

WINDOWS® MARKETPLACE FOR MOBILE  
CUSTOMER SERVICE AGREEMENT (UPDATED AUGUST 2009)

This contract contains terms of the relationship between you and Microsoft for your use of the Windows Marketplace for Mobile service and the applications you download from the service.

**Please note that to the maximum extent permitted by law we do not provide warranties for the Windows Marketplace service. This contract also limits our liability. These terms are in [sections 13 and 14](#), and we ask you to read them carefully.**

By clicking “I accept” or by downloading an application, you agree to be bound by the terms and conditions contained in this contract and the [Standard Application License Terms](#) at the end of this contract (unless alternative application license terms are provided with the application).

Terms and Conditions

1. Windows Marketplace and Applications.
    - 1.1. Windows Marketplace means a) Microsoft’s Windows® Marketplace for Mobile service provided by Microsoft, and any successor platform provided by Microsoft, however named, through which you can browse, search, download and purchase applications for your Windows® phone running a version 6.x of the Windows Mobile® operating system and b) the Windows Marketplace website currently located at <http://marketplace.windowsphone.com>.
    - 1.2. Applications. Applications made available through Windows Marketplace are licensed, not sold, to you. For each application, Windows Marketplace will indicate the name of the application provider licensing the application to you, which may be Microsoft (“Microsoft Applications”) or a third party application provider (“Distributed Applications”).
    - 1.3. Microsoft is not a party to the license between you and the application provider of a Distributed Application. Microsoft acts an agent of the application provider in providing the Distributed Application to you. Furthermore, Microsoft is not responsible for:
      - the Distributed Application;
      - your use of the Distributed Application;
      - the content of the Distributed Application;
      - customer support for any Distributed Application or
      - any warranties or claims relating to the Distributed Application.
  2. Using Windows Marketplace.
    - 2.1. Windows Marketplace is made available for your use as soon as you have finished the sign-up process. No withdrawal right or other “cooling off” period applies to the use of Windows Marketplace service and you waive any applicable “cooling off” period, except if the law requires a “cooling off” period despite your waiver. Under your local law, a “cooling off” period may apply to your purchase of an application.
    - 2.2. The following are required to use Windows Marketplace:
      - a compatible device with Internet Access;
      - Data access plan for Internet access (fees may apply);
      - Windows Marketplace software or a compatible Internet browser, as applicable; and
      - a Windows Live ID (to download free applications or purchase applications on Windows Marketplace). For additional information, see <http://home.live.com/>.
- We may change the requirements from time to time and you are responsible for adhering to the requirements.

3. Windows Marketplace and .NET Compact Framework Software. This section 3 addresses your right to use the Windows Marketplace and .NET Compact Framework software only (“Microsoft Software”). Your use of applications purchased through Windows Marketplace is governed by the Standard Application License Terms (provided at the end of this contract) between you and the application provider (which may be Microsoft or another entity), unless alternative application license terms are provided with the application (in which case those terms shall apply).
  - 3.1. The Microsoft Software is licensed, not sold. This contract only gives you some rights to use the Microsoft Software. We reserve all other rights to the Microsoft Software. Unless applicable law gives you more rights despite this limitation, you may use the Microsoft Software only as expressly permitted in this contract. In doing so, you must comply with any technical limitations in the software that only allow you to use it in certain ways. You may not
    - work around any technical limitations in the Microsoft Software;
    - reverse engineer, decompile or disassemble the Microsoft Software, except and only to the extent that applicable law expressly permits, despite this limitation;
    - make more copies of the Microsoft Software than specified in this contract or allowed by applicable law, despite this limitation;
    - publish the Microsoft Software for others to copy;
    - rent, lease or lend the Microsoft Software;
    - transfer the Microsoft Software or this contract to any third party; or
    - use the Microsoft Software for commercial software hosting services.
  - 3.2. We may automatically check your version of the Microsoft Software. We may automatically download or send upgrades to the Microsoft Software to your Windows® phone to update, enhance and further develop Windows Marketplace, which may result in data charges from your wireless carrier.
  - 3.3. The Microsoft Software 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 Microsoft Software. These laws include restrictions on destinations, end users and end use. For additional information, see <http://www.microsoft.com/exporting>.
4. How Old Must You Be to Use Windows Marketplace? You must be at least 13 years old to use Windows Marketplace. If you are at least 13 but under the age of majority in your state or country, you should review this contract with your parent or guardian and your parent or guardian must accept this contract on your behalf.
5. In using Windows Marketplace, you will:
  - obey the law;
  - obey any codes of conduct or other notices we provide;
  - keep your service account password secret; and
  - promptly notify us if you learn of a security breach related to Windows Marketplace.
6. In using Windows Marketplace, you may not:
  - engage in, facilitate or further unlawful conduct;
  - use Windows Marketplace in a way that harms Microsoft, Microsoft’s advertisers or affiliates, application providers, or wireless carriers over whose network you access Windows Marketplace, or any customer of Microsoft or Microsoft’s advertisers or affiliates, any application provider, or any wireless carrier;

- use any automated process or service to access and/or use Windows Marketplace (such as a BOT, a spider, periodic caching of information stored by Microsoft, or “meta-searching”);
  - damage, disable, overburden or impair Windows Marketplace (or the network(s) connected to Windows Marketplace or over which Windows Marketplace runs) or interfere with anyone’s use and enjoyment of Windows Marketplace; or
  - resell or redistribute an application, or any part of an application.
7. You Are Responsible For Your Service Account. Only you may use your Windows Marketplace service account. You are responsible for all activity that takes place with your service account. You may not authorize any third party to access, use or download applications from Windows Marketplace on your behalf.
8. Purchases and Refunds.
- 8.1. Charges. This section 8 applies to purchases made from Windows Marketplace. Even if you do not pay for an application, you may still incur other charges (not covered by this Section 8) incidental to your downloading or using the application; for example, charges for Internet access or other data transmission, mobile text messaging, subscription or other usage charges for services accessed through an application.
- 8.2. Payment. When you purchase an application for which a fee is payable, you select or confirm your payment method. You must be authorized to use the payment method you select or confirm. **YOU ARE RESPONSIBLE FOR THE TIMELY PAYMENT OF ALL FEES AND FOR PROVIDING MICROSOFT WITH VALID PAYMENT METHOD INFORMATION FOR PAYMENT OF ALL FEES.** You authorize us to charge you for application purchases using your payment method. Your payment method may require us to send your charges to a third party, such as your wireless carrier or a payment processor.
- 8.3. Prices and Taxes. The price for applications excludes all taxes and phone charges (such as data charges for downloading), unless stated otherwise. You are responsible for any taxes that you are obligated to pay or that we may collect from you. You are responsible for all other charges (for example, phone charges). Currency exchange settlements are based on your contract with your payment method provider.
- 8.4. Refund Policy. Unless otherwise provided by law, refunds for purchases will be governed by either a) the refund mechanism independently provided by the application provider for Distributed Applications (if any), b) the Windows® Marketplace for Mobile Refund Policy at <http://go.microsoft.com/?linkid=9677467>, or c) the wireless carrier’s refund policy if paid for your application through your wireless carrier bill and your wireless carrier offers an alternative refund mechanism.

9. Closing Your Account, Removing or Disabling Applications. Microsoft may a) close your Windows Marketplace service account for any reason and b) remove any application from Windows Marketplace and/or disable copies of such application on your device in order to protect Windows Marketplace, application providers, its customers, wireless carriers over whose network you access Windows Marketplace, and others.

10. Content.

10.1. There are four types of content relating to Windows Marketplace:

- content Microsoft provides (“Microsoft Content”); and the following “Non-Microsoft Content”:
- content you or others submit in Windows Marketplace’s forums or reviews;
- content you or others submit through applications; and
- content you receive as part of or through an application, which may be provided by the application provider or others.

10.2. Except for Microsoft Content, you understand that

- Microsoft does not control or endorse content; and
- Microsoft does not claim ownership of nor take responsibility for content.

10.3. Windows Marketplace includes public areas accessible to the general public. If you share content with others on Windows Marketplace in public areas, then you understand and agree that others with whom you have shared content may use that content. You grant to those members of the public to whom you have permitted access free, nonexclusive permission to use, copy, distribute and display the content on their device solely in connection with Windows Marketplace. If you do not want others to have those rights, please do not share your content with them.

10.4. You understand that Microsoft may need and you authorize Microsoft to use, modify, copy, distribute and display content you post on Windows Marketplace to the extent necessary to provide Windows Marketplace. This includes:

- storing and retrieving the content;
- making the content available to you and to the general public;
- conforming to connecting networks’ technical requirements; and
- conforming to the limitations and terms of Windows Marketplace.

10.5. Please respect the rights of artists and creators. Content such as music, photos and video may be protected by copyright. People appearing in content may have a right to control use of their image. You may not share other people’s content unless you own the rights or have permission from the owner and you understand that sharing content that violates others’ copyrights and other intellectual property rights violates this contract. You represent and warrant that you have all the rights necessary for you to grant the rights in this section 10 and that the use and publication of the content does not breach any law. We will not pay you for your content. We may refuse to publish your content and may remove your content from Windows Marketplace at any time for any reason, including for breach of this contract or breach of a Windows Marketplace code of conduct.

10.6. Stock Quotes and E-mail Alerts. Stock quotes appearing on or through an application are supplied by third parties. Stock quotes may be delayed. Your receipt of quotes may be affected by delays in transmission over the Internet or a wireless network and by other causes.

## 11. Privacy.

- 11.1. In order to operate and provide Windows Marketplace, we collect certain information about you. We use and protect that information as described in the Windows Phone Privacy Statement available at <http://go.microsoft.com/fwlink/?LinkId=139850>. In particular, we may access or disclose information about you, including the content of your communications, in order to: (a) comply with the law or respond to lawful requests or legal process; (b) protect the rights or property of Microsoft or our customers, application providers and wireless carriers over whose network you access Windows Marketplace, including the enforcement of our contracts or policies governing your use of Windows Marketplace; (c) act on a good faith belief that such access or disclosure is necessary to protect the personal safety of Microsoft employees, customers, application providers, wireless carriers or the public or (d) to contact you regarding issues with the applications you have downloaded.
- 11.2. Windows Marketplace is a private computer and wireless network that Microsoft operates for the benefit of itself and its customers, application providers and wireless carriers. Microsoft retains the right to block or otherwise prevent delivery of any type of communication to or from Windows Marketplace as part of our efforts to protect Windows Marketplace, protect our customers, application providers and wireless carriers or stop you from breaching this contract. The technology or other means we use may hinder or break your use of Windows Marketplace.
- 11.3. Each time a location request is made by a Windows Marketplace application that uses location services provided by Microsoft, we will collect information about your location such as available cell tower data, Wi-Fi data, and GPS data to help the application provide features that use location and to help improve Microsoft's location services. This data may include cell tower and Wi-Fi access point identification information and their signal strength in relation to your phone. This location data is associated with a unique ID Microsoft generates for your phone. This unique ID is used to distinguish location requests in order to help improve the accuracy and performance of the location services. The unique ID is not associated with identifying information that is part of your Windows Marketplace or Windows Live ID account or profile and is not used to identify or contact you.
- 11.4. Personal information collected through Windows Marketplace may be stored and processed in the United States or any other country in which Microsoft or its affiliates, subsidiaries or agents maintain facilities. By using Windows Marketplace, you consent to any such transfer of information outside of your country. Microsoft abides by the safe harbor framework as set forth by the U.S. Department of Commerce regarding the collection, use and retention of data collected in the European Union, European Economic Area and Switzerland.

12. **How We May Change the Contract.** Microsoft may change this contract at any time. If we change this contract, we will post a notice on the Windows Marketplace website or otherwise notify you that the contract has been changed. If you do not agree to these changes, then you must cancel and stop using Windows Marketplace. If you do not stop using Windows Marketplace, then your continued use will constitute your acceptance of the changed contract, and the changed contract will apply to your use of Windows Marketplace after the date of the change.

13. **WE MAKE NO WARRANTY.** We provide Windows Marketplace and the Microsoft Software "as-is," "with all faults" and "as available." We do not guarantee the accuracy or timeliness of information available from Windows Marketplace (including reviews and forums) or any application. We and our affiliates, application providers and wireless carriers over whose network you access Windows Marketplace give no express warranties, guarantees or conditions. You may have additional consumer rights under your local laws that this contract cannot change. We exclude any implied warranties including those of merchantability, fitness for a particular purpose, workmanlike effort and non-infringement.

14. **LIABILITY LIMITATION.** Microsoft and its affiliates, application providers (unless alternative application license terms are provided with the application) and wireless carriers shall not be liable under this contract for any direct damages in excess of the amount you paid for Windows Marketplace or the application, as applicable. You cannot recover any other damages, including consequential, lost profits, special, indirect, incidental or punitive damages.

This limitation applies to anything related to:

- the Windows Marketplace service and the Microsoft Software,
- content (including code, reviews and forums), third-party programs or third-party conduct,
- viruses or other disabling features that affect your access to or use of Windows Marketplace,
- incompatibility between downloaded applications and other services, software and hardware,
- delays or failures you may have in initiating, conducting or completing any transmissions, downloads or transactions in connection with Windows Marketplace or an application in an accurate or timely manner, and
- claims for breach of contract, breach of warranty, guarantee or condition, strict liability, negligence or other tort.

It also applies even if:

- this remedy does not fully compensate you for any losses, or fails of its essential purpose; or
- Microsoft knew or should have known about the possibility of the damages.

Some states do not allow the exclusion or limitation of incidental or consequential damages, so the above limitations or exclusions may not apply to you. They also may not apply to you because your province or country may not allow the exclusion or limitation of incidental, consequential or other damages.

15. **Changes to Windows Marketplace; If We Cancel Windows Marketplace.** We may change Windows Marketplace or delete features at any time and for any reason. We may cancel or suspend access to Windows Marketplace at any time. Our cancellation or suspension may be without cause and/or without notice. Upon cancellation, your right to use Windows Marketplace stops right away. Once Windows Marketplace is cancelled or suspended, any data you have stored on Windows Marketplace may not be retrieved later, which includes backup copies of applications you may have downloaded. Our cancellation of Windows Marketplace will not alter your obligation to pay all charges made to your account.

16. **Interpreting the Contract.** All parts of this contract apply to the maximum extent permitted by law. A court may decide that we cannot enforce a part of this contract as written. If this happens, then you and we will replace that part with terms that most closely match the intent of the part that we cannot enforce. The rest of this contract will not change. This is the entire contract between you and us regarding your use of Windows Marketplace. It supersedes any prior contract or statements regarding your use of Windows Marketplace. If you have confidentiality obligations related to Windows Marketplace, those obligations remain in force (for example, if you were a beta tester). The section titles in the contract do not limit the other terms of this contract.

17. **Applicable Law.**

17.1. **United States.** If you use Windows Marketplace in the United States, Washington state law governs the interpretation of this contract 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.

17.2. Outside the United States. If you use Windows Marketplace in any other country, the laws of that country apply.

18. Assignment. We may assign this contract, in whole or in part, at any time with or without notice to you. You may not assign this contract, or any part of it, to any other person. Any attempt by you to do so is void. You may not transfer to anyone else, either temporarily or permanently, any rights to use Windows Marketplace or any part of Windows Marketplace.

19. Claim Must Be Filed Within One Year. Except to the extent prohibited under applicable law, any claim related to this contract or Windows Marketplace may not be brought unless brought within one year. The one-year period begins on the date when the claim first could be filed. If it is not filed in time, then that claim is permanently barred. This applies to you and your successors. It also applies to us and our successors and assigns.

20. Notices.

20.1. Notices and Procedure for Making Claims of Copyright Infringement. For information on Microsoft's designated agent and procedure for making copyright infringement claims, please see the Notice and Procedure for Making Claims of Copyright Infringement at <http://www.microsoft.com/info/cpyrtInfrg.htm>. ANY INQUIRY SUBMITTED THROUGH THIS PROCEDURE WHICH IS NOT RELEVANT TO A CLAIM OF COPYRIGHT INFRINGEMENT WILL RECEIVE NO RESPONSE.

20.2. Your Notices to Us. You may notify us as stated in the customer support or "help" area for Windows Marketplace. We do not accept e-mail notices.

20.3. Notices We Send You; Consent Regarding Electronic Information. This contract is in electronic form. We have promised to send you certain information in connection with Windows Marketplace and have the right to send you certain additional information. There may be other information regarding Windows Marketplace that the law requires us to send you. We may send you this information in electronic form. You have the right to withdraw this consent, but if you do, we may cancel your right to use Windows Marketplace. We may provide required information to you:

- by e-mail at the e-mail address you specified when you signed up for your Windows Live ID;
- by access to a Microsoft web site that will be designated in an e-mail notice sent to you at the time the information is available;
- by access to the Windows Marketplace software or
- by access to a Microsoft web site that will be generally designated in advance for this purpose.

Notices provided to you via e-mail will be deemed given and received on the transmission date of the e-mail. As long as you can access and use Windows Marketplace, you have the necessary software and hardware to receive these notices at the e-mail address associated with your Windows Live ID. If you do not consent to receive any notices electronically, you must stop using Windows Marketplace.

20.4. Copyright and Trademark Notices. All contents of Windows Marketplace (except Non-Microsoft Content) are Copyright © Microsoft Corporation, One Microsoft Way, Redmond, Washington 98052 U.S.A. All rights reserved. Copyright and other intellectual property laws and treaties protect any software or content provided as part of Windows Marketplace. We or our application providers and wireless carriers own the title, copyright and other intellectual property rights in the software or content. Microsoft, Windows, Windows Mobile, Windows logo, Windows Marketplace, Windows Marketplace logo, Windows® phone and/or other Microsoft products and

services referenced in Windows Marketplace may also be either trademarks or registered trademarks of Microsoft in the United States and/or other countries. The names of actual companies and products mentioned in Windows Marketplace may be the trademarks of their respective owners. Any rights not expressly granted herein are reserved.

20.5. Financial Notice. Microsoft is not a broker/dealer or registered investment advisor under United States federal securities law or securities laws of other jurisdictions, and does not advise individuals as to the advisability of investing in, purchasing or selling securities or other financial products or services. Nothing contained in Windows Marketplace or an application constitutes an offer or solicitation to buy or sell any security. Microsoft does not endorse or recommend any particular financial products or services. Nothing contained in Windows Marketplace is intended to constitute professional advice, including but not limited to, investment, legal or tax advice.

21. Support. Customer support for Windows Marketplace is available at <http://go.microsoft.com/?linkid=9677468>.

## STANDARD APPLICATION LICENSE TERMS (UPDATED APRIL 2009)

### WINDOWS MARKETPLACE FOR MOBILE

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

- updates and
- supplements

for the Application, unless other terms accompany those items. If so, those terms apply.

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

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

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**In this agreement "Application Provider" means the entity licensing the Application to you. If you download a Microsoft Application, then the Application Provider is Microsoft (or based on where you live, one of its affiliates). If you download an Application provided by an entity other than Microsoft, then that entity is the Application Provider.**

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

#### **1. INSTALLATION AND USE RIGHTS.**

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

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

- a. Consent for Internet-Based or Wireless Services.** The Application may connect to computer systems over an Internet-based wireless network. In some cases, you will not receive a separate notice when they connect. Using the application operates as your consent to the transmission of standard device information (including but not limited to technical information about your device, system and application software, and peripherals) for internet-based or wireless services.

- b. Misuse of Internet-based Services.** You may not use any Internet-based service in any way that could harm it or impair anyone else's use of it or the wireless network. You may not use the service to try to gain unauthorized access to any service, data, account or network by any means.

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

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

- publish or otherwise make the Application available for others to copy;
- rent, lease or lend the Application; or
- transfer the Application or this agreement to any third party.

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

**11. LIMITATION ON AND EXCLUSION OF REMEDIES AND DAMAGES.**

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

This limitation applies to

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

It also applies even if

- repair, replacement or a refund for the Application does not fully compensate you for any losses; or

- Distributor knew or should have known about the possibility of the damages.