(For ISV Royalty Program Only)

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8. **BINDING ARBITRATION AND CLASS ACTION WAIVER.** This section applies to you only if you live in (or, if a business, your principal place of business is in) the United States (inapplicable to residents of or businesses with principal place of business outside the United States).

In the event of a dispute, you and the licensor agree to try for 60 days to resolve it informally. If an informal resolution cannot be reached, you and the licensor 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 review 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.**

* 1. **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 licensor, or you and Microsoft, concerning the software, its price, advertising, marketing, communications, your purchase transaction, billing, 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’, Microsoft’s, or Microsoft’s licensors’ intellectual property rights.**
  2. **Mail a** **Notice of Dispute first.** If you have a dispute with the licensor, send a Notice of Dispute by U.S. Mail to the licensor, ATTN: LEGAL DEPARTMENT. After 60 days, you or we may start an arbitration if the dispute is unresolved.
  3. **Small claims court option.** Instead of mailing a Notice of Dispute, you may litigate in small claims court in your county of residence (or, if a business, your principal place of business) or the licensor’s principal place of business.
  4. **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](https://aka.ms/arbitration)) to the AAA; mail a copy to the licensor. 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 (or, if a business, your principal place of business) or the licensor’s principal place of business. 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. Under AAA Rules, the arbitrator rules on his or her own jurisdiction, including the arbitrability of any claim. But a court has exclusive authority to enforce the prohibition on arbitration on a class-wide basis or in a representative capacity.
  5. **Arbitration fees and payments.**
     1. **Disputes involving $75,000 USD or less**. The licensor will promptly reimburse your filing fees and pay the AAA’s and arbitrator’s fees and expenses. If you reject the licensor’s 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 licensor 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.
     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.
  6. **Must file within one year.** You and the licensor must file in small claims court or arbitration any claim or dispute (except intellectual property disputes—see Section 8.a) within one year from when it first could be filed. Otherwise, it’s permanently barred.
  7. **Severability**. If any part of Section 8 (Binding Arbitration and Class Action Waiver) is found to be illegal or unenforceable, the remainder will remain in effect (with an arbitration award issued before any court proceeding begins), except that if a finding of partial illegality or unenforceability would allow class-wide or representative arbitration, Section 8 will be unenforceable in its entirety.
  8. **Conflict with AAA rules.** This agreement governs if it conflicts with the AAA’s Commercial Arbitration Rules or Consumer Arbitration Rules.
  9. **Microsoft as third-party beneficiary.** Microsoft is not a party to this agreement but is a third-party beneficiary of your agreement with the licensor to resolve disputes through informal negotiation and arbitration.

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* Current staff of Military Family Resource Centres (MFRCs);
* Current Department of National Defence (DND) public servants and their families;
* Serving and former Royal Canadian Mounted Police (RCMP) and their families;
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* Current staff of Defence Construction Canada (DCC) and their families;
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* Family members of the Staff of the NPF, CF; or
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