

## Standard Contract

June 2021

This Standard Contract (“**Agreement**”) is between you (“**you**” or “**Customer**”) and the publisher (“**Publisher**”) from which you are procuring all services, websites (including hosting), solutions, platforms, and products that Publisher makes available under or in relation to this Agreement, including the software, equipment, technology, and services necessary for Publisher to provide the foregoing (each an “**Offering**”) and governs your use of Offerings acquired through the Visual Studio Marketplace and/or Visual Studio Codespaces.

This Agreement is the parties’ entire agreement on this subject and merges and supersedes all related prior and contemporaneous agreements. By agreeing to these terms, you represent and warrant that you have the authority to accept this Agreement, and you also agree to be bound by its terms.

***Microsoft has created this template Standard Contract to facilitate a transaction between Publisher and Customer. Both parties acknowledge that Microsoft is not a party to this Agreement, nor in any way responsible for the parties’ actions or obligations under this Agreement. Microsoft’s relationship with Customer and Publisher is solely governed by Microsoft’s respective agreements with those parties; Microsoft otherwise disclaims all liability resulting from this Agreement.***

**I. Definitions.** The following definitions apply in this Agreement:

- a. “Affiliate”** means, with respect to a party, an entity that controls, is controlled by, or is under common control with such party. For purposes of this definition, “**control**” means having more than fifty percent (50%) ownership or the right to direct the management of the entity.
- b. “Documentation”** means any accompanying documentation, instructions, policies (including privacy policies), pricing, subscription durations, terms, or other written material that Publisher provides to Customer in conjunction with this Agreement.
- c. “End User”** means any person Customer permits to use an Offering.
- d. “Feedback”** means ideas, suggestions, comments, input, or know-how, in any form, that one party provides to the other in relation to recipient’s Confidential Information, products, or services. Feedback does not include sales forecasts, future release schedules, marketing plans, financial results, and high-level plans (e.g., feature lists) for future products.
- e. “Personal Data”** means any information relating to an identified or identifiable natural person.

Other capitalized terms not defined in this section shall have the meanings given to them in the body of the Agreement.

**II. License to Offerings**

- a. License grant.** Offerings are licensed and not sold. Subject to Customer’s compliance with this Agreement and any Documentation, Publisher grants Customer a nonexclusive and limited license to use the procured Offerings. These licenses are solely for Customer’s own use and business purposes and are nontransferable except as permitted under applicable law. Publisher reserves all rights not expressly granted in this Agreement.
- b. Duration of licenses.** Licenses granted on a subscription basis expire at the end of the applicable subscription period, unless renewed. Licenses granted for metered Offerings billed periodically based on usage continue if Customer continues to pay for its usage of the Offerings. All other licenses become perpetual (1) upon payment in full for paid Offerings or (2) immediately when granted in connection with Offerings offered free of charge.
- c. End Users.** Customer will control access to and use of the Offerings by End Users and is responsible for any use of the Offerings that does not comply with this Agreement or the Documentation.

d. **Restrictions.** Except as expressly permitted in this Agreement and any accompanying Documentation, Customer must not (and is not licensed to):

- (1) copy, modify, reverse engineer, decompile, or disassemble any Offering, or attempt to do so;
- (2) install or use any third-party software or technology in any way that would subject Publisher's intellectual property or technology to any other license terms;
- (3) work around any technical limitations in an Offering or restrictions in Documentation;
- (4) separate and run parts of an Offering on more than one device;
- (5) upgrade or downgrade parts of an Offering at different times;
- (6) use an Offering for any unlawful purpose;
- (7) transfer parts of an Offering separately; or
- (8) distribute, sublicense, rent, lease, or lend any Offerings, in whole or in part, or use them to offer hosting services to a third party.

e. **Feedback.** Any Feedback is given voluntarily, and the provider grants to the recipient, without charge, a non-exclusive license under provider's owned or controlled non-patent intellectual property rights to make, use, modify, distribute, and commercialize the Feedback as part of any of recipient's products and services, in whole or in part and without regard to whether such Feedback is marked or otherwise designated by the provider as confidential. The provider retains all other rights in any Feedback and limits the rights granted under this section to licenses under its owned or controlled non-patent intellectual property rights in the Feedback (which do not extend to any technologies that may be necessary to make or use any product or service that incorporates, but are not expressly part of, the Feedback, such as enabling technologies).

III. **Privacy.** Customer consents to the processing of Personal Data by Publisher and its Affiliates, and their respective agents and subcontractors, as provided in the Publisher's privacy policy. The nature, duration, and purpose of this processing will be to provide the Offering pursuant to this Agreement. Before providing Personal Data to Publisher, Customer will obtain all required consents from third parties (including Customer's contacts, partners, distributors, administrators, and employees) under all applicable privacy and data protection laws.

IV. **SLAs.** Publisher may offer further availability and support obligations for an Offering. Such service level agreement ("SLA") will be made available by the Publisher at the applicable URL for such SLA or as otherwise communicated to Customer.

V. **Pricing and payment.** Customer's pricing and payment terms (if any) will be set forth and governed by terms included in the Documentation.

VI. **DISCLAIMER OF WARRANTY. EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT OR THE DOCUMENTATION, THE OFFERING IS PROVIDED AS IS. TO THE MAXIMUM EXTENT PERMITTED BY LAW, PUBLISHER DISCLAIMS ANY AND ALL OTHER WARRANTIES (EXPRESS, IMPLIED OR STATUTORY, OR OTHERWISE) INCLUDING OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WHETHER ARISING BY A COURSE OF DEALING, USAGE OR TRADE PRACTICE, OR COURSE OF PERFORMANCE.**

VII. **Limitation of liability.** For each Offering, each party's maximum, aggregate liability to the other under this Agreement is limited to direct damages finally awarded in an amount not to exceed the amounts Customer was required to pay for the Offerings during the term of the applicable licenses, subject to the following:

a. **Subscriptions.** For Offerings ordered on a subscription basis, Publisher's maximum liability to Customer for any incident giving rise to a claim will not exceed the amount Customer paid for the Offering during the twelve (12) months before the incident.

- b. **Free Offerings and distributable code.** For Offerings provided free of charge and code that Customer is authorized to redistribute to third parties without separate payment to Publisher, Publisher's liability is limited to direct damages finally awarded up to US\$100.
- c. **Exclusions.** In no event will either party be liable for indirect, incidental, special, punitive, or consequential damages, or loss of use, loss of profits, or interruption of business, however caused or on any theory of liability.
- d. **Exceptions.** No limitation or exclusions will apply to liability arising out of either party's violation of the other party's intellectual property rights.

**VIII. *Miscellaneous.***

- a. **Applicable law.**
  - (1) **United States and Canada.** If you acquired the Offering in the United States or Canada, the laws of the state or province where you live (or, if a business, where your principal place of business is located) govern the interpretation of these terms, claims for breach of them, and all other claims (including consumer protection, unfair competition, and tort claims), regardless of conflict of law principles.
  - (2) **Outside the United States and Canada.** If you acquired the Offering in any other country, the laws of that country apply.
- b. **Compliance with laws.** The parties will comply with all laws and regulations applicable to their respective provision or use of the Offerings, including any law applicable to Publisher or Customer relating to data security, data protection and/or privacy. Without limiting the foregoing, each party will be wholly responsible for its compliance with laws governing the rights of individuals to access, modify, export, or delete data related to an identified or identifiable natural person. Publisher will obtain and maintain any approvals, licenses, filings, or registrations necessary to its performance, and will comply with all law (including law related to export, corruption, money laundering, or any combination of these).