s industry-certified payment terminal at a point of sale, including terminals that accept EMVCo payments, such as SoftPOS terminals based on industry-standard NFC protocols. This is without prejudice to the DMA or other regulations.
- 2.35. **“NFC Technical Solution”** means the technical solution Apple will develop under these Commitments, including the components detailed at paras. 3.1-3.9.
- 2.36. **“Payment Application”** is an Application which will utilize NFC technology on an Eligible Device to make In-Store Payments.

- 2.37. **“Person”** means any individual, corporation, limited liability company, partnership, firm, joint venture, association, trust, unincorporated organization, governmental body, or other entity.
- 2.38. **“Program Requirements”** mean the technical, human interface, design, product category, security, performance, and other criteria and requirements specified by Apple in the Apple Developer Program License Agreement as applicable under the eligibility criterion at para. 3.14(1) of these Commitments.
- 2.39. **“Secure Element”** or **“SE”** is an industry-standard certified chip on iPhone running the Java Card platform, which is compliant with financial industry requirements for electronic payments.
- 2.40. **“Secure Enclave”** means a secure subsystem integrated into iPhone that processes, encrypts, and stores Face ID and Touch ID template data for comparison with incoming data from the biometric sensor to determine whether to unlock the device or respond that a match is valid when Face ID or Touch ID is used.
- 2.41. **“Security Incident”** means any actual or reasonably suspected theft, loss, or unauthorized access, use, or disclosure, of personal data in an HCE Developer’s or its third-party service providers’ possession, custody or control, or in connection with the NFC Entitlement, NFC Interface, or an HCE Developer’s Eligible HCE Payment Application.
- 2.42. **“Suppression Mechanism”** means a functionality which will enable an HCE Payment Application that is in the foreground to complete the NFC In-Store Payment without interference by temporarily suppressing Apple Pay, Wallet, or any other Eligible HCE Payment Application that has default access to NFC, promoting co-existence of multiple Payment Applications on iPhone.
- 2.43. **“Wallet”** means Apple’s Application that has the ability to store and display passes for use on iOS.
- 2.44. **“WatchOS”** means the operating system software provided by Apple for use by the Developer with its smartwatches, including any successor versions thereof.
- 2.45. **“Xcode”** is Apple’s integrated development environment for all Apple platforms which enables Developers to develop, test, and distribute Applications for all Apple platforms.

### **3. Commitments**

- 3.1. HCE Developers will be allowed to deploy Eligible HCE Payment Applications on iOS by providing them with the option of accessing and interoperating with the NFC Controller for the purposes of facilitating NFC In-Store Payments for EEA iOS users without the involvement of Apple Pay or Wallet. A Developer will be able to distribute an Eligible HCE Payment Application through Apple’s App Store in the EEA or any other software application distribution channel that is allowed and which is operating on iOS in the EEA. Apple has made a commercial decision that the use of the NFC Technical Solution will not

be subject to any payment to Apple, including any fees for NFC In-store Payments carried out through HCE Payment Applications by EEA iOS users on Eligible Devices. For the avoidance of doubt, HCE Developers will be subject to the same fees as all other Developers, but no fees related to the use of the NFC Technical Solution.

3.2. HCE Developers will be able to request an entitlement to use the NFC Controller and relevant APIs for the sole purpose of developing, testing, and distributing Eligible HCE Payment Applications to EEA iOS users through an app store storefront located and limited to the distribution of Apps in the EEA (including any other software application distribution channel that is allowed and which is operating on iOS in the EEA) that can perform the following functions for NFC In-Store Payments:

- (1) Emulate an Eligible Credential and communicate with a compatible NFC reader to complete an NFC In-Store Payment;
- (2) Route data between the Application Processor and an NFC reader without the involvement of the SE, Wallet, or Apple Pay;
- (3) Enable EEA iOS users to change or select an HCE Payment Application as default for NFC In-Store Payments (as specified at paras. 3.7 and 3.8);
- (4) Utilize Field Detect when a user presents a locked Eligible Device to an NFC reader;
- (5) Utilize Double-click when a user double-clicks the side button of a locked Eligible Device;
- (6) Utilize the Suppression Mechanism when the HCE Payment Application is open and in the foreground; and
- (7) Utilize other relevant Documented APIs and Apple SDKs available to iOS Apps through the Apple Developer Program.

#### *HCE Payment Applications*

- 3.3. Apple shall develop and make available to HCE Developers certain APIs to enable access to, and use of, the NFC Controller and the NFC Interface as set forth in para. 3.2. Apple shall enable Eligible HCE Payment Applications to access and interoperate with the NFC Controller to communicate with NFC readers to exchange APDUs for the purpose of completing an NFC In-Store Payment without the involvement of Wallet or Apple Pay.
- 3.4. Apple will develop an architecture that enables Eligible HCE Payment Applications to utilize Field Detect and Double-click, and supports the co-existence of Payment Applications on Eligible Devices through implementation of a Suppression Mechanism.
- 3.5. HCE Developers will benefit from access to the same Apple SDKs and relevant APIs available to other iOS Developers via Xcode. In particular, HCE Developers will have access to the Local Authentication Framework as defined in the Documentation (to enable Touch ID, Face ID, and device passcode for their Eligible HCE Payment Applications on Eligible Devices).

- 3.6. An HCE Developer will be responsible for designing the user experience of its Eligible HCE Payment Application, including customer lifecycle management of users of its Eligible HCE Payment Application.

*Selecting default Payment Application*

- 3.7. Apple will enable EEA iOS users to select a Payment Application as default for NFC In-Store Payments. Apple will allow HCE Developers to use prompts for users of Payment Applications to select their Payment Application as default and to enable related push notifications on the same terms as those applicable to other Applications under the Apple Developer Program License Agreement and applicable guidelines.
- 3.8. Apple shall create functionality that will be easy to locate within settings and which will allow EEA iOS users to easily set and change their preferred Payment Application as the default Payment Application for NFC In-Store Payments. Apple will enable HCE Payment Applications to redirect users directly to the App's page in settings and include a link which will take the user directly to the NFC settings page to easily set the default Payment Application for NFC In-Store Payments. This solution will be made available with the iOS update to be released in July 2024.
- 3.9. Apple will re-engineer iOS to maintain a register of installed Payment Applications requesting foreground NFC access through the NFC Controller and allow users to grant access to the NFC Controller.

*NFC standards*

- 3.10. The HCE architecture will be compatible with industry standards that are implemented by Apple Pay relating to formatting of messages received through NFC (e.g., APDU and other applicable standards for card-based and account-based payments) and for interpretation of such messages (e.g., PCIDSS, EMVCo and other applicable standards for card-based and account-based payments) which are technically feasible and necessary to the operation of Eligible HCE Payment Applications facilitating NFC In-Store Payments using Eligible Credentials. It will process APDUs as defined in the ISO/IEC 7816-4 specification. Apple will (i) update the HCE architecture to comply with evolving industry standards as long as they are implemented by Apple Pay; and (ii) to the extent the abovementioned standards are no longer implemented by Apple Pay, employ good faith efforts to continue to update them, provided that these standards a) do not conflict with any IP rights (whether Apple or third party IP); b) do not pose a threat to the security or privacy of Apple Pay or Eligible Devices; c) are not incompatible with Apple's business model or operating procedures and set by any group or body which Apple is not eligible to participate in; and d) supporting these standards does not infringe on antitrust laws. Apple shall submit to the Commission a reasoned opinion if it intends to no longer support a given standard.
- 3.11. Apple commits in good faith to use commercially reasonable efforts to support future industry standards and specifications that are (i) technically feasible and necessary to the operation of Eligible HCE Payment Applications facilitating NFC In-Store Payments using

Eligible Credentials and (ii) implemented by Apple Pay.

*Availability of the solution*

- 3.12. The NFC Technical Solution will be made available to EEA iOS users no later than fourteen days after the Effective Date.
- 3.13. The NFC Technical Solution shall be made available only on Eligible Devices.

*NFC Entitlement Program*

- 3.14. The NFC Technical Solution will be made available to Developers that are authorized under the NFC Entitlement Program based on the following fair, objective, transparent, and non-discriminatory eligibility criteria:
  - (1) The Developer has entered into a current and binding Apple Developer Program License Agreement;
  - (2) The Developer accepts and agrees to be bound by additional terms applicable to the use of the entitlement as provided in Annex 3;
  - (3) The Developer intends to develop, test, and distribute an HCE Payment Application that will be made available to EEA iOS users through an app store storefront located and limited to the distribution of Apps in the EEA (including any other software application distribution channel that is allowed and which is operating on iOS in the EEA) for the purposes of carrying out NFC In-Store Payments;
  - (4) The Developer must be established in the EEA. For these purposes, “established” shall mean the effective and real exercise of activities through stable arrangements in line with EU law. The legal form of such arrangements, whether through a branch or a subsidiary with a legal personality, is not the determining factor in that respect;<sup>1</sup>
  - (5) The Developer shall commit to comply with security standards and privacy requirements that correspond to applicable laws and industry standards, including, where relevant, the specifications of the Payment Card Industry Data Security Standards and EMVCo, GDPR, or other applicable national law; to the extent applicable, Apple commits to comply with these same industry-standard specifications;
  - (6) The Developer shall commit to maintaining appropriate written policies and procedures for (a) disclosure and processing of personal data, and (b) disclosure, processing, and remediation of potential vulnerabilities in its Eligible HCE Payment Application and back-end HCE infrastructure, and to have in place a process to promptly and without undue delay, notify Apple of any actively exploited vulnerability contained in its Eligible HCE Payment Application or back-end HCE

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<sup>1</sup> See *Google Spain SL, Google Inc. v AEPD, Mario Costeja González (C-131/12)*, *Weltimmo v NAIH (C230/14)*, *Verein für Konsumenteninformation v Amazon EU (C-191/15)* and *Wirtschaftsakademie Schleswig-Holstein (C-210/16)*.



infrastructure or any Security Incident; and

- (7) The Developer shall commit to comply with industry-standard specifications for NFC In-Store Payments, including NFC-Forum ISO-DEP ISO/IEC 14443-4 and ADPU specifications as defined in ISO/IEC 7816-4. To the extent applicable, Apple commits to comply with these same industry-standard specifications.
- 3.15. Apple shall authorize Developers and provide access to the NFC Technical Solution on the basis of the objective, transparent, and non-discriminatory procedure applied uniformly to all Developers, as detailed in Annex 1 (“NFC Entitlement Program Procedure”).
- 3.16. HCE Developers shall comply with the eligibility criteria detailed at para. 3.14 for as long as they offer HCE Payment Applications to EEA iOS users for NFC In-Store Payments. The Commitments supersede any conflicting provisions in the agreements mentioned at para. 3.14 above or in Annexes 1-3.

*Codification*

- 3.17. Apple shall provide guidance to Developers on the application of the fair, objective, transparent, and non-discriminatory eligibility criteria, as detailed in Annex 3. The guidance will be available on a designated page on the Apple Developer webpage.
- 3.18. Apple shall provide guidance for use of the NFC Technical Solution no later than fourteen days after the Effective Date. The guidance will be available on a designated page on the Apple Developer webpage.

*Non-discrimination*

- 3.19. Apple will not discriminate against Eligible HCE Payment Applications which will be subject to the same rights and obligations as other Applications, including with respect to availability of entitlements, App Review, termination, and commercialization.
- 3.20. HCE Developers will be able to offer the same value-added services as other Developers within their Eligible HCE Payment Applications. Apple will not prevent HCE Developers from combining other functionalities or use cases within the scope of the Commitments and within the scope of the DMA in their HCE Payment Applications. HCE Developers shall be allowed to utilize future authentication tools that are available to or used by Apple Pay on Eligible Devices (or other features under the DMA), provided that they can be used in a way that does not compromise the integrity of the operating system, hardware, or software features provided by Apple.

*Operations, architecture, or structure of Apple Pay and Wallet*

- 3.21. These Commitments shall not affect the current or future operations, architecture, or structure of Apple Pay and Wallet, except for the matters directly resulting from the Commitments, such as the setting of a default HCE Payment App.
- 3.22. Apple shall not prevent EEA iOS users from setting up Apple Pay on Apple Watch from the Apple Watch Application on their Eligible Device or directly on Apple Watch to make

NFC In-Store Payments by using Apple Watch, irrespective of the Payment Application used on iPhone. EEA iOS users shall not be prevented from selecting an Eligible HCE Payment Application as default for NFC In-Store Payments on iPhone, and if they wish, select a payment card credential from the same bank as or a different bank from their HCE Payment Application as default on Apple Watch if the credential is eligible for use with Apple Pay. For the avoidance of doubt, setting up Apple Pay on Apple Watch shall not interfere with the default settings set up by EEA iOS users on iPhone.

#### **4. Timing, duration, and review clause**

- 4.1. The NFC Technical Solution shall be available no later than fourteen days after the Effective Date.
- 4.2. These Commitments shall apply for a period of ten years from the Effective Date. If, following the expiry of the ten-year period, Apple is obliged to comply with the requirements of the DMA as it relates to payments using the NFC functionality on iPhone, and for as long as Apple's obligations apply, Apple shall continue to provide the NFC Technical Solution to HCE Developers.
- 4.3. Without prejudice to the general provisions of Article 9(2) of Regulation 1/2003, Apple may request the Commission to review and modify the Commitments where there has been a material change in any of the relevant facts on which the Commission's Decision pursuant to Article 9(1) of Regulation 1/2003 was based.
- 4.4. In addition, and without prejudice to the general provisions of Article 9(2) of Regulation 1/2003, the Commission may, on its own initiative, review these Commitments if there has been a material change in any of the facts on which the Commission's Decision pursuant to Article 9(1) of Regulation 1/2003 was based.

#### **5. Dispute Resolution**

- 5.1. Developers considering that Apple is not complying with paras. 3.1-3.13 and 3.15-3.22 of these Commitments may submit a written complaint to the monitoring trustee (the "Monitoring Trustee"), setting out the relevant facts and attaching the relevant supporting evidence and documentation. The Monitoring Trustee, with the assistance of any advisor(s) with the necessary expertise appointed according to para. 6.7, may first bring up the matter with Apple to seek resolution and may subsequently advise the Commission on potential issues of non-compliance. For the avoidance of doubt, this procedure excludes any decisions related to App Review that are unrelated to the NFC Technical Solution.
- 5.2. Disputes related to decisions related to the application of the eligibility criteria to the NFC Entitlement Program listed at para. 3.14 shall be exclusively resolved through the dispute resolution procedure detailed in Annex 2 ("NFC Entitlement Program Dispute Resolution Procedure").

#### **6. Monitoring Trustee**

- 6.1. No later than four months from the Effective Date, Apple shall appoint the Monitoring

Trustee to monitor Apple's compliance with these Commitments for the duration of the Commitments.

- 6.2. The Monitoring Trustee shall be independent of Apple (and any other undertaking affiliated with Apple). The Monitoring Trustee will be remunerated by Apple on reasonable terms, and in a way that does not influence or impede the independent and effective fulfilment of its mandate.
- 6.3. The Monitoring Trustee should possess the qualifications, experience, and competence necessary to carry out its mandate, including via the advisor(s) appointed according to para. 6.7 below.
- 6.4. The Monitoring Trustee shall neither have nor become exposed to a conflict of interest. In particular, the Monitoring Trustee (including all of its employees) shall not provide services to, or become an employee of, Apple, neither during the Monitoring Trustee's mandate nor for a period of three years following termination of the Monitoring Trustee's mandate.
- 6.5. If, during the Monitoring Trustee's mandate or for a period of two years following termination of the Monitoring Trustee's mandate, subject to Apple's prior written approval, the Monitoring Trustee or the advisor(s) appointed according to para. 6.7 below proposes to undertake any work for, or provide services to, any of Apple's competitors or a Developer Applicant, the Monitoring Trustee and/or advisor(s) shall be ring-fenced from any work done by the same entity for any of Apple's competitors or any Developer Applicants.
- 6.6. Apple shall indemnify the Monitoring Trustee and its employees and agents (each an "Indemnified Party") and hold each Indemnified Party harmless against, and hereby agrees that an Indemnified Party shall have no liability to Apple for any liabilities arising out of the performance of the Monitoring Trustee's duties under the Commitments, except to the extent that such liabilities result from the willful default, recklessness, gross negligence or bad faith of the Monitoring Trustee, its employees, agents, or advisors.
- 6.7. At the expense of Apple, the Monitoring Trustee may appoint no more than three advisors if the Monitoring Trustee considers the appointment of such advisors strictly necessary for the performance of its duties and obligations under the mandate, provided that any fees and other expenses incurred by the Monitoring Trustee are reasonable.
- 6.8. The advisors shall neither have nor become exposed to a conflict of interest. In particular, the advisors (including all of their employees) shall not provide services to, or become employees of, Apple, neither during their mandate nor for a period of three years following termination of their mandate. Only the Monitoring Trustee shall be entitled to issue instructions to the advisor(s).

*Proposal by Apple*

- 6.9. No later than 21 days after the Effective Date, Apple shall submit a list of at least two Persons whom Apple proposes to appoint as the Monitoring Trustee to the Commission for

approval.

- 6.10. The proposal shall contain sufficient information for the Commission to verify that the proposed Monitoring Trustees fulfil the requirements set out above and shall include:
- The full terms of the proposed mandate, which shall include all provisions necessary to enable the Monitoring Trustee to fulfil its duties under these Commitments; and
  - The outline of a work-plan which describes how the Monitoring Trustee intends to carry out its assigned tasks.

*Approval or rejection by the Commission*

- 6.11. The Commission shall have the discretion to approve or reject the proposed Monitoring Trustees, together with the proposed advisor(s), and to approve the proposed mandate subject to any modifications it deems necessary for the Monitoring Trustee to fulfil its obligations.
- 6.12. The Commission shall not unreasonably withhold its approval of the proposed Monitoring Trustee and proposed advisor(s). In case of rejection, the Commission must give detailed reasons for the rejection of a proposed Monitoring Trustee and proposed advisor(s), and/or reasons supporting the need for any modifications to the Mandate.
- 6.13. If only one Person is approved, Apple shall appoint or cause to be appointed, the individual concerned as Monitoring Trustee, in accordance with the mandate approved by the Commission. If more than one name is approved, Apple shall be free to choose the Monitoring Trustee to be appointed from among the Persons approved. The Monitoring Trustee, and the proposed advisor(s), shall be appointed within seven days from the first business day after Apple receives written notification of the Commission's written approval of the Monitoring Trustee, and the proposed advisor(s), in accordance with the mandate approved by the Commission.

*New proposal(s) by Apple*

- 6.14. If all the proposed Monitoring Trustees are rejected, Apple shall submit the names of at least two more Persons within one month of being informed of the rejection(s), in accordance with the requirements and the procedure set out above.

*Monitoring Trustee nominated by the Commission*

- 6.15. If all further proposed Monitoring Trustees are rejected by the Commission, the Commission shall nominate a Monitoring Trustee, whom Apple shall appoint, or cause to be appointed, within one month following the nomination, in accordance with a trustee mandate approved by the Commission.
- 6.16. The Monitoring Trustee nominated by the Commission shall not be subject to any conflicts of interest *vis-à-vis* any of Apple's competitors or a Developer (Applicant), unless Apple expressly waives (in writing) its rights under this provision. The Monitoring Trustee will not be deemed to have a conflict of interest if it took appropriate ringfencing measures

according to para. 6.5 above.

*Replacement, discharge, and reappointment of the Monitoring Trustee*

- 6.17. If the Monitoring Trustee ceases to perform its functions under these Commitments, acts in breach of its mandate, or for any other good cause, including the exposure of the Monitoring Trustee to a conflict of interest:
- The Commission may require Apple to replace the Monitoring Trustee; or
  - Apple, with the prior notification to the Commission, may replace the Monitoring Trustee.

The procedure set out at paras. 6.10 to 6.16 will apply, *mutatis mutandis*, where the Monitoring Trustee is replaced.

- 6.18. The Monitoring Trustee shall cease to act as Monitoring Trustee only upon the expiration of these Commitments or after the Commission has discharged it from its duties, whichever is earlier.

*Functions of the Monitoring Trustee and advisors*

- 6.19. The Monitoring Trustee shall assume its specified duties in order to ensure compliance with the Commitments. The Commission may, on its own initiative or at the request of the Monitoring Trustee or Apple, give any lawful and appropriate orders or instructions to the Monitoring Trustee for the sole purpose of ensuring compliance with the Commitments.

*Duties and obligations of the Monitoring Trustee and advisors*

- 6.20. The Monitoring Trustee, together with any advisor(s) appointed according to para. 6.7, if this is the case, shall:
- (1) Monitor the performance of the Commitments by:
    - (a) Upon appointment, ensuring that the NFC Technical Solution is made available in compliance with these Commitments; and
    - (b) On an ongoing basis, monitoring data, information, and/or statistics provided by Apple regarding the use of the NFC Entitlement Program;
  - (2) Analyze any written complaints from Developer(s) (Applicants) considering that Apple is not complying with these Commitments submitted under para. 5.1 and communicate to Apple its reasoned opinion (Trustee Proposal) for resolving the dispute; and
  - (3) Within 30 days of its appointment, submit to the Commission a detailed work-plan describing how the Monitoring Trustee intends to carry out the duties provided under this provision on which Apple will be afforded the opportunity to provide its views prior to submission within a reasonable timeframe.

- 6.21. The Monitoring Trustee shall have the following reporting obligations to the Commission:
- (1) Submit to the Commission a reasoned opinion on its monitoring duties pursuant to para. 6.20(1) every six months during the period of the first two years following the Effective Date (*i.e.*, for the first four reports), and, thereafter for the remainder of the Commitments on an annual basis. In addition, each report should contain the following information:
    - (i) The number of entitlement requests received by Apple including details of the applicants;
    - (ii) The number of successful applications and rejected applications, including the reasons for rejection of applications;
    - (iii) Information on Apple's performance, including in relation to any delays in assessing entitlement requests; and
    - (iv) Any other relevant information on Apple's compliance with the Commitments in relation to the application process.
  - (2) Submit to the Commission an overview of the written complaints received under para. 5.1 and para. 6.20(2) every six months during the period of the first two years following the Effective Date (*i.e.*, for the first four reports), and, thereafter for the remainder of the Commitments on an annual basis;
  - (3) Promptly report, without waiting for the annual or semi-annual reporting, in writing to the Commission, any material issues of non-compliance which were not resolved with Apple within two months of the Monitoring Trustee raising such issues with Apple; and
  - (4) Reply to any questions from the Commission regarding any report submitted to the Commission pursuant to this provision.
- 6.22. Apple shall receive, at the same time as the Commission, non-confidential versions of the reports and submissions made under paras. 6.21(1)-(3) provided by the Monitoring Trustee to the Commission.
- 6.23. The Monitoring Trustee may request information from Apple that is strictly necessary to the fulfillment of its duties. Any information request should be justified, should not be overly burdensome for Apple, and should be limited and proportionate to the fulfilment of the Monitoring Trustee's legitimate objectives within the scope of the mandate of the Monitoring Trustee.
- 6.24. The Monitoring Trustee, as well as any advisor(s) appointed, shall not:
- (1) Participate in decisions relating to technical, product design, or any other changes to Apple's business or negotiations with Developers;
  - (2) Have any decision-making power or powers of investigation of the kind vested in the Commission, pursuant to Regulation 1/2003;

- (3) Undertake any work not covered by, or act outside the scope of, its mandate; or
- (4) Disclose any confidential information to any Person, undertaking, or other body other than the Commission. The Monitoring Trustee may only share information related to the performance of its duties under its mandate with the advisors and the Commission.

The Monitoring Trustee shall be prohibited from sharing any other Apple confidential information received in the performance of its mandate. Any confidential information obtained by the Monitoring Trustee in performance of the duties and obligations specified in these Commitments shall be kept in the strictest confidence and shall be used solely for the purpose of performing its duties and obligations specified in the Commitments. The Monitoring Trustee shall ensure that adequate safeguards are established and adhered to in collecting, taking delivery of, tracking the dissemination of, monitoring the use of, protecting against the disclosure of, and determining the safe disposal of confidential information.

These safeguards shall be reviewed by Apple within the time limit set by the Monitoring Trustee. Within this time limit, Apple can make requests to improve the safeguards, which the Monitoring Trustee shall take into account to ensure the adequate level of protection of confidential information. These safeguards must be effective to protect the confidential information, but shall not be such as to prevent the Monitoring Trustee from effectively fulfilling its duties and obligations specified in these Commitments. In case of disagreement, the Commission will take a decision as regards the necessary safeguards. The Monitoring Trustee and any appointed advisor(s) shall not make any public statements relating to the performance of its functions in relation with these Commitments, or the confidential information it has obtained in the context of the performance of its functions in relation with these Commitments. The Monitoring Trustee shall sign confidentiality undertakings addressed to the Commission warranting its knowledge of and compliance with its duties and obligations specified in these Commitments. The Monitoring Trustee shall abide by the obligations of nondisclosure imposed in Article 28(2) of Regulation 1/2003 with regard to any information acquired in its performance of its functions in relation with these Commitments or from the Commission, even after the term of its mandate. Upon expiration of the Monitoring Trustee's mandate and provided there are no pending issues regarding Apple's compliance with the Commitments, any confidential information held by the Monitoring Trustee (or any of its employees) shall be destroyed and confirmed to Apple in writing within 10 business days.

#### *Duties and obligations of Apple*

- 6.25. Apple shall provide and shall cause any contract employees to provide the Monitoring Trustee with all cooperation, assistance, and information that is necessary to monitor Apple's compliance with its obligations under these Commitments.

- 6.26. To the extent the Monitoring Trustee has any necessary information request, Apple shall respond to these questions accurately and within a reasonable time.
- 6.27. Apple agrees that the Commission may share confidential information proprietary to Apple with the Monitoring Trustee and its advisors, provided (i) such sharing of information is strictly necessary and is required to monitor Apple's compliance with its obligations under these Commitments; (ii) the Commission provides prior notice to Apple before making the disclosure and affords Apple the opportunity to object to such disclosure; and (iii) the Commission requires the Monitoring Trustee and its advisors to ensure protective treatment of the confidential information.
7. **Non-circumvention**
- 7.1. Apple shall not circumvent or attempt to circumvent these Commitments either directly or indirectly by any act or omission.



Kyle Andeer

Vice President, Products & Regulatory Law

Date: May ~~17~~, 2024

May 14, 2024



## **Annex 1 – NFC Entitlement Program Procedure**

1. Developers that want to develop, test, and distribute an HCE Payment Application for use by EEA iOS users may apply to become an HCE Developer under the NFC Entitlement Program by submitting a request in a manner described on a designated page on the Apple Developer webpage (“NFC Entitlement Program Request”).
2. A link with details for submitting the NFC Entitlement Program Request shall be made available on a designated page on the Apple Developer webpage, along with an overview of and guidance to fulfil the eligibility criteria as well as a list of information required from Developer Applicants.
3. Developer Applicants shall submit a complete and accurate NFC Entitlement Program Request in a manner described on the designated page on the Apple Developer webpage.
4. Once an NFC Entitlement Program Request has been submitted, an email providing notification of the request shall be sent to the unit within Apple which is responsible for reviewing and assessing NFC Entitlement Program Requests (“NFC Entitlement Program Officer”).
5. Once the NFC Entitlement Program Officer receives the NFC Entitlement Program Request, it shall confirm to the Developer Applicant within five (5) business days whether the request has been completed correctly for Apple to initiate the assessment. If incomplete, the NFC Entitlement Program Officer shall request from the Developer Applicant such additional information as is required to complete the NFC Entitlement Program Request. Following the submission of the additional information required, the NFC Entitlement Program Officer shall confirm to the Developer Applicant within five (5) business days whether the request is complete.
6. Once the NFC Entitlement Program Request is deemed complete pursuant to para. 5, the NFC Entitlement Program Officer shall confirm to the Developer Applicant in writing whether it meets the eligibility criteria within 15 business days.
7. All Developer Applicants that are deemed to meet the eligibility criteria detailed at para. 3.14 of the Commitments after having submitted a complete NFC Entitlement Program Request shall be authorized under the NFC Entitlement Program.
8. Developer Applicants that are deemed not to meet the eligibility criteria shall be provided with the reasons in writing. Developer Applicants that do not meet the eligibility criteria shall either:
  - (1) in line with Apple’s standard practices, be rejected under the NFC Entitlement Program in case the Developer Applicant is deemed ineligible due to security concerns under para. 3.14(5)-(6) of the Commitments, including the following circumstances:
    - a. The Developer Applicant does not comply with (and does not commit to comply with) or fails to comply with privacy requirements and security standards that correspond to applicable laws and industry standards applicable to it, related to its HCE Payment Application, including, where relevant, the current or future

specifications of the Payment Card Industry Data Security Standards and EMVCo, and has not taken steps to remedy its failure to do so;

- b. The Developer Applicant does not maintain (and does not commit to maintain prior to launch of an HCE Payment Application) appropriate written policies and procedures for (a) disclosure and processing of personal data, and (b) for disclosure, processing, and remediation of potential vulnerabilities in its Eligible HCE Payment Application and back-end HCE infrastructure;
  - c. The Developer Applicant does not have in place (and does not commit to have in place prior to launch of HCE functionality) a process to promptly, and without undue delay, notify Apple of any actively exploited vulnerability contained in its Eligible HCE Payment Application or back-end HCE infrastructure;
  - d. The Developer Applicant fails or has failed to remedy a previously experienced actively exploited vulnerability in its HCE Payment Application or back-end HCE infrastructure;
  - e. Apple learns that any Person has breached security measures in relation to the Developer Applicant's HCE Payment Application or back-end HCE infrastructure and the Developer Applicant fails or has failed to remedy this breach or take appropriate steps to prevent a similar breach from recurring;
  - f. The Developer Applicant attempts to hide, misrepresent, mislead, or obscure any features, content, services or functionality in the HCE Payment Application from Apple's review or otherwise hinder Apple from being able to fully review the Developer Applicant's implementation of the entitlement;
  - g. The Developer Applicant provides, or attempts to provide, incorrect information on the identity of the entity seeking to use the entitlement; or
  - h. Apple learns that the Developer Applicant has been engaged in otherwise illegal or fraudulent activities; or
- (2) be given a deadline to comply, in case authorization cannot be granted under the NFC Entitlement Program, due to non-compliance with one or more of the eligibility criteria detailed at para. 3.14(1)-(4) and (7) of the Commitments.
- 9. Developer Applicants who fail to meet the eligibility criteria within the specified deadline will not be authorized under the NFC Entitlement Program.
  - 10. Where a Developer Applicant meets the eligibility criteria and should therefore be authorized under the NFC Entitlement Program, Apple shall, within 10 business days of confirming this in writing to the HCE Developer, ensure that the HCE Developer is provided access to the NFC Technical Solution.
  - 11. HCE Developers that are in breach of the eligibility criteria pursuant to para. 3.16 of the Commitments shall have their authorization under the NFC Entitlement Program revoked.

## **Annex 2 – NFC Entitlement Program Dispute Resolution Procedure**

1. In application of para. 5.2 of the Commitments, the following decisions related to the application of the eligibility criteria detailed at para. 3.14 of the Commitments may be appealed under the NFC Entitlement Program Dispute Resolution Procedure:
  - a. Any decision not to authorize a Developer Applicant under the NFC Entitlement Program, in particular as specified in Annex 1, para. 8;
  - b. Any decision to revoke, restrict, or deny, in whole or in part, an HCE Developer's access to the NFC Entitlement Program (once granted);
  - c. A failure to take a decision on an NFC Entitlement Program Request within the time period defined in the NFC Entitlement Program Procedure (Annex 1); including the failure to confirm that the request is complete pursuant to para. 5 of Annex 1 of the Commitments;
  - d. Any specific material breach by Apple of the obligations provided at paras. 3.1-3.13 of the Commitments which directly results in the revocation, restriction, or denial, in whole or in part, of an HCE Developer's access to the NFC Entitlement Program; and
  - e. Decisions adopted under the App Review procedure that are, or may reasonably be construed as being, directly and primarily, decisions on the application of the eligibility criteria under the NFC Entitlement Program similar to the matters in paras. 1.1(a)-(c) above.

(together or separately, the "Rejection Decision(s)").
2. The provisions provided at paras. 1(d) and 1(e) shall be interpreted restrictively. The NFC Entitlement Program Dispute Resolution Procedure shall not apply to (i) other decisions, including any decision made under Apple's App Review in the ordinary course; and (ii) general complaints or disputes regarding Apple's compliance with the obligations provided at paras. 3.1-3.13 and 3.15-3.22 of the Commitments, which shall be subject to para. 5.1 of the Commitments.
3. In the event of a dispute related to a Rejection Decision ("Dispute"), a Developer (Applicant) ("Requesting Party") shall submit a complaint to Apple, copying the Monitoring Trustee in writing, within 15 business days of the Rejection Decision, setting out in detail the grounds of the claim ("Dispute Notice").
4. The Dispute Notice shall be submitted electronically to the email addresses of Apple and the Monitoring Trustee and made available by Apple on the Apple Developer webpage. A link with details on the NFC Entitlement Program Dispute Resolution Procedure shall be made available on a designated page on the Apple Developer webpage.

### **Consultation**

5. The Requesting Party and Apple (together, "the Parties") will use good faith, reasonable efforts to resolve Disputes through cooperation and consultation within a reasonable period, not exceeding 15 business days after receipt of the Dispute Notice ("Consultation Period"). The Consultation Period may be extended by either of the Parties by a period not exceeding 5 business days.

6. The Monitoring Trustee shall present its own proposal for resolving the Dispute within the Consultation Period, specifying, in writing, the action(s), if any, to be taken to resolve the Dispute and shall, if requested by mutual agreement of both Parties, facilitate the settlement of the Dispute. However, lack (or delay) of the Monitoring Trustee's opinion and/or guidance should not delay, stall, or otherwise invalidate the procedure.
7. Should the Parties fail to resolve their Dispute during the Consultation Period, at the end of the Consultation Period, the Requesting Party may refer the matter to the Appeal Board ("Appeal").

### **Appeal Board**

8. Apple shall establish an Appeal Board within 30 business days of the Effective Date. The Appeal Board shall be composed of seven to nine (as determined by Apple) independent adjudicators having relevant experience and expertise, appointed by Apple ("Appeal Board Members").
9. The Appeal Board shall be composed of at least three Appeal Board Members with relevant technology experience and expertise, as well as at least three Appeal Board Members with a legal background or education.
10. Apple shall provide the Commission and the Monitoring Trustee the opportunity to comment on the profiles of the Appeal Board Member candidates within a reasonable time prior to their appointment. Apple shall consider and, to the extent reasonably necessary and appropriate, integrate the Commission's feedback. Apple shall also consider and, to the extent reasonably necessary and appropriate, integrate the Monitoring Trustee's feedback.
11. Appeal Board Members shall not be Apple employees and they shall not be subject to instructions or remuneration by Apple.
12. The seven to nine Appeal Board Members shall serve two-year terms. Apple may, in consultation with the Commission and the Monitoring Trustee, extend the terms of the Appeal Board Members. The terms will be staggered to ensure continuity and may be extended.
13. The Appeal Board will elect (by a majority of votes) a chairperson from its Members in charge of managing the Appeal Board (including the fair rotation of Appeal Board Members, in Panels, in ongoing adjudicating cases) (the "Chairperson").
14. Appeal Board Members shall be independent from Apple during the exercise of their functions. Former Apple employees or services providers shall also be prohibited from being appointed as Appeal Board Members if they held such capacity up to two years prior to the appointment. Appeal Board Members shall not be employed or provide services to Apple for a period of at least two years following the end of their mandate. Conflicts of interest must be brought to the attention of the Chairperson, the Commission, and the Monitoring Trustee. If the conflict of interest is persistent and affects the independence of the Appeal Board, the relevant Appeal Board Member(s) shall be duly replaced by Apple within a reasonable timeframe. The Commission shall provide feedback on the conflict of interest and replacement, if that is the case, which Apple shall consider and integrate.

15. Apple and Requesting Parties may request the recusal of an Appeal Board Member, based on a material conflict of interest.

### **Appeal**

16. An Appeal shall be decided by a panel of three Appeal Board Members (“Panel”). A Panel shall be established by the Chairperson. The Chairperson shall consider the availability of the Appeal Board Members as well as any specific experience relevant to the Appeal when deciding on the Panel composition. The Chairperson shall appoint one of the Appeal Board Members of the Panel as the Panel Leader. The Panel Leader is responsible for the organization of the Appeal and all procedural decisions related thereto which may be made in consultation with the other members of the Panel. The Panel Leader shall have a legal background or education. Each Panel shall include at least one Appeal Board Member with relevant technology experience and expertise.
17. The Requesting Party must serve the Appeal Board, copying Apple, within 20 business days as from the end of the Consultation Period, with a written request for the matter to be adjudicated by the Appeal Board (“Notice of Appeal”).
18. Both Parties have the right to legal representation in (respect of) an Appeal.
19. The Notice of Appeal shall be submitted electronically to the email addresses of the Appeal Board and Apple. Both these email addresses will be made easily available by Apple on the Apple Developer webpage. The Requesting Party will also ensure that the Monitoring Trustee is informed (copied) of the Notice of Appeal, which shall (at least) contain:
  - a. Name, address, relevant identification criteria of the Requesting Party;
  - b. Legal and/or contractual representative, before the Appeal Board;
  - c. Statement of the legal and/or factual grounds for appeal related to the Rejection Decision;
  - d. All supporting documents submitted during the Consultation Period in connection with the Rejection Decision; and
  - e. A short description of the solution envisaged by the Requesting Party.
20. Within 5 business days of receipt of a Notice of Appeal, the Chairperson shall appoint a Panel to hear the Appeal. A new Panel shall be appointed in respect of each Notice of Appeal and shall have authority in relation to that matter alone.
21. Within 10 business days of its constitution, the Panel shall review the Notice of Appeal and shall indicate to the Requesting Party whether the Notice of Appeal is complete. The Panel may dismiss incomplete, manifestly unfounded, abusive Notices of Appeal, or Notices of Appeal outside the jurisdiction of the Panel (“Admissibility and Jurisdiction Decisions”). In accordance with para. 32 below, Admissibility and Jurisdiction Decisions shall be considered final and binding arbitral awards.
22. The Panel shall have discretion to determine whether a Notice of Appeal is incomplete, manifestly unfounded, or abusive. If a Notice of Appeal is incomplete, the Panel shall have the right to require a Requesting Party to provide the missing information or documents of

its Notice of Appeal within a reasonable time. Notices of Appeal concerning matters (i) that are manifestly outside of the scope of Rejection Decisions, (ii) that have already been ruled on under the NFC Entitlement Program Dispute Resolution Procedure, or (iii) which have not been subject to a Consultation, shall be considered inadmissible. Notices of Appeal submitted after the deadline provided at para. 17 shall be inadmissible.

23. Apple's response to the Notice of Appeal ("Response") shall be submitted electronically to the email addresses of the Requesting Party and the Panel within 20 business days of submission of the Notice of Appeal. The Response shall contain the same elements as a Notice of Appeal, as outlined in para. 19 of this Annex 2, but concerning Apple and its perspective.

### **Conduct of the Appeal**

24. Consistent with principles of international arbitration, Apple will adopt a set of procedural rules for the conduct of an Appeal ("Procedural Rules") at the latest at the same time as the appointment of the Appeal Board. Apple shall provide to the Monitoring Trustee the opportunity to comment on the Procedural Rules within a reasonable time. The Monitoring Trustee shall consult with the Commission. Apple shall consider and, to the extent reasonably necessary and appropriate, integrate the Monitoring Trustee's suggestions before adopting the Procedural Rules. Procedural Rules shall be made easily available on a designated page on the Apple Developer webpage.
25. The Panel may:
  - a. Extend deadlines, in duly justified cases;
  - b. Request necessary information from Apple and/or the Requesting Party in accordance with the Procedural Rules;
  - c. Resolve the matter by mutual agreement, if possible; and
  - d. Adopt final Reasoned Decisions on the matters raised before it by reviewing that Rejection Decisions were not based on a manifest distortion of the facts or breach of due process, based on the evidence adduced, the Commitments, and the Commitment Decision.
26. The Requesting Party or Apple may request an oral hearing ("Hearing") within 5 business days following the receipt of the Notice of Appeal or the Response, whichever is later and, as the case may be. The Panel Leader may organize a Hearing upon request or own motion, which will be held, unless in duly justified cases, within 10 to 15 business days after the request for a Hearing.
27. Confidentiality claims may be raised before the Appeal Board/Panel, which shall exercise both discretion in acceptance thereof, and due care of the fairness of the procedure, especially if such information may be of material significance for the Appeal itself. Confidential information *vis-à-vis* a third party may not be disclosed as part of the Appeal unless the concerned third party has consented to it.
28. Any documents submitted or received in the context of the Appeal, the Notice of Appeal, the Response and the Reasoned Decision as well as any exhibits and transcripts are

confidential and may not be disclosed other than as required by law or to the Monitoring Trustee and the Commission, as specified in the Procedural Rules.

29. The Panel will finalize and adopt the Reasoned Decision by majority (two out of three). Each Appeal Board Member shall have one, equally weighing, vote. A dissenting Appeal Board Member of the Panel may include a dissenting opinion in the Reasoned Decision.
30. The Panel shall issue its final and binding Reasoned Decision no later than 15 business days following the date of the Hearing, or, in its absence, of the latest submitted document which is accepted by the Panel Leader, which shall be saved in a (digital) case file and kept for at least five years following the end of the Appeal.
31. The Reasoned Decision shall set out how to resolve the Dispute over access by rejecting the request or order Apple to take measures to grant or reinstate access to the NFC Entitlement Program.
32. The Reasoned Decision of the Panel is final and binding in the form of an arbitral award.
33. Each Party shall bear its own costs related to the Appeal. Appeal Board Members shall be entitled to appropriate, reasonable remuneration for any work related to a Dispute. The costs and fees of the Appeal Board, including the Panel, shall be borne by Apple.

### Annex 3

PLEASE READ THE FOLLOWING ACCOUNT HCE PAYMENTS ENTITLEMENT ADDENDUM TO THE APPLE DEVELOPER PROGRAM LICENSE AGREEMENT CAREFULLY BEFORE DOWNLOADING OR USING THE APPLE SOFTWARE OR APPLE SERVICES. THESE TERMS AND CONDITIONS CONSTITUTE A LEGAL AGREEMENT BETWEEN YOU AND APPLE AND ARE IN ADDITION TO THE TERMS OF THE APPLE DEVELOPER PROGRAM LICENSE AGREEMENT. IF YOU DO NOT OR CANNOT ACCEPT THIS ADDENDUM, YOU ARE NOT PERMITTED TO USE THE APPLE SOFTWARE OR SERVICES. IF YOU ARE ACCESSING THIS ADDENDUM ELECTRONICALLY, SIGNIFY YOUR AGREEMENT TO BE BOUND BY THE TERMS OF THIS ADDENDUM BY CLICKING THE “AGREE” BUTTON. IF YOU DO NOT AGREE TO THE TERMS OF THIS ADDENDUM, CLICK “DISAGREE”.

#### **HCE Payments Addendum (to the Apple Developer Program License Agreement)**

This HCE Payments Addendum (“Addendum”) is in addition to the terms of the Apple Developer Program License Agreement with Apple (“Developer Agreement”). To enter into this Addendum and use the HCE Payments Entitlement Profile and HCE APIs, You must be a member in good standing of the Apple Developer Program, You must meet the Eligibility Criteria set out in **Section 3 below**, and You must have entered into the current terms of the Developer Agreement. Defined terms not defined herein shall have the same meaning as set forth in the Developer Agreement.

#### **1. Definitions**

“**Account-based payments**” means payments which use bank accounts or an account with the payment provider as funding mechanism.

“**APDU**” means an application protocol data unit as defined by ISO/IEC 7816-4.

“**Apple**” means Apple Inc., a California corporation with its principal place of business at One Apple Park Way, Cupertino, California 95014, U.S.A. and Apple Distribution International Limited, a company organized under the laws of Ireland, with its principal place of business at Hollyhill Industrial Estate, Hollyhill Cork, T23 YK84, Ireland.

“**Apple Materials**” means the Documentation, entitlement profile, and other materials (such as specifications provided by Apple, guidance provided on the developer portal), provided or made available by Apple to You.

“**Card-based payments**” means payments which use payment cards as funding mechanism.

“**Commission**” means the European Commission.

“**Commitments**” means the Commitments offered by Apple to the Commission and accepted by the Commission.

“**Commitments Decision**” means the Commitments Decision under Article 9(1) of Regulation 1/2003, closing the proceedings opened on June 16, 2020, under Case AT.40452.

“**Digital Markets Act**” or “**DMA**” means Regulation (EU) 2022/1925 of the European Parliament



and of the Council of September 14, 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828.

“**EEA**” means those countries participating in the European Economic Area.

“**EEA iOS user**” means an iOS user who has an Apple ID registered in the EEA and is using iOS within the EEA (or while traveling temporarily, without change of residence, outside the EEA).

“**Eligible Credential**” means a payment card credential or an account-based payment credential based on the NFC-Forum ISO-DEP specification based on ISO/IEC 14443-4 for both TYPE-A/TYPE-B cards and current or future standards and specifications which are supported under the NFC Technical Solution.

“**Eligibility Criteria**” are the criteria defined in **Section 3** of the Addendum.

“**Eligible Device**” means iPhone devices specified in the Apple Materials as capable of upgrading to the latest and any future versions of iOS (at the time of the adoption of the Commitments, iPhone XS and above).

“**General Data Protection Regulation**” or “**GDPR**” means Regulation (EU) 2016/679 of the European Parliament and of the Council of April 27, 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of data, and repealing Directive 95/46/EC.

“**HCE APIs**” means the Application Programming Interfaces (“APIs”) contained in the Apple Software that allow Your Licensed HCE Payment Application to access and interoperate with the NFC Controller for the purposes of facilitating NFC In-Store Payments for EEA iOS users.

“**HCE Developer**” is a Developer that meets the Eligibility Criteria defined in **Section 3** of the Addendum.

“**Host Card Emulation**” or “**HCE**” is a technology which will allow Licensed HCE Payment Applications located in the Application Processor (or host CPU) to emulate an Eligible Credential, communicate directly with a compatible NFC reader, and securely store host card data or account-based payment credential data.

“**Licensed HCE Payment Application**” means the Application that has been granted permission to access and use the HCE Payments Entitlement Profile and HCE APIs to facilitate NFC In-Store Payments on Eligible Devices.

“**HCE Payments Entitlement Profile**” means the Payments Development Entitlement Profile and the HCE Payments Deployment Entitlement Profile.

“**HCE Payments Deployment Entitlement Profile**” means the entitlement profile, which may be made available to You by Apple to enable You to access the applicable HCE APIs for distribution of Your Licensed HCE Payment Application to EEA iOS users.

“**HCE Payments Development Entitlement Profile**” means the entitlement profile, which may be made available to You by Apple to enable You to access the applicable HCE APIs for testing and development of HCE functionality in Your Licensed HCE Payment Application before distribution to EEA iOS users or for the sole and exclusive purpose of developing technology for

Licensed HCE Payment Applications.

**“In-store Payment”** means any payment made at a merchant’s industry-certified physical point-of-sale payment terminal, including terminals that accept EMVCo payments, such as SoftPOS terminals based on industry-standard NFC protocols.

**“Near Field Communication”** or **“NFC”** is a standardized wireless connectivity technology that enables devices to exchange information wirelessly within a few centimeters range.

**“NFC Controller”** is a chip integrated in an Eligible Device which includes an NFC front-end and a microcontroller capable of running application logic which ensures the communication between the device and the payment terminal through their antennas.

**“NFC In-Store Payment”** is an In-store Payment using NFC technology to initiate the payment process at a merchant’s industry-certified payment terminal at a point of sale, including terminals that accept EMVCo payments, such as SoftPOS terminals based on industry-standard NFC protocols.

**“Payment Application”** is an Application which will utilize NFC technology on an Eligible Device to make In-Store Payments.

**“Person”** means any individual, corporation, limited liability company, partnership, firm, joint venture, association, trust, unincorporated organization, governmental body, or other entity.

**“Personal Data”** means any information relating to an identified or identifiable natural person.

**“Trustee”** means a Person appointed to act as exclusive trustee to carry out the functions specified in the Commitments for a Monitoring Trustee, according to the Commitments Decision.

**“Undertaking”** means any entity engaged in an economic activity consisting in offering goods or services on a given market, regardless of its legal status and the way in which it is financed.

## **2. Entitlement Profile; Licenses and Restrictions**

2.1. If You qualify as an HCE Developer as set out in **Section 3 (HCE Developer Requirements)** of this Addendum, (i) You may request access to the HCE Payments Development Entitlement Profile to develop and test a Licensed HCE Payment Application prior to distributing it to EEA iOS users or (ii) You may request access to the HCE Payment Development Entitlement Profile for the sole and exclusive purpose of developing technology for Licensed HCE Payment Applications. Upon successfully developing and testing a Licensed HCE Payment Application, You can request access to the HCE Payments Deployment Profile to enable You to distribute Your Licensed HCE Payment Application to EEA iOS users. You acknowledge and agree that You will not access, or attempt to access, the HCE APIs unless You have received an HCE Payments Entitlement Profile from Apple. To obtain an HCE Payments Entitlement Profile:

(a) You agree to use the HCE Payments Development Entitlement Profile solely to develop and test Your Licensed HCE Payment Application;

(b) You agree to use the HCE Payments Deployment Entitlement Profile solely to

distribute Your Licensed HCE Payment Application through an app store storefront located and limited to the distribution of Applications in the EEA (i.e., Apple's App Store in the EEA or any other software application distribution channel that is allowed and which is operating on iOS in the EEA) for the purpose of facilitating NFC In-Store Payments for EEA iOS users; and

- (c) Your Application must meet all additional requirements provided in the Apple Materials to the extent that these requirements are consistent with the Commitments.
- 2.2. You acknowledge and agree that You will not access, or attempt to access, HCE APIs unless You have received an HCE Payments Entitlement Profile from Apple. If You receive an HCE Payments Entitlement Profile, then subject to the terms and conditions of this Addendum and the Developer Agreement, Apple hereby grants You during the Term a limited, non-exclusive, personal, revocable, non-sublicensable, and non-transferable license to:
- (a) distribute the HCE Payments Development Entitlement Profile to Your Authorized Developers solely for testing and developing Your Licensed HCE Payment Application;
  - (b) use the HCE Payments Development Entitlement Profile with Your Licensed HCE Payment Application solely on Authorized Test Units, Registered Devices;
  - (c) use the HCE Payments Deployment Entitlement Profile for submission to the App Store (or any other software application distribution channel that is allowed and which is operating on iOS in the EEA) pursuant to **Section 6** of the Developer Agreement.
- 2.3. You agree to use Your HCE Payments Entitlement Profile only in connection with the Licensed HCE Payment Application developed or distributed by You solely for the use with Eligible Devices (and not for use in any other developer(s)' application(s)) and only in accordance with the Apple Materials. The HCE Payments Entitlement Profile may be used with an existing app by way of an upgrade. For clarity, You may not use the HCE Payments Entitlement Profile with applications developed or distributed under any other Apple Developer agreements (e.g., the Apple Developer Enterprise Program License Agreement). The HCE Payments Entitlement Profile may be used with an existing app by way of an upgrade. You acknowledge and agree that Apple may revoke or remove Your access to the HCE Payments Development Entitlement Profile if you are in breach of this article and that the provision of any HCE Payments Development Entitlement Profile does not guarantee that in the future Apple will provide You with access to an HCE Payments Deployment Entitlement Profile.
- 2.4. When requesting permission to use the HCE Payments Entitlement Profile and HCE APIs, You must submit true, accurate, and complete information to Apple regarding Your requested use of the HCE Payments Entitlement Profile and HCE APIs. You further agree to update this information and notify Apple according to instructions contained in the Apple Materials if any of Your information changes. You acknowledge that material changes to Your information may affect Your continued eligibility for an HCE Payments Entitlement Profile.
- 2.5. You understand and agree that Apple reserves the right to review and approve or reject

any Licensed HCE Payments Application that You would like to distribute for use by Your end-users, or that is already in use by Your end-users, at any time during the Term of the Developer Agreement. If requested by Apple, You agree to promptly provide such Licensed HCE Payment Application to Apple. You agree not to attempt to hide, misrepresent, mislead, or obscure any features, content, services or functionality in Your Licensed HCE Payment Application from Apple's review or otherwise hinder Apple from being able to fully review such Licensed HCE Payment Application, and You agree to cooperate with Apple and answer questions and provide information and materials reasonably requested by Apple regarding such Licensed HCE Payment Application. If You make any changes to Your Licensed HCE Payment Application after submission to Apple, You agree to notify Apple and, if a reasoned request is made by Apple, resubmit Your Licensed HCE Payment Application prior to any distribution of the modified Licensed HCE Payment Application to Your end-users. Apple reserves the right to not provide You with the HCE Payments Entitlement Profile, and to revoke such HCE Payments Entitlement Profile, or remove Your access to any data fields contained therein, at any time, if You do not meet the Eligibility Criteria in **Section 3** of the Addendum, You attempt to circumvent the conditions for using the HCE Payments Entitlement Profile (e.g. by distributing your HCE Payment Application to non-eligible iOS users) or You breach the terms of the Addendum or the Developer Agreement, and, in that event, You agree that You may not access or use the HCE APIs or distribute the HCE Payments Entitlement Profile to Your end-users.

- 2.6. If Your request to use an HCE Payments Entitlement Profile is not approved or the HCE Payments Entitlement Profile You were previously granted is revoked, Apple will provide reasons for its decision. If the issues identified are capable of being resolved to Apple's satisfaction, for example to cure Your breach and bring You into compliance, You can correspond with Apple to resolve such issues. Apple may, but is not obliged to, give You a reasonable timeframe within which to address any of the issues identified. If Your request to use the HCE Payments Entitlement Profile was rejected because You did not meet the Eligibility Criteria, You may choose to submit a new request upon addressing any issues that may have prevented You from meeting the Eligibility Criteria, and providing specific reasons why you believe You now meet the Eligibility Criteria. This Section 2.6 is without prejudice to any dispute resolution mechanism available under the Commitments.
- 2.7. Your Licensed HCE Payment Application must not infringe Apple's intellectual property or appear confusingly similar to Apple Pay, Apple Wallet or an Apple product, service, interface, computer software application, or advertising theme (including, but not limited to, use of the Apple Pay log, Apple Pay button, Apple Wallet, Wallet icon, card-in Wallet, Apple Wallet interface or Wallet gestures). You shall not apply for or register a trademark, service mark, or copyright for or incorporating an Apple, Apple Pay or Wallet trademark, service mark, graphic symbol, logo, icon, trade dress, slogan, or similar variation as a company, product, or service name (including the name of Your Licensed HCE Payment Application). You shall not, indirectly or directly, suggest or imply that Apple recommends, endorses, or sponsors You or Your Licensed HCE Payment Application. Absent an express written license, use of an Apple, Apple Pay or Apple Wallet trademark, service mark, trade dress, slogan, graphic symbol, logo, icon, or similar variation in a manner suggesting or implying affiliation, endorsement, or sponsorship by Apple violates the terms of this Addendum.

### 3. HCE Developer Requirements

To qualify as an HCE Developer You must meet the following criteria, as well as the requirements provided in the Apple Materials and the Program Requirements contained in **Section 3.3** of the Developer Agreement, as they may be modified by Apple from time to time, on an ongoing basis:

- 3.1. You plan to develop, test, and distribute a Licensed HCE Payment Application through an app store storefront located and limited to the distribution of Applications in the EEA for the purpose of facilitating NFC In-Store Payments solely for EEA iOS users;
- 3.2. You are an Undertaking and You are “established” in the EEA , i.e. you have at least a subsidiary, branch, or other form of stable arrangements in the EEA;
- 3.3. You meet all applicable security standards and privacy requirements that apply to Your Licensed HCE Payment Application and Your business, including, where applicable, security standards published by the Payment Card Industry Data Security Standards and EMVCo, GDPR or other applicable national law;
- 3.4. You maintain (or will have in place prior to the HCE Payments Entitlement being granted) appropriate written policies and procedures for (a) disclosure and processing of Personal Data, and (b) disclosure, processing, and the remediation of potential vulnerabilities in Your Licensed HCE Payment Application and back-end HCE infrastructure, and You will have in place a process to promptly and without undue delay, notify Apple of any actively exploited vulnerability contained in Your Licensed HCE Payment Application or HCE back-end infrastructure or any Security Incident (as required under **Section 6.1** of the Addendum); and
- 3.5. You comply (and will comply prior to the HCE Payments Entitlement being granted) with industry-standard specifications for NFC In-Store Payments, if applicable, including NFC-Forum ISO- DEP ISO/IEC 14443-4 and ADPU specifications as defined in ISO/IEC 7816-4.

### 4. HCE Program Requirements

You must meet the following HCE Program Requirements as well as the Program Requirements contained in **Section 3.3** (Program Requirements) of the Developer Agreement, as they may be modified by Apple from time to time:

- 4.1. You will only store any private keys and customer data in a secure manner (e.g., encrypted on a server) and in accordance with the Apple Materials.
- 4.2. You will not call the HCE APIs or otherwise attempt to gain information through the HCE APIs for purposes unrelated to developing, testing, and making available or distributing your Licensed HCE Payment Application to EEA iOS users to perform NFC In-Store Payments.
- 4.3. You will not, directly or indirectly, commit any act intended to interfere with any of the Apple Software or Services, the intent of this Addendum, or Apple’s business practices, including, but not limited to, taking actions designed to hinder or compromise the performance or functionality of Apple Pay, Apple Wallet or other Applications. Further, You will not engage, or encourage others to engage, in any unlawful, unfair, misleading,

fraudulent, improper, or dishonest acts or business practices in relation to Your Licensed HCE Payment Application (e.g., engaging in consumer misrepresentation, deceptive business practices, or unfair competition). Mutatis mutandis, Apple will not, directly or indirectly, commit any act intended to interfere with Your Licensed HCE Payment Application or Your business practices to the extent Your Licensed HCE Payment Application meets the requirements set out in the Commitments, the Addendum and the Developer Agreement.

- 4.4. You acknowledge and agree that Apple is not a party to any payment transactions facilitated through the use of the HCE Payments Entitlement Profile and HCE APIs, and is not responsible for any such transactions, including, but not limited to, the use of payment credentials, unavailability of any end-user payment accounts or payment fraud. Such transactions are between You, and Your end-users and any payment processors, acquirers, payment networks, or other parties involved in processing Your transactions, and You are responsible for complying with any applicable laws and agreements You have with such third parties. In some cases, such applicable laws and agreements may contain specific rights, obligations, requirements, standards, or limitations that You accept and assume in connection with Your decision to utilize the HCE Payments Entitlement Profile and related HCE APIs.
- 4.5. In the event that either (a) You do not have a license to offer payment services in the EEA or (b) You do not have a valid and binding agreement with a payment service provider (“PSP”) that is licensed or authorized to offer payment services in the EEA under Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, then Apple reserves the right to revoke the HCE Payments Entitlement and HCE APIs should Your Licensed HCE Payment Application experience material levels of fraud or security risks that would otherwise have been subject to oversight by a PSP regulator. You agree to promptly provide information on security and/or fraud levels relating to your Licensed HCE Payment Application as reasonably requested by Apple, failure to comply with which may also lead to Your HCE Payments Entitlement Profile being revoked.

## **5. Testing.**

You will be responsible for verifying that Your use of the HCE Payments Entitlement Profile and HCE APIs and Your implementation thereof meets the terms of the Developer Agreement, this Addendum and the requirements in the Apple Materials. Without limiting the generality of the foregoing:

- 5.1. You will allocate sufficient resources to perform adequate testing activities prior to: (i) submission of Your Licensed HCE Payment Application for App Store or Custom App Distribution (as defined in the Developer Agreement); (ii) distributing to end-users, any Licensed HCE Payment Application implementing the HCE Payments Entitlement Profile and HCE APIs; or (iii) deployment of any changes or updates to such Licensed HCE Payment Application; and
- 5.2. Apple may perform its own reviews and testing of Your use of the HCE Payments Entitlement Profile and HCE APIs, and Your deployment thereof; provided, however, such review or testing will not relieve You from any of Your obligations hereunder.

## 6. Security Procedures.

- 6.1. You acknowledge and agree that use of the HCE Payments Entitlement Profile and HCE APIs may provide access to end-users' Personal Data that must be adequately protected. You agree to implement and maintain all appropriate legal, organizational, and technical measures to ensure the Personal Data is kept securely and to protect the Personal Data from (but not limited to) accidental or unlawful destruction, loss, alteration, disclosure or similar processing or use. You will ensure that Personal Data is (i) encrypted in transit when transferred to and from the end-user's device, and (ii) stored in a system with access controls and encryption at rest. You agree that the server connections between Your Licensed HCE Payment Application and Your systems must comply with the Apple Materials. As part of maintaining security, You must not prohibit end-users of Your Licensed HCE Payment Application from updating the Apple Software by installing software updates for their devices. You agree to work with Apple to ensure you maintain the security of Your Licensed HCE Payment Application and to promptly fix any vulnerability that may be identified by You, a third party or Apple (e.g., You may not use any deprecated APIs).
- 6.2. In addition to the terms and conditions set forth in **Section 3.3** of the Developer Agreement, if You discover any actual or reasonably suspected theft, loss or unauthorized access, use, or disclosure, of Personal Data in Your or Your Third-Party Service Provider's possession, custody or control, or in connection with the HCE Payments Entitlement Profile, HCE APIs or Your HCE Payments Application (each, a "Security Incident"), You will: (i) promptly notify Apple thereof, (ii) investigate, remediate, and mitigate the effects of the Security Incident, and (iii) provide Apple with assurances reasonably satisfactory to Apple that such Security Incident will not recur. You will comply with all applicable laws and regulations in the investigation, reporting, and notification of a Security Incident. Additionally, upon Apple's request, You will, at Your cost and expense, provide notices and/or undertake other related remedial measures (including notice, credit monitoring services, fraud insurance and the establishment of a call center to respond to user inquiries) that are reasonably warranted or required by applicable laws. Except as required by applicable laws and regulations, You shall not (and will ensure Your Third-Party Service Providers do not) make any public announcement with respect to a Security Incident until You have consulted with and have obtained the written approval of Apple. In the event of legal proceedings, including but not limited to regulatory investigations or litigation, following or resulting from a Security Incident, You will provide Apple with reasonable assistance and support in responding to such proceedings.

## 7. Representations and Warranties.

By requesting the HCE Payments Entitlement Profile and accessing the HCE APIs, You represent and warrant that on an ongoing basis:

- 7.1. You meet the criteria of an HCE Developer set out **Section 3** of the Addendum and You comply with the HCE Program Requirements in **Section 4** of the Addendum, as well as with the Developer Agreement, the Program Requirements, Apple Materials and, if applicable, App Store Review Guidelines (and any other Apple requirements relating to software application distribution that is allowed on iOS in the EEA).
- 7.2. You (i) are an Undertaking and You are "established" in the EEA; (ii) are duly qualified,

registered, and in good standing under the laws of the country where the conduct of Your businesses requires such qualification or registration; (iii) have the requisite power and authority and the legal right to conduct Your businesses and agree to the terms of the Developer Agreement (including this Addendum); and (iv) are in compliance with Your articles of association, charter and/or other organizational documents.

- 7.3. No legal proceeding or regulatory action is pending or, to Your knowledge, threatened against You that would reasonably be expected to have a material adverse effect on Your ability to perform Your obligations under the terms of this Addendum.
- 7.4. Except as would not reasonably be expected to have a material adverse effect on Your ability to perform Your obligations under this Addendum (i) You are in compliance with all applicable laws; and (ii) You are not subject to any order or ruling that restricts in any respect Your ability to perform Your obligations under the terms of this Addendum;
- 7.5. You have all licenses, permits, and authorizations required under applicable laws or by any supervisory authority having jurisdiction over You, and You are in good standing (i) in each jurisdiction in which the conduct of Your business requires You to so qualify or be licensed; and (ii) with each supervisory authority having jurisdiction over You, including, but not limited to, maintaining all licenses, permits and authorizations required to issue, store and manage payment credentials, provide payment services, and perform Your obligations under the terms of this Addendum;
- 7.6. You will use the HCE Payments Entitlement Profile and HCE APIs for the sole and exclusive purpose of facilitating NFC In-Store Payments for EEA iOS users, and You will not use the HCE Payments Entitlement Profile or the HCE APIs in any manner that is inconsistent with the terms of this Addendum.
- 7.7. Except as permitted in **Section 2.9** (Third-Party Service Providers) of the Developer Agreement or as otherwise set forth herein, You will not share with any third party, access to Apple Materials or mechanisms provided to You by Apple for the use of the HCE Payments Entitlement Profile and HCE APIs with the exception of contractors who have a need to know and who are bound by a written agreement that prohibits unauthorized use or disclosure of the Apple Confidential Information.

## 8. Records and Audits

You understand and agree that Apple reserves the right, duly justifying the purpose of the audit, to review and / or audit Your use of the HCE Payments Entitlement Profile and HCE APIs and / or Your implementation of the HCE Payments Entitlement Profile and HCE APIs. You will maintain, at Your business offices in the EEA, Your records, documents and other information required to verify compliance with the obligations of this Addendum for at least five (5) years after the end of the relevant calendar month You start using the HCE Payments Entitlement Profile. Notwithstanding any provision to the contrary, upon Apple's reasonable request, made directly by Apple or by Apple's external auditors or a third-party appointed by Apple, You will promptly provide copies of any reasonably requested records and documents regarding You and Your HCE Payments Application's compliance with this Addendum and the Apple Materials, including, but not limited to, Your collection, storage, processing, transmission and usage of Personal Data to verify compliance with the requirements in this Addendum. You will cooperate and assist with all reasonable requests made by Apple regarding audits or reviews and You will not attempt to limit their scope. Any confidential information obtained by Apple in the context of an audit shall be adequately protected.



## 9. Submission to Apple for App Store Distribution

- 9.1. By submitting Your HCE Application for distribution by Apple, You understand that You are solely responsible for developing a Licensed HCE Payment Application that complies with applicable laws and regulations and meets the HCE Program Requirements in **Section 4** (HCE Program Requirements) of the Addendum as well as with the Developer Agreement, the Program Requirements, Apple Materials, and, if applicable, App Store Review Guidelines (and any other Apple requirements relating to software application distribution that is allowed on iOS in the EEA). You acknowledge and agree that You are, in Your capacity as the legal entity responsible for any user data processed in connection with the use of Your HCE Payments Application, solely responsible for complying with applicable data protection and privacy laws and regulations.
- 9.2. Nothing herein shall imply that Apple will accept Your HCE Payments Application for distribution on the App Store, and You acknowledge and agree that Apple may reject, or cease distributing Your Licensed HCE Payment Application for the reasons set out in **Section 2.5** of the Addendum. For clarity, once Your Licensed HCE Payment Application has been selected for distribution via the App Store or any other software application distribution channel that is allowed and which is operating on iOS in the EEA, it will be considered a “Licensed Application” under the Developer Agreement, and such Application must be in current distribution on the App Store (or any other software application distribution channel that is allowed and which is operating on iOS in the EEA) to access and use the HCE Payments Entitlement Profile and HCE APIs.
- 9.3. Apple shall not be responsible for any costs, expenses, damages, losses (including, without limitation, lost business opportunities or lost profits) or other liabilities You may incur as a result of the development of Your Licensed HCE Payment Application or use of any Apple Materials, including without limitation the fact that Your Licensed HCE Payment Application may not be selected for distribution via the App Store.

## 10. Complaint Mechanism

If Apple rejects Your Licensed HCE Payment Application and You disagree with Apple’s decision, You can approach Apple in the manner prescribed in the Apple Materials to settle the dispute through cooperation and consultation. If the dispute is not resolved through cooperation and consultation, You may resort to the NFC Entitlement Program Dispute Resolution Procedure established under the Commitments. Details on the NFC Entitlement Program Dispute Resolution Procedure are available on the Apple Developer Webpage.

## 11. Confidentiality

You agree that the Apple Materials, any non-public information regarding Apple-branded products obtained through the use of HCE Payments Entitlement Profile, HCE APIs and related Apple Materials provided or made available to You by Apple, shall be considered and treated as “Apple Confidential Information” and must be protected in accordance with **Section 9** of the Developer Agreement. You agree to use such Apple Confidential Information solely for the purpose of exercising Your rights and performing Your obligations under this Addendum and agree not to use such Apple Confidential Information for any other purpose, including for Your own or any third party’s benefit, without Apple’s prior written consent. You further agree not to disclose or

disseminate Apple Confidential Information to anyone other than those of Your employees and contractors who have a need to know and who are bound by a written agreement that prohibits unauthorized use or disclosure of the Apple Confidential Information.

Apple will not use information You provide under this Addendum that is not publicly available and which is generated by You in the context of running Your HCE Payment Application on iOS for any other purpose than for exercising rights and performing obligations under this Addendum.

## **12. Additional Indemnification Obligations**

Without limiting Apple's other rights under the Developer Agreement, You agree to indemnify and hold harmless an Apple Indemnified Party from any and all Losses incurred by an Apple Indemnified Party arising from or related to any of the following, as long as this is consistent with the Commitments:

- 12.1. any claims that You have breached a contract between You and any third party relating to the use of the HCE Payments Entitlement Profile or HCE APIs;
- 12.2. any failure to comply with applicable laws by You or any of Your service providers;
- 12.3. any claims relating to transactions made through Your Licensed HCE Payment Application;
- 12.4. any claims relating to Your use of the HCE Payments Entitlement Profile or HCE APIs in a manner not in accordance with the Developer Agreement, this Addendum or the Apple Materials;
- 12.5. any claims relating to a security or data breach of or caused by Your Licensed HCE Payment Application, HCE infrastructure or other back-end systems;
- 12.6. any claims that provision to You or Your use of the HCE Payments Entitlement Profile or HCE APIs breaches any third-party intellectual property rights.

## **13. Your acknowledgements**

As long as this is consistent with the Commitments you acknowledge and agree that:

- 13.1. Apple makes no guarantees to You in relation to the availability, completeness, or accuracy of the Apple Materials, the HCE Payments Entitlement Profile or HCE APIs, or any information obtained through the use of the HCE Payments Entitlement Profile and HCE APIs, and Apple is not obligated to provide any maintenance, technical or other support for the HCE Payments Entitlement Profile, HCE APIs or the Apple Materials, other than what is provided for in the Commitments. You are fully responsible for testing Your Licensed HCE Payment Application and the use of the HCE Payments Entitlement Profile and HCE APIs with each new release of the Apple operating system software.
- 13.2. You will not be permitted to access or use the HCE Payments Entitlement Profile, HCE APIs or Apple Materials after expiration or termination of this Addendum or Your Developer Agreement. If You choose to stop using the HCE Payments Entitlement Profile and HCE APIs or do not intend to renew the Term of Your Developer Agreement, You must submit an update to Your Licensed HCE Payment Application removing the

use of the HCE Payments Entitlement Profile and HCE APIs prior to the expiration of the Term. In addition, the restrictions on the use and disclosure of Personal Data shall survive all termination or expiration of this Addendum.

- 13.3. The Apple Materials, HCE Payments Entitlement Profile and HCE APIs are provided by Apple to You on an “AS IS” and “AS AVAILABLE” basis. USE OF THE APPLE MATERIALS, HCE PAYMENTS ENTITLEMENT PROFILE, HCE APIs AND LICENSED HCE PAYMENT APPLICATION IS AT YOUR SOLE RISK AND THE ENTIRE RISK AS TO SATISFACTORY QUALITY, PERFORMANCE, ACCURACY, RELIABILITY, COMPATIBILITY, AND EFFORT IS WITH YOU. APPLE MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, REGARDING THE APPLE MATERIALS, HCE PAYMENTS ENTITLEMENT PROFILE, HCE APIS, OR ANY FUNCTIONALITY RELATED TO IOS, ELIGIBLE DEVICES, HCE PAYMENTS ENTITLEMENT PROFILE, HCE APIS, OR THEIR USE OR OPERATION ALONE OR IN COMBINATION WITH YOUR LICENSED HCE PAYMENT APPLICATION, PRODUCTS, SYSTEMS, SERVICES OR EQUIPMENT. APPLE DOES NOT WARRANT THAT THE APPLE MATERIALS, HCE PAYMENTS ENTITLEMENT PROFILE, HCE APIs OR THEIR IMPLEMENTATION IN YOUR LICENSED HCE PAYMENT APPLICATION WILL MEET YOUR REQUIREMENTS, THAT THE OPERATION OF THE APPLE MATERIALS, HCE PAYMENTS ENTITLEMENT PROFILE, HCE APIS OR YOUR LICENSED HCE PAYMENT APPLICATION WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT THE APPLE MATERIALS, HCE PAYMENTS ENTITLEMENT PROFILE OR HCE APIS WILL BE COMPATIBLE WITH ANY APPLE PRODUCTS, SOFTWARE OR SERVICES OR ANY THIRD-PARTY SOFTWARE, APPLICATIONS, SERVICES OR EQUIPMENT.

PROVIDED HOWEVER THAT WHERE AN ERROR IS IDENTIFIED IN RELATION TO THE NFC TECHNICAL SOLUTION, THEN APPLE WILL USE COMMERCIALY REASONABLE EFFORTS TO RESOLVE THE ERROR WITHOUT ANY UNDUE DELAY. FOR THE AVOIDANCE OF DOUBT, THIS DOES NOT INCLUDE ERRORS AFFECTING ONLY YOUR SPECIFIC LICENSED HCE PAYMENT APPLICATION, WHICH ARE CAUSED BY YOU OR YOUR THIRD PARTY SERVICE PROVIDER OR ARE PRESUMED TO BE CAUSED BY THE IMPLEMENTATION OF THE NFC TECHNICAL SOLUTION AND NOT THE NFC TECHNICAL SOLUTION ITSELF.

#### **14. Additional Liability Disclaimer.**

AS LONG AS THIS IS CONSISTENT WITH THE COMMITMENTS, APPLE SHALL NOT BE LIABLE FOR ANY DAMAGES OR LOSSES ARISING FROM ANY USE, DISTRIBUTION, MISUSE, RELIANCE ON, INABILITY TO USE, INTERRUPTION, SUSPENSION, OR TERMINATION OF THE HCE PAYMENTS ENTITLEMENT PROFILE, HCE APIS, YOUR LICENSED HCE PAYMENT APPLICATION, OR ANY SERVICES PROVIDED IN CONNECTION THEREWITH, INCLUDING, BUT NOT LIMITED TO, ANY LOSS OR FAILURE TO SET UP AN END-USER, COMPLETE A TRANSACTION, UTILIZE ANY FEATURE OR FUNCTIONALITY OR ANY THIRD PARTY OR END-USER CLAIMS ARISING FROM ANY OF THE FOREGOING.

#### **15. Changes to this Addendum; Termination.**

Apple may change the terms of this Addendum at any time, as long as such changes are consistent with the Commitments. In order to continue using the HCE Payments Entitlement

Profile or HCE APIs, You must accept and agree to any new Program Requirements, Apple Materials or Addendum terms which shall be designed by Apple in a manner that conforms with the Commitments. If You do not agree to the new Program Requirements, Apple Materials or Addendum terms, Your use of the HCE Payments Entitlement Profile or HCE APIs may be suspended or revoked or the Addendum may be terminated by Apple. Termination of this Addendum will not constitute termination of the Developer Agreement; provided, however, that termination of the Developer Agreement will constitute termination of this Addendum. The following provisions will survive the termination or expiration of the Addendum: **Section 1** (Definitions), **Section 4** (HCE Program Requirements), **Section 8** (Records and Audits), **Section 10** (Complaint mechanism), **Section 11** (Confidentiality), **Section 12** (Additional Indemnification Obligations), **Section 13** (Your acknowledgements), and **Section 14** (Additional Liability Disclaimer). In the event of a conflict between this Addendum and the Developer Agreement, this Addendum will take precedent with respect to such conflict.