

**DIRECT PURCHASING AGREEMENT (DPA)**

Agreement No.: \_\_\_\_\_  
Effective Date: \_\_\_\_\_

This Direct Purchasing Agreement ("DPA") governs the Customer's purchase of Products and/or Services from HDS. The standard online terms and conditions located at [http://www.hds.com/fi/legal/sales\\_terms.html](http://www.hds.com/fi/legal/sales_terms.html) ("Online Terms") containing information about our warranty, maintenance terms and software license terms form part of this DPA and are incorporated by reference. The Customer acknowledges that Online Terms have been made available at the above-referred internet site prior to the Effective Date and it hereby agrees to be bound by them.

**CUSTOMER :**

Name:  
Address:  
Contact Person (for Notices):

**HITACHI DATA SYSTEMS OY ("HDS")** at [REDACTED]  
(Registered Company No. [REDACTED]);

**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. This DPA, the Order and the Order Confirmation (if any) form the contract between the Customer and HDS. 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 give to HDS will not form part of our contract. Any changes to the Customer's Order are subject to acceptance and payment of an additional processing fee. The Customer may not cancel any Orders.

**1.2 Product Delivery**

Delivery dates communicated by HDS are mere estimates. ACCORDINGLY, ALTHOUGH HDS WILL USE ITS REASONABLE EFFORTS TO MEET ESTIMATED DELIVERY TIMES, UNDER NO CIRCUMSTANCES SHALL HDS BE LIABLE FOR LATE DELIVERY. Where reasonable HDS will make partial deliveries and send the Customer a partial invoice and the Customer shall accept such partial delivery.

Delivery will be FCA (as defined in IncoTerms 2000) from our designated address. The Customer is responsible for loss or damage to the Products once delivered and must pay any ongoing shipping and insurance charges. HDS will own all title to the Equipment ordered until the Customer has paid HDS in full (in cash or cleared funds) all sums due to it in respect of the Equipment and related Software. Until such time the Customer shall hold Equipment (and related Software on a fiduciary basis as HDS' bailee. Save in the case of the limited right granted to the Customer in order to use the Licensed Software and Third Party Software in accordance with the applicable Online Terms, no title in the Software or any other intellectual property rights shall pass to the Customer. The Customer must not do anything that affects HDS ownership to the rights to any Software and tangible media in which it is contained.

**1.3 Product Installation**

Unless agreed otherwise, the Products will be installed by HDS or our authorized service provider. You will prepare the installation environment at your cost according to our needs.

**2. WARRANTIES**

**2.1 Product Warranty**

Subject to section 2.3, HDS warrant to the Customer that during the Warranty Period, the 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 Warranty for Services**

HDS warrant to the Customer that HDS 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 our standard warranty and maintenance conditions and exclusions set out in the Online Terms. EXCEPT AS SPECIFIED IN THE DPA AND/OR 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 (WHETHER OR NOT ANY PURPOSE HAS BEEN NOTIFIED TO HDS) OR 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.

**3. SERVICES**

**3.1 Support Services**

The Customer will only receive Maintenance and Support Services during the Services Period if the Customer has purchased and paid for them in full. HDS will automatically renew these Maintenance and Support Services for successive monthly Service Periods unless the Customer notifies HDS at least 30 days before the Service Period expires to stop. 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 the Customer's 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 the fees and charges for the supply of Products and Services set out in our invoice within 30 days from the invoice date HDS may charge interest or suspend delivery of 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 our invoices.

**4.2 Maintenance and Support Renewals**

The monthly 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 expiry of the applicable Warranty Period. HDS' 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 will provide to the Customer or otherwise create pursuant to this DPA, and their modifications ("Hitachi IP"). The Customer only get license rights in Software, Work Product and any other Hitachi IP as expressly stated in this DPA and the Online Terms. The Customer shall not do anything to jeopardize HDS or HDS' licensors' rights in the Hitachi IP including to (i) copy, modify, reverse engineer (except to the extent permitted by the applicable Finnish intellectual property right laws), transfer or sublicense any Hitachi IP (except as expressly allowed in applicable licensing provisions contained in the Online Terms or HDS agree 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 and 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 infringes that party's intellectual

property rights ("IP Claim"), HDS will provide 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 its option and reasonable 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 defense and settlement of the IP Claim; (iii) co-operates with and assists HDS as HDS may require (HDS will pay the Customer's costs of doing so); and (iv) is not in breach of this DPA or the Online terms .

(b) HDS will, at its option and cost, do any of the following in relation to a Product which is or HDS consider 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 Software or 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 where the IP Claim arises due to any material or item that the Customer owns or has sourced from a third party itself.

## **6. CONFIDENTIAL INFORMATION**

Both parties must keep any Confidential Information that they give to each other confidential by using the same degree of care that they would use to protect their own Confidential Information. HDS will not disclose the Customer's Confidential Information to anyone else, unless the Customer allows HDS to do so, and the Customer must do the same with HDS' Confidential Information. HDS can, however, disclose the Customer's Confidential Information to its 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**

Neither party excludes or limits either party's liability to the other for loss or damage arising from death or personal injury caused by intentional act or negligence of its employees, servants or agents or any other matter to the extent that such exclusion or limitation would be unlawful.

### **7.2 Cap on Liability**

EXCEPT FOR CLAUSES 5.3 AND 7.1 ABOVE AND THE EXCEPTIONS IDENTIFIED IN THE ONLINE TERMS AND TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW:

(A) EACH PARTY'S MAXIMUM AGGREGATE LIABILITY FOR ALL CLAIMS RELATING TO EACH AGREEMENT FOR BREACH OF CONTRACT, INCLUDING BUT NOT LIMITED TO NEGLIGENCE, WILL BE LIMITED TO FIVE HUNDRED THOUSAND EUROS (€500,000) PER AGREEMENT OR, IN THE CASE OF PURCHASES, TO THE AMOUNT PAYABLE BY THE CUSTOMER TO HDS DURING THE PREVIOUS TWELVE (12) MONTHS FOR THE PRODUCT OR SERVICE WHICH IS THE SUBJECT MATTER OF THE CLAIM UP TO A MAXIMUM OF FIVE HUNDRED THOUSAND EUROS (€500,000); AND

(B) NEITHER PARTY WILL BE WILL BE LIABLE TO THE OTHER PARTY FOR ANY LOSS OF PROFIT, LOSS OF DATA OR ANY INDIRECT OR CONSEQUENTIAL LOSSES OR DAMAGE OR OTHER COSTS OR LIABILITIES (WHETHER FORESEEABLE OR UNFORESEEABLE), TO INCLUDE BUT NOT BE LIMITED TO LOSS OF CONTRACTS OR LOSS OF BUSINESS.

SUBJECT TO THE APPLICABLE LAW, NO ACTION ARISING OUT OF OR IN RELATION TO THIS DPA MAY BE BROUGHT BY EITHER PARTY MORE THAN ONE YEAR AFTER THE CAUSE OF ACTION TO WHICH IT RELATES FIRST BECOMES KNOWN (OR OUGHT TO BE KNOWN).

## **8. TERM AND TERMINATION**

The DPA will start on the Effective Date and continue until it is terminated by either of HDS or the Customer 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 (iv) giving the other party not less than 90 calendar days notice in writing. In case of Clause 8(iv) in relation to the Maintenance and Support Services and Software, such termination shall take effect on or after the expiry of the relevant Service Period and/or Software term.

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 the Customer's possession or control or return such material and items to HDS at the Customer's cost. Furthermore, the Customer will not be relieved from the Customer's payment obligations and any money due to HDS will become immediately payable. Neither of HDS or the Customer 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 provide Third Party Products to the Customer without warranties or maintenance of any kind (ii) licenses, warranties and support for Third Party Products will be given by the relevant suppliers in their license agreements that HDS pass to the Customer.

### **9.2 Export Compliance**

The Customer acknowledges that in various countries, laws and regulations regulate the export of computer products and technology which 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. 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.

The Customer acknowledges that the Products are not specifically conceived, manufactured or intended for a use related to design, construction, maintenance and/or functioning of a nuclear facility; an aeronautical system, aeronautical communication, or land aeronautical support; or life support techniques. UNLESS OTHERWISE EXPRESSLY STATED BY THE SALE CONTRACT, HDS WILL NOT BE HELD RESPONSIBLE BY THE CUSTOMER, IN ALL OR IN PART, FOR ANY CLAIM OR DAMAGE CONSEQUENTIAL TO SUCH A USE.

### **9.3 Dispute Resolution**

In the event of a dispute, the parties 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) The laws of Finland govern this DPA and the parties hereby submit to the exclusive jurisdiction of the Finnish Courts.

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 of the Customer nor HDS 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 the Customer's rights or obligations under this DPA without HDS prior written agreement.

(d) HDS may use subcontractors to perform any of its 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 receipted transmission of the fax.

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

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

(h) the Customer grant 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 your 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 of the Customer or HDS 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) Except for the Online Terms, this DPA may not be modified except in writing signed by an authorized 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 only if You agree.

(k) The DPA (including any applicable Online Terms and Orders and any Order Confirmations) is the entire agreement between the parties relating to its subject matter. This DPA (including the Online Terms and any Order Confirmations) supercedes all prior written communications, understandings, proposals, negotiations, representations or warranties in relation to its subject matter. Each of the parties acknowledges in entering into this DPA and any Order that it has not relied (and will not rely) on any representation or warranty, including any pre-contractual representation of the other party which is not expressly set out or referred to in this DPA (including the Online Terms, Orders and Order Confirmations).

(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) the incorporated Online Terms; (iii) the Order Confirmation; and (iv) the Order.

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

(n) If any provision of this DPA or Online Terms (or any Order or Order Confirmation) is held invalid, illegal or unenforceable for any reason, such provision shall be severed and the remainder of the provisions of this DPA and the Online Terms (and any Order and Order Confirmation) shall continue in full force and effect.

## 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.

**Insolvent:** a party is "Insolvent" if it goes into liquidation or passes a resolution for voluntary winding up or its directors convene a meeting of shareholders for that purpose (except for the purposes of an amalgamation or reconstruction not involving insolvency where the entity resulting therefrom agrees to be bound by the obligations imposed on the party) or an encumbrancer takes possession of, or a receiver or an administrative receiver is appointed over, any of its property or assets, or it is the subject of any judgment or order made against it which is not complied with or discharged within 30 days or is the subject of any execution, distress, sequestration or other process levied upon or enforced against any of its assets, or a company voluntary arrangement is proposed or a scheme of arrangement is made in respect of it or it files any documents with the court for a moratorium, or it ceases or threatens to cease to carry on business, or it gives the other party reasonable

grounds for believing that it is unable to meet its debts as they fall due within the meaning of insolvency as defined by the Finnish Bankruptcy Act (120/2004) (as amended) or anything analogous to any of the above occurs in relation to it under the laws of any jurisdiction.

**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 the Online Terms;

**Order:** a written or electronic order for the purchase of Products and/or Services from HDS, or a document detailing the Product, Product description, 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 generally available Equipment and/or Software.

**Professional Services:** software enablement, data migration and other services;

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

**Services:** any generally available Maintenance and Support Services, Professional Services and other services.

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

**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) generally available HDS standard software programs supplied by HDS (**Programs**) and (iii) and any Updates, upgrades and new releases, 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.

**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 our 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

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

**Warranty Period:** means the warranty period for a particular Product specified in the Warranty and Basic Maintenance and Support Online Terms.

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

## EXECUTED AS AN AGREEMENT:

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

Signed for and on behalf of the Customer by:

Signature:

Name:

Position:

Date:

Signed for and on behalf of HDS by:

Signature:

Name:

Position:

Date: