

Windows[®] Phone Marketplace

APPLICATION PROVIDER

AGREEMENT

(UPDATED SEPTEMBER 2010)

This agreement ("Agreement") contains terms of the relationship between you (the Application Provider accepting the Agreement) and Microsoft Corporation or its Affiliate ("Microsoft") relating to your use of the Windows Phone Marketplace and the Developer Website.

By clicking "I accept" and/or by submitting an Application and any related materials to Microsoft, Application Provider (a) represents that the person accepting this Agreement has the requisite authority to accept this Agreement on behalf of Application Provider, and (b) agrees to be bound by the terms and conditions contained in the Agreement then in effect on the date of acceptance or submission.

Terms and Conditions

1. **Definitions.** In this Agreement the following definitions apply:

- a. "Account Fee" means the fee you pay to Microsoft to establish and access your Marketplace 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. "Application" means a WM6.x Application and/or a Windows Phone 7 Application.
- d. "Application Proceeds" means Net Receipts minus the Marketplace Fee.
- e. "Associated Account" means an additional member account for the Developer Website which is dependent on your Marketplace Account.
- f. "Certification" means the process specified by Microsoft for determining the compliance of an Application with the Certification Requirements. An Application is "Certified" when (i) Microsoft (or Microsoft's designated certification provider) confirms that the Application has successfully completed Certification and (ii) the Application is packaged and signed for distribution through Windows Phone Marketplace.
- g. "Certification Fees" means fees you may be required to pay for Certification of Applications.
- h. "Certification Requirements" means the technical, functional, content, and other policy requirements provided by Microsoft (at <http://create.msdn.com> or another location specified by Microsoft) for Applications submitted to the Developer Website for distribution through the Windows Phone Marketplace.

- i. "Developer Website" means the website, currently at <http://create.msdn.com>, through which Microsoft communicates with Application Providers and through which Applications are submitted for Certification and distribution through the Windows Phone Marketplace.
- j. "Distributors" means, collectively, Microsoft and network operators that provide billing services for Windows Phone Marketplace.
- k. "Documentation" means the Developer Website and the Certification Requirements, and such other Windows Phone Marketplace materials and information Microsoft makes available to Application Providers from time to time.
- l. "Excluded License" means any license requiring, as a condition of use, modification and/or distribution of the software subject to the license, that the software or other software combined and/or distributed with it be (i) disclosed or distributed in source code form; (ii) licensed for the purpose of making derivative works; or (iii) redistributable at no charge. Excluded Licenses include, but are not limited to the GPLv3 Licenses. For the purpose of this definition, "GPLv3 Licenses" means the GNU General Public License version 3, the GNU Affero General Public License version 3, the GNU Lesser General Public License version 3, and any equivalents to the foregoing.
- m. "Marks" means the trademarks, logos, icons, short and long product descriptions, and screenshots you provide to Microsoft for use in connection with the distribution of your Application through the Windows Phone Marketplace.
- n. "Marketplace Account" means a service account for the Developer Website, which includes a user name and password.
- o. "Marketplace Fee" means the percentage of Net Receipts for an Application that is retained by Microsoft as a fee for distributing the Application. The Marketplace Fee shall be thirty percent (30%) of Net Receipts for each Application.
- p. "Microsoft Service" means the Windows Phone Marketplace and the Developer Website.
- q. "Net Receipts" means the total amounts collected from Purchasers in connection with the download of an Application from Windows Phone Marketplace, (i) minus any sales, use, or VAT/GST taxes collected from Purchasers for remittance by Microsoft in accordance with Section 6 of this Agreement; and (ii) minus any amounts refunded to Purchasers in accordance with the Refund Policy.
- r. "PC Companion" means the PC based software that provides desktop sync capability and Windows Phone Marketplace access for Windows Phone 7.
- s. "Purchaser" means any end user customer of the Windows Phone Marketplace who downloads an Application, regardless of whether such customer pays a fee to obtain the Application.
- t. "Refund Policy" means Microsoft's refund policy for WM6.x Applications distributed through the Windows Phone Marketplace, as set forth at <http://create.msdn.com/resources/en-ww/MarketplaceRefundPolicies.pdf> and as modified from time to time by Microsoft in its sole discretion, or an alternative refund mechanism required by applicable law or offered by the Distributor who provided billing services for the transaction.

- u. "Windows Live ID" means the unique user name and password that identifies a Windows Live customer.
- v. "WM6.x Application" means a software application (including games, themes, and other applications that operate locally on the device or provide access to Internet-based services), and any related materials such as metadata and screenshots, designed for use on a mobile phone running a version of Windows Mobile 6.X.
- w. "Windows Phone 7 Application" means a software application (including games, themes, and other applications that operate locally on the device or provide access to Internet-based services), and any related materials such as metadata and screenshots, designed for use on a mobile phone running a version of Windows Phone OS 7.
- x. "Windows Phone 7 Device" means a mobile communications device running a version of Windows Phone OS 7.
- y. "Windows Phone Marketplace" means a Microsoft-branded marketplace platform (which includes a mobile phone client application and Internet-based service and may include a PC Companion) provided by Microsoft, however named, through which Applications may be offered to or acquired by Purchasers.
- z. "USD" means United States Dollar.

2. **Marketplace Account.** You are required to open a Marketplace Account and pay an Account Fee, in accordance with the Microsoft payment policies set forth in the Documentation, to submit Applications to Windows Phone Marketplace. Only you may use your Marketplace Account, and you are responsible for all activity that takes place with your Marketplace Account or any Associated Accounts. You may not share your user name and password or otherwise authorize any third party to access or use the Microsoft Service on your behalf. You must keep your account in good standing, which includes, without limit, paying the Account Fee in a timely manner, complying with this Agreement, keeping your information current, and providing only true, complete and accurate information in connection with your Marketplace Account and any Associated Accounts. Microsoft may verify the information you submit, which may include providing your information to third party verification services. Failure to keep your account in good standing may, among other things, result in possible revocation of your Marketplace Account, removal of your Applications from Marketplace, loss of Application ratings and reviews, and forfeiture of any associated Account Fee.

3. **Submission, Evaluation, Certification, and Distribution of Applications.**

- a. **Submission.** You must submit to Microsoft each Application that you wish to distribute through the Windows Phone Marketplace. You are solely responsible and liable for the Applications you submit. You are responsible for supporting your Application in accordance with the requirements, if any, set forth in the Documentation. All copies of the Application (e.g. the electronic files) you submit will be retained (or destroyed) by Microsoft and will not be returned. You are responsible for retaining a back up copy of your Application.

- b. Evaluation and Testing. If Microsoft offers a “device unlock” service, however named, through the Developer Website, you may use such service to unlock a reasonable number of Windows Phone 7 Devices, in accordance with any specifications and technical limitations of the service, solely for the purpose of using such unlocked Windows Phone 7 Device to test and evaluate your Applications. For purposes of this Section 3.c, “unlock” means to enable the Windows Phone 7 Device to load and run Applications that are being developed for the Windows Phone Marketplace.
- c. Certification. Within a reasonable period of time after you submit an Application to Microsoft, and provided that you have (i) paid any applicable Certification Fees and (ii) accepted any additional terms of service from Microsoft’s designated Certification vendors, Microsoft (or Microsoft’s designated Certification vendor) will evaluate the Application to determine whether the Application complies with the Certification Requirements. For additional information about the Certification process and Certification Fees, visit <http://create.msdn.com>.
- d. Distribution. Microsoft has no obligation to distribute any Application you submit, and Microsoft will not distribute any Application unless and until the Application has been Certified. If Microsoft chooses to distribute your Certified Application through the Windows Phone Marketplace, we will do so in accordance with the terms of this Agreement and the Documentation.
- e. Application Placement. Microsoft reserves the right, in its sole discretion, to make all decisions regarding placement or promotion of Applications in the Windows Phone Marketplace.
- f. Removal. Microsoft reserves the right to remove any Application from the Windows Phone Marketplace for any reason. Such reasons may include, without limitation, (i) your breach of the terms of this Agreement or the Documentation; (ii) your express termination of this Agreement or of the license grants associated with an Application; (iii) an assertion or claim that your Application infringes the intellectual property rights of a third party; (iv) an assertion by a mobile network operator that your Application causes harm to the operator’s network; (v) your Application is already distributed under an agreement between you and a mobile operator or (vi) customer complaint(s) about the content or quality of your Application. Microsoft also reserves the right to disable previously downloaded copies of an Application on mobile devices if (i) Microsoft determines that the Application is causing or is likely to cause harm to mobile devices, mobile operator networks, end users, or otherwise; or (ii) a Distributor reasonably believes that it is or may become subject to any liability associated with the Application. Unless your Application is removed or disabled for breach of this Agreement or in response to an infringement allegation (in which case Section 7.c will apply), Microsoft will pay to you the amounts owed, if any, in connection with the distribution of your Application before removal.

4. Appointment as Agent or Commissionaire; Licenses.

- a. Appointment of Microsoft. You appoint Microsoft to act as your agent or commissionaire, as applicable, in offering and providing the Application to Purchasers through the Windows Phone Marketplace. You do not transfer ownership of the Application to Microsoft by submitting it, but you do grant to Microsoft, in its capacity as your agent or commissionaire, the worldwide right (a) to

host, use, reproduce, distribute, license, and sign the Application for purposes of performing Certification (by Microsoft or Microsoft's designated certification provider) and (b) directly or indirectly through Microsoft's authorized distribution partners, to host, reproduce, market, promote, and distribute the Application to Purchasers as your agent or commissionaire, as applicable. If you use the functionality in the Developer Website to request that Microsoft remove your Application from availability in the Windows Phone Marketplace (which functionality may be referred to as the "unpublish" functionality or otherwise), within a reasonable period of time Microsoft will remove the affected Application from the Windows Phone Marketplace and cease distribution of the affected Application, except as permitted under Section 11.b of this Agreement. You also grant Microsoft the right to publish your entity name, Application titles, and Marks, without modification, in connection with the distribution and marketing of the Application through the Windows Phone Marketplace and in marketing campaigns for the Application and/or Windows Phone Marketplace.

- b. License to Purchaser. You, not Microsoft, will license the right to install and use the Application to Purchasers. You may provide a license agreement to the Purchaser with your Application. If you do not provide a license agreement with your Application, then the Standard Application License Terms, attached as Exhibit A, will apply between you and Purchasers of your Application. If you provide your own license agreement, your license must, at a minimum, (a) permit the Purchaser to download the Application on up to five (5) mobile devices associated with that Purchaser's Windows Live ID, without payment of any additional fees to you (from either Microsoft or Purchaser), (b) include "disclaimer of warranty" and "limitation on and exclusion of remedies and damages" sections that are at least as protective of Distributors (as defined in Exhibit A) as Exhibit A and (c) disclaim any support services from Microsoft and the Purchaser's phone manufacturer and network operator.
- c. Terms of Use and Privacy Policy. If your Application enables access to and use of Internet-based or mobile services or otherwise collects and/or transmits user information to you or a third party, you are responsible for informing Purchasers of your terms of use and privacy policy that apply. At a minimum, your privacy policy must (i) comply with applicable laws and regulations, (ii) inform users of the information collected by your Application and how that information is used, stored and disclosed, and (iii) describe the controls that users have over the use and sharing of their information. Distributors' terms of use and privacy policies will not apply to a Purchaser's use of your Application.

5. **Application Requirements.** Each Application you submit to Microsoft for distribution through the Windows Phone Marketplace must comply with the following requirements (the "Application Requirements"):

- a. The Application must comply with and remain in compliance with all requirements and obligations detailed in the Documentation. The Documentation supplements this Agreement and provides detailed requirements related to your Application such as support requirements, content guidelines, payment process, technical specifications, and submission guidelines. Microsoft may revise the Documentation from time to time in its sole discretion and will provide you with a reasonable time-frame to bring your Application(s) into compliance with such revisions.

- b. The Application must comply with the applicable laws of each jurisdiction into which you request distribution of the Application, including (i) export control laws and (ii) laws and regulations relating to collection and use of user information by your Application.
- c. You are, and will continue to be, at your sole cost and expense, responsible for securing, reporting and maintaining all necessary rights, clearances and consents and paying all licensing fees (including but not limited to applicable public performance license fees to music publishers and/or performance rights organizations (e.g., ASCAP, BMI, and SESAC)) and other sums, costs and/or consideration associated with providing music or video (and all content embodied therein) in and through your Application, and for undertaking all associated reporting obligations related thereto.
- d. Your Application must not contain any viruses, hidden content or other malicious applications (including, for example, any "trap doors," "worms," "Trojan horses," "time bombs," back doors, disabling devices, or code blocks) or other unauthorized, hidden, or harmful programs.
- e. The Application must not include software, documentation, or other materials that, in whole or in part, are governed by or subject to an Excluded License, or that would otherwise cause the Application to be subject to the terms of an Excluded License.

6. **Application Pricing; Taxes on Applications.** When you submit an Application to Microsoft, you may designate the price (if any) to be charged to Purchasers (consistent with the Application price points specified by Microsoft in the Documentation for the applicable geography), and Microsoft will charge that price in connection with the distribution of your Application through the Windows Phone Marketplace. If you choose to have Microsoft make your Application available for distribution to Purchasers in the United States, Canada, Taiwan, or any of the countries listed in the attached Exhibit B (the "Remittance Countries"), Microsoft (or its billing service provider) will collect and remit sales, use, goods and services, value added or similar taxes, if any, applicable to the distribution of your Application in such country(s) through the Windows Phone Marketplace. In any country other than the Remittance Countries, Microsoft 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 country other than the Remittance Countries in which you elect to have Microsoft make your Application available for distribution to Purchasers, and you must designate the sales price of your Application to include any applicable taxes that you are obligated to collect and pay in those countries. You will defend, indemnify and hold Microsoft harmless against any claims 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, in any country other than the Remittance Countries.

7. **Payment Terms and Fees.**

- a. As complete compensation to you for the distribution of each Application under this Agreement, Microsoft will pay you applicable Application Proceeds, if any.
- b. Application Proceeds. Application Proceeds will be calculated on a monthly basis based on Net Receipts. Within a reasonable period of time after the end of each calendar month (or portion thereof) during which Microsoft distributes one or more Application(s) on your behalf, Microsoft will

provide you the ability to generate one or more reports containing the following information for the applicable month (or portion thereof):

- Number of downloads of each Application that Microsoft distributed on your behalf through the Windows Phone Marketplace, minus the number of downloads for which a refund has been paid (or for which a refund has been requested) in accordance with the Refund Policy;
- Net Receipts, if any, for each Application;
- The Marketplace Fee, if any, deducted for each Application;
- Application Proceeds, if any, for each Application; and
- Total Application Proceeds, if any, payable to you.

If total Application Proceeds payable to you for a month exceed USD\$200 (or its equivalent in local currency), then Microsoft will remit payment to you in accordance with this Section 7. If total Application Proceeds for the month are less than USD\$200 (or its equivalent in local currency), then Microsoft may elect to carry forward the amount owed to subsequent months until the total amount owed exceeds USD\$200 (or its equivalent in local currency).

- c. If Microsoft removed any Application(s) of yours from the Windows Phone Marketplace and/or Purchasers' devices during the applicable month for breach of this Agreement or in response to an allegation of intellectual property infringement, Microsoft will deduct any costs incurred in connection with the removal of such Application(s) from any Application Proceeds otherwise payable to you under this Section 7. If Microsoft terminated your Marketplace Account during the applicable month for breach of this Agreement, Microsoft will deduct any costs incurred in connection with closing your Marketplace Account from any Application Proceeds otherwise payable to you under this Section 7 for the applicable month.
- d. Payment Processing. Microsoft will make all Application Proceeds payments to you in accordance with Microsoft's then-current payment policies, which include payment via ACH electronic payment to the financial institution listed in our records in accordance with instructions in Microsoft's ACH electronic payment form at <http://create.msdn.com/Help.aspx>. Microsoft is not responsible for delay, loss or misapplication of funds due to incorrect or incomplete information supplied by you, Associated Accounts or a bank or for failure of a bank to credit your account. If you are outside of the United States of America, Microsoft may remit payment to you in the local currency of your address for payment, using Microsoft's then current rates for converting USD into your local currency; see <http://create.msdn.com/Help.aspx> for more information on payment in local currencies. You acknowledge that the amount you actually receive will depend in part on the rates and fees imposed by your financial institution and on any applicable tax withholding requirements, and that the amount you receive will be inclusive of any sales, use, or value-added taxes that may be chargeable by you to Microsoft in connection with the Marketplace Fee. You must provide Microsoft (or its third party payment processor) with all financial, tax and banking information requested in

order to make payment of amounts owed under this Agreement. Microsoft will notify you of any changes to the required information via updates to the Documentation. Failure to provide such information within sixty (60) days after submission of your first Application, or failure to keep such information current and accurate, may result in Microsoft's removal of your Application from distribution and forfeiture of amounts owed to you under this Agreement.

- e. Taxes on payments. You are responsible for your own taxes, including taxes unique to where you reside, related to payments you may receive under this Agreement. You are also responsible for paying, out of the Application Proceeds paid to you under this Agreement, any sales, use, or value-added taxes (if any) that are chargeable by you to Microsoft in connection with the Marketplace Fee that Microsoft collects as a fee for acting as your agent or commissionaire in distributing the Application(s). If taxes are required to be withheld on any amounts to be paid by Microsoft (and, if applicable, its third party payment processor) to you, Microsoft will deduct such taxes from the amount owed and pay them to the appropriate taxing authority and will secure and deliver to you an official receipt for any such taxes withheld. Microsoft shall use reasonable efforts to minimize such taxes to the extent permissible under applicable law, and both parties shall reasonably cooperate with each other to obtain the lowest tax rates or elimination of such taxes pursuant to the applicable income tax treaties.
- f. Reconciliation and Offset. Refunds processed after you receive the Application Proceeds will be debited against your account. Microsoft may offset any amounts owed to Microsoft against amounts Microsoft owes you.

8. **Warranties.** You represent and warrant to Microsoft and each Distributor, as applicable, that:

- a. You have the power and authority to enter into this Agreement and to fully perform your obligations under this Agreement;
- b. You are at least 18 years of age (or of an age of full legal capacity in the location where you reside) on the date you submit your Application(s) to Microsoft;
- c. Listing and distribution of your Application in the Windows Phone Marketplace does not violate any agreements to which you are a party or of which you are otherwise aware;
- d. You have obtained any and all consents, approvals or licenses (including written consents of third parties where applicable) required for you to submit and offer for distribution your Application(s) under this Agreement and for your Application(s) to access any Internet-based services, if any, to which the Application(s) enables access; and
- e. The information you provide to Microsoft under or in connection with this Agreement is true, accurate, current, and complete.

9. **Confidentiality.**

- a. **Confidential Information.** Each party agrees that at all times during the term of this Agreement, and for five (5) years thereafter, the recipient of Confidential Information under this Agreement will hold in confidence, and will not use or disclose to any third party (other than in response to lawful

requests from law enforcement authorities or to Distributors or permitted contractors to the extent they are performing the receiving party's obligations under this Agreement subject to confidentiality obligations that are at least as protective as those contained in this Section 9), any Confidential Information. The term "Confidential Information" means all non-public information that a party designates, either in writing or verbally, as being confidential, or which, under the circumstances of disclosure, ought to be treated as confidential. Confidential Information includes information relating to (i) business policies or practices of a party, (ii) customers or suppliers of a party, or (iii) information received from others that the disclosing party is obligated to treat as confidential, but does not include information that was known to the receiving party prior to disclosure by the disclosing party, or information that becomes publicly available through no fault of the receiving party. If you have any questions as to what comprises Microsoft Confidential Information, you agree to consult with Microsoft.

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

- a. **DISCLAIMER OF WARRANTY.** WE PROVIDE THE MICROSOFT SERVICE "AS-IS," "WITH ALL FAULTS," AND "AS AVAILABLE." YOU BEAR THE RISK OF USING THE MICROSOFT SERVICE TO DISTRIBUTE YOUR APPLICATION(S). TO THE EXTENT PERMITTED BY LOCAL LAW, MICROSOFT, ON BEHALF OF ITSELF AND EACH DISTRIBUTOR, EXCLUDES ANY IMPLIED WARRANTIES OR CONDITIONS, INCLUDING THOSE OF PRODUCT LIABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, WORKMANLIKE EFFORT, AND NON-INFRINGEMENT, RELATING TO THE MICROSOFT SERVICE. WITHOUT LIMITING ANY OF THE FOREGOING, DISTRIBUTORS EXPRESSLY DISCLAIM ANY WARRANTIES THAT ACCESS TO OR USE OF THE MICROSOFT SERVICE WILL BE UNINTERRUPTED OR ERROR FREE.
- b. **LIMITATION OF LIABILITY.** UNDER THIS AGREEMENT, YOU CAN RECOVER FROM MICROSOFT AND ITS AFFILIATES ONLY DIRECT DAMAGES UP TO AN AMOUNT EQUAL TO YOUR ACCOUNT FEE. YOU AGREE NOT TO SEEK TO RECOVER ANY OTHER DAMAGES, INCLUDING CONSEQUENTIAL, LOST PROFITS, SPECIAL, INDIRECT, OR INCIDENTAL DAMAGES FROM ANY DISTRIBUTOR. THESE LIMITS AND EXCLUSIONS APPLY EVEN IF DISTRIBUTOR KNEW OR SHOULD HAVE KNOWN ABOUT THE POSSIBILITY OF THE DAMAGES. THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU BECAUSE YOUR STATE OR COUNTRY MAY NOT ALLOW THE EXCLUSION OF CERTAIN DAMAGES.
- c. **Duty to defend.** You will defend, indemnify and hold harmless each Distributor, as applicable, from and against any and all claims made or brought by an unaffiliated third party, and costs, losses, damages and expenses (including reasonable attorneys' fees) relating thereto: (i) alleging that your Application infringes its copyright, trademark, or patent rights, or misappropriates its trade secret or undisclosed information; (ii) arising from a failure of your Application to comply with any of the Application Requirements; (iii) relating to the use of or inability to use the Application, including any product liability claims; or (iv) arising from any breach of any warranty in this Agreement by you. Your obligations under this subsection are subject to all of the following conditions: Distributor will (A) notify you promptly in writing of the claim; provided however, a Distributor's failure to notify you

shall not relieve you of any liability that you may have, except to the extent that such failure materially prejudices your legal rights; and (B) provide you with reasonable assistance in defending the claim (and you will reimburse Distributor for any reasonable out-of-pocket expenses incurred in providing that assistance). Any settlement or compromise of a claim covered by this section cannot obligate a Distributor in any manner without such Distributor's prior written consent.

- d. Distributors who are not party to this Agreement are beneficiaries of this Agreement solely for the purpose of enforcing the rights granted to such Distributors in this Section 10.

11. Term and Termination.

- a. This Agreement will remain in effect until terminated.
 - i. Termination for convenience. Either of us may terminate this Agreement at any time and for any reason (or no reason) by giving at least sixty (60) days written notice.
 - ii. Termination for breach. Either of us may terminate this Agreement immediately in the event of a material breach of this Agreement by the other party which is not cured within thirty (30) days after receipt of written notice of the breach.
- b. If you terminate this Agreement or request that Microsoft remove your Application from the Windows Phone Marketplace under Section 4.a of this Agreement, you agree that Microsoft may retain a copy of the affected Application(s) and, unless the Application was removed from the Windows Phone Marketplace because of an allegation or judgment of intellectual property infringement, you grant to Microsoft a perpetual, limited license to reproduce and re-distribute such Application(s) to Purchasers who previously downloaded the Application(s) and need to re-download the Application(s) as a result of storage management, backup and restore, technical or other reasons.

12. Miscellaneous

- a. You will identify an individual to serve as the primary contact under this Agreement. This primary contact will be the default administrator for this Agreement, and will receive all notices unless you change the primary contact by visiting <http://create.msdn.com>.
- b. All notices that you provide to Microsoft under this Agreement must be sent to the following email alias: mktlegal@microsoft.com.
- c. Microsoft may disclose your contact information as necessary for Microsoft to administer this Agreement through its Affiliates and other parties that help Microsoft administer this Agreement.
- d. Microsoft may assign this Agreement at any time. You may not assign this Agreement or any rights or obligations hereunder without the express written consent of Microsoft, except that you may assign this agreement without Microsoft's consent (i) to your Affiliate or (ii) in connection with the sale of all or substantially all of your assets. If you assign this agreement as permitted in this Section 12.d, you agree (A) to provide prompt notice of such assignment to Microsoft and (B) if the assignee does not already have a Marketplace Account, such assignee shall open a Marketplace Account in

accordance with Section 2 of this agreement within fourteen (14) days after the date of a permitted assignment under this Section 12.d.

- e. Microsoft may sublicense its rights under this Agreement to third parties to assist Microsoft in performing its obligations under this Agreement, provided that Microsoft will be responsible for the performance of such third parties subject to the terms of this Agreement.
- f. The parties intend for this Agreement to be written 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, the English version will prevail.
- g. This Agreement is governed by the laws of the state of Washington, USA, which apply to the interpretation of this Agreement and to any claims for breach of it, regardless of conflict of laws principles. You irrevocably consent to the exclusive jurisdiction and venue of the state or federal courts in King County, Washington, USA for all disputes arising out of or relating to this Agreement.
- h. Any claim related to this Agreement or to the Microsoft Service must be brought within one year. If it is not filed within that time, then the claim is permanently barred. This applies to you and your successors and to Microsoft and our successors and assigns.
- i. Sections of this Agreement that, by their terms, require performance after the termination or expiration of this Agreement will survive.
- j. This Agreement is nonexclusive, and nothing in this Agreement may be construed as restricting Microsoft from entering into other, similar agreements with other application providers, or from acquiring, licensing, developing, manufacturing, or distributing technology that is similar to your Application(s), nor as restricting you from entering into other, similar agreements with other application distributors.
- k. Microsoft may update this Agreement at any time in its sole discretion. Microsoft recommends that you review this Agreement for updates each time you submit an Application or any related materials. By submitting an Application and/or any related materials under this Agreement, you agree to be bound by the terms and conditions contained in the Agreement then in effect on the date of submission. If you do not agree with an update, do not submit an Application or any related materials, and notify Microsoft that you are terminating the Agreement.

EXHIBIT A - STANDARD APPLICATION LICENSE TERMS

Standard Application License Terms (Updated May 2010)

Windows Phone Marketplace

These license terms are an agreement between Application Provider and you. Please read them. They apply to the software application you download from the Windows Phone Marketplace ("Application"), unless the Application comes with separate terms ("Third Party License"), in which case the terms of the Third Party License will apply. This

agreement also applies to any updates and supplements for the Application, unless other terms accompany those items. If so, those terms apply.

BY DOWNLOADING OR USING THE APPLICATION, YOU ACCEPT THESE TERMS. IF YOU DO NOT ACCEPT THEM, DO NOT DOWNLOAD OR USE THE APPLICATION.

Except for the foregoing, if the Application enables access to any Internet-based services, your use of those services will be subject to the separately-provided terms of use.

In this agreement "Application Provider" means the entity licensing the Application to you, as identified in the Windows Phone Marketplace. If the Application is provided by Microsoft, then the Application Provider is Microsoft (or based on where you live, one of its affiliates).

If you comply with these license terms, you have the rights below.

1. INSTALLATION AND USE RIGHTS.

- a. **Installation and Use.** You may install and use one copy of the Application on up to five (5) mobile devices you personally own or control and which are affiliated with the Windows Live ID associated with your Windows Phone Marketplace account. You may not install or use a copy of the Application on a device you do not own or control.

2. INTERNET-BASED SERVICES. Application Provider may provide Internet-based services with the Application. In addition to the following, your use of such services is subject to the terms provided to you by the Application Provider and/or your wireless carrier.

- a. **Consent for Internet-Based or Wireless Services.** The Application may connect to computer systems over an Internet-based wireless network. In some cases, you will not receive a separate notice when they connect. Using the application operates as your consent to the transmission of standard device information (including but not limited to technical information about your device, system and application software, and peripherals) for internet-based or wireless services.
- b. **Misuse of Internet-based Services.** You may not use any Internet-based service in any way that could harm it or impair anyone else's use of it or the wireless network. You may not use the service to try to gain unauthorized access to any service, data, account or network by any means.

3. SCOPE OF LICENSE. The Application is licensed, not sold. This agreement only gives you some rights to use the Application. Application Provider reserves all other rights. Unless applicable law gives you more rights despite this limitation, you may use the Application only as expressly permitted in this agreement. In doing so, you must comply with any technical limitations in the Application that only allow you to use it in certain ways. You may not

- o work around any technical limitations in the Application;
- o reverse engineer, decompile or disassemble the Application, except and only to the extent that applicable law expressly permits, despite this limitation;
- o make more copies of the Application than specified in this agreement or allowed by applicable law, despite this limitation;

- publish or otherwise make the Application available for others to copy;
 - rent, lease or lend the Application; or
 - transfer the Application or this agreement to any third party.
4. **DOCUMENTATION.** If documentation is provided with the Application, you may copy and use the documentation for your internal, reference purposes.
 5. **EXPORT RESTRICTIONS.** The Application is subject to United States export laws and regulations. You must comply with all domestic and international export laws and regulations that apply to the Application. These laws include restrictions on destinations, end users and end use. For additional information, see www.microsoft.com/exporting.
 6. **SUPPORT SERVICES.** The Application is provided "as is." Contact the Application Provider to determine if any support services are available. Microsoft (unless Microsoft is the Application Provider), your phone manufacturer, and your wireless carrier are not responsible for providing support services for the Application.
 7. **ENTIRE AGREEMENT.** This agreement, and the terms for supplements and updates are the entire agreement for the Application.
 8. **APPLICABLE LAW.**
 - . **United States.** If you acquired the Application in the United States, Washington state law governs the interpretation of this agreement and applies to claims for breach of it, regardless of conflict of laws principles. The laws of the state where you live govern all other claims, including claims under state consumer protection laws, unfair competition laws, and in tort.
 - a. **Outside the United States.** If you acquired the Application in any other country, the laws of that country apply.
 9. **LEGAL EFFECT.** This agreement describes certain legal rights. You may have other rights under the laws of your country. You may also have rights with respect to the Application Provider from whom you acquired the Application. This agreement does not change your rights under the laws of your country if the laws of your country do not permit it to do so.
 10. **DISCLAIMER OF WARRANTY. THE APPLICATION IS LICENSED "AS-IS," "WITH ALL FAULTS," AND "AS AVAILABLE." YOU BEAR THE RISK OF USING IT. THE APPLICATION PROVIDER, ON BEHALF OF ITSELF, MICROSOFT, WIRELESS CARRIERS OVER WHOSE NETWORK THE APPLICATION IS DISTRIBUTED, AND EACH OF OUR RESPECTIVE AFFILIATES, AND SUPPLIERS ("DISTRIBUTORS"), GIVES NO EXPRESS WARRANTIES, GUARANTEES, OR CONDITIONS UNDER OR IN RELATION TO THE APPLICATION. YOU MAY HAVE ADDITIONAL CONSUMER RIGHTS UNDER YOUR LOCAL LAWS WHICH THIS AGREEMENT CANNOT CHANGE. TO THE EXTENT PERMITTED UNDER YOUR LOCAL LAWS, DISTRIBUTORS EXCLUDE ANY IMPLIED WARRANTIES OR CONDITIONS, INCLUDING THOSE OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.**
 11. **LIMITATION ON AND EXCLUSION OF REMEDIES AND DAMAGES.**

TO THE EXTENT NOT PROHIBITED BY LAW, YOU CAN RECOVER FROM THE APPLICATION PROVIDER ONLY DIRECT DAMAGES UP TO THE AMOUNT YOU PAID FOR THE APPLICATION. YOU AGREE NOT TO SEEK TO RECOVER ANY OTHER DAMAGES, INCLUDING CONSEQUENTIAL, LOST PROFITS, SPECIAL, INDIRECT OR INCIDENTAL DAMAGES FROM ANY DISTRIBUTOR.

This limitation applies to

- **anything related to the Application, services made available through the Application, or content (including code) on third party Internet sites; and**
- **claims for breach of contract, breach of warranty, guarantee or condition, strict liability, negligence, or other tort to the extent permitted by applicable law.**

It also applies even if

- **repair, replacement or a refund for the Application does not fully compensate you for any losses; or**
- **Distributor knew or should have known about the possibility of the damages.**

EXHIBIT B - COMMISSIONAIRE COUNTRIES

Austria

Belgium

Denmark

Finland

France

Germany

Greece

Ireland

Italy

Luxembourg

Netherlands

Poland

Portugal

Spain

Sweden

United Kingdom