

# **EVALUATION LICENSE AGREEMENT**

## **TERMS AND CONDITIONS**

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Evaluator's use of the software (described herein and bundled with this Agreement) is subject to the terms and conditions set forth below. Evaluator's right to use the software is expressly conditioned on acceptance of these terms. If Evaluator does not agree with any provision of the terms, Evaluator must not access or use this software in any manner for any purpose.

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4. Term and Termination. This Agreement shall become effective on the date in which Evaluator uses the Product and shall continue until terminated by either party. Either party may terminate this Agreement for any reason immediately by written notice to the other party, with or without cause. Within ten (10) days following any termination or expiration of this Agreement, Evaluator shall return the Product and all copies to Azul or destroy the Product and all copies, and Evaluator shall return to Azul all Proprietary Information in its possession, custody or control. Sections 2 through 7 shall survive any termination or expiration of this Agreement.

5. 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.

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**7. 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 licenses (TPL) available at <https://docs.azul.com/prime/tpl.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 7, 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.