

Case AT.40452 – Mobile Payments
Arbitration Procedural Rules for the NFC Entitlement Program Dispute
Resolution Procedure
(“NFC Appeal Rules”)

Part I – General

1. Incorporation of Commitments

The NFC Appeal Rules incorporate by reference all terms and definitions contained in Apple’s final Proposal of Commitments to the European Commission (the “**Commission**”) of 15 May 2024 concerning In-Store Payments using Near Field Communication with iOS smart mobile phones (the “**Commitments**”), which were made binding by the Commission’s decision of 11 July 2024, in addition to those contained in Article 2 of the NFC Appeal Rules.

2. Definitions

- (a) “**Admissibility and Jurisdiction Decision**” means a decision by the Panel as per Article 21 of Annex 2 on whether a Notice of Appeal is incomplete, manifestly unfounded, abusive, or otherwise inadmissible as per Article 22 of Annex 2, or outside the jurisdiction of the Panel in accordance with Article 10 of the NFC Appeal Rules, which shall take the form of an arbitral award;
- (b) “**Annex 1**” means Annex 1 of the Commitments;
- (c) “**Annex 2**” means Annex 2 of the Commitments;
- (d) “**Appeal**” means an appeal filed with the Appeal Board pursuant to the NFC Entitlement Program Dispute Resolution Procedure, as per Article 7 of Annex 2;
- (e) “**Appeal Board**” means the board of seven to nine independent adjudicators having relevant experience and expertise, appointed by Apple, as per Article 8 of Annex 2;
- (f) “**Appeal Board Member**” means a member of the Appeal Board;
- (g) “**Appeal Proceedings**” means the proceedings before a Panel, commencing with the filing of a Notice of Appeal and ending with (i) a final Jurisdiction and Admissibility Decision rendering the Appeal inadmissible; or (ii) a Reasoned Decision, including any correction as defined in Article 17 of the NFC Appeal Rules;
- (h) “**Chairperson**” means the chairperson of the Appeal Board who is in charge of managing the Appeal Board, as per Article 13 of Annex 2;
- (i) “**Commitment Decision**” means the decision by the Commission approving the Commitments on 11 July 2024;

- (j) **“Commitments”** means Apple’s voluntary commitments in Case AT.40452 regarding Near Field Communication, as approved by the Commission;
- (k) **“Consultation Period”** means a reasonable period, not exceeding 15 business days after receipt of the Dispute Notice (in addition to a potential extension of 5 business days), in which the Parties will use good faith and reasonable efforts to resolve Disputes through cooperation and consultation, as per Article 5 of Annex 2;
- (l) **“Developer”** means and refers to a) the person(s) or legal entity (whether the company, organization, or any applicable legal form) that has accepted the terms of the Apple Developer Program License Agreement under its own developer account and that is using the software provided to the Developer under the Apple Developer Program License Agreement as applicable under the eligibility criterion at para. 3.14(1) of the Commitments or otherwise exercising rights under the Apple Developer Program License Agreement; b) providers of technical solutions that have accepted the terms of the Apple Developer Program License Agreement under their own developer account, that are using the software provided to them under the Apple Developer Program License Agreement and that have been granted a development entitlement for purposes of developing technology for Eligible HCE Payment Applications; or c) the person(s) or legal entity that will use any other software application distribution channel that is allowed and which is operating on iOS in the EEA for its HCE Payment App and has accepted the terms of the Apple Developer Program License Agreement under its own developer account solely for access to the developer environment without obligation to distribute their HCE Payment App through Apple’s App Store;
- (m) **“Developer Applicant”** means a Developer which intends to be authorized under the NFC Entitlement Program;
- (n) **“Dispute”** means a dispute related to a Rejection Decision, as per Article 3 of Annex 2;
- (o) **“Dispute Notice”** means a complaint which a Requesting Party has submitted to Apple, copying the Monitoring Trustee, pursuant to the mechanism in paragraphs 3 and 4 of Annex 2;
- (p) **“Document”** means a writing, communication, picture, drawing, program or data of any kind, whether recorded or maintained on paper or by electronic, audio, visual or any other means;
- (q) **“EEA”** means those countries participating in the European Economic Area as of the Effective Date of the Commitments and at any time thereafter during the term of the Commitments;

- (r) **“Eligible HCE Payment Application”** is an HCE Payment Application which an HCE Developer intends to offer to EEA iOS users through an app store storefront located and limited to the distribution of Apps in the EEA;
- (s) **“HCE”** means “Host Card Emulation”, a technology which will allow HCE Payment Applications located in the Application Processor (or host CPU) to emulate an Eligible Credential, communicate directly with a compatible NFC reader, and securely store host card data or account-based payment credential data. The NFC Technical Solution will enable Eligible HCE Payment Applications to facilitate cardbased and account-based NFC In-Store Payments;
- (t) **“HCE Developer”** is a Developer that meets the eligibility criteria defined at para. 3.14 of the Commitments;
- (u) **“Legal Panel Member”** means a member of a Panel with a legal background or education;
- (v) **“Monitoring Trustee”** means the independent trustee appointed to monitor Apple’s compliance with the Commitments;
- (w) **“NFC”** means “Near Field Communication”, a standardized wireless connectivity technology that enables devices to exchange information wirelessly within a few centimetres range;
- (x) **“NFC Appeal Rules”** means the arbitration procedural rules set out herein for the resolution of Appeals submitted to the Appeal Board pursuant to the NFC Entitlement Program Dispute Resolution Procedure provided for in Annex 2;
- (y) **“NFC Entitlement Program Procedure”** means the procedure pertaining to NFC Entitlement Program Requests, as detailed in Annex 1;
- (z) **“NFC Entitlement Program”** means the Apple program under which access to the NFC Technical Solution will be accessible to HCE Developers;
- (aa) **“NFC Entitlement Program Request”** means a request to become an HCE Developer under the NFC Entitlement Program, as detailed in Annex 1;
- (bb) **“NFC Technical Solution”** means the technical solution Apple will develop under the Commitments;
- (cc) **“Notice of Appeal”** means a written request for the Appeal Board to adjudicate the matter, as per Article 17 of Annex 2;
- (dd) **“Panel”** means an arbitral tribunal of three Appeal Board Members established by the Chairperson to issue a Reasoned Decision in the form of an arbitral award, as per Article 16 of Annex 2;

- (ee) **“Panel Member”** means a member of the Panel;
- (ff) **“Party”** means the Requesting Party or Apple;
- (gg) **“Parties”** means the Requesting Party and Apple, collectively;
- (hh) **“Reasoned Decision”** means the decision on a Notice of Appeal, which shall take the form of an arbitral award, issued by the Panel, which either rejects the request in the Notice of Appeal and upholds the Rejection Decision or orders Apple to take measures to grant or reinstate access to the NFC Entitlement Program; or, where the Notice of Appeal relates to a failure to make a decision on an NFC Entitlement Program Request within the applicable time period, orders Apple to issue such a decision;
- (ii) **“Rejection Decision”** means any of the following decisions by Apple related to the application of the eligibility criteria detailed at para. 3.14 of the Commitments, as set out in Article 1 of Annex 2:
 - (i) Any decision not to authorize a Developer Applicant under the NFC Entitlement Program, in particular as specified in Annex 1, para. 8;
 - (ii) Any decision to revoke, restrict, or deny, in whole or in part, an HCE Developer’s access to the NFC Entitlement Program (once granted);
 - (iii) A failure to take a decision on an NFC Entitlement Program Request within the time period defined in the NFC Entitlement Program Procedure (Annex 1); including the failure to confirm that the request is complete pursuant to para. 5 of Annex 1 of the Commitments;
 - (iv) Any specific material breach by Apple of the obligations provided at paras. 3.1-3.13 of the Commitments which directly results in the revocation, restriction, or denial, in whole or in part, of an HCE Developer’s access to the NFC Entitlement Program; and
 - (v) Decisions adopted under the App Review procedure that are, or may reasonably be construed as being, directly and primarily, decisions on the application of the eligibility criteria under the NFC Entitlement Program similar to the matters in paras. 1.1(a)-(c) of Annex 2.
- (jj) **“Requesting Party”** means a Developer who, in the event of a Dispute, submits a Dispute Notice to Apple within 15 business days of the Rejection Decision, copying the Monitoring Trustee, setting out in detail the grounds of the claim, as per Article 3 of Annex 2;
- (kk) **“Response”** means Apple’s response to a Notice of Appeal, as per Article 23 of Annex 2; and

- (II) **“Tech Panel Member”** means a member of a Panel with the relevant technology experience and expertise.

3. Application of NFC Appeal Rules

The NFC Appeal Rules shall govern the final and binding resolution of Appeals submitted to the Appeal Board for arbitration pursuant to the NFC Entitlement Program Dispute Resolution Procedure, provided for in Annex 2. The parties waive their right to any form of appeal or recourse to a court or other judicial authority insofar as such waiver is valid under the applicable law, and except for appeal and recourse under mandatory provisions of law. An exceptional court review on a question of law arising out of an arbitral award, in particular regarding possible violations of public policy, including fundamental provisions of Union law and fundamental rights, is possible. The parties agree to the procedure for appointing the Appeal Panel set out in the NFC Appeal Rules. These NFC Appeal Rules shall be made easily available to Developer Applicants and Developers on the same designated page on the Apple Developer webpage related to the NFC Technical Solution which also contains details on the NFC Entitlement Program Dispute Resolution Procedure as per Article 4 of Annex 2.

4. Applicability of Annex 2

The NFC Appeal Rules are subject to the provisions contained in the Commitments, including Annex 2, which continue to apply in full, and prevail in the case of any conflict between the NFC Appeal Rules and the Commitments.

5. Appeal Panel’s Decisions

Subject to the mandatory provisions of any applicable law, all decisions issued by an Appeal Panel (including Admissibility and Jurisdiction Decisions and Reasoned Decisions) shall be:

- (a) dated and state the place of arbitration, which shall be deemed to have been the place where the Decision was made;
- (b) signed by the Panel Members and delivered to each Party; and
- (c) final and binding in the form of an arbitral award, except for appeal and recourse under mandatory provisions of law or an exceptional court review on a question of law arising out of an arbitral award, in particular regarding possible violations of public policy, including fundamental provisions of Union law and fundamental rights, which is possible.

Part II - The Proceedings and Evidence

6. Commencement of Appeal and Time Limits

- (a) A Developer Applicant or an HCE Developer may appeal a Rejection Decision pursuant to the NFC Entitlement Program Dispute Resolution Procedure and subject to these NFC Appeal Rules.
- (b) To commence an appeal, the Requesting Party must serve a Notice of Appeal on the Appeal Board, copying Apple, in accordance with section (c) of this Article and within 20 business days as from the end of the Consultation Period.
- (c) The Notice of Appeal shall be submitted electronically to the email addresses of the Appeal Board and Apple, with the Monitoring Trustee in copy. These email addresses will be made easily available by Apple on the Apple Developer webpage. The Notice of Appeal shall (at least) contain:
 - (i) The name, address, relevant identification criteria of the Requesting Party;
 - (ii) The name, address and contact details of the Requesting Party's legal and/or contractual representative, before the Appeal Board;
 - (iii) A statement of the legal and/or factual grounds for the Appeal related to the Rejection Decision;
 - (iv) All supporting Documents submitted during the Consultation Period in connection with the Rejection Decision (i.e., all Documents submitted to the other Party and to the Monitoring Trustee); and
 - (v) A short description of the solution envisaged by the Requesting Party.
- (d) After submitting the Notice of Appeal with supporting Documents directly relevant to or necessary for the understanding of the Documents submitted during the Consultation Period, no additional Documents can be submitted at a later stage in the proceedings, unless requested so by the Panel in accordance with Clause 12(a)(i) of the NFC Appeal Rules.
- (e) Upon receipt of the Notice of Appeal, the Chairperson shall allocate a Case Number to the Appeal and communicate this to the Parties.

7. Constitution of the Panel

- (a) An Appeal shall be submitted for resolution by a Panel.
- (b) A Panel shall be established by the Chairperson within 5 business days of receipt of a Notice of Appeal.

- (c) The Chairperson shall consider the availability of the Appeal Board Members as well as any specific experience relevant to the Appeal when deciding on the Panel composition, and the Panel may include the Chairperson as one of the Appeal Board Members.
- (d) The Chairperson shall appoint one of the Appeal Board Members of the Panel as the Panel Leader (who can be the Chairperson). The Panel Leader is responsible for the organization of the Appeal and all procedural decisions related thereto, which may be made in consultation with the other members of the Panel. The Panel Leader shall be a Legal Panel Member.
- (e) Each Panel shall include at least one Tech Panel Member.
- (f) A new Panel shall be appointed in respect of each Notice of Appeal and shall have authority in relation to that Appeal alone. For the avoidance of doubt, the identity of panels may overlap and still be considered new for the purposes of this provision.
- (g) Once the Panel is constituted, the Chairperson shall immediately notify the Requesting Party and Apple and provide the Panel's relevant contact information.

8. Response to Notice of Appeal

- (a) Apple's Response shall be submitted electronically to the email addresses of the Requesting Party and the Panel within 20 business days of receipt of the Notice of Appeal. Where the Panel has issued a decision or direction pursuant to Article 10(b) of these rules in relation to an incomplete Notice of Appeal, Apple's response shall be submitted within 20 business days of the date on which the Panel deems the Notice of Appeal to be complete.
- (b) The Response shall contain the same elements as a Notice of Appeal, as outlined in Article 6(c) of the NFC Appeal Rules, but concerning Apple and its perspective.
- (c) In the event that the Requesting Party has failed to include any Documents with its Notice of Appeal which were submitted to the Monitoring Trustee, Apple may highlight that omission in its response and/or submit any documents that were omitted.
- (d) After submitting the Response with supporting Documents directly relevant to or necessary for the understanding of the Documents submitted during the Consultation Period, no additional Documents can be submitted at a later stage in the proceedings, unless requested so by the Panel in accordance with Clause 12(a)(i) of the NFC Appeal Rules.

9. Written Notifications or Communications; Time Limits

- (a) A notification or communication shall be deemed to have been made on the day and in the country where it was received by the Party itself or by its representative. The Appeal Board and Apple, shall, without undue delay, acknowledge receipt of notifications and communications from the Requesting Party. In case of electronic notifications or communications, the legal seat or domicile of the recipient determines the country of the reception, not the location of its mail servers.
- (b) Periods of time specified in or fixed under the NFC Appeal Rules shall start to run on the day following the date a notification or communication is deemed to have been made. When the next day following such date is an official holiday, or a nonbusiness day in the country where the notification or communication is deemed to have been made, the period of time shall commence on the first following business day. If the last day of the relevant period of time granted is an official holiday or a non-business day in the country where the notification or communication is deemed to have been made, the period of time shall expire at the end of the first following business day. Equally, any days within a period of time specified or fixed under the NFC Appeal Rules shall not include official holidays in the country where the notification or communication is deemed to have been made.
- (c) Any periods of time referred to in the NFC Appeal Rules which apply to powers of the Panel or related to submissions of the Requesting Party may be subject to reasonable extension by the Panel at the Panel's discretion, either on the Panel's own motion or upon the request of either Party.
- (d) Any periods of time referred to in the NFC Appeal Rules which apply to powers of the Chairperson may be subject to reasonable extension by the Chairperson at their discretion, either on the Chairperson's own motion or upon the request of either Party.

10. Admissibility and Jurisdiction

- (a) Within 10 business days of the Panel's constitution, the Panel shall review the Notice of Appeal and shall indicate to the Requesting Party whether the Notice of Appeal is complete.
- (b) If a Notice of Appeal is incomplete, the Panel shall have the discretion to either dismiss the Notice of Appeal or require a Requesting Party to provide the information or Documents missing from its Notice of Appeal within a reasonable time. During an extension, periods of time specified in or fixed under the NFC Appeal Rules shall be suspended.
- (c) The Panel shall dismiss manifestly unfounded or abusive Notices of Appeal, or Notices of Appeal outside the jurisdiction of the Panel, as per Annex 2 ("Admissibility and Jurisdiction Decisions"). Notices of Appeal concerning matters (i) that are manifestly outside of the scope of Rejection Decisions, (ii) that have

already been ruled on under the NFC Entitlement Program Dispute Resolution Procedure (except a new Rejection Decision by Apple relating to a Reasoned Decision which was adverse to Apple), or (iii) which have not been subject to a Consultation, shall be considered inadmissible.

- (d) Notices of Appeal submitted after the deadline provided at para. 17 of Annex 2 (namely, 20 business days as from the end of the Consultation Period) shall be inadmissible, unless the Panel decides to extend the deadline, in duly justified cases.
- (e) Subject to the mandatory provisions of any applicable law and save for an exceptional court review on a question of law arising out of an arbitral award, in particular regarding possible violations of public policy, including fundamental provisions of Union law and fundamental rights, Admissibility and Jurisdiction Decisions shall be final and binding on the Parties taking the form of arbitral awards. This does not preclude a Requesting Party from appealing a new Rejection Decision by Apple relating to a Reasoned Decision which was adverse to Apple.
- (f) Admissibility and Jurisdiction decisions shall be issued no later than 15 business days following the latest submitted Document which is accepted by the Panel Leader, save where there is a Hearing, in which case 15 business days following the date of the Hearing.

11. Impartiality and Independence

- (a) Each Panel Member must be and remain impartial and independent of the Parties and their representatives.
- (b) Immediately upon appointment to a Panel, the prospective Panel Member shall sign the statement of acceptance, availability, impartiality and independence contained at Annex A. In that statement, the Panel Member shall disclose in writing to the Chairperson (or, if the Panel Member is the Chairperson, the Monitoring Trustee) and the Parties any facts or circumstances which might be of such a nature as to call into question the Panel Member's independence in the eyes of the Parties, as well as any facts or circumstances that could give rise to reasonable doubts as to the Panel Member's impartiality. Such facts or circumstances shall include but are not limited to those facts or circumstances listed in the NonWaivable Red List, the Waivable Red List and the Orange List contained in Annex B to the NFC Appeal Rules. The facts or circumstances listed in the Green List do not need to be disclosed.
- (c) Once the Panel has been constituted, if any such facts or circumstances arise after the Panel has been constituted, the Panel Member shall immediately disclose the same to the Chairperson (or, if the Panel Member is the Chairperson, the Monitoring Trustee) and the Parties. If circumstances listed in Article 14 (2. or 3. sent., e.g. for forward-looking contingent agreements) of Annex 2, arise or become

known after the Panel has been constituted, the affected Panel Member shall be automatically removed from their position.

- (d) Without prejudice to circumstances listed in Article 14 (2. or 3. sent., e.g. for forward-looking contingent agreements) of Annex 2, which should prevent a prospective Panel Member from being appointed and automatically render his appointment null and void, Apple or the Requesting Party may object to a Panel Member within 3 business days of the Panel Member's disclosure, to the Chairperson (or, if the Panel Member is the Chairperson, the Monitoring Trustee) and the Parties. The Chairperson (or, if the Panel Member is the Chairperson, the Monitoring Trustee) shall determine whether the Panel Member should be replaced.
- (e) A Panel Member shall be automatically removed if any of the circumstances listed in Article 14 (2. or 3. sent. e.g. for forward-looking contingent agreements) of Annex 2, arise, and, upon death or incapacitation, be replaced upon acceptance by the Chairperson (or, if the Panel Member is the Chairperson, then the Monitoring Trustee) of the Panel Member's resignation, upon acceptance by the Chairperson (or, if the Panel Member is the Chairperson, then the Monitoring Trustee) of a recusal request, or upon acceptance by the Chairperson (or, if the Panel Member is the Chairperson, then the Monitoring Trustee) of a request of all the Parties.
- (f) For the avoidance of doubt, if the death, incapacitation, resignation, recusal, challenge or replacement relates to the Chairperson, the decision referred to in (e) shall be made by the Monitoring Trustee. In case Article 14 (2. or 3. sent. e.g. for forward-looking contingent agreements) of Annex 2 applies to the Chairperson, the Monitoring Trustee should issue a decision confirming the automatic removal of the Chairperson from their position.
- (g) Subject to the mandatory provisions of any applicable law, the decisions of the Chairperson or Monitoring Trustee made pursuant to this Article as to the appointment, confirmation, resignation, challenge or replacement of a Panel Member shall be final and binding.
- (h) By accepting to serve, Panel Members undertake to carry out their responsibilities in accordance with the NFC Appeal Rules and the Commitments.
- (i) In all cases, the Panel shall act fairly and impartially and ensure that each Party has a reasonable opportunity to present its case.
- (j) If the Panel cannot be or remain fully constituted in accordance with the NFC Appeal Rules, all deadlines provided for in the NFC Appeal Rules shall be suspended, pending constitution or re-constitution of the Appeal Panel, save for the Response, which shall nevertheless be submitted within 20 business days of receipt of the Notice of Appeal.

12. Powers of the Panel

- (a) The Panel may:
 - (i) Request necessary information or Documents from Apple and/or the Requesting Party which were provided to the Monitoring Trustee in the context of the Dispute, but which have not been already provided to the Panel, and which the Panel deems necessary to issue its Reasoned Decision;
 - (ii) Issue an Admissibility and Jurisdiction Decision in the form of an arbitral award;
 - (iii) Establish, in consultation with the Parties, the procedure for the Appeal, including, if the Appeal Panel determines an oral hearing is necessary to issue a Reasoned Decision, the necessary arrangements for a Hearing and a case management conference, provided that such procedure and arrangements are in accordance with the NFC Appeal Rules, including Articles 14 and 15;
 - (iv) Where the Parties have been able to resolve the matter by mutual agreement, adopt that agreement as a Reasoned Decision; and
 - (v) Issue a Reasoned Decision in the form of an arbitral award in accordance with Article 17 of the NFC Appeal Rules.
- (b) Any decision of the Panel in relation to these powers shall be final and binding. The parties waive their right to any form of appeal or recourse to a court or other judicial authority insofar as such waiver is valid under the applicable law, and except for appeal and recourse under mandatory provisions of law. An exceptional court review on a question of law arising out of an arbitral award, in particular regarding possible violations of public policy, including fundamental provisions of Union law and fundamental rights, is possible.

13. Submission of Documents

With respect to the form of submission or production of Documents, unless the Parties agree otherwise or, in the absence of such agreement and in exceptional circumstances, the Panel decides otherwise:

- (a) Documents that a Party maintains in electronic form shall be submitted or produced in the form most convenient or economical to it that is reasonably usable by the recipients.
- (b) A Party which is submitting Documents to the Panel in a language other than English will also provide informal translations which may be limited to relevant

excerpts, together with such other portions of the document as necessary to put such excerpts in proper context.

- (c) A translation need not be certified. If a Party challenges the contents of a noncertified translation, that Party may produce a certified translation of the relevant portion of the Document.

14. Oral Hearings and Case Management Conference

- (a) The Requesting Party or Apple may request an oral hearing (“Hearing”) within 5 business days following the receipt of the Notice of Appeal or the Response, whichever is later, by sending a request to the Panel by email, copying the Chairperson and the other Party. Before filing such a request, the Party requesting the Hearing must first ask the other Party whether they agree to a Hearing, and allow 3 business days for the other Party to submit its views. The Party requesting the Hearing must include the other Party’s response in their request to the Panel. Upon receiving such request, the Panel shall determine whether such a Hearing is necessary to issue the Reasoned Decision. The Panel may also determine on its own motion that a Hearing is necessary.
- (b) If the Panel determines that a Hearing is necessary, the Panel Leader may organize the Hearing, which will be held, unless in duly justified cases, within 10 to 15 business days after the request for a Hearing or motion from the Panel.
- (c) The Panel Leader shall provide the Parties with at least 5 business days’ notice of the date of the Hearing. Once notified that a Hearing will take place, either Party may raise procedural issues regarding the Hearing by emailing the Appeal Panel, copying the other Party and the Chairperson;
- (d) Where the Appeal Panel deems it necessary, either upon a Party’s request or upon the Appeal Panel’s own motion, the Appeal Panel shall convene a case management conference in advance of the Hearing to resolve any procedural issues raised by either Party;
- (e) For the avoidance of doubt, the Parties and Appeal Panel shall not be precluded from raising procedural issues at the Hearing.

15. Procedure at the Oral Hearing

- (a) The Panel shall at all times have complete control over the Hearing, but must act in accordance with the NFC Appeal Rules.
- (b) By default, any Hearing shall be held at a mutually convenient time virtually via Webex, unless the Panel determines that an in-person hearing shall be necessary in which case such in-person hearing will be held at the Dublin Dispute Resolution Centre (also known as the Dublin International Arbitration Centre). The Parties may

submit, and the Panel must consider, comments as to whether an in-person hearing is unreasonably burdensome.

- (c) The duration of the Hearing shall be no more than 1 day, unless, in exceptional circumstances, the Panel in its discretion determines that a longer hearing is necessary.
- (d) The Panel will ensure that each Party shall have an equal amount of total time during the Hearing to present their case, with each Party being able to allocate its time as it sees fit, subject to any reasonable directions from the Panel.
- (e) The Hearing shall consist of oral submissions by each Party, as set out below:
 - (i) The Requesting Party shall first have the opportunity to make oral submissions;
 - (ii) Apple shall then have the opportunity to make oral submissions in response;
 - (iii) The Requesting Party shall have the opportunity to make short oral submissions in rebuttal; and
 - (iv) Apple shall then have the opportunity to make short oral submissions as sur-rebuttal.
- (f) The Panel may direct the Parties to make closing submissions if it considers this necessary to issue a Reasoned Decision.
- (g) The Panel may ask the Parties questions at any time during the Hearing. Time spent on questions from the Panel shall not be deducted from a Parties' total amount of time.
- (h) The list of Hearing attendees shall be agreed by the Panel and the Parties before the Hearing.
- (i) Save with the approval of the Panel and both Parties, persons not involved in the proceedings shall not be admitted to the Hearing.
- (j) For the avoidance of doubt, no evidence other than evidence attached to the Notice of Appeal may be submitted to the Panel, unless requested by the Panel under Clause 12(a)(i). No witness or expert evidence may be submitted.
- (k) Parties may use visual demonstratives and presentations derived from the evidence that is already before the Panel, so long as these contain no new information or Documents.

- (l) All Hearings shall be transcribed by a third-party vendor, and the transcripts of a Hearing shall be made available to the Chairperson, the Appeal Panel and the Parties. The Parties shall split the cost of transcription in equal shares.

16. Reasoned Decision

- (a) The Panel will finalize and adopt the Reasoned Decision by majority (two out of three). Each Panel Member shall have one, equally weighing, vote. A dissenting Panel Member may include a dissenting opinion in the Reasoned Decision.
- (b) The Panel shall issue its Reasoned Decision no later than 15 business days following the latest submitted Document which is accepted by the Panel Leader, save where there is a Hearing, in which case 15 business days following the date of the Hearing.
- (c) The Reasoned Decision shall take the form of an arbitral award which either rejects the request in the Notice of Appeal and upholds the Rejection Decision or orders Apple to take measures to grant or reinstate access to the NFC Entitlement, or, where the Notice of Appeal relates to a failure to make a decision on an NFC Entitlement Program Request within the applicable time period, orders Apple to issue such a decision, within 10 business days. Any subsequent Rejection Decision by Apple relating to a Reasoned Decision which was adverse to Apple shall be duly appealable via the NFC Entitlement Program Dispute Resolution Procedure. The Panel shall reject the Notice of Appeal and uphold the Rejection Decision, unless the Rejection Decision was based on a manifest distortion of the facts as presented to Apple in the Entitlement Request or a breach of due process, on the basis of its review of:
 - (i) The Rejection Decision;
 - (ii) The evidence adduced by the Parties;
 - (iii) The Commitments; and
 - (iv) The Commitment Decision.
- (d) The Reasoned Decision shall be issued to the Parties and shall be saved in a (digital) case file and kept, along with any Documents submitted to the Panel during the Appeal Proceedings, for at least five years in a central repository held by Apple following the end of the Appeal. Any documents submitted or received in the context of the Appeal, the Notice of Appeal, the Response and the Reasoned Opinion as well as any exhibits and transcripts are confidential and may not be disclosed other than as required by law or to the Monitoring Trustee and Commission.
- (e) The Requesting Party may request a copy of the entire case file within 5 years following the issuance of its Reasoned Decision.

- (f) For the avoidance of doubt, the Appeal Panel may not award any monetary damages.
- (g) Subject to the mandatory provisions of any applicable law, Apple and the Requesting Party agree that the Reasoned Decision of the Panel is final and binding. It cannot be appealed to any judicial court or any other arbitration tribunal.

17. Correction

- (a) On the application of a Party within 5 days from receipt of the Admissibility and Jurisdiction Decision or Reasoned Decision, the Panel may correct a clerical or typographical error contained in the Admissibility and Jurisdiction Decision or Reasoned Decision.
- (b) Before issuing such a correction, the Panel must give the other Party 5 days from receipt of the application in (a) above to submit any comments thereon.
- (c) The Appeal Panel shall submit its decision on the application not later than 10 days from expiry of the time limit for the receipt of any comments from the other Party.
- (d) A decision to correct the Admissibility and Jurisdiction Decision or Reasoned Decision shall take the form of an addendum and shall constitute part of the Admissibility and Jurisdiction Decision or Reasoned Decision.
- (e) The provisions of Article 16 shall apply equally to the correction. Specifically, the deadline for Apple to take measures to grant or reinstate access to the NFC Entitlement Program shall expire 10 business days after the correction is issued.
- (f) For the avoidance of doubt, requests for correction can only be made in respect of clerical or typographical corrections; a Party cannot request the Panel to reconsider an Admissibility and Jurisdiction Decision or Reasoned Decision.

18. Waiver

- (a) A Party which proceeds with the Appeal without raising its objection to a failure to comply with any provision of the NFC Appeal Rules or Commitments or any direction given by the Panel, shall be deemed to have waived its right to object to that particular violation.

19. Limitation of Liability

- (a) The Panel and the Panel Members shall not be liable to any person for any act or omission in connection with the Appeal, except to the extent such limitation of liability is prohibited by applicable law.

20. Legal Representation

- (a) Both Parties have the right to legal representation in connection with an Appeal.

- (b) Each Party must promptly inform the Chairperson, Panel, and the other Party of any changes in its representation.

21. Confidentiality

- (a) Any Documents and materials which are submitted, received or created in the Appeal Proceedings, including in response to any requests or orders from the Panel, as well as the Notice of Appeal, the Response, any decisions by the Panel including the Admissibility and Jurisdiction Decision and the Reasoned Decision, exhibits, transcripts, and any other communications, are confidential and may not be disclosed other than as required by law or to the Monitoring Trustee and the Commission.
- (b) If any Party, Panel Member, the Chairperson or the Monitoring Trustee receives a subpoena, order or other request to disclose any Documents or materials which were submitted, received or created in the Appeal Proceedings, it shall immediately (and no later than 3 days after receiving the subpoena, order, or other request) notify the other Party or Parties, who shall be provided a reasonable opportunity to object to the disclosure.
- (c) Subject to legal or regulatory requirements, the Panel Members shall destroy their copies of the Documents submitted to them in the Appeal within 1 month of the notification of its final Decision.
- (d) For the avoidance of doubt, any Documents which a Panel Member receives in the context of a particular Appeal Proceeding may not be used or considered in relation to another Appeal Proceeding involving a different Requesting Party.
- (e) Should a Party wish to share confidential information only with the Panel and not with the other Party, it may make an application to the Panel which explains the basis for the request. Such an application will be accompanied by (i) a redacted, non-confidential version of the Document and (ii) a non-confidential summary of the Document.
- (f) In deciding on the application described in section (e) of this Article, the Panel shall exercise both discretion in acceptance thereof, and due care of the fairness of the procedure, especially if such information may be of material significance for the Appeal itself. For assessment of confidentiality claims the Panel should consider the Commission practice with regard to confidentiality in antitrust proceedings (see guidance on confidentiality claims during Commission antitrust procedures¹).
- (g) Confidential information originating from a third party may not be disclosed as part of the Appeal unless the concerned third party has consented to it.

¹ Available [here](#).

22. Language of the Appeal

- (a) The language of the Appeal proceedings, including any Hearings and communications, shall be English.

23. Seat

- (a) The seat of the Appeal Proceedings shall be Dublin, Ireland.

24. Costs

- (a) Each Party shall bear its own costs related to the Appeal.
- (b) Appeal Board Members shall be entitled to appropriate, reasonable remuneration for any work related to a Dispute (that is, time spent on an Appeal Proceeding following appointment by the Chairperson). The costs and fees of the Appeal Board, including the Panel, shall be borne by Apple.
- (c) For the avoidance of doubt, Appeal Board Members shall not be Apple employees and shall not be subject to instructions or remuneration by Apple, save for the remuneration provided pursuant to section (b) of this Article for work as a Panel Member.