Private Marketplace for Microsoft Visual Studio Code Terms of Use

Last Updated March 2025

1. <u>Introduction</u>

Private Marketplace for Microsoft Visual Studio Code (the "Private Marketplace") is subject to the following Terms of Use (collectively, the "Agreement"). The Private Marketplace is offered by Microsoft Corporation, One Microsoft Way, Redmond, WA 98052, U.S. The Agreement describes the relationship between you ("you" or "your") and Microsoft Corporation ("Microsoft", "we" or "us") and govern your access to and use of the Private Marketplace.

By accessing or using the Private 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.

The Private Marketplace enables you to host extensions which are designed to work with and extend the capabilities of Microsoft VS Code.

Each offering available on the Private Marketplace is governed by the terms that are included with the offering including any third-party offering published to the public Visual Studio Marketplace (each such third-party publisher a "Publisher", and each third-party offering a "Publisher Offering"). When publishing an offering to the Private Marketplace, include applicable terms in a prominent location, such as a license file or an embedded readme file. When accessing, downloading or acquiring an offering you should review the applicable terms. Any terms included with the offerings do not modify this Agreement. For the avoidance of doubt, you may host (i.e., republish, install, deploy) on the Private Marketplace any extensions that Microsoft publishes to the public Visual Studio Marketplace. Microsoft does not license any intellectual property to you from third party offering providers or Publishers and is not responsible for information provided by third parties.

Microsoft is not responsible for information, such as personal data, that you include in offerings that you upload, share, or store through the Private Marketplace and cannot guarantee that such information can be permanently deleted or edited. You may delete your offerings, which prevents those packages from appearing on the Private Marketplace search results and the VS Code UI.

2. <u>Conditions: Use Rights for the Private Marketplace</u>

a. Private Marketplace Offering(s). Your right to use any Private Marketplace offering will be governed by the agreement under which you purchased/acquired such products or services and will be subject to the payment of fees for such products or services (e.g., GitHub Enterprise or GitHub CoPilot Enterprise or Business subscriptions), where applicable. You will not use the Private Marketplace for any purpose that is unlawful or prohibited under this Agreement. You may not use the Private 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 Private Marketplace. You may not attempt to gain unauthorized access to the Private Marketplace, other accounts, computer systems, or networks connected to any Microsoft server or to the Private Marketplace through hacking, password mining, or any other means. If accessed through the Private Marketplace, you may not access, search, obtain or attempt to obtain any offerings, materials, or information from the Private Marketplace through any means other than directly from Microsoft's publicly supported interfaces (for example, harvesting, reverse-engineering, 'spidering' or 'scraping' the offerings on Private Marketplace, whether automated or not, is prohibited). For the avoidance of any doubt, you acknowledge and understand that the Private Marketplace is intended for exclusive use with official VS code and not third-party code editors including forks of VS Code, (e.g., a redistributed, modified copy of VS Code by any party that is not Microsoft). Any such use of the Private Marketplace with third-party code editors is a breach of this Agreement.

b. Publisher Terms of Use. Your right to use any Publisher offering is governed by separate terms of use provided by the Publisher ("Publisher Terms of Use"). Except for Private Marketplace offerings that we publish, we are not a party to any Publisher Terms of Use. You are solely responsible for your dealings with the Publisher.

c. BYOL Offerings. Publishers may make certain Publisher offerings available on the condition that you have obtained, outside of the Private Marketplace, the rights necessary to use such Publisher 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 Publisher offering.

3. <u>Termination and Suspension</u>

If you no longer agree to be bound by this Agreement, you must cease all use of the Private Marketplace. We reserve the right to terminate or suspend your access to and use of the

Private Marketplace, without notice, if we believe, in our sole discretion, that (i) such use is in violation of any applicable law; (ii) such use is harmful to our interests or the interests, including intellectual property or other rights, of another person, entity, or the developer community; (iii) it is reasonably needed to prevent unauthorized access to data hosted in the Private Marketplace or the offerings; (iv) where we have reason to believe that you are in violation of this Agreement; or (v) for any reason whatsoever.

4. Updates and changes to these terms.

We may update or change this Agreement from time to time and will notify you of any update or change when you access the Private Marketplace thereafter. 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 Private Marketplace, you agree to be bound by the terms and conditions contained in the updated Agreement.

5. <u>Privacy and Security Terms</u>

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 third-party offerings, but rather only the information collected through the Private Marketplace.

b. Organizational Control of Account Data. The Private Marketplace and underlying offerings 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 Private 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 Private Marketplace and underlying offerings may be subject to your organization's policies, if any. If your organization is administering your use of the Private Marketplace or the underlying offerings, please direct your privacy inquiries to your administrator. Microsoft is not responsible for administering the privacy or security practices of your organization, which may differ from those set forth in this Agreement, please direct your privacy inquiries to your organization's administrator.

c. 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.

6. <u>No Warranty</u>

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 PRIVATE MARKETPLACE. YOU UNDERSTAND THAT USE OF THE PRIVATE 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 PRIVATE 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 Private Marketplace will be uninterrupted, timely, secure, or error-free or that data loss won't occur.

7. <u>Limitation of Liability</u>

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 PRIVATE 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.

8. <u>Miscellaneous</u>

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 Private Marketplace, that entity will be treated as the owner of the Private Marketplace account for purposes of this Agreement.

b. Intellectual Property Rights. Microsoft or its affiliates retain all rights, titles, and interests in and to the Private 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. To understand what you can and can't do with Microsoft's and GitHub's brand assets review the **t**rademark and brand guidelines here: and ⬚HYPERLINK "https://brand.github.com/"GitHub Brand Toolkit. We have created a non-exhaustive list of **Dos and Don'ts**. Wordmarks can be used to truthfully convey information about your product or service, as long as customers and the public will not be confused into believing Microsoft is affiliated with or endorses your product or service. However, **Microsoft logos, app and product icons, illustrations, photographs, videos, and designs can never be used without an express license**. In particular, use of Microsoft or GitHub word marks in package/extension names is discouraged. Review these Guidelines to better understand how you can more clearly communicate the role that our Microsoft's brand assets are conveyed in your communications. **The Agreement does not grant or imply any rights to any Microsoft or supplier trademarks, trade names, or logos.** GitHub Brand Toolkit. We have created a non-exhaustive list of **Dos and Don'ts**. Wordmarks can be used to truthfully convey information about your product or service, as long as customers and the public will not be confused into believing Microsoft is affiliated with or endorses your product or service. However, **Microsoft logos, app and product icons, illustrations, photographs, videos, and designs can never be used without an express license**. In particular, use of Microsoft or GitHub word marks in package/extension names is discouraged. Review these guidelines to better understand how you can more clearly communicate the role that our Microsoft's brand assets are conveyed in your communications. **The Agreement does not grant or imply any rights to any Microsoft or supplier trademarks, trade names, or logos.** We have created a non-exhaustive list of **Dos and Don'ts**. Wordmarks can be used to truthfully convey information about your product or service, as long as customers and

the public will not be confused into believing Microsoft is affiliated with or endorses your product or service. However, **Microsoft logos, app and product icons, illustrations, photographs, videos, and designs can never be used without an express license**. In particular, use of Microsoft or GitHub word marks in package/extension names is discouraged. Review these Guidelines to better understand how you can more clearly communicate the role that our Microsoft's brand assets are conveyed in your communications. **The Agreement does not grant or imply any rights to any Microsoft or supplier trademarks, trade names, or logos.** GitHub Brand Toolkit. We have created a non-exhaustive list of **Dos and Don'ts**. Wordmarks can be used to truthfully convey information about your product or service, as long as customers and the public will not be confused into believing Microsoft is affiliated with or endorses your product or service. However, **Microsoft logos, app and product icons, illustrations, photographs, videos, and designs can never be used without an express license**. In particular, use of Microsoft or GitHub word marks in package/extension names is discouraged. Review these guidelines to better understand how you can more clearly communicate the role that our Microsoft's brand assets are conveyed in your communications. **The Agreement does not grant or imply any rights to any Microsoft or affiliate trademarks, trade names, or logos.**

 Any rights not expressly granted herein are reserved.

c. Notice and Procedure for Making Claims of IP Infringement. Pursuant to Title 17, United States Code, Section 512(c)(2), notifications of claimed copyright should be sent to Microsoft's DMCA Agent (as 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.

See [Notice and Procedure for Making Claims of Copyright Infringement](#).

You may also utilize the "Report Abuse"/"Report Package" link on the Private Marketplace pages to report any claimed copyright, trademark, or other IP infringement. Note that we may provide your notice of infringement (e.g., your email address) to third parties, including the alleged infringer.

We may also close your account for repeat infringers, including deleting all content related to the account.

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. 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.