

## Weather Company Operations Dashboard for Oil & Gas – Radar System

В настоящем Описании Услуги описывается Облачная Услуга. В соответствующих документах заказа указываются цены и дополнительные сведения о заказе Клиента.

### 1. Облачная Услуга

#### 1.1 Предложения

Следующие предложения поддерживают Weather Company Operations Dashboard for Oil & Gas – Radar System. К обязательным предварительным требованиям относится предложение Weather Company Operations Dashboard Platform, которое приобретается на основании отдельного Описания услуги.

##### 1.1.1 Weather Company Operations Dashboard for Oil & Gas – Sites

Эта Облачная Услуга обеспечивает интеграцию данных с радаров, приобретённых Клиентом, в режиме реального времени с помощью мобильного приложения с веб-интерфейсом. Клиент может приобрести один или несколько радаров, после установки которых данные будут передаваться обратно в IBM для дальнейшей обработки и вывода в мобильном приложении с веб-интерфейсом в режиме реального времени

##### 1.1.2 Weather Company Operations Dashboard for Oil & Gas with Radar

Эта Облачная Услуга представляет собой мобильное приложение с веб-интерфейсом для планшетов и мобильных телефонов, предоставляющее локализованный, интерактивный и адаптивный доступ к глобальным метеорологическим данным, а также оперативным данным с одного или нескольких радаров, приобретённых Клиентом. Радары можно установить в любой точке мира для получения ценных данных в режиме реального времени из удалённых уголков мира. Кроме того, благодаря визуализации других релевантных наборов данных компании нефтегазовой отрасли могут в любой точке мира комбинировать аналитическую информацию, доступную в режиме реального времени, с прогнозами и оповещениями для принятия важных бизнес-решений и повышения эффективности работы.

##### 1.1.3 Weather Company Oil & Gas Radar – Z2G4 System

Предложение Weather Company Oil & Gas Radar – Z2G4 System, включающее Программы, Отдельно Лицензируемый Код и систему HP, которая является Системой стороннего производителя (не IBM), продаётся вместе с каждым радаром, приобретаемым Клиентом. Радарная система подключается к радару, считывает оперативные данные, записанные радаром, и передаёт их обратно в IBM.

### 2. Обработка и защита Данных – Спецификации

Дополнение IBM об Обработке Данных (DPA), приведённое на веб-странице <http://ibm.com/dpa>, и Спецификации обработки и защиты данных (именуемые спецификациями или Приложениями к DPA), ссылки на которые приводятся ниже, содержат дополнительную информацию о защите данных в Облачных Услугах и её вариантах в зависимости от типа Содержимого, подлежащего обработке, применяемых операциях обработки, функциях защиты данных и особенностях сохранения и возврата Содержимого. DPA применяется к персональным данным, входящим в Содержимое, в том случае, если, и в той мере, в какой применяются i) Общеввропейский регламент о защите персональных данных (GDPR) (EU/2016/679); или ii) другие законы о защите данных, указанные на веб-странице <http://ibm.com/dpa/dpl>.

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

### 3. Уровни обслуживания и Техническая поддержка

#### 3.1 Соглашение об уровне обслуживания

Данная Облачная услуга не предусматривает SLA относительно готовности.

## 3.2 Техническая поддержка

Информацию о Технической поддержке для Облачной Услуги, включая контактные данные службы поддержки, уровни серьезности, часы работы, время ответа и другие сведения о поддержке и применимых процессах, можно найти, выбрав раздел "Облачная Услуга" в руководстве IBM по поддержке, доступном на веб-странице по адресу <https://www.ibm.com/support/home/pages/support-guide/>.

## 4. Платежи

### 4.1 Системы расчёта оплаты

Системы расчёта оплаты для Облачной Услуги указываются в Документе по Транзакции.

К данной Облачной Услуге применяются следующие системы расчёта оплаты:

- ID Объекта – это уникальный идентификатор любого объекта, идентифицируемого в рамках Облачной Услуги.
- Совокупный доход в долларах США - это общая сумма годового объёма продаж и других источников дохода Клиента, указанная в последнем открытом отчёте Клиента, либо - для непубличных компаний - в последнем проверенном аудиторами финансовом отчёте Клиента. Сумма в другой валюте должна быть конвертирована в доллары США на основании таблицы, доступной на веб-странице [http://www.ibm.com/software/passportadvantage/conversion\\_unit\\_table.html](http://www.ibm.com/software/passportadvantage/conversion_unit_table.html).
- Клиентское Устройство - любое устройство, которое запрашивает или получает исполняемые команды, процедуры или приложения из серверной среды, обращающейся к Облачным Услугам.

## 5. Дополнительные положения

К Соглашениям об Облачных Услугах (или эквивалентным базовым соглашениям об облачных инфраструктурах), заключённым до 1 января 2019 года, применяются условия, приведённые на веб-странице <https://www.ibm.com/acs>.

### 5.1 Ограничения использования для разных стран

Клиент несёт ответственность за определение допустимости использования Данных Клиентом и (в той мере, в которой это необходимо) получение всех необходимых лицензий, разрешений, подтверждений или авторизаций от любых органов власти или учреждений в стране, в которой он ведёт свою деятельность или использует Данные, и от этого будут зависеть обязательства IBM по данному Описанию Услуги.

### 5.2 Поддерживающее Программное обеспечение

Поддерживающее Программное обеспечение предоставляется Клиенту на следующих условиях:

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

### 5.3 Лицензия на Программу

**Программа** - это компьютерная программа с торговой маркой IBM и связанные с ней материалы, доступные по лицензии при условии внесения платежей. К Программам не относятся Машинный Код или Проектные Материалы (в соответствии с определением этих терминов, которое может содержаться в Приложении). Программы охраняются авторским правом и предоставляются по лицензии (не продаются). Когда IBM принимает заказ на Программу, Клиенту предоставляется неисключительная лицензия на: а) использование Программы только в пределах разрешений и с соблюдением условий настоящего Описания Услуги, Соглашения и любых соответствующих ДТ; б) создание и установку копий, необходимых для поддержки такого разрешённого использования; и с) создание резервной копии. Программы могут использоваться Клиентом, его уполномоченными сотрудниками и подрядчиками только в пределах Предприятия Клиента; Программы не могут использоваться для предоставления какому-либо третьему лицу услуг хостинга или услуг

разделения времени. Клиент не имеет права на сублицензирование, переуступку или передачу лицензии на любую Программу. Дополнительные права могут быть предоставлены за дополнительную плату или на других условиях. Клиенту не предоставляются неограниченные права на использование Программы, и Клиент не оплатил полностью всю экономическую стоимость Программы. Некоторые Программы могут содержать код третьих лиц, лицензируемый на основании отдельных соглашений, указанных ниже.

Лицензия на Программу предоставляется при условии, что Клиент:

- a. будет воспроизводить отметки об авторских правах и другие маркировки;
- b. будет гарантировать, что любые лица, которые используют Программу, делают это только с разрешения Клиента и соблюдают при этом положения лицензии;
- c. не будет осуществлять обратное ассемблирование, обратное компилирование, преобразование или обратное проектирование Программы; и
- d. не будет использовать никакие элементы Программы или связанные лицензионные материалы отдельно от Программы.

Если в Соглашении Клиента определённым образом не сказано иное, будут применяться следующие условия:

- a. Платежи, налоги, оплата и проверки

Клиент будет: i) сохранять и предоставлять по запросу записи и выходные данные системных инструментов, а также доступ к помещениям Клиента, в той мере, в какой это необходимо IBM и её независимым аудиторам для проверки соблюдения Клиентом Соглашения, включая лицензии на Программы и показатели объёмов использования, такие как использование неполных мощностей, когда это применимо; и ii) незамедлительно заказывать и оплачивать необходимые разрешения (в том числе соответствующую Подписку и Поддержку (S&S)) по действующим на тот момент тарифам IBM, а также вносить другие платежи и выполнять другие обязательства, выявленные в результате такой проверки, в соответствии со счетами IBM. Эти обязательства, связанные с проверкой соблюдения требований, сохраняются в течение срока действия любого Документа по Транзакции и в течение двух лет после его окончания.

- b. Ответственность и ограждение от ответственности

IBM не несёт ответственность по претензиям, основанным на Сторонних Программах (не IBM), предметах, которые не были предоставлены IBM, либо на любом нарушении закона или прав третьих лиц, вызванном Содержимым Клиента или любыми материалами, разработками, спецификациями Клиента или использованием Клиентом устаревшей версии или устаревшего выпуска Программы IBM, когда в случае использования текущей версии или текущего выпуска можно было бы избежать претензии о нарушении прав.

- c. Прекращение действия

IBM может прекратить лицензию Клиента на использование Программы, если Клиент не будет соблюдать условия Соглашения. После прекращения лицензии любой стороной Клиент должен немедленно уничтожить все копии Программы.

#### **5.4 Отдельно Лицензируемый Программный Код**

Положения данного абзаца не применяются в той степени, в какой они считаются недействительными или невыполнимыми по закону, регулирующему данную лицензию. Каждый из перечисленных ниже компонентов рассматривается как "Отдельно Лицензируемый Программный Код". Отдельно Лицензируемый Программный Код IBM лицензируется Лицензиату в соответствии с условиями применимых лицензионных соглашений третьих лиц, указанных в Приложениях в конце настоящего Описания Услуги. Несмотря на любые условия Соглашения или любого другого соглашения, которое может существовать между Лицензиатом и IBM, условия такого лицензионного соглашения третьей стороны регулируют использование Лицензиатом всего Отдельно Лицензируемого Программного Кода, если только иное не указано ниже.

Будущие обновления или исправления Программы могут содержать дополнительный или обновлённый Отдельно Лицензируемый Программный Код. Такой Отдельно Лицензируемый Программный Код и связанные лицензии будут предоставляться Лицензиату до того, как будут применены обновление или исправление. Лицензиат признаёт, что Лицензиат прочитал и согласен

с условиями предоставленных лицензионных соглашений. Если Лицензиат не согласен с условиями этих лицензионных соглашений третьих сторон, Лицензиат не может использовать Отдельно Лицензируемый Программный Код.

Для Программ, которые приобретаются на основании условий в отношении Программ, определённых в настоящем Описании Услуги, и для которых Лицензиат является исходным Лицензиатом Программы, если Лицензиат не согласен с лицензионными соглашениями третьих сторон, Лицензиат может вернуть Программу лицу, у которого Лицензиат её приобрел, в течение 30 дней с даты выдачи Свидетельства о Правах (СоП) Лицензиату. Если лицензия имеет фиксированный срок, который подлежит продлению, Лицензиат может получить возмещение только в том случае, если Программа и СоП для неё будут возвращены в течение первых 30 дней исходного срока.

Примечание: Несмотря ни на какие условия лицензионного соглашения третьей стороны, Соглашения или любого другого соглашения, которое может существовать между Лицензиатом и IBM:

- a. IBM предоставляет Лицензиату этот Отдельно Лицензируемый Программный Код БЕЗ КАКИХ-ЛИБО ГАРАНТИЙ;
- b. IBM ОТКАЗЫВАЕТСЯ ОТ ЛЮБЫХ И ВСЕХ ЯВНЫХ И ПОДРАЗУМЕВАЕМЫХ ГАРАНТИЙ И УСЛОВИЙ, ВКЛЮЧАЯ, НО НЕ ОГРАНИЧИВАЯСЬ ЭТИМ, ГАРАНТИЮ ПРАВА СОБСТВЕННОСТИ, НЕНАРУШЕНИЯ ПРАВ ИЛИ СТОЛКНОВЕНИЯ ПАТЕНТНЫХ ПРИТЯЗАНИЙ И ПОДРАЗУМЕВАЕМЫЕ ГАРАНТИИ И УСЛОВИЯ ТОВАРОПРИГОДНОСТИ И СООТВЕТСТВИЯ ОПРЕДЕЛЁННОЙ ЦЕЛИ, В ОТНОШЕНИИ ОТДЕЛЬНО ЛИЦЕНЗИРУЕМОГО ПРОГРАММНОГО КОДА;
- c. IBM не несёт ответственности перед Лицензиатом и не будет защищать Лицензиата, возмещать Лицензиату или оберегать Лицензиата в отношении любых претензий, возникающих из или связанных с Отдельно Лицензируемым Программным Кодом; и
- d. IBM не несёт ответственности за какие-либо прямые, не прямые, непредвиденные, особые, типовые или косвенные убытки или штрафные санкции, включая, но не ограничиваясь этим, потерянные данные, утраченные сбережения и упущенные доходы, в отношении Отдельно Лицензируемого Программного Кода.

Несмотря на эти исключения, в Германии и Австрии гарантия и ответственность IBM за Отдельно Лицензируемый Программный Код регулируется только соответствующими условиями лицензионных соглашений IBM, применимыми к Германии и Австрии.

Примечание: IBM может предоставлять ограниченную поддержку для некоторого Отдельно Лицензируемого Программного Кода. Если такая поддержка доступна, подробная информация и любые дополнительные условия, связанные с такой поддержкой, будут приведены в документе с Лицензионной Информацией или в данном Описании Услуги, соответственно.

Нижеперечисленное является Отдельно Лицензируемым Программным Кодом:

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

## 5.5 Машины сторонних производителей (не IBM)

Машина стороннего производителя (не IBM) - это устройство, включая его компоненты, элементы модернизации и дополнительные принадлежности, которое IBM предоставляет Клиенту. Такие машины сторонних производителей имеют торговую марку не IBM, а другого лица.

Когда IBM принимает заказ Клиента, IBM передаёт право собственности на машины других производителей (не IBM) Клиенту или арендодателю Клиента после внесения всех причитающихся платежей, за исключением США, где право собственности передаётся в момент отгрузки. IBM несёт риск утраты до момента доставки груза транспортной компанией, осуществляющей перевозку. IBM оплачивает страховку от имени Клиента до момента прибытия груза на объект Клиента. Клиент должен сообщить о любой утрате в IBM в письменной форме в течение 10 рабочих дней со дня доставки и следовать процедуре предъявления претензий.

Клиент может приобретать машины других производителей (не IBM) только для использования в пределах Предприятия Клиента в стране приобретения, но не для перепродажи, сдачи в аренду или передачи. Продажа с условием получения обратно в аренду разрешается.

#### **5.6 Возмещение ущерба и финансовая ответственность**

IBM не несёт ответственности по претензиям, причиной которых (полностью или частично) являются машины других производителей (не IBM), элементы, которые не были предоставлены IBM, либо любое нарушение закона или прав третьих лиц, вызванное материалами, разработками или спецификациями Клиента.

#### **5.7 Отказ от гарантийных обязательств в отношении машин сторонних производителей (не IBM)**

IBM не гарантирует бесперебойного или безошибочного функционирования машин сторонних производителей (не IBM). Машины сторонних производителей (не IBM) продаются на основании данного Описания Услуги "как есть", без гарантий какого-либо рода, если в Документе по Транзакции не указано иное. Третьи лица могут предоставлять Клиенту свои собственные гарантии.

Несмотря на вышесказанное, на новые рабочие станции HP предоставляется 5-летняя гарантия с обслуживанием силами HP на следующий рабочий день.

## Уведомления и информация

УВЕДОМЛЕНИЯ И ИНФОРМАЦИЯ, КАСАЮЩИЕСЯ WEATHER COMPANY OPERATIONS DASHBOARD SOLUTION SYSTEMS.

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### СОДЕРЖАНИЕ

ЭТОТ ФАЙЛ IBM NOTICES ВКЛЮЧАЕТ В СЕБЯ СЛЕДУЮЩИЕ

РАЗДЕЛЫ:

- BOOST
- BSD-3 CLAUSE
- MIT

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### 1. ЛИЦЕНЗИЯ BOOST

Программа включает некоторые или все перечисленные ниже продукты, которые получены IBM на условиях Лицензии на Программное обеспечение Boost:

Boost

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

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## Условия Лицензии на программное обеспечение Microsoft

Последнее обновление от июля 2016 года

### MICROSOFT SOFTWARE LICENSE TERMS

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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](https://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](https://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](https://aka.ms/georestrict)) and ([aka.ms/exporting](https://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](https://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](https://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](https://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](http://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](http://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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- Adobe Flash Player License Terms ([aka.ms/adobe-flash](https://aka.ms/adobe-flash))

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