

HITACHI

Inspire the Next

DIRECT PURCHASING AGREEMENT

Agreement No.: _____

Effective Date: _____

This Direct Purchasing Agreement (“**DPA**”) governs Customers purchase of Products and/or Services from HDS. The additional terms and information entitled Software Licence, and Warranty Maintenance and Support (“**Software Licence**”, “**Warranty Maintenance and Support**”) enclosed as Attachments 1 and 2 respectively, form an integrated part of this DPA and are incorporated by reference.

TERMS AND CONDITIONS:

1. ORDERING, DELIVERY AND INSTALLATION

1.1 Ordering Process

When Customer sends HDS an Order, HDS may accept it by sending 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 Customer. For an Order to be valid, it must refer to this DPA. Terms and conditions in or on the back of Customers Order or any other documents that Customer gives to HDS will not form part of the agreement. Any changes to Customer’s Order are subject to acceptance by HDS and payment of an additional processing fee by Customer.

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. Customer agrees that where possible HDS may make partial deliveries and send Customer a partial invoice. Delivery will be EX WORKS (as defined in IncoTerms 2000) at Product distribution center or other HDS designated address. 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. HDS always retains ownership to any Software and tangible media in which it is contained. Customer must not do anything that affects HDS ownership.

1.3 Product Installation

Unless agreed otherwise, the Products will be installed by HDS or its authorised service provider at the 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 section 2.3, 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 under the procedures set out in Attachment 2.

2.2 Service Warranty

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 Attachment 2.

EXCEPT AS SPECIFIED IN THE DPA (INCLUDING ATTACHMENT 2) 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 (“Customer”):

Name:

Address:

Contact Person (for Notices):

Hitachi Data Systems AG (“HDS”):

Address: Kriesbachstrasse 3, 8600 Dübendorf

Contact Person (for Notices):

3.0 SERVICES

3.1 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. Provided that Customer pays the applicable renewal fees in advance, HDS will automatically renew these Maintenance and Support Services for successive 12 month periods unless Customer notifies HDS at least 90 days before the period expires in writing. HDS will provide Customer with Maintenance and Support Services in accordance with Attachment 2.

3.2 Professional Services

HDS will provide 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 enable HDS to provide the Services, 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 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 interest at the rate of 5% and/or suspend delivery of all or any Services if payments are overdue. 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 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 Customer or otherwise creates pursuant to this DPA, and their modifications (“**Hitachi IP**”). Customer only receives 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 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 the DPA or 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 including Attachment 1) 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, 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 provides Customer with the following recourse (which, to the extent permitted by applicable law, comprises Customers 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 notify HDS of the IP Claim (ii) allows HDS to solely manage the defense and settlement of the IP Claim; (iii) co-operates with and assists HDS as it requires (HDS will pay Customers reasonable costs of doing so); and (iv) is not in breach of this DPA, including Attachment 1.
- (b) HDS will, at its 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 or otherwise to any Product that Customer has, or any person on Customers 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 Customer and would have avoided the infringement or (iv) 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 that it would use to protect its own Confidential Information. HDS won't disclose Customers 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 Customers Confidential Information to its employees and contractors (including employees and contractors of its affiliates) who need to know the information in order to perform obligations under this DPA.

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; 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 7.1 above, the exceptions identified in Attachments 1 & 2, and to the extent not prohibited by applicable law:

- (a) each party's 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 Products(s), third Party Software or Service(s) which is the subject matter of the claim up to a maximum of one million Euros (EUR 1,000,000) per agreement; and
- (b) neither party will be liable for any indirect, punitive, special, incidental or consequential damages in connection with or arising out of or in connection with this DPA (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 that 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 of the Parties 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, Customers 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, Customer will not be relieved from its payment obligations and any money due to HDS will become immediately payable. Neither party shall be deemed to have waived any existing rights.

9. GENERAL

9.1 Third Party Products

Except as expressly stated otherwise in this DPA: (i) HDS provides Third Party Products to 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 Customer.

9.2 Export Compliance

Customer acknowledges that 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) Unless it is agreed otherwise in writing that the laws of another jurisdiction will apply, this agreement shall be exclusively construed in accordance with and governed by the substantive laws of Switzerland, without regard to any conflict of laws principles and excluding any treaty, in particular the United Nations Convention on Contracts for the International Sale of Goods (Vienna 1980).

(b) Exclusive place of jurisdiction for all disputes, controversies or claims arising out of or in connection with this DPA, including concerning its validity, breach, termination or non-renewal, shall be the Zurich 1.

(c) 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 its obligations.

(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; or posting, three days after dispatch and for fax, on receipted transmission of the fax.

(f) HDS and Customer 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) 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.

(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 written 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) This DPA may not be modified except in writing signed by an authorised representative of each party. Any such changes to the DPA will not apply retrospectively to Orders for Products or Services made prior to the date of the change.

(k) The DPA (including the Attachments, all Orders and Order Confirmations, and SOWs) is the entire agreement relating to its subject matter.

(l) 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; (iii) an Order Confirmation; (iv) an Order; and (v) a Statement of Work.

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 Attachment 2;

Open Source Licence: The licences applicable to Open Source Software listed at www.hds.com/corporate/legal/index.html.

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 License, Lesser General Public License, Apache or other open source software licence.

Order: a written or electronic 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.

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) 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 equipment or software supplied by HDS that are not listed in HDS standard product price lists published from time to time.

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 the DPA contains Open Source Software, Customer must refer back to the applicable licence for such Open Source Software.

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 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>HITACHI DATA SYSTEMS AG</p> <p>_____</p> <p>Signature:</p> <p>Name:</p> <p>Title:</p>	<p>CUSTOMER:</p> <p>_____</p> <p>Signature:</p> <p>Name:</p> <p>Title:</p>
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Capitalised terms in this Software Licence have the same meaning as defined in the DPA.

1. Licence Grant

Except as otherwise expressly provided, HDS grants Customer 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 Customers internal business needs subject to the restrictions specified on any Equipment used in connection with the Software. For capacity-based Software, Customer will Use the Software up to the specified capacity on the relevant equipment, network, device or CPU. If Customer wishes to exceed capacity, Customer must pay HDS any additional licence fees first; and
- (c) if Customer is provided with Work Product under a Statement of Work, to Use, reproduce, copy and display the Work Product solely for Customers internal business purposes. Customer obtains no title or ownership in any Software or Work Product or Maintenance Material under the DPA or this Software Licence, nor does Customer obtain any right to sublicense the Software or 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 subject to separate licences directly between Customer and the third party licensor (or in certain cases between Customer and HDS as licensor of the Third Party Software) that HDS will pass to Customer. Such licences may be shrink-wrapped or click through licences and HDS will provide these to Customer upon request. Customer will have no recourse against HDS unless HDS is the stated licensor and then only to the extent provided in such licence. Customer 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 this Software Licence, the third party licence or provided under a maintenance contract, HDS will not provide support for Third Party Software and will not provide Customer with any IP indemnity, whether contained in the DPA or otherwise.

Some Software licensed to Customer includes Open Source Software, and Customer can access a complete list of these licenses from the website referenced in the Open Source License definition in Section 9. It is Customers responsibility to read and adhere to these Open Source Licences. By accepting the terms of this Software Licence, Customer is 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 includes certain software licensed 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 Customer may obtain a copy of the applicable source code for the GPL Software by either (a) requesting the open source code be mailed to Customer by HDS or (b) downloading the open source code by following the links on the website referenced in the Open Source License definition in Section 10.

3. Use Restrictions

Except to the extent these restrictions are prohibited by applicable law or prohibited by the terms of any Open Source Licence, Customer 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' prior written consent.

4. Authorised Copies

HDS will provide Customer with one copy of the media and documentation for the Software. For Software licenced under an enterprise licence, HDS grants Customer the right to make copies of the Software solely for Customers own internal use, within the scope of the enterprise licence.

Customer may also make one copy of back-up or archival copies of Software solely for its own internal use. Customer 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, Customer must not transfer the Software to any other person or entity without HDS' prior written consent. Customer may, however, transfer the Operating Software to a third party ("*transferee*") solely with the related HDS Equipment, but Customer must ensure that the transferee agrees to the terms of this Software Licence. The 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, Customer must remove and destroy all copies of the Software in its possession or control. Customer 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 Customer is authorised to Use the Software becomes temporarily inoperable, Customer may load and Use the Software on another of its computer systems located at the same premises, until the original Equipment becomes operable. Otherwise, Customer 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 Customer, examine and audit Customers 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 Customers business operations. If the audit shows that Customer is using more copies of the Software than permitted under its applicable licences, HDS will charge Customer additional usage fees.

8. Termination of Licences

Customers 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 Customer is in breach of any applicable licence terms or the DPA.

ATTACHMENT 2 TO DPA - WARRANTY, MAINTENANCE AND SUPPORT SERVICES

Capitalised terms in this Warranty, Maintenance and Support Services document have the same meaning as defined in the DPA. 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 this Warranty Maintenance and Support document.

1. *Warranty Period and Remedy.*

- (a) HDS warrants the Products either for the period specified in the relevant Order or Attachment, or if no period is specified, for twelve months from the first day of the month following delivery or the date of its installation, whichever is earlier, for Equipment and Operating Software, and 90 days from delivery for Programs ("**Warranty Period**").
- (b) During the Warranty Period HDS will, at its option and expense, either repair or replace any Products that do not comply with the warranty contained in the DPA. Customer must submit any warranty claim in writing to HDS during the Warranty Period.
- (c) If the Services are not performed as warranted in the DPA or in the relevant Order or Attachment or SOW under the DPA, HDS will promptly re-perform the Services at no additional charge to Customer ("**Supplementary Performance**") or credit Customer for the price of the Services subject to the warranty claim. Customer must submit any warranty claim in writing within 90 calendar days of the performance of the Services giving rise to the claim.
- (d) If the Supplementary Performance fails, Customer is authorised to withdraw from the DPA. Customers reduction right is excluded.

2. *Warranty Exclusions; Components.*

- (a) The warranties exclude any Products damaged by accident, neglect, or abuse by any party other than HDS or its subcontractors, or by natural disaster, or subjected to an unsuitable physical operating environment, not properly maintained in accordance with the procedures recommended by HDS or modified without HDS' prior written consent.
- (b) Equipment may include components which are used or remanufactured, in either case 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 a Maintenance and Support Plan*

In addition to the warranties, Customer will receive Maintenance and Support Services under the plan 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*

- (a) Equipment maintenance comprises the following:
- (b) access to an online self-service support portal providing technical information and documentation to facilitate the repair of a malfunction or issue with Equipment operation.
- (c) parts ordering processing to replace a malfunctioning or defective component via the online self-service support portal.
- (d) Software and firmware updates via the online self-service portal.
- (e) 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 services comprise 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; repair of Field Replacement Units if the factory seal of the Field Replacement Unit has been broken; 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 services are 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 8(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 provides 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 5; 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 allows someone other than HDS' authorised service personnel or representatives to move, relocate, perform maintenance or support services, 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.
- (e) 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 such Software. If Customers 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 Customers premises for convenience. Only HDS personnel will be authorised 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 in it. 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 authorised 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

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: a subassembly of components sealed at the factory and subject to replacement as a discreet unit at the 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.

Maintenance and Support Services: the equipment maintenance and software support services described in more detail in this document and applicable Maintenance Service Descriptions.

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 Specification.

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

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").