

Weather Company Operations Dashboard

本「服務說明」說明本「雲端服務」之內容。適用之訂購文件提供 貴客戶訂單有關計價及其他詳細資料。

1. 雲端服務

1.1 供應項目

貴客戶得從下列可用供應項目選取其所要供應項目。

1.1.1 Weather Company Operations Dashboard

IBM Cloud Service for Weather Company Operations Dashboard (雲端服務) 採用應用程式介面及 Web 型與行動式應用程式，可讓 貴客戶接收「資料」。所稱「資料」，係指透過本「服務說明」所載「雲端服務」交付之氣象資料及市場特定資料型 (包括但不限於預報、地圖、警示及圖形)。

1.2 選用服務

下列供應項目為 Weather Company Operations Dashboard 之選用附加程式。

1.2.1 Weather Company Operations Dashboard for Ground Transportation

本套件內含對下列「資料」之存取權限：

元件	說明
Weather Company Operations Dashboard for Ground Transportation Add-on	本服務為平板電腦、手機及電腦適用之行動式與 Web 型應用程式，可提供對氣象及交通服務所為之本地化、互動式及可回應之存取，俾使保有行動式資產之公司得以結合即時見解、預測見解及警示，以做出重要商業決策，並提升作業效率。

1.2.2 Weather Company Operations Dashboard for Retail

本套件內含對下列「資料」之存取權限：

元件	說明
Weather Company Operations Dashboard for Retail Add-on	本服務為平板電腦、手機及電腦適用之行動式與 Web 型應用程式，可提供對氣象及交通服務所為之本地化、互動式及可回應之存取，俾使保有行動式資產之公司得以結合即時見解、預測見解及警示，以做出重要商業決策，並提升作業效率。

1.2.3 Weather Company Operations Dashboard for Oil & Gas

本套件內含對下列「資料」之存取權限：

元件	說明
Weather Company Operations Dashboard for Oil & Gas Add-on	本服務為平板電腦、手機及電腦適用之行動式與 Web 型應用程式，可提供對全球氣象及其他相關資料集所為之本地化、互動式及可回應之存取，俾使在全球任何地方保有保有資產之石油與天然氣公司得以結合即時見解、預測見解及警示，以做出重要商業決策，並提升作業效率。
Weather Company Operations Dashboard for Oil & Gas - Sites	本服務可於行動式與 Web 型應用程式，對由 貴客戶所購雷達提供之資料進行即時整合。貴客戶可購買一部或多部雷達，所安裝之資料傳回 IBM，經處理後，即可於行動式與 Web 型應用程式即時提供已處理資料。

元件	說明
Weather Company Operations Dashboard for Oil & Gas with Radar	本服務為平板電腦及手機適用之行動式與 Web 型應用程式，可對全球氣象資料及由 貴客戶所購一部或多部雷達提供之即時資料為本地化、互動式及可回應之存取。雷達可安裝於全球任何地方，並可作為在全球偏遠地區提供珍貴即時資料之一種方式。此外，其他相關資料集亦已視覺化，俾使在全球任何地方保有資產之石油與天然氣公司得以結合即時見解、預測見解及警示，以作成重要商業決策，並提升作業效率。

1.2.4 Weather Company Operations Dashboard Solution Systems

本套件內含對下列項目之存取權限：

元件	說明
Weather Company Operations Dashboard for Oil & Gas - Radar System	本 Radar System 包含「程式」、「獨立授權程式碼」及 HP 系統（此為非 IBM 機器）係連同 貴客戶所購雷達一併售出。本 Radar System 連接至前揭雷達後，可讀取雷達所記錄之即時資料，並將其傳回 IBM。

2. 資料處理及保護 Data Sheet

「IBM 之資料處理附錄」（網址：<http://ibm.com/dpa>）(DPA) 及「資料處理及保護 Data Sheet」（稱為 Data Sheet 或「DPA 附件」）（如以下鏈結所示）提供有關「雲端服務」之其他資料保護資訊，以及有關可能處理之「內容」類型、所涉及之處理活動、資料保護特定功能 (features) 及「內容」保留與歸還相關細節等事宜之選項。若歐盟一般資料保護規章 (EU/2016/679) (GDPR) 適用於「內容」所含個人資料，則於其適用的範圍內，適用前揭 DPA。

<https://www.ibm.com/software/reports/compatibility/clarity-reports/report/html/softwareReqsForProduct?deliverableId=BFF1AB404A4311E79342EA59690D4322>

3. 服務水準及技術支援

3.1 服務水準協定

IBM 為 貴客戶提供下列可用性服務水準協定 (SLA)。IBM 將就本「雲端服務」累計可用度依最高可適用度進行補償，如下表所示。可用度百分比之計算方式如下：合約月份中的總分鐘數減去合約月份中「服務停用」之總分鐘數，除以合約月份之總分鐘數。「服務停用」定義、請求的處理及如何洽詢 IBM 有關服務可用度問題，載明於「IBM 雲端服務」支援手冊（網址：

https://www.ibm.com/software/support/saas_support_overview.html）。

可用性	扣抵 (每月訂用費用之 %*)
小於 99.9%	2%
小於 99.0%	5%
小於 95.0%	10%

* 訂用費用為請求所主張當月之約定價格。

3.2 技術支援

於 IBM 支援手冊（網址：<https://www.ibm.com/support/home/pages/support-guide/>）中選取本「雲端服務」，即可找到本「雲端服務」之技術支援（包括支援聯絡人詳細資料、嚴重性層次、可用支援時數、回應時間及其他支援資訊與處理程序）。

4. 費用

4.1 計費度量

本「雲端服務」之計費度量載明於「交易文件」中。

下列計費度量適用於本「雲端服務」：

- 「授權使用者」係指被授權透過任何方法以任何直接或間接方式（例如：透過多工程式、裝置或應用程式伺服器）存取「雲端服務」之特定使用者。
- 「客戶裝置」係指對存取「雲端服務」之伺服器環境要求或從之接收執行指令、程序或應用程式之裝置。
- 「實體 ID」係指「雲端服務」內所指明實體之唯一識別碼。
- 「實例」是對「雲端服務」特定配置所為之各次存取。
- 「總收益（美元）」係為 貴客戶所發佈最新公開報告所載 貴客戶每年銷售額及其他收入來源之總額，如為上市公司，則以 貴客戶業經稽核之最新財務報告為準。非美元貨幣依下列網站所示轉換單位表轉換為等值美元：http://www.ibm.com/software/passportadvantage/conversion_unit_table.html。

5. 其他條款

於 2019 年 1 月 1 日前簽署之「雲端服務合約」（或性質相當的基本雲端合約），適用 <https://www.ibm.com/acs> 所載明之條款。

5.1 查核

貴客戶應履行下列事項：i) 持續保留記錄，並在 IBM 認為合理必要情形時，依 IBM 要求而提供記錄及系統工具輸出資料，以利 IBM 及其獨立稽核人驗證 貴客戶是否遵循「本合約」；及 ii) 立即訂購必要授權，並依 授權人當時費率支付該等授權所需費用，及其他費用與義務。前述循規驗證義務於本「雲端服務」期間及其後二年內有效。

5.2 啟用軟體

本「雲端服務」內含下列啟用軟體：

- BOOST
- BSD-3 CLAUSE
- MIT
- Microsoft Windows

下列啟用軟體依下列條款之規定提供予 貴客戶：

Weather Company Operations Dashboard for Android	https://www-03.ibm.com/software/sla/sladb.nsf/displayLls/11DE6B4E0088700C8525827F003B2CEB?OpenDocument
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5.3 服務之終止

於 貴客戶之訂用到期或終止時， 貴客戶據以存取本「雲端服務」之認證將予刪除。

5.4 使用之國家/地區限制

貴客戶應負責判斷其對「資料」之使用是否被許可，且應於必要時向其操作或使用「內容」所在國家/地區之政府機關（構）取得一切必要之許可證明、權限、核准或授權，IBM 依本「服務說明」所負義務之前提條件，係取決於 貴客戶對「資料」之使用是否被許可及是否取得該等必要之許可證明、權限、核准或授權。

5.5 依現狀之材料 (materials)

所有交通資訊及其相關資訊、預報及警示，悉「依現狀」提供，IBM 對於該等材料之精確度、可靠性、完整性或可用性，不負任何責任。

5.6 Weather Company Operations Dashboard Solution Systems 附加條款

5.6.1 程式授權

「程式」係指為給予授權而提供之 IBM 廠牌電腦程式及相關著作物，視所付費用而定。「程式」不包括「機器碼」或「專案著作物」（「附件」可能訂有該等用詞之定義）。「程式」為享有著作權保護之著作且僅授權使用（非出售）。於 IBM 接受「程式」之訂單時，貴客戶被授與非專屬性授權，以行使下列行為：a) 僅限依「程式」之授權範圍使用「程式」，並受本「服務說明」、「合約」及任何相關「交易文件」之拘束；b) 製作及安裝複本以支援該項授權使用；及 c) 製作備份複本。貴客戶與獲得授權使用之貴客戶員工及承包商，均僅得於貴客戶之「企業」內使用「程式」，且不得以提供機器代管 (hosting) 或分時 (timesharing) 服務方式使第三人使用「程式」。貴客戶不得再授權、讓與或轉讓任何「程式」之授權。另亦可能提供額外權利，惟需收取額外費用或依據不同條款。貴客戶並未取得無限制 (unrestricted) 之「程式」使用權利，貴客戶支付之費用亦非該「程式」之全部經濟價值。若干「程式」可能包含以下所載之另依個別合約規定而授權之第三人程式碼。

「程式」之授權以貴客戶遵守下述義務為條件：

- a. 重製著作權聲明及其他標示；
- b. 確保任何使用「程式」之人僅在貴客戶授權範圍內使用並遵守授權條款；
- c. 不對本「程式」進行逆向組譯、逆向編譯、翻譯或逆向還原；及
- d. 不得將「程式」或相關授權著作物之元件/元素 (elements) 與「程式」分開使用。

除貴客戶之「合約」另有規定者外，下列條款適用之：

- e. 收費、稅捐、付款及循規驗證

貴客戶應履行下列事項：i) 在適用情形下，應維護並依要求而提供必要之記錄、系統工具輸出及允許進出貴客戶所在處所，以利 IBM 及其獨立稽核員查核貴客戶是否遵循「本合約」，包括「程式」之授權及計量（例如：子容量用量）；及 ii) 立即訂購必要授權（包括相關聯 S&S），並依 IBM 之當時費率支付該等授權所需費用，及 IBM 於發票中載明之前述查核判定之其他費用與債務。前揭循規查核義務於「交易文件」期間及其後二年內有效。

- f. 責任與賠償

因下列任一事項所生及相關之任何請求，IBM 不負責任：「非 IBM 程式」；非由 IBM 提供之項目；因貴客戶之「內容」(Content)、材料 (materials)、設計、規格導致之違法或侵害第三人權利之情事，或因未使用最新版本或版次之「IBM 程式」所致之違法或侵害第三人權利之情事，且若使用最新版本或版次便能避免侵權請求者。

- g. 終止

如貴客戶未遵循本合約之規定，IBM 得終止貴客戶之「程式」使用授權。任一方終止授權後，貴客戶須立即銷毀該「程式」之所有複本。

5.6.2 獨立授權程式碼

本 8.2 之規定，依本授權合約準據法之規定如係被認為不生效力或無法強制執行者，不適用之。以下列示之各該元件視為「獨立授權程式碼」。依本「服務說明」檢附之「附件」所適用第三人授權合約條款之規定，為給予被授權人 IBM 「獨立授權程式碼」之授權。縱使於本合約或被授權人可能與 IBM 所簽署之任何其他合約有任何條款，但除以下另有規定者外，否則該等第三人授權合約之條款規範被授權人之所有「獨立授權程式碼」之使用行為。

未來之「程式」更新或修正可能包含額外或已更新之「獨立授權程式碼」，該等「獨立授權程式碼」及相關授權，將於套用該等更新或修正前提供予被授權人。被授權人承認被授權人已閱讀並同意所附授權合約。倘被授權人不同意前揭第三人授權合約之條款，被授權人不得使用「獨立授權程式碼」。

依本「服務說明」所定「程式」條款取得之「程式」，被授權人為各該「程式」之原被授權人，倘被授權人不同意前揭第三人授權合約，被授權人應於對其核發權利證明書之日起三十日內，將各該「程式」退還原提供者。如係為受續約規範拘束之固定期間授權，被授權人得退還價金，惟應於起始期間之前三十日內退還各該「程式」及其權利證明書。

注意事項：縱使於第三人授權合約、本合約或被授權人可能與 IBM 所簽署之任何其他合約有任何條款：

- a. IBM 提供予被授權人之「獨立授權程式碼」，不含任何保證；
- b. IBM 不提供任何明示及默示之保證與條件，包括但不限於有關「獨立授權程式碼」之所有權、未涉侵權或不受干擾之保證，以及適售性及符合特定用途之默示保證與條件。
- c. 對於因「獨立授權程式碼」所生或相關之任何索賠或其他請求，IBM 對被授權人不負任何責任，亦不為被授權人抗辯、賠償被授權人或保障其免於蒙受損失；及
- d. IBM 對於有關「獨立授權程式碼」之直接、間接、附帶、特殊、懲戒性、懲罰性或衍生性損害，包括但不限於資料之滅失、可節省之成本損失及利益損失，不負任何責任。

縱使有此等排除條款，在德國及奧地利，IBM 對「獨立授權程式碼」之保證與責任，僅由適用於德國與奧地利之 IBM 授權合約個別條款所拘束。

注意事項：IBM 就若干「獨立授權程式碼」可能僅提供有限支援。若可取得此等支援，關於此等支援之詳細資料與任何額外條款，將於本授權手冊或「服務說明」（視適用情況而定）中明文規定。

以下為「獨立授權程式碼」：

- Microsoft (附錄 B)
- HP (附錄 C)
- Creative Commons (附錄 D)

5.6.3 非 IBM 廠牌機器

非 IBM 廠牌機器係指由 IBM 提供予 貴客戶之非 IBM 廠牌裝置，包括其特定功能、升級項目及配件。前揭非 IBM 廠牌機器，其品牌係由第三人（而非 IBM）所提供。

IBM 於其接受 貴客戶之訂單時，將於 貴客戶支付一切應付款項時移轉「非 IBM 廠牌機器」之所有權予 貴客戶或 貴客戶之出租人，但所在國家為美國者，其所有權係於出貨時移轉。機器毀損滅失之危險，於「機器」交付運送人前由 IBM 負擔，其後即轉由 貴客戶負擔。「機器」由運送人運送至 貴客戶過程中之保險，由 IBM 為 貴客戶安排機器保險事宜及支付保險費。如有滅失之情形者， 貴客戶應於交運日起十個工作天內以書面告知 IBM，且依請求程序辦理。

貴客戶僅限於取得非 IBM 廠牌機器所在國家或地區之「客戶企業」內使用非 IBM 廠牌機器，不得將其使用於轉售、租賃或轉讓等用途。允許融資性售後租回。

5.6.4 賠償與責任

因下列任一事項之全部或部分所致使及相關之任何索賠或其他請求，IBM 概不負責：非 IBM 廠牌機器；非由 IBM 提供之項目；因 貴客戶之材料 (materials)、設計、規格所致之違法行為或第三人權利之侵害。

5.6.5 非 IBM 廠牌機器保證之免責聲明

IBM 不保證非 IBM 廠牌機器之運作不會中斷或全無錯誤。除「交易文件」另有規定者外，依本「服務說明」銷售之非 IBM 廠牌機器係以現狀提供，IBM 不提供任何保證，第三人可能提供其自有之保證予 貴客戶。

縱有前揭規定，全新 HP 工作站仍包含五年保證期間，由 HP 提供下一營業日之服務（不含假日）。

注意事項與資訊

Weather Company 作業儀表板解決方案系統注意事項與資訊

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目錄

本 IBM 注意事項檔案包含以下

各節：

- BOOST
- BSD-3 CLAUSE
- MIT

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1. Boost 授權

本程式包含 IBM 依「Boost 軟體授權」規定取得之下列全部或部分套件：

Boost

Boost Software License – Version 1.0 – August 17th, 2003

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Boost 授權注意事項與資訊結束

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2. BSD 授權

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curl (© 1996 – 2010 Daniel Stenberg; <daniel@haxx.se>. cURL;http://curl.haxx.se/)

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MICROSOFT SOFTWARE LICENSE TERMS

WINDOWS 10 IOT ENTERPRISE & MOBILE (ALL EDITIONS)

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- a. **License.** The software license is permanently assigned to the device with which you acquired the software. You may only use the software on that device.
- b. **Device.** In this agreement, "device" means a physical hardware system with an internal storage device capable of running the software. A hardware partition or blade is considered to be a device.
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 - (7) when using Internet-based features you may not use those features in any way that could interfere with anyone else's use of them, or to try to gain access to or use any service, data, account, or network, in an unauthorized manner.
- d. **Multi use scenarios.**
 - (1) **Multiple versions.** If when acquiring the software, you were provided with multiple versions (such as 32-bit and 64-bit versions), you may install and activate only one of those versions at a time.
 - (2) **Multiple or pooled connections.** Hardware or software you use to multiplex or pool connections, or reduce the number of devices or users that access or use the software, does not reduce the number of licenses you need. You may only use such hardware or software if you have a license for each instance of the software you are using.
 - (3) **Device connections.** You may allow up to 20 other devices to access the software installed on the licensed device for the purpose of using the following software features: file services, print services, Internet information services, and Internet connection sharing and telephony services on the licensed device. The 20 connection limit applies to devices that access the software indirectly through "multiplexing" or other software or hardware that pools connections. You may allow any number of devices to access the software on the licensed device to synchronize data between devices. This section does not mean, however, that you have the right to install the software, or use the primary function of the software (other than the features listed in this section), on any of these other devices.
 - (4) **Remote access.** Users may access the licensed device from another device using remote access technologies, but only on devices separately licensed to run the same or higher edition of this software.

- (5) **Remote assistance.** You may use remote assistance technologies to share an active session without obtaining any additional licenses for the software. Remote assistance allows one user to connect directly to another user's computer, usually to correct problems.
 - (6) **POS application.** If the software is installed on a retail point of service device, you may use the software with a point of service application ("POS Application"). A POS Application is a software application which provides only the following functions: (i) process sales and service transactions, scan and track inventory, record and/or transmit customer information, and perform related management functions, and/or (ii) provide information directly and indirectly to customers about available products and services. You may use other programs with the software as long as the other programs: (i) directly support the manufacturer's specific use for the device, or (ii) provide system utilities, resource management, or anti-virus or similar protection. For clarification purposes, an automated teller machine ("ATM") is not a retail point of service device.
 - (7) **Cloud Computing Devices.** If your device uses Internet browsing functionality to connect to and access cloud hosted applications: (i) no desktop functions may run locally on the device, and (ii) any files that result from the use of the desktop functions may not be permanently stored on the system. "Desktop functions," as used in this agreement, means a consumer or business task or process performed by a computer or computing device. This includes but is not limited to email, word processing, spreadsheets, database, scheduling, network or internet browsing and personal finance.
 - (8) **Desktop Functions.** If your system performs desktop functions, then you must ensure that they: (i) are only used to support the application, and (ii) operate only when used with the application.
- e. **Specific Use.** The manufacturer designed the licensed device for a specific use. You may only use the software for that use.
 - f. **Backup copy.** You may make a single copy of the software for backup purposes, and may also use that backup copy to transfer the software if it was acquired as stand-alone software, as described below.

3. Privacy; Consent to Use of Data.

Your privacy is important to us. Some of the software features send or receive information when using those features. Many of these features can be switched off in the user interface, or you can choose not to use them. By accepting this agreement and using the software you agree that Microsoft may collect, use, and disclose the information as described in the Microsoft Privacy Statement available at (aka.ms/privacy), and as may be described in the user interface associated with the software features.

4. Transfer

- a. **Software preinstalled on device.** If you acquired the software preinstalled on a device, you may transfer the license to use the software directly to another user, only with the licensed device. The transfer must include the software and, if provided with the device, an authentic Windows label including the product key. Before any permitted transfer, the other party must agree that this agreement applies to the transfer and use of the software.
- b. **Stand-alone software.** If you acquired the software as stand-alone software, you may transfer the software to another device that belongs to you. You may also transfer the software to a device owned by someone else if (i) you are the first licensed user of the software and (ii) the new user agrees to the terms of this agreement. You may use the backup copy we allow you to make or the media that the software came on to transfer the software. Every time you transfer the software to a new device, you must remove the software from the prior device. You may not transfer the software to share licenses between devices.

5. Authorized Software and Activation.

You are authorized to use this software only if you are properly licensed and the software has been properly activated with a genuine product key or by other authorized method. When you connect to the Internet while using the software, the software will automatically contact Microsoft or its affiliate to confirm the software is genuine and the license is associated with the licensed device. You can also activate the software manually by Internet or telephone. In either case, transmission of certain information will occur,

and Internet, telephone and SMS service charges may apply. During activation (or reactivation that may be triggered by changes to your device's components), the software may determine that the installed instance of the software is counterfeit, improperly licensed or includes unauthorized changes. If activation fails the software will attempt to repair itself by replacing any tampered Microsoft software with genuine Microsoft software. You may also receive reminders to obtain a proper license for the software. Successful activation does not confirm that the software is genuine or properly licensed. You may not bypass or circumvent activation. To help determine if your software is genuine and whether you are properly licensed, see (aka.ms/genuine). Certain updates, support, and other services might only be offered to users of genuine Microsoft software.

6. Updates.

You may obtain updates only from Microsoft or authorized sources, and Microsoft may need to update your system to provide you with those updates. The software periodically checks for system and app updates, and may download and install them for you. To the extent automatic updates are enabled on your device, by accepting this agreement, you agree to receive these types of automatic updates without any additional notice.

7. Geographic and Export Restrictions.

If your software is restricted for use in a particular geographic region, then you may activate the software only in that region. You must also comply with all domestic and international export laws and regulations that apply to the software, which include restrictions on destinations, end users, and end use. For further information on geographic and export restrictions, visit (aka.ms/georestrict) and (aka.ms/exporting).

8. Support and Refund Procedures.

For the software generally, contact the device manufacturer or installer for support options. Refer to the support number provided with the software. For updates and supplements obtained directly from Microsoft, Microsoft may provide limited support services for properly licensed software as described at (aka.ms/mssupport). If you are seeking a refund, contact the manufacturer or installer to determine its refund policies. You must comply with those policies, which might require you to return the software with the entire device on which the software is installed for a refund.

9. Binding Arbitration and Class Action Waiver if You Live in (or if a Business Your Principal Place of Business is in) the United States.

We hope we never have a dispute, but if we do, you and we agree to try for 60 days to resolve it informally. If we can't, you and we agree to **binding individual arbitration before the American Arbitration Association ("AAA") under the Federal Arbitration Act ("FAA"), and not to sue in court in front of a judge or jury.** Instead, a neutral arbitrator will decide and the arbitrator's decision will be final except for a limited right of appeal under the FAA. **Class action lawsuits, class-wide arbitrations, private attorney-general actions, and any other proceeding where someone acts in a representative capacity aren't allowed. Nor is combining individual proceedings without the consent of all parties.** "We," "our," and "us" includes Microsoft, the device manufacturer, and software installer.

- a. **Disputes covered – everything except IP.** The term "dispute" is as broad as it can be. It includes any claim or controversy between you and the manufacturer or installer, or you and Microsoft, concerning the software, its price, or this agreement, under any legal theory including contract, warranty, tort, statute, or regulation, **except disputes relating to the enforcement or validity of your, your licensors', our, or our licensors' intellectual property rights.**
- b. **Mail a Notice of Dispute first.** If you have a dispute and our customer service representatives can't resolve it, send a Notice of Dispute by U.S. Mail to the manufacturer or installer, ATTN: LEGAL DEPARTMENT. If your dispute is with Microsoft, mail it to Microsoft Corporation, ATTN: LCA ARBITRATION, One Microsoft Way, Redmond, WA 98052-6399. Tell us your name, address, how to contact you, what the problem is, and what you want. A form is available at (aka.ms/disputeform). We'll do the same if we have a dispute with you. After 60 days, you or we may start an arbitration if the dispute is unresolved.
- c. **Small claims court option.** Instead of mailing a Notice of Dispute, and if you meet the court's requirements, you may sue us in small claims court in your county of residence (or if a business

your principal place of business) or our principal place of business – King County, Washington USA if your dispute is with Microsoft. We hope you'll mail a Notice of Dispute and give us 60 days to try to work it out, but you don't have to before going to small claims court.

- d. **Arbitration procedure.** The AAA will conduct any arbitration under its Commercial Arbitration Rules (or if you are an individual and use the software for personal or household use, or if the value of the dispute is \$75,000 USD or less whether or not you are an individual or how you use the software, its Consumer Arbitration Rules). For more information, see (aka.ms/adr) or call 1-800-778-7879. To start an arbitration, submit the form available at (aka.ms/arbitration) to the AAA; mail a copy to the manufacturer or installer (or to Microsoft if your dispute is with Microsoft). In a dispute involving \$25,000 USD or less, any hearing will be telephonic unless the arbitrator finds good cause to hold an in-person hearing instead. Any in-person hearing will take place in your county of residence (of if a business your principal place of business) or our principal place of business – King County, Washington if your dispute is with Microsoft. You choose. The arbitrator may award the same damages to you individually as a court could. The arbitrator may award declaratory or injunctive relief only to you individually to satisfy your individual claim.
- e. **Arbitration fees and payments.**
 - (1) **Disputes involving \$75,000 USD or less.** The manufacturer or installer (or Microsoft if your dispute is with Microsoft) will promptly reimburse your filing fees and pay the AAA's and arbitrator's fees and expenses. If you reject our last written settlement offer made before the arbitrator was appointed, your dispute goes all the way to an arbitrator's decision (called an "award"), and the arbitrator awards you more than this last written offer, the manufacturer or installer (or Microsoft if your dispute is with Microsoft) will: (1) pay the greater of the award or \$1,000 USD; (2) pay your reasonable attorney's fees, if any; and (3) reimburse any expenses (including expert witness fees and costs) that your attorney reasonably accrues for investigating, preparing, and pursuing your claim in arbitration. The arbitrator will determine the amounts unless you and we agree on them.
 - (2) **Disputes involving more than \$75,000 USD.** The AAA rules will govern payment of filing fees and the AAA's and arbitrator's fees and expenses.
 - (3) **Disputes involving any amount.** If you start an arbitration we won't seek our AAA or arbitrator's fees and expenses, or your filing fees we reimbursed, unless the arbitrator finds the arbitration frivolous or brought for an improper purpose. If we start an arbitration we will pay all filing, AAA, and arbitrator's fees and expenses. We won't seek our attorney's fees or expenses from you in any arbitration. Fees and expenses are not counted in determining how much a dispute involves.
- f. **Must file within one year.** You and we must file in small claims court or arbitration any claim or dispute (except intellectual property disputes – see Section 9.a). within one year from when it first could be filed. Otherwise, it's permanently barred.
- g. **Severability.** If the class action waiver is found to be illegal or unenforceable as to all or some parts of a dispute, those parts won't be arbitrated but will proceed in court, with the rest proceeding in arbitration. If any other provision of Section 9 is found to be illegal or unenforceable, that provision will be severed but the rest of Section 9 still applies.
- h. **Conflict with AAA rules.** This agreement governs if it conflicts with the AAA's Commercial Arbitration Rules or Consumer Arbitration Rules.
- i. **Microsoft as party or third-party beneficiary.** If Microsoft is the device manufacturer or if you acquired the software from a retailer, Microsoft is a party to this agreement. Otherwise, Microsoft is not a party but is a third-party beneficiary of your agreement with the manufacturer or installer to resolve disputes through informal negotiation and arbitration.

10. Governing Law.

The laws of the state or country where you live (or if a business where your principal place of business is located) govern all claims and disputes concerning the software, its price, or this agreement, including breach of contract claims and claims under state consumer protection laws, unfair competition laws, implied warranty laws, for unjust enrichment, and in tort, regardless of conflict of law principles. In the United States, the FAA governs all provisions relating to arbitration.

11. Consumer Rights, Regional Variations.

This agreement describes certain legal rights. You may have other rights, including consumer rights, under the laws of your state or country. You may also have rights with respect to the party from which you acquired the software. This agreement does not change those other rights if the laws of your state or country do not permit it to do so. For example, if you acquired the software in one of the below regions, or mandatory country law applies, then the following provisions apply to you:

- a. **Australia.** References to "Limited Warranty" are references to the express warranty provided by Microsoft or the manufacturer or installer. This warranty is given in addition to other rights and remedies you may have under law, including your rights and remedies in accordance with the statutory guarantees under the Australian Consumer Law.

In this section, "goods" refers to the software for which Microsoft or the manufacturer or installer provides the express warranty. Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.

- b. **Canada.** You may stop receiving updates on your device by turning off Internet access. If and when you re-connect to the Internet, the software will resume checking for and installing updates.
- c. **European Union.** The academic use restriction in Section 12.d(i) below does not apply in the jurisdictions listed on this site: (aka.ms/academicuse).

- d. **Germany and Austria.**

- (1) **Warranty.** The properly licensed software will perform substantially as described in any Microsoft materials that accompany the software. However, the manufacturer or installer, and Microsoft, give no contractual guarantee in relation to the licensed software.

- (2) **Limitation of Liability.** In case of intentional conduct, gross negligence, claims based on the Product Liability Act, as well as, in case of death or personal or physical injury, the manufacturer or installer, or Microsoft is liable according to the statutory law.

Subject to the preceding sentence, the manufacturer or installer, or Microsoft will only be liable for slight negligence if the manufacturer or installer or Microsoft is in breach of such material contractual obligations, the fulfillment of which facilitate the due performance of this agreement, the breach of which would endanger the purpose of this agreement and the compliance with which a party may constantly trust in (so-called "cardinal obligations"). In other cases of slight negligence, the manufacturer or installer or Microsoft will not be liable for slight negligence.

- e. **Other regions.** See (aka.ms/variations) for a current list of regional variations

12. Additional Notices.

- a. **Networks, data and Internet usage.** Some features of the software and services accessed through the software may require your device to access the Internet. Your access and usage (including charges) may be subject to the terms of your cellular or internet provider agreement. Certain features of the software may help you access the Internet more efficiently, but the software's usage calculations may be different from your service provider's measurements. You are always responsible for (i) understanding and complying with the terms of your own plans and agreements, and (ii) any issues arising from using or accessing networks, including public/open networks. You may use the software to connect to networks, and to share access information about those networks, only if you have permission to do so.

- b. **H.264/AVC and MPEG-4 visual standards and VC-1 video standards.** The software may include H.264/MPEG-4 AVC and/or VC-1 decoding technology. MPEG LA, L.L.C. requires this notice:

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- c. **Malware protection.** Microsoft cares about protecting your device from malware. The software will turn on malware protection if other protection is not installed or has expired. To do so, other antimalware software will be disabled or may have to be removed.
- d. **Limited rights versions.** If the software version you acquired is marked or otherwise intended for a specific or limited use, then you may only use it as specified. You may use other programs with the software as long as the other programs directly support the manufacturer's specific use for the device, or provide system utilities, resource management, or anti-virus or similar protection.
 - (1) **Academic.** For academic use, you must be a student, faculty or staff of an educational institution at the time of purchase.
 - (2) **Evaluation.** For evaluation (or test or demonstration) use, you may not sell the software, use it in a live operating environment, or use it after the evaluation period. Notwithstanding anything to the contrary in this Agreement, evaluation software is provided "AS IS".
 - (3) **NFR.** You may not sell software marked as "NFR" or "Not for Resale".

13. Entire Agreement.

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Check with your device manufacturer to determine if your device is covered by a warranty.

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