

Weather Company Operations Dashboard for Oil & Gas – Radar System

본 서비스 명세서는 본 클라우드 서비스에 대해 설명합니다. 관련 주문 서류에서는 고객의 주문에 대한 가격 책정과 추가적인 세부사항을 제공합니다.

1. 클라우드 서비스

1.1 오퍼링

다음 오퍼링은 Weather Company Operations Dashboard for Oil & Gas – Radar System 을 지원합니다. Weather Company Operations Dashboard Platform 은 별도의 서비스 명세서에 의거하여 취득되는 사전 필수 오퍼링입니다.

1.1.1 Weather Company Operations Dashboard for Oil & Gas – Sites

이 클라우드 서비스는 모바일 및 웹 기반 애플리케이션 내에서 고객이 구입한 레이더의 실시간 데이터 통합 목적으로 제공됩니다. 고객은 하나 이상의 레이더를 구입할 수 있으며 일단 설치된 데이터는 IBM 으로 다시 전송되어 처리되고 실시간으로 모바일 및 웹 기반 애플리케이션에서 가용케 됩니다.

1.1.2 Weather Company Operations Dashboard for Oil & Gas with Radar

이 클라우드 서비스는 고객이 구입한 하나 이상의 레이더에서 얻은 실시간 데이터와 함께 글로벌 기상에 대한 로컬화된 대화식 반응형 액세스를 제공하는 태블릿 및 전화용 모바일 및 웹 기반 애플리케이션입니다. 레이더들은 전세계 어디서나 설치될 수 있으며 전세계 원격 지역에서 유용한 실시간 데이터를 제공하는 수단으로 사용될 수 있습니다. 또한, 전세계 어디에나 자산이 있는 Oil & Gas 기업이 실시간 인사이트와 예측 인사이트를 결합할 수 있도록 기타 적절한 데이터 세트는 시각화됩니다.

1.1.3 Weather Company Oil & Gas Radar – Z2G4 System

프로그램들, 별도로 라이선스가 부여된 코드 및 HP 시스템(비(非) IBM 기계)을 포함하는 이 Weather Company Oil & Gas Radar – Z2G4 System 은 고객이 구입한 각 레이더와 함께 판매됩니다. 이 Radar System 은 해당 레이더에 연결되며 레이더에 기록된 실시간 데이터를 읽고 이를 다시 IBM 으로 전송합니다.

2. 데이터 처리 및 보호 데이터 시트

IBM 데이터 처리 부칙(Data Processing Addendum: DPA)(<http://ibm.com/dpa> 참조) 및 아래 링크의 데이터 처리 및 보호 데이터 시트(Data Processing and Protection Data Sheet(s))(데이터 시트(들) 또는 DPA 발표(들)로 참조됨)는 클라우드 서비스에 대한 추가적인 데이터 보호 정보와 처리할 수 있는 콘텐츠의 유형, 관련 처리 활동, 데이터 보호 기능 및 콘텐츠의 보관 및 반환 정보와 관련한 옵션을 제공합니다. DPA 는 콘텐츠에 포함된 개인 데이터에 i) European General Data Protection Regulation (EU/2016/679)(GDPR) 또는 ii) <http://ibm.com/dpa/dpl> 에 명시된 기타 데이터 보호법이 적용되는 경우 그 범위에 한 해 적용됩니다.

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

3. 서비스 레벨(Service Levels) 및 기술 지원

3.1 SLA(Service Level Agreement)

이 클라우드 서비스는 가용성 SLA 를 제공하지 않습니다.

3.2 기술 지원

지원 문의 상세 정보, 심각도 레벨, 가용성 지원 시간, 응답 시간 및 기타 지원 정보와 절차를 포함하여, 클라우드 서비스에 대한 기술 지원은 IBM 지원

안내서(<https://www.ibm.com/support/home/pages/support-guide/> 참조)에서 클라우드 서비스를 선택하면 확인할 수 있습니다.

4. 요금

4.1 청구 체계

클라우드 서비스에 대한 과금 체계는 거래서류에 명시됩니다.

이 클라우드 서비스에는 다음 청구 체계가 적용됩니다.

- 엔티티 ID(Entity ID)는 클라우드 서비스 내에 식별된 엔티티의 고유한 ID입니다.
- 미국 달러 총 매출은 고객이 발행한 가장 최근의 공공 보고서 또는 비공개기업의 경우 고객의 가장 최근에 감사한 재무 보고서에 언급된 고객의 연간 매출 및 기타 소득원의 총액입니다. 비미국 달러 통화는 http://www.ibm.com/software/passportadvantage/conversion_unit_table.html에 있는 변환 단위 표에 따라 미국 달러에 상응한 액수로 변환됩니다.
- 클라이언트 디바이스(Client Device)는 클라우드 서비스에 액세스하는 서버 환경에서 실행 명령, 프로시저 또는 애플리케이션을 요청하거나 수신하는 디바이스입니다.

5. 추가 조항

2019년 1월 1일 이전에 작성된 클라우드 서비스 계약들(또는 동등한 기본 클라우드 계약들)에는 <https://www.ibm.com/acs>에서 제공한 조건들이 적용됩니다.

5.1 사용에 관한 국가 제한사항

고객에 의한 데이터 사용이 허용되는지 판단하고 필요한 범위 내에서 고객이 데이터를 운영하거나 사용하는 국가의 정부 법인이거나 기관으로부터 필요한 모든 라이선스, 허가, 승인 또는 권한을 취득할 책임은 고객에게 있으며 본 서비스 명세에 의거한 IBM의 의무는 이러한 고객의 책임을 전제로 합니다.

5.2 인에이블링 소프트웨어(Enabling Software)

인에이블링 소프트웨어는 다음 조건에 따라 고객에게 제공됩니다.

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

5.3 프로그램 라이선스

프로그램이란 대금 납부를 조건으로 라이선스를 제공하는 IBM 브랜드 컴퓨터 프로그램 및 관련 자료를 말합니다. 프로그램은 기계코드나 프로젝트 자료를 포함하지 않습니다. 해당 조건이 부칙에 정의되어 있는 바와 같이 프로그램은 저작권이 부여되어 있고 (판매되는 것이 아니라) 라이선스 되는 것입니다. IBM이 프로그램 주문을 승인하면, 다음 사항에 대한 비독점적 라이선스가 고객에게 부여됩니다: a) 그 권한 한도 내에서만 본 서비스 명세서에 의거 프로그램을 사용할 수 있는 권리, b) 그러한 허가된 사용을 지원하기 위해 복사본을 만들고 설치할 수 있는 권리, c) 백업 사본을 만들 수 있는 권리. 고객, 고객의 승인된 직원 그리고 고객의 기업집단 내에 있는 계약자만이 프로그램을 이용할 수 있으며, 여하한 제 3자에게 호스팅 또는 시분할 서비스를 제공하기 위해서는 프로그램을 이용할 수 없습니다. 고객은 여하한 프로그램을 위한 라이선스를 재 라이선스, 양도 또는 이전할 수 없습니다. 추가 수수료를 지급받거나 다른 조건에 의거하여 추가 권리가 제공될 수 있습니다. 고객에게 프로그램을 사용할 수 있는 무제한적 권리가 부여되지 않으며, 고객은 프로그램의 모든 경제적 가치에 대해 지급 하는 것이 아닙니다. 특정 프로그램은 아래 명시된 별도 계약에 따라 라이선스가 부여된 제 3자 코드를 포함할 수도 있습니다.

프로그램에 대해서 부여된 라이선스는 고객이 다음 사항을 이행하는 것을 조건으로 합니다.

- a. 저작권 통지 및 기타 표시사항을 재현할 것
 - b. 프로그램을 사용하는 자가 고객의 허가된 용도로만 프로그램을 사용하고 라이선스 조건을 준수하도록 할 것
 - c. 프로그램 역어셈블링, 역컴파일링, 번역 또는 역엔지니어링을 하지 않을 것
 - d. 여하한 프로그램의 구성요소 또는 라이선스된 관련 자료를 프로그램과 분리하여 사용하지 않을 것
- 고객의 계약에서 달리 구체적으로 명시하지 않는 한, 다음이 적용됩니다.

- a. 대금, 세금, 지급 및 확인

고객은 i) IBM 또는 IBM의 외부 감사원이 고객의 본 계약(프로그램의 라이선스 및 메트릭 포함, 예를 들어, sub-capacity 사용) 준수를 확인하기 위해서 합리적으로 필요한 기록 및 시스템 도구 출력물을 유지하고; IBM의 요청이 있는 경우 그러한 기록 등과 고객 장소에 대한 접근을 제공하며(해당하는 경우), ii) 여하한의 필요한 권한(관련 S&S 포함)을 즉시 주문하고, 해당 시점에 유효한 IBM 요율에 따라 해당 권한에 대해 그리고 IBM이 청구서에 명시한 대로, 이러한 확인 결과 결정된 기타 채무를 지급해야 합니다. 이러한 준수 확인 의무는 거래서류 기간 및 그 후 2년 간 효력이 유지됩니다.

- b. 책임 및 면책

IBM은 비(非) IBM 프로그램, IBM이 제공하지 않은 항목 또는 콘텐츠, 여하한 고객의 자료, 디자인, 명세 또는 현행 IBM 프로그램 버전이나 릴리스가 아닌 IBM 프로그램 버전이나 릴리스 이용으로 인해서 초래된 법률 또는 제 3자 권리 위반(침해 클레임이 현행 버전이나 릴리스를 이용했다라면 회피될 수 있었을 경우)을 이유로 한, 클레임에 대해서 어떠한 책임도 지지 않습니다.

- c. 해지

고객이 본 계약을 준수하지 않을 경우, IBM은 프로그램을 이용할 수 있는 고객의 라이선스를 해지할 수 있습니다. 일방 당사자가 라이선스를 해지한 경우, 고객은 프로그램의 모든 사본을 즉시 폐기해야 합니다.

5.4 별도로 라이선스가 부여된 코드(Separately Licensed Code)

이 조항은 본 라이선스를 규정하는 법령에 따라 유효하지 않거나 시행이 불가능하다고 간주되는 경우에는 적용되지 않습니다. 아래의 각 구성요소는 "별도로 라이선스가 부여된 코드"("Separately Licensed Code")로 간주됩니다. IBM Separately Licensed Code("IBM 별도로 라이선스가 부여된 코드")는 본 서비스 명세서 뒤의 부록에 명시된 해당 제 3자 계약의 조건들에 의거해서 라이선스 사용자에게 라이선스가 부여됩니다. 본 계약의 조항이나 라이선스 사용자가 IBM과 체결한 기타 계약의 조항에도 불구하고, 아래에서 달리 명시하지 않는 한, 라이선스 사용자가 "별도로 라이선스가 부여된 코드"를 사용하는 경우 해당 제 3자 라이선스 계약의 조항이 적용됩니다.

추후 프로그램 업데이트 또는 수정사항에는 추가되거나 업데이트된 "별도로 라이선스가 부여된 코드"가 포함될 수 있습니다. 이와 같이 별도로 라이선스가 부여된 코드 및 관련 라이선스는 업데이트 또는 수정사항이 적용되기 전에 라이선스 사용자에게 제공됩니다. 라이선스 사용자는 제공된 라이선스 계약을 읽었으며 이에 동의한다고 인정합니다. 해당 제 3자 라이선스 계약의 조항에 동의하지 않는 경우 라이선스 사용자는 "별도로 라이선스가 부여된 코드"를 사용할 수 없습니다.

본 서비스 명세서에 정의된 프로그램 조항에 의거해서 프로그램이 취득되고 라이선스 사용자가 프로그램의 원래 라이선스 사용자인 경우 라이선스 사용자가 제 3자 라이선스 계약에 동의하지 않으면 라이선스 사용자는 라이선스 증서가 발행된 날로부터 30일 이내에 프로그램을 취득한 당사자에게 프로그램을 반환할 수 있습니다. 라이선스가 갱신 대상이 되는 고정 기간 라이선스인 경우 라이선스 사용자는 프로그램과 관련 라이선스 증서를 최초 기간의 처음 30일 이내에 반환한 경우에만 환불을 받을 수 있습니다.

참고: 제 3 자 라이선스 계약, 본 계약 또는 라이선스 사용자가 IBM 과 체결한 기타 계약의 여하한의 조항에도 불구하고 다음이 적용됩니다.

- a. IBM 은 "별도로 라이선스가 부여된 코드"를 일체의 보증 없이 라이선스 사용자에게 제공합니다.
- b. IBM 은 "별도로 라이선스가 부여된 코드"와 관련하여, 소유권, 타인의 권리 비침해에 대한 보증, 특정 목적에 대한 상품성 및 적합성에 대한 묵시적 보증 및 조건들을 포함하여(단, 이에 한하지 않음) 명시적이거나 묵시적을 불문하고 어떠한 보증도 제공하지 않습니다.
- c. IBM 은 "별도로 라이선스가 부여된 코드"로 인해 발생하거나 이와 관련된 여하한의 배상 청구에 대해 라이선스 사용자에게 책임을 지지 않으며 라이선스 사용자를 방어하거나 면책하거나 손해가 없도록 보호하지 않습니다.
- d. IBM 은 "별도로 라이선스가 부여된 코드"와 관련하여 분실 데이터, 상실된 절감 및 상실된 이익을 포함한 (이에 제한되지 않음) 직접 손해, 간접 손해, 부수적 손해, 특별 손해, 징벌적 손해 또는 결과적 손해에 대해 책임을 지지 않습니다.

이러한 제외사항에도 불구하고, 독일 및 오스트리아의 경우, "별도로 라이선스가 부여된 코드"에 관한 IBM 보증과 책임에는 IBM 라이선스 계약에서 독일 및 오스트리아에 적용되는 각 조항만 적용됩니다.

참고: IBM 은 일부 "별도로 라이선스가 부여된 코드"에 대한 제한된 지원을 제공할 수 있습니다. 이러한 지원을 받을 수 있는 경우, 지원에 대한 세부사항과 추가 조항은 해당하는 경우에 따라 라이선스 정보(License Information) 문서나 본 서비스 명세서(SD)에 명시됩니다.

"별도로 라이선스가 부여된 코드"는 다음과 같습니다.

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

5.5 비(非) IBM 기계

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주의사항 및 정보

WEATHER COMPANY OPERATIONS DASHBOARD SOLUTION SYSTEMS 를 위한 주의사항 및 정보.

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목차

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절:

- BOOST
- BSD-3 CLAUSE
- MIT

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Microsoft Software 라이선스 조건

마지막 업데이트 날짜: 2016 년 7 월

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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.
- c. **Restrictions.** The manufacturer or installer and Microsoft reserve all rights (such as rights under intellectual property laws) not expressly granted in this agreement. For example, this license does not give you any right to, and you may not:
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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.
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