

EBOOK AGENCY DISTRIBUTION AGREEMENT

United States / Canada

MS# _____

This Agreement is between Apple Inc. ("Apple"), having its principal place of business at 1 Infinite Loop, Cupertino, California 95014, and Simon & Schuster, Inc. ("Publisher"), having its principal place of business at 1230 Avenue of the Americas, New York, NY 10020, and is effective on the date signed by both Parties (the "Effective Date").

Apple desires to be appointed as Publisher's non-exclusive agent for sales and delivery of digital books under certain conditions, and in exchange for a fee, on behalf of principal Publisher's account, and Publisher is willing to appoint Apple as its agent under such conditions and pay Apple a fee.

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

1. Definitions

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

- (a) "Artwork" means book covers, photos, drawings, and illustrations associated with eBooks made available to Apple hereunder, which have been provided by or on behalf of Publisher to any other distributor of eBooks. All Artwork provided to Apple shall have been cleared for Apple's use as provided in this Agreement. For the avoidance of doubt, no Artwork other than complete book covers can be used by Apple for promotional purposes without further authorization by Publisher. Publisher as provided in Exhibit A.
- (b) "Content File" means a digital file comprising at least one item of Publisher Material.
- (c) "Customer Price" means the price displayed to the customer in the Online Store, as set by
- (d) "eBook" means electronic books (i.e., books in visual form for reading and not, for example audio books or primarily-multimedia books) published by Publisher. Each eBook available for sale hereunder will be designated by its International Standard Book Number (ISBN).
- (e) "Promotional Content" means promotional content provided by or on behalf of Publisher and associated with eBooks made available to Apple hereunder, such as book reviews, author bios, videos, applications and similar content. For the avoidance of doubt, Promotional Content can only be used in the promotion of the eBook to which it relates.



- (f) "iTunes Connect" means the proprietary content and account management tool known as iTunes Connect, made available by Apple to Publisher during the Term subject to acceptance of applicable terms and conditions.
- (g) "New Release" means an adult fiction or non-fiction book which consists primarily of text for reading (not including, for example, and without limitation, dictionaries, cookbooks and guidebooks) during the twelve (12) months from its first generally available commercial publication in its first format.
- (h) "Online Store" means an electronic store owned or controlled by Apple or an Apple affiliate, which is currently targeted to open on or about March 2010.
- (i) "Other Sales Content" means electronic book chapters and other content as the parties may agree hereafter Publisher may sell hereunder.
- (j) "Preview" means an excerpt from an eBook made available to Apple hereunder (not less than what Publisher makes generally available to other eBook distributors), as selected by Publisher in the metadata. The Parties agree that Previews need not be protected using the Security Solution or be subject to any content usage rules other than limited for personal, non-commercial use.
- (k) "Publisher Materials" means, collectively, materials furnished by or on behalf of Publisher to Apple in furtherance of its appointment, including eBooks, Artwork, metadata, Promotional Content, Previews and any extra bonus-type audio, video or audio-visual content ("Extras").
- (l) "Security Solution" means Apple's proprietary digital rights management solution marketed as "Fairplay", as set forth in the Fairplay Specification attached as Exhibit C.
- (m) "Term" means the period beginning on the Effective Date and continuing for one year followed by automatic monthly renewal periods, unless terminated, at any time after the Effective Date, pursuant to Section 13(a), or, after the first anniversary of the Effective Date, for any or no reason by either Party upon advance written notice of not less than thirty (30) days.
- (n) "Territory" means the United States, its territories and possessions (collectively, "United States") as of the Effective Date. Subject to the further agreement of the parties to be negotiated in good faith following the Effective Date, Canada, its territories and provinces (collectively, "Canada") will be added to the Territory for launch of the Online Store.

2. Agency Appointment.



(a) Publisher hereby appoints Apple as its non-exclusive agent for the marketing and delivery of eBooks direct-to-consumers through the Online Store on Publisher's behalf in the Territory for their personal, non-commercial use, and Apple accepts such appointment.

(b) In furtherance of such appointment, Apple shall:

- i. Market, solicit and obtain orders on Publisher's behalf for eBooks from consumers, including delivery of copies of such eBooks to consumers along with free Promotional Content, both as authorized hereunder or otherwise by Publisher;
- ii. Make copies of, format, and otherwise prepare eBooks and (as further authorized herein) other Content Files for download by consumers;
- iii. Provide storage, searching, and hosting services to Publisher so consumers may search for, obtain recommendations for, and purchase eBooks from Publisher by electronic download through the Online Store;
- iv. Issue invoices and provide any other appropriate sales documentation in Publisher's name as the seller for the price payable by consumers for eBooks;
- v. Use entire cover art, Promotional Content and metadata, and trademarks and logos associated with eBooks, in promoting the sale of the Publisher's eBook(s) to which they relate in marketing materials and gift cards; and
- vi. Do other things on a "through to the consumer" basis in furtherance of Apple's appointment and consistent with this Agreement, such as, with prompt notice to Publisher modify metadata as reasonably necessary to correct errors.

(c) For the avoidance of doubt, Publisher does not grant any rights to Apple not expressly granted in this Agreement.

3. Publisher Obligations.

(a) Publisher acknowledges that the breadth of eBook offerings on the Online Store is of the essence of the Agreement and the successful appointment. Publisher shall make available to Apple electronic books of all New Releases it publishes for which Publisher has electronic rights in the Territory and all electronic books it publishes that it makes available through any other distributor of Publisher's electronic books in the Territory; provided that Publisher need not make available any electronic



book to Apple: (i) over the objection of its author (and for the avoidance of doubt, throughout this agreement "author" includes anyone acting on behalf of the author or his or her estate or heirs); (ii) if such book is not generally available to the public because it is a one-off promotional release, a custom publication for a single distributor or customer, a special or premium sale outside of regular trade channels or an electronic book available exclusively on a themed website/fan-site (provided such website or fan-site is not run by a full-line eBook distributor) and (iii) if Apple cannot substantially support the full functionality provided in such electronic book. (Apple acknowledges there are a limited number of books available through certain electronic book retailers where Publisher may not have files at launch.) The Parties acknowledge that the Parties will work together in order to provide customers with the best consumer offering.

- (b) Publisher shall not discriminate against Apple with respect to the permitted usage rules or quality of any Publisher eBook and shall provide Apple with all Promotional Content it makes generally available.
- (c) Except (i) in the event of an author objection or (ii) in connection with a limited-time, one-off promotion for a particular book, Publisher shall provide and make available to Apple under its appointment the eBook of New Releases required to be provided to Apple pursuant to paragraph 3(a) on the same day and date as Publisher makes such new release available to consumers in any format.
- (d) Publisher shall deliver Content Files and metadata to Apple, at Publisher's expense, in a delivery format and method to be mutually agreed. Apple shall in any event accept ePub and pdf files and shall accept metadata by Publisher's standard ONIX feed.
- (e) Publisher shall not, without prior notice to Apple, include any digital watermark or similar technologies in the Content File, and any such information shall not be discernable to the end user or affect any formatting, data protection or product performance.

4. Royalties.

Publisher shall be responsible for and timely pay any royalties or license fees owed to authors, illustrators, artists, talent and other rights holders or contributors (if any) arising from the use of any Publisher Materials in furtherance of Apple's appointment, and the Content Usage Rules, consistent with this Agreement, including any payments required under collective bargaining agreements.

5. Agency Commission; Tax; and Reporting.



- (a) When an eBook is first delivered to a customer hereunder (i.e., at the time of the transfer of ownership in an eBook from Publisher to a consumer), Apple shall be entitled to a commission of thirty percent (30%) of the Customer Price paid by eBook customers net of any and all taxes collected ("eBooks Proceeds").
- (b) If Apple notifies Publisher that an eBook of a hardcover New Release is available in the United States for a customer price that is lower than the then-current Customer Price then Publisher, subject to being made aware of such lower price, hereby automatically sets a new, lower Customer Price to meet such lower customer price for so long as such lower price is in effect, provided that this provision shall not apply (i) if such availability is in contractual breach of Publisher's rights and does not continue for 72 hours after such notification; (ii) if such price represents a one-off limited-time promotional offering; (iii) if such price is not available on an a la carte basis (i.e., individual eBooks are not available at separate prices), (iv) if such price is available through a book club requiring non-cancellable (except for a penalty) prospective purchase commitments, or (v) if such price is the result of a Promotional Discount of the type that would be permitted to Apple under the terms of Section 6(f) below.
- (c) After deducting its commission from each calendar month's eBook Proceeds, Apple shall remit on a monthly basis to Publisher the remaining balance by electronic funds transfer ("EFT") no later than forty-five (45) days following the close of each calendar month.
- (d) Apple shall make available itemized sales data and anonymous customer data in a manner to be agreed. The sales information provided shall in no event include less than the following, which shall be available at a minimum on a monthly basis: listing each eBook by title, S&S eBook ISBN, imprint, and list price, (i) the quantity of eBooks sold for the month by title; (ii) the total quantity of eBooks sold for the month; (iii) year to date sales figures by title; (iv) total year to date sales figures; (v) the revenue due to S&S for the month per title; and (vi) the total revenue due to S&S for the month. Apple shall make available to Publisher the same detail of sales and anonymous customer data that it makes available to any other content provider. Publisher acknowledges that some of the detailed information regarding customer information (as opposed to sales reports) may not be available for a couple of months.
- (e) Publisher is responsible for Publisher's or its intermediary bank fees.
- (f) If an eBook transaction is subject to withholding or similar tax, or sales, use, goods and services, value added, or other tax or levy, or any other tax or other government levy of whatever nature, the full amount of that tax or levy shall be solely for Publisher's account, and shall not reduce the commission to which Apple is entitled.



- (g) Under its appointment, Apple shall be responsible for collecting all such applicable taxes on Publisher's behalf and remitting them to the appropriate taxing authorities.

6. Apple Obligations.

- (a) Apple shall condition sale of eBooks on a consumer's acknowledgement of terms of sale, which terms shall state, among other things, that any use of eBooks is for personal and non-commercial use only, and that the sale of eBooks does not provide any commercial or promotional use rights in any eBook. The parties shall reasonably agree in advance of the launch of the Online Store on all statements of the terms of sale and any terms of use or other disclosures provided to customers, and shall reasonably agree thereafter on any material change in such terms or disclosures.
- (b) Apple shall be responsible for all marketing, storage, customer service (eg, the Online Store), hosting and delivery costs associated with Apple's appointment activities, except as otherwise agreed by the Parties in writing.
- (c) Apple shall be responsible for any costs and expenses incurred in converting and/or encrypting an eBook and/or converting an eBook into its proprietary format following its delivery by Publisher as agreed in paragraph 3(c) above. Apple shall convert the files in a professional and workmanlike manner, which shall include quality assurance review.
- (d) Apple shall be responsible for collecting, processing and storing customer data, which shall include all information collected from or about, or submitted by, customers who acquire or attempt to acquire eBooks ("Customer Data"). Apple shall collect, process, use, store and otherwise handle Customer Data in accordance with all applicable laws, rules and regulations, and its own privacy policy. No personally identifiable Customer Data will be disclosed to Publisher.
- (e) Publisher may stop making an eBook available hereunder at the request of an author or because (i) it no longer controls the rights to such eBook, (ii) of a claim or threat of claim that the eBook infringes the rights of a third party, or (iii) it is no longer making generally available any item of Publisher Material, other than New Releases (a "Withdrawal"). Upon notice of such Withdrawal, Apple shall cease promotion and sales of such eBook or cease use of such other item of Publisher Material as soon as possible but in no event longer than three (3) business days of such notice (for the avoidance of doubt, Apple may continue to provide re-downloads of previously acquired eBooks to the extent authorized by the terms of sale). Publisher shall not discriminate against Apple regarding any withdrawal requests provided that it is understood that it is not discriminatory if the removal is at an author's request and the eBook remains available to other eBook distributors.



- (f) Apple may not, save as directed or agreed by Publisher, offer or apply any price discounts or allowances (including, without limitation, credits, store allowances, rebates; collectively "Promotional Discounts") in connection with the marketing or sale of eBooks, provided that this limitation shall not apply with respect to Promotional Discounts that are available across a significant number of product lines such that the primary intent of the promotion is not to discount books. Unless otherwise agreed in advance by Publisher in writing with respect to any permitted Promotional Discount, payment to Publisher shall in all instances be calculated off of the Customer Price of each unit sold and shall not be affected by any permitted Promotional Discount.
- (g) Apple will not make any eBook available to a customer before the on-sale date notified to Apple by Publisher, unless agreed otherwise.
- (h) Apple shall not abridge, expand, edit or otherwise modify or alter the contents of eBooks, and shall not incorporate any advertisements into or as part of any eBooks except as mutually agreed.
- (i) Apple shall use commercially reasonable efforts so that its method for the transmission of eBooks shall be free from, and shall not transmit to, any consumer any viruses, worms, date bombs, time bombs, or other code that will interfere with the operation of an eBook or damage, interrupt or interfere with any software, data or hardware.
- (j) Apple shall not discriminate against Publisher in the marketing and promotion of electronic books in the Online Store, provided that, for the avoidance of doubt, Publisher acknowledges that Apple has the unfettered right to make decisions regarding how to market and promote electronic books, and the Online Store, without regard to the Publisher of the electronic book, in its sole discretion.

7. Parental Advisory.

In the event that Publisher uses "explicit" content ratings, it shall provide Apple with such ratings. For the avoidance of doubt, Publisher is not obligated to use any such ratings.

8. Names and Likenesses: Promotional Use and Opportunities.

- (a) Apple may use the names and authorized likenesses of, and biographical material for, any eBook author, illustrator or other talent, as well as Previews and Promotional Content, in furtherance of its appointment to promote the corresponding eBook, subject to any contractual or other restrictions of which it is notified in writing. Further written approval from Publisher shall be required if any name, likeness or identifying



material is otherwise used as an endorsement of Apple, the Online Store, or other products.

- (b) For the avoidance of doubt, generally, Apple may promote the Online Store and content on the Online Store in its sole discretion subject only to 6(j) above.

9. Copyright Notices: Ownership.

- (a) Publisher shall provide an appropriate copyright notice in the Content File, or as reasonably requested by Apple, which Apple shall display for each eBook.
- (b) As between the Parties, subject to any pre-existing rights of Apple, all right, title and interest in and to any materials provided by Publisher hereunder shall remain the property of Publisher; nonetheless, Apple shall not have any lesser rights than it would otherwise have as a member of the public. To the extent that Apple gains any copyright right, title or interest in or to any Publisher Material provided hereunder, Apple hereby assigns, transfers and conveys to Publisher all such right, title and interest.

10. Press Release.

The parties agree not to make or issue any public statement or press release regarding this Agreement or its subject matter without prior written agreement.

11. Data Protection/Security.

- (a) Apple shall protect materials furnished by Publisher in a manner no less restrictive than Apple protects materials furnished by any other book content provider, including the use of the Security Solution, and the implementation and enforcement of Content Usage Rules, as set forth in Exhibit B. If the Security Solution is compromised such that eBooks are being made widely available without restriction, having a material adverse effect on the commercial purpose of the appointment and this Agreement, then Apple shall use commercially reasonable efforts to cure such compromise. If the breach is not substantially cured within thirty (30) days, then Publisher may stop providing additional New Releases to Apple, and if the breach is not substantially cured within sixty (60) days, then Publisher may suspend Apple's appointment until cured.
- (b) In the event of a security breach of the Online Store servers such that unauthorized access to Publisher Content becomes available, then Apple will disable all access to such servers or, consistent with applicable law, destroy content on such servers within twenty-four (24) hours.



- (c) Publisher Materials in Apple's control or possession shall reside only on secure network servers or equivalent devices owned or controlled by Apple or its contractors with restricted access.
- (d) Apple shall not provide or enable functionality specifically designed for cut/paste of eBooks, printing of eBooks, or text to speech for eBooks as opposed to general-purpose text to speech technology designed for use by visually impaired end users (e.g., technology used by visually impaired customers to navigate the Online Store and purchase eBooks). Upon Publisher's request, Apple agrees to discuss in good faith other restrictions intended to protect the commercial value of eBooks and not limit legitimate use.
- (e) Apple shall not discriminate against Publisher with respect to any data protection undertaking and shall afford Publisher protection and remedies no less than that provided any other content provider. Further, to the extent that the Content Usage Rules with respect to any other electronic books provide for access to fewer Transfer Devices or restrict the number of Non-Transfer Devices, such amended rules shall be applied to eBooks sold hereunder.

12. Record Keeping and Audit.

- (a) Apple shall maintain complete records regarding sales of eBooks and proceeds payable to Publisher for at least three (3) years following the applicable monthly sales period.
- (b) Upon no less than thirty (30) days advance written notice, and within two (2) years following the applicable monthly sales period (the "Audit Period"), Publisher, at its expense, may appoint an independent certified public accountant to audit directly applicable records of Apple at Apple's principal place of business in the Territory for the sole purpose of verifying proceeds due Publisher. An audit shall take place during regular business hours, and shall not occur more than once during any twelve (12) month period. The certified public accountant should not be engaged in an audit of Apple or Publisher, or on a contingency-fee basis, and must provide to Apple a confidentiality agreement that protects Apple's confidential information no less than the terms of this Agreement or Publisher protects its own similar information. Publisher may audit a record only once, and no audit shall be conducted for a period spanning less than six (6) months.
- (c) Unless Publisher provides a detailed objection within two (2) years following the applicable monthly sales period, Publisher shall be deemed to consent to all reports, and reports shall not be subject to objection by Publisher for any reason. Publisher agrees that Apple's books and records contain "Confidential Information" (as defined below).



13. Termination and Effect of Termination.

- (a) Either Party shall have the right to terminate this Agreement prior to the expiration of the Term if the other Party (i) becomes insolvent, (ii) files a petition in bankruptcy, (iii) makes an assignment for the benefit of creditors, or (iv) breaches a material term of this Agreement, unless such breach is cured within thirty (30) days from notice, or if not able to be so cured, then resolved to the other Party's reasonable satisfaction.
- (b) Publisher shall have the right to terminate this agreement on thirty days' notice in the event that Apple does not launch eBooks on the Online Store by June, 30 ~~2010~~ 2010 *66 CMA*
- (c) Sections 12, 13, 14, 15 and any other section, term, provision or condition required for interpretation of this Agreement or by its nature intended to survive termination or expiration of the Agreement shall do so.
- (d) If this Agreement terminates or expires, then Publisher Materials in Apple's possession or control shall be promptly destroyed, excluding copies necessary for Apple's standard customer support practices, e.g., re-downloads (subject to applicable terms in this Agreement), or required to be maintained by applicable law, rule or regulation.

14. Indemnification and Limitation of Liability.

- (a) Publisher shall be solely responsible for, and Apple shall have no responsibility or liability whatsoever with respect to, any and all claims, suits, liabilities, losses, damages, costs and expenses arising from, the content of the eBooks or of any other materials furnished by or on behalf of Publisher, and distributed by Apple in accordance with this Agreement, including, but not limited to: (i) claims of breach of warranty; (ii) product liability claims; and (iii) claims that such content or its permitted use infringes the copyright or other intellectual property rights of any third party.
- (b) In the event that Apple receives any notice or claim from any customer that they have experienced technical difficulties in downloading, installing, or accessing an eBook within three days of their obtaining an eBook, Apple may refund the customer the full amount of the price paid. In the event that Apple refunds any such price to a customer, Publisher shall reimburse, or grant Apple a credit for, an amount equal to the Customer Price for that eBook. Apple will have the right to refund, and to retain its commission on the sale of that eBook, notwithstanding the refund of the price to the customer provided that the technological difficulty did not result from Apple's non-performance and occurred because of a deficiency in the Content File delivered by Publisher (e.g., an eBook was delivered to Apple with missing pages). Apple will report refund transactions and identify the reason therefore. In addition, in the



event Apple becomes aware of deficiencies either as a result of its Quality Assurance process or due to customer notices or claims, then it shall promptly notify Publisher so that Publisher can correct such Content Files and shall resend them to Apple.

- (c) Apple will indemnify and hold harmless, and upon Publisher's request, defend, Publisher and its affiliates (and their respective directors, officers and employees) from and against any and all losses, liabilities, damages, costs and expenses (including reasonable attorneys' fees and costs) arising out of a claim by a third party by reason of a breach of any warranty, representation, covenant or obligation of Apple under this Agreement; or any claim that the technology used by Apple in its appointment infringes the intellectual property rights of another party. Publisher shall promptly notify Apple of any such claim, and Apple may assume control of the defense or settlement of such claim. Publisher shall provide full and prompt cooperation in the matter. In the event that at any time during the defense of the claim, legal defenses become available to Publisher which are different from or in addition to those available to Apple, or if a conflict exists or arises which precludes representation of Apple and Publisher by the same counsel, Publisher shall have the right to retain separate counsel of its choice to act as co-counsel on behalf of Publisher, at the sole cost and expense of Apple. Apple may, in any case and at any time, settle any claim, provided, however, that it shall in no event impose any obligations upon nor admit any liability of Publisher without Publisher's consent (not to be unreasonably withheld or delayed) as part of any such settlement.
- (d) Publisher will indemnify and hold harmless, and upon Apple's request, defend, Apple and its affiliates (and their respective directors, officers and employees) from and against any and all losses, liabilities, damages, costs and expenses (including reasonable attorneys' fees and costs) arising out of a claim by a third party by reason of a breach of any warranty, representation, covenant or obligation of Publisher under this Agreement; or any claim that Publisher Materials when distributed in accordance with this Agreement infringes the intellectual property rights of another party. Apple shall promptly notify Publisher of any such claim, and Apple may assume control of the defense or settlement of such claim. Apple shall provide full and prompt cooperation in the matter. In the event that at any time during the defense of the claim, legal defenses become available to Apple which are different from or in addition to those available to Publisher, or if a conflict exists or arises which precludes representation of Apple and Publisher by the same counsel, Apple shall have the right to retain separate counsel of its choice to act as co-counsel on behalf of Apple, at the sole cost and expense of Publisher. Publisher may, in any case and at any time, settle any claim, provided, however, that it shall in no event impose any obligations upon nor admit any liability of Apple without Apple's consent (not to be unreasonably withheld or delayed) as part of any such settlement.



- (e) EXCEPT PURSUANT TO AN EXPRESS INDEMNITY OBLIGATION, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, SUCH AS PUNITIVE DAMAGES, EVEN IF ADVISED OF THEIR POSSIBILITY, AND IN NO EVENT EXCEPT PURSUANT TO SUCH EXPRESS INDEMNITY OBLIGATION SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR LOST PROFITS.
- (f) EACH PARTY SPECIFICALLY DISCLAIMS, TO THE MAXIMUM EXTENT ALLOWED BY APPLICABLE LAW, ALL STATUTORY OR OTHER WARRANTIES NOT EXPRESSLY SET FORTH HEREIN, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF SATISFACTORY QUALITY, TITLE, NON INFRINGEMENT OR FITNESS FOR PARTICULAR PURPOSE OR ANY IMPLIED WARRANTIES ARISING FROM USAGE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE.

15. Confidentiality.

Each Party acknowledges that by reason of this Agreement it may have access to certain information and materials concerning the other Party's business plans, customers, technology and products that are confidential and of substantial value to such Party, which value would be impaired if such information were disclosed to third parties or used for purposes other than as expressly permitted by this Agreement (referred to in this Agreement as "Confidential Information"). Each Party agrees to maintain any and all Confidential Information received from the other, in confidence, and agrees not to disclose or otherwise make available such Confidential Information to any third party without the prior written consent of the disclosing Party. Each Party agrees that Confidential Information shall be disclosed to its employees and other personnel under its control and supervision for purposes of performing under this Agreement solely on a need-to-know basis in furtherance of this Agreement, and solely to those individuals who are bound by a written non-disclosure agreement having terms no less restrictive than the non-disclosure terms of this section, unless required by law, or court or governmental order. Confidential Information shall be deemed to include (i) information marked confidential, if conveyed in writing, and (ii) information identified orally as confidential, if conveyed orally. Confidential Information shall not be deemed to include any information which (a) is publicly known at the time of the disclosure, (b) becomes publicly known other than by breach of the terms of this section, (c) becomes known to the receiving Party, without restriction, from a source free of any obligation of confidentiality and without breach of this section, or (d) is independently developed by the receiving Party. For the avoidance of confusion, it is understood that sales information reported pursuant to paragraph will be treated as Confidential Information by Apple (except to the extent aggregated with information regarding other electronic book sales) but may be disclosed by Publisher for purposes of verifying payment to third parties, or for other reasons having business



justification subject to advance notice to Apple and Apple's approval in each instance, which approval shall not be unreasonably withheld; and further provided that, despite anything in this Agreement, no other publisher of electronic books shall have less restrictive terms.

16. Additional Representations and Warranties of the Parties.

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

17. General Provisions.

- (a) *Contractors.* Apple may contract with third parties in furtherance of Apple's appointment, provided such third parties are subject to terms no less restrictive than the terms Apple is subject to under this Agreement. Apple shall be responsible for the performance of such third parties while under Apple's control and supervision.
- (b) *Entire Agreement, Modification, Waiver.* This Agreement, including any schedules and exhibits, contains the entire understanding of the Parties relating to its subject matter, and supersedes all previous understandings between the Parties. This Agreement cannot be changed or modified except by a writing signed by the Parties. If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable, such determination shall not affect any other provision hereof, and the unenforceable provision shall be replaced by an enforceable provision that most closely meets the commercial intent of the Parties.
- (c) *Binding on Successors.* This Agreement shall be binding on the assigns, heirs, executors, administrators, and successors (whether through merger, operation of law, or otherwise) of the Parties. Either party may assign or transfer any part of this Agreement to an affiliate without the other party's consent.



- (d) *Notices.* Any notice under this Agreement shall be given in writing and shall be deemed to have been delivered and given: (i) on the delivery date if delivered personally; (ii) upon delivery by confirmed-receipt facsimile; (iii) one (1) business day after deposit with a commercial overnight carrier, with written verification of receipt; or (iv) five (5) business days after the mailing date, whether or not actually received, if sent by certified mail, return receipt requested, postage and charges prepaid.

If to Publisher, to
Michael Selleck
Executive Vice President, Sales and Marketing
Simon & Schuster, Inc.
1230 Avenue of the Americas
New York, NY 10020
Fax No.: (212) 698-7171

With a copy to:

Elisa Rivlin
Senior Vice President and General Counsel
Simon & Schuster, Inc.
1230 Avenue of the Americas
New York NY 10022
Fax No.: (212) 698-7171

If to Apple, to:
Associate General Counsel, iTunes
Apple Inc.
1 Infinite Loop, MS 3-ITS
Cupertino, CA 95014
Fax: 408-974-9105

- (e) *Governing Law.* This Agreement shall be governed and interpreted in accordance with the laws of the State of New York, without regard to principles of conflict of laws. The Parties agree that any proceeding relating to this Agreement will take place in New York, NY; and both Parties hereby waive the right to object to that choice of law, personal jurisdiction or venue.
- (f) *Counterparts.* This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same document.
- (g) *Remedies.* To the extent permitted by applicable law, the rights and remedies of the Parties provided under this Agreement are cumulative and in addition to any other rights and remedies of the Parties at law or equity.



- (h) *Headings.* The titles used in this Agreement are for convenience only and are not to be considered in construing or interpreting the Agreement.
- (i) *No Third-Party Beneficiaries.* This Agreement is for the sole benefit of the Parties and their authorized successors and permitted assigns. Nothing is intended to confer upon any person or entity, other than the Parties and their authorized successors and permitted assigns, any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.
- (j) *Relationship Between the Parties.* Nothing contained in this Agreement shall create or be construed as creating a joint venture, partnership, or franchise or buyer-seller arrangement between the parties, nor, except as otherwise provided herein, shall they be responsible for the debts, liabilities or obligations incurred, imposed on or suffered by the other party. No party hereto shall make any warranties or representations to any person, firm or corporation, which are inconsistent with this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed by their respective officers thereunto duly authorized.

Apple INC.

Publisher

By: Eddy Cue

By: Carolyn K Reidy
Signature

Name: Eddy Cue
Title: VP, Internet Services
Date: 1/25/10

Name: CAROLYN K REIDY
Title: President + CEO
Date: January 29, 2010



EXHIBIT A

Definitions

"List Price, or Lists" means the Publishers suggested retail price for the corresponding physical book.

NYT Bestseller List shall mean the (adult) Fiction and (adult) Nonfiction and Advice bestseller lists as published on the New York Times website, excluding the below the line "Also Selling" titles also known as the "Expanded List".

Customer Pricing

1. For hardcover New Releases, Publisher will set a Customer Price as follows:

List Price	Maximum Customer Price	70%
\$20.01-22.00	\$9.99	\$7.00
\$22.01-24.00	\$10.99	\$7.70
\$24.01-25.00	\$11.99	\$8.40
\$25.01-27.50	\$12.99	\$9.10
\$27.51-30.00	\$14.99	\$10.50
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