

## TERMS OF SERVICE

**Last Updated: May 23, 2023**

**These Terms of Service** are entered into between **Zadara** (as defined below) and the customer who orders the Zadara Services (as defined below) ("**Customer**").

### THE AGREEMENT

Customer's use of the Zadara Services (as defined below) shall be governed by these Terms of Service, the Service Specific Terms, the Acceptable Use Policy and the Customer's Order (together, the "**Agreement**"). Customer acknowledges that by using the Zadara Services or by providing its electronic consent to the Agreement (i.e. by clicking an "I accept" button or a check box presented with these Terms of Service) it accepts the Agreement for each Order it submits (the "**Effective Date**"). If Customer enters into the Agreement on behalf of an entity, such as an employer or an organization, Customer hereby represents to Zadara that (i) Customer is lawfully able to enter into contracts (e.g., not a minor), and (ii) Customer has the legal authority to bind such entity to the Agreement.

IF CUSTOMER DOES NOT AGREE WITH THE TERMS OF THE AGREEMENT, CUSTOMER MUST ABANDON THE SIGNUP PROCESS AND MAY NOT USE THE ZADARA SERVICES.

### 1. DEFINED TERMS

For the purpose of the Agreement, the following terms shall have the following meaning:

**"Acceptable Use Policy"** or **"AUP"** means the Acceptable Use Policy available at <https://www.zadara.com/legal/>, as may be amended or superseded from time to time.

**"Account Information"** means information that Customer provides in connection with the creation or administration of the Account. For example, Account Information includes names, usernames, phone numbers, email addresses and billing information associated with the Account.

**"API"** means application programming interface.

**"Application"** means a software application or a website created by the Customer which interfaces with the Zadara Services.

**"Affiliate"** means any and all legal entities which are now or hereafter under the control of the ultimate parent company of Zadara. For the purpose of this definition, "control" means an entity holding, directly or indirectly, more than fifty percent (50%) of the issued share capital, or more than fifty percent (50%) of the voting power at general meetings, or which has the power to appoint and to dismiss a majority of the directors or otherwise to direct the activities of such legal entity.

**"Confidential Information"** means all information disclosed by one party to the other, whether before or after the Effective Date, concerning the disclosing party's business, business plans, customers, strategies, trade secrets, technology and any intellectual property related thereto, finances, assets and products. Information will not be deemed Confidential Information hereunder if such information: (i) is or becomes known without restriction to the receiving party from a source other than one having an obligation of confidentiality to the disclosing party; (ii)

becomes generally publicly known or otherwise ceases to be secret or confidential, except through a breach of this Agreement by the receiving party; or (iii) is independently developed by the receiving party without reference to the Confidential Information. For the avoidance of doubt, Confidential Information does not include the Customer Data.

**“Customer Data”** means all data, records, files, input materials, reports, forms and other such items that are transferred to Zadara for processing, storage or hosting using the Zadara Services by the Customer or any of its End Users. Customer Data doesn’t include the Account Information.

**“Data Processing Addendum”** means the Zadara’s Data Processing Addendum located at [<https://www.zadara.com/legal/>], as may be amended or superseded from time to time.

**“Designated Hardware”** means the hardware, physical components, and accessories provided to Customer as part of the OpaaS Services.

**“Documentation”** includes user manuals, installation guides, supporting materials and other information distributed in any format and/or media, as amended from time to time and provided by Zadara to the Customer.

**“End User”** means: (i) Customer’s, personnel, employees, subcontractors and agents that access and use the Zadara Services on Customer’s behalf; and (ii) Customer’s clients and such other entities to which Customer enables access and usage in the Zadara Services, under Customer’s account.

**“High Risk Activities”** means activities where the use or failure of the Services would reasonably be expected to lead to death, personal injury, or environmental or property damage (such as the creation or operation of nuclear facilities, air traffic control, life support systems, or weaponry).

**“Maintenance”** means any maintenance action performed on the Zadara Services’ related hardware, and any upgrades, improvements and bug fixes performed on Zadara Services’ related software.

**“Order”** means the online order submitted by Customer as recorded by Zadara on the Portal or other written order provided to Customer by Zadara for signature or electronic approval, which describes the specifications of the Zadara Services purchased by Customer, if and to the extent approved in writing or electronically by Zadara. In the event that the Order includes terms and conditions which vary from the terms and conditions detailed in the Agreement, such terms and conditions shall supersede and apply only if explicitly approved by Zadara. Zadara may accept or reject any Order in its sole discretion.

**“Portal”** means the customer’s center located at [[add link of the portal](#)] (and any other applicable webpages) through which Customer may place Orders for the Zadara Services. The Portal will communicate to the Customer the updates and other information related to the Agreement.

**“Privacy Policy”** means Zadara’s privacy policy located at <https://www.zadara.com/legal/>, as may be amended from time to time.

**“Service Level Agreement”** or **“SLA”** means the service level agreements Zadara offers with respect to the Services, located at <https://www.zadara.com/legal/>, as may be amended or superseded from time to time.

**“Service Specific Terms”** means the rights and restrictions for specific Zadara Services such as OPaaS located at <https://www.zadara.com/legal/>, as may be amended or superseded from time to time.

**“Services”** and **“Zadara Services”** means the services described in the Order (i.e. Primum Support, On Premise (OpaaS, zStorage, zCompute etc.), including any services Customer utilizes via an API, Documentation, and any other product or service provided by Zadara under the Agreement.

**“Software”** means any downloadable or accessible tools, software development kits (SDK), APIs or other such proprietary computer software modules provided by Zadara in connection with the Zadara Services, which may be downloaded or accessed by Customer, and any updates Zadara may make to such software from time to time.

**“Subscription Period”** means the term of Customer’s authorized use of the Zadara Services, as set forth in the applicable Order, together with any renewal terms (if applicable). If no such term is specified, the Subscription Period will commence once Customer starts using the Zadara Services or upon their delivery to Customer, the earlier to occur, and shall be for an initial term of one month and continue for as long as the Customer is using the Zadara Services.

**“Support”** means the applicable support services offered by Zadara with respect to the Zadara Services, as detailed in <https://www.zadara.com/legal/>.

**“Zadara”** means the applicable Zadara contracting entity identified in the Order documentation.

## 2. PROVISION OF SERVICES AND ACCESS

2.1 Subject to Zadara’s acceptance of the Order, and subject to the terms and conditions of the Agreement, Zadara agrees to provide Customer the Zadara Services described in the Order during the Subscription Period. The Zadara Services may be accessed by Customer via APIs provided by Zadara, which may be modified or replaced by Zadara at any time.

2.2 By signing up for the Zadara Services, Customer expresses its consent to receive from Zadara (including via email) information regarding the Zadara Services, such as: (a) notices about Customer’s use of the Zadara Services, including notices of violations of use (as applicable); (b) updates to the Zadara Services and new features or products; and (c) promotional information and materials with respect to the Zadara Services. Customer may unsubscribe from receiving the promotional information and materials under (c) at any time.

## 3. WHO MAY USE THE ZADARA SERVICES

3.1 Customer may access and use the Zadara Services in accordance with the Agreement and all laws, rules and regulations applicable to Customer’s use of the Zadara Services, and authorize its End Users to use the Zadara Services during the Subscription Period, except as provided below or otherwise restricted by Zadara. In order to access the Zadara Services, Customer must open an account associated with a valid email address and a valid form of payment (**“Account”**). Zadara’s log-in credentials and private keys generated by the Account are for the Customer’s internal use only and the Customer must maintain their security. Customer will not share, sell, transfer or sublicense them to any other entity or person, except that the Customer may disclose its private key to its End Users.

3.2 All of Zadara’s undertakings and obligations hereunder are solely for the benefit of the Customer.

## 4. CUSTOMER’S OBLIGATIONS AND RESPONSIBILITIES

4.1 General. Customer agrees to: (i) comply with the provisions of the Agreement and with all rules, laws and regulations applicable to the use of the Zadara Services, (ii) use the Software in compliance with Section 15 herein, (iii) pay timely and in full when due the fees for the Zadara Services without any deductions, (iv) use reasonable security precautions in light of the Customer's and the End Users' use of the Zadara Services, including encrypting any personally identifiable information transmitted through the Zadara Services and maintaining routine archiving of the Customer Data, (v) cooperate with Zadara's reasonable investigation of outages, security problems and any suspected breach of the Agreement, (vi) keep its billing contact and other Account Information up to date, (vii) immediately notify Zadara of any unauthorized use of its Account or any other breach of security, (viii) ensure that calls it makes to the Zadara Service are compatible with then-current APIs for that Zadara Service, and bear the sole responsibility for the technical operation of the Customer Data (viii) will not use the Services for High Risk Activities; and (ix) not to use the Services in a manner intended to avoid incurring Fees or to circumvent Service-specific usage limits or quotas.

4.2 Customer's Account. Except to the extent caused by Zadara's breach of the Agreement, (i) the Customer is responsible for all activities that occur under the Customer's Account, regardless of whether the activities are authorized by the Customer or undertaken by the Customer, its End Users or a third party, to the same extent as if Customer was using the Zadara Services itself (ii) Zadara and its Affiliates are not responsible for any unauthorized access to the Customer's Account, (iii) the Customer is responsible to ensure that its End Users will comply with Customer's obligations under the Agreement and that Customer's written agreement with each of its End Users is consistent with the terms of the Agreement, and (iv) Customer will immediately suspend access of any of the End Users to the Account and the Zadara Services, if it discovers that such End User violates Customer's obligations under the Agreement.

## 5. CUSTOMER DATA SECURITY AND PRIVACY

5.1 Without derogating from any disclaimers herein or Customer's obligations under the Agreement, Zadara will implement reasonable and appropriate measures designed to help Customer to secure the Customer Data against accidental or unlawful loss, access or disclosure. However, Customer is solely responsible to take appropriate actions to secure, protect and backup the Customer's Account and the Customer Data in a manner that will provide appropriate security and protection and will use encryption technology to protect the Customer Data from unauthorized access and routinely archive the Customer Data. Zadara explicitly encourages the Customer to run, on its own or by third parties which are not Zadara, periodic backups of its data. Customer shall also be responsible to provide the necessary notices to its End Users and obtaining the legally required consents from its End Users regarding their use of the Zadara Services, as applicable.

5.2 Zadara stores the Application and the Customer Data on the drives selected by the Customer at the Customer's sole discretion. By using the Zadara Services, Customer consents to this storage and the transfer of the Application and Customer Data to the specific geographic location(s) selected by the Customer from time to time ("**Location(s)**"). It is Customer's sole responsibility to configure and properly utilize the applicable Zadara Services and Location(s) to address its data security and data residency obligations.

5.3 As between the Parties, the Customer is the controller of the Customer Data. Zadara does not control, verify, or endorse the Customer Data. Zadara will not access or use the Customer Data except (i) as necessary to maintain or provide the Zadara Services or as stipulated under the Agreement, and (ii) as necessary to comply with applicable law or a binding order of a governmental body. Zadara will not (i) disclose the Customer Data to any government

or third party or (ii) move the Customer Data from the Location(s) selected by Customer; except in each case as necessary to comply with the law or a binding order of a governmental body. Unless it would violate the law or a binding order of a governmental body, Zadara will give Customer a notice of any legal requirement or order referred to in this Section 5.3. Zadara will only use the Customer's Account Information in accordance with Zadara's Privacy Policy, and Customer consents to such usage.

5.4 Please note that Zadara may process Services' usage data related to Customer Account, such as security and access roles, rules, usage policies, permissions, usage statistics and analytics, in the Location(s) where Customer uses the Zadara Services or where Zadara maintains its support team, in order to provide Customer with Support and investigate fraud, abuse or violations of the Agreement.

5.5 Customer is solely responsible for: (i) all Customer Data it or its End Users upload through the Zadara Services; (ii) making sure that it or its End Users have all the certifications and rights they need with respect to the Customer Data and meet the legal requirements applicable to the Customer Data; (iii) ensuring that the Customer Data complies with all applicable laws and the AUP; and (iv) ensuring that the Zadara Services and their security are appropriate to the Customer Data. In addition, by storing, using or transmitting Customer Data via the Zadara Services, Customer cannot and will not violate any applicable law, the Agreement or the AUP. Without derogating from the above, if Customer uses the Zadara Services for data which is regulated by law, then Customer is solely responsible for the consequences of such use.

5.6 The Customer represents and warrants that (i) the Customer or the Customer's licensors own all right, title and interest in and to the Customer Data and the Applications, and (ii) none of the Customer Data or the End Users' use of the Customer Data or the Services shall violate the Agreement.

5.7 To the extent the EU General Data Protection Regulation or the California Consumer Privacy Act apply to Customer's use of the Zadara Services, the provisions of the Data Processing Addendum located at <https://www.zadara.com/legal/> shall apply. Zadara's security obligations with respect to the Customer Data are limited to the obligations described therein.

## **6. SERVICE LEVEL AGREEMENT AND SUPPORT**

Zadara will provide the Zadara Services in accordance with the applicable **SLA**. The SLA contains service level credits for unavailability of the Zadara Services. Please note that Zadara performs scheduled maintenance from time to time. In addition, Zadara may occasionally need to perform emergency or unscheduled maintenance. These maintenance activities may cause interruptions to the Zadara Services. Zadara will use reasonable efforts to inform Customer in advance of any interruption that involves unavailability of the Zadara Services.

7. Subject to payment of applicable support Fees, Zadara will provide Support to Customer during the Term in accordance with the Support Guidelines located at <https://www.zadara.com/legal/>.

## **8. FEES AND BILLING**

8.1 Fees. Zadara will charge Customer for its use and/or its End Users use of the Services, using one of the payment methods Zadara supports. Customer must provide Zadara with a current, complete, accurate and authorized payment method information (e.g. credit card information). All fees are nonrefundable. Zadara's measurement of Customer usage is final. Zadara may increase its fees or add new fees and charges for any existing Services by giving the Customer at least 30 days' prior notice. If Customer doesn't agree to that change, Customer

must stop using the Services. The price increase shall not apply to existing Orders which are subject to Subscription Period, until the lapse of the Subscription Period, however additional features and expansions shall be billed according to the price list in effect at that time.

**8.2 Taxes.** Any taxes and duties including value added tax (VAT) and applicable sales tax export and import fees, customs duties, and similar charges, are at the Customer's sole responsibility and Customer agrees to pay Zadara any Zadara Service fees due, without any reduction or withholding for taxes. If Zadara is obligated to collect or pay any taxes, the taxes will be invoiced to Customer, so that the net amount due to Zadara is equal to the amount then due and payable under the Order, unless Customer provides Zadara with a valid tax exemption certificate authorized by the appropriate taxing authority.

**8.3 Billing.** Unless otherwise stated in an Order, Zadara calculates and bills fees and charges on a monthly basis (including, if applicable, the relevant Fees for Support). The billing of the Services is as established in the Order, and generally can be categorized as one or a combination of the following: (i) consumption offering, based on Customer's usage of the Services, measured on an hourly basis rounded up to the nearest whole hour; or (ii) Customer commits in advance to pay a minimum subscription fee (Floor) during the Subscription Period and to pay on a monthly basis for actual use. Payment is due upon Customer's receipt of Zadara's invoice. All amounts payable by Customer under this Agreement will be paid to Zadara without setoff or counterclaim, and without any deduction or withholding.

**8.4 Late payments.** Late payments will accrue interest at a rate of one and a half percent (1.5%) per month or the highest rate allowed by applicable law, whichever is lower. Zadara reserves the right to have Customer completing a credit application to determine its creditworthiness as a condition of receiving additional Zadara Services. If Zadara initiates a collection process to recover fees due and payable hereunder, Customer shall reimburse Zadara for all costs associated with such collection efforts.

## **9. SUSPENSION**

Zadara reserves the right to suspend the Zadara Services and the Customer's right to access or use any portion or all of the Zadara Services, immediately upon notice to the Customer, and without liability, if one or more of the following occur: (i) Zadara reasonably believes that the Zadara Services are being used (or have been or are likely to be used) in violation of the Agreement, (ii) Zadara reasonably believes that the Zadara Services have been accessed or manipulated by a third party without Customer's consent, (iii) Zadara reasonably believes that suspension of the Zadara Services is necessary to protect Zadara's systems, (iv) the Customer is in breach of any of its payment obligations herein, (v) Customer has ceased to operate in the ordinary course, made an assignment for the benefit of creditors or similar disposition of the Customer's assets, or became the subject of any bankruptcy, reorganization, liquidation, dissolution or similar proceedings, or (vi) suspension is required by law.

Customer shall remain liable for all fees and charges incurred during any suspension period and shall not be entitled to any service credits under the SLA for any period of suspension. Any Customer Data stored through the Zadara Services shall be unavailable during a suspension period. Unless Zadara determines in its reasonable discretion that immediate suspension is required, Zadara will use commercially reasonable efforts to provide Customer with a notice of any such immediate suspension and the estimated time for its ending.

## **10. TERM AND TERMINATION**

**10.1 Term.** The Customer has the right to use the Zadara Services during the Subscription Period, until the Agreement is terminated in accordance with Section 10 herein. Any notice of



termination of this Agreement by either party to the other must include a Termination Date that complies with the notice periods in Sections 10.2 and 10.3.

The discount stated in each Order is associated with the applicable Subscription Period. At the end of the original Subscription Period, the Order shall renew for additional 30 days periods each, unless terminated by either Party upon 30-day notice. All subscription and associated discounts will expire at the end of the original Subscription Period, and Zadara shall bill Customer for any amounts due with respect to the renewal term, in accordance with the then in effect price list, disregarding the subscription plan discount.

**10.2 Termination for Convenience.** Each party may terminate the Agreement for convenience at any time upon a thirty (30) day advance written notice, unless a longer termination notice is stated in the Order, including under any minimum Subscription Period commitment. Customer shall remain responsible for all fees and charges it has incurred through the termination until the later of: the end of the Subscription Period and/or the closing of the Customer Account.

**10.3 Termination for Cause.**

(i) **By Either Party.** Either party may terminate this Agreement for cause if the other party is in material breach of this Agreement and the material breach remains uncured for a period of thirty (30) days from receipt of notice by the other party. No later than the Termination Date, the Costumer will close the account and remove the Customer Data.

(ii) **By Zadara.** Zadara may immediately terminate the Agreement for breach on written notice to Customer if one or more of the following occur: (i) occurrence of any of the suspension events described in Section 9 above; (ii) a credit report indicates that Customer no longer meets Zadara's reasonable credit criteria; (iii) termination is required in order to comply with the law or requests of governmental entities; or (iv) Zadara's relationship with a third-party partner who provides software or other technology included in the Services expires.

**10.4 Effect of termination.** Upon termination of the Agreement: (i) except as otherwise provided herein, all of the Customer's rights under the Agreement immediately terminate, including the access to the Zadara Services, (ii) the Customer remains responsible for all fees and charges through the termination date and during the Data Removal Period described in Section 10.4 below, and (iii) the Customer will immediately return or, if instructed by Zadara, destroy all content Zadara or any of its Affiliates made available to the Customer in connection with the Services to allow access to and use of the Services. The Service Specific Terms might include additional provisions related to the effects of termination, such as return of Zadara's hardware and equipment.

## **11. REMOVAL OF CUSTOMER DATA**

Upon termination as detailed above, Customer must stop using the Zadara Services. Customer shall have up to thirty (30) days to retrieve/delete all of the Customer Data and other information from the Zadara Services, including without limitation backup copies thereof, provided that Customer have paid all amounts due under the Order (the "**Data Removal Period**"). Upon expiration of the Data Removal Period, Zadara may remove any and all Customer Data from Zadara's servers or any other data storage systems, including without limitation, any and all backup copies thereof. Zadara is not responsible for any deletion, destruction, damage, loss or failure of Customer to backup any Customer Data removed by Zadara by the end of the Data Removal Period.

For any use of the Zadara Services through and after the termination date, the terms of the Agreement shall apply, and Customer shall pay all the applicable service fees at the rates under Section 8 for such pre and post-termination usage until the Customer Data is removed.

## 12. EXPORT MATTERS

Customer shall, in connection with its use of the Zadara Services, comply with all applicable export and re-export control laws and regulations, including the USA Export Administration Regulations, the International Traffic in Arms Regulations, and country-specific economic sanction programs implemented by the US Office of Foreign Assets Control. For the purposes of Zadara's compliance with applicable export laws, Customer undertakes to provide Zadara with applicable Customer's information upon Zadara's first request. Customer represents that no Customer Data accessible to Zadara shall require an export license or is restricted from export to any such places where Zadara has data centers.

## 13. CONFIDENTIAL INFORMATION AND PUBLICITY

13.1 As between the parties, each party retains all ownership rights in and to its Confidential Information. The receiving Party will use the same degree of care that it uses to protect the confidentiality of its own Confidential Information of like kind (but not less than reasonable care) to (i) not use any Confidential Information of the disclosing Party for any purpose outside the scope of this Agreement and (ii) except as otherwise authorized by the disclosing Party in writing, limit access to Confidential Information of the disclosing Party to those of its and its Affiliates' employees and contractors who need that access for purposes consistent with this Agreement and who have signed confidentiality agreements with the receiving Party containing protections not materially less protective of the Confidential Information than those herein. Neither party will disclose the terms of this Agreement or any Order to any third party other than its Affiliates, legal counsel and accountants without the other party's prior written consent, provided that a party that makes any such disclosure to its Affiliate, legal counsel or accountants will remain responsible for such Affiliate's, legal counsel's or accountant's compliance with this "Confidentiality" section. Customer agrees that Zadara may disclose Customer's Confidential Information to employees or third parties only on a need to know basis, provided they are bound by confidentiality undertakings at least as stringent as those stated herein. Each party's confidentiality obligations shall survive the termination of the Agreement for additional five (5) years commencing upon the termination date.

Compelled Disclosure. The receiving Party may disclose Confidential Information of the disclosing Party to the extent compelled by law to do so, provided the receiving Party gives the disclosing Party prior notice of the compelled disclosure (to the extent legally permitted) and reasonable assistance, at the disclosing Party's cost, if the disclosing Party wishes to contest the disclosure.

13.2 Customer hereby undertakes that it shall not issue any press releases or make any other public communications with respect to the Agreement or the use of the Zadara Services without Zadara's prior written consent.

## 14. FEEDBACK.

Customer may choose to or Zadara may invite Customer to submit comments or ideas about the Zadara Services, including without limitation, comments concerning improvement or enforcement of the Zadara Services ("**Feedback**"). By submitting any Feedback, Customer agrees that: (i) its disclosure is made without entitling Customer to any consideration from Zadara whatsoever, (ii) its disclosure is unsolicited and without restriction and will not place Zadara under any fiduciary or any other obligation, (iii) Zadara is free to use the Feedback without any additional compensation to Customer, and/or to disclose the Feedback on a non-confidential basis or otherwise to anyone, and (iv) it waives all right, title and interest in the copyrights, including any other rights that may be known as or referred to as moral rights, and



Customer ratifies and consents to any action that may be taken with respect to such moral rights by or authorized by Zadara and agrees not to assert any moral rights with respect thereto.

## 15. INTELLECTUAL PROPERTY

15.1 Each party retains all right, title and interest in and to such party's respective trade secrets, inventions, copyrights, and other intellectual property. Any intellectual property developed by Zadara during the performance of the Services shall belong solely to Zadara, unless otherwise agreed in writing between Zadara and the Customer. For the avoidance of doubt, as between the parties, the Software and the Zadara Services are and shall be solely owned by Zadara and/or its licensors.

15.2 Neither the Customer nor any of the End Users will use the Services including the Software in any manner or for any purpose other than as expressly permitted by the Agreement. Neither the Customer nor any of the End Users will, or will attempt to (a) modify, distribute, alter, tamper with, repair, or otherwise create derivative works of the Services, including the Software, (except to the extent Software included in the Services is provided to the Customer under a separate license that expressly permits the creation of derivative works), (b) reverse engineer, disassemble, or decompile the Services or apply any other process or procedure to derive the source code of any software included in the Services (except to the extent applicable law doesn't allow this restriction), (c) access or use the Services in a way intended to avoid incurring fees or exceeding usage limits or quotas, or (d) transfer, resell or sublicense the Services, including the Software.

15.3 The Software provided by Zadara to the Customer may include a third party or open source software which are subject to the terms of the applicable third party or open source licenses ("**Third Party Software**"). THERE ARE NO WARRANTIES PROVIDED WITH RESPECT TO ANY THIRD PARTY SOFTWARE AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. IN THE EVENT OF ANY CONFLICT BETWEEN THE TERMS HEREIN AND THE APPLICABLE THIRD PARTY SOFTWARE, THE TERMS OF THE APPLICABLE THIRD PARTY SOFTWARE LICENSE SHALL PREVAIL. Customer may receive a copy of the Third Party Software license or the open source code to the extent Zadara is required to make them available under such licenses, by sending a written request to Zadara. All requests must clearly specify "Open Source Files Request".

15.4 **ZCompute Service.** In conjunction with the Zadara Services, you may be allowed to use certain software (including related documentation) developed and owned by Microsoft Corporation or its licensors (collectively, the "**Microsoft Software**"). If you use the Microsoft Software, Microsoft and its licensors require that you agree to the End User license terms located at [REDACTED].

## 16. LIMITATION OF LIABILITY

16.1 ZADARA'S LIABILITY AND OBLIGATIONS ARE AS EXPRESSLY DEFINED IN THE AGREEMENT. ZADARA SHALL NOT BE LIABLE FOR ANY FAILURE TO PROVIDE THE ZADARA SERVICES, UNLESS SUCH FAILURE RESULTS FROM A BREACH OF THE SLA OR FROM ZADARA'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. THE CREDITS STATED IN ANY APPLICABLE SLA ARE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR ZADARA'S FAILURE TO MEET THE SLA GUARANTEES FOR WHICH CREDITS WERE PROVIDED.

16.2 NEITHER ZADARA NOR CUSTOMER (NOR ANY OF THEIR EMPLOYEES, AGENTS, AFFILIATES OR SUPPLIERS) SHALL BE LIABLE TO ONE ANOTHER FOR ANY LOSS OF PROFITS OR REVENUES, LOSS OF GOODWILL, DATA, USE OR OTHER INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL LOSS OR DAMAGE OF ANY KIND, OR FOR ANY LOSS THAT COULD HAVE BEEN AVOIDED BY THE DAMAGED PARTY'S USE OF REASONABLE DILIGENCE, EVEN IF THE PARTY

RESPONSIBLE FOR THE DAMAGES HAS BEEN ADVISED OR SHOULD BE AWARE OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY PUNITIVE OR EXEMPLARY DAMAGES.

16.3 NOTWITHSTANDING ANYTHING IN THE AGREEMENT TO THE CONTRARY, THE MAXIMUM AGGREGATE MONETARY LIABILITY OF ZADARA AND ANY OF ITS EMPLOYEES, AGENTS, SUPPLIERS, OR AFFILIATES IN CONNECTION WITH THE ZADARA SERVICES, THE AGREEMENT, AND ANY ACT OR OMISSION RELATED TO THE SERVICES OR THE AGREEMENT, UNDER ANY THEORY OF LAW (INCLUDING BREACH OF CONTRACT, TORT, STRICT LIABILITY, VIOLATION OF LAW, AND INFRINGEMENT) SHALL NOT EXCEED THE GREATER OF (I) THE AGGREGATE FEES CUSTOMER ACTUALLY PAID ZADARA WITH RESPECT TO THE AFFECTED SERVICES GIVING RISE TO THE CLAIM IN THE SIX (6) MONTHS PERIOD PRECEDING THE OCCURRENCE OF THE EVENT GIVING RISE TO THE CLAIM, OR (II) FIVE HUNDRED US DOLLARS (USD 500). THE LIMITATIONS IN THIS SECTION APPLY ONLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

## 17. INDEMNIFICATION

17.1 Zadara Indemnification. Zadara will defend Customer from any third party claim, suit, action or proceeding, and will pay all directly related damages, costs, expenses, judgments, settlement amounts, and other liabilities (including reasonable attorney's fees and costs) finally awarded against Customer by a court or tribunal of competent jurisdiction, arising from any allegation that the Zadara Services, when used by the Customer and its End Users as authorized hereunder in the form provided by Zadara, infringe, misappropriate or violate any copyright, patent, trade secret, trademark or other intellectual property rights of a third party ("**IP Infringement Claim**"). If Customer seeks indemnification under this Section, it must provide Zadara with prompt written notice of the IP Infringement Claim, give Zadara sole control of the defense and related settlement negotiations and reasonably cooperate with Zadara, at Zadara's expense, in defending or settling the IP Infringement Claim.

17.2 Zadara's obligations in Section 17.1 above, will not apply to a claim or award based on: (i) any Customer Data, Third Party Software, modifications made by Customer to the Services, or services or materials Customer provides or makes available as part of using the Services; (ii) combinations of the Services or Customer Data, as applicable, with any other product, service, software, data, content or method; (iii) use of a Zadara trademark without Zadara's express written consent, or use of the Services after Zadara notified Customer to discontinue such use; (iv) redistribution of the Services to, or use for the benefit of, any unaffiliated third party; or (v) Services provided free of charge.

17.3 For any IP Infringement Claim covered by Section 17.1 above, Zadara will, at its election, either: (i) procure the rights to use alleged to be infringing Services; (ii) replace or modify the alleged infringing Services with a non-infringing alternative and notify Customer to stop using the previous version; or (iii) terminate the allegedly infringing portion of the Services or the Agreement, and then refund any advance payments for unused Services.

The foregoing states Customer's sole and exclusive rights and remedies, and Zadara's entire obligations and liability, in the case of any matter falling under clause 17.1.

17.4 Customer Indemnification. Customer will defend Zadara, its Affiliates, licensors and providers of third party services, and each of their respective employees, officers, and representatives from and against any third party claims, suits, actions or proceedings, and will pay all related damages, losses, costs, expenses, judgments, settlement amounts, and other liabilities finally awarded against Zadara by a court or tribunal of competent jurisdiction, arising

out or related to Customer's alleged or actual use of, misuse of, or failure to use the Zadara Services, including without limitation: (i) any violation (or alleged violation) of applicable law by Customer or any Customer Data; (ii) any allegation that any Customer Data infringes, misappropriates or violates any copyright, patent, trade secret, trademark or other intellectual property rights of a third party; (iii) any disputes with third party licensors or providers of any Customer Data; (iv) any acts or omissions of Customer or the End Users, including any breach of this Agreement.

## **18. DISCLAIMERS**

THERE IS NO GUARANTEE THAT THE ZADARA SERVICES WILL BE UNINTERRUPTED, ERROR-FREE, OR COMPLETELY SECURE. CUSTOMER ACKNOWLEDGES THAT THERE ARE RISKS INHERENT IN INTERNET CONNECTIVITY THAT COULD RESULT IN THE LOSS OF CUSTOMER DATA AND CONFIDENTIAL INFORMATION. ZADARA HAS NO OBLIGATION TO PROVIDE SECURITY OTHER THAN SPECIFICALLY STATED IN THE AGREEMENT. EXCEPT TO THE EXTENT PROHIBITED BY APPLICABLE LAW, ZADARA DISCLAIMS ANY AND ALL WARRANTIES NOT EXPRESSLY STATED IN THE AGREEMENT, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. CUSTOMER IS SOLELY RESPONSIBLE FOR THE SUITABILITY OF THE ZADARA SERVICES CHOSEN BY THE CUSTOMER, INCLUDING WITH RELATION TO ANY APPLICABLE DATA PRIVACY LAWS AND REGULATIONS AND THE CUSTOMER DATA. THE ZADARA SERVICES ARE PROVIDED AS IS, SUBJECT ONLY TO ANY APPLICABLE SLA (AS DESCRIBED IN SECTION 6 ABOVE). ANY VOLUNTARY SERVICES ZADARA MAY PERFORM FOR CUSTOMER AT CUSTOMER'S REQUEST AND WITHOUT ANY ADDITIONAL CHARGE ARE ALSO PROVIDED AS IS.

## **19. MONITORING TOOLS**

Customer agrees to provide information and/or other materials related to its Applications as reasonably requested by Zadara and allow Zadara to access the Applications, crawl or otherwise monitor the external interfaces of Customer's Applications with the Zadara Services, for the purposes of (i) facilitating delivery of the Zadara Services, (ii) verifying Customer's compliance with the Agreement, and (iii) allowing Zadara to efficiently manage various Services issues. Customer undertakes not to block, disable or otherwise interfere with such crawling or monitoring tools.

## **20. SERVICES PROVIDED BY THIRD PARTIES**

Zadara may generally direct Customer to third party products or services, including third party applications through deployment or implementation tools. ZADARA MAKES NO REPRESENTATION OR WARRANTY WHATSOEVER REGARDING PRODUCTS AND SERVICES THAT ARE NOT PURCHASED DIRECTLY FROM ZADARA BY THE CUSTOMER. Customer's use of any such third-party products and services is governed by the terms of Customer's direct agreement with the providers of such products and services.

## **21. THE PORTAL**

The Portal and any other sites of Zadara provide comprehensive information regarding the Zadara Services and resources such as Q&A, and may include any other content related thereto, such as contact information, videos, text, logos, button icons, images, data compilations, links, other specialized content, technical data, documentation, know-how, specifications materials, designs, data, the "look and feel" of the Portal, algorithms, source and object code, interface, GUI, interactive features related graphics, illustrations, drawings, animations, and other features obtained from or through the Portal (collectively, the "**Content**").

THE CONTENT ON THE PORTAL, INCLUDING ANY INFORMATION, MATERIALS AND DATA, IS MADE AVAILABLE FOR PERSONAL USE ONLY. ALL RIGHTS IN AND TO THE CONTENT AVAILABLE ON THE PORTAL ARE RESERVED TO ZADARA. TO THE EXTENT LEGALLY PERMISSIBLE, THE PORTAL AND THE CONTENT AVAILABLE THEREIN ARE PROVIDED ON AN "AS IS" BASIS. ZADARA WILL NOT BE LIABLE FOR ANY DAMAGES OR LOSS, INCURRED BY CUSTOMER OR ANY OTHER PERSON AS A RESULT OF OR IN CONNECTION WITH CUSTOMER'S USE OF THE PORTAL AND/OR THE CONTENT AVAILABLE THEREIN. CUSTOMER'S USE OF THE PORTAL AND/OR THE CONTENT IS ENTIRELY AT CUSTOMER'S OWN RISK.

## **22. PURCHASES THROUGH ZADARA PARTNERS**

If Customer purchased the Zadara Services through one of Zadara's authorized resellers or service providers ("**Partners**"), then its agreement with the Partner may contain additional terms other than the terms of the Agreement. However, if there is any conflict between the provisions of the Agreement and such other agreement, then: the provisions of this Agreement shall govern with respect to Zadara and the provisions of the other agreement shall govern as between Customer and the Partner. If a Partner has granted Customer any rights that Zadara does not also directly grant to Customer in the Agreement, or that conflict with the Agreement, then Customer's sole recourse with respect to such rights is against the Partner. The Subscription Period, fees and payment, shall be in accordance with Customer agreement with the Partner. However, if the Partner fails to pay Zadara any amounts due in connection with Customer's use of the Zadara Services, then Zadara may upon notice to Customer, suspend Customer's rights to use the Zadara Services without liability, or request that the fees for the Services will be paid directly to Zadara or a substitute Partner. Customer agrees that Customer's remedy in the event of such suspension is solely against the Partner. Zadara will be an intended third party beneficiary of Customer agreement with Partner, with the right to enforce provisions of Customer's agreement with Partner and to verify Customer's compliance.

## **23. GENERAL PROVISIONS**

**23.1 Orders.** If over time Customer signs multiple Orders for a single Account, the Terms of Service incorporated in the latest Order will govern the entire use of such Account by the Customer.

**23.2 Audit Rights.** Zadara, or an independent auditor acting on Zadara's behalf, may audit Customer, in connection with usage monitoring and invoicing under this Agreement and/or in order to determine compliance with this Agreement. Customer shall allow Zadara, or an independent auditor acting on Zadara's behalf, access to any information, data as well as the data centers and premises housing any Services, and each system configuration containing Zadara's software, on-site and/or remotely, for any actions reasonably required by Zadara to conduct such audits. On-site audits may be conducted upon 5 business days' notice. No notice is required for remote audits. Customer shall fully cooperate with Zadara in connection with any audits conducted by or on behalf of Zadara.

**23.3 U.S. Government users.** U.S government customers should consult with Zadara prior to acceptance. By accepting the Agreement, Customer represents that it has complied and will continue to comply with all applicable laws and governmental procurement requirements.

**23.4 Entire Agreement.** The Terms of Service, together with the AUP, the SLA, DPA the Privacy Policy, the Service Specific Terms and all Orders, represent the sole, exclusive and integrated mutual statement of understanding of the parties concerning the Zadara Services to be provided hereunder, and supersedes and cancels all previous and contemporaneous written and oral agreements and communications between the parties relating to the subject matter of the Agreement.

23.5 Severability. If any provision of the Agreement, or a portion thereof, shall be adjudged by a court of competent jurisdiction to be unenforceable or invalid, that portion shall be eliminated or limited to the minimum extent necessary so that the Agreement shall remain in full force and effect and enforceable.

23.6 Survival. Sections 1, 5, 9, 10, 11, 12, 13, 14, 15, 16, 17, 20, 21, 23.5, 23.6, 23.14, 23.15 and 23.17 and all other provisions that by their nature are intended to survive expiration or termination of the Agreement, shall survive expiration or termination of the Agreement.

23.7 Modifications to the Agreement. Zadara may modify the Agreement, Service Specific Terms, DPA, Privacy Policy and SLA by posting a change notice or the new versions of such documents on the [REDACTED]. The abovementioned changes shall come into effect thirty (30) days following the posting of a change notice by Zadara. If any modification is unacceptable to the Customer, Customer may terminate the Agreement according to Section 10 herein and stop using the Zadara Services. Customer's continued use of the Zadara Services following the posting of a change notice or new documents on Zadara's website will constitute Customer's acceptance of the said changes (provided that any material change of the Agreement will not apply retroactively to any event that occurred prior to the date of posting such material change). It is Customer's sole responsibility to check the Zadara's Portal regularly for modifications to the Agreement and additional documents.

23.8 Modifications to the Zadara Services. Zadara may change or discontinue the Zadara Services or change or remove functionality of any or all the Zadara Services from time to time, subject to a prior notification to Customer. Zadara will provide Customer at least 30 days' prior notice if Zadara discontinues material functionality of a Service, or materially alters any APIs that Customer are using in a backwards-incompatible fashion, except that this notice will not be required if the notice period (i) would pose a security or intellectual property issue to Zadara or the Zadara Services, (ii) is economically or technically burdensome, or (iii) would cause Zadara to violate legal requirements.

23.9 Notices. Any required notice hereunder, including notice of termination or suspension, may be delivered by electronic mail, facsimile, personally or by courier, or mailed by registered or certified mail, return receipt requested, postage prepaid, to either party at the name and address on the signature page of the Order, or at such other address as such party may provide to the other by written notice. Such notice will be deemed to have been given on the first business day after the day of transmission if sent by electronic mail or facsimile; upon delivery if delivered personally, or by courier; or five (5) business days after it is sent by mail. All communications and notices to be made or given pursuant to the Agreement shall be in the English language.

23.10 Assignment. Customer may not assign the Agreement, in whole or in part, without the prior written consent of Zadara. Zadara may assign the Agreement in whole or in part, without consent, to an Affiliate, or as part of a corporate reorganization or a sale of its business. In order to provide the Zadara Services, Customer agrees that Zadara may use third party service providers to perform all or any part of the Zadara Services, provided it remains responsible to Customer under the Agreement for Services performed by such third party. Any attempted assignment or delegation by Customer without Zadara's consent will be void. This Agreement will bind and inure to the benefit of each party's successors and permitted assigns.

23.11 Force Majeure. Except for performance of a payment obligation, neither party shall be liable under the Agreement for any delays or failures to perform any obligation under the Agreement, damages, losses or destruction, or malfunction of any equipment, or any

consequence thereof, caused or occasioned by, or due to, *inter alia*, fire, earthquake, worldwide pandemic, flood, labor disputes or shortages, power failures, explosions, civil disturbances, acts of war or terror, governmental actions, shortages of equipment or supplies, unavailability of transportation, acts or omissions of third parties, or any other cause beyond its reasonable control. If the force majeure continues for more than thirty (30) calendar days, then either party may terminate the Agreement for convenience upon written notice to the other party in accordance with Section 10 herein.

23.12 Evaluation, Trial or Demonstration Services. Customer may receive from Zadara certain services for evaluation, trial or demonstration ("**Evaluation Services**"). Customer agrees to use such Evaluation Services in a non-production environment. The Evaluation Services shall be provided by Zadara on an "As-Is" basis and Customer waives all express and implied warranties and conditions and SLAs during the Evaluation Services period. Either party, upon written notice to the other, may cancel the Evaluation Services with an immediate effect. Upon termination or expiration of the Evaluation Services period as determined between the parties, Customer shall either convert to a paid contract covering the use of such services or immediately terminate use of such services. Continued use of the Services shall entitle Zadara for the applicable Service Fees.

23.13 No Third-Party Beneficiaries. Except as set forth herein, the Agreement does not create any third-party beneficiary rights to any individual or entity that is not a party to the Agreement.

23.14 No Waivers. The failure by Zadara to enforce any provision of this Agreement will not constitute a present or future waiver of such provision nor limit Zadara's right to enforce such provision at a later time. All waivers by Zadara must be in writing to be effective.

23.15 Use of Customer Name. Customer agrees that Zadara may use Customer's name and logo in Zadara's marketing materials and website and identify Customer as a user of the Zadara Services.

23.16 Independent Contractor. Neither party shall be deemed to be an agent of the other party, and the relationship of the parties shall be that of independent contractors. Neither party shall have any right or authority to assume any obligations, or to make any representations or warranties, whether express or implied, on behalf of the other party, or to bind the other party in any matter whatsoever.

23.17 Governing Law. With respect to Orders accepted by Zadara Inc., the Agreement shall be governed by the laws of the State of California, excluding any choice of law rules. For any dispute arising out of or relating to the Agreement, the Parties consent to personal jurisdiction in, and the exclusive venue of, the courts of the State of California. Orders accepted by any other Affiliate of Zadara will be governed by the laws of the State of Israel and the courts of the State of Israel will have exclusive jurisdiction. However, Zadara or its Affiliates may bring a suit for payment in any country in which Customer is located. The Agreement shall not be governed by the United Nations Convention on the International Sale of Goods.

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