

**DEPARTMENT OF DEFENSE
SOFTWARE LICENSE AGREEMENT FOR AZUL SYSTEMS PRODUCTS**

This document sets forth the Department of the Defense (DoD) Software License Requirements. The Azul Software Agreement ("Software License Agreement") is attached hereto as Exhibit A and made a material part hereof by this reference. This document, including the Software License Agreement attached as Exhibit A and Exhibit B: SUPPORT AND MAINTENANCE SERVICES ("SUPPORT SERVICES") TERMS AND CONDITIONS constitutes the Agreement between EC America, Inc. (Contractor) and the DoD. The terms and conditions set out below in these Software License Requirements, supplement, to the extent a conflict exists, supersede, and take precedence over the terms and conditions of Exhibit A and Exhibit B. "Manufacturer" means Azul Systems, Inc.

The parties understand and agree that Contractor acts as a reseller of all Equipment, Software, Documentation, and services offered under this contract. With regard to Equipment, Software, and Documentation, (i) Contractor represents that it has the requisite right and authority under its reseller agreements with the Manufacturer to offer the products and grant the rights specified in this contract, (ii) Manufacturer shall have no privity of contract with DoD hereunder, (iii) Contractor remains solely responsible to DoD for all such Equipment, Software, and Documentation and (iv) Contractor has reviewed this agreement with Azul and will flow-down the appropriate terms and conditions. With regard to services, while some or all of the services ordered hereunder may be physically performed by Manufacturer, Service Provider, or other third-party personnel (as may be specified in an Order) acting under a subcontract or similar arrangement with Contractor, Contractor remains solely responsible to DoD for all such performance and assumes all liability arising therefrom.

This DoD ESI License Agreement and all attachments will be the sole license agreement governing the use of the Azul Systems software products and services purchased under the DoD ESI NASA SEWP Agency Catalog awarded to Contractor.

Enterprise Language: The parties agree that more than one agency of the DoD may license products under this Agreement, provided that any use of products by any agency must be made pursuant to one or more executed purchase orders or purchase documents submitted by each applicable agency seeking to use the licensed product. The parties agree that, if the licensee is a "DoD Department or Agency" as defined by the 48 Code of Federal Regulations, section 202.101, and to include the Intelligence Community¹ and the US Coast Guard, the terms and conditions of this Agreement apply to any purchase of products made by the DoD, and that the terms and conditions of this Agreement become part of the purchase document without further need for execution. The parties agree the terms of this Agreement supersede and take precedence over the terms included in any DoD Order, terms of any shrink-wrap agreement included with the licensed software, terms of any click through agreement included with the licensed software, or any other terms purported to apply to the licensed software, including any Licensor's published policy or program documentation or customer ordering documents. It is also understood by both parties, with the exception of the attached Exhibits, that any other Licensor policies, URLs referencing other terms (except for those URLs that may be contained in the attached Exhibits), conditions or policies or educational documents will not be considered part of this license agreement.

¹ The Intelligence Community is a federation of Executive branch intelligence agencies and Organizations that are comprised of 17 member organizations. <https://www.dni.gov/index.php/what-we-do/members-of-the-ic> Office of the Director of National Intelligence (ODNI) is authorized to procure IT through the DOD ESI per the Memorandum of Agreement, dated 15 May 2008. <https://dodcio.defense.gov/portals/0/documents/net-centric-moa.pdf>

1. **Choice of Law/Venue:** This Agreement shall be governed by and construed in accordance with the substantive laws of the US Code, US Code of Federal Regulations, Federal Acquisition Regulations and Defense Federal Acquisition Regulations (DFARS), without regard to principles of conflict of laws. Any language requiring dispute resolution in a specific forum or venue that is different from that prescribed by applicable Federal law is hereby deleted. Any language prescribing a different time period for bringing an action than that prescribed by applicable Federal law in relation to a dispute is hereby deleted.
2. **End user:** This agreement shall bind the DoD as end user but shall not operate to bind a Government employee or person acting on behalf of the Government in his or her personal capacity.
3. **Indemnification:** The DoD does not have the authority to and shall not indemnify any entity. The DoD agrees to pay for any loss, liability or expense, which arises out of or relates to the DoD's acts or omissions with respect to its obligations hereunder, where a final determination of liability on the part of the DoD is established by a court of law or where settlement has been agreed to by the DoD agency and the Department of Justice. This provision shall not be construed to limit the DoD's rights, claims or defenses which arise as a matter of law or pursuant to any other provision of this Agreement. This provision shall not be construed to limit the sovereign immunity of the DoD.
4. **Patent, Copyright, Trademark, and Trade Secret Protection:**
 - a) The Contractor shall, at its expense, indemnify and hold the DoD harmless from any suit or proceeding which may be brought by a third party against the DoD, its departments, officers or employees for the alleged infringement of any United States patents, copyrights, or trademarks, or for a misappropriation of a United States trade secret arising out of performance of this Agreement (the "Claim"), including all licensed products provided by the Contractor. For the purposes of this Agreement, "indemnify and hold harmless" shall mean the Contractor's specific, exclusive, and limited obligation to (a) pay any judgments, fines, and penalties finally awarded by a court or competent jurisdiction, governmental/administrative body or any settlements reached pursuant to Claim and (b) reimburse the DoD for its reasonable administrative costs or expenses, excluding all attorney's fees, it necessarily incurs in handling the Claim. The DoD agrees to give Contractor prompt notice of any such claim of which it learns. The DoD has the sole authority to represent itself in actions brought against the DoD. Contractor shall not, without the DoD's consent, which shall not be unreasonably withheld, conditioned, or delayed, enter into any settlement agreement which (a) states or implies that the DoD has engaged in any wrongful or improper activity other than the innocent use of the material which is the subject of the Claim, (b) requires the DoD to perform or cease to perform any act or relinquish any right, other than to cease use of the material which is the subject of the Claim, or (c) requires the DoD to make a payment which Contractor is not obligated by this Agreement to pay on behalf of the DoD. It is expressly agreed by the Contractor that, in the event it makes an appropriate request that the DoD to provide support to the Contractor in defending any such Claim, the Contractor shall reimburse the DoD for all necessary expenses (including attorneys' fees, if such are made necessary by the Contractor's request) incurred by the DoD for such support.
 - b) The Contractor agrees to exercise commercially reasonable due diligence to prevent claims of infringement on the rights of third parties.
 - c) If, in the Contractor's opinion, the licensed products furnished hereunder are likely to or do become subject to a claim of infringement of a United States patent, copyright, or trademark, or for a misappropriation of trade secret, then without diminishing the Contractor's obligation to satisfy any final award, the Contractor may, at its option and expense, substitute functional equivalents for the alleged infringing licensed products, or, at the Contractor's option and expense, obtain the rights for the DoD to continue the use of such licensed products.

- d) If any of the licensed products provided by the Contractor are in such suit or proceeding held to constitute infringement and the use thereof is enjoined, the Contractor shall, at its own expense and at its option, either procure the right to continue use of such infringing products, replace them with non-infringing items, or modify them so that they are no longer infringing.
 - e) If use of the licensed products is enjoined and the Contractor is unable to do any of the preceding set forth in item (d) above, the Contractor agrees to, upon return of the licensed products, refund to the DoD the license fee paid for the infringing licensed products, pro-rated over the term of the enjoined license period from the date of delivery plus any unused prepaid maintenance fees.
 - f) The obligations of the Contractor under this Section continue without time limit and survive the termination of this Agreement.
 - g) Notwithstanding the above, the Contractor shall have no obligation under this Section 4 for:
 - (i) Modification of any licensed products provided by the DoD or a third party acting under the direction of the DoD;
 - (ii) any material provided by the DoD to the Contractor and incorporated into, or used to prepare the product;
 - (iii) use of the Software after Contractor recommends discontinuation because of possible or actual infringement and has provided one of the remedy's under (d) or (e) above;
 - (iv) use of the licensed products in other than its specified operating environment;
 - (v) the combination, operation, or use of the licensed products with other products, services, or deliverables not provided by Azul Systems through Contractor as a system or the combination, operation, or use of the product, service, or deliverable, with any products, data, or apparatus that Azul Systems through Contractor did not provide;
 - (vi) infringement of a non-Azul Systems product alone;
 - (vii) the DoD's use of the licensed product beyond the scope contemplated by the Agreement; or
 - (viii) the DoD's failure to use corrections or enhancements made available to the DoD by the Contractor at no charge.
 - h) The obligation to indemnify the DOD, under the terms of this Section, shall be the Contractor's sole and exclusive obligation for the infringement or misappropriation of intellectual property.
5. **Continued Performance:** If the Contractor believes the ordering activity to be in breach of the agreement, it shall pursue its rights under the Contract Disputes Act or other applicable Federal statute while continuing performance as set forth in FAR 52.212-4 subparagraph (d).
6. **Arbitration, Equitable or Injunctive Relief:** In the event of a claim or dispute arising under or relating to this agreement, (A) binding arbitration shall not be used unless specifically authorized by agency guidance, and (B) equitable or injunctive relief, including the award of attorney fees, costs or interest, may be awarded against the U.S. Government only when explicitly provided by statute (e.g., Prompt Payment Act or Equal Access to Justice Act).
7. **Virus, Malicious, Mischievous or Destructive Programming:**
- a) Contractor warrants that the licensed product as delivered by Contractor does not, to the best of Contractor's knowledge, contain any viruses, worms, Trojan Horses, or other malicious or destructive code to allow unauthorized intrusion upon, disabling of, or erasure of the licensed products (each a

“Virus”). However, the licensed products may contain a key limiting use to the scope and quantity of the license(s) granted, and license keys issued by Contractor for temporary use are time-sensitive.

b) The DoD’s exclusive remedy, and Contractor’s sole obligation, for any breach of the foregoing warranty shall be for Contractor to (1) replace the licensed products with a copy that does not contain Virus, and (2) if the DoD, has suffered an interruption in the availability of its computer system caused by Virus contained in the licensed product, reimburse the DoD for the actual reasonable cost to remove the Virus and restore the DoD’s most recent back up copy of data provided that:

- (i) the licensed products have been installed and used by the DoD in accordance with the Documentation;
- (ii) the licensed products have not been modified by any party other than Contractor;
- (iii) The DoD has installed and tested, in a test environment which is a mirror image of the production environment, all new releases of the licensed products and has used a generally accepted antivirus software to screen the licensed products prior to installation in its production environment.

c) Under no circumstances shall Contractor be liable for damages to the DoD for loss of the DoD’s data arising from the failure of the licensed products to conform to the warranty stated above.

8. **Delivery:** Contractor’s delivery of the Products to DoD shall be by electronic download or as otherwise specified in Orders, FOB Destination.

9. **Program Warranty:** Contractor warrants for ninety (90) from the date on which the Software specified in an Order is first used in production by Licensee that the Software will perform in all material respects the functions described in the Documentation when operated in accordance with the Documentation on a Supported Platform.

a) **Noncomplying Product:** In the event DoD determines that the Product does not comply with the documentation that accompanies such Product (“Noncomplying Product”), and Notifies during the 90-day period specified above, DoD will notify Contractor and Contractor will have ten (10) business days thereafter to begin remedying the nonconformance. If Contractor is unable to remedy such nonconformance within a reasonable time, Contractor agrees that DoD may return the Product and Licensor shall promptly refund any moneys paid for such Noncomplying Product.

b) **Contractor Remedies:** Licensee must report to Contractor in writing any breach of the warranties during the relevant warranty period. Contractor shall use commercially reasonable efforts to correct or provide a workaround for reproducible Software errors that cause a breach of this warranty or, if Contractor is unable to make the Software operate as warranted within a reasonable time considering the severity of the error and its impact on Licensee, Licensee shall be entitled to return the Software to Contractor and recover the fees paid by Licensee to Contractor for the license to the non-conforming Software.

c) **Discontinuance of Support:** Contractor will discontinue support of Products in accordance with the support roadmap available at <https://www.azul.com/products/azul-support-roadmap/>.

10. **Limitation of Liability:**

a) The Contractor’s liability to the DoD under this Agreement, as it relates to the Contractor’s software shall be limited to the greater of (1) the value of any Order issued; or (2) \$250,000.

- b) This limitation does not apply to damages for:
- (i) bodily injury;
 - (ii) death;
 - (iii) intentional injury;
 - (iv) damage to real property or tangible personal property for which the Contractor is legally liable; or
 - (v) Contractor's indemnity of the DoD for patent, copyright, trade secret, or trademark protection.
- c) Notwithstanding anything else herein or otherwise, in no event will the Contractor be liable for 1) consequential, indirect, punitive, or incidental damages, 2) any interruption of use or loss or corruption of data, except as covered under Section 7 (Virus, Malicious, Mischievous or Destructive Programming) or 3) for any matter beyond Contractor's reasonable control. . Contractor will not be liable for damages due to lost records or data unless Contractor is responsible for storing or hosting data in its cloud environment or a third party's cloud environment.
- d) The Azul Systems Products are not designed, manufactured, or intended for use in hazardous environments requiring fail-safe performance where the failure of the Product could lead directly to death, personal injury, significant property damage, significant physical damage, or significant environmental damage.

- 11. Termination:** Contractor may not terminate this Agreement for non-payment from reseller. The DoD may terminate this Agreement without cause by giving Contractor ninety (90) calendar day's prior written notice (Notice of Termination) whenever the DoD shall determine that such termination is in the best interest of the DoD (Termination for Convenience).
- 12. Background Checks:** This term will be applicable if required by local command policy and prior to the commencement of on-site professional services by Licensee employee who is proposed for assignment to perform services at a DoD site or via remote access in or from the United States and only if the Contractor employee does NOT possess a Department of Defense ("DoD") performed National Agency Check with Inquiries ("NACI") or a DoD security clearance of SECRET or higher, Contractor, or its agent, will complete a criminal background check, or confirm that such a background check has been completed, on such employee. The criminal background check shall consist of a check of public records, to the extent available at the county level, where the employee has established credit in the United States as determined by a social security trace. The check is for felony and misdemeanor convictions within the seven (7) years preceding the date of the check. To the extent not prohibited by law, Contractor shall not assign any employee to perform such services for whom a criminal background check, at the time of its completion, uncovered conviction of a felony or conviction of a misdemeanor. In the event that DoD requires on-site support outside the United States, Contractor will make reasonable efforts to work with DoD in order to address its security concerns.
- 13. Confidentiality:** Each party shall treat the other party's confidential information in the same manner as its own confidential information. The parties must identify in writing what is considered confidential information. If any document incorporated by reference into this agreement, and/or referenced therein, includes a confidentiality clause, such clause is hereby amended to state that neither this agreement nor the DoD ESI Catalog Product and Price List shall be deemed "confidential information." Issues regarding release of "unit pricing" will be resolved consistent with the Freedom of Information Act. Notwithstanding anything in this agreement to the contrary, the Government may retain any confidential information as required by law, regulation or its internal document

retention procedures for legal, regulatory or compliance purposes; provided, however, that all such retained confidential information will continue to be subject to the confidentiality obligations of this agreement.

14. **Publicity/Advertisement:** The Contractor must obtain DoD approval prior to mentioning the DoD or a DoD agency in an advertisement, endorsement, or any other type of publicity. This includes the use of any trademark or logo.
15. **Territory:** Any Department of Defense (DoD) civilian or military installation or work site in the Continental United States (CONUS) or outside the Continental United States (OCONUS), regardless of where software was acquired.
16. **Software Backup and User Documentation:** Contractor grants DoD to make a reasonable number of copies for DoD's internal backup purposes. DoD is responsible for ensuring that all copyright notices, trademarks and other restrictive legends are maintained on such copies. DoD is also responsible for reporting to Contractor if DoD learns of the misuse or mishandling of Software or User Documentation provided under the contract to DoD personnel, contractors or Government employees.
17. **Transfers and Assignments:** Except for agreements that include an "Unlimited Deployment Program", where an agency can use the Unlimited Deployment Programs on an unlimited number of processors or instances, Licensee is authorized to transfer or assign the Software or Licensee's rights in the Software, and such authorization would include sublicensing, assignment or transfer among or between DoD agencies, outsourcers, contractors or Licensee, (in support of the DoD mission) or authorize any portion of the Software to be copied onto or accessed from another individual's or entity's computer, except as may be explicitly provided in this Agreement.
 - a) **Transfers:** within the DoD and in the event that an Authorized User has a valid license under this Agreement and that Authorized User is reorganized or restructured such that its responsibilities and operations are transferred to another Authorized User agency, the agency shall have the right to assign the affected program licenses to a successor.
 - b) **Assignments:** Licensee is authorized to assign ownership of licenses when Licensee intends to designate an outsourcer, contractor (in support of the DoD mission), DoD Agency or other, as determined, to assume ownership of the license along Contractor written concurrence. All activities by such Assignee shall be subject to the Software License Agreement as modified herein. Any deviation shall be subject to a separate agreement between Contractor and such Assignee, specifying conditions for the management and maintenance of the Software, which agreement shall not impose any more restrictive covenants than are provided to Licensee in the Software License Agreement, as modified herein. The assignment of licenses will be without additional cost to any party involved in the assignment of licenses. It is further understood that Assignee will be responsible for all future software maintenance costs of any assigned licenses.
 - c) Licensee shall complete any required Contractor documentation required to facilitate the transfer or assignment of license and continuation of support for the transferee or assignee. All license transfers or assignments will be without cost to the Licensee, provided that the licenses are current with regard to Contractor annual maintenance, and the Licensee does not re-market or otherwise intend to resell the licenses to be transferred.

It is inherently understood Licensee and the successor transferee or assignee agree to be bound to this Software License Agreement.

18. Functionality Replacement and Extended Support.

- a) If Licensor removes any or all of the material features or functionality to which DoD is being granted access hereunder from the Software without introducing replacement or substitute functionality such that the Software no longer performs its core operations as when initially released and Azul Systems subsequently offers those features or functionality in a new or different product (whether directly or indirectly or through a third party), then upon request by DoD the License will be deemed to include (i) the portion of those new or different products that contain the original features, or (ii) if those features cannot be separated out, the entire product, or (iii) another reasonable substitute Azul Systems Product as determined by DoD, will be provided to DoD under the terms of this Agreement at no additional charge to DoD.
- b) If the Software provided to DoD is updated as replacement, renamed or re-branded applications or products for any reason, then DoD shall be entitled to the same license to use the replacement, renamed or re-branded product as DoD had with respect to the Software that DoD had immediately prior to such replacement, renaming or re-branding, at no additional charge to DoD so long as (a) the new applications or products are functionally equivalent, at a minimum, and the same conditions of use apply as to the Software and (b) Contractor ceased or has advised DoD that Contractor intends to cease supporting the initial Software while DoD was still purchasing Maintenance and Support for such Software.
- c) If the form, fit, or functionality contained in any licensed products acquired hereunder is substantially reduced or if the product is replaced, and/or Azul Systems provides the same or substantially similar functionality as a separate or renamed product, then the DoD is entitled to license such software without any additional license requirements or additional maintenance fees. However, throughout the term of this agreement, the Contractor will provide support services until Azul Systems declares an "end-of life" to the software.

19. Rights of Survivorship of the Agreement. This Agreement shall survive unto Contractor, its Successor, rights and assigns. The software and agreement terms and conditions as covered under this agreement shall survive this agreement for its applicable term notwithstanding the acquisition or merger of Contractor by or with another entity. Sections 1, 2, 3, 4, 6, 10, 13, 19, 34, and 38 shall survive termination of this agreement in perpetuity. Any software name changes, re-packing or merger of similar products that carry forward the same or similar function of the software shall be supported with updates, upgrades and new releases under this agreement at no additional cost.

20. Audit Responsibilities: This Section sets out the sole audit right under this agreement.

- a) DoD will maintain, and promptly provide to Contractor upon its request, but no more frequently than once in a twelve (12) month period, accurate records regarding use of the software by or for DoD. If DoD becomes aware of any unlicensed use of the software, DoD will notify Contractor within 15 calendar days, providing reasonable details. DoD shall either purchase additional licenses for the product through Contractor without any penalty or promptly stop using the software and delete any unauthorized copies. Nothing herein shall limit Contractor's right to seek reimbursement for the used, unlicensed software under the Contract Disputes Act.

- b) DoD will perform a self-audit, upon the request of the Contractor, but no more frequently than once in a twelve (12) month period, and report any change in software program use (hereinafter "True up number"). The Contractor may make such a request of an individual agency of the DoD and will notify the DoD in the event of such a request. If the Contractor requests a self-audit from a DoD agency, a will not make another request of that agency for at least 12 months. Any self-audit, which shall be certified by a DoD employee authorized to do so, shall include, but not be limited to, the number of copies of the programs installed and/or in use by the DoD, the designated system(s) on which the programs are installed and/or running, and if applicable, the number of users of the programs. DoD shall notify Contractor of the True up number no later than 90 calendar days after completion of the self-audit.
 - c) If the self-audit finds that DoD is under-licensed, DoD will either 1) cease use of the quantity in excess of the DoD licensed quantity and work with the Contractor in good faith to account for such excess use or 2) make an additional purchase of the product through Contractor, wherein such pricing is in accordance with any current ESI pricing. The procurement of additional licenses, if required, will transpire no later than 60 days after DoD's aforementioned notification. There will be no penalties involved in the procurement of the additional licenses.
21. US Government Configuration Baseline. The Licensor shall comply with the requirements of the US Government Configuration Baseline (USGCB) as specified at <http://usgcb.nist.gov>, except as noted in (c) below, to ensure applications are fully functional and operate correctly as intended. The standard installation, operation, maintenance, updates, and/or patching of software shall not alter the configuration settings from the approved USGCB configuration.
- a) Applications designed for normal end users shall run in the standard user context without elevated system administration privileges.
 - b) DoD Customer may request compliance with additional baseline configuration requirements.
 - c) DoD acknowledges Windows 7 is the oldest version which is supported for Zulu 8 and 11 (no XP or Vista are on the supported platform list anymore), and Windows is not supported by Zing. RHEL 5 is conditionally supported.
22. **Net-Centricity:** The Department of Defense is transforming the way information is managed to accelerate decision-making, improve joint war fighting and create intelligence advantages. To reach this "Net-Centric" state, DoD must exploit advancing technologies that move the enterprise from an application centric to a data-centric paradigm. DoD ESI Contractor partners are encouraged to use the OSD NII DCIO Net-Centric Checklist, located at: http://DoDcio.defense.gov/Portals/0/Documents/NetCentric_Checklist_v2-1-3_.pdf to provide information on the Net-Centric posture of their IT products and services. Software products offered to and purchased by the DoD and Intelligence Community shall be licensed by the Contractor without restriction to information sharing among the DoD and IC in performing their missions.
23. **Section 508 of the Rehabilitation Act Compliance:** Licensor will make available to DoD Voluntary Product Accessibility Templates (VPATs) for AZUL products to meet its obligations under Section 508. VPATs for AZUL products are available on AZUL's products by product release.

- 24. Orders:** Any term or condition in an Order to be placed that will expressly supersede a term or condition of this agreement must be approved in writing between a DoD ESI PCO and the Contractor.
- 25. Temporary Use of Software During Times of Conflict and/or Natural Disaster:**
- a) As part of Temporary Expeditionary Deployments (TEDs), during the term of this Agreement, DoD may temporarily deploy and install or use on, or access from qualified desktops or servers, a reasonable number of Azul Systems software products in addition to those previously licensed pursuant to this Agreement at no additional cost ("TED Licenses"). TEDs are limited to deployments away from in-garrison locations (any military post or government office where troops or civilian government personnel are at a permanent location), war games, exercises, real world contingencies, and emergency situations similar to the initiated domestic terrorist attacks of 19 April 1995 (i.e., the Timothy McVeigh Terry Nichols perpetrated 'Oklahoma City Bombing' involving the Alfred P. Murrah Federal Building); the initiated international terrorist attacks, perpetrated on American soil, on 9/11/2001; and finally, the national inclement weather natural disasters perpetrated by Hurricane(s) Katrina and Rita during the August and September months of Calendar Year 2005, where temporary duty stations (TED's) and continuity of operations (COOP) alternative venues or sites were needed, for a substantial period of time, due to the destruction of federal or U.S. Government facilities, infrastructure, offices and work spaces.
 - b) After the TED, or six (6) calendar months, whichever is shorter ("Temporary Use Period"), unless a different time period is agreed to in writing by the Licensor, the DoD will provide a written certification that the TED Licenses have either been removed from service, or payment has been made under this Agreement to purchase additional licenses equal to the number of TED Licenses not removed from service. DoD agrees to use the TED Licenses in accordance with the terms contained in this Agreement and the applicable version of the Software License Agreement.
- 26. Software Asset Management & ISO IEC 19770:2015 Series:** The Licensor shall make commercially reasonable efforts comply with ISO 19770:2015 Series Standards for all installable or distributable software products governed by this agreement.
- 27. Authorized Users:** An Authorized User includes, but is not limited to DoD government employees (military, civilian, reserves, national guard), contractors, non-human devices, detailed individuals that are included and accounted for in the DoD in support of DoD missions and those individuals or non-human devices who have access to, use or are tracked by Contractor's programs.
- 28. Data Sharing/Transfer:** Data transfer is Batch Processing, Multiplexing and Flat File Environments. This license provides the DoD all rights concerning data sharing, data access, data transfer and data manipulation for authorized users associated with the DoD missions. The parties agree that as long as one party has a valid license, this transfer of data or the sharing of data is unrestricted. This license also provides for the ability of authorized users to access data from any US-owned datacenter with data owner granted permission and any appropriately licensed non-US owned datacenters.
- 29. Data Recovery and Virtualized Servers:**
- a) Data Recovery methods include four types of environments: backup, failover, standby, and remote mirroring. Backup, failover, and standby servers will not require additional licenses as long as the

number of data recovery servers (excluding remote mirroring servers) equals the number of primary servers.

- b) For virtualized servers, both parties agree that only the primary servers and remote mirroring servers must be licensed. It is understood that advanced virtualization functions (soft partitioning including live migration) are incorporated herein by expressed written reference and by this license agreement.

- 30. Shelf Ware:** It is recognized, that in some instances, DoD may have excess Contractor software licenses that are not currently being used or needed by DoD. These licenses are commonly called Shelf Ware. At DoD's sole discretion, the DoD may transfer any these licenses as described in Section 11 of this document or DoD may terminate the license grant, as it deems necessary. . In no event, when a subset of licenses is terminated or if the level of support is reduced, will such termination or reduction (a) reduce or eliminate DoD's obligation to pay any outstanding payments or invoices owed at the date of such termination, or (b) give rise to any right to receive a refund of payments already made by DoD (for clarity, said payments are non-refundable). If the licenses are transferred and the transferee maintains support for the transferred licenses, such transfer will not result in any type of fee recalculation. If the licenses are terminated and support is reduced, fees will not be recalculated for the then-current term, but fees based on volume discounts provided under the original order may be recalculated to reflect the reduced volume for subsequent option years.
- 31. Third Party Software:** Notwithstanding anything to the contrary, the Government shall not be subject to third party terms and conditions that are contrary to Federal law.
- 32. Additional Functionality:** Provided DoD has purchased maintenance for the applicable Azul Systems Products, any additional functionality provided on such Products shall not impose additional license terms and/or fees on the Government for the specific Azul Systems Product ordered.
- 33. License copies for training, evaluation, research and development (including Research Labs) and back-up.** During the term of this Agreement (including any renewal term), an agency (as defined locally) may, pursuant to a mutually agreed upon evaluation request form, run complimentary copies of any additional product for the evaluation period identified in the applicable evaluation request form.
- 34. Finality of Terms:** This agreement and any attachments to this agreement will be the sole document governing the granting of licenses between DoD and Contractor for the Azul Systems products. There shall be no changes to this license agreement unless agreed to by both parties in writing.
- 35. Software Titles Incorporated by this License Agreement:** This Agreement will govern the provision and use of any Software offered by Contractor as of the effective date of this Agreement as well as any new Azul Systems Software offerings made available by Contractor during the effective term of this Agreement.
- 36. Virtualization:** Contractor recognizes Virtualization through partitioning. A Product deployed on such a partition shall be counted as a Supported Instance as defined in the applicable Exhibit A. Should DOD desire to implement virtualization for the Azul Systems software programs licensed pursuant to this agreement, partitioning shall be defined and executed as follows:
- a) Soft Partition (also called Software Partition): Soft Partition means to partition the operating system using system resource managers that limit the number of CPUs running Azul Systems Programs. Soft

Partitioning creates areas within the same operating system where CPU resources are specifically allocated to respective applications.

- b) **Hard Partition (also called Hardware Partition):** Hard Partition means to partition the server by physically separating the processors of a single server into distinct smaller servers, each of which acts as a physically independent, self-contained server, typically with its own dedicated CPUs, operating system, separate boot area, memory, input/output subsystem, and network resources.
- c) **Implementation:** If DoD partitions through either Soft Partitioning or Hard Partitioning then DoD is only required to license programs for the partitions on which DoD will be installing and/or running the software.

37. Deployment and Use of Perpetual, Subscription or Term Licenses in a Cloud Computing Environment:

The DoD can deploy and use the purchased quantity of its perpetual or term licenses in any cloud computing environment (private or public) and with any third-party cloud service provider. The use of DOD licenses is limited to the mission and business of the DoD. The DoD retains all ownership responsibilities of the licenses. The DoD will maintain records of license deployment.

DoD can transfer its perpetual and term licenses between on-premises data centers and third party cloud service providers or to other third party cloud service providers without charge, limitation, or change in functionality.

Processors shall be counted as set forth in Exhibit A.

38. Unenforceable Provisions: If any document incorporated by reference into this agreement, and/or referenced therein, contains a provision that: (a) allows for the automatic termination of license rights or technical support services; (b) allows for the automatic renewal of services and/or fees; (c) materially change government obligations; (d) increases government prices; (e) decreases overall level of service; (f) limits any other Government rights addressed elsewhere in this contract; (g) requires governing law to be anything other than Federal law; and/or (h) that otherwise violates applicable Federal law, then, such terms shall not apply and shall have no effect. If any document incorporated by reference into this agreement, including additional terms and conditions included and/or referenced therein, contains an indemnification provision, such provision shall not apply as to the United States indemnifying the Manufacturer or Contractor or any other party.

39. Previously Acquired Licenses: All Azul Systems licenses, of any versions or releases, that were purchased by any DoD agency prior to the effective date of this Software License Agreement shall be converted and replaced with licenses subject to this Software License Agreement.

40. [Omitted.]

41. Professional Services: Contractor may subcontract all or part of the Services to be performed, to a qualified third party only with the explicit written acceptance of the Contractor. Any subcontracting of services must be noted on the Order Form and acknowledged in the customer's Order.

42. Parallel Operations: For no additional cost, the DoD agency shall have the ability to run the Azul Systems software on parallel systems for up to 180 days, or a longer mutually agreed upon timeframe, for system migrations, testing, and/or hardware refreshes. The DoD will ensure the duplicate Instances required during the Parallel Operation period are uninstalled and deleted once the parallel operation is no longer

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required. The DoD will only request the ability to run the same number of licensed instances that are currently owned by the DoD. If more licenses are required than the quantity owned by the DoD agency, the DoD will acquire the necessary licenses.

Contractor's Acceptance

David Tong

Name

Sr. Director

Title

3/26/2020

Date

David Tong

Signature

DoD's Acceptance

Dennis J. FELLIN

Name

CONTINGENT

Title

03/26/2020

Date

[Signature]

Signature