

TERMS OF SERVICE

TERMS OF SERVICE between **Zadara Storage Inc.** and/or the Affiliate, from whom Customer purchases the Services defined below ("**Zadara**"), and the customer who orders the Services ("**Customer**").

THE AGREEMENT

Customer's use of the Services shall be governed by these Terms of Service and the Acceptable Use Policy. In addition (and subject to the below), the Order may contain additional terms applicable to the Services. The term "**Agreement**" shall refer to these Terms of Service, the Acceptable Use Policy and Customer's Order. The Services are purchased electronically. Customer acknowledges that its electronic consent constitutes its acceptance of the Agreement for each Order it submits. If Customer is entering into this Agreement for an entity, such as an employer, Customer represents that it is not a consumer, and that it has the legal authority to bind that entity to the Agreement.

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

1. DEFINED TERMS

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

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

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

"**Application**" means software application or web site created by the Customer which interfaces with the Services.

"**Affiliate**" means any and all legal entities which are now or hereafter under the control of the ultimate parent of Zadara. For the purpose of this definition, "control" means an entity, directly or indirectly, holding more than fifty per cent (50%) of the issued share capital, or more than fifty per cent (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 of the Agreement, 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.

"Customer Data" means all data, records, files, input materials, reports, forms and other such items that are received, stored or transmitted using the Services.

"Maintenance" means any maintenance action performed on Zadara's Services related hardware, and any upgrades, improvements and bug fixes performed on Zadara's Services related software.

"Order" means online order submitted by Customer as recorded by Zadara on its customers portal or written order provided to Customer by Zadara for signature, which describes the type of services purchased by Customer, if and to the extent approved in writing by Zadara. In the event that the an Order includes terms and conditions which are different from the terms and conditions detailed in this Terms of Use and the Acceptable Use Policy, such terms and conditions shall apply only if explicitly approved by Zadara. Zadara may accept or reject any Order Customer submits in its sole discretion.

"Privacy Policy" means Zadara's privacy policy located at: <http://www.zadara.com/privacy>, as may be amended from time to time.

"Services" means the services described in the Order, including any services Customer utilizes via an API.

"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 Services, which may be downloaded or accessed by Customer, and any updates Zadara may make to such software from time to time.

"Support" means the applicable level of support offered by Zadara, as detailed in the Order.

2. 2.2PROVISION OF SERVICES AND ACCESS

2.1 Contingent on Zadara's acceptance of Customer's Order, and subject to the terms and conditions of the Agreement, Zadara agrees to provide the Services and the Support described in Customer's Order. The Services may be accessed via APIs provided by Zadara. Zadara may modify or replace its APIs at any time.

2.2 Zadara stores the Application and Customer Data on the drives selected by the customer at the VPSA creation. By using the Services Customer consents to this storage of the Application and the Customer Data.

3. WHO MAY USE THE SERVICES

3.1 Customer may authorize others to use the Services, except as provided below or otherwise restricted by Zadara. If Customer's authorizes others to use the Services, Customer is responsible for use of the Services by any third party authorized by it, to the same extent as if Customer was using the Services itself. Unless otherwise agreed, Zadara will provide Support only to Customer, and not to any other person which the Customer authorized to use the Services. All of Zadara's undertakings and obligations hereunder are to the benefit of the Customer only.

4. CUSTOMER'S OBLIGATIONS

Customer agrees to: (i) comply with all applicable laws and regulations and the Acceptable Use Policy, (ii) use the Software in compliance with Section 19, (iii) pay when due the fees for the Services, (iv) use reasonable security precautions in light of its use of the Services,

including encrypting any personally identifiable information transmitted through the Services and maintaining routine archiving of 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, and (viii) ensure that calls it make to the Service are compatible with then-current APIs for that Service, and bear the sole responsibility for the technical operation of Customer Data.

5. CUSTOMER DATA SECURITY AND PRIVACY:

5.1 Zadara is committed to assist the Customer to protect the security of Customer Data. Zadara uses a variety of administrative, technical and physical security technologies and procedures to help protect Customer's Data from unauthorized access, use, or disclosure. However, Customer is responsible for properly configuring and using the Services and taking its own steps to maintain appropriate security, protection and backup of the Customer Data. Customer specifically agrees to maintain at least one additional current copy of Customer Data elsewhere.

5.2 Zadara is not responsible to Customer for unauthorized access to the Customer Data. Zadara's security obligations with respect to Customer Data are limited to the obligations described herein. Zadara shall not use or disclose Customer Data. Customer Data is and shall always remain under the exclusive care, custody and control of Customer.

5.3 Customer must maintain the security of its login credentials and may not share login credentials except as required to establish and authorize users in its account.

5.4 The Services are subject to Zadara's Privacy Policy. Changes to the Privacy Policy will be made as stated in the applicable policy.

6. SERVICE LEVEL AGREEMENT

Zadara will provide the Services in accordance with the applicable Service Level Agreement ("SLA"), located at <http://www.zadara.com>, as may be amended from time to time. The SLA contains service level credits for unavailability of the Services.

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 Services. Zadara will use reasonable efforts to inform Customer in advance of any interruption that involves downtime of the Services.

7. TERM

This Agreement will commence on the date Customer agrees to the terms and conditions of this Agreement, and continues for the term stated in the Order. If no period is stated in the Order, then the initial term shall be one month. Upon expiration of the initial term, the Order will automatically renew for successive one month terms each, unless and until either party gives the other a written notice of non-renewal prior to end of the initial or renewal term, as applicable.

8. FEES AND BILLING

8.1 **Fees.** Zadara will charge Customer the fees described in Customer's Order, using one of the payment methods Zadara supports.

8.2 Taxes. Any taxes and duties including value added tax and applicable sales tax (other than Zadara's income tax), are at Customer's responsibility and Customer agrees to pay Zadara any Service fee 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, unless Customer provides Zadara with a valid tax exemption certificate authorized by the appropriate taxing authority.

8.3 Billing and Late Payment. Unless otherwise stated in an Order, Zadara calculates and bills fees monthly, based on Customer's actual usage of the Services, on an hourly basis rounded up to the nearest whole hour. Payment is due upon receipt of Zadara's invoice. Late payments will accrue interest at a rate of one and one-half percent (1½ %) 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 further 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 Services without liability if: (i) Zadara reasonably believes that the Services are being used (or have been or are likely to be used) in violation of the Agreement, (ii) Zadara reasonably believes that the Services have been accessed or manipulated by a third party without Customer's consent, (iii) Zadara reasonably believes that suspension of the Services is necessary to protect Zadara's network, (iv) a payment for the Services is overdue, or (v) suspension is required by law. Any Customer Data stored through the Services shall be unavailable during the 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 Suspension and estimated time to cure.

10. TERMINATION FOR CONVENIENCE

Each party may terminate the Agreement for convenience at any time on thirty (30) days advance written notice.

11. TERMINATION FOR BREACH

11.1 Zadara may immediately terminate the Agreement for breach on written notice if: (i) Customer's payment of certain fee is overdue and is not paid within three (3) days of Zadara's written notice; (ii) a credit report indicates that Customer no longer meet Zadara's reasonable credit criteria; (iii) Customer fails to comply with any provision of the Agreement and does not remedy the failure within fourteen (14) days of Zadara's notice.

11.2 Customer may terminate the Agreement for breach on written notice if: (i) Zadara materially fails to provide the Services as agreed and does not remedy that failure within fourteen (14) days of Customer's written notice describing the failure, or (ii) Zadara materially fails to meet any other obligation stated in the Agreement and does not remedy that failure within fourteen (14) days of Customer's written notice describing the failure.

12. ACCESS AND REMOVAL OF CUSTOMER DATA

12.1 During a Suspension period or following the termination of the Agreement, Customer shall not have access to the Customer Data.

12.2 Upon receipt of Zadara's notice of termination as detailed above, Customer shall have 7 days to remove all of Customer Data and other information, including without limitation backup copies thereof, that Customer or anybody on its behalf has uploaded, stored or otherwise input through the Services (the "**Data Removal Period**"). Upon expiration of the Data Removal Period, Zadara may remove any and all Customer Data from Zadara's cloud 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 by Customer to backup any Customer Data removed by Zadara at the end of the Data Removal Period.

13. EXPORT MATTERS

Customer shall, in connection with its use of the 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.

14. CONFIDENTIAL INFORMATION

14.1 Each party agrees that it will not use in any way, for its own account or the account of any third party, except as expressly permitted by this Agreement, nor disclose to any third party (except as required by law or to that party's attorneys, accountants and other advisors as reasonably necessary to carry out the purposes of this Agreement), any of the other party's Confidential Information and will take reasonable precautions to protect the confidentiality of such information. Customer agrees that Zadara will disclose Customer's Confidential Information to its respective service providers, agents and representatives, provided they are bound by confidentiality undertakings at least as stringent as those stated herein.

14.2 **FEEDBACK.** Customer may choose to or Zadara may invite Customer to submit comments or ideas about the Services, including without limitation comments concerning improvement or enforcement of the Services ("**Feedback**"). By submitting any Feedback, Customer agrees that: (i) its disclosure is made without entitling Customer to any consideration whatsoever, (ii) its disclosure is unsolicited and without restriction and will not place Zadara under any fiduciary or 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 copyrights, including any other rights that may be known as or referred to as moral rights, and Customer ratify and consent to any action that may be taken with respect to such moral rights by or authorized by Zadara and agree not to assert any moral rights with respect thereto.

15. OWNERSHIP OF INTELLECTUAL PROPERTY

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 to Zadara unless otherwise agreed in writing between Zadara and Customer. As between the Parties the Software and the Services are and shall be solely owned by Zadara and the licensors of any Software and/or Services related third party software. Customer Data and the Applications shall be solely owned by Customer.

16. LIMITATION OF LIABILITY

16.1 ZADARA'S LIABILITY AND OBLIGATIONS ARE AS EXPRESSLY DEFINED IN THIS AGREEMENT. ZADARA SHALL NOT BE LIABLE FOR ANY FAILURE TO PROVIDE THE SERVICES UNLESS SUCH FAILURE RESULTS FROM A BREACH OF THE SLA OR RESULTS 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 THE OTHER FOR ANY LOST PROFITS OR ANY 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, EXCEPT FOR LIABILITY BASED ON WILLFUL MISCONDUCT OR FRAUDULENT MISREPRESENTATION, AND LIABILITY FOR DEATH OR PERSONAL INJURY RESULTING FROM ZADARA'S NEGLIGENCE, THE MAXIMUM AGGREGATE MONETARY LIABILITY OF ZADARA AND ANY OF ITS EMPLOYEES, AGENTS, SUPPLIERS, OR AFFILIATES IN CONNECTION WITH THE 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 PAID ZADARA WITH RESPECT TO THE SERVICES IN THE SIX MONTHS PERIOD PRECEDING THE OCCURRENCE OF THE EVENT GIVING RISE TO THE CLAIM, OR (II) FIVE HUNDRED US DOLLARS (US \$500).

17. INDEMNIFICATION

17.1 **Zadara Indemnification.** Zadara will defend Customer from any third party claim, suit, action or proceeding, and will pay all 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 Services, when used 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. If Customer seeks indemnification under this Section, it must provide Zadara with prompt notice of the 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 claim.

17.2 **Customer Indemnification.** Customer will defend Zadara from any third party claim, suit, action or proceeding, and will pay all related damages, costs, expenses, judgments, settlement amounts, and other liabilities (including reasonable attorney's fees and costs) 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 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 Customer's authorized users, including any breach of this Agreement.

18. DISCLAIMERS

THERE IS NO GUARANTEE THAT THE 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'S PRIVACY, CUSTOMER DATA AND CONFIDENTIAL INFORMATION. ZADARA HAS NO OBLIGATION TO PROVIDE SECURITY OTHER THAN AS STATED IN THIS AGREEMENT. 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 SERVICES CHOSEN, INCLUDING THE SUITABILITY AS IT RELATES TO CUSTOMER DATA. THE 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 PROVIDED AS IS. CUSTOMER IS SOLELY RESPONSIBLE FOR DETERMINING THE SUITABILITY OF THE SERVICES FOR CUSTOMER'S USE IN LIGHT OF ANY APPLICABLE DATA PRIVACY LAWS AND REGULATIONS.

19. SOFTWARE

19.1 All Software that Zadara provides for Customer's use is subject to the terms of this Agreement. Customer may not use any Software after the expiration or termination of this Agreement, or the termination of the particular Service for which it was provided, and Customer may not copy the Software unless expressly permitted by the Agreement. Customer may not remove, modify or obscure any copyright, trademark or other proprietary rights notices that appear on any Software Zadara provides. Unless permitted by the terms of an open source software license, Customer may not reverse engineer, decompile or disassemble any Software Zadara provides except and to the extent that Customer is expressly permitted by applicable law to do this, and then following at least ten (10) days advance written notice to Zadara. Any additional restrictions which may apply to Software Zadara utilizes in the performance of the Services will be specified in the applicable Order.

19.2 In the event that Zadara distributes any third party or open source software to Customer as part of the Services, such open source software is subject to the terms of the applicable third party or open source license. THERE ARE NO WARRANTIES PROVIDED WITH RESPECT TO ANY third party or OPEN SOURCE SOFTWARE AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. IN THE EVENT OF ANY CONFLICT BETWEEN THE TERMS HEREIN AND THE APPLICABLE OPEN SOURCE or third party LICENSE WITH RESPECT TO ANY such third party or OPEN SOURCE SOFTWARE, THE TERMS OF THE APPLICABLE third party or OPEN SOURCE LICENSE SHALL CONTROL.

20. 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 or crawl or otherwise monitor the external interfaces of Customer's Applications with the Services, for the purpose of verifying Customer's compliance with this Agreement and to allow Zadara to more efficiently manage various service issues. Customer undertakes not to block, disable or otherwise interfere with such crawling or monitoring tools.

21. SERVICES PROVIDED BY THIRD PARTIES

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

22. GENERAL PROVISIONS

22.1 Orders. If over time Customer signs multiple Orders for a single account, the terms of service incorporated in the latest Order posted on the effective date of the latest Order will govern the entire account.

22.2 Entire Agreement. This Agreement, together with the AUP, the SLA the Privacy Policy and all Orders, represent the sole, exclusive and integrated mutual statement of understanding of the parties concerning the 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 this Agreement.

22.3 Severability. If any provision of this 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 this Agreement shall remain in full force and effect and enforceable.

22.4 Survival. Sections 1, 8, 14, 16, 17, 15, 22.6 and 22.13, 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.

22.5 Modifications to the Agreement. Zadara may modify the terms and conditions contained in the Agreement and the SLA, by posting a change notice or a new agreement on <http://www.zadarastorage.com>, as may be amended from time to time.

The change shall come into effect 30 days following posting. If any modification is unacceptable to Customer, Customer may stop using the Services. Customer's continued use of the Services following the posting of a change notice or new Agreement on Zadara's website will constitute Customer's acceptance of the change (provided that any material change to the Agreement will not apply retroactively to any event that occurred prior to the date of posting such material change).

22.6 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 this Agreement, 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 this Agreement shall be in the English language.

22.7 Assignment. Customer may not assign this Agreement, in whole or in part, without the prior written consent of Zadara. Zadara may assign this Agreement in whole or in part, without consent, to an Affiliate, or as part of a corporate reorganization or a sale of its

business. Zadara may use third party service providers to perform all or any part of the Services, provided it remains responsible to Customer under this Agreement for work performed by such third party. Any attempted assignment or delegation without such consent will be void. This Agreement will bind and inure to the benefit of each party's successors and permitted assigns.

22.8 Force Majeure. Except for performance of a payment obligation, neither party shall be liable under this Agreement for delays, failures to perform, damages, losses or destruction, or malfunction of any equipment, or any consequence thereof, caused or occasioned by, or due to fire, earthquake, flood, water, the elements, labor disputes or shortages, utility curtailments, 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.

22.9 Evaluation, Trial or Demonstration Services. Customer may receive from Zadara certain services for evaluation, trial or demonstration at no-cost. Customer agrees to use such services in a non-production environment. By accepting services on such a basis, Customer accept such services as is and waives all express and implied warranties and conditions and service level agreements during the Evaluation. Either Party, upon written notice to the other, may cancel the Evaluation with immediate effect. Upon termination or expiration of the Evaluation period, Customer shall either convert to a paid contract covering the use of such services or immediately terminate use of such services.

22.10 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 user of the Services.

22.11 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.

22.12 OpaaS Services. In the event that Customer's orders Zadara's On Premises as a Service ("OpaaS"), the provisions of the OpaaS Addendum below will apply to such OpaaS Services in addition to the provisions of this Agreement, and the OpaaS Services shall be deemed part of the Services.

22.13 Governing Law. With respect to Orders accepted by Zadara Storage Inc., the Agreement shall be governed by the laws of the state of California, excluding any choice of law rules. The Agreement shall not be governed by the United Nations Convention on the International Sale of Goods. For any dispute arising out of or relating to this Agreement, the parties consent to personal jurisdiction in, and the exclusive venue of, the courts in California. Orders accepted by any Affiliate will be governed by the laws of the country of the Affiliate accepting the Order and the courts of that locale will have exclusive jurisdiction. However, Zadara or its Affiliates may, bring suit for payment in any country where Customer is located.

OpaaS Addendum

"Designated Hardware" means the hardware specified in Customer's Order with respect to

the OpaaS Services, as updated in writing from time to time.

“Customer Site” or **“Site”** shall mean the Customer’s data center or premises as detailed in the Order.

“Remote Hands” shall mean the technical support to be performed by Customer’s staff, which includes diagnose, troubleshoot, installation and repair of the Designated Hardware at any time of day or night, including weekends and holidays.

22.14 The provisions of this OpaaS Addendum apply only to the OpaaS features of the Services.

22.15 **OpaaS Features.** OpaaS features of the Services include provision of the Services through Designated Hardware located at the Customer Site, payment of Minimum Service Fee and Minimum Subscription Period, as described below. This Agreement is a contract for services and not a sale of goods. Other than the rights specifically granted by this OpaaS Addendum, Customer has no right to the Designated Hardware or the Services. Customer shall not remove the Designated Hardware from the Customer Site.

22.16 **Designated Hardware Delivery.** Zadara shall ship the Designated Hardware to the Customer Site, according to the terms specified in the Order. Customer shall bear the shipping costs, insurance costs and applicable taxes. The Customer will install the Designated Hardware at the Site within one week of delivery date, at Customer’s cost. Customer will provide, at its own cost, the space and the infrastructure required for the installation of the Designated Hardware at the Customer Site, including power supply and cooling systems and all other necessary environment conditions, and including expansion of such space and infrastructure if and when needed. Customer will also provide, at its own cost, racks, networking connectivity, IP addresses, WAN communication and Remote Hands. The Designated Hardware will be used by Customer exclusively in connection with the Services, and not for any other purpose.

22.17 **Security.** Customer will be responsible for the physical security and the safekeeping of the Customer Site and the Designated Hardware. Whenever required by Zadara, Customer shall allow and assist Zadara’s representatives to enter the Customer Site and to inspect and handle the Designated Hardware. Customer will maintain environmental conditions for the Designated Hardware as customary and as recommended by Zadara, and will allow access to the Designated Hardware only to its trained and competent employees, who must handle the Designated Hardware according to customary practices and applicable manuals.

22.18 **Title.** Title in the Designated Hardware remains with Zadara at all times. Customer shall mark the Designated Hardware with appropriate legends identifying the Designated Hardware as Zadara’s property. Customer shall not remove or alter such legends or any other legends placed by Zadara. Customer shall not grant any security interest in or otherwise encumber any of the Designated Hardware, shall not cause any of the Designated Hardware, or any interest therein, to become subject to any lien, other than any lien required by Zadara. Upon request of Zadara, Customer shall execute any instrument or document required to perfect Zadara’s security interest in the Designated Hardware.

22.19 **Risks of Loss.** Without prejudice to the foregoing statement, as long as the Designated Hardware is at the Customer Site, Customer bears all risks of loss and damage related to or arising from the Designated Hardware, and shall indemnify Zadara for any damage or loss caused to the Designated Hardware. Customer shall insure the Designated Hardware for its full replacement value with an insurance company of repute and if required by Zadara shall

provide it with an evidence of the insurance and endorsement of the interest of Zadara on such policy.

22.20 Effects of Termination. Upon termination of the Agreement the Customer shall remove the Designated Hardware from the Customer Site and return it to Zadara at its own costs, no later than 10 days of the termination date, according to shipping instructions received from Zadara. Should the Designated Hardware not be received by Zadara within 10 days, Customer shall be invoiced for the Service Fee due until the Designated Hardware is received. Customer is responsible to remove any and all Customer Data stored on the Designated Hardware, prior to shipment.

22.21 Designated Hardware Support. Customer shall ensure the ability of Zadara to remote access the Services, for the purpose of troubleshooting and management of the Services. If Zadara diagnoses a defect that requires a Designated Hardware replacement or repair, or if Customer notifies Zadara of such defect, Zadara will provide the replacement part to Customer. The Customer will provide Remote Hands services to Zadara and the actual on-site hardware replacement will be performed by Customer. The defective part will be returned to Zadara within 10 working days from the receipt of the replacement part. Zadara shall bear the shipping costs of the replacement part, provided that the defect is covered under Zadara's support obligations, as detailed herein. Customer must provide Zadara IP connectivity. The support will be provided in English in accordance with Zadara's then existing technical Support policy. Customer will appoint designated employees, to liaise with Zadara to provide Remote Hands support. Zadara's support obligations are conditioned upon Customer providing Remote Hands support.

22.22 Without derogating from the above, Zadara shall not be liable for any failure or unavailability of the Services, and no SLA credits (as defined in the SLA) shall be provided, if Customer fails to provide Zadara the Remote Hands services or if Customer's staff fails to adhere to Zadara's instructions. The OpaaS Service does not include customization, on-site assistance/support and installation of the Designated Hardware. Support or assistance required as a result of: fault or negligence of the Customer, repairs or modifications made by parties not authorized by Zadara or causes external to the Services, may be provided by Zadara subject to additional service fee.

22.23 Payment. Customer will pay Zadara monthly fees as detailed in the Orders under Customer's account. Customer will pay for the OpaaS Services pursuant to its actual usage, but no less than the Minimum Service Fee defined below. The OpaaS Service fee is determined by the type of engines and number of disks ordered under Customer's account. Customer may order additional disks or upgrade engines ("**Upgrade**"), subject to availability and subject to acceptance of the Order in writing by Zadara. Additional charges will go into effect upon Upgrade.

22.24 Billing and Minimum Service Fee. Billing shall commence upon delivery of the Designated Hardware to the Customer and shall continue until the Designated Hardware is delivered to Zadara. If the monthly Service fee due to Zadara based on Customer's actual usage is lower than the monthly Minimum Service Fee defined in Customer's Order, Zadara will bill Customer the full Minimum Service Fee.

22.25 Minimum Subscription Period. The OpaaS Service requires a minimum subscription period as stated in the Order ("**Minimum Subscription**"). Early termination by Customer is

subject to payment of the Minimum Service Fee due until the end of the Minimum Subscription period.

22.26 **Survival.** The following provisions of this OpaaS Addendum will survive any termination or expiration of this Agreement: Sections 22.17- 22.20 and 22.22- 22.25, as well as any provision that must survive to fulfill its essential purpose.
