

Microsoft Azure Stack Validation Service Agreement

Last Updated: July 2017

The Microsoft Azure Validation Service (“Online Service”) assists you in running validation tests for Microsoft Azure Stack on a particular hardware configuration (“Hardware Solution”) of your choosing.

The terms and conditions of this Agreement apply to your access and use of the Online Service including any technology, information, software, materials, and updates that Microsoft makes available to you as part of such services. This agreement (“Agreement”) is between the entity agreeing to these terms (“Company,” “you” or “your”) and Microsoft Corporation (“Microsoft,” “we,” “us,” or “our”).

This Agreement is effective on the date you accept it or upon your first use of the Online Service. If you are accepting this Agreement on behalf of your employer or another legal entity, you represent and warrant that you have the authority to bind that entity and that you are agreeing to these terms on behalf of that entity. If you cannot truthfully make these representations, do not accept this Agreement.

Terms and Conditions

1. Definitions

- a. “Affiliate” means any legal entity that a party owns, that owns a party, or that is under common ownership with a party. “Ownership” means, for purposes of this definition, control of more than a 50% interest in an entity.
- b. “Solution Data” means all data, including text, software or configuration files, related to your Hardware Solution that you provide to run the Validation Test Suites, or are provided on your behalf, to us through your use of the Online Service.
- c. “Result Data” means all reports and data generated by running the Validation Test Suites on your Hardware Solution and that you provide, or are provided on your behalf, to us, including data sent directly back to us by the Validation Test Suites.
- d. “Company Data” means all data, including Solution Data, that you provide, or are provided on your behalf, to us through your use of the Online Service.
- e. “Portal” means the Microsoft Azure Validation Service Portal currently located at <https://www.azurestackvalidation.com/> or at an alternate web site Microsoft identifies.
- f. “Supplemental Software” means any software, including Validation Test Suites, provided to you as part of and through the Online Service and which may be used with the Online Service to enable certain functions of the Online Service.
- g. “Validation Test Suites” means software made available to you as part of and through the Online Service which you run on your Hardware Solutions that are in effect at the time of testing, and as may be updated by Microsoft from time to time.
- h. “Intellectual Property Rights” means all intellectual and proprietary rights, including, but not limited to, inventions and patents for inventions, know-how, trade secrets, copyrights and trademarks.
- i. “Microsoft Azure Stack Solution Catalog” means the list of Hardware Solutions that pass the Validation Test Suites.

2. Your use of the Online Service.

- a. **General.** This Agreement covers your use of the Online Service for testing your Hardware Solution in accordance with the Validation Test Suites. You will be able to review the test results, indicating whether or not a tested Hardware Solution has passed all applicable Validation Test Suites. If the Hardware Solution has not passed testing, the test results will indicate the reason for failure, but such test results should not be construed as providing Microsoft recommendations for improvements to the Hardware Solution.
- b. **Supplemental Software.** This Agreement governs your use of Supplemental Software, and any upgrades/updates. You may use the Supplemental Software only for the purposes of validating your Hardware Solution and may make as many copies of the Supplemental Software as needed for this purpose.
- c. **Validation.** Microsoft reserves the right to review all Company Data and will do so for the purpose of evaluating them in accordance with this Agreement and determining if the Hardware Solution has passed the applicable Validation Test Suites.
- d. **Privacy, Use and Security of Company Data.** We will use your Company Data to provide you the Online Service, including purposes compatible with providing the Online Service. Your Company Data and the Result Data will be used to validate the operation of Microsoft Azure Stack on your Hardware Solution.
- e. **Limitations on use.** You may not reverse engineer, decompile or disassemble the Online Service or the Supplemental Software, except where applicable law permits it despite this limitation. You may not rent, lease, lend, resell, or host to or for third parties the Online Service or Supplemental Software.
- f. **Your representations and warranties.**

You represent and warrant that:

- (a) you have, will obtain, and will maintain all necessary rights to Company Data, and any other data, software programs or services you use in connection with the Online Service; and
 - (b) your use of such data, software programs or services does not infringe the intellectual property or other proprietary rights of any third party.
- g. Online Service Scope of Use (Code of Conduct).** You may not:
- use the Online Service in a way that is prohibited by any law, regulation or governmental order or decree in any relevant jurisdiction, or that violates others' legal rights;
 - use the Online Service in a way that could harm it or impair anyone else's use of it;
 - use the Online Service to try to gain unauthorized access to any service, data, account or network by any means;
 - falsify any protocol or email header information (e.g., "spoofing");
 - use the Online Service to send "spam" (i.e., unsolicited bulk or commercial messages) or otherwise make available any offering designed to violate these terms (e.g., denial of service attacks, etc.); or
 - remove, modify, or tamper with any regulatory or legal notice or link that is incorporated into the Online Service.
- h. Responsibility for your Credentials.** You are responsible for protecting the confidentiality of all user IDs, passwords, tokens, or other credentials ("Credentials") you use to access the Online Service. In addition, you are responsible for all use of the Online Service through your Credentials. You must inform us immediately about any possible misuse of your accounts or Credentials or any security incident related to the Online Service.

- i. **Feedback.** If you give feedback about the Online Service to Microsoft, you give to Microsoft, without charge, the right to use, share and commercialize your feedback in any way and for any purpose. You will not give feedback that is subject to a license that requires Microsoft to license the Online Service to third parties because we include your feedback in them. These rights survive this Agreement. If you provide feedback about the Online Service to Microsoft through another website or service, the terms of that site or service, and specifically any terms regarding feedback, apply to any feedback submitted through that website or service.
- j. **Security.** We may apply security technologies and procedures to help protect against unauthorized access or use of the Online Service. We do not guarantee the success of such technologies and procedures. You are solely responsible for the security, protection and backup of your Company Data, and any other data, software or services you use in connection with the Online Service.

3. Intellectual Property Rights.

- a. **License Grant.** Company hereby grants to Microsoft, under all Company's Intellectual Property rights, the following worldwide, nonexclusive, royalty-free, fully paid up rights to:
 - (i) use, reproduce, display, distribute, and create derivative works of Company Data in connection with in the actions being undertaken pursuant to Section 2, except that Microsoft has no right under this Agreement to (x) create derivative works of the Company Marks or (y) separate Company Marks from Company Data;
- b. **No Obligation or Charge.** Any use of Company Data under this Agreement will be free of charge to Microsoft.
- c. **Ownership.** Except as expressly licensed to Microsoft under this Section 3, Company retains all right, title and interest in and to all Company Data.
- d. **Localization of Company Data.** At Microsoft's request, Company will provide localized versions of the Company Data in the languages requested by Microsoft from time to time.

4. Term and termination.

- a. **Agreement term.** This Agreement will remain in effect until one of us terminates the Agreement in accordance with the provisions of this Section 4.
- b. **Termination by you.** You may terminate this Agreement at any time during the Term. You must follow the termination process, if available, on the Portal or otherwise contact Microsoft (see contact information on the Portal) to terminate the Agreement. In the event that you terminate this Agreement, Microsoft has no obligation to retain your Company Data and may delete your Company Data immediately from the Online Service.
- c. **Termination by Microsoft.** Microsoft may terminate this Agreement at any time, including for any of the following reasons:
 - i. you violate the terms of this Agreement;
 - ii. we are otherwise required by law to do so;
 - iii. we believe that your use of the Online Service represents a direct or indirect threat to the Online Service or anyone else's use of the Online Service; or
 - iv. we decide to cease providing the Online Service.

- d. **Regulatory environment: modification or termination by Microsoft.** We may modify or terminate an Online Service in any country where there is any current or future government requirement or obligation that subjects us to any regulation or requirement not generally applicable to businesses operating there, presents a hardship for us to continue operating the Online Service without modification, and/or causes us to believe these terms or the Online Service may be in conflict with any such requirement or obligation. For example, we may modify or terminate the Online Service in connection with a government requirement that would cause us to be regulated as a telecommunications provider.

5. Confidentiality.

You will treat the design and performance of the Online Service and any documentation or materials we make available to you under this Agreement as confidential and shall not disclose them to any third party except in the furtherance of our business relationship with each other.

6. Warranties.

- a. **No warranties.** The Online Service and Supplemental Software are being provided under this Agreement as is and without warranty.
- b. **DISCLAIMER OF WARRANTIES. EXCEPT TO THE EXTENT PROHIBITED BY APPLICABLE LAW, WE DISCLAIM ANY AND ALL REPRESENTATIONS OR WARRANTIES, EXPRESS, STATUTORY OR IMPLIED, INCLUDING WITHOUT LIMITATION (i) REPRESENTATIONS OR WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, TITLE OR NON-INFRINGEMENT, (ii) REPRESENTATIONS OR WARRANTIES ARISING THROUGH COURSE OF DEALING OR USAGE OF TRADE, AND (iii) REPRESENTATIONS OR WARRANTIES THAT ACCESS TO OR USE OF THE ONLINE SERVICE OR SUPPLEMENTAL SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE. THESE DISCLAIMERS WILL APPLY UNLESS APPLICABLE LAW DOES NOT PERMIT THEM.**

7. Defense of infringement and misappropriation claims.

- a. **Our agreement to protect.** We will defend you against any claims made by an unaffiliated third party that the Online Service infringes that party's patent, copyright or trademark or makes intentional unlawful use of its trade secret. We will also pay the amount of any resulting adverse final judgment (or settlement to which we consent). This Section provides your exclusive remedy for these claims.
- b. **What you must do.** You must notify us promptly in writing of the claim and give us sole control over defense or settlement. You must also provide us with reasonable assistance in defending the claim. We will reimburse you for reasonable out of pocket expenses that you incur in providing that assistance.
- c. **Limitations on defense obligation.** Our obligations will not apply to the extent that the claim or award is based on:
 - i. Company Data, code, or materials you provided as part of the use of the Online Service;
 - ii. your use of the Online Service after we notify you to discontinue that use due to a third party claim;
 - iii. your combination of the Online Service with a non-Microsoft product, data or business process;

- iv. damages attributable to the value of the use of a non-Microsoft product, data or business process;
- v. modifications you make to the Online Service;
- vi. your redistribution of the Online Service to, or use for the benefit of, any unaffiliated third party;
- vii. your use of Microsoft's trademark(s) without express written consent to do so; or
- viii. any trade secret claim, where you acquire the trade secret or undisclosed information (1) through improper means; (2) under circumstances giving rise to a duty to maintain its secrecy or limit its use; or (3) from a person (other than us or our Affiliate) who owed to the party asserting the claim a duty to maintain the secrecy or limit the use of the trade secret.

You will reimburse us for any costs or damages that result from any of the above actions.

d. Specific rights and remedies in case of infringement.

- i. **Our rights in addressing possible infringement.** If we receive information concerning an infringement claim related to the Online Service, we may, at our expense and without obligation to do so: (1) procure for you the right to continue to use the allegedly infringing Online Service; (2) modify the Online Service; (3) replace the Online Service with a functional equivalent, to make it non-infringing, in which case you will immediately stop using the allegedly infringing Online Service after receiving notice from us; or (4) terminate your access to the Online Service.
- ii. **Your specific remedy in case of injunction.** If, as a result of an infringement claim, your use of the Online Service is enjoined by a court of competent jurisdiction, we will, at our option, either: (1) procure the right to continue its use; (2) replace it with a functional equivalent; (3) modify it to make it non-infringing; or (4) terminate your access to the Online Service.

8. Limitation of liability.

- a. **Limitation on liability.** Except as otherwise provided in this Section, to the extent permitted by applicable law, our and our Affiliates' and contractors' liability to you arising under this Agreement is limited to five United States dollars (\$5.00 USD). These limitations apply regardless of whether the liability is based on breach of contract, tort (including negligence), strict liability, breach of warranties, or any other legal theory. However, this monetary limitation will not apply to:
 - i. Our obligations under the Section titled "Defense of infringement and misappropriation claims;"
 - ii. liability for damages awarded by a court of final adjudication for our employees' or agents' gross negligence or willful misconduct;
 - iii. liabilities arising out of any breach of our obligations under the Section entitled "Confidentiality", except that our and our Affiliates' and contractors' liability arising out of or in relation to Company Data shall in all cases be limited to the amount you paid for the Online Service giving rise to that liability during the (1) Term or (2) twelve months prior to the filing of the claim, whichever is less; and
 - iv. liability for personal injury or death caused by our negligence or that of our employees or agents or for fraudulent misrepresentation.

- b. **EXCLUSION OF CERTAIN DAMAGES. TO THE EXTENT PERMITTED BY APPLICABLE LAW, WHATEVER THE LEGAL BASIS FOR THE CLAIM, NEITHER PARTY, NOR ANY OF ITS AFFILIATES OR SUPPLIERS, WILL BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL OR INCIDENTAL DAMAGES, DAMAGES FOR LOST PROFITS OR REVENUES, BUSINESS INTERRUPTION, OR LOSS OF BUSINESS INFORMATION ARISING IN CONNECTION WITH THIS AGREEMENT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF SUCH POSSIBILITY WAS REASONABLY FORESEEABLE. HOWEVER, THIS EXCLUSION DOES NOT APPLY TO EITHER PARTY'S LIABILITY TO THE OTHER FOR VIOLATION OF ITS CONFIDENTIALITY OBLIGATIONS (EXCEPT TO THE EXTENT THAT SUCH VIOLATION RELATES TO COMPANY DATA), THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS, OR THE PARTIES' RESPECTIVE OBLIGATIONS IN THE SECTION TITLED "DEFENSE OF INFRINGEMENT, MISAPPROPRIATION, AND THIRD PARTY CLAIMS."**

9. *Miscellaneous.*

- a. **Notices to us.** You must send notices, authorizations, and requests in connection with this Agreement by email to vaashelp@microsoft.com. We will treat notices as delivered on the date shown on email. You must terminate the Agreement via the Portal.
- b. **Assignment.** You may not assign this Agreement. We may assign this Agreement to our Affiliates.
- c. **Severability.** If a court holds any provision of this Agreement to be illegal, invalid or unenforceable, the rest of the Agreement will remain in effect and this Agreement will be amended to give effect to the eliminated provision to the maximum extent possible.
- d. **Waiver.** A waiver of any breach of this Agreement is not a waiver of any other breach. Any waiver must be in writing and signed by an authorized representative of the waiving party.
- e. **Applicable law.** This Agreement is governed by the laws of the State of Washington without regard to its conflict of laws principles. The 1980 United Nations Convention on Contracts for the International Sale of Goods and its related instruments will not apply to this Agreement. The Online Service is protected by copyright and other intellectual property rights laws and international treaties.
- f. **Dispute resolution.** Any action to enforce this Agreement must be brought in the State of Washington, USA. This choice of jurisdiction does not prevent either party from seeking injunctive relief with respect to a violation of intellectual property rights or confidentiality obligations in any appropriate jurisdiction.
- g. **This Agreement is not exclusive.** You are free to enter into agreements to license, use or promote non-Microsoft software or services.
- h. **Entire agreement.** This Agreement constitutes the entire agreement concerning the subject matter and supersedes any prior or contemporaneous communications.
- i. **Survival.** Provisions regarding feedback, restrictions on use, transfer of licenses, export restrictions, defense of infringement and misappropriation claims, limitations of liability, confidentiality, obligations on termination and the provisions in this Section entitled "Miscellaneous" will survive termination of this Agreement.
- j. **No transfer of ownership.** We do not transfer any ownership rights in any Online Service. We reserve all rights not specifically granted in this Agreement. The Online Service is protected by copyright and other intellectual property rights laws and international treaties.
- k. **Force majeure.** Neither party will be liable for any failure in performance due to causes beyond either party's reasonable control (such as fire, explosion, power blackout, earthquake, flood, severe storms, strike, embargo, labor disputes, acts of civil or military authority, war, terrorism (including cyber terrorism), acts of God, acts or omissions of Internet

traffic carriers, actions or omissions of regulatory or governmental bodies (including the passage of laws or regulations or other acts of government that impact the delivery of Online Service).

- i. U.S. export jurisdiction.** The Online Service is subject to U.S. export jurisdiction. You must comply with all applicable laws including the U.S. Export Administration Regulations, the International Traffic in Arms Regulations, as well as end-user, end-use and destination restrictions issued by U.S. and other governments. For additional information, see <http://www.microsoft.com/exporting/>.
- m. Natural disaster.** In the event of a natural disaster, we may post information or provide additional assistance or rights on <http://www.microsoft.com>.