

DIRECT PURCHASING AGREEMENT

Agreement No.: _____

Effective Date: _____

This Direct Purchasing Agreement (“DPA”) governs Customer’s purchase of Products and/or Services from HDS. The additional terms and information at Exhibits A and B entitled Software Licence, and Warranty Maintenance and Support (“Software Licence”, “Warranty Maintenance and Support”) form an integrated part of this DPA and are incorporated by reference. Customer

TERMS AND CONDITIONS:

1. PRODUCT ORDERING DELIVERY AND INSTALLATION

1.1 Quotation and Ordering Process

At Customer’s request, HDS will send Customer a Quote or Statement of Work for the supply of Products and/or Services. When Customer sends HDS an Order (whether or not it is in response to a Quote), HDS may accept it by sending Customer an Order Confirmation, or otherwise by shipping the Products and/or starting the Services. Each Quote (if any), Order, Order Confirmation (if any), together with this DPA, form a separate agreement between HDS and Customer for that supply. For an Order to be valid, it must refer to this DPA. Terms and conditions in, or on the back of Customer’s Order, or any other documents that Customer gives to HDS will not form part of the agreement. Any changes that Customer makes to an Order are subject to HDS’ acceptance and if HDS requires, the payment of an additional processing fee to HDS. Customer may not cancel any Orders any later than five (5) business days prior to the scheduled date of shipment of the Products and/or commencement of the Services that are the subject of the Order. Notwithstanding, if Products have been delivered to Customer by HDS, the Services subject to the same Order may not be cancelled and will be performed as agreed.

1.2 Product Delivery

HDS will do everything that is reasonably possible to meet its estimated Delivery dates. Where necessary, HDS may make partial Deliveries of Products and send Customer a corresponding partial invoice. Delivery of Products will be FCA (as defined in Incoterms 2010) to HDS’ nominated Delivery Point. HDS will arrange shipping of Products on Customer’s behalf and at Customer’s risk, and charge Customer accordingly, unless Customer instructs HDS in writing not to do so. Upon delivery Customer will execute a delivery certificate.

1.3 Risk and Title in Products and Work Product

Subject to Section 1.2, risk of loss of and damage to the Products and Work Product passes to Customer upon Delivery of the relevant Products and Work Product. Subject to Section 1.6, title in the Products will pass to on Delivery. However, ownership of any Software and Work Product and the tangible media in which they are contained will remain at all times with HDS and its licensors. Without limiting Section 5, Customer must not do anything that affects such ownership.

1.4 Product Installation

Unless Customer and HDS agree otherwise, the Products will be Installed at the location set out in the Order. Customer will prepare the installation environment at such location at Customer’s cost and in accordance with HDS’ requirements and directions.

1.5 Product Acceptance

Customer is deemed to have accepted the Products on Delivery. At HDS’ request, Customer will sign and provide a written acceptance certificate to HDS.

CUSTOMER (“Customer”):

Name:

Address:

Contact Person (for Notices):

Hitachi Data Systems (“HDS”):

Name: Hitachi Data Systems N.V.

Address: Corporate Village, Bayreuth Building,

Leonardo da Vincilaan 3, bus 1, 1935 – Zaventem, Belgium

Contact Person (for Notices):

1.6 Product Loans

(a) If HDS agrees to loan Products to Customer, such loan will be conditional on the Parties signing a Loan Schedule that refers to this DPA, in a form that is acceptable to HDS. HDS reserves the right to require Customer to execute a separate Loan Agreement, which is mandatory for pre-release Products. HDS 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 Customer pursuant to Section 1.3 and HDS 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 Exhibits A and B 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 provision in this DPA and to the extent permitted by applicable law and in respect of Product loans: (i) Customer accepts the Products and any Services performed on the loan Products 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 HDS’ act or omission and subject to section 9.3, HDS will not be liable to Customer for any actual or anticipated, direct, indirect, special, incidental, consequential or other damages arising from the Product Loan and any Services performed on the loan Products, howsoever caused, whether under contract or otherwise, including breach of contract, breach of warranty or in tort (including negligence), anticipatory breach or repudiation, and even if HDS has previously been advised of the possibility of such damages. This Section 1.6(b) prevails to the extent of any inconsistency with the terms of Section 9 in respect of Product Loans and Products and Services provided under such loans. (c) Subject to Section 1.6(d), ownership of, and all right, title and interest in all Products loaned to Customer by HDS will remain with HDS at all times and Customer gains 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 Exhibits A and B to this DPA. Without limiting Section 11.4, Customer must not do anything that affects HDS’ ownership of, or other rights in the Products, nor use the Products for any reason other than the Designated Use.

(d) If Customer has agreed in a Loan Schedule to purchase the Products at the end of the Loan Period, Customer must provide HDS 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 Customer upon the date that HDS receives the Order for the Products and

Customer's use of the Products will be subject to the terms of this DPA (except for this Section 1.6) and the Loan Schedule will be deemed terminated. Otherwise, if Customer does not purchase the Products, then Customer's rights in the 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, Customer will return the Products to HDS in the same condition (normal wear and tear excepted) and if Customer fails to do so, Customer grants to HDS the right to enter the premises where the Products are located, in order to recover them.

1.7 Affiliate Transactions

(a) Customer's Affiliates are able to order Products and/or Services from HDS or a HDS Affiliate (as the case may be), by executing a Participation Agreement to this DPA, a template of which is available per Exhibit C to this DPA. Orders and Order Confirmations (if any) will be issued, and the delivery of, and payment for Products and/or Services will be made between the relevant parties to the Participation Agreement.

(b) Each Participation Agreement will be a separate agreement, incorporating the terms of this DPA (except to the extent that changes are required by applicable local law or as otherwise agreed by the relevant parties to the Participation Agreement to reflect local conditions). Unless stated otherwise in the Participation Agreement, the Participation Agreement will be governed by the local law of the place of incorporation of the relevant HDS entity that is the party to such Participation Agreement.

(c) Each Party will use all reasonable endeavors to ensure that the relevant members of its company group comply with their respective obligations under the Participation Agreement. Notwithstanding this, each Party will not be liable to the other Party for the acts or omissions of their Affiliates or other members of their respective groups and does not guarantee, and assumes no liability for, the performance or default of the duties and obligations of any Affiliate under such Affiliate's Participation Agreement.

(d) When construing a Participation Agreement, the respective references in the DPA to "HDS" and "Customer" will be read as references to the relevant entities which are parties to the Participation Agreement.

2. ADDENDA FOR ADDITIONAL RIGHTS

Terms granting rights beyond those contained in this DPA will be agreed to by both Parties in writing, before HDS agrees to consumption storage, software-as-a service, service provider hosted service rights and other permissions.

3. SERVICES

3.1 Maintenance and Support Services

(a) Subject to Section 11.1, HDS will provide Customer with Maintenance and Support Services on the Products during the Initial Service Period, provided that Customer has paid HDS the Fees for such Services in full. Such Fees are non-cancellable and non-refundable during the Initial Service Period. The Maintenance and Support Services will be performed in accordance with the maintenance sections of the Exhibits A and B to this DPA.

(b) Subject to Customer's payment of the applicable renewal Fees to HDS in full, the Maintenance and Support Services will be automatically renewed for successive Renewal Service Periods, unless Customer provides to HDS written notice of non-renewal at least thirty (30) days before the expiry date of the then current Service Period. As a courtesy, HDS may provide Customer with a prior written notification, in the form of a Quote, for the renewal prior to the end of the then-current Service Period. HDS' notification of the renewal or quotation of renewal Fees does not obligate Customer to renew Maintenance and Support Services.

3.2 Professional Services

(a) HDS will provide Customer with Professional Services under a separate SOW that incorporates the terms of the DPA and Customer is deemed to have accepted the Work Product arising from the Professional Services on Delivery. Without limiting the operation of the DPA on the SOW, the SOW will set out any other terms that relate to the Professional Services. 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) HDS will not be obligated to provide Customer with any Professional Services until a SOW has been agreed and signed by the relevant parties.

3.3 Customer's Responsibilities

To assist in the supply of the Services, Customer must provide HDS, its subcontractors or agents (if applicable) and their respective Personnel with prompt access to Customer's 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, Customer will, at HDS' request, assign an appropriately qualified person(s) to be Customer's representative(s) for the receipt of the Services and to communicate with HDS on all Service-related matters, and HDS will be entitled to assume that the acts, conduct and decisions of such person(s) are authorized by, and are binding on, Customer.

3.4 Liability for Service Delays and Failures

If HDS fails to perform, or delays in the performance of, any Service or other obligation required of HDS under this DPA, HDS will not be liable to Customer for the failure or non-performance, to the extent that such failure or non-performance is caused by Customer's act or omission, or the act or omission of Customer's Personnel or any other person acting on Customer's behalf. In any event, Customer agrees to take all steps and measures available to Customer in order to mitigate and minimize the losses, costs and damages arising from such failure or non-performance, irrespective of the nature and extent of Customer's contribution.

4. FINANCIAL TERMS

4.1 Fees and Payment

HDS will invoice Customer the Fees for the supply of Products and/or Services (as applicable): (i) upon shipment of the Products, with respect to Order(s) pursuant to a Quote for Products only, or for combined Products and Services; and (ii) in accordance with the applicable terms set out in the Quote and/or SOW for Services only, or where no invoicing terms are set out, prior to commencement of the Services by HDS. Customer will pay the Fees for the supply of Products and/or Services set out in HDS' invoice within 30 days from the invoice date. Customer will make payment without any deduction by way of set-off, counterclaim, discount or otherwise. HDS may, in the case of Services, suspend delivery of any Services, where payments for such Services are overdue.

4.2 Processing Fees

HDS will not incur the burden of any fees or charges associated with Customer's processing or payment of Fees, including but not limited to any portal service fees, unless those fees or charges have been agreed to by HDS in advance and in writing. HDS reserves the right to pass through to Customer any processing fees that HDS incurs from a third party service provider that Customer engages to process vendor invoices.

4.3 Taxes

Customer must also pay for all Taxes arising from the transaction under this DPA, irrespective of whether or not these taxes are

included in HDS' invoices. If Customer is required under any applicable law to withhold or deduct any amount from the payments due to HDS, Customer will increase the sum Customer pays to HDS by the amount necessary to leave HDS with an amount equal to the sum HDS would have received if no such withholdings or deductions had been made.

5. INTELLECTUAL PROPERTY

5.1 Ownership and Licenses

(a) Customer agrees and acknowledge that HDS and its licensors own all copyright, trademarks, designs, patents, circuit layout rights, know-how, trade secrets, trade, business and/or company names, domain names and related registration rights and all other intellectual property rights in all Hitachi IP.

(b) Customer gains no right, title or interest in the Hitachi IP, other than the license rights in Software, Work Product and any other Hitachi IP, as expressly stated in this DPA and the Exhibits A and B to this DPA.

(c) Without limiting the operation of the Exhibits A and B to this DPA, Customer must not do anything to jeopardize the rights of HDS and HDS' licensors in the Hitachi IP, including to: (i) copy, modify, reverse engineer (except to the extent such restrictions are prohibited by applicable law), transfer or sub-license any Hitachi IP (except as allowed by Customer's license or as HDS agrees in writing); (ii) register or attempt to register any competing intellectual property rights in or to the Hitachi IP; (iii) delete or tamper with any proprietary notices on or in the Hitachi IP; (iv) take or allow any action that diminishes the value of any trademarks included in the Hitachi IP; or (v) use the Products or any Work Product in violation of applicable law.

5.2 Software License Grant

Subject to the terms of this DPA and the Exhibits A and B to this DPA, HDS grants to Customer a personal, non-exclusive, non-transferable (except in connection with the transfer of Equipment as permitted by this DPA and the Exhibits A and B to this DPA) license to use the Software in order to operate the Equipment in accordance with its Published Specifications solely for Customer's internal business purposes. Any additional or alternative purposes must be agreed between the Parties in accordance with Section 2.

5.3 Intellectual Property Claims

Subject to Sections 5.1, 5.4 and 9.1, if a third party makes a claim against Customer that any Product or Work Product that HDS has supplied to Customer under this DPA infringes that party's patent rights or copyright ("**IP Claim**"), HDS will provide Customer with the following recourse (which comprises, to the extent permitted by applicable law, Customer's sole and exclusive remedy against HDS, and HDS' sole and exclusive liability to Customer for, the IP Claim):

(a) HDS will defend or settle the IP Claim at HDS' option and cost, and pay to Customer the amount of damages, losses and costs finally awarded against Customer or settled by Customer (with HDS' written consent), provided that Customer: (i) promptly notify HDS of the IP Claim; (ii) allow HDS to solely manage the defense and settlement of the IP Claim; (iii) co-operate with and assist HDS as HDS requires (and HDS will pay Customer's costs of doing so); and (iv) Customer is not in breach of this DPA or the Exhibits A and B to this DPA.

(b) HDS will, at HDS' option and cost, do any of the following in relation to a Product or Work Product which is, or which HDS considers is likely to be, the subject of an IP Claim ("**Infringing Item**"): (i) secure the rights for Customer to continue to use the Infringing Item without infringement; or (ii) modify the Infringing Item so that it is not infringing, or (iii) replace it with something that has similar functionality to the Infringing Item. If HDS considers that none of these options are reasonably possible, HDS will provide

Customer with a Refund, provided that Customer promptly returns the Infringing Item to HDS.

5.4 Exceptions

HDS will not be liable to provide any of the remedies in Section 5.3 with respect to: (a) any Third Party Products which are not included on HDS' standard price list at the time of the IP Claim; (b) any Third Party Related OSS; or (c) to any Product or Work Product that Customer has, or any person on Customer's behalf has: (i) modified or combined with any third party product not authorized or approved by HDS; (ii) used outside HDS' stated standard operating environment for the Product or Work Product, or for a purpose not authorized by HDS; (iii) failed to use a more recent version of the Product or Work Product that was available to Customer and that would have avoided the infringement; or (iv) where the IP Claim arises due to any material or item that Customer owns or have sourced from a third party Customer itself.

6. CONFIDENTIAL INFORMATION

Each Party must keep any Confidential Information that is disclosed to it by the other Party as confidential, by using the same degree of care that it would use to protect its own Confidential Information. Each Party must not disclose the other Party's Confidential Information to any third party, without the other Party's prior written consent. A Party can, however, disclose the other Party's Confidential Information to those of its Personnel who need to know the information in order to perform that Party's obligations under this DPA, provided that it takes all necessary steps to ensure its Personnel's compliance with this Section.

7. PERSONAL DATA

7.1 Customer's Obligations

Customer is, and will remain at all times, the data controller for any Personal Data Customer provides to HDS. Customer is responsible for compliance with Customer's obligations as the data controller under applicable data protection laws. Customer will provide adequate safeguards to, routinely back up, and ensure the integrity and security of Customer's Personal Data. Customer is responsible for any unauthorized access, acquisition, use, disclosure, modification or destruction to Customer's Personal Data caused by the acts or omissions of Customer, Customer's Personnel, Affiliates, agents, vendors, and contractors. Customer will only provide HDS with Personal Data that Customer has the legal right to collect, process, use, and transfer, and only to the extent that is necessary or required under any transaction agreed to by the Parties pursuant to this DPA. Customer will not disclose any Personal Data about HDS Personnel without the prior written consent of HDS.

7.2 Our Obligations

To the extent that HDS collects Customer's Personal Data as part of a transaction agreed to by the Parties pursuant to this DPA, HDS agrees to not disclose such Personal Data unless HDS has Customer's prior written consent, or otherwise as is allowed under this DPA. HDS is entitled to disclose Customer's Personal Data: (i) to HDS' Personnel with a need to know the information in order to perform obligations under this DPA; (ii) to Affiliates, subcontractors, vendors, and agents of HDS who help HDS perform its obligations under this DPA and who are contractually obligated to protect Customer's Personal Data; or (iii) as required by law. HDS will comply with applicable law with respect to Customer's Personal Data.

7.3 Reporting

Each Party will promptly report any Security Breach to the other Party. The Party experiencing the Security Breach will first provide oral notice as soon as reasonably practicable and no later than ten (10) days after discovery. That Party will provide follow-up, written notice as soon as reasonably practicable and no later than fifteen (15) days after discovery. The written notice will include, to the extent the information is currently available: (i) an identification of affected individuals, and (ii) any other

information that must be included in a legally required notice of Security Breach under applicable law.

7.4 Cooperation And Mitigation

Each Party agrees to cooperate in any Security Breach investigation undertaken by, or otherwise involving the other Party and to take reasonable measures to mitigate the harmful effects of any Security Breach, of which that Party becomes aware.

8. WARRANTIES

8.1 Product Warranty

Subject to Sections 8.3 and 9.1, HDS warrants to Customer that, during the Warranty Period, the Products will function in accordance with their applicable Published Specifications. To make a valid warranty claim, Customer must submit a claim to HDS in accordance with the procedures referred to in the Exhibits A and B to this DPA.

8.2 Service Warranty

Without limiting any of the warranties in the Exhibits A and B to this DPA, HDS warrants to Customer that HDS will provide the Services to Customer in a professional and workmanlike manner and in accordance with Good Industry Practice.

8.3 Warranty Exclusions

The provision of any Warranty and Maintenance Services are subject to HDS' standard warranty and maintenance terms conditions set out in the Exhibits A and B to this DPA. **EXCEPT AS SPECIFIED IN THE DPA AND THE EXHIBITS A AND B TO THIS DPA, 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. HDS DOES NOT WARRANT THAT ANY PRODUCT, OR SERVICE WILL OPERATE UNINTERRUPTED OR ERROR FREE AND WILL NOT BE LIABLE FOR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES.**

9. LIMITATIONS OF LIABILITY

9.1 Uncapped Liability

Each Party acknowledges the full extent of its own respective liability and shall not seek to exclude or otherwise limit any liability to the other Party arising from: death or personal injury resulting from negligent acts or omissions; fraud or deceit; breaches of any Software license; any infringement of Hitachi IP or breach of the confidentiality obligations pursuant to Section 6. For the avoidance of doubt, to the full extent permitted by law, this Section 9.1 does not apply a Party's liability for Security Breaches under this DPA or under applicable law or for a breach of Section 7.

9.2 Limits and Exclusions of Liability

Subject to Sections 3.4 and 9.1, the exceptions identified in the Exhibits A and B to this DPA, and except for HDS' indemnity obligations in Section 5.3, and to the extent not prohibited by applicable law:

(a) each Party's maximum aggregate liability for all claims made against it will be limited to the Fees paid by Customer to HDS under the Order for the relevant Products and/or Service(s) that is or are the subject matter of the claim, up to a maximum of: (i) the Fees paid by Customer to HDS over the twelve (12) months period immediately prior to the first event giving rise to the claim, where the Order contains only Software and/or Services; and (ii) the lesser of the total Fees paid by Customer under the Order and two million Euros (€2,000,000), in all other cases; and

(b) neither Party will be liable for: (i) any indirect, punitive, special, incidental or consequential damages in connection with or arising out of this DPA or Exhibits B and C to DPA or (ii) whether direct or

indirect, for loss of actual or anticipated business, revenue, profits, goodwill, loss of use, lost or corrupted data, electronically transmitted orders, or loss of other economic advantage.

The limitations and exclusions of liability in Sub-sections (a) and (b) above, apply whether such liabilities or claims arise under contract, in equity, common law, statute or otherwise, including breach of contract, breach of warranty or in tort (including negligence), anticipatory breach, 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. **10. TERM AND TERMINATION**

The DPA will start on the Effective Date and continue until it is terminated by either Party by written notice to the other Party, if the other Party: (i) breaches the confidentiality, intellectual property or export compliance and anti-bribery sections of the DPA; (ii) commits a material breach of any other terms and does not remedy that breach within thirty (30) days of written notice to do so; or (iii) becomes or threatens to become Insolvent. If the DPA is terminated, Customer's rights, licenses and privileges under it will terminate and Customer must comply with HDS' directions to either remove and destroy all Hitachi IP and Confidential Information in Customer's possession or control or return such material and items to HDS, at Customer's cost. HDS reserves the right to cancel any Order(s) which have not yet been delivered. Customer will not be relieved from Customer's payment obligations and any money due to HDS will become immediately payable. Neither Party is deemed to have waived any of its existing rights as a result of termination.

11. GENERAL

11.1 Third Party Products

Except as expressly stated otherwise in this DPA, the Exhibits A and B to this DPA, a Quote or a SOW: (i) HDS provides Third Party Products to Customer without warranties or maintenance of any kind, and (ii) licenses, warranties and support for Third Party Products will be given by the relevant suppliers in their license agreements that HDS passes on to Customer.

11.2 Export Compliance and Anti-Bribery

(a) Customer acknowledges that in various countries, laws and regulations governing the export of computer products and technology may prohibit use, sale or re-export of such products or technology if Customer knows or has reason to know that such products and technology are for use in connection with the design, development, production, stock piling or use of nuclear, chemical or biological weapons or missiles, and in some countries (e.g., China) for certain conventional military end-uses. If Customer sells or transfers to another person or entity title in or right to use any part of products or other materials supplied by HDS, Customer will ensure that all applicable export restrictions of the nature described in this section are observed.

(b) Each party will comply with all applicable laws and regulations 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. Customer must read, understand and comply with the HDS Code of Ethics and Business Conduct located at <https://www.hds.com/en-us/pdf/brochure/code-of-ethics-and-business-conduct.pdf>.

11.3 Dispute Resolution

In the event of a dispute between the Parties arising out of this DPA, the Parties will use reasonable efforts to get an appropriate person from their respective management teams to meet and attempt to resolve the dispute in good faith. If such management are unable to resolve the dispute within 30 days, the Parties may resort to alternate dispute resolution such as arbitration (if both Parties

agree) or otherwise a Party may seek recourse from the courts. Either Party may seek injunctive or other urgent equitable relief at any time.

11.4 Responsibility for HDS Property

(a) Customer is responsible for loss of, or damage to, the HDS Property, once delivered to Customer's custody or control, except for loss or damage arising due to the actions of HDS, or normal wear and tear in the course of proper use, storage and maintenance. HDS will retain title to the HDS Property at all times. Customer must not: (i) assign, transfer, sell, deal with, or create any mortgages, security, liens, or interests in or over the HDS Property; or (ii) move, repair or modify or interfere in anyway with the HDS Property without HDS' prior consent. Customer will provide to HDS (or HDS' authorized representatives) reasonable access to the premises on which HDS Property is located on receipt of reasonable notice by HDS, in order for HDS to inspect the HDS Property and to verify Customer's compliance with this Section 11.4.

(b) Upon the delivery of HDS Property to Customer's custody or control, and until such HDS Property is either delivered back to HDS or otherwise removed by HDS from Customer's custody or control, Customer will maintain insurance policies with reputable insurers covering loss of, and damage to the Products at least equal to the replacement cost of the HDS Property. Where requested by HDS or required under the applicable SOW, Customer will also maintain insurance policies with reputable insurers to cover Service arrangements requiring the on-site presence of any Personnel of HDS or its subcontractors. The insurance policies referred to in this Section will note HDS as an additional insured party and all insurance coverage will be primary and non-contributory. Customer will provide HDS with evidence of such insurance that is acceptable to HDS, upon HDS' request.

11.5 Non-Solicitation

Customer undertakes that Customer will not, directly or indirectly, while this Agreement is in force and for a period of one (1) year after termination of this Agreement for any reason whatsoever, engage, employ or otherwise solicit for employment any person who during the term of the Agreement was an employee of HDS and was directly engaged in the provision of the Services.

11.6 Miscellaneous

(a) Unless the Parties agree in writing that the laws of another jurisdiction will apply, this agreement shall be exclusively construed in accordance with and governed by the laws of the jurisdiction of Belgium, without regard to its conflict of laws principles and the venue for any litigation will be the appropriate courts in Brussels, Belgium. 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. (b) Neither Party will be responsible for any failure to meet any of its obligations under the DPA (except payment obligations), due to matters beyond its reasonable control, provided all reasonable efforts have been made to perform them.

(c) Customer must not assign, or otherwise transfer any of Customer's rights under this DPA without HDS' prior written agreement.

(d) HDS may engage or retain subcontractors to perform any of its obligations, and HDS will remain responsible for their performance.

(e) Notices made under the DPA must be in writing to the appropriate representative of the recipient, as identified in the DPA or otherwise to a senior executive. Notices will be deemed given: where they are hand delivered, when a duly authorized Personnel of the recipient gives written acknowledgement of receipt; for email communication, at the time the communication enters into the information system of the recipient; for posting, three days after dispatch and for fax, on receipted transmission of the fax.

(f) Each Party is an independent contractor and there is no actual or deemed partnership, franchise, joint venture, agency, employment or other fiduciary relationship between the Parties.

(g) Rights and obligations under the DPA, which by their nature should survive the termination or expiration, will remain in effect after termination.

(h) Customer grants to HDS the limited right to use Customer's company and brand name and/or logo in promotional materials, including press releases, presentations and customer references regarding the sale of Products, Third Party Products and Services. These permissions are free of charge and for worldwide use in any medium. The foregoing notwithstanding, HDS agrees to obtain Customer's prior written approval for publicity that contains claims, quotes, endorsements or attributions by Customer, such approval not to be unreasonably withheld.

(i) 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 written 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.

(j) The DPA (including the Exhibits A and B to this DPA and all Quotes, Orders and Order Confirmations) 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).

(k) 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 A and B to this DPA; (iii) a SOW; (iv) a Quote; (v) an Order Confirmation; and (vi) an Order.

(l) There are no third party beneficiaries to this DPA.

(m) References to "business days" means a day which is not a Saturday, Sunday or public holiday in the location where Products and/or Services are delivered to Customer.

12. DEFINITIONS AND INTERPRETATION

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 HDS, Affiliate also means Hitachi Limited and any business entity controlled by Hitachi Limited. However, Affiliate does not include HDS distributors, resellers, independent service providers or HDS authorized service providers.

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 as confidential or under the circumstances such information would be considered to be confidential by a reasonable person. Confidential Information does not include any Personal Data or other 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; or (iii) is independently developed by the receiving party, without use of or reference to the disclosing party's Confidential Information.

Delivery: delivery of Product to the Delivery Point in accordance with the delivery terms set out in Section 1.2 or in the case of Work Product, delivery of the Work Product in accordance with the terms of the applicable SOW.

Delivery Point: HDS' Product distribution center or other location for delivery, as nominated by HDS.

Designated Use: Customer's internal business evaluation of the performance of the Product in a non-production environment.

Equipment: hardware and spare parts.

Fees: the fees payable by Customer to HDS for the supply of Products and/or Services, as set out in HDS' invoice to Customer.

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 Customer for products and services similar to the Products Services and under similar terms and conditions for similar pricings, whilst seeking to comply with its contractual obligations and complying with applicable laws.

HDS Property: all Products provided to Customer by HDS prior to the passing of title pursuant to Section 1.3, all products loaned to Customer pursuant to Section 1.6, any consumption or other services contemplated by Section 2, and all other HDS materials and property that HDS retains on Customer's premises pursuant to the performance of Services.

Hitachi IP: all items and materials that HDS provides to Customer or otherwise creates pursuant to this DPA, and their changes, improvements, additions, enhancements, new versions, updates and derivatives.

Initial Service Period: the non-cancellable Service Period of the duration referred to in, and commencing on the date referred to in, HDS' Quote (or if there is no Quote, then the Order).

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 to 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.

Install: has the meaning set out in the maintenance and support provisions of the Exhibits A and B to this DPA.

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 under Section 1.6, as set out in the applicable Loan Schedule.

Loan Schedule: a Schedule to this DPA, 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.

Maintenance and Support Services: the Equipment maintenance and Software support services described in more detail in the Exhibits A and B to this DPA (including the Service Descriptions as referred to in the Exhibits A and B to this DPA);

Order: a written or electronic order for the purchase of Products, Third Party Products and/or Services from HDS, or a document detailing the same, including, but not limited to, description and price which is submitted to, and accepted by HDS in accordance with this DPA and HDS' then-current ordering requirements.

Order Confirmation: a written or electronic acknowledgement or invoice issued by HDS in response to an Order.

Participation Agreement: an agreement for Affiliates of the Parties to participate in this DPA, which agreement will be in the form set out in Exhibit C to this DPA.

Party: HDS and Customer when referred individually.

Parties: HDS and Customer when referred jointly.

Personal Data: data which relates to a living individual who can be identified (a) from those data, or (b) from those data and other

information which is in the possession of, or is likely to come into the possession of the data controller. **Personnel:** of a Party means that Party's employees, contractors or workforce members.

Product(s): any Equipment or Software (including Third Party Products) listed in HDS' standard product price lists published from time to time.

Product Loan: HDS' loan of Products in accordance with Section 1.6 and the applicable Loan Schedule or Loan Agreement (as applicable).

Professional Services: software enablement, data migration and other services.

Published Specifications: are the specifications for Products stated as valid at the time of acceptance of the Order.

Quote: a written quotation or proposal issued by HDS for the proposed supply of Products and/or Services.

Refund: a refund of the price that Customer has paid for the Product will be less a straight-line depreciation, based on a 3 year useful life. A refund of Service fees will be the pro-rated portion of the Fees paid by Customer, for the Services actually delivered and which are in conformity with the HDS Services warranty.

Renewal Service Period: the automatically renewable Service Period commencing at the end of the Initial Service Period and any subsequent renewal period thereafter.

Security Breach: the unauthorized access, acquisition, use, disclosure, modification or destruction of unencrypted or physical copies of an identifiable person's name in combination with medical information, Social Security numbers, financial account information, driver's license numbers, state identification numbers, or other Personal Data protected by the applicable security breach statute.

Services: Billable Services (as defined in the Exhibits A and B to this DPA), Maintenance and Support Services, Professional Services and any other services listed in HDS' published price lists or similar offerings from time to time.

Service Period: term during which Maintenance and Support Services are provided. The term of a particular Service Period and the applicable charges shall be as specified in an 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 the Equipment ("**Operating Software**"), (ii) software programs supplied by HDS ("**Programs**"), and (iii) any Updates, related documentation and Published Specifications.

Statement of Work or SOW: a document agreed and executed between the Parties, which fully describes the Professional Services being provided by HDS and sets out the scope of services being provided, the price, estimated delivery dates, service deliverable acceptance procedures and roles and responsibilities of the Parties.

Tax: a tax, duty, fee or impost (including withholding tax and VAT).

Third Party Products: any Equipment or Software supplied to HDS by any party other than Hitachi Ltd. for direct or indirect distribution to end users, which is listed in HDS' standard product price lists published from time to time.

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 Exhibits A and B to this DPA contains Third Party Related OSS, Customer must refer back to that applicable license for those terms.

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

Use: to use Software and Third Party Software in live production for processing data either in operation of Products, in use of Programs or in receipt of Services.

Warranty Period: means the applicable warranty period listed in the Exhibits A and B to this DPA for a particular Product or, in the case

of Third Party Products, as may be provided in the applicable third party warranty terms.

Work Product: any works of authorship, program listings, tools, documentation, reports, drawings and similar works created by HDS or on behalf of HDS pursuant to the supply of Services.

EXECUTED AS AN AGREEMENT:

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

HITACHI DATA SYSTEMS N.V.	CUSTOMER
By	By
Name	Name
Title	Title
Company	Company
Date	Date

EXHIBIT A
SOFTWARE LICENSE TERMS

Capitalized terms will have the same meaning as defined in the DPA and this Software License.

1. License Grant

- (a) Except as otherwise expressly provided, HDS grants Customer a personal, non-transferable, non-exclusive license:
- (i) to Use the Software solely on the HDS Equipment with which it is shipped, to enable the Equipment to function;
 - (ii) to Use the Software solely for Customer's internal business purposes, subject to the restrictions specified on any Equipment used in connection with the Software. For capacity-based Software, Customer will Use the Software up to the specified capacity purchased (e.g. number of Cores specified in an Order) on the relevant equipment, network, device or CPU. If Customer wishes to exceed capacity, Customer must pay to HDS any additional license fees first;
 - (iii) if Customer is provided with Work Product under a Statement of Work, to Use, reproduce, copy and display the Work Product solely for Customer's internal business purposes. Customer obtains no title or ownership in any Software or Work Product or Maintenance Material under the Agreement or these License Terms, nor does Customer obtain any right to sublicense the Software, Work Product or Maintenance Material;
 - (iv) if Customer has purchased "development/testing" licenses, Customer acknowledges that such licenses are intended for Use in Customer's development and testing environments only, and not in a Production Environment; and
 - (v) if Customer has loaned Equipment from HDS, to Use the Software loaned to Customer as part of the Equipment for Customer's internal evaluation purposes, and subject to the additional terms set out in Section 2 below.
- (b) Customer must only use the Software as provided:
- (i) in either machine-readable object code form or machine-compressed form (and the related Documentation may be used only in printed or electronic form);
 - (ii) in accordance with the Published Specifications applicable to that Software; and
 - (iii) in compliance with all applicable laws.

2. Software Evaluation License

Where HDS has granted Customer the right to Use the Software for Customer's evaluation purposes, Customer must Use the Software solely to evaluate its performance and functionality on the relevant Equipment with which HDS has supplied the Software, in Customer's internal business environment at the location, and only for the Designated Use, that Customer has agreed with HDS under the loan arrangement. Customer's right to Use the Software for such purpose will end upon the earlier of the expiration of the applicable loan period or termination of the loan arrangement.

3. Third Party Software

- (a) Third Party Software may be embedded in the Hitachi proprietary Software that is branded as HDS and sublicensed directly to Customer under these License Terms. Other Third Party Software is provided to Customer subject to Third Party EULAs, which are available from HDS at Customer's request. Such EULAs may be in the form of shrink-wrap or click-through license agreements.
- (b) Customer will have no recourse against HDS with respect to any Third Party Software, unless HDS is the stated licensor and then, only to the extent expressly provided for in such license. Customer is 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 Customer's acceptance of any Third Party EULAs or Open Source Software Licenses (or other similar agreements presented by Third Party Licensors) will not adversely affect Customer's use of the Product as contemplated under the Agreement.

4. Open Source Software

- (a) The Software may include Open Source Software. Customer can access a complete list of the licenses for the Open Source Software provided with the Hitachi proprietary Software from the Open Source License Website. Customer is responsible to read the terms of, and adhere to all licenses for Open Source Software.
- (b) By accepting these License Terms, Customer is also accepting 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. Customer must refer to the applicable Third Party EULA or the file directory located in the Software for those terms.
- (c) If the Software includes 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 ("**GPL Software**") and the applicable source code was not included in the Software, then Customer may obtain a copy of the applicable source code for the GPL Software by either: (i) requesting HDS to mail the open source code to Customer; or (ii) downloading the open source code by following the links on the website referenced in the Open Source License Website.

5. Use Restrictions

Except to the extent these restrictions are prohibited by applicable law, prohibited by the terms of any Open Source Software license or otherwise agreed to by HDS in writing, Customer 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 the prior written consent of HDS;
- (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 the Agreement, these License Terms or as authorized by HDS;
- (f) remove or otherwise tamper with any proprietary notices, labels or marks contained on or in the Software;

- (g) use or permit the Software, any Product or any Work Product to be used to perform services for third parties, whether on a service bureau or time sharing basis or otherwise, other than as expressly allowed in the Agreement or as authorized by HDS;
- (h) use the Software or any Product or allow their use for the purpose of: (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; (i) use the Software via any communications network or by means of remote access; or
- (j) use the Software in any manner other than as expressly provided herein.

6. **Authorized Copies**

HDS will provide Customer with one (1) copy of the media and documentation for the Software. For Software licensed under an enterprise license, HDS grants to Customer the right to make copies of the Software solely for Customer's own internal use, within the scope of the enterprise license. Customer may also make one copy of back-up or archival copies of Software solely for Customer's own internal use, provided that Customer ensures that such copy bears HDS' proprietary notices, labels or marks. Customer must reproduce on all copies made, all proprietary and copyright notices contained on or in the Software.

7. **Software Transfers**

Except to the extent otherwise provided in any applicable Open Source Software license, Customer must not transfer the Software to any other person or entity without HDS' prior written consent. Customer may, however, transfer the Operating Software to a third party ("*transferee*") solely with the related HDS Equipment, but Customer 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 extension of any existing warranty or support arrangements. When the transfer is complete, Customer must remove and destroy all copies of the Operating Software in Customer's possession or under Customer's control. Customer must also permanently remove all Software from any media upon which it is stored prior to disposing of the media.

8. **Location of Software**

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

9. **Verification Rights**

HDS or its independent auditor may, upon reasonable notice to Customer, examine and audit Customer's records and systems to ensure compliance with applicable software licenses. The audit will be performed during normal business hours in a manner which does not unduly interfere with Customer's business operations. If the audit shows that Customer is using more copies of the Software than permitted under Customer's applicable license(s), HDS may charge Customer additional usage fees.

10. **Termination of Licenses**

Customer's license in the Software will terminate: (i) when that Software is replaced with any upgrade, revision or replacement Software; (ii) when the license term ends, if any is expressly stated; (iii) if Customer is in breach of these Online License Terms, any license for Third Party Software, or the Agreement.

11. **Definitions**

Core: an individual processor and associated cache memory that is capable of executing a single Software or Third Party Software code thread at a time.

Designated Use: Customer's internal business evaluation of the performance of the Product in a non-production environment.

HDS Partner: an authorised reseller or distributor under the Hitachi Data Systems True North Partner Program, the Global Systems Integrator Program or any related Programs offered by HDS, including any substitute programs (howsoever named), from time to time.

Maintenance Material: is defined in the HDS Warranty Maintenance and Support Terms.

Open Source License Website: <http://www.hds.com/corporate/legal/>

Open Source Software: Third Party Software which may be available without charge for use, modification or distribution and generally licensed under the GNU General Public License, Lesser General Public License, Apache or other open source software license.

Production Environment: any computer system running Software that: a) is being actively used to process data or provide information to the system's users, and b) is not being used for testing purposes.

Published Specifications: are the specifications for Products stated as valid by HDS at the time of acceptance of the 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 the Equipment ("**Operating Software**") and (ii) software programs supplied by HDS ("**Programs**") and (iii) and any Updates, related documentation and Published Specifications.

Third Party EULAs: separate licenses directly between Customer and the third party licensor, which terms may be shrink-wrapped or click-through and related documentation, which may be provided to Customer in connection with delivery of the Software.

Third Party Licensor: the person set out in the Third Party EULA who licenses the Third Party Software to Customer.

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 Exhibits A and B to this DPA contains Third Party Related OSS, Customer must refer back to that applicable license for those terms.

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

Use: to use Software and Third Party Software in live production for processing data either in operation of Products,, in use of Programs or in receipt of Services.

EXHIBIT B
WARRANTY AND MAINTENANCE AND SUPPORT TERMS

Unless the Parties expressly agree otherwise, capitalized terms in these Warranty and Maintenance and Support Terms (“WMS”) have the same meaning as defined in the DPA. For further descriptions of the Service Plans and other Service related details for Customer’s Maintenance and Support coverage, please refer to the information located at <https://www.hds.com/support/maintenance-coverage-services/customer-support-terms.html> and the Plan descriptions set out in <https://www.hds.com/support/maintenance-coverage-services/> (“Service Descriptions”). The Service Descriptions form part of, and are incorporated by reference into these WMS Terms. Customer agrees and acknowledges that HDS may update the 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) HDS warrants to Customer that, during the Warranty Period, the Products will function in accordance with the Published Specifications, when used properly and normally. To make a valid warranty claim, it must be in accordance with the following sections. **The Warranty Period begins on the Warranty Commencement Date.**
- (b) The warranty in Section 1(a) does not apply to any Third Party Products that are warranted by the third party licensor under a separate third party end user license agreement (or EULA) provided to Customer with the Third Party Product.
- (c) Subject to the exclusions in Section 6, in the event of a Defect, HDS will provide the Warranty Services in accordance with the Maintenance and Support Terms set out below. To make a valid warranty claim to HDS, Customer must make such claim during the Warranty Period, and Customer must contact Customer’s local HDS support contact center within seven (7) days of discovering the Defect. If HDS considers that, in the circumstances, the Defect will not be remedied by the provision of the Warranty Services, then HDS will provide Customer with a Refund for the Defective item, provided that Customer promptly returns it to HDS. The remedies set out in this Section 1(c) comprise HDS’ sole and exclusive liability to Customer and Customer’s sole and exclusive remedy in relation to a breach of the warranty in Section 1(a).
- (d) HDS warrants to Customer that the Maintenance and Support Services and Installation Services will be provided to Customer in a professional and workmanlike manner in accordance with Good Industry Practice. If HDS fails to do so, HDS will promptly re-perform the applicable services at no additional charge to Customer, provided that Customer has submitted a claim in writing to HDS for the service failure within ninety (90) calendar days of the date that the Warranty Services giving rise to the claim were performed and HDS has accepted that claim. This is HDS’ sole and exclusive liability to Customer and Customer’s sole and exclusive remedy in relation to the breach of the warranty in this Section 1(d).
- (e) **EXCEPT AS SPECIFIED IN THESE WMS TERMS, 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. HDS DOES NOT WARRANT THAT ANY PRODUCT OR SERVICE WILL OPERATE UNINTERRUPTED OR ERROR FREE. HDS WILL HAVE NO LIABILITIES OR OBLIGATIONS FOR THE PRODUCT OR SERVICE WARRANTY OTHER THAN THOSE STATED IN SECTION 1.**

MAINTENANCE AND SUPPORT TERMS

2. Maintenance and Support Plans

- (a) In addition to Customer’s entitlement to the Warranty Services in Section 1, and subject to the Service Descriptions and Customer’s payment of all applicable fees in full, HDS will provide Customer with Maintenance and Support Services on the relevant Products, and under the applicable Plan, as specified in the Order that Customer has issued to HDS or a HDS Partner. Customer’s HDS Partner is not authorized to provide such services to Customer, unless they are also authorized as a HDS 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 noted in the Service Descriptions.
- (c) Warranty, Maintenance and Support Terms for Pentaho Programs are covered separately to these WMS Terms. Please refer to the Support Terms for Pentaho Programs located at https://www.hds.com/corporate/legal/?WT.ac=us_ft_legal and to the Pentaho Support Features set out in the Service Descriptions. Services for Pentaho Programs will be provided by Pentaho on behalf of HDS.

3. Service Partners

- (a) HDS may authorize third parties to provide Maintenance and Support Services to Customer on HDS Equipment and/or Software (“**Service Partners**”). Service Partners may be either: (i) Independent Service Providers, or “**ISPs**”, which are third parties certified and authorized to provide Maintenance and Support Services on behalf of HDS as its subcontractor, subject to these WMS Terms, or (ii) Authorized Service Providers, or “**ASPs**”, which are certified and authorized to provide Maintenance and Support Services under a contractual arrangement that Customer enters directly with the ASP, and to which HDS is not a party.
- (b) HDS will authorize its ISPs to deliver Maintenance and Support Services to Customer on behalf of HDS on these WMS Terms, but HDS will remain responsible for the performance of such Services to Customer.
- (c) However, HDS will not be responsible to Customer for the acts or omissions of the ASP in the performance of Maintenance and Support Services, and such performance will be a matter for Customer and the ASP under the terms of the contract that Customer put in place directly with the ASP.

4. Scope of Equipment Maintenance Services

Subject to the exclusions in Section 6, HDS Equipment maintenance comprises the following:

- (a) supervision and installation of engineering changes impacting the reliability of the Equipment, which HDS determines to be applicable 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 deemed necessary by HDS as described in the hours of coverage under the applicable Plan.

5. Scope of Support Services for Software

- (a) Subject to the exclusions in Section 6, HDS Software support is the support required in connection with ordinary use of the Software in accordance with its Published Specifications, through:
 - (i) remote telephone support to:
 - (A) identify the Defect, and 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 performed at HDS' sole discretion; and
 - (iii) the provision of access to Updates as and when HDS makes them generally available. Additional fees for Updates may apply. Access to Updates will be without additional charge, where HDS provides the Updates on that basis to its general customer base.
- (b) HDS only supports the Operating Software (including any Array Based Software) if HDS is also maintaining the Equipment on which it is installed. HDS' obligation to provide Software support is contingent upon:
 - (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 maintenance agreement; and
 - (iii) the Software must be operating in a HDS supported configuration.

If Customer's license is terminated for any reason (including due to the assignment or transfer of the license to another party) then HDS' Software Maintenance and Support Services obligations for the relevant Software will cease.

6. Warranty and Maintenance & Support Exclusions

(A) Service Exclusions

HDS' Warranty Services in Section 1, and the scope of Maintenance and Support Services in Sections 4 and 5 do not apply to, and exclude:

- (a) any loss of, or damage to Products or Defects in Products caused by:
 - (i) any act or omission of any party other than HDS or an HDS ISP, including but not limited to, the Products not being properly installed or maintained by any party other than HDS or a HDS ISP;
 - (ii) accident, natural disaster, transportation, neglect or misuse, improper maintenance from any cause other than ordinary use;
 - (iii) Customer's failure to provide and maintain a suitable operating environment for the Products, as specified by HDS (including but not limited to failure of electrical power, air conditioning and humidity control, environmental containments, and, as applicable for the Product, any of the items that Customer is required to provide under Section 16 of these WMS Terms, as they pertain to the environment of the Product);
 - (iv) the Products being used in a manner other than in accordance with the Published Specifications or in a manner which is outside the scope of Customer's licensed rights in the Software;
 - (v) any Equipment maintenance or Software support service that is impractical or otherwise rendered more difficult for the service personnel or representatives of HDS or HDS Service Partner to provide because of any alterations, additions, modifications to any Product or Customer's system or operating environment or the connection of any Product by mechanical or electrical means to another machine or device;
 - (vi) the Products being modified without HDS' prior written consent; this includes engineering changes other than those described in Section 4(a) and software installation services described in Section 8(b);
 - (vii) the Products being painted, refinished or refurbished or external works being done to the Products without HDS' prior written consent; or
 - (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 HDS' prior written consent;
- (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 HDS;
- (d) the provision of maintenance or other services on HDS-provided host bus adaptor ("HBA") Equipment not installed and utilized with HDS storage Equipment;
- (e) the physical installation, de-installation and replacement of HBAs within Customer's environment;
- (f) Professional Services and training, which are scoped separately under a Statement of Work and delivered by HDS Global Solution Services 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 Releases.

(B) Field Replacement Units

- (a) Equipment may include components which are used or remanufactured, and regardless of this, HDS' warranties in Section 1 will apply. Where HDS has shipped a Field Replacement Unit ("FRU") to Customer 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 HDS, while the FRU will belong to Customer. Any removed components which are: (i) not returned to HDS within 60 calendar days of the date of their removal; and (ii) not covered by a valid retention option that is current at the time, HDS will be entitled to charge Customer for such components at

HDS' then-current spares price list. The data and other confidential information that is contained in any removed Product component will be Customer's responsibility and Customer must make Customer's own arrangements to delete that data. If Customer is subject to security requirements that require the data to not be removed from Customer's site and Customer is not covered by a valid retention option, it is up to Customer to ensure that the data is deleted. Should Customer requires HDS to delete data for Customer, HDS may charge Customer an additional fee.

- (b) Without limiting the operation of Section 2(a), breaking the factory seal on a FRU by any party other than HDS or a HDS ISP will void Customer's entitlement to Warranty Services and/or Maintenance and Support Services in their entirety.

7. Remote Monitoring Services.

- (a) Maintenance and Support Services include remote diagnostic and monitoring services on eligible Equipment, using HDS' proprietary Hi-Track[®] hardware, software, Microcode and documentation ("**Hi-Track Services**"). All right, title and interest in the Hi-Track Services, including all material that is used to provide the Hi-Track Services, will be retained by HDS and its licensors, and Customer does not get any licensed rights in it.
- (b) HDS will not charge Customer a fee for the supply of Hi-Track Services, but Customer must provide and maintain, at Customer's cost, all telecommunications lines, monitor, PC, modem and access required for HDS to implement and provide the Hi-Track Services.
- (c) If the Agreement (or the supply of any of the Maintenance and Support Services under it) or Customer's separate services contract with a HDS ASP is terminated, Customer will allow HDS to disable the Hi-Track Services and de-install and remove all material on Customer's premises used by HDS to provide the terminated services.
- (d) In providing Hi-Track Services to Customer, HDS does not access Customer's data. HDS will maintain the confidence of all passwords that Customer provide to HDS in connection with its supply of Hi-Track Services.
- (e) Remote monitoring services other than Hi-Track may be provided for certain eligible Equipment, which does not prompt HDS Service activity or call logging. For more details, please refer to the Services Exhibits A and B to this DPA.
- (f) If Customer refuses to allow HDS to provide the Hi-Track Services or otherwise disable or interfere with Hi-Track on the Equipment, Customer acknowledges that HDS will be prevented from providing the remote diagnostic and monitoring services that are essential to its supply of Maintenance and Support Services. In such circumstances, HDS will not be liable for any service level response time commitments nor for any delays in providing the Maintenance and Support Services in accordance with these WMS Terms. HDS may use reasonable efforts to assist Customer with any Defects of which Customer notify HDS, but any efforts which are based on, or otherwise rely on assessments or information that Customer, or anyone on Customer's behalf has provided to HDS, will be at Customer's risk. HDS may charge Customer an additional fee in order to provide the Maintenance and Support Services in such circumstances.

8. Installation Services

- (a) Subject to Sections 8(b) and (c), HDS will provide installation services as described in the Service Descriptions pursuant to the relevant Order.
- (b) HDS may provide on-site Software installation services (where HDS advises that the Software has to be installed by HDS) for an additional fee. Installation does not result in production ready implementation of the Software; production ready Software implementation is a Professional Service. If Customer requires a production ready implementation of Software or additional capabilities to the standard installation services, HDS may require Customer to enter into a separate Statement of Work for those services and HDS will be entitled to charge Customer an additional fee based on Customer's requirements, and the Software and/or Equipment, subject to that Statement of Work. HDS will advise Customer of the Professional Services fees 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 Customer's 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-HDS equipment;
 - (viii) onsite standby beyond the storage system test phase;
 - (ix) de-installation of displaced equipment;
 - (x) attendance at Customer's meetings;
 - (xi) SAN design, integration and implementation; or
 - (xii) Software production-ready implementation.

9. Services for Additional Fees

If Customer requests HDS to perform:

- (a) any of the "excluded" services in Section 6 or 8(c) of these WMS Terms; or
- (b) any Maintenance and Support Services outside the coverage hours or support zone for Customer's support Plan;
- (c) any other activities or tasks, which HDS has stated in these WMS Terms may be subject to an additional fee; or
- (d) any other Services which HDS reasonably determines to be "out of scope" of these WMS Terms,

HDS may perform the relevant Services at HDS' then current rates or on a quoted fixed fee basis ("**Billable Services**").

10. Void Arrangements and Re-certification

- (a) Customer is not entitled to move or relocate any part of the Product (including moving any disks from one item of Equipment to another), or to allow any third party other than HDS authorised service personnel or representatives (e.g. a HDS Service Partner) to perform any maintenance and/or support on any Product, or repair any Product, without HDS' prior written consent. If Customer does this, it will void

Customer's entitlement to Warranty, Maintenance and Support Services in respect of that Product and Customer will need to undergo re-certification of the applicable Product, in order to reinstate it to Customer's Plan.

- (b) If Customer's Warranty, Maintenance and/or Support Services have been voided under Section 10(a) or otherwise the Maintenance and Support Services have been terminated under Section 11 and Customer wishes to reinstate the Maintenance and Support Services for all or part of the affected Product, Customer must have the relevant Product re-certified by HDS or a HDS Service Partner, in order to have HDS' obligations under these WMS Terms continue to apply to it. HDS will charge Customer 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. Termination and Expiration of Maintenance and Support Services

- (a) Without limiting any other rights of HDS, HDS reserves the right to terminate all or any of the Maintenance and Support Services at any time by written notice to Customer:
- (i) when Customer transfers Customer's Equipment or any Software to another person or entity or otherwise Customer relocates the Equipment or any Software in any way, without the prior written consent of HDS;
 - (ii) where the Equipment or any Software is damaged by accident, neglect or abuse by any party other than HDS or its subcontractors, or by natural disaster, or subjected to an unsuitable operating environment, not properly installed or maintained by any party other than HDS, or its Service Partner;
 - (iii) where 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 Customer's licensed rights in the Software;
 - (iv) where Customer has modified the Equipment or any Software in any way (including any unauthorized attachments or additions to the Equipment or any Software) without the prior written consent of HDS;
 - (v) where Customer has failed to provide and maintain a suitable physical operating environment for Products, as specified by HDS (including but not limited to failure of electrical power, air conditioning and humidity control, or environmental contaminants); or
 - (vi) where Customer has infringed any rights of HDS in any Maintenance Material or any Software.
- (b) Without limiting Customer's rights elsewhere in the Agreement, following expiration of the Initial Service Period, Customer may terminate the Maintenance and Support Service for one or more items of Equipment and/or Software by giving HDS no less than ninety (90) calendar days' prior written notice. The reinstatement of any Maintenance and Support Services so terminated will be subject to a reinstatement fee (based on HDS' then-current rates for reinstatement at the time), in addition to the then current monthly fee for such Services. Any notice to terminate a single Maintenance and Support Service must identify the specific Service item to be terminated. If, in the reasonable opinion of HDS, the termination of a single Maintenance and Support Service adversely affects HDS' ability to provide Customer other Services, then HDS may in its sole discretion terminate these other Services.
- (c) If any Maintenance and Support Services are terminated or expire, Customer's rights, licenses and privileges under these WMS Terms terminate and Customer must comply with HDS' directions to either remove and destroy all Hitachi intellectual property and confidential information in Customer's possession or control, or to return such material and items to HDS at Customer's cost. Furthermore, Customer will not be relieved from Customer's payment obligations and any money due to HDS will become immediately payable. Neither Party is deemed to have waived any of its existing rights.

12. Current and Superseded Software Support

- (a) HDS will provide Normal Support (as defined below) for the Current Version and one prior Version of the Software. If a release of Software is older than one prior Version from the Current Version, then HDS will provide Limited Support (as defined below) for a twelve (12) month period following the general availability of the Current Version.
- (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. HDS does not provide support for Software releases that are older than two prior Versions of the Current Version.
- (d) HDS may refuse to supply Customer with Patches and Fixes for Software if Customer 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 HDS has specified otherwise in its EOL communications at <https://www.hds.com/assets/pdf/hitachi-data-systems-end-of-service-life-matrix.pdf> ("**EOL Website**"). Customer shall also refer to Customer's local HDS support contact center for any additional policies, which may apply to EOL Products in Customer's country or region.
- (b) HDS' obligations to provide Services in accordance with these WMS Terms for Products that have been announced as "End of Life" or "EOL" ("**EOL Service Obligations**") will expire five (5) years from the Withdraw from Sale Date (however, Customer shall note that some Products, such as servers and racks, may have a different period that will apply, e.g. 3 years and Customer should confirm the applicable period of the EOL Service Obligations at the EOL Website). HDS will use commercially reasonable efforts to provide Customer with the EOL 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", HDS 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)) and further subject to a twenty (20) % increase on the monthly fees payable by Customer for the Maintenance and Support Services. HDS will make Maintenance and Support available to Customer for a period of up to a maximum of twelve (12) months from the date of the EOSL announcement ("**Extended Support Period**"). HDS 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) without liability to the other by providing no less than thirty (30) days prior written notice.
- (e) Terms for “best effort” support from HDS:
 - (i) Customer will remain eligible for Equipment repairs by means of spare parts replacement, whereby HDS 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 Product and Customer will not receive any further Patches and Fixes, Service Packs or Updates. HDS will provide Software support to the best of its ability, with the resources available to it.
 - (iii) Engineering support is no longer available for Products after their EOSL date.
 - (iv) Best effort support may be cancelled or terminated by HDS at its discretion, regardless of published dates, in accordance with this Section 13.

14. Maintenance Material

- (a) HDS may store Maintenance Material within the Products or elsewhere on Customer’s premises for convenience. Only HDS or Service Partner personnel will be authorized to use the Maintenance Material.
- (b) Maintenance Material will always remain HDS’ sole and exclusive property as Hitachi IP as defined under the Agreement, and Customer does not get any licensed rights. Without limiting Customer’s obligations under the Agreement, Customer must not use, access, modify, copy or relocate the Maintenance Material or allow any other person to do so and must return or allow HDS to de-install it upon demand by HDS 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

Customer agrees that:

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

16. Customer Responsibilities

- (a) To assist HDS to provide Customer with Services, Customer must provide HDS, the HDS ISP and their respective Personnel with prompt access to Customer’s 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.
- (b) Customer is responsible for the wireless, microwave, cable, physical or other physical data networks. Customer is 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 Section 16(a), 16(b) or the terms of any applicable Statement of Work, if requested by HDS, Customer will assign an appropriately qualified person(s) to be Customer’s representative(s) for the receipt of the Services and to communicate with HDS on all Service-related matters, and HDS will be entitled to assume that the acts, conduct and decisions of such person(s) are authorized by, and are binding on, Customer.

17. Liability for Service Delays and Failures

- (a) If HDS or its partner or sub-contractor fails to perform, or delays in the performance of any service or other obligation required of HDS hereunder, HDS will not be liable to Customer for the failure or non-performance (including any consequences under the Agreement), to the extent that such failure or non-performance is caused by Customer’s act or omission, or the act or omission of Customer’s Personnel or any other person acting on Customer’s behalf.
- (b) In any event, Customer agrees to take all steps and measures available to Customer to mitigate and minimize the losses, costs and damages arising from such failure or non-performance of HDS, irrespective of the nature and extent of Customer’s contribution.

18. Defined Terms

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

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 HDS.

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

Delivery Point: HDS’ Product distribution centre or other location for delivery of Products, as nominated by HDS.

End of Life or EOL: when HDS announces that a particular Product is no longer manufactured and will be withdrawn from sale, after which it will no longer be generally available for purchase. HDS may publish EOL dates for Products online; see <https://www.hds.com/assets/pdf/hitachi-data-systems-end-of-service-life-matrix.pdf>.

End of Service Life or EOSL: when HDS announces that HDS withdraws the supply of Services with respect to an EOL Product.

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: The hardware component of any Product.

Field Replaceable Unit or FRU: a subassembly of components sealed at the factory and subject to replacement as a discrete unit at Customer's 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 Customer for products and services similar to the Services hereunder and under similar terms and conditions for similar pricings, whilst seeking to comply with its contractual obligations and complying with applicable laws.

HDS ASP: has the meaning set out in Section 3.

HDS ISP: has the meaning set out in Section 3.

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

HDS Partner: an HDS authorised reseller or distributor.

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 to 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.

Maintenance and Support Services: the Equipment 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 Hi-Track[®] 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 HDS Products.

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

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

Patches and Fixes: changes made to the Software by HDS that establish or restore substantial conformity with the applicable Published Specifications. In particular, "Patches" refers to minor enhancements to the Software that typically provide interoperability updates and "Fixes" refers to error corrections to the Software.

Personnel: of a Party means that Party's employees, contractors or workforce members.

Pentaho: Pentaho Corporation, a wholly owned subsidiary of HDS, who on behalf of HDS may be providing Maintenance and Support Services directly to Customer, solely in connection with the Pentaho Software Program(s) ("**Pentaho Program(s)**") licensed under an Agreement between Customer and HDS.

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

Product(s): Any Equipment and/or Software listed in HDS' standard Product price lists published from time to time.

Published Specifications: HDS' published specifications for Products that are stated by HDS as valid at the time of acceptance of Customer's order.

Professional Services: Software enablement, data migration, implementation or other design services.

Refund: a refund of the price that Customer has paid for the Product that is the subject of the Defect (and returned by Customer in accordance with these WMS Terms) less a straight-line depreciation, based on a 3 year useful life. A refund of Service fees will be the pro-rated portion of the Fees paid by Customer, for the Services actually delivered and which are in conformity with the HDS Services warranty.

Service Descriptions: the terms located at <https://www.hds.com/support/maintenance-coverage-services/customer-support-terms.html> and the Plan descriptions set out in <https://www.hds.com/support/maintenance-coverage-services/> or any replacement sites from time to time.

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 existing Software install base.

Software: The object code format of (i) programming firmware embedded in the Equipment to enable it to perform its basic functions or to operate the Equipment ("**Operating Software**"), (ii) software programs supplied by HDS or by a Third Party Software provider ("**Programs**"), and (iii) any Updates, related documentation and Published Specifications.

Software Support Services: The support that HDS provides, in accordance with these WMS Terms, in connection with ordinary use of the Software in accordance with its published specifications.

Third Party Products: any equipment or software supplied by HDS that are not manufactured by HDS or Hitachi Ltd.

Third Party Software: any software contained in or comprising Third Party Products.

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

Version: a base set of features and functionality for the Software.

Warranty Commencement Date: the first day of the calendar month commencing immediately after the date that HDS delivers the Product (which, for the purposes of clarification means when the Product has left the Delivery Point).

Warranty Period: the period specified in the Service Descriptions.

Warranty Services: services within the scope of Sections 4 and 5 of these WMS Terms that HDS considers necessary to correct the Defect so that the Products comply with the warranty in Section 1(a), including to replace any Defective Equipment component and, where HDS considers necessary, any Software media.

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

EXHIBIT C

PARTICIPATION AGREEMENT

This Participation Agreement ("**Participation Agreement**") dated [insert date] ("**PA Effective Date**") has been entered into by and between [insert full title of local HDS entity] ("**HDS Affiliate**") and [insert full title of local CUSTOMER company] ("**Customer Affiliate**").

HDS Affiliate and Customer Affiliate will be jointly referred to as "Parties" and individually as "Party".

Background

- (A) Hitachi Data Systems Corporation ("**HDS**") and [insert full company name of CUSTOMER] ("**Customer**") have signed an Direct Purchasing Agreement dated [insert date] ("**Agreement**"), a copy of which is attached as an Annex to this Participation Agreement.
- (B) HDS Affiliate and Customer Affiliate wish to benefit from the terms of the Agreement.

Now it is hereby agreed as follows:

1. Both HDS Affiliate and Customer Affiliate have read the Agreement, and agree that it will govern the engagement between them, except that:
 - (i) this Participation Agreement will commence on the PA Effective Date shown above and will continue to operate until either the Agreement as a whole is terminated, or until this Participation Agreement is terminated by either party on the same grounds as set out in the Agreement, or is terminated on 30 days' prior written notice by: (i) HDS Affiliate where the Customer Affiliate ceases to be a member of the Customer corporate group; or (ii) Customer Affiliate where the HDS Affiliate ceases to be a member of the HDS corporate group. Termination of this Participation Agreement does not affect the Agreement.
 - (ii) the governing law of this Participation Agreement will be [insert governing law] (except that body of law controlling conflict of laws). All disputes arising out of this Participation Agreement will be resolved by the courts of [insert choice of jurisdiction], and the parties to this Participation Agreement submit to the exclusive jurisdiction of those courts;
 - (iii) the currency for transactions under this Participation Agreement will be [insert currency]; and
 - (iv) Except for the claims of intellectual property rights infringement, breach of confidentiality obligation and willful misconduct, HDS Affiliate's and Customer Affiliate's respective maximum aggregate liability for all claims relating to this Participation Agreement, whether for breach of contract, breach of warranty or in tort, including negligence, will be [insert local PA cap] in aggregate.
2. HDS Affiliate and Customer Affiliate agree to comply with the terms of the Agreement which are incorporated by reference herein. References in this Participation Agreement to the Agreement mean the Agreement and any future amendments to the Agreement from time to time (unless the Parties expressly agree in writing that any particular amendment will not apply). Neither HDS Affiliate nor Customer Affiliate will be liable to other for the acts or omissions of other members of their respective corporate groups.
3. Capitalized terms used throughout this Participation Agreement which are not defined herein will have the meaning given to them in the Agreement. In the event of conflict between the terms of the Agreement and those of this Participation Agreement, the terms of this Participation Agreement prevails to the extent of such conflict.

IN WITNESS WHEREOF, the parties have caused this Participation Agreement to be executed their duly authorized representatives.

HDS Affiliate	Customer Affiliate
By	By
Name	Name
Title	Title
Company	Company
Date	Date