

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.

TERMS AND CONDITIONS:

1. ORDERING DELIVERY AND INSTALLATION

1.1 Ordering Process

When the Customer sends HDS an Order, HDS may accept it by sending the Customer an Order Confirmation, shipping the Product or starting the Services. Each Order, the Order Confirmation (if any) and this DPA form a separate agreement between HDS and the Customer. For an Order to be valid, it must refer to this DPA. Terms and conditions in or on the back of the Customer's Order or any other documents that the Customer gives to HDS will not form part of the agreement. Any changes to the Customer's Order are subject to HDS' acceptance and the Customer's payment of an additional processing fee. The Customer may not cancel any Orders.

1.2 Product Delivery

HDS will use reasonable efforts to meet agreed estimated delivery dates. However, estimated delivery dates are communicated for information purposes only and HDS will not be liable for any late delivery. The Customer agrees that, where possible, HDS may make partial deliveries and send the Customer a partial invoice. Delivery will be EX WORKS (as defined in IncoTerms 2000), HDS' Product distribution center or other HDS designated address. The 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 the Customer has paid HDS in full. HDS always retains ownership to any Software and tangible media in which it is contained. The Customer must not do anything that affects HDS' ownership.

1.3 Product Installation

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

2. WARRANTIES

2.1 Product Warranty

Subject to section 2.3, HDS warrants to the Customer that, during the Warranty Period, Products will function in accordance with the Published Specifications. To make a valid warranty claim, the Customer must submit a claim to HDS under the procedures set out in the Online Terms.

2.2 Service Warranty

HDS warrants to the Customer that the Services will be provided 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 HDS' standard warranty and maintenance conditions and exclusions set out in the Online Terms. **EXCEPT AS SPECIFIED IN THE DPA, INCLUDING THE ONLINE TERMS, ALL EXPRESS OR IMPLIED CONDITIONS, REPRESENTATIONS AND WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OR CONDITION OF MERCHANTABILITY, SATISFACTORY QUALITY, OR FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT ARE EXCLUDED TO THE MAXIMUM EXTENT PERMITTED BY LAW. HDS DOES NOT WARRANT THAT ANY PRODUCT OR SERVICE WILL OPERATE UNINTERRUPTED OR ERROR FREE.**

CUSTOMER (the "Customer"):

Name:

Address:

Contact Person (for Notices):

Hitachi Data Systems Israel Limited ("HDS"):

Address: 27 Masckit St., 46733, Herzlia, Israel

Contact Person (for Notices):

3.0 SERVICES

3.1 Support Services

After the end of the Warranty Period, the Customer will be entitled to receive Maintenance and Support Services during the Initial Services Period, provided that the Customer has purchased and paid for those services in full. Provided that the Customer pays HDS the applicable renewal fees in advance, HDS will automatically renew these Maintenance and Support Services for successive 12 month periods, unless the Customer writes to HDS at least 90 days before the then-current period expires and tells HDS that they will not be renewed any further. HDS will provide the Customer with Maintenance and Support Services in accordance with the maintenance section of the Online Terms.

3.2 Professional Services

HDS will provide the Customer with Professional Services under a separate Statement of Work that incorporates the terms of the DPA. The Statement of Work sets out any other terms that relate to the Professional Services.

3.3 Co-operation

To assist HDS to provide the Customer Services, the 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

The Customer will pay HDS the fees and charges for the supply of Products and Services set out in HDS' invoice within 30 days from the invoice date. HDS may charge up to the maximum amount of interest allowed under applicable law or suspend delivery of all or any Services if payments are overdue. The Customer must also pay for any Taxes arising from the transaction under this DPA, whether or not these taxes are included in HDS' invoices.

4.2 Maintenance and Support Renewals

The fees for Maintenance and Support Services will be payable from the date set out in HDS' invoice or if no such date is specified, from the expiration of the applicable Warranty Period for the Products. The quotation of renewal fees does not obligate the 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, circuit layout rights, 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 provides to the Customer or otherwise creates pursuant to this DPA, and their modifications ("Hitachi IP"). The Customer only gets license rights in Software, Work Product and any other Hitachi IP as expressly stated in this DPA, including the Online Terms. The 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 the Customer's license

or as HDS 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 the Online Terms, HDS grants the Customer a personal, non-exclusive, non-transferable (except in connection with the transfer of Equipment as permitted by this DPA including the Online Terms) license to Use the Software to operate the Equipment in accordance with its Published Specifications solely for the Customer's internal business purposes.

5.3 Intellectual Property Claims

Subject to section 5.1, if a third party makes a claim against the Customer that any Product or Service infringes that party's patent rights or copyright ("**IP Claim**"), HDS provides the Customer with the following recourse (which, to the extent permitted by applicable law, comprises the Customer's sole and exclusive remedy against HDS for IP Claims):

- (a) HDS will defend or settle the IP Claim at HDS' option and cost, and pay to the Customer the amount of damages, losses and costs finally awarded (or settled with HDS' written consent), provided that the 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 HDS requires (HDS will pay the Customer's reasonable costs of doing so); and (iv) is not in breach of this DPA, including the Online terms .
- (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 the 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 the Customer with a refund, provided that the Customer promptly returns the Product to HDS.

The above remedies will not apply to any Third Party Products or otherwise to any Product that the Customer has, or any person on the Customer's 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 version of the Product that was available to the Customer and would have avoided the infringement or (iv) where the IP Claim arises due to any material or item that the Customer owns or have sourced from a third party itself.

6. CONFIDENTIAL INFORMATION

The parties respectively must keep any Confidential Information that they receive from one another confidential by using the same degree of care that they would use to protect their own Confidential Information. HDS won't disclose the Customer's Confidential Information to anyone else, unless the Customer allows HDS to, and the Customer must do the same with HDS' Confidential Information. HDS can, however, disclose the Customer's Confidential Information to HDS' employees and contractors who need to know the information in order to perform obligations under this DPA.

7. LIMITATIONS OF LIABILITY

7.1 Uncapped Liability

The parties respectively acknowledge the full extent of liability to the other arising from: death or personal injury resulting from negligent acts or omissions; claims for non-payment; the non-excludable statutory rights of consumers (for example, under laws providing for strict product liability); breaches of any Software license; breach of any obligation of confidence; and any infringement of Hitachi IP.

7.2 Cap on Liability

Except for section 7.1 and the exceptions identified in the Online Terms and to the extent not prohibited by applicable law:

- (a) each party's respective maximum aggregate liability for all claims, whether for breach of contract, breach of warranty or in tort, including negligence, will be limited to the amount paid for the Product(s), Third Party Product(s), Third Party Software or Service(s) which is the subject matter of the claim up to a maximum of the NIS equivalent to DPA_V3_26NOV08_ISRAEL

one million pounds (£1,000,000) per agreement; and (b) neither party will be respectively liable for any indirect, punitive, special, incidental or consequential damages in connection with or arising out of this DPA including the Online Terms (including, without limitation, loss of business, revenue, profits, goodwill, use, data, electronically transmitted orders, or other economic advantage), however they arise, whether in breach of contract, breach of warranty or in tort, including negligence, and even if the liable party has previously been advised of the possibility of such damages. Liability for damages will be limited and excluded, even if an exclusive remedy provided for in this Agreement fails of its essential purpose.

8. TERM AND TERMINATION

The DPA will start on the Effective Date and continue until it is terminated by either party by written notice to the other, if the other (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 (iii) becomes or threatens to become Insolvent. If the DPA is terminated, the Customer's rights, licenses and privileges under it will terminate and the Customer must comply with HDS' requests to either remove and destroy all Hitachi IP in its possession or control or return such material and items to HDS at the Customer's cost. Furthermore, the Customer will not be relieved from its payment obligations and any money due to HDS will become immediately payable. Neither party is deemed to have waived any existing rights.

9. GENERAL

9.1 Third Party Products

Except as expressly stated otherwise in this DPA, the Online Terms or a SOW: (i) HDS provides Third Party Products to the Customer without warranties or maintenance of any kind, and (ii) licenses, warranties and support for Third Party Products will be given by the relevant suppliers in their license agreements that HDS passes to the Customer.

9.2 Export Compliance

The 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 the 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 the 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, the 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 their respective management teams to meet and attempt to resolve the dispute in good faith. If they are unable to resolve the dispute within 30 days, 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) Unless it is agreed in writing that the laws of another jurisdiction will apply, the laws of the State of Israel, without regard to its conflict of law principles, will apply to the DPA and the venue for any litigation will be the appropriate court of Tel-Aviv Jaffa, Israel. To the extent allowed in the applicable jurisdiction, the United Nations Convention on Contracts for the International Sale of Goods and its implementing legislation will not apply to this DPA.

(b) Neither party will be responsible for any failure to meet any obligations (except payment obligations) due to matters beyond its reasonable control provided reasonable efforts have been made to perform them.

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

(d) HDS may use subcontractors to perform any of HDS' obligations, but HDS will remain responsible for their performance.

(e) 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. Notices will be deemed given: where they are hand delivered, when a duly authorised employee or representative of the recipient gives written acknowledgement of receipt; for email communication, at the time the communication enters into the

information system of the recipient; for posting, three days after dispatch and for fax, on the verified telephonic receipted transmission of the fax.

(f) The parties are each independent contractors and there is no actual or deemed partnership, franchise, joint venture, agency, employment or other fiduciary relationship between them.

(g) Rights and obligations under the DPA, which by their nature should survive the termination or expiration, will remain in effect after termination.

(h) The Customer grants to HDS the limited right to use the Customer's 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 the Customer's prior written approval for publicity that contains claims, quotes, endorsements or attributions by the Customer, such approval not to be unreasonably withheld.

(i) If either party fails to promptly exercise any contractual right, this does not of itself mean that the right has been waived. For a waiver of a right to be valid, it must be in writing and it will not give rise to an ongoing waiver or any expectation that the right will not be enforced, unless it is expressly stated to do so.

(j) Except for the Online Terms, this DPA may not be modified except in writing signed by an authorised representative of each party. Any changes to the Online Terms will not apply retrospectively to Orders for Products or Services made prior to the date of the change. Changes to the Online Terms may apply prospectively to new Orders received by HDS prior to the change only if the Customer agrees.

(k) The DPA (including the Online Terms, all Orders and Order Confirmations and SOWs) is the entire agreement relating to its subject matter. All other written communications, understandings, proposals, representations and warranties are, by agreement, excluded and are of no force or effect (to the extent permitted by law).

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

(m) This DPA and any Attachments may be signed in counterparts, each of which may be transmitted electronically, to be effective on the other party's receipt of the signed copy.

(n) It is not intended that any third party may enforce any benefit conferred under these terms and conditions.

10. DEFINITIONS AND INTERPRETATION

Attachment: any of the signed 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.

Equipment: hardware and spare parts.

Initial Services Period: the initial, renewable service period for the supply of Maintenance and Support Services (which is either 12, 24 or 36 months).

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

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

Order: a written or electronic order from the Customer 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.

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.

Services: 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 HDS (**Programs**) and (iii) and any Updates, 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, estimated delivery dates, acceptance procedures and roles and responsibilities of the parties.

Tax: a tax, duty, fee or impost (including withholding tax and VAT).

Third Party Products: any Products supplied by HDS that are not listed in HDS' standard product price lists published from time to time.

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

Updates: subsequent releases and error corrections for Software previously licensed by HDS, as listed in HDS' standard product price lists published from time to time.

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 on the Online Terms 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.

FOR HITACHI DATA SYSTEMS LIMITED Signature: Name: Title:	FOR CUSTOMER Signature: Name: Title:
--	--