

Azul Zing Evaluation Agreement Terms

BY CLICKING ON THE "I AGREE" (OR SIMILAR) BUTTON OR CHECK BOX, OR BY DOWNLOADING, INSTALLING, COPYING, OR OTHERWISE USING THE PRODUCT, YOU ARE UNCONDITIONALLY CONSENTING TO BE BOUND BY AND ARE BECOMING A PARTY TO THIS EVALUATION AGREEMENT CONSISTING OF THIS PARAGRAPH AND THE FOLLOWING TERMS (THE "AGREEMENT"). "YOU" MEANS THE NATURAL PERSON OR THE ENTITY THAT YOU REPRESENT, YOUR EMPLOYEES AND THIRD PARTY CONTRACTORS THAT PROVIDE SERVICES TO YOU ("EVALUATOR") THAT IS AGREEING TO BE BOUND BY THIS AGREEMENT. IF A SEPARATE WRITTEN EVALUATION AGREEMENT WITH RESPECT TO THIS PRODUCT EXISTS BETWEEN EVALUATOR AND AZUL SYSTEMS, INC. ("AZUL"), THE TERMS OF THAT WRITTEN EVALUATION AGREEMENT (EXCLUDING ANY PRE-PRINTED OR OTHERWISE CONFLICTING TERMS OF ANY PURCHASE ORDER, CONFIRMATION OR SIMILAR DOCUMENT, WHICH WILL HAVE NO EFFECT AND WILL NOT BE CONSIDERED AGREED TO BY AZUL) SHALL TAKE PRECEDENCE OVER THIS AGREEMENT, AND YOU ACKNOWLEDGE THAT EVALUATOR IS BOUND BY THE TERMS OF THAT WRITTEN EVALUATION AGREEMENT. IF THESE TERMS ARE CONSIDERED AN OFFER, ACCEPTANCE IS EXPRESSLY LIMITED TO SUCH TERMS.

1. Definitions. "Product" means the proprietary software product known as Zing belonging to Azul, including any updates, modifications or bug fixes, and may include pre-release products which are undergoing development at Azul, and associated documentation that are provided by Azul to Evaluator hereunder.

2. Evaluation License, Restrictions, and Ownership

2.1 License Grant and Restrictions. Subject to the terms and conditions of this Agreement, Azul grants Evaluator a one-time, limited, nonexclusive, without rights to sublicense, non-transferable license in object form only to use and evaluate the Product without charge for a period of thirty (30) days from the first date of Product installation (the "Evaluation Period"), solely for its internal testing and evaluation purposes and solely in accordance with the associated documentation. Evaluator will not (and will not allow any third party to) (i) reverse engineer or attempt to discover any source code or underlying ideas or algorithms of the Product; (ii) provide, lease, lend, license, sublicense, sell, use for timesharing or service bureau purposes or otherwise use or allow others to use the Product for the benefit of any third party; (iii) use the Product, or allow the transfer, transmission, export, or re-export of the Product or any portion thereof in violation of any export control laws or regulations administered by the U.S. Commerce Department, OFAC, or any other government agency; (iv) copy, modify or create derivative works of the Product; (v) remove or alter any copyright, trademark, or other proprietary notice from the Product or any portion thereof; (vi) use the Product in any manner after the Evaluation Period; or (vii) re-install the Product or re-accept the terms of this Agreement to extend the length of the Evaluation Period. Any rights not expressly granted herein are reserved and retained by Azul.

2.2 Ownership. Evaluator acknowledges and agrees that Azul owns all right, title and interest in the Product and all intellectual property rights related thereto. Evaluator may not make any filings or registrations in any jurisdiction with respect to any trademark, domain name, or other designation relevant to the subject matter of this Agreement. If Evaluator proposes or makes any modifications, corrections or enhancements to the Product during the evaluation period, Evaluator hereby assigns to Azul all right, title and interest thereto, without further compensation.

3. Term and Termination. Either party may terminate this Agreement for any reason immediately by written notice to the other party. This Agreement shall terminate after the Evaluation Period unless

extended by Azul in writing or by Azul issuing to Evaluator an additional license key(s). Within ten (10) days following any termination or expiration of this Agreement, Evaluator shall destroy the Product and associated documentation (and all copies of either) in its possession, custody or control. Sections 2 through 6 shall survive any termination or expiration of this Agreement.

4. No Warranty. THE PRODUCT IS PROVIDED "AS IS", AND AZUL MAKES NO WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT THERETO, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY, OR NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE. WITHOUT LIMITING THE FOREGOING, Azul DOES NOT WARRANT RESULTS OF USE OR THAT THE PRODUCT OR PRODUCT COMPONENTS ARE BUG FREE OR THAT THEIR USE WILL BE UNINTERRUPTED.

5. Limitation of Liability. NOTWITHSTANDING ANYTHING ELSE IN THIS AGREEMENT OR OTHERWISE, AND EXCEPT FOR BODILY INJURY, AZUL SHALL NOT BE LIABLE OR OBLIGATED WITH RESPECT TO THE SUBJECT MATTER OF THIS AGREEMENT OR UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY (I) FOR ANY AMOUNTS IN EXCESS OF ONE HUNDRED DOLLARS (\$100); (II) FOR ANY COST OF PROCUREMENT OF SUBSTITUTE GOODS, TECHNOLOGY, SERVICES OR RIGHTS; (III) FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES; (IV) FOR INTERRUPTION OF USE OR LOSS OR CORRUPTION OF DATA OR LOSS OF REVENUE; OR (V) FOR ANY MATTER BEYOND ITS REASONABLE CONTROL.

6. Miscellaneous. If any provision of this Agreement shall be adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and enforceable. Evaluator acknowledges that Product may be distributed alongside or contain or use certain third party and/or open source software ("Third Party Software"). Third Party Software is (in addition to the terms and conditions of this Agreement), subject to and governed by the respective licenses for the third party software available at http://www.azulsystems.com/license/third_party_licenses.html.

Evaluator represents and warrants that neither this Agreement nor the performance of or exercise of rights hereunder is restricted by, in conflict with, requires registration or approval, affects Azul's proprietary rights under, or will require any payment, indemnification or compulsory licensing under, any law or regulation within any jurisdiction in which Evaluator is located or uses or will use any Product(s) pursuant to this Agreement.

This Agreement shall be deemed to have been made in, and shall be construed pursuant to the laws of the state of California, without regard to conflicts of laws provisions thereof, and without regard to the United Nations Convention on the International Sale of Goods. Any dispute arising from or relating to the subject matter of this Agreement shall be finally settled by arbitration in San Jose, California, using the English language in accordance with the Arbitration Rules and Procedures of JAMS then in effect, by one or more commercial arbitrator(s) with substantial experience in the software industry and in resolving complex commercial contract disputes. If the parties cannot agree upon the number and identity of the arbitrators, then a single arbitrator shall be selected in accordance with the Arbitration Rules and Procedures of JAMS. The arbitrator(s) shall have the authority to grant specific performance and to allocate between the parties the costs of arbitration in such equitable manner as the arbitrator(s) may determine. The prevailing party in the arbitration shall be entitled to receive reimbursement of its reasonable expenses (including without limitation reasonable attorneys' fees) incurred in connection therewith. Judgment upon the award so rendered may be entered in a court having jurisdiction or application may be made to such court for judicial acceptance of any award and an order of enforcement,

as the case may be. Notwithstanding the foregoing, each party shall have the right to institute an action in a court of proper jurisdiction for preliminary injunctive relief pending a final decision by the arbitrator(s), provided that a permanent injunction and damages shall only be awarded by the arbitrator(s). For all purposes of this Section 6, the parties consent to exclusive jurisdiction and venue in the United States federal courts located in the Northern District of California.

This Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements and communications relating to the subject matter of this Agreement. This Agreement may not be modified without the prior written consent of both parties.

Revision 8-Feb-2017