

HITACHI

Inspire the Next

DIRECT PURCHASING AGREEMENT

Agreement No.: _____

Effective Date: _____

This Direct Purchasing Agreement ("**DPA**") governs the Customer's purchase of Products and/or Services from HDS. The online terms and conditions located at

<http://www.hds.com/corporate/legal/index.html> ("**Online Terms**") contain information about HDS' warranty and maintenance terms and software license terms form part of this DPA and are incorporated by reference in addition to the in this document amended BASIC SOFTWARE ONLINE TERMS and WARRANTY MAINTENANCE AND SUPPORT.

TERMS AND CONDITIONS:

1. **ORDERING DELIVERY AND INSTALLATION**

1.1 **Ordering Process**

Following Customer request HDS will produce an offer for delivery of Products and/or Services. The Customer accepts the offer by means of a corresponding purchase order. Customer's purchase order has to reference HDS' offer and must not contain any additional, alternative or contradicting terms or conditions. Any delivery of Products and Services will only be provided on the basis of the terms and conditions of this DPA. Any additional, alternative or contradicting terms (including but not limited to Customer terms which may be eg on the back of a purchase order or form part of any other documents) will be incorporated only if expressly accepted by HDS in writing. HDS may confirm a Customer purchase order by providing a written order confirmation. Customer may change or cancel orders only with HDS written consent.

1.2 **Product Delivery**

HDS will use reasonable efforts to meet delivery dates, however delivery dates are only estimates unless HDS has explicitly confirmed in writing a fixed delivery date. Customer agrees that where necessary HDS may make partial deliveries and send Customer a partial invoice. Delivery will be CPT (as defined in IncoTerms 2000) at the agreed delivery point. Customer is responsible for loss or damage to the Products once delivered, and must pay all subsequent shipping and insurance charges. HDS will retain all title to the Equipment ordered until Customer has paid HDS in full.

1.3 **Product Installation**

Unless agreed otherwise, the Products will be installed by HDS or its authorised service provider at the agreed installation site specified in the Order. Customer will prepare the installation environment at its cost according to HDS requirements.

2. **WARRANTIES**

2.1 **Product Warranty**

Subject to sections 2.3 and 9.1, HDS warrants to Customer that, during the Warranty Period, Products will function in accordance with the Published Specifications. To make a valid warranty claim, Customer must submit a claim to HDS in writing.

2.2 **Service Warranty**

CUSTOMER ("Customer"):

Name:

Address:

Contact Person (for Notices):

Hitachi Data Systems GmbH ("HDS"):

Address: Guglgasse 17-19, 1110 Vienna, Austria

Contact Person (for Notices):

HDS warrants to Customer that it will provide the Services in a workmanlike manner in accordance with generally accepted industry standards.

2.3 **Warranty Exclusions**

The provision of any Warranty and Maintenance Services are subject to the conditions and exclusions set out in the Warranty, Maintenance and Support terms in Attachment 2.

3.0 **SERVICES**

3.1 **Maintenance & Support Services**

After the end of the warranty Period Customer will be entitled to receive Maintenance and Support Services during the Initial Services Period, provided that Customer has purchased and paid for those services in full. HDS will automatically renew these Maintenance and Support Services for successive Renewal Service Periods unless Customer writes to HDS at least 90 days before the then current Renewal Service Period expires and tells HDS that they will not be renewed any further. HDS will provide Customer with Maintenance and Support Services in accordance with Attachment 2 (Warranty, Maintenance and Support).

3.2 **Professional Services**

HDS will provide Customer with Professional Services as defined in a Statement of Work. The Statement of Work sets out any other terms that relate to the Professional Services.

3.3 **Co-operation**

To assist HDS to provide Services to Customer, Customer must provide prompt access to its premises, computer equipment (including remote access), adequate working space, facilities, personnel, information or materials that HDS may reasonably require.

4. **FINANCIAL TERMS**

4.1 **Fees and Payment**

Customer will pay the agreed fees and charges for the supply of Products and Services set out in HDS invoice within 30 days from the invoice date. HDS may claim interest charges at the legal rate or suspend delivery of all or any Services if payments are overdue. HDS reserves further claims. VAT at the legal rate must be added to any given prices.

4.2 **Maintenance and Support Renewals**

The fees for Maintenance and Support Services will be payable from the date set out in the Order. HDS quotation of renewal fees does not obligate Customer to renew Maintenance and Support Services.

5. INTELLECTUAL PROPERTY

5.1 Ownership and Licenses

HDS and its licensors own all copyright, trade marks, designs, patents, know-how, trade secrets, trade, business or company names, domain names and related registration rights and all other intellectual property rights in all items and materials that HDS provide to Customer or otherwise create pursuant to this DPA, and their modifications ("**Hitachi IP**"). Customer only gets license rights in Software, Work Product and any other Hitachi IP as expressly stated in this DPA, and Attachment 1. Customer must not do anything to jeopardise HDS or its licensors' rights in the Hitachi IP including to (i) copy, modify, reverse engineer (except to the extent such restrictions are prohibited by applicable law), transfer or sublicense any Hitachi IP (except as allowed by HDS licence or as HDS otherwise agrees in writing); (ii) register or attempt to register any competing intellectual property rights to the Hitachi IP; (iii) delete or tamper with any proprietary notices on or in the Hitachi IP, (iv) take or use any action that diminishes the value of any trademarks included in the Hitachi IP, or (v) use the Products in violation of applicable law.

5.2 Software License Grant

Subject to the terms of this DPA and the applicable licensing provisions contained in Attachment 1, HDS grants Customer a personal, non-exclusive, non-transferable (except in connection with the transfer of Equipment as permitted by this DPA) license to Use the Software to operate the Equipment in accordance with its Published Specifications solely for Customers internal business purposes.

5.3 Intellectual Property Claims

Subject to section 5.1 and the exceptions in this section 5.3, if a third party makes a claim against Customer that any Product or Service infringes that party's patent rights or copyright ("**IP Claim**"), HDS will provide Customer with the following recourse (which comprises the Customer's sole and exclusive remedy against HDS for IP Claims):

- (a) HDS will defend or settle the IP Claim at its option and cost, and pay to Customer the amount of damages, losses and costs finally awarded (or settled with HDS' written consent), provided that Customer: (i) promptly notifies HDS of the IP Claim (ii) allows HDS to solely manage the defence and settlement of the IP Claim; (iii) co-operates with and assists HDS as it require (HDS will pay Customers reasonable costs of doing so); and (iv) is not in breach of this DPA or its Attachments.
- (b) HDS will, at HDS' option and cost, do any of the following in relation to a Product which is, or HDS considers is likely to be, the subject of an IP Claim: (i) secure the rights for Customer to continue to use the Product without infringement or (ii) modify the Product so that it is not infringing or replace it with something that has similar functionality to the Product. If neither option is reasonably possible, HDS will provide Customer with a refund, provided that Customer promptly returns the Product to HDS.

The above remedies will not apply to any Third Party Products (including without limitation any Third Party Related OSS as defined in the Online Terms); or otherwise to any Product that Customer has, or any person on its behalf has: (i) modified or combined with any third party product not authorised or approved by HDS; (ii) used outside HDS stated standard operating environment for the Product or for a purpose not authorised by HDS; (iii) failed to use a more recent Release Update which contained at least the same functionalities of the Product that was available to Customer and would have avoided the infringement or

where the IP Claim arises due to any material or item that Customer owns or has sourced from a third party itself.

6. CONFIDENTIAL INFORMATION

Each party must keep confidential any Confidential Information that is given to it by the other party. Each party shall use the same degree of care in protecting Confidential Information of the other party as it would use to protect its own Confidential Information.

HDS will not disclose Customer Confidential Information to anyone else, unless Customer allows HDS to do so, and Customer must do the same with HDS Confidential Information. HDS can, however, disclose Customer Confidential Information to its employees and contractors who need to know the information in order to perform obligations under this DPA.

Neither party shall be required to keep confidential any Confidential Information which: (a) is or becomes a matter of public knowledge through no fault of the receiving party; (b) is rightfully received by the receiving party from a third party without a duty of confidentiality; (c) is independently developed by the receiving party; or (d) is disclosed under operation of law.

7. LIMITATIONS OF LIABILITY

7.1 Uncapped Liability

Each party acknowledges the full extent of its own liability to the other arising from: death or personal injury resulting from negligent acts or omissions; any claims resulting from intentional or severe grossly negligent behavior; non-excludable rights of consumers (arising for instance from laws with a strict product-liability); breach of software-rights by customer use; breach of confidentiality-obligations or any violation of HDS-IP-rights.

7.2 Cap on Liability

With exception of the "uncapped liability" in sec. 7.1, HDS liability, no matter from what legal cause, is limited as follows:

- a) HDS is held liable only for damages caused by intent or gross negligence or breach of a substantial contractual obligation; in the last case, liability is limited to the damage that was obvious to HDS at the time of the execution of the agreement.
- b) Liability of HDS in the aforementioned cases of sec. 7.2 (a) is limited to € 500.000,- per individual contract in total, except in cases of intent.

8. TERM AND TERMINATION

8.1 Term and Termination of the DPA

The DPA will start on the Effective Date and continue until it is terminated by either party on written notice to the other

a) by giving ninety (90) days notice or if the other party becomes insolvent or insolvency proceedings were rejected by court due to the lack of sufficient funds.

b) because of important reason such as if the other e.g. (i) breaches the confidentiality, intellectual property or export compliance sections of the DPA; (ii) commits a material breach of any other terms and does not remedy that breach within 30 days of written notice to do so. If the DPA is terminated for important reason, Customer rights, licenses and privileges under it will terminate and Customer must comply with HDS requests to either remove and destroy all Hitachi IP in Customers possession or control or return such material and items to HDS at Customers cost.

Furthermore in case of termination for whichever reason, Customer will not be relieved from its payment obligations and any money due to HDS will become immediately payable.

8.2 Term and Termination of each agreement

Each agreement arising under this DPA will start in accordance with Section 1.1 and will continue until either (a) all obligations under that agreement are discharged by the parties, or (b) the DPA is terminated by HDS in accordance with Section 8.1 b), or (c) the agreement itself is terminated by either party on written notice to the other because of important reason.

Furthermore in case of termination for whichever reason, Customer will not be relieved from its payment obligations and any money due to HDS will become immediately payable unless otherwise agreed.

9. GENERAL

9.1 Third Party Products

In the event of any defects of the Third Party Products provided by HDS, HDS will, during the Warranty Period at its sole discretion, either replace or repair the defect Third Party Product. The Customer shall not be entitled to rescind the respective purchase agreement or the DPA or demand a reduction in price. The relevant Third Party Product suppliers may provide additional guarantees to Customers for their Third Party Products which will not restrict the warranties provided under this clause in any way. These Customer terms, and any additional distribution or other obligations imposed on Customer in connection with the sale and distribution of Third Party Products are available upon request and compliance is Customer responsibility.

9.2 Export Compliance

Customer acknowledges that in various countries, laws and regulations governing the export of computer products and technology may prohibit use, sale or re-export of such products or technology if Customer knows or has reason to know that such products and technology are for use in connection with the design, development, production, stock piling or use of nuclear, chemical or biological weapons or missiles, and in some countries (eg China) for certain conventional military end uses. If Customer sells or transfers to another person or entity title in or right to use any part of products or other materials supplied by HDS, Customer will ensure that all applicable export restrictions of the nature described in this section are observed.

9.3 Dispute Resolution

In the event of a dispute, each party will use reasonable efforts to get an appropriate person from its respective management teams to meet and attempt to resolve the dispute in good faith. If such representatives are unable to resolve the dispute within 30 days (starting on the day of notification of the claim grounding the dispute) either party may resort to alternate dispute resolution such as conciliation or otherwise seek recourse from the courts. Either party may seek injunctive or other urgent equitable relief at any time.

9.4 Miscellaneous

(a) This DPA shall be governed by Austrian law; both parties expressly consent to the jurisdiction of the competent courts in Vienna, Austria. The United Nations Convention on the International Sale of Goods and its implementing legislation (also known as the "Vienna Convention") will not apply to this DPA.

(b) Customer must not assign, or otherwise transfer any of its rights under this DPA without HDS prior written agreement.

(c) HDS may use subcontractors to perform any of its obligations, but HDS will remain responsible for performance.

(d) Notices made under the DPA must be in writing to the appropriate representative of the recipient, as identified in the DPA or otherwise to a senior executive.

(e) Each party is an independent contractor and there is no actual or deemed partnership, franchise, joint venture, agency, employment or other fiduciary relationship between them.

(f) Customer grants to HDS the limited right to use Customers name in promotional materials, including press releases, presentations and customer references regarding the sale of Products and Services. These permissions are free of charge and for worldwide use in any medium. The foregoing notwithstanding, HDS will obtain Customers prior written approval for publicity that contains claims, quotes, endorsements or attributions by Customer, such approval not to be unreasonably withheld.

(g) This DPA may not be modified except in writing signed by an authorised representative of each party.

(h) The DPA (including Attachments 1 and 2 and all Orders and Order Confirmations) is the entire agreement relating to its subject matter. On the Effective Date, this DPA supersedes and terminates any prior agreements of the parties with regard to the subject matter of this DPA.

(i) If there is a conflict amongst the elements the DPA, the following order of precedence will apply (in descending order): (i) this DPA; (ii) Attachments 1 and 2; (iii) an Order Confirmation; (iv) an Order; and (v) a Statement of Work.

(j) Should any provisions of this DPA be or become invalid or unenforceable, this shall not affect the validity of the remaining provisions of this DPA. The invalid or unenforceable provision shall automatically be replaced by such valid and enforceable provisions as come closest to the intended economic purpose. The same shall apply mutatis mutandis in case the Agreement is incomplete.

10. DEFINITIONS AND INTERPRETATION

Attachment: any of the documents attached to this DPA that supplements or amends it.

Confidential Information: information that, at the time of disclosure, is clearly marked as confidential or in the circumstances would be considered to be confidential.

Current Release: the latest New Version of the Software released by HDS (designated sequentially by HDS as, for example, "New Version 1.0.0").

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

Equipment: hardware and spare parts.

Initial Services Period:

the non-cancellable Service Period commencing immediately upon expiration of the Warranty Period.

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.

Maintenance and Support Services: the equipment maintenance and software support services described in more detail in Attachment 2.

New Version: a new version of the Software that provides significant additional or enhanced functionality and/or significantly enhanced performance that is made generally available by HDS for an additional fee.

Order: a written order for the purchase of Products and/or Services from HDS, or a document detailing the Product, Product description and price which is submitted in accordance with HDS then-current ordering requirements.

Order Confirmation: a written or electronic acknowledgement or invoice issued by HDS in response to an Order.

Patches and Fixes: changes made to the Software by HDS that establish or restore substantial conformity with the applicable Specification.

Problem: an instance where a HDS Product does not substantially conform to the Published Specifications.

Product(s): any Equipment and/or Software listed in HDS standard product price lists published from time to time.

Professional Services: software enablement, data migration and other services.

Published Specifications: are the specifications for Products listed valid at the time of acceptance of the Order.

Renewal Service Period: the automatically renewable Service Period commencing at the end of the Initial Service Period.

Service Period: term during which Maintenance and Support Services are provided. The term of a particular Service Period and the applicable charges shall be as specified in an Order or Attachment.

Release Update: an update of the Current Release which contains error corrections and/or minor functional enhancements and which is made generally available by HDS without additional charge (designated sequentially by HDS as, for example, "Release 1.1.0").

Severity Levels: the levels set out the following table:

SEVERITY	DESCRIPTION
1	Business critical system* or application is down
2	Business critical system is useable but severe restrictions

3	Problems or errors but with no severe restrictions
4	Circumvention is in place, but requiring permanent fix
5	Information only.

* **Business Critical System:** a computer system on which continued business production is absolutely dependant

Services: Billable Services (as defined in the Online Terms),

Maintenance and Support Services, Professional Services and any other services listed in HDS published offerings from time to time.

Software: the object code format of (i) programming firmware embedded in the Equipment to enable it to perform its basic functions (**Operating Software**) and (ii) software programs supplied by us (**Programs**) and (iii) and any Updates (as defined in the Online Terms), related documentation and specifications.

Statement of Work or SOW: is a document which fully describes the Professional Services being provided by HDS and sets out the services being provided, the price, estimated delivery dates, acceptance procedures and roles and responsibilities of the parties.

Third Party Products: any Equipment or Software supplied to HDS by any party other than Hitachi Ltd. for direct or indirect distribution to end users.

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

Use: to use Software in live production for processing data either in operation of Products or in use of Programs.

Warranty Period: means the period listed in Attachment 2 for a particular Product.

Work Product: works of authorship, program listings, tools, documentation, reports, drawings and similar works created by or on behalf of HDS pursuant to the supply of Services.

EXECUTED AS AN AGREEMENT:

IN WITNESS WHEREOF, the parties have executed this DPA by its authorised officers as of the Effective Date.

<p>FOR HITACHI DATA SYSTEMS GMBH</p> <p>Signature:</p> <p>Name:</p> <p>Title:</p>	<p>FOR CUSTOMER:</p> <p>Signature:</p> <p>Name:</p> <p>Title:</p>
<p>FOR HITACHI DATA SYSTEMS GMBH</p> <p>Signature:</p> <p>Name:</p> <p>Title:</p>	<p>FOR CUSTOMER:</p> <p>Signature:</p> <p>Name:</p> <p>Title:</p>

You must read these Basic Software Online Terms ("Online Licence Terms") together with any additional terms and conditions relating to Software in the agreement between You and HDS ("Agreement"). If there is any inconsistency between these Online Licence Terms and the Agreement, these Online Licence Terms will be the controlling document. Capitalised terms will have the same meaning as defined in the Agreement and these Online Licence Terms.

1. Licence Grant

Except as otherwise expressly provided, HDS grants You a personal, non-transferable, non-exclusive licence:

- (a) to Use the Software solely on the HDS Equipment with which it is shipped, to enable the Equipment to function;
- (b) to Use the Software solely for your internal business needs subject to the restrictions specified on any Equipment used in connection with the Software. For capacity-based Software, You will Use the Software up to the specified capacity purchased on the relevant equipment, network, device or CPU. If you wish to exceed capacity, you must pay HDS any additional licence fees first; and
- (c) if you are provided with Work Product under a Statement of Work, to Use, reproduce, copy and display the Work Product solely for your internal business purpose. You obtain no title or ownership in any Software or Work Product or Maintenance Material under the Agreement or these Online Licence Terms, nor do you obtain any right to sublicense the Software, Work Product or Maintenance Material.

The Software may be used only as provided in either machine-readable object code form or machine-compressed form, and the related Documentation may be used only in printed or electronic form.

2. Third Party Software

Third Party Software may be embedded in HDS' Software and sub-licensed directly to You. Other Third Party Software is provided to You subject to Third Party EULAs available from HDS at Your request. You will have no recourse against HDS unless HDS is the stated licensor and then only to the extent provided in such licence. You will be responsible to do whatever is necessary or required by the third party licensor for the licences and related terms to take effect (e.g. online registration). Unless stated otherwise in these Online Licence Terms or in the third party licence or provided under a maintenance contract, HDS will not provide support for Third Party Software and will not provide You with any IP indemnity, including the IP indemnity in the Agreement, for the Third Party Software. Some Software licensed to You includes Open Source Software, and You can access a complete list of these licenses for the Open Source Software provided with HDS' or Hitachi Ltd's proprietary Software from the Open Source License Website. The Open Source License Website does not include Third Party Related OSS. You must refer to the applicable Third Party EULA for those terms.. It is Your responsibility to read and adhere to all licences for Open Source Software. By accepting the Online License Terms, You are also accepting the terms and conditions of the licences applicable to any Third Party Software (including any Open Source Software) included with the Software. If the Software licensed by HDS includes certain software licenced under the GNU General Public License or other similar Open Source Software with a licence that requires the licensor to make the source code publicly available ("**GPL Software**") and the applicable source code was not included in the Software, then You may obtain a copy of the applicable source code for the GPL Software by either (a) requesting the open source code be mailed to You by HDS or (b) downloading the open source code by following the links on the website referenced in the Open Source License Website.

3. Use Restrictions

Except to the extent these restrictions are prohibited by applicable law, or prohibited by the terms of any open source licence, You must not, and must not allow any other person to: (a) use the Software to conduct comparative or competitive analyses, including benchmarking; (b) reverse engineer, decompile, reverse compile, reduce in human readable form or otherwise access the source code of the Software (c) sub-licence, rent, lease, modify, enhance, supplement, create derivative works from the Software; (d) copy the Software other than as expressly allowed; (e) remove or otherwise tamper with any proprietary notices contained on or in the Software; or (f) use or permit the Software to be used to perform services for third parties, whether on a service bureau or time sharing basis or otherwise, without HDS express written authorisation.

4. Authorised Copies

HDS will provide You with one copy of the media and documentation for the Software. For Software licenced under an enterprise licence, HDS grants to You right to make copies of the Software solely for your own internal use, within the scope of the enterprise licence. You may also make one copy of back-up or archival copies of Software solely for your own internal use. You must reproduce on all copies made, all proprietary and copyright notices contained on or in the Software.

5. Software Transfers

Except to the extent otherwise provided in any applicable open source licence, You must not transfer the Software to any other person or entity without HDS' prior written consent. You may, however, transfer the Operating Software to a third party ("*transferee*") solely with the related HDS Equipment, but You must ensure that the transferee agrees to the terms of these Online Licence Terms and the relevant licence terms. The Operating Software is provided to the transferee on an "as is" basis, with no extension of any existing warranty or support arrangements. When the transfer is complete, You must remove and destroy all copies of the Operating Software in Your possession or under Your control. You must also permanently remove all Software from any media upon which it is stored prior to disposing of the media.

6. Location of Software

If the Equipment upon which You are authorised to Use the Software becomes temporarily inoperable, You may load and Use the Software on another of your computer systems located at the same premises, until the original Equipment becomes operable. Otherwise, You must always get HDS' prior written consent before changing the Equipment on which the Software is to be Used, or its location.

7. Verification Rights

HDS or its independent auditor may, upon reasonable notice to You, examine and audit Your records and systems to ensure compliance with applicable software licences. The audit will be performed during normal business hours in a manner which does not unduly interfere with Your business operations. If the audit shows that You are using more copies of the Software than permitted under Your applicable licences, HDS will charge You additional usage fees.

8. Termination of Licences

Your licence in the Software will terminate: (i) when that Software is replaced with any upgrade, revision or replacement Software; (ii) when the licence term ends, if any is expressly stated; (iii) if You are in breach of these Online Licence Terms, any license for Third Party Software, or the Agreement.

9. Definitions

Open Source Licence Website: www.hds.com/assets/pdf/open-source-licenses-applicable-to-hds-products.pdf
Open Source Software: Third Party Software which may be available without charge for use, modification or distribution and generally licensed under the GNU General Public Licence, Lesser General Public License, Apache or other open source software licence.

Third Party EULAs: separate licenses directly between Customer and the third party licensor, which terms may be shrink-wrapped or click-through and related documentation, which may be provided to You in connection with delivery of the Software.

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

Third Party Software: any software licensed to HDS for direct or indirect distribution to end users. For clarification purposes, if any Third Party Software not sublicensed through these terms contains Open Source Software, You must refer back to that applicable licence for those terms.

ATTACHMENT 2 TO DPA - WARRANTY MAINTENANCE AND SUPPORT

Capitalised terms in this Warranty Maintenance and Support document have the same meaning as defined in the DPA. If there is any inconsistency between this Warranty Maintenance and Support document and the DPA, the DPA will be the controlling document. If a Product is delivered with a separate warranty, the terms of that separate warranty apply to such Product, not the Product warranty terms of the DPA or the warranty terms of those Warranty Maintenance and Support document.

1. Warranty Period and Remedy

- (a) HDS warrants to Customer that, during the Warranty Period, Products will function in accordance with the Published Specifications.
- (b) Unless specified otherwise, HDS warrants the Products (including hidden errors) for a period of twelve (12) months from the delivery date. ("**Warranty Period**").
- (c) The warranty does not include product failures caused by circumstances which are not related to the product itself. In particular, the warranty does not include failures due to an unsuitable installation site, lack of energy or other unsuitable physical operating environment.
- (d) Customer must submit any warranty claim in writing to HDS by giving detailed explanations. Product deficiencies for products accepted by customer are excluded from the warranty claim to the extent such product deficiencies have been foreseeable by customer. The warranties exclude any Products not properly maintained by Customer or modified without HDS' prior written consent or used other than for the agreed purposes.
- (e) During the Warranty Period HDS will, at its option and expense, either repair or replace any Products that do not comply with the warranty. Other remedies are excluded.
- (f) The applicability of section 933 b AGBG ("Vormännerhaftung") for the purposes of introducing a claim against HDS is excluded. The legal assumptions of Section 924 AGBG regarding the relevant time for the occurrence of product deficiencies shall be excluded.
- (g) Equipment may include components which are used or remanufactured, regardless, HDS' warranties apply. All components removed in the course of performing warranty service or any Maintenance and Support Services shall be the property of HDS.

3. Selecting Maintenance and Support Services

In addition to the warranties, Customer will receive Maintenance and Support Services if specified in the relevant Order or Attachment under the DPA. Maintenance and Support Services may not be available in certain locations, and plans may vary between locations or be subject to additional fees.

4. Scope of Self-Service Maintenance

Self-service Equipment maintenance comprises the following:

- (a) access to online self-service support portal providing technical information and documentation to facilitate the repair of a malfunction or issue with Equipment operation.
- (b) Parts ordering processing to replace a malfunctioning or defective component via the online self-service support portal.
- (c) Software and firmware updates via the online self-service portal.
- (d) remote telephone technical assistance to assist with fault isolation, installation, configuration, interoperability or other Equipment issues.

5. Scope of Onsite Maintenance Services on Equipment

HDS Equipment onsite maintenance comprises the following:

- (a) supervision and installation of engineering changes impacting the reliability of the Equipment, which HDS 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 HDS during the applicable on-call hours of coverage.

The following are excluded from the scope of Equipment maintenance: Engineering Changes other than those described in 5(a) above; providing and maintaining a suitable environment for the Equipment, as specified by HDS; the availability and performance of any electrical work external to an item of Equipment or the maintenance of accessories, attachments, equipment, or other devices not listed in the relevant Order or Attachment; the painting, refinishing, or other refurbishment of Equipment; repair of damage resulting from accident, natural disaster, transportation, neglect or misuse, failure to continually provide a suitable installation environment (including but not limited to failure of electrical power, air conditioning or humidity control), or from causes other than ordinary use; the movement, rearrangement or reconfiguration of Equipment or cables, additional wiring, or repair to a previously prepared site or station to make it operational; the installation or removal of accessories, attachments or other devices, or the furnishing of supplies; support required or rendered more difficult because of Customers failure to maintain the most current version of Software made available to Customer by HDS; any service which is impractical for HDS' service personnel or representatives to render because of alterations in the Equipment or their connection by mechanical or electrical means to another machine or device.

6. Scope of Support Services for Software

HDS Software support is the support required in connection with ordinary use of the Software in accordance with its Published Specifications, through:

- (a) remote telephone support to (i) identify the problem, and its source and assist in resolving the problem; (ii) advise on installation of Updates; and (iii) respond to minor "ad hoc" Software information queries;
- (b) on-site intervention where necessary and provision of Patches and Fixes where necessary, to be performed at HDS' sole discretion; and
- (c) access to "mandatory" Release Updates free-of-charge.

- (d) Software support services exclude the following events (or any other similar event outside HDS' reasonable control):
- (e) support of other software, accessories, attachments, machines, systems or other devices not supplied by HDS;
- (f) support of Operating Software residing on Equipment not being maintained by HDS
- (g) support rendered more difficult because of any alterations, additions, modifications or variations to the Software, the Equipment or Customers system or operating environment;
- (h) support required or rendered more difficult because of Customers failure to maintain the most current version of Software made available to Customer by HDS;
- (i) diagnosis and/or rectification of problems not associated with the Software;
- (j) Professional Services and training, which are scoped and delivered by HDS Global Solution Services;
- (k) Software installation services described in Section 7(b).

7. Hi-Track Services.

Maintenance and Support Services include remote diagnostic and monitoring services on eligible Equipment, using HDS' proprietary Hi-Track® hardware, software, microcode and documentation ("**Hi-Track Services**"). This material will always remain HDS' sole and exclusive property as Hitachi IP as defined in the DPA, and Customer does not get any licensed rights in this material. Customer must provide and maintain, at Customers cost, all telecommunications lines, monitor, PC, modem and access required for HDS to implement and provide the Hi-Track Services. If the DPA or the supply of Maintenance and Support Services under it is terminated, Customer will allow HDS to disable the Hi-Track Services and de-install and remove all material on Customers premises used by HDS to provide these services. HDS warrants that in providing Hi-Track Services, HDS does not access Customers data. HDS will maintain the confidence of all passwords that Customer provide to HDS in connection with its supply of Hi-Track Services.

8. Installation Services

(a) HDS will provide installation services as specified in the DPA or relevant Order or Attachment, and as further described in the applicable Installation Services Description.

(b) HDS may provide on-site Software installation services (where HDS advises that the Software has to be installed by HDS) for an additional fee. Installation does not result in production ready implementation of the Software; production ready software implementation is a Professional Service. If Customer requires a production ready implementation or additional capabilities, Customer will pay an additional fee based on Customers requirements, and the Software and/or Equipment. HDS will advise Customer of the Professional Services fee in advance.

9. Services for Additional Fees

If Customer requests HDS to perform:

- (a) any of the "excluded" services in Sections 2 or 3; or
- (b) any Maintenance and Support Services outside the coverage hours or support zone for Customers support plan; or
- (c) any other Services which HDS reasonably determines to be "out of scope" of Warranty Maintenance and Support.

HDS may perform the relevant Services at HDS' then current rates or on a quoted fixed fee basis ("**Billable Services**"). If Customer allow someone other than HDS' authorised service personnel or representatives to move, relocate, perform maintenance or support, or repair Equipment or Software, Customer must re-certify its maintenance eligibility to continue HDS' commitments under this Warranty Maintenance and Support document. HDS will charge its then current rates for recertification and further repair necessary to restore the Equipment or Software to good operating condition.

10. Termination and Expiration of Maintenance and Support Services

- (a) HDS will terminate its Maintenance and Support Services immediately when Customer transfers its Equipment to another person or entity. Either party may terminate Maintenance and Support Services for cause in accordance with the termination rights stated in the DPA.
- (b) Without limiting Customers rights elsewhere in the DPA, Customer may terminate the Maintenance and Support Service for one or more items of Equipment and/or Software by giving HDS 30 day's prior written notice. 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 HDS, the termination of a single Maintenance and Support Service adversely affects the ability of HDS to provide Customer other Services, then HDS may in its sole discretion terminate these other Services.
- (c) HDS' Maintenance and Support Service obligations for Equipment no longer manufactured will expire five (5) years from the last manufacturing date of the equipment, spare parts or accessories for the relevant Equipment model. HDS will use commercially reasonable efforts to provide Customer with at least three (3) months prior notice of any expiration date.

11. Current and Superseded Software Support

- (a) HDS will provide Normal Support (as defined below) for the Current Release and one prior version of the Software. If a release is older than one prior version from the Current Release, then HDS will provide Limited Support (as defined below) for a 12 month period following the general availability of the Current Release.
- (b) "Normal Support" means the development and provision of upgrades, service packs, 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. HDS does not provide Support for Software releases that are older than two prior versions of the Current Release.
- (d) HDS may refuse to supply Patches and Fixes for Software if Customer could have solved the Problem or defect by upgrading to the latest Release Update. HDS does not support the Operating Software unless HDS is also maintaining the Equipment on which it is installed. Customer must have the proper effective Software license before HDS has an obligation to support Customers Software. If Customers licence is terminated for any reason (including due to the assignment or transfer of the license to another party) then HDS' Software support obligations will cease.

(d) HDS may refuse to supply Patches and Fixes for Software if Customer could have solved the Problem or defect by upgrading to the latest Release Update. HDS does not support Operating Software unless HDS is also maintaining the Equipment on which it is installed and Customer must have the proper effective Software license before HDS has an obligation to support such Software. If Customer's license is terminated for any reason (including due to the assignment or transfer of the license to another party) then HDS' Software support obligations will cease.

12. Maintenance Material

HDS may store Maintenance Material within the Products or elsewhere on Customer's premises for convenience. Only HDS personnel will be authorized to use the Maintenance Material. Maintenance Material will always remain HDS' sole and exclusive property as Hitachi IP as defined under the DPA, and Customer does not get any licensed rights. Customer must not use, access, modify, copy or relocate the Maintenance Material or allow any other person to do so and must return or allow HDS to de-install it upon demand by HDS or on termination of the Maintenance and Support Services.

13. Transferability of Services

Customer agrees that:

- (a) HDS has no obligation to Customer for Products purchased from a source other than HDS or its authorized channel partners;
- (b) Customer must not assign or transfer any warranty, maintenance and/or support arrangement with HDS to any third party without the prior written consent of HDS. HDS will have no obligation to perform any Maintenance and Support Services for the transferee; and
- (c) In certain cases when HDS supplies Third Party Products to Customer, Customer will obtain maintenance services directly from the vendor of the Third Party Product, and not HDS.

14. Additional Defined Terms

Attachment: any of the signed documents attached to the Agreement that supplements or amends it.

Current Release: the latest New Version of the Software released by HDS (designated sequentially by HDS as, for example, "New Version 1.0.0").

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

Field Replacement Unit (FRU): a subassembly of components sealed at the factory and subject to replacement as a discreet unit at a customer site.

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.

New Version: a new version of the Software that provides significant additional or enhanced functionality and/or significantly enhanced performance that is made generally available by HDS for an additional fee.

Patches and Fixes: changes made to the Software by HDS that establish or restore substantial conformity with the applicable Published Specification.

Problem: an instance where a HDS Product does not substantially conform to the Published Specifications.

Third Party Products: any equipment or software supplied by Us that are not listed in our standard product price lists published from time to time.

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

Update: a modification of the Current Release which contains error corrections and/or minor functional enhancements and which is made generally available by HDS without additional charge (designated sequentially by HDS as, for example, "Release 1.1.0").