

# Microsoft Visual Studio Marketplace Terms of Use

Last Updated January 2019

Thank you for your interest in the Microsoft Visual Studio Marketplace (the “**Marketplace**”). These Microsoft Visual Studio Marketplace Terms of Use (“**Agreement**”) describe the relationship between you and Microsoft Corporation (“**Microsoft**”, “**we**” or “**us**”) and govern your access to and use of the Marketplace. The Marketplace enables you to access or purchase products or services which are designed to work with and extend the capabilities of Microsoft Visual Studio, Visual Studio for Mac, Visual Studio Code, Azure DevOps, Team Foundation Server and successor Microsoft products and services (collectively, the “**Visual Studio Products and Services**”). The Marketplace may include products or services (“**Offerings**”) published by Microsoft and various third-party publishers (each such third-party publisher, a “**Publisher**”).

By accessing or using the Marketplace, you represent and warrant to us that you have the authority to accept this Agreement, and you agree to be bound by its terms.

## **1. Use Rights**

- a. Publisher Terms of Use.** Your right to use any Offering is governed by separate terms of use provided by the Publisher of the Offering (“**Publisher Terms of Use**”). Except for Offerings that we publish, we are not a party to and are not bound by any Publisher Terms of Use. You are solely responsible for your dealings with the Publisher.
- b. Visual Studio Products and Services.** Your right to use any underlying Visual Studio Products and Services will be governed by the agreement under which you purchased such products or services, and will be subject to the payment of fees for such products or services, where applicable. Marketplace Offerings are intended for use only with Visual Studio Products and Services and you may only install and use Marketplace Offerings with Visual Studio Products and Services.
- c. BYOL Offerings.** Publishers may make certain Offerings available on the condition that you have obtained, outside of the Marketplace, the rights necessary to use such Offerings (“**Bring-Your-Own-License (BYOL) Offerings**”). If you use any BYOL Offering, you are responsible for ensuring that you have sufficient rights to use the Offering.
- e. Application Programming Interfaces.** We may make available application programming interfaces (“**Marketplace APIs**”) for use with the Marketplace. If you use any Marketplace APIs to purchase or access Marketplace Offerings, you are responsible for reviewing and complying with any applicable terms of use presented in the Marketplace user interface, which may change from time to time. Your use of any Marketplace APIs to purchase Marketplace Offerings will also constitute your authorization to pay all applicable fees in accordance with the payment terms set forth in the Marketplace user interface at the time of purchase.
- f. Acceptable Use Policy.** You will not use the Marketplace for any purpose that is unlawful or prohibited under this Agreement. You may not use the Marketplace in any manner that could damage, disable, overburden, or impair any Microsoft server, or any networks connected to any Microsoft server, or that could interfere with any other party's use and enjoyment of the Marketplace. You may not attempt to gain unauthorized access to the Marketplace, other accounts, computer systems, or

networks connected to any Microsoft server or to the Marketplace through hacking, password mining, or any other means. You may not access, search, obtain or attempt to obtain any Offerings, materials, or information through any means other than Microsoft's publicly supported interfaces (including, without limitation, through automated harvesting, 'spidering' or 'scraping' the Marketplace).

## **2. Privacy and Security Terms**

- a. Privacy.** See the [Microsoft Privacy Statement](#) for information relating to the collection and use of your information. For clarity, the Microsoft Privacy statement is not applicable to the collection and use of your information through Offerings, but rather only the information collected through the Marketplace.
- b. Information Disclosed to Publishers.** If you purchase or use an Offering from a Publisher, we may share with the Publisher of such Offering your contact information and details about the transaction, including usage information for transactional purposes. Subject to your contact preferences or with your consent, the Publisher or Microsoft may use your contact information to send you promotional communications.
- c. Publisher Privacy Policies.** Publishers are responsible for providing privacy statements that describe their privacy practices with respect to customer data collected by their Offerings or any customer information that they receive from Microsoft. Microsoft's privacy, security, and data location and data retention policies will not apply to any such Offering or to Publishers' use of any customer data or other customer information.
- d. Organizational Control of Account Data.** The Marketplace and underlying Visual Studio Products and Services may be used by organizations. If you use an email address provided by an organization you are affiliated with, such as an employer or school, to access the Marketplace, the owner of the domain associated with your email address may: (i) control and administer your account and (ii) access and process your data, including the contents of your communications and files. Your use of the Marketplace and underlying Visual Studio Products and Services may be subject to your organization's policies, if any. If your organization is administering your use of the Marketplace or the underlying Visual Studio Products and Services, please direct your privacy inquiries to your administrator. Microsoft is not responsible for the privacy or security practices of our customers, which may differ from those set forth in this Agreement.
- e. Security.** Microsoft is committed to helping protect the security of users' information. Microsoft has implemented and will maintain and follow appropriate technical and organizational measures intended to protect customer data against accidental, unauthorized or unlawful access, disclosure, alteration, loss, or destruction.

## **3. No Warranty**

MICROSOFT, AND OUR AFFILIATES, SUPPLIERS, RESELLERS, DISTRIBUTORS, AND VENDORS, MAKE NO WARRANTIES, EXPRESS OR IMPLIED, GUARANTEES OR CONDITIONS WITH RESPECT TO YOUR USE OF THE MARKETPLACE. YOU UNDERSTAND THAT USE OF THE MARKETPLACE IS AT YOUR OWN RISK AND THAT WE PROVIDE THE SERVICES ON AN "AS IS" BASIS "WITH ALL FAULTS" AND "AS AVAILABLE." MICROSOFT DOESN'T GUARANTEE THE ACCURACY OR TIMELINESS OF INFORMATION AVAILABLE FROM THE MARKETPLACE. To the extent permitted under your local law, we exclude any implied warranties,

including for merchantability, satisfactory quality, fitness for a particular purpose, workmanlike effort, and non-infringement. You may have certain rights under your local law. Nothing in this Agreement is intended to affect those rights, if they are applicable.

YOU ACKNOWLEDGE THAT computer and telecommunications systems are not fault-free and occasional periods of downtime occur. We do not guarantee your access to or use of the Marketplace will be uninterrupted, timely, secure, or error-free or that data loss won't occur.

#### **4. Limitation of Liability**

IF MICROSOFT BREACHES THIS AGREEMENT, OR IF YOU HAVE ANY BASIS FOR RECOVERING DAMAGES DESPITE THIS AGREEMENT'S LIMITATIONS, YOU AGREE THAT YOUR EXCLUSIVE REMEDY IS TO RECOVER, FROM MICROSOFT OR ANY AFFILIATES, SUPPLIERS, RESELLERS, DISTRIBUTORS, AND VENDORS, DIRECT DAMAGES UP TO USD\$5.00. TO THE EXTENT PERMITTED BY APPLICABLE LAW, WHATEVER THE LEGAL BASIS FOR THE CLAIM, YOU CAN'T RECOVER ANY OTHER DAMAGES OR LOSSES, INCLUDING, WITHOUT LIMITATION, CONSEQUENTIAL, LOST PROFITS, SPECIAL, INDIRECT, INCIDENTAL, OR PUNITIVE DAMAGES. THESE LIMITATIONS AND EXCLUSIONS APPLY EVEN IF THIS REMEDY DOESN'T FULLY COMPENSATE YOU FOR ANY LOSSES OR FAILS OF ITS ESSENTIAL PURPOSE OR IF WE KNEW OR SHOULD HAVE KNOWN ABOUT THE POSSIBILITY OF THE DAMAGES. TO THE MAXIMUM EXTENT PERMITTED BY LAW, THESE LIMITATIONS AND EXCLUSIONS APPLY TO ANYTHING RELATED TO THIS AGREEMENT SUCH AS: (I) LOSS OF CUSTOMER DATA; (II) ANY VIRUS AFFECTING YOUR USE OF THE MARKETPLACE; (III) DELAYS OR FAILURES IN STARTING OR COMPLETING TRANSMISSIONS OR TRANSACTIONS; (IV) CLAIMS FOR BREACH OF CONTRACT, WARRANTY, GUARANTEE, OR CONDITION; (V) STRICT LIABILITY, NEGLIGENCE, MISREPRESENTATION, OMISSION, TRESPASS, OR OTHER TORT; (VI) VIOLATION OF STATUTE OR REGULATION; OR (VII) UNJUST ENRICHMENT. SOME OR ALL OF THESE LIMITATIONS OR EXCLUSIONS MAY NOT APPLY TO YOU IF YOUR STATE, PROVINCE, OR COUNTRY DOESN'T ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL, CONSEQUENTIAL, OR OTHER DAMAGES.

#### **5. Termination and Suspension**

We may suspend your use of the Marketplace or any Offering if: (1) it is reasonably needed to prevent unauthorized access to data hosted in the Marketplace or the Visual Studio Products and Services; or (2) you do not abide by the Marketplace Participation Policies or you violate other terms of this Agreement. We also may discontinue the Marketplace at any time.

#### **6. Miscellaneous**

**a. Contracting authority.** If you are an individual accepting these terms on behalf of an entity, you represent that you have the legal authority to enter into this Agreement on that entity's behalf. If you specify an entity, or you use an email address provided by an entity you are affiliated with (such as an employer) to sign in to the Marketplace, that entity will be treated as the owner of the Marketplace account for purposes of this Agreement.

**b. Notice and Procedure for Making Claims of Copyright Infringement.** Pursuant to Title 17, United States Code, Section 512(c)(2), notifications of claimed copyright should be sent to the Service Provider's Designated Agent. ALL INQUIRIES NOT RELEVANT TO THE FOLLOWING PROCEDURE WILL RECEIVE NO RESPONSE. See [Notice and Procedure for Making Claims of Copyright Infringement](#).

**c. Intellectual Property Rights.** Microsoft or its suppliers retain all right, title, and interest in and to the Marketplace and all Offerings published by Microsoft, including all copyrights, patents, trade secrets, trademarks, and other intellectual property rights. Microsoft reserves all rights not expressly granted. The Agreement does not grant or imply any rights to any Microsoft or supplier trademarks, trade names, or logos. Trademark information is available at <https://www.microsoft.com/en-us/legal/intellectualproperty/trademarks/en-us.aspx>. Any rights not expressly granted herein are reserved.

**d. Jurisdiction and Governing Law.** This Agreement will be governed by the laws of the State of Washington, excluding its conflicts of laws, of the United States of America. All claims brought relating to this Agreement will be brought exclusively in the federal courts in King County, Washington, unless no federal subject matter jurisdiction exists, in which case the parties consent to exclusive jurisdiction and venue in the Washington State courts in King County, Washington. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply.

**e. Updates.** We may update this Agreement from time to time. If we update this Agreement, we will indicate the last date on which the Agreement was modified at the top of the Agreement. By continuing to access and use the Marketplace, you agree to be bound by the terms and conditions contained in the updated Agreement.

**f. Entire Agreement.** This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous communications.