

APPENDIX F – CONTRACT NO. DIR-TSO-4357

DIRECT PURCHASING AGREEMENT

Agreement No.: _____

Effective Date: _____

DIR Contract No. DIR-TSO-4357 and this Direct Purchasing Agreement (“DPA”) governs the supply of Products and/or Services by Hitachi to You. The Software License Terms and the Warranty Maintenance & Support Terms contained in Appendices D and E, respectively, in DIR Contract No. DIR-TSO-4357 (the “Online Terms”) contain Hitachi’s warranty and maintenance terms and software license terms that form part of this DPA and are incorporated by reference.

TERMS AND CONDITIONS:

1. PRODUCT ORDERING DELIVERY AND INSTALLATION

1.1 Quotation and Ordering Process

To the extent allowable by DIR Contract No. DIR-TSO-4357, at your request, Hitachi will send You a Quote or Statement of Work for the supply of Products and/or Services. When You send Hitachi an Order (whether or not it is in response to a Quote), Hitachi may accept it by sending You an Order Confirmation, or otherwise by shipping the Products and/or starting the Services. Each Quote (if any), Order, Order Confirmation (if any), together with this DPA, form a separate agreement between Hitachi and You for that supply. For an Order to be valid, it must refer to DIR Contract No. DIR-TSO-4357. Terms and conditions in, or on the back of Your Order, or any other documents that You give to Hitachi will not form part of the agreement. Any changes that You make to an Order are subject to Hitachi’s acceptance and if Hitachi requires, the payment in accordance with Appendix A, Section 8 of the DIR Contract No. DIR-TSO-4357. You may not cancel any Orders any later than five (5) business days prior to the scheduled date of shipment of the Products and/or commencement of the Services that are the subject of the Order. Notwithstanding, if Products have been delivered to You by Hitachi, the Services subject to the same Order may not be cancelled and will be performed as agreed.

1.2 Product Delivery

Hitachi will do everything that is reasonably possible to meet its estimated Delivery dates. Where necessary, Hitachi may make partial Deliveries of Products and send You a corresponding partial invoice. Shipping and handling will be in accordance with Appendix A, Section 8.D of the DIR Contract No. DIR-TSO-4357.

1.3 Risk and Title in Products and Work Product

Subject to Section 1.2, risk of loss of and damage to the Products and Work Product passes to You upon Delivery of the relevant Products and Work Product. Subject to Section 1.6, title in the Products will pass to You on Delivery. However, ownership of any Software and Work Product and the tangible media in which they are contained will remain at all times with Hitachi and its licensors. Without limiting Section 5, You must not do anything that affects such ownership.

1.4 Product Installation

Unless You and Hitachi agree otherwise, the Products will be Installed at the location set out in the Order. You will prepare the installation environment at such location at Your cost and in accordance with Hitachi’s requirements and directions.

1.5 Product Acceptance

CUSTOMER (“You”):

Name:

Address:

Contact Person (for Notices):

Hitachi Vantara Corporation (“Hitachi”):

Name: Hitachi Vantara Corporation

Address: 2845 Lafayette Street, Santa Clara, CA 95050

Contact Person (for Notices): Chief Legal Counsel

You are deemed to have accepted the Products on Delivery. At Hitachi’s request, You will sign and provide a written acceptance certificate to Hitachi.

1.6 INTENTIONALLY OMITTED

1.7 INTENTIONALLY OMITTED

2. ADDENDA FOR ADDITIONAL RIGHTS

To the extent allowable by DIR Contract No. DIR-TSO-4357, terms granting rights beyond those contained in this DPA will be agreed to by both Parties in writing, before Hitachi agrees to consumption storage, software-as-a service, service provider hosted service rights and other permissions.

3. SERVICES

3.1 Maintenance and Support Services

(a) Subject to Section 11.1, Hitachi will provide You with Maintenance and Support Services on the Products during the Initial Service Period, provided that You have paid Hitachi the Fees for such Services in full. Such Fees are non-cancellable and non-refundable during the Initial Service Period. The Maintenance and Support Services will be performed in accordance with the maintenance sections of the Online Terms.

(b) Subject to Your payment of the applicable renewal Fees to Hitachi in full, the Maintenance and Support Services will be automatically renewed for successive Renewal Service Periods, unless You provide to Hitachi written notice of non-renewal at least thirty (30) days before the expiry date of the then current Service Period. As a courtesy, Hitachi may provide You with a prior written notification, in the form of a Quote, for the renewal prior to the end of the then-current Service Period. Hitachi’s notification of the renewal or quotation of renewal Fees does not obligate You to renew Maintenance and Support Services.

3.2 Technical Services

(a) To the extent allowable by DIR Contract No. DIR-TSO-4357, Hitachi will provide You with Technical Services under a separate SOW that incorporates the terms of the DPA and You are deemed to have accepted the Work Product arising from the Technical Services on Delivery. Without limiting the operation of the DPA on the SOW, the SOW will set out any other terms that relate to the Technical Services. Unless the SOW expressly states otherwise, if there is a conflict between the terms of a SOW and this DPA, the terms of the DPA will prevail to the full extent of the conflict.

(b) Hitachi will not be obligated to provide You with any Technical Services until a SOW has been agreed and signed by the relevant parties.

3.3 Your Responsibilities

To assist in the supply of the Services, You must provide Hitachi, its subcontractors or agents (if applicable) and their respective Personnel with prompt access to Your premises, computer equipment (including remote access), adequate working space, facilities, Personnel, technology, data, information or other materials that are reasonably required from time to time. Without limiting the previous sentence or the terms of any applicable SOW, You will, at Hitachi's request, assign an appropriately qualified person(s) to be Your representative(s) for the receipt of the Services and to communicate with Hitachi on all Service-related matters, and Hitachi will be entitled to assume that the acts, conduct and decisions of such person(s) are authorized by, and are binding on, You.

3.4 Liability for Service Delays and Failures

If Hitachi fails to perform, or delays in the performance of, any Service or other obligation required of Hitachi under this DPA, Hitachi will not be liable to You for the failure or non-performance, to the extent that such failure or non-performance is caused by Your act or omission, or the act or omission of Your Personnel or any other person acting on Your behalf. In any event, You agree to take all steps and measures available to You in order to mitigate and minimize the losses, costs and damages arising from such failure or non-performance, irrespective of the nature and extent of Your contribution.

4. FINANCIAL TERMS

4.1 Fees and Payment

Hitachi will invoice You the Fees for the supply of Products and/or Services (as applicable): (i) upon shipment of the Products, with respect to Order(s) pursuant to a Quote for Products only, or for combined Products and Services; and (ii) in accordance with the applicable terms set out in the Quote and/or SOW for Services only, or where no invoicing terms are set out, prior to commencement of the Services by Hitachi. You will pay the Fees for the supply of Products and/or Services set out in Hitachi's invoice in accordance with DIR Contract No. DIR-TSO-4357, Appendix A, Section 8. You will make payment without any deduction by way of set-off, counterclaim, discount or otherwise.

4.2 Processing Fees

Hitachi will not incur the burden of any fees or charges associated with Your processing or payment of Fees, including but not limited to any portal service fees, unless those fees or charges have been agreed to by Hitachi in advance and in writing. Hitachi reserves the right to pass through to You any processing fees that Hitachi incurs from a third party service provider that You engage to process vendor invoices.

4.3 Taxes

All prices for Products and Services are quoted by Hitachi to be exclusive of applicable Taxes. Taxes shall be in accordance with Appendix A, Section 8.E of the DIR Contract No. DIR-TSO_4357. If You are required under any applicable law to withhold or deduct any amount from the payments due to Hitachi, You will increase the sum You pay to Hitachi by the amount necessary to leave Hitachi with an amount equal to the sum Hitachi would have received if no such withholdings or deductions had been made.

5. INTELLECTUAL PROPERTY

5.1 comments (a) You agree and acknowledge that Hitachi and its licensors own all copyright, trademarks, designs, patents, circuit layout rights, know-how, trade secrets, trade, business and/or

company names, domain names and related registration rights and all other intellectual property rights in all Hitachi IP.

(b) You gain no right, title or interest in the Hitachi IP, other than the license rights in Software, Work Product and any other Hitachi IP, as expressly stated in this DPA and the Online Terms.

(c) Without limiting the operation of the Online Terms, You must not do anything to jeopardize the rights of Hitachi and Hitachi's licensors in the Hitachi IP, including to: (i) copy, modify, reverse engineer (except to the extent such restrictions are prohibited by applicable law), transfer or sub-license any Hitachi IP (except as allowed by Your license or as Hitachi agrees in writing); (ii) register or attempt to register any competing intellectual property rights in or to the Hitachi IP; (iii) delete or tamper with any proprietary notices on or in the Hitachi IP; (iv) take or allow any action that diminishes the value of any trademarks included in the Hitachi IP; or (v) use the Products or any Work Product in violation of applicable law.

5.2 Software License Grant

Subject to the terms of this DPA and the Online Terms, Hitachi grants to You 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 in order to operate the Equipment in accordance with its Published Specifications solely for Your internal business purposes. Any additional or alternative purposes must be agreed between the Parties in accordance with Section 2.

6. CONFIDENTIAL INFORMATION

To the extent allowable by the Texas Public Information Act, each Party must keep any Confidential Information that is disclosed to it by the other Party as confidential, by using the same degree of care that it would use to protect its own Confidential Information. Each Party must not disclose the other Party's Confidential Information to any third party, without the other Party's prior written consent. A Party can, however, disclose the other Party's Confidential Information to those of its Personnel who need to know the information in order to perform that Party's obligations under this DPA, provided that it takes all necessary steps to ensure its Personnel's compliance with this Section.

7. PERSONAL DATA

7.1 Your Obligations

You are, and will remain at all times, the data controller for any Personal Data You provide to Hitachi. You are responsible for compliance with Your obligations as the data controller under applicable data protection laws. You will provide adequate safeguards to, routinely back up, and ensure the integrity and security of Your Personal Data. You are responsible for any unauthorized access, acquisition, use, disclosure, modification or destruction to Your Personal Data caused by the acts or omissions of You, Your Personnel, Affiliates, agents, vendors, and contractors. You will only provide Hitachi with Personal Data that You have the legal right to collect, process, use, and transfer, and only to the extent that is necessary or required under any transaction agreed to by the Parties pursuant to this DPA. You will not disclose any Personal Data about Hitachi Personnel without the prior written consent of Hitachi.

7.2 Our Obligations

To the extent that Hitachi collects Your Personal Data as part of a transaction agreed to by the Parties pursuant to this DPA, Hitachi agrees to not disclose such Personal Data unless Hitachi has your prior written consent, or otherwise as is allowed under this DPA. Hitachi is entitled to disclose Your Personal Data: (i) to Hitachi's Personnel with a need to know the information in order to perform obligations under this DPA; (ii) to Affiliates, subcontractors, vendors, and agents of Hitachi who help Hitachi perform its obligations under this DPA and who are contractually obligated

to protect Your Personal Data; or (iii) as required by law. Hitachi will comply with applicable law with respect to your Personal Data.

7.3 Reporting

Each Party will promptly report any Security Breach to the other Party. The Party experiencing the Security Breach will first provide oral notice as soon as reasonably practicable and no later than ten (10) days after discovery. That Party will provide follow-up, written notice as soon as reasonably practicable and no later than fifteen (15) days after discovery. The written notice will include, to the extent the information is currently available: (i) an identification of affected individuals, and (ii) any other information that must be included in a legally required notice of Security Breach under applicable law.

7.4 Cooperation And Mitigation

Each Party agrees to cooperate in any Security Breach investigation undertaken by, or otherwise involving the other Party and to take reasonable measures to mitigate the harmful effects of any Security Breach, of which that Party becomes aware.

8. WARRANTIES

8.1 Product Warranty

Subject to Sections 8.3 and 9.1, Hitachi warrants to You that, during the Warranty Period, the Products will function in accordance with their applicable Published Specifications. To make a valid warranty claim, You must submit a claim to Hitachi in accordance with the procedures referred to in the Terms.

8.2 Service Warranty

Without limiting any of the warranties in the Online Terms, Hitachi warrants to You that Hitachi will provide the Services to You in a professional and workmanlike manner and in accordance with Good Industry Practice.

8.3 Warranty Exclusions

The provision of any Warranty and Maintenance Services are subject to Hitachi's standard warranty and maintenance terms conditions set out in the Online Terms. **EXCEPT AS SPECIFIED IN THE DPA AND 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. Hitachi DOES NOT WARRANT THAT ANY PRODUCT, OR SERVICE WILL OPERATE UNINTERRUPTED OR ERROR FREE AND WILL NOT BE LIABLE FOR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES.**

9. LIMITATIONS OF LIABILITY

9.1 Limitation of Liability will be in accordance with Appendix A, Section 10.K of the DIR Contract No. DIR-TSO-4357.

10. 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 Party, if the other Party: (i) breaches the confidentiality, intellectual property or export compliance and anti-bribery sections of the DPA; (ii) commits a material breach of any other terms and does not remedy that breach within thirty (30) days of written notice to do so; or (iii) becomes or threatens to become Insolvent. If the DPA is terminated, Your rights, licenses and privileges under it will terminate and You must comply with Hitachi's directions to either remove and destroy all Hitachi IP and Confidential Information in Your possession or control or return such material and items to Hitachi, at Your cost. Hitachi reserves the right to cancel any Order(s) which have not yet been delivered. You will not be relieved from Your payment obligations and any money due to Hitachi will become payable in accordance with DIR Contract No. DIR-

TSO-4357, Appendix A, Section 8. Neither Party is deemed to have waived any of its existing rights as a result of termination.

11. GENERAL

11.1 INTENTIONALLY OMITTED

11.2 Export Compliance and Anti-Bribery(a) You acknowledge 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 You know or have 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 (e.g., China) for certain conventional military end-uses. If You sell or transfer to another person or entity title in or right to use any part of products or other materials supplied by Hitachi, You will ensure that all applicable export restrictions of the nature described in this section are observed.

11.3 Dispute Resolution

In the event of a dispute between the Parties arising out of this DPA, 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 such persons are unable to resolve the dispute within thirty (30) days, the Parties may resort to the dispute resolution process provided for in Chapter 2260, Texas Government Code. Either Party may seek injunctive or other urgent equitable relief at any time.

11.6 Miscellaneous

(a) The laws of the State of Texas shall govern the construction and interpretation of this Agreement. Nothing in this Agreement shall be construed to waive the State's sovereign immunity.

(b) Neither Party will be responsible for any failure to meet any of its obligations under the DPA (except payment obligations), due to matters beyond its reasonable control, provided all reasonable efforts have been made to perform them.

(c) You must not assign, or otherwise transfer any of Your rights under this DPA without Hitachi's prior written agreement.

(d) To the extent allowable under DIR Contract No. DIR-TSO-4357, Hitachi may engage or retain subcontractors to perform any of its obligations, and Hitachi 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 Appendix A, Section 12 of the DIR Contract No. DIR-TSO-4357, the DPA or otherwise to a senior executive. Notices will be deemed given: where they are hand delivered, when a duly authorized Personnel 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) Both Parties are independent contractors and there is no actual or deemed partnership, franchise, joint venture, agency, employment or other fiduciary relationship between the Parties.

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

(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) 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 effective date of the change.

(k) DIR Contract No. DIR-TSO-4357, this DPA (including the Online Terms and all Quotes, Orders and Order Confirmations) 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 at law).

(l) If there is a conflict among the contractual provisions of DIR Contract No. DIR-TSO-4357 and this DPA, the following order of precedence will apply (in descending order): (i) DIR Contract No. DIR-TSO-4357; (ii) this DPA; (iii) the Online Terms; (iv) a SOW; (v) a Quote; (vi) an Order Confirmation; and (vi) an Order.

(m) This DPA may be signed by the Parties in counterparts, which together with DIR Contract No. DIR-TSO-4357 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) There are no third party beneficiaries to this DPA.

(o) References to "business days" means a day which is not a Saturday, Sunday or public holiday in the location where Products and/or Services are delivered to You.

12. DEFINITIONS AND INTERPRETATION

Confidential Information: to the extent allowable by the Texas Public Information Act, all information of a confidential or proprietary nature concerning the disclosing Party's business, including, but not limited to, any non-public information relating to a party's business operations, financials, products, services, pricing, or trade secrets, which at the time of disclosure, is clearly marked as confidential or under the circumstances such information would be considered to be confidential by a reasonable person. Confidential Information does not include any Personal Data or other information that is: (i) already in the public domain prior to disclosure; (ii) becomes publicly known and made generally available after disclosure through no breach of the receiving party; or (iii) is independently developed by the receiving party, without use of or reference to the disclosing party's Confidential Information.

Designated Use: Your internal business evaluation of the performance of the Product in a non-production environment.

Equipment: hardware and spare parts.

Fees: the fees payable by You to Hitachi for the supply of Products and/or Services, as set out in Hitachi's invoice to You.

Good Industry Practice: at any time, the exercise of the degree of care and skill that would reasonably and ordinarily be expected at that time from a skilled and experienced provider or supplier to a customer like You for products and services similar to the Products Services and under similar terms and conditions for similar pricings, whilst seeking to comply with its contractual obligations and complying with applicable laws.

Hitachi IP: all items and materials that Hitachi provides to You or otherwise creates pursuant to this DPA, and their changes, improvements, additions, enhancements, new versions, updates and derivatives.

Initial Service Period: the non-cancellable Service Period of the duration referred to in, and commencing on the date referred to in, Hitachi's Quote (or if there is no Quote, then the Order).

Install: has the meaning set out in the maintenance and support provisions of the Online Terms.

Maintenance and Support Services: the Equipment maintenance and Software support services described in more detail in the Online

Terms (including the Service Descriptions as referred to in the Online Terms);

Order: a written or electronic order for the purchase of Products, Third Party Products and/or Services from Hitachi, or a document detailing the same, including, but not limited to, description and price which is submitted to, and accepted by Hitachi to the extent allowable by DIR Contract No. DIR-TSO-4357 and in accordance with this DPA and Hitachi's then-current ordering requirements.

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

Party: Hitachi and You when referred individually.

Parties: Hitachi and You when referred jointly.

Personal Data: personal information about an identifiable person.

Personnel: of a Party means that Party's employees, contractors or workforce members.

Product(s): To the extent allowable by DIR Contract No. DIR-TSO-4357, any Equipment or Software (including Third Party Products) listed in Hitachi's standard product price lists published from time to time.

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

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

Quote: To the extent allowable by DIR Contract No. DIR-TSO-4357, a written quotation or proposal issued by Hitachi for the proposed supply of Products and/or Services.

Renewal Service Period: the renewable Service Period commencing at the end of the Initial Service Period and any subsequent renewal period thereafter.

Security Breach: the unauthorized access, acquisition, use, disclosure, modification or destruction of unencrypted or physical copies of an identifiable person's name in combination with medical information, Social Security numbers, financial account information, driver's license numbers, state identification numbers, or other Personal Data protected by the applicable security breach statute.

Services: Billable Services (as defined in the Online Terms), Maintenance and Support Services, Professional Services and any other services listed in Hitachi's published price lists or similar offerings from time to time.

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.

Software: the object code format of (i) programming firmware embedded in the Equipment to enable it to perform its basic functions or to operate the Equipment ("Operating Software"), (ii) software programs supplied by Hitachi ("Programs"), and (iii) any Updates, related documentation and Published Specifications.

Statement of Work or SOW: To the extent allowable by DIR Contract No. DIR-TSO-4357, a document agreed and executed between the Parties, which fully describes the Technical Services being provided by Hitachi and sets out the scope of services being provided, the price, estimated delivery dates, service deliverable acceptance procedures and roles and responsibilities of the Parties.

Third Party Products: To the extent allowable by DIR Contract No. DIR-TSO-4357, any Equipment or Software supplied to Hitachi by any party other than Hitachi Ltd. for direct or indirect distribution to end users, which is listed in Hitachi's standard product price lists published from time to time.

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 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, You must refer back to that applicable license for those terms.

Update: Subsequent releases and error corrections and/or minor functional enhancements for Software previously licensed by Hitachi.

Use: to use Software and Third Party Software in live production for processing data either in operation of Products, in use of Programs or in receipt of Services.

Warranty Period: means the applicable warranty period listed in the Online Terms for a particular Product or, in the case of Third Party Products, as may be provided in the applicable third party warranty terms.

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

EXECUTED AS AN AGREEMENT:

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

HITACHI VANTARA CORPORATION	CUSTOMER
By	By
Name	Name
Title	Title
Company	Company
Date	Date