

VENDOR PASS-THROUGH TERMS

UNITY TECHNOLOGIES RESELLER PASS-THROUGH TERMS

Vendor:	UNITY TECHNOLOGIES SF
Product(s):	Unity Offerings distributed by TD SYNEX
Version:	July 1, 2024
Territories:	European Economic Area (EEA), Andorra, Switzerland, United Kingdom, Middle East and Africa.

In addition to the Terms and Conditions (available at eu.tdsynnex.com/terms-and-conditions) and the Country Specific Terms (available at eu.tdsynnex.com/country-specific-terms-of-sale) these terms and conditions (“**Vendor Pass-Through Terms**”) apply to the purchase or licensing, as applicable, of Vendor Products (as set out above) by Buyer from TD SYNEX.

By purchasing or licensing, as applicable, the Vendor Products from TD SYNEX, Buyer agrees to these Vendor Pass-Through Terms, which shall form a part of the Agreement between TD SYNEX and Buyer.

To the extent required under these Vendor Pass-Through Terms, Buyer will flow down such terms to its customer in its agreements with such customer.

Vendor may amend these Vendor Pass-Through Terms from time to time. In such case, TD SYNEX will publish the updated terms on its website at: eu.tdsynnex.com/vendor-pass-through-terms. Buyer agrees to be bound by such updated pass-through terms. It is Buyer’s responsibility to check such link from time to time.

In case of conflicts between these Vendor Pass-Through Terms and the Terms and Conditions or the Country Specific Terms, the Vendor Pass-Through Terms shall prevail.

Unless agreed otherwise in the following for the purposes of these Vendor Pass-Through Terms, capitalized terms shall have the meaning given in the Agreement.

The Vendor Pass-Through Terms are made in English. This English language version shall be controlling in all respects and shall prevail in case of any inconsistencies with translated versions, if any.

Subject to the following terms Buyer may resell or distribute Unity’s software and services offerings which currently include a rendering engine, animation system and tools, workflows and editor, and other products and related services. For the purposes of these Vendor Pass-Through Terms, “you,” “your” and “Partner” will refer and apply to Buyer.

Exhibit A: Marketing and Trademark Usage Guidelines is agreed by the Parties and incorporated into this Agreement.

1. End User Terms, Trademark License and Ownership

- 1.1 End User Terms. You acknowledge that each End User will be required to accept the applicable terms and conditions for the purchased Unity Offerings which are currently found on or linked from Unity's "Legal" webpage: unity3d.com/legal, as a condition to Unity's performance of the applicable Unity Services and/or in advance of downloading, installing, or otherwise using the Unity Software or Third-Party Products. You will not modify or tamper with such terms and will not permit an End User to do so. For clarity, such Terms of Service shall be by and between the End User and Unity, or (for Third Party Products) between the End User and an applicable third party.
- 1.2 NFR Software. From time to time, Unity or TD SYNEX may provide you with licenses for Unity Offerings that are not for resale ("**NFR Software**"). Subject to the terms of this Agreement and your compliance with the TOS, Unity grants you a non-exclusive, non-transferable, non-assignable, non-sublicensable, revocable, limited license to use the NFR Software solely for the non-production purposes of demonstrations and internal training purposes.
- 1.3 Trademark License. Conditioned on your compliance with the terms and conditions of this Agreement, Unity hereby grants to you a non-exclusive license, during the Term of this Agreement, to use the Unity Marks and, if applicable, the Third Party Marks, solely in connection with your marketing, promotion, and resale of the Unity Offerings. Any use of a Unity Mark or Third-Party Mark by you is subject to prior approval by Unity, and (a) must be in compliance with this Agreement, including Section 2.2, (b) must correctly attribute ownership of such mark to Unity or the third party, as applicable, and (c) must be in accordance with applicable law and Unity's and/or the applicable third party's then-current trademark usage guidelines. You acknowledge and agree that: (i) Unity owns the Unity Marks and that any and all goodwill and other proprietary rights that are created by or that result from your use of a Unity Mark hereunder inure solely to the benefit of Unity, and (ii) the applicable third party owns the Third Party Marks and that any and all goodwill and other proprietary rights that are created by or that result from your use of a Third Party Mark hereunder inure solely to the benefit of such third party. You will at no time contest or aid in contesting the validity or ownership of any Unity Mark or Third-Party Mark or take any action in derogation of Unity's or the applicable third party's rights therein, including, without limitation, applying to register any trademark, trade name or other designation that is confusingly similar to any Unity Mark or Third-Party Mark.
- 1.4 Ownership. All rights, title and interest, including without limitation all intellectual property rights, in and related to the Unity Offerings and all improvements, derivative works and modifications thereof, are solely owned by and shall remain with Unity, its Affiliates, and its licensors and suppliers. You acknowledge and agree that you have no proprietary rights by virtue of this Agreement, except those contractual rights that are expressly set forth herein. You shall not, and shall not permit any third party to, copy, make copies of, translate, localize, disassemble, decompile, reverse engineer, attempt to discover the source code of, modify, create derivative works of and/or in any way change any part of the Unity Offerings, including without limitation any notices and trademarks. However, the parties hereto may execute an Amendment to this Agreement to grant you a limited license to translate certain end-user documentation, sales collateral and marketing materials for certain Unity Offerings.
- 1.5 Limited Rights. Your rights in the Unity Offerings, Unity Marks and Third-Party Marks are limited to those expressly granted in this Section 1. Unless otherwise set forth in an Exhibit to this Agreement, you shall not appoint any other person, firm, or entity as a reseller, sub-distributor or agent for the Unity Offerings. You shall not, for itself, any affiliate of you or any third party: sell, sublicense, assign, or transfer the Unity Offerings, except as permitted under this Agreement; or copy the Unity Offerings except to the limited extent permitted by applicable and mandatory national law. Unity reserves all other rights, title and interest in and to the Unity Offerings, Unity Marks and Third-Party Marks not expressly granted to you under this Agreement. You will use its reasonable efforts to protect Unity's Intellectual Property Rights in the Unity Offerings and will promptly report to Unity any infringement or other violation of such rights of which you become aware.

2. BUYER OBLIGATIONS

- 2.1 Business Practices. You will: (a) conduct business in a manner that reflects favorably at all times on the Unity Offerings and the good name, goodwill and reputation of Unity; (b) make no false or misleading representations with regard to Unity or the Unity Offerings; (c) make no representations, warranties or guarantees with respect to the specifications, features or functionality of the Unity Offerings that are inconsistent with this Agreement, the TOS or other applicable terms, or the literature distributed by Unity; and (d) not directly or indirectly sell any products or services which any legal proceeding of competent jurisdiction has made a final determination to be infringing of the intellectual property rights of Unity. You agree and represent that all third-party agreements and arrangements concerning the Unity Offerings shall state that Unity, its Affiliates and its licensors are the intended beneficiaries of and are entitled to enforce those agreements and shall not state terms inconsistent with the terms and conditions of this Agreement. Other than as permitted hereunder, you shall refrain from (i) entering into any agreement or arrangement with any third party which imposes any legal obligation or liability of any kind whatsoever on Unity; (ii) signing Unity's name to any commercial paper, contract or other instrument; or (iii) incurring any debt to a third-party

payable by Unity. You acknowledge and agree that you shall be responsible for any license keys received pursuant to this Agreement. Any misuse of such license keys, such as, by way of example only, the reselling of a single license key to multiple End Users, shall be considered a material breach of this Agreement.

2.2 Minimum Obligations.

- a) **Marketing.** You shall, at your own expense, use your best efforts to market and promote the Unity Offerings to End Users in the Territory, including by: (a) promoting the Unity Offerings at trade shows that you attend; (b) listing the Unity Offerings in your product lists and your other marketing materials; and (c) advertising the Unity Offerings in trade journals, magazines, and other appropriate publications. You shall use the Unity Marks and conduct any and all marketing activities in accordance with instructions from Unity and Unity's then current marketing policies, which Unity may revise at its discretion. You agree to cooperate with Unity in facilitating Unity's monitoring and control of the nature and quality of the marketing materials and to supply Unity with specimens of use of the Unity Marks upon request.
- b) **Support.** You will provide End Users with direct limited installation and download support services (but not technical support services) for the Unity Offerings. Unity's instructions for downloading the Unity Offerings are available to you upon request. Except as expressly specified in the Terms or as otherwise agreed to in writing by the parties, Unity will have no obligation to provide maintenance or support services to End Users. You will notify Unity immediately in the event that you are unable to respond effectively to any End-user request for support.

2.3 Prohibition of Similar Trademarks, Domain Names and Paid Search Terms. You shall not adopt, use, register, make an application for or attempt to register anything similar to a Unity Mark, or any trademark or other marketing name or acronym of Unity, Unity3d, or any confusingly similar mark, uniform resource locator (URL), Internet domain name or symbol as part of your own name or the name of any of its affiliates or as the name of any product it markets. You shall not purchase paid advertising using Unity, Unity3D or any other Unity trademark or similar word as a paid search term.

2.4 Dealing in Pirated or Secondhand Unity Products. You agree that you shall not during the Term participate or have any kind of interest whether on your own or through third parties, in the purchase, production, marketing, sale, or distribution of any Pirated Unity Products or Secondhand Unity Products. "**Pirated Unity Products**" shall mean any product or media containing a software program which has been copied without the prior authorization of the copyright owner. "**Secondhand Unity Products**" shall mean Unity Products that have been previously purchased by an End User.

3. **Audit and Compliance**

3.1 Privacy Law. You shall comply with all privacy rules and regulations applicable within the Territory, and with Unity's privacy policy available at www.unity3d.com/legal/privacy-policy (the Unity "**Privacy Policy**"), while carrying out your obligations under this Agreement. You agree and will ensure by obtaining all required consents in accordance with applicable law, that Unity has the right to receive, collect, retain and use data collected from End Users to deliver the Unity Products and otherwise in accordance with the terms of its Privacy Policy.

3.2 Requirements. You shall meet the following requirements (the "Requirements"):

- a) Refrain from taking any action which would cause Unity to be in violation of the U.S. Foreign Corrupt Practices Act ("FCPA"), the U.K. Bribery Act, or any other anti-corruption law or regulation of any countries where you do business (the "Anti-Corruption Laws"). Upon written request, you agree to provide periodic certifications in writing that neither you nor any of your representatives have made, promised, offered, authorized, or is aware of any improper payments to a government official or any other person.
- b) You will not offer, pay, promise, give, or authorize to offer, pay, promise or give, anything of value, either directly or indirectly, to anyone for the purpose of improperly influencing any act or decision in such person's official capacity, or inducing them to use their influence improperly to obtain, retain or direct business to any person.
- c) You represent and warrant that to the best of your knowledge, none of your officers, directors, agents, employees, consultants, shareholders, proxyholders, or suppliers is a government official or a family member of a government official who is in a position to influence or improperly benefit from any transaction involving Unity products and services. You undertake to immediately notify Unity if changes to the above occur.
- d) You undertake to immediately notify Unity if you become aware of any violation of the Anti-Corruption Laws and to fully cooperate in good faith in any investigation by Unity into allegations of violation of the Anti-Corruption Laws.
- e) You will indemnify TD SYNEX and/or Unity for any losses, damages, fines, penalties whatsoever which

TD SYNnex and/or Unity may suffer or incur arising out of any violation of the Anti-Corruption Laws.

- f) Unity products, software, and technology may be subject to US and other applicable export laws, executive orders, regulations and requirements including export controls administered by the U.S. Commerce Department's Bureau of Industry and Security and economic sanctions administered by the U.S. Treasury Department's Office of Foreign Assets Control, including those related to sanctioned parties, or embargoed countries or restricted end-users and end-uses (including nuclear, chemical or biological weapons or missile proliferation). You agree to comply with all applicable laws and regulations and obtain any required export authorizations, licenses or other approvals and file any reports that may be required.
- g) You shall provide, pay for, be responsible for, and keep in good standing all licenses, exemptions, permits or other applicable approvals pertaining to your activities. You shall comply with all applicable laws and regulations, including without limitation federal, state, local and foreign laws and regulations, pertaining to its distribution of the Unity Offerings and its obligations and activities under this Agreement.
- h) You will keep complete and accurate books and records regarding all Unity-related business, including all transactions, expenses, electronic records and original and supporting documentation relating to sale, marketing, maintenance and disposition of all Unity products and services.
- i) Upon notice to you and solely to ensure compliance with these terms, TD SYNnex and Unity shall have the right to audit you and your records, during regular business hours and in such a manner as to not unreasonably interfere with your normal business activities. You will maintain complete and accurate records directly relating to the resale of the Unity Offerings for two (2) years from the date of sale or purchase of all products and services. In the event the results of the audit show that you are in breach of or are violating any of these terms TD SYNnex and Unity may pursue damages or other remedies available under law and equity.

4. WARRANTY.

UNITY MAKES NO WARRANTIES OR REPRESENTATIONS TO BUYER OR TO ANY OTHER PARTY REGARDING ANY UNITY OFFERINGS, EXCEPT FOR THE EXPRESS WARRANTIES, IF ANY, MADE TO THE END USER IN THE TERMS OR APPLICABLE TERMS. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, UNITY DISCLAIMS ALL OTHER WARRANTIES AND REPRESENTATIONS, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT, AND ANY WARRANTIES ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE. YOU WILL NOT MAKE ANY WARRANTIES OR REPRESENTATIONS IN UNITY'S NAME OR ON UNITY'S BEHALF. YOU SHALL BE SOLELY RESPONSIBLE FOR ANY CLAIMS, WARRANTIES OR REPRESENTATIONS MADE BY YOU WHICH DIFFER FROM OR ARE IN ADDITION TO THE WARRANTY PROVIDED BY UNITY IN THE TERMS OR OTHER APPLICABLE TERMS.

5. LIMITATION OF LIABILITY

5.1 **Total Liability.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, AGGREGATE, CUMULATIVE LIABILITY TO YOU UNDER THIS AGREEMENT, FROM ALL CAUSES OF ACTION RELATED TO THESE VENDOR PASS-THROUGH TERMS AND UNDER ALL THEORIES OF LIABILITY (WHETHER IN CONTRACT, TORT, UNDER STATUTE, OR OTHERWISE), WILL BE LIMITED TO THE PAYMENTS ACTUALLY RECEIVED FROM YOU FOR THE SPECIFIC ORDER(S) OF PRODUCTS AND/OR SERVICES FROM WHICH THE LIABILITY ARISES (WHERE APPLICABLE), AND IN NO EVENT SHALL SUCH TOTAL LIABILITY EXCEED THE PAYMENTS ACTUALLY RECEIVED FROM YOU FOR THE RELEVANT UNITY OFFERINGS DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE DATE OF THE EVENT GIVING RISE TO ANY LIABILITY. YOU AGREE THAT SUCH AMOUNT IS SUFFICIENT TO SATISFY THE ESSENTIAL PURPOSE OF THE PROVISIONS OF THIS AGREEMENT AND THAT SUCH A LIABILITY IS A FAIR AND REASONABLE ESTIMATE OF ANY LOSS AND DAMAGE LIKELY TO BE SUFFERED IN THE EVENT OF ANY WRONGFUL ACT OR OMISSION.

5.2 **Exclusion of Damages.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL TD SYNnex AND UNITY OR ITS AFFILIATES BE LIABLE TO YOU FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOSS OF USE, LOSS OF DATA OR LOSS OF GOODWILL), ANY THIRD PARTY CLAIMS, OR THE COSTS OF PROCURING SUBSTITUTE PRODUCTS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE USE OR PERFORMANCE OF THE UNITY OFFERINGS, WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED UPON BREACH OF CONTRACT, BREACH OF WARRANTY, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE, AND WHETHER OR NOT UNITY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. THE PARTIES HAVE AGREED THAT THESE LIMITATIONS WILL SURVIVE AND APPLY EVEN IF ANY

LIMITED REMEDY SPECIFIED IN THIS AGREEMENT IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE. BUYER AGREES THAT THE PRICE OF THE UNITY OFFERINGS REFLECT THIS ALLOCATION OF RISK. BUYER ACKNOWLEDGES AND AGREES THAT THE FOREGOING LIMITATIONS OF LIABILITY AND DISCLAIMERS FORM AN ESSENTIAL ELEMENT OF THIS AGREEMENT, WITHOUT WHICH TD SYNEX AND UNITY WOULD NOT HAVE ENTERED INTO THE TRANSACTIONS CONTEMPLATED HEREIN.

6. GENERAL

- 6.1 Indemnification. You will defend or settle, indemnify and hold TD SYNEX, Unity and its Affiliates harmless from any liability, damages and expenses (including court costs and reasonable attorneys' fees) arising out of or resulting from any third-party claim based on or otherwise attributable to: (i) the activities of you, its employees, agents or contractors under this Agreement, (ii) your gross negligence or intentional misconduct; (iii) any misrepresentations made by you with respect to Unity, the Unity Offerings; or (iv) breach of any representation, warranty or covenant contained in this Agreement.
- 6.2 Export Control. You will comply fully with all relevant export laws and regulations of the United States ("**Export Laws**") to ensure that neither the Unity Offerings nor any technical data related thereto is: (i) exported or re-exported directly or indirectly in violation of Export Laws; or (ii) used for any purposes prohibited by the Export Laws, including, but not limited to, nuclear, chemical, or biological weapons proliferation.
- 6.3 U.S. Government Rights. The Unity Offerings and computer software documentation ("**Documentation**") are "commercial items" as that term is defined in the Federal Acquisition Regulation ("FAR") 2.101, consisting of "commercial computer software" and "commercial computer software documentation," respectively, as such terms are used in FAR 12.212 and DFARS 227.7202. If acquired by or on behalf of a civilian agency, the U.S. Government acquires or will acquire the Unity Offerings and/or Documentation and other technical data subject to the terms of this Agreement as required in 48 C.F.R. 12.212 (Computer software) and 12.211 (Technical Data) of the FAR and its successors. If acquired by or on behalf of any agency within the Department of Defense ("DOD"), the U.S. Government acquires or will acquire the Unity Offerings and/or Documentation subject to the terms of this Agreement as specified in 48 C.F.R. 227.7202-3 of the DOD FAR Supplement ("DFARS") and its successors. This U.S. Government Rights clause is in lieu of, and supersedes, any other FAR, DFARS, or other clause or provision that addresses Government rights in computer software or technical data.

7. DEFINITIONS

- 7.1 "**Affiliate**" means an entity which controls, is controlled by or is under common control with a party hereto, where "control" means the power to control the composition of the board of directors of the relevant party (whether by contract, corporate law or other means), or the possession of more than half of the voting equity share capital of the relevant party, or the ability to consolidate such company's financial statements with those of such party in accordance with generally accepted accounting principles.
- 7.2 "**Distributor**" means an entity authorized by Unity to distribute Unity Offerings to Resellers and End Users within a defined Territory in accordance with the Distribution Agreement.
- 7.3 "**End User**" means a customer of you that acquires the Unity Offerings for its own internal use, and not for further resale or distribution.
- 7.4 "**Intellectual Property Rights**" means patent rights (including, without limitation, patent applications and disclosures), copyrights, trade secrets, trademarks, know-how and any other intellectual property rights recognized in any country or jurisdiction in the world.
- 7.5 "**Reseller(s)**" means individual or organizational partners and resellers of Unity Offerings authorized by Unity individually or through a distributor, to market, promote, sell and/or deliver (including through performance) the Unity Offerings directly to End Users.
- 7.6 "**Territory**" means the geographical locations and/or vertical markets wherein you are authorized to exercise its rights hereunder.
- 7.7 "**Third Party Marks**" means the applicable Third-Party Product name and all other trademarks, service marks, logos or trade names used by the applicable third party to identify itself and/or its products that have been provided to you for use hereunder.
- 7.8 "**Third Party Products**" means the various software products developed by third parties for which Unity and TD SYNEX is authorized to appoint you to resell to End Users hereunder. Third-party products are subject to the applicable Third-Party Terms.

- 7.9 “**Third Party Terms**” means the terms and conditions associated with a particular Third-Party Product, which are typically found on or linked from Unity’s “Legal” webpage: unity3d.com/legal.
- 7.10 “**TOS**” or “**Terms of Service**” means Unity’s online terms of service for the applicable Unity Offerings as set forth on Unity’s Legal page found on or linked from Unity’s “Legal” webpage: unity3d.com/legal.
- 7.11 “**Unity**” means Unity Technologies SF, an entity duly organized and existing under the laws of the United States of America, with a primary place of business at 30 3rd Street, San Francisco, CA 94103.
- 7.12 “**Unity Initiated Opportunity**” or “**Paperwork Transaction**” means deals that are initiated, scoped, and or substantially led by Unity personnel but which you process or complete the order form, contract, or other sales documentation.
- 7.13 “**Unity Marks**” means the name “**Unity**,” as well as any partner badge and all other trademarks, service marks, logos or trade names used by Unity to identify itself and/or its products and services that have been provided to you for use hereunder.
- 7.14 “**Unity Offerings**” means the software and services offerings you are authorized to resell which may be amended from time to time.

Exhibit A

Marketing & Trademark Usage Guidelines

Unity Badge for Partners

The Unity badge for Resellers (the “**Unity Reseller Badge**”), is a seal of approval to you from Unity (hereinafter referred to as “**Unity**”). This comes with benefits as well as responsibilities. When you are authorized or certified in your region of business or vertical expertise, you also represent Unity. By following the Guidelines (as defined below), you reap the benefits of the Unity identity. Unity grants you a non-exclusive, non-sublicensable, non-transferable right to use the Unity Partner Badge in the Territory during the Term of the Agreement, subject to your continued compliance with the Guidelines.

Unity reserves the right to withdraw permission to use a Unity Reseller Badge or logo at any time if the use of the Unity Reseller Badge is inconsistent with these guidelines or is otherwise deemed inappropriate by Unity. Unity Reseller Badges and logos cannot be used in connection with any communications that do not meet the criteria outlined in this Agreement.

Unity Guidelines Requirements

Unity has provided and you have received a copy of the current Unity Reseller Logo and Badge Guidelines. You must comply with the Reseller Logo and Badge Guidelines, as well as any additional guidelines for using Unity trademarks, copyrights, and other applicable guidelines found at <http://www.unity3d.com/legal>, <http://unity3d.com/public-relations/brand>, and <https://brandguide.brandfolder.com/unity/badges> any successor site or other relevant Unity website as notified to you (collectively, the “**Guidelines**”). In the event such Guidelines conflict with the terms and conditions of this Exhibit B, such Guidelines will supersede all or portions of this Exhibit B. Unity retains the right to periodically amend the Guidelines in its sole discretion, and such Guidelines are incorporated hereto by reference.

You must follow the Guidelines when publicizing its relationship with Unity in any and all communications.

Unity Partner Promo Events and User Group Identity Guidelines

Beyond its own events, you are also encouraged to market the Unity Products to industry user groups and meet-ups. The Unity Mark or the Unity Partner Badge may be used in marketing communications adhering to the Guidelines. Unity Marks or the Unity Partner Badge must always be placed in a layout position that is secondary to your event or user group identity as an industry group.

Unity Partner Identity Guidelines for Social Media Requirements

You may market Unity on social media pages such as Facebook, Google+ and Twitter, adhering to the Unity Reseller Badge policy and the Guidelines. You acknowledge and agree that Unity may seek to retain the right to take over any third-party social media groups or meet-up pages, at any time, at its sole discretion, and you shall relinquish any such third-party social media page or group upon Unity’s request. Unity Marks or a Unity Reseller Badge must always be placed in a layout position that is secondary to your event or user group identity as an industry group.