

MICROSOFT VISUAL STUDIO MARKETPLACE PUBLISHER AGREEMENT

LAST UPDATED AUGUST 2016

Thank you for your interest in publishing in the Microsoft Visual Studio Marketplace. This Microsoft Visual Studio Marketplace Publisher Agreement (“**Agreement**”) describes the relationship between you and Microsoft Corporation (“**we**” or “**us**”) and governs your publication of any Offering (as defined below) within the Microsoft Visual Studio Marketplace.

By clicking to accept and/or by submitting an Offering to Microsoft for publication in 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.

SECTION 1 Definitions.

- (a) “**Account Fee**” means the fee you pay to Microsoft, if any, to establish and access your Publisher Account.
- (b) “**Affiliate**” means any legal entity that owns, is owned by, or is commonly owned with a party. “**Own**” means more than 50% ownership or the right to direct the management of the entity.
- (c) “**Azure Reseller**” means a Microsoft partner that is authorized to resell access to Microsoft Azure and/or Marketplace Offerings, in one or more Indirect Channels.
- (d) “**Bring-Your-Own-License (BYOL) Offering**” means an Offering for which Customers have obtained outside of the Marketplace the right to access or use the Offering.
- (e) “**Customer**” means any Azure customer or end user who acquires, makes use of, or otherwise views an Offering published through the Marketplace.
- (f) “**Customer Data**” means all data, including all text, sound, video, or image files, and software, that are provided to you by, or on behalf of, Customers through their use of your Offerings.
- (g) “**Customer Information**” means any information that we provide to you, in our discretion, about Customers who have purchased or accessed your Offerings, including, contact information or, with respect to your Offerings, purchase history or usage information.
- (h) “**Free Trial Offering**” means an Offering that you permit Customers to use for free during a limited, trial period.
- (i) “**Listing Information**” means the information and images accompanying an Offering that identifies the nature, volume, User Fees, Terms of Use, and other features of the Offering, as specified by you in connection with your request to publish the Offering or otherwise.
- (j) “**Marketplace**” means a limited, Microsoft-curated repository of links to Offerings published by Microsoft and various third-party publishers available through the Visual Studio Marketplace or any other service through which Offerings are published subject to this Agreement. Customers may access the Marketplace via a web-based management portal, Azure APIs, or other mechanisms made available by Microsoft.

- (k) **“Marketplace Participation Policies”** means the business policies and requirements for publishing in the Marketplace, as set forth at <http://aka.ms/vsmarketplace-policies>.
- (l) **“Marketplace Publication Guidelines”** means the documentation by which we provide technical instructions and baseline requirements to publishers to assist them in creating, testing, and publishing Offerings within the Marketplace, as set forth at <http://aka.ms/vsmarketplace-publish-main>.
- (m) **“Microsoft Azure”** or **“Azure”** means Microsoft’s Azure-branded cloud services platform.
- (n) **“Microsoft Seller Dashboard”** means a web portal through which publishers may register to offer software and other products and services through various Microsoft marketplaces, located at <https://sellerdashboard.microsoft.com/Registration> or at an alternate site that we identify.
- (o) **“Microsoft Software Products”** means certain Microsoft software products that Microsoft may authorize publishers to make available on Microsoft’s behalf within certain types of Offerings.
- (p) **“Offering”** means any software, data, media, or service published or proposed to be published in the Marketplace under this Agreement, and includes, without limitation, the Offering categories described in **Exhibit A**. Additional terms applicable to specific categories of Offerings are set forth in **Exhibit A**.
- (q) **“Offering Contents”** means all data, software, and services included within, installable by, or otherwise associated with an Offering. Offering Contents include, without limitation, all operating system and application software associated with an Offering, not including any Microsoft Software Products, irrespective of whether you are the owner of such software.
- (r) **“Paid Offering”** means an Offering for which User Fees are charged for Customers’ use of the Offering through the Marketplace. Paid Offerings do not include BYOL Offerings.
- (s) **“Privacy Statement”** means a privacy statement that describes your practices regarding collection and use of Customer Data and Customer Information, as specified in the Listing Information associated with your Offering.
- (t) **“Publisher Account”** means a publisher account for the Marketplace, which includes a user name and password.
- (u) **“Publishing Portal”** means the web portal available at <http://publish.windowsazure.com, marketplace.visualstudio.com/manage> or at an alternate site that we identify, through which publishers may submit Offerings for approval and publication within the Marketplace and access information and receive communications from Microsoft relating to the Marketplace.
- (v) **“Terms of Use”** means the legal terms under which you grant Customers the right to use or access your Offering (not including BYOL Offerings), as well as all Offering Contents associated therewith, as specified in the Listing Information associated with your Offering.
- (w) **“User Fees”** means a set of fees that you authorize Microsoft to charge Customers or Azure Resellers, as applicable, for Customers’ use of an Offering. The Marketplace Participation Policies sets forth the pricing models supported by the Marketplace. .

All other capitalized terms that are not defined in this **Section 1** shall have the meanings assigned in the text of this Agreement.

SECTION 2 Publisher Account.

To submit certain types of Offerings to the Marketplace, we may require you to register in the Microsoft Seller Dashboard and open a Publisher Account through the Publishing Portal. We may verify information you submit when you set up your Publisher Account. You may be required to pay an Account Fee to submit your Offering for approval. We may use the contact information you provide in the Microsoft Seller Dashboard or with your Publisher Account to send you newsletters and information regarding events, contests, promotions, and the like. Your Publisher Account is only for your use, and you are responsible for all activity that takes place within your Publisher Account. If you fail to keep your Publisher Account in good standing (for example, by failing to pay fees, if any, associated with the Publisher Account, by providing incorrect or outdated information, by engaging in dishonest or fraudulent activity, or by repeatedly submitting Offerings that violate this Agreement, abuse the Marketplace service, or interfere with any other party's use of the Marketplace) we may revoke your Publisher Account, remove your Offerings from the Marketplace, delete Offering ratings and reviews, retain associated Account Fees (if any), and pursue any other remedies available to us.

SECTION 3 Submission, Approval, and Publication of Offerings.

- (a) Submission Process.** You must submit a request for each Offering that you wish to publish in the Marketplace. We may approve or reject any proposed Offering in our sole discretion, and may condition our approval on your making modifications to the Offering or its Listing Information. You are responsible for ensuring that the Listing Information associated with your Offering is accurate and does not violate third parties' intellectual property rights, including third-party trademarks or icons. We may require you to provide us with one or more Offering prototypes or to subject an Offering to testing prior to our approving it for publication. Following our approval of an Offering, you may publish the Offering in the Marketplace, subject to the terms and conditions of this Agreement, the Listing Information provided with your request, and your compliance with the Marketplace Participation Policies and Marketplace Publication Guidelines. You may not publish any Offering in the Marketplace unless we approve it in accordance with this **Section 3(a)**.
- (b) Publication Process.** The Marketplace Publication Guidelines provide technical information about how different types of Offerings may be published to the Marketplace. As between you and Microsoft, you are solely responsible for making your Offerings available to Customers.
- (c) Presentation of Offerings.** We reserve the right to determine the manner in which all Offerings, whether published by you or others, are presented and promoted in the Marketplace. We may display your Listing Information in connection with your Offering, as well as other information designed to inform Customers that the Offering is provided by you, what content is included within the Offering, the life-cycle of any software in the Offering, support options with respect to the Offering, and how Customers can obtain and use the Offering.

- (d) **Terms for Publisher Marks.** You hereby grant us a non-exclusive, royalty-free, personal license to display your trademarks and logos (“**Publisher Marks**”), as provided to us through the Publishing Portal or otherwise, in connection with the marketing and promotion of your Offerings or the Marketplace. You are the owner and/or authorized licensor of the Publisher Marks. As between the parties, all goodwill associated with the Publisher Marks shall inure to your benefit. We may reformat or resize Publisher Marks as necessary and without altering the overall appearance of the Publisher Marks. You may notify us at any time if you believe that we are misusing your Publisher Marks, and we will correct such use within a reasonable time.

SECTION 4 Licensing of Offerings and Support.

- (a) **Licensing of Offerings.** You are responsible for licensing or otherwise granting rights to your Offerings, including all Offering Contents associated therewith, to Customers. Such licenses and grants will be between you and Customers and will not create any obligations or responsibilities of any kind for Microsoft. With respect to the web-based management portal experience for the Marketplace, Offerings shall be conditioned upon a “click to agree” acceptance of your Terms of Use and Privacy Statement by Customers. Microsoft may also enable Customers to purchase and access Offerings through Marketplace APIs. You acknowledge that Microsoft grants no rights or license to your Offerings through the operation of the Marketplace, or through enabling you to provide your Offerings through the Marketplace.
- (b) **Support.** You are responsible for supporting your Offerings that are paid-for and fully available (i.e., not a preview release). You will ensure that any support options described in your Listing Information remain available to Customers for as long as the relevant Offering is available in the Marketplace or is otherwise provided to Customers. For each Offering that you publish in the Marketplace, you must make support available to Customers, either as included within the User Fees associated with the Offering, if any, or as a support offering that may be separately purchased. You must provide commercially reasonable support to Customers for inquiries related to deployment of Offerings via the Marketplace. You must make technical and billing support contacts available to Microsoft via e-mail and telephone for notification in the event that there are any billing issues that require your response or technical problems with any Offering. If we contact you regarding a problem that requires your support, you must respond promptly and provide a resolution within a commercially reasonable period. You agree to work with us to identify or isolate root cause issues and fixes in necessary scenarios. Our sole obligation with respect to customer service for any Offering is to make your customer service contact information reasonably available to Customers. We reserve the right to require Customers to purchase Azure support plans before we will provide any support to Customers related to the Azure services, including root cause analysis. You will ensure that the contact information you provide in the Publishing Portal and in the Listing Information associated with each Offering remains accurate and current.

SECTION 5 Privacy.

- (a) **Use of Customer Information and Customer Data.** You may use Customer Data only to provide your Offering. You may use Customer Information to provide your Offering, to contact Customers as provided in **Section 5(c)**, to prevent fraud, to provide support, or to perform statistical analysis. You may not use Customer Data or Customer Information for any other purposes unless you obtain permission from Customers for such other purposes in your Privacy Statement or otherwise obtain express permission from Customers.
- (b) **Privacy Statement.** Your Privacy Statement must (i) comply with applicable laws and regulations; (ii) inform Customers about the Customer Data collected by your Offering and how that information is used, stored, secured, and disclosed; and (iii) describe the controls that Customers have over the use and sharing of their Customer Data and Customer Information and how they may access their data and information. Microsoft's privacy policies apply solely to Customers' use of Azure services and will not apply to Customers' use of any third-party Offering. If a Service Offering is hosted, or if an Offering includes hosted components, you must indicate all countries in which the service may be hosted and where any Customer Data may be stored. This information must be made available in your Privacy Statement and your Listing Information to enable Customers to determine how to comply with applicable laws, regulations, or policies governing the use and transfer of their data.
- (c) **Communications with Customers.** If we provide you with Customer Information, you may contact the Customer for Transactional Purposes only. You may not contact the Customer for Promotional Purposes unless the Customer has provided affirmative, opt-in consent to receive such communications from you. This section does not restrict you from using other Customer contact information that you acquire independently for any purpose, even if that information is identical to the Customer Information we provide to you, provided that you do not target communications on the basis of the intended recipient being an Azure customer. **"Transactional Purposes"** encompasses communications related to support for your Offering, service downtime, changes in your Terms of Use, billing, and notification or delivery of invoices. **"Promotional Purposes"** encompasses communications related to offering or advertising products or services, feedback requests, and links to training or other resources. Your communications with Customers must comply with all applicable laws.

SECTION 6 User Fees, Payments, and Taxes.

- (a) **Appointment of Microsoft.** The Marketplace is a forum through which Offerings are made available by publishers. Microsoft's role is to provide the technology and services to enable this forum and to process the related purchases, returns, and chargebacks for you. You appoint Microsoft to act as your agent or commissionaire, as applicable, for these purposes, and you acknowledge that you, not Microsoft, are the provider and/or licensor of your Offerings, as applicable.
- (b) **User Fees.** When you submit an Offering for publication, you will designate the User Fees (if any) to be charged for use of your Offering. The Publishing Portal may direct you to designate User Fees for different Offering SKUs, geographies, currencies, or other aspects of your Offering.
- (c) **Billing.** For Paid Offerings, we will charge or invoice Customers or Azure Resellers, as applicable, for Customers' use of your Offering in Azure in accordance with the User Fees specified in your Listing Information (or its reasonable currency equivalent), including any discounts from

promotional codes entered by Customers through the Marketplace. We may convert the User Fees associated with an Offering into a local currency or to a currency associated with a Customer's or Azure Reseller's customer agreement or reseller agreement, as applicable. Excluding BYOL Offerings, you will ensure that all fees and charges payable for use of your Offering are billed and collected through the Marketplace, and you will not offer or establish any alternative means of payment.

- (d) **Publisher Net Revenue.** Amounts payable to you will be calculated as follows: (i) aggregate User Fees paid and actually collected from Customers or Azure Resellers, as applicable, for Customers' use of your Offerings over the previous payment period, net of any applicable taxes, refunds, and chargebacks ("**Publisher Net Receipts**"); less (ii) a "**Marketplace Service Fee**," equal to 20% of Publisher Net Receipts, for promotion and availability of the Offerings. The total sum payable hereunder is referred to as "**Publisher Net Revenue**." We will include a transaction report along with payments made to you hereunder that reflects the calculation of Publisher Net Revenues and the number of Paid Offerings used by Customers during the relevant Payment Period.
- (e) **Payment Terms.** We will pay you applicable Publisher Net Revenues within 45 days after each payment period, as specified in the Marketplace Participation Policies. If Publisher Net Revenues are less than \$250.00 USD in any given payment period, we may elect to carry forward the amount owed to subsequent payment periods until the total amount owed is at least \$250.00 USD. All Publisher Net Revenues shall be paid using Microsoft's standard payment methods and in the manner you indicated in the Microsoft Seller Dashboard or during the Publisher Account setup, which may include checks payable to you and sent via U.S. mail and/or ACH electronic payment to a financial institution that you designate. You must provide us (or our third-party payment processor) with all financial, tax, and banking information requested so that we can pay you under this Agreement. We are not responsible for delay, loss, or misapplication of payment because of incorrect or incomplete information supplied by you or a bank or for failure of a bank to credit your account. We may remit payment to you in the currency associated with your Seller Dashboard profile or Publisher Account using Microsoft's then-current conversion rates.
- (f) **Refunds and Offsets for Paid Offerings.** If a Customer or an Azure Reseller contacts us to request a refund for a purchase of your Paid Offering, we will apply the same credit and refund policies that we use for our provision of the Azure services. If our policies indicate that a credit or refund is due, we will proactively issue, and you authorize us to issue on your behalf, a credit or refund to the Customer or Azure Reseller, as applicable. If our policies do not indicate that a credit or refund is due, we may invite the Customer or Azure Reseller to contact you directly. You agree to inform us in the event that any Customer or Azure Reseller is owed a refund for your Offering. In such case, we will be solely responsible for processing any refunds through our payment system. You will not receive payment for any Offering that is sold and later refunded or subjected to a chargeback, and we may offset future payments to you if a refund or chargeback is issued for a transaction for which you previously received payment.
- (g) **Taxes.**
 - (i) **Responsibility for Taxes Pertaining to Offering Purchases.** In certain countries ("**Remittance Countries**"), we will collect and remit sales, use, goods and services, value added, or similar taxes, if any, applicable to the sale of your Offering to Customers or to Azure Resellers, as applicable, in such countries through the Marketplace based on our

tax footprint in those countries. We make no warranty that our tax footprint in any Remittance Country will be equivalent to yours or that the taxes we collect and remit in such countries will relieve you of primary liability for taxes on domestic sales, whether or not such taxes are separately stated by us. In any country other than the Remittance Countries (such other country an “**ISV Remittance Country**”), we will not remit any sales, use, goods and services, value added, or other similar tax. You are responsible for determining whether you have an obligation to register, collect, and remit taxes in any ISV Remittance Country, and you must designate the User Fees associated with your Offering as made available in such country to include any applicable taxes that you are obligated to collect and pay. For the list of Remittance Countries and to find more information about how Microsoft collects taxes in Remittance Countries, see the Marketplace Participation Policies.

- (ii) **Exemption Certificates.** Notwithstanding **Section 6(g)(i)**, we will not collect and remit tax from sales to certain Azure Resellers in Remittance Countries if we have deemed the sale tax-exempt. In such cases, you may be liable for taxes applicable to such sales unless you also obtain valid exemption certificates from the applicable Azure Resellers. You will be solely responsible for obtaining any necessary exemption certificates from Azure Resellers and for any tax liability resulting from your failure to do so.
- (iii) **Responsibility for All Other Taxes.** In the event that any price payable by any Customer or Azure Reseller for any Offering is subject to (A) any withholding or similar tax; or (B) any sales, use, goods and services, value added, or other tax or levy not collected by Microsoft; or (C) any other tax or other government levy of whatever nature, the full amount of that tax or levy shall be solely for your account, and shall not reduce the Marketplace Service Fee to which Microsoft is entitled. You are solely responsible for determining your federal, state, local, foreign, and any other tax obligations in any taxing jurisdiction in connection with the transactions contemplated by this Agreement and for paying and reporting those taxes, including taxes unique to your residence and any taxes related to Publisher Net Revenue that you may receive under this Agreement. If taxes are required to be withheld on any amounts payable by Microsoft (or, if applicable, Microsoft’s Affiliate, vendor, or agent) to you, Microsoft (or such Affiliate, vendor, or agent) will deduct such taxes from the amount otherwise owed and pay them to the appropriate taxing authority and will secure and deliver to you an official receipt or other evidence of payment for any taxes withheld. We will use reasonable efforts to minimize such taxes to the extent permissible under applicable law, and both parties will reasonably cooperate with each other to obtain the lowest tax rates or elimination of such taxes. If we are required to collect any sales, use, goods or services, value-added, or similar taxes in connection with your payment of the Marketplace Service Fee, we may deduct and retain the amount of such taxes from amounts otherwise due to you and remit them to the applicable taxing authority.
- (iv) **Tax Reporting.** If you choose to make Offerings available in an ISV Remittance Country, you will have sole responsibility to determine your tax obligation in such ISV Remittance Country, if any.

SECTION 7 Removal of Offerings.

- (a) **Removal Policies.** Subject to **Section 7(b)**, you may remove an Offering from the Marketplace on thirty (30) days' notice. We reserve the right to remove or suspend the availability of any Offering from the Marketplace for any reason or no reason. Reasons may include, without limitation, (i) your breach of the terms of this Agreement, which includes the Marketplace Participation Policies and the Marketplace Publication Guidelines; (ii) your express termination of this Agreement; (iii) inconsistency between your Offering and its Listing Information; (iv) an assertion or claim that your Offering infringes the intellectual property rights of a third party; (v) complaints about the content or quality of your Offering; or (vi) failure to provide adequate support to Customers or to Microsoft in accordance with this Agreement.
- (b) **Existing Customer Deployments.** Except for Service Offerings, for which removal policies are described in **Exhibit A**, removal of any Offering will apply to prospective Customers of your Offering only, and existing Customers will be able to continue to use the Offering to the same extent as prior to the removal.

SECTION 8 Confidentiality and Data Protection.

- (a) **Confidentiality.** We will each comply with the terms of any nondisclosure agreement currently in force between us. If no such agreement exists, the recipient of Confidential Information under this Agreement will hold in confidence, and will not use or disclose any of the other party's Confidential Information to a third party, except contractors who are performing on the receiving party's behalf and only subject to confidentiality terms at least as protective as this section. "**Confidential Information**" means all information that a party designates as confidential, or a reasonable person knows or reasonably should understand to be confidential. Confidential Information does not include information that is or becomes known to the receiving party without a breach of this agreement or any other confidentiality obligation owed to a disclosing party. This section does not prohibit either party from responding to lawful requests from law enforcement authorities.
- (b) **Data Protection.** Each party will comply with all applicable data protection and privacy legislation in connection with its performance hereunder.

SECTION 9 Warranties. You represent, warrant, and undertake to Microsoft that:

- (a) You have obtained any and all consents, approvals, or licenses (including written consents of third parties where applicable) required for you to make your Offerings available in the Marketplace;
- (b) Our exercise of the rights granted by you under this Agreement will not obligate us or our Affiliates to pay any third party any amounts;
- (c) Information that you provide to us under or in connection with this Agreement is true, accurate, current, and complete; and
- (d) In carrying out your obligations set forth in this Agreement, you are in compliance with all applicable laws, including privacy laws.

SECTION 10 Disclaimer, Limitation of Liability, and Defense of Claims.

- (a) **DISCLAIMER OF WARRANTY.** AS TO PUBLISHERS AND THEIR OFFERINGS, WE PROVIDE THE AZURE SERVICES AND THE MARKETPLACE "AS-IS," "WITH ALL FAULTS," AND "AS AVAILABLE." YOU BEAR THE RISK OF PUBLISHING YOUR OFFERINGS THROUGH THE MARKETPLACE FOR USE BY CUSTOMERS. TO THE EXTENT PERMITTED BY APPLICABLE LAW, WE EXCLUDE ANY IMPLIED WARRANTIES OR CONDITIONS, INCLUDING THOSE OF PRODUCT LIABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, WORKMANLIKE EFFORT, AND NON-INFRINGEMENT RELATING TO THE AZURE SERVICES AND THE MARKETPLACE. WITHOUT LIMITING THE FOREGOING, WE EXPRESSLY DISCLAIM ANY WARRANTIES THAT ACCESS TO, OR USE OF, THE AZURE SERVICES OR THE MARKETPLACE WILL BE UNINTERRUPTED OR ERROR FREE.
- (b) **LIMITATION OF LIABILITY.** EXCEPT AS PROVIDED IN **SECTION 10(d)**, EACH PARTY'S AND ITS AFFILIATES' LIABILITY UNDER THIS AGREEMENT IS LIMITED TO DIRECT DAMAGES UP TO \$5,000. EACH PARTY AGREES NOT TO SEEK, AND EACH PARTY EXPRESSLY WAIVES, ANY RIGHT TO RECOVER ANY OTHER LOSSES OR DAMAGES, INCLUDING WITHOUT LIMITATION LOST PROFITS OR CONSEQUENTIAL, SPECIAL, INDIRECT, PUNITIVE, OR INCIDENTAL DAMAGES. THESE LIMITS AND EXCLUSIONS APPLY EVEN IF THE PARTY KNEW OR SHOULD HAVE KNOWN ABOUT THE POSSIBILITY OF SUCH DAMAGES. THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU IF YOUR STATE OR COUNTRY DOES NOT ALLOW THE EXCLUSION OF CERTAIN DAMAGES.
- (c) **Scope.** For clarity, the disclaimer and limitation of liability provisions in this **Section 10** pertain to you solely in your capacity as a publisher in the Marketplace. Neither the foregoing provisions nor any other provisions in this Agreement are intended to apply to your use of any Azure services in your capacity as an Azure customer, if applicable.
- (d) **Duty to Defend.** You agree to defend, indemnify, and hold harmless us and our Affiliates, as applicable, from and against (including by paying any associated costs, losses, damages, or expenses and attorneys' fees) any and all third-party claims:
- (i) alleging that your Offering, including any Listing Information, infringes any proprietary or personal right of a third party;
 - (ii) arising from any dispute between you and a Customer relating to your Offering; or
 - (iii) by any tax authority based on any nonpayment or underpayment of any sales, use, goods and services, value added, or other similar tax, including any associated penalties and interest.
- (e) We will (A) notify you promptly in writing of the claim, provided that our failure to notify you will not relieve you of any liability except to the extent that such failure materially prejudices your legal rights; and (B) at your reasonable request, provide you with reasonable assistance in defending the claim. You agree to reimburse us or our Affiliates, as applicable, for any reasonable out-of-pocket expenses incurred in providing such assistance. You may not make any settlement or compromise of a claim, or admit or stipulate any fault or liability on the part of us or our Affiliates with respect to any claim covered by this section without our express, prior written consent.

SECTION 11 Term and Termination.

- (a) **General.** This Agreement will remain in effect until terminated. Either party may terminate this Agreement at any time, for any reason or no reason, upon thirty (30) days' written notice and

removal of all of your Offerings from the Marketplace.

- (b) **Effect of Termination.** Sections of this Agreement that, by their terms, require performance or establish rights or protections after the termination or expiration of this Agreement will survive.

SECTION 12 Miscellaneous.

- (a) **Affiliates.** We may perform certain of our obligations under this Agreement through one or more Microsoft Affiliates. We may also appoint one or more of our Affiliates to act as our agents in different regions.
- (b) **Notices.** All notices that you provide to us under this Agreement must be sent to the following email alias: azmarketplacelegal@microsoft.com. We may disclose your contact information as necessary for us to administer this Agreement through our Affiliates and other parties that help us administer this Agreement.
- (c) **Reservation of Rights.** Except as expressly provided, nothing in this Agreement transfers, conveys, or grants any right, title, or interest in any software or other materials exchanged by the parties. Each party reserves all rights not expressly granted.
- (d) **No Exclusivity.** Each party acknowledges and agrees that the rights granted to and obligations due to the other party in this Agreement are intended to be non-exclusive, and therefore that nothing in this Agreement will be deemed or construed to prohibit either party from engaging in or participating itself or with one or more third parties in business arrangements similar to or competitive with those described herein.
- (e) **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.
- (f) **Costs.** Each party is solely responsible for all costs and expenses incurred by it in connection with its performance of this Agreement.
- (g) **Responding to Claims.** If we receive a claim from a third party requesting that your Offering be changed or removed, we may refer that claim to you. You must comply with the notice as soon as reasonably practicable, together with any other requirements in Microsoft's Notice and Takedown policies at <https://www.microsoft.com/info/cpyrtlnfrg.aspx>. If you discover that your Offering violates the terms of this Agreement, you must immediately notify us and work with us to cure the violation.
- (h) **Waiver.** Either party's delay or failure to exercise any right or remedy will not result in a waiver of that or any other right or remedy.
- (i) **Severability.** If any court of competent jurisdiction determines that any provision of this Agreement is illegal, invalid, or unenforceable, the remaining provisions will remain in full force

and effect.

- (j) **Assignment.** Neither party may assign this Agreement (or any rights or duties under it) without the other party's prior written consent, provided that either party may assign this Agreement without the other party's consent (i) to an Affiliate or (ii) in connection with a merger, acquisition, or sale of all or substantially all of its assets. Either party who assigns this Agreement as permitted in this **Section 12(j)** shall provide the other party with prompt notice of such assignment. Subject to the foregoing, this Agreement will be binding upon and inure to the benefit of the parties and their permitted successors and assigns.
- (k) **Subcontractors.** We may sublicense our rights under this Agreement to third parties or otherwise authorize third parties to assist us in performing our obligations or exercising our rights under this Agreement. We will, subject to the terms of this Agreement, be responsible for the performance of such third parties.
- (l) **English Language.** The parties intend for this Agreement to be written and interpreted solely in English. Any notices required or provided under this Agreement will be in English. In the event of any conflict between the English version of this Agreement or any notices and a translation of the same, the English version will prevail.
- (m) **Force Majeure.** Neither party will be liable for failure to perform any obligation under this Agreement to the extent such failure is caused by a force majeure event, including acts of God, natural disasters, war, civil disturbance, action by governmental entity, strike, or other causes beyond the reasonable control of the party seeking recourse under this **Section 12(m)**. The party affected by the force majeure event will provide notice to the other party within a commercially reasonable time and will use reasonable efforts to resume performance. Obligations not performed due to a force majeure event will be performed as soon as reasonably possible when the force majeure event ends. Lack of funds will not constitute an event of force majeure.
- (n) **Relationship of Parties.** Neither this Agreement, nor any terms and conditions contained herein, create a partnership, joint venture, employment relationship, or grant of any franchise rights.
- (o) **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 make Offerings available in the Marketplace, you agree to be bound by the terms and conditions contained in the updated Agreement. In the event of a conflict between the terms of this document and the terms of the Marketplace Publication Guidelines or the Marketplace Participation Policies, this document will control.
- (p) **Entire Agreement.** This Agreement (including its Exhibits) constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous communications.

EXHIBIT A

Offering Types

SECTION 1 Extensions for Visual Studio Team Services and Team Foundation Server

Extensions for Visual Studio Team Services and Team Foundation Server are Offerings that you make available to Customers through the Marketplace that install into a Customer's Visual Studio Team Services account or Team Foundation Server and provide new capabilities to users of that account.

SECTION 2 Extensions for Visual Studio and Visual Studio Code

Extensions for Visual Studio and Visual Studio Code are Offerings that you make available to Customers through the Marketplace that install into an instance of Visual Studio or Visual Studio Code and provides new capabilities to users of that Visual Studio program.

SECTION 3 Integrations

An integration is a product, service, or tool that is not available to Customers directly through the Marketplace but for which the Marketplace displays a link, icon, and/or description directing Customers to your website or providing instructions on how Customers may obtain and use the Offering with Visual Studio Team Services, Team Foundation Server, Visual Studio, or Visual Studio Code. For clarity, Integrations are considered Offering Contents for purposes of this Agreement.

SECTION 4 Services.

A “**Service Offering**” is a software-as-a-service, platform-as-a-service, data service, or other service Offering that you make available to Customers through the Marketplace.

- (a) **Metering.** For certain types of Service Offerings, as described in the Marketplace Publisher Participation Policies, if your Service Offering includes usage-based billing User Fees, you are responsible for metering Customers' use of your Service Offering and reporting such usage to us on a periodic basis not to exceed 24 hours. We will provide you with one or more manual or automated mechanisms to report such usage information to us. We reserve the right not to collect User Fees for any usage information provided more than 24 hours after the close of any billing cycle. You are also responsible for notifying us and requesting correction of any erroneous usage information previously submitted. We will attempt to correct over-billing errors at any time, where feasible, but we will not correct under-billing errors for Customers whose billing cycles have already closed. We reserve the right to suspend your Service Offering if (i) you repeatedly fail to submit usage information on a timely basis; or (ii) you repeatedly submit erroneous usage information or request billing corrections.
- (b) **Removal.** Following removal of your Service Offering from the Marketplace, you must continue to provide your service to each existing Customer for 90 days or until expiration of the term of that Customer's subscription to your Service Offering, whichever is longer.

SECTION 5 Catalog-Only Listings.

A “**Catalog-Only Listing**” is an Offering that is not available to Customers directly through the Marketplace

but for which the Marketplace displays a link, icon, and/or description directing Customers to your website or providing instructions on how Customers may obtain and use the Offering in Azure. For clarity, any software or data referenced by a Catalog-Only Listing is considered Offering Contents for purposes of this Agreement.