

## DIRECT PURCHASING AGREEMENT

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

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

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

### TERMS AND CONDITIONS:

#### 1. PURCHASING FROM HITACHI

##### 1.1 Scope of Agreement

(a) This DPA comprises the terms and conditions set out in this document and, to the full extent applicable, to the Supply Transactions made under this DPA: (i) the Exhibits attached to this document; and (iii) the Online Terms, which are defined herein and incorporated into the DPA by reference.

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

##### 1.2 Supply Transactions

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

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

##### 1.3 Ordering from Hitachi

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

#### 2. FINANCIAL TERMS

##### 2.1 Fees and Payment

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

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

(c) If You dispute Hitachi’s invoice in good faith, You must pay the full amount of the invoice by the due date and immediately provide

#### CUSTOMER (“You”):

Name:

Address:

Contact Person (for Notices):

#### Hitachi Vantara (“Hitachi”):

Name: Hitachi Vantara LLC

Address:

Contact Person (for Notices):

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

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

##### 2.2 Taxes

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

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

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

#### 3. INTELLECTUAL PROPERTY

##### 3.1 Ownership and Licenses

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

IP, as expressly granted by Hitachi under this DPA, including the Online Terms. All rights not expressly granted in the Hitachi IP are reserved by Hitachi or its licensors.

(b) Without limiting Your obligations in this DPA and except where permitted by applicable law, You must not take any action nor permit any third-party to take or allow any action that will, or is likely to, jeopardize Hitachi's or its licensors' rights in the Hitachi IP, including to: (i) copy, modify, disassemble, decompile or otherwise reverse engineer any Hitachi IP; (ii) sub-license any Hitachi IP without Hitachi's prior written approval; (iii) register or seek to register anywhere in the world any IP Rights that are confusingly similar to or otherwise comprise or include any variation to the Hitachi IP, or to use or allow the use of any Hitachi IP for that purpose; (iv) delete or tamper with any proprietary notices on or in the Hitachi IP; (v) do anything that diminishes the value of any Hitachi Trademarks; (vi) use the Hitachi IP in any manner which creates the impression that the Hitachi IP belongs to, or is identified with You; or (vii) use the Hitachi IP in violation of applicable law.

### 3.2 Intellectual Property Claims

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

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

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

### 3.3 Exceptions

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

## 4. CONFIDENTIAL INFORMATION

### 4.1 Obligations

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

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

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

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

### 4.2 Return or Destruction

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

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

### 4.3 Equitable Relief

Each Party agrees and acknowledges that a breach of this Section 4 will cause the disclosing Party irreparable damage for which remedies other than injunctive relief will be inadequate, and agrees that the disclosing Party may request injunctive or other equitable relief seeking to restrain such use or disclosure, without limitation or waiver of any other remedy available at law or in equity.

## 5. PERSONAL DATA

### 5.1 Your Obligations

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

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

Data about Hitachi Personnel to third parties apart from Your Personnel.

(c) Without limiting the operation of Section 5.1(a) of this DPA with regard to any Personal Data that You receive from Hitachi, You represent and warrant to Hitachi that: (i) You will not disclose any Personal Data of Hitachi, its Affiliates or their respective Personnel without Hitachi's prior written consent; (ii) You will enter a written contract with the recipient or sub-processor of the Personal Data on terms that are no less restrictive than in this Section 5 and You will remain fully responsible for their performance; (iii) the processing of Personal Data will not cause Hitachi or its Affiliates or their respective Personnel to breach any applicable laws; (iv) You will maintain adequate technical, physical and administrative security measures and safeguards to routinely back-up and ensure the integrity and security of Personal Data and will require the same from all of your downstream parties; and (v) You will strictly comply with the express instructions that Hitachi provides to You and You will only process the Personal Data for the purposes of this DPA.

## 5.2 Hitachi's Obligations

To the extent that that Hitachi processes Personal Data as part of a Supply Transaction under this DPA, Hitachi will not disclose such Personal Data without Your prior written consent or as otherwise permitted by applicable law. Hitachi will comply with applicable data protection laws for that Personal Data. Hitachi may disclose Your Personal Data to its Personnel who need to know the information to perform Hitachi's obligations under the DPA; and/or to its Affiliates, subcontractors, vendors, and agents who help Hitachi perform those obligations and who are contractually required to protect Your Personal Data or as required by applicable law.

## 5.3 Security Breaches

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

(b) Each Party will cooperate in any Security Breach investigation that the other Party conducts or is involved in and will take reasonable measures to mitigate any harmful effects of any Security Breach, of which it becomes aware.

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

## 6. LIMITATIONS OF LIABILITY

### 6.1 Uncapped Liability

Each Party acknowledges the full extent of its own liability to the other Party for all Losses arising from the following areas of liability:

(a) death or personal injury resulting from negligent acts or omissions; (b) Claims for non-payment; (c) the non-excludable statutory rights of consumers (for example, under laws providing for strict product liability); (d) any infringement of Hitachi IP, including any Software license breaches; (e) breaches of confidentiality obligations (but this Section 6.1 does not apply to a Party's liability for breach of Section 5.3 of this DPA nor for any Security Breach, whether

under this DPA or under applicable law); (f) fraud or deceit; (g) any indemnity obligations of a Party under this DPA.

### 6.2 Limits and Exclusions of Liability

(a) Subject to the other parts of this Section 6, the Online Terms and to the extent permitted by applicable law:

(i) unless an Exhibit expressly states otherwise, each Party's maximum and aggregate liability arising out of or in connection with a Supply Transaction under this DPA will not exceed the lesser of: (A) the total Fees that You have paid to Hitachi under the Supply Transaction out of which the liability arose during the twelve (12) month period immediately before the date of the first event that gave rise to the Claim; and (B) Two Million US Dollars (\$US2,000,000); and (ii) each Party's maximum and aggregate liability arising out of or in connection with the DPA in general (not related to any specific Supply Transaction) will not exceed the greater of: (A) the total Fees You have paid to Hitachi under all Supply Transactions made under the DPA during the twelve (12) month period immediately before the date of the first event that gave rise to the Claim; and (B) Five Hundred Thousand US Dollars (\$US500,000); and

(iii) neither Party will be liable in any circumstances for: (i) any indirect, punitive, special, incidental or consequential damages in connection with or arising out of the DPA; or (ii) whether direct or indirect, for loss of actual or anticipated business, revenue, profits, savings, goodwill, loss of use, lost or corrupted data, electronically transmitted Orders, or loss of other economic advantage.

(b) The limitations and exclusions of liability in Sections 6.2(a) above, apply whether such liabilities or Claims arise under breach of contract (including anticipatory breach or repudiation), tort (including negligence), statutory duty or otherwise (including in equity or common law) and even if the liable Party has previously been advised of the possibility of such damages. Liability for damages will be limited and excluded, even if an exclusive remedy provided for in this DPA fails of its essential purpose.

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

### 6.3 Excluded Performance

Except for payment obligations, neither Party will be responsible for its failure to meet any of its obligations due to events beyond its reasonable control, provided reasonable efforts have been made to perform those obligations. Without limiting the previous sentence, Hitachi will not be liable for any Failure, to the extent that the Failure is caused by Your act or omission or those of Your Personnel, End Users or any other person acting on Your behalf. You will take all measures available to mitigate and minimize the Losses arising from any Failure, irrespective of the nature and extent of Your contribution and You will ensure that Your Personnel do the same.

### 6.4 Warranty Exclusion

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

**7. TERM AND TERMINATION**

**7.1 Termination of the DPA**

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

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

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

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

**7.2 Consequences of Termination**

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

(b) Rights and obligations under the DPA, which by their nature should survive the termination or expiration, will remain in effect after termination. Neither Party is deemed to have waived any of its existing rights as a result of termination. Any termination will be without prejudice to any other rights or remedies a Party may be entitled to under this DPA or at law (or which have arisen on or before the date of termination).

**8. AFFILIATE TRANSACTIONS**

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

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

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

**9. GENERAL**

**9.1 Ethics and Business Conduct**

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

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

(c) By accepting the Hitachi Supplies from Hitachi, You agree that none of them will be re-exported, sold or otherwise transferred to any US-embargoed destination or any entity subject to a US denial order or to any person, company or entity if You know or have reason to believe that they will be re-exported, sold or transferred in violation of US or other applicable law or regulations, including but not limited to, where You know or have reason to know that such Hitachi Supplies or associated information are for use in connection with internal or political repression, the design, development, production, stock piling or use of nuclear, chemical or biological weapons or missiles or for the violation of any other human right, or if You know or have reason to know that governments (especially police forces, military, intelligence and security services) or telecom providers and/or data storage providers may be required to co-operate in human rights violations using the Hitachi Supplies. You certify that none of the Hitachi Supplies will be re-exported, sold or otherwise transferred to, or made available for any entity or end use that is engaged in the design, development, production, stockpiling or use of nuclear, biological or chemical weapons or missile technology, or for any entity with specific end use that is engaged in conventional weapons or any other military activities. You will indemnify, defend and hold harmless Hitachi and its Affiliates and their respective Personnel for all Losses arising directly or indirectly from any violation(s) or alleged violation(s) of any such applicable laws, regulations and requirements by Your or Your Personnel.

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

**9.2 Dispute Resolution**

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



(b) IF RECOURSE IS SOUGHT FROM THE COURTS, THEN TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE PARTIES KNOWINGLY AND WILLINGLY EACH WAIVE THEIR RESPECTIVE RIGHTS TO A TRIAL BY JURY OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF OR RELATED TO THIS DPA OR THE TRANSACTIONS CONTEMPLATED HEREBY, IN ANY ACTION, PROCEEDING OR OTHER LITIGATION OF ANY TYPE, WHETHER WITH RESPECT TO CONTRACT CLAIMS, TORT CLAIMS, OR OTHERWISE, INCLUDING ANY ACTION, COUNTERCLAIM OR OTHER PROCEEDING WHICH SEEKS, IN WHOLE OR IN PART, TO CHALLENGE THE VALIDITY OR ENFORCEABILITY OF THIS DPA OR ANY PROVISION HEREOF. THIS WAIVER WILL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS DPA.

### 9.3 Hitachi Property

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

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

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

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

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

### 9.4 Governing Law and Jurisdiction

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

(b) To the extent allowed in the applicable jurisdiction, the United Nations Convention on Contracts for the International Sale of Goods and its implementing legislation will not apply to this DPA.

### 9.5 Customer Referrals

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

(b) You grant to Hitachi and its Affiliates a worldwide, royalty-free, limited right to use Your company and brand name and/or logo in promotional materials within any medium, including press releases, presentations and customer references regarding any Supply Transactions. Hitachi agrees to obtain Your prior written approval for publicity that contains claims, quotes, endorsements or attributions by You, but Your approval cannot be unreasonably withheld.

### 9.6 Terms for Managing the DPA

(a) **Assignment and Transfer.** You must not sub-contract, assign, or otherwise transfer any of Your rights or obligations under this DPA or any Order, SOW or other document made under the DPA, without Hitachi's prior written consent. You agree and acknowledge that Hitachi may engage subcontractors to perform any of its obligations, but Hitachi will remain responsible for their performance.

(b) **Notices.** Notices made under the DPA must be in writing (printed or electronic format) to the appropriate representative of the recipient, as identified at the head of this DPA or otherwise to a senior executive. Notices will be deemed given: (i) where they are hand delivered, when a duly authorized Personnel of the recipient gives written acknowledgement of receipt; (ii) for email communication, at the time the communication enters into the information system of the recipient; (iii) for post, three (3) days after dispatch and; (iv) for fax, on receipted transmission of the fax.

(c) **Modifications.** Except for the Hitachi Policies and Online Terms, modifications to this DPA must be in writing signed by each Party's authorized representative. Hitachi may change the Hitachi Policies or Online Terms from time to time and post the revised version on the Hitachi Website. Any changes to the Online Terms will not apply retrospectively to Supply Transactions made prior to the effective date of the change.

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

(e) **Waiver.** If either Party fails to promptly exercise any contractual right, this does not of itself mean that the right has been waived. For a waiver of a right to be valid, it must be in written form and it will not give rise to an ongoing waiver or any expectation that the right will not be enforced, unless it is expressly stated to do so.

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

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

(h) **Defense of Claims.** You will defend or settle any Claim for which You have an indemnity obligation under this DPA, at Your sole expense. If You fail to do so promptly, Hitachi may assume control of the defense of the Claim at any time and You will reimburse Hitachi its reasonable expenses (including reasonable legal fees) in doing so,

without limiting Your other obligations. You must not settle a Claim without Hitachi's prior written approval.

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

(j) **Miscellaneous.** The Parties are independent contractors and there is no actual or deemed partnership, franchise, joint venture, agency, employment or other fiduciary relationship between the Parties. There are no third-party beneficiaries to the DPA. The Parties may sign the DPA and any further documents made under it in counterparts, which together will form a binding agreement on the Parties and each of which may be transmitted electronically and will be effective upon the Effective Date. When an obligation falls on a day that is not a Business Day, it must be done the following Business Day. Hitachi may withhold or rescind any of its rights of approval or consent at Hitachi's sole and absolute discretion. The singular includes the plural and *vice versa*. Words referring to gender include each gender. All grammatical forms of a defined term are given a corresponding meaning. Words such as "including" are not intended to be words of limitation. No rule of construction applies to disadvantage the Party that drafted the DPA. Unless the Parties expressly agree otherwise, the rules of interpretation in the DPA also apply to the Online Terms and any defined terms in the DPA will also have the same meaning in the Online Terms and *vice versa*.

## 10. DEFINITIONS

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

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

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

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

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

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keys, file hierarchies, graphics and user interfaces), solutions, related documentation, samples, business operations, financials, trade secrets, business outlooks, roadmaps and plans, revenue, pricing, customer information, partner information, data, inventions, techniques, methodologies, product design and any other technical or business information and strategies of a Party or its Affiliate, as well as the terms of this DPA, all documents attached to it or incorporated by reference, all Supply Transactions and other items expressly stated to form part of Confidential Information elsewhere in this DPA. Confidential Information excludes any Personal Data or any information that is: (i) already in the public domain prior to disclosure; (ii) becomes publicly known and made generally available after disclosure through no breach of the receiving Party; (iii) in the receiving Party's possession prior to the time it was received from the disclosing Party or came into the receiving Party's possession thereafter, in each case lawfully obtained from a source other than the disclosing Party and not subject to any obligation of confidentiality or restriction on use; or (iv) independently developed by the receiving Party, without use of or reference to the disclosing Party's Confidential Information.

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

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

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

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

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

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

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

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

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

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

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

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

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

**Interest:** interest on any overdue payments at the rate of 1.5% per month of the outstanding Fees, or the highest rate permitted by applicable law, if less from the date such sum is due until the date it is paid in cleared funds.

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

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

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

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

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

**Online Terms:** the online documents respectively located on the Hitachi Website at the following link, <https://www.hitachivantara.com/en-us/company/legal/terms-licensing-maintenance.html>, which contain licensing, warranty, maintenance and support terms and "as a Service" terms for the Hitachi Supplies and all replacements and updates from time to time.

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

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

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

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

**Personal Data:** for You, personal information about an identifiable person that You provide to Hitachi or otherwise use as part of the receipt or use of the Hitachi Supplies. For Hitachi, personal information about an identifiable person that Hitachi collects under the DPA.

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

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

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

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

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

**Refund:** a refund of the Fees that You have paid for Hitachi Supplies, which in the case of: (i) any Equipment and any Software licensed under a perpetual term license, will be less a straight-line depreciation, based on a 3-year useful life; (ii) any term based Programs, the unexpired period of the license and associated Maintenance and Support Services; and (iii) any Services, a pro-rated refund of Fees for the Services delivered that are not conformity with the Hitachi Services warranty.

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

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

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

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

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

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

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

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

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

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

**EXECUTED AS AN AGREEMENT:**

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

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



## **EXHIBIT A TO THE DPA - PRODUCT TERMS**

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

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

#### **1.1 Product Delivery**

Hitachi will do everything that is reasonably possible to meet its estimated Delivery dates for the supply of Products. Where necessary, Hitachi may make partial Deliveries of Products and send You a corresponding partial invoice. Delivery of Products will be FCA (as defined in Incoterms 2010) to Hitachi’s nominated Delivery Point, however Programs will be deemed Delivered when either: (a) the license keys for the Programs are sent to You electronically; or (b) the Programs are made available electronically to You. Hitachi will arrange shipping of Products on Your behalf and at Your risk, and charge You accordingly, unless You instruct Hitachi in writing not to do so.

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

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

#### **1.3 Product Installation**

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

#### **1.4 Product Acceptance**

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

#### **1.5 Product Loans**

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

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

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

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

(e) If You do not purchase the loaned Products, then Your rights in those Products will cease at the end of the applicable Loan Period or, if the Product Loan is terminated earlier, on the effective date of termination; in which case, You will return the loan Products to Hitachi in the same condition (normal wear and tear excepted) as the initial Delivery to You and if You fail to do so, You grant to Hitachi the right to enter the premises where the loaned Products are located, in order to recover them.

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

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

**2. MAINTENANCE AND SUPPORT OF PRODUCTS**

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

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

**3. RENEWALS**

**3.1 Renewal Notifications**

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

**3.2 Renewal of Maintenance and Support**

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

**3.3 Software Support Renewals**

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

**4. WARRANTY OF PRODUCTS AND SERVICES**

**4.1 Product Warranty**

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

**4.2 Service Warranty**

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

**5. THIRD PARTY PRODUCTS**

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

**6. DATA REMOVAL**

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

**7. DEFINITIONS**

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

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

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

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

**Installation** has the corresponding meaning.

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

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

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

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

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

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

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

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

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

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

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

**Warranty Period:** means the applicable warranty period listed in: (i) the Online Terms for a Product or, in the case of Third Party Products, as may be provided in the applicable third-party warranty terms and (ii) in the case of Professional Services, as set forth in Exhibit B.

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

**WMS Terms:** the Warranty Maintenance and Support Terms forming part of the Online Terms.

## **EXHIBIT B TO THE DPA - SOFTWARE TERMS**

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

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

#### **1.1 Software Delivery**

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

#### **1.2 Software Ownership**

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

### **2. SOFTWARE LICENSES**

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

(a) Without limiting the operation of any further licenses set out elsewhere in the DPA and subject to the restrictions set out in the Online Terms, or as otherwise set forth in the applicable Quote or SOW, Hitachi grants to You a personal, non-exclusive license to Use the Software in accordance with its Published Specifications and as authorized in this DPA: (i) solely for Your internal business purposes; and (ii) where You are expressly authorized by Hitachi to do so in the Quote, to provide Hosted Services to End Users. Your license rights in the Software are non-transferable, except as permitted by this DPA.

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

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

#### **2.2 Hosted Services**

(a) If You are authorized to provide Hosted Services under Section 2.1(a)(ii) of this Exhibit, You are responsible for entering the End User Agreements with End Users for the Hosted Services. However, without limiting the Online Terms, those agreements must be at least as protective of and must not limit or otherwise detract from Hitachi's rights under this DPA, especially with respect to those rights relating to IP Rights and Software licensing and Maintenance and Support Services. You must not provide to, or otherwise agree to any Additional Terms with an End User without Hitachi's prior written consent. If You do so, You will be solely responsible for the Additional Terms. Hitachi will have no liability to You or any End User for the Additional Terms. You will defend, indemnify and hold Hitachi harmless from and against all Losses incurred by Hitachi or its Affiliates due to any Claim made against Hitachi, directly or indirectly related to the making of such Additional Terms.

(b) You will provide customer support, helpdesk and similar services to Your End Users. Hitachi will not provide those services to Your End Users unless Hitachi enters a separate agreement for such services.

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

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

#### **2.3 Evaluation Licenses**

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

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

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

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



### **3. SOFTWARE SUPPORT**

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

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

### **4. RENEWALS**

#### **4.1 Renewal Notifications**

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

#### **4.2 Renewal of Maintenance and Support**

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

#### **4.3 Software Support Renewals**

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

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

#### **5.1 Software Warranty**

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

#### **5.2 Service Warranty**

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

### **6. THIRD PARTY SOFTWARE**

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

### **7. DEFINED TERMS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Patches and Fixes:** changes made to the Software by Hitachi that establish or restore substantial conformity with the applicable Published Specifications. **Patches** refers to minor enhancements to the Software that typically provide interoperability updates and **Fixes** refers to error corrections to the Software. Errors must be reproducible.

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

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

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

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

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

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

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

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

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

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

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

**WMS Terms:** the Warranty Maintenance and Support Terms forming part of the Online Terms.

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

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

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

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

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

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

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

### **3. CHANGE ORDERS**

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

### **4. YOUR RESPONSIBILITIES**

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

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

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

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

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

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

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

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

(a) Without limiting the operation of the Online Terms, Hitachi represents and warrants that it will provide the Professional Services to You in a professional and workmanlike manner and in accordance with Good Industry Practice and that upon delivery, the Deliverables and Work Product will conform in all material respects to the specifications set out in the applicable SOW.

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

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

**7. TERMINATION OF A SOW**

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

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

**8. DEFINED TERMS**

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

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

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

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

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



## **EXHIBIT D TO THE DPA - “AS A SERVICE” OFFERINGS**

### **1. Supply of XaaS Services**

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

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

(c) The terms related to Hitachi’s XaaS Services are located in, and form part of, the Online Terms for the purposes of the DPA.