

Microsoft Band Software Development Kit Terms of Use

(LAST UPDATED June 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. “You” or “you” means the individual who downloads, installs, accesses, or uses the Band SDK (and, if you represent a legal entity, it also means that entity, and you represent and warrant that you are authorized to enter into this agreement for that entity).

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 Band SDK. **By using the Band SDK, you agree to be bound by the terms and conditions set forth in this Agreement. Please read them. If you do not agree with an update, do not use the Band SDK.**

Microsoft has created the Band SDK to encourage the development of an ecosystem of health and fitness applications, devices, and services exchanging data for the benefit of users, developers, and Microsoft.

The parties agree as follows:

1. DEFINITIONS.

- (a) **“Band”** means Microsoft’s wearable device marketed as the Microsoft Band.
- (b) **“Band Application”** means a software application (including desktop, mobile or other), service, device or website developed by you that collects and displays User Data.
- (c) **“Band SDK”** means the software and documentation for the Band Software Development Kit available at <http://developer.microsoftband.com/>.
- (d) **“Band Sensors”** means the sensors exposed on the Band through the Band SDK.
- (e) **“Data”** means the data made available through the Band SDK from users for a Band Application.
- (f) **“Excluded License”** means a license that requires, as a condition of use, modification or distribution, that the code be disclosed or distributed in source code form; or others have the right to modify it.
- (g) **“Effective Date”** means the date you first use or accesses the Band SDK or any associated documents or materials.
- (h) **“Privacy Statement”** means a written document that clearly discloses to Users what is being done with Data and any additional information that may be collected, or shared by your Band Application.
- (i) **“Term”** means the period during which this Agreement is effective, which begins on the Effective Date and extends until this Agreement is terminated.
- (j) **“User”** means a registered user of Microsoft or a Band Application as applicable.

2. INSTALLATION AND USE RIGHTS.

- (a) **Installation and Use.** Subject to your compliance with this Agreement, you may (i) install and use any number of copies of the Band SDK (only when installed using the accompanying software installer package) on your computer to design, develop, and test your Band Applications that run across platforms (specifically on Windows, iOS, and Android), and that are intended for use solely in connection with the Band Sensors, Band experiences, and associated drivers and runtime software, and no other sensor unless

such sensor is supported by Microsoft; and (ii) distribute your Band Applications, subject to the terms in this agreement.

(b) Data License. Subject to your compliance with this Agreement, Microsoft grants to you a nonexclusive, revocable, sublicensable, non-transferable, royalty free license to access, copy, use and display the Data solely in connection with your Band Application.

(c) Telemetry Data Collection. When in use by you, the Band SDK will provide Microsoft with telemetry data (e.g. operating system, number of processors, graphic chipset, memory, device type, locale, time) regarding your installation and use. The data will not be used to identify specific individuals. Microsoft will use the telemetry data for product and service improvements.

(d) 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.

3. ADDITIONAL REQUIREMENTS.

(a) Distributable Code. The Band SDK contains code that you are permitted to distribute solely in the Band Applications if you comply with the terms below. The code and text files listed below are "Distributable Code."

REDIST.TXT Files. You may copy and distribute the object code form of code listed in REDIST.TXT files as part of your Band Application.

Sample Code. You may modify, copy and distribute the source and object code form of code in the Samples subdirectory as part of your Band Application.

Third Party Distribution. You may permit distributors of your Band Applications to copy and distribute the Distributable Code as part of those Band Applications.

Third Party Programs. The Band SDK may contain certain third-party programs. You agree that your use of them is governed by the license terms provided with those programs.

(b) No High Risk Use. WARNING: The Band Sensors and the Band SDK are not fault-tolerant. The Band Sensors and the Band SDK are not designed or intended for medical use or use with any program where failure or fault of any kind of the Band Sensors or Band SDK could lead to death or serious bodily injury of any person, or to severe physical or environmental damage ("High Risk Use"). You are not licensed to, and you agree not to, use, distribute or sublicense the use of the Band Sensors and/or Band SDK in, or in conjunction with, High Risk Use. High Risk Use is STRICTLY PROHIBITED. **High Risk Use includes, for example, the following: aircraft navigation and control of other modes of human mass transportation, nuclear or chemical facilities.**

(c) Distribution Requirements. For any Distributable Code you distribute, you must:

- (i) add significant primary functionality to it in your Band Applications;
- (ii) distribute Distributable Code included in a setup program only as part of that setup program without modification;
- (iii) provide Users with a Privacy Statement for your Band Application and will make this Privacy Statement available for a User's review at the time a User authorizes use of the Band Sensors with your Band Application;

- (iv) clearly state in your Band Application (as well as require your licensees to do so) the Privacy Statement regarding the collection and use of Data as well as the following statement regarding Microsoft's collection and use of Data: "Note: When using the _____ (insert name of your Band Application) with the Microsoft Band and Microsoft Health, Microsoft will collect Band sensor data, telemetry data (e.g. operating system, number of processors, graphic chipset, memory, device type, locale, time) in order to improve Microsoft products and services. The data will not be used to identify specific individuals."
- (v) clearly state in marketing materials, documentation and other materials related to the Band Application (e.g. on the webpages on which the Band Application is described or from which the Band Application may be downloaded or otherwise obtained), that it is intended for use with the Band Sensors;
- (vi) require licensees, distributors and external end users to agree to license terms that are as protective of Microsoft's rights and interests in the Distributable Code as stated in this agreement; and
- (vii) display your valid copyright notice on your Band Applications.

(d) Distribution Restrictions. You may not:

- (i) alter any copyright, trademark or patent notice in the Distributable Code;
- (ii) license the Microsoft Distributable Code in a manner inconsistent with the terms of this Agreement;
- (iii) use Microsoft's trademarks, including but not limited to Microsoft, the Band and Windows, in your Band Applications' names or in a way that suggests your Band Applications come from or are endorsed by Microsoft;
- (iv) use Data for any advertising purposes (e.g., targeted advertising based on User Data) unless such usage is expressly permitted by the Privacy Statement;
- (v) attempt or encourage others to perform wholesale export of Data for the purpose of account migration or service duplication;
- (vi) attempt or encourage others to use data scraping, Data harvesting, web crawlers, or other Data extraction methods to extract data from the Band SDK or Band Sensors;
- (vii) include Distributable Code in malicious, obscene, deceptive or unlawful programs;
- (viii) include Distributable Code for any programs designed or intended for High Risk Use;
- (ix) modify or distribute the source code of any Distributable Code so that any part of it becomes subject to an Excluded License;
- (x) access or use, or attempt to access or use, features of the Band Sensors that are not exposed or enabled by the Band SDK, use the Band SDK or any Band Applications in any High Risk Use; work around any technical limitations in the Band SDK;
- (xi) reverse engineer, decompile, or disassemble any part of the Band SDK not provided in source code form, except and only to the extent that applicable law expressly permits, despite this limitation;
- (xii) publish the Band SDK for others to copy; and
- (xiii) rent, lease, or lend the Band SDK.

4. REGULATORY COMPLIANCE. You agree that your development, marketing, sales, and distribution of the Band Applications 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.

5. ACKNOWLEDGEMENT AND WAIVER. In using the Band SDK, you must take steps to design and test your Band Applications to ensure that your Band Applications do not present unreasonable risks of personal injury or death, property damage, or other losses. Band Sensors utilize complex hardware and software technology that may not always function as intended. You must design your Band Application so that any failure of a Band Sensors and/or the Band SDK does not cause personal injury or death, property damage, or other losses. If you choose to use the Band SDK, you assume all risk that your use of the Band Sensors and/or the Band SDK causes any harm or loss, including to the end users of your Band Applications, and you agree to waive all claims against Microsoft and its affiliates related to such use (including but not limited to any claim that a Band Sensors or the Band SDK is defective) and to hold Microsoft and its affiliates harmless from such claims.

6. 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 Band Applications and the Band SDK.

7. SUPPORT SERVICES. Because this Band SDK is "as is," we may not provide support services for it.

8. EXPORT RESTRICTIONS. The Band SDK is subject to United States export laws and regulations. You must comply with all domestic and international export laws and regulations that apply to the Band SDK. These laws include restrictions on destinations, end users, and end use. For additional information, see www.microsoft.com/exporting.

9. ENTIRE AGREEMENT. This Agreement, and the terms for supplements, updates, Internet-based services and support services that you use, are the entire agreement for the Band SDK and support services.

10. APPLICABLE LAW.

(a) United States. If you acquired the Band SDK in the United States, Washington state law governs the interpretation of this agreement and applies to claims for breach of it, regardless of conflict of laws principles. The laws of the state where you live govern all other claims, including claims under state consumer protection laws, unfair competition laws, and in tort.

(b) Outside the United States. If you acquired the Band SDK in any other country, the laws of that country apply.

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. DISCLAIMER OF WARRANTY. The Band SDK is licensed "as-is." You bear all risk of using it. Microsoft gives no express warranties, guarantees or conditions. You may have additional consumer rights under your local laws that this agreement cannot change. To the extent permitted under your local laws,

Microsoft excludes the implied warranties of merchantability, fitness for a particular purpose, and non-infringement.

13. LIMITATION ON AND EXCLUSION OF REMEDIES AND DAMAGES. You can recover from Microsoft and its suppliers only direct damages up to U.S. \$5.00. You cannot recover any other damages, including consequential, lost profits, special, indirect or incidental damages.

This limitation applies to: anything related to the Band SDK, services, content (including code) on third party Internet sites, or third party programs; and claims for breach of contract; breach of warranty, guarantee, or condition; strict liability, negligence, or other tort, to the extent permitted by applicable law.

It also applies even if 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, province or country may not allow the exclusion or limitation of incidental, consequential, or other damages.