

## DIRECT PURCHASING AGREEMENT

Agreement No.: \_\_\_\_\_

Effective Date: \_\_\_\_\_

This Direct Purchasing Agreement (“DPA”) governs the Supply Transactions between Hitachi and You and commences on the Effective Date set out above.

### TERMS AND CONDITIONS:

#### 1. PURCHASING FROM HITACHI

##### 1.1 Scope of Agreement

(a) This DPA comprises the terms and conditions set out in this document and, to the full extent applicable, to the Supply Transactions made under this DPA and the Exhibits attached to this document.

(b) If Hitachi agrees to supply You any offering beyond the scope of the Exhibits that apply to You under this DPA, Hitachi reserves the right to require the Parties to execute further terms for that supply, in the form of a further Exhibit to this DPA, a Change Order or a separate agreement. Hitachi does not grant You any Reselling rights for any Hitachi Supplies that You purchase under this DPA.

##### 1.2 Supply Transactions

(a) Each purchase that You make from Hitachi under this DPA will be deemed a “Supply Transaction” and the items that You purchase or license from Hitachi pursuant to a Supply Transaction will be “Hitachi Supplies”. You agree to be bound by the applicable Exhibits to this DPA, in addition to these DPA terms.

(b) At Your request, Hitachi will send You a Quote and/or SOW (as applicable) for a Supply Transaction. When You send an Order to Hitachi in accordance to Section 1.3, whether in response to a Quote or otherwise, Hitachi may accept it by commencing Delivery of the Hitachi Supplies. Except where an Exhibit expressly states otherwise, each Quote (if any), the Order and this DPA, including all relevant Exhibits, form a separate agreement between the Parties for the Supply Transaction.

##### 1.3 Ordering from Hitachi

For Your Order to be accepted by Hitachi as valid, it must refer to this DPA. Terms and conditions in, or on the back of Your Order, or any other documents that You give to Hitachi will not form part of the agreement. Any changes that You make to an Order are subject to Hitachi’s acceptance in writing in a Change Order and, if Hitachi requires, Your payment of an additional processing fee to Hitachi.

#### 2. FINANCIAL TERMS

##### 2.1 Fees and Payment

(a) You must pay the Fees to Hitachi within thirty (30) days from the date of Hitachi’s invoice, without any deduction by way of set-off, counterclaim, discount or otherwise.

(b) Without limiting any other rights available to Hitachi under this DPA or under applicable law, if You fail to pay Hitachi’s invoice as required: (i) Hitachi may charge You Interest on the overdue Fees, with effect from the invoice date and in accordance with applicable law; and (ii) without limiting the previous sub-Section, where Your payments for any Services are overdue, Hitachi may suspend the delivery of the Services. Provided that You are not otherwise in breach of this DPA, Hitachi will reinstate any suspended Services following Your payment in full of all outstanding amounts to Hitachi.

(d) If You dispute Hitachi’s invoice in good faith, You must pay the full amount of the invoice by the due date and immediately provide Hitachi with written notice of the dispute for the disputed portion.

#### CUSTOMER (“You”):

Name:

Address:

Contact Person (for Notices):

#### Hitachi Vantara (“Hitachi”):

Name: Hitachi Vantara AG

Address : Richtstrasse 11, 8304 Wallisellen, Switzerland

Contact Person (for Notices):

The Parties will use commercially reasonable efforts to resolve the dispute pursuant to Section 9.2 of this DPA. If the dispute is not resolved within the thirty (30) day period set out in Section 9.2, Hitachi may, without prejudice to any other rights available to Hitachi under the DPA or applicable law, seek any of the remedies in Section 2.1(c). If You can show, on good grounds, that Hitachi has overcharged You in its invoice, Hitachi will refund You the amounts that been proven to be overcharged, if applicable.

(e) Hitachi is not responsible for any Processing Fees or other terms associated with Your payments under this DPA unless Hitachi has agreed in writing, in advance. Without such agreement, Hitachi will pass through all Processing Fees invoices to You for Your payment.

##### 2.2 Taxes

(a) All pricing and Fees contemplated under this DPA will exclude any applicable Taxes. Any Taxes arising under this DPA will be the sole responsibility of the Party owing such Tax, which liability will be determined by the specific law governing such Tax assessment.

(b) For any Supply Transaction arising under this DPA, to the extent that the governing law of any taxing authority imposes a withholding or collection obligation on the paying party for any Tax properly associated with the amounts due under this DPA, the paying Party will exercise due professional care to determine if there is tax relief under local law and/or a mutual tax treaty agreement between paying Party and the invoicing Party countries. If, after all options are exhausted and tax withholding applies, then the paying Party may deduct the withholding tax from amounts due under this DPA. The paying Party will remit to the proper authorities the additional Taxes as required by applicable law and will provide to the other Party within a commercially reasonable period, appropriate written evidence supporting the nature and amount of the Tax involved.

(c) If a resale certificate, treaty benefits exemption certificate or other exemption document is required to reduce or eliminate any Taxes arising with respect to a Supply Transaction, the paying Party will be solely responsible for providing to the invoicing Party such documentation and the invoicing party will use all commercially reasonable efforts to fully co-operate to establish the validity of the documentation. If it is determined that any Tax withheld or paid relative to the DPA was not required to be paid and that a refund of such Taxes is appropriate, both Parties agree to provide all commercially reasonable co-operation and assistance for the timely collection of such refund.

#### 3. INTELLECTUAL PROPERTY

##### 3.1 Ownership and Licenses

(a) Hitachi or its licensors own all IP Rights in the Hitachi IP. You and Your End Users have no right, title or interest in the Hitachi IP, other than the license rights in Software, Work Product or any other Hitachi IP, as expressly granted by Hitachi under this DPA, including the

Software Terms and the Warranty, Maintenance and Support terms attached as Exhibits B and E to this DPA. All rights not expressly granted in the Hitachi IP are reserved by Hitachi or its licensors.

(b) Without limiting Your obligations in this DPA and except where permitted by applicable law, 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; (ii) sub-license any Hitachi IP without Hitachi's prior written approval; (iii) register or seek to register anywhere in the world any IP Rights that are confusingly similar to or otherwise comprise or include any variation to the Hitachi 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 Hitachi Trademarks; (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.

### 3.2 Intellectual Property Claims

Subject to Section 3.3 of this DPA, if a third party makes an IP Claim against You, You will be entitled to the following recourse, (which comprises, to the extent permitted by applicable law, Your sole and exclusive remedy against Hitachi, and Hitachi's sole and exclusive liability to You and Your Personnel for all Losses associated with the IP Claim):

(a) Hitachi will at its option and cost, defend or settle the IP Claim and pay to You the amount of Losses finally awarded against You or settled by You (with Hitachi's written approval), provided that You: (i) promptly notify Hitachi of the IP Claim; (ii) allow Hitachi to solely control and manage the defense and settlement of the IP Claim; (iii) provide timely assistance and co-operation as required by Hitachi, at Hitachi's cost; and (iv) You are not in breach of this DPA; and

(b) Hitachi will, at its option and cost, do any of the following in relation to an Infringing Item: (i) secure the rights for You to continue to use the Infringing Item without infringement; (ii) modify the Infringing Item so that it is not infringing; or (iii) replace it with something that has substantially similar functionality to the Infringing Item. If Hitachi considers that none of these options are reasonably possible, Hitachi will provide You with a Refund for the Infringing Item, provided You immediately cease to use it and, at Hitachi's request, promptly return it to Hitachi.

### 3.3 Exceptions

Hitachi will not be liable to provide any of the remedies in Section 3.2 for IP Claims related to: (a) any Third Party Products (other than those that Hitachi expressly agrees to cover in writing and in such case, Hitachi's liability is strictly limited to the extent set out in Section 5 of Exhibits A and B); (b) any Third Party Related OSS; (c) any technology or other material used in conjunction with the Hitachi Supplies, which You own or have sourced independently from a third party; or (d) an Infringing Item that You have, or any person on Your behalf has: (i) modified or combined with any third party product not authorized or approved by Hitachi in writing, or in a manner which is not authorized or approved by Hitachi in writing; (ii) used outside of Hitachi's stated standard operating environment for that item or for a purpose not authorized or approved by Hitachi in writing; or (iii) failed to use another version of the Infringing Item that was made available to You and which, if used, would have avoided the infringement.

## 4. CONFIDENTIAL INFORMATION

### 4.1 Obligations

(a) Each Party will: (i) maintain the confidentiality of the other Party's Confidential Information that is disclosed to it, by using the same degree of care that it uses to protect its own Confidential

Information, and in any event, a reasonable degree of care; (ii) only use that Confidential Information for purposes related to this DPA; and (iii) not disclose the other Party's Confidential Information to a third party without the other Party's prior written consent or as allowed by the DPA.

(b) Each Party may disclose the other Party's Confidential Information to its Personnel and/or Affiliates who need to know the information in order to perform that Party's obligations under this DPA, provided that Party takes all reasonable steps to ensure compliance with its confidentiality obligations including, where necessary, to execute a written confidentiality agreement containing terms that are no less restrictive than those in this Section 4. The receiving Party will be fully responsible for any confidentiality breach caused by its Personnel or its Affiliates.

(c) If a Party has a Legal Requirement to disclose Confidential Information of the other Party, that Party will, if permitted by applicable law, provide the other Party with prompt prior written notice of this, so that the other Party may seek a protective order or other limitation on disclosure. If a Legal Requirement to disclose any Confidential Information nonetheless remains on the Party, it may disclose that portion of the Confidential Information that it is legally required to, without violation of this DPA, but it will exercise commercially reasonable efforts to minimize the disclosure, such as by redaction and to obtain assurances that such Confidential Information will be treated confidentially.

### 4.2 Return or Destruction

(a) Except to the extent otherwise allowed in this DPA and subject to Section 4.2(b) of this DPA, each Party will: (i) securely and promptly destroy the other Party's Confidential Information that is in its possession or control, together with all copies that have been made, upon the termination of this DPA or otherwise, at the other Party's request and (ii) promptly provide the other Party with written certification when this is done. Notwithstanding the foregoing, but subject to the Software Terms attached as Exhibit B to this DPA, You may retain a copy of Hitachi IP as necessary to exercise any license rights granted by Hitachi to You pursuant to this DPA. This Section 4 will survive the termination of this DPA, with respect to the retained copy of Hitachi IP.

(b) Where it is not technically possible or practicable for a receiving Party to access and destroy Confidential Information stored in an automatic electronic archiving system, the receiving Party will cease to use that Confidential Information and ensure that it is kept secure for the period of retention, until it is eventually overwritten.

## 5. PERSONAL DATA

### 5.1 Your Obligations

(a) 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) You are responsible for any unauthorized access, acquisition, use, disclosure, modification or destruction to Personal Data caused by Your acts or omissions and those of Your Affiliates, End Users and your respective Personnel in Your receipt and use of the Hitachi Supplies. You will only use or provide Hitachi with Personal Data that You have the legal right to collect, process, use, and transfer, and only to the extent that is necessary or required under any Supply Transaction made under this DPA. You will not disclose any Personal Data about Hitachi Personnel to third parties apart from Your Personnel.

(c) Without limiting the operation of Section 5.1(a) of this DPA with regard to any Personal Data that You receive from Hitachi, You represent and warrant to Hitachi that: (i) You will not disclose any

Personal Data of Hitachi, its Affiliates or their respective Personnel without Hitachi's prior written consent; (ii) You will enter a written contract with the recipient or sub-processor of the Personal Data on terms that are no less restrictive than in this Section 5 and You will remain fully responsible for their performance; (iii) the processing of Personal Data will not cause Hitachi or its Affiliates or their respective Personnel to breach any applicable laws; (iv) You will maintain adequate technical, physical and administrative security measures and safeguards to routinely back-up and ensure the integrity and security of Personal Data and will require the same from all of your downstream parties; and (v) You will strictly comply with the express instructions that Hitachi provides to You and You will only process the Personal Data for the purposes of this DPA.

## **5.2 Hitachi's Obligations**

Without prejudice to the provisions contained in this DPA, the Parties agree that the provision of Services and the supply of Products that are the object of this DPA, do not entail the processing of Personal Data on Customer's behalf by Hitachi. Notwithstanding the above, in the event that Hitachi requires to process Personal Data on Customer's behalf for the performance of the Services covered by this DPA, 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 GDPR. To the extent that Hitachi processes Personal Data as part of a Supply Transaction under this DPA, Hitachi will not disclose such Personal Data without Your prior written consent or as otherwise permitted by applicable law. Hitachi will comply with applicable data protection laws for that Personal Data. Hitachi may disclose Your Personal Data to its Personnel who need to know the information to perform Hitachi's obligations under the DPA; 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).

## **5.3 Security Breaches**

(a) Without limiting any of its other obligations in the DPA or under applicable law, each Party will promptly report any Security Breach to the other Party by providing: (i) oral notice as soon as reasonably practicable and no later than forty-eight (48) hours after discovery; and (ii) a follow-up, written report as soon as reasonably practicable and no later than ten (10) days after discovery. The written report will include, to the extent the information is currently available, identification of affected individuals and any other information that is legally required for a notice of Security Breach under applicable law. The report will be promptly updated by the reporting Party, as new material information is discovered, and the updated report will be promptly provided to the other Party.

(b) Each Party will 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.

(c) The Parties agree and acknowledge that the Data Controller will determine, in its sole discretion, which Party will provide notice to affected individuals of a Security Breach and the content, timing and method of delivery of the notice.

## **6. LIMITATIONS OF LIABILITY**

### **6.1 Uncapped Liability**

Each Party acknowledges the full extent of its own liability to the other Party for all Losses arising from the following areas of liability: (a) death or personal injury resulting from negligent acts or omissions; (b) Claims for non-payment; (c) the non-excludable statutory rights of consumers (for example, under laws providing for strict product liability); (d) any infringement of Hitachi IP, including any Software license breaches; (e) breaches of confidentiality obligations (but this Section 6.1 does not apply to a Party's liability for breach of Section 5.3 of this DPA nor for any Security Breach, whether under this DPA or under applicable law); (f) fraud or deceit; (g) any indemnity obligations under section 9.7 h) of this DPA and section 7 of Exhibit D to the DPA.

### **6.2 Limits and Exclusions of Liability**

(a) Subject to the other parts of this Section 6, the Software Terms and the Warranty, Maintenance and Support terms attached as Exhibits B and E to this DPA and to the extent permitted by applicable law:

(i) unless an Exhibit expressly states otherwise, each Party's maximum and aggregate liability arising out of or in connection with a Supply Transaction under this DPA will not exceed the lesser of: (A) the total Fees that You have paid to Hitachi under the Supply Transaction out of which the liability arose during the twelve (12) month period immediately before the date of the first event that gave rise to the Claim; and (B) Two Million Swiss Francs (CHF2'000'000,00); and

(ii) each Party's maximum and aggregate liability arising out of or in connection with the DPA in general (not related to any specific Supply Transaction) will not exceed the greater of: (A) the total Fees You have paid to Hitachi under all Supply Transactions made under the DPA during the twelve (12) month period immediately before the date of the first event that gave rise to the Claim; and (B) Five Hundred Thousand Swiss Francs (CHF500'000,00); and

(iii) neither Party will be liable in any circumstances for: (i) any indirect, punitive, special, incidental or consequential damages in connection with or arising out of the DPA; or (ii) 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.

(b) The limitations and exclusions of liability in Sections 6.2(a) above, apply whether such liabilities or Claims arise under breach of contract (including anticipatory breach or repudiation), 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 DPA fails of its essential purpose.

(c) The liability caps set out in Section 6.2(a) above may be subject to and do not restrict the Parties from expressly agreeing to additional or alternative caps of liability under a PA, Order or SOW (as applicable).

### **6.3 Excluded Performance**

Except for payment obligations, neither Party will 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. Without limiting the previous sentence, Hitachi will not be liable for any Failure, to the extent that the Failure is caused by Your act or omission or those of Your Personnel, End Users or any other person acting on Your behalf. You will take all measures available to mitigate and minimize the Losses arising from any Failure, irrespective of the nature and extent of Your contribution and You will ensure that Your Personnel do the same.

#### **6.4 Warranty Exclusion**

Except as specified in the DPA, including the Exhibits to this DPA, 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 Hitachi Supplies will operate uninterrupted, securely or error free and will not be liable for costs of procurement of substitute Items.

#### **7. TERM AND TERMINATION**

##### **7.1 Termination of the DPA**

(a) The DPA will start on the Effective Date and will continue until it is terminated by a Party giving written notice of termination to the other Party, where the other Party: (i) breaches the confidentiality, intellectual property, export compliance or anti-bribery sections of the DPA; (ii) commits a material breach of any other terms of the DPA that is not capable of remedy or, where capable of remedy, fails to remedy the breach within thirty (30) days of written notice to do so; or (iii) becomes or takes steps to become Insolvent.

(b) Each Supply Transaction will start on the effective date stated in the applicable Order and is subject to termination by a Party on the same grounds of termination that are available to that Party under Section 7.1(a). Hitachi reserves the right to cancel any Order(s) that have not yet been delivered on the date of termination of the DPA, other than where the termination is due to a material breach of Hitachi under Section 7.1(a)(ii).

(c) The termination of the DPA automatically results in the termination of all outstanding Supply Transactions at such time, other than where the termination is due to a material breach of Hitachi under Section 7.1(a)(ii) or where the Parties agree otherwise in writing.

(d) The termination of a Supply Transaction will not lead to the termination of other outstanding Supply Transactions at such time, except where the Parties otherwise agree in writing.

##### **7.2 Consequences of Termination**

(a) If the DPA or any Supply Transaction made under it is terminated, to the full extent applicable: (i) Your rights, licenses and privileges under it will end; (ii) You must comply with any directions issued by Hitachi requiring You to either remove and return to or destroy (at Hitachi's election) all Hitachi IP and Confidential Information of Hitachi in Your possession or control or return them to Hitachi, at Your cost; and (iii) You will not be relieved from Your payment obligations and any money due to Hitachi will become immediately payable.

(b) Rights and obligations under the DPA, 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 this DPA or at law (or which have arisen on or before the date of termination).

#### **8. AFFILIATE TRANSACTIONS**

(a) A Party's Affiliate may participate in this DPA by executing a PA with the other Party or that Party's Affiliate and enter Supply Transactions under that PA. Each PA: (i) is a separate agreement between the parties that execute it; (ii) applies to the territory stated in the PA, if applicable; and (iii) incorporates the terms of this DPA, except to the extent that changes are required under applicable local law or agreed by the parties to the PA to reflect local conditions.

(b) If the PA does not expressly state a governing law that is to apply to the PA, then the PA will be governed by the local law of the place where the Hitachi entity under the PA is incorporated. When construing a PA, references in this DPA to "Hitachi" and "You" will respectively refer to the parties to the PA.

(c) All Supply Transactions made under the PA and the performance of all related obligations will be the responsibility of the executing parties. The Parties will use reasonable commercial endeavors to encourage their respective Affiliates to comply with the PA that those Affiliates have entered and to fully perform their respective obligations under that PA. However, the Parties are not liable for the acts, omissions or obligations of their Affiliates and do not guarantee any performance by their Affiliates.

#### **9. GENERAL**

##### **9.1 Ethics and Business Conduct**

(a) Hitachi is required by U.S. export control laws and regulations to restrict access to or seek prior U.S. government approval for the release of restricted technology, source code and downloadable software to citizens or nationals of certain countries. Pursuant to the Export Administration Regulations, the release within the United States of controlled technology, source code and downloadable software to You under this DPA is "deemed" to be an export to the country of citizenship or nationality of Your Personnel.

(b) You acknowledge that in various countries, laws and regulations regulate the export of products, services and information which may prohibit use, sale or re-export of such products, services or information. You will not transmit, export or re-export, directly or indirectly, separately or as part of any system, any Hitachi Supplies or technical data (including processes and services) received from Hitachi, without first obtaining any license required by the applicable government, including without limitation, the United States government acting under the authority of the Export Administration Act and implementing Export Administration Regulations, and/or any other applicable competent authority.

(c) By accepting the Hitachi Supplies from Hitachi, You agree that none of them will be re-exported, sold or otherwise transferred to any US-embargoed destination or any entity subject to a US denial order or to any person, company or entity if You know or have reason to believe that they will be re-exported, sold or transferred in violation of US or other applicable law or regulations, including but not limited to, where You know or have reason to know that such Hitachi Supplies or associated information 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 Hitachi Supplies. You certify that none of the Hitachi Supplies will be re-exported, sold or otherwise transferred to, or made available for any entity or end use that is engaged in the design, development, production, stockpiling or use of nuclear, biological or chemical weapons or missile technology, or for any entity with specific end use that is engaged in conventional weapons or any other military activities. You will indemnify, defend and hold harmless Hitachi and its Affiliates and their respective Personnel for all Losses arising directly or indirectly from any violation(s) or alleged violation(s) of any such applicable laws, regulations and requirements by Your or Your Personnel.

(d) Each Party 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.

##### **9.2 Dispute Resolution**

If there is dispute between the Parties related to this DPA, the Parties will appoint an appropriate representative from their respective

management to resolve the dispute in good faith. If those persons cannot resolve the dispute within thirty (30) days from the date of first meeting, the Parties may resort to alternate dispute resolution such as arbitration (if both Parties agree) or a Party may seek recourse from the courts with jurisdiction over this DPA, without further notice to the other Party. Either Party may seek injunctive or other urgent equitable relief from a court of competent jurisdiction at any time.

### 9.3 Hitachi Property

(a) If Hitachi provides You with any Hitachi Property as part of a Supply Transaction, You are responsible for loss of or damage to the Hitachi Property, once delivered to Your custody or control, except for loss or damage arising due to Hitachi's acts or omissions, or normal wear and tear during proper use, storage and maintenance. Hitachi retains title to the Hitachi Property.

(b) You must not: (i) assign, transfer, sell, deal with, or create any mortgages, security, liens, or other interests in or over the Hitachi Property; or (ii) move, repair, modify or interfere in any way with the Hitachi Property without Hitachi's prior consent; or (iii) obscure or tamper with any asset tag or like identification or notification affixed to the Hitachi Property. You will indemnify, defend and hold Hitachi harmless from and against any Claims caused by any failure by You or Your Personnel to comply with this Section 9.3(a). You will provide Hitachi with immediate notice of any attachment, lien or judicial process affecting the Hitachi Property, or Hitachi's ownership of the Hitachi Property.

(c) You will provide to Hitachi and its authorized representatives reasonable access to the premises on which the Hitachi Property is located, upon Hitachi's reasonable notice, for Hitachi's inspection, verification and removal purposes.

(d) Upon the delivery of the Hitachi Property to Your custody or control and until that Hitachi Property is either returned to Hitachi or otherwise Hitachi removes it from Your custody or control, You will maintain insurance policies with reputable insurers covering loss of, and damage to the Products at least equal to the replacement cost of the Hitachi Property.

(e) To the full extent possible, You must ensure that, prior to removal by or return to Hitachi for any reason, all data is removed from all Hitachi Property. Hitachi takes no responsibility for data remaining on any Hitachi Property that is removed by or returned to Hitachi and You must defend, indemnify and hold Hitachi, its Affiliates and their respective Personnel harmless from and against any and all losses, damages, liabilities, judgments, settlements, costs and other expenses (including reasonable legal fees) that is caused directly or indirectly by Your failure to comply with this Section 9.3(e).

### 9.4 Governing Law and Jurisdiction

(a) Except as the Parties expressly agree otherwise in writing and subject to Section 8(b), this DPA and all Supply Transactions related to the DPA will be governed and construed in accordance with the Swiss laws (without regard to its conflict of law principles), will apply to the DPA and the venue for any litigation will be the appropriate courts in Zürich 1.

(b) 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 this DPA.

### 9.5 Customer Referrals

(a) Subject to Section 9.5(b), Hitachi may refer to You as a customer of Hitachi, both internally and in externally published media. You will not use Hitachi's name in any publication, advertisement, or public announcement, nor disclose the results, existence, or content of the DPA, without Hitachi's prior written consent.

(b) 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 Supply Transactions. 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.

### 9.6 Hitachi Employees Management

When fulfilling commitments that Hitachi has taken under this DPA, all Hitachi employees carry out their obligations as an associate in the sense of art. 101 Code of obligations regarding any performance related to a "contrat de mandat" (art. 394 ff. Code of obligations) or "contrat d'entreprise" (art. 363 ff. Code of obligations) law. Your role shall be limited to taking receipt of the Products and Services and You shall at no time be entitled to issue general directives and specific instructions regarding the performance of the work and the conduct of any Hitachi employee working on Customer's site. The Hitachi employees shall however comply with any internal house rules that governs Your premises. As a result, the sole authority to give instructions to any Hitachi's employee remains with Hitachi throughout the entire duration of this DPA.

### 9.7 Terms for Managing the DPA

(a) **Assignment and Transfer.** You must not sub-contract, assign, or otherwise transfer any of Your rights or obligations under this DPA or any Order, SOW or other document made under the DPA, 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.

(b) **Notices.** Notices made under the DPA must be in writing (printed or electronic format) to the appropriate representative of the recipient, as identified at the head of this DPA 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 post, three (3) days after dispatch.

(c) **Modifications.** Except for the Hitachi Policies, modifications to this DPA must be in writing signed by each Party's authorized representative. Hitachi may change the Hitachi Policies from time to time and post the revised version on the Hitachi Website.

(d) **Conflicts.** Unless the Parties expressly agree otherwise, and to the full extent applicable to the Supply Transactions made under this DPA, if there is a conflict among the elements the DPA, the following order of precedence will apply (in descending order): (i) this DPA; (ii) the Exhibits; (iii) a SOW; (iv) a Quote; and (v) an Order.

(e) **Waiver.** 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.

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

(g) **Entire Agreement.** The DPA (including all terms attached hereto or incorporated by reference) is the entire agreement relating to its subject matter. All other written communications, understandings, proposals, representations and warranties are by agreement, excluded and are of no force or effect (to the extent permitted at law).

(h) **Defense of Claims.** You will defend or settle any Claim for which You have an indemnity obligation under this DPA, 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

it'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.

(i) **Non-Solicitation.** During the term of any Supply Transaction and for a period of twelve (12) months thereafter, neither Party will solicit for employment, employ or engage the services of any employee of the other party who performed services on behalf of such other party in connection with, or was otherwise involved in the procurement of Hitachi Supplies or the performance of obligations under this DPA or any Supply Transaction, without the prior written consent of the other Party. This does not restrict general advertisements of employment or the rights of any employee of one party, on that employee's own initiative, or in response to general advertisements, to seek employment from the other party and under such circumstances, for the other party to hire such employee.

(j) **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 DPA 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 Effective Date. The Parties may also sign the DPA and any further documents made under it by using electronic signature and the mutually signed copy will form a binding agreement on the Parties. When an obligation falls on a day that is not a Business Day, it must be done the following Business Day. Hitachi may withhold or rescind any of its rights of approval or consent at Hitachi's sole and absolute discretion. The singular includes the plural and *vice versa*. Words referring to gender include each gender. 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 DPA.

## 10. DEFINITIONS

**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 Hitachi's authorized service providers.

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

**Change Order:** a written amendment between the Parties setting out an addition, deletion or other modification of Hitachi Supplies and any resulting adjustment in Fees or other charges. A Change Order is not binding unless signed by both Parties.

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

**Confidential Information:** all information of a confidential or proprietary nature disclosed by one Party to another, which at the time of disclosure, is clearly marked or otherwise expressed as confidential or, under the relevant circumstances, the information would be considered to be confidential by a reasonable person, whether such information is contained in electronic or any other form whatsoever and includes information relating to products, goods, services, software (including computer programs, software formulas, code, software output, screen displays, access credentials, license keys, file hierarchies, graphics and user interfaces), solutions, related

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documentation, samples, business operations, financials, trade secrets, business outlooks, roadmaps and plans, revenue, pricing, customer information, partner information, data, inventions, techniques, methodologies, product design and any other technical or business information and strategies of a Party or its Affiliate, as well as the terms of this DPA, all documents attached to it or incorporated by reference, all Supply Transactions and other items expressly stated to form part of Confidential Information elsewhere in this DPA. Confidential Information excludes any Personal Data or 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) 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) independently developed by the receiving Party, without use of or reference to the disclosing Party's Confidential Information.

**Data Controller:** the Party who determines the purposes and means of the processing of Personal Data.

**Delivery:** the delivery of Hitachi Supplies under a Supply Transaction by Hitachi to You in accordance with the terms of the applicable Exhibit to this DPA. **Deliver** has the corresponding meaning.

**Effective Date:** the effective date of this DPA, as set out at the head of the DPA.

**Exhibit:** an Exhibit or similar document attached to and forming part of this DPA or otherwise incorporated by reference.

**Failure:** the failure, delay or non-performance of any obligation required of Hitachi under a Supply Transaction pursuant to this DPA.

**Fees:** the fees that You must pay to Hitachi for the Hitachi Supplies pursuant to this DPA, as set out in Hitachi's invoice to You or set out in the SOW, if applicable.

**GDPR:** Regulation (EU) 2016/679 (General Data Protection Regulation).

**Hitachi IP:** the IP Rights in all items and materials that Hitachi provides to You or otherwise creates pursuant to this DPA, including without limitation, the Hitachi Property, and work product and all related changes, improvements, additions, enhancements, Versions, Updates, Upgrades and derivative works.

**Hitachi Price List:** Hitachi's standard price list for Hitachi Supplies, as updated from time to time.

**Hitachi Property:** all proprietary tools, materials and technology of Hitachi, its Affiliates or partners that Hitachi uses, provides or otherwise makes available for the purpose of a Supply Transaction under this DPA, including those items that Hitachi provides to You electronically or retains on Your premises for that purpose. Without limitation, Hitachi Property includes (to the full extent applicable) any Equipment that Hitachi provides to You, whether prior to the passing of title pursuant to a sale or provided on loan to You; and all Software application programming instructions; documentation; sample code; software libraries; command line tools; templates; other related technology; and any items (such as disk drives) that you return to Hitachi pursuant to the terms of this DPA.

**Hitachi Supplies:** all or any of the following, to the extent applicable to Supply Transactions made under this DPA: Equipment under Exhibit A; and/or Software under Exhibit B (including any Third Party Products) and/or Services agreed by the Parties to form part of a Supply Transaction.

**Hitachi Website:** [www.hitachivantara.com](http://www.hitachivantara.com) and any successor or related site and all updates from time to time.

**Infringing Item:** any item of the Hitachi Supplies that is, or that Hitachi considers is likely, in its sole determination to be, in whole or in part, the subject of an IP Claim.

**Insolvency:** the inability of a Party to pay its debts as they fall due, the appointment of a receiver or administrator, liquidator or similar person in respect of the Party's affairs under the laws of any jurisdiction; the calling of a meeting of creditors of a Party or for any reason, a Party ceasing to carry on business. **Insolvent** has the corresponding meaning.

**Interest:** interest on any overdue payments at the rate of 5% above the then current legal interest rate if payments are overdue.

**IP Claim:** a Claim made by a third party against You that any item of the Hitachi Supplies that You have purchased from Hitachi under this DPA infringes that party's patent or copyright.

**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 as required by law or a judicial, arbitral or governmental order or process (including any rules of a stock exchange).

**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.

**Maintenance and Support Services:** the Equipment maintenance and Software support services described in more detail in Exhibit E to this DPA (including the Service Descriptions as referred to in these Terms).

**Order:** a written or electronic order for the purchase of Hitachi Supplies from Hitachi under a Supply Transaction, or a document detailing the same, including, but not limited to, description and price which is submitted to, and accepted by Hitachi in accordance with this DPA and Hitachi's then-current ordering requirements.

**Participation Agreement or PA:** Participation Agreement or PA: the form of agreement for Affiliates of the Parties to enter, adopting the terms of this DPA (Hitachi will provide the form of PA upon Your request).

**Party:** Hitachi and You when referred individually.

**Parties:** Hitachi and You when referred jointly.

**Personal Data:** for You, personal information about an identified or identifiable person that You provide to Hitachi or otherwise use as part of the receipt or use of the Hitachi Supplies. For Hitachi, personal information about an identified or identifiable person that Hitachi collects under the DPA An identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person, as defined in the GDPR..

**Personnel:** of a Party means that Party's employees, subcontractors, workforce members, agents and authorized representatives.

**Processing Fees:** all fees and charges charged by a third-party service provider that You engage with respect to the processing of Hitachi's invoices or payment of the Fees (for example, portal service fees).

**Professional Services:** software enablement, configuration, data migration and other migration services, implementation, data analytic and other services as agreed between the Parties from time to time.

**Published Specifications:** the user or technical manuals, training materials, specifications or other documentation for Products, stated as valid at the time of acceptance of the Order or referred to in the Software Terms and/or the Warranty, Maintenance and Support terms attached as Exhibits B and E to this DPA, as updated by Hitachi from time to time.

**Quote:** a written quotation or proposal issued by Hitachi for the proposed Supply Transaction. If applicable, a Quote may include a SOW for Professional Services.

**Refund:** a refund of the Fees that You have paid for Hitachi Supplies, which in the case of: (i) any Equipment and any Software licensed under a perpetual term license, will be less a straight-line depreciation, based on a 3-year useful life; (ii) any term based Programs, 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 conformity with the Hitachi Services warranty.

**Resell:** to promote, market, distribute, resell and/or sub-license the Hitachi Supplies purchased under this DPA to downstream resellers or end users. "Resale" has the corresponding meaning.

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

**Services:** all or any of the following, to the extent applicable to Supply Transactions made under this DPA: (i) Billable Services and Maintenance and Support Services (as defined in the Exhibit E to this DPA) under Exhibits A or B to this DPA; (ii) Professional Services under Exhibit C; (iii) "as a Service" offerings under Exhibit D; (iv) training and any other services listed in the Hitachi Price List; or (v) similar offerings from time to time.

**Software:** software in object code format as applicable to a Supply Transaction under this DPA and further described in Exhibits A or B.

**Statement of Work or SOW:** a document agreed and executed between the Parties that sets out the Professional Services to be provided by Hitachi, including the scope of services, the price, estimated delivery dates, service deliverable procedures and roles and responsibilities of the Parties.

**Supply Transaction:** the supply by Hitachi of Hitachi Supplies to You under the terms of this DPA, as described further in Section 1 of this DPA. A Supply Transaction may comprise an Order or a series of related Orders, or a SOW for the supply arrangement.

**Tax:** any applicable tax on a Supply Transaction, including, income tax, value added tax (Ad Valorem Tax or VAT), government sales tax, national sales tax (NST), goods and services tax (GST), sales or use tax, withholding tax or excise tax.

**Third Party Products:** any products or technology supplied to Hitachi by any party (other than Hitachi, Ltd.) for direct or indirect distribution to Hitachi's customers.

**Third Party Related OSS:** any Open Source Software licensed to, provided with or otherwise contained in, the Third Party Software.

**Third Party Software:** any software contained in or comprising Third Party Products. For clarification purposes, if any Third Party Software not sublicensed through the Software Terms, detailed in Exhibit B to this DPA, contains Third Party Related OSS, You must refer to that applicable license for those terms.

**EXECUTED AS AN AGREEMENT:**

IN WITNESS WHEREOF, the Parties have executed this DPA by their respective authorized officers as of the Effective Date.

<b>HITACHI VANTARA AG</b>	<b>CUSTOMER</b>
By	By
Name	Name
Title	Title
Company	Company
Date	Date

<b>HITACHI VANTARA AG</b>	<b>CUSTOMER</b>
By	By
Name	Name
Title	Title
Company	Company
Date	Date



## EXHIBIT A TO THE DPA - PRODUCT TERMS

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

The following terms and conditions apply to Supply Transactions under the DPA that include Equipment. References to "Products" in this Exhibit mean (i) Equipment and related Operating Software; and (ii) Software supplied with the Equipment, per the terms of Exhibit B. All Maintenance and Support Services will be provided in accordance with the Online Terms.

### **1. PRODUCT, DELIVERY AND INSTALLATION**

#### **1.1 Product Delivery**

Hitachi will do everything that is reasonably possible to meet its estimated Delivery dates for the supply of Products. Where necessary, Hitachi may make partial Deliveries of Products and send You a corresponding partial invoice. Delivery of Products will be DDP (as defined in Incoterms 2010) to Hitachi's nominated Delivery Point, however Programs will be deemed Delivered when either: (a) the license keys for the Programs are sent to You electronically; or (b) the Programs are made available electronically to You. Upon delivery You will execute a delivery certificate.

#### **1.2 Risk and Title in Products**

Subject to Sections 1.1 and 1.5 of this Exhibit: (a) risk of loss of and damage to the Products passes to You upon Delivery of the relevant Products; and (b) title in the Products will pass to You on Delivery, however, ownership of any Software and the tangible media in which it is contained will remain with Hitachi or its licensors. Without limiting Section 3 of the DPA, You must not do anything that affects such ownership. Your license rights in the Operating Software will be in accordance with Section 2.1 of Exhibit B and the Hitachi Vantara Software License Terms that are contained in the Software Terms attached as Exhibit B to this DPA.

#### **1.3 Product Installation**

Unless the Parties agree otherwise, the Products will be Installed at the location set out in the Order. You will prepare the installation environment at such location at Your cost and in accordance with Hitachi's requirements and directions.

#### **1.4 Product Acceptance**

You are deemed to have accepted the Products on Delivery. At Hitachi's request, You will sign and provide a written acceptance certificate to Hitachi.

#### **1.5 Product Loans**

(a) If Hitachi agrees to loan Products to You, such loan will be conditional on the Parties signing a Loan Schedule that refers to this DPA, in a form that is acceptable to Hitachi. Hitachi reserves the right to require You to execute a separate Loan Agreement, which is mandatory for pre-release Products. Hitachi will Deliver and Install the Products at the Location set out in the Loan Schedule in accordance with this DPA. Risk in the Products will pass to You under Section 1.2 of this Exhibit. Hitachi will provide Maintenance and Support Services on the Products at the Weekday Basic Support level (or its closest equivalent in place at the time of the Product Loan), as referred in, and subject to the Warranty, Maintenance and Support terms attached as Exhibit E to this DPA. Either Party may terminate a Product Loan, in whole or in part at any time, by written notice to the other Party.

(b) Notwithstanding any other part of the DPA and to the extent permitted by applicable law: (i) You accept the loan Products and any Services performed on the loaned Products on an "as-is" basis, without warranty of any kind, including warranty relating to performance or function; and (ii) except for death and personal injury caused directly by Hitachi's negligent act or omission and, subject to section 6.2(a) of the DPA, Hitachi will not be liable to You for any actual or anticipated, direct, indirect, special, incidental, consequential or other damages arising from the Product Loan and any Services performed on the loaned Products, howsoever caused, whether under contract, statute or otherwise, including breach of contract, breach of warranty or in tort (including negligence), anticipatory breach or repudiation, and even if Hitachi has previously been advised of the possibility of such damages. This Section 1.5(b) prevails to the extent of any inconsistency with the terms of Section 6.2 of the DPA, in respect of Product Loans and Products and Services provided under such loans.

(c) Subject to clause 1.5(d) of this Exhibit, ownership of, and all right, title and interest in all Products that Hitachi loans to You will remain with Hitachi at all times and You gain no rights in the Products, other than the right to use the Products at the Location, for the Designated Use specified on the Loan Schedule and in accordance with the applicable licensing provisions contained in the Software Terms attached as Exhibit B to this DPA. You must not do anything that affects Hitachi's rights ownership of, or other rights in the Products, nor use the Products for any reason other than the Designated Use.

(d) If You have agreed in a Loan Schedule to purchase the Products at the end of the Loan Period, You must provide Hitachi with an Order for such Products no later than five (5) days after the end of the Loan Period. Title in the Equipment will pass to You upon the date that Hitachi receives the Order for the Products and Your use of the loaned Products will be subject to the terms of this DPA (except for clause 1.5 of this Exhibit, which will not apply) and the Loan Schedule will be deemed terminated.

(e) If You do not purchase the loaned Products, then Your rights in those Products will cease at the end of the applicable Loan Period or, if the Product Loan is terminated earlier, on the effective date of termination; in which case, You will return the loan Products to Hitachi in

the same condition (normal wear and tear excepted) as the initial Delivery to You and if You fail to do so, You grant to Hitachi the right to enter the premises where the loaned Products are located, in order to recover them.

#### **1.6 Product Order Cancellation**

You may not cancel any Orders for Products any later than five (5) business days prior to the scheduled date of Delivery of the Products and/or commencement of the Services that are the subject of the Order. Notwithstanding, if Hitachi has delivered the Products to You, any Services that are related to the same Order may not be cancelled and will be performed as agreed.

#### **2. MAINTENANCE AND SUPPORT OF PRODUCTS**

(a) Subject to Sections 2(b), 3.2 and 4 of this Exhibit, Hitachi will provide You with Maintenance and Support Services on the Products during the Service Period, provided You have paid Hitachi the Fees for such services in full.

(b) The term of a Service Period, including the initial term and any applicable renewal terms, as well as the related Fees will be specified in Hitachi's Quote accepted by You or otherwise agreed by the Parties and stated in the applicable Order. The initial term for Maintenance and Support Services that You have purchased will be non-cancellable and the applicable Fees for that term will be non-refundable, unless Hitachi states otherwise in its Quote accepted by You or the Parties have agreed otherwise and stated in the Order.

#### **3. RENEWALS**

##### **3.1 Renewal Notifications**

Hitachi will use reasonable commercial efforts to send You a Renewal Notification at least sixty (60) days prior to the expiration of the initial term or then-current renewal term of the applicable supply (whichever is the case).

##### **3.2 Renewal of Maintenance and Support**

Subject to both Your: (a) acceptance of the Renewal Notification; and (b) payment in full of the applicable Fees to Hitachi by no later than the end of the Renewal Notification Period, the Maintenance and Support Services will be renewed for the applicable period and Fees stated in the Renewal Notification. Hitachi's issue of a Renewal Notification does not require You to renew Maintenance and Support Services. However, if You do not renew Maintenance and Support Services, any subsequent reinstatement of Maintenance and Support Services may be subject to additional charges and other requirements set out in the WMS Terms.

##### **3.3 Software Support Renewals**

Subject to Section 3.2 of this Exhibit: (a) if the Renewal Notification relates to Software that is licensed to You on a term-based license, Maintenance and Support Services for that Software will be renewed concurrently with the renewal of the term-based license period; and (b) Maintenance and Support Services for Software that is licensed to You on a perpetual basis will be renewed for the period set out in the applicable Renewal Notification.

#### **4. WARRANTY OF PRODUCTS AND SERVICES**

##### **4.1 Product Warranty**

Subject to Section 4.2 of this Exhibit and Section 6.4 of the DPA, Hitachi warrants to You that, during the Warranty Period, the Products will function in accordance with their applicable Published Specifications. To make a valid warranty claim, You must submit a claim to Hitachi in accordance with the procedures referred to in the WMS Terms.

##### **4.2 Service Warranty**

Any warranties for the Maintenance and Support Services are subject to Hitachi's standard maintenance and support terms and conditions set out in the WMS Terms.

#### **5. THIRD PARTY PRODUCTS**

Except as expressly stated otherwise in the DPA or related document: (i) Hitachi provides Third Party Products to You without warranties or support of any kind, and (ii) licenses, warranties, indemnities for IP Rights infringement Claims and support for Third Party Products will be given by the relevant suppliers in their end user license and support terms that Hitachi passes on to You or that You otherwise enter with such suppliers.

#### **6. DATA REMOVAL**

You retain responsibility for Your data and technical, logical and physical access controls to Your data. To the full extent possible, You must ensure that, prior to removal by or return to Hitachi for any reason, all data is removed from any Product. Hitachi takes no responsibility for data remaining on any Product that is removed by or returned to Hitachi and You must defend, indemnify and hold Hitachi, its Affiliates and their respective Personnel harmless from and against any and all losses, damages, liabilities, judgments, settlements, costs and other expenses (including reasonable legal fees) that is caused directly or indirectly by Your failure to comply with this Section 6.

#### **7. DEFINITIONS**

Without limiting the operation of defined terms contained elsewhere in the DPA, the following definitions apply to this Exhibit:

**Designated Use:** Your internal business evaluation of the performance of the Product in a non-Production Environment.

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

**Install:** has the meaning set out in the Warranty, Maintenance and Support terms attached as Exhibit E to this DPA.

**Installation** has the corresponding meaning.

**Maintenance and Support Services:** the Equipment maintenance and Software support services described in more detail in the Warranty, Maintenance and Support terms attached as Exhibit E to this DPA (including the Service Descriptions as referred to in these Terms).

**Hitachi Remote Ops Services:** remote diagnostic and monitoring services on eligible Equipment, using Hitachi's proprietary remote operations tool and related Documentation.

**Loan Agreement:** a separate agreement to this DPA, under which the Parties agree to the terms of a Product Loan.

**Loan Period:** the period for the loan of Products referred to under Section 1.5 of this Exhibit A and as set out in the applicable Loan Schedule.

**Loan Schedule:** a Schedule made pursuant to Section 1.5 of this Exhibit A, under which the Parties agree to terms of a Product Loan.

**Location:** the location for the delivery of Products that are the subject of a Product Loan, as set out in the applicable Loan Schedule.

**Product Loan:** Hitachi's loan of Products in accordance with Section 1.5 of this Exhibit A and the applicable Loan Schedule or Loan Agreement (as applicable).

**Production Environment:** any computer system running one or more instances of Software that is being actively used to process data or provide information to the system's users. **Renewal Notification:** a notice issued by Hitachi to You in accordance with this DPA, setting out Your options for purchase of further Hitachi Supplies from Hitachi for the applicable renewal term set out in the notice. The Renewal Notification may take the form of a Quote.

**Renewal Notification Period:** the period between the date of Hitachi's Renewal Notification and the end date of the initial term or renewal term for the applicable supply (as the case may be).

**Service Period:** term during which Maintenance and Support Services are provided under a Supply Transaction. **Warranty Period:** means the applicable warranty period listed in: (i) the Warranty, Maintenance and Support terms, attached as Exhibit E to this DPA, for a Product or, in the case of Third Party Products, as may be provided in the applicable third-party warranty terms and (ii) in the case of Professional Services, as set forth in Exhibit B.

**Weekday Basic Support:** the applicable level of support identified in the service descriptions, which are applicable to the WMS Terms.

**WMS Terms:** the Warranty Maintenance and Support Terms forming part of the DPA as Exhibit E.

## EXHIBIT B TO THE DPA - SOFTWARE TERMS

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

The following terms and conditions apply where the Hitachi Supplies under the DPA include Software.

### **1. DELIVERY AND INSTALLATION**

#### **1.1 Software Delivery**

Programs will be deemed Delivered when: (i) the license keys for the Programs are sent to You electronically; or (ii) the Programs are made available electronically to You.

#### **1.2 Software Ownership**

You agree and acknowledge that ownership of any Software and the tangible media in which it is contained will remain with Hitachi or its licensors. Without limiting the operation of Section 3 of the DPA, You must not do anything that affects such ownership.

### **2. SOFTWARE LICENSES**

#### **2.1 Software License Grant**

(a) Without limiting the operation of any further licenses set out elsewhere in the DPA and subject to the restrictions set out below, or as otherwise set forth in the applicable Quote or SOW, Hitachi grants to You the following license rights. Your license rights in the Software are non-transferable, except as permitted by this DPA.

- (1) Except as expressly provided otherwise in these License Terms or the Agreement, Hitachi grants to You a personal, non-transferable, non-exclusive license to Use the Licensed Items for Your internal business operations, solely in a manner that is consistent with Your Entitlement and the applicable Documentation. You obtain no title or ownership in any Licensed Items under the Agreement or these License Terms and You must not sub-license any Licensed Item without Hitachi's prior written consent. Your rights in the Licensed Items comprise the following:
  - (i) You are entitled to Use the Software that You purchase from Hitachi or a Hitachi Partner:
    - (A) in either machine-readable object code form or machine-compressed form (and the related Documentation may be used only in printed or electronic form in support of the applicable Software);
    - (B) in accordance with the Published Specifications applicable to that Software;
    - (C) subject to the restrictions specified in these License Terms, Your Entitlement and the applicable Documentation; and
    - (D) in compliance with all applicable laws.
  - (ii) If You are provided with Maintenance Material, You are entitled to Use that Maintenance Material solely in receipt of the Maintenance and Support Services with respect to Products that You have purchased from Hitachi or a Hitachi Partner.
  - (iii) If You are provided with Work Product under a Statement of Work as part of Your receipt of Professional Services from Hitachi, You are entitled to Use, reproduce, copy and display the Work Product solely for Your internal business purposes and subject to any further restrictions and/or additional terms set out in the Statement of Work.
  - (iv) If You are provided with "development/testing" or Software evaluation licenses, You may only Use the evaluation Software in Your internal development and testing environments, but not in a Production Environment. Your Use is subject to the additional terms set out in Section 2 below.
  - (v) If Hitachi or a Hitachi Partner have loaned Products to You, You will use the Software provided to You solely as part of those Products for Your internal evaluation purposes, and subject to the additional terms set out in Section 2 below.
  - (vi) If You are authorized under Your Entitlement to provide Hosted Services to End Users, You will use the Products that You have purchased in compliance with the terms of the Hosted Services Addendum to these Software License Terms. References to these License Terms will be deemed to include the Hosted Services Addendum, as applicable.
- (2) You agree and acknowledge that Hitachi may use license keys, Tokens and other means to limit Your access to or Use of Programs in accordance with the terms of the Agreement and these License Terms. If You have been issued with license keys for a perpetual Version of a Program, Your Use of the Program will be locked to that Version. You must not disable, work-around or otherwise interfere with the operation of any license key, Token or other mechanisms or technical limitations in the Programs. You further acknowledge that Hitachi may choose not to renew any license key if Hitachi reasonably believes that You are in breach of these License Terms or any IP Rights in the Software or any other Licensed Items.
- (3) Software Use is strictly limited by the Entitlement. You may only Use Operating Software on the Equipment for which it was purchased in order to operate the Equipment in accordance with its Published Specifications. For capacity-based Software licenses, You may only Use the Software up to the specified capacity purchased on the relevant Equipment, network, device, node or CPU. For Core-based licenses, the total number of virtual and physical Cores running the Software may not exceed the permitted number

of Cores identified in the Entitlement. For term-based or subscription licenses, You may only Use the Software only for the duration for which You are licensed to Use the Program.

- (4) For prepaid Tokens, You may only use the Software until the earlier of: (i) the Token expiration date that Hitachi or Hitachi's Partner (as applicable) has expressly provided to You in writing; and (ii) the date that the balance of the Tokens reaches zero. If You exceed the applicable limitations, You must pay to Hitachi or the Hitachi Partner (as applicable) all additional license fees before You may be granted further Use of the Software.

(b) Any additional or alternative purposes of using the Software outside the scope of use authorized by the DPA will be subject to any separate agreement between the Parties pursuant to Section 1.1(b) of this DPA or as otherwise set forth in the applicable Quote or SOW.

(c) Nothing contained in the DPA grants any right or license in or to the Community Editions and any use of such software is and will be governed by the applicable license provided with the Community Editions. If You use a Community Edition, then Hitachi is under no obligation to provide You with any Maintenance and Support Services for such Community Edition.

## **2.2 Hosted Services**

(a) If You are authorized to provide Hosted Services under Section 2.1(a)(ii) of this Exhibit, You are responsible for entering the End User Agreements with End Users for the Hosted Services. However, without limiting the Online Terms, those agreements must be at least as protective of and must not limit or otherwise detract from Hitachi's rights under this DPA, especially with respect to those rights relating to IP Rights and Software licensing and Maintenance and Support Services. 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 any End User for the Additional Terms. You will defend, indemnify and hold Hitachi harmless from and against all Losses incurred by Hitachi or its Affiliates due to any Claim made against Hitachi, directly or indirectly related to the making of such Additional Terms.

(b) You will provide You 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) You will use Your best efforts to ensure that the End Users who receive the Hosted Services from You use those services consistently with Your license rights under this DPA and do not cause You to be in breach of the DPA. If You become aware of, or reasonably suspect any such breach, You will immediately notify Hitachi and suspend the applicable End User's access to the Hosted Services. You will fully cooperate with Hitachi's investigation and remediation actions for such breach.

(d) You agree and acknowledge that End Users of the Hosted Services are not granted any rights in the Hitachi IP, including any access to or license rights in the Software.

(e) You will comply with the Hosted Services Addendum attached to this Exhibit, with respect to the Software identified in that Exhibit.

## **2.3 Evaluation Licenses**

(a) If Hitachi agrees to provide Software to You for Your evaluation, such loan will be conditional on the Parties signing a Loan Schedule that refers to this DPA, in a form that is acceptable to Hitachi. Hitachi reserves the right to require You to execute a separate Loan Agreement, which is mandatory for pre-release Software. Hitachi will Deliver and Install the Software at the Location set out in the Loan Schedule in accordance with this DPA. The Use of the Software provided to You for evaluation purposes will be governed by the terms of Section 2 of the Hitachi Vantara Software License Terms that are contained in the Online Terms.

(b) Where You are granted the right to Use the Software for Your evaluation purposes under a Product loan arrangement, then without limiting the applicable loan terms, You must Use the Software solely to evaluate its performance and functionality on a standalone basis or on the relevant Equipment with or for which the Software has been supplied, in Your internal business environment at the location, and only for the Designated Use and loan period that You have agreed to under the applicable loan arrangement or otherwise as part of Your Entitlement.

(c) Ownership of, and all right, title and interest in all Software that Hitachi provides to You under an evaluation license will remain with Hitachi at all times and You gain no rights in the Software, other than the right to use the Software at the location listed in the Loan Agreement, for the Designated Use specified on the Loan Schedule and in accordance with the applicable licensing provisions contained in the Hitachi Vantara Software License Terms. You must not do anything that affects Hitachi's rights ownership of, or other rights in the Software, nor use the Software for any reason other than the Designated Use.

(d) If You have agreed in a Loan Schedule to purchase the Software at the end of the Loan Period, You must provide Hitachi with an Order for such Software no later than five (5) days after the end of the Loan Period.

(e) Otherwise, if You do not purchase the loaned Software, then Your license to use the Software will cease in accordance with Section 2 of the Hitachi Vantara Software License Terms, and You will remove the loaned Software from the hardware on which it has been Used and destroy it; upon Our request, You will certify that such destruction has occurred.

(f) Your right to Use the Software for that purpose will end upon the earlier of: (i) the expiry of the applicable loan period; (ii) the termination of the loan arrangement; or (iii) the expiry of the applicable license key. Any output of the Software that is created or inferred by the Software provided under a development/testing or Software evaluation license may not be duplicated to the other systems and will be considered the Confidential Information of Hitachi. You may not Use such output after the expiration of the Software evaluation period unless You obtain a license to the Software.

(g) Notwithstanding any other provision in the DPA and to the extent permitted by applicable law: (i) You accept the loaned Software and any Services performed on the loaned Software on an “as-is” basis, without warranty of any kind, including any warranty relating to performance or function; and (ii) 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 loaned Software and any Services performed on the loaned Software, howsoever 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, and even if Hitachi has previously been advised of the possibility of such damages. This Section 2 prevails to the extent of any inconsistency with other terms of the Agreement, in respect of loaned Software and Services provided under such loans.

## **2. SOFTWARE SUPPORT**

(a) Subject to Sections 2.2(b), 3.2 and 4 of this Exhibit, Hitachi will provide You with Support Services on the Software during the Service Period, provided You have paid Hitachi the Fees for such services in full.

(b) The term of a Service Period, including the initial term and any applicable renewal terms, as well as the related Fees will be specified in Hitachi’s Quote accepted by You or otherwise agreed by the Parties and stated in the applicable Quote. The initial term for Support Services that You have purchased will be non-cancellable and the applicable Fees for that term will be non-refundable, unless Hitachi states otherwise in its Quote accepted by You or the Parties have agreed otherwise and stated in the Quote.

## **3. RENEWALS**

### **3.1 Renewal Notifications**

Hitachi will use reasonable commercial efforts to send You a Renewal Notification at least sixty (60) days prior to the expiration of the initial term or then-current renewal term of the applicable supply (whichever is the case).

### **3.2 Renewal of Maintenance and Support**

Unless Hitachi’s Quote provides for auto-renewal of Software license and support terms, then subject to both Your: (a) acceptance of the Renewal Notification; and (b) payment in full of the applicable Fees to Hitachi by no later than the end of the Renewal Notification Period, the Support Services will be renewed for the applicable period and Fees stated in the Renewal Notification. Hitachi’s issue of a Renewal Notification does not require You to renew Support Services. However, if You do not renew Support Services, any subsequent reinstatement of Support Services may be subject to additional charges and other requirements set out in the WMS Terms.

### **3.3 Software Support Renewals**

Subject to Section 3.2 of this Exhibit and unless Hitachi’s Quote provides for auto-renewal of Software license and support terms, (a) if the Renewal Notification relates to Software that is licensed to You on a term-based license, Support Services for that Software will be renewed concurrently with the renewal of the term-based license period; and (b) Support Services for Software that is licensed to You on a perpetual basis will be renewed for the period set out in the applicable Renewal Notification.

## **4. WARRANTY OF PRODUCTS AND SERVICES**

### **4.1 Software Warranty**

Subject to Section 4.2 of this Exhibit and Section 6.4 of the DPA, Hitachi warrants to You that, during the Warranty Period, the Software will function in accordance with their applicable Published Specifications. To make a valid warranty claim, You must submit a claim to Hitachi in accordance with the procedures referred to in the Online Terms.

### **4.2 Service Warranty**

Any warranties for Support Services are subject to the Online Terms.

## **5. THIRD PARTY SOFTWARE**

(a) Third Party Software may be embedded in the Hitachi proprietary Software that is branded as “Hitachi” Software and sub-licensed directly to You under these License Terms. Other Third-Party Software is provided to You subject to the terms of the applicable Third Party EULAs, which are available from Hitachi at Your request. Such Third Party EULAs may be in the form of shrink-wrap or click-through license agreements. Except as expressly stated otherwise in the DPA or related document: (i) Hitachi provides Third Party Software to You without warranties or support of any kind, and (ii) licenses, warranties, indemnities for IP Rights infringement Claims and support for Third Party Software will be given by the relevant suppliers in their license agreements that Hitachi passes on to You or that You otherwise enter with such suppliers.

(b) You will have no recourse against Hitachi or its Affiliates with respect to any Third-Party Software, unless Hitachi is the stated licensor and then, only to the extent expressly provided for in these License Terms. You are responsible to do whatever is necessary or required by the Third-Party Licensor for the licenses and related terms to take effect (e.g. online registration).

(c) The inclusion of Third-Party Software or Open Source Software in the Products and Your acceptance of any Third-Party EULAs or Open Source Software Licenses (or other similar agreements presented by Third-Party Licensors) will not adversely affect Your Use of the Products, as authorized under these License Terms.

(d) 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.

**6. OPEN SOURCE SOFTWARE**

(a) The Software may include Open Source Software. A complete list of the licenses for the Open Source Software provided with the Hitachi proprietary Software is made available with the Software or Documentation or on the Open Source License Website. You are responsible to read the terms of and adhere to all licenses for Open Source Software.

(b) By accepting these License Terms, You are also deemed to have accepted the terms and conditions of the licenses applicable to any Third-Party Software (including any Open Source Software) included with the Software. The Open Source License Website does not include Third-Party Related OSS. You must refer to the applicable Third-Party EULA or the file directory located in the Software for those terms.

(c) If the Software includes GPL Software and the applicable source code was not included in the Software, then You may obtain a copy of the applicable source code for the GPL Software by either: (i) requesting Hitachi to mail the open source code to You; or (ii) downloading the open source code by following the links on the website referenced in the Open Source License Website.

**7. USE RESTRICTIONS**

Except to the extent that any of the following restrictions are prohibited by applicable law or the terms of any Open Source Software license or Hitachi expressly agrees to waive a restriction in writing, You must not, and must not allow any other person to:

- (a) disclose the results of testing or benchmarking the Software or Products to any third party without Hitachi's prior written consent;
- (b) translate, decompile, disassemble, reverse compile, reverse engineer, reduce in human readable form or otherwise attempt to discover, access or reconstruct the source code or underlying ideas, algorithms, file formats, programming or interoperability interfaces of the Software, or any files contained in, or generated using the Software by any means whatsoever;
- (c) modify, unbundle, enhance, supplement or create derivative works using the Software;
- (d) sub-license, rent, lease, transfer, loan, distribute, resell or grant any rights in and to the Software to a third party;
- (e) copy or reproduce the Software other than as expressly allowed in these License Terms or as authorized by Hitachi in writing;
- (f) remove or otherwise tamper with any proprietary notices, labels or marks contained on or in the Software;
- (g) use or permit the Software or other Licensed Item to be used to perform services for third parties, whether on a service bureau or time-sharing basis, cloud services, hosted services or otherwise, other than as expressly allowed in these License Terms or as authorized by Hitachi in writing;
- (h) use the Software or other Licensed Item or allow their use for any of the following purposes: (i) developing, enhancing or marketing any product that is in any way competitive with the Software or any Product; or (ii) testing the Software or Product to derive data for any purpose which is competitive with the Software or any Product; (iii) using the Software via any communications network or by means of remote access that is not authorized by Hitachi in writing;
- (j) use the Software that is licensed for a specific device, whether physical or virtual, on another device unless expressly authorized by Hitachi in writing;
- (k) use the Software in breach or excess of the terms of Your Entitlement; or
- (l) use the Software in any manner other than as expressly provided in these License Terms or as authorized by Hitachi in writing.

**8. AUTHORIZED COPIES**

Except as Hitachi agrees otherwise in writing, all Programs and related Documentation will be delivered to You via download or other electronic access. In all other cases, Hitachi will provide You with one (1) copy of the media and Documentation of the Software. For Software licensed to You under an enterprise license, Hitachi grants to You the right to make a reasonable number of copies of the Software solely for Your own internal use, within the scope of the enterprise license. You may also make one (1) copy of back-up or archival copies of Software solely for Your own internal business use; however, You must ensure that such copy bears Hitachi's proprietary notices, labels or marks. You must reproduce on all copies made, all proprietary and copyright notices contained on or in the Software.

**9. SOFTWARE TRANSFERS**

Except to the extent otherwise provided in any applicable Open Source Software license, You must not transfer the Software to any other person or entity without Hitachi's prior written consent. You may, however, transfer the Operating Software to a third party ("*transferee*") solely with the related Equipment, but You must ensure that the transferee agrees to the terms of these License Terms and all additional relevant 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. When the transfer is complete, You must remove and destroy all copies of the Operating Software in Your possession or under Your control. You must also permanently remove all Software from any media upon which it is stored prior to disposing of the media.

**10. LOCATION OF SOFTWARE**

If the Equipment upon which You are authorized to Use the Software becomes temporarily inoperable, You may load and Use the Software on another of Your computer systems located at the same premises, until the original Equipment becomes operable. Otherwise, You must always get Hitachi's prior written consent before changing the Equipment on which the Software is to be Used, or its location.

**11. VERIFICATION RIGHTS**

Hitachi or its independent auditor may, upon reasonable notice to You, examine and audit Your records and systems to ensure compliance with Your Entitlement and 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 Software than permitted under Your Entitlement, Hitachi may charge You additional usage fees.

## **12. TERMINATION OF LICENSES**

Your license in the Software is effective until its termination or expiration (whether of a license key or otherwise). Your license in the Software will terminate if You are in breach of these License Terms, any license for Third Party Software, 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.

## **13. USAGE AND PERFORMANCE DATA**

Hitachi may collect and transfer Derived Data to its Affiliates, Personnel or partners at any time and without notifying You. You grant to 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 product and/or service delivery, improvement and development.

## **14. DEFINED TERMS**

Without limiting the operation of defined terms contained elsewhere in the DPA, the following definitions apply to this Exhibit:

**Additional Terms:** any representations, warranties, indemnities, licenses or other contractual terms containing obligations or making statements regarding the performance, features and/or functionality of the Products and/or Services, which are different from or go beyond the scope of those that Hitachi has agreed to provide under this DPA, including in the Online Terms or in any Quote issued by Hitachi or any SOW agreed to by Hitachi.

**Core:** the processor or execution core contained in the same integrated circuit within a computer's central processing unit, whether physical or virtual, that is capable of reading and executing program instructions.

**Community Editions:** the source code of certain portions of Programs that Hitachi offers to the public under various open source licenses.

**Current Version:** the latest generally available Version of the Software released by Hitachi.

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

**Designated Use:** Your internal business evaluation of the performance of the Software in a non-Production Environment.

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

**End User:** any entity or natural person to whom You supply a Hosted Service, including Your Personnel and (if applicable) unaffiliated third parties who are outside of Your organization.

**End User Agreement:** a contract between You and Your End User for the supply of Hosted Services.

**Entitlement:** means the details of the Software license(s) that You have purchased, including license metric, duration, and/or quantity published on Hitachi's Price List or Quote or any other Hitachi-issued documentation confirming Your Order or in any SOW agreed to by both Parties.

**GPL Software:** certain software licensed under the GNU General Public License or other similar Open Source Software with a license that requires the licensor to make the source code publicly available.

**Hosted Services:** any service that You supply to an End User using Products and Services that You have purchased under the DPA, regardless of whether they are located at the site of the End User, the Hosted Services Provider or a third-party, where You: (i) assume the responsibility for day-to-day operations and management of all or a portion of the End User's data processing operations; (ii) perform data center management, systems integration or similar services for the End User; (iii) host and deliver, or otherwise provide access to the functionality of the Products to the End User without Reselling or sublicensing the Products to the End User; or (iv) provide business process outsourcing services to the End User.

**Hitachi Partner:** a Hitachi authorised reseller or distributor.

**Hitachi Service Partner:** a third party authorized by Hitachi to provide Maintenance and Support Services on Hitachi Products.

**Install:** has the meaning set out in the Online Terms.

**Licensed Item:** Software, Work Product or Maintenance Material (as the case may be).

**Loan Agreement:** a separate agreement to this DPA, under which the Parties agree to the terms of a Software Loan.

**Loan Period:** the period for the loan of Software referred to under Section 2.3 of this Exhibit B and as set out in the applicable Loan Schedule.

**Loan Schedule:** a Schedule made pursuant to Section 2.3 of this Exhibit B, under which the Parties agree to terms of a Software Loan.

**Maintenance Material:** diagnostic and/or tracking tools, including without limitation the Hitachi Remote Ops Services software, firmware and related documentation, personal computers or notebooks, maintenance manuals and other documentation.

**Open Source Software or OSS: or "OSS":** any source and/or object code which is available without charge in the public domain and licensed under the GNU GPL, BSD or any other open source license.

**Open Source License Website:** the site located at <https://www.hitachivantara.com/en-us/company/legal.html> and any updates or replacements from time to time.



**Patches and Fixes:** changes made to the Software by Hitachi that establish or restore substantial conformity with the applicable Published Specifications. **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.

**Production Environment:** any computer system running on one or more instances of Software that is being actively used to process data or provide information to the system's users.

**Published Specifications:** the user or technical manuals, training materials, specifications or other documentation for Products stated as valid by Hitachi at the time of acceptance of the Order, as updated by Hitachi from time to time.

**Renewal Notification:** a notice issued by Hitachi to You in accordance with this DPA, setting out Your options for purchase of further Hitachi Supplies from Hitachi for the applicable renewal term set out in the notice. The Renewal Notification may take the form of a Quote.

**Renewal Notification Period:** the period between the date of Hitachi's Renewal Notification and the end date of the initial term or renewal term for the applicable supply (as the case may be).

**Service Packs:** an accumulation of Patches and Fixes into a generally available package applicable to the Current 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.

**Service Period:** term during which Support Services are provided under a Supply Transaction.

**Software:** the following, in object code format: (i) programming firmware embedded in the Equipment to enable it to perform its basic functions or to operate or manage the Equipment ("**Operating Software**"), (ii) stand-alone software programs supplied by Hitachi, including their license keys, where applicable, which do not fall within section (i) ("**Programs**"); and (iii) all Updates, related documentation and Published Specifications.

**Software Loan:** Hitachi's loan of Software to You in accordance with Section 2.3 of this Exhibit B and the applicable Loan Schedule or Loan Agreement (as applicable).

**Support Services:** the Software support services described in more detail in the Online Terms (including the Service Descriptions as referred to in the Online Terms).

**Third-Party EULAs:** separate licenses for Third Party Software directly between You and the Third-Party Licensor, which terms may be shrink-wrapped or click-through, including all other related documentation, which may be provided to You by Hitachi.

**Third-Party Licensor:** the person set out in the Third-Party EULA who licenses the Third-Party Software to You.

**Third-Party Related OSS:** any Open Source Software licensed to, provided with or otherwise contained in, the Third-Party Software.

**Third-Party Software:** any software supplied to Hitachi by any party other than Hitachi, Ltd., including Third Party Licensors, for direct or indirect distribution to You. For clarification purposes, if any Third-Party Software contains Third Party Related OSS, You must refer back to that applicable Third Party EULA.

**Token:** a prepaid mechanism to meter user consumption.

**Update:** Subsequent releases and error corrections and/or minor functional enhancements for Software previously licensed by Hitachi.

**Upgrade:** releases that contain new additional features which significantly increase the basic functionality of the Product and for which Hitachi elects to charge separately to You generally.

**Use:** to use Software in a Production Environment to process data or receive Services.

**Version:** a generic term for code corrections, error corrections, Service Packs, maintenance releases, minor releases, major releases and/or minor functional enhancements of a Program, generally made available by Hitachi to You.

**Warranty Period:** means the applicable warranty period listed in: (i) the Online Terms for Software or, in the case of Third Party Software, as may be provided in the applicable third-party warranty terms.

**WMS Terms:** the Warranty Maintenance and Support Terms attached in Exhibit E.

**Work Product:** any works of authorship, program listings, tools, documentation, reports, specifications, implementations, drawings, work papers and similar works created by Hitachi or on behalf of Hitachi pursuant to the supply of Services.

**Version:** a generic term for code corrections, error corrections, Service Packs, maintenance releases, minor releases, major releases and/or minor functional enhancements of a Program, generally made available by Hitachi to You.

## 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. THIS ADDENDUM APPLIES SOLELY TO THE SOFTWARE EXPRESSLY DEFINED IN SECTION 5 BELOW. This Addendum will apply, irrespective of whether You purchased the Software licenses from Hitachi or a Hitachi Partner. 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 You receive the Software from Hitachi.
- (b) Where You have been authorized by Hitachi under Your Entitlement to provide Hosted Services, Hitachi grants to You 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 You deliver through the operation of the Software at the Location.

### 2. YOUR RESPONSIBILITIES

- (a) You 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 You or any End User in that regard. You 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 Your 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) You are responsible for End Users' use of Content and the Applications. You will ensure that Your service agreements with End Users are consistent with the License Terms. You are fully responsible for (i) any unauthorized use of the Software or breach of the above obligations by You and/or any of Your End Users; (ii) purchasing a sufficient quantity of Software licenses to cover Your provision of Hosted Services to Your 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 You become aware or reasonably suspect of any violation of Your obligations under the License Terms due to the act or omission of any of Your Personnel, and End User or other third party (including an End User), You 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) You are responsible for properly configuring and using the Software to suit Your operations and requirements, as well as the Content and the service-related requirements of Your or Your End Users, and Hitachi has no responsibility or liability to You or any End User in that regard.
- (e) WITHOUT LIMITING YOUR OBLIGATIONS ELSEWHERE UNDER APPLICABLE CONTRACT OR LAW, YOU 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) You 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 You 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 You or to any End User unless Hitachi has a separate agreement with You or an End User, under which Hitachi is required to provide such support or services.
- (g) You 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 You or to the extent reasonably required for Your own internal administrative purposes. You 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 You and/or any End User.
- (h) You must not move the Software from the Location without Hitachi's prior written consent.

### 3. PROPRIETARY RIGHTS

- (a) As between You 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 You obtain no rights in such items, other than as expressly provided for in the License Terms, and (ii) You or Your licensors own all right, title and interest, including all copyright in the Content. However, You consent to the access or use by Hitachi (including its licensors) of such Content to provide any services that Hitachi has agreed to provide You and/or any End Users or to comply with any request of a governmental regulatory body (including subpoenas and court orders).
- (b) You represent and warrant to Hitachi that: (i) You or Your licensors own all right, title, and interest in the Content; (ii) You have obtained all rights in such Content necessary to grant the rights to End Users contemplated herein; and (iii) no Content, or Your 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) You 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) Your or any End Users' operation and/or use of the Hosted Services or Software; (ii) any violation of applicable law by You or any End User in connection with the Hosted Services or Software; (iii) Your 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 You 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, You 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) You 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 You 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 You and/or Your 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 You 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 You 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 Your 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 You in writing. This Software definition only applies to this Addendum.

## **EXHIBIT C TO THE DPA - PROFESSIONAL SERVICES TERMS**

The following terms and conditions apply to all orders for Professional Services under the DPA.

### **1. STATEMENTS OF WORK**

(a) Hitachi will provide You with Professional Services under one or more separate SOWs that incorporate the terms of the DPA. Without limiting the operation of the DPA on the SOW, the SOW will set out any other terms that relate to the Professional Services. Each SOW will be deemed a part of and will be subject to the terms and conditions of this DPA. Unless the SOW expressly states otherwise, if there is a conflict between the terms of a SOW and this DPA, the terms of the DPA will prevail to the full extent of the conflict.

(b) Notwithstanding anything to the contrary in the DPA, each Party's maximum and aggregate liability arising out of a the supply of Professional Services will not exceed the Fees that You have paid to Hitachi for such Professional Services under the SOW or Order under which the liability arose. The other parts of Section 6.2 of the DPA (except for 6.2(a)(i) will operate and apply.

### **2. SOW EXECUTION REQUIRED**

Hitachi will not be required to provide You with any Professional Services until a SOW has been agreed and signed by the relevant parties.

### **3. CHANGE ORDERS**

If You desire to change the Professional Services to be performed under a SOW or if Hitachi believes that a SOW needs to be changed, the requesting party will request such changes pursuant to a proposed Change Order. If the Parties agree to the changes set forth in the Change Order, they will execute the Change Order and the Change Order will become a part of the applicable SOW.

### **4. YOUR RESPONSIBILITIES**

(a) To assist in Hitachi's supply of the Professional Services, You will provide Hitachi, its subcontractors or agents (if applicable) and their respective Personnel with prompt access to Your premises, computer equipment (including remote access), adequate working space, facilities, Personnel, technology, data, information or other materials that are reasonably required from time to time. Without limiting the previous sentence or the terms of any applicable SOW, You will, at Hitachi's request, assign an appropriately qualified person(s) to be Your representative(s) for the receipt of the Professional 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.

(b) Hitachi will be entitled to rely upon the accuracy and completeness of all information You provide, and upon your decisions and approvals, in connection with the Professional Services. The selection of any products or services to be purchased from third parties, and the adequacy of such products or services for yours needs, are management decisions that are made solely by You.

(c) Where You are required under the applicable SOW, You will also maintain insurance policies with reputable insurers to cover Service arrangements requiring the on-site presence of any Personnel of Hitachi or its subcontractors. The insurance policies referred to in this Section 4(b) will note Hitachi as an additional insured party and all insurance coverage will be primary and non-contributory. You will provide Hitachi with evidence of such insurance upon request.

### **5. ACCEPTANCE OF PROFESSIONAL SERVICES AND WORK PRODUCT; WORK PRODUCT LICENSE**

(a) If applicable, testing criteria or requirements for acceptance of the Professional Services or Work Product will be set out in the applicable SOW. If the SOW does not state any acceptance criteria or requirements, acceptance of Professional Services and/or Work Product under a SOW will be based on Your use of the applicable Professional Services or Work Product in the conduct of your business or your failure to deliver written notice of non-conformance of such Services or Work Product to Hitachi within thirty (30) days of the date of completion of the performance of the Professional Services (or the applicable milestone under the SOW, as the case may be) or delivery of the Work Product to You (10 days in the event of interim Work Product).

(b) Except as expressly provided otherwise in a SOW, If You are provided with Work Product under a SOW as part of Your receipt of Professional Services from Hitachi, Hitachi grants to You a personal, non-transferable, non-exclusive license to Use, reproduce, copy and display the Work Product solely for Your internal business purposes and subject to any further restrictions and/or additional terms set out in the SOW. Work Product is deemed to be Hitachi IP and subject to the provisions applicable to Hitachi IP in the DPA. You obtain no title or ownership in any Work Product under this DPA and You must not sub-license any Work Product without Hitachi's prior written consent.

(c) Hitachi will be permitted to retain a copy of Your Confidential Information in Hitachi's Work Papers, as necessary to substantiate the Services and/or Work Product, and of the Work Product in Hitachi's internal knowledge repository; in each case, Section 4 of the DPA will continue to apply in respect of such retained information.

### **6. WARRANTY OF PROFESSIONAL SERVICES**

(a) Without limiting the operation of the Software Terms and the Warranty, Maintenance and Support terms attached as Exhibits B and E to this DPA, Hitachi represents and warrants that it will provide the Professional Services to You in a professional and workmanlike manner and in accordance with Good Industry Practice and that upon delivery, the Deliverables and Work Product will conform in all material respects to the specifications set out in the applicable SOW.

(b) If Hitachi fails to meet this warranty and provided that You notify Hitachi in writing, specifying the nature and extent of the non-conformity within thirty (30) calendar days from the date that the warranted Services giving rise to the Claim were performed and Hitachi accepts that Claim, Hitachi will re-perform the applicable Professional Services to cure the non-conformity as promptly as possible, but in any event within such period as agreed upon by the Parties in writing. If the non-conformity has not been corrected within such period, You may: (i) provide Hitachi with a further opportunity to correct the non-conformity, in which event the procedures and time periods set

forth above will again apply; or (ii) terminate the applicable SOW and return to Hitachi the non-conforming Work Product or Deliverables, if any, at which time Hitachi will provide You with a Refund of Fees previously paid for the non-conforming Deliverables and/or Work Product provided pursuant to that SOW. This is Hitachi's sole and exclusive liability to You and Your sole and exclusive remedy in relation to the breach of the warranty in this Section 6.

**7. TERMINATION OF A SOW**

(a) Either Party may terminate a SOW for any of the reasons set forth in Section 7.1(a) of the DPA. Unless the Parties have expressly agreed otherwise in the SOW, a SOW may not be terminated for convenience.

(b) Without limiting the operation of Section 7.3(b) of the DPA, upon the termination of a SOW, You will promptly pay Hitachi the outstanding Fees for all Professional Services rendered and reimbursable expenses incurred up to the effective date of the termination of the SOW. If You fail to pay Hitachi in accordance with this Section, You must, at Hitachi's request, return the Work Product to Hitachi at Your cost.

**8. DEFINED TERMS**

Without limiting the operation of defined terms contained elsewhere in the DPA, the following definitions apply to this Exhibit:

**Deliverables:** required materials or results identified in the applicable SOW (including advice, specifications, documentation and/or implementations) produced or delivered pursuant to the Professional Services.

**Good Industry Practice:** at any time, the exercise of the degree of care and skill that would reasonably and ordinarily be expected at that time from a skilled and experienced provider or supplier to a customer like You for products and/or services similar to the Hitachi Supplies and under similar terms and conditions for similar prices, whilst seeking to comply with its contractual obligations in accordance with applicable laws.

**Work Papers:** those internal memoranda and working notes prepared by Hitachi during performance of Services hereunder that serve to substantiate the Services and/or any Work Product. The Work Papers are subject to the obligations in Section 4 of the DPA.

**Work Product:** any works of authorship, program listings, tools, documentation, reports, specifications, implementations, drawings, Work Papers, Deliverables and similar works created by or on behalf of Hitachi pursuant to the supply of Services.

## EXHIBIT D TO THE DPA - "AS A SERVICE" OFFERINGS

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

### **1. XaaS Agreements**

(a) You may purchase "as a Service" offerings ("**XaaS Services**") from Hitachi under the terms and conditions of this Exhibit. You do not purchase or otherwise acquire any Products or other infrastructure used to provide the XaaS Services under this Exhibit. To the full extent applicable, the XaaS Services form part of the "**Services**" for the purposes of the DPA.

(b) Notwithstanding anything to the contrary in the DPA, each Supply Transaction for XaaS Services under this Exhibit requires the Parties to execute an XaaS Agreement, which forms a separate, binding contract when executed by the Parties and comprises the applicable terms of the DPA (including this Exhibit), the relevant Service Catalogue, the Service Agreement (comprising either a Service Summary or Order as required by the applicable Service Catalogue), any SOWs related to the XaaS Services and any terms attached to or incorporated by reference in those documents.

### **2. Delivery of XaaS Services; Third Party Services**

(a) In consideration of Hitachi's receipt of the Fees, Hitachi will deliver the XaaS Services to You pursuant to the XaaS Agreement. You will not engage a third party, including a Hitachi Partner, to deliver the XaaS Services, in whole or in part, unless authorized by Hitachi to do so. 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 is 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 harmless from and against all losses incurred by Hitachi or its Affiliates due to any Claim made against Hitachi, directly or indirectly related to the delivery of services for which You are liable under this Section 2.

(b) To the extent that Hitachi provides Hitachi Infrastructure to Your Location in order to deliver the XaaS Services, the Hitachi Infrastructure Terms set out in Section 8 of these Terms will apply and be incorporated into the XaaS Agreement.

(c) 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 and in any event, Hitachi's liability for such breaches will be fully subject to the limitations and exclusions set out in the Service Catalogue, the XaaS Agreement and this DPA.

### **3. Evaluation and Professional Services**

(a) If Hitachi offers Evaluation Services for the selected XaaS Services, You may request the Evaluation Services from Hitachi in writing. Hitachi may require You to enter a SOW or other agreement for the supply of Evaluation Services.

(b) Hitachi will deliver Professional Services, where they form part of the Services, under the XaaS Agreement. Except for Ancillary Services or where the XaaS Agreement states otherwise, all Professional Services will be supplied by Hitachi under a separate SOW that incorporates the XaaS Agreement. Hitachi will not have any obligation to provide the Professional Services to You unless Hitachi has agreed to the terms of the applicable SOW and that SOW has been fully executed.

(c) Without limiting Your obligations elsewhere in the DPA, You will, at Your cost, as assist and co-operate with Hitachi, in order to enable Hitachi to meet its obligations under the XaaS Agreement. This includes the provision of: (i) timely access to Your operations, including all Locations, Hitachi and Non-Hitachi Infrastructure, third-party services and contracts; (ii) remote and on-site access to computer equipment, work space, facilities, Personnel, materials and other support and resources; and (iii) complete and accurate information in the form Hitachi reasonably requests. You acknowledge and agree to the Dependencies and Assumptions related to the XaaS Services.

(d) Without limiting Section 3(c) 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 receipt 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.

### **4. Use and License Grants**

#### **4.1 Ownership**

Hitachi or its licensors own the IP Rights in the XaaS Services and in the Hitachi Infrastructure and technology used to supply the XaaS Services. You get no rights, except for the express rights that Hitachi grants to You in this Exhibit or an XaaS Agreement. You have no right to use any Hitachi trademark or brand name by virtue of the authorizations hereunder.

#### **4.2 Terms for Use and Licensed Rights for the XaaS Services**

(a) Without limiting the other parts of this Section 4.2 or other the terms of the applicable XaaS Agreement:

- (i) You must Use the XaaS Services solely as authorized by Your XaaS Agreement and You will comply with all applicable laws, regulations, Hitachi Policies and any other mandatory codes and industry practices in that Use;
- (ii) unless the XaaS Agreement provides otherwise, You must use the XaaS Services solely for Your internal business purposes and You are not authorized to Resell the XaaS Services or otherwise sell or transfer the ownership of any Hitachi Property used in the provision of the XaaS Services;

- (iii) You will arrange the supply of internet connectivity for Your Use of the XaaS Services, as well as maintaining and managing the necessary infrastructure that is compatible with and capable of enabling Your Use of the XaaS Services in a secure and authorized manner, consistent with the XaaS Agreement;
- (iv) You are responsible for all Use of the XaaS Services and the Content by You, Your Personnel and Your End Users, including: (A) full compliance with Your internal policies, industry best practices and applicable laws; (B) proper configuration of the XaaS Services to meet Your operational and business requirements (unless Hitachi agreed to do so in a signed SOW); (C) transfer of Content to third parties; (D) securing all necessary rights and permissions to Use the Content as part of the XaaS Services; and (E) the proper handling of all Content violation notices;
- (v) Without limiting Your obligations under the DPA or applicable law, You must maintain appropriate security and back-up of the Content, including 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;
- (vi) You must ensure that there is no Misuse of the XaaS Services, by You, Your Personnel or 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. If Hitachi becomes aware of any Misuse then, without limiting any other rights available to Hitachi under the DPA or applicable law, Hitachi may immediately suspend the XaaS Services and You will promptly meet with Hitachi to discuss in good faith the remedial actions and comply with all such remedial actions.
- (b) If Hitachi is required to physically or logically access any infrastructure at a location in order to supply any services under an XaaS Agreement, Hitachi will comply with Your Security Policies, provided Hitachi has agreed to those policies in advance, in writing. If Hitachi considers that any additional or amended Security Policy that You provide to Hitachi after the XaaS Services have started may have a materially detrimental impact on Hitachi's ability to provide the XaaS Services for the Fees set out in the XaaS Agreement, Hitachi will notify You of that in writing and either Party may submit those changes to the Change Management Process.
- (c) If You install or enable Third Party Content for Your Use with the XaaS Services or authorize Hitachi to do so, Hitachi may allow the Third Party Content provider to access Your Content as necessary for the interoperability of the Third Party Content and the XaaS Services.
- (d) Hitachi grants to You and Your End Users a limited, revocable, non-exclusive, non-transferrable right (with no right to sub-license) to: (i) use the XaaS Services during the Service Term and in the Locations, subject to the terms of this Exhibit and in accordance with the XaaS Agreement; (ii) use or copy the Hitachi Content, if any is specifically identified in the XaaS Agreement, solely for Your internal business use in connection with the XaaS Services; and (iii) copy, modify and use the APIs to develop applications for Your Use only with the XaaS Services.
- (e) To the extent that Hitachi provides You with access to Software for Your Use of the XaaS Services, Hitachi grants to You a non-exclusive, non-transferrable and revocable right to use the Software during the Service Term in accordance with the XaaS Agreement and the Published Specifications of the Software and the software licensing provisions of the Software Terms attached as Exhibit B to this DPA, solely for that Use. For any non-Hitachi proprietary software, Hitachi will pass to You all applicable end user license and/or maintenance terms provided by the third party vendor.
- (f) Without limiting Your obligations under other parts of the DPA or applicable law, You must not, and must ensure that Your Personnel and End Users do not: (i) reverse engineer, disassemble, or decompile all or any part of the XaaS Services, Hitachi Content or any infrastructure and technology used in the supply of the XaaS Services, nor do anything that is designed to access or derive the source code, except to the extent applicable law does not allow Hitachi to restrict this; (ii) modify, alter, repair, tamper with, the XaaS Services, Hitachi Content or any infrastructure and technology used in the supply of the XaaS Services, except to the extent that You are expressly authorized to do so under the XaaS Agreement or a separate, specific license granted by Hitachi; or (iii) access or use the XaaS Services or Hitachi Content in a manner which is intended to avoid or avoids incurring the charges that would otherwise be payable for such services.

#### 4.3 Content and Data Rights under XaaS Services

- (a) 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. You grant to Hitachi, its Affiliates and their respective Personnel a worldwide, royalty-free, non-exclusive right and license to: (i) use the Content as Hitachi reasonably determines to provide the XaaS Services; and (ii) disclose the Content in order to comply with a Legal Requirement.
- (b) Hitachi may collect and transfer Derived Data to its Affiliates, Personnel, contractors or vendors at any time and without notifying You. You grant to 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.
- (c) 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 that You make and to incorporate them into any product or service supplied by Hitachi or its Affiliates.
- (d) 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 the terms of this Exhibit.
- (e) The use of subcontractors will be governed by Section 9.6(a) of the DPA. You consent to Hitachi transferring Your Content and/or registration and/or account information to such subcontractors.

(f) 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.

#### 4.4 End User Agreements

(a) Where You Use XaaS Services to sell further services to End Users, You are responsible for entering any End User Agreements. However, those agreements must be at least as protective of and must not limit or otherwise detract from Hitachi's rights, especially with respect to IP Rights and the authorized use of Services and Misuse. 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.

(b) 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) 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, 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. Your End Users are not granted any rights in the Hitachi IP, including any access to or license rights in any Hitachi Property.

(d) If this Exhibit or 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.

#### 4.5 Responsibility for Data Removal

Without limiting Your other obligations in the DPA, the XaaS Agreement or applicable law, Your obligations under Section 5.4 of the DPA apply to any Product or Hitachi Property that is used in the supply of XaaS. You must ensure that, prior to removal by or return to Hitachi for any reason, all data is removed from such 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.

### 5. **Financial and Payment Terms**

#### 5.1 Fees and Payment

Notwithstanding any other part of the DPA or any XaaS Agreement:

(a) the Fees for the Hitachi XaaS Services will be as set out in the applicable XaaS Agreement. Unless a related SOW states otherwise, all amounts for the supply of Professional Services will be included in the Fees, but any amounts payable for Evaluation Services are excluded from the Fees;

(b) 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 Monthly Consumption Report for each Location, which together with the relevant invoice of Fees for the Location, will be provided to You in electronic format on a monthly in arrears basis. 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; and

(c) notwithstanding anything to the contrary in any other part of the DPA or an XaaS Agreement, You must pay: (i) the Monthly Minimum Commitment, 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 the XaaS Agreement for cause, under Section 6 of this Exhibit. Your payment obligations under the XaaS Agreement, including payment of Fees, the Total Minimum Commitment and the Termination Payment, are without any deduction by way of set-off, counterclaim, withholding, discount or otherwise.

#### 5.2 Payment Terms

The terms of Section 2 of the DPA remain in full force and effect. Unless otherwise stated in the XaaS Agreement, Section 2.1 (except Section 2.1(b)) applies to payments made under to this Exhibit.

### 6. **Term and Termination**

#### 6.1 Term of XaaS Agreement

Each XaaS Agreement will start on the XaaS Agreement Start Date and subject to Section 6.2 of this Exhibit, 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 ninety (90) days prior written notice, taking effect at the end of the then-current period.

#### 6.2 Termination and Suspension Rights

(a) Without limiting the rights of the Parties under the DPA or any XaaS Agreement: (a) a Party may terminate the XaaS Services for cause on the same grounds as stated in Section 6 of the DPA; and (b) You may terminate the XaaS Services for convenience by giving Hitachi no less than one hundred and twenty (120) days prior written notice to Hitachi and subject to paying Hitachi the Termination Payment by no later than the end of that notice period.

(a) Without limiting Hitachi's other rights under the DPA 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 this Exhibit and the breach is not remedied within thirty (30) days of the date of Hitachi's written notice of breach; (ii) You are otherwise in uncured breach of this Exhibit because of Your conduct



or the conduct of Your Personnel or End User; or (iii) You or any party on Your behalf commits a Misuse. Without limiting Hitachi's rights under this DPA or under applicable law, Hitachi will reinstate any suspended XaaS Services following the remediation of the breach.

(b) Hitachi will use reasonable commercial endeavors to give You 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 this Exhibit or the XaaS Agreement. However, if any service credits are payable by Hitachi under the XaaS Agreement, Hitachi will not be liable to pay these to You during the suspension period. Hitachi will not erase Content during a suspension except as otherwise specified in the Exhibit or the XaaS Agreement.

### 6.3 Post-Termination Provisions

(a) 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);

(b) 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 any directions issued by Hitachi requiring You to cease Use of the XaaS Services and at Your cost, return to Hitachi or destroy (at Hitachi's election) all Hitachi IP and Confidential Information in Your possession or control; (iii) You will not be relieved from Your payment obligations and all money due and owing to Hitachi at the date of termination will become immediately payable, including 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, provided the Service Catalogue states that Disengagement Assistance is available for those Services. The XaaS Agreement will continue to operate on the same terms at the Service End Date for the duration of any Disengagement Assistance.

(c) Rights and obligations under the Exhibit or a 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 the Exhibit, XaaS Agreement or at law (or which have arisen on or before the date of termination).

## 7. **Indemnity**

(a) You will indemnify, and hold harmless, Hitachi and its Affiliates, licensors and subcontractors, and each of their respective Personnel ("**Indemnified Parties**") from and against any Losses arising out of the following: (i) any Claim related to 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; (ii) 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; or (iii) any third party Claim arising from any Additional Terms not approved by Hitachi in advance; or (iv) a dispute between You and any End User.

(b) You will defend or settle any Claim referred to in Section 7(a) of this Exhibit 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.

## 8. **Terms Related to Hitachi Infrastructure**

This Section 8 is incorporated and forms part of any XaaS Agreements between the Parties where the supply of the Services comprises the use of Hitachi Infrastructure, e.g. Storage as a Service (STaaS).

### 8.1 Due Diligence

You agree and acknowledge that: (a) Hitachi may conduct Due Diligence before and after the Service Activation Date; (b) Due Diligence conducted after the Service Activation Date may be additional to or different from that conducted before that date; (c) Due Diligence requirements may be different for each Location; and (d) the XaaS Agreement is based on the outcomes of Due Diligence undertaken before the Service Activation Date. If Hitachi considers on reasonable grounds that the XaaS Agreement must change due to any information arising after the Service Activation Date, Hitachi may charge You additional Fees, based on the necessary change of requirements. Any such change will go through the Change Management Process. Until the Parties have executed a Change Order, no XaaS Agreement is deemed to have changed, irrespective of the outcomes of the Due Diligence.

### 8.2 Hitachi Infrastructure

(a) Without limiting the operation of any other terms of the DPA, title in all Hitachi Infrastructure is retained by Hitachi. You are responsible for loss of or damage to the Hitachi Infrastructure, once delivered to the relevant Location (including replacement costs), except for loss or damage arising due to Hitachi's acts or omissions, or normal wear and tear during proper use, storage and maintenance and You must not: (i) assign, transfer, sell, deal with, or create any mortgages, security, liens, or other interests in or over the Hitachi Infrastructure; (ii) move, repair, modify or interfere in anyway with the Hitachi Infrastructure without Hitachi's prior written consent; or (iii) obscure or tamper with any asset tag or like identification or notification affixed to the Hitachi Infrastructure. You will indemnify, defend and hold Hitachi harmless from and against any Claims caused by Your failure to comply with this Section 8.2. You will provide Hitachi with immediate notice of any attachment, lien or judicial process affecting the Hitachi Infrastructure, or Hitachi's ownership of it.

(b) If Hitachi deploys the Hitachi Infrastructure to the Locations and for any reason, You do not authorize or otherwise enable the implementation of the Hitachi Infrastructure to take place, or You otherwise delay the implementation for a period of more than thirty (30)

days from the date that Hitachi delivers the Hitachi Infrastructure to the Location, then Hitachi has the right to charge You the Monthly Minimum Commitment.

(c) Without limiting Hitachi's rights elsewhere in the DPA, You will provide Hitachi and its authorized representatives access to the Hitachi Infrastructure during business hours at the Location (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, provide Hitachi with the peaceful right of entry to collect the Hitachi Infrastructure.

### 8.3 Insurance

(a) Upon delivery of the Hitachi 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 Hitachi Infrastructure, including damage or loss due to flood and earthquake, with limits at least equal to the replacement cost of the Hitachi Infrastructure. The relevant insurance policy will name Hitachi as "Loss Payee"; and (ii) Commercial General (or Public) Liability Insurance, including contractual liability, of not less than US \$10,000,000 per occurrence, and in the aggregate. Hitachi and its Affiliates will be noted on the policy as "Additional Insured". All insurance coverage will be primary and non-contributory.

(b) You will provide a current certificate of insurance for the insurance policies set out in Section 8.3 of this Exhibit to Hitachi annually during the Service Term. You will procure that such policies state that the insurer will give thirty (30) days' prior written notice to Hitachi of any intention to cancel or reduce any insurance coverage. If You fail to take out appropriate insurance, Hitachi may (but will not be obliged) to take out appropriate insurance pursuant to this section and Hitachi may recover from You the premiums and other charges that it pays to an insurer forthwith.

(c) For insurance purposes, You may require Hitachi to itemize the components of the Hitachi Infrastructure and where so required, Hitachi will provide a list of such components to You as soon as is reasonably practicable.

### 8.4 Total Loss Infrastructure

(a) If the Hitachi Infrastructure becomes a total loss or constructive total loss as a result of being lost, stolen, seized, confiscated, damaged beyond economic repair or otherwise ("**Total Loss Infrastructure**"), You will procure, using any relevant insurance proceeds where applicable and available (but without affecting Your other obligations under this Section 8.4), that the relevant Hitachi Infrastructure ("**Total Loss Infrastructure**") is replaced with equipment and/or infrastructure of the same specification, quality and model as the Total Loss Infrastructure ("**Replacement Infrastructure**") within twenty one (21) days or otherwise as soon as is reasonably practicable from the date of the Total Loss occurring and Hitachi is not obligated to provide the Services to You in accordance with the XaaS Agreement during such replacement period. You will ensure that title to such Replacement Infrastructure vests in Hitachi and such Replacement Infrastructure will be deemed Hitachi Infrastructure for the purposes of the XaaS Agreement.

### 8.5 Changes to Hitachi Infrastructure

If, under the capacity planning process, whether as part of or outside of the Monthly Operations Review (MOR) meeting, Hitachi determines that the Hitachi Infrastructure at one or more Locations should be increased or decreased, Hitachi will either deploy additional Hitachi Infrastructure or remove existing Hitachi Infrastructure as required by Hitachi and communicated to You. Any change in the Hitachi Infrastructure or the Services relating to it does not affect Your obligation to pay the Minimum Commitment pursuant to an XaaS Agreement.

### 8.6 Excluded Performance

Without limiting the operation of any other terms of the DPA or any exclusions set out in the Service Catalogue, 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) the failure of Customer to: (A) provide and maintain a suitable Location environment, including but not limited to, failure of electrical power, air conditioning and humidity control, environmental containments, noise levels above 85dB(A) or unreasonable or excessive vibrations; or (B) to comply with any contractual obligation, as they pertain to the Location(s) (iv) 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; (v) Your material failure to comply with the Dependencies and Assumptions set out in the Service Catalogue 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 You 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.

## 9. **Interpretation**

(a) Except as expressly varied or excluded by this Exhibit, or the context otherwise requires: (i) the DPA will apply to and is incorporated by reference in this Exhibit; (ii) all other terms of the DPA will remain unchanged; and (iii) the rules of interpretation stated in the DPA are also applicable to this Exhibit.

(b) Unless the Parties agree otherwise in writing, if there is a conflict among the following contractual documents that comprise a XaaS Agreement, the following order of precedence will apply (in descending order): (i) the terms and conditions DPA (including this Exhibit); (ii) the Service Summary; (iii) any SOW made under the XaaS Agreement; (iv) the Service Catalogue; and (v) the Hitachi Policies.

## 10. **Definitions**

Without limiting the operation of defined terms contained elsewhere in the DPA or the XaaS Agreement, the following terms will have the meaning set out below:

**Additional Locations:** additional Location(s), which are not in the scope of the XaaS Agreement as at the Service Activation 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 this Exhibit, an XaaS Agreement, Hitachi Quote or SOW agreed to by Hitachi.

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

**API:** a set of application programming interface 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 or enable connectivity with the XaaS Services.

**Change Management Process:** Hitachi's change management process set out in the Service Catalogue, as modified or updated from time to time.

**Change Order:** a written amendment to an XaaS Agreement or SOW that describes a material addition, deletion or other modification of the XaaS Services and any resulting adjustment in Fees or other charges. A Change Order is not binding unless agreed and signed by both Parties in writing.

**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 provides to Hitachi for the purposes of, or arising from Your 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.

**Contributions:** any Content and other posts that You make or otherwise provide 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 XaaS Services and set out in the 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 Your disengagement and/or transition from the XaaS Services to You 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.

**Due Diligence:** the process of due diligence, including all enquiries and other activities undertaken by or on behalf of Hitachi with respect to the Locations, Dependencies and Assumptions, and Your operations, business, networks, systems and processes (including Non-Hitachi Infrastructure) and which comprises pre-contract due diligence, as well as all due diligence that Hitachi conducts after the Service Activation Date.

**End User:** any person or entity that directly or indirectly accesses or uses Your Content or otherwise accesses or Uses the 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 and individual contractors within Your organization.

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

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

**Fees:** the monthly fees that You must pay Hitachi for the supply of XaaS Services, as set out in Hitachi's 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 Infrastructure:** Equipment and/or Software supplied and used by Hitachi to provide the XaaS Services.

**Hitachi Policies:** in addition to the Software Terms and the Warranty, Maintenance and Support terms attached as Exhibits B and E to this DPA, Hitachi Vantara Global Data Protection & Privacy Policy: <https://www.Hitachivantara.com/en-us/company/legal.html> and the Hitachi Vantara Acceptable Use Policy: <https://www.Hitachivantara.com/en-us/company/legal.html> and all replacements and updates from time to time. 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.

**Hitachi Property:** all Hitachi Infrastructure 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 to You electronically or retains on Your premises for that purpose. Without limitation, Hitachi Property 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 Service Summary and commencing on the Service Billing Date.

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

**Misuse:** use of the XaaS Services or Hitachi IP 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, disability or other protected status; (v) infringes a third Party's IP Rights; or (vi) infringes a Hitachi Policy.

**Monthly Consumption Report:** the written monthly report issued by Hitachi, setting out Your consumption of the XaaS Services for the previous month and other matters determined by the service type, such as performance and utilization reporting, billing and capacity reporting, replication reporting and management (storage only), configuration reporting; and monthly service reporting including Service Level compliance and related measures.

**Monthly Minimum Commitment:** the minimum level of Fees that You must pay to Hitachi 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 XaaS Agreement.

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

**Personal Data:** for You, personal information about an identifiable person that You provide to Hitachi or otherwise use as part of the supply or use of Services. For Hitachi, personal information about an identifiable person that Hitachi collects pursuant to this Exhibit or an XaaS Agreement.

**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.

**Security Policies:** means Your security, access and safety policies and procedures, which have been previously provided to Hitachi from time to time in writing (including at Hitachi's request, before the XaaS Agreement Start Date) and to which Hitachi has agreed to be bound.

**Service Activation Date:** unless the XaaS Agreement states otherwise, the date stated to be the activation date in Hitachi's written notice of Service activation to You.

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

**Service Catalogue:** the catalogue of XaaS service classes applicable to the XaaS Services and related terms and all updates and replacements from time to time.

**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 the terms of this Exhibit.

**Service Summary:** the document signed by the Parties, setting out the commercial terms of the supply of the XaaS Services.

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

**Termination Date:** the effective date of termination of this Exhibit, an XaaS Agreement or any SOW under it pursuant to Section 11.3 of this Exhibit or under any right of termination provided in the XaaS Agreement.

**Termination Payment:** the greater of: (i) the Total Minimum Commitment less the Monthly Minimum Commitment amounts that You have paid to Hitachi 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 Hitachi Property is stored or used.

**Total Minimum Commitment:** the total minimum monetary amount that You must pay to Hitachi for the supply of XaaS Services under the 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 XaaS Services. 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:** the agreement for the supply of the applicable XaaS Services as formed in accordance with Section 1 of this Exhibit.

**XaaS Agreement Start Date:** the date stated at the head of the XaaS Agreement or otherwise the date when the XaaS Agreement first takes effect.

**XaaS Services:** the "as a Service" offering(s) described in the XaaS Agreement and as applicable, includes related Professional Services.

## EXHIBIT E TO THE DPA

### HITACHI VANTARA WARRANTY MAINTENANCE AND SUPPORT TERMS

For further descriptions of the Maintenance and Support Service Plans and other Service related details for Your Maintenance and Support Service coverage (collectively, "Plans"), please refer to the information at <https://www.hitachivantara.com/en-us/pdf/specifications/hitachi-support-service-descriptions-and-deliverables.pdf> and the related Plan descriptions set at <https://www.hitachivantara.com/en-us/services/customer-support.html> ("Service Descriptions"). The Plans and Service Descriptions form part of and are incorporated by reference into these Warranty and Maintenance and Support Terms (collectively, the "WMS Terms"). You agree and acknowledge that Hitachi may update the Plans and Service Descriptions from time to time and the updates will form part of, and will be incorporated into these WMS Terms, as and from their date of publication.

#### **WARRANTY TERMS**

##### **1. Warranty Period and Remedy.**

- (a) Hitachi warrants to You that, during the Warranty Period, the Products will function in accordance with their Published Specifications, when used properly and normally. **The Warranty Period begins on the Warranty Commencement Date.**
- (b) Hitachi's warranty in Section 1(a) does not apply to any Third-Party Products that are subject to the warranties by the third-party licensor under a separate third-party end user license agreement (or EULA) that applies to the Third-Party Product.
- (c) Subject to the exclusions in Section 6 of these WMS Terms, if You have a valid warranty claim for a Defect, Hitachi will provide the Warranty Services for that Defect according to the terms set out herein. To make a valid warranty claim, You must, during the Warranty Period submit Your claim in writing to Your local Hitachi support contact center and the claim must be made with within seven (7) days of You discovering the Defect. If Hitachi considers in its sole discretion that, in the circumstances, the Defect will not be remedied by the Warranty Services, Hitachi will provide You with a Refund for the Defective item, provided that You promptly return it to Hitachi. The remedies set out in this Section 1(c) 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).
- (d) Hitachi represents and warrants that it will provide the Services to You in a professional and workmanlike manner in accordance with Good Industry Practice. If Hitachi fails to meet this warranty and provided that You notify Hitachi in writing, specifying the nature and extent of the non-conformity within thirty (30) calendar days of the date that the warranted Services giving rise to the claim were performed and Hitachi accepts that claim, Hitachi will re-perform the applicable Services to cure the non-conformity as promptly as possible, but in any event, within the period agreed to by the Parties in writing. If the non-conformity has not been corrected within that period, You may: (i) provide Hitachi with a further opportunity to correct the non-conformity, in which event the procedures and time periods set forth above will again apply; or (ii) terminate the applicable Agreement or SOW and return to Hitachi the non-conforming Work Product or Deliverables, if any, at which time Hitachi will provide You with a Refund of Fees previously paid for the non-conforming Deliverables and/or Work Product provided by Hitachi. This is Hitachi's sole and exclusive liability to You and Your sole and exclusive remedy in relation to the breach of the warranty in this Section 1(d).
- (e) Except as otherwise stated in these WMS terms and the 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 any Product or Service will operate uninterrupted, securely or error free. Hitachi will have no liability or obligations for the Product or Service warranty other than those stated in section 1 of these WMS terms.

#### **MAINTENANCE AND SUPPORT TERMS**

##### **2. Maintenance and Support Plans**

- (a) Subject to these WMS Terms and further provided that You have valid support coverage and have paid Hitachi all applicable fees in full, Hitachi will provide Maintenance and Support Services for the relevant Products under the Plan specified in the Order that You have issued to Hitachi or a Hitachi Partner. Your Hitachi Partner is not authorized to provide such services to You, unless they are also authorized as a Service Partner.
- (b) Maintenance and Support Services may not be available in certain locations, and Plans may vary between locations or may be subject to additional fees. Additionally, Maintenance and Support Services may vary by Equipment, Product type or family, as specified in the Service Descriptions.

##### **3. Service Partners**

- (a) Hitachi may authorize third parties to provide Maintenance and Support Services to You on Hitachi Products ("Service Partners"). Service Partners may be either ISPs or ASPs.
- (b) Hitachi may authorize its ISPs to deliver Maintenance and Support Services to You on behalf of Hitachi in accordance with these WMS Terms, but Hitachi will remain responsible for the performance of such Services to You. However, Hitachi will not be responsible to You for the acts or omissions of an ASP in the performance of Maintenance and Support Services and that performance will be a matter between You and the ASP under the terms of the contract that You enter with the ASP.

##### **4. Scope of Equipment Maintenance Services**

Subject to the exclusions set out in Section 6 of these WMS Terms, Hitachi Equipment maintenance comprises the following:

- (a) supervision and installation of engineering changes impacting the reliability of the Equipment, which Hitachi determines to be relevant to the Equipment;
- (b) preventive maintenance for Equipment, including necessary lubrication, adjustment or replacement of unserviceable parts; and
- (c) unscheduled maintenance for Equipment, 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. Scope of Support Services for Software**

- (a) Subject to the exclusions set out in 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 Published Specifications, which is provided through:
  - (i) remote telephone support or support via the Hitachi Support Portal to:
    - (A) identify the Defect, its source and assist in resolving the Defect;
    - (B) advise on installation of Updates; and
    - (C) respond to minor "ad hoc" Software information queries;
  - (ii) on-site intervention (where necessary) and the provision of Patches and Fixes, Service Packs (where necessary), to be respectively performed 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.
- (b) Hitachi only supports the Operating Software (including any Array Based Software) if Hitachi is also maintaining the Equipment on which it is installed. Hitachi's obligation to provide Software support under Section 5(a) above is contingent upon the following:
  - (i) the Software must be subject to a current and valid license;
  - (ii) the Software must be covered under a current and fully paid up agreement for the support services; and
  - (iii) the Software must be operating in a Hitachi-supported configuration, which may be detailed in the Published Specifications.

If Your Software license is terminated for any reason (including due to the assignment or transfer of the license to another party) then Hitachi's obligations to provide support for the relevant Software will cease.

**6. Warranty and Maintenance & Support Exclusions**

**(A) Service Exclusions**

Hitachi's Warranty Services set out in Section 1 and the scope of Maintenance and Support Services set out in Sections 4 and 5 of these WMS Terms do not apply to, and exclude:

- (a) any loss of, or damage to Products, or data contained in the Products or Defects in Products caused by:
  - (i) any act or omission of a party other than Hitachi or its Service Partner, including but not limited to, the improper installation or maintenance of the Products or modifications, enhancements or customizations of the Software by any party other than Hitachi or its Service Partner;
  - (ii) accident, natural disaster, transportation, neglect or misuse, improper maintenance or loss or damage from any cause other than normal and ordinary use;
  - (iii) use of the Products outside of an environmentally controlled data center where the environment is controlled by You or on Your behalf (unless the Products are specified for use outside of an environmentally controlled data center) or Your failure to provide and maintain a suitable operating environment within the data center on terms specified by Hitachi, including but not limited to, failure of electrical power, air conditioning and humidity control, environmental contaminants, noise levels above 85dB(A) or unreasonable or excessive vibrations and, as applicable, any of the items that You are required to provide under Section 16 of these WMS Terms, as they pertain to the environment of the Products;
  - (iv) use of the Products in a manner other than in accordance with the Published Specifications or in a manner which is outside the scope of Your licensed rights in the Software;
  - (v) any service that is impractical or otherwise rendered more difficult for the service Personnel or representatives of Hitachi or its Service Partner to provide because of any service clearance interference, alterations, additions, modifications to any Product or Your system or operating environment or the connection of any Product by mechanical or electrical means to another machine or device;
  - (vi) the modification of Hitachi Products without Hitachi's prior written consent, including any engineering changes other than those described in Section 4(a) and the software installation services described in Section 8(b) of these WMS Terms;
  - (vii) the Products being cleaned, painted, refinished or refurbished or subjected to external works without Hitachi's prior written consent;
  - (viii) the movement, rearrangement or reconfiguration of Equipment, disks or cables, additional wiring, or repair to a previously prepared site to make it operational, without Hitachi's prior written consent; or

- (ix) Your failure to make updates required or recommended by Hitachi to install Patches and Fixes required or recommended by Hitachi.
- (b) the installation or removal of accessories, attachments or other devices, or the furnishing of supplies;
- (c) support of other software, accessories, attachments, machines, systems or other devices not supplied by Hitachi;
- (d) the provision of maintenance or other services on Hitachi-provided host bus adaptor (“HBA”) Equipment not installed and utilized with Hitachi Equipment;
- (e) the physical installation, de-installation and replacement of HBAs within Your environment;
- (f) Professional Services and training, which are scoped and delivered separately under a Statement of Work and delivered by Hitachi’s services organization or an applicable Service Partner;
- (g) diagnosis and/or rectification of Defects not associated with the Equipment or Software; and
- (h) services to remedy any failure that could have been prevented by installation of the most recent mandatory Updates or Versions.
- (i) Products or Versions that have reached End of Life or that are provided for evaluation purposes, unless Hitachi explicitly agrees to do so at Hitachi’s sole discretion.
- (j) the acts or omissions of a third party public cloud provider.
- (B) Field Replacement Units
- (a) Equipment may include components which are used or remanufactured, and regardless of this, Hitachi’s warranties in Section 1 of these WMS Terms will apply. Where Hitachi has shipped a Field Replacement Unit (“FRU”) to You to replace a Product component that is removed in the course of performing any Warranty Service or a Maintenance and Support Service, the removed component will be the property of Hitachi, while the FRU will belong to You. For any removed components which are: (i) not returned to Hitachi within fifteen (15) calendar days of the date of their removal; or (ii) not covered by a then-current valid retention option, Hitachi may charge You for those components at Hitachi’s then-current spares price list.
- (b) The data and other confidential information that is contained in any removed Product component will be Your responsibility and You must make Your own arrangements to delete that data. If You are subject to security requirements that require the data to not be removed from Your site and You are not covered by a valid retention option, it is up to You to ensure that the data is deleted. Should You require Hitachi to delete data for You, Hitachi may charge You an additional fee.
- (c) Without limiting Section 2(a) of these WMS Terms, if You allow any person other than Hitachi or a Hitachi ISP to break the factory seal on a FRU, this will void Your entitlement to Warranty Services and/or Maintenance and Support Services in its entirety.

**7. Remote Monitoring Services.**

- (a) Maintenance and Support Services include Hitachi Remote Ops Services, as applicable. All right, title and interest in the Hitachi Remote Ops Services, including all material that is used to provide the Hitachi Remote Ops Services, is retained by Hitachi or its licensors, and You do not get any licensed rights in it.
- (b) Hitachi will not charge You a fee for the supply of the Hitachi Remote Ops 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 Hitachi Remote Ops Services.
- (c) If the Agreement (or the supply of any Maintenance and Support Services under it) or Your separate services contract with a Hitachi ASP is terminated, You will allow Hitachi to disable the Hitachi Remote Ops Services and de-install and remove all material on Your premises used by Hitachi to provide the terminated services.
- (d) In providing Hitachi Remote Ops Services to You, Hitachi does not access Your data. Hitachi will maintain the confidence of all passwords that You provide to Hitachi for the supply of the Hitachi Remote Ops Services.
- (e) Remote monitoring services other than the Hitachi Remote Ops 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.
- (f) If You refuse to allow Hitachi to provide the Hitachi Remote Ops Services, fail to sign up for the Hitachi Remote Ops Services, or otherwise disable or interfere with the Hitachi Remote Ops Services on the Equipment, You acknowledge that Hitachi will be prevented from providing the remote diagnostic and monitoring services that are essential to its supply of Maintenance and Support Services and critical notifications as applicable (including, but not limited to Security Breach notifications). In such circumstances, Hitachi will not be liable for any failure to meet service level response time commitments or service warranties, nor for any delays in providing the Maintenance and Support Services in accordance with these WMS Terms. Hitachi may use reasonable efforts to assist You with any Defects of which 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 Maintenance and Support Services in such circumstances.

**8. Installation Services**

- (a) Subject to Sections 8(b) and (c) of these WMS Terms, Hitachi will provide Installation Services with respect to the Products set out in the relevant Order.
- (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. If You require a production ready implementation of Software or additional capabilities to the standard Installation Services, Hitachi may require You to enter a separate Statement of Work for those services and Hitachi will be entitled to charge You an additional fee based on Your requirements, and the Software and/or Equipment, subject to that Statement of Work. Hitachi will advise You of the applicable Fees for those Professional Services in advance.

- (c) Installation Services do not include:
- (i) physical siting of the Equipment;
  - (ii) all electrical work, including connection of the Equipment power supply to Your power supplies;
  - (iii) any operating system development and testing;
  - (iv) computer room planning services;
  - (v) performance tuning;
  - (vi) advanced operator training;
  - (vii) moves of any non-Hitachi equipment;
  - (viii) onsite standby beyond the storage system test phase;
  - (ix) de-installation of displaced equipment;
  - (x) installation of equipment outside of the hours of coverage under the applicable Plan;
  - (xi) attendance at Your meetings;
  - (xii) SAN design, integration and implementation; or
  - (xiii) Software production-ready implementation.

**9. Services for Additional Fees**

If You request Hitachi to provide:

- (i) any of the “excluded” services in Sections 6 or 8(c) of these WMS Terms; or
  - (ii) any Maintenance and Support Services outside the coverage hours or support zone for Your support Plan;
  - (iii) any other activities or tasks, which Hitachi has stated (in these WMS Terms or elsewhere) may be subject to an additional fee; or
  - (iv) any other Services which Hitachi reasonably determines to be “out of scope” of these WMS Terms,
- Hitachi may, at its sole discretion, agree to provide the relevant Services to You at Hitachi's then current rates or on a quoted, fixed fee basis (“**Billable Services**”).

**10. 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 (e.g. Hitachi's Service Partner) to perform any maintenance and/or support on any Product or repair any Product.
- If You do so, You will void Your entitlement to Warranty, Maintenance and Support Services in respect of that Product and You will need to undergo re-certification of the applicable Product, to reinstate the Product to Your Plan.
- (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 Your Warranty, Maintenance and/or Support Services have been voided under Sections 10(a) or (b) of these WMS Terms or if the Maintenance and Support Services have been terminated under Section 11 of these WMS Terms and You wish to reinstate the Maintenance and Support Services for all or part of the affected Product, You must have the relevant Product re-certified by Hitachi or its Service Partner, in order to have Hitachi's obligations under these WMS Terms continue to apply to it. 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).

**11. Renewal and Termination of Maintenance and Support Services**

- (a) Without limiting any of Hitachi's other rights under these WMS Terms or applicable law, Hitachi reserves the right to terminate all or any of the Maintenance and Support Services at any time by written notice to You if:
- (i) You transfer Your Equipment or any Software to another person or entity or otherwise You relocate the Equipment or any Software in any way, without Hitachi's prior written consent;
  - (ii) the Equipment or any Software is damaged by accident, neglect or abuse by any party other than Hitachi or its authorised service Personnel, or by natural disaster, or subjected to an unsuitable operating environment, not properly installed or maintained by any party other than Hitachi or its Service Partner;



- (iii) the Equipment or any Software is used in a manner not contemplated by the Published Specifications or in a manner which is outside the scope of Your licensed rights in the Software;
- (iv) You have modified the Equipment or any Software in any way (including any unauthorized attachments or additions to the Equipment or any Software) without Hitachi's prior written consent;
- (v) You have failed to provide and maintain a suitable physical operating environment for Products, as specified by Hitachi (including all items referred to in Section 6A(a)(iii) of these WMS Terms); or
- (vi) where You have infringed any of Hitachi's IP Rights with respect to any Maintenance Material, Work Product or Software.

Any notice to terminate a single Maintenance and Support Service must identify the specific Service item to be terminated. If, in Hitachi's reasonable opinion, the termination of a single Maintenance and Support Service adversely affects Hitachi's ability to provide other Services to You, then Hitachi may, in its sole discretion, terminate these other Services.

- (b) Subject to Hitachi's rights of termination and suspension under the Agreement and applicable law, Hitachi will provide You with Maintenance and Support Services on the Products during the Service Period, provided You have paid Hitachi or the Hitachi Partner (as applicable) the Fees for such services in full. The initial term for Maintenance and Support Services that You have purchased will be non-cancellable and the applicable Fees for that term will be non-refundable, unless stated otherwise in the Hitachi or Hitachi Partner Quote accepted by You (as applicable) or as otherwise agreed and stated in the Order.
- (c) Hitachi will use best efforts to send You a Renewal Notification at least sixty (60) days prior to the expiration of the initial term or then-current renewal term of the applicable supply (whichever is the case). Subject to both Your: (i) acceptance of the Renewal Notification; and (ii) payment in full of the applicable Fees by no later than the end of the Renewal Notification Period, the Maintenance and Support Services will be renewed for the applicable period and Fees stated in the Renewal Notification. Hitachi's issue of a Renewal Notification does not obligate You to renew Maintenance and Support Services. However, if You do not renew Maintenance and Support Services, any subsequent reinstatement of Maintenance and Support Services may be subject to a reinstatement fee (based on Hitachi's then-current rates for reinstatement at the time), in addition to the then current monthly fee for such Services.
- (d) Subject to Section 11(c) of these Terms: (a) if the Renewal Notification relates to Software that is licensed to You on a term-based license, Maintenance and Support Services for that Software will be renewed concurrently with the renewal of the term-based license period; and (b) Maintenance and Support Services for Software that is licensed to You on a perpetual basis will be renewed for the period set out in the applicable Renewal Notification.
- (e) If any Maintenance and Support Services are terminated or are not renewed, Your rights, licenses and privileges under these WMS Terms terminate 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 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. Neither Party is deemed to have waived any of its existing rights.

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

- (a) Subject to these WMS Terms and further 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 (i) the time since a Version was initially released ("**Time-based**"), or (ii) 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):
    - Hitachi will provide Normal Support for a period no longer than 18 months from the date of release. If a release of Software is older than 18 months, then Hitachi will provide Limited Support (as defined below) for a twelve (12) month period following the end of Normal Support period.
    - Hitachi does not provide support past 30 months for Software on the Hitachi Vantara Time-based support lifecycle matrix.
  - (ii) End of Normal Support for Version-based obsolescence products (all products not listed in the Time-based matrix):
    - 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, then 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.
    - 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>.
- (b) "**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 Published Specifications.

- (c) “**Limited Support**” means the provision of existing Service Packs, and existing Patches and Fixes necessary to maintain the Software in substantial conformance with the Published Specifications. Hitachi does not provide support for Software releases that are older than two prior Versions of the current Version.
- (d) 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. Products Subject to End of Life Announcements**

- (a) The following terms apply to all Hitachi-branded Products, unless Hitachi has specified otherwise in its EOL communications at <https://www.hitachivantara.com/en-us/pdf/datasheet/support-services-end-of-life-policy.pdf> (“**EOSL Website**”). 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.
- (b) Hitachi’s obligations to provide Services in accordance with these WMS Terms for Products that have been announced as “End of Life” or “EOSL” (“**EOSL Service Obligations**”) will expire five (5) years from the Withdraw from Sale Date (however, please note that some Products, such as servers and racks, may have a different period that will apply, e.g. 3 years and You should confirm the applicable period of the EOL Service Obligations at the EOSL Website). Hitachi will use commercially reasonable efforts to provide You with the EOSL announcement for a Product at least three (3) months’ prior notice of the Withdraw from Sale Date.
- (c) For Products that have been announced to be “End of Service Life” or “EOSL”, Hitachi may at its discretion, provide Maintenance and Support Services in accordance with these WMS Terms on a “best efforts” support basis (as described in Section 13(e) below) and further subject to a twenty (20) % increase on the monthly fees payable by You for the Maintenance and Support Services. Hitachi will make Maintenance and Support available to You for a period of up to a maximum of twelve (12) months from the date of the EOSL announcement (“**Extended Support Period**”). Hitachi reserves the right to not supply the Maintenance and Support Services, or otherwise to cancel all or any part of the support arrangements at any time during the Extended Support Period, due to lack of parts availability.
- (d) Either Party may terminate the supply of Maintenance and Support Services referred to in Section 13(e) below without liability to the other by providing no less than thirty (30) days prior written notice.
- (e) Terms for “best effort” support from Hitachi:
  - (i) You will remain eligible for Equipment repairs by means of spare parts replacement, whereby Hitachi will make commercially reasonable efforts to maintain adequate spare parts supply, though there is no guarantee that spare parts will be available.
  - (ii) There will be no further Software features or functions added to the EOL Products and You will not receive any further Patches and Fixes, Service Packs or Updates. Hitachi will provide Software support to the best of its ability, with the resources available to it.
  - (iii) Engineering support is no longer available for EOL Products after their EOSL date.
  - (iv) Best effort support may be cancelled or terminated by Hitachi at its discretion, regardless of published dates, in accordance with this Section 13.

**14. Maintenance Material**

- (a) Hitachi may store Maintenance Material within the Products or elsewhere on Your premises for convenience. Only Hitachi or a Hitachi Service Partner Personnel will be authorized to use the Maintenance Material.
- (b) Maintenance Material will always remain Hitachi’s sole and exclusive property and to the full extent applicable, will be covered as Hitachi IP as defined under the Agreement, 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 Maintenance and Support Services.
- (c) User manuals utilized for self-serviceable eligible Equipment are not considered Maintenance Materials.

**15. Transferability of Services**

You agree that:

- (a) Hitachi has no obligation to You for Product or any Software purchased from a source other than Hitachi or a Hitachi Partner.
- (b) You must not assign or transfer any warranty, maintenance and/or support arrangement with Hitachi to any third party without the prior written consent of Hitachi. In the absence of such consent, Hitachi will have no obligation to perform any Maintenance and Support Services for the transferee.
- (c) In cases where Hitachi supplies a Third-Party Product to You, Hitachi may require You to obtain support services for the Third-Party Product directly from the vendor of the Third Party Product.

**16. Customer Responsibilities**

- (a) To assist Hitachi to provide You with Services, You must provide Hitachi, Hitachi Service Partners and their respective Personnel with prompt access to Your premises, computer equipment (including remote access), adequate working space, facilities,

Personnel, technology, data, information or other materials that are reasonably required from time to time. 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, physical 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) of these WMS Terms 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 Big Data Products, You are entitled to the number of 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 Big Data Products. 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, 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 and You agree to defend, indemnify and hold Hitachi harmless from and against any and 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. Liability for Service Delays and Failures**

- (a) If Hitachi or its Personnel fail to perform, or delays in the performance of any service or other obligation required of Hitachi hereunder, Hitachi will not be liable to You for the failure or non-performance (including any consequences under the Agreement), 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.
- (b) In any event, You agree to take all steps and measures available to You to mitigate and minimize the losses, costs and damages arising from such failure or non-performance of Hitachi, irrespective of the nature and extent of Your contribution.

#### **18. Defined Terms**

**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.

**Array Based Software:** license key enabled features and functionality embedded in the Operating Software, but not required to operate the Equipment.

**ASPs:** Authorized Service Providers, which are certified and authorized to provide Maintenance and Support Services under a separate contract that You enter directly with the ASP, and to which Hitachi is not a party.

**Big Data Product:** the commercial enterprise edition of the Pentaho™ data integration and business analytics software that Hitachi makes available from time to time.

**Billable Services:** Services outside or excluded from the scope of the Maintenance and Support Services described within these WMS Terms.

**Current Version:** the latest generally available Version of the Software released by Hitachi.

**Defect:** an instance where a Product does not substantially conform to the Published Specifications. "Defective" has corresponding meaning.

**Delivery Point:** Hitachi's Product distribution centre or other location for delivery of Products, as nominated by Hitachi.

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

**End of Life or EOL:** when Hitachi announces that a Product is no longer manufactured and will be withdrawn from sale, after which it will no longer be generally available for purchase.

**End of Service Life or EOSL:** when Hitachi announces the last date on which a discontinued Product is eligible for Services. Hitachi may publish EOSL dates for Products online – refer to <https://www.hitachivantara.com/en-us/pdf/datasheet/support-services-end-of-life-policy.pdf>.

**Engineering Changes:** design modifications or software changes initiated to improve functionality and operational performance of the Equipment. Engineering Changes are normally developed and released by the Equipment manufacturer.

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

**Field Replaceable Unit or FRU:** a subassembly of Equipment components sealed at the factory and subject to replacement as a discrete unit at Your site.

**Good Industry Practice:** at any time, the exercise of the degree of care and skill that would reasonably and ordinarily be expected at that time from a skilled and experienced provider or supplier to a customer like You for products and services that are similar to the Products and Services under similar terms and conditions for similar prices, whilst seeking to comply with its contractual obligations in accordance with applicable laws.

**Hitachi Service Partner:** has the meaning set out in Section 3.

**Hitachi Support Portal:** the online portal through which Hitachi offers information and notifications about the Maintenance and Support Services and Versions and all updates and replacements thereof.

**Hitachi Partner:** a Hitachi authorised reseller or distributor.

**Hitachi Remote Ops Services:** remote diagnostic and monitoring services on eligible Equipment, using Hitachi's proprietary remote monitoring tool and related Documentation.

**Insolvency:** the inability of a Party to pay its debts as they fall due, the appointment of a receiver or administrator, liquidator or similar person in respect of the Party's affairs under the laws of any jurisdiction; the calling of a meeting of creditors of a Party or for any reason, a Party ceasing to carry on business. **Insolvent** has the corresponding meaning.

**Installation Services:** the services set out in Section 8 of these WMS Terms and excludes the services set out in Section 8(c). **Install** and **Installation** have corresponding meanings.

**ISPs:** Independent Service Providers, which are third parties certified and authorized to provide Maintenance and Support Services on behalf of Hitachi as its subcontractor, subject to these WMS Terms.

**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.

**Maintenance and Support Services:** Equipment maintenance and Software support Services described in more detail in these WMS Terms and the Service Descriptions.

**Maintenance Material:** diagnostic and/or tracking tools, including without limitation Hitachi Remote Ops Services software, firmware and related documentation, personal computers or notebooks, maintenance manuals and other documentation.

**Microcode:** the embedded software that drives control, monitoring and data manipulation on the Products.

**Named Support Contact:** the 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.

**Order:** a written or electronic order for the purchase of Products and/or Services to Hitachi or a Hitachi Partner, or a document detailing the same, including, but not limited to, description and price, which is submitted in accordance with the terms of Your Agreement and Hitachi's then-current ordering requirements.

**Operating Software:** refer to the definition of "Software" below.

**Patches and Fixes:** changes made to the Software by Hitachi that establish or restore substantial conformity with the applicable Published Specifications. **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.

**Personal Data:** for You, personal information about an identifiable person that You provide to Hitachi or otherwise use as part of the receipt or use of Hitachi's Products and/or Services. For Hitachi, personal information about an identifiable person that Hitachi collects pursuant to its agreement with You.

**Personnel:** of a Party means that Party's employees, subcontractors, workforce members, agents or authorized representatives.

**Plan:** a specific level of Maintenance and Support Services provided by Hitachi, in accordance with the support plan descriptions set out in the Service Descriptions.

**Product(s):** any Equipment and/or Software, including Third-Party Products listed in the Hitachi Price List or as otherwise agreed by the Parties from time to time.

**Published Specifications:** the user or technical manuals, training materials, specifications or other documentation for Products, stated as valid at the time of acceptance of the Order, as updated by Hitachi from time to time.

**Professional Services:** Software enablement, configuration, data migration and other migration services, implementation, data analytic and other services as agreed between the Parties from time to time.

**Refund:** a refund of the Fees that You have paid for the Products and/or Services which in the case of: (i) Equipment, will be less a straight-line depreciation, based on a 3-year useful life; (ii) Programs, the unexpired period of the license and associated Maintenance and Support Services; and (iii) Services, a pro-rated refund of Fees for the Services that are actually delivered and are in conformity with the Hitachi Services warranty.

**Renewal Notification:** a notice issued by Hitachi to You in accordance with these WMS Terms, setting out Your options for purchase of further Products, Services and related solutions from Hitachi for the applicable renewal term set out in the notice. The Renewal Notification may take the form of a Quote.

**Renewal Notification Period:** the period between the date of Hitachi's Renewal Notification and the end date of the initial term or renewal term for the applicable supply (as the case may be).

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

**Services:** Maintenance and Support Services, Professional Services, training and any other services listed in the Hitachi Price List or similar offerings from time to time.

**Service Descriptions:** has the meaning set out in the third paragraph at the head of these WMS Terms.

**Service Packs:** an accumulation of Patches and Fixes into a generally available package applicable to the Current 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.

**Service Period:** the initial term and any applicable renewal terms specified in the Hitachi or Hitachi Partner Quote accepted by You (as applicable) or as otherwise agreed and stated in the applicable Order.

**Software:** the object code format of (i) programming firmware embedded in the Equipment to enable it to perform its basic functions or to operate or manage the Equipment ("**Operating Software**"); (ii) stand-alone software programs supplied by Hitachi, including their license keys where applicable, which do not fall within section (i) ("**Programs**"); and (iii) any Updates, Documentation and Published Specifications.

**Software Support Services:** the support that Hitachi provides, in accordance with these WMS Terms, with respect to the ordinary use of the Software in accordance with its Published Specifications.

**Third Party Products:** any Equipment or Software supplied by Hitachi that are not manufactured by Hitachi or Hitachi, Ltd.

**Third Party Software:** any software supplied to Hitachi by any party other than Hitachi, Ltd., including Third Party Licensors, for direct or indirect distribution to end users, including You. For clarification purposes, if any Third-Party Software contains Third Party Related OSS, You must refer to that applicable Third Party EULA.

**Update:** subsequent releases and error corrections and/or minor functional enhancements for Software previously licensed by Hitachi.

**Upgrade:** 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.

**Version:** is a generic term for code corrections, Service Packs, maintenance releases, minor releases, and major releases of the same Software, generally made available by Hitachi to its customers.

**Warranty Commencement Date:** the first day of the calendar month commencing immediately after the date that Hitachi delivers the Product (which, for the purposes of clarification means when the Product has left the Delivery Point). However, for Programs that Hitachi delivers to You electronically, it will be the date that the initial license key which enables the download of the Program is issued by Hitachi to You.

**Warranty Period:** with respect to Products, the period specified in the Service Descriptions commencing from the Warranty Commencement Date and in the case of Services, the period set forth in Section 1(d) of these WMS Terms.

**Warranty Services:** the services within the scope of Sections 4 and 5 of these WMS Terms that Hitachi considers necessary to correct the Defect so that the Products comply with the warranty in Section 1(a) of these WMS Terms, including to replace any Defects in any Equipment component and, where Hitachi considers necessary, any Software media and Updates and in the case of Services, the remedial services set forth in Section 1(d) of these WMS Terms.

**Withdraw from Sale Date:** the date that Hitachi has notified to be the date that an EOL Product will no longer be generally available for purchase.

**Work Papers:** those internal memoranda and working notes prepared by Hitachi during performance of Services hereunder that serve to substantiate the Services and/or any Work Product.

**Work Product:** any works of authorship, program listings, tools, documentation, reports, specifications, implementations, drawings, Work Papers, Deliverables and similar works created by or on behalf of Hitachi pursuant to the supply of Services.

**You:** the entity to whom Hitachi provides the services on these WMS Terms.