

## HITACHI VANTARA SOLUTION FRAMEWORK AGREEMENT

<b>Effective date:</b>	<b>Agreement number:</b>
<b>Customer (“You”):</b>	<b>Hitachi Vantara (“Hitachi”):</b>
Name:	Name: Hitachi Vantara S.A.U
Address:	Address: Avenida General Peron, No. 38, 2da Planta, 28020 Madrid, Spain
Contact Person (for Notices):	Contact Person (for Notices): Regional Counsel

**1. Parties and Scope.** This Agreement, which includes the Exhibits 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 Exhibits 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.** 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.

**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 determined in accordance with article 7 of Law 3/2004 of 29 December, as amended; (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 DDP 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 Exhibit A.

**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 Exhibit C. 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. 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. In the event that Hitachi requires to process Personal Data on Your behalf as part of any Order or other transaction made under this Agreement, the parties will enter into the corresponding Addendum describing the process and the security measures to be implemented when processing Personal Data in accordance with the Regulation (EU) 2016/679 (General Data Protection Regulation) (“GDPR”). Hitachi may disclose Your Personal Data to its personnel who need to know the information to perform Hitachi’s obligations under this Agreement; and/or to its affiliates, subcontractors, vendors, and agents who help Hitachi perform those obligations and who are contractually required to protect Your Personal Data or as required by applicable law. These affiliates subcontractors, vendors, and agents may be located outside of the European Economic Area (“EEA”). Transfers of Personal Data to locations outside of the EEA are managed in accordance with the provisions of GDPR. The parties may exercise the right to access, rectify, delete or object to the processing of Personal Data by sending a written communication to [privacy@hitachivantara.com](mailto:privacy@hitachivantara.com).

**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) and €1,000,000; 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 ), tort (including negligence), statutory duty or otherwise 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 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.**

**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 Spain.

**20. Force Majeure.** Except for payment obligations, neither party will be liable for performance delays nor for non-performance (including suspension) of an Order due to causes beyond its reasonable control, including without limitation war, riots, rebellions, currency and trade restrictions, embargos and sanctions, acts of authorities, compliance with law or governmental order, epidemic or pandemic, natural disasters or extreme natural events; explosions, fire, destruction of equipment, prolonged break-down of transport, telecommunication, information system or energy; general labour disturbance (e.g. boycott or strike) except for payment obligations. The party affected by a force majeure event shall notify the other party promptly of the event and the expected time to recover from such event. In case the force majeure event will only be temporary, the above consequences shall apply only as long as the performance delays are affecting the performance under the Order. In case the force majeure event is or becomes permanent (i.e. if it cannot be approximately foreseen whether or when an impediment to the fulfillment will cease to exist), either party has the right to terminate the Order by notification within a reasonable period but not less than one hundred eighty (180) days to the other party.

**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 criteria listed below (“**Background Check**”):

Background Check	Failure Criteria
Identity, including identifying numbers and identity documents	No identity evidence supplied
Right to work / Work permit information	No work authorization confirmed by government work authorities.
Education history and qualifications	Institution verifies individual never attended or degree has not been earned.
5 Year Employment Verification	Past employment indication cannot be verified.
Professional qualifications and registrations	Database match.

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 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. Subcontracting.** You agree that Hitachi may subcontract the performance of Services under this Agreement to employees and other resources outside the European Union 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. Hitachi Employees Management.** Hitachi employees working on Your premises will in all circumstances remain under Hitachi’s direct and disciplinary responsibility. Hitachi will manage Hitachi employees during on site services performance by all and any appropriate means. Hitachi, as employer of Hitachi employees, shall keep the burden of administrative and accounting management relevant to Hitachi onsite employees as well as all and any labor commitments and other legal requirements applicable in respect of these.

**29. General Terms**

(a) **Governing Law and Jurisdiction.** This Agreement and all Orders will be governed and construed in accordance with the laws of Spain (without regard to its conflict of law principles), and ~~and the venue for~~ any litigation arising out of, or in connection with, this Agreement, shall be of the exclusive jurisdiction of the Spanish courts in Madrid, Spain.

For the avoidance of doubt, 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.** Any modifications and amendments to this Agreement must be in written format and signed by each party's authorized representative.

Hitachi may change the Exhibits to this Agreement from time to time by providing at least three months' written notice. Those changes will not apply retrospectively; they apply, as of the effective date, only to new Orders and renewals. You shall be deemed to have accepted such changes unless You state anything to such contrary.

(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.** For a waiver of a right to be valid, it must be in written form. 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 S.A.U</b>	<b>CUSTOMER</b>
Signature:	Signature:
Name:	Name:
Title:	Title:
Date:	Date:



## EXHIBIT A TO THE SFA - SOFTWARE LICENSE TERMS

**DRAFTING NOTE: IF THIS EXHIBIT IS NOT RELEVANT TO THE PROPOSED HITACHI PRODUCTS OR SERVICES UNDER THE SFA, DELETE THE FOLLOWING TERMS AND ADD STATEMENT, "NOT APPLICABLE".**

These License Terms along with the terms attached to or incorporated by reference (together, the "License Terms") apply to Software supplied to You as end user and licensee ("You") and must be read together with Your supply agreement with Hitachi or a Hitachi authorized distributor or reseller partner for the provision of products and/or services from Hitachi ("Agreement"). References to "Hitachi" mean Hitachi Vantara LLC or its Affiliate, which may be Hitachi, Ltd., or any business entity controlled by or under the common control of Hitachi Vantara or Hitachi, Ltd.

### 1. Software Scope and Your Entitlement.

(a) Under these License Terms "Software" includes, as applicable, operating software contained within the equipment, firmware or stand-alone software.

(b) Your Software license rights are defined by Your "Entitlement" setting out the details of the Software licenses purchased by You, including license metric, duration, quantity, and other relevant information detailed in Your Order or other Hitachi-authorized confirmation of Your Order.

(c) Your Software license entitles You to receive: (i) the version of the Software stated in Your Entitlement and, if You are entitled to support, any no charge updates that Hitachi makes generally available to its customer base from time to time, including code or error corrections, service packs, maintenance releases, and minor releases; and (ii) applicable related "Documentation," such as end user or technical manuals, published specifications and other standard Hitachi product documentation as updated by Hitachi from time to time.

### 2. License Grant.

(a) Provided that You are in compliance with these License Terms, Hitachi grants You a non-transferable, non-exclusive license to use the Software in object code format solely for Your internal business operations, pursuant to Your Entitlement and the Documentation.

(b) If You exceed Your Entitlement, You must pay to Hitachi or the Hitachi partner (as applicable) all additional license fees.

(c) Unless Hitachi notifies You otherwise, Software and Documentation will be delivered to You electronically. Hitachi may use license keys, tokens (i.e. prepaid mechanisms to meter user consumption) and any remote or other mechanisms to limit Your use of Software. If You receive a license key for a perpetual version of the Software, Your authorized use will be locked to that version except for any version number changes to the right of the version release decimal point that are effected by the provision of updates to You as described in Section 1(c) above.

(d) You may only use the Documentation in support of Your authorized use of the applicable Software.

### 3. Software Evaluation Licenses. If Hitachi grants You the right to evaluate Software:

(a) Your authorized use of the Software under evaluation is limited solely to: (i) evaluating the performance and functionality of the Software either on a stand-alone basis or on the relevant equipment with which it is provided in a non-production environment; and (ii) evaluating the product's performance in a non-production environment for Your internal business purposes.

(b) Your license to evaluate the Software will end upon the earlier of: (i) the expiry of the applicable product loan period; (ii) the termination of the product loan arrangement; or (iii) the expiry of the applicable license key.

(c) Any output of the Software that is created or otherwise arises pursuant to Your evaluation is deemed confidential and proprietary information of Hitachi. You must not duplicate such output, nor use it after the evaluation period ends, unless Hitachi grants to You a further license to the Software.

(d) Notwithstanding any other provision in the Agreement and to the extent permitted by applicable law and except for death and personal injury caused directly by Hitachi's act or omission, Hitachi will not be liable for any actual or anticipated, direct, indirect, special, incidental, consequential or other damages arising from the use of the Software and any services performed on the Software for such purposes, however caused, whether under contract, in equity, common law, statute or otherwise, including breach of contract, breach of warranty or in tort (including negligence), anticipatory breach or repudiation, even if Hitachi has previously been advised of the possibility of such damages. THE SOFTWARE IS PROVIDED FOR EVALUATION PURPOSES AND THE SOFTWARE AND ANY SERVICES PERFORMED ON OR USING THE SOFTWARE FOR SUCH PURPOSES ARE PROVIDED "AS IS" WITHOUT ANY WARRANTIES OR REPRESENTATIONS EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF QUALITY, NON-INFRINGEMENT, INTEROPERABILITY, PERFORMANCE, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

#### **4. Third Party Software.**

(a) Except where Hitachi sub-licenses to You third party software embedded in Hitachi-branded Software under these License Terms:

(i) Subject to Section 5 below, Your authorized use and other license rights in any third party software that Hitachi supplies to You will be subject to the terms of the end user license agreement issued by the licensor of the third party software, or "EULA."

(ii) Except as expressly stated otherwise in the Agreement or in Your Entitlement, You will have no recourse against Hitachi or its Affiliates under any aforementioned EULA, and You are solely responsible to comply with such license terms. Without limiting the previous sentence, Hitachi provides third party software to You without warranties or support of any kind, and licenses, warranties, indemnities for intellectual property infringement claims and support for third party software will be governed by the licensor in the applicable EULA.

(b) When Hitachi is the licensor of third party software and the license requires it, the licensor of the third party software is an intended third party beneficiary of these License Terms and may enforce them against you.

(c) You will have no recourse against Hitachi or its Affiliates with respect to the actions or omissions of a third-party hosting service or hosting provider and its agents.

#### **5. Open Source Software.**

(a) You acknowledge that Software you license may include open source software and is subject to separate license terms set forth in the applicable open source software provided with the Software itself, or otherwise in the Documentation or at <https://www.hitachivantara.com/en-us/company/legal.html>.

(b) You must refer to the applicable EULA for open source software terms related to third party software. By accepting these License Terms, You are deemed to have accepted the terms of the applicable EULA.

**6. Use Restrictions.** Except to the extent that any of the following restrictions are prohibited by law (and, then only to the extent prohibited) or any such restricted actions are otherwise allowed under these License Terms or by written authorization from Hitachi, You must not:

(a) disclose to any third party the results of Software or other product testing or benchmarking;

(b) reconstruct the source code or underlying ideas, algorithms, file formats, or interfaces of the Software, such as by translating, decompiling, disassembling or reverse engineering;

(c) create derivative works of or unbundle the Software;

(d) allow use of the Software by a third party, such as by sublicensing, leasing, reselling, transferring, loaning, distributing, or allowing use on a service bureau, time sharing, hosted or cloud service model;

- (e) copy the Software, except as authorized in Section 7 below ;
- (f) make the Software available on any public network or allow access on an intranet unless it is restricted to authorized users;
- (g) remove or tamper with proprietary notices, labels, or marks on or in the Software;
- (h) use the Software or allow its use for any competitive development, testing, analysis, or marketing purposes;
- (i) use the Software via any communications network or by means of remote access;
- (j) use the Software licensed for a specific device, whether physical or virtual, on any other device; or
- (k) disable, attempt any work-around of, or otherwise interfere with any license keys, tokens, or other mechanisms in the Software.

**7. Authorized Copies.** Subject to the restrictions in Sections 6 and 8, You may copy the Software solely for Your internal backup or archival use so long as all proprietary marks, notices (including copyright notices) and labels are reproduced and included with each copy of the Software.

**8. Software Transfers.**

(a) You must not sublicense or transfer the Software to any other party without Hitachi’s prior written consent. You may only use operating software on the equipment for which it was purchased and must not transfer other Software to new equipment without Hitachi’s prior written consent.

(b) You may, however, transfer operating software to a third party solely with the related equipment, but You must ensure that the transferee agrees to the License Terms. The operating software is provided to the transferee on an “as is” basis, with no transfer or extension of any existing warranty or support arrangements. Upon such transfer, You must remove and destroy all copies of the operating software in Your possession or under Your control.

**9. Verification Rights.** Hitachi or its independent auditor may, upon reasonable notice to You, examine and audit Your records and systems to ensure Your compliance with these License Terms. The audit will be performed during normal business hours in a manner which does not unduly interfere with Your business operations. If the audit shows that You are using more copies of the Licensed Items than permitted, Hitachi may charge You additional license fees.

**10. Termination Of Licenses.** Subject to Section 3(b) above, Your license in the Software is effective until its termination or expiration. Your license in the Software will terminate if You are in breach of these License Terms, the Agreement, or if you fail to pay any portion of the applicable license fee and You fail to cure the breach in accordance with the terms of the Agreement. Upon termination or expiration of a license, You must destroy or disable all copies of the Software and Documentation.

**11. Usage And Performance Data.** Hitachi may collect and transfer data created by and derived from the products or services that Hitachi supplies to You, including analytics models and statistical and performance usage data, which does not include personal data or other identifying information. You grant to Hitachi, its Affiliates and their respective personnel a worldwide, royalty-free, non-exclusive license to use, copy, modify and sublicense such derived data for the purposes of product and/or service delivery, improvement and development and You agree and acknowledge that Hitachi may share that data with Affiliates or authorized partners at any time and without notifying You. Hitachi may use feedback You provide about the Software for its business operations.

**12. Maintenance Materials and Software Support.** The Hitachi Warranty, Maintenance and Support Terms located at <https://www.hitachivantara.com/en-us/pdf/legal/warranty-maintenance-support-online-terms.pdf> set out Hitachi’s terms and conditions related to the support of Software.

## HOSTED SERVICES ADDENDUM TO HITACHI VANTARA SOFTWARE LICENSE TERMS

This Addendum governs Your licensed rights, in, and authorized use of the Software to provide Hosted Services to End Users. References to "License Terms" includes the terms of this Addendum.

### 1. HOSTED SERVICES PERMITTED

- (a) This Addendum will take effect on the date that the Parties agree in writing to be the effective date or, if no such date is agreed, on the date that Customer receive the Software from Hitachi.
- (b) Where Customer have been authorized by Hitachi under Customer's Entitlement to provide Hosted Services, Hitachi grants to Customer the non-exclusive, non-transferable right: (i) to Use the Software at the Location to offer or provide Hosted Services to End Users; and (ii) to authorize End Users to install, upload, or uninstall the Application(s) intended for this purpose on their systems, for the sole purpose of receiving the Hosted Services that Customer deliver through the operation of the Software at the Location.

### 2. CUSTOMER'S RESPONSIBILITIES

- (a) Customer are responsible for the development, configuration, operation, maintenance, performance, confidentiality, security and use of all Content in connection with the Hosted Services, as well as the ongoing availability of the Hosted Services. Hitachi has no responsibility or liability to Customer or any End User in that regard. Customer must ensure that such Content is fully compliant with all applicable policies, contractual terms, regulations and laws; including, but not limited to the implementation of commercially reasonable measures and enforceable security and use policies with respect to the Hosted Services and those parts of Customer's network that use the Software, in order to prevent (i) security breaches, (ii) internet breaches (e.g., unauthorized access, security or privacy breaches), (iii) uploading and/or use of offensive Content, and (iv) violation of intellectual property laws.
- (b) Customer are responsible for End Users' use of Content and the Applications. Customer will ensure that Customer's service agreements with End Users are consistent with the License Terms. Customer are fully responsible for (i) any unauthorized use of the Software or breach of the above obligations by Customer and/or any of Customer's End Users; (ii) purchasing a sufficient quantity of Software licenses to cover Customer's provision of Hosted Services to Customer's End Users; and (iii) making no representations or warranties (express or implied) or providing indemnities on behalf of Hitachi to End Users in connection with the Software.
- (c) If Customer become aware or reasonably suspect of any violation of Customer's obligations under the License Terms due to the act or omission of any of Customer's Personnel, and End User or other third party (including an End User), Customer will immediately: (i) notify Hitachi, (ii) terminate such End User's access to the Content and the Hosted Services; and (iii) if applicable, pay all outstanding fees owed to Hitachi or the Hitachi Partner (as the case may be).
- (d) Customer are responsible for properly configuring and using the Software to suit Customer's operations and requirements, as well as the Content and the service-related requirements of Customer's or Customer's End Users, and Hitachi has no responsibility or liability to Customer or any End User in that regard.
- (e) WITHOUT LIMITING CUSTOMER'S OBLIGATIONS ELSEWHERE UNDER APPLICABLE CONTRACT OR LAW, CUSTOMER MUST TAKE ALL NECESSARY STEPS TO MAINTAIN APPROPRIATE SECURITY, PROTECTION AND BACK-UP MEASURES WITH RESPECT TO THE CONTENT AND THE HOSTED SERVICES, WHICH MAY INCLUDE THE USE OF ENCRYPTION TECHNOLOGY TO PROTECT THE CONTENT FROM UNAUTHORIZED ACCESS AND THE IMPLEMENTATION OF ROUTINE BACK-UP AND ARCHIVING PROCESSES.
- (f) Customer are responsible for providing any support or services (if any) to End Users with respect to the Hosted Services and Hitachi has no responsibility or liability to Customer or any End User in that regard. Without limiting the previous sentence, Hitachi does not provide any support or services with respect to the Software to Customer or to any End User unless Hitachi has a separate agreement with Customer or an End User, under which Hitachi is required to provide such support or services.
- (g) Customer will not permit any End User to access the Software, except to the extent that is necessary for the End User to receive the Hosted Service from Customer or to the extent reasonably required for Customer's own internal administrative purposes. Customer must co-operate with Hitachi's investigation of security problems relating to the use of the Software and Hosted Services and any breach of this Addendum by Customer and/or any End User.
- (h) Customer must not move the Software from the Location without Hitachi's prior written consent.

### 3. PROPRIETARY RIGHTS

- (a) As between Customer and Hitachi: (i) Hitachi or its licensors own all right, title and interest, including all IP Rights, in the Software and the Hosted Service and Customer obtain no rights in such items, other than as expressly provided for in the License Terms, and (ii) Customer or Customer's licensors own all right, title and

interest, including all copyright in the Content. However, Customer consent to the access or use by Hitachi (including its licensors) of such Content to provide any services that Hitachi has agreed to provide Customer and/or any End Users or to comply with any request of a governmental regulatory body (including subpoenas and court orders).

- (b) Customer represent and warrant to Hitachi that: (i) Customer or Customer's licensors own all right, title, and interest in the Content; (ii) Customer have obtained all rights in such Content necessary to grant the rights to End Users contemplated herein; and (iii) no Content, or Customer's and/or End Users' use of the Content, Hosted Service or the Software will violate the License Terms, the Acceptable Use Policy or third party IP Rights.

#### **4. INDEMNITY**

- (a) Customer will defend, indemnify, and hold harmless Hitachi and its Affiliates and licensors, and each of their respective Personnel ("**Indemnified Parties**") from and against any claims, damages, losses, liabilities, costs, and expenses (including reasonable legal fees) arising out of or relating to the following ("**Claim**"): (i) Customer's or any End Users' operation and/or use of the Hosted Services or Software; (ii) any violation of applicable law by Customer or any End User in connection with the Hosted Services or Software; (iii) Customer's or End Users' Content or the combination of such Content with other applications, content or processes, including any claim involving alleged infringement or misappropriation of third-party rights by such Content or by the use, development, design, production, advertising or marketing of such Content; or (iv) a dispute between Customer and any End User. If any Indemnified Party is obligated to respond to a third party subpoena or other compulsory legal order or process described above, Customer will also reimburse the Indemnified Party for reasonable legal fees, as well as an amount for time and materials spent responding to the third party subpoena or other compulsory legal order or process at the then-current hourly rates applicable to the Indemnified Party.
- (b) Customer will be responsible to defend or settle the Claim but must not settle the Claim without Hitachi's prior written consent. Hitachi reserves the right to assume control of the defense and settlement of the Claim at any time.
- (c) Hitachi's obligations to Customer with respect to the Use of the Software are as expressly stated in the License Terms.

#### **5. DEFINED TERMS**

The following defined terms apply in addition to the defined terms set out in the License Terms (which also apply to this Addendum):

**Acceptable Use Policy:** the policy that is available at <https://www.hitachivantara.com/en-us/company/legal.html>, as amended or updated from time to time.

**Application(s):** desktop client and mobile applications accessed via the Hosted Services.

**Content:** content of any kind that Customer and/or Customer's End Users access or use through the operation and/or supply of the Hosted Services, with such content including software (including machine images), data, text, audio, video, images or other content.

**End Users:** any persons to whom Customer offer or provide the Hosted Services. The term "**End Users**" will apply in circumstances where the providing entity supplies the Hosted Services to Personnel within its own organization and to unaffiliated third parties who are outside of its organization.

**Hosted Services:** the technology services (including Content and Applications) that Customer offer or provide to End Users, using the Software at the Location through a network connection.

**Location:** the location of the physical servers or systems either at the site of Customer's business, a third party or the End User, as notified to Hitachi prior to the delivery of the Software.

**Personnel:** an entity's employees, subcontractors, workforce members, agents and authorized representatives.

**Software:** the Hitachi Content Platform portfolio, which includes, but is not limited to, Hitachi Content Platform, Hitachi Content Platform Anywhere, Hitachi Content Intelligence, and Hitachi Content Platform's Edge solutions and any further Hitachi software that Hitachi notifies to Customer in writing. This Software definition only applies to this Addendum.

## EXHIBIT B TO THE SFA - "AS A SERVICE" OFFERINGS

DRAFTING NOTE: IF THIS EXHIBIT IS NOT RELEVANT TO THE PROPOSED HITACHI PRODUCTS OR SERVICES UNDER THE SFA, DELETE THE FOLLOWING TERMS AND ADD STATEMENT, "NOT APPLICABLE".

### 1. XAAS AGREEMENTS

(a) **Direct Purchases.** If You purchase XaaS Services directly from Hitachi pursuant to a Master Agreement, then these Terms, the applicable Service Catalogue (if any) and Service Summary, along with the terms of the Master Agreement (to the extent not expressly excluded), will apply to and, together with other documents as provided in the definition of the XaaS Agreement, form the binding "**XaaS Agreement**" between Hitachi and You for the applicable XaaS Services as further described in the Definitions section. For a Hitachi "Manage" partner, references to You mean the Hitachi "Manage" Partner.

(b) **Indirect Purchases.** If You purchase XaaS Services from a Hitachi Partner, Hitachi will provide the XaaS Services to You under these Terms and the applicable Service Catalogue (if any), which will form the binding "**XaaS Agreement**" between Hitachi and You for the applicable XaaS Services as further described in the Definitions section. You will enter a separate agreement with the Hitachi Partner for the purchase of the XaaS Services covering matters such as ordering, pricing, commitment, service credits (if any) and payment terms. Hitachi will not be a party to, nor will be bound by the terms of Your agreement with the Hitachi Partner. Any terms of the agreement between the Hitachi Partner and You will not apply to the XaaS Agreement.

### 2. SCOPE OF XAAS SERVICES; OTHER SERVICES

(a) **Authorized Scope.** Subject to the terms of the XaaS Agreement, Hitachi provides You a personal, non-transferable, non-exclusive right to access and consume the XaaS Services during the Term solely in a manner that is consistent with Your entitlement from the Partner or Hitachi. Your authorized rights stated herein are granted solely for Your internal business purposes, unless the XaaS Agreement states otherwise. Notwithstanding the previous sentence, You will be fully responsible and liable for all services performed by a third party that You have engaged to do so or where such services are performed by or on Your behalf, including those performed by a Hitachi Partner and Hitachi will have no liability to You for that delivery. You will defend, indemnify and hold Hitachi and its Affiliates and their respective Personnel harmless from and against all Losses that they jointly or severally incur due to any Claim directly or indirectly related to the delivery of services for which You are liable under this Section 2(a).

(b) **Infrastructure.** To the extent that Hitachi provides Infrastructure to Your Location to provide the XaaS Services, the Hitachi Infrastructure Terms set out in Exhibit A to these Terms will apply and be incorporated into the XaaS Agreement.

(c) **Service Levels; Additional Terms.** Hitachi will only be liable to you for service level breaches with respect to XaaS Services if service levels are contained in the applicable Service Catalogue (if any) and Hitachi's liability for such breaches will be fully subject to the limitations and exclusions set out in the Service Catalogue (if any) and the XaaS Agreement. For the avoidance of doubt, Hitachi will have no liability for any Additional Terms, including any warranties or service level commitments (and any associated service credits) made by Hitachi Partner to You and which are not contained in these Terms or the applicable Service Catalogue (if any). For indirect purchases, if any service credits are payable under Your agreement with the Hitachi Partner for service level breaches with respect to the XaaS Services, Hitachi will not be liable to You, and payment of the service credits to You will be the responsibility of the Hitachi Partner.

(d) **Other Services.** Hitachi will deliver Professional Services, where they form part of the transaction under the XaaS Agreement. All Professional Services will be supplied by Hitachi for a separate fee, except where stated in the relevant Service Summary, under a SOW that incorporates the terms of the XaaS Agreement, or as specified in a Service Catalogue. Where Professional Services are provided pursuant to an SOW instead of a Service Catalogue, Hitachi will not be required to commence any Professional Services unless the applicable SOW has been agreed and fully executed.

### 3. OWNERSHIP AND TERMS OF USE

(a) **Ownership.** Hitachi or its licensors own all right, title and interest in the XaaS Services and the Infrastructure and You and Your End Users get no rights (including any usage rights in any Hitachi trademarks) other than the access and license rights specified herein or any applicable rights granted to You in the Software Online Terms. You are not

authorized to resell the XaaS Services unless the XaaS Agreement states otherwise and You are not authorized to otherwise sell or transfer the ownership of or any other rights in the Infrastructure.

(b) **Restrictions on Use.** You must not take any action nor permit any third-party to take or allow any action that will, or is likely to, jeopardize Hitachi's or its licensors' rights in the Hitachi IP, including to: (i) copy, modify, disassemble, decompile or otherwise reverse engineer any Hitachi IP, except to the extent permitted by applicable law or an express authorization under the XaaS Agreement; (ii) sub-license any Hitachi IP without Hitachi's prior written approval; (iii) register or seek to register anywhere in the world any competing IP, or to use or allow the use of any Hitachi IP for that purpose; (iv) delete or tamper with any proprietary notices on or in the Hitachi IP; (v) do anything that diminishes the value of any trademarks included in the Hitachi IP; (vi) use the Hitachi IP in any manner which creates the impression that the Hitachi IP belongs to, or is identified with You; or (vii) use the Hitachi IP in violation of applicable law or in a manner that avoids incurring charges that would otherwise be payable for such services.

(c) **License Grants.** Without limiting the operation of any further rights set out elsewhere in these Terms and the XaaS Agreement and subject to the restrictions set out in the Software Online Terms, Hitachi grants You a personal, non-transferable, non-exclusive license to Use the Software to operate the Equipment in accordance with its Published Specifications as authorized in the XaaS Agreement. For any non-Hitachi proprietary software, Hitachi will pass through all applicable end user license and/or maintenance terms provided by the third party vendor and, subject to applicable law, these will form a contract between You and the third party vendor.

#### **4. YOUR OBLIGATIONS**

(a) **Compliance and Misuse.** Without limiting other parts of these Terms or any other terms of the applicable XaaS Agreement, You will comply with all applicable laws, regulations, Hitachi Policies and other mandatory codes and industry practices in the Use of the XaaS Services. You are responsible to ensure that there is no Misuse of the XaaS Services, by You, Your Personnel or Your End Users. Hitachi and its Affiliates and Personnel are not responsible or liable for any Misuse by You or any other person. If You become aware of any Misuse, You must notify Hitachi immediately.

(b) **Technical Requirements.** You are responsible for: (i) the provision at the applicable Location(s) of sufficient solution components, server connectivity, data center space, light, continuous, constant and uninterrupted power, data migration services and telecommunications infrastructure and bandwidth in order to access and consume the XaaS Services in a secure and authorized manner, consistent with the XaaS Agreement; and (ii) the proper configuration of the XaaS Services to meet Your operational and business requirements (unless Hitachi has agreed to do so in a signed SOW). You will provide customer support, helpdesk and similar services to Your End Users. Hitachi will not provide those services to Your End Users, unless Hitachi enters a separate agreement for such services.

(c) **Co-operation and Resources.** You will, at Your cost, assist and co-operate with Hitachi, to enable Hitachi to meet its obligations under the XaaS Agreement. This includes the provision of: (i) timely access to Your operations, including to all Locations, Hitachi and Non-Hitachi Infrastructure, third party services and contracts); (ii) remote and one-site access to computer equipment (including remote access and the user access authentication tokens and passwords required for such access), Infrastructure, work space, facilities, Personnel, materials and other support and resources; and (iii) complete and accurate information in the form that Hitachi reasonably requests. You acknowledge and agree to the Dependencies and Assumptions related to the XaaS Services. Without limiting the previous sentence or the terms of an applicable SOW, You will, at Hitachi's request, ensure that appropriately qualified person(s) are appointed as Your representative(s) for the access to and consumption of the XaaS Services and to communicate with Hitachi on all service-related matters. Hitachi will be entitled to assume that the acts, conduct and decisions of such appointee(s) are authorized by, and are binding on the applicable appointing party.

(d) **Content.** You are responsible for: (i) the Use of the Content as part of the XaaS Services by You, Your Personnel and Your End Users; (ii) the transfer of Content to third parties; (iii) securing all necessary rights and permissions to Use the Content as part of the XaaS Services; and (iv) the proper handling of all Content violation notices. Without limiting Your obligations under applicable contract or law, You must maintain appropriate security and back-up of the Content, the use of encryption technology to protect all Content in motion and at rest from unauthorized access and during routine back-up and archiving processes. You grant to Hitachi, its Affiliates and their respective Personnel a worldwide, royalty-free, non-exclusive right and license to: (A) use the Content as Hitachi reasonably determines to provide the XaaS Services; and (B) disclose the Content in order to comply with a Legal Requirement. You

represent and warrant to Hitachi that You or Your licensors own all right, title and interest in the Content and that You are duly authorized to provide the licenses herein. Hitachi may use third-party providers and Third Party Content for some XaaS Services. Third Party Content may be subject to separate terms, which will operate separately to these Terms. You consent to Hitachi transferring Your Content and/or registration and/or account information to its authorized subcontractors. If You install or enable Third Party Content for Use with any XaaS Services or authorize Hitachi to do so, Hitachi may allow the Third Party Content provider to access the Content as necessary for the interoperability of the Third Party Content and the XaaS Services.

(e) **End Users.** (i) Where You Use XaaS Services to sell further services to End Users, You are responsible for entering the applicable End User Agreements, which must be at least as protective of and must not limit or otherwise detract from Hitachi's rights. You will use Your best efforts to ensure that Your End Users use the Content and XaaS Services consistently within the scope of Your authorized Use and do not cause You to be in breach of the XaaS Agreement. If You become aware of, or reasonably suspect any such breach or any Misuse, You must immediately notify Hitachi and suspend the applicable End User's access to the Content and the XaaS Services. You will fully co-operate with Hitachi's investigation and remediation actions for such breach or Misuse. (ii) You must not provide to, or otherwise agree to any Additional Terms with an End User without Hitachi's prior written consent. If You do so, You will be solely responsible for the Additional Terms. Hitachi will have no liability to You or an End User for those Additional Terms. (iii) If the relevant XaaS Agreement ends or Your relationship with an End User ceases for any reason, You will end that End User's access to and use of the XaaS Services immediately.

(f) **Derived Data.** Hitachi may collect and transfer Derived Data to its Affiliates, Personnel, contractors or vendors at any time and without notifying You. You grant Hitachi, its Affiliates and their respective Personnel a worldwide, royalty-free, non-exclusive right and license to use, copy, modify and sub-license the Derived Data for the purposes of service delivery, improvement and development.

(g) **Contributions.** You grant to Hitachi and its Affiliates and their respective Personnel a worldwide, royalty-free, non-exclusive right and license to use, copy, modify, sub-license and distribute any Contributions and to incorporate them into any product or service supplied by Hitachi or its Affiliates.

(h) **Audit Rights.** Hitachi may regularly audit Your compliance with the XaaS Agreement. You will notify Hitachi immediately if You become aware of any breach and will fully co-operate with Hitachi's investigation and remediation efforts for such breach. Without limitation, such remedies may include the suspension of access rights to the XaaS Services.

(i) **Data Removal.** Without limiting Your other obligations in the XaaS Agreement or applicable law, You must ensure that, prior to removal by or return to Hitachi for any reason, all data is removed from such Product or Infrastructure. Hitachi takes no responsibility for data remaining on any Product or Infrastructure that is removed by or returned to Hitachi. You must defend, indemnify and hold Hitachi, its Affiliates and their respective Personnel harmless from and against any and all Losses that is caused directly or indirectly by Your failure to comply with this Section.

## **5. SUSPENSION AND TERMINATION**

(a) **XaaS Agreement Term.** Each XaaS Agreement will start on the XaaS Agreement Start Date and subject to Section 5(b) of these Terms, will continue until the Service End Date. The Initial Service Period will automatically renew for consecutive Renewal Service Periods, unless either Party notifies the other Party in writing of non-renewal by no less than one hundred and twenty (120) days prior written notice, taking effect at the end of the then-current period.

(b) **Termination Rights.** These Terms do not limit the termination rights that are available to a Party under an XaaS Agreement, however You may terminate an XaaS Agreement for no cause, provided that You ensure Hitachi receives (either directly or through the Hitachi Partner, as applicable) no less than one hundred and eighty (180) days' prior written notice of termination from You or, where applicable, Your Hitachi partner and in the case of a direct purchase of XaaS Services, subject to the payment of the Termination Payment to Hitachi by no later than the end of that notice period.

(c) **Suspension Rights.** Without limiting any other rights available to Hitachi under the Master Agreement or applicable law, Hitachi may suspend delivery of all or any part of the XaaS Services without liability if: (i) You are in breach of Your payment obligations under an XaaS Agreement or payment obligations to a Hitachi Partner; (ii) You are otherwise in uncured breach of an XaaS Agreement because of Your conduct or the conduct of Your Personnel or End User; (iii) You or any party on Your behalf commits a Misuse; (iv) You become or threaten to become Insolvent; or (v) there is a change of control in You that is not approved in writing by Hitachi. Without limiting Hitachi's rights



under these Terms or under applicable law, Hitachi will reinstate any suspended XaaS Services following the remediation of the breach. Hitachi has a right to terminate the XaaS Agreement if Hitachi has a right to suspend XaaS Services under this Section. Hitachi will use reasonable commercial endeavors to give You or Your Hitachi Partner (where applicable) notice in advance of a suspension, except where it determines immediate suspension is necessary. You will remain responsible for all fees and charges that You incur during the suspension period, including any further period of use contemplated by these Terms or the XaaS Agreement. However, Hitachi shall not be liable for any Failure in the XaaS Services during any suspension period, irrespective of whether or not any service credits are payable by Hitachi under an XaaS Agreement for service level breaches. Hitachi will not erase Content during a suspension except as otherwise specified in these Terms or the XaaS Agreement.

(d) **Post-Termination.** Upon and after the Termination Date, You, Your Personnel and Your End Users no longer have the right to access and Use the XaaS Services, except for the limited circumstances of Disengagement Assistance below. Upon the termination or expiry of an XaaS Agreement or SOW (as applicable), to the full extent applicable: (i) Your rights, licenses and privileges under it will end; (ii) You must comply with Hitachi's directions requiring You to cease Use of the XaaS Services and, at Your cost, to return to Hitachi or destroy (at Hitachi's election and within the timescales notified by Hitachi) all Infrastructure and Confidential Information in Your possession or control; (iii) You will not be relieved of Your payment obligations and all money due and owing to Hitachi at the date of termination will become immediately payable, including, if a direct purchase of XaaS Services, the Termination Payment, if applicable; (iv) You will be responsible, at Your cost, to delete or otherwise remove all Content in a proactive and timely manner; and (v) You may request Disengagement Assistance from Hitachi or the authorized Hitachi partner, as applicable, provided the relevant Service Catalogue, if any, states that Disengagement Assistance is available for those XaaS Services. The XaaS Agreement will continue to operate on the same terms at the Service End Date for the duration of any Disengagement Assistance. Rights and obligations under Exhibit A to these Terms or an XaaS Agreement, which by their nature should survive the termination or expiration, will remain in effect after termination. Neither Party is deemed to have waived any of its existing rights as a result of termination. Any termination will be without prejudice to any other rights or remedies a Party may be entitled to under Exhibit A to these Terms, XaaS Agreement or at law (or which have arisen on or before the date of termination).

## **6. FINANCIAL AND PAYMENT TERMS**

This Section 6 shall apply solely to direct purchases of XaaS Services from Hitachi. For indirect purchases of XaaS Services from a Hitachi Partner, financial and payment terms shall be set out in Your agreement with the relevant Hitachi Partner.

(a) **Fees and Payment.** The Fees for the XaaS Services will be as set out in the applicable XaaS Agreement and Your payment obligations will start on the Service Billing Date and will continue during the Service Term. The Fees will be set out in the Billing Report for each Location, which together with the relevant invoice of Fees for the Location, will be provided to You in electronic format. Unless the XaaS Agreement states otherwise, the Fees will be in US Dollars and will apply to all Locations. The Fees are accrued, due and payable monthly, regardless of whether You receive an invoice from Hitachi.

(b) **Minimum Fee and Termination Payment.** Notwithstanding anything to the contrary in any other part of the Master Agreement or an XaaS Agreement, You must pay: (i) the Monthly Minimum Fee, irrespective of Your actual usage of the XaaS Services; and (ii) the Termination Payment, if any is set forth in the XaaS Agreement, where You have exercised Your right to terminate the XaaS Agreement for convenience, or Hitachi has exercised its right to terminate EverFlex the XaaS Agreement for cause under these Terms. Your payment obligations are without any right of deduction by way of set-off, counterclaim, discount or otherwise.

## **7. CONFIDENTIALITY**

Hitachi may provide its Confidential Information to You and You may provide Your Confidential Information to Hitachi (the Party disclosing the information is the "**Discloser**" and the Party receiving the information is the "**Recipient**"). The Recipient will only use the Confidential Information of the Discloser internally for reasons connected to the XaaS Services under the XaaS Agreement. For a period ending three (3) years after the termination or expiration of the XaaS Agreement, the Recipient will not disclose the Confidential Information of the Discloser to a third party, unless the Discloser agrees to this in writing or as otherwise specified in this section. The Recipient must use all reasonable measures to avoid disclosure or unauthorized use of such Confidential Information and, at a minimum, take the same measures that the Recipient takes to protect their own Confidential Information. If

Hitachi is the Recipient, Hitachi may disclose Your Confidential Information to its affiliates solely for the purposes of delivering or improving the XaaS Services. The obligations of confidentiality do not apply to any disclosure or use of Confidential Information to the extent the disclosure or use is required by a Legal Requirement or is expressly authorized by the Discloser in writing.

#### **8. INDEMNITY**

(a) You will indemnify, defend and hold Hitachi, its Affiliates, licensors and subcontractors, and each of their respective Personnel (each an “**Indemnified Party**”) harmless from and against any Claims or Losses asserted, claimed, assessed or adjudged against any Indemnified Party by any third party (including without limitation End Users) or incurred by any Indemnified Party arising out of the following:

- (i) Your use of the Infrastructure or any breach of Your obligations under the XaaS Agreement;
- (ii) any Claim related to any Misuse or breach of applicable law by You, Your Personnel or an End User with respect to the XaaS Services or the removal or deletion of Content by You or a third party on Your behalf at the end of the XaaS Services;
- (iii) any third-party Claim against any of the Indemnified Parties related to Your Content or Contributions, including their combination with other applications, content or processes or their misappropriation or breach of any third party’s IP Rights;
- (iv) any third party Claim arising from any Additional Terms not approved by Hitachi in advance; or
- (v) a dispute between You and any End User.

(b) You will defend or settle any Claim referred to in Section 8(a) of these Terms at Your sole expense and 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 its 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.

#### **9. LIMITATIONS OF LIABILITY**

(a) If You have a Master Agreement, the limitation of liability provision in that Master Agreement applies unless otherwise agreed in relevant the XaaS Agreement. If You don’t have a Master Agreement, to the extent permitted by applicable law and unless an XaaS Agreement states otherwise, except for liability arising from death or personal injury resulting from negligence or omission, any infringement of Hitachi IP, fraud or deceit, a confidentiality obligation, Your indemnity obligations, or Your nonpayment: (i) neither Party will be liable in any circumstances for: (A) any indirect, punitive, special, incidental or consequential damages in connection with or arising out of an XaaS Agreement; or (B) whether direct or indirect, for loss of actual or anticipated business, revenue, profits, savings, goodwill, loss of use, lost or corrupted data, electronically transmitted orders, or loss of other economic advantage; and (ii) unless an XaaS Agreement or SOW states otherwise, each Party’s maximum and aggregate liability arising out of or in connection with the supply or receipt of the XaaS Services will not exceed the lesser of the total Fees that You have paid for the XaaS Services during the six (6) month period immediately before the date of the first event that gave rise to the Claim and two million US dollars (\$2,000,000). Hitachi’s breach of any data privacy obligations falls within sections (i) and (ii) in the previous sentence.

(b) The limitations and exclusions of liability in this Section 9 apply whether such liabilities or Claims arise under contract (including anticipatory breach or repudiation), in equity, common law, statute or otherwise, including breach of contract, breach of warranty or in tort (including negligence) or otherwise 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 the XaaS Agreement fails of its essential purpose.

#### **10. WARRANTY AND DISCLAIMER**

(a) You represent and warrant to Hitachi that, as at the XaaS Agreement Start Date and for the Service Term of each XaaS Agreement that you enter:

- (i) You are organized under the laws of Your country of incorporation and You are in good standing under such laws and in such other jurisdictions as are necessary for You to carry on Your business;
- (ii) You have obtained all necessary authorizations to carry on Your business in every country where a Location is situated;
- (iii) the execution and performance of Your obligations under the XaaS Agreement will not violate any provision of Your articles or certificate of incorporation or bylaws or any other agreement to which you are a party;

(v) You have obtained all necessary authorizations to execute, deliver and perform Your obligations under the XaaS Agreement;

(vi) the XaaS Agreement concluded on the terms hereunder is legal, valid, binding and enforceable against You in accordance with its terms; and

(vii) You are and will always remain the data controller for any Personal Data that You provide to Hitachi and You will comply with all corresponding obligations under applicable data protection laws and regulations.

(b) EXCEPT AS SPECIFIED IN AN XAAS AGREEMENT, ALL EXPRESS OR IMPLIED CONDITIONS, REPRESENTATIONS AND WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OR CONDITION OF MERCHANTABILITY, 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 THE XAAS SERVICES WILL OPERATE UNINTERRUPTED, SECURELY OR ERROR FREE AND WILL NOT BE LIABLE FOR COSTS OF PROCUREMENT OF SUBSTITUTE ITEMS OR SERVICES.

#### **11. DATA PRIVACY**

You are responsible for Your compliance with all applicable data protection laws, including, with respect to Personal Data You provide to Hitachi, those obligations applicable to data controllers (who determine the purposes and means of personal data processing). You are responsible for any unauthorized access, acquisition, use, disclosure, modification or destruction of Personal Data caused by You, Your Affiliates and End Users. To the extent You process any Personal Data provided by Hitachi, You shall do so only (i) for purposes of performing under these Terms, (ii) in strict compliance with Hitachi's instructions, (iii) and You shall maintain adequate technical, physical and administrative safeguards for the duration of such processing.

#### **12. SECURITY BREACH**

Each party shall promptly report any Security Breach to the other no later than forty-eight (48)-hours after discovery. The reporting party shall provide all known details reasonably required for a notice of Security Breach under applicable law. Each party shall cooperate in any Security Breach investigation that the other party conducts or is involved in and will take reasonable measures to mitigate any harmful effects of any Security Breach of which it becomes aware.

#### **13. GENERAL**

(a) **Governing Law.** Unless it is agreed in writing between the Parties that the laws of another jurisdiction will apply, the laws of the Local Service Jurisdiction will apply to these Terms and any XaaS Agreement and the venue for any litigation will be the one designated through the application of the Local Service Jurisdiction. To the extent allowed in the applicable jurisdiction, the United Nations Convention on Contracts for the international sale of goods and its implementing legislation will not apply to these Terms. **Local Service Jurisdiction** means the jurisdiction of the state, province or country in which the Hitachi entity from which You procured the XaaS Services is located, or if indirect, the jurisdiction of the state, province or country in which the Hitachi entity from which Your supplying Hitachi Partner procures the XaaS Services is located.

(b) **Notices.** Notices made under an XaaS Agreement must be in writing (printed or electronic format) to the appropriate representative of the recipient or otherwise to a senior executive. Notices will be deemed given: (i) where they are hand delivered, when a duly authorized personnel of the recipient gives written acknowledgement of receipt; (ii) for email communication, at the time the communication enters into the information system of the recipient; and (iii) for posting, three (3) days after dispatch. Modifications to these Terms or an XaaS Agreement must be in writing signed by each Party's authorized representative; however, Hitachi may change the Online Terms and/or Hitachi Policies from time to time.

(c) **Conflicts.** Unless the Parties expressly agree otherwise, if there is a conflict among the elements the XaaS Agreement, the following order of precedence will apply (in descending order): (i) the Master Agreement (if a direct purchase of XaaS Services from Hitachi or any direct or indirect purchase by a Hitachi "Manage" partner), (ii) the Service Catalogue (if any), (iii) these Terms; and (iv) the Service Summary (if a direct purchase of XaaS Services from Hitachi).

(d) **Publicity.** Each Party grants the other Party a limited right to use the other Party's name and/or trademark in internal presentations and customer references regarding the XaaS Services. The foregoing notwithstanding, each Party agrees to obtain the other Party's prior written approval for publicity that contains claims, quotes, endorsements or attributions by the other Party such approval not to be unreasonably withheld.

(e) **Assignment.** You must not assign, or otherwise transfer any of Your rights or obligations under these Terms or an XaaS Agreement. You acknowledge that Hitachi is entitled to and, accordingly, Hitachi may sell or assign its rights, interest or grant a security interest in the XaaS Agreement, and/or in any Infrastructure, in whole or any part to a third party by giving to You notice of such assignment or granting of security. On receiving notice from Hitachi of such sale, assignment of rights, interest or granting of security, as applicable, and if such notice requires signed acknowledgement, You agree to promptly sign such notice to confirm its agreement to such assignment. Hitachi warrants to You that any such assignment or grant will not adversely affect the provision of XaaS Services by Hitachi to You or Hitachi's obligations under the XaaS Agreement. Hitachi will remain responsible and liable to You for the performance of its obligations under the XaaS Agreement. You will not assert any right or remedy against an assignee of Hitachi that You may have against Hitachi under the XaaS Agreement.

(f) **Independent Parties.** 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 an XaaS Agreement and any further documents made under it in counterparts, which together will form a binding agreement on the Parties and each of which may be transmitted electronically and will be effective upon the XaaS Agreement Start Date.

(g) **Export Control.** Hitachi is required by U.S. export control laws and regulations to restrict access to or seek prior U.S. government approval for the direct or in-direct release of technology (including services), source code and downloadable software to entities, citizens or nationals of certain countries and to parties listed on any U.S. denied persons and/or consolidated screening list/exclusion list. You acknowledge that in various countries, laws and regulations regulate the export of products, services and information which may prohibit the direct or in-direct use, transfer, sale or re-export of such products, services, or information. If You know or have a reason to know that the Infrastructure and/or the XaaS Services (or information in respect thereof) are for use in connection with internal or political repression, the design, development, production, stock piling or use of nuclear, chemical or biological weapons or missiles or for the violation of any other human right or if You know or have reason to know that governments (especially police forces, military, intelligence and security services) or telecom providers and/or data storage providers may be required to co-operate in human rights violations using the Infrastructure, You will indemnify, defend and hold harmless Hitachi and its affiliates from any violation(s) or alleged violation(s) of any such applicable laws, regulations and requirements by You or your personnel.

(h) **Compliance.** You will comply with all applicable laws and regulations, including those relating to anti-corruption and bribery, including the U.S. Foreign Corrupt Practices Act, and not engage in any activity, practice or conduct that would constitute an offence under such laws and regulations.

(i) **Miscellaneous.** Hitachi will not be responsible for its failure to meet any of its obligations due to events beyond its reasonable control, provided reasonable efforts have been made to perform those obligations. If either Party fails to promptly exercise any contractual right, this does not of itself mean that the right has been waived. For a waiver of a right to be valid, it must be in written form and it will not give rise to an ongoing waiver or any expectation that the right will not be enforced, unless it is expressly stated to do so. You will defend or settle any Claim for which You have an indemnity obligation under an XaaS Agreement, at Your sole expense. These Terms, along with all other terms that form the XaaS Agreement is the entire agreement relating to its subject matter and all other written communications, understandings, proposals, representations and warranties are, by agreement, excluded and are of no force or effect (to the extent permitted by law). Other than an assignee or transferee of the rights of Hitachi, it is not intended that any third party may enforce any benefit conferred under these terms and conditions.

## EXHIBIT A TO “AS A SERVICE OFFERINGS”: TERMS RELATED TO INFRASTRUCTURE

**DRAFTING NOTE: IF THIS EXHIBIT IS NOT RELEVANT TO THE PROPOSED HITACHI PRODUCTS OR SERVICES UNDER THE SFA, DELETE THE FOLLOWING TERMS AND ADD STATEMENT, “NOT APPLICABLE”.**

This Exhibit is only incorporated into, and forms part of the XaaS Agreement between the Parties where the supply of the XaaS Services comprises the use of Equipment.

### **1. Infrastructure**

(a) You are responsible for loss of or damage to the Hitachi Infrastructure, once delivered to the relevant Location, except for loss or damage arising due to Hitachi’s acts or omissions, or normal wear and tear during proper use, storage and maintenance. You must not (i) assign, transfer, sell, deal with, or create any mortgages, security, liens, or interests in or over the Infrastructure; or (ii) move, repair or modify or interfere in anyway with the Infrastructure without the prior consent of Hitachi. You will provide Hitachi with immediate notice of any attachment, lien or judicial process affecting the Infrastructure, or Hitachi’s ownership thereof.

(b) If Hitachi deploys the Infrastructure to the Location(s) and for any reason, You do not authorize or otherwise enable the implementation of the Infrastructure to take place, or otherwise delay the implementation for a period of more than thirty (30) days from the date that Hitachi delivers such Infrastructure to the Location, then Hitachi has the right to start charging the Monthly Minimum Fees from the end of such period, irrespective of the Service Start Date for that XaaS Agreement.

(c) Without limiting Hitachi’s rights elsewhere in the XaaS Agreement, You will provide Hitachi and its authorized representatives with access to the Infrastructure during Business Hours at the Location(s) (including procuring access to any Third-Party Facility) on receipt of reasonable notice from Hitachi, for inspection and verification purposes. You will, promptly and without the requirement of the posting of a bond or similar surety, ensure Hitachi is provided with the peaceful right of entry to collect the Infrastructure.

(d) Upon the termination or non-renewal of an XaaS Agreement: (i) Your rights, licenses and privileges under it will end; (ii) You must comply with Hitachi’s or Hitachi Partner’s (as applicable) directions for ceasing the Use of the XaaS Services; (iii) as applicable, You will (or will procure) at its expense, de-install, package and remove all Infrastructure from its Location(s) and return it to a location specified by Hitachi or Hitachi’s Partner (as applicable) within eight (8) Business Days. If You fail to return the Infrastructure in accordance with the previous sentence within eight (8) Business Days, Hitachi or Hitachi Partner (as applicable) will give You formal notice in writing to return the Infrastructure within an additional period of eight (8) Business Days. If the Infrastructure is not returned at the end of this second period, Hitachi or Hitachi Partner (as applicable) may seek recovery through any legal routes available to it and You will, promptly and without requiring the posting of a bond or other similar surety, procure Hitachi’s or Hitachi Partner’s (as applicable) peaceful right of entry to the Your premises or any other Location (including any Third Party Facility) to recover it. If a direct purchase of XaaS Services, You will pay Hitachi for every late day, a sum at a daily rate, based on the average daily rate invoiced by Hitachi for the last three (3) months of the XaaS Agreement. You will ensure the return of the Infrastructure free and clear of any and all mortgages, security interests, charges, encumbrances, claims and liens and in good operating order, repair, condition and appearance (fair wear and tear excepted). You will pay all costs and expenses incurred by Hitachi to repair and restore the Infrastructure to such condition to qualify it for Hitachi Support and Maintenance Services. Any parts added or removed in connection with this will become the property of Hitachi.

### **2. Insurance**

Upon delivery of the Infrastructure to the applicable Location, and until it is either delivered back to Hitachi or otherwise removed by Hitachi from the Location, You will maintain the following policies with reputable insurers: (i) a property ‘all-risk’ insurance covering damage or loss to the Infrastructure, including damage or loss due to flood and earthquake, with limits at least equal to the replacement cost of the Infrastructure the relevant insurance policy naming Hitachi as “Loss Payee”; and (ii) Commercial General (or Public) Liability Insurance, including contractual liability, for such amount as is prudent in the circumstances against third party personal injury and property damage.

Hitachi and its Affiliates will be noted on the policy as “Additional Insured”. All insurance coverage will be primary and non-contributory.

### **3. Changes to Infrastructure or Service Provider**

(a) If, under the capacity planning process, whether as part of or outside of a Monthly Operations Review (“MOR”) meeting, Hitachi determines that the Infrastructure at one or more Locations should be increased, decreased, changed or replaced, absent objection from you, Hitachi may deploy additional Infrastructure or remove, replace or change part or all of the existing Infrastructure in accordance with the XaaS Agreement in the course of providing the XaaS Services. If You object to any such changes to the Infrastructure, any service levels included in the relevant Service Catalogue (if any) shall be deemed to be void from the point at which such Hitachi recommendation was made. Any changes in the Infrastructure or the XaaS Services relating to it does not affect Your obligation to pay the Monthly Minimum Fees pursuant to an XaaS Agreement. Any deployment of additional Infrastructure may be subject to additional fees. Any change in the Infrastructure or the XaaS Services relating to it does not affect Your obligation to pay the Monthly Minimum Fees pursuant to an XaaS Agreement.

(b) You may also authorise other parties to provide services similar to the XaaS Services and/or operate the Infrastructure during the Service Term, subject to You ensuring that such services and the operation of the Infrastructure by such third parties in no way impedes Hitachi’s ability to provide the relevant XaaS Services. Should You wish to designate another party to provide services similar to the XaaS Services and/or operate the Infrastructure, You will notify Hitachi with no less than one-hundred and twenty (120) calendar days’ prior written notice.

### **4. Exclusions from Liability for Failure**

Without limiting the operation any exclusions set out in the Service Catalogue (if any) or the XaaS Agreement, Hitachi excludes any and all liability for Failure, to the extent that the Failure is caused by: (i) the operation of any Non-Hitachi Infrastructure by You or Your Personnel; (ii) the failure or non-performance of any of any Non-Hitachi Infrastructure; (iii) non-performance of or any physical loss or damage to the Hitachi Infrastructure after delivery to the Location that is not attributable to the acts or omissions of Hitachi or reasonable wear and tear under proper use, storage and maintenance; (iv) Your failure to provide and maintain a suitable Location environment, including but not limited to, failure of electrical power, air condition and humidity control, environmental contaminants, noise levels above 85dB(A) or unreasonable or excessive vibrations, and as applicable, any failure by You to fulfil Your obligations under these Terms or Master Agreement as they pertain to the Location; (v) any material failure by You to comply with any Dependencies and Assumptions; or (vi) the acts or omissions of a third party public cloud provider. For the avoidance of doubt, the exclusion under this Section will start at the date and time of such Failure to meet the relevant responsibility. You must take all steps and measures available to mitigate and minimize the losses, costs and damages arising from the Failure and You will ensure Your Personnel, End Users and any party acting on Your behalf do the same.

## EXHIBIT B TO “AS A SERVICE” OFFERINGS: GLOSSARY OF DEFINED TERMS

Without limiting the operation of terms defined elsewhere in these Terms or in an XaaS Agreement, the following terms have the meaning set out below:

**Additional Locations:** additional Location(s), which are not in the scope of a XaaS Agreement at the XaaS Agreement Start Date.

**Additional Terms:** any contractual terms containing license terms or obligations or warranties regarding the performance, features and/or functionality of the XaaS Services, which are different from or go beyond the scope of those that Hitachi provides to You under these Terms (or those agreed between Hitachi and the Hitachi Partner in respect of the provision of the XaaS Services).

**Affiliate:** in relation to a Party, means a business entity controlled by, controlling or under common control of such Party, where “control” means owning or controlling the majority (more than 50%) of the voting rights, either directly or indirectly, or, if no voting stock exists, possessing, directly or indirectly, the power to direct or cause the direction of the management and policies of the concerned entity. In the case of Hitachi, Affiliate also means Hitachi Limited, and any business entity controlled by Hitachi Limited. However, Affiliate does not include Hitachi’s distributors, resellers, independent service providers or authorized service providers.

**Ancillary Services:** professional services that are expressly set out in the applicable Service Catalogue (if any) as necessary for, and incidental and fundamentally related to the operation of the XaaS Services.

**API:** a set of application programming instructions, and standards for accessing the XaaS Services in the Documentation and any other materials provided by Hitachi as part of the XaaS Services, which are designed to create applications for, or enable connectivity with the XaaS Services.

**Billing Report:** the written monthly report issued by Hitachi or the Hitachi Partner (as the case may be), setting out Your consumption of the XaaS Services for the previous month and other matters determined by the service type.

**Business Day:** a day other than a Saturday, Sunday or public holiday at the location where the EverFlex XaaS Services are delivered. **Business Hours** has the corresponding meaning, based on an 8-hour working day commencing at 9.00 AM, local time.

**Claims:** any actions, claims, proceedings, demands, judgements, settlements or complaints of any nature from a third party.

**Content:** all software, data, text, audio, video, images, information, technology, tools or other content of any nature that You or a third party on Your behalf provide to Hitachi for the purposes of, or arising from the Use of the XaaS Services, including all applications that are developed using the APIs and all third party interfaces required to access or use the XaaS Services.

**Confidential Information:** all information of a confidential or proprietary nature concerning the disclosing party’s business, including, but not limited to, any non-public information relating to a party’s business operations, financials, products, services, pricing, or trade secrets, which at the time of disclosure, is clearly marked or identified as confidential or under the circumstances such information would be considered confidential by a reasonable person. Confidential Information does not include any information that is: (i) already in the public domain prior to disclosure; (ii) becomes publicly known and made generally available after disclosure through no breach of the receiving party; (iii) was in the receiving party's possession prior to the time it was received from the disclosing party or came into the receiving party's possession thereafter, in each case lawfully obtained from a source other than the disclosing party and not subject to any obligation of confidentiality or restriction on use; or (iv) is independently developed by the receiving party, without use of or reference to the disclosing party's Confidential Information.

**Contributions:** any Content and other posts that are made or otherwise provided to Hitachi in developer forums, sample code repositories, public data repositories, or similar community-focused areas of the XaaS Services, or any part of the XaaS Services that allows third parties to make available software, products or data.

**Dependencies and Assumptions:** the assumptions, customer responsibilities and dependencies with respect to the EverFlex XaaS Services, as set out in a Service Catalogue or SOW (as applicable).

**Derived Data:** data created by and derived from the XaaS Services, including but not limited to analytics models, statistical data and performance usage data, that does not include Personal Data or other identifying information.

**Disengagement Assistance:** Hitachi's assistance and co-operation for the disengagement and/or transition from the XaaS Services to Your internal services or the services of a third-party service provider, if any such disengagement services are applicable to the XaaS Services.

**Documentation:** the user or technical manuals, training materials, specifications or other documentation applicable to the XaaS Services, as provided by Hitachi.

**End User:** any person or entity that directly or indirectly accesses or uses the Content or otherwise accesses or Uses the EverFlex XaaS Services on Your account or to whom You Use the XaaS Services to provide further services. Unless an XaaS Agreement provides otherwise, End Users will be limited to employees within Your organization.

**End User Agreement:** an XaaS Agreement between You and Your End User for access to the XaaS Services or the supply of services that You provide to the End User through the utilization of the XaaS Services.

**Equipment:** computer hardware, storage devices, networking equipment, sensors, cameras and/or any other tangible equipment, devices, accessories and items of any type.

**Evaluation Service:** a demonstration, trial, Proof of Concept, Proof of Value, evaluation or similar service for the XaaS Services and/or related Infrastructure made available from time to time.

**Failure:** the failure, delay or non-performance of any service or other obligation required of Hitachi pursuant to a XaaS Agreement.

**Fees:** the monthly fees that You must pay Hitachi or the Hitachi Partner (as the case may be) for the supply of XaaS Services, as set out in the applicable invoice to You or otherwise in an applicable SOW. Unless the XaaS Agreement or related SOW states otherwise, all amounts for the supply of Professional Services will be included in the Fees. Any amounts payable for Evaluation Services are excluded from the Fees.

**Hitachi IP:** the IP Rights in all items and materials that Hitachi provides to You or otherwise creates pursuant to an XaaS Agreement and all related changes, improvements, additions, enhancements, new versions, updates and derivative works.

**Hitachi Policies:** the following policies, in addition to Hitachi's Online Terms covering technical support for Infrastructure: (i) Hitachi Vantara Global Data Protection & Privacy Policy: <https://www.Hitachivantara.com/en-us/company/legal.html>; (ii) Hitachi Vantara Acceptable Use Policy: <https://www.Hitachivantara.com/en-us/company/legal.html>. You agree and acknowledge that the Hitachi Policies are incorporated by reference into the applicable XaaS Agreement. Hitachi may change the above list or add to the list with further terms in its sole discretion.

**Infrastructure:** all Equipment and/or Software and all other tools, materials and technology that Hitachi uses, provides or otherwise makes available for the purpose of providing the XaaS Services under an XaaS Agreement, including those items that Hitachi provides electronically or retains at any Location for that purpose. Without limitation, Infrastructure includes APIs; Documentation; sample code; software libraries; command line tools; templates; and other related technology but excludes Third Party Content.

**Initial Service Period:** the period stated as the initial service period in the XaaS Agreement and commencing on the Service Billing Date.

**Insolvent:** the inability of a party to pay its debts as they fall due or the appointment of a receiver or administrator, liquidator or similar person to a party's affairs under the laws of any jurisdiction or the calling of a meeting of creditors or for any reason ceasing to carry on business, or a bankruptcy, liquidation or reorganization proceeding has been instituted by or against a party and, if instituted, has not been dismissed within 45 days of the institution.

**IP Rights:** all current and future worldwide statutory or other proprietary rights, whether registered or unregistered, including but not limited to, moral rights, copyright, trademarks, rights in designs, patents, rights in computer software data base rights, circuit layout rights, rights in know-how, mask work, utility models, rights to sue for passing off, trade secrets, inventions, trade, business, domain or company names and any application for the foregoing, including registration rights.

**Legal Requirement:** the law or a binding order of a governmental body is required by law or judicial, arbitral or governmental order or process (including any rules of a stock exchange).

**Locations:** the locations for the delivery of the XaaS Services, as set out in the XaaS Agreement, which may include a Third Party Facility.



**Losses:** losses, damages, liabilities, judgments, settlements, fines, penalties, costs and expenses (including, but not limited to, reasonable attorneys' fees, related costs and expenses) incurred in the defense of the action, claim, demand, judgement or settlement.

**Master Agreement:** (i) for customers who are not Hitachi "Manage" Partners and are purchasing directly from Hitachi, the Direct Purchasing Agreement or other supply agreement between such customer and Hitachi; or (ii) for Hitachi "Manage" Partners purchasing directly or indirectly from Hitachi, the Partner Appointment, the Partner Agreement Base Terms and the Manage Business Model Addendum, or equivalent supply agreement between such Hitachi "Manage" Partner and Hitachi.

**Misuse:** use of the XaaS Services or Infrastructure to, store, view, transfer, copy, archive or process any data containing any material that: (i) is harmful, threatening, harassing, racially or ethnically offensive, defamatory or obscene; (ii) is illegal or unlawful, promotes illegal or unlawful activity, or otherwise violates any applicable rules, regulations or laws; (iii) depicts sexually explicit images; (iv) promotes unlawful violence, discrimination based on race, gender, colour, religious belief, sexual orientation or disability; (v) infringes a third Party's IP; or (vi) infringes a Hitachi Policy.

**Monthly Minimum Fee:** the minimum level of Fees that You must pay to Hitachi or the Hitachi Partner (as the case may be) for the supply of the XaaS Services on a monthly basis during the Initial Service Period or a Renewal Service Period (as the case may be), as set out in the applicable XaaS Agreement.

**Non-Hitachi Infrastructure:** Your hardware, software and communications infrastructure and Content, irrespective of whether it is owned and/or managed by You, which is in any way connected with, or impacts upon, the performance of the XaaS Services and/or the Hitachi Infrastructure used to provide the XaaS Services.

**Online Terms:** the online documents respectively located at <https://www.hitachivantara.com/en-us/company/legal/terms-licensing-maintenance.html>, which contain the warranty, maintenance and support terms for the Infrastructure and the Software Online Terms.

**Parties:** Hitachi and You when referred jointly. **Party** means Hitachi and You when referred individually.

**Partner Services:** any services that a Hitachi Partner provides or agrees to provide to a You that are related to the EverFlex XaaS Services.

**Personal Data:** personal information about an identifiable person, which is processed under these Terms.

**Personnel:** employees, contractors or agents.

**Professional Services:** software enablement, implementation, configuration, data migration, data analytic and other services as designated by Hitachi from time to time that are necessary for or related to the implementation of the XaaS Services and/or the Infrastructure, as stated in the XaaS Agreement.

**Published Specifications:** the specifications publicly available for Equipment and Software comprised in the Infrastructure that are applicable and valid at the Service Start Date.

**Renewal Service Periods:** unless the XaaS Agreement states otherwise, the rolling, consecutive 12-month periods immediately after the end of the Initial Service Period.

**Security Breach:** any accidental or unauthorized access, destruction, disclosure, modification or transfer of Personal Data.

**Service Start Date:** the date of delivery of the Infrastructure provided pursuant to an XaaS Agreement or, if different, the date stated in the XaaS Agreement when the XaaS Agreement takes effect.

**Service Billing Date:** the first day of the calendar month immediately following the Service Start Date, unless Hitachi or the Hitachi Partner notifies You in writing that billing will commence on an alternative date.

**Service Catalogue:** if applicable, the document (forming part of the Service Summary or otherwise) setting out the description of the XaaS Services, service class descriptions and other service-related terms.

**Service End Date:** the date that the XaaS Services end, either by virtue of a Party exercising a right of termination or non-renewal pursuant to a XaaS Agreement.

**Service Summary:** for customers purchasing directly from Hitachi only, the document between Hitachi and You setting out the commercial terms of the XaaS Services supply.

**Service Term or Service Period:** the duration of an EverFlex XaaS Service under the XaaS Agreement, starting on the Service Billing Date and ending on the Service End Date.

**Software:** means any software provided to You by Hitachi and comprised in the Infrastructure, including (i) any firmware embedded in the Equipment to enable it to perform its basic functions (operating software) and (ii) any software product listed in Hitachi products list and provided to You by Hitachi and any related documentation and specifications.

**Software Online Terms:** the Software license terms located at <https://www.hitachivantara.com/en-us/company/legal/terms-licensing-maintenance.html>. In the Software Online Terms “Products” means Infrastructure.

**Statement of Work or SOW:** a statement of work entered which incorporates the terms of the XaaS Agreement and specifies the Professional Services to be supplied by Hitachi.

**Termination Payment:** the greater of: (i) the Total Minimum Fee less the Monthly Minimum Fee amounts that You have paid for the XaaS Services, with respect to the Initial Service Period or a Renewal Service Period (as the case may be), as at the effective date of termination; and (ii) the average of the six (6) highest monthly payments that are due and owing to Hitachi in the twelve (12) month period immediately prior to the effective date of termination, multiplied by the number of outstanding months to reach the end of the then-applicable service period for the XaaS Agreement.

**Third Party Content:** any third-party information, data, technology, products or materials that is used for the supply of the XaaS Services under the terms of an agreement between You and the third party.

**Third Party Facility:** any premises not controlled by Hitachi, where the Infrastructure is stored or used.

**Total Minimum Fee:** the total minimum monetary amount that You must pay for the supply of the XaaS Services under the applicable XaaS Agreement for the Initial Service Period or a Renewal Service Period (as the case may be), as set out in the XaaS Agreement.

**Use:** to access, use, upload and download Content using the EverFlex XaaS Services in accordance with the XaaS Agreement. Unless the XaaS Agreement expressly states otherwise, “Use” means internal use only and includes use by Your End Users to exchange data about Your business only.

**XaaS Agreement:** (i) for customers or Hitachi “Manage” partners purchasing directly from Hitachi, the terms of agreement for delivery of the XaaS Services, which comprises the relevant Master Agreement, the relevant Service Catalogue (if any), the commercial terms (comprising either a Service Summary or if required by the applicable Service Catalogue, the Order), any SOWs related to the XaaS Services and any terms attached to or incorporated by reference in those documents, including these Terms; (ii) for Hitachi “Manage” partners purchasing indirectly via a Hitachi Partner, the relevant Master Agreement, these Terms and the relevant Service Catalogue (if any) and (iii) for customers purchasing via a Hitachi Partner, these Terms and the applicable Service Catalogue.

**XaaS Agreement Start Date:** the date when the XaaS Agreement takes effect.

**XaaS Services:** the “as a service” offerings described in further detail in the XaaS Agreement and as applicable, includes related Professional Services.

## EXHIBIT C TO THE SFA - WARRANTY MAINTENANCE AND SUPPORT TERMS

These Warranty and Maintenance and Support Terms along with the terms attached to or incorporated by reference (together, the “**WMS Terms**”) apply to and form part of Your supply agreement with Hitachi or a Hitachi authorized distributor or reseller partner (“**Hitachi Partner**”) for the purchase of Hitachi products and services (“**Agreement**”). References to “**Hitachi**” mean Hitachi Vantara LLC or its Affiliate, which may be Hitachi, Ltd., or any business entity controlled by or under the common control of Hitachi Vantara or Hitachi, Ltd.

These WMS Terms cover the supply of the maintenance, support and installation services as described in these WMS Terms (“**Services**”) to Hitachi products purchased under the Agreement (“**Products**”). If You purchase Products through a Hitachi Partner and Hitachi performs the Services for those Products, Section 18 of the WMS Terms (Additional Terms and Conditions) will apply.

### 1. Product Warranty.

(a) Hitachi warrants to You that during the applicable warranty period set out in the Service Descriptions (“**Warranty Period**”), the Products will function in accordance with the user or technical manuals, training materials, specifications, or similar documentation relevant to the Products (“**Documentation**”). For equipment, the Warranty Period will start on the first day of the calendar month immediately after the date the equipment has left Hitachi’s distribution center or other delivery location. For software delivered electronically, the Warranty Period will start on the date that You are issued with the initial license key to download the software.

(b) If a Product does not substantially conform to the Documentation (“**Defect**” or “**Defective**”) then during the Warranty Period, you may make a warranty claim and subject to Section 6 of these WMS Terms, Hitachi will provide the Services that Hitachi considers in its sole discretion necessary to correct the Defect. To make a valid warranty claim, You must submit it in writing, including a full description of the Defect, to Your local Hitachi support contact center during the Warranty Period and within seven (7) days of discovering the Defect.

(c) If Hitachi considers in its sole discretion that the Services will not remedy the Defect, Hitachi will provide You with a refund for the Defective item upon Your prompt return of the item to Hitachi. These remedies comprise Hitachi’s sole and exclusive liability to You and Your sole and exclusive remedy for a breach of the warranty in Section 1(a). This warranty does not apply to any third-party products subject to warranties under a separate third-party end user agreement nor to any Products that are outside the Warranty Period.

Hitachi may authorize third parties to provide Services to You (“**Authorized Providers**” or “**ASP**”). The Hitachi Partner that You order Products from is not authorized to provide Services unless they are also an ASP. ASPs may provide Services on behalf of Hitachi as its subcontractor or provide Services under a separate contract that You enter into directly with the ASP. Hitachi will not be responsible for the Services provided to You by an ASP under a separate contract with You, and You must look to that separate contract for your rights and remedies.

**2. Service Descriptions and Plans.** Provided that You are eligible for Services, have purchased a support plan and have paid Hitachi all applicable fees in full and subject to Section 3, Hitachi will provide the Services for the relevant Products as specified in Your Order to Hitachi or a Hitachi Partner in accordance with these WMS Terms. Service descriptions and further details for Your Service coverage are contained at <https://www.hitachivantara.com/en-us/pdf/specifications/hitachi-support-service-descriptions-and-deliverables.pdf> (“**Service Descriptions**”). The Service Descriptions form part of and are incorporated by reference into these WMS Terms. Hitachi may update the Service Descriptions from time to time and the updates will form part of, and will be incorporated into these WMS Terms, from the date of publication. Services may not be available in certain locations and may vary between locations, Product type or family, as specified in the Service Descriptions. Additional information regarding the Premium, Standard and Weekday Basic support offerings are available at <https://www.hitachivantara.com/en-us/services/customer-support.html>.

**3. Service Partners.** Hitachi may authorize third parties to provide Services to You (“**Authorized Providers**” or “**ASP**”). The Hitachi Partner that You order Products from is not authorized to provide Services unless they are also an ASP. ASPs may provide Services on behalf of Hitachi as its subcontractor or provide Services under a separate contract that You enter into directly with the ASP. Hitachi will not be responsible for the Services

provided to You by an ASP under a separate contract with You, and You must look to that separate contract for your rights and remedies.

**4. Equipment Maintenance Services.** Subject to Section 6 of these WMS Terms, Hitachi equipment maintenance comprises the following:

- (a) supervision and installation of relevant engineering changes impacting the reliability of the equipment;
- (b) preventive maintenance, including necessary lubrication, adjustment or replacement of unserviceable parts; and
- (c) unscheduled maintenance, including repair, adjustment or replacement of unserviceable parts, as determined necessary by Hitachi and described in the hours of coverage under the applicable Plan.

**5. Support Services for Software.**

(a) Subject to Section 6 of these WMS Terms, Hitachi's software support comprises the support required for the ordinary use of the software in accordance with its Documentation, as provided through:

- (i) remote telephone support or support via the online portal ("**Hitachi Support Portal**") to: (1) identify and assist in resolving the Defect; (2) advise on installation of Updates; (3) and respond to minor software information queries.
- (ii) on-site intervention and the provision of Patches and Fixes, Service Packs, respectively at Hitachi's sole discretion; and
- (iii) the provision of access to Updates as and when Hitachi makes them generally available. Additional fees for Updates and/or Upgrades may apply. Access to Updates will be without additional charge where Hitachi provides the Updates on that basis to its general customer base.

**"Patches and Fixes"** mean changes made to the software by Hitachi that establish or restore substantial conformity with the Documentation. **Patches** refers to minor enhancements to the software that typically provide interoperability updates and **Fixes** refers to error corrections to the software. Errors must be reproducible.

**"Service Packs"** mean an accumulation of Patches and Fixes into a generally available package applicable to the latest generally available version of the software, v1.r1.r2. released at the same time as a new maintenance level and targeted at Hitachi's existing software install base.

**"Updates"** means subsequent releases and error corrections and/or minor functional enhancements for Software previously licensed by Hitachi.

**"Upgrades"** means releases that contain new additional features which significantly increase the basic functionality of the Product and for which Hitachi elects to charge separately to its customers generally.

(b) Hitachi only supports the operating software (including any license key enabled features/functionality embedded in the operating software) if Hitachi is also maintaining the equipment on which it is installed. Hitachi's obligation to provide software support is contingent upon the software being: (i) subject to a current and valid license; (ii) covered under a current and fully paid-up agreement for support services; and (iii) operated in a Hitachi-supported configuration, which may be detailed in the Documentation. If Your software license is terminated for any reason, Hitachi's obligations to provide support for the relevant software will cease.

**6. Service Exclusions.**

(a) Without limiting the operation of any other part of the WMS Terms, Hitachi is not obligated to provide any Services to You, or otherwise remedy any Defects in Products, and Hitachi is not responsible for any lost or damaged data due to:

- (i) accident, natural disaster, Your neglect of Products, or other use of Products outside of normal and ordinary use;
- (ii) Your failure to maintain an environmentally controlled data center with a suitable operating environment for the Products on terms that Hitachi specifies or otherwise agrees to, including failure of electrical power, air

conditioning and humidity control, environmental contaminants, noise levels above 85dB(A) or unreasonable or excessive vibrations;

(iii) Your failure to provide any of the required items under Sections 8(b) or 16 of these WMS Terms;

(iv) Your failure to install or enable Hitachi to install any items that are necessary for the provision of the Services or to provide Hitachi with necessary service clearances;

(v) any interference, alterations, additions, modifications or substitutions to any Product or to Your systems or operating environment connected to the Product that are made by You or on Your behalf, unless authorized by Hitachi;

(vi) Your failure to make Updates required or recommended by Hitachi or to install the most recent mandatory Updates or Patches and Fixes for the software or any modification, enhancement or customization of software made by You or on Your behalf and not authorized by Hitachi;

(vii) any other act or omission of any person other than Hitachi or Hitachi's sub-contractor, which person includes an ASP or third party cloud service provider.

(b) Without limiting the operation of sub-section (a), the following services are also expressly excluded from the Scope of Services, and Hitachi will not be responsible for:

(i) the maintenance or support of Products, including software versions, which have reached "End of Life" status, other than as expressly stated in these WMS Terms or in Hitachi's End of Life policy;

(ii) the maintenance or support of Products that you are given for testing, proof of concept or evaluation purposes unless Hitachi explicitly agrees to provide all or some Services for such Products, at Hitachi's sole discretion;

(iii) the maintenance or support of any third-party Products that are subject to a separate third-party support agreement; and

(iv) the diagnosis and/or rectification of Defects that are not associated with the Products.

(c) If You request Hitachi to provide additional services not covered under these WMS Terms or any other services which Hitachi reasonable determines to be subject to the Service exclusions or otherwise "out of scope", Hitachi may, at its sole discretion, agree to provide such services to You at Hitachi's then current rates or on a quoted, fixed fee basis.

**7. Field Replacement Units.** Equipment may include components which are used or remanufactured, and regardless of this, the warranty in Section 1 of these WMS Terms will apply. Where Hitachi ships a sub-assembly of equipment components sealed at the factory and subject to replacement as a discrete unit at Your site ("**Field Replacement Unit**" or **FRU**") to replace a Product component that is removed during the supply of Services, the removed component will be the property of Hitachi, while the FRU will belong to You. For any removed components which: (i) You fail to return to Hitachi within fifteen (15) calendar days of the date of their removal; or (ii) are not covered by a then-current valid retention option, Hitachi may charge You a fee for those components at Hitachi's then-current spares price list. If You allow any person other than Hitachi or Hitachi's sub-contractor to break the factory seal on a FRU, this will void Your entitlement to the Product warranty or to otherwise receive Services entirely.

#### **8. Remote Monitoring Services.**

(a) The Services include remote diagnostic and monitoring services on eligible equipment, using Hitachi's proprietary remote monitoring tools and related Documentation, including but not limited to Hitachi Remote Ops, Hitachi Ops Center Clear Sight, and Hitachi SVOS cloud connector, as applicable ("**Remote Monitoring Services**"). All right, title and interest in the Remote Monitoring Services, and in all material that is used to provide those services, remain with Hitachi or its licensors and You do not get any licensed rights.

(b) Hitachi will not charge You for the supply of the Remote Monitoring Services, but You must provide and maintain, at Your cost, all telecommunications lines, monitor, PC, modem and access required for Hitachi to implement and

provide the Remote Monitoring Services. In some instances, You will be required to opt-in to receive certain features of the Remote Monitoring Services. By opting-in, You agree to any updates to the Remote Monitoring Services. Remote diagnostic or monitoring services other than the Remote Monitoring Services may be provided for certain eligible equipment, which does not prompt any Service activity or call logging with Hitachi. For more details, please refer to the Service Descriptions.

(c) Hitachi will maintain the confidence of all passwords that You provide to Hitachi for the access and use of the Remote Monitoring Services. Hitachi may collect, use, and transfer telemetry data created by and derived from Remote Monitoring Services to its Affiliates for purposes of product and/or services monitoring, delivery, improvement, testing, and development.

(d) If You refuse to allow Hitachi to provide, fail to sign up for, or otherwise disable or interfere with the Remote Monitoring Services in any way, You acknowledge that Hitachi will be prevented from providing the remote diagnostic and monitoring services that are essential to the supply of Services and critical notifications, as applicable, including security breach notifications. In such circumstances, Hitachi will not be liable for any failure to meet service level response time commitments or other performance warranties, nor for any delays in providing the Services in accordance with these WMS Terms. Hitachi may use reasonable efforts to assist You with the rectification of any Defects that You notify Hitachi, but any efforts which are based on, or otherwise rely on assessments or information that You, or anyone on Your behalf has provided to Hitachi, will be at Your risk. Hitachi may charge You an additional fee to provide the Services in such circumstances.

(e) If the Agreement or Your separate services contract with an ASP or the supply of any Services is terminated or expires, You will allow Hitachi to disable the Remote Monitoring Services and de-install and remove all material on Your premises used by Hitachi to provide the terminated services. Hitachi may terminate access to the Remote Monitoring Services for systems that are not under valid support coverage.

#### **9. Installation Services.**

(a) Subject to Section 9(b), Hitachi will provide installation Services for the Products as set out in the relevant Order. Installation Services include only those Services identified in the Service Descriptions. Installation Services do not include any Service expressly identified as an exclusion in the relevant Order or the Service Descriptions, in addition to the exclusions in Section 6.

(b) Hitachi may provide on-site installation Services with respect to software, where Hitachi advises that the software must be installed by Hitachi, for an additional fee. Installation does not result in production ready implementation of the software; production ready software implementation is a professional service.

#### **10. Termination and Renewal of Services.**

(a) Without limiting any of Hitachi's other rights under the Agreement or applicable law, Hitachi reserves the right to terminate all or any of the Services at any time by written notice if You breach these WMS Terms or You otherwise infringe Hitachi's intellectual property rights. Any notice to terminate one or more discrete Service items will identify the specific item(s) to be terminated. If, in Hitachi's reasonable opinion, the termination of one or more discrete Service items adversely affects Hitachi's ability to provide other Services to You, then Hitachi may, in its sole discretion, terminate those other Services.

(b) Subject to Hitachi's rights of termination and suspension under the Agreement and applicable law, Hitachi will provide You with Services on the Products during the initial term and any applicable renewal terms as specified in the Hitachi or Hitachi Partner Quote accepted by You or as otherwise agreed and stated in the applicable Order ("**Service Period**"), provided You have paid Hitachi or the Hitachi Partner (as applicable) the fees for such services in full. The initial term for the Services will be non-cancellable and the applicable fees for that term will be non-refundable, unless the Quote as accepted by You or the Order (as applicable) states otherwise.

(c) If You do not renew the Services or if the Services are terminated, any subsequent reinstatement of Services may be subject to a reinstatement fee, based on Hitachi's current rates for reinstatement at the time, in addition to the then-current monthly fee for such Services.

(d) If any Services are not renewed or are terminated, Your rights, licenses and privileges under these WMS Terms cease and You must comply with Hitachi's directions to either remove and destroy all Hitachi proprietary and confidential information in Your possession or control, or to return such material and items to Hitachi at Your cost, subject to Section 16(e), and in any case, You will not use any such items in Your possession or control. Furthermore, You will not be relieved from Your payment obligations and any money due to Hitachi will become immediately payable.

#### 11. Void Arrangements and Re-certification.

(a) You are not entitled to do any of the following without Hitachi's prior written consent: (i) move or relocate any part of the equipment (including moving any disks from one item of equipment to another); or (ii) allow any third party other than Hitachi authorised service personnel or representatives or a Hitachi ASP to perform any maintenance /support or repair any Product.

(b) You must not install software on any equipment, or a public cloud located in any countries that are prohibited by applicable export laws, restrictions and regulations of the U.S. Department of Commerce, the U.S. Department of Treasury and any other U.S. or foreign agency or authority.

(c) If any Services have been voided under Sections 11(a) or (b) or terminated under Section 10 or have expired and You wish to reinstate the Services for all or part of the affected Product, You must have the relevant Product re-certified by Hitachi or a Hitachi ASP, in order to continue receiving the Services. Hitachi will charge You its then current rates for re-certification and further repair necessary to restore the affected Product to good operating condition (normal wear and tear excepted).

#### 12. Current and Superseded Software Support.

(a) Provided that You have valid support coverage and have paid Hitachi all applicable Fees in full, Hitachi will provide support as defined below, based on either the time since a Version was initially released ("**Time-based**") or the version ("**Version-based**").

(i) End of Normal Support for time-based obsolescence products listed on the Hitachi Vantara Time-based support lifecycle matrix located at [https://knowledge.hitachivantara.com/Support\\_Information/More\\_Info/Time\\_Based\\_Support\\_Lifecycle\\_Matrix](https://knowledge.hitachivantara.com/Support_Information/More_Info/Time_Based_Support_Lifecycle_Matrix).

(1) Hitachi will provide Normal Support for a period no longer than eighteen (18) months from the date of release. If a release of software is older than eighteen (18) months, Hitachi will provide Limited Support (as defined below) for a twelve (12) month period following the end of Normal Support period.

(2) Hitachi does not provide support past thirty (30) months for software on the Hitachi Vantara Time-based support lifecycle matrix.

(ii) End of Normal Support for version-based obsolescence products listed on the Hitachi Vantara Version-based support lifecycle matrix located at:

[https://knowledge.hitachivantara.com/Support\\_Information/More\\_Info/Version\\_Based\\_Support\\_Lifecycle\\_Matrix](https://knowledge.hitachivantara.com/Support_Information/More_Info/Version_Based_Support_Lifecycle_Matrix).

(1) Hitachi will provide Normal Support (as defined below) for the current major version and one prior version of the software. If a release of software is older than one prior version from the current version, Hitachi will provide Limited Support (as defined below) for a twelve (12) month period following the general availability of the current version. Hitachi does not provide support for software releases that are older than two prior versions of the current version.

(2) For certain Version-based software Hitachi will provide support as described at <https://support.pentaho.com/hc/en-us/articles/205789159-Pentaho-Product-End-of-Life>.

"**Normal Support**" means the development and provision of Service Packs, Updates and Patches and Fixes necessary to maintain the software in substantial conformance with the Documentation.

"**Limited Support**" means the provision of existing Service Packs, and existing Patches and Fixes necessary to maintain the software in substantial conformance with the Documentation. Hitachi does not provide support for software releases that are older than two prior versions of the current version.

(b) Hitachi may refuse to supply You with Patches and Fixes for software if You could have solved the problem or Defect by upgrading to the latest Update of the current version.

**13. End of Life Products.** Please refer to Hitachi's End of Life Policy located at <https://www.hitachivantara.com/en-us/pdf/datasheet/support-services-end-of-life-policy.pdf>. Please also refer to Your local Hitachi support contact center for any additional policies, which may apply to EOSL Products in Your country or region.

**14. Maintenance Material.** Hitachi may store diagnostic and/or tracking tools, including without limitation, Remote Monitoring Services software, firmware and related documentation, personal computers or notebooks, maintenance and other documentation ("**Maintenance Material**") within the Products or elsewhere on Your premises as Hitachi considers necessary or convenient. Only Hitachi or Hitachi ASP personnel will be authorized to use the Maintenance Material. Maintenance Material will always remain Hitachi's sole and exclusive property and to the full extent applicable, will be covered as Hitachi intellectual property and You do not get any licensed rights. Without limiting Your obligations under the Agreement, You must not use, access, modify, copy or relocate the Maintenance Material or allow any other person to do so and must return or allow Hitachi to de-install it upon Hitachi's demand or upon the termination of the Services.

**15. Transferability of Services.** You must not assign or transfer any warranty, maintenance and/or support arrangement with Hitachi to any third party without Hitachi's prior written consent. Unless Hitachi provides such consent, Hitachi will have no obligation to perform any Services to any third party.

**16. Customer Responsibilities.**

(a) To assist Hitachi to provide You with Services, You must provide Hitachi, Authorized Partners, and their respective personnel with prompt access to Your premises (as applicable) and make all necessary arrangements that are reasonably necessary to perform the Services, in Hitachi's sole determination. If You cannot provide required access, Hitachi may be unable to provide you with the applicable services.

(b) You are responsible for the wireless, microwave, cable, or other physical data networks. You are responsible for managing and resolving issues related to the integrity of the network including physical implementation, signal quality, availability, identity and access, and related capabilities.

(c) Without limiting Sections 16(a) or 16(b) above or the terms of any applicable statement of work, if Hitachi requests, You will assign an appropriately qualified person(s) to be Your representative(s) for the receipt of the Services and to communicate with Hitachi on all Service-related matters, and Hitachi will be entitled to assume that the acts, conduct and decisions of such person(s) are authorized by, and are binding on You.

(d) For the commercial enterprise edition of the Data Integration (Pentaho™), You are entitled to the number of individuals designated by You to be Hitachi's sole contacts for communicating with in connection with the Maintenance and Support Services, as You may update from time to time ("**Named Support Contacts**") depending on the level of Maintenance and Support Services purchased from Hitachi. You may change such contacts by providing no less than two (2) weeks' prior written notice to Hitachi and may increase Your number of Named Support Contacts by paying Hitachi an additional fee. Only a Named Support Contact is entitled to access the Hitachi Support Portal. Each Named Support Contact must have full administrative access to all files, file systems and databases required for the operation of the Data Integration Product. Named Support Contacts may not forward requests from other parties and must be able to act as the primary contact for any Maintenance and Support Services issues. Each Named Support Contact may access Hitachi's online "Knowledge Base" through the Hitachi Support Portal. Named Support Contacts must be trained via training courses provided by Hitachi to You for the Big Data Products online or in person for a public group of attendees or on a custom basis.

(e) You retain responsibility for Your data and technical, logical and physical access controls to Your data. You must ensure that, prior to removal by or return to Hitachi for any reason, including any removed Product component(s) under Section 7, all data is removed from any Product or Hitachi property. Hitachi takes no responsibility for data remaining on any Product or Hitachi property that is removed by or returned to Hitachi. You agree to defend, indemnify and hold Hitachi harmless from and against all losses, damages, liabilities, judgments, settlements, costs and other expenses (including reasonable legal fees) that Hitachi incurs because of Your failure to comply with this sub-section (e).



**17. Services for Additional Fees.** If You request Hitachi to provide additional services not covered under these WMS Terms or any other services which Hitachi reasonable determines to be “out of scope”, Hitachi may, at its sole discretion, agree to provide such services to You at Hitachi's then current rates or on a quoted, fixed fee basis.

**18. Additional Terms and Conditions.**

**The following additional terms and conditions apply if, and only if, You do not have an Agreement in place with Hitachi or have purchased products and services from an authorized Hitachi Partner and Hitachi is providing you with the Services under these WMS Terms.**

- (a) **Fees and Payment.** You will pay the fees and charges for the Services set out in Hitachi's invoice within thirty (30) days from the invoice date. Hitachi may charge You interest or suspend delivery of Services if payments from You are overdue. You must also pay for any taxes arising from the transaction under these WMS Terms, irrespective of whether these taxes are included in Hitachi's invoices.
- (b) **Limitation of Liability.** Except for liability arising from: death, bodily injury or damage to tangible property arising from Hitachi's negligent acts or omissions, and for willful misconduct, in all cases and to the extent not prohibited by applicable law: (a) Hitachi's maximum aggregate liability for all claims relating to these WMS Terms, whether contractual, non-contractual or pre-contractual, will be limited to fifty thousand US dollars (U.S. \$50,000) or the monetary equivalent in the currency of the Local Service Jurisdiction (as defined below), calculated on the date of the claim; (b) Hitachi will not be liable for any indirect, punitive, special, incidental or consequential damages in connection with or arising out of these WMS Terms (including, without limitation, loss of business, revenue, profits, goodwill, use, data, electronically transmitted orders or other economic advantage), however they arise, whether contractual, non-contractual or pre-contractual, and even if Hitachi has previously been advised of the possibility of such damages. These limitations and exclusions apply, even if an exclusive remedy provided for in these WMS Terms fails of its essential purpose.
- (c) **Data Privacy.** If the parties exchange any information that relates to an identified or identifiable individual that is considered “Personal Data” as part of the Services, the parties will take all reasonably necessary steps to ensure that such Personal Data is transferred, processed, and handled 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 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.
- (d) **Governing Law.** Unless it is agreed in writing between the parties that the laws of another jurisdiction will apply, the laws of the Local Service Jurisdiction will apply to these WMS Terms and the venue for any litigation will be the one designated through the application of the Local Service Jurisdiction (as defined below). To the extent allowed in the applicable jurisdiction, the United Nations Convention on Contracts for the international sale of goods and its implementing legislation will not apply to these WMS Terms. “Local Service Jurisdiction” means the jurisdiction of the state, province or country in which the Hitachi entity that sold You the Product is located.
- (e) **Termination.** A Party may terminate any Maintenance and Support Services hereunder if the other Party: (i) commits a material breach of these WMS Terms and does not remedy that breach within thirty (30) days of written notice to do so; or (ii) becomes or threatens to become insolvent.
- (f) **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.
- (g) **Contributory Liability.** Hitachi will not be liable to You for the failure or non-performance of any obligation required of Hitachi hereunder, to the extent that such failure or non-performance is caused by Your act or omission, or the act or omission of Your personnel or any other person acting on Your behalf. You agree to take

all steps and measures available to You to mitigate and minimize the losses, costs and damages arising from any failure or non-performance of Hitachi, irrespective of the nature and extent of Your contribution.

- (h) Conflict of Terms. If there is a conflict between the terms of the contract that You have with Partner and these WMS Terms, then to the full extent that those terms impact on these WMS Terms, these WMS Terms will prevail with respect to that conflict.