

# Hosting Master Service Agreement



BY CLICKING "I AGREE" AND/OR USING AZUL SERVICES' SERVICES, YOU AGREE TO BE BOUND BY ALL OF THE TERMS AND CONDITIONS OF THIS MASTER SERVICES AGREEMENT, THE ATTACHED APPENDIXES A: MICROSOFT SOFTWARE USE-TERMS AND CONDITIONS AND B: RESEARCH IN MOTION USE-TERMS AND CONDITIONS, AZUL SERVICES' ACCEPTABLE USE POLICY, AZUL SERVICES' SERVICE LEVEL AGREEMENT (THE "SERVICE LEVEL AGREEMENT"), AZUL SERVICES' PRIVACY POLICY AND AZUL SERVICES' NO-SPAM POLICY, WHICH MAY BE FOUND AT [HTTP://WWW.AZUL-SERVICES.COM/TERMS](http://www.azul-services.com/terms) (COLLECTIVELY, THIS "AGREEMENT").

This Hosting Master Service Agreement is by and between Azul Services and the individual, corporation, partnership, association, joint-stock Azul Services, trust, unincorporated organization, or government or political subdivision which is utilizing Azul Services' exchange hosting and/or other services provided hereunder ("You"). In consideration of the mutual promises, covenants and agreements hereinafter set forth, Azul Services and You agree as follows:

**1. Lawful Use of the Services.**

You agree to use Azul Services' exchange hosting and/or other services provided hereunder (the "Services") only for lawful purposes. In the event that Your use of the Services violates any law, rule or regulation, Azul Services shall have the right to immediately terminate this Agreement.

**2. Provision of Services.**

Azul Services agrees to provide the Services to You in accordance with the Service Level Agreement. You hereby agree to comply with the terms and conditions of this Master Services Agreement, the Appendixes A: Microsoft Software Use-Terms and Conditions and B: Research in Motion Use-Terms and Conditions (attached hereto), Azul Services' Acceptable Use Policy, Privacy Policy and No-Spam Policy, each of which are incorporated by reference herein. YOU SHALL AT ALL TIMES PROVIDE AND KEEP CURRENT AND UP TO DATE YOUR CONTACT, CREDIT CARD, IF APPLICABLE, AND BILLING INFORMATION ON THE ADMINISTRATIVE CONTROL PANEL.

**3. Term and Termination.**

- a. Term. Unless defined otherwise between Azul Services and You, the following shall apply: The Agreement term is either the Initial Term or Renewal Term (each, a "Term") as defined herein. The Initial Term is defined as the period from the date of Your initial payment or execution of this Agreement, whichever occurs earlier, through the remainder of the calendar month in which this Agreement was executed. The Renewal Term is defined as one calendar month beginning at the end of the Initial Term and each subsequent calendar month thereafter.
- b. Automatic Renewal. This Agreement shall renew automatically at the end of the prior Term unless terminated in accordance with this Agreement either by You or by Azul Services. When a new Term begins, the then current Hosting Master Service Agreement and Service Level Agreement shall replace in their entirety the previous Hosting Master Service Agreement and Service Level Agreement. The then current Hosting Master Service Agreement and Service Level Agreement shall be considered this "Agreement". Please review the then current Hosting Master Service Agreement and Service Level Agreement from time to time so that You will be apprised of any changes (<http://www.msoutlookonline.net/legal>).

### 3.1 Termination by You without cause.

- a. You may terminate this Agreement at any time without cause by following the termination procedure located within the Account section of the Administrative Control Panel prior to the beginning of any Renewal Term. If You terminate without cause prior to the end of the then current Term, Azul Services shall not be required to refund to You fees already paid.
- b. Refunds/Fees for Termination by You without cause. Fees for non-recurring services and set up fees shall not be refunded. Any fees previously waived or discounts applied may be reinstated if You terminate the account for no cause during the term or if You breach this Agreement.

3.2 Termination by Azul Services without cause. Azul Services may terminate this Agreement without cause by providing written or electronic mail notice of termination to Your Administrative email contact address not less than fifteen (15) calendar days prior to the effective termination date.

### 3.3 Termination for Cause.

- a. By You. To terminate Your account for Azul Services' violation of the terms of this Agreement or the Service Level Agreement, You shall provide to Azul Services' Administrative Contact in writing, via email or via certified mail, the details of Azul Services' violation and allow Azul Services thirty (30) days to cure any such violation prior to termination of Your account.
- b. AZUL SERVICES MAY TERMINATE SERVICES TO YOU IMMEDIATELY AND WITHOUT PRIOR NOTICE (TERMINATION FOR CAUSE) FOR ANY OR ALL OF THE FOLLOWING REASONS:
  1. ANY MATERIAL BREACH OF THIS AGREEMENT, WHICH INCLUDES BUT IS NOT LIMITED TO FAILURE TO MAKE PAYMENT WHEN DUE, VIOLATION OF THE AZUL SERVICES' ACCEPTABLE USE OR NO SPAM POLICIES; OR ANY NON-MATERIAL BREACH OF THIS AGREEMENT WHICH REMAINS UNCURED BEYOND A REASONABLE TIME AFTER BREACH NOTIFICATION; AND FAILURE TO PROVIDE AND KEEP CURRENT ALL ADMINISTRATIVE CONTACT AND BILLING INFORMATION.
  2. IN THE EVENT OF TERMINATION FOR CAUSE, AZUL SERVICES SHALL NOT REFUND ANY PAID FEES. TERMINATION FOR CAUSE WILL NOT CANCEL OR WAIVE ANY FEES OWED TO AZUL SERVICES PRIOR TO ACCOUNT TERMINATION.

3.4 Following Termination. TERMINATION OF YOUR ACCOUNT WILL NOT CANCEL OR WAIVE ANY FEES OWED TO AZUL SERVICES PRIOR TO OR UPON TERMINATION. YOUR DATA AND ACCOUNT SETTINGS SHALL BE IRREVOCABLY DELETED IMMEDIATELY UPON TERMINATION, INCLUDING BUT NOT LIMITED TO, WEB SITE CONTENT, DATABASES, AND EMAIL MESSAGES. IT SHALL BE SOLELY YOUR RESPONSIBILITY TO SECURE ALL NECESSARY DATA FROM YOUR ACCOUNT PRIOR TO TERMINATION.

## 4. Fees, Billing, Taxes, Charges.

4.1 Fees. The fees set forth in the order form created at the outset of Your account shall be effective for the Initial Term and each Renewal Term of this Agreement, provided, that Azul Services shall have the right to increase these fees at any time upon thirty (30) days' written notice to You. In the event that You do not agree with such fee increase, You shall have the right to terminate this Agreement upon thirty (30) days' written notice, provided, that such notice of termination must be received within thirty (30) days of date of notice of the fee increase.

4.2 Billing and Payment Arrangements. Azul Services will bill You on a monthly basis for all recurring and one-time fees, including but not limited to late payment fees, invoice processing fees and returned check fees.

### 4.3 Payment by Credit Card.

- a. For payment by credit card, Azul Services shall not provide an invoice to You. You may view and print an invoice for Your account using the Administrative Control Panel. On or about the first day of each month, Azul Services

will apply the current monthly charges to Your credit card, the number of which You entered on the Billing Information page in the Administrative Control Panel.

- b. It is Your responsibility to keep Your credit card information up-to-date. In the event charges to Your credit card fail, Azul Services shall email a warning to Your account billing contacts. If, after seven (7) days, Azul Services is unable to bill Your credit card, Azul Services will suspend Your access to the Services. During this suspension, incoming email as well as existing data will not be affected. After fourteen (14) days of non-payment from the date Your credit card was initially charged, Azul Services shall have the right to immediately terminate this Agreement.

#### 4.4 Payment by Check.

Acceptance into Azul Services' invoice program shall be at Azul Services' sole discretion.

4.5 Excess use. You shall monitor and maintain Your accounts within all plan-specified limits and in a manner that does not disrupt the activities of other Azul Services customers. In the event Your usage exceeds the limits for Your account or may disrupt the activities of other Azul Services customers, You agree Azul Services may, in its sole discretion, (i) charge You for such excess usage via Your credit card, or by invoice if You have been accepted into a check paying program, (ii) upgrade You to a plan or increase the limits on Your account to address this excess usage, and/or (iii) suspend or terminate Your account for cause. Usage and associated charges for excess usage shall be determined based solely upon Azul Services' collected usage information. Unused monthly allotments shall not accrue or carry over from one month to any other month. Upon any upgrade or increase on the limits of Your Account, You shall be responsible for the new costs and fees.

4.6 Taxes. You shall be liable for taxes, governmental fees and assessments to be paid related to fees and charges arising under this Agreement or in connection with the Services. You shall also pay all taxes, fees, and assessments of any nature associated with products or services sold through the use of or with the aid of the Services.

## 5. **Modification of Terms.**

Azul Services may update, amend, modify or supplement the terms and conditions of this Agreement from time to time without notice to You. You can review the most current version of this Agreement at any time at:

<http://www.msoutlookonline.net/legal/>.

## 6. **Beta Products and Services.**

6.1 Provided "As Is". THIS SECTION APPLIES ONLY TO CUSTOMERS WITH ACCOUNTS CREATED ON EXPERIMENTAL "BETA" PLANS AND PLATFORMS. "BETA" SERVICES ARE PROVIDED TO YOU ON AN "AS IS" BASIS. AZUL SERVICES' SERVICE LEVEL AGREEMENT SHALL NOT APPLY TO "BETA" PLANS OR PLATFORMS. NOTWITHSTANDING ANYTHING ELSE SET FORTH IN THIS AGREEMENT, AZUL SERVICES DOES NOT MAKE ANY REPRESENTATIONS OR WARRANTIES REGARDING THE "BETA" PLANS OR PLATFORMS NOR DOES IT MAKE ANY REPRESENTATIONS AND WARRANTIES REGARDING THE INTEGRITY OF DATA STORED ON "BETA" SERVERS. YOU ARE STRONGLY DISCOURAGED FROM USING ACCOUNTS ON "BETA" PLANS OR PLATFORMS FOR HOSTING ANY PRODUCTION APPLICATIONS OR FOR STORING SENSITIVE DATA.

6.2 Upgrades. Azul Services shall upgrade software on "beta" programs when and as Azul Services deems necessary in its sole discretion. Azul Services does not represent or warrant that new versions of the software installed on "beta" programs will be compatible with the currently installed version or that loss of functionality or interruption of service will not occur as a result of such upgrades.

6.3 Termination. Azul Services reserves a right to terminate any "beta" program at any time by giving You fifteen (15) days written or electronic mail notice. Azul Services will convert the "beta" servers at the end of the fifteen (15) day notice period to an Azul Services' Services Plan selected at Azul Services' sole discretion. To discontinue the account and avoid incurring increased charges under selected Azul Services Services Plan, You must terminate the account in accordance with the termination provisions in Section 3 of this Agreement.

## 7. Materials, Data, Software or Products.

7.1 Server Ready. Any material, data, software or products You provide to Azul Services in connection with Azul Services' services shall be Server Ready, meaning that they shall be in a condition and form, as determined solely by Azul Services, which requires no additional manipulation or verification on the part of Azul Services. Attempting to place or requesting placement of Non-Server-Ready material, data, software or products on Azul Services' servers shall be a breach of this Agreement.

7.2 Rejection. Azul Services may, in its sole discretion, reject material, data, software or products that You have placed, attempted to place, or have requested be placed on Azul Services' servers. Azul Services shall notify You of its rejection and provide You with an opportunity to amend or modify such material, data, software or products to meet the requirements of Azul Services.

7.3 Malicious Code. Any material, data, software or products placed on Azul Services' servers by or through You shall be free of any and all malicious code, including without limitation, disabling devices, drop dead devices, time bombs, trap doors, trojan horses, worms, computer viruses and mechanisms that may disable or negatively impact the servers.

## 8. LIMITED WARRANTY; LIMITATION OF DAMAGES.

8.1 AZUL SERVICES PROVIDES SERVICES "AS IS". YOU EXPRESSLY AGREE THAT USE OF AZUL SERVICES SERVICES IS AT YOUR SOLE RISK. AZUL SERVICES AND ITS SUBSIDIARIES, AFFILIATES, OFFICERS, EMPLOYEES, AGENTS, PARTNERS, VENDORS AND LICENSORS EXPRESSLY DISCLAIM ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. YOU HEREBY AGREE THAT THE TERMS OF THIS AGREEMENT SHALL NOT BE ALTERED DUE TO CUSTOM OR USAGE OR DUE TO THE PARTIES' COURSE OF DEALING OR COURSE OF PERFORMANCE UNDER THIS AGREEMENT.

8.2 AZUL SERVICES AND ITS SUBSIDIARIES, AFFILIATES, OFFICERS, EMPLOYEES, AGENTS, PARTNERS, VENDORS AND LICENSORS SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOST PROFITS, BUSINESS INTERRUPTION, LOSS OF PROGRAMS OR INFORMATION, AND THE LIKE, THAT RESULT FROM THE USE OR INABILITY TO USE THE SERVICES OR FROM MISTAKES, OMISSIONS, INTERRUPTIONS, DELETION OF FILES OR DIRECTORIES, ERRORS, DEFECTS, DELAYS IN OPERATION, OR TRANSMISSION, REGARDLESS OF WHETHER AZUL SERVICES HAS BEEN ADVISED OF SUCH DAMAGES OR THEIR POSSIBILITY.

8.3 You agree that the total liability of Azul Services and its subsidiaries, affiliates, officers, employees, agents, partners, vendors and licensors and Your sole remedy for any claims regarding the Services is limited to the credits set forth in the Service Level Agreement.

8.4 Azul Services will exercise no control over the content of the information passing through Azul Services' network except those controls expressly provided herein.

## 9. Patents, Copyrights, Trademarks, and Other Intellectual and Proprietary Rights.

9.1 Except for rights expressly granted herein, this Agreement does not transfer any intellectual or other property or proprietary right to You. All right, title, and interest in any product or service provided to You, including without limitation any copyright, trade secret and vested or potential trademark and patent rights, is solely the property of Azul Services and its vendors and licensors. You shall not reserve engineer, transfer, assign, copy, modify, reproduce or use any of product or service, hardware, software or otherwise which is provided in connection with the Services for purposes other than in conjunction with the permitted use of the Services.

9.2 You hereby represent and warrant to Azul Services that You have the right to use any patented, copyrighted, trademarked or proprietary material which You use, post, or otherwise transfer to or by way of Azul Services servers.

## 10. Hardware, Equipment, and Software.

You are responsible for and must provide all phones, phone services, computers, software, hardware, and other services necessary to access the Services. Azul Services makes no representations, warranties, or assurances that Your equipment will be compatible with Azul Services services.

## 11. Indemnification.

You shall defend, indemnify, save, and hold Azul Services and its subsidiaries, affiliates, officers, employees, agents, partners, vendors and licensors harmless from any and all demands, liabilities, losses, costs, and claims, including reasonable attorneys' fees, asserted against them that may arise or result from Your breach of this Agreement, Your negligence or willful misconduct or any of Your services or products.

## 12 Miscellaneous.

12.1 Governing Law; Jurisdiction; Forum; Attorneys' Fees. This Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to its conflicts of laws or its principles. You agree, in the event any claim or suit is brought in connection with this Agreement, to the exclusive jurisdiction and venue of the courts of Santa Clara County, California. In any action to enforce this Agreement, including, without limitation, any action by Azul Services for the recovery of fees due hereunder, You shall pay Azul Services reasonable attorneys' fees and costs in connection with such action.

12.2 Age and Capacity. You hereby represent and warrant that You and any person to whom You grant access to Your Azul Services account have reached the age of eighteen and that You are not subject to a limitation on Your ability to enter into this Agreement.

12.3 Severability. In the event that any one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any of the other provisions of this Agreement, and this Agreement shall be construed as if such provision(s) had never been contained herein, provided that such provision(s) shall be curtailed, limited, or eliminated only to the extent necessary to remove the invalidity, illegality, or unenforceability.

12.4 Waiver; Modification. No waiver by Azul Services of any breach by You of any of the provisions of this Agreement shall be deemed a waiver of any preceding or succeeding breach of this Agreement. No such waiver shall be effective unless it is in writing signed by the parties hereto, and then only to the extent expressly set forth in such writing. No modification of this Agreement shall be effective unless it is in writing and signed by Azul Services, and then only to the extent set forth in such writing. We may modify or amend this Agreement, including the Service Level Agreement and the rates and fees, from time to time. Unless otherwise provided in this Agreement, all such modifications or amendments shall be effective immediately upon posting on the Website. You may request a copy of the revised Agreement by e-mailing the Azul Services' administrative contact. YOUR CONTINUED USE OF YOUR ACCOUNT AND/OR THE SERVICES AFTER THE NOTICE PERIOD WILL BE CONCLUSIVELY DEEMED TO BE ACCEPTANCE BY YOU OF ANY SUCH MODIFICATIONS OR AMENDMENTS.

12.5 No Assignment. No benefit or duty under this Agreement shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance or charge, and any attempt to do so shall be void.

12.6 Force Majeure. Except for monetary obligations, this Agreement and Your obligations hereunder shall not be affected or impaired because Azul Services is unable to fulfill any of its obligations hereunder or is delayed in doing so, if such inability or delay is caused by reason of Force Majeure Event and Azul Services' obligations under this Agreement shall be suspended by any such Force Majeure Event. "Force Majeure Event" is defined as any cause beyond Azul Services' reasonable control or anticipation, including, without limitation, acts of war, acts of God, terrorism,



earthquake, hurricanes, flood, fire or other casualty, embargo, riot, sabotage, labor shortage or dispute, governmental act, insurrections, epidemics, quarantines, inability to procure materials or transportation facilities, failure of power, restrictive governmental laws or regulations, condemnation, acts of third parties, failure of the Internet or other reason that is beyond Azul Services' reasonable control.

12.7 Survival. Sections 8, 9, 11 and this Section 12 of this Agreement shall survive termination.

12.8 Entire Agreement; Third Party Beneficiaries. This Agreement constitutes the entire agreement for provision of the Services to You and supersedes all other prior agreements and understandings, both written and oral, between You and Azul Services with respect to the Services. You understand and agree that Azul Services and You intend to include, as the sole third party beneficiaries of this Agreement, Azul Services' vendors and licensors, with all rights and remedies available as if such vendors and licensors were a party to this Agreement.

## APPENDIX A. MICROSOFT SOFTWARE USE – TERMS AND CONDITIONS

This document concerns your use of Microsoft software, which includes computer software provided to you by Azul Services as described below, and may include associated media, printed materials, and “online” or electronic documentation (individually or collectively “SOFTWARE PRODUCTS”). Azul Services does not own the SOFTWARE PRODUCTS and the use thereof is subject to certain rights and limitations of which Azul Services needs to inform you. Your right to use the SOFTWARE PRODUCTS is subject to your agreement with Azul Services, and to your understanding of, compliance with and consent to the following terms and conditions, which Azul Services does not have authority to vary, alter or amend.

### DEFINITIONS.

For purposes of this Appendix, the following definitions shall apply:

“**Client Software**” means software that allows a Device to access or utilize the services or functionality provided by the Server Software.

“**Device**” means each of a computer, workstation, terminal, handheld PC, pager, telephone, personal digital assistant, “smart phone”, or other electronic device.

“**Server Software**” means software that provides services or functionality on a computer acting as a server.

“**Redistribution Software**” means software described in Paragraph 4 (“Use of Redistribution Software”) below.

- 1. OWNERSHIP OF SOFTWARE PRODUCTS.** The SOFTWARE PRODUCTS are licensed to Azul Services from an affiliate of the Microsoft Corporation (“Microsoft”). All title and intellectual property rights in and to the SOFTWARE PRODUCTS (and the constituent elements thereof, including but not limited to any images, photographs, animations, video, audio, music, text, and “applets” incorporated into the SOFTWARE PRODUCTS) are owned by Microsoft or its suppliers. The SOFTWARE PRODUCTS are protected by copyright laws and international copyright treaties, as well as other intellectual property laws and treaties. Your possession, access, or use of the SOFTWARE PRODUCTS does not transfer any ownership of SOFTWARE PRODUCTS or any intellectual property rights to you.
- 2. USE OF CLIENT SOFTWARE.** You may use the Client Software installed on your Devices by Azul Services only in accordance with the instructions, and only in connection with the services, provided by you by Azul Services.
- 3. USE OF REDISTRIBUTION SOFTWARE.** In connection with the services provided to you by Azul Services, you may have access to certain “sample,” “redistributable” and/or software development (“SDK”) software code and tools (individually and collectively “Redistribution Software”). **YOU MAY NOT USE, MODIFY, COPY, AND/OR DISTRIBUTE ANY REDISTRIBUTION SOFTWARE UNLESS YOU EXPRESSLY AGREE TO AND COMPLY WITH CERTAIN ADDITIONAL TERMS CONTAINED IN THE SERVICES PROVIDER USE RIGHTS (“SPUR”) APPLICABLE TO AZUL SERVICES, WHICH TERMS MUST BE PROVIDED TO YOU BY AZUL SERVICES.** Microsoft does not permit you to use any Redistribution Software unless you expressly agree to and comply with such additional terms, as provided to you by Azul Services.
- 4. COPIES.** You may not make any copies of the SOFTWARE PRODUCTS; provided, however, that you may (a) make one (1) copy of Client Software on your Device as expressly authorized by Azul Services; and (b) you may make copies of certain Redistribution Software in accordance with Paragraph 4 (Use of Redistribution Software). You must erase or destroy all such Client Software and/or Redistribution Software upon termination or cancellation of your agreement with Azul Services, upon notice from Azul Services or upon transfer of your Device to another person or entity, whichever first occurs. You may not copy any printed materials accompanying the SOFTWARE PRODUCTS.
- 5. LIMITATIONS ON REVERSE ENGINEERING, DECOMPILED AND DISASSEMBLY.** You may not reverse engineer, decompile, or disassemble the SOFTWARE PRODUCTS, except and only to the extent that applicable law, notwithstanding this limitation expressly permits such activity.
- 6. NO RENTAL.** You may not rent, lease, lend, pledge, or directly or indirectly transfer or distribute SOFTWARE PRODUCTS to any third party, and you may not permit any third party to have access to and/or use the functionality of the SOFTWARE PRODUCTS.
- 7. TERMINATION.** Without prejudice to any other rights, Azul Services may terminate your rights to use the SOFTWARE PRODUCTS if you fail to comply with these terms and conditions. In the event of termination or cancellation, you must stop using and/or accessing the SOFTWARE PRODUCTS, and destroy all copies of the SOFTWARE PRODUCTS and all of its component parts.
- 8. NO WARRANTIES, LIABILITIES OR REMEDIES BY MICROSOFT.** ANY WARRANTIES, LIABILITY FOR DAMAGES AND REMEDIES, IF ANY, ARE PROVIDED SOLELY BY AZUL SERVICES AND NOT BY MICROSOFT OR ITS AFFILIATES OR SUBSIDIARIES.
- 9. PRODUCT SUPPORT.** Any product support for the SOFTWARE PRODUCTS is provided to you by Azul Services and is not provided by Microsoft or its affiliates or subsidiaries.
- 10. NOT FAULT TOLERANT.** THE SOFTWARE PRODUCTS MAY CONTAIN TECHNOLOGY THAT IS NOT FAULT TOLERANT AND IS NOT DESIGNED, MANUFACTURED, OR INTENDED FOR USE IN ENVIRONMENTS OR APPLICATIONS IN WHICH THE FAILURE OF THE SOFTWARE PRODUCTS COULD LEAD TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL, PROPERTY OR ENVIRONMENTAL DAMAGE.
- 11. EXPORT RESTRICTIONS.** The SOFTWARE PRODUCTS are of U.S. origin for purposes of U.S. export control laws. You agree to comply with all applicable international and national laws that apply to the SOFTWARE PRODUCTS, including U.S. Export Administration Regulations, as well as end-user, end-use and destination restrictions issue by U.S. and other governments. For additional information, see <http://www.microsoft.com/exporting/>.
- 12. LIABILITY FOR BREACH.** In addition to any liability you may have to Azul Services, you agree that you will also be legally responsible directly to Microsoft for any breach of these terms and conditions.

## APPENDIX B. RESEARCH IN MOTION USE –TERMS AND CONDITIONS

This Appendix is required as a result of Your use of Research in Motion (“RIM”) software, hardware and services as well as any printed or electronic documentation or associated media (“the RIM Products”) provided by Azul Services and is in addition to the terms and conditions of the Hosting Master Services Agreement. Azul Services does not own the RIM Products and the use thereof is subject to certain rights and limitations of which Azul Services needs to inform You. Your right to use the RIM Products is subject to Your agreement with Azul Services, and to Your understanding of, compliance with and consent to the following terms and conditions.

- 1. DEFINITIONS.** Capitalized terms used herein but not otherwise defined shall have their respective meanings set forth in the Master Services Agreement. For purposes of this Appendix, the following definition shall apply:  
  
“End User” solely for the purpose of this Appendix shall mean You and any related party for whom Azul Services operates a messaging platform and who is authorized directly or indirectly by Azul Services to access the RIM Products, or otherwise to whom the functionality of the RIM Products is made available by Azul Services, directly or indirectly. “End Users” shall include Your employees or independent contractors who access the RIM Products, or otherwise to whom the functionality of the RIM Products is made available by Azul Services.  
  
“End User Data” means any information or data of any kind that personally identifies (or that can be used, together with other information or data, to personally identify) an End User. 2.  
  
2. **Use.** Each End User is prohibited from using the RIM Products for any purpose other than the internal business or personal purposes of the End User. You shall be responsible for each End User’s compliance with this Appendix.  
  
3. **Exclusion of Liability.** IN NO EVENT SHALL RIM AND RIM’S AGENTS BE LIABLE TO ANY END USER FOR, ANY INDIRECT, ECONOMIC, SPECIAL, PUNITIVE, COMMERCIAL, INCIDENTAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES (INCLUDING WITHOUT LIMITATION LOST PROFITS, LOSS OF BUSINESS REVENUE OR EARNINGS, LOST DATA, DAMAGES CAUSED BY DELAYS, OR A FAILURE TO REALIZE EXPECTED SAVINGS) DIRECTLY OR INDIRECTLY ARISING OUT OF OR IN CONNECTION WITH THIS APPENDIX OR THE END USER’S USE OF THE RIM PRODUCTS, WHETHER OR NOT SUCH DAMAGES COULD REASONABLY BE FORESEEN OR THEIR LIKELIHOOD WAS DISCLOSED TO THE PARTIES.  
  
4. **Application of Limitations, Exclusions and Disclaimers.** The limitations, exclusions and disclaimers set out in the Master Services Agreement and this Appendix shall apply: (a) whether an action, claim or demand arises from a breach of warranty or condition, breach of contract, tort (including negligence), strict liability or any other kind of civil or statutory liability connected with or arising out of the Master Services Agreement, this Appendix or the RIM Products; and (b) to RIM and to RIM’s affiliated companies as well as to RIM to RIM’s affiliated companies’ director, officers, employees, and independent contractors. Some jurisdictions do not allow limitation or exclusions of certain types of damages and/or of implied conditions or warranties.  
  
5. **Termination for Breach.** In the event that the End User breaches the Master Services Agreement, including without limitation, any provision of this Appendix, Azul Services shall have the right, in its sole discretion, to immediately terminate the Master Services Agreement with the End User for cause or to terminate the portion of the Services to which such breach pertains.  
  
6. **Transition Period upon Termination.** Upon termination of Azul Services’ Master Alliance Agreement with RIM and any subsequent transition period, this Appendix shall terminate.  
  
7. **Liability.** As a condition of Azul Services’ ability to provide access to the RIM Products to End Users, End User shall be liable to Azul Services for any and all damages caused as a result of any breach of the Agreement by such End User without limitation or exception.  
  
8. **End User Data.** The End User hereby consents to Azul Services providing End User Data to RIM solely for the purpose of facilitating the transition of End Users to an alternative solution in the event of a termination of the Azul Services’ Master Alliance Agreement with RIM.  
  
9. **No Trojan Horses.** End User shall not distribute in any way, any viruses, contaminating or destructive features, “backdoors”, “time bombs”, “Trojan horses”, “sniffer” routines, “worms”, bots, “drop dead devices”, harmful software code, file, program or programming routine or other contaminating or destructive features or other computer software routines or hardware components designed to: (i) permit unauthorized access to, or use of, the RIM Products or computer systems on which the RIM Products are loaded, or to which RIM Products are linked; (ii) disable, damage or erase the RIM Products; or (iii) perform any other similar actions that would preclude full use of the RIM Products by RIM, its channel partners, its authorized sub-licensees, or their end users.  
  
10. **Representations and Warranties.** In addition to any similar representations and warranties in any applicable RIM agreement, End User represents and warrants that it will not (a) incorporate any data, content, files or materials in any medium distributed by End User, or in conjunction with the End User products or services, that: (i) includes content, material, graphics, sounds, video, screens, code or information that is unlawful or fraudulent, or violates or infringes any patent, copyright, trademark, trade secret or any other intellectual property of others; (ii) includes any inappropriate language or material that is unlawful, libelous, slanderous, defamatory or invasive of another person’s right of privacy or right of publicity or personality, or that RIM may reasonably deem harmful, vulgar, obscene, derogatory, pornographic, abusive, harassing, threatening, hateful, objectionable with respect to race religion, sexual orientation, age group, national origin or gender, injurious to the reputation or business goodwill of RIM or the BlackBerry brand or otherwise unfit for publication; or (b) publish, transmit, distribute or upload any unauthorized or unsolicited bulk email solicitations, chain letters, advertisements, marketing or promotional materials, “junk mail”, “spam”, pyramid schemes or any other solicitations or communications, including without limitation spamming the RIM Products or other mobile phones or computers, or uses or collects RIM Product user email addresses or phone numbers, or other user information for any purpose other than the legitimate internal purposes of End User, or uses the RIM Products to perform any data collection, extraction or mining or gain or attempt to gain unauthorized access to the wireless device memory and software programs or applications.  
  
11. **Restrictions on Use.** End User shall not use the RIM Products to commit or attempt to commit a crime or facilitate the commission of any crime or other illegal or tortious act.  
  
12. **Cooperation.** End User shall cooperate with Azul Services and/or its licensors and provide information and copies of records requested by Azul Services and/or its licensors to assist Azul Services in investigating or determining whether there has been a breach of any and all agreements by and between End User and Azul Services and/or its licensors.