

Remote Backup Terms and Conditions



1 Definitions

"Business Day" means any day other than a Saturday, Sunday or a Bank Holiday in Nevada.

"Cancellation" is defined as written notification to Azul Services, via certified U.S. Postal Mail, at 2505 Anthem Village Drive Suite E229, Henderson, NV 89052, attention: Account Cancellation.

"Commencement Date" is defined as the date in which the Service is installed and available for use by Customer.

"Confidential Information" means all information not publicly known, used in or otherwise relating to a party's business, customers or financial or other affairs, including, without limitation, information relating to (a) the marketing of goods or services including, without limitation, existing and future customer names and lists and other details of existing and future customers, (b) future products, business development or planning, commercial relationships and negotiations; (c) information relating to the Service and the Azul Services Technology; (d) information received from third parties that a party is obligated to treat as confidential; (e) all information which is marked as confidential or proprietary, whether such information is disclosed orally, in writing or otherwise before or after the Effective Date; and (f) this Agreement.

"Customer" means the Customer as defined in the Agreement and shall include, but is not limited to the terms; Customer, Partner or Wholesale Partner.

"Early Termination Penalty" means the Customer has terminated their service prior to the Minimum Service Period and is responsible for payment for the remaining months in the Minimum Service Period. (Example: Twelve month agreement with a Effective date of January. Customer cancels in the month October. There are two months remaining in the Minimum Service Period. The minimum monthly commitment is \$200. The Early Termination Penalty will be \$400.00, Two months remaining multiplied by the minimum monthly commitment).

"Effective Date" means the date this Agreement takes legal effect, being the date on this first page of Azul Services Order Form.

"Equipment" means the computer equipment (if any), racking (if any) and associated equipment (if any) used in connection with the provision of the Service and located on Customer's premises for the time being.

"End-User License Agreement" means the Clickwrap license agreement between Customer and Azul Services which the Customer must execute in order to install and license the Software and utilize the Azul Services Service.

"Installation Charges or Installation Fees" means the set up charges for establishing the Service.

"Laws" means all statutes, codes, ordinances, decrees, rules, regulations, municipal-by-laws, orders, decisions, rulings or awards, policies, voluntary restraints, guidelines, or any provisions of the foregoing, including general principles of common and civil law and equity, binding on or affecting the party referred to in the context of which such word is used and "Law" means any one of the foregoing.

"Minimum Service Period" also referred to as the MSP, the Minimum Service Period is the Customer commitment from the Effective Date to completion of the Service agreement length (Example: Customer signs for a 12 month Minimum Service Period beginning in January. The Minimum Service Period will expire at the end of December).

"Service" means the Azul Services service as described in this Agreement and Schedules, and including, without limitation the provision of people, infrastructure resources, support and access to and the use of Azul Services software (including, without limitation, the Software), applications, hardware (including without limitation the Equipment), data center resources and interconnection to other third party networks and any other services provided by Azul Services in connection with the backup, storage, and recovery of Customer data.

"Service Period" means the Customer commitment after the completion of the Minimum Service Period. (Example: Customer signs for a 12 month commitment beginning in January 1, 2010. The Minimum Service Period will end on December 31, 2010. The new Minimum Service Period will begin on January 1, 2011.)

"Software" means all and any software installed for purposes of the Service.

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- 2 Azul Services shall have no liability should there be any delay in the provision of the Service.
 - 2.1 Azul Services does not make any independent representations or warranties with respect to any Customer Equipment. Any third party warranties are the exclusive remedies of Customer with respect to such Equipment.
 - 2.2 If, in Azul Services' sole discretion, Azul Services judges that it is reasonable to do so for the purposes of repair, maintenance or improvement of the Equipment, Software and/or Service or any part thereof, Azul Services reserves the right to suspend provision of the Service. Azul Services reserves the right to limit Customer bandwidth utilization.
 - 2.3 Azul Services reserves the right to suspend provision of the Service or any part thereof for the purpose of carrying out or implementing such repair, maintenance or improvement, provided that in the event of such suspension Azul Services will use its reasonable endeavors to ensure that reasonable notice is given to Customer and minimum disruption to the Service is caused.
 - 2.4 Azul Services may also suspend the Service or any part thereof or terminate the Agreement without liability on its part if the provision of the Service or the relevant part of the Service is prohibited by law, statute, legislation, order, regulation or guidance issued by a court of law, governmental body or regulatory body.
- 3 The Agreement shall, subject to Section 6.1, continue for a Minimum Service Period (MSP) of 12 months from the Commencement Date. Upon completion of the initial MSP, and each subsequent MSP, the Agreement shall renew for a 12 month MSP thereafter unless notification is provided by either party prior to the expiration of the MSP or the Agreement is terminated by either party in accordance with section 6.1 of this agreement.
 - 3.1 If Customer cancels Azul Services Service prior to the completion of the Minimum Service Period, Customer shall be responsible for an Early Termination Penalty.
- 4 Customer will be responsible for securely storing, managing and deploying when required any encryption key or password which are generated to protect Customer data. If Customer loses the encryption keys or passwords, Azul Services is unable to assist in data restoration. A one-time fee of \$50 will be charged to the Customer to re-seed data if Customer loses the encryption key.
 - 4.1 Customer must allow persons authorized by Azul Services to enter Customer's premises at reasonable times for the purposes of maintenance, improving, upgrading.
 - 4.2 Customer will not, and will not permit any third party, to (a) distribute or allow others to distribute copies of the Software or any part thereof to any third party, (b) tamper with, remove, reproduce, modify or copy the Software or any part thereof, (c) provide, rent, sell, lease or otherwise transfer the Software or any copy or part thereof or use it for the benefit of a third party, or (d) reverse assemble, reverse compile or reverse engineer the Software or any part thereof, or otherwise attempt to discover any Software, source code or underlying proprietary information except as may be permitted by law and which rights cannot be excluded.
 - 4.3 Customer is solely responsible for verification of the accuracy of the data that resides with Azul Services under the client Software and that the service is accurately installed and the appropriate data is sent offsite. For the purposes of this Agreement Azul Services will exclude .jpg, .mpg, .tif, .wav, .m4a, .wma, .mp4, .avi and .mp3 within the service software template.
- 5 The Monthly and Installation Charges are payable within 30 days after receipt of an invoice, in U.S. currency. All late payments will result in Customer being charged interest on any unpaid balances at the rate of one and one half percent (1 ½%) per month or the maximum rate allowed by law. Monthly invoicing is based upon data utilization rounded up to the nearest gigabyte (GB).
 - 5.1 Azul Services will be entitled to increase such charges by giving written notice of the same to Customer not less than 30 days prior to the increase.
 - 5.2 All charges for the Service and the other services are exclusive of taxes, which, if it is applicable, will be added to Customer's invoice.
 - 5.3 If Customer disputes charges, Customer must notify Azul Services in writing of the dispute within thirty (30) days of the date on the affected bill, or else waive the dispute.
 - 5.4 Customer will be responsible for reimbursing Azul Services for all costs (including reasonable attorney fees) associated with collecting delinquent or dishonored payments.

- 5.5 Customer requests to delete data or accounts must be provided in writing to Azul Services. No requests for cancellation or deletion will be completed without written notice subject to Section 14.1 of this agreement.
- 6 Subject to Section 6.2, in the event that Customer or Azul Services is in breach of the Agreement and such a breach is not remedied within fourteen (14) days of receipt of written notice from Azul Services requiring such breach to be remedied, Azul Services or Customer (as the case may be) shall, without prejudice to its other rights, have the right to terminate the Agreement forthwith and without liability on its part in respect of such termination by written notice to Customer or Azul Services (as the case may be). Default in paying any sum due under the Agreement will be remedied only if the payment includes interest payable pursuant to Section 5.1.
- 6.1 Azul Services shall be entitled, without prejudice to its other rights, to terminate the Agreement forthwith and without liability on its part in respect of such termination by written notice to Customer if Customer is in breach of this agreement or Customer fails to pay any sum due under the Agreement within the period specified in the Agreement.
- 6.2 If Azul Services terminates the Agreement following a breach by the Customer of this Agreement or Customer fails to give sufficient notice of termination in accordance with Section 3.1, Customer will be liable to pay the Installation Charges, all cancellation and other contractual charges incurred by Azul Services relating to the provision of Services which have been ordered by Azul Services for the purpose of the provision of the Service. Customer will also pay Azul Services any Early Termination Penalties including, but not limited to, minimum monthly usage commitments multiplied by the remaining months in the Minimum Service Period.
- 6.3 Upon the termination of the Agreement, without prejudice to any other rights Azul Services may have, Customer shall:
- 6.3.1 within fifteen (15) days of the date of termination, deliver up to Azul Services and forthwith remove and/or destroy all components of the Service Provider Technology, any Confidential Information of Azul Services and any materials bearing Azul Services' trade-marks from any storage media or hard copies remaining in Customer's control or possession;
 - 6.3.2 provide an officer's certificate attesting to such delivery, erasure and/or destruction as is satisfactory to Azul Services, acting reasonably;
 - 6.3.3 remit all fees payable for services due prior to the date of such termination;
 - 6.3.4 remit to Azul Services all such costs and fees owing to Azul Services including those related to the permanent or temporary winding down of any services provided by Azul Services
- 6.4 The provisions of this Terms & Conditions of Service will survive the termination of the Agreement and shall continue in full force and effect. Termination of the Agreement will not affect the rights of either party accrued prior to such termination in respect of a breach of the Agreement.
- 7 Customer acknowledges and agrees that all proprietary right, title and interest in and to the Service Provider Technology and the Service Provider Software, including all intellectual property rights therein, are owned by Azul Services or its licensors, respectively. Customer shall have no right to sublicense or modify any Service Provider Technology.
- 7.1 During the term of the Agreement Azul Services grants Customer a non-exclusive, non-transferable limited license to use the Software solely for the purpose of using the Service and for no other purpose.
- 7.2 Customer acknowledges that, pursuant to this Agreement, it is given a non-exclusive, nontransferable, royalty-free right to use, during the term of the End-User License Agreement, any Service Provider Software or Service Provider Technology incorporated solely for the purpose of using the Service and not for providing services to any third party. At no time and under no circumstances does Customer acquire an ownership interest in the Product, Service Provider Software or Service Provider Technology.
- 7.3 Customer further acknowledges and agrees that: (i) it is expressly prohibited from translating, adapting, modifying, decompiling, reverse engineering, creating derivative works from, disassembling, unlocking, copying or recreating any component of the Service Provider Software under the terms of this Agreement or the End-User License Agreement; (ii) Azul Services shall have all right, title, interest in and to all copies, derivative works, translations, adaptations or modifications of the Service Provider Technology or the Service Provider Software howsoever made by Customer; and (iii) any proceeds derived from the activities described above, whether or not made by Customer in compliance with this Agreement or the End-User License Agreement, shall accrue to Azul Services.

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- 8 The liability of Azul Services to Customer or Customer's employees, agents, subcontractors, customers or any other person under or in connection with the Agreement shall be limited by the provisions of these terms and, in particular, Section 8.
 - 8.1 Except for death or personal injury resulting from the negligence of Azul Services or its employees Azul Services' total liability to the Customer under or in connection with the Agreement (including, without limitation, arising out of any delay in commencing the Service) shall be limited to the Monthly Charges for the time being payable for 12 months.
 - 8.2 Notwithstanding any other provision of the Agreement, in no circumstance shall Azul Services be liable to Customer under or in connection with the Agreement or otherwise for:
 - 8.2.1 any loss or corruption of data (whether temporary or permanent);
 - 8.2.2 indirect, special, consequential or incidental damages, including, without limitation, loss of profits or revenue, loss of goodwill, business interruption, loss of anticipated savings, loss of data, cost of capital, however caused, even if such damages were foreseeable and the parties have been advised of the possibility of such damages; or
 - 8.2.3 inability to restore data due to the loss of Customer's encryption keys.
 - 8.3 Except as expressly provided in this agreement, Azul Services does not make any express or implied representations, warranties or conditions of any kind, including but not limited to implied or statutory warranties or conditions of merchantability or fitness for a particular purpose.
- 9 Customer shall indemnify Azul Services as required, on demand against any and all reasonable costs, expenses (including, without limitation, legal costs), liabilities, losses, damages, claims, demands and judgments which Azul Services incurs or suffers as a result of a breach of this Terms & Conditions of Service.
 - 9.1 Under no circumstances will Azul Services be liable for data that was never sent to the data vault by Customer. Customer is advised to review backup sets to ensure that the desired files have been transmitted.
- 10 Azul Services does not make any independent representations or warranties with products provided by third parties. Any third party warranties are the exclusive remedies of Customer with respect to such products.
- 11 Each party agrees to: 1. keep confidential all the other party's Confidential Information (whether written or oral) which it has obtained or received as a result of the discussions leading up to or the entering into, or obtains or receives in performance or during the term of, the Agreement; 2. not to disclose the other party's Confidential Information in whole or in part to any third party without the disclosing party's written consent, save to those of its employees, agents and contractors involved in the implementation of this Agreement and who have a need to know the same and are bound to keep it confidential;
- 12 The failure by either party to exercise any right conferred by the Agreement shall not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement of any such right on any later occasion.
- 13 Additionally, Customer acknowledges that Azul Services shall be permitted to assign the Agreement to any successor in title or other entity into, by or with which the business or assets of Azul Services to which the Agreement relates may be merged, acquired, consolidated or reorganized, or any entity which may purchase all or substantially all of such business or assets. The Agreement shall be binding upon and shall endure to the benefit of the parties hereto and their respective successors and permitted assigns.
- 14 Customer shall send Azul Services written notice or other document required by or in connection with the Agreement to the Azul Services address listed on the Azul Services invoice.
- 15 Azul Services shall not be liable for any breach of the Agreement caused by matters beyond Azul Services' reasonable control, including, without limitation, Acts of God, fire, lightning, explosion, war, disorder, flood, industrial disputes (whether or not involving Azul Services' employees), weather of exceptional severity or acts of local or central Government or other authorities or regulatory bodies.
- 16 State law issues concerning the construction, interpretation and performance of these terms and conditions shall be governed by the substantive laws of the State of Nevada, excluding its choice of law rules.