

## **WINDOWS PHONE**

### **WP REFERENCE DESIGN DEVELOPER AGREEMENT (February 2014)**

This agreement (the "Agreement") is between Microsoft Corporation, a Washington company, with its principal place of business at One Microsoft Way, Redmond, WA 98052 ("Microsoft") and Company and applies to Company's access to and use of any Deliverables, as further described in this Agreement.

By clicking "I accept", Company (a) represents that the person accepting this Agreement has the requisite authority to accept this Agreement on behalf of you/Company, and (b) agrees to be bound by the terms and conditions of this Agreement.

#### ***Terms and Conditions***

##### **1) Definitions**

- a) "Affiliate" of a party to this Agreement means a company or other entity that directly or indirectly controls, is controlled by, or is under common control with the applicable party to this Agreement.
- b) "Applications" means applications, games, services and other similar content developed by or for Company and licensed by Company for use with Windows Phone Software on an OEM Device, and that meet Microsoft's requirements for distribution through the Store.
- c) "Approved Recipient" means a third party that has entered into a WP Reference Design Kit Agreement with Microsoft, or any other agreement in which Microsoft provides rights to use and access the Deliverables.
- d) "Company" means the company or other entity accepting this Agreement and any of its Affiliates, or if you are an individual, then you as an individual.
- e) "Company Customers" means Company's customers and potential customers, including without limitation, wireless telecommunications operators, enterprise customers, and software and hardware developers.
- f) "Company Materials" has the meaning set forth in Section 5) of this Agreement.
- g) "Confidential Information" has the meaning set forth in Section 9)a) of this Agreement.
- h) "Contractor" means a third party that is engaged by Microsoft or Company (as applicable) under a development contract in which such third party's work product is provided to the engaging party on a "work for hire" basis.
- i) "Deliverables" means the information, documentation, materials or software (including third party materials) that Microsoft may provide to Company in connection with this Agreement via the Partner Portal or such other means as Microsoft chooses.
- j) "Device Data" has the meaning set forth in Section 7) of this Agreement.
- k) "Employee" means a person who is designated as an employee and is on the regular payroll of Company or Microsoft (as applicable). For purposes of this agreement, "Employee" also includes employees of temporary agencies who are assigned by their employer to complete assignments at Company or Microsoft (as applicable) and who are subject to confidentiality restrictions and information security standards (pursuant to an agreement between their employer and Company or Microsoft (as applicable)) that are substantially the same as those for employees of Company or Microsoft (as applicable). For the avoidance of doubt, "Employee" does not include Contractors.
- l) "Excluded License" means any software license requiring, as a condition of use, modification and/or distribution, 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.
- m) "Feedback" has the meaning set forth in Section 6) of this Agreement.

- n) "Image" means a binary image of Windows Phone Software, including an emulator version for use with the Windows Phone Software development kit on a PC.
- o) "Intellectual Property Rights" means all Patents, copyrights, trade secrets, trademarks, and other intellectual property rights (including rights in applications, registrations, filings and renewals) that are now or hereafter protected or legally enforceable under state or federal common law or statutory laws of the United States or any foreign country, or under any treaty regime.
- p) "OEM Device" means a device created by or for Company containing any licensed version of Windows Phone Software.
- q) "Offering" means, with respect to either party, (i) any of such party's products, technologies, tools, services or any component of any of the foregoing, including pre-release and commercially released versions whether offered for a fee or otherwise, (ii) any specifications or other proposal for any such product, technology, service or component, and (iii) any documentation for any of the foregoing.
- r) "Partner Portal" means the web-site designated and hosted by or on behalf of Microsoft or a Microsoft Affiliate where Microsoft makes the Deliverables available to Company.
- s) "Patents" means any and all patents, utility models, patent registrations, design patents, design registrations, and equivalent rights (including originals, divisionals, provisionals, re-exams, continuations, continuations-in-part, extensions or reissues), and applications for the foregoing in all countries of the world.
- t) "Sample Files" means the sample code files contained in "sample file" or "sample code" folders in the Deliverables (or otherwise designated by Microsoft as "sample" code).
- u) "Store" means a marketplace platform provided by Microsoft or a Microsoft Affiliate through which Applications may be acquired by individual end users of Windows Phone devices.
- v) "Windows Phone Software" means the Windows Phone operating system software made available on the Partner Portal. The term includes any bug fixes, upgrades, updates and future or successor versions (including as Microsoft may rename such versions in its discretion) that Microsoft may make available to Company under this Agreement in Microsoft's sole discretion.

## 2) Microsoft Licenses to Company

- a) **Test and Development.** Except as provided in Section 2)d), for each Deliverable provided by Microsoft, Microsoft grants to Company a limited, personal, nonexclusive, nontransferable, non-assignable and royalty-free license for the term of this Agreement to internally reproduce and use a reasonable number of copies of the Deliverables only for the following limited purposes:
  - i) designing, developing, modifying and testing OEM Devices;
  - ii) evaluating and testing the Deliverables for use with OEM Devices, including providing Feedback to Microsoft; and
  - iii) compiling and installing Images on OEM Devices to exercise the license grants in (i) and (ii) above..
- b) **Limited Distribution/ Demonstration Rights and Related Terms.**
  - i) **Licenses.** Except as provided in Section 2)d), Microsoft grants to Company the following limited, personal, nonexclusive, nontransferable, non-assignable and royalty-free licenses for the term of this Agreement, and for the sole purposes of OEM Device and Application development, testing and evaluation:
    - (1) **Demonstration and Distribution of Deliverables to Approved Recipients.** Company may disclose, demonstrate or distribute Deliverables to Approved Recipients.
    - (2) **Demonstration and Distribution of Images on OEM Devices.** Company may disclose, demonstrate and temporarily distribute to Company Customers and Contractors a nominal number of OEM Devices containing Images, and may distribute Images to update such OEM Devices. Company

may distribute only OEM Devices that Company reasonably believes will comply with Microsoft's hardware, software and branding requirements for commercialization.

- ii) **Electronic Deliverables.** For disclosure or distribution of Deliverables through electronic means, Company will disclose or distribute the Deliverables as a downloadable file via a Company managed, secure web site or file server for which each individual downloading of the file can be authenticated to individual users, or as otherwise permitted by Microsoft in writing.
- iii) **Reports.** Upon Microsoft's request, Company will promptly provide a report indicating the name, address and contact information of each Company Customer and Contractor then in possession of OEM Devices. Company will not be required to provide such reports more frequently than once per quarter, except that if there is a leak of Microsoft Confidential Information relating to the Deliverables, Company will provide such reports upon Microsoft's reasonable request.
- iv) **Responsibility.** Company agrees to be fully responsible to Microsoft for any and all acts or omissions of Company Customers and Contractors in connection with any Deliverables made available to them by Company.

c) **Sample Files**

Microsoft grants to Company a limited, personal, nonexclusive, nontransferable, non-assignable and royalty-free license to reproduce and distribute Sample Files (together with modifications developed by Company, at Company's option) with or as part of OEM Devices or Applications, provided:

- i) The OEM Devices or Applications containing the Sample Files add significant and primary functionality to the original and unmodified code;
- ii) Any modified Sample Files operate only with Windows Phone Software;
- iii) Company does not distribute Sample Files to run on an operating system other than Windows Phone Software;
- iv) Company includes a valid copyright notice with the Sample File, and does not remove any Microsoft copyright notice in the Sample Files source code;
- v) Company does not include Sample Files in malicious, deceptive or unlawful products;
- vi) Company does not permit further distribution of the Sample Files except when the Sample Files are included in an OEM Device or Application in object code form;
- vii) Company will indemnify, hold harmless, and defend Microsoft and its Affiliates from and against any third party claims or lawsuits, including attorneys' fees, that arise or result from the use or distribution of the OEM Devices and Applications; and
- viii) For distribution of Sample Files in OEM Devices or Applications distributed under a commercial license, Company is responsible for any testing and/or certification requirements; for the avoidance of doubt, any such distribution must be in object code form.

d) **License Limitations; Ownership**

- i) **Restriction on Use of Deliverables.** Company will not reverse engineer any hardware Deliverables, or reverse engineer, decompile or disassemble any software Deliverables provided in object code form. This restriction will not apply to the extent that applicable law prohibits it.
- ii) **Excluded Licenses.** Company's license to the Deliverables does not include any license, right, power or authority to, and Company will not:
  - (1) modify the Deliverables in a way that causes any portion of the Deliverables to become subject to any of the terms of an Excluded License; or

- (2) to the extent distribution is authorized under this Agreement, distribute the Deliverables in a way that causes any portion of the Deliverables to become subject to any of the terms of an Excluded License.
- iii) **Separate Terms May Apply.** All testing, evaluation and development must be conducted according to the instructions accompanying the Deliverables. In addition, if any Deliverable is accompanied by separate license terms that conflict with this Agreement, the separate license terms apply and supersede anything to the contrary in the terms of this Agreement.
  - iv) **Separate Commercial Distribution License Required.** Company acknowledges and agrees that this Agreement does not include a license to commercially distribute the Deliverables (other than Sample Files as set forth in Section 2)c)).
  - v) **Reservation of Rights.** Except for the licenses set forth in this Agreement, Microsoft reserves all other rights in the Deliverables to itself and its suppliers. This Agreement does not transfer any rights of ownership or license to the Deliverables or to their features or information, except as provided in this Agreement.

### 3) Company Affiliates

Company may distribute copies of the Deliverables to Company Affiliates, and may authorize Company Affiliates to exercise rights in the Deliverables, Images, and Sample Files on Company's behalf and in accordance with the terms and conditions of this Agreement, provided that Company causes such Affiliates to comply with the terms and conditions of this Agreement. Company will be jointly and severally liable with each such Company Affiliate. If Company or a Company Affiliate breaches this Agreement, Microsoft may terminate this Agreement with respect to Company and/or any and all Company Affiliates by giving written notice to Company. All remedies available to Microsoft with respect to Company, including the ability to obtain injunctive relief, are also available with respect to Company Affiliates.

### 4) Updates and Support

Microsoft is not required to provide maintenance, technical support or updates to the Deliverables. If Microsoft chooses to provide further versions of the Deliverables, maintenance, support or related information to Company, they are considered Deliverables.

### 5) Company Materials License to Microsoft

Company may give Microsoft object code software, tools (including flashing tools), OEM Devices or other hardware containing object code software, or documentation that does not qualify as Feedback ("Company Materials"). If such Company Materials are not licensed under another agreement between the parties, Company hereby grants to Microsoft a limited, personal, nontransferable, non-assignable, nonexclusive and royalty-free license to internally reproduce and use such Company Materials for: (i) designing, developing, modifying and testing Windows Phone Software and products or services that operate with Company Materials; (ii) evaluating and testing Company Materials; and (iii) installing Company Materials, Windows Phone Software and other software that operates with Company Materials on OEM Devices to exercise the license grants in clauses (i) and (ii). Except as set forth in Section 9)d) with respect to Representatives, this Agreement does not grant Microsoft any right to distribute Company Materials. Further, it does not restrict Microsoft's ability to acquire, license, develop, manufacture or distribute for itself, or have others acquire, license, develop, manufacture or distribute, any technology that is similar to Company Materials. Company will not provide any Company Materials that are subject to an Excluded License and Microsoft may not subject any Company Materials to an Excluded License. If Company desires to deliver Company source code to Microsoft, the parties may enter into a separate license for such source code.

### 6) Feedback

Each party may provide to the other party suggestions, comments, input and feedback regarding the other party's Offerings and activities contemplated by this Agreement, including but not limited to usability, bug reports and test results (collectively "Feedback"). The party providing Feedback grants to the receiver, without charge, a non-exclusive and royalty-free license under the Feedback provider's owned or controlled Intellectual Property Rights, to make, use, modify, distribute and otherwise commercialize the Feedback as part of any receiver Offering, except that neither party grants any licenses or other rights (whether by exhaustion, implication, estoppel or otherwise) under any of its Patents that read on such Feedback. The party receiving Feedback may not subject the Feedback to an Excluded License. This Agreement is the entire agreement between the parties on Feedback with respect to the subject matter of this Agreement, and expressly supersedes any Feedback or input license between the parties as to such subject matter.

## **7) Consent for Collection and Use of Information**

- a) **Microsoft Collection and Use of Device Data.** During testing, Microsoft may collect information about service and device performance, service and device use and interactions, software operation errors and standard device information (such as hardware IDs and subscriber IDs, IP addresses, operating system version and other device configuration information) (collectively, "Device Data") in connection with the Deliverables in order to provide and improve Microsoft products and services. The Device Data may include screen shots, website histories, IP addresses, call and sms details (e.g., number called or from which a call was received, date, time, length, etc.), and other data. In some cases, users may be not able to switch off the collection of Device Data. Company will notify its Employees, Contractors and Affiliates to whom it distributes Deliverables under this Agreement of all terms in this Section 7). Additionally, Company consents to the transmission of any information that occurs through use by or on behalf of Company of such features.
- b) **Microsoft Sharing of Information.** Microsoft may share the Device Data with others, who may use the Device Data to improve how their products and services work with Windows Phone Software.
- c) **Company Use of Device Data.**
  - i) If Microsoft provides Company with access to Device Data, Company acknowledges that such Device Data is confidential and proprietary information of Microsoft and its suppliers. Company may use and copy such Device Data only internally and solely for testing and resolving compatibility issues related to use of OEM Devices with Microsoft products, technology or services and to provide Microsoft with Feedback thereon. Company will not use the Device Data for any other purpose, including without limitation promotional, sales, advertising, competitive analysis or marketing purposes. Company must store any Device Data only on a secure server with limited access (solely on a need to know basis) for up to a maximum of six months, after which Company will destroy the Device Data. If Company is subject to other terms of use or another agreement regarding access to and use of Device Data, the terms of such other agreement will apply and supersede anything to the contrary in this Section 7)c) with the exception that Company agrees to maintain the confidentiality of the Device Data notwithstanding the terms of any other agreement.
  - ii) If Microsoft provides Company with a method by which Company can match Device Data to an identifiable user, Company will be responsible for providing users with appropriate notice and consent to Company's use of the Device Data.

## **8) Term and Termination**

- a) **Term.** The term of this Agreement begins on the Effective Date and continues until the earlier of:
  - i) Three years; or
  - ii) The date on which a party terminates this Agreement by giving written notice to the other party. Either party may provide such notice at any time, with or without cause.

- b) **Effects of Termination.** On the termination or expiration of this Agreement or the license to any individual Deliverable, Company will promptly return to Microsoft, or certify destruction of, all full or partial copies of such Deliverable and related Microsoft materials.
- c) **Survival.** Sections 1) (Definitions), 2)c) (Sample Files), 2)d)i) (Restriction on Use of Deliverables), 2)d)ii) (Excluded Licenses), 2)d)iii) (Separate Terms May Apply), 2)d)v) (Reservation of Rights), 5) (Company Materials License to Microsoft), 6) (Feedback), 7) (Consent for Collection and Use of Information), 8) (Term and Termination), 9) (Confidentiality), 9) (Representations and Warranties), 10) (Disclaimer, including Disclaimer of Warranties), 11) (Limitation of Liability), and 12) (Miscellaneous) will survive expiration or termination of this Agreement.

## 9) Confidentiality

- a) "Confidential Information" is non-public information, know-how and trade secrets in any form that are designated as "confidential", or a reasonable person knows or reasonably should understand to be confidential. The Deliverables and related information, including their existence and features, are Confidential Information to Microsoft and its suppliers.  
Confidential Information does not include information that:
  - i) Is or becomes publicly available without a breach of this Agreement;
  - ii) Was lawfully known to the receiver of the information without an obligation to keep it confidential;
  - iii) Is received from another source who can disclose it lawfully and without an obligation to keep it confidential; or
  - iv) Is independently developed.
- b) Except as permitted under this Agreement, Company will not disclose or give the Deliverables, documentation, or any related Confidential Information to a third party unless Microsoft has consented in writing. This includes information about features of the Deliverables and the results of use or testing.
- c) Each party will not disclose the other's Confidential Information to third parties, and will only use and disclose the other's Confidential Information for purposes of this Agreement and any other agreement that incorporates these provisions. Each party will take reasonable steps to protect the other's Confidential Information, and these steps must be at least as protective as such party takes to protect its own Confidential Information. Company will notify Microsoft promptly upon discovery of any unauthorized use or disclosure of any of the Deliverables, and will cooperate with Microsoft to help regain control of the Deliverables and prevent further unauthorized use or disclosure of them.
- d) Each party may disclose the other's Confidential Information to Approved Recipients and its Representatives (who may then disclose that Confidential Information to other Approved Recipients or to Representatives) only if those Approved Recipients or Representatives have a need to know about it for purposes of the Microsoft and Company business relationship. Before doing so, each party must ensure that Approved Recipients and Representatives are required to protect the Confidential Information on terms consistent with this agreement; and accept responsibility for each Representative's use of Confidential Information. A "Representative" is an Employee, Contractor, advisor or consultant of Microsoft or Company (or an Affiliate of either party).
- e) Neither party is required to restrict work assignments of Representatives who have had access to Confidential Information. Neither party can control the incoming information the other will disclose to it in the course of working together, or what its Representatives will remember, even without notes or other aids. Each party agrees that use of information in Representatives' unaided memories in the development or deployment of its respective products or services does not create liability under this Agreement or trade secret law, and each party agrees to limit what it discloses to the other accordingly.

- f) Each party may disclose the other's Confidential Information if required to comply with a court order or other government demand that has the force of law. Before doing so, each party must seek the highest level of protection available and, when possible, give the other party enough prior notice to provide a reasonable chance to seek a protective order.
- g) Except as expressly permitted in this Agreement, neither party will use or disclose the other's Confidential Information for five years after receipt. The five-year time period does not apply if applicable law requires a longer period.

#### **9) Representations and Warranties**

- a) **Power.** Each party represents it has all requisite power and authority to enter into this Agreement and comply with its terms.
- b) **Feedback.** Each party represents that it will not give any Feedback that:
  - i) Violates any copyright or trade secret claim or right of any third party; or
  - ii) Is subject to an Excluded License.

#### **10) Disclaimer, including Disclaimer of Warranties**

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE DELIVERABLES AND COMPANY MATERIALS ARE PROVIDED "AS IS" AND WITH ALL FAULTS. EXCEPT AS PROVIDED HEREIN, EACH PARTY EXPRESSLY DISCLAIMS ALL OTHER EXPRESS, IMPLIED, OR STATUTORY WARRANTIES. THIS INCLUDES THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, LACK OF VIRUSES, ACCURACY OR COMPLETENESS OF RESPONSES, RESULTS, LACK OF ERRORS, LACK OF WORKMANLIKE EFFORT, AND THE PROVISION OF OR FAILURE TO PROVIDE SUPPORT SERVICES.

#### **11) Limitation of Liability**

TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT WILL MICROSOFT OR ITS SUPPLIERS BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, SPECIAL, OR EXEMPLARY DAMAGES ARISING OUT OF OR THAT RELATE IN ANY WAY TO THIS AGREEMENT OR ITS PERFORMANCE. THIS EXCLUSION WILL APPLY REGARDLESS OF THE LEGAL THEORY UPON WHICH ANY CLAIM FOR SUCH DAMAGES IS BASED, WHETHER THE MICROSOFT OR ITS AFFILIATES HAD 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. THIS EXCLUSION WILL NOT APPLY TO BREACH OF CONFIDENTIALITY OBLIGATIONS OR ANY INFRINGEMENT OR MISUSE OF INTELLECTUAL PROPERTY RIGHTS.

#### **12) Miscellaneous**

- a) **Notices.** Notices may be provided either by electronic or physical mail. The person(s) identified by Company as part of the on-line onboarding process for receiving access to the Deliverables will receive notices on behalf of Company. Notices to Microsoft will be sent to [wmdla@microsoft.com](mailto:wmdla@microsoft.com), with a copy to: Microsoft Corporation, 1 Microsoft Way, Redmond, WA 98052, Attn: OSG LCA: WP Reference Design. Each party may change the persons to whom notices will be sent by giving notice to the other.
- b) **Jurisdiction and governing law.** The laws of the State of Washington govern this Agreement. If federal jurisdiction exists, the parties consent to exclusive jurisdiction and venue in the federal courts in King County, Washington. If not, the parties consent to exclusive jurisdiction and venue in the Superior Court of King County, Washington.
- c) **Attorneys' fees.** If either Microsoft or Company employs attorneys to enforce any rights arising out of or relating to this Agreement, the prevailing party will be entitled to recover its reasonable attorneys' fees, costs, and other expenses, including the costs and fees incurred on appeal or in a bankruptcy or similar action.
- d) **Compliance with law.** The Deliverables are subject to U.S. export jurisdiction. Company will comply with all applicable international and national laws that apply to the Deliverables, including the U.S. Export

Administration Regulations and Office of Foreign Assets Control Regulations, as well as end-user, end-use and destination restrictions issued by U.S. and other governments. For additional information on exporting Microsoft products, see <http://www.microsoft.com/exporting/>.

- e) **Assignment.** Company may not assign this Agreement, or any rights or obligations hereunder, except with Microsoft's express written consent. Any attempted assignment in violation of this section will be void.
- f) **Waiver.** A party's delay or failure to exercise any right or remedy will not result in a waiver of that or any other right or remedy.
- g) **Money damages insufficient.** Each party acknowledges that money damages may not be sufficient compensation for a breach of this Agreement. Each party agrees that the other may seek court orders to stop Confidential Information from becoming public in breach of this Agreement or otherwise to protect its Intellectual Property Rights in connection with this Agreement.
- h) **Severability.** If any court of competent jurisdiction determines that any provision of this Agreement is illegal, invalid or unenforceable, the remaining provisions will remain in full force and effect.
- i) **Integration and modification.**
  - i) This Agreement (including any exhibits and any separate license terms or other agreements referenced herein) is the entire agreement between the parties regarding its subject matter. It replaces all prior agreements, communications and representations between the parties regarding its subject matter.
  - ii) Microsoft may update this Agreement at any time in its sole discretion. Microsoft will indicate the last date on which the Agreement was modified at the top of the Agreement. Microsoft recommends that Company review this Agreement for updates each time it accesses any of the Deliverables. By accessing and using the Deliverables under this Agreement, Company agrees to be bound by the terms and conditions contained in the Agreement then in effect on the date of such access. If Company does not agree with an update to this Agreement, it must not access or use any of the Deliverables after the update has been made available, and Company should notify Microsoft that it is terminating the Agreement.
- j) **Relationship.** This Agreement does not create a partnership, joint venture, or agency relationship, nor does it grant a franchise.
- k) **Governing language.** This Agreement is executed in the English language which will be the sole and controlling language used in interpreting or construing its meaning.

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