



Zadara Service Specific Terms

Last updated: **September 1 2024**

The Service Specific Terms below govern Customer's use of the Zadara Services. Capitalized terms not defined herein shall have the same meaning as ascribed to them in the Terms of Service <https://www.zadara.com/legal/#faq/terms-of-service>.

a. OPaaS Services

"**OPaaS Services**" means Zadara's On Premises-as-a-Service.

"**Designated Hardware**" means the hardware specified in Customer's Order with respect to the OPaaS Services to be installed at the Customer Site, as updated in writing from time to time.

"**Customer Site**" or "**Site**" shall mean the Customer's data center or premises (under Customer's full control as detailed in the Order), in which the Designated Hardware is installed.

"**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.

The following provisions apply solely to the OPaaS Services.

- 1. OPaaS Features.** OPaaS Services include the provision of the Zadara Services through Designated Hardware located at the Customer Site, payment of Minimum Subscription Fee (Floor) and Minimum Subscription Period, as described below. These terms are a contract for services and not a sale of goods. Other than the rights specifically granted by these terms and/or the Agreement, Customer has no right to the Designated Hardware or the Zadara Services. Customer shall not remove the Designated Hardware from the Customer Site without Zadara's prior written consent and subject to Section 7 below.
- 2. 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 upon delivery, at Customer's sole expense. Customer will provide, at its own expense, 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 environmental conditions as customary and as recommended by Zadara, and including expansion of such space and infrastructure if and when required. Customer shall prepare the Site for installation and will also provide, at its own expense, racks, networking connectivity, IP addresses, WAN communication and Remote Hands. Customer is responsible for any special interface equipment or facilities necessary to ensure compatibility between the Designated Hardware and other equipment of the Customer. The Designated Hardware will be used by Customer exclusively in connection with the Services, and not for any other purpose.
- 3. Availability.** It is acknowledged that the Designated Hardware is supplied to Zadara by third parties, and while Zadara uses reasonable efforts to maintain sufficient supply of the Designated Hardware, inventory shortages may affect Zadara's ability to fulfil an Order. If there is a delay or shortage of Designated Hardware item that Zadara believes will affect Customer's Order, Zadara will use reasonable efforts to notify Customer of the delay and keep Customer informed of the delivery schedule. Zadara may cancel accepted Orders at any time if it is unable to fulfil the order due to shortages, delays in supply or failure to obtain license/permit.

4. **Security.** Customer will be responsible for the physical security and the safekeeping of the Customer Site and the Designated Hardware. Customer may not affix or install any accessory, addition, upgrade, equipment of device on the Designated Hardware, unless expressly approved in writing by Zadara. 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 allow access to the Designated Hardware solely to its trained and competent required personnel, who shall handle the Designated Hardware according to customary practices and applicable Documentation provided by Zadara.
5. **Title.** As between the parties, title and ownership in the Designated Hardware remains solely 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.
6. **Risks of Loss.** Without prejudice to the foregoing statement, Customer bears all risks of loss and damage related to or arising from the Designated Hardware upon delivery and shall indemnify Zadara for any damage or loss caused to the Designated Hardware. Customer shall keep the Designated Hardware in good repair, appearance and condition, subject to normal wear and tear. 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 insurance policy. Customer's obligations to pay the fees in respect of the Designated Hardware is absolute and continues notwithstanding its loss, destruction or damage.
7. **Effects of Termination.** Upon termination of these terms and the Agreement, notwithstanding any other rights under 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 ten (10) days of the termination date, according to shipping instructions received from Zadara. Should the Designated Hardware not be received by Zadara within such ten (10) days, Customer shall be invoiced for the Service Fee due until the Designated Hardware is received without derogating from Zadara's right to repossess the Designated Hardware. Customer is responsible to remove any and all Customer Data stored on the Designated Hardware, prior to shipment.
8. **Designated Hardware Support.**
 - 8.1 **Replacements or repairs:** Customer shall ensure the ability of Zadara to remote access the OPaaS Services, for the purpose of troubleshooting and management of the OPaaS 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 the Customer. The defective part will be returned to Zadara by the Customer within ten (10) working days from the date the Customer received 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.

- 8.2 **Support:** Customer must provide Zadara with an IP connectivity for the purpose of Zadara's support. The support will be provided by Zadara in English in accordance with Zadara's then existing Technical Support guidelines. Zadara's support obligations are conditioned upon Customer providing Remote Hands support and Customer will appoint designated personnel, to liaise with Zadara to provide the Remote Hands support. Without derogating from the above and from the provisions of the SLA, Zadara shall not be liable for any failure or unavailability of the OPaaS 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 designated personnel fail to adhere to Zadara's instructions. The OPaaS Services do not include customization, on-site assistance/support and installation of the Designated Hardware. Support or assistance required as a result of (i) fault or negligence of the Customer, (ii) repairs or modifications made by parties not authorized by Zadara, or (iii) causes external to the Services, may be provided by Zadara to the Customer subject to additional service fee.
9. **Payment.** Customer will pay Zadara monthly fees during the Subscription Period as detailed in the Order. Customer may order additional disks or upgrade engines ("**Upgrades**"), subject to availability and to Zadara's approval. Additional charges due to Upgrades will enter into effect upon delivery to the Customer.
10. **Billing and Minimum Subscription Fee/Floor.** Billing shall commence upon delivery of the Designated Hardware to the Customer and shall continue until the later of (i) the end of the Subscription Period, or (ii) until the Designated Hardware is returned to Zadara by the Customer. If the monthly OPaaS Services fee due to Zadara based on Customer's actual usage is lower than the Minimum Subscription Fee detailed in the Customer's Order, Zadara will invoice Customer the Minimum Subscription Fee.
11. **Minimum Subscription Period.** The Zadara Services require a minimum Subscription Period (as defined in the Customer's Order). Early termination by Customer is subject to payment of the Minimum Subscription Fee due until the end of the Minimum Subscription Period.
12. **Survival.** The following provisions will survive any termination or expiration of the Agreement: 4 to 7, 9 to 13 as well as any provision that by its nature must survive to fulfill its essential purpose.
13. **Use of Microsoft Software**
- SPLA Products by Customers who are resellers or services providers** (.i.e. other than End Users).
- 13.1 In conjunction with the OpaaS Services, Zadara manages the Designated Hardware, and thus serves as Data Center Provider under the SPLA.
- 13.2 Customer may be allowed to use certain software and managed services known as Microsoft SPLA (including related documentation) developed and owned by Microsoft Corporation or its licensors (collectively, the "**Microsoft Software**").
- 13.3 Subject to Zadara's consent, Customer may provision workloads (Virtual Machines) that contain Microsoft Software using its own Microsoft SPLA. Customer can use its own licenses only if it is eligible to use such Microsoft Software licenses under its agreement with Microsoft. In this case Customer shall be deemed "Software Services Provider" and Zadara shall be an "Outsourcing Company" or "Data Center Provider" as applicable, as such terms are defined in Microsoft Services Provider License Agreement (SPLA).



- 13.4 Zadara will not consent to a mix mode, where part of the workloads are using the Customer SPLA and other uses Zadara. The consent, if given, is for an entire zCompute cluster or an entire Site.
- 13.5 Customer shall be solely responsible for its and its End Users use of the Microsoft Software, for obtaining all required licenses and for complying with all applicable Microsoft licensing requirements. Usage of the Zadara Services in violation of Customer's agreement(s) with Microsoft is not authorized or permitted, and Customer shall indemnify Zadara for any expense or damage it incurs in connection with such breach.
- 13.6 If Customer purchases the Microsoft Software from Zadara for reselling it to its End Users, Customer shall be deemed "Software Services Reseller" under the SPLA and the terms of Zadara Software Services Reseller Addendum – Microsoft SPLA in the form enclosed herein https://www.zadara.com/wp-content/uploads/SPLA-Software-Services-Reseller-Addendum_Sep1-2024.pdf, shall govern Customer's resale of the Microsoft Software.

End User Use of Microsoft Software.

- 13.7 If Customer uses the Microsoft Software, Microsoft and its licensors require that Customer agrees to the End User license terms located at <https://www.zadara.com/ms-license/>.