

## **Terms of Use for Hinemos Subscription Service**

NTT Data Intellilink Corporation (“**NTT Data Intellilink**”) shall, in accordance with the terms and conditions stipulated below (these “**Terms Of Use**”), provide customers with services (“**Services**”) based on Hinemos subscription (“**Subscription**”), which contains software updates, Bug Fixes, service support, and the like, in relation to Hinemos (a integrated operation management tool by which multiple computers can be operated and controlled) under terms and conditions and in an environment designated by NTT Data Intellilink. To use Services, each customer is required to consent to the content of these Terms Of Use.

### **Article 1 Establishment of agreement**

At the point in time when the customer consents to the content of these Terms Of Use, an agreement (“**Agreement**”) for using the Services with the content of these Terms Of Use is established between NTT Data Intellilink and the customer.

### **Article 2 Amending these Terms Of Use**

- 2.1 NTT Data Intellilink may, at its discretion, amend these Terms Of Use without obtaining approval from customers. In that case, fees and other terms and conditions of provision are determined by the amended terms of use.
- 2.2 If NTT Data Intellilink intends to amend these Terms Of Use, NTT Data Intellilink shall, in advance, publicly announce to customers the content of the amended terms of use and the amendment date on the official website for Services (“**Hinemos Website**”).

### **Article 3 Purchase units**

- 3.1 To use Services, it is necessary for the customer to purchase one subscription per one management server (“**Hinemos Manager**”) unit which this service will be applied, from a Services sales agent (“**Sales Agent**”) authorized by NTT Data Intellilink. In principle, with respect to Hinemos Manager, one management server is treated as one unit, but if a Hinemos Manager has become redundant due to the Hinemos mission critical option, the Hinemos HA option, or another option provided by NTT Data Intellilink, then two management servers will be treated as one unit.
- 3.2 The customer shall use Services by using a number of Hinemos Managers that is within the extent of the number of Subscriptions purchased from a Sales Agent and may not use Services in excess of that.
- 3.3 If the customer intends to use Services with a number of Hinemos Managers units that exceeds the number of Subscriptions purchased from a Sales Agent, then the customer shall purchase the shortfall in the number of Subscriptions from a Sales Agent.

### **Article 4 Content of Subscription; subcontracting**

- 4.1 The type of Subscription, the content of Services, the agreement period, compensation,

and the like are determined by the Subscription purchase agreement executed between the customer and a Sales Agent (“**Purchase Agreement**”). NTT Data Intellilink might, at its discretion, add to, amend, etc., a part of Services in order to add a function, conduct an improvement, or for another reason. Functions, performance etc is not guaranteed to be maintained, by such an addition, amendment, etc.

- 4.2 NTT Data Intellilink may, at its discretion, subcontract all or part of Services to a third party.

## **Article 5 Start of providing Services**

- 5.1 NTT Data Intellilink shall provide software (“**Relevant Software**”) and manuals and other related documents, etc., (“**Related Documents**”) required for customers to use Services.
- 5.2 NTT Data Intellilink shall notify ID, temporary password, and other information needed for customer to login to Hinemos Website. Customer shall download relevant software and related Documents under Article 5.1.
- 5.3 The customer shall, at its own responsibility and expense, secure and maintain telecommunications lines connected to Services from various devices used for Services, and NTT Data Intellilink is not at all liable for those telecommunications lines.

## **Article 6 Version change**

The customer shall, at its own responsibility, obtain the latest versions of and patches for Relevant Software and Related Documents provided by NTT Data Intellilink by downloading them from the Hinemos Website, by obtaining them from the Help Desk for service support, and through other methods. NTT Data Intellilink shall post on the Hinemos Website, and shall send emails to the customer and use other methods to send, information related to updates and patches for Relevant Software, and the customer shall check those updates and patches.

## **Article 7 Contact person for service support**

- 7.1 The customer shall stipulate, as a registered user, the person in charge at the customer that will be the contact point to receive service support for Services.
- 7.2 The customer shall register the names, contact information, etc., (“Registered User Information”) as registered users. The registration method, the maximum number of registered user, is regulated by NTT Data Intellilink. At least one registered user must be an employee of the customer.
- 7.3 If a change will occur in Registered User Information, the customer shall promptly notify NTT Data Intellilink of the content of the change with the method prescribed by NTT Data Intellilink (“**Change Notification**”). If a Change Notification is not provided by the customer, NTT Data Intellilink might not be able to provide service support to the customer.

## **Article 8 Software supported by service support**

- 8.1 Service support provides support only for software (excluding software marked “β

version”) that is obtainable from Github (<https://github.com/hinemos/hinemos>) or the Hinemos website and is limited to binaries supplied by NTT Data Intellilink. Service support does not provide support for modified RPMs, installation packages, modified source code, systems, network configurations, security rules, or policy implementation or development.

8.2 The OSs that are compatible with Software for which service support is provided are designated by NTT Data Intellilink, and is limited to that stated in the various manuals provided to customers by NTT Data Intellilink. Further, service support will no longer be provided for OSs for which the OS manufacturer has stopped providing product support when that support provided by the OS manufacturer stops.

## Article 9 Content of service support

9.1 NTT Data Intellilink shall, as service support, provide the services listed as below via the Help Desk stated in Article 10 to customers. The Help Desk suggests to registered users, in accordance with the quality of service listed below, an answer or solution strategy for each incident.

### (1) Content and quality of regular service support

Service Content	Work Content	Service Quality
<p>Answers to technical questions related to Software (however, excluding answers to following questions.</p> <p>(i) Questions related to matters of Software modifications.</p> <p>(ii) Questions related to non-supported environments</p>	<p>Answer is given by searching for and then clearly indicating the source of already known information; information that is publicly available via the internet, a book, or the like; or information stated in a manual.</p> <p>Support service cases, and knowhow from the past is stored and managed in the knowledge base. Information stored in this knowledge base will be searched, and will be provided to registered users when information is requested.</p>	<p><b>Reception date:</b> Reception date of inquiry will be the following business day of the date which inquiry is made. (When inquiry is made after the support service time period of the business day, the inquiry date is treated as the following business day)</p> <p><b>Answer date:</b> Within three business date, stating from the Reception date.</p>
<p>Providing problem analyses, and suggestions for strategical avoidance of the problem, caused by abnormal operation, etc., in software.</p>	<p>Analyze various logs or configuration files received from individual registered users and propose emergency avoidance strategies for abnormal operations in Software.</p> <p>Further, if it is judged that the source of an abnormal operation is malfunctioning Software, then, if possible, the Software will be repaired.</p>	<p><b>Reception date:</b> Reception date of inquiry will be the following business day of the date which inquiry is made. (When inquiry is made after the support service time period of the business day, the inquiry date is treated as the following business day)</p> <p><b>Answer date:</b> Within three business date, stating from the Reception date.</p>

**(2) Content and quality of extended service support**

Service Content	Work Content	Service Quality
<p>Answers to technical questions related to Software (however, excluding answers to following questions.</p> <p>(i) Questions related to matters of Software modifications.</p> <p>(ii) Questions related to non-supported environments</p>	<p>Answer is given by searching for and then clearly indicating the source of already known information; information that is publicly available via the internet, a book, or the like; or information stated in a manual.</p> <p>Support service cases, and knowhow from the past is stored and managed in the knowledge base,, and provide information in response to requests from registered users by searching that knowledge base.</p>	<p><b>Reception date:</b> Reception date of inquiry will be the following business day of the date which inquiry is made.(When inquiry is made after the support service time period of the business day, the inquiry date is treated as the following business day)</p> <p><b>Answer date:</b> Within three business date, stating from the Reception date.</p>
<p>Providing problem analyses, and suggestions for strategical avoidance of the problem, caused by abnormal operation, etc., in software.</p>	<p>Analyze various logs or configuration files received from individual registered users and propose emergency avoidance strategies for abnormal operations in Software.</p>	<p><b>Reception date:</b> Reception date of inquiry will be the following business day of the date which inquiry is made.(When inquiry is made after the support service time period of the business day, the inquiry date is treated as the following business day)</p> <p><b>Answer date:</b> Within three business date, stating from the Reception date.</p>

**(3) Content and quality of specially extended service support**

If the customer wishes to be provided with specially extended service support, the customer shall separately execute, with NTT Data Intellilink, an agreement stipulating the agreement term, agreement content, quality, agreement monetary value, and the like.

9.2 The work stipulated in the following items is not included in service support:

- (1) modifying Software or adding a function to Software at the customer's request
- (2) handling damage caused by repairing, modifying, or adding a function to Software or by conducting work related to those without the approval of NTT Data Intellilink
- (3) handling damage caused by other software (excluding parts for which repair, modification, or function addition was conducted by NTT Data Intellilink) or by defects, failure, etc., of the equipment which software is installed

- (4) handling damage caused by a reason attributable to the customer
  - (5) handling damage caused by a natural disaster or other cause that cannot be attributable to the customer or NTT Data Intellilink
- 9.3 NTT Data Intellilink shall, with the due care of a good manager, provide service support, and the liability of NTT Data Intellilink is limited to the extent of that duty of care.
- 9.4 The service quality indicated in Article 9.1 is not guaranteed to provide customers an absolutely effective answer or solution strategy. Further, if an effective solution strategy cannot be obtained even after conducting the work, providing an answer by the deadline might not be possible.
- 9.5 The period in which NTT Data Intellilink provides service support is as stipulated in the following URL:
- Japanese site: <http://www.hinemos.info/support/lifecycle>
  - English site: <http://www.hinemos.info/en/support/lifecycle>
- 9.6 The provision of service support might be delayed or might not be possible due to a damaged telecommunications line or other event of force majeure.
- 9.7 The customer shall promptly cooperate if NTT Data Intellilink requests the provision of data or the like that is considered necessary to provide service support. If the customer cannot provide cooperation, service support might be delayed or might not be possible to provide.
- 9.8 The customer consents in advance to NTT Data Intellilink publicly announcing to third parties, as an FAQ for Services, information provided by customers to NTT Data Intellilink in using service support (excluding (i) information designated by the customer as confidential information and (ii) personal information).

## **Article 10 Help Desk**

- 10.1 NTT Data Intellilink shall respond to inquiries from registered users of the customer via the help desk (“**Help Desk**”).
- 10.2 Documents and the like necessary for service support may be exchanged only through the Help Desk, and exchanging (including directly exchanging documents and the like between a registered user and NTT Data Intellilink personnel) documents and the like via a means other than the Help Desk must not be conducted.
- 10.3 The Help Desk only accepts inquiries from registered users. NTT Data Intellilink is not obligated to provide answers to a party that is not a registered user.
- 10.4 The Help Desk shall provide service support in the English language, unless the customer wishes for it to be provided in the Japanese language.

## **Article 11 Time period in which Services are provided**

The time period in which NTT Data Intellilink provides service support is as stipulated below. However, service support is not provided on statutory holidays in Japan or between December 29 (inclusive) and January 3 (inclusive).

Monday – Friday; 9:00 to 17:00 (Japan Standard Time)

## **Article 12 Reporting**

When NTT Data Intellilink has provided service support, NTT Data Intellilink shall, through the registered user, report the content of the work to the customer with the method prescribed by NTT Data Intellilink. When the customer has received the report, the customer shall, without delay, confirm the content and shall, with the method prescribed by NTT Data Intellilink and through its registered user, notify NTT Data Intellilink of information necessary to judge whether the provision of service support is complete in accordance with Article 13.2, such as whether the problem is resolved by the report.

## **Article 13 Inquiry matter units**

- 13.1 If the customer has a matter about service support for which it would like to make an inquiry, then the customer shall, in advance, isolate the matter and make an inquiry to NTT Data Intellilink by restricting the content of the inquiry to Software. The minimum unit for an inquiry matter from the customer is “1 incident”.
- 13.2 NTT Data Intellilink shall, in response to an inquiry matter from the customer, conduct service support, and if (i) information is notified by the customer to the effect that the problem is resolved or other information is notified by the customer by which NTT Data Intellilink can judge that the problem is resolved or (ii) the customer does not give notification within five business days starting from the business day following the day in which NTT Data Intellilink gave its reply (for inquiries made outside of the time period stipulated in Article 5, the reply date is the following business day), then the provision of service support for that incident is complete.

## **Article 14 User terms and conditions for works**

The terms of use for Relevant Software and Related Documents (collectively, “**Works**”) are as follows:

- (1) The copyrights and all other rights of Works belong to NTT Data Intellilink or to a third party who grants to NTT Data Intellilink the rights, and, excluding use rights for Works obtained under an Agreement, no customer holds rights related to Works.
- (2) Irrespective of any Agreement, with respect to Software to which an OSS license applies (“**OSS**”), the OSS license bundled in each Software is applicable taking precedence over the Agreement. OSSs provided to customers in Services are determined by manuals for Relevant Software separately provided to the customer by NTT Data Intellilink.
- (3) NTT Data Intellilink shall grant non-exclusive rights to the customer to use Works to the extent stipulated in the Agreement.
- (4) The customer may use Works within the extent of the purchase units stipulated in Article 3.
- (5) The customer may, in accordance with manuals for Relevant Software, install Relevant Software in a system that uses Services in order for the customer itself to use Relevant Software.
- (6) The customer may not assign, loan, lease, publicly transmit (including by uploading to a device connected to a network), or provide to a third party with any other method all or part of Works and may not sublicense to a third party all or part of Works.

- (7) The customer may not translate, adapt, amend, modify, add to, or delete all or part of Works and may not decompile, disassemble, or otherwise reverse engineer (meaning analyzing executable files, object codes, and the like and converting these into a form readable to humans) all or part of Relevant Software.
- (8) The customer shall not delete or modify copyright notices displayed on Works by NTT Data Intellilink or by a third party licensed by NTT Data Intellilink.
- (9) Except when explicitly stipulated in an Agreement, NTT Data Intellilink does not guarantee to customers or third parties the operations of Relevant Software, the fitness of the use purpose of Works, or the appropriateness or reliability with respect to use results, and NTT Data Intellilink bears no liability with respect to damage, whether incurred directly or indirectly, including warranty for defects. This Article 14 will remain valid after the Agreement ends.

## **Article 15 Guarantee**

- 15.1 NTT Data Intellilink does not guarantee to customers (i) that Services, Relevant Software, and Related Documents do not infringe on a copyright, patent right, or other right or interest of a third party, (ii) that Services, Relevant Software, and Related Documents do not contain bugs or other defects, or (iii) that Services fit the purpose of use specified by the customer.
- 15.2 The liability owed by NTT Data Intellilink to the customer for Services is limited to the extent stipulated in these Terms Of Use. NTT Data Intellilink is not liable for protecting Software, files, data, etc., installed, connected, stored, or otherwise used in a system with which the customer uses Services, unless any of them is damaged due to NTT Data Intellilink's willful misconduct or gross negligence, and the customer shall protect and maintain them at its own responsibility and expense.

## **Article 16 Confidentiality**

The customer shall keep confidential and strictly manage Relevant Software, Related Documents, and other information related to Services or to an Agreement and shall not disclose or divulge those to a third party without NTT Data Intellilink's approval.

## **Article 17 Change in specifications**

NTT Data Intellilink might, without giving prior notice to customers, change all or part of specifications of Relevant Software or all or part of details of Related Documents. If NTT Data Intellilink makes a change, it shall, excluding minor changes, publicly announce the change on the Hinemos Website. Functions, performance etc is not guranteed to be maintained, by such an addition, amendment, etc.

## **Article 18 Agreement term**

- 18.1 The term of each Agreement is the term stipulated in the Purchase Agreement.
- 18.2 If the customer does not take procedures to cancel an Agreement by at least 30 days before it expires, the Agreement will automatically be renewed for one year from the day following the expiration day, and in that case, the customer shall pay the consideration

prescribed in the Purchase Agreement to the Sales Agent with which the customer executed the Purchase Agreement, and the same applies thereafter. NTT Data Intellilink's instructions for the payment recipient, etc., must be followed if the Sales Agent does not exist at the time of renewal.

- 18.3 If, after a certain period has elapsed after an Agreement ends, the customer and NTT Data Intellilink re-enter into an Agreement and if the customer has retained reproductions of Relevant Software and Related Documents after the end of the previous Agreement, then the new Agreement will be treated as having been formed retroactively on the date following the expiration date of the previous Agreement, and the customer shall pay the consideration corresponding to the period starting from the new execution date.

### **Article 19 Handling after Agreement ends**

If an Agreement ends, irrespective of the reason, the customer may use Relevant Software, but cannot receive service support, updates or patches for Relevant Software, or the like based on the Subscription. The customer shall use Relevant Software at its own responsibility.

### **Article 20 No assignment of rights and obligations**

No customer may assign to a third party a status under an Agreement or all or part of a right or obligation stipulated in an Agreement without NTT Data Intellilink's prior written consent.

### **Article 21 Damages**

Each of the customer and NTT Data Intellilink may make a claim against the other party for compensation for only normal and direct damage if the damage was incurred due to the other party breaching an Agreement (in the case of NTT Data Intellilink breaching an Agreement, limited to if NTT Data Intellilink conducts willful misconduct or gross negligence). However, the extent of damages that the customer may claim for against NTT Data Intellilink does not include damage arising from a natural disaster or other event of force majeure, damage arising from an event with a cause attributable to the customer, or lost profits and is limited to the amount that has already been paid during the period of the Agreement as consideration for Services.

### **Article 22 Cancellation**

NTT Data Intellilink may, without notice or demand, immediately cancel all or part of an Agreement executed with the customer if the customer

- (1) breaches an Agreement and does not cure the breach within 30 days after receiving a notice requesting cure of the breach;
- (2) fails to pay consideration to a Sales Agent or otherwise breaches the Purchase Agreement;
- (3) suspends payment or files a petition, or is subject to a petition, for commencement of bankruptcy proceedings, commencement of civil rehabilitation proceedings, commencement of corporate reorganization proceedings, commencement of special liquidation, or commencement of other similar legal liquidation proceedings (including the same petitions in jurisdictions other than Japan);



- (4) passes a resolution for its dissolution or receives a dissolution order (excluding dissolution accompanying an absorption-type merger or consolidation-type merger);
- (5) is subject to business suspension, business license rescission, business registration rescission, or other administrative disposition from a supervisory authority;
- (6) reduces its capital, transfers all or a substantial part of its business, or splits, abolishes, or changes a substantial part of its business; or
- (7) otherwise has business or financial conditions that have deteriorated or NTT Data Intellilink judges that there are reasonable grounds to find that there is a likelihood thereof.

### **Article 23 Force Majeure**

NTT Data Intellilink is not liable to customers for delays in performing, or an inability to perform, Services due to a natural disaster, a war, a riot, an insurrection, terrorism, a serious disease, a risk of infectious disease or a similar concern, a dispute, or other event with a cause not attributable to NTT Data Intellilink (collectively, “**Force Majeure**”). Delays in performing or an inability to perform Services due to an event of Force Majeure in this Article 23 includes delays in performing or an inability to perform Services due to stand-by at home or other measures based on reasonable instructions issued by NTT Data Intellilink to its employees and other staff in relation to that event of Force Majeure.

### **Article 24 Exclusion of relationship with antisocial forces**

The customer represents and warrants that

- (1) neither the customer itself nor an officer of the customer has been, is, or will become an antisocial force (including, but not limited to, terrorists) stipulated in applicable laws and regulations of Japan or the country where the customer is located;
- (2) neither the customer itself nor an officer of the customer will use the power, etc., of an antisocial force, irrespective of whether it for the purpose of its own unjust enrichment or for another purpose;
- (3) neither the customer itself nor an officer of the customer will cooperate in maintaining or operating an antisocial force by providing funds to it or by using another means;
- (4) neither the customer itself nor an officer of the customer will have a socially condemnable relationship with an antisocial force;
- (5) neither the customer itself nor an officer of the customer, by oneself or by using a third party, will (i) make a violent request or an unreasonable request beyond legal liability to NTT Data Intellilink, (ii) damage the reputation or credit of NTT Data Intellilink, or (iii) obstruct business at NTT Data Intellilink; and
- (6) neither the customer itself nor an officer of the customer will, in relation to an Agreement, commit an act that breaches applicable anti-bribery laws or regulations of Japan or of other countries toward a government employee or a representative or the like of a government employee.

### **Article 25 Governing law and dispute resolution**

- 25.1 The laws of Japan govern the validity, interpretation, and legal enforceability of each Agreement (excluding conflict of laws).
- 25.2 All disputes, arguments, and differences in opinion arising from an Agreement or from a breach of an Agreement between NTT Data Intellilink and the customer must be ultimately resolved in Tokyo, Japan, in accordance with the commercial arbitration rules of the Japan Commercial Arbitration Association effective as of the execution day of the Agreement. Arbitral awards given by the arbitrators will be final and bind both parties. The execution judgment for an arbitral award may be obtained from any competent court. Arbitration must be conducted in the English language by three arbitrators.
- 25.3 Notwithstanding the foregoing, if an arbitration agreement stipulated in this Article 25 becomes invalid under an applicable law or regulation, then all disputes related to an Agreement must be handled by the Tokyo District Court of Japan as the agreed exclusive competent court of first instance.

## **Article 26 Miscellaneous**

- 26.1 Unless otherwise stated in an Agreement, the dates and times in each Agreement are based on Japan Standard Time.
- 26.2 Unless otherwise stated in an Agreement, the currency in each Agreement is Japanese yen.
- 26.3 Even if a provision or a part of a provision of an Agreement is judged to be legally invalid or unenforceable, then the force and effect of the remaining provisions or the remaining part of that provision of the Agreement will remain valid.
- 26.4 Each Agreement constitutes the entire agreement between the parties for providing and using Services and supersedes oral and written agreements previously exchanged by the parties regarding the subject matter. Excluding the case stipulated in Article 2, an amendment to an Agreement is valid and binds the parties only if the amendment is made in writing and signed by duly authorized representatives.