

THE APPLE SETTLEMENT AGREEMENT AND THE APPLE SETTLEMENT AMENDING AGREEMENT
HAVE BEEN COMBINED IN THIS DOCUMENT FOR EASE OF REFERENCE – in the case of any
discrepancy between this document and the original documents, the original documents shall govern.

**CANADIAN EBOOK CLASS ACTION
NATIONAL SETTLEMENT AGREEMENT**

Made as of November 14, 2018

Between

WAYNE VAN TASSEL, NANCY JEAN ADAMS and ANTOINE PONTBRIAND

(collectively, the “Plaintiffs”)

and

Apple Inc and Apple Canada Inc

(together, “Apple”)

As amended by

**CANADIAN EBOOK CLASS ACTION
AMENDING AGREEMENT TO THE NATIONAL SETTLEMENT AGREEMENT**

Made as of May 25, 2020

Between

WAYNE VAN TASSEL, NANCY JEAN ADAMS and ANTOINE PONTBRIAND

and

Apple Inc and Apple Canada Inc

TABLE OF CONTENTS

RECITALS.....	1
SECTION 1 – DEFINITIONS.....	5
SECTION 2 – SETTLEMENT APPROVAL	18
2.1 Best Efforts.....	18
2.2 Motions Certifying the National Proceeding, Authorizing the Quebec Proceeding, Approving Notice and Identification of Settlement Class Members .	18
2.3 Motion for eRetailer Data Order	19
2.4 Apple Data.....	19
2.5 Cooperating eRetailers	20
2.6 Motions for Approval of Settlement.....	20
2.7 Discontinuance Order.....	21
SECTION 3 – SETTLEMENT BENEFITS.....	21
3.1 Payment of Settlement Amount	21
3.2 Taxes and Interest.....	22
SECTION 4 – DISTRIBUTION PROTOCOL	22
4.1 General.....	22
4.2 Credit Distribution	24
4.3 Direct Distribution	25
4.4 Alternate Distribution.....	26
4.5 Remaining Total Net Settlement Amount.....	27
4.6 No Responsibility for Administration or Fees.....	28
SECTION 5 – OPTING-OUT	28
5.1 Procedure.....	28
5.2 Opt-Out Report	29
SECTION 6 – RELEASES, DISMISSAL AND TRANSACTION HOMOLOGATION	30
6.1 Release of Releasees.....	30
6.2 No Further Claims	30
6.3 Disposition of the Canadian Proceedings	31
6.4 Claims Against Other Entities Reserved	31
SECTION 7 – EFFECT OF SETTLEMENT.....	31
7.1 No Admission of Liability.....	31
7.2 Agreement Not Evidence.....	31
7.3 No Further Litigation.....	32
SECTION 8 – CERTIFICATION OR AUTHORIZATION FOR SETTLEMENT ONLY.....	33
8.1 Settlement Classes and Common Issue	33
8.2 Certification and Authorization Without Prejudice	33
SECTION 9 – NOTICE TO NATIONAL SETTLEMENT CLASS.....	33
9.1 Notice Required	33
9.2 Dissemination of Notices	34

SECTION 10 – CLASS COUNSEL FEES AND ADMINISTRATION EXPENSES	35
SECTION 11 – TERMINATION OF AGREEMENT	36
11.1 Right of Termination	36
11.2 If Agreement is Terminated	37
11.3 Allocation of Monies in the Trust Account Following Termination	37
11.4 Survival of Provisions After Termination	37
SECTION 12 – MISCELLANEOUS.....	38
12.1 Releasees Have No Liability for Administration.....	38
12.2 Motions for Directions.....	38
12.3 Headings, etc.	38
12.4 Computation of Time	39
12.5 Ongoing Jurisdiction.....	39
12.6 Governing Law.....	39
12.7 Entire Agreement.....	39
12.8 Amendments	40
12.9 Binding Effect.....	40
12.10 Counterparts.....	40
12.11 Interpretation.....	40
12.12 Language	41
12.13 Transaction	41
12.14 Recitals.....	41
12.15 Schedules	41
12.16 Notice	41
12.17 Acknowledgements.....	42
12.18 Authorized Signatures	43
12.19 Date of Execution.....	43
SCHEDULE A.....	45
SCHEDULE B.....	46
SCHEDULE C.....	47
SCHEDULE D.....	48
SCHEDULE E.....	49

CANADIAN EBOOK CLASS ACTION NATIONAL SETTLEMENT AGREEMENT

RECITALS

A. WHEREAS the Plaintiffs have commenced the Canadian Proceedings in the Courts and allege that Apple participated in the Alleged Conspiracy, and the Plaintiffs claim class-wide damages as a result of the Alleged Conspiracy, as well as equitable relief;

B. AND WHEREAS the Plaintiffs and the Defendant Publishers are parties to the Publishers' Settlement, which was approved by the Approval Courts. Apple was not a party to the Publishers' Settlement;

B-1. AND WHEREAS Penguin Group (USA) LLC (formerly Penguin Group (USA) Inc.) was merged into Penguin Random House LLC on December 31, 2014, with the surviving entity being Penguin Random House LLC;

B-2. AND WHEREAS Penguin Canada Books Inc. amalgamated with Random House of Canada Limited on January 1, 2015 to become Penguin Random House Canada Limited;

B-3. AND WHEREAS following the combinations, the agency agreements that Penguin Group (USA) LLC and Penguin Canada Books Inc. had with eBook retailers for the sale of eBooks in Canada were terminated and eBooks were distributed by the merged/amalgamated entities either under the terms that Penguin Random House Canada Limited made with eBook retailers or under the terms of agreements that Random House of Canada Limited had made with eBook retailers prior to the combinations;

~~C. AND WHEREAS at the time the Plaintiffs entered into the Publishers' Settlement, the Plaintiffs understood that the Defendant Publishers had or were about to enter into consent agreements with the Commissioner of Competition and that, as a result of those agreements, eRetailers who sold Defendant Publishers' eBooks were permitted to independently offer discounts on the sales of eBooks;~~

C. AND WHEREAS at the time the Plaintiffs entered into the Publishers' Settlement, the Plaintiffs understood that the Defendant Publishers (other than Penguin) had or were about to enter into consent agreements with the Commissioner of Competition and that, as a result of those agreements, eRetailers who sold Defendant Publishers' eBooks were permitted to independently offer discounts on the sales of eBooks;

D. AND WHEREAS the Plaintiffs take the position that the Publishers' Settlement was limited in scope to the sales of eBooks during the Original Class Period;

E. AND WHEREAS after the approval of the Publishers' Settlement, Kobo launched a challenge to the consent agreements made as between some of the Defendant Publishers and the Commissioner of Competition concerning the same conduct. This challenge was ultimately successful on technical grounds, but the Commissioner of Competition was free to renegotiate the agreements with the Defendant Publishers;

F. AND WHEREAS the Plaintiffs assert that the Defendant Publishers continued to prohibit retailers from independently offering discounts on the sales of eBooks after the end of the Original Class Period;

G. AND WHEREAS on September 22, 2016, Nancy Jean Adams commenced the Second National Proceeding, CV-16-24156-00CP;

H. AND WHEREAS Apple expressly denies that it has engaged in the Alleged Conspiracy or other unlawful conduct and believes that it is not liable in respect of the Alleged Conspiracy or at all, and believes it has good and reasonable defences in respect of the claims advanced in the Canadian Proceedings;

I. AND WHEREAS, despite its belief that it is not liable in respect of the Alleged Conspiracy and that it has good and reasonable defences in respect of the claims advanced in the Canadian Proceedings, Apple has negotiated and entered into this Agreement to avoid the further expense, inconvenience, and burden of litigating the Canadian Proceedings and any other present or future litigation arising out of the facts that gave rise to them, to avoid the risks inherent in uncertain, complex and protracted litigation and to achieve final resolutions of all claims asserted or which could have been asserted against Apple, the Defendant Publishers, and the Releasees by the Plaintiffs

on their own behalf and on behalf of the Settlement Classes in relation to the Alleged Conspiracy, as it relates to the sales of eBooks in Canada;

J. AND WHEREAS counsel for Apple has engaged in extensive arm's-length settlement discussions and negotiations with Class Counsel, including with the assistance of an experienced mediator, the Honourable Warren Winkler, Q.C.;

K. AND WHEREAS as a result of these settlement discussions and negotiations, Apple and the Plaintiffs have entered into this Agreement, which embodies all of the terms and conditions of the settlement between Apple and the Plaintiffs, both individually and on behalf of the Settlement Classes;

L. AND WHEREAS as part of this resolution, Apple has agreed to make a payment in the Settlement Amount for the benefit of the Settlement Classes;

M. AND WHEREAS as part of this resolution, Apple has confirmed that, on January 19, 2017, it entered into a consent agreement with the Commissioner of Competition that has been registered with the Competition Tribunal and that Apple has implemented that consent agreement;

~~N. AND WHEREAS the Commissioner of Competition has also entered into similar consent agreements with the Defendant Publishers that have been registered with the Competition Tribunal;~~

N. AND WHEREAS the Commissioner of Competition has also entered into similar consent agreements with the Defendant Publishers (other than Penguin) that have been registered with the Competition Tribunal;

O. AND WHEREAS a challenge launched by Kobo in relation to some of the consent agreements was dismissed on February 1, 2018;

P. AND WHEREAS the Plaintiffs and Apple have resolved the additional claims advanced against the Defendant Publishers in the Second National Proceeding and have agreed to include the Defendant Publishers as Releasees;

Q. AND WHEREAS the Defendant Publishers have agreed in writing to waive any claim for costs, disbursements or taxes in respect of the Second National Proceeding as part of the Approval Orders;

R. AND WHEREAS the Plaintiffs have agreed to accept this settlement because of the value of the Settlement Amount, as well as the attendant risks of litigation in light of the defences that would be asserted by Apple and the Defendant Publishers;

~~S. AND WHEREAS the Plaintiffs and Class Counsel have reviewed and fully understand the terms of this Agreement and, based on their analyses of the facts and law applicable to the Plaintiffs' claims, and having regard to the proposed disposition of the Canadian Proceedings against Apple and the Defendant Publishers, the value of the Settlement Amount, the consent agreements that have been entered into by Apple and the Defendant Publishers, the risks associated with prosecuting the Canadian Proceedings, including the risks and uncertainties associated with trials and appeals, the Plaintiffs and Class Counsel have concluded that this Agreement is fair, reasonable and in the best interests of the Plaintiffs and the Settlement Classes;~~

S. AND WHEREAS the Plaintiffs and Class Counsel have reviewed and fully understand the terms of this Agreement and, based on their analyses of the facts and law applicable to the Plaintiffs' claims, and having regard to the proposed disposition of the Canadian Proceedings against Apple and the Defendant Publishers, the value of the Settlement Amount, the consent agreements that have been entered into by Apple and the Defendant Publishers (other than Penguin), the risks associated with prosecuting the Canadian Proceedings, including the risks and uncertainties associated with trials and appeals, the Plaintiffs and Class Counsel have concluded that this Agreement is fair, reasonable and in the best interests of the Plaintiffs and the Settlement Classes;

T. AND WHEREAS the Plaintiffs and the Settlement Classes intend to fully and completely settle and resolve the claims advanced in the Canadian Proceedings as against Apple and the other Releasees on the Effective Date pursuant to this Agreement;

U. AND WHEREAS the Parties therefore wish to, and hereby do, finally resolve on a nation-wide basis, without admission of liability, the Canadian Proceedings as against Apple and the other Releasees;

V. AND WHEREAS for the purposes of settlement only and contingent on approval of the Approval Courts as provided for in this Agreement, the Parties have consented to authorization of the Quebec Proceeding as a class proceeding and certification of the National Proceeding and the Second National Proceeding as national class proceedings as against Apple;

W. AND WHEREAS for the purposes of settlement only and contingent on approval by the Approval Courts as provided for in this Agreement, the Parties have consented to the Approval Orders and the Discontinuance Order;

NOW THEREFORE, in consideration of the covenants, agreements and releases set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed by the Parties that the Canadian Proceedings against Apple be settled and discontinued (in the case of the BC Proceeding), dismissed (in the case of the National Proceeding and the Second National Proceeding) and settled by way of homologated transaction (in the case of the Quebec Proceeding) with prejudice and without costs, subject to the approval of the Approval Courts, on the following terms and conditions:

SECTION 1 – DEFINITIONS

For the purpose of this Agreement only, including the Recitals and Schedules hereto:

- (1) **Active Account** means an account used by a Settlement Class Member to purchase an Eligible eBook from Apple or from an eRetailer, and which account was used in the one-year period preceding the date when the eRetailer Data or Apple Data is compiled for the implementation of this Agreement;
- (2) **Additional Class Period** means the period of time extending from September 22, 2014 up to and including March 10, 2017;

- (3) **Administration Expenses** mean all fees, disbursements, expenses, costs, taxes and any other amounts incurred or payable by the Plaintiffs, Class Counsel, the Claims Administrator, or otherwise for the approval, implementation and operation of this Agreement, including but not limited to the costs of notices, translations, claims administration, distributions to Class Members, distributions to charitable organizations, obtaining any required approvals of one or more Approval Courts under this Agreement, any expenses or costs ordered to be paid to the Third Party eRetailers in connection with the eRetailer Data Order, taking any other steps required by one of more of the Approval Courts in order to implement this Agreement, taking any steps necessary to implement or required pursuant to the Distribution Protocol, and any amount owing to the Fonds d'aide aux recours collectifs of the Province of Quebec, but excluding Class Counsel Fees;
- (4) **Agreement** means this national settlement agreement, including the recitals and schedules;
- (5) **Alleged Conspiracy** means the alleged unlawful conspiracy by the Defendants, including Apple, to fix, maintain, increase or control the price of eBooks sold by them in Canada, contrary to Part VI of the *Competition Act*, the common law and the Civil Code of Quebec;
- (6) **Alternate Distribution** has the meaning set out in section 4.4 of the Agreement;
- (7) **Amazon** means Amazon.com, Inc. and any subsidiary or affiliate thereof that acted as a distribution agent for Defendant Publishers' eBooks in Canada;
- (8) **Apple** means Apple, Inc. and Apple Canada, Inc.;
- (9) **Apple Data** means the names and e-mail addresses of Settlement Class Members who purchased Eligible eBooks published by the Defendant Publishers from Apple during the Settlement Class Period, the total number of Eligible eBooks purchased by each Settlement Class Member from Apple

during the Settlement Class Period, and information as to which of the Settlement Class Members has an Active Account with iTunes;

- (10) **Approval Courts** mean the Ontario Court and the Quebec Court;
- (11) **Approval Order** means orders of the Ontario Court and Quebec Court in the forms attached as Schedule A approving this Agreement, declaring it to be binding upon all Settlement Class Members, dismissing the National Proceeding and the Second National Proceeding and homologating the transaction in the Quebec Proceeding against the Defendants, with prejudice and without costs;
- (12) **BC Court** means the Supreme Court of British Columbia;
- (13) **BC Plaintiff** means the plaintiff in the BC Proceeding;
- (14) **BC Proceeding** means the proceeding commenced by Wayne Van Tassel in the form of an action filed in the BC Court (Vancouver Registry), Court File No. S-122529, on April 5, 2012;
- (15) **Canadian Proceedings** mean the National Proceeding (CV-12-17511), the Second National Proceeding (CV-16-24156-CP), the Québec Proceeding (No. 500-06-000595-120) and the BC Proceeding (S-122529);
- (16) **Certification and Authorization Orders** mean the order of the Ontario Court in the form attached as Schedule B certifying the National Proceeding and Second National Proceeding as a national class proceeding and the judgment of the Quebec Court in the form attached as Schedule B authorizing the Quebec Proceeding as a class proceeding, in each case as against Apple, for the purpose of giving effect to and implementing this Agreement, and approving a Notice of Certification, Authorization and Settlement Approval Hearing;
- (17) **Claims Administrator** means a third party administrator proposed by Class Counsel and appointed by the Approval Courts to receive the Apple Data and eRetailer Data, assist with dissemination of Notices, receive the opt-out

requests and administer the Distribution Protocol, and any employees of such Person;

- (18) **Claims Period** means a period of time commencing 30 days after the last Approval Order is granted, and extending for 180 days thereafter;
- (19) **Class Counsel** means Branch MacMaster LLP, Strosberg Sasso Sutts LLP, Morganti & Co., P.C., and Sylvestre Painchaud et associés SENCRL;
- (20) **Class Counsel Fees** mean the fees, disbursements, costs, and all other applicable taxes or charges of Class Counsel, including without limitation any applicable GST, PST, HST or QST;
- (21) **Common Issue** means: Did Apple and the Defendant Publishers, or any of them, conspire with each other or others to fix, maintain, increase or control the price of eBooks in Canada during the Settlement Class Period;
- (22) **Cooperating eRetailer** means an eRetailer who has agreed to abide by the provisions of this Agreement relating to Cooperating eRetailers;
- (23) **Courts** mean the Ontario Court, the Québec Court and the BC Court;
- (24) **Credit Distribution** has the meaning set out in section 4.2 of the Agreement;
- (25) **Defendant(s)** means, individually or collectively, the individuals or entities now or in the future named as a defendant in the Canadian Proceedings;
- (26) **Defendant Publisher(s)** means, individually or collectively, Hachette, Harper Collins, Macmillan, Penguin, and Simon & Schuster;
- (27) **Direct Distribution** has the meaning set out in section 4.3 of the Agreement;
- (28) **Discontinuance Order** means the order made by the BC Court in the form attached as Schedule C discontinuing the BC Proceeding as against Apple with prejudice and without costs;

- (29) **Distribution Protocol** means the plan developed by the Parties, based on the terms set out in section 4 of this Agreement, for distributing the Total Net Settlement Amount to Settlement Class Members or for their benefit, as approved by the Approval Courts on notice to Apple and to the Publisher Defendants;
- (30) **Document** means any paper, computer or electronic record, or other material within the scope of Rule 1.03(1) and Rule 30.01(1) of the Ontario *Rules of Civil Procedure* and any copies, reproductions or summaries of the foregoing, including microfilm copies and computer images;
- ~~(31) **eBook(s)** means an electronically formatted book in digital format designed to be read on a computer, a handheld device, or other electronic devices capable of visually displaying an electronically formatted book in digital format. For purposes of this Agreement, the term eBook does not include (1) an audio book, even if delivered and stored digitally; (2) a standalone specialized software application or "app" sold through an "app store" rather than through an eBook store (e.g., through Apple Inc.'s "App Store" rather than through "iBooks" or "iTunes") and not designed to be executed or read by or through a dedicated eBook reading device; or (3) a media file containing an electronically formatted book for which most of the value to consumers is derived from audio or video content contained in the file that is not included in the print version of the book;~~
- (31) **eBook(s)** means an electronically formatted book in digital format designed to be read on a computer, a handheld device, or other electronic devices capable of visually displaying an electronically formatted book in digital format. For greater certainty, the term eBook in this agreement refers to an individual copy of the above, rather than to a title. For purposes of this Agreement, the term eBook does not include (1) an audio book, even if delivered and stored digitally; (2) a standalone specialized software application or "app" sold through an "app store" rather than through an eBook store (e.g., through Apple Inc.'s "App Store" rather than through "iBooks" or "iTunes") and not designed to be executed or read by or through a dedicated eBook reading device; or (3) a media file containing an electronically formatted book for which most of the

value to consumers is derived from audio or video content contained in the file that is not included in the print version of the book;

~~(32) **eBook Monetary Benefit** means the Total Net Settlement Amount divided by the number of Eligible eBooks;~~

(32) **eBook Monetary Benefit** means the Total Net Settlement Amount, less any amount paid or to be paid *cy pres* pursuant to section 4.1(7) of this Agreement, divided by the number of Eligible eBooks (other than PRH Excluded eBooks);

(33) **Effective Date** means the next calendar day after the day on which all appellate rights with respect to the Approval Orders and the Discontinuance Order have expired or the Approval Orders and the Discontinuance Order, as applicable, are affirmed upon a final disposition of all appeals;

~~(34) **Eligible eBooks** means each and every eBook published by one or more of the Defendant Publishers that was purchased in Canada by a Settlement Class Member during the Settlement Class Period;~~

(34) **Eligible eBooks** means each and every eBook published and/or distributed by one or more of the Defendant Publishers and/or their respective present and former, direct and indirect, parents, subsidiaries, divisions, and/or affiliates, that was purchased in Canada by a Settlement Class Member during the Settlement Class Period, except for eBooks published and/or distributed by Random House of Canada Limited and/or its present or former, direct or indirect, parents, subsidiaries, divisions and/or affiliates and purchased in Canada on or before December 31, 2014. For the purposes of section 4 only of this Agreement, Eligible eBooks does not include PRH Excluded eBooks;

(35) **eRetailers** means Amazon, Google, Kobo and Sony;

~~(36) **eRetailer Data** means the names and e-mail addresses of Settlement Class Members who purchased Eligible eBooks published by the Defendant Publishers from the eRetailer during the Settlement Class Period, the total number of Eligible eBooks purchased by each Settlement Class Member from~~

~~the eRetailer during the Settlement Class Period, and information as to which of the Settlement Class Members has an Active Account with the eRetailer. In the case of Sony, the eRetailer Data will also include information showing whether or not the Settlement Class Members transferred their accounts to Kobo following the March 20, 2014 Sony Reader Store close-down;~~

(36) **eRetailer Data** means unique identifiers (which may but need not be Settlement Class Members' names) and e-mail addresses of Settlement Class Members who purchased Eligible eBooks (other than those who purchased only PRH Excluded eBooks) from the eRetailer during the Settlement Class Period, the total number of Eligible eBooks (other than PRH Excluded eBooks) purchased by each Settlement Class Member from the eRetailer during the Settlement Class Period, and information as to which of the Settlement Class Members has an Active Account with the eRetailer. In the case of Sony, the eRetailer Data will also include information showing whether or not the Settlement Class Members transferred their accounts to Kobo following the March 20, 2014 Sony Reader Store close-down;

~~(37) **eRetailer Data Order** means the Orders of the Ontario Court requiring the eRetailers to provide the eRetailer Data to the Claims Administrator;~~

(37) **eRetailer Data Order** means any or all of (i) the Order(s) of the Ontario Court requiring the eRetailers to provide the eRetailer Data to the Claims Administrator, (ii) binding agreement(s) by eRetailers to voluntarily provide the eRetailer Data to the Claims Administrator in the absence of Order(s) of the Ontario Court, or (iii) the voluntary provision of the eRetailer Data by eRetailers to the Claims Administrator in the absence of Order(s) of the Ontario Court or binding agreement(s) to provide such information;

(38) **Excluded Person** means the Defendants and any of their subsidiaries, affiliates, officers, directors, senior employees, legal representatives, heirs, predecessors, successors and assigns;

(39) **Google** means Google, Inc. and any subsidiary or affiliate thereof that acted as a distribution agent for Defendant Publishers' eBooks in Canada;

(40) **Hachette** means Hachette Book Group, Inc. and its wholly owned subsidiary Hachette Book Group Canada Ltd.;

(41) **HarperCollins** means HarperCollins Publishers, LLC, and its wholly owned subsidiary HarperCollins Canada Limited;

~~(42) **Individual Monetary Benefit** means the pro rata share of the Total Net Settlement Amount to which each Settlement Class Member is entitled to under this Agreement, being an amount of money equaling the eBook Monetary Benefit multiplied by the number of Eligible eBooks purchased by that Settlement Class Member during the Settlement Class Period, provided that the Individual Monetary Benefit may be increased proportionately as provided for in section 4.1(6) of this Agreement;~~

(42) **Individual Monetary Benefit** means the pro rata share of the Total Net Settlement Amount to which each Settlement Class Member is entitled to under this Agreement, being an amount of money equaling the eBook Monetary Benefit multiplied by the number of Eligible eBooks (other than PRH Excluded eBooks) purchased by that Settlement Class Member during the Settlement Class Period, provided that the Individual Monetary Benefit may be increased proportionately as provided for in section 4.1(6) of this Agreement;

(43) **Kobo** means Kobo, Inc. and Rakuten Kobo, Inc. and any subsidiary or affiliate thereof that acted as a distribution agent for Defendant Publishers' eBooks in Canada;

~~(44) **Macmillan** means Macmillan Publishers, Inc.;~~

(44) **Macmillan** means Holtzbrinck Publishers, LLC d/b/a Macmillan and Macmillan Publishers, Inc.;

(45) **National Proceeding** means the proceeding commenced by Nancy Jean Adams in the form of a Notice of Action filed in the Ontario Court (Windsor Registry), Court File No. CV-12-17511, on February 23, 2012;

~~(46) **National Settlement Class** means all Persons in Canada who purchased Eligible eBooks during the Settlement Class Period, except the Excluded Persons, Persons who are included in the Quebec Settlement Class, and Persons who validly opt-out of the National Settlement Class in accordance with the certification order made in respect of Apple;~~

(46) **National Settlement Class** means all Persons in Canada who purchased Eligible eBooks during the Settlement Class Period, except the Excluded Persons, Persons who are included in the Quebec Settlement Class, Persons who validly opted out of the National Class Proceeding, and Persons who validly opt out of the Second National Proceeding;

(47) **Net Settlement Amount** means the amount remaining from the Settlement Amount plus any interest that accrues thereon after deduction of Class Counsel Fees, Administration Expenses, and any other amounts that may be approved by the Approval Courts;

(48) **Notice of Certification, Authorization and Settlement Approval Hearing** means the form or forms of notice attached hereto as Schedule E, or such other form or forms as may be agreed to by the Plaintiffs and Apple and approved by the Approval Courts, which informs the Settlement Classes of: (i) the principal elements of this Agreement, including the procedure to be followed by the Settlement Class Members to prove their claims, (ii) the certification of the National Proceeding and Second National Proceeding as a national class proceeding and the authorization of the Quebec Proceeding as a class proceeding, each as against Apple, (iii) the dates and locations of the Settlement Approval Hearings, and (iv) the right to present arguments to the Approval Courts;

- (49) **Notice of Distribution** means any form or forms of notice as may be approved by the Approval Courts, which informs the Settlement Classes of the manner of distribution of the Total Net Settlement Amount including any claims process by which Settlement Class Members may apply to obtain compensation from the Total Net Settlement Amount;
- (50) **Notices** mean the Notice of Certification, Authorization and Settlement Approval Hearings, the Notice of Distribution, and any other notice that may be issued pursuant to an order of the Approval Courts;
- (51) **Ontario Court** means the Ontario Superior Court of Justice;
- (52) **Ontario Plaintiff** means the plaintiff in the National Proceeding and the Second National Proceeding;
- (53) **Opt-Out Period** means the period of time commencing on the date on which the Notice of Certification, Authorization and Settlement Approval Hearing is first published and ending thirty (30) days thereafter, or such other date agreed upon by the Parties and ordered by the Approval Courts;
- (54) **Original Class Period** means the period of time extending from April 1, 2010 up to and including September 21, 2014;
- (55) **Penguin** means Penguin Group (USA) LLC (formerly Penguin Group (USA), Inc.) and Penguin Canada Books, Inc.;
- (56) **Parties** mean the Plaintiffs, the Settlement Class Members and Apple;
- (57) **Person** means an individual, corporation, partnership, limited partnership, limited liability company, association, joint stock company, joint venture, estate, legal representative, trust, trustee, executor, beneficiary, unincorporated association, government or any political subdivision or agency thereof, member, manager and any other business or legal entity and their heirs, predecessors, successors, representatives, or assignees;
- (58) **Plaintiffs** mean the plaintiffs in the Canadian Proceedings;

- (59) **Publishers' Settlement** means the settlement agreement dated May 8, 2014 made as between the Defendant Publishers and the Plaintiffs, which was approved as ordered on October 6, 2014;
- (60) **Publishers' Net Settlement Amount** means the amount remaining from the amounts paid by the Defendant Publishers pursuant to the Publishers' Settlement plus any interest that accrues thereon after deduction of Class Counsel Fees, Administration Expenses, and any other amounts that may be approved by the Approval Courts;
- (60-A) **PRH Excluded eBooks** means all eBooks published or distributed by Penguin Random House Canada Limited and/or its present or former, direct or indirect, parents, subsidiaries, divisions and/or affiliates and purchased in Canada after December 31, 2014;
- (61) **Quebec Court** means the Superior Court of Quebec;
- (62) **Quebec Plaintiff** means the petitioner in the Quebec Proceeding;
- (63) **Quebec Proceeding** means the proceeding commenced by Antoine Pontbriand, in the form of an application for authorization (la Requête pour obtenir l'autorisation d'exercer un recours collectif) filed in the Quebec Superior Court, Court File No. 500-06-000595-120 (Montreal) on February 24, 2012;
- (64) **Quebec Settlement Class** means all individuals resident in Quebec and all legal Persons in Quebec established for a private interest, partnership or association in the Province of Quebec which at all times since February 24, 2013 have had no more than fifty persons bound to it by contact of employment or under its direction or control, who purchased Eligible eBooks during the Settlement Class Period except Excluded Persons, Persons who are in the National Settlement Class and Persons who validly Opt-Out of the Quebec Settlement Class in accordance with the Authorization judgment made in respect of Apple;

(65) **Released Claims** mean any and all manner of claims, demands, actions, suits, causes of action, whether class, individual or otherwise in nature, whether personal or subrogated, for damages of any kind, including without limitation compensatory, punitive or other damages, liabilities of any nature whatsoever, including interest, costs, expenses, class administration expenses (including Administration Expenses), penalties, and lawyers' fees (including Class Counsel Fees), known or unknown, suspected or unsuspected, foreseen or unforeseen, actual or contingent, and liquidated or unliquidated, in law, under statute or in equity, that the Releasors, or any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have, relating in any way to any conduct occurring anywhere, from the beginning of time to the end of the Settlement Class Period, in respect of the Alleged Conspiracy as it relates to the sales of Eligible eBooks in Canada during the Settlement Class Period which was alleged (or which could have been alleged) in the Canadian Proceedings including, without limitation, any such claims which have been asserted, would have been asserted, or could have been asserted, directly or indirectly, whether in Canada or elsewhere, as a result of or in connection with the Alleged Conspiracy or any other alleged unlawful or any other horizontal or vertical, or unilateral or coordinated, anti-competitive conduct (whether that conduct occurred in Canada or elsewhere) in connection with the purchase, sale, pricing, discounting, marketing or distributing of Eligible eBooks during the Settlement Class Period, including, without limitation, any claims for consequential, subsequent or follow-on harm that arise after the Settlement Class Period in respect of any agreement or conduct that occurred during the Settlement Class Period, provided that sections 2 and 3 of the consent agreement entered into on January 19, 2017 between Apple and the Commissioner of the Competition were implemented. For greater certainty, nothing herein shall be construed to release any claims arising from (a) any alleged product defect, breach of contract, breach of warranty or similar claims between the Parties relating to Eligible eBooks, or (b) any claims relating to the sale of eBooks after the end of the Settlement Class Period in the event that sections 2 and 3 the consent

agreement entered into on January 19, 2017 between Apple and the Commissioner of the Competition was not implemented.

- (66) **Releasees** mean, jointly and severally, individually and collectively, Apple and the Defendant Publishers and all of their respective present and former, direct and indirect, parents, subsidiaries, divisions, affiliates, partners, insurers, and all other Persons, partnerships or corporations with whom any of the former have been, or are now, affiliated or otherwise related, and all of their respective past, present and future officers, directors, employees, agents, shareholders, members and managers, attorneys, trustees, servants and representatives (subject to such particular inclusions or exclusions of individuals as may be specified in writing by Apple in its sole discretion prior to the Effective Date), and the predecessors, successors, heirs, executors, administrators and assigns of each of the foregoing;
- (67) **Releasors** mean, jointly and severally, individually and collectively, the Plaintiffs and the Settlement Class Members and their respective parents, subsidiaries, predecessors, successors, heirs, executors, administrators, insurers, and assigns;
- (68) **Second National Proceeding** means the proceeding commenced by Nancy Jean Adams in the form of a Statement of Claim issued in the Ontario Court (Windsor Registry), Court File No. CV-16-24156-CP, on September 22, 2016;
- (69) **Settlement Amount** means the total sum of CDN \$12 million;
- (70) **Settlement Approval Hearings** means the hearings of the motions to be brought by the Ontario Plaintiff in the Ontario Court and the Quebec Plaintiff in the Quebec Court for the Approval Orders;
- (71) **Settlement Classes** mean the National Settlement Class and the Quebec Settlement Class;
- (72) **Settlement Class Member(s)** means, individually or collectively, any member or members of the National Settlement Class or the Quebec Settlement Class;

- (73) **Settlement Class Period** means the Original Class Period and the Additional Class Period;
- (74) **Simon & Schuster** means Simon & Schuster Canada, a division of CBS Canada Holdings Co.;
- (75) **Sony** means Sony of Canada Ltd. and any subsidiary or affiliate thereof that acted as a distribution agent for Defendant Publishers' eBooks in Canada;
- (76) **Third Party eRetailer(s)** means, individually or collectively, any eRetailer which does not choose to become a Cooperating eRetailer;
- (77) **Total Net Settlement Amount** means the Net Settlement Amount plus the Publishers' Net Settlement Amount;
- (78) **Trust Account** means an interest bearing trust account at a Canadian Schedule 1 bank or at Desjardins Group under the control of Class Counsel for the benefit of Settlement Class Members.

SECTION 2 – SETTLEMENT APPROVAL

2.1 Best Efforts

- (1) The Parties shall use their best efforts to effectuate this Agreement, including securing the Certification and Authorization Orders, eRetailer Data Order, Approval Orders and Discontinuance Order in accordance with this Agreement.

2.2 Motions Certifying the National Proceeding, Authorizing the Quebec Proceeding, Approving Notice and Identification of Settlement Class Members

- (1) At a time mutually agreed to by the Plaintiffs and Apple after this Agreement is executed, and which is as soon as practicable, the Ontario Plaintiff and the Quebec Plaintiff shall each bring a motion or application before their respective Approval Courts for Certification and Authorization Orders and approving Notices.

- (2) The Certification and Authorization Orders shall be substantially in the forms set out in Schedule B to this Agreement.

2.3 Motion for eRetailer Data Order

- (1) At the same time that the motion or application is brought for Certification and Authorization Orders, Apple and Class Counsel will jointly seek, on notice to the eRetailers, the eRetailer Data Order from the Ontario Court, only.
- (2) The Parties will jointly propose that the eRetailers bear their own expenses and costs in connection with the eRetailer Data Order. However, any expenses or costs ordered to be paid to the eRetailers in connection with the eRetailer Data Order will be paid by Class Counsel from the Settlement Amount on behalf of the Settlement Class Members. For greater certainty and in any event, Apple shall have no liability or responsibility for any expenses or costs ordered to be paid to the eRetailers in connection with the eRetailer Data Order.
- (3) If the Ontario Court declines to make the eRetailer Data Order, Class Counsel are not required to appeal such decision. However, Apple is permitted, but not required to appeal such decision. If Apple does elect to appeal such decision, this settlement shall not be implemented further until such appeals are finally disposed.

2.4 Apple Data

- ~~(1) Within forty five (45) days after the Ontario Court makes or declines to make the eRetailer Data Order, Apple shall in any case provide the Apple Data to the Claims Administrator.~~

(1) Within forty-five (45) days after the later of (i) the eRetailer Data Order being made in respect of all eRetailers or, if the eRetailer Data Order is not otherwise made, the Ontario Court declining to make the eRetailer Data Order, or (ii) the appointment of the Claims Administrator by the Approval Courts, Apple shall in any case provide the Apple Data to the Claims Administrator.

2.5 Cooperating eRetailers

- (1) Prior to or at the same time as Apple and Class Counsel bring a motion for the eRetailer Data Order, Apple and Class Counsel shall advise eRetailers of their ability to become a Cooperating eRetailer under this Agreement.
- (2) Within fifteen (15) days after the Ontario Court makes or declines to make the Third Party eRetailer Data Order, each eRetailer may advise whether it agrees to abide by the provisions of this Agreement relating to Cooperating eRetailers. In the event that an eRetailer does not advise whether it agrees to abide by the provisions of this Agreement relating to Cooperating eRetailers within fifteen (15) days after the Ontario Court makes or declines to make the eRetailer Data Order, that eRetailer shall be deemed not to be a Cooperating eRetailer.
- ~~(3) Within forty-five (45) days after the Ontario Court makes or declines to make the eRetailer Data Order, each Cooperating eRetailer shall provide the eRetailer Data to the Claims Administrator.~~

(3) Within forty-five (45) days after the latter of (i) the eRetailer Data Order being made in respect of all eRetailers or, if the eRetailer Data Order is not otherwise made, the Ontario Court declining to make the eRetailer Data Order, or (ii) the appointment of the Claims Administrator by the Approval Courts, each Cooperating eRetailer shall provide the eRetailer Data to the Claims Administrator.

2.6 Motions for Approval of Settlement

- (1) Following receipt of the Certification and Authorization Orders and the eRetailer Data Order, if it is granted, and at a time mutually agreed to by the Plaintiffs and Apple which is as soon as practicable, the Ontario Plaintiff and the Quebec Plaintiff each shall bring a motion or application before their respective Approval Court for Approval Orders approving this Agreement, dismissing the National Proceeding and the Second National Proceeding and homologating the transaction in the Quebec Proceeding, respectively, as against Apple and the Defendant Publishers with prejudice and without costs.

- (2) The Approval Orders shall be substantially in the forms set out in Schedule A to this Agreement.

2.7 Discontinuance Order

- (1) Following receipt of the Certification and Authorization Orders and the expiration of the Opt-Out Period, the BC Plaintiffs shall bring an application at a time mutually agreed to by the BC Plaintiffs and Apple, before the BC Court seeking the Discontinuance Order.
- (2) The Discontinuance Order shall be substantially in the form set out in Schedule C to the Agreement.

SECTION 3 – SETTLEMENT BENEFITS

3.1 Payment of Settlement Amount

- (1) Within forty-five (45) days of the execution of this Agreement by the Parties, Apple shall cause the Settlement Amount to be paid to Class Counsel to be held in the Trust Account in accordance with the terms of this Agreement.
- (2) The Plaintiffs have the right to terminate this Agreement if the Settlement Amount is not paid in full within sixty (60) days of the execution of this Agreement by the Parties.
- (3) Class Counsel shall maintain the Trust Account as provided for in this Agreement. Class Counsel shall not pay out all or any part of the monies in the Trust Account, except in accordance with this Agreement or in accordance with an order of the Approval Courts, obtained with notice to Apple, after all appeal rights in respect of the Approval Orders have either lapsed or been exhausted.
- (4) If this Agreement is terminated under section 11, then Class Counsel shall forthwith return the Settlement Amount to Apple, together with interest earned on the Settlement Amount between the date it was paid by Apple and the date it is returned, less the costs of any Notice, any expenses or costs ordered to be paid to the eRetailers in connection with the eRetailer Data Order, and any

translations as provided in section 11.3(1) that had been incurred to the date on which the Agreement is terminated.

3.2 Taxes and Interest

- (1) Except as hereinafter provided, all interest earned on the Settlement Amount shall accrue to the benefit of the Settlement Class Members and shall become and remain part of the Trust Account.
- (2) All taxes payable on any interest which accrues on the Settlement Amount in the Trust Account or otherwise in relation to the Settlement Amount shall be the responsibility of the Settlement Classes. Class Counsel shall be solely responsible to fulfill all tax reporting and payment requirements arising from the Settlement Amount in the Trust Account, including any obligation to report taxable income and make tax payments. All taxes (including interest and penalties) due with respect to the income earned on the Settlement Amount shall be paid from the Trust Account.
- (3) Apple shall have no responsibility to make any filings relating to the Trust Account and will have no responsibility to pay tax on any income earned by the Settlement Amount or pay any taxes on the monies in the Trust Account, except in the event the Agreement is terminated and the Settlement Amount is returned to Apple as provided in section 3.1(4), in which case Apple shall be solely responsible for all taxes payable on any interest which accrued thereon.

SECTION 4 – DISTRIBUTION PROTOCOL

4.1 General

- (1) The mechanics of the administration and implementation of this Agreement and the Distribution Protocol shall be approved by the Approval Courts on a motion brought by Class Counsel on notice to Apple.
- (2) The Distribution Protocol will be based on and consistent with the principles set out in this Agreement and, in particular, section 4 of this Agreement, or as may

be otherwise agreed upon by the Plaintiffs and Apple and approved by the Approval Courts.

- (3) After the Total Net Settlement Amount is paid by Class Counsel to the Claims Administrator and at the conclusion of the Claims Period, each Settlement Class Member shall be entitled to receive their Individual Monetary Benefit as hereinafter provided.
- (4) Subject to approval by the Approval Courts, the Individual Monetary Benefits:
 - (a) for each Settlement Class Member who has an Active Account with iTunes, will be calculated based on the Apple Data and distributed by way of the Credit Distribution to the Settlement Class Member's iTunes Active Account;
 - (b) for each Settlement Class Member identified in the Apple Data who does not have an Active Account with iTunes, will be calculated based on the Apple Data and distributed by way of Direct Distribution;
 - (c) for each Settlement Class Member who has an Active Account with a Cooperating eRetailer, will be calculated based on the eRetailer Data and distributed by way of the Credit Distribution to the Settlement Class Member's Cooperating eRetailer Active Account;
 - (d) for each Settlement Class Member identified in Cooperating eRetailer Data who does not have an Active Account with the Cooperating eRetailer, will be calculated based on the Cooperating eRetailer Data and distributed by way of Direct Distribution;
 - (e) for all other Eligible eBook purchases by Settlement Class Members from Third Party eRetailers:
 - (A) will be calculated based on the eRetailer Data provided by the Third Party eRetailers and distributed by way of Direct Distribution, if the eRetailer Data Order is made; or

- (B) will be calculated based on approved claims submitted through a claims process and distributed by way of the Alternate Distribution, if the eRetailer Data Order is not made.
- (5) After Apple has provided the Apple Data to the Claims Administrator, each Cooperating eRetailer has provided the eRetailer Data to the Claims Administrator, each Third Party eRetailer has provided the eRetailer Data to the Claims Administrator (if the eRetailer Data Order is made), and the Claims Period has expired (if the eRetailer Data Order is not made), the Claims Administrator shall determine the Individual Monetary Benefits payable to Settlement Class Members.
- (6) The Individual Monetary Benefit shall be increased proportionally, by excluding Settlement Class Members who elect to receive their benefit by cheque under the Alternate Distribution and who would receive less than CAD \$20.00, so as to ensure optimal claims administration expediency and that insofar as possible the entirety of the Total Net Settlement Amount is paid out to Settlement Class Members.
- (7) Notwithstanding anything else in this Agreement, if agreed to by both the Plaintiffs and Apple, and subject to approval by the Approval Courts, in the event that the eRetailer Data Order is made with respect to some eRetailers but not others such that it is reasonably likely that compensation is payable in respect of at least 80% of Eligible eBooks by way of Credit Distribution and/or Direct Distribution, the Plaintiffs and Apple may agree to forego an Alternate Distribution entirely and instead have any portion of the Total Net Settlement Amount that would be payable or would reasonably be estimated to be payable pursuant to the Alternate Distribution paid *cy pres* as the Parties agree and as the Approval Courts shall direct.

4.2 Credit Distribution

- (1) Individual Monetary Benefits distributed by way of the Credit Distribution shall be dealt with in accordance with section 4.2.

- (2) After the Claims Administrator has determined the Individual Monetary Benefits payable to Settlement Class Members in respect of their iTunes or Cooperating eRetailers Active Accounts, the Claims Administrator shall pay to Apple and each Cooperating eRetailer an amount representing the total amount of Individual Monetary Benefits payable to Settlement Class Members who have an Active Account with iTunes or such Cooperating eRetailer, as the case may be. At the same time, the Claims Administrator shall provide Apple and each Cooperating eRetailer a list setting out the amounts of the Individual Monetary Benefit payable to each Settlement Class Member who has an Active Account with iTunes or that Cooperating eRetailer, as the case may be.
- (3) Within thirty (30) days of the Claims Administrator providing the amount and the list described in section 4.2(2), Apple and each Cooperating eRetailer shall provide to each Settlement Class Member who has an Active Account with iTunes or the Cooperating eRetailer, as the case may be, a credit in the amount of that Settlement Class Member's Individual Monetary Benefit in his or her iTunes or Cooperating eRetailer Active Account automatically with no requirement on that Settlement Class Member to submit a claim.
- (4) Apple and the Cooperating eRetailers shall not charge any fees in connection with the deposit of such credits into a Settlement Class Member's iTunes or Cooperating eRetailer Active Account, as the case may be.
- (5) For greater certainty, there shall be no minimum amount of credit for a Settlement Class Member to be eligible for a deposit of such credits into a Settlement Class Member's iTunes or Cooperating eRetailer Active Account, as the case may be.

4.3 Direct Distribution

- (1) Individual Monetary Benefits distributed by way of the Direct Distribution shall be dealt with in accordance with section 4.3.
- (2) After the Claims Administrator has determined the Individual Monetary Benefits payable to Settlement Class Members by way of Direct Distribution in

accordance with sections 4.1(4)(b), 4.1(4)(d) and 4.1(4)(e)(A), the Claims Administrator shall pay those Individual Monetary Benefits to each Settlement Class Member by electronic transfer to the e-mail address provided to the Claims Administrator pursuant to the Apple Data or the eRetailer Data automatically with no requirement on that Settlement Class Member to submit a claim.

- (3) For greater certainty, there shall be no minimum amount of Individual Monetary Benefits for a Settlement Class Member to be eligible for an electronic transfer of said benefit to the Settlement Class Members' email address.

4.4 Alternate Distribution

- (1) Individual Monetary Benefits distributed by way of the Alternate Distribution shall be dealt with in accordance with section 4.4.

~~(2) For greater certainty, the Alternate Distribution shall only be employed for the distribution of Individual Monetary Benefits to Settlement Class Members who file an approved claim for Eligible eBooks purchased from a Third Party eRetailer, and only in the event that the eRetailer Data Order is not made.~~

(2) For greater certainty, the Alternate Distribution shall only be employed for the distribution of Individual Monetary Benefits to Settlement Class Members who file an approved claim for Eligible eBooks purchased from a Third Party eRetailer, and only in the event that the eRetailer Data Order is not made with respect to such Third Party eRetailer.

~~(3) In the event that the eRetailer Data Order is not made, each Settlement Class Member may submit a claim form to the Claims Administrator in accordance with section 4.1(4)(e)(B) before the end of the Claims Period in respect of Eligible eBooks purchased on a Third Party eRetailer account.~~

(3) In the event that the eRetailer Data Order is not made with respect to one or more Third Party eRetailers, each Settlement Class Member may submit a claim form to the Claims Administrator in accordance with section 4.1(4)(e)(B) before the end of the

Claims Period in respect of Eligible eBooks purchased on such Third Party eRetailer accounts.

~~(4) In the event that the eRetailer Data Order is not made, after the conclusion of the Claims Period, the Claims Administrator shall pay the Individual Monetary Benefits for each approved claim for Eligible eBooks purchased on a Third Party eRetailer account to each Settlement Class Member by electronic transfer to the e-mail address provided to the Claims Administrator or by cheque, should the Settlement Class Member so elect, to an address provided to the Claims Administrator.~~

(4) In the event that the eRetailer Data Order is not made with respect to one or more Third Party eRetailers, after the conclusion of the Claims Period, the Claims Administrator shall pay the Individual Monetary Benefits for each approved claim for Eligible eBooks purchased on such Third Party eRetailer account to each Settlement Class Member by electronic transfer to the e-mail address provided to the Claims Administrator or by cheque, should the Settlement Class Member so elect, to an address provided to the Claims Administrator.

(5) Settlement Class Members who elect payment by cheque under the Alternate Distribution shall not be eligible for payment if their Individual Monetary Benefit is under CAD \$20.

(6) For greater certainty, there shall be no minimum amount of Individual Monetary Benefits for a Settlement Class Member to be eligible for an electronic transfer of said benefit to the Settlement Class Members' email address.

4.5 Remaining Total Net Settlement Amount

(1) In the event that the entirety of the Total Net Settlement Amount is not paid to the Settlement Class Members in accordance with the Distribution Protocol, any remaining portion of the Total Net Settlement Amount shall be paid *cy pres* as the Parties agree and as the Approval Courts shall direct.

- (2) For greater certainty, in the event that the entirety of the Total Net Settlement Amount is not paid to the Settlement Class Members in accordance with the Distribution Protocol, there shall be no second or subsequent distribution of any remaining portion of the Total Net Settlement Amount to Settlement Class Members or any portion of the Settlement Class Members.

4.6 No Responsibility for Administration or Fees

- (1) Apple shall not have any responsibility, financial obligations or liability whatsoever with respect to the implementation, administration and oversight of the Distribution Protocol and/or the investment, distribution or administration of monies in the Trust Account including, but not limited to, Administration Expenses and Class Counsel Fees. The totality of Apple's monetary contribution shall be limited to the Settlement Amount. For greater certainty, this section does not derogate from the requirement for Apple to provide the Apple Data in accordance with section 2.4 or to distribute the Individual Monetary Benefits to iTunes Active Accounts in accordance with section 4.2.

SECTION 5 – OPTING-OUT

5.1 Procedure

- ~~(1) A Person may opt-out of the National Proceeding, the Second National Proceeding, or the Quebec Proceeding by sending a signed opt-out request form by pre-paid mail, courier or email to the Claims Administrator at an address and coordinates to be identified in the Notice of Certification, Authorization and Settlement Approval Hearing.~~

(1) A Person may opt-out of the Second National Proceeding by sending a signed opt-out request form by pre-paid mail, courier or email to the Claims Administrator at an address and coordinates to be identified in the Notice of Certification, Authorization and Settlement Approval Hearing.

- (2) Opt-out requests must contain:

- (a) a statement requesting that the Person opting out be excluded from the relevant Settlement Class; and
 - (b) the full name, current address, telephone number, and e-mail address of the Person who is opting out and any former names which are relevant to its purchase of eBooks in Canada during the Class Period.
- ~~(3) An opt-out request of the National Proceeding shall be deemed to also be an opt-out request of the Second National Proceeding. An opt-out request of the Second National Proceeding shall be deemed to also be an opt-out request of the National Proceeding.~~
- (4) An opt-out request will only be effective if the executed opt-out request is postmarked or emailed on or before the end of the Opt-Out Period.
 - (5) Opt-out request forms will be available on the websites of Class Counsel, and can also be obtained by mail or email by contacting Class Counsel, or as otherwise ordered by an Approval Court.

5.2 Opt-Out Report

- ~~(1) Within twenty one (21) days of the end of the Opt-Out Period, the Claims Administrator shall notify Class Counsel and Apple of: (i) each Person, if any, who has opted out of the Canadian Proceedings; and (ii) the percentage representing the total number of Eligible eBooks purchased during the Settlement Class Period by Persons who opt-out of the Canadian Proceedings divided by the total number of Eligible eBooks purchased during the Settlement Class Period for (a) Settlement Class Members that are identified in the Apple Data, and (b) Settlement Class Members that are identified in the eRetailer Data, if available.~~
- (1) Within twenty-one (21) days of the end of the Opt-Out Period, the Claims Administrator shall notify Class Counsel and Apple of: (i) each Person, if any, who has opted out of the Second National Proceeding; and (ii) the percentage representing the total number of Eligible eBooks (other than PRH Excluded

eBooks) purchased during the Settlement Class Period by Persons who opt-out of the Canadian Proceedings divided by the total number of Eligible eBooks (other than PRH Excluded eBooks) purchased during the Settlement Class Period for (a) Settlement Class Members that are identified in the Apple Data, and (b) Settlement Class Members that are identified in the eRetailer Data, if available.

(2) Prior to the end of the Opt-Out Period, Class Counsel shall provide the information described in section 5.2(1) of the Publishers' Settlement to the Claims Administrator.

SECTION 6 – RELEASES, DISMISSAL AND TRANSACTION HOMOLOGATION

6.1 Release of Releasees

- (1) Upon the Effective Date, and in consideration of payment of the Settlement Amount and for other valuable consideration set forth in this Agreement, the Releasors forever and absolutely release and forever discharge the Releasees from the Released Claims that any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have.

6.2 No Further Claims

- (1) The Releasors shall not now or hereafter institute, continue, maintain, assert, participate in or be involved with, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other Person, any action, suit, cause of action, claim or demand against any Releasee or against any other Person who may claim contribution or indemnity, or other claims over for relief, from any Releasee in respect of any Released Claims.

6.3 Disposition of the Canadian Proceedings

- (1) Upon the Effective Date, the National Proceeding and the Second National Proceeding shall be dismissed and the Quebec Proceeding shall be settled by homologation of transaction, with prejudice and without costs as against Apple and where applicable, the Defendant Publishers.
- (2) Upon the Effective Date, the BC Proceeding shall be discontinued with prejudice and without costs as against Apple.

6.4 Claims Against Other Entities Reserved

- (1) Except as provided herein, this Agreement does not settle, compromise, release or limit in any way whatsoever any claim by Settlement Class Members against any Person other than the Releasees.

SECTION 7 – EFFECT OF SETTLEMENT

7.1 No Admission of Liability

- (1) The Plaintiffs and Apple expressly reserve all of their rights if this Agreement is not approved, is terminated or otherwise fails to take effect for any reason. Further, whether or not this Agreement is finally approved, is terminated, or otherwise fails to take effect for any reason, this Agreement and anything contained herein, and any and all negotiations, Documents, discussions and proceedings associated with this Agreement, and any action taken to carry out this Agreement, shall not be deemed, construed or interpreted to be an admission of any violation of any statute or law, or of any wrongdoing or liability by Apple or by any Releasee, or of the truth of any of the claims or allegations contained in the Canadian Proceedings or any other pleading filed by the Plaintiffs or any other Person.

7.2 Agreement Not Evidence

- (1) Whether or not it is terminated, this Agreement and anything contained herein, and any and all negotiations, Documents, discussions and proceedings

associated with this Agreement, and any action taken to carry out this Agreement, shall not be referred to, offered as evidence or received in evidence in any present, pending or future civil, criminal or administrative action or proceeding, except: (i) by the Parties in a proceeding to approve or enforce this Agreement; (ii) by a Releasee to defend against the assertion of any Released Claims; (iii) by a Releasee in any insurance-related proceeding; or (iv) as otherwise required by law or as provided in this Agreement.

7.3 No Further Litigation

- (1) No Class Counsel may hereafter institute, continue, maintain, assert, participate in or be involved with, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other Person, any action, suit, cause of action, claim or demand against any Releasee or against any other Person who may claim contribution or indemnity, or other claims over for relief, from any Releasee which relates to or arises from the Alleged Conspiracy or Released Claims. For greater certainty, this section shall not affect the right of any Class Counsel to litigate any claims relating to the sale of eBooks after the end of the Settlement Class Period in the event that sections 2 and 3 the consent agreement entered into on January 19, 2017 between Apple and the Commissioner of the Competition were not implemented.
- (2) Section 7.3(1) of this Agreement shall be inoperative to the extent that it requires any lawyer who is a member of the Law Society of British Columbia (the "LSBC") to breach his or her obligations under Rule 4.7 of the LSBC's Professional Conduct Handbook by refraining from participation or involvement in any claim or action in a British Columbia court. This section shall not affect or render inoperative any other section or provision of this Agreement.

SECTION 8 – CERTIFICATION OR AUTHORIZATION FOR SETTLEMENT ONLY

8.1 Settlement Classes and Common Issue

- (1) The Parties agree that the National Proceeding, the Second National Proceeding, and the Quebec Proceeding shall be certified or authorized solely for purposes of settlement of the Canadian Proceedings against Apple and the approval of this Agreement by the Approval Courts.
- (2) The Plaintiffs agree that, for settlement purposes, the only common issue that they will seek to define is the Common Issue and the only classes that they will assert are the National Settlement Class in both the National Proceeding and the Second National Proceeding and the Quebec Settlement Class in the Quebec Proceeding. The Plaintiffs acknowledge that Apple agrees to the definition of the Common Issue for purposes of settlement only.

8.2 Certification and Authorization Without Prejudice

- (1) In the event that this Agreement is not finally approved, is terminated in accordance with its terms or otherwise fails to take effect, this Agreement shall, subject to an agreement by the Parties to the contrary, be null and void and of no force and effect and any order certifying or authorizing a class proceeding shall be set aside and the Parties agree that all Parties shall be put in the position they were in before this Agreement was executed and nothing in this Agreement shall prejudice any position that any of the Parties or any Releasee may take on any issue in the Canadian Proceedings or any other litigation.

SECTION 9 – NOTICE TO NATIONAL SETTLEMENT CLASS

9.1 Notice Required

- (1) The proposed Settlement Classes shall be given the following Notices:
 - (i) Notice of Certification, Authorization and Settlement Approval Hearing;

(ii) Notice of Distribution; and (iii) any other notice that may be required by the Approval Courts or the BC Court.

- (2) All Notices will be provided to Apple for its approval as to form and content no less than thirty (30) days before any motion for approval to an Approval Court or the BC Court.

9.2 Dissemination of Notices

- (1) The Ontario Plaintiff and the Quebec Plaintiff shall, on a motion to their respective Approval Courts on notice to Apple, seek approval of the plan attached hereto as Schedule D for the dissemination of Notices in the form attached hereto as Schedule E.
- (2) The plan for dissemination of Notices shall include a provision that all required Notices under this Agreement shall be provided by direct e-mail notification to the e-mail address of each Settlement Class Member provided to the Claims Administrator pursuant to the eRetailers Data Order within thirty (30) days of the Order, if any, and/or by Apple pursuant to section 2.3(4) of this Agreement.
- (3) Subject to the approval of the Approval Courts, the plan for dissemination of Notices shall also include a provision that notice shall be provided by newspaper publications in English and French for: (i) Notice of Certification, Authorization and Settlement Approval Hearing; and (ii) Notice of Distribution, only in the event that the Alternate Distribution is required to be made.
- (4) Apple and Class Counsel shall agree on a mutually acceptable date to propose to the Court that the plan for disseminating the Notices be approved.
- (5) Subject to the approval of the Approval Courts, any notices required to be provided under this Agreement by direct e-mail notification to the e-mail addresses provided by Apple or pursuant to the eRetailer Data Order may be provided, at the election of Apple or the eRetailer who provided such information (as the case may be), by Apple or the eRetailer directly instead of by the Claims Administrator, provided that: (i) Apple or the eRetailer (as the case may be) agrees to provide notice to all applicable

Settlement Class Members in substantially the manner and form approved by the Approval Courts; and (ii) Apple or the eRetailer (as the case may be) provides confirmation satisfactory to Class Counsel, Apple, and the Claims Administrator that notice has in fact been provided to all applicable Settlement Class Members in substantially the manner and form approved by the Approval Courts.

SECTION 10 – CLASS COUNSEL FEES AND ADMINISTRATION EXPENSES

- (1) Except as provided in sections 10(2) and 11.3(1), the Releasees shall not be liable for any fees, disbursements or taxes arising in any way under this Agreement or the Canadian Proceedings including but not limited to Class Counsel Fees and Administration Expenses, and any costs, fees, disbursements or taxes of the Defendant Publishers, the Plaintiffs or any Settlement Class Members, including any expenses or costs incurred by any lawyers, experts, advisors, agents, or representatives of the Settlement Class Members.
- (2) Class Counsel may on notice to Apple seek the Approval Courts' approval of Class Counsel Fees and Administration Expenses contemporaneous with seeking the Approval Orders, or at such other time as they shall determine in their sole discretion.
- (3) Except as provided in sections 10(2) and 11.3(1), any Administration Expenses and Class Counsel Fees may only be paid out of the Trust Account after the Effective Date.
- (4) The failure of an Approval Court to approve a request for Class Counsel Fees or Administration Expenses has no impact or effect on the rights and obligations of the Parties to this Agreement and shall not be grounds for termination of the Agreement.

SECTION 11 – TERMINATION OF AGREEMENT

11.1 Right of Termination

- (1) The Plaintiffs or Apple may terminate this Agreement as it relates to it in the event that:
 - (a) any Approval Court declines to grant a Certification Order or Authorization Order substantially in the form attached as Schedule B in the National Proceeding, the Second National Proceeding or the Quebec Proceeding or if any such Certification Order or Authorization Order is overturned or reversed in whole or in part on appeal;
 - (b) any Approval Court declines to grant the Approval Orders substantially in the form of Schedule A or if any such Approval Order is overturned or reversed in whole or in part on appeal;
 - (c) the Discontinuance Order in substantially the form of Schedule C obtained in accordance with this Agreement is not approved by the BC Court or is overturned or reversed in whole or in part on appeal; or
 - (d) the total number of Eligible eBooks purchased by Persons who opt-out of a Canadian Proceeding exceeds 5% of total number of Eligible eBooks sold by the Defendant Publishers through Apple and the eRetailers.
- (2) In addition, as provided in section 3.1(2) of this Agreement, the Plaintiffs have the right to terminate this Agreement if the Settlement Amount is not paid in full within sixty (60) days of the execution of this Agreement by the Parties.
- (3) To exercise a right of termination under section 3.1(2) or section 11.1(1), a terminating party shall deliver a written notice of termination pursuant to section 12.16 of this Agreement within thirty (30) days of the ground for termination becoming known to the terminating party. Upon delivery of such a written notice, this Agreement shall be terminated, shall be null and void and have no further force or effect, and shall not be binding on the Parties.

- (4) For greater certainty, this Agreement may not unilaterally be terminated if the Motion for eRetailer Data Order is not granted.

11.2 If Agreement is Terminated

- (1) If this Agreement is not approved, is terminated by the Plaintiffs or Apple in accordance with its terms or otherwise fails to take effect for any reason, all orders made in respect of this Agreement shall be set aside and shall be deemed as having no force and effect and shall be without prejudice to any position the Parties may assert in the future.
- (2) The Plaintiffs and Apple shall negotiate in good faith to determine a new timetable if the Canadian Proceedings are to continue.

11.3 Allocation of Monies in the Trust Account Following Termination

- (1) If this Agreement is terminated, Class Counsel shall return the Settlement Amount to Apple plus all accrued interest thereon, less the disbursements in respect of Notices, the expenses or costs ordered to be paid to the Third Party eRetailers in connection with the eRetailer Data Order, and translations incurred to the date of such payment, within thirty (30) days of receipt of a termination notice pursuant to section 11.1(3).

11.4 Survival of Provisions After Termination

- (1) If this Agreement is terminated or otherwise fails to take effect for any reason, the provisions of sections 3.1(4), 3.2(3), 7.1, 7.2, 8.2, 10(1), 10(2) and 11 and the definitions applicable thereto shall survive the termination and continue in full force and effect. The definitions shall survive only for the limited purpose of the interpretation of these surviving sections within the meaning of this Agreement. All other provisions of this Agreement and all other obligations pursuant to this Agreement shall cease immediately.

SECTION 12 – MISCELLANEOUS

12.1 Releasees Have No Liability for Administration

- (1) The Releasees have no responsibility for and no liability whatsoever with respect to the administration of this Agreement or the Distribution Protocol. For greater certainty, this section does not derogate from the requirement for Apple to provide the Apple Data in accordance with section 2.4 or to distribute the Individual Monetary Benefits to iTunes Active Accounts in accordance with section 4.2.

12.2 Motions for Directions

- (1) Apple or the Plaintiffs may apply to the Approval Courts for directions in respect of the interpretation, implementation and administration of this Agreement.
- (2) Apple or the Plaintiffs may apply to the Approval Courts for directions in respect of any Distribution Protocol.
- (3) All motions contemplated by this Agreement shall be on notice to the Plaintiffs and Apple.

12.3 Headings, etc.

- (1) In this Agreement:
 - (a) the division of the Agreement into sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement; and
 - (b) the terms “this Agreement”, “hereof”, “hereunder”, “herein” and similar expressions refer to this Agreement and not to any particular section or other portion of this Agreement.

12.4 Computation of Time

- (1) In the computation of time in this Agreement, except where a contrary intention appears:
 - (a) where there is a reference to a number of days between two events, the number of days shall be counted by excluding the day on which the first event happens and including the day on which the second event happens, including all calendar days; and
 - (b) only in the case where the time for doing an act expires on a holiday, the act may be done on the next day that is not a holiday.

12.5 Ongoing Jurisdiction

- (1) The Approval Courts jointly shall retain exclusive jurisdiction over this Agreement and the Parties hereto (including the Settlement Class Members), Class Counsel Fees and Administration Expenses.

12.6 Governing Law

- (1) This Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario.

12.7 Entire Agreement

- (1) This Agreement constitutes the entire agreement among the Parties, and supersedes all prior and contemporaneous understandings, undertakings, negotiations, representations, promises, agreements, agreements in principle and memoranda of understanding in connection herewith. None of the Parties will be bound by any prior obligations, conditions or representations with respect to the subject matter of this Agreement, unless expressly incorporated herein.

12.8 Amendments

- (1) This Agreement may not be modified or amended except in writing and on consent of all Parties hereto and the modifications or amendments shall only be effective if the Approval Courts approve any such material modification or amendment made after the Approval Orders have been granted.

12.9 Binding Effect

- (1) This Agreement shall be binding upon, and enure to the benefit of, the Plaintiffs, Apple, the Settlement Class Members, the Releasers, the Releasees, and all of their successors and assigns. Without limiting the generality of the foregoing, each and every covenant and agreement made herein by the Plaintiffs shall be binding upon all Releasers and each and every covenant and agreement made herein by Apple shall be binding upon all of the Releasees.

12.10 Counterparts

- (1) This Agreement may be executed in counterparts, all of which taken together will be deemed to constitute one and the same agreement, and a facsimile or PDF signature shall be deemed an original signature for purposes of executing this Agreement.

12.11 Interpretation

- (1) This Agreement has been the subject of negotiations and discussions among the Parties, each of which has been represented and advised by competent counsel, so that any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Agreement shall have no force and effect. The Parties further agree that the language contained in or not contained in previous drafts of this Agreement, or any agreement in principle, all have no bearing upon the proper interpretation of this Agreement.

12.12 Language

- (1) The Parties acknowledge that they have required and consented that this Agreement and all related documents be prepared in English; les parties reconnaissent avoir consenti à ce que la présente convention et tous les documents connexes soient rédigés en anglais. Nevertheless, the Class Counsel shall prepare a French translation of this Agreement including the Schedules and may recoup the costs of translation from the Trust Account. In the event of any dispute as to the interpretation or application of this Agreement, the English version shall prevail.

12.13 Transaction

- (1) This Agreement constitutes a transaction in accordance with Articles 2631 and following of the *Civil Code of Quebec*, and the parties are hereby renouncing to any errors of fact, of law and/or of calculation.

12.14 Recitals

- (1) The recitals to this Agreement are true and form part of the Agreement.

12.15 Schedules

- (1) The Schedules annexed hereto form part of this Agreement.

12.16 Notice

- (1) Any and all notices, requests, directives, or communications required by this Agreement shall be in writing and shall, unless otherwise expressly provided herein, be given personally, by express courier, by postage prepaid mail, by facsimile transmission, or by email PDF files, and shall be addressed as follows:

FOR THE PLAINTIFFS AND FOR CLASS COUNSEL:

Heather Rumble Peterson

STROSBERG SASSO SUTTS LLP

1561 Ouellette Avenue
Windsor, ON N8X 1K5
Tel: 519-561-6216
Fax: 519-258-9527
Email:
hpeterston@strosbergco.com

Eli Karp

MORGANTI & CO., P.C.

One Yonge St., Suite 1506
Toronto, ON M5E 1E5
Tel: 647-344-1900
Fax: 416-352-7638
Email: ekarp@morgantilegal.com

Luciana Brasil

BRANCH MACMASTER LLP

1410 - 777 Hornby Street
Vancouver, BC V7G 3E2
Tel: 604-654-2966
Fax: 604-684-3429
Email: lbrasil@branmac.com

Normand Painchaud

SYLVESTRE PAINCHAUD ET
ASSOCIÉS SENCRL

740 Avenue Atwater
Montreal, QC H4C 2G9
Tel: 514-937-2881 Ext. 228
Fax: 514-937-6529
Email: n.painchaud@spavocats.ca

FOR APPLE:

J. Thomas Curry
Paul-Erik Veel

LENCZNER SLAGHT

130 Adelaide Street W.
Suite 2600
Toronto, Ontario M5H 3P5
Tel: (416) 865-3096
Fax: (416) 865-9010
Email: tcurry@litigate.com
pveel@litigate.com

12.17 Acknowledgements

- (1) Each of the Parties hereby affirms and acknowledges that:
 - (a) he, she or a representative of the Party with the authority to bind the Party with respect to the matters set forth herein has read and understood this Agreement;

- (b) the terms of this Agreement and the effects thereof have been fully explained to him, her or the Party's representative by his, her or its counsel;
- (c) he, she or the Party's representative fully understands each term of this Agreement and its effect; and
- (d) no Party has relied upon any statement, representation or inducement (whether material, false, negligently made or otherwise) of any other Party, beyond the terms of this Agreement, with respect to the first Party's decision to execute this Agreement.

12.18 Authorized Signatures

- (1) Each of the undersigned represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Agreement on behalf of the Parties identified above their respective signatures below.

12.19 Date of Execution

- (1) The Parties have executed this Agreement as of the date on the cover page.

WAYNE VAN TASSEL, NANCY JEAN ADAMS and ANTOINE PONTBRAND, by their counsel

By: _____
Strosberg Sasso Sutts LLP
Title: Counsel for the Ontario Plaintiff

By: _____
Morganti & Co., P.C.
Title: Counsel for the Ontario Plaintiff

By: _____
Branch MacMaster LLP
Title: Counsel for the BC Plaintiff

By:

Sylvestre Painchaud et associés
Title: Counsel for the Quebec Plaintiff

APPLE INC.

Per: Noreen Krall
VP, Chief Litigation Counsel, Apple Inc.
I have authority to bind the corporation.

APPLE CANADA INC., by their counsel

Lenczner Slaght Royce Smith Griffin LLP

SCHEDULE A

SCHEDULE B

SCHEDULE C

SCHEDULE D

SCHEDULE E