



Contract Number

22-245

SAP Number

## Innovation and Technology

Department Contract Representative  
Telephone Number

Kim Lewis

909-388-0522

Contractor  
Contractor Representative  
Telephone Number  
Contract Term  
Original Contract Amount  
Amendment Amount  
Total Contract Amount  
Cost Center

Hitachi Vantara Corporation

Dave Fischetti

951-233-4814

4/1/2022 - 3/31/2023

Non-financial

N/A

Non-financial

1200604048

**Briefly describe the general nature of the contract:** *Renewal of Contract No. 21-174 Warranty and Maintenance and Support Terms with Hitachi Vantara Corporation for maintenance and support services for the Hitachi storage platform.*

**FOR COUNTY USE ONLY**

Approved as to Legal Form

► *Bonnie Uphold*  
Bonnie Uphold, Deputy County Counsel

Date 3-3-2022

Reviewed for Contract Compliance

►

Date

Reviewed/Approved by Department

►

Date

## HITACHI VANTARA WARRANTY MAINTENANCE AND SUPPORT TERMS

If You have a Direct Purchase Agreement or other form of supply agreement in place with Hitachi Vantara LLC or its Affiliate ("Hitachi") or a Hitachi Partner for the purchase of Hitachi Products and/or Hitachi Services ("Agreement"), these Warranty and Maintenance and Support Terms, along with all of the terms incorporated herein by reference (collectively, the "WMS Terms") will apply to, and must be read together with the terms and conditions in the Agreement. 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 ASP, then You will be subject to the Additional Terms and Conditions in Section 19, in addition to the rest of the WMS Terms.

For further descriptions of the Maintenance and Support Service Plans and other Service related details for Your Maintenance and Support Service coverage (collectively, "Plans"), please refer to the information at <https://www.hitachivantara.com/en-us/pdf/specifications/hitachi-support-service-descriptions-and-deliverables.pdf> and the related Plan descriptions set at <https://www.hitachivantara.com/en-us/services/customer-support.html> ("Service Descriptions"). The Plans and Service Descriptions form part of and are incorporated by reference into these WMS Terms. You agree and acknowledge that Hitachi may update the Plans and 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 their Published Specifications, when used properly and normally. **The Warranty Period begins on the Warranty Commencement Date.**
- (b) Hitachi's warranty in Section 1(a) does not apply to any Third-Party Products that are subject to the warranties by the third-party licensor under a separate third-party end user license agreement (or EULA) that applies to the Third-Party Product.
- (c) Subject to the exclusions in Section 6 of these WMS Terms, if You have a valid warranty claim for a Defect, Hitachi will provide the Warranty Services for that Defect according to the terms set out herein. To make a valid warranty claim, You must, during the Warranty Period submit Your claim in writing to Your local Hitachi support contact center and the claim must be made with within seven (7) days of You discovering the Defect. If Hitachi considers in its sole discretion that, in the circumstances, the Defect will not be remedied by the Warranty Services, Hitachi will provide You with a Refund for the Defective item, provided that 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 for a breach of the warranty in Section 1(a).
- (d) Hitachi represents and warrants that it will provide the Services to You in a professional and workmanlike manner in accordance with Good Industry Practice. If Hitachi fails to meet this warranty and provided that You notify Hitachi in writing, specifying the nature and extent of the non-conformity within thirty (30) calendar days of the date that the warranted Services giving rise to the claim were performed and Hitachi accepts that claim, Hitachi will re-perform the applicable Services to cure the non-conformity as promptly as possible, but in any event, within the period agreed to by the Parties in writing. If the non-conformity has not been corrected within that period, You may: (i) provide Hitachi with a further opportunity to correct the non-conformity, in which event the procedures and time periods set forth above will again apply; or (ii) terminate the applicable Agreement or SOW and return to Hitachi the non-conforming Work Product or Deliverables, if any, at which time Hitachi will provide You with a Refund of Fees previously paid for the non-conforming Deliverables and/or Work Product provided by Hitachi. 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 OTHERWISE STATED IN THESE WMS TERMS AND THE AGREEMENT, ALL EXPRESS OR IMPLIED CONDITIONS, REPRESENTATIONS AND WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OR CONDITION OF MERCHANTABILITY, SATISFACTORY QUALITY, OR FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT ARE EXCLUDED, TO THE MAXIMUM EXTENT PERMITTED BY LAW. HITACHI DOES NOT WARRANT THAT ANY PRODUCT OR SERVICE WILL OPERATE UNINTERRUPTED, SECURELY OR ERROR FREE. HITACHI WILL HAVE NO LIABILITY OR OBLIGATIONS FOR THE PRODUCT OR SERVICE WARRANTY OTHER THAN THOSE STATED IN SECTION 1 OF THESE WMS TERMS.**

### MAINTENANCE AND SUPPORT TERMS

#### **2. Maintenance and Support Plans**

- (a) Subject to these WMS Terms and further provided that You have valid support coverage and have paid Hitachi all applicable fees in full, Hitachi will provide Maintenance and Support Services for the relevant Products under the Plan 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 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 specified in the Service Descriptions.

#### **3. Service Partners**

- (a) Hitachi may authorize third parties to provide Maintenance and Support Services to You on Hitachi Products ("Service Partners"). Service Partners may be either ISPs or ASPs.
- (b) Hitachi may authorize its ISPs to deliver Maintenance and Support Services to You on behalf of Hitachi in accordance with these WMS Terms, but Hitachi will remain responsible for the performance of such Services to You. However, Hitachi will not be responsible to You for the acts or omissions of an ASP in the performance of Maintenance and Support Services and that performance will be a matter between You and the ASP under the terms of the contract that You enter with the ASP.

#### 4. *Scope of Equipment Maintenance Services*

Subject to the exclusions set out in Section 6 of these WMS Terms, Hitachi Equipment maintenance comprises the following:

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

#### 5. *Scope of Support Services for Software*

- (a) Subject to the exclusions set out in Section 6 of these WMS Terms, Hitachi's Software support comprises the support required for the ordinary use of the Software in accordance with its Published Specifications, which is provided through:
  - (i) remote telephone support or support via the Hitachi Support Portal to:
    - (A) identify the Defect, 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 respectively 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 and/or Upgrades 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 under Section 5(a) above is contingent upon the following:
  - (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 agreement for the support services; and
  - (iii) the Software must be operating in a Hitachi-supported configuration, which may be detailed in the Published Specifications.

If Your Software license is terminated for any reason (including due to the assignment or transfer of the license to another party) then Hitachi's obligations to provide support for the relevant Software will cease.

#### 6. *Warranty and Maintenance & Support Exclusions*

##### (A) Service Exclusions

Hitachi's Warranty Services set out in Section 1 and the scope of Maintenance and Support Services set out in Sections 4 and 5 of these WMS Terms do not apply to, and exclude:

- (a) any loss of, or damage to Products, or data contained in the Products or Defects in Products caused by:
  - (i) any act or omission of a party other than Hitachi or its Service Partner, including but not limited to, the improper installation or maintenance of the Products or modifications, enhancements or customizations of the Software by any party other than Hitachi or its 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 where the environment is 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, noise levels above 85dB(A) or unreasonable or excessive vibrations 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) use of the Products 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 service that is impractical or otherwise rendered more difficult for the service Personnel or representatives of Hitachi or its 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 modification of Hitachi Products without Hitachi's prior written consent, including any engineering changes other than those described in Section 4(a) and the software installation services described in Section 8(b) of these WMS Terms;
  - (vii) the Products being cleaned, painted, refinished, refurbished or subjected to external works without Hitachi's prior written consent;
  - (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; or
  - (ix) Your failure to make updates required or recommended by Hitachi to install Patches and Fixes required or recommended by Hitachi.
- (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 Equipment;
- (e) the physical installation, de-installation and replacement of HBAs within Your environment;
- (f) Professional Services and training, which are scoped and delivered separately under a Statement of Work and delivered by Hitachi's services organization 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.
- (i) Products or Versions that have reached End of Life or that are provided for evaluation purposes unless Hitachi explicitly agrees to do so, at Hitachi's sole discretion.
- (j) the acts or omissions of a third party public cloud provider.

**(B) Field Replacement Units**

- (a) Equipment may include components which are used or remanufactured, and regardless of this, Hitachi's warranties in Section 1 of these WMS Terms 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. For any removed components which are: (i) not returned to Hitachi within fifteen (15) calendar days of the date of their removal; or (ii) not covered by a then-current valid retention option, Hitachi may charge You for those components at Hitachi's then-current spares price list.
- (b) 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.
- (c) Without limiting Section 2(a) of these WMS Terms, if You allow any person other than Hitachi or a Hitachi ISP to break the factory seal on a FRU, this will void Your entitlement to Warranty Services and/or Maintenance and Support Services in its entirety.

**7. *Remote Monitoring Services.***

- (a) Maintenance and Support Services include Hitachi Remote Ops Services, as applicable. All right, title and interest in the Hitachi Remote Ops Services, including all material that is used to provide the Hitachi Remote Ops Services, is retained by Hitachi or its licensors, and You do not get any licensed rights in it.
- (b) Hitachi will not charge You a fee for the supply of the Hitachi Remote Ops 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 Hitachi Remote Ops Services.
- (c) If the Agreement (or the supply of any Maintenance and Support Services under it) or Your separate services contract with a Hitachi ASP is terminated, You will allow Hitachi to disable the Hitachi Remote Ops Services and de-install and remove all material on Your premises used by Hitachi to provide the terminated services.
- (d) In providing Hitachi Remote Ops Services to You, Hitachi does not access Your data. Hitachi will maintain the confidence of all passwords that You provide to Hitachi for the supply of the Hitachi Remote Ops Services.
- (e) Remote monitoring services other than the Hitachi Remote Ops Services may be provided for certain eligible Equipment, which does not prompt any Service activity or call logging with Hitachi. For more details, please refer to the Service Descriptions.
- (f) If You refuse to allow Hitachi to provide the Hitachi Remote Ops Services, fail to sign up for the Hitachi Remote Ops Services, or otherwise disable or interfere with the Hitachi Remote Ops Services 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 and critical notifications as applicable (including, but not limited to Security Breach notifications). In such circumstances, Hitachi will not be liable for any failure to meet service level response time commitments or service warranties, 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 to provide the Maintenance and Support Services in such circumstances.

**8. *Installation Services***

- (a) Subject to Sections 8(b) and (c) of these WMS Terms, Hitachi will provide Installation Services with respect to the Products set out in the relevant Order.
- (b) Hitachi may provide on-site Installation Services with respect to Software (where Hitachi advises that the Software must 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 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 applicable Fees for those Professional Services 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 provide:

- (i) any of the “excluded” services in Sections 6 or 8(c) of these WMS Terms; or
- (ii) any Maintenance and Support Services outside the coverage hours or support zone for Your support Plan;
- (iii) any other activities or tasks, which Hitachi has stated (in these WMS Terms or elsewhere) may be subject to an additional fee; or
- (iv) any other Services which Hitachi reasonably determines to be “out of scope” of these WMS Terms,

Hitachi may, at its sole discretion, agree to provide the relevant Services to You 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 do any of the following without Hitachi's prior written consent:

- (i) move or relocate any part of the Equipment (including moving any disks from one item of Equipment to another); or
- (ii) allow any third party other than Hitachi authorised service Personnel or representatives (e.g. Hitachi's Service Partner) to perform any maintenance and/or support on any Product or repair any Product.

If You do so, You 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, to reinstate the Product to Your Plan.

- (b) You must not install Software on any equipment or a public cloud located in any countries that are prohibited by applicable export laws, restrictions and regulations of the U.S. Department of Commerce, the U.S. Department of Treasury and any other U.S. or foreign agency or authority.
- (c) If Your Warranty, Maintenance and/or Support Services have been voided under Sections 10(a) or (b) of these WMS Terms or if the Maintenance and Support Services have been terminated under Section 11 of these WMS Terms 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 its 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. Renewal and Termination of Maintenance and Support Services**

- (a) Without limiting any of Hitachi's other rights under these WMS Terms or applicable law, Hitachi reserves the right to terminate all or any of the Maintenance and Support Services at any time by written notice to You if:

- (i) 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 Hitachi's prior written consent;
- (ii) the Equipment or any Software is damaged by accident, neglect or abuse by any party other than Hitachi or its authorised service Personnel, 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) 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) You have modified the Equipment or any Software in any way (including any unauthorized attachments or additions to the Equipment or any Software) without Hitachi's prior written consent;
- (v) You have failed to provide and maintain a suitable physical operating environment for Products, as specified by Hitachi (including all items referred to in Section 6A(a)(iii) of these WMS Terms); or
- (vi) where You have infringed any of Hitachi's IP Rights with respect to any Maintenance Material, Work Product or Software.

Any notice to terminate a single Maintenance and Support Service must identify the specific Service item to be terminated. If, in Hitachi's reasonable opinion, the termination of a single Maintenance and Support Service adversely affects Hitachi's ability to provide other Services to You, then Hitachi may, in its sole discretion, terminate these other Services.

- (b) Subject to Hitachi's rights of termination and suspension under the Agreement and applicable law, Hitachi will provide You with Maintenance and Support Services on the Products during the Service Period, provided You have paid Hitachi or the Hitachi Partner (as applicable) the Fees for such services in full. The initial term for Maintenance and Support Services that You have purchased will be non-cancellable and the applicable Fees for that term will be non-refundable, unless stated otherwise in the Hitachi or Hitachi Partner Quote accepted by You (as applicable) or as otherwise agreed and stated in the Order.
- (c) Hitachi will use best efforts to send You a Renewal Notification at least sixty (60) days prior to the expiration of the initial term or then-current renewal term of the applicable supply (whichever is the case). Subject to both Your: (i) acceptance of the Renewal Notification; and (ii) payment in full of the applicable Fees by no later than the end of the Renewal Notification Period, the Maintenance and Support Services will be renewed for the applicable period and Fees stated in the Renewal Notification. Hitachi's issue of a Renewal Notification does not obligate You to renew Maintenance and Support Services. However, if You do not renew Maintenance and Support Services, any subsequent reinstatement of Maintenance and Support Services may be subject to 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.
- (d) Subject to Section 11(c) of these Terms: (a) if the Renewal Notification relates to Software that is licensed to You on a term-based license, Maintenance and Support Services for that Software will be renewed concurrently with the renewal of the term-based license period; and (b) Maintenance and Support Services for Software that is licensed to You on a perpetual basis will be renewed for the period set out in the applicable Renewal Notification.
- (e) If any Maintenance and Support Services are terminated or are not renewed, 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 proprietary and confidential information in Your possession or control, or to return such material and items to Hitachi at Your cost and in any case, You will not use any such items in Your possession or control. 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.

## 12. Current and Superseded Software Support

- (a) Subject to these WMS Terms and further provided that You have valid support coverage and have paid Hitachi all applicable Fees in full, Hitachi will provide support (as defined below) based on either (i) the time since a Version was initially released ("**Time-based**"), or (ii) the Version ("**Version-based**").
  - (i) End of Normal Support for time-based obsolescence products listed on the Hitachi Vantara Time-based support lifecycle matrix located at [https://knowledge.hitachivantara.com/Support/Information/More\\_Info/Time\\_Based\\_Support\\_Lifecycle\\_Matrix](https://knowledge.hitachivantara.com/Support/Information/More_Info/Time_Based_Support_Lifecycle_Matrix):
    - Hitachi will provide Normal Support for a period no longer than 18 months from the date of release. If a release of Software is older than 18 months, then Hitachi will provide Limited Support (as defined below) for a twelve (12) month period following the end of Normal Support period.
    - Hitachi does not provide support past 30 months for Software on the Hitachi Vantara Time-based support lifecycle matrix.
  - (ii) End of Normal Support for Version-based obsolescence products (all products not listed in the Time-based matrix):
    - Hitachi will provide Normal Support (as defined below) for the current major 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. Hitachi does not provide support for Software releases that are older than two prior Versions of the current Version.
    - For certain Version-based Software Hitachi will provide support as described at <https://support.pentaho.com/hc/en-us/articles/205789159-Pentaho-Product-End-of-Life>.
- (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/support-services-end-of-life-policy.pdf> (**EOSL Website**). Please also refer to Your local Hitachi support contact center for any additional policies, which may apply to EOSL 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 "EOSL" ("**EOSL 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 EOSL Website). Hitachi will use commercially reasonable efforts to provide You with the EOSL 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) below) 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) below 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 EOL Products 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 EOL 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 a Hitachi Service Partner Personnel will be authorized to use the Maintenance Material.
- (b) Maintenance Material will always remain Hitachi's sole and exclusive property and to the full extent applicable, will be covered 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 Hitachi's demand 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. In the absence of such consent, Hitachi will have no obligation to perform any Maintenance and Support Services for the transferee.
- (c) In cases where Hitachi supplies a Third-Party Product to You, Hitachi may require You to obtain support services for the Third-Party Product 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, Hitachi Service Partners 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. If You cannot provide required access, Hitachi may be unable to provide you with the applicable Services.
- (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 Sections 16(a) or 16(b) of these WMS Terms or the terms of any applicable Statement of Work, if Hitachi requests, 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.
- (d) For Big Data Products, You are entitled to the number of Named Support Contacts depending on the level of Maintenance and Support Services purchased from Hitachi. You may change such contacts by providing no less than two (2) weeks' prior written notice to Hitachi and may increase Your number of Named Support Contacts by paying Hitachi an additional fee. Only a Named Support Contact is entitled to access the Hitachi Support Portal. Each Named Support Contact must have full administrative access to all files, file systems and databases required for the operation of the Big Data Products. Named Support Contacts may not forward requests from other parties and must be able to act as the primary contact for any Maintenance and Support Services issues. Each Named Support Contact may access Hitachi's online "Knowledge Base" through the Hitachi Support Portal. Named Support Contacts must be trained via training courses provided by Hitachi to You for the Big Data Products online or in person for a public group of attendees or on a custom basis.



- (e) You retain responsibility for Your data and technical, logical and physical access controls to Your data. You must ensure that, prior to removal by or return to Hitachi for any reason, all data is removed from any Product or Hitachi property. Hitachi takes no responsibility for data remaining on any Product or Hitachi property that is removed by or returned to Hitachi and You agree to defend, indemnify and hold Hitachi harmless from and against any and all losses, damages, liabilities, judgments, settlements, costs and other expenses (including reasonable legal fees) that Hitachi incurs because of Your failure to comply with this sub-section (e).

## **17. Liability for Service Delays and Failures**

- (a) If Hitachi or its Personnel fail 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 Hitachi’s distributors, resellers, independent service providers or authorized service providers.

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

**ASPs:** Authorized Service Providers, which are certified and authorized to provide Maintenance and Support Services under a separate contract that You enter directly with the ASP, and to which Hitachi is not a party.

**Big Data Product:** the commercial enterprise edition of the Pentaho™ data integration and business analytics software that Hitachi makes available from time to time.

**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.

**Defect:** an instance where a 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.

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

**End of Life or EOL:** when Hitachi announces that a Product is no longer manufactured and will be withdrawn from sale, after which it will no longer be generally available for purchase.

**End of Service Life or EOSL:** when Hitachi announces the last date on which a discontinued Product is eligible for Services. Hitachi may publish EOSL dates for Products online – refer to <https://www.hitachivantara.com/en-us/pdf/datasheet/support-services-end-of-life-policy.pdf>.

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

**Field Replaceable Unit or FRU:** a subassembly of Equipment 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 that are similar to the Products and Services under similar terms and conditions for similar prices, whilst seeking to comply with its contractual obligations in accordance with applicable laws.

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

**Hitachi Support Portal:** the online portal through which Hitachi offers information and notifications about the Maintenance and Support Services and Versions and all updates and replacements thereof.

**Hitachi Partner:** a Hitachi authorised reseller or distributor.

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

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

**Installation Services:** the services set out in Section 8 of these WMS Terms and excludes the services set out in Section 8(c). **Install** and **Installation** have corresponding meanings.



**ISPs:** Independent Service Providers, 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.

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

**Maintenance and Support Services:** Equipment maintenance 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 Hitachi Remote Ops Services 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 the Products.

**Named Support Contact:** the individuals designated by You to be Hitachi's sole contacts for communicating with in connection with the Maintenance and Support Services, as You may update from time to time.

**Order:** a written or electronic order for the purchase of Products and/or Services to Hitachi or a Hitachi Partner, or a document detailing the same, including, but not limited to, description and price, which is submitted in accordance with the terms of Your Agreement and 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. **Patches** refers to minor enhancements to the Software that typically provide interoperability updates and **Fixes** refers to error corrections to the Software. Errors must be reproducible.

**Personal Data:** for You, personal information about an identifiable person that You provide to Hitachi or otherwise use as part of the receipt or use of Hitachi's Products and/or Services. For Hitachi, personal information about an identifiable person that Hitachi collects pursuant to its agreement with You.

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

**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, including Third-Party Products listed in the Hitachi Price List or as otherwise agreed by the Parties from time to time.

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

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

**Refund:** a refund of the Fees that You have paid for the Products and/or Services which in the case of: (i) Equipment, will be less a straight-line depreciation, based on a 3-year useful life; (ii) Programs, the unexpired period of the license and associated Maintenance and Support Services; and (iii) Services, a pro-rated refund of Fees for the Services that are actually delivered and are in conformity with the Hitachi Services warranty.

**Renewal Notification:** a notice issued by Hitachi to You in accordance with these WMS Terms, setting out Your options for purchase of further Products, Services and related solutions from Hitachi for the applicable renewal term set out in the notice. The Renewal Notification may take the form of a Quote.

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

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

**Services:** Maintenance and Support Services, Professional Services, training and any other services listed in the Hitachi Price List or similar offerings from time to time.

**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 Hitachi's existing Software install base.

**Service Period:** the initial term and any applicable renewal terms specified in the Hitachi or Hitachi Partner Quote accepted by You (as applicable) or as otherwise agreed and stated in the applicable Order.

**Software:** the object code format of (i) programming firmware embedded in the Equipment to enable it to perform its basic functions or to operate or manage the Equipment ("**Operating Software**"); (ii) stand-alone software programs supplied by Hitachi, including their license keys where applicable, which do not fall within section (i) ("**Programs**"); and (iii) any Updates, Documentation and Published Specifications.

**Software Support Services:** the support that Hitachi provides, in accordance with these WMS Terms, with respect to the 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 supplied to Hitachi by any party other than Hitachi, Ltd., including Third Party Licensors, for direct or indirect distribution to end users, including You. For clarification purposes, if any Third-Party Software contains Third Party Related OSS, You must refer to that applicable Third Party EULA.

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

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

**Version:** is a generic term for code corrections, Service Packs, maintenance releases, minor releases, and major releases of the same Software, generally made available by Hitachi to its 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). However, for Programs that Hitachi delivers to You electronically, it will be the date that the initial license key which enables the download of the Program is issued by Hitachi to You.

**Warranty Period:** with respect to Products, the period specified in the Service Descriptions commencing from the Warranty Commencement Date and in the case of Services, the period set forth in Section 1(d) of these WMS Terms.

**Warranty Services:** the 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) of these WMS Terms, including to replace any Defects in any Equipment component and, where Hitachi considers necessary, any Software media and Updates and in the case of Services, the remedial services set forth in Section 1(d) of these WMS Terms.

**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.

**Work Papers:** those internal memoranda and working notes prepared by Hitachi during performance of Services hereunder that serve to substantiate the Services and/or any Work Product.

**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.

**You:** the entity to whom Hitachi provides the services on these WMS Terms.

## **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 have purchased Products and Services from an authorized Hitachi Partner and Hitachi is providing you with the Services under these WMS Terms.**

### **(a) Fees and Payment**

You will pay the fees and charges for the Services set out in Hitachi's invoice within thirty (30) days from the invoice date. Hitachi may charge You interest or suspend delivery of Services if payments from You are overdue. You must also pay for any Taxes arising from the transaction under these WMS Terms, irrespective of whether these Taxes are included in Hitachi's 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 contractual, non-contractual or pre-contractual, will be limited to the lesser of 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 contractual, non-contractual or pre-contractual, 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 WMS Terms fails of its essential purpose.

### **(c) Governing Law**

Unless it is agreed in writing between the Parties that the laws of another jurisdiction will apply, the laws of the Local Service Jurisdiction will apply to these WMS Terms and the venue for any litigation will be the one designated through the application of the Local Service Jurisdiction (as defined below). 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 WMS 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.

### **(e) Conflict of Terms**

If there is a conflict between the terms of the contract that You have with Partner and these WMS Terms, then to the full extent that those terms impact on these WMS Terms, these WMS Terms will prevail with respect to that conflict.