

## HITACHI VANTARA EVERFLEX AND 'AS A SERVICE' XAAS TERMS

If You purchase Hitachi 'As a Service' offerings including EverFlex offerings ("XaaS Services") from Hitachi Vantara LLC or its Affiliate or a Hitachi Partner, these 'As a Service' Terms, along with the terms attached to or incorporated herein (together, the "Terms") will apply to Your access to and consumption of the XaaS Services as a binding agreement between the entity that you represent ("You") and the applicable Hitachi entity that will deliver the XaaS Services ("Hitachi").

### 1. XAAS AGREEMENTS

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

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

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

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

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

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

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

### 3. OWNERSHIP AND TERMS OF USE

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

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

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

### 4. YOUR OBLIGATIONS

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

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

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

(d) **Content.** You are responsible for: (i) the Use of the Content as part of the XaaS Services by You, Your Personnel and Your End Users; (ii) the transfer of Content to third parties; (iii) securing all necessary rights and permissions to Use the Content as part of the XaaS Services; and (iv) the proper handling of all Content violation notices. Without limiting Your obligations under applicable contract or law, You must maintain appropriate security and back-up of the Content, the use of encryption technology to protect all Content in motion and at rest from unauthorized access and during routine back-up and archiving processes. You grant to Hitachi, its Affiliates and their respective Personnel a worldwide, royalty-free, non-exclusive right and license to: (A) use the Content as Hitachi reasonably determines to provide the XaaS Services; and (B) disclose the Content in order to comply with a Legal Requirement. You represent and warrant to Hitachi that You or Your licensors own all right, title and interest in the Content and that You are duly authorized to provide the licenses herein. Hitachi may use third-party providers and Third Party Content for some XaaS Services. Third Party Content may be subject to separate terms, which will operate separately to these Terms. You consent to Hitachi transferring Your Content and/or registration and/or account information to its authorized subcontractors. If You install or enable Third Party Content for Use with any XaaS Services or authorize Hitachi to do so, Hitachi may allow the Third Party Content provider to access the Content as necessary for the interoperability of the Third Party Content and the XaaS Services.

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

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

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

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

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

## **5. SUSPENSION AND TERMINATION**

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

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

(c) **Suspension Rights.** Without limiting any other rights available to Hitachi under the Master Agreement or applicable law, Hitachi may suspend delivery of all or any part of the XaaS Services without liability if: (i) You are in breach of Your payment obligations under an XaaS Agreement or payment obligations to a Hitachi Partner; (ii) You are otherwise in uncured breach of an XaaS Agreement because of Your conduct or the conduct of

Your Personnel or End User; (iii) You or any party on Your behalf commits a Misuse; (iv) You become or threaten to become Insolvent; or (v) there is a change of control in You that is not approved in writing by Hitachi. Without limiting Hitachi's rights under these Terms or under applicable law, Hitachi will reinstate any suspended XaaS Services following the remediation of the breach. Hitachi has a right to terminate the XaaS Agreement if Hitachi has a right to suspend XaaS Services under this Section. Hitachi will use reasonable commercial endeavors to give You or Your Hitachi Partner (where applicable) notice in advance of a suspension, except where it determines immediate suspension is necessary. You will remain responsible for all fees and charges that You incur during the suspension period, including any further period of use contemplated by these Terms or the XaaS Agreement. However, Hitachi shall not be liable for any Failure in the XaaS Services during any suspension period, irrespective of whether or not any service credits are payable by Hitachi under an XaaS Agreement for service level breaches. Hitachi will not erase Content during a suspension except as otherwise specified in these Terms or the XaaS Agreement.

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

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

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

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

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

## **7. CONFIDENTIALITY**

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

## **8. INDEMNITY**

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

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

(b) You will defend or settle any Claim referred to in Section 8(a) of these Terms at Your sole expense and if You fail to do so promptly, Hitachi may assume control of the defense of the Claim at any time and You will reimburse Hitachi its reasonable expenses (including reasonable legal fees) in doing so, without limiting Your other obligations. You must not settle a Claim without Hitachi's prior written approval.

**9. LIMITATIONS OF LIABILITY**

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

(b) The limitations and exclusions of liability in this Section 9 apply whether such liabilities or Claims arise under contract (including anticipatory breach or repudiation), in equity, common law, statute or otherwise, including breach of contract, breach of warranty or in tort (including negligence) or otherwise and even if the liable Party has previously been advised of the possibility of such damages. Liability for damages will be limited and excluded, even if an exclusive remedy provided for in the XaaS Agreement fails of its essential purpose.

**10. WARRANTY AND DISCLAIMER**

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

(i) You are organized under the laws of Your country of incorporation and You are in good standing under such laws and in such other jurisdictions as are necessary for You to carry on Your business;

(ii) You have obtained all necessary authorizations to carry on Your business in every country where a Location is situated;

(iii) the execution and performance of Your obligations under the XaaS Agreement will not violate any provision of Your articles or certificate of incorporation or bylaws or any other agreement to which you are a party;

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

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

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

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

**11. DATA PRIVACY**

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

**12. SECURITY BREACH**

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

**13. GENERAL**

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

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

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

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

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

(f) **Independent Parties.** The Parties are independent contractors and there is no actual or deemed partnership, franchise, joint venture, agency, employment or other fiduciary relationship between the Parties. The Parties may sign an XaaS Agreement and any further documents made under it in counterparts, which together will form a binding agreement on the Parties and each of which may be transmitted electronically and will be effective upon the XaaS Agreement Start Date.

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

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

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

**EXHIBIT A : TERMS RELATED TO INFRASTRUCTURE**

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

**1. Infrastructure**

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

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

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

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

**2. Insurance**

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

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

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

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

**4. Exclusions from Liability for Failure**

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

available to mitigate and minimize the losses, costs and damages arising from the Failure and You will ensure Your Personnel, End Users and any party acting on Your behalf do the same.

**EXHIBIT B: GLOSSARY OF DEFINED TERMS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Hitachi IP:** the IP Rights in all items and materials that Hitachi provides to You or otherwise creates pursuant to an XaaS Agreement and all related changes, improvements, additions, enhancements, new versions, updates and derivative works. **Hitachi Policies:** the following policies, in addition to Hitachi’s online terms covering technical support for Infrastructure: (i) Hitachi Vantara Global Data Protection & Privacy Policy; EverFlex XaaS Online Terms\_V2\_JAN2021\_Global

<https://www.Hitachivantara.com/en-us/company/legal.html>; (ii) Hitachi Vantara Acceptable Use Policy: <https://www.Hitachivantara.com/en-us/company/legal.html>. You agree and acknowledge that the Hitachi Policies are incorporated by reference into the applicable XaaS Agreement. Hitachi may change the above list or add to the list with further terms in its sole discretion.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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