

Microsoft Band Web Tile Developer Terms of Use

(LAST UPDATED December 2015)

These terms are an agreement (“Agreement”) between Microsoft Corporation (or based on where you live, one of its Affiliates) (“Microsoft” or “we”) and you (the user) of the Microsoft Band (“Band”) online Web Tile Authoring Tool (“Tool”) available at <http://developer.microsoftband.com/WebTile> and/or a user of the Web Tile Documentation (“Documentation”) available at <http://developer.microsoftband.com/WebTile>). This Agreement also includes Microsoft’s Tile Gallery Policies. If you choose to submit your Web Tile(s) for inclusion in Microsoft’s Tile Gallery, these terms also apply.

Please read these terms. By clicking “Accept” in the Tool and/or by accessing or using the Tool and/or Documentation to create, design, develop, and/or distribute a Web Tile you represent that you have the requisite authority to accept this Agreement, and agree to be bound by the terms and conditions contained in the Agreement then in effect on the date of use of the Tool or Documentation.

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 you review this Agreement for updates each time you use the Tool and/or Documentation. By using the Tool and/or Documentation under this Agreement, you agree to be bound by the terms and conditions contained in the Agreement then in effect on the date of use. If you do not agree with an update, do not use the Tool and/or Documentation.

1. Use of the Tool and Documentation. You may use the Tool and/or Documentation to create, design, and develop a Web Tile(s) for use in connection with the Microsoft Health app (on the Windows, iOS, and Android platforms) and the Band, provided you comply with the requirements explained in this Agreement. As used in this Agreement, a “Web Tile” is a package that you develop using the Tool or Documentation and that interacts with the Microsoft Health app. It includes tile metadata and information needed to fetch data from the web and format it for the Band. It ends with the extension “.webtile”.

a. Web Tile Requirements. Each Web Tile must comply with the following requirements:

i. The Web Tile must comply with and remain in compliance with this Agreement and all requirements and obligations detailed in the Documentation, as any of these may be revised from time to time.

ii. The Web Tile must comply with the applicable laws of each jurisdiction into which you choose to make the Web Tile available, including (without limitation) (i) export control laws; (ii) data protection, privacy, and other laws and regulations relating to collection and use of user information by your Web Tile; (iii) telecommunications laws; and (iv) intellectual property laws.

iii. Your Web Tile 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.

b. Web Tile Content.

i. Content includes anything used in or displayed by the Web Tile that you develop or which you make available for use by Web Tile users, such as data, names, text (including, for example, URLs, headers, captions, body lines, secondary content), icons, contact information (“Content”). Except for material that we license to you, or that we make available to you (for example at <http://developer.microsoftband.com/WebTile>), and that may be incorporated into your own Content, we do not claim ownership of your Content. Your Content remains your Content, and you are responsible for it. We do not control, verify, pay for, or endorse the Content that you and others make available through Web Tiles.

ii. The Tool and Documentation enable the development of Web Tile(s) that may interact with data or content from third party websites. Use of or interaction with such data or content may be subject to separate terms issued by the third party website or such use or interaction may be expressly prohibited by a third party website. By using the Tool and/or Documentation to develop a Web Tile that interacts with data or content from any source, you acknowledge and agree that it is your responsibility to locate, understand and comply with all applicable terms for any data or content with which the Web Tile you develop interacts. In some cases this may mean you are prohibited from creating the Web Tile to interact with a particular third party source of data or content.

iii. You represent and warrant that you have (and will have) all the rights necessary for the Content contained in your Web Tile(s), and that any use of the Content through implementation of the Web Tile(s), will not violate any law or third party agreement (such as a third-party website’s terms of use or website policies).

iv. We may ask you to remove your Web Tile(s) from public display or distribution if it violates this Agreement or the law or if we receive a notice of intellectual property infringement from a third party.

c. Web Tile Distribution. The Tool and Documentation suggests ways in which you can store your Web Tile(s) and distribute them to others. You are, and will continue to be, at your sole cost and expense, responsible for storing, hosting, making available and distributing your Web Tile(s), and for undertaking all associated obligations related thereto.

2. Prohibited Conduct. You agree that in using the Tool and/or Documentation, and in publishing and/or distributing any and all Web Tile(s) you create, design, or develop, you will not:

a. modify, create derivative works of, reverse engineer, reverse compile, or disassemble any elements of the Tool, the Documentation, or the Microsoft Health apps for Windows, iOS, or Android;

b. distribute, sell, lease, rent, lend, or sublicense any part of Microsoft’s software or services to any third party except as included within, and necessary to, execute a Web Tile;

c. destroy, overwrite or delete user data without explicit user intent and confirmation;

d. infringe Microsoft’s or any third party intellectual property rights;

e. use Microsoft’s trademarks, including but not limited to Microsoft, the Band, and Windows, in naming your Web Tile(s) or in a way that suggests your Web Tile(s) come from or are endorsed by Microsoft; or

f. violate any term(s) in a third-party website's use terms or policies.

3. Tile Gallery Policies. You may choose to submit your Web Tile(s) to Microsoft for consideration for hosting on Microsoft's Tile Gallery. Microsoft will evaluate each submission, and determine in its sole discretion, whether the Web Tile(s) are suitable and appropriate for inclusion. Microsoft's evaluation criteria include, but are not limited to, the policies below. Microsoft reserves the right to remove any Web Tile from the Tile Gallery at any time for any reason, with or without notice. You are solely responsible for selecting all content made available through your Web Tile, and for ensuring that such content complies with the terms of this Agreement and all applicable laws and regulations. Microsoft's hosting of the Web Tile does not constitute any representation or acknowledgement by Microsoft that the Web Tile complies with such requirements, nor does it constitute any acceptance by Microsoft of any responsibility or liability in connection with such requirements.

Grant of Rights to Microsoft. You do not transfer ownership of any Web Tile to Microsoft by submitting the Web Tile for inclusion in the Tile Gallery, but you do grant to Microsoft the worldwide right to: host, install, use, reproduce, publicly perform and display via any digital transmission technology, format, make available to end users your Web Tile for all purposes under this Agreement.

Marketing Rights. You grant Microsoft, its agents, contractors, licensees, marketing partners, and Affiliates the right to use, reproduce, display, publicly perform and publish your entity name, Web Tile or portion of your Web Tile, and to modify your Web Tile description solely to correct obvious spelling, grammatical or typographical errors, in connection with (i) the distribution and marketing of the Web Tile in the Tile Gallery (ii) advertising or promoting your Web Tile in any and all media, and (iii) in any marketing, presentations, demonstrations, trade shows, industry events, and press releases, for the Web Tile.

License to End User for your Tile. You, not Microsoft, will license the right to install and use each Web Tile to end users. The license in Exhibit A below will apply between you and an end user of your Web Tile.

Web Tile Policies. Each Web Tile you submit to Microsoft for inclusion in the Tile Gallery must meet the following policies:

a. Distinct Function and Value; Accurate Representation

Your Web Tile and its associated metadata must accurately and clearly reflect the source, functionality, and features of your Web Tile.

- The tile name, tile author name, tile icon, category and tile description, and any other related metadata you provide with your Web Tile, should make it easy for a user to understand the functions, features, and any important limitations of your Web Tile.
- Your Web Tile must be fully functional and offer end users unique, creative value or utility, and your Web Tile may not use a name or icon similar to that of other Web Tiles.
- You should not represent your Web Tile to be from a company, government body, or other entity if you do not have permission to make that representation.
- If your Web Tile contains content or features restricted to certain languages, markets or geographies or has other important limitations, they should be clearly described.

- If your Web Tile declares an association with a given file type or extensibility point, it must provide the functionality that an end user would expect, given that association. For example, if your Web Tile declares an association with the .png file type, the Web Tile should be able to open the image for viewing.
- You may submit updates to your Web Tile for review and distribution through the Tile Gallery. Those updates are subject to all of the requirements of this Agreement. You may not add any new functionality to your Web Tile via an update which requires written consent from the end user without first providing notice to the end user and obtaining any consents as may be required by law in the markets where you choose to distribute your Web Tile.

b. Security

Your Web Tile must not jeopardize or compromise user security, or the security or functionality of Microsoft Band device(s), system or related systems and must not have the potential to cause harm to users or any other person. Web Tiles must always run within the permitted sandbox provided by the system. Thus, the following applies:

- Your Web Tile must not invoke code outside the allowed security model.
- Your Web Tile must not communicate with local Web Tiles (on Microsoft Band) or services via local mechanisms, including via files and registry keys.

Your Web Tile must not attempt to change or extend the described functionality through any form of dynamic inclusion of code that is in violation of these Policies. Your Web Tile should not, for example, download a remote script and subsequently execute that script in a manner that is not consistent with the described functionality.

c. Web Tile is Testable

The Web Tile must be testable. If it is not possible to test your Web Tile for any reason, including, but not limited to, the items below, your Web Tile may fail this requirement.

- If your Web Tile requires login credentials, provide us with a working demo account with your Web Tile submission.
- If your Web Tile requires access to a server, the server must be functional to verify that it's working correctly.

d. Usability

Your Web Tile must meet Tile Gallery standards for usability, including, but not limited to, those listed in the subsections below:

- The Web Tile must run on Microsoft Band devices.
- The Web Tile supports graceful closing. A Web Tile that closes unexpectedly may not be accepted in the Tile Gallery. The Web Tile must continue to run and remain responsive to user input after the exception is handled.
- The Web Tile must start up promptly and must stay responsive to user input.

e. Personal Information

The following requirements apply to Web Tiles that access personal information, such as from a web service through authenticated login. Personal information includes all information or data that identifies or could be used to identify a person, or that is associated with such information or data. Examples of personal information include: name and address, phone number, biometric identifiers (examples: heart rate, steps and other fitness data), location, contacts, photos, audio & video recordings, documents, SMS, email, or other text communication, screen shots, and in some cases, combined browsing history.

If your Web Tile accesses, collects or transmits personal information, or if otherwise required by law, you must provide and maintain a privacy policy. You must provide users with access to your privacy policy via the web service associated with the Web Tile, via an app associated with the Web Tile, or in the description section of your Web Tile in the Microsoft Tile Gallery (such as by providing a URL to your privacy policy). Your privacy policy must inform users of the personal information accessed, collected or transmitted by your Web Tile and how that information is used, secured and disclosed. It must describe the controls that users have over the use and sharing of their information and how they may access their information, and it must comply with applicable laws and regulations. Your privacy policy must be kept up-to-date as you add new features and functionality to your Web Tile.

f. Capabilities

The capabilities you declare to end users regarding your Web Tile must legitimately relate to the functions of your Web Tile.

g. Notifications

Your Web Tile must respect system settings for notifications and remain functional when they are disabled. If the end user disables notifications, your Web Tile must remain functional.

You may not obscure or try to disguise the source of any notification initiated by your Web Tile.

You may not include in a notification any information an end user would reasonably consider to be confidential or sensitive.

h. Advertising Conduct and Content

For all advertising related activities, the following requirements apply:

- Any advertising content your Web Tile displays must adhere to Microsoft's Creative Acceptance Policy (available at <http://go.microsoft.com/fwlink/p/?LinkId=532595>).
- The primary content of your Web Tile may not be advertising, and advertising must be clearly distinguishable from other content in your Web Tile.
- Any ads delivered to the Web Tile must have an associated privacy statement or terms of use that let users know personal information will be sent to the ad service provider and must tell users how they can opt-out of interest-based advertising.

- You must ensure that all ad content displayed in your Web Tile would merit a rating of ESRB EVERYONE 10+, or lower.

i. Content Policies

The following policies apply to content and metadata (including tile author name, tile name, tile icon, tile description, and any other tile metadata) offered for distribution in the Tile Gallery. Content includes the tile name, tile author name, tile icon, tile description, and the text, images and icons contained in the Web Tile, other Web Tiles, notifications or ads exposed through your Web Tile, and anything that's delivered from a server or that the Web Tile connects to. Because Microsoft Band Web Tiles and the Tile Gallery are used around the world, these requirements will be interpreted and applied in the context of regional and cultural norms.

1. General Content Requirements

Metadata and other content you submit to accompany your Web Tile may contain only content that would merit a rating of ESRB EVERYONE 10+, or lower.

Your Web Tile may only display content that would merit a rating of ESRB EVERYONE 10+, or lower.

2. Content including Names, Logos, Original and Third Party

All content in your Web Tile and associated metadata must be either originally created by the Web Tile author, appropriately licensed from the third-party rights holder, used as permitted by the rights holder, or used as otherwise permitted by law.

3. Harm to Others

Your Web Tile must not contain any content that facilitates or glamorizes extreme or gratuitous violence, human rights violations or the creation or illegal use of weapons against a person or animal in the real world.

4. Defamatory, Libelous, Slanderous and Threatening

Your Web Tile must not contain any content that is defamatory, libelous, slanderous, or threatening.

5. Offensive Content

Your Web Tile must not contain any potentially offensive content or content that advocates discrimination, hatred, or violence based on considerations of race, ethnicity, national origin, language, gender, age, disability, religion, sexual orientation, status as a veteran, or membership in any other social group.

6. Alcohol, Tobacco, Weapons and Drugs

Your Web Tile must not contain any content that facilitates or glamorizes excessive or irresponsible use of alcohol or tobacco products, drugs, or weapons.

7. Adult Content

Your Web Tile must not contain or display content that a reasonable person would consider pornographic or sexually explicit.

8. Illegal Activity

Your Web Tile must not contain content or functionality that encourages, facilitates or glamorizes illegal activity in the real world.

9. Excessive Profanity and Inappropriate Content

Your Web Tile must not contain excessive or gratuitous profanity.

Your Web Tile must not contain or display content that a reasonable person would consider to be obscene.

10. Country/Region Specific Requirements

Content that is offensive in any country/region to which your Web Tile is targeted is not allowed. Content may be considered offensive in certain countries/regions because of local laws or cultural norms.

4. Support Services. Because the Tool and Documentation is provided “as is,” we may not provide support services for it.

5. Acknowledgement and Waiver. In using the Tool and/or Documentation to create, design, and develop a Web Tile(s) for use in connection with the Microsoft Health app and the Band, you agree that you must take steps to design and test your Web Tile(s) to ensure that your Web Tile(s) does not present unreasonable risks of personal injury or death, property damage, or other losses. If you choose to use the Tool and/or Documentation, you assume all risk that your use of the Tools and Documentation causes any harm or loss, including to the end users of your Web Tile(s), and you agree to waive all claims against Microsoft and its affiliates related to such use (including but not limited to any claim that the Tools, Documentation, Microsoft Health app, and/or other associated software is defective) and to hold Microsoft and its affiliates harmless from such claims.

6. DISCLAIMER, EXCLUDED DAMAGES, LIMITATION ON LIABILITY.

a. DISCLAIMER OF WARRANTY. MICROSOFT PROVIDES THE TOOL AND/OR DOCUMENTATION "AS-IS," "WITH ALL FAULTS," AND "AS AVAILABLE." YOU BEAR THE RISK OF USING THE TOOL AND/OR DOCUMENTATION AND THE WEB TILES YOU DEVELOP AND DISTRIBUTE USING THE TOOL AND/OR DOCUMENTATION. TO THE EXTENT PERMITTED BY LOCAL LAW, 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

TOOL AND/OR DOCUMENTATION AND THE WEB TILES. WITHOUT LIMITING ANY OF THE FOREGOING, MICROSOFT EXPRESSLY DISCLAIMS ANY WARRANTIES THAT ACCESS TO OR USE OF WEB TILES WILL BE UNINTERRUPTED OR ERROR FREE.

b. LIMITATION OF LIABILITY. YOU AGREE NOT TO SEEK TO RECOVER DIRECT DAMAGES OR ANY OTHER DAMAGES, INCLUDING CONSEQUENTIAL, LOST PROFITS, SPECIAL, EXEMPLARY, PUNITIVE, INDIRECT, OR INCIDENTAL DAMAGES FROM MICROSOFT. THESE LIMITS AND EXCLUSIONS APPLY EVEN IF MICROSOFT 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. INEFFECTIVE DISCLAIMER. MICROSOFT'S LIABILITY FOR BREACH OF AN IMPLIED WARRANTY THAT CANNOT, BY LAW, BE DISCLAIMED OR EXCLUDED IS, IF PERMITTED BY LAW, LIMITED, AT MICROSOFT'S ELECTION: (A) FOR GOODS, TO REPLACING, REPAIRING, OR SUPPLYING EQUIVALENT GOODS (OR PAYING THE COST OF THE FOREGOING OR REFUNDING THE PURCHASE PRICE); AND (B) FOR SERVICES, TO SUPPLYING (OR PAYING A THIRD PARTY TO SUPPLY) THE SERVICES AGAIN OR REFUNDING THE PURCHASE PRICE.

7. Nonexclusivity. This Agreement is nonexclusive, and nothing in this Agreement may be construed as restricting Microsoft from entering into other, similar agreements with other developers, or from acquiring, licensing, developing, manufacturing, or distributing technology that is similar to your Web Tile(s), nor as restricting you from entering into other, similar agreements to make similar features available through other services.

8. Indemnification. You agree to indemnify, defend, and hold harmless Microsoft and its affiliates from any claims, including attorneys' fees, related to the distribution or use of your Web Tile(s), and any and all content or software accessible through or contained therein.

9. Regulatory Compliance. You agree that your development and distribution of the Web Tile(s) shall be in compliance with all applicable legal requirements, including compliance with the medical device regulatory requirements of the U.S. Federal Food, Drug, and Cosmetic Act and any associated requirements, or similar laws, regulations, or policies in other countries or territories. To the extent required by law, you are solely responsible for obtaining or filing any approval, clearance, registration, permit, or other regulatory authorization and shall comply with the requirements of such authorization

10. Termination. Either party may terminate this Agreement for convenience at any time with no prior notice. Sections of this Agreement that, by their terms, require performance after the termination or expiration of this Agreement will survive.

11. Legal Effect. This Agreement describes certain legal rights. You may have other rights under the laws of your state, province or country. This Agreement does not change your rights under the laws of your state, province or country if the laws of your state, province or country do not permit it to do so.

12. General Terms.

a. Entire Agreement. These terms constitute the entire agreement among the parties with respect to the subject matter hereof and supersedes all prior agreements, understandings and communications between the parties respect to that subject matter.

b. Law. This Agreement is governed by Washington State law (disregarding conflicts of law principles), and the parties consent to exclusive jurisdiction and venue in the state and federal courts of King County, Washington. Neither party will claim lack of personal jurisdiction or forum non conveniens in these courts.

c. Interpretation. If a court of competent jurisdiction finds any term of the Agreement unenforceable, the Agreement will be deemed modified as necessary to make it enforceable, and the rest of the Agreement will be fully enforced to effect the parties' intent.

d. Notices. All notices in connection with this Agreement may be delivered to you in writing or via email (if available) that you provide in your Web Tile package, and to Microsoft at healthms@microsoft.com. If you do not provide an email address in the Web Tile package, you agree that you may not receive notices and waive any right to receive notices under this Agreement.

e. Reservation. All rights not expressly granted in this Agreement are reserved. Without limiting the above, and except to the extent otherwise expressly provided in this Agreement, nothing in this Agreement may be construed as a license to either party's intellectual property rights, expressly or by implication, estoppel, exhaustion, or otherwise.

f. Miscellaneous. Each party is an independent contractor to the other and has no authority to act on behalf of or bind the other, and this Agreement does not create any other relationship (e.g., employment, partnership, or agency). All rights and remedies under this Agreement are cumulative.

Exhibit A

Tile End User License Agreement

These license terms are an agreement between you and the tile author. Please read them.

BY DOWNLOADING OR USING THE TILE, OR ATTEMPTING TO DO ANY OF THESE, YOU ACCEPT THESE TERMS. IF YOU DO NOT ACCEPT THEM, YOU HAVE NO RIGHT TO AND MUST NOT DOWNLOAD OR USE THE TILE.

The tile author means the entity licensing the tile to you, as identified in the Microsoft Tile Gallery. If you comply with these license terms, you have the rights below.

INSTALLATION AND USE RIGHTS. You may install and use the tile on a Microsoft Band device.

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

- a. Work around any technical limitations in the tile.

- b. Reverse engineer, decompile, or disassemble the tile, except and only to the extent that applicable law expressly permits, despite this limitation.
- c. Make more copies of the tile than specified in this agreement or allowed by applicable law, despite this limitation.
- d. Publish or otherwise make the tile available for others to copy.
- e. Rent, lease, or lend the tile.
- f. Transfer the tile or this agreement to any third party.

SUPPORT SERVICES. The tile author, Microsoft, your hardware manufacturer and your wireless carrier aren't responsible for providing support services for the tile.

ENTIRE AGREEMENT. This agreement, any applicable privacy policy, and the terms for supplements and updates are the entire license agreement between you and tile author for the tile.

APPLICABLE LAW.

- a. **United States and Canada.** If you acquired the tile in the United States or Canada, the laws of the state or province where you live (or, if a business, where your principal place of business is located) govern the interpretation of these terms, claims for breach of them, and all other claims (including consumer protection, unfair competition, and tort claims), regardless of conflict of law principles.
- b. **Outside the United States and Canada.** If you acquired the tile in any other country, the laws of that country apply.

LEGAL EFFECT. This agreement describes certain legal rights. You may have other rights under the laws of your state or country. This agreement doesn't change your rights under the laws of your state or country if the laws of your state or country don't permit it to do so.

DISCLAIMER OF WARRANTY. The tile is licensed "as is," "with all faults," and "as available." You bear the entire risk as to its quality and performance. Should it prove defective, you assume the entire cost of all necessary servicing or repair. The tile author, on behalf of itself, Microsoft, wireless carriers over whose network the tile is provided, and each of our respective affiliates, vendors, agents, and suppliers ("Covered Parties"), gives no express warranties, guarantees, or conditions in relation to the tile. You

may have additional consumer rights under your local laws that this agreement can't change. To the extent permitted under your local laws, Covered Parties exclude any implied warranties or conditions, including those of merchantability, fitness for a particular purpose, and non-infringement. If your local laws impose a warranty, guarantee or condition even though these terms do not, its duration is limited to 90 days from when you download the tile.

LIMITATION ON AND EXCLUSION OF REMEDIES AND DAMAGES. To the extent not prohibited by law, if you have any basis for recovering damages, you can recover from the tile author only direct damages up to the amount you paid for the tile or \$1.00, whichever is greater. You will not, and waive any right to, seek to recover any other damages, including lost profits and consequential, special, direct, indirect, or incidental damages, from the tile author.

This limitation applies to:

- Anything related to the tile or services made available through the tile; and
- Claims for breach of contract, warranty, guarantee or condition; strict liability, negligence, or other tort; violation of a statute or regulation; unjust enrichment; or under any other theory; all to the extent permitted by applicable law.

It also applies even if:

- This remedy doesn't fully compensate you for any losses; or
- The tile author knew or should have known about the possibility of the damages.