

# **Soliton Cloud Service**

## **Terms of Service**

**Soliton Systems K.K.**

Updated: 08/Aug./2023

### **1. (Terms of Service)**

These Terms of Service (the “**Terms**”) set forth the terms and conditions pursuant to which Soliton Systems K.K. (“**Soliton**”) provides its cloud services (the “**Service**”) to Customers.

### **2. (Amendment)**

Soliton reserves the right to amend these Terms in its sole discretion by notifying Customer of the proposed amendments and its effective date through its webpage and/or by email to the email address registered by Customer or by a reseller from which Customer has purchased Licenses for Service-related communication. In this case, Customer is deemed to have agreed with the amended Terms, and the Service provided after the effective date is subject to such amended Terms.

### **3. (Definitions)**

The following terms have the meanings set forth below.

<b>Terms</b>	<b>Definitions</b>
Agreement	An agreement between Soliton and Customer concerning the provision of the Service, or if Customer purchases License(s) through a reseller, the agreement between such reseller and Customer.
Business Day	Any day other than (i) Saturdays, (ii) Sundays and (iii) Soliton’s company holidays (Japan Standard Time).
Business Hours	9:00 to 17:30 on Business Days (Japan Standard Time)
Customer	A customer who has purchased License(s) pursuant to the Agreement.
Customer’s Administrator	The administrator designated by Customer who is in charge of distribution and installation of the Service Software for Users, provision of support to Users, and communication with Soliton.
DPA	Data Processing Addendum, a copy of which is provided together with these Terms and becomes a part of these Terms by reference.
License	A non-exclusive, non-sublicensable, non-transferable license to use the Service to use optional functions of the Service, pursuant to these Terms.
Service Device	Devices, such as computers (Windows, Mac) and smartphones (iOS, Android), with which Users use the Service.
Service Software	Software as provided or designated by Soliton which is required in order to use the Service. The Service Software required for Soliton’s

	respective cloud services are set forth in the applicable Service Appendix.
Service System	System comprised of equipment and devices including server(s), communication equipment and other equipment and devices which are necessary to use and operate the Service.
Service Term	Term during which the Service is provided in accordance with the Agreement, purchased Licenses and/or these Terms.
Obtained Information	Such information as defined in the applicable Service Appendix, which may include user data, logs, OS-related data, device-related data and diagnostic data, and may be obtained by Soliton from Customer through the Service.
User	A user of the Service with standard user rights (without administrator rights).

#### 4. (Services; Use of Obtained Information)

Details of the Service and optional services are as set out in the applicable Service Appendix. In the event of any conflict between the terms of these Terms and those of the applicable Service Appendix, the terms of the applicable Service Appendix shall prevail, and in the event of any conflict between the terms of these Terms of the applicable Service Appendix and those of the DPA, the terms of the DPA shall prevail. Subject to the DPA, Soliton may, and shall use, Obtained Information only for the purposes set out in the applicable Service Appendix.

#### 5. (Offer and Acceptance)

(a) To enter into an Agreement, Customer which directly purchases License(s) from Soliton shall accept these Terms and the other terms set out in the order form provided by Soliton for the Service (the “**Order Form**”), fill in the Order Form with required information such as name and address, desired start date, number of licenses and contact email address, and submit the Order Form to Soliton or an entity designated by Soliton.

(b) The Agreement is executed and becomes effective upon acceptance by Soliton in writing of Customer’s order for the Service to be made in accordance with Section 5(a) above.

(c) If Customer purchases the License(s) through a reseller, the Licenses become effective upon the completion of both of the following: (i) Soliton’s acceptance of the order made to it for the License purchased by the Customer; and (ii) Soliton’s confirmation of Customer’s acceptance of these Terms.

(d) In the event the Agreement between Soliton and Customer is executed in accordance with Section 5(b) above or the Licenses purchased through a reseller become effective in accordance with Section 5(c) above, Soliton shall, directly or through the reseller, send a notice (the “**Start Notice**”), which sets out the Service’s start date and other matters, to the email address registered by Customer with Soliton or the reseller at least one (1) day prior to the desired start date; provided, however, that if Soliton may not start the Service on the desired start date, Soliton shall, directly or through the reseller, notify Customer of an alternative start date (together with the desired start date, the “**Scheduled Start Date**”). Soliton is not liable to Customer or any third party for any delay of the start date of the Service unless such delay is caused by Soliton’s willful misconduct or gross negligence.

(e) Customer shall notify Soliton or the reseller if the Start Notice is not delivered to Customer by one (1) day prior to the Scheduled Start Date. If Customer fails to give this notification by the Scheduled Start Date, it is deemed that (i) the Start Notice has timely been delivered in accordance with Section 5(d) above; and (ii) the Service started on the Scheduled Start Date.

## **6. (Service Term and Termination)**

(a) The Service Term starts on the Start Date; provided that the Services are provided free of charge for the calendar month that the Start Date occurs. Where Customer purchases Licenses from Soliton, Soliton will issue invoices for the Service fees on a monthly basis. Where Customer purchases Licenses from Soliton, invoices will be issued in accordance with Customer's Agreement with the reseller. Customer may be invoiced initial costs, installation costs, configuration fees and other ancillary fees if separately agreed.

(b) The Service Term shall automatically renew for the same term and with the same terms and conditions as the immediately preceding term unless Customer gives Soliton or the reseller a notice of non-renewal at least thirty (30) days prior to the expiration of the Service Term; provided, however, that if Soliton or the reseller, by way of submitting a quote or any other means, notifies Customer of new terms and conditions applicable following the renewal no later than thirty (30) days prior to the expiration and subsequently the Service Term is automatically renewed, such new terms and conditions apply during such renewed term.

(c) If Customer intends to terminate all or part of the Licenses it has purchased, Customer shall notify Soliton of such intent at least thirty (30) days prior to the expiration of the Service Term. If Customer terminates all or a part of the Licenses it has purchased in the middle of the Service Term, no fees are prorated or refunded, and Customer is obligated to pay to Soliton or the reseller any unpaid fees, if any, for the entire Service Term.

(d) If Customer terminates all or a part of the Licenses it has purchased in accordance with Section 6(c) above, Customer shall pay to Soliton or the reseller all unpaid fees within thirty (30) days after such termination.

(e) Unless otherwise provided in the applicable Service Term, In no circumstances shall Soliton refund any fees or any other amount it has received for the Service.

(f) Customer shall cause Service Software to be uninstalled from all of its Service Devices no later than the earlier of expiration or early termination of the Service Term. If Customer fails to do so within thirty (30) days of the earlier of expiration or early termination of the Service Term, Customer shall pay to Soliton or the Reseller the fees for the period from such expiration or early termination through the last day of the month in which such uninstallation is completed at the monthly rate applicable as of such expiration or early termination.

(g) Subject to the terms of the DPA, Soliton is not obligated to return any data it has obtained with respect to Customer at the end of the Service; provided that, after termination or expiration of the Service Term, Soliton shall delete all Customer-related data stored in Soliton's Service System in accordance with the applicable Service Appendix. Data backup is Customer's responsibility.

## **7. (Addition or Reduction of Licenses)**

(a) Customer may purchase new Licenses or reduce the number of Licenses by terminating a part of the Licenses by giving notice to Soliton in advance; provided that no refund is made for the terminated Licenses, and Customer shall pay all unpaid fees for the remaining Service Term within thirty (30) days after such termination as provided in Section 6(d).).

(b) Customer shall promptly notify Soliton of any change of its company detail information registered at the beginning of the Service and thereafter (e.g. company name, address, contact person, email address, phone number). Soliton shall not be responsible or liable for any losses, damages, liabilities, claims, actions, costs or expenses in relation to or arising out of any discrepancy between the registered information and correct information, such as non-delivery of notice from Soliton to Customer.

## **8. (Termination)**

(a) Soliton may immediately terminate all or a part of the Licenses purchased by Customer on written notice if any of the following occurs with respect to Customer:

- (i) Customer breaches any of its provisions of the Agreement or these Terms and fails to cure such breach within twenty (20) days after receiving a notice from Soliton or the reseller;
- (ii) Customer (A) becomes insolvent, (B) is generally unable to pay, or fails to pay, its debts as they become due, (C) files, or has filed against it, a petition for voluntary or involuntary bankruptcy or pursuant to any other insolvency law, (D) makes or seeks to make a general assignment for the benefit of its creditors, or (E) applies for, or consents to, the appointment of a trustee, receiver or custodian for a substantial part of its property or business;
- (iii) A promissory note or check is dishonored or business with a bank or a clearinghouse is suspended;
- (iv) An administrative penalty, such as business suspension and cancellation of business license, permit or registration, is imposed on Customer; or
- (v) Customer adopts a resolution with regard to a material corporate change such as capital deduction, cessation of business, and dissolution;
- (vi) Any of the following turns out to be true or Soliton believes that any of the following is reasonably expected to occur with respect to Customer:
  - (A) The Order Form submitted by or for Customer contained any false information;
  - (B) Whether before or after the date of the Agreement, Customer has failed to pay any amount due to Soliton or its affiliate with respect to their product or service;
  - (C) Whether before or after the date of the Agreement, Customer has taken any action prohibited under Section 12 below;
  - (D) Continuation of provision of the Service to Customer could cause Soliton's or its affiliate's business and/or operation with respect to the Service to be significantly hampered;
  - (E) Any of Customer, Users or organizations by which any User is employed or otherwise retained, their parent company, subsidiary or other affiliate or their director, officer, employee or major shareholder or investor is or was affiliated with an organized crime group, a member (or a quasi-member) of an organized crime group, a company affiliated with an organized crime group, corporate racketeer, a group engaging in criminal activities under the pretext of conducting social campaigns or political activities, a crime group specialized in intellectual crimes or any other group similar to the foregoing (collectively, "**Anti-Social Forces**"); or

- (F) Any of Customer, Users or organizations by which any User is employed or otherwise retained, their parent company, subsidiary or other affiliate or their director, officer, employee or major shareholder or investor was or is an Anti-Social Force, has used or taken advantage of an Anti-Social Force, has taken any act of making violent demands using intimidation or violence in relation to any transaction, impairing the credibility of a counterparty, interfering with or obstruct another party's business, making unreasonable demands, or engaging in any other activity similar to the foregoing.

(b) In the event that Soliton terminates the Agreement or all or any part of Licenses it has purchased pursuant to Section 7(a) above, Customer shall immediately pay to Soliton all outstanding amount due to Soliton for entire the Service Term, and Soliton shall not be liable for any losses, damages, liabilities, claims, actions, costs or expenses arising out of or in relation to such termination.

## **9. (Support)**

(a) During the Service Term, Soliton shall, directly or through the reseller, provide Customer with technical information relating to the Service and answer technical inquiries and questions from Customer's Administrators.

(b) Inquiries and questions to be made under this Section shall be submitted to the email address or the website form notified by Soliton or the reseller in writing. Responses from Soliton will be made only during the Business Hours on Business Days; provided, however, that in the event that support for the Service is provided by a reseller in accordance with the Agreement between the reseller and Customer, the terms of such Agreement shall apply with regard to the manner in which inquiries and questions are submitted, support hours, any other terms and conditions (including restrictions and exceptions) of such support.

(c) Soliton is not obligated to respond to or answer any questions from any other persons than Customer's Administrators (e.g. questions directly sent by Users other than Customer's Administrators). Customer shall ensure that Customer's Administrator who contacts Soliton for the support has basic knowledge of how to use the Service and its system and technical expertise and knowledge sufficient to manage and operate the Service's systems. In addition, the scope of such support service Soliton provides is limited to questions and problems which would not be resolved by referring to the manuals provided by Soliton.

(d) The language to be used for the support is English. However, some documents and other materials provided by Soliton may be written in other languages. If there is any separate agreement between Customer and the reseller, the reseller may provide support in a language other than English.

(e) It is Customer's responsibility to diagnose the problem at issue and identify whether it is due to Customer's environment or the Service System or Service Software. Customer shall also provide information to Soliton and conduct additional investigation as requested by Soliton in relation to the support.

(f) It is Customer's responsibility and at Customer's expense to store and maintain the data it provides to Soliton and any other data and materials necessary to restore Customer's own configurations.

(g) Soliton does not warrant or guarantee that the Service properly works and operates on Customers or each User's environment or that the Service performs as described in the Service's specifications on such environment. Accordingly, the method and scope of Soliton's investigation of

Customer's problem that has occurred in the course of using the Service and those of any other support provided by Soliton will be determined by Soliton at its sole discretion.

(h) Soliton reserves the right to close its support for any problem reported by Customer if Soliton concludes that it is impossible to identify the cause of such problem due to lack of information necessary for investigation, impossibility to replicate the problem or any other reason.

(i) Soliton does not warrant or guarantee that the Service works or operates properly regardless of an update made to the operation system on which the Service Software is installed or settings of other software installed on the Service Device. Accordingly, Soliton's support does not warrant or guarantee that it is able to identify the cause of a problem that occurs on Customer's or User's environment or it always resolves such problem by providing an update to the Service Software or any other means.

(j) In the event that Customer suffers any damage or loss due to the technical information or support provided by Soliton, Soliton will make commercially reasonable efforts to resolve the issue, problem or error caused thereby. NOTWITHSTANDING THE FOREGOING, SOLITON DOES NOT GUARANTEE THAT IT MAY RESOLVE THE ISSUE, PROBLEM OR ERROR, AND IN NO EVENT SHALL SOLITON INDEMNIFY OR DEFEND CUSTOMER AGAINST ANY LOSSES, DAMAGES, LIABILITIES, CLAIMS, ACTIONS, COSTS OR EXPENSES ARISING OUT OF OR IN RELATION TO SUCH ISSUE, PROBLEM OR ERROR.

(k) The following are not included in Soliton's support to be provided hereunder:

- (i) Visit to Customer's site, participation in any meeting with Customer, or preparation of any report;
- (ii) Restoration of Customer's or User's environment; and
- (iii) Any other support not expressly provided herein.

#### **10. (Change to and Discontinuation of Service)**

(a) Soliton reserves the right to change the Service in its sole discretion by notifying Customer of its intent to make such change, the details of such change and its effective date through its webpage and/or by email to the email address registered by Customer or by the reseller for Service-related communication.

(b) Soliton reserves the right to discontinue the Service in its sole discretion by giving notice to Customer or the reseller in accordance with the applicable Service Appendix. In this case, Soliton's sole responsibility and liability are to refund to Customer or the reseller, as the case may be, the part of the fees corresponding to the remaining portion of the Service Term after the discontinuation. SOLITON IS NOT RESPONSIBLE TO PROVIDE OR PROPOSE ANY ALTERNATIVE SERVICE OR LIABLE FOR ANY LOSSES, DAMAGES, LIABILITIES, CLAIMS, ACTIONS, COSTS OR EXPENSES ARISING OUT OF OR IN RELATION TO SUCH DISCONTINUATION.

(c) Soliton may change or discontinue the Service without taking the procedures set out in the foregoing Sections in the case of emergency or where Soliton considers doing so is reasonably required given the circumstances.

#### **11. (Warranty and Disclaimer)**

(a) Soliton shall monitor the Service System's operation in accordance with the applicable Service Appendix.

(b) Soliton may, from time to time, temporarily suspend the Service System for scheduled maintenance, test, check and other purposes necessary to provide the Service in accordance with the applicable Service Appendix; provided, however, that Soliton may suspend the Service in a manner not set out in the applicable Service Appendix where Soliton considers such action is urgently needed.

(c) Soliton shall provide Customer or the reseller with information on system failures with regard to the Service System through its website and/or by email to the email address registered by Customer or by a reseller from which Customer has purchased Licenses for Service-related communication.

(d) Customer shall, and shall cause Users to, install the Service Software (including its updates) to the Service Devices as necessary at its responsibility and expense. Upon such installation, Customer is deemed to have acknowledged the specifications of the Service Software and accepted and agreed to the terms of the applicable End User License Agreements. SOLITON IS NOT LIABLE FOR ANY LOSSES, DAMAGES, LIABILITIES, CLAIMS, ACTIONS, COSTS OR EXPENSES INCURRED OR SUFFERED BY CUSTOMER OR ANY USER IN CONNECTION WITH THEIR USE OF THE SERVICE SOFTWARE.

(e) SOLITON IS NOT LIABLE FOR ANY LOSSES, DAMAGES, LIABILITIES, CLAIMS, ACTIONS, COSTS OR EXPENSES ARISING OUT OF OR IN RELATION TO ANY IMPROPER USE OR UNAUTHORIZED USE OF USER IDS OR PASSWORDS PROVIDED TO CUSTOMER FOR THE SERVICE IF SUCH IMPROPER USE OR UNAUTHORIZED USE IS NOT ATTRIBUTABLE TO SOLITON.

(f) TO THE EXTENT PERMITTED BY APPLICABLE LAW, SOLITON IS NOT LIABLE FOR ANY LOSSES, DAMAGES, LIABILITIES, CLAIMS, ACTIONS, COSTS OR EXPENSES ARISING OUT OF OR IN RELATION TO ANY LEAKAGE OF CUSTOMER'S OR USER'S INFORMATION VIA NOTIFICATIONS SENT BY SOLITON, WHETHER OR NOT SENT BY THE SERVICE SYSTEM AUTOMATICALLY, IN CONNECTION WITH THE SERVICE UNLESS SUCH LEAKAGE IS CAUSED BY SOLITON'S WILLFUL MISCONDUCT OR GROSS NEGLIGENCE.

(g) Customer acknowledges and agrees that the Service is provided "as is", computers and electronic communication system are not perfect or error-free, and there may be downtime while using the Service. SOLITON MAKES NO WARRANTY OF ANY KIND THAT THE SERVICE OR THE SERVICE DEVICES WILL OPERATE WITHOUT INTERRUPTION OR ERROR-FREE OR DELAY-FREE.

(h) SOLITON IS NOT RESPONSIBLE OR LIABLE FOR ANY LOSSES, DAMAGES, LIABILITIES, CLAIMS, ACTIONS, COSTS OR EXPENSES ARISING OUT OF OR IN RELATION TO LOSS OF INFORMATION REGISTERED OR STORED ON THE SERVICE SYSTEM BY CUSTOMER UNLESS IT IS CAUSED BY SOLITON'S WILLFUL MISCONDUCT OR GROSS NEGLIGENCE.

(i) SOLITON IS NOT RESPONSIBLE OR LIABLE FOR ANY LOSSES, DAMAGES, LIABILITIES, CLAIMS, ACTIONS, COSTS OR EXPENSES IF CUSTOMER OR USERS ARE UNABLE TO USE THE SERVICE DUE TO ANY REASON ATTRIBUTABLE TO CUSTOMER'S, INTERNET PROVIDERS' OR ANY OTHER THIRD PARTY'S SYSTEM, NETWORK OR SERVICE DEVICES OVER WHICH SOLITON HAS NO CONTROL.

(j) SUBJECT TO THE TERMS OF THE DPA, SOLUTION MAKES NO WARRANTY OR REPRESENTATION AS TO THE ACCURACY, INTEGRITY OR QUALITY OF THE SERVICE OR INFORMATION OR DATA OBTAINED BY CUSTOMER IN THE COURSE OF THE USE OF THE SERVICE.

(k) Soliton represents and warrants that it has the power and authority to perform the Service in accordance with these Terms and that any use of the Service in accordance with these Terms does not infringe any third party's copyrights or any other proprietary rights or intellectual property rights; PROVIDED, HOWEVER, THAT SOLITON IS NOT LIABLE FOR ANY LOSSES, DAMAGES, LIABILITIES, CLAIMS, ACTIONS, COSTS OR EXPENSES IF CUSTOMER USES THE SERVICE IN ANY MANNER NOT CONSISTENT WITH

OR IN VIOLATION OF THE AGREEMENT, THE LICENSES, THESE TERMS OR THE APPLICABLE END USER LICENSE AGREEMENTS OF THE SERVICE SOFTWARE.

(l) Except for the limited rights and licenses expressly granted under the Agreement and the Licenses, these Terms and the applicable End User License Agreements of the Service Software, nothing in the Agreement, the Licenses or these Terms grants or assigns to Customer any copyright or other intellectual property rights or other right, title or interest in connection with the Service.

(m) Soliton does not warrant or guarantee that any confidential or personal data collected in relation to the Service will be protected by using the Service or that the Service prevents all information leakage or other types of security incidents.

(n) Soliton makes no warranty or representation that the Service or the Service System's functions satisfy all of Customer's needs or provide a perfect protection against malware, malicious attack or any other threats.

(o) IN NO EVENT SHALL SOLITON LIABLE FOR ANY LOSSES, DAMAGES, LIABILITIES, CLAIMS, ACTIONS, COSTS OR EXPENSES ARISING OUT OF OR IN RELATION TO ANY FAILURE OR INCIDENT THAT OCCURS TO A SERVICE, HARDWARE OR SOFTWARE OWNED OR PROVIDED BY CUSTOMER OR A THIRD PARTY IN CONNECTION WITH THE SERVICE.

(p) IN NO EVENT SHALL SOLITON NOT LIABLE FOR ANY LOSSES, DAMAGES, LIABILITIES, CLAIMS, ACTIONS, COSTS OR EXPENSES INCURRED OR ARISING OUT AS A RESULT OF CUSTOMER OR USER NOT HAVING FOLLOWED INSTRUCTIONS CONTAINED IN THE SERVICE'S MANUALS OR OTHERWISE GIVEN BY SOLITON.

(q) SOLITON IS NOT LIABLE FOR ANY LOSSES, DAMAGES, LIABILITIES, CLAIMS, ACTIONS, COSTS OR EXPENSES ARISING OUT OF OR IN RELATION TO CUSTOMER'S OWN BREACH OF ANY TERM OR CONDITION OF THE AGREEMENT OR THESE TERMS.

(r) EXCEPT FOR THE WARRANTY EXPRESSLY SET FORTH IN THE AGREEMENT, THESE TERMS OF THE APPLICABLE END USER LICENSE AGREEMENTS OF THE SERVICE SOFTWARE, SOLITON MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE SERVICE OR THE SERVICE SOFTWARE, INCLUDING ANY (I) WARRANTY OF MERCHANTABILITY; OR (II) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.

(s) TO THE EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT IN THE CASE OF SOLITON'S WILLFUL CONDUCT OR GROSS NEGLIGENCE, IN NO EVENT SHALL SOLITON OR ITS AFFILIATES BE LIABLE UNDER THE AGREEMENT OR THESE TERMS TO CUSTOMER OR ANY THIRD PARTY FOR DIRECT, CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR ENHANCED DAMAGES, LOST PROFITS OR REVENUES, DIMINUTION IN VALUE, DATA LOSS OR DESTRUCTION, ERROR OR MALFUNCTION OF THE SERVICE DEVICES, ARISING OUT OF, RELATING TO, OR IN CONNECTION WITH ANY BREACH OF THE AGREEMENT OR THESE TERMS, ANY ERROR, ISSUE, FAILURE OR MALFUNCTION OF THE SERVICE, THE SERVICE SOFTWARE OR THE SERVICE SYSTEM REGARDLESS OF (A) WHETHER SUCH DAMAGES WERE FORESEEABLE, (B) WHETHER OR NOT SOLITON WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND (C) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED.

(t) TO THE EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT IN THE CASE OF SOLITON'S WILLFUL CONDUCT OR GROSS NEGLIGENCE, IN NO EVENT SHALL SOLITON'S AND ITS AFFILIATES' AGGREGATE



LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THESE TERMS, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO SOLITON PURSUANT TO THE AGREEMENT IN THE ONE MONTH PERIOD IN WHICH THE EVENT GIVING RISE TO THE CLAIM.

## **12. (Prohibited Acts)**

(a) Customer shall not, and shall cause Users not to, take any of the following acts or any other act that Soliton deems is similar thereto in relation to their use of the Service or permit any person to take any of such acts:

- (i) Modification to, or deletion or destruction of any information or data on the Service System, the Service Software or information on the Service's web administration page;
- (ii) Provision, sale, license, sublicense, publishing, assignment, transfer, distribution, reproduction, lease or rental of the Service Software to any person;
- (iii) Reverse engineering, decompiling or disassembling of the Service Software;
- (iv) Sending or embedding any malicious data, malware, virus or anything similar thereto to the Service System;
- (v) Any use or operation of or any input to the Service System in any manner that is not in consistent with the applicable manuals or Soliton's instructions;
- (vi) Any use of the Service in a manner against the public order;
- (vii) Any act that could harm or adversely affect the Service's, Soliton's or its affiliate's reputation;
- (viii) Any act that defames a third party or violates a third party's privacy;
- (ix) Sending of spams or similar emails;
- (x) Unlawfully uploading or registering any information regarding Customer, Soliton or Solitons' affiliates onto any website on the Internet using any function of the Service;
- (xi) Making a decision with regard to an individual based solely on automated processing, including profiling, of data collected or generated in connection with the Service which produces legal effects concerning that individual or similarly significantly affects that individual;
- (xii) Any other act that Soliton reasonably considers is inappropriate.

(b) Soliton reserves the right to manage, investigate or review all logs with regard to Customer's and User's use of the Service for the purposes of monitoring and detecting unauthorized or unlawful use or operation of or access to the Service System or on the Service's web administration page. Soliton may store such logs for the period Soliton considers is necessary; provided that such logs shall not include any information that identifies a particular person.

## **13. (Assignment)**

Customer shall not assign any of its rights or delegate any of its obligations under the Agreement, the Licenses and these Terms without the prior written consent of Soliton. To the extent permitted by

applicable law, Soliton may delegate, subcontract or outsource any of its obligations under the Agreement, the Licenses and these Terms to any third party, including its affiliates without Customer's consent.

#### **14. (Confidentiality)**

(a) Each of Soliton and Customer shall hold in confidence information disclosed by the other party and identified as confidential at the time of disclosure, which includes, but not limited to, business information and technical information ("**Confidential Information**"), and shall not use, reproduce or disclose to any third party such Confidential Information for any purpose other than these Terms or the Agreement. Notwithstanding the foregoing, Soliton may disclose Customer's Confidential Information to directors, officers and employees of Soliton and its subcontractors to which any of Soliton's obligations under the Agreement, the Licenses or these Terms is delegated in accordance with Section 13 above only to the extent necessary for performing its obligations under these Terms, the Licenses or the Agreement.

(b) Notwithstanding the foregoing, the confidentiality obligations under this Section 14 shall not apply to the following information:

- (i) Information the disclosure of which has been consented to by the disclosing party in writing;
- (ii) Information which is generally known to the public at the time of disclosure;
- (iii) Information which has become generally known to the public without the receiving party's fault;
- (iv) Information which the receiving party may prove has been held by the receiving party before receiving such information from the disclosing party; and
- (v) Information lawfully received from a third party who is authorized to disclose such information without any breach of any confidentiality obligation.

(c) Notwithstanding Sections 14(a) and (b) above, each party may disclose Confidential Information if and to the extent that such disclosure is required by law, regulation or the order or judgment of court, government authority a stock exchange; provided that the receiving party shall give prior notice to the disclosing party.

(d) The confidentiality obligations set out in this Section 13 shall survive for five (5) years from the expiration or termination of the Agreement and the Service.

#### **15. (Personal Data)**

(a) Soliton shall process all personal data (as defined in GDPR) or personal information (as defined in CPRA) collected by Soliton as part of the provision of the Service (the "**Provided Personal Data**") in accordance with the DPA. The terms of the DPA, to the extent applicable, are hereby incorporated herein by reference and the parties agree to the terms of the DPA.

(b) To the extent permitted by applicable law, Soliton may use statistical information generated based on the information received from Customer in the course of the provision of the Service (which source information may include Provided Personal Data) for the purposes of improvement and development of the Service and new products and services.

(c) To the extent permitted by applicable law, Customer agrees that Soliton may use Obtained Information (excluding Provided Personal Data but including statistic information) for purposes of

operation and improvement of the Service, development of new service, maintenance and support for the systems used for the Service and development of new functions.

(d) Customer shall, at its responsibility, obtain required consents with regard to use of Provided Personal Data necessary to use the Service.

(e) Customer shall indemnify, defend and hold harmless Soliton, its affiliates and their officers, directors and employees against any losses, damages, liabilities, claims, actions, costs or expenses arising out of or in relation to any claim or action by third party in relation to collection or use of Obtained Information (including Provided Personal Data) by Soliton in accordance with these Terms.

#### **16. (Notification of Security Incident)**

Subject to the terms of the DPA, as applicable, in the event that Soliton becomes aware of the occurrence of any security incident and such incident has caused or could cause any harm to Customer, Soliton shall notify Customer by email to the email address to the email address registered by Customer or by a reseller from which Customer has purchased Licenses for Service-related communication. This notification shall include the date and time of the incident, its potential impact and scope and information on the remedial actions.

#### **17. (Provision of Digital Evidence)**

It is Customer's responsibility to collect, use, retain and manage logs and other information which can be obtained by Customer as a part of the Service by referring to the manuals for the Service. Soliton is not obligated to provide Customer with any logs or any other digital or forensic evidence which cannot be obtained by Customer using the Service.

#### **18. (Anti-Social Force)**

(a) Customer represents and warrants to Soliton that any of Customer, Users or organizations by which any User is employed or otherwise retained, their parent company, subsidiary or other affiliate or their director, officer, employee or major shareholder or investor is not and will not an Anti-Social Force.

(b) If any person or entity listed in Section 18(a) above is found to be an Anti-Social Force or belong to an Anti-Social Force, Soliton may terminate the Agreement and the Licenses purchased by Customer immediately without giving notice to Customer.

(c) Soliton is not liable to Customer for any losses, damages, liabilities, claims, actions, costs or expenses arising out of or in relation to terminations under this Section.

(d) In the event of termination under this Section, Customer shall indemnify Soliton for any losses, damages, liabilities, claims, actions, costs or expenses arising out of or in relation to breach of this Section by Customer.

#### **19. (Force Majeure)**

(a) No party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, the Licenses or these Terms, for any failure or delay in fulfilling or performing any term of the Agreement, the Licenses or these Terms, when and to the extent such failure or delay is caused by or results from acts beyond the affected party's reasonable control, including, without limitation: (a) acts of God; (b) flood, fire, earthquake, public health emergency, pandemic, epidemic, or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest; (d) government order or law; (e) actions, embargoes, or blockades in effect on or after the date of the Agreement; (f) action by any governmental authority; (g) national or

regional emergency; (h) strikes, labor stoppages or slowdowns, or other industrial disturbances; (i) shortage of adequate power or transportation facilities.

(b) Soliton is not liable or responsible for any losses, damages, liabilities, claims, actions, costs or expenses or for Soliton's failure or delay in fulfilling or performing any term of the Agreement, the Licenses or these Terms arising out of or relating to any tortious act by a third party such as hacking or other unauthorized access to the Service System unless it involves Soliton's willful misconduct or gross negligence.

## **20. (Miscellaneous)**

(a) In the event that any party institutes any legal suit, action, or proceeding against the other party to enforce the covenants contained in the Agreement, the Licenses or these Terms (or obtain any other remedy arising out of or relating to the Agreement, the Licenses or these Terms, the prevailing party in the suit, action, or proceeding shall be entitled to receive, in addition to all other damages to which it may be entitled, the costs incurred by such party in conducting the suit, action, or proceeding, including reasonable attorneys' fees and expenses and court costs.

(b) If any term or provision of the Agreement, the Licenses or these Terms is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of the Agreement, the Licenses or these Terms or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, the court may modify the Agreement or these Terms so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

(c) The Agreement, the Licenses and these Terms, together with the applicable Service Appendix and any other documents incorporated herein or in the Agreement by reference, and all related exhibits and schedules, constitutes the sole and entire agreement of the parties to the Agreement with respect to the subject matter contained herein and therein, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter.

(d) Unless otherwise expressly provided herein or therein, the Agreement, the Licenses and these Terms may only be amended, modified, or supplemented by an agreement in writing signed by each party thereto.

(e) No waiver by any party of any of the provisions of the Agreement, the Licenses, or these Terms shall be effective unless explicitly set forth in writing and signed by the party so waiving. No waiver by any party shall operate or be construed as a waiver in respect of any failure, breach, or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from the Agreement, the Licenses or these Terms shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

(f) Customer agrees that irreparable damage would occur to Soliton if any provision of the Agreement, the Licenses or these Terms were not performed in accordance with the terms hereof and that Soliton shall be entitled to equitable relief, including injunctive relief or specific performance of the

terms of the Agreement, the Licenses and these Terms, in addition to any other remedy to which they are entitled at law or in equity.

(g) The Agreement, the Licenses and these Terms shall be binding upon and shall inure to the benefit of the parties to the Agreement and their respective permitted successors and permitted assigns.

(h) This Agreement and the Licenses are for the sole benefit of the parties thereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement, the Licenses or these Terms.

(i) This Agreement, the Licenses, these Terms and all related documents, and all matters arising out of or relating to the Agreement, the Licenses and these Terms, whether sounding in contract, tort, or statute, are governed by, and construed in accordance with, the laws of Japan, without giving effect to the conflict of laws provisions thereof to the extent such principles or rules would require or permit the application of the laws of any jurisdiction other than Japan.

(j) All disputes, controversies or differences arising out of or in connection with these Terms, Licenses or the Agreement shall be finally settled by arbitration in accordance with the Commercial Arbitration Rules of The Japan Commercial Arbitration Association. The place of the arbitration shall be Tokyo, Japan. The number of the arbitrators shall be one (1). The arbitral proceedings shall be conducted in English.