

## HITACHI VANTARA SOLUTION FRAMEWORK AGREEMENT

<b>Effective date:</b>	<b>Agreement number:</b>
<b>Customer (“You”):</b> Name: Address: Company Number: Contact Person (for Notices):	<b>Hitachi Vantara (“Hitachi”):</b> Name: Hitachi Vantara New Zealand Limited Address: Duncan Cotterill Lawyers, Level 2, Chartered Accountants House, 50 Customhouse Quay, Wellington 6011 New Zealand Company Number: 114206 Contact Person (for Notices): Regional Counsel (anz.legal@hitachivantara.com)

**1. Parties and Scope.** This Agreement, which includes the Online Terms located at <https://www.hitachivantara.com/en-us/company/legal/terms-licensing-maintenance.html> and any other documents incorporated by reference and their respective updates and replacements from time to time, sets out the terms under which You may purchase products and/or services from Hitachi for Your internal business use, including equipment, software licenses, maintenance and support services, professional services, “as a service” offerings, training, any other services listed in Hitachi’s price list and similar Hitachi offerings (together and respectively, “**Products**”, “**Services**”). The Online Terms cover software licenses, product warranty, maintenance and support service terms and “as a service” purchase terms.

**2. Quotes and Orders.** Hitachi may provide You with a written quote or other form of proposal, including a statement of work as appropriate, setting out the details of the Products and Services and related fees. To purchase from Hitachi, you must sign and return the quote and related documents to Hitachi or, at Hitachi’s request, issue a purchase order referencing the quote number and this Agreement. The documents that You provide to Hitachi will become the “Order” and, along with this Agreement, the Order or series of related Orders form a separate and binding contract between the parties. Any terms and conditions set out or otherwise incorporated in Your purchase order form or any related or similar documents that You supply will not be part of the Order. Hitachi may accept the Order by shipping the Products or commencing the Services. Once You submit an Order to Hitachi, You may only change it with Hitachi’s express approval and You may not cancel an Order after the earlier of five (5) business days prior to Product shipment or ten (10) business days prior to Service commencement.

**3. Affiliate Transactions.**

Your Affiliates located in the same country as You may use this Agreement to purchase Products and Services from Hitachi by providing an Order to Hitachi in accordance with Section 2, in which case that Affiliate fully assumes Your rights and obligations under this Agreement for its Order. Your Affiliates located in other countries may purchase Products and Services from the Hitachi Affiliate nominated by Hitachi, by entering a participation agreement with the Hitachi Affiliate adopting the terms of this Agreement, as may be modified for localization purposes. All Orders made under a participation agreement, including all rights and obligations of Your Affiliate, will only be between the parties who signed the participation agreement. In this Agreement, a party’s “Affiliate” means an entity controlled by, controlling or under the common control of that party, where “control” means having a sufficient amount of voting shares to make corporate decisions for the entity. For Hitachi, Affiliate includes Hitachi, Ltd., and any business entity controlled by Hitachi, Ltd., but excludes Hitachi’s distributors, resellers and authorized service providers (collectively, the “**Hitachi Group**”).

**4. Prices and Taxes.**

(a) All prices quoted by Hitachi and all fees payable for Products and Services are exclusive of any applicable taxes and duties. To the extent that withholding, value-added or similar taxes are required, the paying party will exercise

due care to determine whether relief is available under a tax treaty and if, despite this, withholding tax applies, the paying party will: (i) deduct the withholding from the amount due; (ii) remit to the taxing authority the withheld amount; (iii) provide all appropriate documents to the invoicing party. The paying party may provide to the invoicing party any resale certificate, treaty benefits exemption certificate or other exemption document required to reduce or eliminate any taxes. The parties will co-operate and assist each other to use the documents to reduce the taxes and if it is determined that a refund of any taxes is appropriate, to enable a timely collection of the refund.

(b) Without limiting the operation of Section 4 (a), invoiced amounts payable under this Agreement are expressed exclusive of GST.

(c) If a party ("GST Supplier") makes a taxable supply to the other party ("GST Recipient") in connection with this Agreement, the GST Recipient must pay the GST Supplier an amount equal to any GST payable by the GST Supplier in relation to that taxable supply ("GST Amount"), in addition to the invoiced amounts or other consideration (if any) required to be paid under any other provision of this Agreement, unless the amount payable by the GST Recipient for that supply is already expressed to be inclusive of GST.

(d) The GST Amount must be paid at the same time and in the same manner as making payment of any basic consideration on which the GST is calculated. If the GST Amount is not calculated on basic consideration, the GST Recipient must pay the GST Amount within seven (7) days of receipt of a written demand from the GST Supplier.

(e) The GST Supplier must do all other things reasonably requested by the GST Recipient (including if necessary, providing a tax invoice) to enable the GST Recipient to obtain any input tax credit to which it is entitled.

(f) The amount recoverable on account of GST under this Agreement will include any fines, penalties, interest and other charges incurred as a result of late payment or other default by the GST Recipient under this Agreement

(g) If a party is required to pay, reimburse or indemnify another party for any cost, expense or other amount that the other party has incurred or will incur in connection with this Agreement, that amount will be reduced by any part thereof for which the other party (or representative member if this is not the other party) can claim an input tax credit under the GST Act.

(h) For the purposes of this Agreement, "basic consideration" means the fees and any and all other consideration (whether in money or otherwise) to be paid or provided by You for any supply of goods or services by Hitachi under this Agreement (exclusive of GST payable pursuant to this clause); and "goods", "services", and "taxable supply" have the meanings ascribed to them by the Goods and Services Tax Act 1985. (GST Act).

**5. Invoices and Payment.** Fees for Products and Services will be set out in Hitachi's invoice or fully signed statement of work, as applicable, and are payable within thirty (30) days of the date of Hitachi's invoice without the right of any deduction, refund or set-off that is not expressly allowed in this Agreement. Failure to pay the full amount of fees as required under this Agreement may result in Hitachi: (i) charging interest on any overdue payments at the rate of 1.5% per month or the highest rate allowed by applicable law, if less, from the date the amounts are due until the date of payment in cleared funds; (ii) suspending delivery; and (iii) taking other actions available under this Agreement or applicable law. If there is a dispute regarding an invoice, the invoice remains payable by the due date and the dispute will be dealt with under Section 19. Hitachi is not responsible for any third party issued payment-related processing fees, such as portal service fees.

**6. Product Delivery.** Hitachi will use all commercially reasonable efforts to meet its estimated Product delivery dates. Hitachi will arrange for Products to be shipped on Your behalf and at Your risk, and charge You accordingly, unless You notify Hitachi in writing not to do so. Where necessary, Hitachi may make partial deliveries of Products and send You a corresponding partial invoice. Unless an Order states otherwise, delivery of Products will be FCA as defined in Incoterms 2020 to Hitachi's nominated delivery point. If Hitachi delivers software by download or other electronic transmission, it is deemed delivered when the software programs or related license keys are made available to You.

**7. Title and Risk.** Risk of loss of or damage to, and title in the Products will pass to You upon delivery in accordance with Section 6. You gain no ownership rights whatsoever in any software forming part of the Products, whether such software is operating software contained within the equipment, firmware or stand-alone software and without limiting the operation of Sections 12 to 14, Hitachi expressly grants to You the license rights to use such software in object code only under the license terms contained in the Online Terms.

**8. Product Warranty, Installation and Support Services.** Your purchased Products are supplied subject to Product warranties and warranty claim procedures, standard Product installation services and equipment maintenance and software support services under Your selected support plan, all of which will be delivered in accordance with the Online Terms. The Order will set out the maintenance and support services period, including the initial term and any applicable renewal terms, as well as the related fees. Unless the Order states otherwise, the initial maintenance and support term will be non-cancellable and the fees paid for that initial term will be non-refundable.

**9. Professional Services.** Professional services may include software enablement, configuration, data migration and other migration services, implementation, data analytics and other services that the parties agree to from time to time. Without limiting the operation of any other part of this Agreement: (i) professional services and related deliverables, fees and reimbursable charges will be set out in a written statement of work and once it is signed by the parties' authorized representatives, the statement of work will form part of the Order; (ii) Hitachi will perform the professional services and deliver all related deliverables in accordance with the Order, subject to the terms of this Agreement; and (iii) any changes to professional services, including scope, related deliverables, fees or other terms of an Order must be agreed to by Hitachi and set out in a written change order signed by the parties' authorized representatives.

**10. Services Performance and Deliverables.** Hitachi warrants that it will provide the Services and all related Service deliverables to a standard that is reasonably expected of a supplier experienced in providing such Services under similar terms and conditions. Unless the Order states otherwise, You are deemed to have accepted the Services and all related Service deliverables within thirty (30) days of Hitachi's performance or delivery, as applicable, unless You provide Hitachi with written notification of any defect against a relevant specification set out in the Order within that period. Hitachi will promptly remedy the defect and if Hitachi fails to deliver that remedy, then provided that You promptly return the deliverable(s) and/or other relevant work product not provided in accordance with the Order, Hitachi will refund you any pre-paid fees for those items. Subject to section 18(d), these remedies comprise Hitachi's sole liability to You with respect to such breach of this Section 10 and Hitachi's other Service-related performance obligations under this Agreement.

**11. Service Dependencies.** In addition to any specific obligations that you have agreed to in an Order, You will provide to Hitachi, on a timely basis, the information, facilities, staffing, decisions and co-operation as Hitachi reasonably expects of you as a recipient of the type of Services involved and you will ensure that any exclusions, dependencies and assumptions set out in the Order are, respectively, correct and will be met. If this does not happen, You accept that the Services may not be performed as set out in the Order, related targets and deliverables may not be met and that Hitachi is not liable for such consequences.

**12. Intellectual Property Rights.** Other than the rights expressly stated in this Agreement, Hitachi transfers no ownership of any intellectual property rights to You. If You are provided with deliverables specified in an Order as part of Your receipt of Services, upon receipt of payment, Hitachi grants to You a worldwide, non-exclusive, non-transferable, royalty-free license to use the deliverables solely for Your internal use. You hereby grant to Hitachi a worldwide, royalty free, non-exclusive license to use and reproduce any material provided by You, for the sole purpose of Hitachi's performance of Services under this Agreement.

**13. Intellectual Property Rights Infringement.** As its sole obligation and as Your sole remedy related to third-party intellectual property infringement, Hitachi will defend or settle any claim of any nature whatsoever against You alleging that a Hitachi-branded Product or Service provided to You under an Order infringes the intellectual property rights of a third party. Hitachi will rely on Your prompt notification of the claim and co-operation. Provided that You

are not in material breach of this Agreement, Hitachi will, at its option and sole discretion: (i) secure the rights for You to continue to use the affected Product or Service; (ii) modify the affected Product or Service; (iii) replace the affected Product or Service with something that has substantially similar functionality; or (iv) provide You with a pro-rated refund for the affected Product or Service. Hitachi will not be liable to provide any of the remedies for any claims related to: (A) any technology or other material used in conjunction and/or combination with the Product or Service, including third party products or technology supplied to Hitachi by entities outside the Hitachi Group for direct or indirect distribution (“**Third Party Products**”); (B) any design requirements or materials provided by You; or (C) any Product or Service that You have, or any person on Your behalf has: (a) used in an unauthorized manner; (b) modified without the express written consent of Hitachi; or (c) failed to use another version of the Product or Service that has been made available to You and which would have avoided the infringement.

**14. Third Party Product.** Except as expressly stated otherwise in this Agreement or related documents: (i) Hitachi provides Third Party Products to You without warranties or support of any kind, and (ii) licenses, warranties, indemnities as applicable and support for these Third Party Products will be given by the relevant suppliers in their agreements and support terms that Hitachi passes on to You or that You otherwise enter with such suppliers.

**15. Confidentiality.** Information exchanged by the parties under this Agreement will be treated as confidential if it is expressly stated to be confidential or, in the circumstances and given the nature of the information, it reasonably appears to be confidential. Confidential information of a party may only be used for purposes related to this Agreement and may be shared with the other party’s Affiliates, employees, subcontractors, agents and authorized representatives with a need to know such information to support those purposes. Each party will protect the other party’s confidential information by using a reasonable degree of care to prevent unauthorized disclosure or use for three (3) years from the termination date of this Agreement. These obligations do not cover any information: (i) already known by, or which becomes known to, the receiving party without an obligation of confidentiality; (ii) that has been developed by the receiving party or its Affiliate independently of such confidential information or (iii) where disclosure is required by law or a governmental agency. Notwithstanding the foregoing provisions of this section, Hitachi may in all events retain a copy of the Service deliverables, relevant supporting documentation and its working notes and memoranda prepared during the Services as necessary to substantiate its performance of the Services.

**16. Personal Information.** If the parties exchange any information that relates to an identified or identifiable individual that is considered “Personal Data” as part of any Order or other transaction made under this Agreement, the parties will take all reasonably necessary steps to transfer, process, and handle such Personal Data in compliance with each party’s obligations under all applicable data protection laws. You will at all times remain the Data Controller (namely, the entity who is responsible to determine the purposes and means of processing the data) of any Personal Data that You provide to Hitachi. Hitachi will only use such Personal Data for any purposes necessary to carry out the supply of Products and Services under an Order. Where and if applicable, the most current Data Privacy and Security Terms at <https://www.hitachivantara.com/en-us/pdf/legal/data-privacy-security-terms-customer.pdf> are incorporated and form part of this Agreement.

**17. Global Trade compliance.** If You export, import or otherwise transfer Products and/or Service deliverables, You agree to comply with all applicable export laws, restrictions, and regulations. You will indemnify, defend and hold harmless Hitachi and its Affiliates and their respective employees, subcontractors, agents and authorized representatives for all losses arising directly or indirectly from any violation(s) or alleged violation(s) of any such applicable laws, regulations and requirements by You or Your employees, subcontractors, agents and authorized representatives. Each party will comply with all applicable laws and regulations, including those relating to trade control, anti-corruption and bribery, including but not limited to the U.S. Export Administration Regulations, the U.S. economic sanctions and the U.S. Foreign Corrupt Practices Act.

**18. Limitation of Liability and Disclaimer of Warranties.**

(a) **Limitation of Liability.** Except for physical bodily injury, death, willful misconduct, fraud, claims for non-payment, infringement of Hitachi’s intellectual property rights, breaches of confidentiality, or a party’s indemnification obligations under this Agreement and to the maximum extent permitted by law:

(i) each party's liability under this Agreement is limited to direct damages for an amount not exceeding the greater of the total fees paid or owed by You under the applicable Order(s) or \$NZ1,000,000; and

(ii) whether direct or indirect, neither party will be liable for any loss of business, loss of revenue or profits, loss of economic advantage or goodwill, loss of use, lost or corrupted data; or any other indirect, punitive, special, incidental, or consequential damages, irrespective of how they arise.

For the avoidance of doubt, sub-sections (i) and (ii) will apply to a party's liability for any Personal Data or data security breach, whether the liability arises under this Agreement or under applicable law.

(b) The limitations and exclusions of liability above apply whether such liabilities or claims arise under breach of contract (including anticipatory breach or repudiation), tort (including negligence), statutory duty or otherwise (including in equity or common law) and even if the liable party has previously been advised of the possibility of such damages. Liability for damages will be limited and excluded, even if an exclusive remedy provided for in this Agreement fails of its essential purpose.

**(c) Disclaimer of Warranties. EXCEPT AS SPECIFIED IN THIS AGREEMENT, INCLUDING THE EXHIBITS AND THE ONLINE TERMS, ALL EXPRESS OR IMPLIED CONDITIONS, REPRESENTATIONS AND WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OR CONDITION OF MERCHANTABILITY, INTEROPERABILITY, SATISFACTORY QUALITY, OR FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT, ARE EXCLUDED TO THE MAXIMUM EXTENT PERMITTED BY LAW. HITACHI DOES NOT WARRANT THAT ANY OF THE PRODUCTS OR SERVICES WILL OPERATE UNINTERRUPTED, SECURELY OR ERROR FREE AND WILL NOT BE LIABLE FOR COSTS OF PROCUREMENT OF SUBSTITUTE ITEMS.**

**(d) Implied Terms.**

(i) To the extent permitted by law, notwithstanding any provisions of the *Contractual Remedies Act 1979*, the only remedy for misrepresentation, repudiation or breach of contract by Hitachi is a remedy for damages.

(ii) Hitachi's liability for a breach of any implied term of the kind referred to in sub-section (i) will be limited to the full extent expressly allowed for in the relevant legislation, being: (1) in the case of goods, repairing the goods (in any case where the failure does not relate to title) or curing or curing any defect in title (in any case where the failure relates to title), replacing the goods with goods of identical type or where the supplier cannot reasonably be expected to repair the goods, by providing a refund of any money paid or other consideration provided by You in respect of the goods; or (2) in the case of services, the supplying of the services again or the payment of all reasonable costs of having the services supplied again.

**19. Disputes.** The parties will attempt in good faith to resolve through negotiation any dispute, claim, or controversy arising out of or relating to this Agreement. Either party may initiate negotiations by providing written notice to the other party, setting out the subject of the dispute and the relief requested. The recipient will respond within ten (10) days with a written statement of its position on, and recommended solution to, the dispute. If the dispute is not resolved by this exchange of correspondence, then authorized representatives of each party will meet at a mutually agreeable time and place within fifteen (15) days of the date of the initial notice in order to resolve the dispute. If the dispute is not resolved by these negotiations, either party may elect to pursue the dispute in a court of competent jurisdiction in New Zealand.

**20. Force Majeure.** Neither party will be liable for performance delays nor for non-performance (including suspension) due to causes beyond its reasonable control, except for payment obligations.

**21. Term and Termination.** This Agreement will start on the effective date that is stated at the head of this Agreement and will continue until a party terminates it by written notice, based on the other party: (i) committing a material breach of its terms that cannot be remedied or, failing to remedy one that can be remedied within thirty

(30) days of the date of the non-breaching party's written notice to do so; or (ii) becoming unable to pay its debts when due or filing for or becoming subject to bankruptcy, receivership, administration, liquidation or similar asset assignment. The termination of this Agreement will not automatically terminate an Order, but an Order may also be terminated upon written notice for the same causes stated above. A party may also terminate this Agreement without cause by giving the other party no less than thirty (30) days' prior written notice, provided that there are no outstanding Orders. On the termination of this Agreement or an Order, as applicable, You must immediately pay to Hitachi all fees and other amounts due and outstanding, which You accept may entail a reduced payment period, and each party will promptly return to the other party all property of the other party that it no longer has a right to retain under this Agreement or otherwise under applicable law. All rights and obligations of a party that, by their nature, should survive the expiration or termination of this Agreement or an Order will do so.

**22. Publicity.** Subject to Section 15, Hitachi may refer to You as a customer of Hitachi, both internally and in externally published media. You must not use Hitachi's name in any publication, advertisement, or public announcement, nor disclose the results, existence, or content of this Agreement or any Order, without Hitachi's prior written consent. You grant to Hitachi and its Affiliates a worldwide, royalty-free, limited right to use Your company and brand name and/or logo in promotional materials within any medium, including press releases, presentations and customer references regarding any Order. Hitachi agrees to obtain Your prior written approval for publicity that contains claims, quotes, endorsements or attributions by You, but Your approval cannot be unreasonably withheld.

**23. Background Checks.** Hitachi will conduct background checks in accordance with applicable law for any employee or resource who is planned to perform Services for You, and will not assign an employee or resource to perform Services for You who has not successfully passed all elements of the relevant background check ("**Background Check**").

Upon Your request, Hitachi will confirm in writing that its employees and resources delivering Services to You have passed a Background Check.

**24. Insurance.** For the term of this Agreement, Hitachi will carry the adequate amounts of the following insurance, having regard to the obligations under this Agreement which Hitachi is engaged to fulfill: Comprehensive General Liability; Professional Liability; statutory limits for Workers' Compensation; Business Auto Liability; and Employer's Liability. Where permitted, Excess Umbrella Liability Coverage may be used to bridge limits.

**25. Information Security.** Hitachi will comply with its global standards for information security, which will be provided to You at Your request.

**26. Offshore Services.** You agree that Hitachi may subcontract the performance of Services under this Agreement to employees and other resources outside New Zealand on a remote basis.

**27. Your Policies and Procedures.** Hitachi will ensure that its employees and resources will comply with any policies (by way of example, relating to safety and security at Your premises and acceptable use and security when using Your devices or accessing Your network) provided they are attached to the Agreement or an SOW at the time of signature.

## **28. General Terms**

(a) **Governing Law.** This Agreement and all Orders will be governed and construed in accordance with the laws of the jurisdiction of New Zealand (without regard to its conflict of law principles), and the venue for any litigation will be the appropriate courts in Auckland, New Zealand. The United Nations Convention on Contracts for the International Sale of Goods and its implementing legislation will not apply to this Agreement.

(b) **Assignment and Transfer.** You must not sub-contract, assign or otherwise transfer any of Your rights or obligations under this Agreement or any Order without Hitachi's prior written consent. You agree and acknowledge

that Hitachi may engage subcontractors to perform any of its obligations, but Hitachi will remain responsible for their performance.

(c) **Notices.** All notices required by this Agreement will be in writing addressed to an appropriate representative of the recipient and given by certified or registered mail, return receipt requested, or an overnight mail service that confirms delivery and will be deemed to be given when received by the intended recipient.

(d) **Modifications.** Except for the Online Terms, any modifications to this Agreement must be in writing signed by each party's authorized representative. Hitachi may change the Online Terms from time to time and post the revised version on Hitachi's website. Any changes to the Online Terms will not apply to any Orders made prior to the effective date of the change.

(e) **Conflicts.** Unless an Order states otherwise and to the full extent applicable, if there is a conflict among the following documents, then this descending order of precedence will apply: (i) the terms of this Agreement; (ii) the Online Terms; (iii) a fully signed statement of work; (iv) a Hitachi quote or other proposal; and (v) any other documents comprising the Order.

(f) **Waiver.** No waiver by a party of any of its rights or remedies will be construed as a waiver by such party of any other rights or remedies that the party may have under this Agreement.

(g) **Severability.** If any part of this Agreement is held to be invalid, illegal, or otherwise unenforceable, that part will be eliminated to the minimum extent necessary, so that the Agreement will otherwise remain in full force and interpreted to reflect the original intent of the parties.

(h) **Entire Agreement.** The Agreement (including all terms attached hereto or incorporated by reference) is the entire agreement relating to its subject matter and by agreement excludes all other written communications, understandings, proposals, representations and warranties (to the extent permitted by law).

(i) **Defense of Claims.** You will defend or settle any claim for which You have an indemnity obligation under this Agreement, at Your sole expense. If You fail to do so promptly, Hitachi may assume control of the defense of the claim at any time and You will reimburse Hitachi's reasonable expenses (including reasonable legal fees) in doing so, without limiting Your other obligations. You must not settle a Claim without Hitachi's prior written approval.

(j) **Refunds.** To the extent that You are entitled under this Agreement to a refund of the fees that You have paid to Hitachi for: (i) any equipment and any software licensed under a perpetual term license, the refund will be less a straight-line depreciation, based on a 3-year useful life; (ii) any term based software programs, the refund will reflect the unexpired period of the license and associated maintenance and support services; and (iii) any Services, a pro-rated refund of fees for the Services delivered that are not in conformity with the warranty provided in Section 10.

(k) **Miscellaneous.** The parties are independent contractors and there is no actual or deemed partnership, franchise, joint venture, agency, employment or other fiduciary relationship between the parties. The parties may sign the Agreement and any further documents made under it in counterparts, which together will be binding on the parties and each of which may be transmitted electronically and will be effective upon the stated effective date. The singular includes the plural and vice versa. All grammatical forms of a defined term are given a corresponding meaning. Words such as "including" are not intended to be words of limitation. No rule of construction applies to disadvantage the party that drafted the Agreement. Unless the parties expressly agree otherwise, these rules of interpretation apply to the Online Terms and defined terms in the Agreement will also have the same meaning in the Online Terms and *vice versa*.

**EXECUTED AS AN AGREEMENT:**

IN WITNESS WHEREOF, the Parties have executed this Agreement by their respective authorized officers as of the effective date.

<b>HITACHI VANTARA NEW ZEALAND LIMITED</b>	<b>CUSTOMER</b>
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Signature:	Signature:
Name:	Name:
Title:	Title:
Date:	Date: