

MICROSOFT BAND BINDING ARBITRATION AGREEMENT AND CLASS ACTION WAIVER

If you live in (or if a business your principal place of business is in) the United States, this Agreement applies to any dispute EXCEPT DISPUTES RELATING TO THE ENFORCEMENT OR VALIDITY OF YOUR, YOUR LICENSORS', MICROSOFT'S, OR MICROSOFT'S LICENSORS' INTELLECTUAL PROPERTY RIGHTS. The term "dispute" means any dispute, action, or other controversy between you and Microsoft concerning the Microsoft Band or Accessory (including its price) or this Agreement, whether in contract, tort, statute, regulation, ordinance, or any other legal or equitable basis. "Dispute" will be given the broadest possible meaning allowable under law.

- (a) **Notice of Dispute.** In the event of a dispute, you or Microsoft must give the other a Notice of Dispute, which is a written statement that sets forth the name, address and contact information of the party giving it, the facts giving rise to the dispute, and the relief requested. You must send any Notice of Dispute by U.S. Mail to Microsoft Corporation, ATTN: LCA ARBITRATION, One Microsoft Way, Redmond, WA 98052-6399, U.S.A. A form is available on the Legal and Corporate Affairs (LCA) website (<http://go.microsoft.com/fwlink/?LinkId=245499>). Microsoft will send any Notice of Dispute to you by U.S. Mail to your address if we have it, or otherwise to your email address. You and Microsoft will attempt to resolve any dispute through informal negotiation within 60 days from the date the Notice of Dispute is sent. After 60 days, you or Microsoft may commence arbitration.
- (b) **Small Claims Court.** You may also bring any dispute in small claims court in your county of residence (or if a business your principal place of business) or King County, Washington, U.S.A. if the dispute meets all requirements to be heard in the small claims court. You may sue in small claims court whether or not you negotiated informally first.
- (c) **Binding Arbitration.** If you and Microsoft do not resolve any dispute by informal negotiation or in small claims court, any other effort to resolve the dispute will be conducted exclusively by individual binding arbitration governed by the Federal Arbitration Act ("FAA"). Class arbitrations are not permitted. You are giving up the right to sue in court before a judge or jury (or participate in court as a party or class member). Instead, all disputes will be resolved before a neutral arbitrator, whose decision will be final except for a limited right of appeal under the FAA. Any court with jurisdiction over the parties may enforce the arbitrator's award.
- (d) **Class Action Waiver.** Any proceedings to resolve any dispute in any forum will be conducted solely on an individual basis. Neither you nor Microsoft will seek to have any dispute heard as a class action, private attorney general action, or in any other proceeding in which either party acts or proposes to act in a representative capacity. No arbitration or other proceeding will be combined with another without the prior written consent of all parties to all affected arbitrations or proceedings.
- (e) **Arbitration Procedure.** Any arbitration will be conducted by the American Arbitration Association (the "AAA") under its Commercial Arbitration Rules (or if you are an individual and use the Microsoft Band or Accessory for personal or household use, or if the value of the dispute is \$75,000 or less whether or not you are an individual or how you use the Microsoft Band or Accessory, its Consumer Arbitration Rules). For more information, see www.adr.org or call 1-800-778-7879. To commence arbitration, submit the form available on the Legal and Corporate Affairs (LCA) website (<http://go.microsoft.com/fwlink/?LinkId=245497>) to the AAA. You agree to commence arbitration only in your county of residence (or if a business your principal place of

business) or in King County, Washington, U.S.A. Microsoft agrees to commence arbitration only in your county of residence (of if a business your principal place of business). You may request a telephonic or in-person hearing by following the AAA rules. In a dispute involving \$25,000 or less, any hearing will be telephonic unless the arbitrator finds good cause to hold an in-person hearing instead. 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, and only to the extent required to satisfy your individual claim.

(f) **Arbitration Fees and Payments**

i. Disputes Involving \$75,000 or Less. Microsoft will promptly reimburse your filing fees and pay the AAA's and arbitrator's fees and expenses. If you reject Microsoft's last written settlement offer made before the arbitrator was appointed ("Microsoft's last written offer"), your dispute goes all the way to an arbitrator's decision (called an "award"), and the arbitrator awards you more than Microsoft's last written offer, Microsoft will: (i) pay the greater of the award or \$1,000; (ii) pay your reasonable attorney's fees, if any; and (iii) 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 amount of fees, costs, and expenses unless you and Microsoft agree on them.

ii. Disputes Involving More than \$75,000. The AAA rules will govern payment of filing fees and the AAA's and arbitrator's fees and expenses.

iii. Disputes Involving Any Amount. In any arbitration you commence, Microsoft will seek its AAA or arbitrator's fees and expenses, or your filing fees it reimbursed, only if the arbitrator finds the arbitration frivolous or brought for an improper purpose. In any arbitration Microsoft commences, Microsoft will pay all filing, AAA, and arbitrator's fees and expenses. Microsoft won't seek its attorney's fees or expenses from you in any arbitration. Fees and expenses are not counted in determining how much a dispute involves.

(g) **Conflict with AAA Rules.** This Agreement governs to the extent it conflicts with the AAA's Commercial Arbitration Rules or Consumer Arbitration Rules.

(h) **Claims or Disputes Must Be Filed Within One Year.** To the extent permitted by law, any claim or dispute to which this Agreement applies must be filed within one year in small claims court (Section (b)), or in arbitration (Section (c)), or in court, if this Agreement permits the dispute to be filed in court instead of arbitration. The one-year period begins when the claim or Notice of Dispute first could be filed. If such a claim or dispute is not filed within one year, it is permanently barred.

(i) **Severability.** If the class action waiver in Section (d) is found to be illegal or unenforceable as to all or some parts of a dispute, then this Agreement won't apply to those parts. Instead, those parts will be severed and proceed in a court of law, with the remaining parts proceeding in arbitration. If any other provision of this Agreement is found to be illegal or unenforceable, that provision will be severed with the remainder of this Agreement remaining in full force and effect.

(j) **Choice of Law.** The FAA governs the interpretation of this Agreement, claims for breach of it, and all matters relating to arbitration. The laws of your State govern any claim for which the FAA cannot provide the governing law.