MICROSOFT VISUAL STUDIO MARKETPLACE PUBLISHER AGREEMENT

EFFECTIVE DATE: JUNE 2021

Thank you for your interest in publishing an offer with Microsoft in the Microsoft Visual Studio Marketplace. This Microsoft Visual Studio Marketplace Publisher Agreement ("**Agreement**") describes the relationship between you ("**you**" or "**your**") and Microsoft Corporation ("**Microsoft**," "**we**," "**us**" or "**our**") and governs your listing of Offerings within the Marketplace.

By clicking to accept, submitting an Offering for publication in the Marketplace, and/or accessing the functionality that allows an Offering to be published or managed from your Publisher Account via the Publishing Portal, you agree to the terms of this Agreement. Microsoft may update this Agreement at any time and will indicate when such changes were made at the top of this document. By continuing to use your Publisher Account or listing your Offerings in the Marketplace after the changes become effective, you agree to the new terms. If you do not agree to the new terms, you must remove your Offerings from the Marketplace and close your Publisher Account.

Except to the extent a provision states that it applies only in limited circumstances or to certain Offerings, provisions in this Agreement referring to "publishing," "making available," "submitting" or taking other actions with respect to Offerings apply to all Offerings listed in the Marketplace.

The Agreement consists of:

- the Terms and Conditions;

- Exhibit A— Offering Types; and

- the provisions in any documents or online resources referenced in other parts of this Agreement, including any Documentation.

TERMS AND CONDITIONS

SECTION 1   Definitions.

(a)   "**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.

(b)   "**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.

(c)   "**Codespaces Licensees**" has the meaning set forth in **Section 5(a)**.

(d)   "**Confidential Information**" means all non-public information that a party designates as confidential, or which under the circumstances of disclosure ought to be treated as confidential. Confidential Information does not include information that is (i) known to a party before the disclosing party's disclosure to the receiving party; (ii) information publicly available through no fault of the receiving party; (iii) received from a third party without breach of an obligation owed to the disclosing party; or (iv) independently developed by a party without reference to or use of the disclosing party's Confidential Information.

(e)   "**Covered Parties**" means, collectively, Microsoft, Microsoft's Affiliates, Third-Party Operators, and Microsoft's other authorized resale partners.

(f)   "**Customer**" means an end user who seeks or acquires a right to use or redistribute your Offering.

(g)   "**Data Protection Law**" means any law, rule, regulation, decree, statute, or other enactment, order, mandate or resolution relating to data security, data protection and/or privacy, including but not limited to Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to processing of personal data and the free movement of that data ("**GDPR**") and the California Consumer Privacy Act ("**CCPA**"), and any implementing, derivative or related legislation, rule, regulation, and regulatory guidance, as amended, extended, repealed and replaced, or re-enacted.

(h)   "**Documentation**" means the requirements, materials, and information Microsoft makes available to you from time to time pursuant to this Agreement for your internal use.

(i)   **"GitHub"** means Microsoft Affiliate GitHub, Inc.

(j)   **"GitHub Codespaces"** means the integrated development environment service marketed by GitHub under the name "Codespaces" and successor services of the foregoing.

(k)   **"In-Scope Products and Services"** has the meaning set forth in **Section 3(a)** of this Agreement.

(l)   "**Listing Information**" means the information and images accompanying an Offering that identifies the nature, volume, 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.

(m)   "**Marketplace**" means a limited, Microsoft-curated repository of links to Offerings published by Microsoft and various third-party publishers for use with In-Scope Products and Services, or any other service through which such Offerings are published subject to this Agreement, including any updates or successors (however named) to such services. Customers may access the Marketplace via a web-based management portal, APIs, or other mechanisms made available by Microsoft. The Marketplace is sometimes commonly referred to as "**the Visual Studio Marketplace**."

(n)   "**Marketplace Participation Policies**" means the business policies and requirements for publishing in the Marketplace, as set forth at http://aka.ms/vsmarketplace-policies.

(o)   **"Microsoft Mark(s)"** means trademarks and services marks, logos, badges and other business identifiers described in the Microsoft Branding Guidelines, including any other trademarks, service marks, logos, and badges that Microsoft identifies in writing as being available for use by you pursuant to this Agreement.

(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 Assets"** means, for each Offering, the name, trademarks, logos, icons, product descriptions, titles, trade dress, images, documentation, screenshots, video trailers, user generated content, and other metadata you provide to Microsoft in connection with your Offering.

(r)   **"Personal Data"** means any information relating to an identified or identifiable natural person and any other data information that constitutes personal data or personal information under any applicable Data Protection Law. An identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural, or social identity of that natural person.

(s)   "**Publisher Account**" means an account for publishing your Offerings through the Marketplace, which includes at least a username and password.

(t)   "**Publishing Portal**" means the web portal available at https://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.

(u)   "**Service Offering**" means a software-as-a-service, platform-as-a-service, data service, or other service Offering that you make available to Customers through the Marketplace.

(v)   "**Microsoft Standard Agreement**" has the meaning set forth in **Section 4(c)**.

(w)   "**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 Assets associated therewith, as specified in the Listing Information associated with your Offering.

(x)   **"Third-Party Operator"** means a third party authorized by GitHub or Microsoft to license to its customers the use of GitHub Codespaces or an instance of GitHub Codespaces operated by the third party.

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 Offerings to the Marketplace, you must open a Publisher Account through the Publishing Portal and provide all information required by Microsoft to approve you as a Publisher. We may use the contact information you provide in the Publishing Portal or with your Publisher Account to send you information regarding announcements, programs, updates, and the like for the Publishing Portal and your activities related to your Publisher Account. You agree that Microsoft may display in the Marketplace the contact information (including email address) that you provide for Customer support and transactional purposes. You are responsible for all activity that takes place with your Publisher Account. If you fail to keep your Publisher Account in good standing, Microsoft may revoke your Publisher Account, remove your Offerings from the Marketplace, delete Offering ratings and reviews, and pursue any other remedies available to us. If you do not publish any Offerings within a reasonable time of opening your Publisher Account (as determined by Microsoft), Microsoft may revoke your Publisher Account and may make your account or username available for registration by another Publisher.

SECTION 3   **Submission, Approval, and Distribution of Offerings**.

(a)   **In-Scope Products and Services**. Offerings must be designed to work with and extend the capabilities of Microsoft Visual Studio, Visual Studio for Mac, Visual Studio Code, GitHub Codespaces, Azure DevOps, Azure DevOps Server, and successor products and services offered by Microsoft and GitHub (collectively, the "**In-Scope Products and Services**"). Offerings are intended for use only with In-Scope Products and Services and may only be installed and used with In-Scope Products and Services.

(b)   **Appointment of Microsoft**. Microsoft provides the technology and services enabling the Marketplace. You appoint Microsoft to act as your agent for these purposes. You acknowledge that you, not Microsoft, are the distributor of your Offerings.

(c)   **Submission**. You must submit to Microsoft each Offering that you wish to make available through the Marketplace, including any Offering Assets and updates. Microsoft has no obligation to make available any Offering that you submit or to maintain the availability of any Offering. You are solely responsible and liable for your Offerings, Offering Assets, and Listing Information, including all delivery and support. Microsoft may retain copies of the Offering, Offering Assets, and any other materials you submit. Microsoft will not return them, so you must maintain your own backup copies. Microsoft's approval of an Offering does not constitute any representation or acknowledgment by Microsoft that the Offering complies with the terms of this Agreement, the Marketplace Participation Policies, and applicable laws and regulations, nor does it constitute any acceptance by Microsoft of any responsibility or liability for the Offering.

(d)   **Updates to Offering.** You may submit updates to Offerings available in the Marketplace. Those updates are subject to all the requirements of this Agreement.

(e)   **Post-Publication Assurances**. Once your Offering is published in the Marketplace, Microsoft may periodically test and evaluate your Offering to verify that it continues to comply with this Agreement, the Marketplace Participation Policies, and Documentation. Microsoft may also modify the Offering Assets or Listing Information to correct obvious spelling, grammatical, or typographical errors.

(f)   **Removing an Offering Listing.**

> A.   Subject to **Section 3(f)(B)**, if you wish to remove your Offering, you may do so via your Publisher Account via the Publishing Portal, provided that you must provide thirty (30) days' notice before removing a paid Offering.

> B.   Except for Service Offerings, for which removal policies are described in **Section 12(d)**, 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.

(g)   **Microsoft Removal and Disablement Policies.** Microsoft may remove or suspend the availability of any Offering from the Marketplace for any reason or no reason and at any time. Reasons may include, without

limitation, (i) your breach of the terms of this Agreement (including Documentation), which includes the Marketplace Participation Policies; (ii) your termination of this Agreement or of the license grants associated with an Offering; (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 in accordance with our Notice and Takedown process for services; (v) complaint(s) about the content or quality of your Offering; (vi) failure to provide adequate support to Customers or to Microsoft in accordance with this Agreement; or (vii) an allegation of or your violation of any applicable law, regulation, or regulatory guideline. Microsoft's termination and suspension rights are without prejudice to any other rights and remedies available to Microsoft.

Microsoft also may disable your Offering from operating with the In-Scope Products and Services if: (a) Microsoft determines that the Offering causes harm to Customers or their devices, third parties (including any Covered Parties) or any network, (b) pursuant to a request or instruction from a Customer, or (c) to comply with any judicial order, or government law, regulation, or order.

(h) **Infringement Claims.** If you believe another Offering violates your rights, you may submit a claim to Microsoft in accordance with Microsoft's Notice and Takedown process. If Microsoft refers a claim to you, you will promptly respond and comply with any requirements in the Notice and Takedown process.

(i) **Presentation of Offerings**. Microsoft reserves the right, in its sole discretion, to make (or to designate Affiliates or third parties to make) all decisions regarding placement or promotion of Offerings anywhere in the Marketplace, except as may be otherwise agreed between you and Microsoft in writing. 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.

(j) **Offering Rankings and Ratings.** The Marketplace may allow Customers to comment on and rate Offerings and display such comments and ratings on your Offering, including comments and ratings sourced from third parties. Microsoft may make rankings, rating, or comments publicly available. Microsoft may use those ratings and other data to determine the placement or marketing of Offerings in the Marketplace. You may not attempt to manipulate rankings, ratings or comments for your Offering or any other Offering. Microsoft may remove any rankings, ratings, or comments at its sole discretion and for any reason.

(k) **Modification or Discontinuance.** The Marketplace and Publishing Portal are property of Microsoft. Microsoft may, in its sole discretion, change or discontinue the Marketplace and Publishing Portal at any time.

SECTION 4 **Licensing of Offerings and Support**.

(a) **Grant of Rights from You.**

(i) **Your Offering.** You do not transfer ownership of any Offering to Microsoft by submitting it for publication. By submitting an Offering and Offering Assets for publication, except for third-party rights and material under open-source licenses described in **Section 4(b)**, you directly grant to Microsoft the worldwide, non-exclusive right to: host, install, use, reproduce, publicly perform and display via any digital transmission technology, format, make available to customers (including through multiple tiers of distribution), insert third party ad controls selected by you via Publishing Portal Center, and sign the Offering (including by removing preexisting signatures), all for purposes of exercising Microsoft's rights and responsibilities under this Agreement.

(ii) **Your Marks**. You hereby grant us and, for purposes of **Section 5**, Codespaces Licensees, 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, promotion, and recommendation 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.

(iii) **In-Marketplace Marketing Rights.** You grant Microsoft, its agents, contractors, licensees, marketing partners, and other Covered Parties the right to use, reproduce, display, publicly perform and publish your entity name, Offering or portion of your Offering, the Offering Assets, and Listing Information and to modify your Offering description solely to correct obvious spelling, grammatical or typographical errors, in connection with the distribution and marketing of your Offering through (1) the Marketplace, (2) any Covered Party websites, (3) and the In-Scope Products and Services. Nothing in this Agreement precludes Covered Parties from using your Offering, Offering Assets, and Listing Information as permitted by law (e.g., fair use under applicable copyright law or "referential" use under trademark law).

(iv) **Deployment**. You grant the Covered Parties the right and license to deploy your Offerings within our systems for staging, onboarding, testing, troubleshooting, support, demonstration, or other similar purposes. You agree the Covered Parties' use of your Offerings in this manner: (i) does not create a customer relationship between you and the Covered Parties; (ii) does not constitute the Covered Parties' acceptance of your terms of use or privacy policy or other agreement; and (iii) will not incur fees. Microsoft may continue evaluating your Offering to verify that it continues to comply with this Agreement, remains compatible with Microsoft's development and distribution platforms, and to improve Microsoft's development and distribution platforms.

(b) **Third-Party Rights/Open-Source Licenses.** Your Offering and the Offering Assets must not infringe or misappropriate any intellectual property or personal right of any third party. If any portion of your Offering's code is licensed from a third party or under any open-source license, you are solely responsible for compliance with those license terms and conditions and ensuring that Microsoft, in its capacity as your agent, has the necessary rights to perform its obligations to you under this Agreement. You are, at your sole cost and expense, responsible for securing, reporting, and maintaining all necessary rights, clearances and consents and paying all licensing fees (including applicable public performance license fees or other consideration associated with providing music or video (and all content embodied therein) in and through your Offering or Offering Assets), and for undertaking all related reporting obligations.

(c) **Licensing of Offerings to Customers**. You, not Microsoft, will license or grant any necessary rights to your Offerings and any Offering Assets to Customers. You may provide your own end-user license agreement or other applicable terms (subject to the requirements herein, including any privacy policy required under the Agreement), or you may elect to govern Customers' use of your Offering with the "**Microsoft Standard Agreement"** (available at https://aka.ms/vsm-standard-agreement). If you do not provide your own license agreement for the Terms of Use of your Offering and your Offering is not a BYOL Offering (or, if you elect to use the Microsoft Standard Agreement), then the Microsoft Standard Agreement terms will apply between you and Customers. The preceding sentence will only apply to Offerings and Offering updates that are published on or after the "Last Updated" date of this Agreement as set forth at the top of this document. Any licenses and grants are between you and Customers and will not create any obligations or responsibilities of any kind for Microsoft. Except for BYOL Offerings, any license agreement or other terms that govern a Customer's use of your Offering, or a link to them, must be delivered to Microsoft for publication as part of the Offering's Listing Information. 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.

(d) **License to Microsoft Marks.** While your Offering is listed in the Marketplace, Microsoft grants you a worldwide, nonexclusive, nontransferable, non-sublicensable, royalty-free, revocable license to use the Microsoft Marks in connection with advertising for your Offering, solely as described in the Microsoft Marketing Guidelines and in compliance with the General Microsoft Trademark and Brand Guidelines. You will correct any misuse of Microsoft Marks upon Microsoft's reasonable notice and will cease using Microsoft Marks if you fail to correct such misuse. Microsoft reserves all rights not expressly granted herein. Microsoft is the sole owner of the Microsoft Marks and associated goodwill, and the sole beneficiary of the goodwill associated with your use of the Microsoft Marks. You will not acquire any right, title, or interest in the Microsoft Marks because of your use of the Microsoft Marks. You hereby assign and will assign in the future any rights you may acquire in the Microsoft Marks as a result of your use of the Microsoft Marks under this license, along with the associated goodwill. You will reasonably assist Microsoft at Microsoft's expense in protecting the Microsoft Marks. Microsoft will determine, in its sole discretion, whether to take legal action to enforce or defend its rights in the Microsoft Marks and will control any legal action concerning the Microsoft Marks.

SECTION 5 **Use of Your Offerings in GitHub Codespaces.**

(a) **Hosting Your Offerings**. Without limiting **Section 4**, you grant GitHub, Microsoft, and Third-Party Operators (the **"Codespaces Licensees"**) a fully paid up, royalty-free, non-exclusive, personal, worldwide, non-transferable, non-assignable license to:

    (i) store, cache, host, and bundle into hosted image files copies of your Offering to facilitate use by your Customers; and

    (ii) feature and recommend (in the sole discretion of the Codespaces Licensees) your Offering in GitHub Codespaces and related marketing materials.

(b) **License Terms for Your Offerings.** Use of your Offering in GitHub Codespaces will be governed by your Terms of Use or, if applicable, the terms associated with such BYOL Offering ("**BYOL Terms**"). All Terms of Use and BYOL Terms, as applicable, will be solely between you and your Customers. Unless and to the extent Codespaces Licensees separately obtain your Offering from the Marketplace under your Terms of Use or your BYOL Terms, Codespaces Licensees will not be a party to the Terms of Use or BYOL Terms. In no event will Codespaces Licensees have obligations to your Customers thereunder.

SECTION 6 **Offering Requirements.** Each Offering you submit to Microsoft for publication and distribution through the Marketplace must meet the following requirements:

(a) **General Requirements.** The Offering must comply with this Agreement, the Marketplace Participation Policies, and any Documentation, as any of these may be revised from time to time.

(b) **Local Law.** Your Offering and your marketing of the Offering must comply with the applicable laws of each territory or country in which you elect to make the Offering and Offering Assets available. This includes applicable: (i) Data Protection Laws; (ii) telecommunications laws; (iii) content ratings regulations; (iv) consumer protection and marketing laws; including laws that prohibit direct exhortations to children to buy advertised Offerings; (v) export control laws; (vi) tax laws, regardless of the origin of your Offering; (vii) medical device regulation; and (viii) financial regulation. If you are required to make any disclosures to consumers prior to sale or download of the Offering, you must provide those in the Offering description field (unless they are provided elsewhere in an Offering's Listing Information). The Offering's Listing Information may include your full contact information and information about in-Offering purchases available in an Offering. You must make such notices sufficiently prominent as is required by local law. You must disclose to Microsoft any controlled technology employed, used, or supported by your Offering that may impose any legal obligations or requirements on Microsoft. You must inform Microsoft of such legal obligations and requirements and take any action if necessary for Microsoft to comply with its legal obligations. You may not use the Marketplace or any services or tools made available for the development of Offerings for, or to permit others to carry out, any illegal activity or breach of contract.

(c) **Support.** Microsoft is not responsible for providing support for your Offerings. You are responsible for supporting your Offerings that are paid-for and fully available (i.e., not a preview release). For each paid-for Offering that you publish in the Marketplace, you must make support available to Customers, either as included within the fees associated with the Offering, if any, or as a support offering that may be separately purchased. You will ensure that any support options described in your Listing Information remain accurate, current, and available to Customers for as long as the relevant Offering is available in the Marketplace or is otherwise provided to Customers. You must make technical and billing support contacts available to Microsoft via e-mail and telephone for when Microsoft receives technical or billing questions from Customers about your Offering. You will use best efforts to respond to any inquiry received by Microsoft about your Offering.

SECTION 7 **User Fees, Payments, and Taxes**.

(a) **Billing**. You are solely responsible for providing Customers with pricing information and for charging or invoicing Customers, as applicable, for Customers' use of your Offering. You are solely responsible for ensuring that all fees and charges payable for use of your Offering are billed and collected outside of the Marketplace.

(b) **Refunds and Offsets for Paid Offerings**. You are solely responsible for all taxes, costs and expenses for returns, and chargebacks of your Offering, including the full refund and chargeback amounts paid or credited to Customers.

(c) **Taxes**. You are solely responsible for your own taxes, including taxes unique to where you reside, that are related to payments from Customers for your Offerings. You are solely responsible for determining whether you have any tax obligations in any country. Microsoft is not responsible for collecting and remitting telecommunications taxes or any similar taxes in connection with Customers' acquisition of your Offering. You acknowledge and agree to cooperate with Customers to facilitate the furnishing, exchange, transmittal or other provision of tax documentation, and such cooperation includes, but is not limited to, authorizing Microsoft to grant Customers the ability to contact you in order to obtain any required tax invoices.

SECTION 8 **Confidentiality, Privacy, Security, and Data Protection**.

(a) **Confidentiality.** Information shared under this Agreement is subject to our existing Non-Disclosure Agreement ("**NDA**"). If no NDA exists, then during the term of this Agreement and for 5 years after, the parties will hold in strictest confidence, and will not use or disclose any Confidential Information of the other party to any third party (except to an Affiliate or contractor performing services on behalf of the recipient, and only subject to confidentiality terms as protective as this section). This section does not prohibit either party from responding to lawful requests from law enforcement authorities.

(b) **Privacy.**

(i) **Disclosure of Information.** Microsoft may disclose your contact information as necessary for Microsoft to administer this Agreement through Covered Parties and other parties that help Microsoft administer this Agreement.

(ii) **Privacy Policy**. You must maintain a privacy policy if (i) your Offering accesses, collects or transmits any Personal Data to you or a third party; or (ii) otherwise required by law. You are responsible for informing Customers of your privacy policy (including by submitting that policy to us for display to Customers).

(iii) **Communications with Customers**. You are not restricted from using information that you acquire independent of this Agreement. Though, for clarity, you may not target individuals on the basis that they are Microsoft Customers, or otherwise violate the terms of the Agreement, and Microsoft will not be responsible or liable for your use of such information.

(iv) **Roles.** With respect to the Personal Data collected from Customers, you and Microsoft agree that both you and Microsoft process Customers' Personal Data independently and

are not joint controllers, as defined in the GDPR, of the Personal Data that each independently processes. Microsoft will not share Customers' Personal Data it collects with you.

(c) **Data Protection**. Each party will comply with the obligations imposed on it under all applicable Data Protection Law.

(d) **Security**. Your Offerings, network, operating systems and the software of your servers, databases, and computer systems must use reasonable security measures to protect Customer information. Your Offering must not jeopardize or compromise user security, the security of the Marketplace, the In-Scope Products and Services, any related services or systems, or any Customer's or Codespace Licensees' systems and must not install or launch executable code on the user's environment beyond what is identified in or may reasonably be expected from the Listing Information. You must report suspected security events, including security incidents and vulnerabilities of your Offering and service offerings, at the earliest opportunity.

SECTION 9   REPORTING. Microsoft will provide you the reporting capabilities we are required to provide under applicable tax laws and regulations. The reporting capabilities available to you through Publishing Portal will provide aggregate information relating to your Offering downloads.

SECTION 10   Warranties. You represent, warrant, and undertake to Microsoft that:

(a) you have the power and authority to enter into this Agreement and to fully perform your obligations under this Agreement;

(b) if you are a business or other legal entity, then the individual entering into this Agreement on your behalf represents that he or she has all necessary legal authority to bind you to this Agreement;

(c) your Offering and Offering Assets, together with all advertising or other materials accessible from or that provide access to your Offering and Offering Assets comply with and will continue to comply with all requirements of this Agreement;

(d) listing, distribution, and monetization of your Offering in the Marketplace does not and will not violate any agreements to which you are a party or of which you are otherwise aware. You have obtained any and all consents, approvals, or licenses (including written consents of third parties where applicable) required for you to make your Offering, or Offering Assets available in the Marketplace and for your Offering to access any Internet-based or Microsoft-provided services, if any, to which the Offering enables access;

(e) exercise of the rights granted by you under this Agreement will not obligate us or other Covered Parties to pay any third party any amounts;

(f) information that you provide to us under or in connection with this Agreement is true, accurate, current, and complete; and

(g) in carrying out your obligations set forth in this Agreement, you are following all applicable laws, including privacy laws.

SECTION 11   Disclaimer, Limitation of Liability, and Defense of Claims.

(a) **DISCLAIMER OF WARRANTY**. WE PROVIDE THE PUBLISHING PORTAL AND THE MARKETPLACE "AS-IS," "WITH ALL FAULTS," AND "AS AVAILABLE." YOU BEAR THE RISK OF USING THE MARKETPLACE AND PUBLISHING PORTAL. MICROSOFT MAKES NO WARRANTIES RELATED TO ANY PROGRAMS OFFERED IN CONNECTION WITH OR ANY OTHER SERVICES PROVIDED TO YOU UNDER THIS AGREEMENT. MICROSOFT 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 MARKETPLACE AND PUBLISHING PORTAL. YOU MAY HAVE CERTAIN RIGHTS UNDER YOUR LOCAL LAW. NOTHING IN THESE TERMS IS INTENDED TO AFFECT THOSE RIGHTS, IF AND SOLELY TO THE EXTENT THAT THEY ARE APPLICABLE. WITHOUT LIMITING THE FOREGOING, COVERED PARTIES EXPRESSLY DISCLAIM ANY WARRANTIES THAT ACCESS TO, OR USE OF, THE MARKETPLACE OR PUBLISHING PORTAL WILL BE UNINTERRUPTED OR ERROR FREE.

(b) **LIMITATION OF LIABILITY**. AS PERMITTED BY LAW, YOU CAN ONLY RECOVER FROM COVERED PARTIES DIRECT DAMAGES UP TO $5,000. YOU AGREE NOT TO SEEK AND YOU WAIVE ANY RIGHT TO RECOVER ANY OTHER LOSSES OR DAMAGES, INCLUDING WITHOUT LIMITATION CONSEQUENTIAL, LOST PROFITS, SPECIAL, INDIRECT, PUNITIVE, OR INCIDENTAL DAMAGES FROM ANY COVERED PARTY. THESE LIMITS AND EXCLUSIONS APPLY REGARDLESS OF THE LEGAL THEORY UPON WHICH ANY CLAIM FOR SUCH DAMAGES IS BASED, WHETHER YOU HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, WHETHER SUCH DAMAGES WERE REASONABLY FORESEEABLE, OR WHETHER APPLICATION OF THE EXCLUSION CAUSES ANY REMEDY TO FAIL OF ITS ESSENTIAL PURPOSE.

(c) **Indemnity**. You will defend, indemnify and hold harmless Covered Parties, 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 infringes any proprietary or personal right of a third party; (ii) arising from your breach of this Agreement, (iii) relating to the functionality of, the use of, or the inability to use the Offering, including any claims of product liability or misleading advertising; (iv) 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, which you are obligated to pay; or (v) your use or breach of the Microsoft Standard Agreement in connection with your Offerings. The Covered Party will (1) promptly notify you of the claim; provided, however, a Covered Party'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 (2) at your reasonable request, provide you with reasonable assistance in defending the claim. You will: (A) reimburse the Covered Party for any reasonable out-of-pocket expenses incurred in providing that assistance, and (B) permit the Covered Party, through mutually acceptable counsel, to answer and defend such claims. You will not make any settlement or compromise of a claim or admit or stipulate any fault or liability on a Covered Party with respect to any claim covered by this section without such Covered Party's express, prior written consent. Covered Parties who are not party to this Agreement are beneficiaries of this Agreement solely for the purpose of enforcing the rights granted to such Covered Parties in this **Section 11**.

(d) **Limitation on Claims.** As permitted by applicable law, any claim related to this Agreement or to the Marketplace must be filed within one year of the claimant first becoming aware of the claim. 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.

SECTION 12   Term and Termination.

(a) **Termination for Convenience**. This Agreement will remain in effect until terminated. Microsoft may terminate this Agreement at any time, for any reason or no reason, upon thirty (30) days' written notice. You may terminate this Agreement by (1) removing all of your Offerings from the Marketplace and (2) closing your publisher account.

(b) **Effect of Termination**. Within 30 days of Microsoft's notice of termination, Microsoft will remove all your Offerings from the Marketplace. We reserve the right to remove, disable, and terminate your Offerings on an expedited basis at our discretion. Sections of this Agreement that, by their terms, require performance after the termination or expiration of this Agreement will survive.

(c) **Termination of Offering.** In certain cases where Microsoft suspends, disables, or removes your Offering pursuant to its rights under the Agreement, Microsoft may elect (in its sole discretion) to terminate the Agreement solely with respect to such Offering. You agree that Microsoft will have no responsibility or liability for Customers' unauthorized use of your Offering after the termination date.

(d) **Wind-Down Period.** If a Service Offering is removed from the Marketplace, existing Customers will be able to continue using the Service Offering for the longer of: (i) 90 days, or (ii) the expiration of the term of the Customer's subscription to your Offering ("**Wind-Down Period**"). You must continue to provide any services that are part of your Service Offering to each existing Customer during the Wind-Down Period except in cases where termination is legally required or is otherwise necessitated by compelling

circumstances, such as fraud or a claim of intellectual property infringement. You are responsible for terminating any Customer access after termination and any applicable Wind-Down Period.

(e) **API License.** Upon removing an Offering that interoperates with an In-Scope Product and Service from the Marketplace, Microsoft will cease connecting new Customers to APIs via that Offering. However, existing Customers using the integration will continue to be able to refresh their data by making calls using such APIs after the termination of an Offering unless otherwise blocked.

SECTION 13 **Miscellaneous**.

(a) **Affiliates**. Microsoft may perform certain of our obligations under this Agreement through one or more Microsoft Affiliates.

(b) **Notices**. All notices that you provide to us under this Agreement must be sent to the following email aliases: vsmarketplace@microsoft.com and vsmagent@microsoft.com. For notices to you under this Agreement, you will identify an individual to serve as the primary contact for Publishing Portal notices and messages. This contact will receive all notices unless you change such contact information through the Publishing Portal.

(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**. This Agreement is nonexclusive, and nothing in this Agreement restricts you or Microsoft from entering into other, similar agreements with other marketplaces or partners, or from acquiring, licensing, developing, manufacturing, or distributing similar or competing technologies.

(e) **Choice of Law and Venue.** This Agreement is governed by Washington State law (disregarding conflict of laws principles) and the parties consent to exclusive jurisdiction and venue in the state and federal courts in King County, Washington, USA. Neither party will claim lack of personal jurisdiction or forum non conveniens in these courts. In any action or suit related to this Agreement, the prevailing party is entitled to recover its costs, including reasonable attorneys' fees.

(f) **Costs**. Each party is solely responsible for all costs and expenses incurred by it in connection with its performance of this Agreement.

(g) **Waiver**. A party's failure to enforce any rights under this Agreement will not be deemed a waiver of the same right on another occasion, or of the right to enforce any other right under this Agreement. Microsoft's decision to make an Offering available in the Marketplace will not be deemed a waiver of any rights Microsoft may have under this Agreement.

(h) **Severability**. All parts of this Agreement apply to the maximum extent permitted by relevant law. If a court holds that Microsoft can't enforce a part of this Agreement as written, Microsoft may replace those terms with similar terms to the extent enforceable under the relevant law, but the rest of this Agreement won't change.

(i) **Assignment**. Microsoft may freely assign or delegate all rights and obligations under this Agreement, fully or partially without notice to you. You may not assign or delegate any rights or obligations under this Agreement, including in connection with a change of control. Any purported assignment and delegation shall be ineffective.

(j) **Sublicensing and Subcontractors**. Microsoft may sublicense its rights under this Agreement to third parties or otherwise authorize third parties to assist Microsoft in performing its obligations or exercising its rights under this Agreement. Microsoft will remain obligated under this Agreement for the performance of such third parties excepting any assumption of responsibility for the administration of any sales, use, goods and services, value added or other similar tax.

(k) **URLs.** URLs listed in this Agreement also refer to successor URLs, URLs for localized content, and information or resources linked from within the websites at the specified URLs.

(l)   **Headings.** This Agreement's section titles are for reference only and have no legal effect.

(m)   **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.

(n)   **Entire Agreement**. This is the entire Agreement between you and Microsoft in connection with your Offerings in the Marketplace. It supersedes any prior agreements between you and Microsoft regarding your Offerings in the Marketplace.

<u>**EXHIBIT A**</u>

Offering Types

SECTION 1   Extensions for Azure DevOps and Azure DevOps Server

Extensions for Azure DevOps and Azure DevOps Server are Offerings that you make available to Customers through the Marketplace that install into a Customer's Azure DevOps account or Azure DevOps Server and provide new capabilities to users of that account. These extensions may only be offered for use with Azure DevOps, Azure DevOps Server, and successor products and services.

SECTION 2   Extensions for Visual Studio, Visual Studio Code, Visual Studio for Mac, and GitHub Codespaces

Extensions for Visual Studio, Visual Studio Code, Visual Studio for Mac, and GitHub Codespaces are Offerings that you make available to Customers through the Marketplace that install into an instance of Visual Studio, Visual Studio Code, Visual Studio for Mac, or are used with GitHub Codespaces and provide new capabilities to users of that program or service. These extensions may only be offered for use with Visual Studio, Visual Studio Code, Visual Studio for Mac, GitHub Codespaces, or successor products and services.

SECTION 3   Integrations and Catalog-Only Listings.

"**Integrations and Catalog-Only Listings**" are Offerings that are 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 In-Scope Products and Services. For clarity, Integrations and Catalog-only Listings are considered Offerings for purposes of this Agreement.

SECTION 4   Services.

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.