

Zebrium Terms of Service

THIS IS A BINDING, CONTRACTUAL AGREEMENT (“**AGREEMENT**”) BETWEEN YOU AND ZEBRIUM (“**ZEBRIUM**,” “**WE**” OR “**US**”). THIS AGREEMENT APPLIES TO YOUR USE OF ZEBRIUM’S SOFTWARE-AS-A-SERVICE PLATFORM AND ALL CONTENT CONTAINED THEREIN, INCLUDING ALL ENHANCEMENTS, VERSIONS AND MODIFICATIONS TO THE FOREGOING, IF PROVIDED BY ZEBRIUM IN ITS SOLE DISCRETION (COLLECTIVELY, THE “**SERVICES**”).

BY CLICKING THE “SUBMIT” BUTTON, COMPLETING THE SIGN-UP PROCESS, AND/OR BY ACCESSING THE SERVICES, YOU AGREE TO BE BOUND BY ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU DO NOT ACCEPT AND AGREE TO THE TERMS OF THIS AGREEMENT, YOU MUST NOT ACCESS THE SERVICES. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY TO ALL OF THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERMS “**YOU**” OR “**YOUR**” SHALL REFER TO SUCH ENTITY. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT WISH TO BE BOUND BY THIS AGREEMENT, YOU MAY NOT ACCESS OR USE THIS SERVICES. YOU SHALL BE LIABLE FOR ANY FAILURE BY YOUR EMPLOYEES AND THIRD PARTY CONTRACTORS TO COMPLY WITH THE TERMS OF THIS AGREEMENT.

IF YOU SUBSCRIBE TO THE SERVICES FOR A TERM (THE “INITIAL TERM”), THEN THE TERMS WILL BE AUTOMATICALLY RENEWED FOR ADDITIONAL PERIODS OF THE SAME DURATION AS THE INITIAL TERM AT ZEBRIUM’S THEN-CURRENT FEE FOR SUCH SERVICES UNLESS YOU CANCEL YOUR SUBSCRIPTION IN ACCORDANCE WITH SECTION 7 BELOW.

Zebrium reserves the right to modify this Agreement or its policies relating to the Services at any time, effective upon posting of an updated version of this Agreement. You should regularly review this Agreement, as your continued use of the Services after any such changes constitutes your agreement to such changes.

1. Account Registration

You will need to sign up with us in order to receive credentials to access and use the Services. If you choose to sign up with us, you agree to provide only accurate, complete registration information, and you will keep that information up-to-date if it changes. Your registration must be completed using your real name and, if you are subscribing on behalf of a corporate or other entity, the exact legal name of such corporation, limited liability company or partnership. Each registration is for the use of the single company or organization on whose behalf you access the Services, but the Services may not be used on behalf of more than one person or entity under one user name without our prior written consent. Access to the Services is not authorized by any other person or entity using your registration information and you are responsible for preventing such unauthorized use.

2. Grant and Use Rights

Subject to the terms and conditions contained in this Agreement, Zebrium hereby grants you a non-exclusive, non-transferable right and license, without rights to sublicense, to access and use the Services, solely for your business internal operations, only for the time period that you have paid/or agree to pay the applicable fees (the “**Subscription Term**”). This Agreement does not convey to you any rights of ownership in or related to the Services, or any intellectual property rights. All rights not expressly granted to you in this Agreement are reserved by Zebrium. Except as expressly set forth herein, Zebrium and its licensors will retain all intellectual property rights relating to the Services or any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by you or any other party relating to the Services, which are hereby assigned to Zebrium.

3. Restrictions

You will not, directly or indirectly, nor will you authorize or assist any third party to: (i) reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas, know-how or algorithms relevant to the Services or any software, documentation or data related to the Services (“**Software**”); (ii) use, copy, modify, translate, or create derivative works based on the Services or any Software (except to the extent expressly permitted by Company or

authorized within the Services); (iii) use the Services or any Software for timesharing or service bureau purposes or otherwise for the benefit of a third; or remove any proprietary notices or labels; (iv) rent, lease, loan, resell for profit, or distribute the Services, or any part thereof; (v) interfere with or disrupt the integrity or performance of the Services or the data contained therein; (vi) attempt to gain unauthorized access to the Services or its related systems or networks; or (vii) access the Service or Software for purposes of monitoring its availability, performance, or functionality, or for any other benchmarking or competitive purposes.

4. **Your Data**

In using the Services, you may provide data to Zebrium to enable the provision of the Services ("**Your Data**"). You are responsible for the accuracy, quality and legality of Your Data, you represent and warrant that you have obtained all consents necessary for the provision of Your Data. We will provide reasonable security for our equipment and Your Data. However, you understand and agree that such steps do not guarantee that the Services are invulnerable to all security breaches or immune from viruses, security threats or other vulnerabilities. Zebrium is not obligated to back up any of Your Data, and we recommend that you create backup copies of any of Your Data at your sole cost and expense. Notwithstanding anything to the contrary, Zebrium shall have the right to collect and analyze data and other information relating to the provision, use and performance of various aspects of the Services and related systems and technologies (including, without limitation, information concerning Your Data and data derived therefrom), and Zebrium will be free to (i) use such information and data to improve and enhance the Services and for other development, diagnostic and corrective purposes in connection with the Services and other Zebrium offerings; and (ii) disclose such data in aggregate or other de-identified form in connection with its business.

5. **Confidentiality**

Each party (the "**Receiving Party**") understands that the other party (the "**Disclosing Party**") has disclosed or may disclose information relating to the Disclosing Party's technology or business (hereinafter referred to as "**Proprietary Information**").

The Receiving Party agrees: (i) not to divulge to any third person any such Proprietary Information, (ii) to give access to such Proprietary Information solely to those employees with a need to have access thereto for purposes of this Agreement, and (iii) to take the same security precautions to protect against disclosure or unauthorized use of such Proprietary Information that the party takes with its own proprietary information, but in no event will a party apply less than reasonable precautions to protect such Proprietary Information. The Disclosing Party agrees that the foregoing will not apply with respect to any information that the Receiving Party can document (a) is or becomes generally available to the public without any action by, or involvement of, the Receiving Party, or (b) was in its possession or known by it prior to receipt from the Disclosing Party, or (c) was rightfully disclosed to it without restriction by a third party, or (d) was independently developed without use of any Proprietary Information of the Disclosing Party. Nothing in this Agreement will prevent the Receiving Party from disclosing the Proprietary Information pursuant to any judicial or governmental order, provided that the Receiving Party gives the Disclosing Party reasonable prior notice of such disclosure to contest such order. In any event, Zebrium may collect data with respect to and report on aggregate measures of the Services' performance and other measures to enhance the performance of the Services.

Zebrium agrees that all of Your Data, including your log files and machine-generated data produced by applications and systems, is your Proprietary Information. Except for such Proprietary Information, you acknowledge that Zebrium does not wish to receive any other Proprietary Information that is not necessary for Zebrium to perform its obligations under this Agreement, and, unless the parties specifically agree otherwise, Zebrium may reasonably presume that any unrelated information received from you is not confidential or Proprietary Information.

See also: [Zebrium Privacy Policy](#).

6. Payment Terms

You will be charged the amount for the applicable subscription, and your subscription will continue indefinitely until terminated in accordance

with the Agreement. **If you have subscribed for a minimum term, after your initial subscription period expires, your subscription will automatically renew on the first day following the end of such period (each, a “Renewal Commencement Date”) and continue for an additional equivalent period, at Zebrium’s then-current price for such subscription. You agree that your account will be subject to this automatic renewal feature unless you cancel your subscription at least thirty (30) days prior to the Renewal Commencement Date (or in the event that you receive a notice from us that your subscription will be automatically renewed (which notice is not required), you will have thirty (30) days from the date of the notice).** If you do not wish your account to renew automatically, or if you want to change or terminate your subscription, please contact us at support@zebrium.com. If you cancel your subscription, you may use your subscription until the end of your then-current subscription term; your subscription will not be renewed after your then-current term expires. Should you terminate your subscription prior to the expiration of the subscription period, you will not be eligible for a prorated refund of any portion of the subscription fee paid for the then-current subscription period. By subscribing, you authorize us to charge your payment provider now, and again at the beginning of any subsequent subscription period. Upon renewal of your subscription, if we do not receive payment from your payment provider, (a) you agree to pay all amounts due on your account upon demand and/or (b) you agree that we may either terminate or suspend your subscription and continue to attempt to charge your payment provider until payment is received (upon receipt of payment, your account will be activated and for purposes of automatic renewal, your new subscription commitment period will begin as of the day payment was received).

All fees will be due and will be automatically billed to your credit card monthly or annually (depending on your subscription) in arrears based on the data volume processed by the Software. All fees will be billed and payable in U.S. dollars. You must provide us with a valid credit card or purchase order information as a condition to signing up for the Services. Your payment provider agreement governs your use of the designated credit card, and you must refer to that agreement and not the Terms to determine your rights and liabilities. By providing us with your credit card number and associated payment information, you agree that we are authorized to immediately invoice your account for all fees and charges

due and payable to us hereunder and that no additional notice or consent is required. You agree to immediately notify us of any change in your billing address or the credit card used for payment hereunder. We reserve the right at any time to change our prices and billing methods, either immediately upon posting on the Services or by e-mail to you. Any payment not received by the due date shall accrue interest at a rate of one and one-half percent (1.5%) per month, or the highest rate allowed by applicable law, whichever is lower. If you are delinquent in the payment of undisputed amounts, we may suspend the provision of the Services to you.

You will be responsible for payment of any applicable sales, use and other taxes and all applicable export and import fees, customs duties and similar charges (other than taxes based on our income), and any related penalties and interest for the grant of access rights hereunder, or the delivery of related services. You will make all required payments to us free and clear of, and without reduction for, any withholding taxes. Any such taxes imposed on payments to us will be your sole responsibility, and you will, upon our request, provide us with official receipts issued by appropriate taxing authorities, or such other evidence as we may reasonably request, to establish that such taxes have been paid.

7. Termination of Services

At its sole discretion, Zebrium may, without prior notice, modify or discontinue the Services. Zebrium may immediately terminate, limit your access to or suspend your account and use of the Services if at any time Zebrium reasonably suspects that you are not complying with this Agreement or your use of the Services is not authorized as contemplated herein. In addition to suspending or terminating your access to the Services, Zebrium reserves the right to take appropriate legal action, including without limitation pursuing civil, criminal or injunctive redress. Even after your right to use the Services is terminated, this Agreement will remain enforceable against you and unpaid amounts you owe to Zebrium for any purchases will remain due.

8. Limitation of Liability and Indemnity

IN NO EVENT SHALL ZEBRIUM OR ITS SUPPLIERS HAVE LIABILITY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, OR LOSS OF BUSINESS INFORMATION AND DATA), HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, EVEN IF ZEBRIUM AND ITS SUPPLIERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

EXCEPT FOR ZEBRIUM'S INDEMNIFICATION OBLIGATIONS WITH RESPECT TO IP CLAIMS AS SET FORTH BELOW, THE TOTAL LIABILITY OF ZEBRIUM, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY), OR OTHERWISE, WILL NOT EXCEED, IN THE AGGREGATE, ONE HUNDRED U.S. DOLLARS (\$100).

You agree to indemnify and hold Zebrium and its affiliates and suppliers harmless from any and all claims, liability and expenses, including reasonable attorneys' fees and costs, arising out of your use of the Services in a manner that is not expressly authorized herein, Your Data or your breach of any of your obligations or any restrictions set forth in this Agreement (collectively referred to as "**Claims**").

Zebrium shall defend and/or settle at its expense, any claims, actions or proceedings against You to the extent exclusively arising out of or relating to any misappropriation or infringement by the Software or Services of any third party's proprietary or intellectual property right ("IP Claims"), and Zebrium shall pay all damages finally awarded by a court of competent jurisdiction to such third party against You, or any settlement amounts agreed by Zebrium in writing; subject to the conditions that, You shall notify Zebrium promptly of any IP Claims, permit Zebrium to control the defense and settlement of such IP Claims (provided that You may participate with counsel of Your own choosing, at Your own expense), and assist Zebrium, at Zebrium's expense, in defending or settling such IP Claims. Zebrium shall not be liable for any settlement amounts entered into by You without our prior written approval. If Zebrium has reason to believe that it would be subject to an injunction or continuing damages based on the Software or Services, then Zebrium shall be entitled to either modify the Software or Services

to make it non-infringing and/or remove the misappropriated material, replace the Software or Services or portion thereof with a service or materials that provide substantially the same functionality or information, or, if neither of the foregoing is commercially practicable, require You to cease use of the Software or Services, as the case may be, without any obligation to refund any fees paid hereunder except for fees that have been pre-paid by You but have not yet been applied. The foregoing notwithstanding, Zebrium shall have no liability for a claim of infringement or misappropriation to the extent caused by (i) the combination of Software or Services with any other service, software, data or products not provided by Zebrium, which claim would have been avoided if the Software or Services had not been so combined; or (ii) the use of any material provided by You or third parties; or (iii) any breach by You of this Agreement or any Services policies and/or procedures. The foregoing is Zebrium's sole and exclusive liability, and Your sole and exclusive remedy for any infringement or misappropriation of any third-party intellectual property rights

9. Disclaimer

THE SERVICES, SOFTWARE, ANY DOCUMENTATION, AND ANY UPDATES ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. ZEBRIUM AND ITS SUPPLIERS SPECIFICALLY DISCLAIM ALL IMPLIED WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE. THE FOREGOING LIMITATIONS SHALL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, REGARDLESS OF WHETHER ZEBRIUM OR ITS LICENSORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF WHETHER ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

10. Other Provisions

(a) **Governing Law.** This Agreement, and all disputes arising out of or related thereto, shall be governed by and construed under the laws of the State of California without reference to conflict of laws principles.

(b) **Assignment.** You shall not assign this Agreement or any rights or obligations hereunder, directly or indirectly, by operation of law, merger, acquisition of stock or assets, or otherwise, without the prior written consent of Zebrium. Subject to the foregoing, this Agreement shall inure to the benefit of and be binding upon the parties and their respective successors and permitted assigns.

(c) **Export Controls.** You acknowledge that this website, the Services, and the underlying software may include U.S. technical data subject to restrictions under export control laws and regulations administered by the United States government. Diversion contrary to U.S. law is prohibited. Without limiting the foregoing, you agree that (1) you are not, and are not acting on behalf of, any person who is a citizen, national, or resident of, or who is controlled by the government of Cuba, Iran, North Korea, Sudan, or Syria, or any other country to which the United States has prohibited export transactions; (2) you are not, and are not acting on behalf of, any person or entity listed on the U.S. Treasury Department list of Specially Designated Nationals and Blocked Persons, or the U.S. Commerce Department Denied Persons List or Entity List; and (3) you will not use the Software for, and will not permit the Software to be used for, any purposes prohibited by law.

(d) **Force Majeure.** Zebrium will not be liable for inadequate performance to the extent caused by a circumstance beyond its reasonable control, including, without limitation, failure of the internet, labor strikes or shortages, riots, insurrection, fires, flood, storm, explosions, acts of God, war, terrorism, governmental action, labor conditions, earthquakes, material shortages and other acts not caused by Zebrium.

(e) **Modification.** This is the entire agreement between the parties relating to the subject matter hereof and all other terms are rejected. Zebrium reserves the right to modify the terms of this Agreement at any time without prior notice. The waiver of a breach of any term hereof shall in no way be construed as a waiver of any term or other breach hereof. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law the remaining provisions of this Agreement shall remain in full force and effect.