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Contract Number

24-250

SAP Number

Innovation and Technology Department

Department Contract Representative	Staci McClane
Telephone Number	909-388-0622
Contractor	Hitachi Vantara LLC
Contractor Representative	Kendrick Dukes
Telephone Number	916-719-5333
Contract Term	Specified in quotes accepted by Purchasing within limits set by County Policy
Original Contract Amount	Non-financial
Amendment Amount	N/A
Total Contract Amount	N/A
Cost Center	1200604048

Briefly describe the general nature of the contract: Non-financial Warranty Maintenance and Support Terms with Hitachi Vantara LLC, for maintenance and support services for the Hitachi storage platforms specified in quotes accepted by Purchasing within limits set by County Policy.

FOR COUNTY USE ONLY

Approved as to Legal Form

▶ Bonnie Uphold
Bonnie Uphold, Supervising Deputy County Counsel

Date 3/13/2024

Reviewed for Contract Compliance

▶ _____

Date _____

Reviewed/Approved by Department

▶ _____

Date _____

HITACHI VANTARA WARRANTY MAINTENANCE AND SUPPORT TERMS

These Warranty and Maintenance and Support Terms along with the terms attached to or incorporated by reference (together, the “**WMS Terms**”) apply to and form part of Your supply agreement with Hitachi or a Hitachi authorized distributor or reseller partner (“**Hitachi Partner**”) for the purchase of Hitachi products and services (“**Agreement**”). References to “**Hitachi**” mean Hitachi Vantara LLC or its Affiliate, which may be Hitachi, Ltd., or any business entity controlled by or under the common control of Hitachi Vantara or Hitachi, Ltd.

These WMS Terms cover the supply of the maintenance, support and installation services as described in these WMS Terms (“**Services**”) to Hitachi products purchased under the Agreement (“**Products**”). If You purchase Products through a Hitachi Partner and Hitachi performs the Services for those Products, Section 18 of the WMS Terms (Additional Terms and Conditions) will apply.

1. Product Warranty.

(a) Hitachi warrants to You that during the applicable warranty period set out in the Service Descriptions (“**Warranty Period**”), the Products will function in accordance with the user or technical manuals, training materials, specifications, or similar documentation relevant to the Products (“**Documentation**”). For equipment, the Warranty Period will start on the first day of the calendar month immediately after the date the equipment has left Hitachi’s distribution center or other delivery location. For software delivered electronically, the Warranty Period will start on the date that You are issued with the initial license key to download the software.

(b) If a Product does not substantially conform to the Documentation (“**Defect**” or “**Defective**”) then during the Warranty Period, you may make a warranty claim and subject to Section 6 of these WMS Terms, Hitachi will provide the Services that Hitachi considers in its sole discretion necessary to correct the Defect. To make a valid warranty claim, You must submit it in writing, including a full description of the Defect, to Your local Hitachi support contact center during the Warranty Period and within seven (7) days of discovering the Defect.

(c) If Hitachi considers in its sole discretion that the Services will not remedy the Defect, Hitachi will provide You with a refund for the Defective item upon Your prompt return of the item to Hitachi. These remedies 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). This warranty does not apply to any third-party products subject to warranties under a separate third-party end user agreement nor to any Products that are outside the Warranty Period.

Hitachi may authorize third parties to provide Services to You (“**Authorized Providers**” or “**ASP**”). The Hitachi Partner that You order Products from is not authorized to provide Services unless they are also an ASP. ASPs may provide Services on behalf of Hitachi as its subcontractor or provide Services under a separate contract that You enter into directly with the ASP. Hitachi will not be responsible for the Services provided to You by an ASP under a separate contract with You, and You must look to that separate contract for your rights and remedies.

2. Service Descriptions and Plans. Provided that You are eligible for Services, have purchased a support plan and have paid Hitachi all applicable fees in full and subject to Section 3, Hitachi will provide the Services for the relevant Products as specified in Your Order to Hitachi or a Hitachi Partner in accordance with these WMS Terms. Service descriptions and further details for Your Service coverage are contained at <https://www.hitachivantara.com/en-us/pdf/specifications/hitachi-support-service-descriptions-and-deliverables.pdf> (“**Service Descriptions**”). The Service Descriptions form part of and are incorporated by reference into these WMS Terms. 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, from the date of publication. Services may not be available in certain locations and may vary between locations, Product type or family, as specified in the Service Descriptions. Additional information regarding the Premium, Standard and Weekday Basic support offerings are available at <https://www.hitachivantara.com/en-us/services/customer-support.html>.

3. Service Partners. Hitachi may authorize third parties to provide Services to You (“**Authorized Providers**” or “**ASP**”). The Hitachi Partner that You order Products from is not authorized to provide Services unless they are also an ASP. ASPs may provide Services on behalf of Hitachi as its subcontractor or provide Services under a separate contract that You enter into directly with the ASP. Hitachi will not be responsible for the Services provided to You by an ASP under a separate contract with You, and You must look to that separate contract for your rights and remedies.

4. Equipment Maintenance Services. Subject to Section 6 of these WMS Terms, Hitachi equipment maintenance comprises the following:

- (a) supervision and installation of relevant engineering changes impacting the reliability of the equipment;
- (b) preventive maintenance, including necessary lubrication, adjustment or replacement of unserviceable parts; and
- (c) unscheduled maintenance, 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. Support Services for Software.

(a) Subject to 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 Documentation, as provided through:

- (i) remote telephone support or support via the online portal ("**Hitachi Support Portal**") to: (1) identify and assist in resolving the Defect; (2) advise on installation of Updates; (3) and respond to minor software information queries.
- (ii) on-site intervention and the provision of Patches and Fixes, Service Packs, respectively 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.

"Patches and Fixes" mean changes made to the software by Hitachi that establish or restore substantial conformity with the Documentation. **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.

"Service Packs" mean an accumulation of Patches and Fixes into a generally available package applicable to the latest generally available 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.

"Updates" means subsequent releases and error corrections and/or minor functional enhancements for Software previously licensed by Hitachi.

"Upgrades" means 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.

(b) Hitachi only supports the operating software (including any license key enabled features/functionality embedded in the operating software) if Hitachi is also maintaining the equipment on which it is installed. Hitachi's obligation to provide software support is contingent upon the software being: (i) subject to a current and valid license; (ii) covered under a current and fully paid-up agreement for support services; and (iii) operated in a Hitachi-supported configuration, which may be detailed in the Documentation. If Your software license is terminated for any reason, Hitachi's obligations to provide support for the relevant software will cease.

6. Service Exclusions.

(a) Without limiting the operation of any other part of the WMS Terms, Hitachi is not obligated to provide any Services to You, or otherwise remedy any Defects in Products, and Hitachi is not responsible for any lost or damaged data due to:

- (i) accident, natural disaster, Your neglect of Products, or other use of Products outside of normal and ordinary use;
- (ii) Your failure to maintain an environmentally controlled data center with a suitable operating environment for the Products on terms that Hitachi specifies or otherwise agrees to, including failure of electrical power, air conditioning and humidity control, environmental contaminants, noise levels above 85dB(A) or unreasonable or excessive vibrations;
- (iii) Your failure to provide any of the required items under Sections 8(b) or 16 of these WMS Terms;
- (iv) Your failure to install or enable Hitachi to install any items that are necessary for the provision of the Services or to provide Hitachi with necessary service clearances;
- (v) any interference, alterations, additions, modifications or substitutions to any Product or to Your systems or operating environment connected to the Product that are made by You or on Your behalf, unless authorized by Hitachi;
- (vi) Your failure to make Updates required or recommended by Hitachi or to install the most recent mandatory Updates or Patches and Fixes for the software or any modification, enhancement or customization of software made by You or on Your behalf and not authorized by Hitachi;
- (vii) any other act or omission of any person other than Hitachi or Hitachi's sub-contractor, which person includes an ASP or third party cloud service provider.

(b) Without limiting the operation of sub-section (a), the following services are also expressly excluded from the Scope of Services, and Hitachi will not be responsible for:

- (i) the maintenance or support of Products, including software versions, which have reached "End of Life" status, other than as expressly stated in these WMS Terms or in Hitachi's End of Life policy;
- (ii) the maintenance or support of Products that you are given for testing, proof of concept or evaluation purposes unless Hitachi explicitly agrees to provide all or some Services for such Products, at Hitachi's sole discretion;
- (iii) the maintenance or support of any third-party Products that are subject to a separate third-party support agreement; and
- (iv) the diagnosis and/or rectification of Defects that are not associated with the Products.

(c) If You request Hitachi to provide additional services not covered under these WMS Terms or any other services which Hitachi reasonable determines to be subject to the Service exclusions or otherwise "out of scope", Hitachi may, at its sole discretion, agree to provide such services to You at Hitachi's then current rates or on a quoted, fixed fee basis.

7. Field Replacement Units. Equipment may include components which are used or remanufactured, and regardless of this, the warranty in Section 1 of these WMS Terms will apply. Where Hitachi ships a sub-assembly of equipment components sealed at the factory and subject to replacement as a discrete unit at Your site ("**Field Replacement Unit**" or **FRU**") to replace a Product component that is removed during the supply of Services, the removed component will be the property of Hitachi, while the FRU will belong to You. For any removed components which: (i) You fail to return to Hitachi within fifteen (15) calendar days of the date of their removal; or (ii) are not covered by a then-current valid retention option, Hitachi may charge You a fee for those components at Hitachi's then-current spares price list. If You allow any person other than Hitachi or Hitachi's sub-contractor to break the factory seal on a FRU, this will void Your entitlement to the Product warranty or to otherwise receive Services entirely.

8. Remote Monitoring Services.

(a) The Services include remote diagnostic and monitoring services on eligible equipment, using Hitachi's proprietary remote monitoring tools and related Documentation, including but not limited to Hitachi Remote Ops, Hitachi Ops Center Clear Sight, and Hitachi SVOS cloud connector, as applicable ("**Remote Monitoring Services**"). All right, title and interest in the Remote Monitoring Services, and in all material that is used to provide those services, remain with Hitachi or its licensors and You do not get any licensed rights.

(b) Hitachi will not charge You for the supply of the Remote Monitoring 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 Remote Monitoring Services. In some instances, You will be required to opt-in to receive certain features of the Remote Monitoring Services. By opting-in, You agree to any updates to the Remote Monitoring Services. Remote diagnostic or monitoring services other than the Remote Monitoring 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.

(c) Hitachi will maintain the confidence of all passwords that You provide to Hitachi for the access and use of the Remote Monitoring Services. Hitachi may collect, use, and transfer telemetry data created by and derived from Remote Monitoring Services to its Affiliates for purposes of product and/or services monitoring, delivery, improvement, testing, and development.

(d) If You refuse to allow Hitachi to provide, fail to sign up for, or otherwise disable or interfere with the Remote Monitoring Services in any way, You acknowledge that Hitachi will be prevented from providing the remote diagnostic and monitoring services that are essential to the supply of Services and critical notifications, as applicable, including security breach notifications. In such circumstances, Hitachi will not be liable for any failure to meet service level response time commitments or other performance warranties, nor for any delays in providing the Services in accordance with these WMS Terms. Hitachi may use reasonable efforts to assist You with the rectification of any Defects that 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 Services in such circumstances.

(e) If the Agreement or Your separate services contract with an ASP or the supply of any Services is terminated or expires, You will allow Hitachi to disable the Remote Monitoring Services and de-install and remove all material on Your premises used by Hitachi to provide the terminated services. Hitachi may terminate access to the Remote Monitoring Services for systems that are not under valid support coverage.

9. Installation Services.

(a) Subject to Section 9(b), Hitachi will provide installation Services for the Products as set out in the relevant Order. Installation Services include only those Services identified in the Service Descriptions. Installation Services do not include any Service expressly identified as an exclusion in the relevant Order or the Service Descriptions, in addition to the exclusions in Section 6.

(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.

10. Termination and Renewal of Services.

(a) Without limiting any of Hitachi's other rights under the Agreement or applicable law, Hitachi reserves the right to terminate all or any of the Services at any time by written notice if You breach these WMS Terms or You otherwise infringe Hitachi's intellectual property rights. Any notice to terminate one or more discrete Service items will identify the specific item(s) to be terminated. If, in Hitachi's reasonable opinion, the termination of one or more discrete Service items adversely affects Hitachi's ability to provide other Services to You, then Hitachi may, in its sole discretion, terminate those other Services.

(b) Subject to Hitachi's rights of termination and suspension under the Agreement and applicable law, Hitachi will provide You with Services on the Products during the initial term and any applicable renewal terms as specified in the Hitachi or Hitachi Partner Quote accepted by You or as otherwise agreed and stated in the applicable Order ("**Service Period**"), provided You have paid Hitachi or the Hitachi Partner (as applicable) the fees for such services in full. The initial term for the Services will be non-cancellable and the applicable fees for that term will be non-refundable, unless the Quote as accepted by You or the Order (as applicable) states otherwise.

(c) If You do not renew the Services or if the Services are terminated, any subsequent reinstatement of Services may be subject to a reinstatement fee, based on Hitachi's current rates for reinstatement at the time, in addition to the then-current monthly fee for such Services.

(d) If any Services are not renewed or are terminated, Your rights, licenses and privileges under these WMS Terms cease 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, subject to Section 16(e), 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.

11. 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 or a Hitachi ASP to perform any maintenance /support or repair any Product.

(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 any Services have been voided under Sections 11(a) or (b) or terminated under Section 10 or have expired and You wish to reinstate the Services for all or part of the affected Product, You must have the relevant Product re-certified by Hitachi or a Hitachi ASP, in order to continue receiving the Services. 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).

12. Current and Superseded Software Support.

(a) 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 the time since a Version was initially released ("**Time-based**") or 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.

(1) Hitachi will provide Normal Support for a period no longer than eighteen (18) months from the date of release. If a release of software is older than eighteen (18) months, Hitachi will provide Limited Support (as defined below) for a twelve (12) month period following the end of Normal Support period.

(2) Hitachi does not provide support past thirty (30) months for software on the Hitachi Vantara Time-based support lifecycle matrix.

(ii) End of Normal Support for version-based obsolescence products listed on the Hitachi Vantara Version-based support lifecycle matrix located at:

[https://knowledge.hitachivantara.com/Support Information/More Info/Version Based Support Lifecycle Matrix](https://knowledge.hitachivantara.com/Support%20Information/More%20Info/Version%20Based%20Support%20Lifecycle%20Matrix).

- (1) 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, 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.
- (2) 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>.

“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 Documentation.

“Limited Support” means the provision of existing Service Packs, and existing Patches and Fixes necessary to maintain the software in substantial conformance with the Documentation. Hitachi does not provide support for software releases that are older than two prior versions of the current version.

(b) 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. End of Life Products. Please refer to Hitachi’s End of Life Policy located at <https://www.hitachivantara.com/en-us/pdf/datasheet/support-services-end-of-life-policy.pdf>. 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.

14. Maintenance Material. Hitachi may store diagnostic and/or tracking tools, including without limitation, Remote Monitoring Services software, firmware and related documentation, personal computers or notebooks, maintenance and other documentation (**“Maintenance Material”**) within the Products or elsewhere on Your premises as Hitachi considers necessary or convenient. Only Hitachi or Hitachi ASP personnel will be authorized to use the Maintenance Material. Maintenance Material will always remain Hitachi’s sole and exclusive property and to the full extent applicable, will be covered as Hitachi intellectual property 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 Services.

15. Transferability of Services. You must not assign or transfer any warranty, maintenance and/or support arrangement with Hitachi to any third party without Hitachi’s prior written consent. Unless Hitachi provides such consent, Hitachi will have no obligation to perform any Services to any third party.

16. Customer Responsibilities.

(a) To assist Hitachi to provide You with Services, You must provide Hitachi, Authorized Partners, and their respective personnel with prompt access to Your premises (as applicable) and make all necessary arrangements that are reasonably necessary to perform the Services, in Hitachi’s sole determination. 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, 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) above 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 the commercial enterprise edition of the Data Integration (Pentaho™), You are entitled to the number of 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 (**“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 Data Integration Product. 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, including any removed Product component(s) under Section 7, 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. You agree to defend, indemnify and hold Hitachi harmless from and against 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. Services for Additional Fees. If You request Hitachi to provide additional services not covered under these WMS Terms or any other services which Hitachi reasonable determines to be "out of scope", Hitachi may, at its sole discretion, agree to provide such services to You at Hitachi's then current rates or on a quoted, fixed fee basis.

18. 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 fifty thousand US dollars (U.S. \$50,000) or the 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) **Data Privacy.** If the parties exchange any information that relates to an identified or identifiable individual that is considered "Personal Data" as part of the Services, the parties will take all reasonably necessary steps to ensure that such Personal Data is transferred, processed, and handled in compliance with each party's obligations under all applicable data protection laws. You will at all times remain the Data Controller (namely, the entity who is responsible to determine the purposes and means of processing the data) of any Personal Data that You provide to Hitachi. Hitachi will only use such Personal Data for any purposes necessary to carry out the supply of Products and Services under an Order. Where applicable, the most current Data Privacy and Security Terms at <https://www.hitachivantara.com/en-us/pdf/legal/data-privacy-security-terms-customer.pdf> are incorporated and form part of this Agreement.
- (d) **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. "Local Service Jurisdiction" means the jurisdiction of the state, province or country in which the Hitachi entity that sold You the Product is located.
- (e) **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.
- (f) **Force Majeure.** Neither party will be liable for performance delays nor for non-performance (including suspension) due to causes beyond its reasonable control, except for payment obligations.

- (g) **Contributory Liability.** Hitachi will not be liable to You for the failure or non-performance of any obligation required of Hitachi hereunder, 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. You agree to take all steps and measures available to You to mitigate and minimize the losses, costs and damages arising from any failure or non-performance of Hitachi, irrespective of the nature and extent of Your contribution.
- (h) **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.