



## AzulStar Customer Agreement - November 2009

### Please Read This Customer Agreement Carefully Before Using Our Wireless Internet Services.

The terms and conditions of this Agreement shall govern the relationship between you ("Customer") and AzulStar (AzulStar, Inc. or subsidiary e.g. MetraMax GR, LLC) ("AzulStar"). AzulStar provides its wireless Internet access and Voice over IP services, as they may exist from time to time ("Services"), to Customers who establish an account with AzulStar. By establishing an account or using any software provided, developed, licensed or owned by AzulStar, you agree to be bound by this Agreement and to use the Services in compliance with this Agreement and other AzulStar policies posted on our Web site, <http://www.AzulStar.com>

### Subscription Options and Requirements

Customer has the option of purchasing the Services in one of 3 ways:

- o Yearly paid in advance, recurring automatically
- o Month to month, paid in advance, recurring automatically
- o Prepaid passes, non recurring (for Wi-Fi and mobile WiMAX Service only)

No contract is required for subscription plans and service may be cancelled at any time, with the exception of Small Biz, T1, T3 and T4 connections, which require a minimum commitment. Subscriptions will renew automatically unless cancelled prior to the start of new service term. Once a new service term has begun, refunds are not granted after the initial refund period of 30 days has passed. Customers must be at least 18 years old. Service may not be available in all areas. Current prices for the Services are posted on our Web site at <http://www.AzulStar.com/services/sign-up-and-plans/>. These rates also may be obtained by calling 1-877-AZULSTAR or 616-842-2763. AzulStar reserves the right to change prices and institute new fees at any time.

### Service Levels

AzulStar provides 5 tiers of service or SLAs for its connections; details of these SLAs are provided on the AzulStar Website: <http://www.AzulStar.com/services/sign-up-and-plans/>. These uptimes are measured at the demarcation point which is the Ethernet port of the WiFi or WiMAX Adaptor. AzulStar will do its very best to provide you the maximum speed of the service tier you have ordered at all times. AzulStar monitors each fixed connection on a 24x7x365 basis to ensure quality connections and provides the following service guarantees; mobile connections cannot be monitored and are not covered within the service guarantee:

- If AzulStar fails to meet the availability target, as measured over a particular month, due solely to AzulStar's operations, you may receive a credit for 2% of your package's monthly recurring charge for each hour of service outage in excess of the availability and throughput target. By definition, a connection is experiencing an outage if no traffic can be exchanged on the line and AzulStar is unable to ping your router when using the CPEs.
- If AzulStar is unable to meet its target response time for a call back, you may receive a credit for 10% of your package's monthly recurring charge.

In no case shall the sum of target response time credits and uptime availability target credits during a calendar month exceed the total of your package's monthly recurring charge. Credits may be applied to the following month's invoice. No refunds will be provided. The throughput you receive will vary from connection to connection depending on a variety of factors such as antenna placement and other variables some of which are outside of AzulStar's control. Due to this, AzulStar guarantees SLAs only when the CPE has been professionally installed by AzulStar and unmodified by the customer. All AzulStar-provided customer premise equipment is pre-configured for the AzulStar service you have ordered. Support for the hardware configuration comes with the service. Customer modifications that make the hardware inaccessible remotely will result in billable configuration/repair by AzulStar and/or vendor technicians.

### Privacy Policy

We regard our user's privacy as one of our most important values and we do not share this information with anyone. We want you to know how we protect member information and what choices you have about its use. We believe AzulStar's Privacy Policy should give you confidence whenever you use any AzulStar services. Please see: <http://www.AzulStar.com/privacy-policy/> for complete privacy policy details.

### Payment Obligations of Customer

Customers must (1) provide AzulStar with accurate and complete billing information including legal name, address, email or telephone number and credit card/billing information, and (2) report to AzulStar all changes to this information within 30 days of the change. Customers having questions regarding charges to an account should contact AzulStar's Customer Service Department at 1-877-AZULSTAR or 616-842-2763 or by email at [support@AzulStar.com](mailto:support@AzulStar.com). All charges are considered valid unless disputed in writing within 60 days of the billing date. Adjustments will not be made for charges that are more than 60 days old. Charges are pre-billed to Customers at the beginning of each month or year for the applicable service plan and any additional usage or services from the previous period. AzulStar is not responsible for any charges or expenses resulting from charges billed by AzulStar (e.g., for overdrawn accounts, exceeding credit card limits, etc.). Delinquent accounts may be suspended or canceled at AzulStar's sole discretion; however, charges will continue to accrue until the account is canceled and collection fees, late charges or other similar fees may be added. AzulStar may bill an additional charge to reinstate a suspended account.

### Port Blocking

AzulStar blocks ports according to the SLA purchased in order to maintain the integrity and reliability of its networks as well as differentiate between the SLA services tiers. Detail is provided here: <http://www.azulstar.com/support/technical-support/port-blocking/>. AzulStar is committed to meeting the principals of Net Neutrality while ensuring maximum reliability and performance of the network. AzulStar will prioritize time sensitive applications such as VoIP and video traffic where possible and explicitly limit illegal file sharing services to 25kbps on all residential and small business service tiers.

### Acceptable Use Policy

All Customers of the Services and users of AzulStar services, software and Web Sites agree to and must comply with this Acceptable Use Policy (AUP). This AUP is intended to improve the use of the Internet by preventing unacceptable uses. We do not actively monitor the use of the Services under normal circumstances. Similarly we do not exercise editorial control or review over the content of any Web site, electronic mail transmission, newsgroup or other material created or accessible over or through the Services. However, we may remove, block, filter or restrict by any other means any materials that we determine, in our sole discretion, may be illegal, may subject AzulStar to liability or may violate this AUP. AzulStar may cooperate with legal authorities and/or third parties in the investigation of any suspected or alleged crime or civil wrong. Violation of this AUP may result in the suspension or termination of either access to the Services and/or AzulStar account or other actions as detailed below.

The following constitute examples of violations of this AUP. You agree to not use the Services to:

- (1) transmit any material (by uploading, posting, email or otherwise) that is unlawful, threatening, abusive, harassing, tortuous, defamatory, obscene, libelous, invasive of another's privacy, hateful or racially, ethnically or otherwise objectionable;
- (2) harm, or attempt to harm, minors in any way;
- (3) impersonate any person or entity or falsely state or otherwise misrepresent your affiliation with a person or entity; forge headers or otherwise manipulate identifiers in order to disguise the origin of any material transmitted through the Services;
- (4) transmit any material (by uploading, posting, email or otherwise) that you do not have a right to make available under any law or under contractual or fiduciary relationships (such as inside information, proprietary and confidential information learned or disclosed as part of employment relationships or under NDA);
- (5) transmit any material (by uploading, posting, email or otherwise) that infringes any patent, trademark, trade secret, copyright or other rights of any party;
- (6) transmit (by uploading, posting, email or otherwise) any unsolicited or unauthorized advertising, promotional materials, "junk mail," "spam," "chain letters," "pyramid schemes" or any other form of solicitation;
- (7) transmit any material (by uploading, posting, email or otherwise) that contains software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment;
- (8) disrupt the normal flow of dialogue, cause a screen to "scroll" faster than other users of the Service are able to type, or otherwise act in a manner that negatively affects other users' ability to engage in real time exchanges;
- (9) interfere with or disrupt the Service or servers or networks connected to the Service, or disobey any requirements, procedures, policies or regulations of networks connected to the Service;
- (10) intentionally or unintentionally violate any applicable local, state, national or international law or regulation, including, but not limited to, regulations promulgated by the U.S. Securities and Exchange Commission, any rules of any national or other securities exchange, including, without limitation, the New York Stock Exchange, the American Stock Exchange or the NASDAQ, and any regulations having the force of law;
- (11) "stalk" or otherwise harass another; or collect or store, or attempt to collect or store, personal data about third parties without their knowledge or consent;
- (12) resell any of the Residential Services or otherwise make available to anyone outside the Premises the ability to use the Service (for example, though wi-fi or other methods of networking), in whole or in part, directly or indirectly. The Residential Service is for personal and non-commercial use only and you agree not to use the Service for operation as an Internet service provider or for any business enterprise or purpose (whether or not for profit) without AzulStar's authorization,
- (13) use Residential Services for high volume data transfers, especially sustained high volume data transfers, hosting a web server, IRC server, or any other server. AzulStar requests that anyone who believes that there is a violation of this AUP direct the information to: [support@AzulStar.com](mailto:support@AzulStar.com). If available, please provide the following information: (1) the IP address used to commit the alleged violation; (2) the date and time of the alleged violation, including the time zone; and (3)



evidence of the alleged violation. When reporting an issue regarding unsolicited email please provide a copy of the email messages with full headers which typically provides all of the above data. Other situations will require different methods of providing the necessary information. AzulStar may take any one or more of the following actions, or other actions not listed, at AzulStar's sole discretion in response to complaints: (1) issue warnings: written or verbal; (2) suspend the Customer's account; (3) terminate the Customer's account; (4) bill the Customer or user for administrative costs and/or reactivation charges, with a minimum administrative cost; or (5) bring legal action to enjoin violations and/or to collect damages, if any, caused by violations.

#### **Legal Notices**

All content included on this Web site, including, but not limited to, text, graphics, logos, buttons, icons, images and software, is the property of AzulStar or its licensors or partners and is protected by U.S. and international copyright and trademark laws. Reproduction, duplication, modification, distribution, transmission, replication, display or performance of the content of this Web site without the express written permission of AzulStar is strictly prohibited. AzulStar is committed to complying with U.S. copyright law and expects all of our Customers to do the same. The Digital Millennium Copyright Act of 1998, 17 U.S.C. § 512(c) (3) ("DMCA") provides recourse for owners of copyrighted material who believe that their rights under U.S. copyright law have been infringed on the Internet. If you believe that any material contained on this Web site infringes your copyright, you should notify AzulStar of your copyright infringement claim in accordance with the following procedure.

AzulStar will process all notices of alleged infringement and will take appropriate action as required by the DMCA and other applicable intellectual property laws. The DMCA requires that notifications of claimed copyright infringement should be sent to AzulStar's designated agent who is:

General Counsel, AzulStar, Inc.  
1051 Jackson Street  
Grand Haven, MI 49417  
E-mail: legal@AzulStar.com

To be effective, the notification must be in writing and contain the following information (DMCA, 17 U.S.C. §512(c)(3)): (1) Physical or electronic signature of a person authorized to act on behalf of the copyright owner; (2) Identification of the copyrighted work claimed to have been infringed; (3) Identification of the material that is claimed to be infringing and that is to be removed or access to which is to be disabled as well as information reasonably sufficient to permit AzulStar to locate the material; (4) Contact information of the complaining party; (5) A statement that the complaining party has a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agents, or the law; (6) A statement that the information in the notification is accurate, and under penalty of perjury, that the complaining party is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

#### **Term and Termination**

Either party may terminate this Agreement upon 30 days prior written notice before the end of the Initial Term (if that option was elected) or at any time after that Initial Term. If the 12 month Initial Term was elected and Customer desires to terminate earlier than the end of the Initial Term, Customer will be charged a \$100 early termination fee. Without prior notice, AzulStar may terminate this Agreement, your password, your account or your use of the Services, for any reason, including, without limitation, if AzulStar, in its sole discretion, believes you have violated this Agreement or any of the applicable Customer policies, or if you fail to pay any charges when due. AzulStar may provide termination notice to you by: email addressed to your email account or by US Mail or courier service to the address you provided for the Services. All notices to you shall be deemed effective on the first (1st) calendar day following the date of electronic mailing or on the fourth (4th) calendar day following the date of first-class mailing or deposit with a commercial courier service. Sections of this Agreement relating to (1) your payment obligations, (2) your account, password and security, (3) disclaimer of warranties and limitation of liability and (4) jurisdiction shall survive termination of this Agreement.

#### **Assignment**

Customer may not assign his/her rights under this Agreement without AzulStar's prior written consent.

#### **Mandatory arbitration**

Any claim or dispute between customer and AzulStar arising under or in any way related to or concerning this agreement, and/or AzulStar's provision to customer of services or licensed programs, shall be submitted to final, binding arbitration with the American arbitration association ("AAA") pursuant to its published wireless industry arbitration rules, incorporated herein by this reference and available by calling the AAA at 800-778-7879 or visiting its web site at <http://www.adr.org>. Notice of an arbitration commenced by Customer must be served on AzulStar's registered agent. An arbitrator may only award as much relief as a court having jurisdiction in the place of arbitration, limited to the same extent that a court would limit such relief and consistent with the provisions of this Agreement. An arbitrator may not order consolidation or arbitration on a class wide basis and may order injunctive or declaratory relief pursuant to applicable law. The arbitral award shall be final and binding and may be entered as a judgment in any court of competent jurisdiction. Each party shall bear its own costs in connection with the arbitration; the cost of the arbitrator and the administration of the arbitration shall be borne in accordance with the directive of the arbitral award. Customer acknowledges and agrees that this arbitration provision constitutes a waiver of any right to a jury trial, or participation as a plaintiff or as a class member in a class action. Any such arbitration shall be held in Grand Rapids, Michigan.

#### **Jurisdiction**

This Agreement is governed by Michigan law without regard to conflict of law provisions. [The federal and state courts located in Grand Rapids, Michigan alone have jurisdiction over all disputes arising out of or related to this Agreement and the Services. You consent to the personal jurisdiction of such courts sitting in Grand Rapids, Michigan with respect to such matters or otherwise between you and AzulStar, and waive your rights to removal or consent to removal. This should be deleted if you want to keep the arbitration requirement in the receding section.] Except as otherwise provided in this Agreement, and unless prohibited by law, any controversy, claim, or dispute must be brought by Customer within one (1) year of the date Customer is entitled to assert any such claim.

#### **Miscellaneous**

This Agreement, the Privacy Policy and AzulStar's other Customer policies posted on AzulStar's Web site constitute the entire agreement between you and AzulStar with respect to your use of the Services. AzulStar may revise, amend or modify this Agreement and any other Customer policies and agreements, at any time and in any manner. AzulStar's failure at any time to require strict performance by Customer or any other licensees of any of the provisions herein shall not waive or reduce AzulStar's right to thereafter require strict compliance with any provisions of this Agreement.

#### **Disclaimer Of Warranties And Limitation Of Liability**

Except for certain products and services specifically identified as being offered by AzulStar, AzulStar does not control any materials, information, products, or services on the internet. The internet contains unedited materials, some of which are sexually explicit or may be offensive to you. AzulStar has no control over and accepts no responsibility for such materials. You assume full responsibility and risk for use of the services and the internet and are solely responsible for evaluating the accuracy, completeness, and usefulness of all services, products and other information, and the quality and merchantability of all merchandise provided through the service or the internet.

AzulStar does not warrant that the services will be uninterrupted, error-free, or free of viruses or other harmful components. AzulStar makes no express warranties and customer waives all implied warranties including, but not limited to, warranties of title, non infringement, merchantability, and fitness for a particular purpose regarding any merchandise, information or service provided through AzulStar or the internet generally. Customer expressly acknowledges that there are, and assumes all responsibility related to, the security, privacy and confidentiality risks inherent in wireless communications and technology and AzulStar does not make any assurances or warranties relating to such risks. No advice or information given by AzulStar or its representatives shall create a warranty. Any statements made in packaging, manuals or other documents, or by any of AzulStar's agents is provided for informational purposes only and not as warranties by AzulStar of any kind. AzulStar and its employees are not liable for any costs or damages arising directly or indirectly from your use of the services, the licensed programs or the internet including any indirect, incidental, exemplary, multiple, special, punitive or consequential damages. In any event, AzulStar's cumulative liability to any customer for any and all claims relating to the use of the services and/or licensed programs shall be to recover the actual damages customer incurs based upon reasonable reliance on the services and/or licensed programs up to five U.S. dollars (us \$5.00).