

## SOFTWARE LICENSE TERMS

Unless the entity with whom Hitachi licenses the Software on these License Terms (“**You**”) have a master agreement or any other form of supply or licensing agreement in place with Hitachi Vantara LLC or its Affiliate (“**Hitachi**”) or a Hitachi authorized reseller partner, these Hitachi License Terms (“**License Terms**”) apply to the Hitachi software purchased or downloaded by You (“**Software**”). You as the end user and license, must read these License Terms under which Hitachi will license Software to You. “**Party**” means Hitachi and You when referred to individual. “**Parties**” means Hitachi and You when referred to jointly.

BY DOWNLOADING, INSTALLING, COPYING, ACCESSING, OR USING THE SOFTWARE, YOU AGREE TO THESE LICENSE TERMS. IF YOU ARE ACCEPTING THESE TERMS ON BEHALF OF ANOTHER PERSON, COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT AND WARRANT THAT YOU HAVE FULL AUTHORITY TO BIND THAT PERSON, COMPANY, OR LEGAL ENTITY TO THESE LICENSE TERMS. IF YOU DO NOT AGREE TO THESE LICENSE TERMS, DO NOT DOWNLOAD, INSTALL, COPY, ACCESS, OR USE THE SOFTWARE AND PROMPTLY RETURN THE SOFTWARE TO THE PARTY FROM WHOM IT WAS OBTAINED FOR A REFUND OF THE AMOUNT PAID.

### 1. Software Scope and Your Entitlement

- (a) Under these License Terms “**Software**” includes, as applicable, operating software contained within the equipment, firmware, standalone software.
- (b) Your Software license rights are defined by Your “**Entitlement**” setting out the details of the Software licenses purchased by You, including license metric, duration, quantity, and other relevant information detailed in Your order, other Hitachi-provided confirmation of Your order; or as specified in the respective cloud marketplace.
- (c) Your Software license entitles You to receive (i) the version of the Software stated in Your Entitlement and, if You are entitled to support, any no charge updates that Hitachi makes generally available to its customer base from time to time, including code or error corrections, service packs, maintenance releases, minor releases; and (ii) applicable related “**Documentation**,” such as end user or technical manuals, published specifications and other standard Hitachi product documentation as updated by Hitachi from time to time.

### 2. License Grant

- (a) Provided that You are in compliance with these License Terms, Hitachi grants to You a non-transferable, non-exclusive license to use the Software in object code format for Your internal business operations, pursuant to Your Entitlement and Documentation.
- (b) If You exceed Your Entitlement, You must pay to Hitachi or the Hitachi authorized reseller partner (as applicable) all additional license fees.
- (c) Unless Hitachi notifies You otherwise, Software and Documentation will be delivered to You electronically. Hitachi may use license keys, tokens (i.e. prepaid mechanisms to meter user consumption) and any remote or other mechanisms to limit Your use of Software. If You receive a license key for a perpetual version of the Software, Your authorized use will be locked to that version except for any version number changes to the right of the version release decimal point that are effected by the provision of updates to You as described in Section 1 (c) above.

- (d) You may only use Documentation in support of Your authorized use of the applicable Software.

### 3. Software Evaluation License.

If Hitachi grants You the right to evaluate Software:

- (a) Your authorized use of the Software under evaluation is limited solely to evaluating the performance and functionality of the Software in a non-production environment for Your internal business purposes.
- (b) Your license to evaluate the Software will end upon the earlier of: (i) the expiry of the applicable evaluation period (ii) the termination of the evaluation; or (iii) the expiry of the applicable license key.
- (c) Any output of the Software that is created or otherwise arises pursuant to Your evaluation is deemed confidential and proprietary information of Hitachi. You must not duplicate such output, nor use it after the evaluation period end, unless Hitachi grants to You a further license to the Software.

- (d) Notwithstanding any other provision in these License Terms and to the extent permitted by applicable law and except for death and personal injury caused directly by Hitachi’s act or omission, Hitachi will not be liable for any actual or anticipated, direct, indirect, special, incidental, consequential or other damages arising from the use of the Software and any services performed on the Software for such purposes, however caused, whether under contract, in equity, common law, statute or otherwise, including breach of contract, breach of warranty or in tort (including negligence), anticipatory breach or repudiation, even if Hitachi has been previously advised of the possibility of such damages. THE SOFTWARE IS PROVIDED FOR EVALUATION PURPOSES AND THE SOFTWARE AND ANY SERVICES PERFORMED ON OR USING THE SOFTWARE FOR SUCH PURPOSES ARE PROVIDED “AS IS” WITHOUT ANY WARRANTIES OR REPRESENTATIONS EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF QUALITY, NON-INFRINGEMENT, INTEROPERABILITY, PERFORMANCE, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

### 4. Third Party Software & Hosting Services.

- (a) Except where Hitachi sub-licenses to You third party software embedded in Hitachi-branded Software under these License Terms:

- (i) Subject to Section 5 below, Your authorized use and other license rights in any third party software that Hitachi supplies to You will be subject to the terms of the end user license agreement issued by the licensor of the third party software, or “**EULA**.”
- (ii) Except as expressly stated otherwise in these License Terms or in Your Entitlement, You will have no recourse against Hitachi or its Affiliates under any aforementioned EULA, and You are solely responsible to comply with such license terms. Without limiting the previous sentence, Hitachi provides third party software to You without warranties or support of any kind, and licenses, warranties, indemnities for intellectual property infringement claims and support for third party software will be governed by the licensor in the applicable EULA. “**Affiliate**” means an entity controlled by, controlling or under the common control of that Party, where “control” means having a sufficient amount of voting shares to make corporate decisions for the entity. For Hitachi, Affiliate includes Hitachi, Ltd., and any business entity controlled by Hitachi, Ltd., but excludes Hitachi’s distributors, resellers and authorized service providers (collectively, the “**Hitachi Group**”).

(b) When Hitachi is the licensor of third party software and the license requires it, the licensor of the third party software is an intended third party beneficiary of these License Terms and may enforce them against you.

(c) You will have no recourse against Hitachi or its Affiliates with respect to the actions or omissions of a third-party hosting service or hosting provider and its agents.

#### **5. Open Source Software.**

(a) You acknowledge that Software You license may include open source software and is subject to separate license terms set forth in the applicable open source software provided with the Software itself, or otherwise in the Documentation or at <https://www.hitachivantara.com/en-us/company/legal.html>.

(b) You must refer to the applicable EULA for open source software terms related to third party software. By accepting these License Terms, You are deemed to have accepted the terms of the applicable EULA.

#### **6. Use Restrictions.**

Except to the extent that any of the following restrictions are prohibited by applicable law (and, then only to the extent prohibited) or any such restricted actions are otherwise allowed under these License Terms or by written authorization from Hitachi, You must not:

(a) disclose to any third party the results of Software or other product testing or benchmarking;

(b) reconstruct the source code or underlying ideas, algorithms, file formats, or interfaces of the Software, such as by translating, decompiling, disassembling or reverse engineering;

(c) create derivative works of or unbundle the Software;

(d) allow use of the Software by a third party, such as by sublicensing, leasing, reselling, transferring, loaning, distributing, or allowing use on a service bureau, time sharing, host or cloud service model;

(e) copy the Software, except as authorized in Section 7 below;

(f) make the Software available on any public network or allow access on an intranet unless it is restricted to authorized users;

(g) remove or tamper with proprietary notices, labels, or marks on or in the Software;

(h) use the Software or allow its use for any competitive development, testing, analysis, or marketing purposes;

(i) use the Software via any communications network or by means of remote access;

(j) use the Software licensed for a specific device, whether physical or virtual, on any other device; or

(k) disable, attempt any work-around of, or otherwise interfere with any license keys, tokens, or other mechanisms in the Software.

**7. Authorized Copies.** Subject to the restrictions in Sections 6 and 8, You may copy the Software solely for Your internal backup or archival use so long as all proprietary marks, notices (including copyright notices) and labels are reproduced and included with each copy of the Software.

#### **8. Software Transfers.**

(a) You must not sublicense or transfer the Software to any other party without Hitachi's prior written consent. You may only use operating software on the equipment for which it was purchased and must not transfer other Software to new equipment without Hitachi's prior written consent.

(b) You may, however, transfer operating software to a third party solely with the related equipment, but You must ensure that the transferee agrees to the License Terms. The operating software is provided to the transferee on an "as is" basis, with no transfer or extension of any existing warranty or support arrangements. Upon such transfer, You must remove and destroy all copies of the operating software in Your possession or under Your control.

#### **9. Verification Rights.**

Hitachi or its independent auditor may, upon reasonable notice to You, examine and audit Your records and systems to ensure Your compliance with these License Terms. The audit will be performed during normal business hours in a manner which does not unduly interfere with Your business operations. If the audit shows that You are using more copies of the Licensed Items than permitted, Hitachi may charge You additional license fees.

#### **10. Limited Warranty.**

Subject to this Section 10, Hitachi warrants to You that the Software will materially function in accordance with the Documentation for a period of ninety (90) days. To make a valid warranty claim, You must submit a claim to Hitachi under its standard warranty claim procedures. **EXCEPT AS SPECIFIED IN THESE LICENSE TERMS, ALL EXPRESS OR IMPLIED CONDITIONS, REPRESENTATIONS AND WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OR CONDITION OF MERCHANTABILITY, INTEROPERABILITY, 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 PRODUCTS OR THIRD-PARTY SOFTWARE WILL OPERATE UNINTERRUPTED, SECURELY, OR ERROR FREE AND WILL NOT BE LIABLE FOR COSTS OF PROCUREMENT OF SUBSTITUTE ITEMS.**

#### **11. Intellectual Property Right.**

Other than the rights expressly stated in these License Terms, Hitachi transfers no ownership of any intellectual property rights to You.. You hereby grant to Hitachi a worldwide, royalty free, non-exclusive license to use and reproduce any material provided by You, for the sole purpose of Hitachi's performance of services under these License Terms.

#### **12. Intellectual Property Rights Infringement.**

As its sole obligation and as Your sole remedy related to third-party intellectual property infringement, Hitachi will defend or settle any claim of any nature whatsoever against You alleging that the Software provided to You infringes the intellectual property rights of a third party. Hitachi will rely on Your prompt notification of the claim and co-operation. Provided that You are not in material breach of these License Terms, Hitachi will, at its option and sole discretion: (i) secure the rights for You to continue to use the affected Software; (ii) modify the affected Software; (iii) replace the affected Software with something that has substantially similar functionality; or (iv) provide You with a pro-rated refund for the affected Software. Hitachi will not be liable to provide any of the remedies for any claims related to: (A) any technology or other material used in conjunction and/or combination with the Software including third party products or technology supplied to Hitachi by entities outside the Hitachi Group for direct or indirect distribution ("**Third Party Products**"); (B) any product or service that You have, or any person on Your behalf has: (a) used in an unauthorized manner; (b) modified without the express written consent of Hitachi; or (c) failed to use another version of the Software that has been made available to You and which would have avoided the infringement.

#### **13. Liability Limitations.**

(a) Except for physical bodily injury, death, willful misconduct, fraud, claims for non-payment, infringement of Hitachi's intellectual property rights, breaches of confidentiality, or a Party's indemnification obligations under these License Terms and to the maximum extent permitted by law:

(i) each Party's liability under these License Terms is limited to direct damages for an amount not exceeding the greater of the total fees paid or owed by You under the applicable order and \$US 500,00.00; and

(ii) whether direct or indirect, neither Party will be liable for any loss of business, loss of revenue or profits, loss of economic advantage or goodwill, loss of use, lost or corrupted data; or any other indirect, punitive, special, incidental, or consequential damages, irrespective of how they arise.

For the avoidance of doubt, sub-sections (i) and (ii) will apply to a Party's liability for any personal data or data security breach, whether the liability arises under these License terms or under applicable law.

(b) The limitations and exclusions of liability above apply whether such liabilities or claims arise under breach of contract (including anticipatory breach or repudiation), tort (including negligence), statutory duty or otherwise (including in equity or common law) and even if the liable party has previously been advised of the possibility of such damages. Liability for damages will be limited and excluded, even if an exclusive remedy provided for in these License Terms fails of its essential purpose.

#### **14. Confidential Information.**

Information exchanged by the Parties under these License Terms will be treated as confidential if it is expressly stated to be confidential or, in the circumstances and given the nature of the information, it reasonably appears to be confidential. Confidential information of a Party may only be used for purposes related to these License Terms and may be shared with the other Party's Affiliates, employees, subcontractors, agents and authorized representatives with a need to know such information to support those purposes. Each Party will protect the other Party's confidential information by using a reasonable degree of care to prevent unauthorized disclosure or use for three (3) years from the termination date of these License Terms. These obligations do not cover any information: (i) already known by, or which becomes known to, the receiving Party without an obligation of confidentiality; (ii) that has been developed by the receiving Party or its Affiliate independently of such confidential information or (iii) where disclosure is required by law or a governmental agency.

#### **15. Personal Information.**

If the Parties exchange any information that relates to an identified or identifiable individual that is considered "Personal Data" as part of any transaction made under these License Terms, the Parties will take all reasonably necessary steps to ensure that such Personal Data is transferred, processed, and handled in compliance with each Party's obligations under all applicable data protection laws. You will at all times remain the Data Controller (namely, the entity who is responsible to determine the purposes and means of processing the data) of any Personal Data that You provide to Hitachi. Hitachi will only use such Personal Data for any purposes necessary to carry out the supply of Software. Where applicable, the most current Data Privacy and Security Terms at <https://www.hitachivantara.com/en-us/pdf/legal/data-privacy-security-terms-customer.pdf> are incorporated and form part of these License Terms.

#### **16. Global Trade Compliance.**

If You export, import or otherwise transfer the Software, You agree to comply with all applicable export laws, restrictions, and regulations. You hereby certify that You are not a sanctioned party and are not owned (50 percent or more) or controlled by any sanctioned party listed on the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) Specially Designated Nationals (SDN) List. You also agree not to use the Software in any restricted end-use, including but not limited to:

- (i) Any application in weapons of mass destruction (WMD) proliferation activities. This includes, but is not limited to, the design, development, production, stockpiling, or use of nuclear, chemical, or biological weapons or missiles.
- (ii) Military end use or supply to any military end-users.
- (iii) Engaging in activities contributing to internal or political repression, or the violation of human rights, or if You possess knowledge or reason

to suspect that governments (particularly police forces, military, intelligence, and security services) or telecom providers and/or data storage providers could be compelled to collaborate in human rights violations.

(iv) In the case of China (including Hong Kong) and Macau, participating in supercomputer and advanced technology node semiconductor manufacturing activities.

The above end-use restrictions are considered material obligations of these License Terms, and any violation thereof shall be deemed a material breach of these License Terms. You will indemnify, defend and hold harmless Hitachi and its Affiliates and their respective employees, subcontractors, agents and authorized representatives for all losses arising directly or indirectly from any violation(s) or alleged violation(s) of any such applicable laws, regulations and requirements (including Your breach of this Section 16) by You or Your employees, subcontractors, agents and authorized representatives. Each Party will comply with all applicable laws and regulations, including those relating to trade control, anti-corruption and bribery, including but not limited to the U.S. Export Administration Regulations, the U.S. economic sanctions and the U.S. Foreign Corrupt Practices Act. Hitachi may suspend its performance under this Agreement to the extent required by applicable laws to either Party.

#### **17. Termination of License**

Subject to Section 3(b) above, Your license in the Software is effective until its termination or expiration. Your license in the Software and any Software support services will terminate if You are in breach of these License Terms or if you fail to pay any portion of the applicable license fee and You fail to cure the breach in accordance with the terms of these License Terms. Upon termination or expiration of a license, You must destroy or disable all copies of the Software and Documentation.

#### **18. Disputes.**

The Parties will attempt in good faith to resolve through negotiation any dispute, claim, or controversy arising out of or relating to these License Terms. Either Party may initiate negotiations by providing written notice to the other party, setting out the subject of the dispute and the relief requested. The recipient will respond within ten (10) days with a written statement of its position on, and recommended solution to, the dispute. If the dispute is not resolved by this exchange of correspondence, then authorized representatives of each Party will meet at a mutually agreeable time and place within fifteen (15) days of the date of the initial notice in order to resolve the dispute. If the dispute is not resolved by these negotiations, either Party may elect to pursue the dispute in a court of competent jurisdiction in the State of New York.

**19. Governing Law.** These License Terms will be governed and construed in accordance with the laws of the jurisdiction of the state of New York (without regard to its conflict of law principles), and the venue for any litigation will be the appropriate courts in Manhattan, New York. The United Nations Convention on Contracts for the International Sale of Goods and its implementing legislation will not apply to this Agreement.

**20. Fees.** Unless otherwise specified in the respective cloud marketplace, fees for Software and Software Support will be set out in Hitachi's invoice, as applicable, and are payable within thirty (30) days of the date of Hitachi's invoice without the right of any deduction, refund or set-off that is not expressly allowed in these License Terms. Failure to pay the full amount of fees as required may result in Hitachi: (i) charging interest on any overdue payments at the rate of 1.5% per month or the highest rate allowed by applicable law, if less, from the date the amounts are due until the date of payment in cleared funds; (ii) suspending delivery; and (iii) taking other actions available under these License Terms or applicable law. If there is a dispute regarding an invoice, the

invoice remains payable by the due date and the dispute will be dealt with under Section 18. Hitachi is not responsible for any third party issued payment-related processing fees, such as portal service fees, cloud marketplace service fees, etc.

**21. Taxes.** To the extent that withholding, value-added or similar taxes are required, the paying Party will exercise due care to determine whether relief is available under a tax treaty and if, despite this, withholding tax applies, the Paying party will: (i) deduct the withholding from the amount due; (ii) remit to the taxing authority the withheld amount; (iii) provide all appropriate documents to the invoicing party. The paying Party may provide to the invoicing Party any resale certificate, treaty benefits exemption certificate or other exemption document required to reduce or eliminate any taxes. The Parties will co-operate and assist each other to use the documents to reduce the taxes and if it is determined that a refund of any taxes is appropriate, to enable a timely collection of the refund.

**22. Publicity.** Subject to Section 14, Hitachi may refer to You as a customer of Hitachi, both internally and in externally published media. You must not use Hitachi's name in any publication, advertisement, or public announcement, nor disclose the results, existence, or content of these License Terms, without Hitachi's prior written consent. You grant to Hitachi and its Affiliates a worldwide, royalty-free, limited right to use Your company and brand name and/or logo in promotional materials within any medium, including press releases, presentations and customer references regarding any order. Hitachi agrees to obtain Your prior written approval for publicity that contains claims, quotes, endorsements or attributions by You, but Your approval cannot be unreasonably withheld.

**23. Usage and Performance Data.** Hitachi may collect and transfer data created by and derived from the Software that Hitachi supplies to You, including analytics models and statistical and performance usage data, which does not include personal data or other identifying information. You grant to Hitachi, its Affiliates and their respective personnel a worldwide, royalty-free, non-exclusive license to use, copy, modify and sublicense such derived data for the purposes of product and/or service delivery, improvement and development and You agree and acknowledge that Hitachi may share that data with Affiliates or authorized partners at any time and without notifying You. Hitachi may use feedback You provide about the Software for its business operations.

**24. Software Support.** Support will be provided as specified in the respective cloud marketplace.

**25. Defense of Claims.** You will defend or settle any claim for which You have an indemnity obligation under these License Terms, at Your sole expense. If You fail to do so promptly, Hitachi may assume control of the defense of the claim at any time and You will reimburse Hitachi's reasonable expenses (including reasonable legal fees) in doing so, without limiting Your other obligations. You must not settle a claim without Hitachi's prior written approval.

**26. General Terms.**

(a) **Assignment and Transfer.** You must not sub-contract, assign, or otherwise transfer any of Your rights or obligations under these License Terms without Hitachi's prior written consent. You agree and acknowledge that Hitachi may engage subcontractors to perform any of its obligations, but Hitachi will remain responsible for their performance.

(b) **Notices.** Notices made under these License Terms must be in writing (printed or electronic format) to the appropriate representative of the recipient, as identified in these License Terms, or otherwise to a senior executive. Notices will be deemed given: (i) where they are hand delivered, when a duly authorized Personnel of the recipient gives written acknowledgement of receipt; (ii) for email communication, at the time the communication enters into the information system of the recipient; and (iii) for posting, three (3) days after dispatch.

(c) **Survival.** All rights and obligations of a Party that, by their nature, should survive the expiration of these License Terms will do so.

(d) **Waiver.** No waiver by a Party of any of its rights or remedies will be construed as a waiver by such Party of any other rights or remedies that the Party may have under these License Terms.

(e) **Modification.** Any modification to these License Terms must be in writing signed by each Party's authorized representative.

(f) **Third-party Beneficiaries.** There are no third-party beneficiaries to these License Terms.

(g) **Severability.** If any part of these License Terms is held to be invalid, illegal or otherwise unenforceable, that part will be eliminated to the minimum extent necessary, so that these License Terms will otherwise remain in full force and interpreted to reflect the original intent of the Parties.

(h) The Parties are independent contractors and there is no actual or deemed partnership, franchise, joint venture, agency, employment or other fiduciary relationship between the Parties.

(i) Hitachi may withhold or rescind any of its rights of approval or consent at Hitachi's sole and absolute discretion.

(j) The singular includes the plural and vice versa. All grammatical forms of a defined term are given a corresponding meaning. Words such as "including" are not intended to be words of limitation. No rule of construction applies to disadvantage the Party that drafted these License Terms. Unless the parties expressly agree otherwise, these rules of interpretation apply to the Online Terms located at <https://www.hitachivantara.com/en-us/company/legal/terms-licensing-maintenance.html> and all replacements and updates from time to time. and defined terms in the Agreement will also have the same meaning in the Online Terms and *vice versa*.

(k) **Conflicts.** If there is a conflict among the following documents, then this descending order of precedence will apply: (i) these License Terms; (ii) Software support and fees as specified in the respective cloud marketplace; (iii) the Online Terms, as applicable; (iv) a Hitachi quote or other proposal; (iv) any other documents comprising the order.

(l) **Force Majeure.** Neither Party will be liable for performance delays nor for non-performance (including suspension) due to causes beyond its reasonable control, except for payment obligations.

(m) **Entire Agreement.** These License Terms (including all terms attached or incorporated by reference) are the entire agreement relating to their 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).