

Managed IT Services Terms & Conditions

I. Overview

This Agreement states the terms and conditions by which Azul Services (heretofore known as "Provider") will deliver, and Customer (heretofore known as "Client") will receive any or all of the services provided by Provider, including equipment, bandwidth, managed and professional services

This Agreement is intended to cover any and all Services ordered by Client and delivered by Provider. In the event that any terms set forth herein apply specifically to a service not ordered by a Client, such terms shall not apply to Client.

II. Definitions

"Client Technology" - means Client's proprietary technology, including Client's Internet Operations design, content, software tools, hardware designs, algorithms, software (in source and object forms), user interface designs, architecture, class libraries, objects and documentation (both printed and electronic), know-how, trade secrets, and any related intellectual property rights throughout the world (whether owned by Client or licensed to Client from a third party) and also including any derivatives, improvements, enhancements or extensions of Client Technology conceived, reduced to practice, or developed during the term of this Agreement by Client.

"Provider Supplied Equipment" - means the computer hardware, software, and other tangible equipment and intangible computer code contained therein to be delivered by Provider for use by Client as set forth on the Order Form.

"Provider Technology" - means Provider proprietary technology including Provider services, software tools, hardware designs, algorithms, software (in source and object forms), user interface designs, architecture, class libraries, objects and documentation (both printed and electronic), network designs, know-how, trade secrets and any related intellectual property rights throughout the world (whether owned by Provider or licensed to Provider from a third party) and also including any derivatives, improvements, enhancements or extensions of Provider Technology conceived, reduced to practice or developed during the term of this Agreement by either party that are not uniquely applicable to Client.

"Initial Term" - means the minimum term for which Provider will provide Service (s) to Client as indicated on the Order Form (s). Except as otherwise expressly provided in this Agreement, Provider is obligated to deliver and Client is obligated to pay for each Service through its Initial Term and Renewal Term.

"Professional Services" - means any non-standard professional or consulting service delivered by Provider to Client as more fully described in a Statement of Work.

"Renewal Term" - means any service term following the Initial Term as specified in Section IV.

"Service (s)" - means the specific services delivered by Provider as described on the Order Form

"Service Commencement Date" - means the date Provider will begin delivering the Services (s) to Client as indicated in a Notice of Service Commencement delivered by Provider to Client

"Service Level" - is described and defined in Section VII below

"Statement of Work" - means the detailed description of the professional services attached to an Order Form.

III. Delivery of Services

- 1.0 Performance of Services. Provider warrants that it will perform all Services and Professional Services in a manner consistent with industry standards reasonably applicable to the performance thereof.
- 2.0 Use of Provider Supplied Equipment: Manufacturer Warranty: Client acknowledges that it may use the Provider supplied equipment and disclaims any statement made by Provider. Except with respect to any express warranties for Service (s) related to Provider supplied equipment, Client acknowledges and agrees that its use and possession of the Provider supplied equipment by Client shall be subject to and controlled by the terms of any manufacturer's or, if appropriate, supplier's warranty.
- 3.0 Installation, Configuration, Testing and Documentation of Monitoring Software

Provider engineers will install monitoring software and configure the system to perform IT monitoring and preventive maintenance tasks in accordance with a Provider-defined views, including:

- (a) Provider will configure and maintain the industry standard monitoring hardware platform and software according to published documentation from monitoring vendor.
- (b) Provider will ensure that all appropriate software updates and patches to operating system and platform are applied to customer's configuration within 10 days of quality assurance acceptance by Provider technical staff. A short period of downtime will be required to apply these updates.
- (c) Provider will specify and agree on a 30 minute maintenance window per month with Client during which time the provision of routine maintenance tasks will be completed. Scheduled downtime does not count against Service Level.
- (d) Provider will perform complete backup and archive of monitoring systems and log files, maintain all changes and perform updates to all hardware/software components to ensure the highest level of protection, performance and availability. Provider will maintain these archives for 1 year.
- (d) Provider Technical Support is available (subject to conditions beyond our control) to our customers 5 days per week, 8am to 5pm Pacific Time, 365 days a year. Provider will use reasonable efforts to respond to customer's trouble calls within 2 hours. Provider will monitor customer networks 24 hours per day 365 days a year, and is available after-hours on an extended time and materials charge basis.
- (e) Provider will maintain support contracts with various IT management vendors that will provide Client with access to technical information about hardware and software around which Client services are built, including known corrections and updates.

IV. Terms

- 1.0 Term commencement – the term for each Service will commence on the Contract Start Date indicated in the Services Agreement delivered by Provider to Client, and signed by Client.
- 2.0 Renewal Term (s) Each Service will continue automatically for additional terms equal to the Initial Term ("Renewal Term") unless Client notifies Provider in writing at least thirty (30) days prior to the end of the Initial Term or a Renewal Term, as applicable that it has elected to terminate such Service, in which case such Service shall terminate at the end of such Term. The termination of any Service will not affect Client's obligations to pay for other Service(s). Notwithstanding the foregoing, Provider may change or increase the prices it charges Client for any Service once during a Renewal term, effective 30 days (thirty days) after providing notice to the Client. In the event Client does not agree with the increased pricing, Client may terminate the Agreement.

V. Fees and Payment Terms

- 1.0 Fees and Expenses. Client will pay all fees due according to the process and terms listed in the Order Form(s). The prices listed in the Order Form(s) will remain in effect during the Initial Term indicated in the Order Form(s) and will continue thereafter, unless modified in accordance with Section 2.0. Client also agrees to reimburse Provider for actual out-of-pocket reasonable expenses incurred in providing Professional Services to Client.
- 2.0 Payment Terms. On the Service Commencement Date for each Service, Client will be billed an amount equal to all non-recurring charges indicated on the Order Form and the monthly recurring charges for the first month of the term. Monthly recurring charges for all other months will be billed in advance of the provision of Services. All other charges for Services received and expenses incurred for Professional Services during a month (e.g. bandwidth usage fees, travel expenses) will be billed at the end of the month in which the Services or Professional Services were provided. Payment for all fees is due upon receipt of each Provider invoice. All payments will be made in the United States in U.S. dollars.
- 3.0 Late Payments. Any payment not received within thirty (30) days of the invoice will accrue interest at a rate of one and one-half percent (1 ½%) per month, or the highest rate allowed by applicable law, whichever is lower.
- 4.0 Taxes. All fees charged by Provider for Services are exclusive of all taxes and similar fees now in force or enacted in the future imposed on the transaction and/or the delivery of Services, all of which Client will be responsible for and will pay in full, except for taxes based on Provider's net income.

VI. Confidential Information; Intellectual Property Ownership, License Grants

- 1.0 Ownership. Provider does not transfer from Provider to Client any Provider technology, and all right, title and interest in and to Provider Technology will remain solely with Provider.
- 2.0 License Grants. Provider and Client each agrees that it will not, directly or indirectly, copy, reproduce, reverse engineer, decompile, disassemble or otherwise attempt to derive source code or other trade secrets from the other party. License Grant commences at the time Provider receives full and final payment for the Statement of Work. To the extent, that Client or its employees or contractors participate in the creation or development of Provider Technology, Client, on behalf of itself and its employees and contractors, hereby assigns to Provider all right, title and interest, including all intellectual property rights in the Provider Technology.
 - (a) By Provider. Provider hereby grants to Client a nonexclusive, royalty-free license, during the term of this Agreement, to use the Provider Technology solely for the purposes of using the Service(s). Client shall have no right to use the Provider Technology for any purpose other than using the Service(s).
 - (b) By Client. Client agrees that if, in the course of performing Professional Service(s), it is necessary for Provider to access Client Equipment and Client Technology, Provider is hereby granted and shall have a nonexclusive, royalty-free license, during the term of this Agreement, to use the Client Technology solely for the purposes of delivering the Professional Service(s) to Client. Provider shall have no right to use the Client Technology for any purpose other than providing the Service(s).

VII. Provider Service Level

1.0 In the event that Client experiences any of the service performance issues defined in this Section as a result of Provider failure to deliver Managed IT Services, Provider will, upon Client's request in accordance with paragraph VII-1.0-a below, credit Client's account as described below ("Service Level"). The Service Level shall not apply to any services other than Managed IT Services as defined herein, and, shall not apply to performance issues (i) caused by factors outside of Provider's reasonable control: (ii) that resulted from any actions or inactions of Client or any third parties; or (iii) that resulted from Client's equipment and/or third party equipment (not within the sole control of Provider).

(a) Service Level Definitions. For purposes of this Agreement, the following definitions shall apply only to the Services (not including Professional Services)

- i. "Downtime" shall mean any extended period during which Client cannot access systems and services defined in the Statement of Work. Downtime shall not include any unavailability during Provider's scheduled maintenance of the network and Service(s).
- ii. "Service Credit" shall mean an amount equal to the pro-rata monthly recurring systems and infrastructure maintenance charges (i.e. all monthly recurring charges) for one (1) day of Service.

(b) Problem/Services Resolution

- i. Provider will assign sufficient resources to resolve problems as quickly as possible with the goal of maintaining maximum system uptime. For all problems, Provider uses a tiered approach. In the event of a detected or reported problem, Provider will respond as follows:
 - ii. Log and ticket the problem
 - iii. Determine the extent of the problem
 - iv. Confirm the operation and configuration of all equipment
 - v. Assign troubleshooting resources based on severity
 - vi. Escalate to second and third-tier contacts as appropriate
 - vii. Evaluate time to repair, and report to customer with estimated time to repair
 - viii. Client must grant Provider continuous access (via VPN and PPP) or Service Level is not valid.

(c) Downtime Periods. In the event Client experiences Downtime greater than 2% of the total available time in a month, excluding scheduled maintenance time, Client shall be eligible to receive from Provider a Service Credit for each Downtime period. Examples: If Client experiences one Downtime period, it shall be eligible to receive one Service Credit. If Client experiences two Downtime periods, either from a single event or multiple events, it shall be eligible to receive two Service Credits.

- i. Performance Problem: System or Service Unavailability for Extended Period of time. In the event that Provider discovers or is notified by Client that Client is experiencing performance problem, Provider will take all actions reasonable and necessary to determine the source of the performance problem and respond to the Client within a reasonable period of time.
- ii. Time to Discover Source of Performance Problem: Notification of Client. Within two (2) hours of discovering or receiving notice of the Performance Problem, Provider will determine whether the source of the Performance Problem is limited to the Client Equipment and the Provider equipment connecting the Client Equipment to the Provider LAN. If not the source of the Performance Problem, Provider will determine the source of the performance problem within a reasonable time period. In any event, Provider will notify Client of the source of the Performance Problem within a reasonable time period of identifying the source.
- iii. Failure to Determine Source and/or Remedy. In the event that Provider (A) is unable to determine the source of the Performance Problem within a reasonable time periods (B) Provider is the sole source of the

Performance Problem and is unable to remedy such Performance Problem, Provider will deliver a Service Credit to Client

- (d) **Client Must Request Service Credit.** In order to receive any of the Service Credits described in this section, Client must notify Provider within seven (7) days from the time Client has been notified by the Provider and becomes eligible to receive a Service Credit. Failure to comply with this requirement will forfeit Client's right to receive a Service Credit.
- (e) **Remedies Shall Not Be Cumulative: Maximum Service Credit.** The aggregate maximum number of Service Credits to be issued by Provider to Client for any and all Downtime periods and Performance Problems that occur in a single calendar year shall not exceed eight (8) Service Credits. A Service Credit shall be issued in the month following the Downtime or Performance Problem, unless the Service credit is due in Client's final month of Service. In such case, credit shall take the form of an extension of service as defined by Provider.
- (f) **Termination Option for Chronic Problems.** Client may terminate this agreement for cause and without penalty by notifying Provider within five (5) days following the end of a calendar month in the event either of the following occurs: (i) Client experiences more than fifteen (15) Downtime periods resulting from three (3) or more nonconsecutive Downtime Periods during the calendar month; or (ii) Client experiences more than eight (8) consecutive hours of Downtime due to any single event. Such termination will be effective thirty (30) days after such notice by Provider.

VIII. Limitations of Liability

- 1.0 **Damage to Client Equipment.** Provider assumes no liability for any damage to, or loss of, any Client equipment resulting from any cause other than the negligence or willful misconduct of Provider. To the extent Provider is liable for any damage to, or loss of, Client equipment for any reason, such liability will be limited solely to the then-current replacement value of the Client equipment excluding lost data, software and firmware.
- 2.0 In no event shall Provider or distributors or marketing partners be liable for any loss of profits, loss of business, loss of use, or of data, interruption of business, or for indirect, special incidental, exemplary or consequential damages of any kind whether under this Agreement or otherwise, even if Provider has been advised of the possibility of such damages, or for any claim against Client by any other party. In no case will Provider or its employees, agents, distributors, marketing partners, resellers, affiliates or subsidiaries be liable for any representation or warranty to Client by any third party.

IX. Termination

- 1.0 **Termination for Cause:** Either party may terminate this agreement if: (i) the other party breaches any term or condition of this agreement and fails to cure such breach within thirty (30) days after receipt of written notice of the same, except in the case of failure to pay fees, which must be cured within five (5) days after receipt of written notice from Provider; (ii) the other party becomes the subject of a voluntary petition in bankruptcy or any voluntary proceeding relation to insolvency, receivership, liquidation, or composition for the benefit of creditors; or (iii) the other party becomes the subject of involuntary petition in bankruptcy or any involuntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors, if such petition or proceeding is not dismissed within sixty (60) days of filing. Client may also terminate this Agreement in accordance with the terms set forth in paragraph ____ ("Termination Option For Chronic Problems") of this Agreement.
- 2.0 **No Liability for Termination.** Neither party will be liable to the other for any termination or expiration of any Service or this Agreement in accordance with its terms.
 - (a) Within thirty (30) days of such termination, each party will return all confidential information of the other party in its possession and will not make or retain any copies of such Confidential Information except as required to comply with any applicable legal or accounting record keeping requirement.

X. Indemnification

Each party will indemnify, defend and hold the other harmless from and against any and all costs, liabilities, losses, and expenses (including but not limited to reasonable attorneys' fees (collectively "losses" resulting from any claim, suite, action, or proceeding (each, an "action") brought by any third party against the other or its affiliates alleging (i) the infringement or misappropriation of any intellectual property right relating to the delivery or use of the Service (s) (but excluding any infringement contributory caused by the other party); (ii) personal injury caused by the negligence or will misconduct of the other party; and (iii) any violation of or failure to comply with the Rules and Regulations. Client will indemnify, defend and hold Provider, its affiliates and Clients harmless from and against any and all Losses resulting from or arising out of any Action brought against Provider, its affiliate or Clients alleging any damage or destruction to Provider equipment or other Client equipment caused by Client, its Representatives or designees.

XI. Additional Provisions

- 1.0 Force Majeure. Except for the obligation to make payments, neither party will be liable for any failure or delay in its performance under this Agreement due to any cause beyond its reasonable control including acts of war, acts of God, earthquake, flood, embargo, riot, sabotage, labor shortage or dispute, governmental act or failure of the Internet (not resulting from the actions or inactions of Provider), provided that they delayed party: (a) gives the other party prompt notice of such cause and (b) uses its reasonable commercial efforts to promptly correct such failure or delay in performance. If Provider is unable to provide Service(s) for a period of fifteen (15) consecutive days as a result of a continuing force majeure event, Client may cancel the Service(s).
- 2.0 Non-Solicitation. During the term of this Agreement, and continuing through the first anniversary of the termination of this Agreement, Client agrees that it will not, and will ensure that its affiliates do not, directly or indirectly, solicit or attempt to solicit for employment any persons employed by Provider or contracted by Provider to provide Services to Client.
- 3.0 Governing Law: Dispute Resolution. This Agreement is made under and will be governed by and construed in accordance with the laws of the State of Nevada and without regard to conflicts of the United Nations Convention on the International Sale of Goods. The parties will endeavor to settle amicably by mutual discussions and disputes, differences or claims whatsoever related to this Agreement. Failing such an amicable settlement, any controversy, claim or dispute arising under or relating to this Agreement including the existence, validity, interpretation, performance, termination or breach thereof, shall finally be settled by arbitration in accordance with the Arbitration Rules (and if Client is a non-U.S. entity, the International Arbitration Rules) of the American Arbitration Association ("AAA").
- 4.0 Interpretation of Conflicting Terms. In the event of a conflict between or among the terms in this agreement, the Services Agreement, Order Form(s), the Specification Sheet(s), the Statement(s) of Work, and any other document made a part hereof, the documents shall control in the following order: the Order Form with the latest date, the Statement of Work, Specification Sheets, the Agreement and other documents.