

WARRANTY AND MAINTENANCE AND SUPPORT TERMS

If You have a Direct Purchase Agreement or other form of supply agreement in place with Hitachi Vantara Corporation or its Affiliate (“HITACHI”) or a HITACHI Partner (“Agreement”), these Warranty and Maintenance and Support Terms, along with the terms incorporated herein by reference (together, the “WMS Terms”) will apply to, and must be read together with the terms and conditions in the Agreement. Unless the Parties expressly agree otherwise, capitalized terms in these WMS Terms have the same meaning as defined in the Agreement. If there is any inconsistency between these WMS Terms and the Agreement, notwithstanding anything to the contrary in the Agreement, these WMS Terms will be the controlling document to the full extent of the inconsistency.

If You do not have an Agreement in place directly with HITACHI and You do not acquire maintenance and support services under a separate agreement from a HITACHI Authorized Service Provider, then You will be subject to the Additional Terms in Section 19, in addition to the rest of the WMS Terms.

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

WARRANTY TERMS

1. Warranty Period and Remedy.

- (a) HITACHI warrants to You that, during the Warranty Period, the Products will function in accordance with the Published Specifications, when used properly and normally. To make a valid warranty claim, it must be in accordance with the following sections. **The Warranty Period begins on the Warranty Commencement Date.**
- (b) The warranty in Section 1(a) does not apply to any Third Party Products that are warranted by the third party licensor under a separate third party end user license agreement (or EULA) provided to You with the Third Party Product.
- (c) Subject to the exclusions in Section 6, in the event of a Defect, HITACHI will provide the Warranty Services in accordance with the Maintenance and Support Terms set out below. To make a valid warranty claim to HITACHI, You must make such claim during the Warranty Period, and You must contact Your local HITACHI support contact center within seven (7) days of discovering the Defect. If HITACHI considers that, in the circumstances, the Defect will not be remedied by the provision of the Warranty Services, then HITACHI will provide You with a Refund for the Defective item, provided You promptly return it to HITACHI. The remedies set out in this Section 1(c) comprise HITACHI’s sole and exclusive liability to You and Your sole and exclusive remedy in relation to a breach of the warranty in Section 1(a).
- (d) HITACHI warrants to You that the Maintenance and Support Services and Installation Services will be provided to You in a professional and workmanlike manner in accordance with Good Industry Practice. If HITACHI fails to do so, HITACHI will promptly re-perform the applicable services at no additional charge to You, provided You have submitted a claim in writing to HITACHI for the service failure within ninety (90) calendar days of the date that the Warranty Services giving rise to the claim were performed and HITACHI has accepted that claim. This is HITACHI’s sole and exclusive liability to You and Your sole and exclusive remedy in relation to the breach of the warranty in this Section 1(d).
- (e) **EXCEPT AS SPECIFIED IN THESE WMS TERMS, ALL EXPRESS OR IMPLIED CONDITIONS, REPRESENTATIONS AND WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OR CONDITION OF MERCHANTABILITY, SATISFACTORY QUALITY, OR FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT ARE EXCLUDED, TO THE MAXIMUM EXTENT PERMITTED BY LAW. HITACHI DOES NOT WARRANT THAT ANY PRODUCT OR SERVICE WILL OPERATE UNINTERRUPTED OR ERROR FREE. HITACHI WILL HAVE NO LIABILITIES OR OBLIGATIONS FOR THE PRODUCT OR SERVICE WARRANTY OTHER THAN THOSE STATED IN SECTION 1.**

MAINTENANCE AND SUPPORT TERMS

2. Maintenance and Support Plans

- (a) In addition to Your entitlement to the Warranty Services in Section 1, and subject to the Service Descriptions and Your payment of all applicable fees in full, HITACHI will provide You with Maintenance and Support Services on the relevant Products, and under the applicable Plan, as specified in the Order that You have issued to HITACHI or a HITACHI Partner. Your HITACHI Partner is not authorized to provide such services to You, unless they are also authorized as a HITACHI Service Partner.
- (b) Maintenance and Support Services may not be available in certain locations, and Plans may vary between locations or may be subject to additional fees. Additionally, Maintenance and Support Services may vary by Equipment, Product type or family, as noted in the Service Descriptions.
- (c) Warranty, Maintenance and Support Terms for Big Data and Analytics Products are covered separately to these WMS Terms. Please refer to the Support Terms for the Big Data and Analytics Products located at <https://www.hitachivantara.com/en-us/pdf/legal/support-and-maintenance-terms-for-pentaho-software-programs.pdf> and to the Big Data and Analytics Product Support Features set out in the Service Descriptions. Services for Pentaho Programs will be provided by Pentaho on behalf of HITACHI.

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3. *Service Partners*

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

4. *Scope of Equipment Maintenance Services*

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

- (a) supervision and installation of engineering changes impacting the reliability of the Equipment, which HITACHI determines to be applicable to the Equipment;
- (b) preventive maintenance for Equipment including necessary lubrication, adjustment or replacement of unserviceable parts; and
- (c) unscheduled maintenance for Equipment, including repair, adjustment or replacement of unserviceable parts, as deemed necessary by HITACHI as described in the hours of coverage under the applicable Plan.

5. *Scope of Support Services for Software*

- (a) Subject to the exclusions in Section 6, HITACHI Software support is the support required for the ordinary use of the Software in accordance with its Published Specifications, through:
 - (i) remote telephone support to:
 - (A) identify the Defect, and its source and assist in resolving the Defect;
 - (B) advise on installation of Updates; and
 - (C) respond to minor "ad hoc" Software information queries;
 - (ii) on-site intervention where necessary, and the provision of Patches and Fixes, Service Packs where necessary, to be performed at HITACHI's sole discretion; and
 - (iii) the provision of access to Updates as and when HITACHI makes them generally available. Additional fees for Updates may apply. Access to Updates will be without additional charge, where HITACHI provides the Updates on that basis to its general customer base.
- (b) HITACHI only supports the Operating Software (including any Array Based Software) if HITACHI is also maintaining the Equipment on which it is installed. HITACHI's obligation to provide Software support is contingent upon:
 - (i) the Software must be subject to a current and valid license;
 - (ii) the Software must be covered under a current and fully paid up maintenance agreement; and
 - (iii) the Software must be operating in a HITACHI supported configuration.

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

6. *Warranty and Maintenance & Support Exclusions*

(A) Service Exclusions

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

- (a) any loss of, or damage to Products or Defects in Products caused by:

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- (i) any act or omission of any party other than HITACHI or a Service Partner, including but not limited to, the Products not being properly installed or maintained by any party other than HITACHI or the Service Partner;
- (ii) accident, natural disaster, transportation, neglect or misuse, improper maintenance or loss or damage from any cause other than normal and ordinary use;
- (iii) use of the Products outside of an environmentally controlled data center environment controlled by You or on Your behalf (unless the Products are specified for use outside of an environmentally controlled data center) or Your failure to provide and maintain a suitable operating environment within the data center on terms specified by HITACHI, including but not limited to failure of electrical power, air conditioning and humidity control, environmental contaminants and, as applicable, any of the items that You are required to provide under Section 16 of these WMS Terms, as they pertain to the environment of the Products);
- (iv) the Products being used in a manner other than in accordance with the Published Specifications or in a manner which is outside the scope of Your licensed rights in the Software;
- (v) any Equipment maintenance or Software support service that is impractical or otherwise rendered more difficult for the service personnel or representatives of HITACHI or HITACHI Service Partner to provide because of any service clearance interference, alterations, additions, modifications to any Product or Your system or operating environment or the connection of any Product by mechanical or electrical means to another machine or device;
- (vi) the Products being modified without HITACHI's prior written consent; this includes engineering changes other than those described in Section 4(a) and software installation services described in Section 8(b);
- (vii) the Products being cleaned, painted, refinished or refurbished or external works being done to the Products without HITACHI's prior written consent; or
- (viii) the movement, rearrangement or reconfiguration of Equipment, disks or cables, additional wiring, or repair to a previously prepared site to make it operational, without HITACHI's prior written consent;
- (b) the installation or removal of accessories, attachments or other devices, or the furnishing of supplies;
- (c) support of other software, accessories, attachments, machines, systems or other devices not supplied by HITACHI;
- (d) the provision of maintenance or other services on HITACHI-provided host bus adaptor ("**HBA**") Equipment not installed and utilized with HITACHI storage Equipment;
- (e) the physical installation, de-installation and replacement of HBAs within Your environment;
- (f) Professional Services and training, which are scoped separately under a Statement of Work and delivered by HITACHI Global Solution Services or an applicable Service Partner;
- (g) diagnosis and/or rectification of Defects not associated with the Equipment or Software; and
- (h) services to remedy any failure that could have been prevented by installation of the most recent mandatory Updates or Versions.
- (B) Field Replacement Units
 - (a) Equipment may include components which are used or remanufactured, and regardless of this, HITACHI's warranties in Section 1 will apply. Where HITACHI has shipped a Field Replacement Unit ("**FRU**") to You to replace a Product component that is removed in the course of performing any Warranty Service or a Maintenance and Support Service, the removed component will be the property of HITACHI, while the FRU will belong to You. Any removed components which are: (i) not returned to HITACHI within 60 calendar days of the date of their removal; and (ii) not covered by a valid retention option that is current at the time, HITACHI will be entitled to charge You for such components at HITACHI's then-current spares price list. The data and other confidential information that is contained in any removed Product component will be Your responsibility and You must make Your own arrangements to delete that data. If You are subject to security requirements that require the data to not be removed from Your site and You are not covered by a valid retention option, it is up to You to ensure that the data is deleted. Should You require HITACHI to delete data for You, HITACHI may charge You an additional fee.
 - (b) Without limiting the operation of Section 2(a), breaking the factory seal on a FRU by any party other than HITACHI or a HITACHI ISP will void Your entitlement to Warranty Services and/or Maintenance and Support Services in their entirety.

7. Remote Monitoring Services.

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

8. Installation Services

- (a) Subject to Sections 8(b) and (c), HITACHI will provide installation services as described in the Service Descriptions pursuant to the relevant Order.
- (b) HITACHI may provide on-site Software installation services (where HITACHI advises that the Software has to be installed by HITACHI) for an additional fee. Installation does not result in production ready implementation of the Software; production ready Software implementation is a Professional Service. If You require a production ready implementation of Software or additional capabilities to the standard installation services, HITACHI may require You to enter into a separate Statement of Work for those services and HITACHI will be entitled to charge You an additional fee based on Your requirements, and the Software and/or Equipment, subject to that Statement of Work. HITACHI will advise You of the Professional Services fees in advance.
- (c) Installation services do not include:
 - (i) physical siting of the Equipment;
 - (ii) all electrical work, including connection of the Equipment power supply to Your power supplies;
 - (iii) any operating system development and testing;
 - (iv) computer room planning services;
 - (v) performance tuning;
 - (vi) advanced operator training;
 - (vii) moves of any non-HITACHI equipment;
 - (viii) onsite standby beyond the storage system test phase;
 - (ix) de-installation of displaced equipment;
 - (x) installation of equipment outside of the hours of coverage under the applicable Plan;
 - (xi) attendance at Your meetings;
 - (xii) SAN design, integration and implementation; or
 - (xiii) Software production-ready implementation.

9. Services for Additional Fees

If You request HITACHI to perform:

- (a) any of the “excluded” services in Sections 6 or 8(c) of these WMS Terms; or
- (b) any Maintenance and Support Services outside the coverage hours or support zone for Your Plan;

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- (c) any other activities or tasks, which HITACHI has stated in these WMS Terms may be subject to an additional fee; or
- (d) any other Services which HITACHI reasonably determines to be “out of scope” of these WMS Terms,

HITACHI may perform the relevant Services at HITACHI's then current rates or on a quoted fixed fee basis (“**Billable Services**”).

10. Void Arrangements and Re-certification

- (a) You are not entitled to move or relocate any part of the Product (including moving any disks from one item of Equipment to another), or to allow any third-party other than HITACHI authorised service personnel or representatives (e.g. a HITACHI Service Partner) to perform any maintenance and/or support on any Product, or repair any Product, without HITACHI's prior written consent. If You do this, it will void Your entitlement to Warranty, Maintenance and Support Services in respect of that Product and You will need to undergo re-certification of the applicable Product, in order to reinstate it to Your Plan.
- (b) If Your Warranty, Maintenance and/or Support Services have been voided under Section 10(a) or otherwise the Maintenance and Support Services have been terminated under Section 11 and You wish to reinstate the Maintenance and Support Services for all or part of the affected Product, You must have the relevant Product re-certified by HITACHI or a HITACHI Service Partner, in order to have HITACHI's obligations under these WMS Terms continue to apply to it. HITACHI will charge You its then current rates for re-certification and further repair necessary to restore the affected Product to good operating condition (normal wear and tear excepted).

11. Termination and Expiration of Maintenance and Support Services

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

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12. Current and Superseded Software Support

- (a) HITACHI will provide Normal Support (as defined below) for the Current Version and one prior Version of the Software. If a release of Software is older than one prior Version from the Current Version, then HITACHI will provide Limited Support (as defined below) for a twelve (12) month period following the general availability of the Current Version.
- (b) **“Normal Support”** means the development and provision of Service Packs, Updates and Patches and Fixes necessary to maintain the Software in substantial conformance with the Published Specifications.
- (c) **“Limited Support”** means the provision of existing Service Packs, and existing Patches and Fixes necessary to maintain the Software in substantial conformance with the Published Specifications. HITACHI does not provide support for Software releases that are older than two prior Versions of the Current Version.
- (d) HITACHI may refuse to supply You with Patches and Fixes for Software if You could have solved the problem or Defect by upgrading to the latest Update of the Current Version.

13. Products Subject to End of Life Announcements

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

14. Maintenance Material

- (a) HITACHI may store Maintenance Material within the Products or elsewhere on Your premises for convenience. Only HITACHI or Service Partner personnel will be authorized to use the Maintenance Material.

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- (b) Maintenance Material will always remain HITACHI's sole and exclusive property as Hitachi IP as defined under the Agreement, and You do not get any licensed rights. Without limiting Your obligations under the Agreement, You must not use, access, modify, copy or relocate the Maintenance Material or allow any other person to do so and must return or allow HITACHI to de-install it upon demand by HITACHI or upon the termination of the Maintenance and Support Services.
- (c) User manuals utilized for self-serviceable eligible Equipment are not considered Maintenance Materials.

15. Transferability of Services

You agree that:

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

16. Customer Responsibilities

- (a) To assist HITACHI to provide You with Services, You must provide HITACHI, the HITACHI ISP 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.
- (b) You are responsible for the wireless, microwave, cable, physical or other physical data networks. You are responsible for managing and resolving issues related to the integrity of the network including physical implementation, signal quality, availability, identity and access, and related capabilities.
- (c) Without limiting Section 16(a), 16(b) or the terms of any applicable Statement of Work, if requested by HITACHI, You will assign an appropriately qualified person(s) to be Your representative(s) for the receipt of the Services and to communicate with HITACHI on all Service-related matters, and HITACHI will be entitled to assume that the acts, conduct and decisions of such person(s) are authorized by, and are binding on, You.

17. Liability for Service Delays and Failures

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

18. Defined Terms

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

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

Big Data and Analytics Product: the commercial enterprise edition Versions of the Pentaho data integration and analytics software programs that HITACHI licenses, in object code, to You on a term, subscription or perpetual basis.

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

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

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

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

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

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

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

Equipment: The hardware component of any Product.

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

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

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

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

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

HITACHI Partner: an HITACHI authorised reseller or distributor.

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

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

Maintenance Material: diagnostic and/or tracking tools, including without limitation Hi-Track[®] software, firmware and related documentation, personal computers or notebooks, maintenance manuals and other documentation.

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

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

Operating Software: refer to the definition of “Software” below.

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

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

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

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

Published Specifications: HITACHI’s published specifications for Products that are stated by HITACHI as valid at the time of acceptance of Your order.

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

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

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

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

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

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

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

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

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

Version: is a generic term for code corrections, patches, maintenance releases, minor releases, and major releases of the same Software, generally made available to HITACHI customers.

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

Warranty Period: the period specified in the Service Descriptions.

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

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

19. **Additional Terms and Conditions**

The following additional terms and conditions apply if, and only if, You do not have an Agreement in place with HITACHI or a service agreement with HITACHI or, where applicable, a HITACHI ASP and have purchased from an authorized HITACHI Partner.

(a) **Fees and Payment**

You will pay the fees and charges for the Services set out in HITACHI’s invoice within 30 days from the invoice date. HITACHI may charge You interest or suspend delivery of Services if payments are overdue. You must also pay for any Taxes arising from the transaction under these Terms whether or not these Taxes are included in HITACHI invoices.

(b) **Limitation of Liability**

Except for liability arising from: death, bodily injury or damage to tangible property arising from HITACHI’s negligent acts or omissions, and for willful misconduct, in all cases and to the extent not prohibited by applicable law: (a) HITACHI’s maximum aggregate liability for all claims relating to these WMS Terms, whether for breach of contract, breach of warranty or in tort, including negligence will be limited to fifty thousand US dollars (U.S. \$50,000) or monetary equivalent in the currency of the Local Service Jurisdiction (as defined below), calculated on the date of the claim; (b) HITACHI will not be liable for any indirect, punitive, special, incidental or consequential damages in connection with or arising out of these WMS Terms (including, without limitation, loss of business, revenue, profits, goodwill, use, data, electronically transmitted orders or other economic advantage), however they arise, whether in breach of contract, breach of warranty or in tort, including negligence, and even if HITACHI has previously been advised of the possibility of such damages. These limitations and exclusions apply, even if an exclusive remedy provided for in these Terms fails of its essential purpose.

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(c) Governing Law

Unless it is agreed in writing between HITACHI and You that the laws of another jurisdiction will apply, the laws of the Local Service Jurisdiction will apply to these Terms and the venue for any litigation will be the appropriate courts in that state, province or country. To the extent allowed in the applicable jurisdiction, the United Nations Convention on Contracts for the international sale of goods and its implementing legislation will not apply to these Terms.

For the purposes of these Additional Terms, “**Local Service Jurisdiction**” will mean the jurisdiction of the state, province or country in which the HITACHI entity that sold You the Product is located.

(d) Termination

A Party may terminate any Maintenance and Support Services hereunder if the other Party: (i) commits a material breach of these WMS Terms and does not remedy that breach within thirty (30) days of written notice to do so; or (ii) becomes or threatens to become Insolvent. This does not limit any other rights of that Party arising from the Maintenance and Support Services provided on a “non-cancellable and non-refundable basis”.