

## MASTER “AS A SERVICE” AGREEMENT (“MXA”)

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

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

### TERMS AND CONDITIONS:

#### 1. SCOPE OF AGREEMENT

##### 1.1 Purchase of Services

You may purchase Services from Hitachi by executing a Service Agreement, which forms a separate, binding contract when executed by the Parties and comprises this MXA, the Service Summary, the applicable Service Catalogue, any SOWs related to the Services and any terms attached to or incorporated by reference in those documents. Terms contained in or on the back of Your purchase order or any other documents that You submit to Hitachi for the purchase of Services do not form part of the Service Agreement.

##### 1.2 Supply of Services

(a) You may request Evaluation Services from Hitachi in writing. You agree and acknowledge that Hitachi may require the Parties to enter a SOW or other agreement for the supply of Evaluation Services.

(b) In consideration of Hitachi’s receipt of the Fees, Hitachi will supply the Services to You pursuant to the Service Agreement. Hitachi will perform Professional Services where they form part of the Services. Except for Ancillary Services or where the Service Agreement states otherwise: (i) Professional Services will be supplied under a SOW that incorporates and is subject to the Service Agreement; and (ii) Hitachi will not start the Professional Services until the related SOW has been fully executed.

(c) You will, at Your cost, provide such assistance and co-operation as Hitachi reasonably requests, in order to enable Hitachi to meet its obligations under the Service Agreement. This includes the provision of: (i) timely access to Your operations, including all Non-Hitachi Infrastructure, Locations and third-party services and contracts; (ii) remote and on-site access to computer equipment, work space, facilities, Personnel, materials and other support and resources; and (iii) complete and accurate information. You agree to and acknowledge the Dependencies and Assumptions associated with the Services.

#### 2. FINANCIAL TERMS

##### 2.1 Fees and Payment

(a) Your obligation to pay the Fees will start on the Service Billing Date and will continue for the Service Term. The Fees will be set out in the Monthly Consumption Report for each Location, which together with the relevant invoice of Fees for the Location, will be provided to You in electronic format on a monthly in arrears basis. Unless the Service Agreement states otherwise, the Fees will be in US Dollars and will apply to all Locations. The Fees are accrued, due and payable monthly, regardless of whether You receive an invoice.

(b) You must pay the Fees to Hitachi within thirty (30) days from Hitachi’s invoice date. Without limiting any other rights available to Hitachi under this MXA or under applicable law: (i) if You fail to pay Hitachi’s invoice as required, Hitachi may charge You Interest on the overdue Fees, with effect from the invoice date and/or suspend delivery of the applicable Services; and (ii) 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 will pay the full amount of the invoice by the due date and promptly provide Hitachi

#### CUSTOMER (“You”):

Name:

Address:

Contact Person (for Notices):

#### Hitachi Vantara (“Hitachi”):

Name: Hitachi Vantara [insert full name]

Address:

Contact Person (for Notices):

with written notice of the dispute for the disputed portion. The Parties will use commercially reasonable efforts to resolve the dispute pursuant to Section 10.2 of this MXA. If the dispute is not resolved within the thirty (30) day period set out in Section 10.2, Hitachi may, without prejudice to any other rights available to Hitachi, 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.

(d) Hitachi will not be responsible for any Processing Fees associated with your payments under a Service Agreement, unless Hitachi has agreed in advance in writing. Unless otherwise agreed, Hitachi will pass through all Processing Fees invoices to You for Your payment.

(e) Notwithstanding any other part of the MXA or a Service Agreement, You must pay: (i) the Monthly Minimum Commitment, irrespective of Your actual Service usage; and (ii) the Termination Payment where You have exercised Your right to terminate the Service Agreement for convenience, or Hitachi has exercised its right to terminate the Service Agreement for cause, under Section 9 of this MXA. Your payment obligations under the Service Agreement, including payment of Fees, the Total Minimum Commitment and the Termination Payment, are without any deduction by way of set-off, counterclaim, withholding, discount or otherwise.

##### 2.2 Taxes

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

(b) For any transaction arising under this MXA, 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 MXA, 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 MXA. The paying party will remit to the proper authorities these 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 on transactions contemplated herein, the invoicing party will be solely responsible for providing to the paying 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 MXA 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 towards the timely collection of such refund.

### **3. USE OF SERVICES**

#### **3.1 Authorized Use**

(a) You may only Use the Services as authorized by this MXA and the Service Agreement and You will comply with all applicable laws, regulations, Hitachi Policies and any other mandatory codes and industry practices in that Use.

(b) Unless the Service Agreement provides otherwise, You will only use the Services for Your internal business purposes. You are not authorized to Resell the Services or any Hitachi Property.

(c) You are responsible for arranging the supply of internet connectivity for Your Use of the Services, as well as maintaining and managing the necessary infrastructure that is compatible with and capable of enabling Your Use of the Services in a secure and authorized manner.

(d) If Hitachi is required to physically or logically access any infrastructure at Your location in order to supply the Services, Hitachi will comply with Your Security Policies, provided that Hitachi has agreed to those policies in advance, in writing. If Hitachi considers that any additional or amended Security Policy that You provide to Hitachi after the Service Agreement Start Date will or is likely to have a materially detrimental impact on Hitachi's ability to provide the Services for the Fees set out in the Service Agreement, Hitachi will notify You of that in writing and either Party may submit those changes to the Change Management Process.

#### **3.2 Content**

(a) You are responsible for all Use of the Services and the Content, including: (i) full compliance with Your internal policies, industry best practice and applicable laws; (ii) proper configuration of the Services to meet Your operational and business requirements; (iii) transfer of Content to third parties; (iv) securing all necessary rights and permissions to Use the Content as part of the Services; and (v) the proper handling of all Content violation notices.

(b) Without limiting Sections 3.2(a) or 6.1 of this MXA, You must maintain appropriate security and back-up of the Content, including the use of encryption technology to protect all Content in motion and at rest from unauthorized access and during routine back-up and archiving processes.

(c) If You install or enable Third Party Content for Your Use with any Services or authorize Hitachi to do so, Hitachi may allow the Third Party Content provider to access Your Content as necessary for the interoperability of the Third Party Content with the Services.

#### **3.3 Misuse**

You must not Misuse the Services, nor authorize or allow Your Personnel or End Users to do so. Hitachi and its Personnel are not responsible or liable for any Misuse by You or any other person. If You become aware of any Misuse, You must notify Hitachi immediately. If You do this or if Hitachi otherwise becomes aware of Misuse then, without limiting any other rights available to Hitachi under this MXA or applicable law, the Parties will promptly meet to discuss in good faith the remedial actions.

### **3.4 End User Agreements**

(a) You are responsible for entering any service agreements with End Users. However, they must be at least as protective of and must not limit or otherwise detract from Hitachi's rights, especially with respect to IP Rights and the authorized use of Services and Misuse. You must not provide to, or otherwise agree to any Additional Terms with an End User without Hitachi's prior written consent. If You do so, You will be solely responsible for the Additional Terms. Hitachi will have no liability to You or an End User for those Additional Terms.

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

(c) You will use Your best efforts to ensure that Your End Users use the Content and Services consistently within the scope of Your authorized Use and do not cause You to be in breach of the Services Agreement. 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 Content and the Services. You will fully co-operate with Hitachi's investigation and remediation actions for such breach. End Users of the Hosted Services are not granted any rights in the Hitachi IP, including any access to or license rights in any Hitachi Property.

(d) If this MXA or the relevant Service Agreement ends or Your relationship with an End User ceases for any reason, You will end that End User's access and use of the Services immediately.

### **3.5 Responsibility for Hitachi Property**

(a) You are responsible for all loss of, and damage to Hitachi Property that is in Your custody or control, except where the loss or damage is caused by Hitachi's act or omission or due to normal wear and tear under proper use, storage and maintenance. Hitachi retains title to the Hitachi Property. You must provide to Hitachi and its authorized representatives reasonable access to the premises where the Hitachi Property is located upon Hitachi's reasonable notice, for inspection and verification purposes.

(b) Subject to any further insurance requirements set out in the Exhibit (if applicable to the Services) or as requested by Hitachi, You will maintain insurance policies with reputable insurers covering loss or damage of all Hitachi Property that is in Your custody or control, at least equal to the replacement cost of the Hitachi Property. You will provide Hitachi with evidence of such insurance at Hitachi's request.

## **4. PROPRIETARY AND LICENSE RIGHTS**

### **4.1 Hitachi IP**

(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 rights expressly provided in a Service Agreement.

(b) 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: (a) copy, modify, disassemble, decompile or otherwise reverse engineer any Hitachi IP, except to the extent permitted by applicable law; (b) sub-license any Hitachi IP without Hitachi's prior written approval; (c) register or seek to register anywhere in the world any Competing IP, or to use or allow the use of any Hitachi IP for that purpose; (d) delete or tamper with any proprietary notices on or in the Hitachi IP; (e) do anything that diminishes the value of any trademarks included in the Hitachi IP; (f) use the Hitachi IP in any manner which creates the impression that the Hitachi IP belongs to, or is identified with You; or (g) use the Hitachi IP in breach of applicable law.

## 4.2 License Grants

(a) Hitachi grants to You a non-exclusive, non-transferrable, revocable right during the Service Term and in the Locations stated in the Service Agreement to: (i) Use the Services in accordance with the Service Agreement; and (ii) copy, modify and use the APIs (if any) to develop applications solely for Your Use of the Services.

(b) To the extent that Hitachi provides You with access to Software for Your Use of the Services, Hitachi grants to You a non-exclusive, non-transferrable and revocable right to use the Software during the Service Term in accordance with the Service Agreement and the published specifications of the Software, solely for that Use. For any non-Hitachi proprietary software, Hitachi will pass to You all applicable end user license and/or maintenance terms provided by the third party vendor.

(c) You may only sub-license Your rights in Sections 4.2(a) and (b) of the MXA to a third party with Hitachi's prior written approval.

(d) You represent and warrant to Hitachi that You or Your licensors own all right, title and interest in the Content. You give Hitachi, its Affiliates and their respective Personnel a worldwide, royalty-free, non-exclusive right and license to: (i) use the Content as Hitachi reasonably determines to provide the Services; and (ii) disclose the Content in order to comply with a Legal Requirement.

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

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

## 4.3 IP Claims

Subject to Sections 4.4 and 7.1 of this MXA, if a third party makes an IP Claim against You, You are 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 IP Claims):

(a) Hitachi will defend or settle the IP Claim at its option and cost, 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 Hitachi requires (Hitachi will pay Your costs of doing so); and (iv) You are not in breach of this MXA or the applicable Service Agreement; 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; or (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 is 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.

## 4.4 Exceptions

Hitachi will not be liable to provide any of the remedies in Section 4.3 for IP Claims related to: (a) any Third Party Content; (b) any technology or other material used in conjunction with the Services, which You own or sourced independently from a third party; or (c) an Infringing Item that You or any person on Your behalf has: (i) modified or combined with any third party product not authorized or approved by Hitachi, or in a manner which is not authorized or approved by Hitachi; (ii) used outside Hitachi's stated standard operating environment for that item, or for a purpose not authorized or approved by Hitachi; or (iii) failed to use a more recent version of the Infringing Item that was made available to You and which if used, would have avoided the infringement.

## 5. CONFIDENTIAL INFORMATION

### 5.1 Obligations

(a) Each Party will: (i) maintain the confidentiality of the other Party's Confidential Information 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 the MXA or a Service Agreement; 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 MXA or a Service Agreement.

(b) Each Party may disclose the other Party's Confidential Information to its Personnel and/or Affiliates who need to know the information to perform that Party's obligations under the Service Agreement, provided that Party takes all reasonable steps to ensure its Personnel's compliance including, where necessary, to execute a written confidentiality agreement with its Personnel on terms that are no less restrictive to those in this Section 5. Each Party remains fully responsible for any confidentiality breach caused by its Personnel.

(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 an obligation 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 MXA, but it will exercise commercially reasonable efforts to obtain assurances that such Confidential Information will be treated confidentially.

### 5.2 Return or Destruction

(a) Each Party will: (i) securely and promptly return or destroy the other Party's Confidential Information that is in its possession or control, together with all copies made, at the other Party's request or upon the completion of the Services or the termination of the MXA or Service Agreement; and (ii) promptly provide the other Party with written certification when this is done.

(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.

(c) You may retain one copy of the Hitachi IP as necessary to exercise any post-termination license rights that Hitachi grants to You in a Service Agreement (if any) and Hitachi may retain one copy of Your Confidential Information as necessary to substantiate the Services in

Hitachi's internal knowledge base; in each case, the confidentiality obligations in this Section 5 will continue for the retained information.

### **5.3 Equitable Relief**

Each Party agrees and acknowledges that a breach of this Section 5 will cause the disclosing Party irreparable damage, for which remedies other than injunctive relief will be inadequate and that the disclosing Party may request injunctive or other equitable relief seeking to restrain the other Party's use or disclosure, without limitation or waiver of any other remedy available at law or in equity.

## **6. PERSONAL DATA**

### **6.1 Your Obligations**

(a) You are and 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 or those of Your Affiliates, End Users and your respective Personnel when Using the Services. You will only use or provide Hitachi with Personal Data on the Services that You have the legal right to collect, process, use and transfer and only to the extent necessary under any transaction under the MXA, a Service Agreement or SOW made under it. You will not disclose any Personal Data about Hitachi Personnel to third parties apart from Your Personnel.

(b) Without limiting Section 6.1(a) of this MXA, 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 6 and You will remain fully liable for their performance; (iii) the processing of Personal Data will not cause Hitachi or its Affiliates or their respective Personnel to breach any applicable law; (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 End Users; and (v) You will strictly comply with the express instructions that Hitachi provides to You and will only process the Personal Data for any purposes of the MXA and applicable Service Agreement.

### **6.2 Hitachi's Obligations**

To the extent that Hitachi processes Your Personal Data as part of a transaction under this MXA or a Service Agreement, Hitachi will not disclose that Personal Data without Your prior written consent or as otherwise permitted by 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 it in order to perform Hitachi's obligations under this MXA or a Service Agreement and/or to its Affiliates, subcontractors, vendors and agents who help Hitachi perform those obligations and who are contractually required to protect Your Personal Data or as required by applicable law.

### **6.3 Security Breaches**

(a) Without limiting any of its other obligations in this MXA or a Service Agreement or under applicable law, each Party will promptly report a Security Breach to the other Party by providing: (i) oral notice as soon as is reasonably practical and no later than forty-eight (48) hours after discovery; and (ii) a follow-up, written report as soon as reasonably practicable and not later than ten (10) days after

discovery. The written report will include, to the extent the information is then currently available, identification of affected individuals and other information that is legally required for Security Breach notice 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 co-operate with any Security Breach investigation that the other Party conducts or is involved in and will take reasonable measures to mitigate any harmful effects of the Security Breach, of which it becomes aware.

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

## **7. LIMITATIONS OF LIABILITY**

### **7.1 Unlimited 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: death or personal injury resulting from negligent acts or omissions; Claims for non-payment; the non-excludable statutory rights of consumers (for example, laws providing for strict product liability); breaches of any Software license terms; breaches of confidentiality obligations (but this Section 7.1 will not apply to a Party's liability for any breach of Section 6 of this MXA nor for any Security Breach, whether under a Service Agreement or under applicable law); fraud or deceit; any infringement of Hitachi IP and any indemnity obligations of a Party under this MXA or a Service Agreement.

### **7.2 Limits and Exclusions of Liability**

(a) Subject to the other parts of this Section 7, to the extent permitted by applicable law and unless stated otherwise in a Service Agreement:

(i) each Party's maximum and aggregate liability arising out of or in connection with a Service Agreement will not exceed the lesser of the total Fees that You have paid to Hitachi pursuant to the Service Agreement during the twelve (12) month period immediately before the first date of the event that gave rise to the Claim and Two Million US Dollars (\$US2,000,000);

(ii) each Party's maximum, aggregate liability arising out of or in connection with the MXA in general (not related to any specific Service Agreement) will not exceed the total Fees You have paid to Hitachi under all Service Agreements made under the MXA during the twelve (12) month period immediately before the first date of the event that gave rise to the Claim; and

(iii) neither Party will be liable under any circumstances for: (A) any indirect, punitive, special, incidental or consequential damages in connection with or arising out of the MXA or a Service Agreement; or (B) whether direct or indirect, 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.

(b) The limitations and exclusions in Section 7.2 apply, irrespective whether such liabilities or Claims arise under contract (including anticipatory breach or repudiation), in equity, common law, statute or otherwise, including breach of contract, breach of warranty or in tort (including negligence) or otherwise and even if the liable Party has previously been advised of the possibility of such damages. Liability for damages will be limited and excluded, even if an exclusive



remedy provided for in this MXA or a Service Agreement fails its essential purpose.

### **7.3 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 limitation, Hitachi will not be liable for any Failure, to the extent that the Failure is caused by: (a) Your acts or omissions or those of Your Personnel or any other person acting on Your behalf or any third party public cloud service provider; or (b) any other exclusions set out in the Service Catalogue. You will take all measures available to mitigate and minimize the Losses arising from a Failure, irrespective of the nature and extent of Your contribution and You will ensure that Your Personnel do the same.

### **7.4 Warranty Exclusion**

EXCEPT AS EXPRESSLY STATED IN THE MXA OR A SERVICE AGREEMENT, ALL EXPRESS OR IMPLIED CONDITIONS, REPRESENTATIONS AND WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OR CONDITION OF MERCHANTABILITY, SATISFACTORY QUALITY, OR FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT, ARE EXCLUDED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. HITACHI DOES NOT WARRANT THAT ANY SERVICE OR PRODUCT WILL OPERATE UNINTERRUPTED, SECURELY OR ERROR FREE AND WILL NOT BE LIABLE FOR COSTS OF PROCUREMENT OF SUBSTITUTE PRODUCTS OR SERVICES.

## **8. INDEMNITY**

(a) Without limiting any of Your other obligations, You will defend, indemnify and hold harmless Hitachi, its Affiliates and their respective Personnel from and against all Losses arising out of: (i) any Claim related to any Misuse or breach of applicable law by You or an End User with respect to the Services or the removal or deletion of Content by You or a third party on Your behalf at the end of the Services; (ii) any third party Claim against Hitachi related to Your Content or Contributions, including their combination with other applications, content or processes or their misappropriation or breach of any third party's IP Rights; or (iii) any third party Claim arising from any Additional Terms not approved by Hitachi in advance.

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

## **9. TERM AND TERMINATION**

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

(b) Each Service Agreement will start on the Service Agreement Start Date and subject to Section 9(e)(v) of this MXA, will continue until the Service End Date. The Initial Service Period will automatically renew for consecutive Renewal Service Periods, unless either Party notifies the other Party in writing of non-renewal by no less than ninety (90) days

prior written notice, taking effect at the end of the then-current period.

(c) A Service Agreement may be terminated: (i) by Hitachi, where You fail to pay the Fees or any other amounts due and owing to Hitachi in accordance with the Service Agreement and that breach is not remedied within fourteen (14) days of Hitachi's written notice to You to do so; or (ii) by either Party on the same grounds of termination that are available to that Party in Section 9(a) of this MXA. You may also terminate a Service Agreement for convenience by giving Hitachi no less than one hundred and twenty days (120) days prior written notice to Hitachi and subject to paying Hitachi the Termination Payment by no later than the end of that notice period.

(d) The termination of this MXA automatically terminates all Service Agreements and related SOWs in force at the time of termination. The termination or non-renewal of a Service Agreement automatically terminates all SOWs made under it but does not terminate the MXA.

(e) At the end of the MXA, Service Agreement or SOW, to the full extent applicable: (i) Your rights, licenses and privileges under it will end; (ii) You must comply with any directions issued by Hitachi requiring You to cease Use of the Services and at Your cost, return to Hitachi or destroy (at Hitachi's election) all Hitachi IP and Confidential Information in Your possession or control; (iii) You will not be relieved from Your payment obligations and all money due and owing to Hitachi at the date of termination will become immediately payable, including the Termination Payment, if applicable; (iv) You will be responsible, at Your cost, to delete or otherwise remove all Content in a proactive and timely manner; and (v) You may request Disengagement Assistance from Hitachi, provided the Service Catalogue states that Disengagement Assistance is available for those Services. The Service Agreement will continue to operate on the same terms at the Service End Date for the duration of any Disengagement Assistance.

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

(g) Without limiting any other rights available to Hitachi, Hitachi may suspend delivery of all or any of the Services if You or Your End User Misuse the Services or You otherwise are in breach of Sections 3, 4.2, 5 or 6 of this MXA. Without limiting Hitachi's rights under other parts of this Section 9 or under applicable law, Hitachi will reinstate any suspended Services following Your remediation of the breach.

## **10. GENERAL**

### **10.1 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. Under the Export Administration Regulations, the release within the U.S. of controlled technology, source code and downloadable software to You is "deemed" to be an export to the country of citizenship or nationality of Your Personnel. 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. If You know or have reason to know that such products, services or 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, You will indemnify, defend and hold harmless Hitachi, its Affiliates and their respective Personnel from any violation(s) or alleged violation(s) of any such applicable laws, regulations and requirements by Your or Your Personnel.

(b) Each Party will comply with applicable laws and regulations relating to the supply and receipt of the Services and with anti-corruption and bribery laws, including the U.S. Foreign Corrupt Practices Act and will not engage in any activity, practice or conduct that constitutes an offence under such laws or regulations.

## 10.2 Dispute Resolution

(a) If there is a dispute between Parties related to the MXA or a Service Agreement, the Parties will appoint an appropriate person 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 MXA, without further notice to the other Party. A Party may seek injunctive or other urgent equitable relief 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 MXA 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 MXA OR ANY PROVISION HEREOF. THIS WAIVER WILL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS MXA.

## 10.3 Governing Law

(a) Except as the Parties expressly agree otherwise in writing and subject to Section 10.5(b), this MXA and all Service Agreements will be governed by and construed in accordance with the laws of the jurisdiction of [insert jurisdiction] (without regard to its conflict of law principles) and the venue for any litigation or alternate dispute resolution will be the appropriate courts in [insert location].

(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 MXA, a Service Agreement or SOW made under it.

## 10.4 Customer Referrals

(a) Subject to Section 10.4(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 MXA or a Service Agreement, without Hitachi's prior written consent.

(b) You grant to Hitachi and its Affiliates a world-wide, 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 the supply of the Services. These permissions are free of charge and for worldwide use in any medium. Hitachi agrees to obtain Your prior written approval for publicity that contains Your claims, quotes, endorsements or attributions, but Your approval cannot be unreasonably withheld.

## 10.5 Affiliate Transactions

(a) A Party's Affiliate may participate in this MXA by executing a PA with the other Party or that Party's Affiliate and enter into Service Agreements and SOWs made 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 MXA, 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, 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 MXA to "Hitachi" and "You" will respectively refer to the parties of the PA.

(b) All 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, but the Parties are not liable for the acts or omissions of their Affiliates and do not guarantee any performance by their Affiliates.

## 10.6 Terms for Managing the MXA

(a) **Assignment.** You must not sub-contract, assign, or otherwise transfer any of Your rights under this MXA or any Service Agreement without Hitachi's prior written consent. You agree and acknowledge that Hitachi may: (i) engage subcontractors to perform any of its obligations under a Service Agreement, but Hitachi will remain responsible for that performance; (ii) assign all or any of its rights to payment under a Service Agreement to a third party, provided that such assignment does not materially adversely affect Your rights or increase Your obligations under this MXA or the Service Agreement and all references to "Hitachi" will mean and include such assignee; and (iii) sell or assign its interest, or grant a security interest in a Service Agreement to secure financing to Hitachi or otherwise and You will not assert against any such assignee, any set-off, defence or counterclaim that may be held against Hitachi or any other person and that the sale or assignment will not materially change Your duties or materially increase Your burdens or risks imposed under the Service Agreement. Hitachi will not be relieved of its obligations under the Service Agreement because of any sale or assignment under this Section 10.6(a).

(b) **Notices.** Notices made under the MXA or a Service Agreement will be in writing (printed or electronic format) and addressed to the representative of the recipient as identified at the head of this MXA 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 communications, at the time the email enters into the information system of the recipient; (iii) for posting, three (3) days after dispatch and; (iv) for fax, on receipted transmission of the fax.

(c) **Modifications.** Except for the Service Catalogue and the Hitachi Policies, modifications to this MXA will be in writing signed by each Party's authorized representative. Changes to the scope of Services under a Service Agreement (including any SOW) will be by Change

Order under the Change Management Process. Hitachi may change the Service Catalogue or Hitachi Policies from time to time and will use all reasonable commercial endeavors to notify You of the revised versions but those changes will not apply retrospectively.

(d) **Conflicts.** Unless the Parties agree otherwise in writing, if there is a conflict among the following contractual documents, the following order of precedence will apply (in descending order): (i) the terms and conditions of this MXA; (ii) any Exhibit attached to this MXA; (iii) the Service Summary; (iv) any SOW made under the Service Agreement; (v) the Service Catalogue; and (vi) the Hitachi Policies.

(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 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.

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

(g) **Entire Agreement.** The MXA and each Service Agreement (including all documents attached to or incorporated by reference) comprise the entire agreement relating to their respective 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) **Non-Solicitation.** Each Party undertakes that it will not, directly or indirectly, while a Service Agreement is in force and for a period of one (1) year after termination of the Service Agreement for any reason whatsoever, engage, employ or otherwise solicit for employment any person who during the term of the applicable Service Agreement was an employee of the other Party and was directly engaged in the provision or receipt of the Services. Nothing in this Section will prevent either Party from conducting general advertisements of employment opportunities and engaging in general employee searches by head-hunter/search firms.

(i) **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 MXA or a Service Agreement. The Parties may sign the MXA and all further documents made under them in counterparts, which together will form a binding agreement on the Parties, each of which may be transmitted electronically and will be effective upon the stated effective date of the agreement. 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 consent or approval 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 MXA. Unless the Service Agreement expressly states otherwise, the rules of interpretation in the MXA also apply to the Service Agreement and any defined terms in the MXA will also have the same meaning in the Service Agreement and *vice versa*.

## 11. DEFINITIONS

**Additional Terms:** any contractual terms containing license terms or obligations or warranties around the performance, features and/or functionality of the Services, which are different from or go beyond

the scope of those that Hitachi provides to You under the MXA, a Service Agreement or SOW.

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

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

**API:** a set of application programming interface and standards for accessing the Services in the Documentation and any other materials provided by Hitachi as part of the Services, which are designed to create applications or otherwise support interoperability between the Services and the Non-Hitachi Infrastructure.

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

**Change Management Process:** Hitachi's change management process set out in the Service Catalogue and any changes from time to time.

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

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

**Competing IP:** any word, logo, mark or other intellectual property rights that are confusingly similar to, or otherwise comprising or including any variation to the Hitachi IP.

**Confidential Information:** all information 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, would be considered to be confidential by a reasonable person, whether such information is contained in electronic or any other form whatsoever and includes information relating to products, goods, services, software (including computer programs, software formulas, code, software output, screen displays, access credentials, license keys, file hierarchies, graphics and user interfaces), solutions, related 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 the MXA, Service Agreements, SOW(s) and all documents attached to or incorporated by reference. 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; or (iii) was in the receiving Party's possession prior to the time it was received from the disclosing Party or came into the receiving Party's possession thereafter, in each case lawfully obtained from a source other than the disclosing Party and not subject to any obligation of

confidentiality or restriction on use; or (iv) is independently developed by the receiving party, without use of or reference to the disclosing party's Confidential Information.

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

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

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

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

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

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

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

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

**End User:** any person or entity that directly or indirectly accesses or uses Your Content or otherwise accesses or Uses the Services on Your account. Unless a Service Agreement provides otherwise, End Users will be limited to employees and individual contractors within Your organization.

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

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

**Exhibit:** an exhibit attached to and forming part of this MXA or otherwise incorporated by reference.

**Failure:** the failure, delay in performance or non-performance of any Services or other obligation required of Hitachi under this MXA, a Service Agreement or SOW made under it.

**Fees:** the monthly fees that You must pay Hitachi for the supply of Services, as set out in Hitachi's invoice to You. Unless the Service Agreement or related SOW states otherwise, all amounts for the supply of Professional Services will be included in the Fees. Any amounts payable for Evaluation Services are excluded from the Fees.

**Hitachi Infrastructure:** Equipment and/or Software used by Hitachi to provide the Services.

**Hitachi IP:** the IP Rights in all items and materials that Hitachi provides to You or otherwise creates pursuant to the MXA, a Service

Agreement or a SOW, including without limitation, the Hitachi Property, Work Product and all related changes, improvements, additions, enhancements, new versions, updates and derivative works.

**Hitachi Policies:** the following policies and online terms:

Hitachi Vantara Global Data Protection & Privacy Policy:  
<https://www.hitachivantara.com/en-us/company/legal.html>

Hitachi Vantara Acceptable Use Policy:  
<https://www.hitachivantara.com/en-us/company/legal.html>

Hitachi Vantara Online Terms of Use for Software (for software licenses granted in Hitachi-supplied Software, if any):  
<https://www.hitachivantara.com/en-us/company/legal.terms-licensing-maintenance.html>

Hitachi Vantara Online Warranty, Maintenance and Support Terms (covering technical support for Hitachi Infrastructure, if any):  
<https://www.hitachivantara.com/en-us/company/legal.terms-licensing-maintenance.html>

You agree and acknowledge that the Hitachi Policies form part of this MXA and are incorporated by reference. Hitachi may change the above list or add to the list with further terms in its sole discretion.

**Hitachi Property:** all Hitachi Infrastructure and all other tools, materials and technology that Hitachi uses, provides or otherwise makes available for the purpose of providing the Services under a Service Agreement, including those items that Hitachi provides to You electronically or retains on Your premises for that purpose. Without limitation, Hitachi Property includes APIs; Documentation; sample code; software libraries; command line tools; templates; and other related technology but excludes Third Party Content.

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

**Infringing Item:** a portion of Hitachi IP that is, or that Hitachi considers is likely to be, the subject of an IP Claim.

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

**Insolvency:** the inability of a Party to pay its debts as they fall due; or the appointment of a receiver, administrator, liquidator or similar person in respect of the Party's affairs or assets under the laws of any jurisdiction and/or steps are taken to appoint such officer; or the calling of a meeting of creditors or for any reason 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 element of the Hitachi Property used in providing the Services 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, computer software database 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, domain names and any application of the foregoing, including registration rights.



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

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

**Losses:** losses, damages, liabilities, judgments, settlements, fines, penalties, costs and other expenses, including reasonable attorneys' fees, and/or damages awarded, or liabilities incurred and any 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.

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

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

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

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

**Optional Services:** any professional services, including deployment, configuration assistance, integration, migration, training and enablement services, which are not identified by Hitachi as Ancillary Services.

**Participation Agreement or PA:** the form of agreement for Affiliates of the Parties to participate in this MXA (Hitachi will provide the form of PA at 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 supply or use of Services. For Hitachi, personal information about an identifiable person that Hitachi collects under the MXA or a Service Agreement.

**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:** Ancillary Services and/or Optional Services. For the avoidance of doubt, an Evaluation Service is not a Professional Service.

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**Refund:** a refund of the pro-rated portion of the Fees You have paid for the Services delivered in accordance with the MXA and Service Agreement up to the termination date.

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

**Resell:** to promote, market, distribute, resell and/or sub-license the Services and/or Hitachi Infrastructure to resellers or end user customers.

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

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

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

**Service Agreement:** the agreement for the supply of the applicable Services as formed in accordance with Section 1.1 of this MXA.

**Service Agreement Start Date:** the date stated at the head of the Service Agreement when the Service Agreement takes effect.

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

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

**Service Class:** applicable the class of Services as set out in the Service Catalogue.

**Service Credits:** the service credits (if any) that apply to Hitachi's failure to meet the Service Levels and that are calculated according to the Service Catalogue.

**Service End Date:** the date that the Services end, either by virtue of a Party exercising a right of termination or non-renewal pursuant to Sections 9(b), (c) or (d) of this MXA.

**Service Levels:** the service levels applicable to the Services (if any) set out in the Service Catalogue.

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

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

**Services:** the "as a service" offerings described in further detail in the Service Agreement and, where applicable, includes related Professional Services.

**Software:** the object code format of programming firmware embedded in the Equipment to enable it to perform its basic functions or to operate the Equipment, or stand-alone software programs such as enabling software and all related license keys, updates, upgrades, new versions, patches and fixes, Documentation and published specifications.

**Statement of Work or SOW:** a document agreed and executed between the Parties that sets out the Professional Services provided by Hitachi, including the scope of services, the price, estimated

delivery dates, service deliverable procedures and roles and responsibilities of the Parties.

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

**Tax:** any applicable tax on a transaction for the supply of Services, 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 Content:** any third party information, data, technology, products or materials that is used for the supply of the Services or on under the terms of an agreement between You and the third party.

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

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

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

**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.

**EXECUTED AS AN AGREEMENT:**  
IN WITNESS WHEREOF, the Parties have executed this MXA by their authorized officers as of the Effective Date.

HITACHI VANTARA [insert full company name]	[insert full company name of customer]
By	By
Name	Name
Title	Title
Date	Date

## **EXHIBIT A TO MXA - TERMS RELATED TO HITACHI INFRASTRUCTURE**

This Exhibit is incorporated into, and forms part of the Service Agreement between the Parties where the supply of the Services comprises the use of Hitachi Infrastructure, e.g. Storage as a Service (STaaS).

### **1. Due Diligence**

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

### **2. Hitachi Infrastructure**

(a) Without limiting the operation of any other terms of the MXA, title in all Hitachi Infrastructure is retained by Hitachi. You are responsible for loss of or damage to the Hitachi Infrastructure, once delivered to the relevant Location, except for loss or damage arising due to Hitachi's acts or omissions, or normal wear and tear during proper use, storage and maintenance and You must not: (i) assign, transfer, sell, deal with, or create any mortgages, security, liens, or other interests in or over the Hitachi Infrastructure; (ii) move, repair, modify or interfere in anyway with the Hitachi Infrastructure without Hitachi's prior written consent; or (iii) obscure or tamper with any asset tag or like identification or notification affixed to the Hitachi Infrastructure. You will indemnify, defend and hold Hitachi harmless from and against any Claims caused by Your failure to comply with this Section 2(b), subject to Section 8 of the MXA. You will provide Hitachi with immediate notice of any attachment, lien or judicial process affecting the Hitachi Infrastructure, or Hitachi's ownership of it.

(b) If Hitachi deploys the Hitachi Infrastructure to the Locations and for any reason, You do not authorize or otherwise enable the implementation of the Hitachi Infrastructure to take place, or You otherwise delay the implementation for a period of more than thirty (30) days from the date that Hitachi delivers the initial solution to the Location, then Hitachi has the right to charge You the Monthly Minimum Commitment.

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

### **3. Insurance**

(a) Upon delivery of the Hitachi Infrastructure to the applicable Location, and until it is either delivered back to Hitachi or otherwise removed by Hitachi from the Location, You will maintain the following policies with reputable insurers: (i) a property 'all-risk' insurance covering damage or loss to the Hitachi Infrastructure, including damage or loss due to flood and earthquake, with limits at least equal to the replacement cost of the Hitachi Infrastructure. The relevant insurance policy will name Hitachi as "Loss Payee"; and (ii) Commercial General (or Public) Liability Insurance, including contractual liability, of not less than US \$10,000,000 per occurrence, and in the aggregate. Hitachi and its Affiliates will be noted on the policy as "Additional Insured". All insurance coverage will be primary and non-contributory.

(b) You will provide a current certificate of insurance for the insurance policies set out in Section 3 (a) of this Exhibit to Hitachi annually during the Service Term. You will procure that such policies state that the insurer will give thirty (30) days' prior written notice to Hitachi of any intention to cancel or reduce any insurance coverage. All insurance will be primary and non-contributory. If You fail to take out appropriate insurance, Hitachi may (but will not be obliged) to take out appropriate insurance pursuant to this section and Hitachi may recover from You the premiums and other charges that it pays to an insurer forthwith.

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

### **4. Total Loss Infrastructure**

(a) If the Hitachi Infrastructure becomes a total loss or constructive total loss as a result of being lost, stolen, seized, confiscated, damaged beyond economic repair or otherwise ("**Total Loss Infrastructure**"), You will procure, using any relevant insurance proceeds where applicable and available (but without affecting Your other obligations under this Section 4), that the relevant Hitachi Infrastructure ("**Total Loss Infrastructure**") is replaced with equipment and/or infrastructure of the same specification, quality and model as the Total Loss Infrastructure ("**Replacement Infrastructure**") within twenty one (21) days or otherwise as soon as is reasonably practicable from the date of the Total Loss occurring and Hitachi is not obligated to provide the Services to You in accordance with the Service Agreement during such replacement period. You will ensure that title to such Replacement Infrastructure vests in Hitachi and such Replacement Infrastructure will be deemed Hitachi Infrastructure for the purposes of the Services Agreement.

### **5. Changes to Hitachi Infrastructure**

If, under the capacity planning process, whether as part of or outside of the Monthly Operations Review (MOR) meeting, Hitachi determines that the Hitachi Infrastructure at one or more Locations should be increased or decreased, Hitachi will either deploy additional Hitachi Infrastructure or remove existing Hitachi Infrastructure as required by Hitachi and communicated to You. Any change in the Hitachi

Infrastructure or the Services relating to it does not affect Your obligation to pay the Minimum Commitment pursuant to this Service Agreement.

**6. Excluded Performance**

Without limiting the operation of Section 7 of the MXA or any exclusions set out in the Service Catalogue, Hitachi excludes any and all liability for Failure, to the extent that the Failure is caused by: (i) the operation of any Non-Hitachi Infrastructure by Your Personnel; (iii) the failure or non-performance of any of any Non-Hitachi Infrastructure; (iii) any physical loss or damage to the Hitachi Infrastructure after delivery to the Location that is not attributable to the acts or omissions of Hitachi or reasonable wear and tear under proper use, storage and maintenance; or (iv) Your material failure to comply with the Dependencies and Assumptions set out in the Service Catalogue. For the avoidance of doubt, the exclusion under this Section will start at the date and time of such failure to meet Your responsibility. You must take all steps and measures available to You to mitigate and minimize the losses, costs and damages arising from the Failure.

**7. Additional Definitions**

In addition to the defined terms set out in elsewhere in the MXA or the Service Agreement, the following definitions apply to this Exhibit:

**Additional Locations:** additional Location(s), which are not in the scope of this Service Agreement at the Service Activation Date.

**Contract Terms:** for the purposes of Due Diligence, means the Dependencies and Assumptions, as well as the scope of Services and related matters in the Services Agreement as at the Service Activation Date.

**Dedicated Additional Infrastructure:** additional Hitachi Infrastructure that is dedicated for a specific purpose, such as an End User requirement or a unique project.

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

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