License Terms for Azure Sphere OS and Azure Sphere Security Service

**Required Language**

**IF YOU LIVE IN (OR IF YOUR PRINCIPAL PLACE OF BUSINESS IS IN) THE UNITED STATES, PLEASE READ THE BINDING ARBITRATION CLAUSE AND CLASS ACTION WAIVER IN SECTION [*insert section reference*]. IT AFFECTS HOW DISPUTES ARE RESOLVED.**

This is a contract (“***Agreement***”) between the individual purchasing the [*Company*] electronic appliance or other electronic device with which this Agreement is provided (“***Device***”), on his or her own behalf and on behalf of all individuals having access to that Device (collectively, “***you***” or “***your***”) and [*Company*] (“[***Company***]”, “***we***”, “***us***”, or “***our***”) regarding the Device and the Azure Sphere OS and the Azure Sphere Security Service included with the Device (such Azure Sphere OS and Azure Sphere Security Service, collectively, “***Services***”). This Agreement also applies to any [*Company*] software, firmware or applications (collectively “***Apps***”) that [*Company*] may include or provide with the Device. The term “Device” is deemed to include any Apps, except as and to the extent “Apps” are otherwise expressly addressed in this Agreement. You must review the entire Agreement, including any supplemental terms that accompany the Device or the Services, as well as any linked terms, because all of the terms are important and together create this Agreement that applies to you.

[*insert language of acceptance and contract formation – see Additional Qualitative Requirements for License Terms below*]

1. **Overview.**
	1. **Services**. The Services include the Azure Sphere OS software that is preinstalled on your Device, any updates to that software provided by us or our Providers, and the Azure Sphere Security Service through which such updates (as well as any updates to Apps) may be provided by us or our Providers. Although the Azure Sphere Security Service may be used to deliver updates to Apps, the Services do not include such Apps (or the updates to Apps) themselves.
	2. **Applicability**. This Agreement applies to the Services and any updates for the Services provided by us or our Providers, unless other terms come with them. If this Agreement contains terms regarding a feature or function not available on your Device, then those terms do not apply.
	3. **Additional Terms.** The Device may include features and functionality provided by our affiliates, licensors, and suppliers, including Microsoft Corporation or its applicable affiliates (collectively, “***Providers***”). Such features and functionality include the Services, for which Microsoft Corporation or its applicable affiliates are the Provider. Additional Provider terms may apply to your use of certain features, services, and apps, depending on your Device’s capabilities, how it is configured, and how you use it. Please be sure to read them.
		1. Some Services features may provide an access point to, or rely on, online services of other Providers, and the use of those services is sometimes governed by separate terms and privacy policies. You can view these terms and policies by looking at the applicable terms of use. The Services (and any such online services) may not be available in all regions.
		2. The Services may include third party programs that are licensed to you under this Agreement, or under their own terms. License terms, notices, and acknowledgements, if any, for the third party programs can be viewed at <http://3rdpartysource.microsoft.com>.
2. **Scope of License.** The Services are licensed, not sold. This Agreement only gives you some rights to use the Services. Microsoft reserves all other rights. Unless applicable law gives you more rights despite this limitation, you may use the Services only as expressly permitted in this Agreement. In doing so, you must comply with and not work around any technical limitations in the Services that only allow you to use them in certain ways or that limit what features are enabled. Except as expressly authorized otherwise in this Agreement you may **not** and agree **not** to:
	1. **Reverse Engineering.** reverse engineer, decompile or disassemble the Services, or attempt to do so, except and only to the extent that the foregoing is: (i) permitted by applicable law; (ii) permitted by licensing terms governing the use of the open-source components that may be included with the Services; or (iii) required to debug changes to any libraries licensed under the GNU Lesser General Public License that are included with and linked to by the Services;
	2. **Third Party Access.** publish, copy, rent, lease, or lend the Services;
	3. **Legal Compliance.** access or use the Services in any way that is prohibited by applicable law, regulation, or governmental order or decree or that violates any rights of others;
	4. **Technical Restrictions.** work around any technical restrictions or limitations in the Services; or
	5. **Harmful Use.** when using Internet-based features of the Services, use those features in any way that could interfere with anyone else’s use of them, or try to gain access to or use any service, data, account, or network, in an unauthorized manner.
	6. **Modify the Device or Service.** modify the Azure Sphere OS, the Apps or the chip on the Device on which they are running.
3. **Use Rights.** Subject to the limitations in this Agreement, you may use the Services only on the Device with which you acquired them.
4. **Privacy; Consent to Use of Data.** Your privacy is important to us. Some of the Services features send or receive information when using those features. Required diagnostic data is information about your Device, its settings and capabilities, and whether it is performing properly. This is the minimum level of diagnostic data needed to help keep your Device reliable, secure, and operating normally. [Optional diagnostic data includes additional details about your Device and its settings, capabilities, and Device health. Optional diagnostic data also includes information about Device activity (sometimes referred to as usage), and enhanced error reporting. Optional diagnostic data can also include the memory state of your Device when a system or app crash occurs (which may unintentionally include personal data). While your device will be just as secure and operate normally when only sending required diagnostic data, the additional information collected when you've chosen to send optional diagnostic data makes it easier for us to identify and fix issues and make product improvements that benefit all Azure Sphere customers. All of this data is collectively referred to in this Agreement as “Device Data”. . [*You may opt-in to the use of these optional diagnostic features as described in [insert] by [insert process]]/[You may opt-out of collection of optional diagnostic data, but not required diagnostic data, as described in [insert] by [insert process]*]]. By accepting this Agreement, you agree that Microsoft and its affiliates may collect, use, and disclose Device Data to third parties for diagnostics, troubleshooting and product improvement purposes only. Except for unintentional collection in connection with optional diagnostic data, Device Data does not include any personal data that [*Company*] may collect from you (“User Data”) and such information is not shared with Microsoft and its affiliates in any way under this Agreement. Collection of User Data (if any) may be subject to additional terms.
5. **Additional Licensing Requirements and Use Rights.**
	1. **No High Risk Use.** The Services are not fault-tolerant. The Services are not designed or intended for use in any Device where failure or fault of any kind of the Services could reasonably be seen to lead to death or serious bodily injury of any person, or to severe physical or environmental damage.
	2. **Networks, data, and Internet usage.** Some features of the Services, including updates and related smart features, 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 Services may help you access the Internet more efficiently, but the Services’ 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 paying for your access to the Internet and any bandwidth used by the Service; and (ii) any issues arising from using or accessing networks, including public/open networks. You may use the Services to connect to networks, and to share access information about those networks, only if you have permission to do so.
6. **Updates.** The Services will periodically check for updates. If any are identified, the Services will download and install them to enhance Device functionality and security and for other purposes. You agree to accept these automatic updates without any additional notice. We recommend that Devices be connected to the Internet at least once every month to check for them (although more regular Internet access may be necessary to enable other Device functionality, such as “smart” connectivity features of the Device).
7. **Geographic and Export Restrictions.** If the Services are restricted for use in a particular geographic region, then you may use them only in that region. You must also comply with all domestic and international export laws and regulations that apply to the software portions of the Services, 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.** For the Services generally, contact [*Company*] for support; [*Company*] is responsible for how the Services operate on the Device. Refer to the support number provided with the Device. If you are seeking a refund, contact [*Company*] or your retailer to determine its refund policies. You must comply with those policies, which may require you to return the Device 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 are not allowed. Nor is combining individual proceedings without the consent of all parties.** As used in this Section 9 only, “we,” “our,” and “us” includes [*Company*], Microsoft, and any other Providers.
	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 any (or all) of us concerning the Device, the Services, the price for either, 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.**
	2. **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 [*Company*], ATTN: LEGAL DEPARTMENT. If your dispute is with Microsoft, mail it to Microsoft Corporation, ATTN: LCA ARBITRATION, One Microsoft Way, Redmond, WA 98052-6399. If your dispute is with any other Provider, send a Notice of Dispute by U.S. Mail to [*Company*], ATTN: LEGAL DEPARTMENT, and [*Company*] will forward it to the other Provider. Tell us your name, address, how to contact you, what the problem is, and what you want. If your dispute is with Microsoft, 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.
	3. **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 (which is \_\_\_\_\_ if your dispute is with [*Company*], and is 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.
	4. **Arbitration procedure.** The AAA will conduct any arbitration under its Commercial Arbitration Rules (or if you are an individual and use the Services 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 [*Company*] (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. 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.
	5. **Arbitration fees and payments.**
		1. **Disputes involving $75,000 USD or less.** [*Company*] (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, [*Company*] (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.
	6. **Must file within one year.** You and we must file in small claims court or to arbitrate 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.
	7. **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.
	8. **Conflict with AAA rules.** This agreement governs if it conflicts with the AAA’s Commercial Arbitration Rules or Consumer Arbitration Rules.
	9. **Third-party beneficiaries.** Microsoft and other Providers are not parties to this Agreement. Microsoft and other Providers are, however, third-party beneficiaries of your Agreement with [*Company*] to resolve disputes through informal negotiation and arbitration.
10. **Miscellaneous.**
	1. **Compliance with Laws.** We and our Providers will comply with applicable law (including applicable security breach notification law) in performance under this Agreement, although laws that do not apply generally to IT service providers will not be applicable for purposes of this Section 10.a. You hereby provide any consents required: (i) to allow us and our Providers to access, use, and disclose your data; and (ii) for us and our Providers to provide the Services.
	2. **Changes.** The Services may be changed periodically, after which you may need to agree to new terms. We and our Providers will use commercially reasonable efforts to avoid degrading Data security through any such change.
	3. **Force Majeure.** A “Force Majeure Event” means fire, casualty, or an act caused exclusively by forces of nature, riot, terrorist act, war, labor dispute, material changes of laws or regulations, or court decree. A Force Majeure Event does not include theft or loss. Neither party will be liable for failing to perform under the Agreement to the extent that a Force Majeure Event caused the failure. The party subject to the Force Majeure Event must notify the other party, and must perform the obligations that were not performed, as soon as the Force Majeure Event stops.
	4. **Entire Agreement; Applicability.** This Agreement is the parties’ entire agreement on this subject and supersedes any concurrent or prior communications. Agreement terms that require performance, or apply to events that may occur, after termination or expiration will survive. Our Providers may deliver the Services (in whole or in part), and the rights granted to us also apply to them, and Section [*insert reference to limitation of liability clause*] also limits their liability.

**Additional Requirements for License Terms**

***Formation*.** Company will include in Company’s agreement with its End Users (“License Terms”) a clause providing for its End User’s acceptance of the License Terms and for formation of a binding contract, under the applicable law of the jurisdiction in which Company is selling its Connected Devices, consisting of the License Terms, and any additional terms incorporated by reference through or in accordance with the License Terms. A sample acceptance and formation clause is included in Exhibit A, although Microsoft makes no representation or warranty to Company that such clause is either sufficient to comply with Company’s obligations, or legally effective in the jurisdiction in which Company is distributing its Connected Devices. If Company wants to use any portion of Exhibit A in its License Terms, Company must engage its own legal counsel and make appropriate modifications to comply with applicable law.

***Data*.** Company will include in the License Terms a section that: (a) provides for Company’s storage, processing, and use of data, including User Data and Device Data in accordance with Company’s privacy policy and applicable law; and (b) provides a grant of rights to Company’s Providers (or at least to Microsoft) as necessary to provide the Services.

***Warranties and Warranty Disclaimer*.** Company may offer any warranties that it elects to offer with regard to Apps, but only if such warranties expressly provide that they are inapplicable to the Services and do not apply to any Providers or at least to Microsoft. Company will include in the License Terms a disclaimer of all warranties, express, implied, or statutory (including warranties of merchantability, fitness for a particular purpose and non-infringement) that is applicable to at least the Services. A sample warranty disclaimer is included in Exhibit B, although Microsoft makes no representation or warranty to Company that such clause is either sufficient to comply with Company’s obligations, or legally effective in the jurisdiction in which Company is distributing its Connected Devices. If Company wants to use any portion of Exhibit B in its License Terms, Company must engage its own legal counsel and make appropriate modifications to comply with applicable law.

***Limited Liability*.** Company will include in the License Terms a limitation of liability clause that is applicable at least to the Services and Company’s Providers and that effectively: (a) excludes liability for all special, incidental, consequential, or exemplary damages related to the Services and the License Terms; and (b) limits all liability of Company’s Providers in relation to the Services and the License Terms to an amount that is less than or equal to the amount that Company paid to Microsoft for the applicable customer’s access to the Services. A sample limitation of liability clause is included in Exhibit C, although Microsoft makes no representation or warranty to Company that such clause is either sufficient to comply with Company’s obligations, or legally effective in the jurisdiction in which Company is distributing its Connected Devices. If Company wants to use any portion of Exhibit C in its License Terms, Company must engage its own legal counsel and make appropriate modifications to comply with applicable law.

***Term, Termination, and Suspension*.** Company will include in the License Terms a specified duration for the provision of Services under the agreement that does not exceed the applicable Service and Support Lifecycle and includes Company’s and Company’s Providers’ right to terminate at least for: (a) the End User’s material breach (including without limitation breaches of Section 2); (b) End User actions that harm the operation, or Microsoft’s offering, of the Services; and (c) the End User’s infringement or misappropriation of any Provider’s intellectual property or other proprietary rights. Company will also include in the License Terms a right to suspend offering of the Services for any reason whereby Microsoft can temporarily deactivate or disable the connectivity between the Azure Sphere Security Service or the Apps and the Internet in the Connected Device and can temporarily halt updates to the Apps. If the End User’s right to access the Services was not terminated by Company before the natural expiration of the Service and Support Lifecycle, Company may provide the End User a surviving right to continue to access and use the final version of the Services resident on the Connected Device at the end of the Service and Support Lifecycle for the remaining productive life of the Connected Device. Company will also include a clause granting Company and its Providers the right to change, or if necessary to terminate, the Services if an applicable government rule or regulation is promulgated or interpreted so as to make it materially more difficult, or impossible, to provide the Services without materially changing them.

**Exhibit A – Sample Language of Acceptance and Contract Formation**

**By accepting this Agreement or accessing or using (or attempting to access or use) the Apps or Services, you agree to all of these terms, and consent to the transmission of certain information, including Device Data during your use of the Services. If you do not accept and agree to comply with these terms, you may not use the Apps or Services** and you may contact [*Company*], or your retailer, to determine its return policy and return the Device for a refund or credit under that policy.

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**Exhibit B – Sample Warranty Disclaimer**

**No Warranty**

**The Services on your Device (including the Apps) are licensed “as is.” To the maximum extent permitted by your local laws, you bear the entire risk as to the Services’ quality and performance. Should the Services prove defective, you assume the entire cost of all servicing or repair. Neither the Device manufacturer nor Microsoft gives any express warranties, guarantees, or conditions for the Services. To the extent permitted under your local laws, the manufacturer and Microsoft exclude all implied warranties and conditions, including those of merchantability, quality, fitness for a particular purpose, and non-infringement. You may have additional consumer rights or statutory guarantees under local laws that these terms cannot change.**

**If your local laws impose a warranty, guarantee, or condition even though this Agreement does not, its term is limited to 90 days from when the first user accesses the Services on your Device. If the manufacturer or Microsoft breaches such a warranty, guarantee, or condition, your sole remedy, at the manufacturer’s or Microsoft’s election, is: (a) repair or replacement of the Services at no charge, or (b) return of the Device on which the Services were installed (and from which the Services are accessed) for a refund of the amount paid, if any. These are your only remedies for breach of a warranty, guarantee, or condition your local laws impose.**

Check with your Device manufacturer to obtain warranty service or to determine if your Device is covered by a warranty from the Device manufacturer.

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**Exhibit C – Sample Limitation of Liability Clause**

**Limitation of Liability**

**To the extent not prohibited by your local laws, if you have any basis for recovering damages, you can recover from the manufacturer or Microsoft only direct damages up to $\_\_\_. You will not, and waive any right to, seek to recover any other damages or remedy, including lost profits, consequential, special, indirect, or incidental damages, or any direct damages in excess of the above amount, under any part of this Agreement or under any theory. This limitation applies to: (a) anything related to this Agreement, the Services (including the Apps), the Device, corruption or loss of data, failure to transmit or receive data, or content (including code) on third party internet sites or third party programs; and (b) claims for breach of contract, warranty, guarantee, or condition; strict liability, negligence, or other tort; violation of a statute or regulation; unjust enrichment; or under any other theory, but in each case solely to the extent not prohibited by your local laws.**

**The damage exclusions and remedy limitations in this Agreement apply even if: (a) you have no remedy (the Services are licensed “as is”); (b) if repair, replacement, or a refund (if required by your local law) does not fully compensate you for any losses; (c) if the manufacturer or Microsoft knew or should have known about the possibility of the damages; or (d) if the remedy fails of its essential purpose.**

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