



**Last updated:** February 19, 2024

Please read these terms and conditions carefully before using Our Service.

This Standard Contract ("Agreement") is between You ("You" or "Customer") and the publisher ("CogniMind, LLC") from which You are procuring Offerings (defined below) and governs Your use of the Offerings purchased from CogniMind through the Azure Marketplace and AppSource Marketplace (collectively, "Marketplace").

This Agreement is the parties' entire agreement on this subject and merges and supersedes all related prior and contemporaneous agreements. By agreeing to these terms, you represent and warrant that You have the authority to accept this Agreement on behalf of You and Your organization, and You also agree to be bound by its terms. This Agreement applies to all Orders entered into under this Agreement. Capitalized terms have the meanings giving under Interpretations and Definitions.

Microsoft is the facilitator of the transaction between the Customer and CogniMind. Both parties acknowledge that Microsoft is not a party to this Agreement nor in anyway responsible for the parties' actions or obligations under this Agreement. Microsoft's relationship with the Customer and CogniMind are solely governed by Microsoft's respective agreements with those parties; Microsoft otherwise disclaims all liability resulting from this Agreement (including any Orders).

## Interpretation and Definitions

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### Interpretation

The words of which the initial letter is capitalized have meanings defined under the following conditions. The following definitions shall have the same meaning regardless of whether they appear in singular or in plural.

### Definitions

For the purposes of these Terms and Conditions:

**Application** means the software program provided by CogniMind, LLC downloaded by "You" on any electronic device or the Web Application accessed from "Any" electronic device, named VALKERIE™.

**Application Store** means the digital distribution service operated and developed by Microsoft (Azure Marketplace) or (AppSource Marketplace) in which the Application has been downloaded or subscribed collectively known as the Marketplace.

**Affiliate** means an entity that controls, is controlled by or is under common control with a party, where "control" means ownership of 50% or more of the shares, equity

interest or other securities entitled to vote for election of directors or other managing authority. Furthermore, any legal entity that controls, is controlled by, or is under common control with a party.

**Account** means a unique account created for “You” to access our “Service” or parts of our “Service”.

**Anti-Corruption Laws** means all laws against fraud, bribery, corruption, inaccurate books and records, inadequate internal controls, money-laundering, and illegal software, including the U.S. Foreign Corrupt Practices Act.

**Country** refers to: United States

**CogniMind, LLC** (referred to as either “CogniMind”, “We”, “Us” or “Our” in this Agreement) refers to CogniMind, LLC, 30 N. Gould St. Ste R, Sheridan, WY 82801.

**Content** refers to content such as text, images, or other information that can be posted, uploaded, linked to or otherwise made available by “You”, regardless of the form of that content.

**Control** means ownership of more than a 50% interest of voting securities in an entity or the power to direct the management and policies of an entity.

**Confidential Information** is defined in the “Confidentiality” section.

**Customer Data** means all data, including all text, sound, software, image, or video files that are provided to CogniMind or its Affiliates by, or on behalf of, Customer and its Affiliates through use of the Offering. “Customer Data” does not include “Support Data”. “Support Data” means all data, including all text, sound, video, image files, or software, that are provided to CogniMind by or on behalf of “Customer” (or that Customer authorizes CogniMind to obtain from an Offering) through an engagement with CogniMind to obtain technical support for the “Offering” covered under this Agreement.

**Data Protection Law** means any law applicable to CogniMind or Customer, relating to data security, data protection and/or privacy, including Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to processing of personal data and the free movement of that data (“GDPR”), and any implementing, derivative or related legislation, rule, regulation, and regulatory guidance, as amended, extended, repealed and replaced, or re-enacted.

**Documentation** means all user manuals, handbooks, training material, requirements, and other written or electronic materials CogniMind makes available for, or that result from use of, the “Offering”.

**Device** means any device that can access the “Service” such as a computer, a cellphone, or a digital tablet.

**End User** means any person “Customer” CogniMind permits to use an “Offering” or access “Customer Data”.

**Feedback** means feedback, innovations or suggestions sent by “You” regarding the attributes, performance or features of our “Service” including ideas, suggestions, comments, input, or know-how, in any form, that one party provides to the other in relation to recipient’s “Confidential Information”, products, or services. Feedback

does not include sales forecasts, future release schedules, marketing plans, financial results, and high-level plans (e.g., - 10 -feature lists) for future products.

**Free Trial** refers to a limited period of time that may be free when purchasing a “Subscription”.

**Goods** refer to the items offered for sale on the “Service”.

**In-app Purchase** refers to the purchase of a product, item, service, or “Subscription” made through the “Application” and subject to these “Terms and Conditions” and/or the “Application Store’s” own terms and conditions.

**Insolvent** means admitting in writing the inability to pay debts as they mature; making a general assignment for the benefit of creditors; suffering or permitting the appointment of a trustee or receiver for all or any of its (i.e., the non-terminating party’s) assets, unless such appointment is vacated or dismissed within 60 days from the date of appointment; filing (or having filed) any petition as a debtor under any provision of law relating to insolvency, unless such petition and all related proceedings are dismissed within 60 days of such filing; being adjudicated insolvent or bankrupt; having wound up or liquidated; or ceasing to carry on business.

**Offering** means all services, websites (including hosting), solutions, platforms, and products identified in an “Order” and that CogniMind makes available under or in relation to this Agreement, including the software, equipment, technology, and services necessary for CogniMind to provide the foregoing. “Offering” availability may vary by region.

**Orders** means an ordering document used to transact the “Offering” via the Marketplace.

**Personal Data** means any information relating to an identified or identifiable natural person.

**Representatives** means a party’s employees, “Affiliates”, contractors, advisors and consultants.

**Service** refers to the “Application” or the “Website” or both.

**Standard Contractual Clauses** means the standard data protection clauses for the transfer of personal data to processors established in third countries which do not ensure an adequate level of data protection, as described in Article 46 of the GDPR.

**Subcontractor** means any third party: (1) to whom CogniMind delegates its obligations under this “Agreement”, including a CogniMind “Affiliate” not contracting directly with “Customer” through an “Order”; or (2) who, in performing under a contract between it and CogniMind or a CogniMind “Affiliate”, stores, collects, transfers or otherwise processes “Personal Data” (obtained or accessed in connection with performing under this “Agreement”) or other “Customer Confidential Information”.

**Subscriptions** refer to the services or access to the “Service” offered on a subscription basis by CogniMind to “You”.

**Terms and Conditions** (also referred as “Terms”) mean these “Terms and Conditions” that form the entire agreement between “You” and CogniMind regarding the use of the “Service”.

**Third-party Service** means any services or content (including data, information, products, or services) provided by a third-party that may be displayed, included or made available by the “Service”.

**Use** means to copy, download, install, run, access, display, use or otherwise interact with.

**Website** refers to VALKERIE™, accessible from <https://www.valkerie.com> or any subdomain thereof, such as customer.valkerie.com.

**You** mean the individual accessing or using the “Service”, or CogniMind, or other legal entity on behalf of which such individual is accessing or using the Service, as applicable.

## Acknowledgment

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These are the Terms and Conditions governing the use of this Service and the agreement that operates between You and CogniMind. These Terms and Conditions set out the rights and obligations of all users regarding the use of the Service.

Your access to and use of the Service is conditioned on Your acceptance of and compliance with these Terms and Conditions. These Terms and Conditions apply to all visitors, users and others who access or use the Service.

By accessing or using the Service You agree to be bound by these Terms and Conditions. If You disagree with any part of these Terms and Conditions then You may not access the Service.

You represent that You are over the age of 18. CogniMind does not permit those under 18 to use the Service.

Your access to and use of the Service is also conditioned on Your acceptance of and compliance with the Privacy Policy of CogniMind. Our Privacy Policy describes Our policies and procedures on the collection, use and disclosure of Your personal information when You use the Application or the Website and tells You about Your privacy rights and how the law protects You. Please read Our Privacy Policy carefully before using Our Service.

# Licensing to Offerings

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## License Grant

Offerings are licensed and not sold. Upon Microsoft's acceptance of an Order, and subject to Customer's compliance with this Agreement, CogniMind grants Customer a non-exclusive and limited license to use the ordered Offerings. These licenses are solely for Customer's own use and business purposes and are nontransferable except as expressly permitted under this Agreement or applicable law.

## Duration of Licenses

Licenses granted on a subscription basis expire at the end of the applicable subscription period set forth in the Order, unless renewed. Licenses granted for metered Offerings billed periodically based on usage continue as long as Customer continues to pay for its usage of the Offerings. All other licenses become perpetual upon payment in full.

## End Users

Customer will control access to and use of the Offerings by End Users and is responsible for any use of the Offerings that does not comply with this Agreement.

## Affiliates

Customer may order Offerings for use by its Affiliates. If it does, the licenses granted to Customer under this Agreement will apply to such Affiliates, but Customer will have the sole right to enforce this Agreement against CogniMind. Customer will remain responsible for all obligations under this Agreement and for its Affiliates' compliance with this Agreement and any applicable Order(s).

## Reservation of Rights

CogniMind reserves all rights not expressly granted in this Agreement. Offerings are protected by copyright and other intellectual property laws and international treaties. No rights will be granted or implied by waiver or estoppel. Rights to access or use Offerings on a device do not give Customer any right to implement CogniMind's patents or other intellectual property in the device itself or in any other software or devices.

## Restriction

Except as expressly permitted in this Agreement, Documentation, or an Order, Customer must not (and is not licensed to):

(1) copy, modify, reverse engineer, decompile, or disassemble any Offering, or attempt to do

so;

(2) install or use any third-party software or technology in any way that would subject

CogniMind's intellectual property or technology to any other license terms;

(3) work around any technical limitations in an Offering or restrictions in Documentation;

(4) separate and run parts of an Offering on more than one device;

(5) upgrade or downgrade parts of an Offering at different times;

(6) use an Offering for any unlawful purpose;

(7) transfer parts of an Offering separately; or

(8) distribute, sublicense, rent, lease, or lend any Offerings, in whole or in part, or use them to offer hosting services to a third party.

## License Transfers

Customer may only transfer fully paid, perpetual licenses to

(1) an Affiliate or

(2) a third party solely in connection with the transfer of hardware to which, or employees to whom, the licenses have been assigned as part of

(A) a divestiture of all or part of an Affiliate or

(B) a merger involving Customer or an Affiliate. Upon such transfer, Customer must uninstall and discontinue using the licensed Offering and render any copies unusable. Customer must notify CogniMind of a License transfer and provide the transferee a copy of this Agreement and any other documents necessary to show the scope, purpose, and limitations of the licenses transferred. Attempted license transfers that do not comply with this section are void.

## Feedback

Any Feedback is given voluntarily, and the provider grants to the recipient, without charge, a non-exclusive license under provider's owned or controlled non-patent intellectual property rights to make, use, modify, distribute, and commercialize the Feedback as part of any of recipient's products and services, in whole or in part and without regard to whether such Feedback is marked or otherwise designated by the provider as confidential. The provider retains all other rights in any Feedback and limits the rights granted under this section to licenses under its owned or controlled non-patent intellectual property rights in the Feedback (which do not extend to any technologies that may be necessary to make or use any product or service that incorporates, but are not expressly part of, the Feedback, such as enabling technologies).

# Placing Orders for Goods

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By placing an Order for Goods through the Service, You warrant that You are legally capable of entering into binding contracts.

## Your Information

If You wish to place an Order for Goods available on the Service, You may be asked to supply certain information relevant to Your Order including, without limitation, Your name, Your email, Your phone number, Your billing address, and Your shipping information.

You represent and warrant that: (i) You have the legal right to use any credit or debit card(s) or other payment method(s) in connection with any Order; and that (ii) the information You supply to us is true, correct and complete.

By submitting such information, You grant us the right to provide the information to payment processing third parties for purposes of facilitating the completion of Your Order.

# User Accounts

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When You create an account with Us, You must provide Us information that is accurate, complete, and current at all times. Failure to do so constitutes a breach of the Terms, which may result in immediate termination of Your account on Our Service.

You are responsible for safeguarding the password that You use to access the Service and for any activities or actions under Your password, whether Your password is with Our Service or a Third-Party Service like Azure AD.

You agree not to disclose Your password to any third party. You must notify Us immediately upon becoming aware of any breach of security or unauthorized use of Your account.

You may not use as a username the name of another person or entity or that is not lawfully available for use, a name or trademark that is subject to any rights of another person or entity other than You without appropriate authorization, or a name that is otherwise offensive, vulgar, or obscene.

# Content

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## Your Right to Post Content

Our Service allows You to post Content. You are responsible for the Content that You post to the Service, including its legality, reliability, and appropriateness.

By posting Content to the Service, You grant Us the right and license to use, modify, publicly perform, publicly display, reproduce, and distribute such Content on and through the Service. You retain any and all of Your rights to any Content You submit, post or display on or through the Service and You are responsible for protecting those rights. You agree that this license includes the right for Us to make Your Content available to other users of the Service, who may also use Your Content subject to these Terms.

You represent and warrant that: (i) the Content is Yours (You own it) or You have the right to use it and grant Us the rights and license as provided in these Terms, and (ii) the posting of Your Content on or through the Service does not violate the privacy rights, publicity rights, copyrights, contract rights or any other rights of any person.

## Content Restrictions

CogniMind is not responsible for the content of the Service's users. You expressly understand and agree that You are solely responsible for the Content and for all activity that occurs under Your account, whether done so by You or any third person using Your account.

You may not transmit any Content that is unlawful, offensive, upsetting, intended to disgust, threatening, libelous, defamatory, obscene or otherwise objectionable. Examples of such objectionable Content include, but are not limited to, the following:

- Unlawful or promoting unlawful activity.
- Defamatory, discriminatory, or mean-spirited content, including references or commentary about religion, race, sexual orientation, gender, national/ethnic origin, or other targeted groups.
- Spam, machine – or randomly – generated, constituting unauthorized or unsolicited advertising, chain letters, any other form of unauthorized solicitation, or any form of lottery or gambling.
- Containing or installing any viruses, worms, malware, trojan horses, or other content that is designed or intended to disrupt, damage, or limit the functioning of any software, hardware, or telecommunications equipment or to damage or obtain unauthorized access to any data or other information of a third person.

- Infringing on any proprietary rights of any party, including patent, trademark, trade secret, copyright, right of publicity or other rights.
- Impersonating any person or entity including CogniMind and its employees or representatives.
- Violating the privacy of any third person.
- False information and features.

The CogniMind reserves the right, but not the obligation, to, in its sole discretion, determine whether or not any Content is appropriate and complies with this Terms, refuse, or remove this Content. CogniMind further reserves the right to make formatting and edits and change the manner of any Content. CogniMind can also limit or revoke the use of the Service if You post such objectionable Content. As the CogniMind cannot control all content posted by users and/or third parties on the Service, You agree to use the Service at Your own risk. You understand that by using the Service You may be exposed to content that You may find offensive, indecent, incorrect, or objectionable, and You agree that under no circumstances will the CogniMind be liable in any way for any content, including any errors or omissions in any content, or any loss or damage of any kind incurred as a result of Your use of any content.

### Content Backups

Although regular backups of Content are performed, the SolonTek Corporation does not guarantee there will be no loss or corruption of data.

Corrupt or invalid backup points may be caused by, without limitation, Content that is corrupted prior to being backed up or that changes during the time a backup is performed.

The SolonTek Corporation will provide support and attempt to troubleshoot any known or discovered issues that may affect the backups of Content. But You acknowledge that the SolonTek Corporation has no liability related to the integrity of Content or the failure to successfully restore Content to a usable state.

You agree to maintain a complete and accurate copy of any Content in a location independent of the Service.

## Copyright Policy

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### Intellectual Property Infringement

We respect the intellectual property rights of others. It is Our policy to respond to any claim that Content posted on the Service infringes a copyright or other intellectual property infringement of any person.

If You are a copyright owner, or authorized on behalf of one, and You believe that the copyrighted work has been copied in a way that constitutes copyright infringement that is taking place through the Service, You must submit Your notice in writing to the attention of our copyright agent via email at [dmca@solontek.us](mailto:dmca@solontek.us) and include in Your notice a detailed description of the alleged infringement.

You may be held accountable for damages (including costs and attorneys' fees) for misrepresenting that any Content is infringing Your copyright.

### **DMCA Notice and DMCA Procedure for Copyright Infringement Claims**

You may submit a notification pursuant to the Digital Millennium Copyright Act (DMCA) by providing our Copyright Agent with the following information in writing (see 17 U.S.C 512(c)(3) for further detail):

- An electronic or physical signature of the person authorized to act on behalf of the owner of the copyright's interest.
- A description of the copyrighted work that You claim has been infringed, including the URL (i.e., web page address) of the location where the copyrighted work exists or a copy of the copyrighted work.
- Identification of the URL or other specific location on the Service where the material that You claim is infringing is located.
- Your address, telephone number, and email address.
- A statement by You that You have a good faith belief that the disputed use is not authorized by the copyright owner, its agent, or the law.
- A statement by You, made under penalty of perjury, that the above information in Your notice is accurate and that You are the copyright owner or authorized to act on the copyright owner's behalf.

You can contact our copyright agent via email at [dmca@solontek.us](mailto:dmca@solontek.us). Upon receipt of a notification, the SolonTek Corporation will take whatever action, in its sole discretion, it deems appropriate, including removal of the challenged content from the Service.

## **Intellectual Property**

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The Service and its original content (excluding Content provided by You or other users), features and functionality are and will remain the exclusive property of the SolonTek Corporation and its licensors.

The Service is protected by copyright, trademark, and other laws of both the Country and foreign countries.

Our trademarks and trade dress may not be used in connection with any product or service without the prior written consent of the SolonTek Corporation.

# Your Feedback to Us

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You assign all rights, title, and interest in any Feedback You provide SolonTek Corporation. If for any reason such assignment is ineffective, You agree to grant SolonTek Corporation a non-exclusive, perpetual, irrevocable, royalty free, worldwide right and license to use, reproduce, disclose, sub-license, distribute, modify and exploit such Feedback without restriction. Any Feedback is given voluntarily, and the provider grants to the recipient, without charge, a non-exclusive license under provider's owned or controlled non-patent intellectual property rights to make, use, modify, distribute, and commercialize the Feedback as part of any of recipient's products and services, in whole or in part and without regard to whether such Feedback is marked or otherwise designated by the provider as confidential. The provider retains all other rights in any Feedback and limits the rights granted under this section to licenses under its owned or controlled non-patent intellectual property rights in the Feedback (which do not extend to any technologies that may be necessary to make or use any product or service that incorporates, but are not expressly part of, the Feedback, such as enabling technologies).

## Links to Other Websites

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Our Service may contain links to third-party web sites or services that are not owned or controlled by the SolonTek Corporation.

The SolonTek Corporation has no control over, and assumes no responsibility for, the content, privacy policies, or practices of any third-party web sites or services. You further acknowledge and agree that the SolonTek Corporation shall not be responsible or liable, directly, or indirectly, for any damage or loss caused or alleged to be caused by or in connection with the use of or reliance on any such content, goods or services available on or through any such web sites or services.

We strongly advise You to read the terms and conditions and privacy policies of any third-party web sites or services that You visit.

## Term & Termination

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### Term

This Agreement is effective until terminated by a party, as described below. The term for each Order will be set forth therein.

### Termination without Cause

Unless otherwise set forth in an Order, either party may terminate this Agreement or any Order without cause on 60 days' notice. Termination without cause will not affect Customer's perpetual licenses, and licenses granted on a subscription basis will continue for the duration of the subscription period(s), subject to the terms of this Agreement. SolonTek Corporation will not provide refunds or credits for any partial subscription period(s) if the Agreement or an Order is terminated without cause.

### Termination for Cause

Without limiting other remedies, it may have, either party may terminate this Agreement or any Order immediately on notice if (i) the other party materially breaches the Agreement or an Order and fails to cure the breach within 30 days after receipt of notice of the breach; or (ii) the other party becomes Insolvent.

Upon such termination, the following will apply:

- (1) All licenses granted under this Agreement will terminate immediately except for fully paid, perpetual licenses.
- (2) All amounts due under any unpaid invoices will become due and payable immediately. For metered Offerings billed periodically based on usage, Customer must immediately pay for unpaid usage as of the termination date.
- (3) If SolonTek Corporation is in breach, Customer will receive a credit for any subscription fees, including amounts paid in advance for unused consumption for any usage period after the termination date.

### Suspension

SolonTek Corporation may suspend use of the Offering without terminating this Agreement during any period of material breach. SolonTek Corporation will give Customer reasonable notice before suspending the Offering. Suspension will only be to the extent reasonably necessary.

### Survival

The terms of this Agreement, including the applicable Order, that are likely to require performance, or have application to events that may occur, after the termination or expiration of this Agreement or any Order, will survive termination or expiration, including all indemnity obligations and procedures.

# Miscellaneous

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## Entire Agreement

This Agreement supersedes all prior and contemporaneous communications, whether written or oral, regarding the subject matter covered in this Agreement. If there is a conflict between any parts of this Agreement, the following order of precedence will apply:

- (1) Order;
- (2) this Agreement;
- (3) Service Level Agreement (SLA); and
- (4) Documentation.

## Independent Contractors

The parties are independent contractors. Customer and SolonTek Corporation each may develop products independently without using the other's Confidential Information.

## Agreement not Exclusive

Customer is free to enter into agreements to license, use, and promote the services of others.

## Amendments

Unless otherwise agreed in a writing signed by both parties, SolonTek Corporation will not change the terms of this Agreement, including privacy terms, during the term of this Agreement.

## Assignment

Either party may assign this Agreement to an Affiliate, but it must notify the other party in writing of the assignment. Customer consents to the assignment to an Affiliate or third-party, without prior notice, of any rights SolonTek Corporation may have under this Agreement to receive payment and enforce Customer's payment obligations, and all assignees may further assign such rights without further consent. Furthermore, either party may assign this Agreement without the consent of the other party in connection with a merger, reorganization, acquisition, or other transfer of all or substantially all of such party's assets. Any other proposed assignment of this Agreement must be approved by the non-assigning party in writing. Assignment will not relieve the assigning party of its obligations under the assigned Agreement. Any attempted assignment without required approval will be void.

## **Severability**

If any part of this Agreement is held to be unenforceable, the rest of the Agreement will remain in full force and effect.

## **Waiver**

Failure to enforce any provision of this Agreement will not constitute a waiver. Any waiver must be in writing and signed by the waiving party.

## **No Third-Party Beneficiaries**

This Agreement does not create any third-party beneficiary rights except as expressly provided by its terms.

## **Notices**

Notices must be in writing and will be treated as delivered on the date received at the address, date shown on the return receipt, email transmission date, or date on the courier or fax confirmation of delivery. Notices to SolonTek Corporation must be sent to the address stated in the Order. Notices to Customer will be sent to the individual at the address Customer identifies on its account as its contact for notices. SolonTek Corporation may send notices and other information to Customer by email or other electronic form.

## **Order of Precedence**

The body of this Agreement will take precedence over any conflicting terms in other documents that are part of this Agreement that are not expressly resolved in those documents. Terms in an amendment control over the amended document and any prior amendments concerning the same subject matter.

## **Government Procurement Rules**

By accepting this Agreement, Customer represents and warrants that:

- (1) it has complied and will comply with all applicable government procurement laws and regulations;
- (2) it is authorized to enter into this Agreement; and
- (3) this Agreement satisfies all applicable procurement requirements.

## **Compliance with Laws**

SolonTek Corporation will comply with all laws and regulations applicable to its provision of the Offerings. SolonTek Corporation will obtain and maintain any approvals, licenses, filings, or registrations necessary to its performance, and will comply with all law (including law related to export, corruption, money laundering, or any combination of these). Customer must also comply with laws applicable to their use of the Offerings.

## Construction

Neither party has entered this Agreement in reliance on anything not contained or incorporated in it. This Agreement is in English only. Any translation of this Agreement into another language is for reference only and without legal effect. If a court of competent jurisdiction finds any term of the Agreement unenforceable, the Agreement will be deemed modified as necessary to make it enforceable, and the rest of the Agreement will be fully enforced to effect the parties' intent. Lists of examples following "including", "e.g.", "for example", or the like are interpreted to include "without limitation," unless qualified by words such as "only" or "solely." This Agreement will be interpreted according to its plain meaning without presuming that it should favor either party. Unless stated or context requires otherwise:

- (1) all internal references are to this Agreement and its parties;
- (2) all monetary amounts are expressed and, if applicable, payable, in U.S. dollars;
- (3) URLs are understood to also refer to successors, localizations, and information or resources linked from within websites at those URLs;
- (4) a party's choices under this Agreement are in its sole discretion, subject to any implied duty of good faith;
- (5) "written" or "in writing" means a paper document only, except where email is expressly authorized;
- (6) "days" means calendar days;
- (7) "may" means that the applicable party has a right, but not a concomitant duty,
- (8) "partner," if used in this Agreement or related documents, is used in its common, marketing sense and does not imply a partnership;
- (9) "current" or "currently" means "as of the Effective Date" but "then-current" means the present time when the applicable right is exercised or performance rendered or measured;
- (10) "notify" means to give notice under subsection
  - (i) above; and
- (11) a writing is "signed" when it has been hand-signed (i.e., with a pen) or signed via an electronic signature service by a duly authorized representative of the signing party.

# Applicable Law

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## United States and Canada

If you acquired the Offering in the United States or Canada, the laws of the state or province where you live (or, if a business, where your principal place of business is located) govern the interpretation of these terms, claims for breach of them, and all other claims (including consumer protection, unfair competition, and tort claims), regardless of conflict of law principles.

## Outside the United States and Canada

if you acquired the Offering in any other country, the laws of that country apply.

# Disputes Resolution

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If You have any concern or dispute about the Service, You agree to first try to resolve the dispute informally by contacting the SolonTek Corporation.

# For European Union (EU) Users

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If You are a European Union consumer, You will benefit from any mandatory provisions of the law of the country in which You are resident in.

# United States Federal Government End Use Provisions

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If You are a U.S. federal government end user, our Service is a "Commercial Item" as that term is defined at 48 C.F.R. §2.101.

# United States Legal Compliance

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You represent and warrant that

- (i) You are not located in a country that is subject to the United States government embargo, or that has been designated by the United States government as a "terrorist supporting" country, and

- (ii) You are not listed on any United States government list of prohibited or restricted parties.

# Privacy

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## EU Standard Contractual Clauses

To the extent applicable, the parties will abide by the requirements of European Economic Area and Swiss data protection law regarding the collection, use, transfer, retention, and other processing of Personal Data from the European Economic Area and Switzerland. All transfers of Customer Data out of the European Union, European Economic Area, and Switzerland will be governed by the Standard Contractual Clauses, as designated by the European Commission, made available by SolonTek Corporation at the applicable URL for such terms or as otherwise communicated to Customer.

## Personal Data

Customer consents to the processing of Personal Data by SolonTek Corporation and its Affiliates, and their respective agents and Subcontractors, as provided in this Agreement. Before providing Personal Data to SolonTek Corporation, Customer will obtain all required consents from third parties (including Customer's contacts, partners, distributors, administrators, and employees) under applicable privacy and Data Protection Law.

## Processing of Personal Data; GDPR

To the extent SolonTek Corporation is a processor or sub-processor of Personal Data subject to the GDPR, the Standard Contractual Clauses govern that processing and the parties also agree to the following terms in this subsection ("Processing of Personal Data; GDPR")

## Processor and Controller Roles and Responsibilities

Customer and SolonTek Corporation agree that Customer is the controller of Personal Data and SolonTek is the processor of such data, except when

- (a) Customer acts as a processor of Personal Data, in which case SolonTek Corporation is a sub-processor or
- (b) stated otherwise in any Offering-specific terms. SolonTek Corporation will process Personal Data only on documented instructions from Customer. In any instance where the GDPR applies and Customer is a processor, Customer warrants to SolonTek Corporations that Customer's instructions, including appointment of Processor as a processor or sub-processor, have been authorized by the relevant controller.

## Processing Details

The parties acknowledge and agree that:

(A) the subject-matter of the processing is limited to Personal Data within the scope of the GDPR;

(B) the duration of the processing will be for the duration of the Customer's right to use the Offering and until all Personal Data is deleted or returned in accordance with Customer instructions or the terms of this Agreement;

(C) the nature and purpose of the processing will be to provide the Offering pursuant to this Agreement;

(D) the types of Personal Data processed by the Offering include those expressly identified in Article 4 of the GDPR; and

(E) the categories of data subjects are Customer's representatives and end users, such as employees, contractors, collaborators, and customers, and other data subjects whose Personal Data is contained within any data made available to SolonTek Corporation by Customer.

## Data Subject Rights; Assistance with Requests

SolonTek Corporation will make information available to Customer in a manner consistent with the functionality of the Offering and SolonTek Corporation's role as a processor of Personal Data of data subjects and the ability to fulfill data subject requests to exercise their rights under the GDPR. SolonTek Corporation will comply with reasonable requests by Customer to assist with Customer's response to such a data subject request. If SolonTek receives a request from Customer's data subject to exercise one or more of its rights under the GDPR in connection with an Offering for which SolonTek Corporation is a data processor or sub-processor, SolonTek Corporation will redirect the data subject to make its request directly to Customer. Customer will be responsible for responding to any such request including, where necessary, by using the functionality of the Offering. SolonTek Corporation will comply with reasonable requests by Customer to assist with Customer's response to such a data subject request.

## Use of Sub-processors

Customer consents to SolonTek Corporation using the sub-processors listed at the applicable SolonTek URL or as otherwise communicated to Customer. SolonTek Corporation remains responsible for its sub-processors' compliance with the obligations herein. SolonTek Corporation may update its list of sub-processors from time to time, by providing Customer at least 14-days' notice before providing any new sub-processor with access to Personal Data. If Customer does not approve of any such changes, Customer may terminate any subscription for the affected Offering without penalty by providing, prior to

expiration of the notice period, written notice of termination that includes an explanation of the grounds for non-approval.

### **Records of Processing Activities**

SolonTek Corporation will maintain all records required by Article - 4 - 30(2) of the GDPR and, to the extent applicable to the processing of Personal Data on behalf of Customer, make them available to Customer upon request.

## **Confidentiality**

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### **Confidential Information**

“Confidential Information” is non-public information that is designated “confidential” or that a reasonable person should understand is confidential, including, but not limited to, Customer Data, the terms of this Agreement, and Customer’s account authentication credentials.

Confidential Information does not include information that:

- (1) becomes publicly available without a breach of a confidentiality obligation;
- (2) the receiving party received lawfully from another source without a confidentiality obligation;
- (3) is independently developed; or
- (4) is a comment or suggestion volunteered about the other party’s business, products, or services.

### **Protection of Confidential Information**

Each party will take reasonable steps to protect the other’s Confidential Information and will use the other party’s Confidential Information only for purposes of the parties’ business relationship. Neither party will disclose Confidential Information to third parties, except to its Representatives, and then only on a need-to-know basis under nondisclosure obligations at least as protective as this Agreement. Each party remains responsible for the use of Confidential Information by its Representatives and, in the event of discovery of any unauthorized use or disclosure, must promptly notify the other party.

### **Disclosure Required by Law**

A party may disclose the other’s Confidential Information if required by law, but only after it notifies the other party (if legally permissible) to enable the other party to seek a protective order.

## Duration of Confidentiality Obligation

These obligations apply:

- (1) for Customer Data, until it is deleted by SolonTek Corporation; and
- (2) for all other Confidential Information, for a period of five years after a party receives the Confidential Information.

## SLAs

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SolonTek will offer further availability and support obligations for an Offering. Such service level agreement (“SLA”) will be made available by SolonTek Corporation at the applicable URL for such SLA or as otherwise communicated to Customer.

## Verifying Compliance

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Customer must keep records relating to Offerings it and its Affiliates use or distribute. At SolonTek Corporation’s expense, SolonTek Corporation may verify Customer’s and its Affiliates’ compliance with this Agreement at any time upon 30 days’ notice. To do so, SolonTek Corporation may engage an independent auditor (under nondisclosure obligations) or ask Customer to complete a self-audit process. Customer must promptly provide any information and documents that SolonTek Corporation or the auditor reasonably requests related to the verification and access to systems running the Offerings. If verification or self-audit reveals any unlicensed use, Customer must, within 30 days, order sufficient licenses to cover the period of its unlicensed use. Without limiting SolonTek Corporation’s other remedies, if unlicensed use is 5% or more of Customer’s total use of all Offerings, Customer must reimburse SolonTek Corporation for its costs incurred in verification and acquire sufficient licenses to cover its unlicensed use at 125% of the then-current Customer price or the maximum allowed under applicable law, if less. All information and reports related to the verification process will be Confidential Information and used solely to verify compliance.

Nothing in this section limits Customer’s right to audit SolonTek Corporation under the GDPR provisions.

## Representation and Warranties

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SolonTek Corporation continuously represents and warrants that:

- a. it has full rights and authority to enter into, perform under, and grant the rights in, this Agreement;
- b. its performance will not violate any agreement or obligation between it and any third-party;
- c. the Offering will substantially conform to the Documentation;
- d. the Offering will not:
  - (1) to the best of SolonTek Corporation's knowledge, infringe or violate any third-party patent, copyright, trademark, trade secret, or other proprietary right; or
  - (2) contain viruses or other malicious code that will degrade or infect any products, services, software, or Customer's network or systems, and e. while performing under this Agreement, SolonTek Corporation will comply with law, including Data Protection Laws and Anti-Corruption Laws, and will provide training to its employees regarding Anti-Corruption Laws.

### Disclaimer

Except as expressly stated in this Agreement, the Offering is provided as is. To the maximum extent permitted by law, SolonTek Corporation disclaims any and all other warranties (express, implied, or statutory, or otherwise) including of merchantability or fitness for a particular purpose, whether arising by a course of dealing, usage or trade practice, or course of performance.

## Defense of Third-Party Claims

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### By Customer

Customer will defend SolonTek Corporation and its Affiliates from and against any and all third-party claims, actions, suits, proceedings arising from or related to Customer's or any authorized user's violation of this Agreement or user terms (a "Claims Against SolonTek Corporation"), and will indemnify SolonTek Corporation and its Affiliates for all reasonable attorney's fees incurred and damages and other costs finally awarded against SolonTek Corporation or its Affiliates in connection with or as a result of, and for amounts paid by SolonTek Corporation or its Affiliates under a settlement Customer approves of in connection with a Claim Against SolonTek Corporation. SolonTek Corporation must provide Customer with prompt written notice of any Claims Against SolonTek Corporation and allow Customer the right to assume the exclusive defense and control of the claim and cooperate with any reasonable requests assisting Customer's defense and settlement of such matter.

### By SolonTek Corporation

SolonTek Corporation will defend Customer from and against any and all third party claims, actions, suits, proceedings, and demands alleging that the use of the Offering as permitted under the Contract infringes or misappropriates a third party's intellectual property rights (a "Claim Against Customer"), and will indemnify Customer for all reasonable attorney's fees incurred and damages and other costs finally awarded against Customer in connection with or as a result of, and for amounts paid by Customer under a settlement SolonTek Corporation approve of in connection with a Claim Against Customer; provided, however, that the SolonTek Corporation has no liability if a Claim Against Customer arises from:

- (1) Customer Data or non-SolonTek Corporation products, including third-party software; and
- (2) any modification, combination or development of the Offering that is not performed or authorized in writing by SolonTek Corporation, including in the use of any application programming interface (API). Customer must provide SolonTek Corporation with prompt written notice of any Claim Against Customer and allow SolonTek Corporation the right to assume the exclusive defense and control and cooperate with any reasonable requests assisting SolonTek Corporation's defense and settlement of such matter. This section states - 6 – SolonTek Corporation sole liability with respect to, and Customer's exclusive remedy against SolonTek Corporation for, any Claim Against Customer.

Notwithstanding anything contained in the above subsections (a) and (b),

- (1) an indemnified party will always be free to choose its own counsel if it pays for the cost of such counsel; and
- (2) no settlement may be entered into by an indemnifying party, without the express written consent of the indemnified parties (such consent not to be unreasonably withheld), if:
  - (A) the third party asserting the claim is a government agency; (B) the settlement arguably involves the making of admissions by the indemnified parties;
  - (B) the settlement does not include a full release of liability for the indemnified parties; or
  - (D) the settlement includes terms other than a full release of liability for the indemnified parties and the payment of money

# Limitation of Liability

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For each Offering, each party's maximum, aggregate liability to the other under this Agreement is limited to direct damages finally awarded in an amount not to exceed the amounts Customer was required to pay for the Offerings during the term of the applicable licenses, subject to the following:

## Subscriptions

For Offerings ordered on a subscription basis, SolonTek Corporation's maximum liability to Customer for any incident giving rise to a claim will not exceed the amount Customer paid for the Offering during the 12 months before the incident.

## Free Offerings and Distributable Code

For Offerings provided free of charge and code that Customer is authorized to redistribute to third parties without separate payment to SolonTek Corporation, SolonTek Corporation's liability is limited to direct damages finally awarded up to US \$100.

## Exclusions

In no event will either party be liable for indirect, incidental, special, punitive, or consequential damages, or loss of use, loss of profits, or interruption of business, however caused or on any theory of liability.

## Exceptions

No limitation or exclusions will apply to liability arising out of either party's:

- (1) confidentiality obligations (except for liability related to Customer Data, which will remain subject to the limitations and exclusions above);
- (2) defense obligations; or
- (3) violation of the other party's intellectual property rights.

# Pricing and Payment

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Customer's pricing and payment terms for a given order are set forth and governed by the Microsoft Services Agreement and applicable Order.

# "AS IS" and "AS AVAILABLE" Disclaimer

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The Service is provided to You "AS IS" and "AS AVAILABLE" and with all faults and defects without warranty of any kind. To the maximum extent permitted under applicable law, the SolonTek Corporation, on its own behalf and on behalf of its Affiliates and its and their respective licensors and service providers, expressly disclaims all warranties, whether express, implied, statutory or otherwise, with respect to the Service, including all implied warranties of merchantability, fitness for a particular purpose, title and non-infringement, and warranties that may arise out of course of dealing, course of performance, usage or trade practice. Without limitation to the foregoing, the SolonTek Corporation provides no warranty or undertaking, and makes no representation of any kind that the Service will meet Your requirements, achieve any intended results, be compatible or work with any other software, applications, systems, or services, operate without interruption, meet any performance or reliability standards or be error free or that any errors or defects can or will be corrected.

Without limiting the foregoing, neither the SolonTek Corporation nor any of the SolonTek Corporation's provider makes any representation or warranty of any kind, express or implied:

- (i) as to the operation or availability of the Service, or the information, content, and materials or products included thereon;
- (ii) that the Service will be uninterrupted or error-free;
- (iii) as to the accuracy, reliability, or currency of any information or content provided through the Service; or
- (iv) that the Service, its servers, the content, or e-mails sent from or on behalf of the SolonTek Corporation are free of viruses, scripts, trojan horses, worms, malware, timebombs or other harmful components.

Some jurisdictions do not allow the exclusion of certain types of warranties or limitations on applicable statutory rights of a consumer, so some or all of the above exclusions and limitations may not apply to You. But in such a case the exclusions and limitations set forth in this section shall be applied to the greatest extent enforceable under applicable law.

# Severability and Waiver

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## Severability

If any provision of these Terms is held to be unenforceable or invalid, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions will continue in full force and effect.

## Waiver

Except as provided herein, the failure to exercise a right or to require performance of an obligation under these Terms shall not effect a party's ability to exercise such right or require such performance at any time thereafter nor shall the waiver of a breach constitute a waiver of any subsequent breach.

# Translation Interpretation

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These Terms and Conditions may have been translated if We have made them available to You on our Service. You agree that the original English text shall prevail in the case of a dispute.

# Changes to These Terms and Conditions

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We reserve the right, at Our sole discretion, to modify or replace these Terms at any time. If a revision is material We will make reasonable efforts to provide at least 30 days' notice prior to any new terms taking effect. What constitutes a material change will be determined at Our sole discretion.

By continuing to access or use Our Service after those revisions become effective, You agree to be bound by the revised terms. If You do not agree to the new terms, in whole or in part, please stop using the website and the Service.

# Contact Us

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If You have any questions about these Terms and Conditions, You can contact us:

By email: [support@valkerie.com](mailto:support@valkerie.com)

By visiting this page on our website: <https://www.valkerie.com/support>

By phone number: (984) 263-5050