

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION**

LODSYS, LLC,

Plaintiff,

v.

ATARI INTERACTIVE, INC.;  
COMBAY, INC.;  
ELECTRONIC ARTS, INC.;  
ICONFACTORY, INC.;  
ILLUSION LABS AB;  
MICHAEL G. KARR D/B/A SHOVELMATE;  
QUICKOFFICE, INC.;  
ROVIO MOBILE LTD.;  
RICHARD SHINDERMAN;  
SQUARE ENIX LTD.;  
TAKE-TWO INTERACTIVE SOFTWARE,  
INC.,

Defendants.

CIVIL ACTION NO. 2:11-cv-272

**DECLARATION OF CHRISTOPHER M. HUCK IN SUPPORT OF  
PLAINTIFF LODSYS, LLC'S RESPONSE IN OPPOSITION TO  
APPLE INC.'S MOTION TO INTERVENE**

I, Christopher M. Huck, declare as follows:

1. I am an attorney with Kelley, Donion, Gill, Huck & Goldfarb, PLLC, representing Plaintiff Lodsys, LLC in the above-captioned action. I have personal knowledge of the facts set forth in this declaration and, if called as a witness, could and would testify completely to such facts under oath.

2. Attached hereto as Exhibit 1 is a true and correct copy of the relevant pages of an article entitled "Patent Licensing Considerations in Light of Quanta and MedImmune," publically available at [www.kilpatrickstockton.com](http://www.kilpatrickstockton.com).

3. Attached hereto as Exhibit 2 is a true and correct copy of the relevant pages of a Form 10-K filed with Securities and Exchange Commission by Electronic Arts Inc. on May 24,

2011, publically available at [www.sec.gov](http://www.sec.gov).

4. Attached hereto as Exhibit 3 is a true and correct copy of a screenshot of “Top Paid iPad Apps,” publically available on iTunes.

5. Attached hereto as Exhibit 4 is a true and correct copy of an iPhone Developer Program License Agreement, publically available at [www.eff.org](http://www.eff.org).

6. Attached hereto as Exhibit 5 is a true and correct copy of Illusion Labs AB’s annual report filed with the Swedish Companies Registration Office, publically available at [www.bolagsverket.se](http://www.bolagsverket.se).

7. Attached hereto as Exhibit 6 is a true and correct copy of a press release by Quickoffice, Inc. dated July 25, 2011, publically available at [www.quickoffice.com](http://www.quickoffice.com).

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct.

Executed on July 27, 2011, at Seattle, Washington.

  
\_\_\_\_\_  
Christopher M. Huck

# Exhibit 1



**INTELLECTUAL PROPERTY  
DESK REFERENCE**

PATENTS, TRADEMARKS, COPYRIGHTS AND RELATED TOPICS

**PATENT**

## **Patent Licensing Considerations in Light of Quanta and MedImmune**

**Michael J. Turton, Cate E. Hart, and Tiffany L. Williams**

 **KILPATRICK  
STOCKTON LLP**  
Attorneys at Law

[WWW.KILPATRICKSTOCKTON.COM](http://WWW.KILPATRICKSTOCKTON.COM)

## Patent Licensing Considerations in Light of *Quanta* and *MedImmune*

Michael J. Turton, Cate E. Hart, and Tiffany L. Williams

### I. Introduction

As intellectual property has become an increasingly important commodity for many corporations, the numbers of licensing agreement disputes and large-scale patent infringement suits are multiplying.<sup>1</sup> As a result, courts have recently had numerous opportunities to address the fundamental doctrines of patent law. In many cases, these decisions directly impact licensing provisions and the protections offered by those provisions.<sup>2</sup> Moreover, the Supreme Court has been much more active recently in the patent arena, addressing multiple patent law issues in recent terms.<sup>3</sup> In *Quanta Computer, Inc. v. LG Electronics, Inc.*, the Supreme Court addressed the doctrine of patent exhaustion and, in *MedImmune, Inc. v. Genentech, Inc.*, the Supreme Court addressed declaratory judgment jurisdiction. This paper discusses these two recent Supreme Court decisions, *Quanta* and *MedImmune*, and how these decisions impact patent licensing.

### II. Patent Exhaustion

#### A. Background

The longstanding doctrine of patent exhaustion provides that the initial authorized sale of a patented item terminates all patent rights to that item.<sup>4</sup> Thereafter, a patent owner cannot assert rights against subsequent purchasers of authorized goods.<sup>5</sup>

The Supreme Court first articulated the patent exhaustion doctrine in *Bloomer v. McQuewan*.<sup>6</sup> In *Bloomer*, Congress's extension of a patent term did not affect the rights of purchasers from a patent licensee. The Court held that "when the machine passes to the hands of the purchaser, it is no longer within the limits of the monopoly."<sup>7</sup> The Supreme Court later upheld the patent exhaustion doctrine in *Adams v. Burke*.<sup>8</sup> In *Adams*, a licensee acquired the right to make, use, and sell coffin lids within a 10-mile radius of Boston. The licensee sold the coffin lid to an undertaker within the prescribed 10-mile radius, who in turn used the coffin lid outside the geographical area. The Supreme Court dismissed the patentee's suit against the undertaker, affirming the patent exhaustion doctrine and stating, "the sale by a person who has the full right to make, sell, and use such a machine carries with it the right to the use of that machine to the full extent to which it can be used . . . ."<sup>9</sup>

1 See Dennis Crouch, *Patent Litigation Statistics: Number of Patents Being Litigated*, <http://www.patentlyo.com/patent/2008/03/patent-litigati.html>.

2 See, e.g., *Cat Tech LLC v. Tubemaster, Inc.*, 528 F.3d 871 (Fed. Cir. 2008); *Sony Elecs., Inc. v. Guardian Media Techs., Ltd.*, 497 F.3d 1271 (Fed. Cir. 2007); *SanDisk Corp. v. STMicroelectronics, Inc.*, 480 F.3d 1372 (Fed. Cir. 2007).

3 See *Quanta Computer, Inc. v. LG Elecs., Inc.*, 128 S. Ct. 2109 (2008); *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398 (2007); *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118 (2007); *eBay, Inc. v. MercExchange, LLC*, 547 U.S. 388 (2006).

4 See *United States v. Univis Lens Co.*, 316 U.S. 241, 239 (1942).

5 See *id.*

6 55 U.S. (14 How.) 539 (1853).

7 *Id.* at 549.

8 84 U.S. (17 Wall.) 453 (1873).

9 *Id.* at 455.

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After the turn of the century, the Supreme Court briefly allowed post-sale restrictions on the use of a patented article.<sup>10</sup> In *Henry v. A.B. Dick Co.*, the Court held that any reasonable downstream restriction that did not violate any other substantive law was valid.<sup>11</sup> However, *Henry* only remained good law for five years, after which it was overturned by *Motion Picture Patents Co. v. Universal Film Manufacturing. Co.*<sup>12</sup> In *Motion Picture Patents*, the Court reaffirmed the fundamental principle of patent exhaustion, stating that, “a single, unconditional sale . . . render[s] [a patented article] free of every restriction which the vendor may attempt to put upon it.”<sup>13</sup>

The Supreme Court revisited patent exhaustion in *Ethyl Gasoline Corp. v. United States*, where the Court held that sale of a motor fuel produced under one patent exhausted a method patent that used the fuel in combination with a combustion motor.<sup>14</sup> Two years later, the Supreme Court issued its most recent decision on patent exhaustion until this year, *United States v. Unis Lens Co.*<sup>15</sup> In *Univis*, an eyeglass lens patentee licensed manufacturers to create lens blanks for sale to Univis-licensed wholesalers. Under the license, the wholesalers were permitted to grind the lens blanks into patented finished lenses, which were then sold to Univis-licensed retailers. The Court held that the sale of the lens blanks exhausted Univis’s patent rights in the finished lenses. The Court based its holding on the fact that the lens blanks “embodie[d] essential features of [the] patented invention . . . and has destined the article to be finished by the purchaser in conformity to the patent . . . .”<sup>16</sup> As the Supreme Court explained in *Univis*:

The declared purpose of the patent law is to promote the progress of science and the useful arts by granting to the inventor a limited monopoly, the exercise of which will enable him to secure the financial rewards for his invention. The full extent of the monopoly is the patentee’s “exclusive right to make, use, and vend the invention or discovery.” The patentee may surrender his monopoly in whole by the sale of his patent or in part by the sale of an arti[c]le embodying the invention. His monopoly remains so long as he retains the ownership of the patented article. But sale of it exhausts the monopoly in that article and the patentee may not thereafter, by virtue of his patent, control the use or disposition of the article.<sup>17</sup>

### B. *Quanta Computer, Inc. v. LG Electronics, Inc.*

Over sixty years later, the Supreme Court reexamined the patent exhaustion doctrine in *Quanta*.<sup>18</sup> The Court granted certiorari to address: (1) whether method claims may be exhausted; and (2)

<sup>10</sup> See *Henry v. A.B. Dick Co.*, 224 U.S. 1 (1912).

<sup>11</sup> *Id.* at 49.

<sup>12</sup> 243 U.S. 502, 518 (1917).

<sup>13</sup> *Id.* at 516.

<sup>14</sup> 309 U.S. 436 (1940).

<sup>15</sup> 316 U.S. 241 (1942).

<sup>16</sup> *Id.* at 250-51.

<sup>17</sup> *Id.* at 250 (internal citations omitted).

<sup>18</sup> 128 S. Ct. 2109 (2008).

whether a patent licensee's sale of licensed products exhausts a patent owner's patent rights, including its ability to collect royalties from downstream users of the licensed products.<sup>19</sup>

LG Electronics ("LGE") is the owner of various patents relating to personal computers. Some of LGE's patents cover computer components, while other patents cover methods and systems of combining these components into products.<sup>20</sup> LGE settled a broad patent dispute between itself and Intel Corporation by licensing Intel to manufacture and sell products that utilize technology covered by the LGE patents.<sup>21</sup> The agreement provided, however, that the license would not extend to a third party who combined licensed products with products made by any party other than Intel or LGE.<sup>22</sup> Thus, the license did not authorize the use of Intel products practicing the LGE patents, along with components purchased from others.<sup>23</sup> As part of the license, Intel was required to inform its customers that the LGE license did not cover the combination of Intel and non-Intel components.<sup>24</sup> Quanta, an Intel customer, purchased the Intel components and combined them with non-Intel components to produce computer systems, despite the required notice from Intel.<sup>25</sup> LGE subsequently sued Quanta for patent infringement asserting that the produced computer systems infringed its patents.<sup>26</sup> Quanta responded that LGE's patent rights were exhausted under the patent exhaustion doctrine by Intel's authorized sale to Quanta or, alternatively, that LGE's license was unconditional, thus leading to the exhaustion of LGE's patent rights.

Upon Quanta's motion for summary judgment, the district court held that Intel's sales to Quanta were unconditional and granted summary judgment of non-infringement for Quanta.<sup>27</sup> Under the doctrine of patent exhaustion, the district court reasoned, Intel's sales to Quanta were unconditional because the sales were in no way conditioned on the agreement not to combine Intel parts with non-Intel parts, and the notice requirement banning combination with third party products served only to negate an implied license from LGE.<sup>28</sup> The license LGE granted to Intel, thus, resulted in forfeiture of any potential infringement actions against legitimate purchasers of the Intel products.<sup>29</sup> The district court confirmed its previous decision that patent exhaustion was not a defense to alleged infringement of LGE's method claims.<sup>30</sup>

On appeal, the Federal Circuit concluded that LGE's notice to Intel created a conditional sale and, thus, the patent exhaustion doctrine did not apply.<sup>31</sup> Therefore, the Federal Circuit reversed the

19 *Id.* at 2117, 2121-22.

20 *Id.* at 2113-14.

21 *Id.* at 2114.

22 *Id.*

23 *Id.*

24 *Id.*

25 *Id.*

26 *Id.* at 2116.

27 *LG Elecs., Inc. v. Asustek Computer, Inc.*, 248 F. Supp. 2d 912, 918 (N.D. Cal. 2003).

28 *Id.*

29 *Id.* at 917.

30 *Id.* at 918.

31 *LG Elecs., Inc. v. Bizcom Elecs., Inc.*, 453 F.3d 1364, 1369 (Fed. Cir. 2006).

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district court's application of the doctrine of patent exhaustion.<sup>32</sup> The Federal Circuit, however, upheld the decision that method claims could not be exhausted.<sup>33</sup> The Supreme Court granted certiorari in September of 2007.<sup>34</sup>

A unanimous Supreme Court reversed the Federal Circuit, finding that LGE's patent rights were exhausted by the authorized sale of Intel products to Quanta.<sup>35</sup> First, the Court held that sales under a license to practice the patented invention constitute "authorized sales" for purposes of patent exhaustion whether the invention be for a method or an apparatus, stating that "[e]liminating exhaustion for method patents would seriously undermine the exhaustion doctrine . . . ."<sup>36</sup>

Next, the Court considered and concluded that the Intel products bought by Quanta sufficiently embodied the patents in order to trigger patent exhaustion.<sup>37</sup> In reaching this conclusion, the Court found that the Intel products "only reasonable and intended use was to practice the patent[s]" and the Intel products "embodie[d] essential features of [the] patented invention[s]."<sup>38</sup> On the issue of the intended use of the Intel products, the Court found that LGE "suggested no reasonable use for the Intel Products other than incorporating them into computer systems that practice the LGE Patents."<sup>39</sup> Moreover, on the essential features issue, the Court found that even though the Intel products only partially practiced the licensed patents, "[e]verything inventive about each patent [was] embodied in the Intel Products."<sup>40</sup>

Finally, the Court found that the sale of the Intel products to Quanta exhausted LGE's patent rights.<sup>41</sup> LGE argued that there was no authorized sale from Intel, because the "License Agreement does not permit Intel to sell its products for use in combination with non-Intel products to practice the LGE patents."<sup>42</sup> However, the Court concluded that the notice requirement for Intel had no effect on the exhaustion analysis because: (1) the provision was in a separate master agreement, not the license agreement; and (2) "Intel's authority to sell its products embodying the LGE patents was not conditioned on the notice or on Quanta's decision to abide by LGE's directions in that notice."<sup>43</sup>

In reaching this conclusion, the Court implied that if Intel had lacked authorization under the license to sell the components to Quanta (i.e., if Intel's license was conditioned on the notice provision), then patent exhaustion might not have applied, and LGE might have had a viable claim against Quanta for infringement.<sup>44</sup> Unfortunately, the Court did not elaborate on what specific transactional

<sup>32</sup> *Id.* at 1370.

<sup>33</sup> *Id.*

<sup>34</sup> *Quanta Computer, Inc. v. LG Elecs., Inc.*, 128 S. Ct. 28 (2007).

<sup>35</sup> *Quanta Computer, Inc. v. LG Elecs., Inc.*, 128 S. Ct. 2109, 2122 (2008).

<sup>36</sup> *Id.* at 2117.

<sup>37</sup> *Id.* at 2118-21.

<sup>38</sup> *Id.* at 2119 (internal citation omitted).

<sup>39</sup> *Id.*

<sup>40</sup> *Id.* at 2120.

<sup>41</sup> *Id.* at 2122.

<sup>42</sup> *Id.* at 2112.

<sup>43</sup> *Id.* at 2121-22.

<sup>44</sup> *Id.* at 2121.



structures would have avoided exhaustion.<sup>45</sup> Although it did not consider the issue, the Court did note that had LGE sued for breach of contract, contract damages may have been available even though patent exhaustion eliminated the possibility of patent damages.<sup>46</sup>

### III. Declaratory Judgments

#### A. Background

In a case of actual controversy within its jurisdiction, upon the filing of an appropriate pleading, a federal district court may declare the rights and other relations of the parties.<sup>47</sup> In patent law, a declaratory judgment is typically requested when a dispute relating to patent infringement arises to the point that litigation is threatened, but not yet filed.<sup>48</sup> Declaratory judgments allow, for example, a party that has been told that it infringes another's patent rights to ask a court to declare whether, in fact, infringement has occurred.<sup>49</sup> Prior to the Supreme Court's recent decision in *MedImmune*,<sup>50</sup> a party wishing to bring a declaratory judgment action had to satisfy two tests: (1) she had to show that she had acted in a way, or was prepared to act in a way, that the patentee asserts infringes the patent; and (2) she had to show that she was under a "reasonable apprehension of [imminent] suit" from the patentee.<sup>51</sup> In the licensing arena, therefore, a declaratory judgment action had previously been unavailable to licensees wishing to challenge the validity of a licensed patent because there was no "reasonable apprehension of suit," i.e., there was no reason for the licensor to sue the licensee because the patent had been licensed and royalties were being paid.

#### B. *MedImmune, Inc. v. Genentech, Inc.*

In *MedImmune*, MedImmune entered into a patent license with Genentech that covered an existing Genentech patent and a pending patent application.<sup>52</sup> When the application issued, Genentech sought royalties from MedImmune.<sup>53</sup> MedImmune paid the requested royalties for the newly issued patent "under protest" and brought a declaratory judgment action challenging its validity.<sup>54</sup>

The district court dismissed MedImmune's declaratory judgment action for lack of subject matter jurisdiction.<sup>55</sup> *Gen-Probe Inc. v. Vysis, Inc.* had held that when a licensee is in good standing, there is no reasonable apprehension of suit, thus precluding establishment of an Article III case or controversy.<sup>56</sup> The Federal Circuit affirmed the district court's holding, also relying on *Gen-Probe*.<sup>57</sup>

<sup>45</sup> *Id.* at 2122.

<sup>46</sup> *Id.* at n.7.

<sup>47</sup> 28 U.S.C. § 2201 (2000).

<sup>48</sup> See *Sierra Applied Scis., Inc. v. Advanced Energy Indus., Inc.*, 363 F.3d 1361, 1373 (Fed. Cir. 2004).

<sup>49</sup> *Id.*

<sup>50</sup> 549 U.S. 118 (2007).

<sup>51</sup> See *EMC Corp. v. Norand Corp.*, 89 F.3d 807, 811 (Fed. Cir. 1996).

<sup>52</sup> 127 S. Ct. at 768.

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> *MedImmune, Inc. v. Genentech, Inc.*, No. CV 03-2567 MRP (CTX), 2004 WL 3770589, at \*6 (C.D. Cal. Apr. 26, 2004) (relying on *Gen-Probe Inc. v. Vysis, Inc.*, 359 F.3d 1376 (Fed. Cir. 2004)).

<sup>56</sup> 359 F.3d at 1381.

<sup>57</sup> *MedImmune, Inc. v. Genentech, Inc.*, 427 F.3d 958, 963 (Fed. Cir. 2005).

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The Supreme Court implicitly rejected the Federal Circuit’s “reasonable apprehension of imminent suit” test.<sup>58</sup> Instead, the Court focused its inquiry for declaratory judgment jurisdiction on “whether the facts alleged, under all the circumstances, show that there is a substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.”<sup>59</sup> The Court analogized the situation to a constitutional challenge where a party seeks to challenge the validity of a government action, where a party is not required to expose itself to liability before bringing a suit to challenge a law.<sup>60</sup>

In articulating this new standard, the Court ruled that licensees need not repudiate their licenses in order to seek a declaratory judgment as to a licensed patent’s validity, enforceability, or infringement.<sup>61</sup> Thus, after *MedImmune*, licensees need not breach the license—and expose themselves to treble damages for willful infringement—before bringing an action to invalidate the licensed patent.<sup>62</sup>

### C. Cases Applying *MedImmune* Decision

In the wake of the *MedImmune* decision, it appeared that the courts would be flooded with declaratory judgment actions, particularly in the context of patentees seeking to invalidate licensed patents.<sup>63</sup> However, many of these post-*MedImmune* decisions make clear that there are still some limits on a licensee’s ability to seek declaratory judgments.

#### 1. *SanDisk Corp. v. STMicroelectronics, Inc.*

In *SanDisk Corp. v. STMicroelectronics, Inc.*, the Federal Circuit acknowledged that the “Supreme Court’s opinion in *MedImmune* represents a rejection of our reasonable apprehension of suit test.”<sup>64</sup> The plaintiff filed a declaratory judgment action for patent invalidity and unenforceability during licensing negotiations with the patentee.<sup>65</sup> Although the Federal Circuit recognized that declaratory judgment jurisdiction typically is not present where a party believes that a particular patent poses a risk of infringement, the Court held that “jurisdiction may be met where the *patentee takes a position* that puts the declaratory judgment plaintiff in the position of either pursuing arguably illegal behavior or abandoning that which he claims a right to do.”<sup>66</sup> Specifically, the Court found that it is not necessary for a potential licensee to “bet the farm” by cutting off licensing negotiations and risk a suit for infringement before seeking a declaratory judgment.<sup>67</sup>

<sup>58</sup> *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 132 n.11 (2007).

<sup>59</sup> *Id.* at 127.

<sup>60</sup> *Id.* at 128-29.

<sup>61</sup> *Id.* at 135.

<sup>62</sup> *Id.* at 132.

<sup>63</sup> *See, e.g., SanDisk Corp. v. STMicroelectronics, Inc.*, 480 F.3d 1372 (Fed. Cir. 2007).

<sup>64</sup> *Id.* at 1380.

<sup>65</sup> *Id.* at 1374-76.

<sup>66</sup> *Id.* at 1381 (emphasis added).

<sup>67</sup> *Id.* at 1382.

2. *Sony Electronics, Inc. v. Guardian Media Technologies, Ltd.*

In *Sony Electronics, Inc. v. Guardian Media Technologies, Ltd.*,<sup>68</sup> the patent owner and several companies were in the midst of licensing discussions when the companies filed declaratory judgment actions for noninfringement and invalidity, even though the patentee never threatened to sue any of them.<sup>69</sup> The Federal Circuit recognized that *MedImmune* did not require an explicit threat of patent litigation, and on that basis, held that the district court erred by denying declaratory judgment jurisdiction.<sup>70</sup> Although the court disagreed that the evidence suggested the plaintiffs had filed suit to leverage a more favorable negotiating position, the court nevertheless remanded the case for the district court to determine whether it should properly exercise declaratory judgment jurisdiction.<sup>71</sup> By its holding, the court appeared to reaffirm that utilizing a declaratory judgment as a means to improve one's leverage during license negotiations is "not a purpose that the Declaratory Judgment Act was designed to serve."<sup>72</sup>

3. *Cat Tech LLC v. Tubemaster, Inc.*

In *Cat Tech LLC v. Tubemaster, Inc.*,<sup>73</sup> the Federal Circuit held that while *MedImmune* eliminated the "reasonable apprehension of suit" prong of the declaratory judgment jurisdiction test, it did not affect the second prong, namely, the requirement of a showing of "meaningful preparation" to conduct potentially infringing activity.<sup>74</sup> Although "MedImmune articulated a 'more lenient legal standard' for the availability of declaratory judgment relief in patent cases," the Federal Circuit stated:

the issue of whether there has been meaningful preparation to conduct potentially infringing activity remains an important element in the totality of circumstances which must be considered in determining whether a declaratory judgment is appropriate.<sup>75</sup>

While holding that the "meaningful preparation" standard was met in this case, the Federal Circuit clarified that the "requirements for justiciability" must include "significant, concrete steps to conduct infringing activity . . . ."<sup>76</sup>

#### IV. Impact of *Quanta* and *MedImmune* on Licensing Techniques

Both *Quanta* and *MedImmune* have had a significant impact on the protections afforded to patentees by licensing provisions. In light of these decisions, patent owners should consider the following options when drafting license agreements as means to avoid patent exhaustion and challenges to the validity of their patents through declaratory judgment actions:

<sup>68</sup> 497 F.3d 1271 (Fed. Cir. 2007).

<sup>69</sup> *Id.* at 1279-81.

<sup>70</sup> *Id.* at 1288.

<sup>71</sup> *Id.* at 1289.

<sup>72</sup> *Id.*

<sup>73</sup> 528 F.3d 871 (Fed. Cir. 2008).

<sup>74</sup> *Id.* at 879-80.

<sup>75</sup> *Id.* at 880 (internal citation omitted).

<sup>76</sup> *Id.*

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### **A. Affirmatively Restrict Licensee's Actions**

One strategy to avoid exhaustion is to condition a licensee's rights with respect to the licensed patent with direct language in the license from licensor to licensee. In *Quanta*, the Court did not view Intel's promise in a separate agreement to notify its customers regarding the restriction on combination of the licensed product with third-party components as affecting authorized sales under the license agreement. It may be prudent to define specifically "authorized sales" in the license itself or condition the license on appropriate downstream restrictions to avoid a subsequent finding of exhaustion.

### **B. Include Descriptions of Alternative Reasonable Uses**

One factor that influenced the Supreme Court's decision in *Quanta* was the absence of reasonable noninfringing uses. To avoid exhaustion, licensors should consider including a description of alternative reasonable uses for the articles sold by licensees.

### **C. Contractually Make Challenge of Licensed Patent a Breach**

Patentees may also consider including a provision in the license that makes validity challenges to a licensed patent a material breach allowing termination. While such a provision may not be effective during negotiations, it may deter declaratory judgment actions after the license is entered, because bringing such an action would then constitute a breach of the license agreement.

### **D. Include a Forum-Selection Clause, Notice Provision, and Indemnification Clause**

In light of *MedImmune* and its progeny, patentees should include forum selection clauses for both breach of contract and declaratory judgment actions. In addition, licenses should also require that the licensee provide notice prior to filing a declaratory judgment action. Finally, a clause requiring a licensee to pay costs and fees associated with a frivolously filed declaratory judgment action may also provide some protection to the licensor.

# Exhibit 2

10-K 1 d10k.htm FORM 10-K

Table of Contents

**UNITED STATES SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549**

**Form 10-K**

**ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE  
SECURITIES EXCHANGE ACT OF 1934**

For the fiscal year ended **March 31, 2011**

**OR**

**TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE  
SECURITIES EXCHANGE ACT OF 1934**

For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission File No. **000-17948**

**ELECTRONIC ARTS INC.**

*(Exact name of registrant as specified in its charter)*

**Delaware**

*(State or other jurisdiction of  
incorporation or organization)*

**94-2838567**

*(I.R.S. Employer  
Identification No.)*

**209 Redwood Shores Parkway**

**Redwood City, California**

*(Address of principal executive offices)*

**94065**

*(Zip Code)*

**Registrant's telephone number, including area code:**

**(650) 628-1500**

**Securities registered pursuant to Section 12(b) of the Act:**

<b>Title of Each Class</b>	<b>Name of Each Exchange on Which Registered</b>
Common Stock, \$0.01 par value	NASDAQ Global Select Market

**Securities registered pursuant to Section 12(g) of the Act:**

**None**

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes  No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes  No

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes  No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes  No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K (§ 229.405 of this chapter) is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting



# Exhibit 3





LIBRARY

- Music
- Movies
- TV Shows
- Podcasts
- Radio

STORE

Home Sharing

Genius

PLAYLISTS

- iTunes DJ
- 90's Music
- Classical Music
- Music Videos
- My Top Rated
- Recently Added
- Recently Played
- Top 25 Most Played



Search Store

# Top Paid iPad Apps

Sort By: **Bestsellers**

- 

**Angry Birds HD**  
Games  
Updated Jul 25, 2011  
Game Center  
\$1.99 BUY
- 

**Sid Meier's Pirates! for iPad**  
Games  
Released Jul 21, 2011  
Game Center  
\$3.99 BUY
- 

**Angry Birds Seasons HD**  
Games  
Updated Jun 28, 2011  
Game Center  
\$1.99 BUY
- 

**Pages**  
Productivity  
Updated May 31, 2011  
Game Center  
\$9.99 BUY
- 

**Angry Birds Rio HD**  
Games  
Updated Jul 14, 2011  
Game Center  
\$2.99 BUY
- 

**Cut the Rope HD**  
Games  
Updated Jul 21, 2011  
Game Center  
\$1.99 BUY
- 

**Fruit Ninja HD**  
Games  
Updated Jun 20, 2011  
Game Center  
\$2.99 BUY
- 

**GarageBand**  
Music  
Updated Jun 01, 2011  
Game Center  
\$4.99 BUY
- 

**MyPad+ - for Facebook & Twitter**  
Social Networking  
Updated Jul 11, 2011  
Game Center  
\$0.99 BUY
- 

**GoodReader for iPad**  
Productivity  
Updated Jun 24, 2011  
Game Center  
\$4.99 BUY
- 

**Numbers**  
Productivity  
Updated May 31, 2011  
Game Center  
\$9.99 BUY
- 

**Keynote**  
Productivity  
Updated May 31, 2011  
Game Center  
\$9.99 BUY
- 

**Captain America: Sentinel of Liberty**  
Games  
Updated Jul 26, 2011  
Game Center  
\$0.99 BUY
- 

**Quickoffice Pro HD**  
Business  
Updated Jun 07, 2011  
Game Center  
\$19.99 BUY
- 

**Star Walk for iPad - interactive a...**  
Education  
Updated Jul 14, 2011  
Game Center  
\$4.99 BUY
- 

**Zombie Smash HD**  
Games  
Updated Apr 29, 2011  
Game Center  
\$0.99 BUY
- 

**UINO HD**  
Games  
Updated Dec 20, 2010  
Game Center  
\$0.99 BUY
- 

**Penultimate**  
Productivity  
Updated May 10, 2011  
Game Center  
\$1.99 BUY

# Exhibit 4

**PLEASE READ THE FOLLOWING LICENSE AGREEMENT TERMS AND CONDITIONS CAREFULLY BEFORE DOWNLOADING OR USING THE APPLE SOFTWARE. THESE TERMS AND CONDITIONS CONSTITUTE A LEGAL AGREEMENT BETWEEN YOU AND APPLE.**

## **iPhone Developer Program License Agreement**

### **Purpose**

You would like to use the Apple Software (as defined below) to develop one or more Applications (as defined below) for the iPhone and iPod touch. Apple is willing to grant You a limited license to use the Apple Software to develop and test Your Applications on the terms and conditions set forth in this Agreement.

Applications developed under this Agreement can be distributed in two ways: (1) through the App Store, if selected by Apple, and (2) on a limited basis for use on Registered Devices (as defined below).

Applications that meet Apple's Documentation and Program Requirements may be submitted for consideration by Apple for distribution via the App Store. If submitted by You and selected by Apple, Your Applications will be digitally signed by Apple and distributed through the App Store. Distribution of free (no charge) Applications will be subject to the distribution terms contained in Schedule 1 to this Agreement. If You would like to distribute Applications for which You will charge a fee, You must enter into a separate agreement with Apple ("Schedule 2").

### **1. Accepting this Agreement; Definitions**

#### **1.1 Acceptance**

In order to use the Apple Software and related services, You must first agree to this License Agreement. If You do not or cannot agree to this License Agreement, You are not permitted to use the Apple Software or related services. Do not download or use the Apple Software or any related services in that case.

You accept and agree to the terms of this License Agreement on Your own behalf and/or on behalf of Your company, organization or educational institution as its authorized legal representative, by doing either of the following:

- (a) checking the box displayed at the end of this Agreement if You are reading this on an Apple website; or
- (b) clicking an "Agree" or similar button, where this option is provided by Apple.

#### **1.2 Definitions**

Whenever capitalized in this Agreement:

"Agreement" means this iPhone Developer Program License Agreement, including any attachments, Schedule 1 and any exhibits thereto which are hereby incorporated by this reference.

"App Store" means an electronic store and its storefronts branded, and owned and/or controlled by Apple or an affiliate of Apple.

"Apple" means Apple Inc., a California corporation with its principal place of business at One Infinite Loop, Cupertino, California 95014, U.S.A.

"Apple OS" means the iPhone operating system software provided by Apple for use by You in connection with Your Application development and testing, which, from time to time during the Term, may consist of an Apple confidential, pre-release version of the iPhone operating system

software or a gold master "GM" production, non-Apple confidential, commercially-available version of the iPhone operating system software.

"Apple Push Notification" or "APN" means the Apple Push Notification service that Apple may provide to You to enable You to transmit Push Notifications to Your Application.

"APN API" means the Documented API that enables You to use the APN to deliver a Push Notification to Your Application.

"Apple Software" collectively means: (a) the SDK, (b) the Apple OS, and (c) the Provisioning Profiles, and includes any Updates to any of the foregoing that may be provided to You by Apple.

"Apple Subsidiary" means a corporation at least fifty percent (50%) of whose outstanding shares or securities (representing the right to vote for the election of directors or other managing authority) are owned or controlled, directly or indirectly, by Apple, and that is involved in the operation of or otherwise affiliated with the App Store, including without limitation Apple Pty Limited, iTunes S.à.r.l., and iTunes K.K.

"Application" means one or more software programs developed by You in compliance with the Documentation and the Program Requirements, under Your own trademark or brand, and for specific use with the Apple iPhone and/or the Apple iPod touch, including bug fixes, updates, upgrades, modifications, enhancements, supplements to, revisions, new releases and new versions of such software programs.

"Authorized Test Devices" means iPhone or iPod touch devices owned or controlled by You that have been designated by You for testing and development purposes and specifically registered with Apple under this Program.

"Authorized Developers" means Your employees and contractors, members of Your organization or, if You are an educational institution, Your faculty and staff who (a) each have an active and valid Registered iPhone Developer account with Apple, (b) have a demonstrable need to know or use the Apple Software in order to develop and test Applications, and (c) to the extent such individuals will have access to Apple Confidential Information, each have written and binding agreements with You to protect the unauthorized use and disclosure of such Apple and third party confidential information.

"Currency" means any form of currency, points, credits, resources, content or other items or units recognized by a group of individuals or entities as representing a particular value and that can be transferred or circulated as a medium of exchange.

"Documentation" means any technical or other specifications or documentation that Apple may provide to You for use in connection with the Apple Software.

"Documented API(s)" means the Application Programming Interface(s) documented by Apple in published Apple Documentation and which are contained in the Apple Software.

"FOSS" (Free and Open Source Software) means any software that is subject to terms that, as a condition of use, copying, modification or redistribution, require such software and/or derivative works thereof to be disclosed or distributed in source code form, to be licensed for the purpose of making derivative works, or to be redistributed free of charge, including without limitation software distributed under the GNU General Public License or GNU Lesser/Library GPL.

"In App Purchase API" means the Documented API that enables additional functionality or content to be paid for by an end user from within a Paid Application.

"iPod Accessory Protocol" or "iAP" means Apple's proprietary protocol for communicating with iPhone and/or iPod touch devices and which is licensed under Apple's Made for iPod and Works with iPhone Program.

"iPhone Accessory" means a non-Apple branded hardware device that interfaces, communicates, or otherwise interoperates with or controls an iPhone and/or iPod touch device through the iPod Accessory Protocol.

"iTunes Connect" means Apple's proprietary online content management tool for Applications.

"Licensed Application" means an Application that (a) meets and complies with all of the Documentation and Program Requirements, and (b) has been selected and digitally signed by Apple for production distribution.

"Licensed Application Information" means screen shots, images, artwork, icons and/or any other copyrighted text, descriptions, representations or information relating to a Licensed Application that You provide to Apple for use in accordance with Schedule 1.

"Made for iPod and Works with iPhone Licensing Program" or "MFi Program" means a separate Apple program that offers iPhone Accessory developers, among other things, a license to incorporate certain Apple technology into a hardware device to interface, communicate or otherwise interoperate with or control Apple iPhone and/or iPod touch devices.

"Maps API" means the Documented API that enables You to add mapping functionality to Applications.

"Paid Application" means a Licensed Application that is distributed to end users for a fee. Paid Applications are subject to the terms of a separate agreement with Apple (Schedule 2).

"Program" means the overall iPhone and iPod touch application development, testing, digital signing, and distribution program contemplated in this Agreement.

"Program Requirements" mean the technical, human interface, design, product category, security, performance, and other criteria and requirements specified by Apple, including but not limited to the current set of requirements set forth in Section 3.3, as they may be modified from time to time by Apple in accordance with this Agreement.

"Provisioning Profiles" means the provisioning profiles provided by Apple for use by You in connection with Your Application development and testing, and limited distribution of Your Applications for use on Registered Devices.

"Push Application ID" means the unique identification number or other identifier that Apple assigns to an Application in order to permit it to access and use the APN.

"Push Notification" means a message, including any content or data therein, that You transmit to end users and that is delivered in Your Application.

"Registered Devices" means iPhone or iPod touch devices owned or controlled by You, or owned by individuals who are affiliated with You, that You have specifically registered with Apple under this Program.

"Security Solution" means the proprietary Apple content protection system marketed as Fairplay, to be applied to Licensed Applications distributed on the App Store to administer Apple's standard usage rules for Licensed Applications, as such system and rules may be modified by Apple from time to time.

"SDK" (Software Development Kit) means the Documentation, software (source code and object code), applications, sample code, simulator, tools, libraries, APIs, data, files, and materials provided by Apple for use by You in connection with Your Application development, and includes any Updates that may be provided by Apple to You pursuant to this Agreement.

"Term" means the period described in Section 12.

"Updates" means bug fixes, updates, upgrades, modifications, enhancements, supplements, and new releases or versions of the Apple Software, or to any part of the Apple Software.

"You", "Your" and "Licensee" means and refers to the person(s) or legal entity using the Apple Software or otherwise exercising rights under this Agreement. If You are entering into this Agreement on behalf of Your company, organization or educational institution, "You" or "Your" refers to your company, organization or educational institution as well.

## **2. Internal Use License and Restrictions**

### **2.1 Permitted Uses and Restrictions**

Subject to the terms and conditions of this Agreement, Apple hereby grants You during the Term, a limited, non-exclusive, personal, revocable, non-sublicensable and non-transferable license to:

(a) Install a reasonable number of copies of the SDK portion of the Apple Software on Apple-branded computers owned or controlled by You, to be used internally by You or Your Authorized Developers for the sole purpose of developing or testing Applications;

(b) Make and distribute a reasonable number of copies of the Documentation to Authorized Developers for their internal use only and for the sole purpose of developing or testing Applications;

(c) Install one (1) copy of the Apple OS and a Provisioning Profile on each of Your Authorized Test Devices, up to the number of Authorized Test Devices that You have registered and acquired licenses for, to be used internally by You or Your Authorized Developers for the sole purpose of developing and testing Your Applications; and

(d) Install a Provisioning Profile on each of Your Registered Devices, up to the limited number of Registered Devices that You have registered and acquired licenses for, for the sole purpose of enabling the distribution and use of Your Applications on such Registered Devices.

Apple reserves the right to set the limited number of iPhone and iPod touch devices that each Licensee may register with Apple and obtain licenses for under this Program (a "Block of Registered Device Licenses"), as specified on the Program web portal. For the purposes of limited distribution on Registered Devices under Section 7.2, each company, organization, educational institution or affiliated group may only acquire one (1) Block of Registered Device Licenses per company, organization, educational institution or group, unless otherwise agreed in writing by Apple. You therefore agree not to knowingly acquire, or to cause others to acquire, more than one Block of Registered Device Licenses for the same company, organization, educational institution or group.

### **2.2 Authorized Test Devices**

As long as an Authorized Test Device contains any pre-release versions of the Apple Software or uses pre-release versions of services, You agree to restrict access to such Authorized Test Device to Your Authorized Developers and to not disclose, show, rent, lease, lend, sell or otherwise transfer such Authorized Test Device to any third party. You further agree to take reasonable precautions to safeguard, and to instruct Your Authorized Developers to safeguard, all Authorized Test Devices from loss or theft.

**You acknowledge that by installing any pre-release Apple Software or using any pre-release services on Your Authorized Test Devices, these Devices may be "locked" into testing mode and may not be capable of being restored to their original condition.** Any use of any pre-release Apple Software or pre-release services are for evaluation and development purposes only, and You should not use any pre-release Apple Software or pre-release services in a commercial operating environment or with important data. You should back up any data prior to using the pre-release Apple Software or pre-release services. Apple shall not be responsible for any costs, expenses or other liabilities You may incur as a result of provisioning Your Authorized Test Devices and Registered Devices, Your Application development or the installation or use of this Apple Software, including but not limited to any damage to any equipment, software or data.

### **2.3 Confidential Nature of Pre-Release Apple Software**

From time to time during the Term, Apple may provide You with pre-release versions of the Apple Software or related services that constitute Apple Confidential Information and are subject to the confidentiality obligations of this Agreement. Such pre-release Apple Software and related services should not be relied upon to perform in the same manner as a final-release commercial-grade product, nor should it be used with data that is not sufficiently and regularly backed up, and may include features, functionality or APIs for services that are not yet available.

### **2.4 Copies**

You agree to retain and reproduce in full the Apple copyright, disclaimers and other proprietary notices (as they appear in the Apple Software and related services and Documentation provided) in all copies of the Apple Software and Documentation that You are permitted to make under this Agreement.

### **2.5 Ownership**

Apple retains all rights, title, and interest in and to the Apple Software and any Updates it may make available to You under this Agreement. You agree to cooperate with Apple to maintain Apple's ownership of the Apple Software, and, to the extent that You become aware of any claims relating to the Apple Software, You agree to use reasonable efforts to promptly provide notice of any such claims to Apple. The parties acknowledge that this Agreement does not give Apple any ownership interest in Your Applications.

### **2.6 No Other Permitted Uses**

Except as otherwise set forth in this Agreement, You agree not to rent, lease, lend, upload to or host on any website or server, sell, redistribute, or sublicense the Apple Software or any services, in whole or in part, or to enable others to do so. You may not use the Apple Software or any services provided hereunder for any purpose not expressly permitted by this Agreement. You agree not to install, use or run the SDK on any non-Apple-branded computer, not to install, use or run the Apple OS and Provisioning Profiles on or in connection with devices other than Apple-branded iPhone and iPod touch devices, or to enable others to do so. You may not and You agree not to, or to enable others to, copy (except as expressly permitted under this Agreement), decompile, reverse engineer, disassemble, attempt to derive the source code of, modify, decrypt, or create derivative works of the Apple Software or any services provided by the Apple Software or otherwise provided hereunder, or any part thereof (except as and only to the extent any foregoing restriction is prohibited by applicable law or to the extent as may be permitted by licensing terms governing use of open-sourced components or sample code included with the Apple Software). You agree not to exploit any services provided hereunder in any unauthorized way whatsoever, including but not limited to, by trespass or burdening network capacity. Any attempt to do so is a violation of the rights of Apple and its licensors of the Apple Software or services. If You breach any of the foregoing restrictions, You may be subject to prosecution and damages. All licenses not expressly granted in this Agreement are reserved and no other licenses, immunity or rights, express or implied are granted by Apple, by implication, estoppel, or otherwise. This Agreement does not grant You any rights to use any trademarks, logos or service marks belonging to Apple, including but not limited to the iPhone or iPod word marks. If You

make reference to any Apple products or technology or use Apple's trademarks, You agree to comply with the published guidelines at <http://www.apple.com/legal/trademark/guidelinesfor3rdparties.html>, as modified by Apple from time to time.

### **2.7 Updates; No Support or Maintenance**

Apple may extend, enhance, or otherwise modify the Apple Software or services provided hereunder at any time without notice, but Apple shall not be obligated to provide You with any Updates to the Apple Software. If Updates are made available by Apple, the terms of this Agreement will govern such Updates, unless the Update is accompanied by a separate license in which case the terms of that license will govern. Apple is not obligated to provide any maintenance, technical or other support for the Apple Software or services. You acknowledge that Apple has no express or implied obligation to announce or make available any Updates to the Apple Software or to any services to anyone in the future. Should an Update be made available, it may have APIs, features, services or functionality that are different from those found in the Apple Software licensed hereunder or the services provided hereunder.

## **3. Your Obligations**

### **3.1 General**

You certify to Apple and agree that:

- (a) You are of the legal age of majority in the jurisdiction in which You reside (at least 18 years of age in many countries) and have the right and authority to enter into this Agreement on Your own behalf, or if You are entering into this Agreement on behalf of Your company, organization or educational institution, that You have the right and authority to legally bind Your company, organization or educational institution to the terms and obligations of this Agreement;
- (b) All information provided to Apple by You, including without limitation Licensed Application Information, will be current, true, accurate and complete and You will promptly notify Apple of any changes to such information;
- (c) You will comply with the terms of and fulfill Your obligations under this Agreement and You agree to monitor and be responsible for Your Authorized Developers' use of the Apple Software and services and Authorized Test Devices and their compliance with the terms of this Agreement;
- (d) You will be solely responsible for all costs, expenses, losses and liabilities incurred, and activities undertaken by You and Authorized Developers in connection with the Apple Software and services, the Registered Devices, Your Applications and Your related development and distribution efforts, including, but not limited to, any related development efforts, network and server equipment, Internet service(s), or any other hardware, software or services used by You in connection with Your use of any services;
- (e) For the purposes of Schedule 1(if applicable), You represent and warrant that You own or control the necessary rights in order to appoint Apple and Apple Subsidiaries as Your worldwide agent for the delivery of Your Licensed Applications, and that the fulfillment of such appointment by Apple and Apple Subsidiaries shall not violate or infringe the rights of any third party; and
- (f) You will not act in any manner which conflicts or interferes with any existing commitment or obligation You may have and no agreement previously entered into by You will interfere with Your performance of Your obligations under this Agreement.

### **3.2 Use of the Apple Software**

As a condition to using the Apple Software and any services, You agree that:

- (a) You will only use the Apple Software and any services for the purposes and in the manner expressly permitted by this Agreement and in accordance with all applicable laws and regulations;
- (b) You will not use the Apple Software or any services for any unlawful or illegal activity, nor to develop any Application which would commit or facilitate the commission of a crime, or other tortious, unlawful or illegal act;
- (c) Your Application will be developed in compliance with the Documentation and the Program Requirements, the current set of which is set forth in Section 3.3 below;



(d) To the best of Your knowledge and belief, Your Application and Licensed Application Information do not and will not violate, misappropriate, or infringe any Apple or third party copyrights, trademarks, rights of privacy and publicity, trade secrets, patents, or other proprietary or legal rights (e.g. musical composition or performance rights, video rights, photography or image rights, logo rights, third party data rights, etc. for content and materials that may be included in Your Application);

(e) You will not, through use of the Apple Software, services or otherwise, create any Application or other program that would disable, hack or otherwise interfere with the Security Solution, or any security, digital signing, digital rights management, verification or authentication mechanisms implemented in or by the iPhone operating system software, iPod touch operating system software, this Apple Software, any services or other Apple software or technology, or enable others to do so; and

(f) Applications developed using the Apple Software may only be distributed if selected by Apple (in its sole discretion) for distribution via the App Store or for limited distribution on Registered Devices (ad hoc distribution) as contemplated in this Agreement.

### **3.3 Program Requirements for Applications**

Any Application developed using this Apple Software must meet all of the following criteria and requirements, as they may be modified by Apple from time to time:

#### **APIs and Functionality:**

3.3.1 Applications may only use Documented APIs in the manner prescribed by Apple and must not use or call any private APIs.

3.3.2 An Application may not itself install or launch other executable code by any means, including without limitation through the use of a plug-in architecture, calling other frameworks, other APIs or otherwise. No interpreted code may be downloaded or used in an Application except for code that is interpreted and run by Apple's Documented APIs and built-in interpreter(s).

3.3.3 Without Apple's prior written approval or as permitted under Section 3.3.17, an Application may not provide, unlock or enable additional features or functionality through distribution mechanisms other than the App Store.

3.3.4 An Application may only read data from or write data to an Application's designated container area on the device, except as otherwise specified by Apple.

#### **User Interface and Data:**

3.3.5 Applications must comply with the Human Interface Guidelines and other Documentation provided by Apple.

3.3.6 Any form of user or device data collection, or image, picture or voice capture or recording performed by the Application (collectively "Recordings"), and any form of user data, content or information processing, maintenance, uploading, syncing, or transmission performed by the Application (collectively "Transmissions") must comply with all applicable privacy laws and regulations as well as any Apple program requirements related to such aspects, including but not limited to any notice or consent requirements. In particular, a reasonably conspicuous audio, visual or other indicator must be displayed to the user as part of the Application to indicate that a Recording is taking place.

#### **Local Laws, User Privacy, Location Services and Mapping:**

3.3.7 Applications must comply with all applicable criminal, civil and statutory laws and regulations, including those in any jurisdictions in which Your Applications may be delivered.

In addition, for Applications that use location-based APIs or that collect, transmit, maintain, process, share, disclose or otherwise use a user's personal information or data:

- You and the Application must comply with all applicable privacy and data collection laws and regulations with respect to any collection, transmission, maintenance, processing, use, etc. of the user's location data or personal information by the Application.
- Applications may not be designed or marketed for the purpose of harassing, abusing, stalking, threatening or otherwise violating the legal rights (such as the rights of privacy and publicity) of others.
- Applications may not perform any functions or link to any content or use any robot, spider, site search or other retrieval application or device to scrape, retrieve or index services provided by Apple or its licensors, or to collect, disseminate or use information about users for any unauthorized purpose.

3.3.8 For Applications that use location-based APIs, such Applications may not be designed or marketed for automatic or autonomous control of vehicles, aircraft, or other mechanical devices; dispatch or fleet management; or emergency or life-saving purposes. In addition:

- Applications that offer location-based services or functionality must notify and obtain consent from an individual before his or her location data is being collected, transmitted or otherwise used by the Application.

3.3.9 For Applications that use location-based APIs for real-time route guidance (including, but not limited to, turn-by-turn route guidance and other routing that is enabled through the use of a sensor), You must place the following notice in Your end user license agreement: YOUR USE OF THIS REAL TIME ROUTE GUIDANCE APPLICATION IS AT YOUR SOLE RISK. LOCATION DATA MAY NOT BE ACCURATE.

3.3.10 Applications must not disable, override or otherwise interfere with any Apple-implemented system alerts, warnings, display panels, consent panels and the like, including, but not limited to, those that are intended to notify the user that the user's location data is being collected, transmitted, maintained, processed or used, or intended to obtain consent for such use. If consent is denied or withdrawn, Applications may not collect, transmit, maintain, process or utilize the user's location data or perform any other actions for which the user's consent has been denied or withdrawn.

3.3.11 If Your Application accesses the Google Mobile Maps (GMM) service through the Maps API, use of the GMM Service is subject to Google's Terms of Service which will be set forth at: <http://code.google.com/apis/maps/terms/iPhone.html>. If You do not accept such Google Terms of Service, including, but not limited to all limitations and restrictions therein, You may not use the GMM service in Your Application. You acknowledge and agree that use of the GMM Service in Your Application will constitute Your acceptance of such Terms of Service. (If the terms are not yet available when You first access the url, they will be coming soon, and Your Application may not access the GMM service through the Maps API unless the Google Terms of Service are available at such url and accepted by You.)

**Content and Materials:**

3.3.12 Any master recordings and musical compositions embodied in Your Application must be wholly-owned by You or licensed to You on a fully paid-up basis and in a manner that will not require the payment of any fees, royalties and/or sums by Apple to You or any third party. In addition, if Your Application will be distributed outside of the United States, any master recordings and musical compositions embodied in Your Application (a) must not fall

within the repertoire of any mechanical or performing/communication rights collecting or licensing organization now or in the future and (b) if licensed, must be exclusively licensed to You for Your Application by each applicable copyright owner.

3.3.13 If Your Application includes or will include any other content, You must either own all such content or have permission from the content owner to use it in Your Application.

3.3.14 Applications must not contain any obscene, pornographic, offensive or defamatory content or materials of any kind (text, graphics, images, photographs, etc.), or other content or materials that in Apple's reasonable judgment may be found objectionable by iPhone or iPod touch users.

3.3.15 Applications must not contain any malware, malicious or harmful code, program, or other internal component (e.g. computer viruses, trojan horses, "backdoors") which could damage, destroy, or adversely affect other software, firmware, hardware, data, systems, services, or networks.

3.3.16 If Your Application includes any FOSS, You agree to comply with all applicable FOSS licensing terms. You also agree not to use any FOSS in the development of Your Application in such a way that would cause the non-FOSS portions of the Apple Software to be subject to any FOSS licensing terms or obligations.

#### **In App Purchase API:**

3.3.17 Only Paid Applications (which require You to enter into a separate agreement with Apple (Schedule 2)) may use the In App Purchase API. In addition:

- Your Application may only use the In App Purchase API for adding functionality that has been reviewed and approved by Apple and/or content that has been approved by Apple in accordance with the processes set forth in Section 6.

- You may not enable end users to purchase Currency of any kind through the In App Purchase API, including but not limited to any Currency for exchange, gifting, redemption, transfer, trading or use in purchasing or obtaining anything within or outside of Your Application. For the avoidance of doubt, nothing herein is intended to prohibit You from offering for sale goods or services (other than Currency) to be delivered outside of Your Application.

- You may not enable the end user to set up a pre-paid account to be used for subsequent purchases of content or functionality, or otherwise create balances or credits that end users can redeem or use to make purchases at a later time.

#### **iPhone Accessories:**

3.3.18 If Your Application interfaces, communicates, or otherwise interoperates with or controls an iPhone Accessory (as defined above) through Bluetooth or Apple's 30-pin dock connector, then the accessory must be licensed under Apple's MFi Program.

#### **Cellular Network:**

3.3.19 If an Application requires or will have access to the cellular network, then additionally such Application:

- Must comply with Apple's best practices and other guidelines on how Applications should access and use the cellular network;

- Must not in Apple's reasonable judgment excessively use or unduly burden network capacity or bandwidth;
- May not have Voice over Internet Protocol (VoIP) functionality using the cellular network.

**APN (Apple Push Notification service):**

3.3.20 All use of the APN must be in accordance with the terms of this Agreement (including the Program Requirements) and Attachment 1 (Additional Terms for Apple Push Notification service).

**Additional Services:**

3.3.21 From time to time, Apple may provide access to additional services for You to use in connection with Your Applications. Some of these additional services may be subject to separate terms and conditions in addition to this Agreement. If You elect to use such services, Your usage will also be subject to those separate terms and conditions. In addition, such services may not be available in all languages or in all countries. Apple makes no representation that such services are appropriate or available for use in any particular location. To the extent You choose to access such services, You do so at Your own initiative and are responsible for compliance with any applicable laws, including but not limited to applicable local laws. Certain services made accessible to You through the Apple Software may be provided by third parties. You acknowledge that Apple will not have any liability or responsibility to You or any other person (including to any end user) for any third-party services or for any Apple services. Apple and its licensors reserve the right to change, suspend, remove, or disable access to any services at any time. In no event will Apple be liable for the removal of or disabling of access to any such services.

**4. Changes to Program Requirements or Terms**

Apple may change the Program Requirements or the terms of this Agreement at any time. New or modified Program Requirements will not retroactively apply to Applications already in distribution. In order to continue using the Apple Software or any services, You must accept and agree to the new Program Requirements and/or new terms of this Agreement. If You do not agree to new Program Requirements or new terms, Your use of the Apple Software and any services will be suspended or terminated by Apple. You agree that Your acceptance of such new Agreement terms or Program Requirements may be signified electronically, including without limitation, by Your checking a box or clicking on an "agree" or similar button. Nothing in this Section shall affect Apple's rights under Section 8 below.

**5. Digital Signing of Applications; Restrictions on Certificates**

All Applications must be signed with an Apple-issued certificate in order to be installed on Registered Devices. During the Term of this Agreement, You may obtain development-related digital certificates from Apple, subject to a maximum number as reasonably determined by Apple, that will allow Your Application to be installed and tested on Authorized Test Devices. You may also obtain, during the Term, one or more production digital certificates from Apple, subject to a maximum number as reasonably determined by Apple, to be used for the sole purpose of signing Your Application(s) prior to submission of Your Application to Apple or limited distribution of Your Application for use on Registered Devices.

In relation to this, You represent and warrant to Apple that: (a) You will not take any action to interfere with the normal operation of any Apple-issued digital certificates or Provisioning Profiles; (b) You are solely responsible for preventing any unauthorized person from having access to Your digital certificates and corresponding private keys and You will use best efforts to safeguard Your digital certificates and corresponding private keys from compromise; (c) You agree to immediately notify Apple in writing if You have any reason to believe there has been a

compromise of any of Your digital certificates or corresponding private keys; (d) You will not provide or transfer Apple-issued digital certificates provided under this Program to any third party, nor use Your digital certificate to sign a third party's application; and (e) You will use Apple-issued certificates provided under this Program exclusively for the purpose of signing Your Applications for testing, submission to Apple and/or limited distribution for use on Registered Devices as contemplated under this Program, and only in accordance with this Agreement.

You further represent and warrant to Apple that the licensing terms governing Your Application, or governing any third party code or FOSS included in Your Application, will be consistent with and not conflict with the digital signing or content protection aspects of the Program or any of the terms, conditions or requirements of the Program or this Agreement. In particular, such licensing terms will not purport to require Apple (or its agents) to disclose or make available any of the keys, authorization codes, methods, procedures, data or other information related to the Security Solution, digital signing or digital rights management mechanisms utilized as part of the Program. If You discover any such inconsistency or conflict, You agree to immediately notify Apple of it and will cooperate with Apple to resolve such matter. Apple may immediately cease distribution of any affected Licensed Applications and refuse to accept any subsequent Application submissions from You until such matter is resolved to Apple's reasonable satisfaction.

## **6. Application Submission and Selection**

### **6.1 Submission to Apple**

You may submit Your Application for consideration by Apple for distribution via the App Store once You decide that Your Application has been adequately tested and is complete. By submitting Your Application, You represent and warrant that Your Application complies with the Documentation and Program Requirements then in effect. You further agree that You will not attempt to hide or obscure any features, content or functionality in Your submitted Applications from Apple's review or otherwise hinder Apple from being able to fully review such Applications. In addition, You agree to inform Apple in writing through iTunes Connect if Your Application connects to a physical device, including an iPhone Accessory, and, if so, to disclose the means of such connection (whether IAP or any other communication protocol and standard) and identify at least one physical device with which Your Application is designed to communicate. You agree to cooperate with Apple in this submission process and to answer questions and provide information and materials in connection with Your submitted Application, as reasonably requested by Apple, including, without limitation, to provide Apple with access to or with samples of physical devices that connect to Your Application.

If You are submitting functionality that You would like to make available through the use of the In App Purchase API, then the functionality must be submitted to and approved by Apple in the same manner as the Application in accordance with this Section 6. For both functionality and content submissions, You must provide the name, text description, price, unique identifier number, and other information that Apple reasonably requests (collectively, the "Submission Description") to Apple. For content submissions, the actual content will not have to be submitted to Apple, unless requested by Apple. Apple reserves the right to review the actual content that has been described in the Submission Descriptions at any time, including, but not limited to, in the submission process and after approval of the Submission Description by Apple. If You would like to provide additional content through the In App Purchase API that is not described in Your Submission Description, then You must first submit a new or updated Submission Description for review and approval by Apple prior to using the In App Purchase API for the delivery of any such content. Apple reserves the right to withdraw its approval of content previously approved, and You agree to stop making such content available for use within Your Application. For avoidance of doubt, all content and functionality delivered through the In App Purchase API is subject to the Program Requirements for Applications.

If You make any changes to an Application (including to any functionality made available through use of the In App Purchase API) after submission to Apple, You must resubmit the Application to Apple. Similarly all bug fixes, updates, upgrades, modifications, enhancements, supplements to,

revisions, new releases and new versions of Your Application must be submitted to Apple for review in order for them to be considered for distribution via the App Store. Further, if Your Application is accepted for distribution via the App Store, You agree that Apple may use Your Application for the limited purpose of compatibility testing of Your Application with the Apple OS, for finding and fixing bugs in the Apple OS and for purposes of providing other information to You (e.g. crash logs).

## **6.2 Selection by Apple for Distribution**

You understand and agree that Apple may, in its sole discretion:

- (a) determine that Your Application does not meet all or any part of the Documentation or Program Requirements then in effect;
- (b) reject Your Application for distribution for any reason, even if Your Application meets the Documentation and Program Requirements; or
- (c) select and digitally sign Your Application for distribution via the App Store.

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 Your Application development, use of this Apple Software, use of any services, or participation in the Program, including without limitation the fact that Your Application may not be selected for distribution via the App Store. You will be solely responsible for developing Applications that are safe, free of defects in design and operation, and comply with applicable laws and regulations. You will also be solely responsible for any documentation and end user customer support and warranty of Your Applications. The fact that Apple may have reviewed, tested, approved or selected an Application will not relieve You of any of these responsibilities.

## **7. Distribution**

Applications developed under this Agreement may be distributed in two ways: (1) through the App Store, if selected by Apple, and (2) distribution for use on a limited number of Registered Devices.

### **7.1 Delivery of Freely Available Licensed Applications via the App Store**

If Your Application qualifies as a Licensed Application, it is eligible for delivery to end users via the App Store by Apple and/or an Apple Subsidiary. If You would like Apple and/or an Apple Subsidiary to deliver Your Licensed Application to end users for free (no charge), then You appoint Apple and Apple Subsidiaries as Your legal agent pursuant to the terms of Schedule 1, for Licensed Applications designated by You as free of charge applications.

If Your Application qualifies as a Licensed Application and You intend to charge end users a fee of any kind for Your Licensed Application, You must enter into a separate agreement (Schedule 2) with, and provided by, Apple and/or an Apple Subsidiary before any such commercial distribution of Your Licensed Application may take place via the App Store. To the extent that You enter (or have previously entered) into Schedule 2 with Apple and/or an Apple Subsidiary, the terms of Schedule 2 will be deemed incorporated into this Agreement by this reference.

### **7.2 Distribution on Registered Devices (Ad Hoc Distribution)**

Subject to the terms and conditions of this Agreement, You may also distribute Your Applications to individuals within Your company, organization, educational institution, group, or who are otherwise affiliated with You for use solely on a limited number of Registered Devices (as specified on the Program web portal), if Your Application has been digitally signed using Your Apple-issued digital certificate as described in this Agreement. By distributing Your Application in this manner, You represent and warrant to Apple that Your Application complies with the Documentation and Program Requirements then in effect and You agree to cooperate with Apple and to answer questions and provide information about Your Application, as reasonably requested by Apple.

You also agree to be solely responsible for determining which individuals within Your company, organization, educational institution or affiliated group should have access to and use of Your Applications and Registered Devices, and for managing such Registered Devices. 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 distributing Your Applications in this manner, or for Your failure to adequately manage, limit or otherwise control the access to and use of Your Applications and Registered Devices.

You will be responsible for attaching or otherwise including, at Your discretion, any relevant usage terms with Your Applications. Apple will not be responsible for any violations of Your usage terms. You will be solely responsible for all user assistance, warranty and support of Your Applications.

### **7.3 No Other Distribution Authorized Under this Agreement**

Except for the distribution of freely available Licensed Applications and the distribution of Applications for use on Registered Devices as set forth in Sections 7.1 and 7.2 above, no other distribution of programs or applications developed using the Apple Software is authorized or permitted hereunder. In the absence of a separate agreement with Apple, You agree not to distribute Your Application to third parties via other distribution methods or to enable or permit others to do so.

## **8. Revocation**

You understand and agree that Apple may cease distribution of Your Licensed Application(s) and/or Licensed Application Information or revoke the digital certificate of any of Your Applications at any time. By way of example only, Apple might choose to do this if at any time:

- (a) Any of Your Provisioning Profiles, digital certificates or corresponding private keys has been compromised or Apple has reason to believe that either has been compromised;
- (b) Apple has been notified or otherwise has reason to believe that Your Application violates, misappropriates, or infringes the rights of a third party or of Apple;
- (c) Apple has reason to believe that Your Application contains malicious or harmful code, malware, programs or other internal components (e.g. software virus);
- (d) Apple has reason to believe that Your Application damages, corrupts, degrades, destroys or otherwise adversely affects the devices it operates on, or any other software, firmware, hardware, data, systems, or networks accessed or used by the Application;
- (e) You breach any term or condition of this Agreement or the Registered iPhone Developer terms and conditions;
- (f) Any information or documents provided by You to Apple for the purpose of verifying Your identity or obtaining Provisioning Profiles or Apple-issued digital certificates is false or inaccurate;
- (g) Any representation, warranty or certification provided by You to Apple in this Agreement is untrue or inaccurate;
- (h) Apple is required by law, regulation or other governmental or court order to take such action;
- (i) You request that Apple take such action in accordance with Schedule 1;
- (j) You misuse or overburden any services provided hereunder;
- (k) You fail to renew this Agreement and pay the applicable renewal fee; or
- (l) Apple has reason to believe that such action is prudent or necessary.

## **9. Program Fees**

As consideration for the rights and licenses granted to You under this Agreement and Your participation in the Program, You agree to pay Apple the requisite annual program fees as set forth on the Program website. The fees are non-refundable. Any taxes that may be levied on the Apple Software or Your use of it shall be Your responsibility. Your program fees must be paid up and not in arrears at the time You submit (or resubmit) Applications to Apple under this Agreement, and Your continued use of the Program web portal is subject to Your payment of such fees.

## **10. Confidentiality**

### **10.1 Information Deemed Apple Confidential**

You agree that all pre-release versions of the Apple Software (including pre-release Documentation) and services, any terms and conditions contained herein that disclose pre-release features of the Apple Software or services, and the terms and conditions of Schedule 2 (available separately to cover distribution of paid-for Licensed Applications via the App Store) will be deemed "Apple Confidential Information"; provided however that upon the commercial release of the Apple Software the terms and conditions that disclose pre-release features of the Apple Software or services will no longer be confidential. Notwithstanding the foregoing, Apple Confidential Information will not include: (i) information that is generally and legitimately available to the public through no fault or breach of Yours, (ii) information that is generally made available to the public by Apple, (iii) information that is independently developed by You without the use of any Apple Confidential Information, (iv) information that was rightfully obtained from a third party who had the right to transfer or disclose it to You without limitation, or (v) any FOSS included in the Apple Software and accompanied by licensing terms that do not impose confidentiality obligations on the use or disclosure of such FOSS.

### **10.2 Obligations Regarding Apple Confidential Information**

You agree to protect Apple Confidential Information using at least the same degree of care that You use to protect Your own confidential information of similar importance, but no less than a reasonable degree of care. You agree to use Apple Confidential Information solely for the purpose of exercising Your rights and performing Your obligations under this Agreement and agree not to use Apple Confidential Information for any other purpose, 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: (i) those of Your employees and contractors, or those of Your faculty and staff if You are an educational institution, 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; or (ii) except as otherwise agreed or permitted in writing by Apple. You may disclose Apple Confidential Information to the extent required by law, provided that You take reasonable steps to notify Apple of such requirement before disclosing the Apple Confidential Information and to obtain protective treatment of the Apple Confidential Information. You acknowledge that damages for improper disclosure of Apple Confidential Information may be irreparable; therefore, Apple is entitled to seek equitable relief, including injunction and preliminary injunction, in addition to all other remedies.

### **10.3 Information Submitted to Apple Not Deemed Confidential**

Apple works with many application and software developers and some of their products may be similar to or compete with Your Applications. Apple may also be developing its own similar or competing applications and products or may decide to do so in the future. To avoid potential misunderstandings, Apple cannot agree, and expressly disclaims, any confidentiality obligations or use restrictions, express or implied, with respect to any information that You may provide in connection with this Agreement or the Program, including information about Your Application, Licensed Application Information and metadata (such disclosures will be referred to as "Licensee Disclosures"). You agree that any such Licensee Disclosures will be **non-confidential**. Apple will be free to use and disclose any Licensee Disclosures on an unrestricted basis without notifying or compensating You. You release Apple from all liability and obligations that may arise from the receipt, review, use, or disclosure of any portion of any Licensee Disclosures. Any physical materials You submit to Apple will become Apple property and Apple will have no obligation to return those materials to You or to certify their destruction.



#### **10.4 Press Releases and Other Publicity**

You may not issue any press releases or make any other public statements regarding this Agreement, its terms and conditions, or the relationship of the parties without Apple's express prior written approval, which may be withheld at Apple's discretion.

#### **11. Indemnification**

To the extent permitted by law, You agree to indemnify, defend and hold harmless Apple, its directors, officers, employees, independent contractors and agents (each an "Apple Indemnified Party") from any and all claims, losses, liabilities, damages, expenses and costs (including without limitation attorneys fees and court costs) (collectively "Losses") incurred by an Apple Indemnified Party as a result of: Your breach of this Agreement; a breach of any certification, covenant, representation or warranty made by You in this Agreement; any claims that Your Applications or the distribution, sale, offer for sale, use or importation of Your Applications (whether alone or as an essential part of a combination), Licensed Application Information or metadata violate or infringe any third party intellectual property or proprietary rights; any claims arising out of Apple's permitted use, promotion or distribution of Your Licensed Application(s), Licensed Application Information, related trademarks and logos, or images and other materials that You provide to Apple at Apple's request; and/or otherwise related to or arising from Your use of the Apple Software or services, Your Application(s), Licensed Application Information, metadata, Registered Devices, or Your development and distribution of Applications.

You acknowledge that neither the Apple Software nor any services are intended for use in the development of Applications in which errors or inaccuracies in the content, data or information provided by the Application or the failure of the Application, could lead to death, personal injury, or severe physical or environmental damage, and, to the extent permitted by law, You hereby agree to indemnify, defend and hold harmless each Apple Indemnified Party from any Losses incurred by such Apple Indemnified Party by reason of any such use.

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

#### **12. Term and Termination**

##### **12.1 Term**

The Term of this Agreement shall extend until the one (1) year anniversary of the original activation date of Your Program account ("Effective Date"). Thereafter, subject to Your payment of annual renewal fees and compliance with the terms of this Agreement, the Term will automatically renew for successive one (1) year terms, unless sooner terminated in accordance with this Agreement.

##### **12.2 Termination**

This Agreement and all rights and licenses granted by Apple hereunder and any services provided hereunder will terminate, effective immediately upon notice from Apple:

- (a) if You or any of Your Authorized Developers fail to comply with any term of this Agreement other than those contained in Section 10 (Confidentiality) and fail to cure such breach within 30 days after becoming aware of or receiving notice of such breach;
- (b) if You or any of Your Authorized Developers fail to comply with the terms of Section 10;
- (c) in the event of the circumstances described in the subsection entitled "Severability" below;
- (d) if You, at any time during the Term, commence an action for patent infringement against Apple;
- (e) if You become insolvent, fail to pay Your debts when due, dissolve or cease to do business, file for bankruptcy, or have filed against You a petition in bankruptcy; or
- (f) if You engage, or encourage others to engage, in any fraudulent, improper, unlawful or dishonest act relating to this Agreement, including, but not limited to, embezzlement, alteration or falsification of documents, theft, inappropriate use of computer systems, bribery, or other misrepresentation of facts.

Apple may also terminate this Agreement, or suspend Your rights to use the Apple Software or services, if You fail to accept any new Program Requirements or Agreement terms as described in Section 4.

Either party may terminate this Agreement for its convenience, for any reason or no reason, effective 30 days after providing the other party with written notice of its intent to terminate.

### **12.3 Effect of Termination**

Upon the termination of this Agreement for any reason, You agree to immediately cease all use of the Apple Software and services and erase and destroy all copies, full or partial, of the Apple Software and any information pertaining to the services (including Your Push Application ID) and all copies of Apple Confidential Information in Your and Your Authorized Developers' possession or control. At Apple's request, You agree to provide written certification of such destruction to Apple. Upon the expiration of the Delivery Period defined and set forth in Schedule 1, all Licensed Applications and Licensed Application Information in Apple's possession or control shall be deleted or destroyed within a reasonable time thereafter, excluding any archival copies maintained in accordance with Apple's standard business practices or required to be maintained by applicable law, rule or regulation. The provisions of Sections 1, 2.5, 2.6, 3.1(d), 3.1(e), 3.1(f), 3.2(d), 3.2(e), 3.2(f), 3.3, 5 (second and third paragraphs), 6.1, 6.2, 7.1 (Schedule 1 for the Delivery Period), 7.3, 8, and 10 through 15 inclusive, and the second sentence of Paragraph 2.3, Paragraph 2.5, the last sentence of Paragraph 4.1, the second sentence of Paragraph 4.3, and Paragraph 7 of Attachment 1 will survive any termination of this Agreement. Apple will not be liable for compensation, indemnity, or damages of any sort as a result of terminating this Agreement in accordance with its terms, and termination of this Agreement will be without prejudice to any other right or remedy Apple may have, now or in the future.

### **13. NO WARRANTY**

The Apple Software may contain inaccuracies or errors that could cause failures or loss of data and it may be incomplete. Apple or its licensors may provide or make available through the Apple Software or as part of the Program, certain web-based applications, certificate-issuance services, App Store services or other services for Your use (collectively the "Services" for purposes of this Section 13 and 14). Apple and its licensors reserve the right to change, suspend, remove, or disable access to any Services at any time without notice. In no event will Apple or its licensors be liable for the removal of or disabling of access to any such Services. Apple or its licensors may also impose limits on the use of or access to certain Services, in any case and without notice or liability. YOU EXPRESSLY ACKNOWLEDGE AND AGREE THAT USE OF THE APPLE SOFTWARE, SECURITY SOLUTION, SERVICE-RELATED SOFTWARE AND ANY SERVICES IS AT YOUR SOLE RISK AND THAT THE ENTIRE RISK AS TO SATISFACTORY QUALITY, PERFORMANCE, ACCURACY AND EFFORT IS WITH YOU. THE APPLE SOFTWARE, SECURITY SOLUTION, SERVICE-RELATED SOFTWARE AND ANY SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE", WITH ALL FAULTS AND WITHOUT WARRANTY OF ANY KIND, AND APPLE, APPLE'S AGENTS AND APPLE'S LICENSORS (COLLECTIVELY REFERRED TO AS "APPLE" FOR THE PURPOSES OF SECTIONS 13 AND 14) HEREBY DISCLAIM ALL WARRANTIES AND CONDITIONS WITH RESPECT TO THE APPLE SOFTWARE, SECURITY SOLUTION, SERVICE-RELATED SOFTWARE AND SERVICES, EITHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, TIMELINESS, AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS. APPLE DOES NOT WARRANT AGAINST INTERFERENCE WITH YOUR ENJOYMENT OF THE APPLE SOFTWARE, SERVICE-RELATED SOFTWARE OR SERVICES, THAT THE APPLE SOFTWARE, SECURITY SOLUTION, SERVICE-RELATED SOFTWARE OR SERVICES WILL MEET YOUR REQUIREMENTS, THAT THE OPERATION OF THE APPLE SOFTWARE, SECURITY SOLUTION, SERVICE-RELATED SOFTWARE OR THE PROVISION OF SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE OR ERROR-FREE, THAT DEFECTS OR ERRORS IN THE APPLE SOFTWARE, SECURITY SOLUTION, SERVICE-RELATED SOFTWARE OR

SERVICES WILL BE CORRECTED, OR THAT THE APPLE SOFTWARE, SECURITY SOLUTION, SERVICE-RELATED SOFTWARE OR SERVICES WILL BE COMPATIBLE WITH FUTURE APPLE PRODUCTS, SERVICES OR SOFTWARE, OR THAT ANY INFORMATION STORED OR TRANSMITTED THROUGH ANY APPLE SOFTWARE, SERVICE-RELATED SOFTWARE OR SERVICES WILL NOT BE LOST, CORRUPTED OR DAMAGED. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY APPLE OR AN APPLE AUTHORIZED REPRESENTATIVE WILL CREATE A WARRANTY NOT EXPRESSLY STATED IN THIS AGREEMENT. SHOULD THE APPLE SOFTWARE, SECURITY SOLUTION, SERVICE-RELATED SOFTWARE OR SERVICES PROVE DEFECTIVE, YOU ASSUME THE ENTIRE COST OF ALL NECESSARY SERVICING, REPAIR OR CORRECTION. Location data provided by any Services is for basic navigational purposes only and is not intended to be relied upon in situations where precise location information is needed or where erroneous, inaccurate or incomplete location data may lead to death, personal injury, property or environmental damage. Neither Apple nor any of its licensors guarantees the availability, accuracy, completeness, reliability, or timeliness of location data or any other data or information displayed by any Services.

#### **14. LIMITATION OF LIABILITY**

TO THE EXTENT NOT PROHIBITED BY LAW, IN NO EVENT WILL APPLE BE LIABLE FOR PERSONAL INJURY, OR ANY INCIDENTAL, SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES WHATSOEVER, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS, LOSS OF DATA, BUSINESS INTERRUPTION OR ANY OTHER COMMERCIAL DAMAGES OR LOSSES, ARISING OUT OF OR RELATED TO THIS AGREEMENT, YOUR USE OR INABILITY TO USE THE APPLE SOFTWARE, SECURITY SOLUTION OR SERVICES, OR YOUR DEVELOPMENT EFFORTS OR PARTICIPATION IN THE PROGRAM, HOWEVER CAUSED, WHETHER UNDER A THEORY OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), PRODUCTS LIABILITY, OR OTHERWISE, EVEN IF APPLE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY. IN NO EVENT SHALL APPLE'S TOTAL LIABILITY TO YOU UNDER THIS AGREEMENT FOR ALL DAMAGES (OTHER THAN AS MAY BE REQUIRED BY APPLICABLE LAW IN CASES INVOLVING PERSONAL INJURY) EXCEED THE AMOUNT OF FIFTY DOLLARS (\$50.00).

#### **15. General Legal Terms**

**15.1 Third Party Notices.** Portions of the Apple Software or services may utilize or include third party software and other copyrighted material. Acknowledgements, licensing terms and disclaimers for such material are contained in the electronic documentation for the Apple Software and services, and Your use of such material is governed by their respective terms.

**15.2 Consent to Collection and Use of Non-Personal Data.** You agree that Apple and its subsidiaries may collect and use technical and related information, including but not limited to information about Your Applications, computer, system software, other software and peripherals, that is gathered periodically to facilitate the provision of software updates and other services to You (if any) related to the Apple Software, and to verify compliance with the terms of this Agreement. Apple may use this information, as long as it is in a form that does not personally identify You, to improve the Apple Software, our products or to provide services or technologies to You and our customers.

**15.3 Assignment.** This Agreement may not be assigned, nor may any of Your obligations under this Agreement be delegated, in whole or in part, by You by operation of law, merger, or any other means without Apple's express prior written consent and any attempted assignment without such consent will be null and void.

**15.4 Relationship of Parties.** Except for the agency appointment as specifically set forth in Schedule 1 (if applicable), this Agreement will not be construed as creating any other agency

relationship, or a partnership, joint venture, fiduciary duty, or any other form of legal association between You and Apple, and You will not represent to the contrary, whether expressly, by implication, appearance or otherwise. This Agreement is not for the benefit of any third parties.

**15.5 Independent Development.** Nothing in this Agreement will impair Apple's right to develop, acquire, license, market, promote, or distribute products or technologies that perform the same or similar functions as, or otherwise compete with, Applications, Licensed Applications or any other products or technologies that You may develop, produce, market, or distribute.

**15.6 Notices.** Any notices relating to this Agreement shall be in writing. Notices will be deemed given by Apple when sent to You at the email address or mailing address You provided during the sign-up process. All notices to Apple relating to this Agreement will be deemed given (a) when delivered personally, (b) three business days after having been sent by commercial overnight carrier with written proof of delivery, and (c) five business days after having been sent by first class or certified mail, postage prepaid, to this Apple address: iPhone Developer Program Licensing, Apple Inc., 12545 Riata Vista Circle, MS 198-3SW, Austin, TX 78727, U.S.A. You consent to receive notices by email and agree that any such notices that Apple sends You electronically will satisfy any legal communication requirements. A party may change its email or mailing address by giving the other written notice as described above.

**15.7 Severability.** If a court of competent jurisdiction finds any clause of this Agreement to be unenforceable for any reason, that clause of this Agreement shall be enforced to the maximum extent permissible so as to effect the intent of the parties, and the remainder of this Agreement shall continue in full force and effect. However, if applicable law prohibits or restricts You from fully and specifically complying with, or appointing Apple and Apple Subsidiaries as Your agent under, Schedule 1 or the Sections of this Agreement entitled "Internal Use License and Restrictions", "Your Obligations" or "Digital Signing of Applications; Restrictions on Certificates", or prevents the enforceability of any of those Sections or Schedule 1, this Agreement will immediately terminate and You must immediately discontinue any use of the Apple Software as described in the Section entitled "Term and Termination."

**15.8 Waiver and Construction.** Failure by Apple to enforce any provision of this Agreement shall not be deemed a waiver of future enforcement of that or any other provision. Any laws or regulations that provide that the language of a contract will be construed against the drafter will not apply to this Agreement. Section headings are for convenience only and are not to be considered in construing or interpreting this Agreement.

**15.9 Export Control.** You may not use, export, re-export, import, sell or transfer the Apple Software except as authorized by United States law, the laws of the jurisdiction in which You obtained the Apple Software, and any other applicable laws and regulations. In particular, but without limitation, the Apple Software may not be exported or re-exported (a) into any U.S. embargoed countries or (b) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Department of Commerce Denied Person's List or Entity List. By using the Apple Software, You represent and warrant that You are not located in any such country or on any such list. You also agree that You will not use the Apple Software for any purposes prohibited by United States law, including, without limitation, the development, design, manufacture or production of nuclear, missiles, or chemical or biological weapons. You certify that pre-release versions of the Apple Software will only be used for development and testing purposes, and will not be rented, sold, leased, sublicensed, assigned, or otherwise transferred. Further, You certify that You will not transfer or export any product, process or service that is a direct product of such pre-release Apple Software.

**15.10 Government End Users.** The Apple Software and Documentation are "Commercial Items", as that term is defined at 48 C.F.R. §2.101, consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation", as such terms are used in 48 C.F.R. §12.212 or 48 C.F.R. §227.7202, as applicable. Consistent with 48 C.F.R. §12.212 or 48

C.F.R. §227.7202-1 through 227.7202-4, as applicable, the Commercial Computer Software and Commercial Computer Software Documentation are being licensed to U.S. Government end users (a) only as Commercial Items and (b) with only those rights as are granted to all other end users pursuant to the terms and conditions herein. Unpublished-rights reserved under the copyright laws of the United States.

**15.11 Dispute Resolution; Governing Law.** Any litigation or other dispute resolution between You and Apple arising out of or relating to this Agreement, the Apple Software, or Your relationship with Apple will take place in the Northern District of California, and You and Apple hereby consent to the personal jurisdiction of and exclusive venue in the state and federal courts within that District with respect to any such litigation or dispute resolution. This Agreement will be governed by and construed in accordance with the laws of the United States and the State of California, except that body of California law concerning conflicts of law. Notwithstanding the foregoing sentence, if You (as an entity entering into this Agreement) are a U.S. public and accredited educational institution, then this Agreement will be governed and construed in accordance with the laws of the state (within the U.S.) in which Your educational institution is domiciled, except that body of state law concerning conflicts of law. This Agreement shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded.

**15.12 Entire Agreement; Governing Language.** This Agreement constitutes the entire agreement between the parties with respect to the use of the Apple Software licensed hereunder and supersedes all prior understandings and agreements regarding its subject matter, including the iPhone SDK Agreement (clickwrap) accompanying the SDK. This Agreement may be modified only: (a) by a written amendment signed by both parties, or (b) to the extent expressly permitted by this Agreement (for example, by Apple by written or email notice to You). Any translation of this Agreement is done for local requirements and in the event of a dispute between the English and any non-English version, the English version of this Agreement shall govern.

If You are located in the province of Quebec, Canada, the following clause applies: The parties hereby confirm that they have requested that this Agreement and all related documents be drafted in English. Les parties ont exigé que le présent contrat et tous les documents connexes soient rédigés en anglais.

**Attachment 1**  
**(to the Agreement)**  
**Additional Terms for Apple Push Notification service**

The following terms are in addition to the terms of the Agreement and apply to any use of the APN (Apple Push Notification service) in Your Application:

**1. Use of the APN**

1.1 Your Application may only access the APN via the APN API and only if You have been assigned a Push Application ID by Apple. You agree not to share your Push Application ID with any third party. You understand that Your Application will not be permitted to access or use the APN after expiration or termination of Your Agreement.

1.2 You are only permitted to use the APN and the APN APIs for the purpose of sending Push Notifications to Your Application on an iPhone or iPod touch device as expressly permitted by the Agreement (including but not limited to this Attachment 1) and the APN Documentation, and You must only do so in accordance with all applicable laws and regulations (including all intellectual property laws). You further agree that You must disclose to Apple any use of the APN as part of the submission process for Your Application.

1.3 You understand that before You send an end user any Push Notifications through the APN, the end user must provide consent to receive such Push Notifications. You agree not to disable, override or otherwise interfere with any Apple-implemented consent panels or any Apple system preferences for enabling or disabling Notifications functionality. If the end user's consent to receive Push Notifications is denied or later withdrawn, You may not send the end user Push Notifications.

**2. Additional Requirements**

2.1 You may not use the APN for the purpose of sending unsolicited messages to end users or for the purpose of phishing or spamming, including, but not limited to, engaging in any types of activities that violate anti-spamming laws and regulations, or that are otherwise improper, inappropriate or illegal.

2.2 You may not use the APN for the purposes of advertising, product promotion, or direct marketing of any kind (e.g. up-selling, cross-selling, etc.), including, but not limited to, sending any messages to promote the use of Your Application or advertise the availability of new features or versions.

2.3 You may not excessively use the overall network capacity or bandwidth of the APN, or unduly burden an iPhone or iPod touch device with excessive Push Notifications, as may be determined by Apple in its reasonable discretion. In addition, You agree not to harm or interfere with Apple's networks or servers, or any third party servers or networks connected to the APN, or otherwise disrupt other developers' use of the APN.

2.4 You may not use the APN to send material that contains any obscene, pornographic, offensive or defamatory content or materials of any kind (text, graphics, images, photographs, sounds, etc.), or other content or materials that in Apple's reasonable judgment may be found objectionable by the end user of Your Application.

2.5 You may not transmit, store or otherwise make available any material that contains viruses or any other computer code, files or programs that may harm, disrupt or limit the normal operation of the APN or an iPhone or iPod touch device, and You agree not to disable, spoof, hack or otherwise interfere with any security, digital signing, verification or authentication mechanisms that are incorporated in or used by the APN, or enable others to do so.

**3. Delivery by the APN**

You understand and agree that in order to provide the APN and make Your Push Notifications available on iPhone or iPod touch devices, Apple may transmit Your Push Notifications across

various public networks, in various media, and modify or change Your Push Notifications to comply with the technical and other requirements for connecting to networks or devices. You acknowledge and agree that the APN is not, and is not intended to be, a guaranteed or secure delivery service, and You shall not use or rely upon it as such. Further, as a condition to using the APN, You agree not to transmit sensitive personal or confidential information belonging to an individual (e.g. a social security number, financial account or transactional information, or any information where the individual may have a reasonable expectation of secure transmission) as part of any Push Notification, and You agree to comply with any applicable notice or consent requirements with respect to any collection, transmission, maintenance, processing or use of an end user's personal information.

#### **4. Your Acknowledgements**

You acknowledge and agree that:

4.1 Apple may at any time, and from time to time, with or without prior notice to You (a) modify the APN, including changing or removing any feature or functionality, or (b) modify, deprecate, reissue or republish the APN APIs. You understand that any such modifications may require You to change or update Your Applications at Your own cost. Apple has no express or implied obligation to provide, or continue to provide, the APN and may suspend or discontinue all or any portion of the APN at any time. Apple shall not be liable for any losses, damages or costs of any kind incurred by You or any other party arising out of or related to any such service suspension or discontinuation or any such modification of the APN or APN APIs.

4.2 The APN is not available in all languages or in all countries and Apple makes no representation that the APN is appropriate or available for use in any particular location. To the extent You choose to access and use the APN, You do so at Your own initiative and are responsible for compliance with any applicable laws, including but not limited to any local laws.

4.3 Apple provides the APN to You for Your use with Your Application, and does not provide the APN directly to any end user. You acknowledge and agree that any Push Notifications are sent by You, not Apple, to the end user of Your Application, and You are solely liable and responsible for any data or content transmitted therein and for any use of the APN in Your Application.

4.4 Apple makes no guarantees to You in relation to the availability or uptime of the APN and is not obligated to provide any maintenance, technical or other support for the APN.

4.5 Apple may monitor and collect information (including but not limited to technical and diagnostic information) about Your usage of the APN to aid Apple in improving the APN and other Apple products or services and to verify Your compliance with this Agreement; provided however that Apple will not access or disclose the content of any Push Notification unless Apple has a good faith belief that such access or disclosure is reasonably necessary to: (a) comply with legal process or request; (b) enforce the terms of this Agreement, including investigation of any potential violation hereof; (c) detect, prevent or otherwise address security, fraud or technical issues; or (d) protect the rights, property or safety of Apple, its developers, customers or the public as required or permitted by law.

#### **5. Third Party Service Providers**

You are permitted to employ or retain a third party ("Service Provider") to assist You in accessing and using the APN in Your Applications including, but not limited to, engaging any such Service Provider to maintain and administer Your Applications' servers on Your behalf, provided any such Service Provider's access to and use of the APN is only done on Your behalf in providing such services to You for Your Application and in accordance with these terms, and is subject to a binding written agreement between You and the Service Provider with terms at least as restrictive as those set forth herein, including, but not limited to, confidentiality for pre-release versions of the APN. Any actions undertaken by any such Service Provider in relation to Your Push Application and/or arising out of this Agreement shall be deemed to have been taken by You.

**6. Changes to Attachment 1**

Apple may change the terms of this Attachment 1 at any time by providing notice to You. In order to continue using the APN, You must accept and agree to the new terms of this Agreement or, if presented separately to You by Apple, to the new terms for this Attachment 1. You agree that any new terms for Attachment 1 (whether agreed to separately by You or as part of the Program Agreement) will be automatically incorporated into the Program Agreement. If You do not agree to new terms of this Agreement or Attachment 1, Your use of the APN will be suspended or terminated by Apple. You agree that Your acceptance of such new Agreement terms or revised Attachment 1 may be signified electronically, including without limitation, by Your checking a box or clicking on an "agree" or similar button which may be presented to You in a dialog box that is separate from this Agreement.

**7. Additional Liability Disclaimer**

APPLE SHALL NOT BE LIABLE FOR ANY DAMAGES OR LOSSES ARISING FROM ANY INTERRUPTIONS TO THE APN, INCLUDING, BUT NOT LIMITED TO, ANY POWER OUTAGES, SYSTEM FAILURES, NETWORK ATTACKS, SCHEDULED OR UNSCHEDULED MAINTENANCE, OR OTHER INTERRUPTIONS. YOU ACKNOWLEDGE THAT THE SERVICE IS NOT INTENDED OR SUITABLE FOR USE IN SITUATIONS OR ENVIRONMENTS WHERE ERRORS, DELAYS, FAILURES OR INACCURACIES IN THE TRANSMISSION OF DATA OR INFORMATION THROUGH THE SERVICE COULD LEAD TO DAMAGE OF ANY KIND INCLUDING BUT NOT LIMITED TO, DEATH, PERSONAL INJURY, OR FINANCIAL, PHYSICAL, PROPERTY OR ENVIRONMENTAL DAMAGE.



# Schedule 1

## 1. Appointment of Agent

1.1 You hereby appoint Apple and Apple Subsidiaries (collectively "Apple") as Your worldwide agent for the delivery of the Licensed Applications to end-users, during the Delivery Period. You hereby acknowledge that Apple will deliver the Licensed Applications to end users in Apple's own name, through one or more App Stores, but for You and on Your behalf.

1.2 In furtherance of Apple's appointment under Section 1.1 of this Schedule 1, You hereby authorize and instruct Apple to:

(a) solicit and obtain orders on Your behalf for Licensed Applications from end-users located in the countries You designate under Section 2.1 hereof;

(b) provide hosting services to You, in order to allow for the storage of, and end-user access to, the Licensed Applications;

(c) make copies of, format, and otherwise prepare Licensed Applications for acquisition and download by end-users, including adding the Security Solution;

(d) allow end-users to access copies of the Licensed Applications, so that end-users may acquire from You and electronically download those Licensed Applications, Licensed Application Information, and associated metadata to end-users through one or more App Stores;

(e) use (i) screen shots and/or up to 30 second excerpts of the Licensed Applications; (ii) trademarks and logos associated with the Licensed Applications; and (iii) Licensed Application Information, for promotional purposes in marketing materials and gift cards, excluding those portions of the Licensed Applications, trademarks or logos, or Licensed Application Information which You do not have the right to use for promotional purposes, and which You identify in writing at the time that the Licensed Applications are delivered by You to Apple under Section 2.1 of this Schedule 1, and use images and other materials that You may provide to Apple, at Apple's reasonable request, for promotional purposes in marketing materials and gift cards; and

(f) otherwise use Licensed Applications, Licensed Application Information and associated metadata as may be reasonably necessary in the delivery of the Licensed Applications in accordance with this Schedule 1.

1.3 The parties acknowledge and agree that their relationship under this Schedule 1 is, and shall be, that of principal and agent, and that You, as principal, are, and shall be, solely responsible for any and all claims and liabilities involving or relating to, the Licensed Applications, as provided in this Schedule 1. The parties acknowledge and agree that Your appointment of Apple as its agent under this Schedule 1 is non-exclusive.

1.4 For purposes of this Schedule 1, the "Delivery Period" shall mean the period beginning on the Effective Date of the Agreement, and expiring on the last day of the Agreement or any renewal thereof; provided, however, that Apple's appointment as Your agent shall survive expiration of the Agreement for a reasonable phase-out period not to exceed thirty (30) days.

1.5 All of the Licensed Applications delivered by You to Apple under Section 2.1 of this Schedule 1 shall be made available by Apple for download by end-users at no charge. Apple shall have no duty to collect any fees for the Licensed Applications for any end-user and shall

have no payment obligation to You with respect to any of those Licensed Applications under this Schedule 1. In the event that You intend to charge end-users a fee for any Licensed Application, You must enter (or have previously entered) into a separate agreement (Schedule 2) with Apple with respect to that Licensed Application.

## **2. Delivery of the Licensed Applications to Apple**

2.1 You will deliver to Apple, at Your sole expense, using the iTunes Connect site, the Licensed Applications, Licensed Application Information and associated metadata, in a format and manner prescribed by Apple, as required for the delivery of the Licensed Applications to end-users in accordance with this Schedule 1. Metadata You deliver to Apple under this Schedule 1 will include: (i) the title and version number of each of the Licensed Applications; (ii) the countries You designate, in which You wish Apple to allow end-users to download those Licensed Applications; (iii) any copyright or other intellectual property rights notices; and (iv) Your end-user license agreement ("EULA"), if any, in accordance with Section 3.2 of this Schedule 1.

2.2 All Licensed Applications will be delivered by You to Apple using software tools, a secure FTP site address and/or such other delivery methods as prescribed by Apple.

2.3 You hereby certify that all of the Licensed Applications You deliver to Apple under this Schedule 1 are authorized for export from the United States to each of the countries designated by You under Section 2.1 hereof, in accordance with the requirements of the United States Export Administration Regulations, 15 C.F.R. Parts 730-774. Without limiting the generality of this Section 2.3, You certify that (i) none of the Licensed Applications contains, uses or supports any data encryption or cryptographic functions; or (ii) in the event that any Licensed Application contains, uses or supports any such data encryption or cryptographic functionality, You have qualified that Licensed Application for export as a "mass market encryption item" in accordance with section 742.15(b)(2) of the Export Administration Regulations, and You will provide Apple with a PDF copy of the mass market export classification ruling (CCATS) issued by the United States Commerce Department, Bureau of Industry and Security for that Licensed Application. For purposes of determining the proper export classification and export control status of each Licensed Application, You should consult the export compliance decision tree in the iTunes Connect tool. You acknowledge that Apple is relying upon Your certification in this Section 2.3 in allowing end-users to access and download the Licensed Applications under this Schedule 1. Except as provided in this Section 2.3, Apple will be responsible for compliance with the requirements of the Export Administration Regulations in allowing end-users to access and download the Licensed Applications under this Schedule 1.

## **3. Ownership and End-User Licensing**

3.1 The parties acknowledge and agree that Apple shall not acquire any ownership interest in or to any of the Licensed Applications or Licensed Applications Information, and title, risk of loss, responsibility for, and control over the Licensed Applications shall, at all times, remain with You. Apple may not use any of the Licensed Applications or Licensed Application Information for any purpose, or in any manner, except as specifically authorized in this Schedule 1.

3.2 You may deliver to Apple Your own EULA for any Licensed Application at the time that You deliver that Licensed Application to Apple, in accordance with Section 2.1 of this Schedule 1; provided, however, that Your EULA must include and may not be inconsistent with the minimum terms and conditions specified on Exhibit A to this Schedule 1 and must comply with all applicable laws in all countries where You wish Apple to allow end-users to download that Licensed Application. Apple shall allow each end-user to which Apple allows access to any such Licensed Application to review Your EULA (if any) at the time that Apple delivers that Licensed Application to that end-user, and Apple shall notify each end-user that the end-user's use of that Licensed Application is subject to the terms and conditions of Your EULA (if any). In the event that You do not furnish Your own EULA for any Licensed Application to Apple, You acknowledge

and agree that each end-user's use of that Licensed Application shall be subject to Apple's standard EULA (which is part of the App Store Terms of Service).

3.3 You hereby acknowledge that the EULA for each of the Licensed Applications is solely between You and the end-user and conforms to applicable law, and Apple shall not be responsible for, and shall not have any liability whatsoever under, any EULA or any breach by You or any end-user of any of the terms and conditions of any EULA.

#### **4. Content Restrictions and Software Rating**

4.1 You represent and warrant that: (a) You have the right to enter into this Agreement, to reproduce and distribute each of the Licensed Applications, and to authorize Apple to permit end-users to download and use each of the Licensed Applications through one or more App Stores; (b) none of the Licensed Applications, or Apple's or end-users' permitted uses of those Licensed Applications, violate or infringe any patent, copyright, trademark, trade secret or other intellectual property or contractual rights of any other person, firm, corporation or other entity; (c) each of the Licensed Applications is authorized for distribution, sale and use in, export to, and import into each of the countries designated by You under Section 2.1 of this Schedule 1, in accordance with the laws and regulations of those countries and all applicable export/import regulations; (d) none of the Licensed Applications contains any obscene, offensive or other materials that are prohibited or restricted under the laws or regulations of any of the countries You designate under Section 2.1 of this Schedule 1; and (e) all information You provide using the iTunes Connect tool, including any information relating to the Licensed Applications, is accurate and that, if any such information ceases to be accurate, You will promptly update it to be accurate using the iTunes Connect tool.

4.2 You shall use the software rating tool set forth on iTunes Connect to supply information regarding each of the Licensed Applications delivered by You for marketing and fulfillment by Apple through the App Store under this Schedule 1 in order to assign a rating to each such Licensed Application. For purposes of assigning a rating to each of the Licensed Applications, You shall use Your best efforts to provide correct and complete information about the content of that Licensed Application with the software rating tool. You acknowledge and agree that Apple is relying on: (i) Your good faith and diligence in assigning a rating to each Licensed Application; and (ii) Your representations and warranties in Section 4.1 hereof, in making that Licensed Application available for download by end-users in each of the countries You designate hereunder.

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

#### **5. Responsibility, Liability and Indemnity**

5.1 Apple shall have no responsibility for the installation and/or use of any of the Licensed Applications by any end-user. You shall be solely responsible for any and all product warranties, end-user assistance and product support with respect to each of the Licensed Applications.

5.2 You shall be solely responsible for, and Apple shall have no responsibility or liability whatsoever with respect to, any and all claims, suits, liabilities, losses, damages, costs and expenses arising from, or attributable to, the Licensed Applications and/or the use of those Licensed Applications by any end-user, including, but not limited to: (i) claims of breach of warranty, whether specified in the EULA or established under applicable law; (ii) product liability claims; and (iii) claims that any of the Licensed Applications and/or the end-user's possession or use of those Licensed Applications infringes the copyright or other intellectual property rights of

any third party.

5.3 To the extent permitted by law, You shall indemnify and hold Apple harmless against any and all claims, suits, liabilities, losses, damages, taxes, costs and expenses arising from, or related or attributable to: (i) the Licensed Applications or their delivery; (ii) Your failure to fulfill or perform any of Your obligations under the EULA for those Licensed Applications; (iii) Your failure to fulfill or perform any of Your obligations under this Schedule 1, including, but not limited to, Your obligations under Section 5.2 hereof; or (iv) any breach of Your representations and warranties, as set forth in Section 4.1 hereof, or any breach of Your obligations under Section 4.2 hereof.

## **6. Termination**

6.1 This Schedule 1, and all of Apple's obligations hereunder, shall terminate upon the expiration or termination of the Agreement.

6.2 In the event that You no longer have the legal right to distribute the Licensed Applications, or to authorize Apple to allow access to those Licensed Applications by end-users, in accordance with this Schedule 1, You shall promptly withdraw those Licensed Applications from the App Store using the tools provided on the iTunes Connect site; provided, however, that such withdrawal by You under this Section 6.2 shall not relieve You of any of Your obligations to Apple under this Schedule 1, or any liability to Apple and/or any end-user with respect to those Licensed Applications.

6.3 Apple reserves the right to cease allowing download by end-users of the Licensed Applications at any time, with or without cause, by providing notice of termination to You. Without limiting the generality of this Section 6.3, You acknowledge that Apple may cease allowing download by end-users of some or all of the Licensed Applications if Apple reasonably believes that: (i) those Licensed Applications are not authorized for export to one or more of the countries designated by You under Section 2.1 hereof, in accordance with the Export Administration Regulations; (ii) those Licensed Applications and/or any end-user's possession and/or use of those Licensed Applications, infringe patent, copyright, trademark, trade secret or other intellectual property rights of any third party; or (iii) the distribution and/or use of those Licensed Applications violates any applicable law in any country You designate under Section 2.1 of this Schedule 1. An election by Apple to cease allowing download of any Licensed Applications, pursuant to this Section 6.3, shall not relieve You of Your obligations under this Schedule 1.

6.4 You may withdraw any or all of the Licensed Applications from the App Store, at any time, and for any reason, by using the tools provided on the iTunes Connect site.

## **7. Legal Consequences**

The relationship between You and Apple established by this Schedule 1 may have important legal consequences for You. You acknowledge and agree that it is Your responsibility to consult with Your legal advisors with respect to Your legal obligations hereunder.

**EXHIBIT A**  
**(to Schedule 1)**

**Instructions for Minimum Terms of Developer's  
End-User License Agreement**

- 1. Acknowledgement:** You and the end-user must acknowledge that the EULA is concluded between You and the end-user only, and not with Apple, and You, not Apple, are solely responsible for the Licensed Application and the content thereof. The EULA may not provide for usage rules for Licensed Applications that are less restrictive than the Usage Rules set forth for Licensed Applications in, or otherwise be in conflict with, the App Store Terms of Service as of the Effective Date (which You acknowledge You have had the opportunity to review).
- 2. Scope of License:** The license granted to the end-user for the Licensed Application must be limited to a non-transferable license to use the Licensed Application on any iPhone or iPod touch that the end-user owns or controls and as permitted by the Usage Rules set forth in the App Store Terms of Service.
- 3. Maintenance and Support:** You must be solely responsible for providing any maintenance and support services with respect to the Licensed Application, as specified in the EULA, or as required under applicable law. You and the end-user must acknowledge that Apple has no obligation whatsoever to furnish any maintenance and support services with respect to the Licensed Application.
- 4. Warranty:** You must be solely responsible for any product warranties, whether express or implied by law, to the extent not effectively disclaimed. The EULA must provide that, in the event of any failure of the Licensed Application to conform to any applicable warranty, the end-user may notify Apple, and Apple will refund the purchase price for the Licensed Application to that end-user; and that, to the maximum extent permitted by applicable law, Apple will have no other warranty obligation whatsoever with respect to the Licensed Application, and any other claims, losses, liabilities, damages, costs or expenses attributable to any failure to conform to any warranty will be Your sole responsibility.
- 5. Product Claims:** You and the end-user must acknowledge that You, not Apple, are responsible for addressing any claims of the end-user or any third party relating to the Licensed Application or the end-user's possession and/or use of that Licensed Application, including, but not limited to: (i) product liability claims; (ii) any claim that the Licensed Application fails to conform to any applicable legal or regulatory requirement; and (iii) claims arising under consumer protection or similar legislation. The EULA may not limit Your liability to the end-user beyond what is permitted by applicable law.
- 6. Intellectual Property Rights:** You and the end-user must acknowledge that, in the event of any third party claim that the Licensed Application or the end-user's possession and use of that Licensed Application infringes that third party's Intellectual property rights, You, not Apple, will be solely responsible for the investigation, defense, settlement and discharge of any such intellectual property infringement claim.
- 7. Legal Compliance:** The end-user must represent and warrant that (i) he/she is not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a "terrorist supporting" country; and (ii) he/she is not listed on any U.S. Government list of prohibited or restricted parties.
- 8. Developer Name and Address:** You must state in the EULA Your name and address, and the contact information (telephone number; E-mail address) to which any end-user questions, complaints or claims with respect to the Licensed Application should be directed.

**9. Third Party Beneficiary:** You and the end-user must acknowledge and agree that Apple, and Apple's subsidiaries, are third party beneficiaries of the EULA, and that, upon the end-user's acceptance of the terms and conditions of the EULA, Apple will have the right (and will be deemed to have accepted the right) to enforce the EULA against the end-user as a third party beneficiary thereof.

Rev. 3-17-09  
EA0527

# Exhibit 5



"The most popular application in the entire App Store today is the free maze game Labyrinth, created by Illusion Labs." TIME 08/08/06

"LABYRINTH 2 WINS THE IMGA GRAND PRIX AWARD" POCKET GAMER



"TOUCHGRIND WAS BROUGHT OUT FOR THE WINTER HOLIDAY SEASON AND SOLD 25,000 COPIES ON CHRISTMAS DAY." THE INQUIRER

"The completely unique control method of using your fingers as legs on a skateboard immediately makes sense and is totally addicting." GIZMODO

"LABYRINTH 2 A WONDERFUL GAME" STEVE D'IS

"IPINT ISN'T JUST HALF FULL, IT'S OVERFLOWING WITH BRILLIANCE." THE INDEPENDENT

FIND THE ES FOR ER



"INNOVATOR IN MULTITOUCH GAMES, ILLUSION LABS." THE WALL STREET JOURNAL

"This skateboarding game was designed from the ground up for the multi-touch iPhone platform, and it shows." GIZMODO





THE GAME HAD A CONSTANT  
CROWD AROUND IT YELLING  
AND CHEERING FOR GOALS.  
TOUCHING THE BALL

## INNEHÅLLSFÖRTECKNING

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## Förvaltningsberättelse

Styrelsen för Illusion Labs AB, 556748-0214 får härmed avge årsredovisning för 2009-07-01 - 2010-06-30.

### Allmänt om verksamheten

#### Verksamhetsbeskrivning

Illusion Labs skapar innovativa spel till mobila plattformar genom att utnyttja potentialen i varje telefonmodell maximalt. Fokus ligger på iPhone men företaget har även gjort ett av de mest populära spelen till Google Android.  
Bolaget är sedan januari 2010 ett helägt dotterbolag till Illusion Labs Holding AB. Illusion Labs AB äger det helägda engelska dotterbolaget Illusion Labs Ltd.

#### Väsentliga händelser under räkenskapsåret

Företaget har skapat sig en ledande roll som spelutvecklare på både iPhone och Android och släppt flera av de mest populära mobilspelen under 2008-2010.

#### Förväntad framtida utveckling

Fokus ligger på iPhone-plattformen då denna visat sig ha störst potential i nuläget. Framöver kommer även de konkurrerande plattformarna och distributionslösningarna från andra telefontillverkare undersökas och testas.

### Ekonomisk översikt

	2010-06-30	2009-06-30
Nettoomsättningen (Tkr)	32 165	29 656
Resultat efter finansiella poster (Tkr)	20 275	18 660
Balansomslutning (Tkr)	28 852	19 916
Soliditet, %	64	68
Antal anställda	6	4

### Dispositioner beträffande vinst

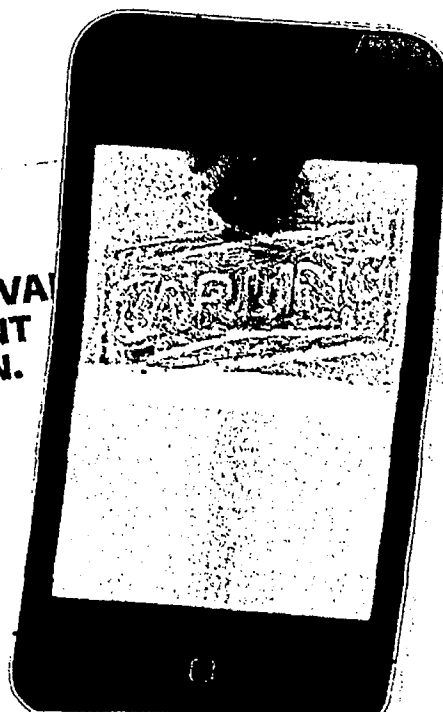
	Belopp i kr
Styrelsen föreslår att till förfogande stående medel:	
balanserat resultat	10 077 311
utdelning extra bolagsstämma 2010-01-05	-10 000 000
årets resultat	16 870 848
Totalt	16 948 159
disponeras för	16 948 159
utdelning,	16 900 000
balanseras i ny räkning	48 159
Summa	16 948 159

Vad beträffar företagets resultat och ställning i övrigt, hänvisas till efterföljande resultat- och balansräkningar med tillhörande bokslutskommentarer.

## Resultaträkning

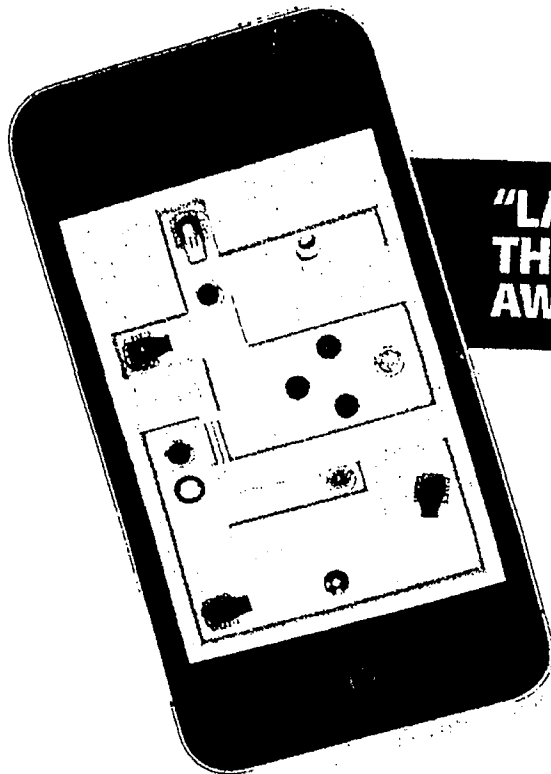
Belopp i kr	Not	2009-07-01- 2010-06-30	2008-01-02- 2009-06-30
Nettoomsättning		32 165 459	29 655 798
Övriga rörelseintäkter		-	42 893
		<u>32 165 459</u>	<u>29 698 691</u>
<b>Rörelsens kostnader</b>			
Underkonsulter och förmedlingskostnad		-7 772 273	-7 763 133
Övriga externa kostnader	1	-795 956	-780 629
Personalkostnader	2	-3 385 199	-2 523 729
Avskrivningar av materiella anläggningstillgångar	3	-12 243	-18 265
Övriga rörelsekostnader		-5 025	-
<b>Rörelseresultat</b>		<u>20 194 763</u>	<u>18 612 935</u>
<b>Resultat från finansiella poster</b>			
Ränteintäkter och liknande resultatposter		80 352	46 829
Räntekostnader och liknande resultatposter		-63	-143
<b>Resultat efter finansiella poster</b>		<u>20 275 052</u>	<u>18 659 621</u>
Bokslutsdispositioner	4	2 660 000	-4 660 000
<b>Resultat före skatt</b>		<u>22 935 052</u>	<u>13 999 621</u>
Skatt på årets resultat		-6 064 204	-3 922 310
<b>Årets resultat</b>		<u>16 870 848</u>	<u>10 077 311</u>

**CANNES LIONS  
INTERNATIONAL  
ADVERTISING FESTIVAL  
2008 AWARDED IPINT  
WITH A SILVER LION.**



## Balansräkning

Belopp i kr	Not	2010-06-30	2009-06-30
<b>TILLGÅNGAR</b>			
<b>Anläggningstillgångar</b>			
<b>Materiella anläggningstillgångar</b>			
Inventarier, verktyg och installationer	5	30 714	42 957
		<u>30 714</u>	<u>42 957</u>
<b>Finansiella anläggningstillgångar</b>			
Andelar i koncernföretag	8	-	-
		<u>-</u>	<u>-</u>
<b>Summa anläggningstillgångar</b>		<b>30 714</b>	<b>42 957</b>
<b>Omsättningstillgångar</b>			
<b>Kortfristiga fordringar</b>			
Kundfordringar		100 000	-
Övriga fordringar		2 729 642	268 264
Förutbetalda kostnader och upplupna intäkter		3 695 340	1 764 269
		<u>6 524 982</u>	<u>2 032 533</u>
<b>Kassa och bank</b>		<b>22 296 020</b>	<b>17 840 332</b>
		<u>22 296 020</u>	<u>17 840 332</u>
<b>Summa omsättningstillgångar</b>		<b>28 821 002</b>	<b>19 872 865</b>
		<u>28 821 002</u>	<u>19 872 865</u>
<b>SUMMA TILLGÅNGAR</b>		<b>28 851 716</b>	<b>19 915 822</b>
		<u>28 851 716</u>	<u>19 915 822</u>



**"LABYRINTH 2 WINS  
THE IMGA GRAND PRIX  
AWARD"**

POCKET GAMER 15/02/2010

## Balansräkning

<i>Belopp i kr</i>	<i>Not</i>	<i>2010-06-30</i>	<i>2009-06-30</i>
<b>EGET KAPITAL OCH SKULDER</b>			
<b>Eget kapital</b>	6		
<i>Bundet eget kapital</i>			
Aktiekapital (100000 aktier)		100 000	100 000
		<u>100 000</u>	<u>100 000</u>
<i>Fritt eget kapital</i>			
Balanserad vinst		77 311	-
Årets resultat		16 870 848	10 077 311
		<u>16 948 159</u>	<u>10 077 311</u>
<b>Summa eget kapital</b>		<u>17 048 159</u>	<u>10 177 311</u>
<b>Obeskattade reserver</b>			
Periodiseringsfonder	7	2 000 000	4 660 000
		<u>2 000 000</u>	<u>4 660 000</u>
<b>Kortfristiga skulder</b>			
Leverantörsskulder		500 496	270 540
Skatteskulder		7 878 131	3 359 641
Övriga skulder		252 731	379 541
Upplupna kostnader och förutbetalda intäkter		1 172 199	1 068 789
		<u>9 803 557</u>	<u>5 078 511</u>
<b>SUMMA EGET KAPITAL OCH SKULDER</b>		<u>28 851 716</u>	<u>19 915 822</u>

## Ställda säkerheter och ansvarsförbindelser

### Ställda säkerheter

	<i>2010-06-30</i>	<i>2009-06-30</i>
<i>Ställda panter och säkerheter</i>	<i>Inga</i>	<i>Inga</i>

### Ansvarsförbindelser

<i>Ansvarsförbindelser</i>	<i>Inga</i>	<i>Inga</i>
----------------------------	-------------	-------------

## Redovisningsprinciper och bokslutskommentarer

Belopp i kr om inget annat anges

### Allmänna redovisningsprinciper

Årsredovisningen har upprättats i enlighet med Årsredovisningslagen och Bokföringsnämndens allmänna råd.

### Värderingsprinciper m m

Tillgångar, avsättningar och skulder har värderats till anskaffningsvärden om inget annat anges nedan.

### Redovisning av intäkter

Intäktsredovisning sker i enlighet med BFNAR 2003:3 Intäkter.

Som inkomst redovisar bolaget det verkliga värdet av vad som erhållits eller kommer att erhållas. Bolaget redovisar därför löpande inkomst till nominellt belopp när bolaget får ersättningen i likvida medel. Avdrag görs för bankkostnader. I bokslutet styr inte kontantprincipen.

Inkomsten från bolagets försäljning av applikationer redovisas som intäkt när följande villkor är uppfyllda; de väsentliga risker och förmåner som är förknippade med applikationens ägande har överförts till köparen, den likvida ersättningen för försäljningen har erhållits och de utgifter som uppkommit eller som förväntas uppkomma till följd av transaktionen kan beräknas på ett tillförlitligt sätt.

### Fordringar

Fordringar är redovisade till anskaffningsvärde minskat med eventuell nedskrivning.

### Fordringar och skulder i utländsk valuta

Fordringar och skulder i utländsk valuta har omräknats till balansdagens kurs i enlighet med Redovisningsrådets rekommendation. Kursdifferenser på rörelsefordringar och rörelseskulder ingår i rörelseresultatet, medan differenser på finansiella fordringar och skulder redovisas bland finansiella poster.

### Avskrivningsprinciper för anläggningstillgångar

Avskrivningar enligt plan baseras på ursprungliga anskaffningsvärden. Avskrivning sker linjärt över tillgångens beräknande livslängd.

Följande avskrivningsprocent har tillämpats:

<u>Anläggningstillgångar</u>	<u>% per år</u>
Materialiella anläggningstillgångar: -Inventarier, verktyg och installationer	

20

### Definition av nyckeltal

#### Soliditet

Eget kapital och obeskrattade reserver med avdrag för uppskjuten skatt i förhållande till balansomslutningen.

### Koncernuppgifter

Sedan januari 2010 är bolaget ett helägt dotterbolag till Illusion Labs Holding AB(556797-5627).

Företaget äger det helägda engelska dotterbolaget Illusion Labs Ltd, org nr 6857373. Ingen koncernredovisning har upprättats då koncernen är av mindre storlek enligt ÄRL 7:3.

Av bolagets omsättning avser 100.973 kronor intäkter från koncernföretag.  
Inga inköp har skett från koncernföretag.





## Noter

### Not 1 Arvode och kostnadsersättning till revisorer

	2009-07-01- 2010-06-30	2008-01-02- 2009-06-30
<i>Tremissis AB</i>		
Revisionsarvode	23 600	17 600
Övriga uppdrag	4 900	5 000
<b>Summa</b>	<b>28 500</b>	<b>22 600</b>

### Not 2 Anställda och personalkostnader

#### Medelantalet anställda

	2009-07-01- 2010-06-30	2008-01-02- 2009-06-30
Män	6	4
Kvinnor	-	-
<b>Totalt</b>	<b>6</b>	<b>4</b>

#### Löner, andra ersättningar och sociala kostnader

	2009-07-01- 2010-06-30	2008-01-02- 2009-06-30
Styrelse och VD	504 000	931 680
Övriga anställda	1 508 036	659 397
<b>Summa</b>	<b>2 012 036</b>	<b>1 591 077</b>
Sociala kostnader (varav pensionskostnader)	1 087 040 419 832	815 963 314 778

Av företagets pensionskostnader avser 334.052 (260.946) gruppen företagets ledning.

### Not 3 Avskrivningar av materiella anläggningstillgångar

	2009-07-01- 2010-06-30	2008-01-02- 2009-06-30
Inventarier, verktyg och installationer	-12 243	-18 265
<b>Summa</b>	<b>-12 243</b>	<b>-18 265</b>

### Not 4 Bokslutsdispositioner

	2009-07-01- 2010-06-30	2008-01-02- 2009-06-30
Förändring av periodiseringsfond	2 660 000	-4 660 000
<b>Summa</b>	<b>2 660 000</b>	<b>-4 660 000</b>

## Not 5 Inventarier, verktyg och installationer

	2010-06-30	2009-06-30
Akkumulerade anskaffningsvärden:		
-Vid årets början	61 222	-
-Nyanskaffningar	-	61 222
-Avyttringar och utrangeringar	-	-
	<u>61 222</u>	<u>61 222</u>
Akkumulerade avskrivningar enligt plan:		
-Vid årets början	-18 265	-
-Årets avskrivning enligt plan	-12 243	-18 265
	<u>-30 508</u>	<u>-18 265</u>
Redovisat värde vid årets slut	<u>30 714</u>	<u>42 957</u>

## Not 6 Eget kapital

	Aktie- kapital	Reserv- fond	Balanserat resultat	Årets resultat
Belopp vid årets ingång	100 000	-	-	10 077 311
Omföring föregående års resultat			10 077 311	-10 077 311
Utdelning extra bolagsstämma 2010-01-05			-10 000 000	
Årets resultat				16 870 848
Belopp vid årets utgång	<u>100 000</u>	<u>-</u>	<u>77 311</u>	<u>16 870 848</u>

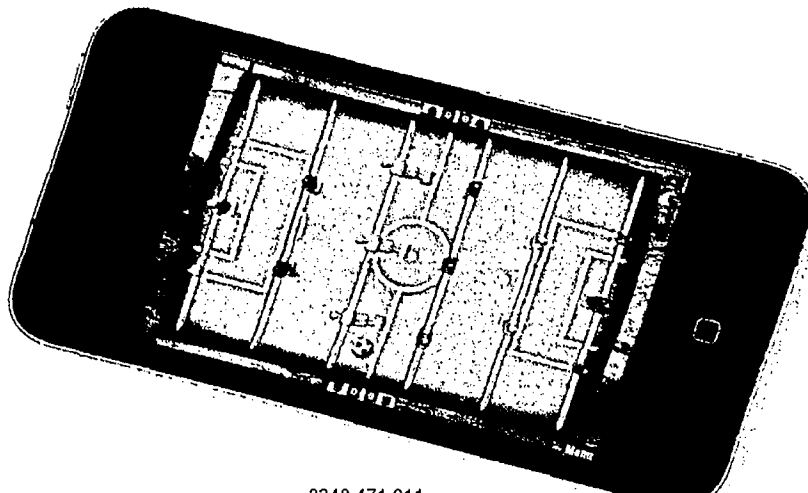
## Not 7 Periodiseringsfonder

	2010-06-30	2009-06-30
Periodiseringsfond, avsatt vid taxering 2010	-	4 660 000
Periodiseringsfond, avsatt vid taxering 2011	2 000 000	-
	<u>2 000 000</u>	<u>4 660 000</u>

## Not 8 Andelar i koncernföretag

Bolaget etablerade under 2009 ett bolag i England, Illusion Labs Ltd, org. nr 6857373. Dotterbolaget har bedrivit mindre verksamhet under räkenskapsåret 09/10. Resultatet i bolaget för räkenskapsåret 09/10 uppgår till 1.698 GBP och det egna kapitalet uppgår till 1.699 GBP.

Det bokförda värdet på dotterbolagets aktier är 0.

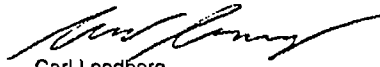


Underskrifter

Malmö den 26 oktober 2010



Andreas Alptun  
Styrelseordförande

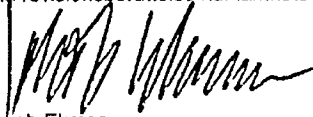


Carl Loodberg  
Styrelseledamot



Hampus Jakobsson  
Styrelseledamot

Min revisionsberättelse har lämnats den 26 oktober 2010



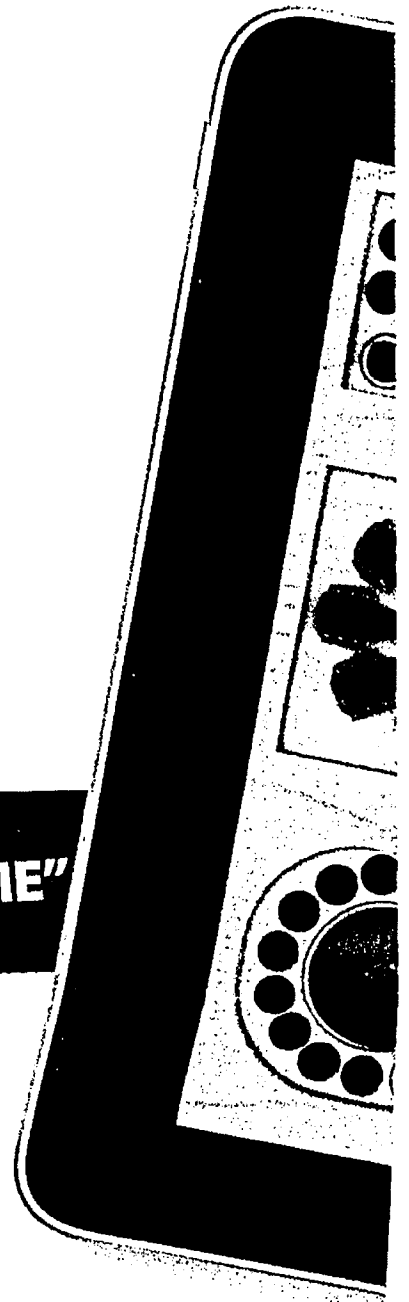
Jakob Ekman  
Auktoriserad revisor

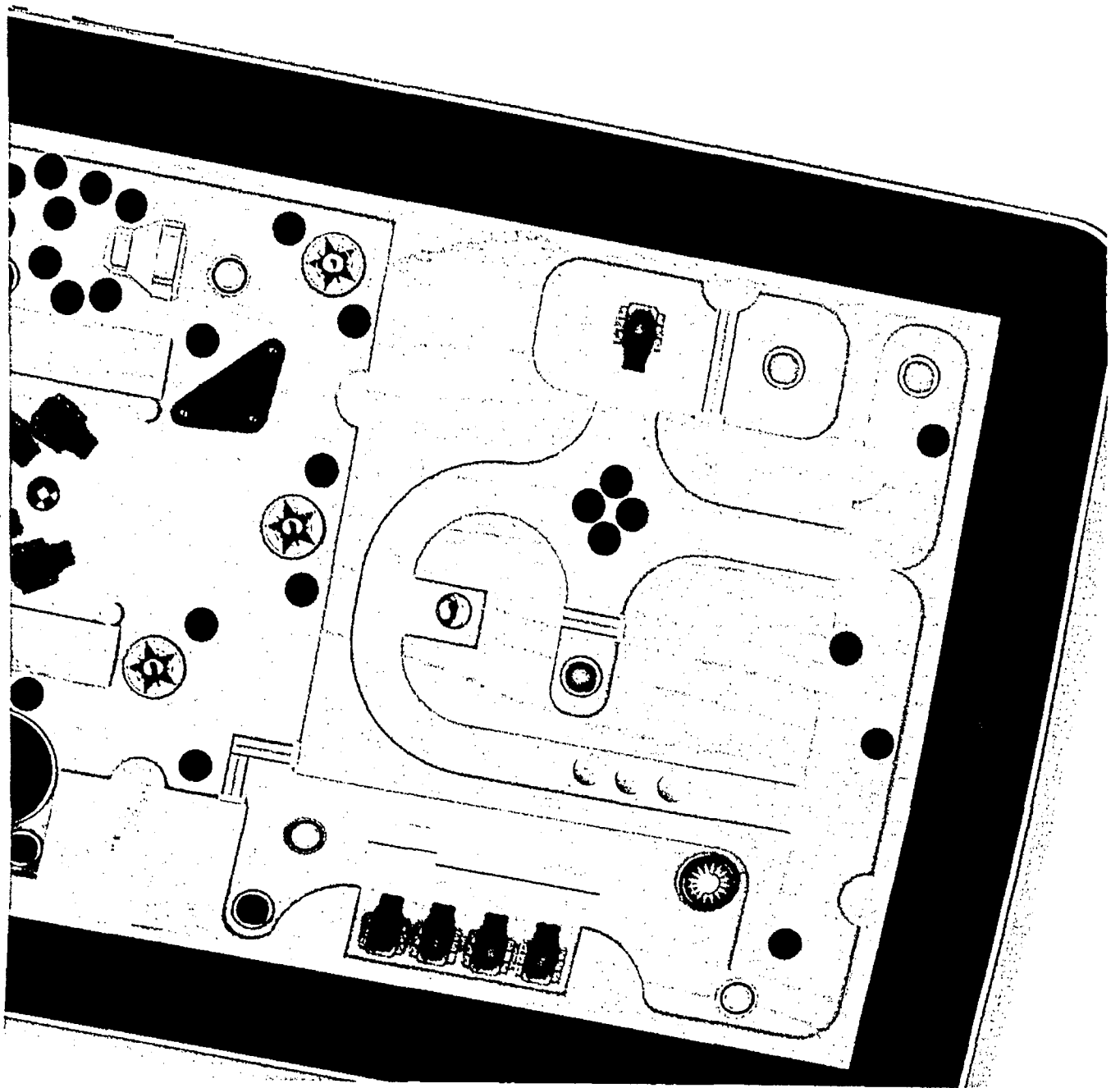
Fotokopians överensstämmelse  
med originalet intygas:



**"LABYRINTH 2  
A WONDERFUL GAME"**

STEVE JOBS, KEYNOTE





8348.471.013





# SWEDISH MINISTER FOR FOREIGN AFFAIRS VISITS ILLUSION LABS

02/09/2010



"ILLUSION LABS ÄR BOLAGET SOM VAR PÅ RÄTT PLATS I RÄTT TID." IDG



## WINNER OF THE MOST INNOVATIVE GAME 2008

BEST APP EVER AWARDS

"APPLE LOVED THEM AS THEIR GAMES BROUGHT THE BEST OUT IN THE PHONE"

The first game they developed has become one of the most popular pieces of software for the iPhone.

BUSINESS WEEK

## ÅRETS RAPIDUS FÖRETAG 2009

"TOUCHGOLF - ONE OF THE BEST GAMES AVAILABLE ON THE PLATFORM"

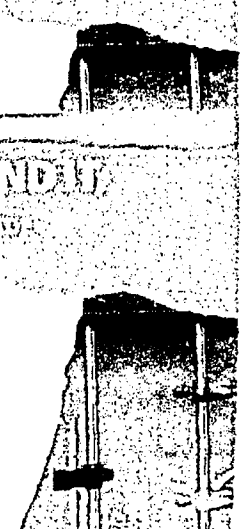
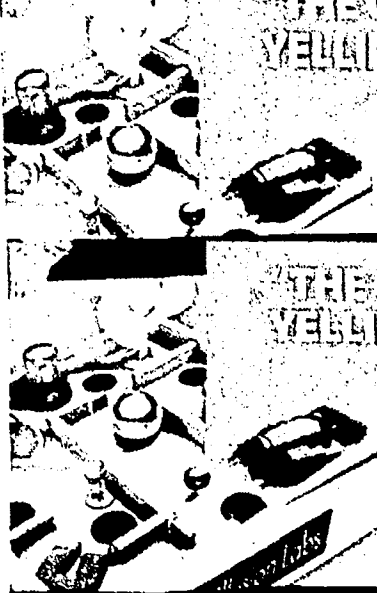
"THE GAME HAD A CONSTANT GROUND AROUND IT, YELLING AND CHEERING FOR GOALS"

Cannes Lions International Advertising Festival 2008 awarded

"THE GAME HAD A CONSTANT GROUND AROUND IT, YELLING AND CHEERING FOR GOALS"

Cannes Lions International Advertising Festival 2008 awarded iPinT with a silver lion in the Cyber Lions Mobile Advertising category.

"Fosball HD a very well polished and..."



## **Fastställelseintyg**

Undertecknad styrelseledamot intygar härmed dels att denna kopia av årsredovisningen överensstämmer med originalet, dels att resultat- och balansräkningen fastställts på årsstämma 2010-10-26. Stämman beslöt också att godkänna styrelsens förslag till resultatdisposition.

Malmö 26 oktober 2010



Carl Loodberg  
Styrelseledamot



**Tremissis AB****Revisionsberättelse****Till årsstämman i Illusion Labs AB****Org.nr 556748-0214**


Jag har granskat årsredovisningen och bokföringen samt styrelsens förvaltning i Illusion Labs AB för räkenskapsåret 2009-07-01 - 2010-06-30. Det är styrelsen som har ansvaret för räkenskapshandlingarna och förvaltningen och för att årsredovisningslagen tillämpas vid upprättandet av årsredovisningen. Mitt ansvar är att uttala mig om årsredovisningen och förvaltningen på grundval av min revision.

Revisionen har utförts i enlighet med god revisions sed i Sverige. Det innebär att jag planerat och genomfört revisionen för att med hög men inte absolut säkerhet försäkra mig om att årsredovisningen inte innehåller väsentliga felaktigheter. En revision innefattar att granska ett urval av underlagen för belopp och annan information i räkenskapshandlingarna. I en revision ingår också att pröva redovisningsprinciperna och styrelsens tillämpning av dem samt att bedöma de betydelsefulla uppskattningar som styrelsen gjort när de upprättat årsredovisningen samt att utvärdera den samlade informationen i årsredovisningen. Som underlag för mitt uttalande om ansvarsfrihet har jag granskat väsentliga beslut, åtgärder och förhållanden i bolaget för att kunna bedöma om någon styrelseledamot är ersättningskyldig mot bolaget. Jag har även granskat om någon styrelseledamot på annat sätt har handlat i strid med aktiebolagslagen, årsredovisningslagen eller bolagsordningen. Jag anser att min revision ger mig rimlig grund för mina uttalanden nedan.

Årsredovisningen har upprättats i enlighet med årsredovisningslagen och ger en rättvisande bild av bolagets resultat och ställning i enlighet med god redovisnings sed i Sverige. Förvaltningsberättelsen är förenlig med årsredovisningens övriga delar.

Jag tillstyrker att årsstämman fastställer resultaträkningen och balansräkningen, disponerar vinsten enligt förslaget i förvaltningsberättelsen och beviljar styrelsens ledamöter ansvarsfrihet för räkenskapsåret.

Lund den 26/10 2010

  
Jakob Ekman  
Auktoriserad revisor**Fotokopians överensstämmelse  
med originalet intygas:**

## Årsstämmoprotokoll

Protokoll fört vid årsstämma med aktieägare i Illusion Labs AB, 556748-0214, Malmö 2010-10-26

<u>Närvarande</u>	<u>Antal aktier</u>	<u>Antal röster</u>
Illusion Labs Holding genom Carl Loodberg och Andreas Alptun	100 000	100 000

- § 1 Till ordförande för stämman valdes Andreas Alptun.
- § 2 Till att föra protokoll för stämman valdes Carl Loodberg.
- § 3 Stämman beslöt att dagens protokoll skulle justeras av ordföranden.
- § 4 Ovanstående närvaroförteckning godkändes som röstlängd.
- § 5 Stämman förklarades i behörig ordning sammankallad och dagordningen godkändes
- § 6 Styrelsen föredrog den upprättade årsredovisningen och revisionsberättelsen för räkenskapsåret 2009-07-01 - 2010-06-30.
- § 7 Stämman beslöt att fastställa den i årsredovisningen intagna resultaträkningen och balansräkningen för räkenskapsåret.
- § 8 Stämman beslöt i enlighet med styrelsens förslag att till förfogande stående vinstmedel 16 948 159 kronor, skall disponeras så att 16 900 000 delas ut och 48 159 kronor balanseras i ny räkning.
- § 9 Styrelsens ledamöter beviljades ansvarsfrihet för räkenskapsåret 2009-07-01 - 2010-06-30.
- § 10 Stämman beslutade att inget arvode skulle utgå till styrelsen. Arvode till revisor skulle utgå enligt räkning.
- § 11 Till ordinarie styrelseledamöter för tiden fram till nästa årsstämma omvaldes Andreas Alptun, Carl Loodberg och Hampus Jakobsson.
- § 12 Det antecknades att revisorsval ska göras efter bokslutet 2012-06-30.
- § 13 Inga övriga ärenden förelåg, varför stämman förklarades avslutad.

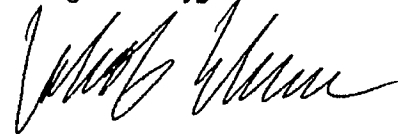
Justeras:

  
Andreas Alptun  
Ordförande

Vid protokollet:

  
Carl Loodberg

**Fotokopiens överensstämmelse  
med originalet intygas:**



# Exhibit 6



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Mobilize Your World.™



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## Quickoffice® Announces Key Executive Positions, Enhances Apple Productivity Applications in Q2 2011

*Ships pre-loaded on additional smartphones and midsize devices*

**Dallas, TX - July 25, 2011** - Quickoffice, Inc., the global leader in mobile office productivity solutions, continued its aggressive growth during the second quarter of 2011, expanding the executive team and enhancing its top-selling iPad and iPhone applications. Quickoffice appointed Craig Holmes as chief financial officer and promoted Quickoffice industry veteran Gregg Fiddes to senior vice president of sales and business development.

The additions to the senior management team are a result of Quickoffice's rising sales and revenue. An industry veteran with more than 20 years of experience, Holmes will help guide the company's next phase of financial and operational growth. He was previously EVP and CFO of Intervoice, Inc. (NASDAQ) and prior to that EVP and CFO for Excel Communications, Inc. (NYSE). Fiddes, an expert in the wireless and communications industry, has led the company's worldwide sales and marketing efforts since joining in 2004. His leadership in developing the company's distribution model has resulted in Quickoffice's software inclusion on over 300,000,000 devices in over 180 countries worldwide. In his new role, Fiddes will continue to spearhead the company's expansion through new channels, markets and customer segments.

"Quickoffice has experienced remarkable growth over the last few years and currently sits at the center of an exploding industry," said Holmes. "I'm excited to serve as Quickoffice's first CFO and provide additional strategic and financial guidance as we move into our next development phase."

In addition to the new product releases on iOS, Quickoffice continued to experience tremendous growth on key platforms such as Android and webOS. The Quickoffice application is currently shipping on the recently announced HP TouchPad, and as a result of other OEM relationships, Quickoffice shipped pre-loaded on additional new smartphones and tablets, including Motorola Droid 3, Toshiba Thrive and Nokia E6. In addition, Quickoffice was named one of five top selling apps on Barnes & Noble's NOOKcolor, capturing more market share across emerging eReader devices. The company also announced a strategic partnership with Freescale Semiconductor, wherein Quickoffice will integrate its mobile Office viewer onto Freescale's Android tablet reference designs to further expand the company's presence in the Android market.

To read Quickoffice's blog, comment, TrackBack or subscribe via RSS, please visit <http://blog.quickoffice.com>.

Customers can also follow the company on <http://www.twitter.com/quickoffice> and <http://www.facebook.com/quickoffice>.

To subscribe to an RSS feed of all Quickoffice's news, please visit <http://live.lewispr.com/quickofficesd/> and click subscribe.

### About Quickoffice, Inc.

Installed on over 300 million devices in more than 180 countries, Quickoffice is the worldwide leader in mobile office solutions. Quickoffice delivers high quality, innovative mobile office software and solutions and is revolutionizing the way people use their mobile devices. Quickoffice's flagship, award-winning software allows mobile professionals to view, edit and create Microsoft® Word, Excel and PowerPoint documents on their mobile device. Through the software's seamless integration with the cloud, it enables simple, anytime, anywhere access to important content.

Available direct-to-consumer in leading App Stores or via handset OEMs, Quickoffice solutions support Android™, iPhone®, iPad®, HP webOS and Symbian® platforms. Privately held, Quickoffice is based in Dallas with offices in UK, Seoul, Russia, Ukraine, and India. More information is available at <http://www.quickoffice.com>.

**Press Contact for Quickoffice:**  
Amy Robinson / Brittney Wolff

LEWIS PR for Quickoffice  
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