

NASPO ValuePoint
PARTICIPATING ADDENDUM



**COMPUTER EQUIPMENT,
PERIPHERALS & RELATED SERVICES**

Led by the State of Minnesota
State of Utah Contract #: PA4285

Master Agreement #: 23009

Contractor: **HITACHI VANTARA LLC**

Participating Entity: **STATE OF UTAH**

Participating Entity Contract #: **PA4285**

The following products or services are included in this contract portfolio:

- - Personal computing devices such as desktops, laptops, and tablets;
- - Enterprise computing devices such as servers and storage;
- - Ruggedized devices in the categories above; and
- - Related peripheral commodities.

- This contract also allows for limited services related to the purchase of the commodities available through this contract.

The following products or services are not included in this agreement:

- See master agreement #5 for details

Participating Addendum Terms and Conditions:

1. Scope: This addendum covers **COMPUTER EQUIPMENT, PERIPHERALS & RELATED SERVICES** led by the State of Minnesota for use by state agencies and other entities located in the State of Utah authorized by that State's statutes to utilize State contracts with the prior approval of the State's Chief Procurement Official. An amendment to this PA is not required when offerings are adjusted in the Master Agreement, so long as all additions remain within the master agreement's original scope.
2. Pricing: The pricing and rates from the Master Agreement shall flow down to this PA. An amendment to this PA is not required when pricing in the Master Agreement is adjusted / updated.
3. Contract Effective Dates: This PA is effective upon final signature of both parties, and expires upon the expiration or termination of the NASPO ValuePoint Master Agreement #23009. A contract amendment is not necessary in the event of the renewal or extension of the Master Agreement, so long as such renewal/extension was originally provided within the solicitation supporting the master agreement.
4. Order of Precedence: The order of precedence as provided in the NASPO ValuePoint Master Agreement #23009 applies to this PA.
5. Participation: This NASPO ValuePoint Master Agreement may be used by all state agencies, institutions of higher institution, political subdivisions and other entities authorized to use statewide contracts in the State of Utah. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official.

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6. Administrative Fee: 1.0% will apply per Section 54 of Attachment A.
 7. Subcontractors: All contactors, dealers, and resellers authorized in the State of Utah, as shown on the dedicated Contractor (cooperative contract) website, are approved to provide sales and service support to participants in the NASPO ValuePoint Master Agreement. The contractor's dealer participation will be in accordance with the terms and conditions set forth in the aforementioned Master Agreement.
 8. Orders: Any order placed by a Participating Entity or Purchasing Entity for a product and/or service available from this Master Agreement shall be deemed to be a sale under (and governed by the prices and other terms and conditions) of the Master Agreement unless the parties to the order agree in writing that another contract or agreement applies to such order.
 9. Primary Contacts: The primary contact individuals for this Participating Addendum are as follows (or their named successors):

Contractor

Name:	Karin Miyamoto, Sales Operations - Enterprise
Address:	Hitachi Vantara LLC 2535 Augustine Drive Santa Clara, CA 95054
Telephone:	630.875.4385
Email:	karin.miyamoto@hitachivantara.com

Participating Entity

Name:	Brent Bowden
Address:	4315 S 2700 W, Taylorsville, UT 84129
Telephone:	(801) 957-7144
Email:	bbowden@utah.gov

10. ADDITIONAL TERMS AND CONDITIONS

The following terms and conditions will apply to this participating addendum.

ATTACHMENT A: STATE OF UTAH STANDARD INFORMATION TECHNOLOGY TERMS AND CONDITIONS

STATE OF UTAH COOPERATIVE INFORMATION TECHNOLOGY CONTRACT

This is a State Cooperative Contract for information technology products and services. DTS policies referenced by number in this Attachment are only applicable to the Executive Branch and are available at <https://dts.utah.gov/policies>. All other policies and codes of conduct are available upon request.

(Terms negotiated and agreed to by both parties: 1c, g, h, l, m, p, q, s, 2f, j, 3, 7, 10, 11-20, 22-32, 35b, c, 37, 39-41, 43, 44, 45c, e, 46 & 47)

1. DEFINITIONS:

- a. "Access to Secure State Facilities, Data, or Technology" means Contractor will (a) enter upon secure premises controlled, held, leased, or occupied by State of Utah or Eligible User; (b) maintain, develop, or have access

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to any deployed hardware, software, firmware, or any other technology, that is in use by State of Utah or Eligible User; or (c) have access to or receive any State Data or Confidential Information.

- b. "Authorized Persons" means the Contractor's employees, officers, partners, Subcontractors, or agents of Contractor who need Access to Secure State Facilities, Data, or Technology to enable the Contractor to perform its responsibilities under this Contract.
- c. Removed
- d. "Contract" means the Contract Signature Page(s), including all referenced attachments and documents incorporated by reference.
- e. "Contract Period" means the term of this Contract, as set forth in the Contract Signature Page(s).
- f. "Contract Signature Page(s)" means the cover page that the Division and Contractor sign.
- g. "Contractor" means the individual or entity identified on the Contract Signature Page(s). "Contractor" includes Contractor's affiliates, agents, officers, employees, partners, contractors, and Subcontractors at any level. "Data Breach" means the unauthorized access or acquisition of State Data that compromises the security, confidentiality, or integrity of State Data.
- h. "Division" means the State of Utah Division of Purchasing.
- i. "DTS" means the Utah Department of Technology Services.
- j. "Eligible User(s)" means the State of Utah's government departments, institutions, agencies, political subdivisions (i.e., colleges, school districts, counties, cities, etc.), and, as applicable, nonprofit organizations, agencies of the federal government, or any other entity authorized by the laws of the State of Utah to participate in State Cooperative Contracts.
- k. "Federal Criminal Background Check" means a fingerprint-based, nationwide background check conducted and processed by the FBI.
- l. "Good" means Products as defined in the Master Agreement..
- m. Removed
- n. "Non-Public Data" means records or data, that are not subject to distribution to the public. Access is restricted because it includes information that is protected by state or federal law. Non-Public Data includes, but is not limited to, a person's name; government-issued identification numbers (e.g., Social Security, driver's license, passport); financial account information; or Protected Health Information.
- o. "Response" means the Contractor's bid, proposals, quote, or any other document used by the Contractor to respond to the State Entity's Solicitation.
- p. "Security Incident" means the unauthorized access to State Data that may result in the use, disclosure, or theft of State Data.
- q. "Services" means the furnishing of labor, time, or effort by Contractor, and may include installation, configuration, implementation, technical support, warranty maintenance and support services for covered Products purchased or supplied under this Contract .
- r. "Solicitation" means an invitation for bids, request for proposals, notice of sole source procurement, request for statement of qualifications, request for information, or any document used to obtain bids, proposals, pricing, qualifications, or information for the purpose of entering into this Contract.
- s. "State Data" means all Confidential Information that is created, controlled, maintained, owned, or in any way originating with the State of Utah or Eligible User regardless of where such data or output is stored or maintained.
- t. "State of Utah" means the State of Utah, in its entirety, including its institutions, agencies, departments, divisions, authorities and instrumentalities, boards, commissions, elected or appointed officers, employees, agents, and authorized volunteers.

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- u. "Subcontractors" includes contractors, manufacturers, distributors, suppliers, or consultants, at any tier, that are under the direct or indirect control or responsibility of Contractor, including a person or entity that is, or will be, providing goods or performing services pursuant to this Contract.

2. ESSENTIAL PROVISIONS:

- a. **CONTRACT JURISDICTION, CHOICE OF LAW, AND VENUE:** This Contract shall be governed solely by the laws of the State of Utah. Any action or proceeding arising from this Contract shall be brought in a court of competent jurisdiction in the State of Utah. Exclusive venue shall be in Salt Lake City, in the Third Judicial District Court for Salt Lake County.
- b. **LAWS:** Contractor and all Goods and Services delivered under this Contract will comply with all applicable federal and state of Utah laws, including applicable licensure and certification requirements.
- c. **SOVEREIGN IMMUNITY:** The Division and the State of Utah do not waive any protection, right, defense or immunity under the Governmental Immunity Act of Utah, Utah Code §§ 63G-7-101 to 904, as amended, the Eleventh Amendment to the Constitution of the United States, or otherwise, from any claim or from the jurisdiction of any court.
- d. **PUBLIC INFORMATION:** This Contract and any purchase orders, invoices, pricing lists, and the Response are public records available for disclosure in accordance with the State of Utah's Government Records Access and Management Act (GRAMA, Utah Code 63G-2-101 et seq.), except to the extent classified as protected in accordance with UCA 63G-2-309. GRAMA takes precedence over any statements of confidentiality or similar notations. Neither the Division, the Eligible User nor the State of Utah will inform Contractor of any request for a copy of this Contract, including any purchase orders, invoices, pricing lists, or the Response.
- e. **CREDITING THE DIVISION IN PUBLICITY:** Any publicity given to this Contract shall identify the Division as the managing agency and shall not be released without prior written approval from the Division.
- f. **SALES TAX EXEMPTION:** Goods, and Services purchased by some Eligible Users are being paid from that Eligible User's funds and used in the exercise of that Eligible User's essential functions as a State of Utah governmental entity. Any such Eligible Users will provide Contractor with a copy of its sales tax exemption number upon request.
- g. **SEVERABILITY:** A declaration or order by any court that any provision of this Contract is illegal and void shall not affect the legality and enforceability of any other provision of this Contract, unless the provisions are mutually dependent.
- h. **AMENDMENTS:** This Contract may only be amended by the mutual written agreement of the parties, provided that the amendment is within the Scope of Work of this Contract, is within the scope/purpose of the Solicitation, and is attached and made part of this Contract. Automatic renewals are prohibited and are deemed void even if listed elsewhere in this Contract.
- i. **DEBARMENT:** Contractor certifies that it is not presently nor has ever been debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any government department or agency, whether international, national, state, or local. Contractor must notify the Division within thirty (30) days if debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in any contract by any governmental entity.
- j. **NONAPPROPRIATION OF FUNDS, REDUCTION OF FUNDS, OR CHANGES IN LAW:** This Contract may be terminated in whole or in part at the sole discretion of the Division or Eligible User upon thirty days written notice, if the Division or Eligible User reasonably determines that (a) a change in Federal or State legislation or applicable laws materially affects the ability of either party to perform under the terms of this Contract; or (b) that a change in available funds affects the Division or Eligible User's ability to pay under this Contract. A change of available funds includes, but is not limited to, a change in Federal or State funding, whether as a result of a legislative act or an order of the President, the Governor, or Executive Director.

The Division or Eligible User, as applicable, will reimburse Contractor for the Goods or Services properly ordered and delivered until the effective date of said notice. The Division and Eligible User are not liable for any performance, commitments, penalties, or liquidated damages that accrue after the effective date of the

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notice.

- k. **ENTIRE AGREEMENT:** This Contract is the entire agreement between the parties, and supersedes any prior and contemporaneous agreements and understandings between the parties, whether oral or written.
 - l. **WAIVER:** The waiver by either party of any provision, term, covenant, or condition of this Contract shall not be deemed to be a waiver of any other provision, term, covenant, or condition of this Contract nor any subsequent breach of the same or any other provision, term, covenant, or condition of this Contract. The Eligible User's approval, acceptance, or payment for any Goods or Services required under this Contract shall not be construed to operate as a waiver by the Eligible User of any right under this Contract or of any cause of action arising out of the performance or nonperformance of this Contract.
 - m. **CHANGES IN SCOPE:** Any changes in the scope of work to be performed under this Contract shall be in the form of a written amendment to this Contract, mutually agreed to and signed by both parties, specifying any such changes, fee adjustments, any adjustment in time of performance, or any other significant factors arising from the changes in the scope of work.
 - n. **TRAVEL COSTS:** Unless otherwise agreed to in the contract, all travel costs associated with the delivery of Services will be paid in accordance with the Utah Administrative Code R25-7. Invoices containing travel costs outside of these rates will be returned to the Contractor for correction.
3. **RECORDS ADMINISTRATION:** See Section 33 of the Master Agreement .
 4. **CERTIFY REGISTRATION AND USE OF EMPLOYMENT "STATUS VERIFICATION SYSTEM":** This Status Verification System, also referred to as "E-verify", requirement only applies to contracts issued through a Request for Proposal process and to sole sources that are included within a Request for Proposal.
 - 1) Contractor certifies as to its own entity, under penalty of perjury, that Contractor has registered and is participating in the Status Verification System to verify the work eligibility status of Contractor's new employees that are employed in the State of Utah in accordance with applicable immigration laws including Section 63G-12-302, Utah Code, as amended.
 - 2) Contractor shall require that the following provision be placed in each subcontract at every tier: "The subcontractor shall certify to the main (prime or general) Contractor by affidavit that the subcontractor has verified through the Status Verification System the employment status of each new employee of the respective subcontractor, all in accordance with applicable immigration laws including Section 63G-12-302, Utah Code, as amended, and to comply with all applicable employee status verification laws. Such affidavit must be provided prior to the notice to proceed for the subcontractor to perform the work."
 - 3) Contractor's failure to comply with this section will be considered a material breach of this Contract.
 - 4) Contractor shall protect, indemnify, and hold harmless the Division, the Eligible Users, and the State of Utah, and anyone that the State of Utah may be liable for, against any claim, damages, or liability arising out of or resulting from violations of the above Status Verification System Section whether violated by employees, agents, or contractors of the following: (a) Contractor; (b) Subcontractor at any tier; and/or (c) any entity or person for whom the Contractor or Subcontractor may be liable.
 5. **CONFLICT OF INTEREST:** Contractor represents that none of its officers or employees are officers or employees of the State of Utah, unless written disclosure has been made to the Division.
 6. **INDEPENDENT CONTRACTOR:** Contractor is an independent contractor, and not an employee or agent of the Division, the Eligible Users, or the State of Utah, and therefore is not entitled to any of the benefits associated with such employment. Contractor has no authorization, express or implied, to bind the Division, the Eligible Users, or the State of Utah to any agreements, settlements, liabilities, or understandings, and shall not perform any acts as an agent for the Division, the Eligible users, or the State of Utah. Contractor is responsible for all applicable federal, state, and local taxes and FICA contributions.
 7. **CRIMINAL BACKGROUND SCREENING:** Depending on the Eligible User's policy, each employee of Contractor and Subcontractor may be required to successfully complete a Federal Criminal Background Check, prior to being granted Access to Secure State Facilities, State Data, or Technology. Contractor shall run a background check on

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an employee, should employee of Contractor have Access to Secure State Facilities, State Data, or Technology. Contractor shall not deploy any individual who has not successfully passed a background check to an Eligible Users' location. Eligible Users may revoke Access to Secure State Facilities, Data, and Technology granted in the event of any negative results. Contractor and the employee or subcontractor shall promptly notify Eligible Users if an arrest or conviction for a felony or misdemeanor of any person that has Access to Secure State Facilities, State Data or Technology occurs during the Contract Period. Eligible Users will determine in its discretion if such person's Access to Secure State Facilities, State Data, or Technology shall remain in effect. Felony and misdemeanor are defined by the laws of the State of Utah, regardless of where the conviction occurred. (DTS Policy 2000-0014 Background Investigations)

8. **DRUG-FREE WORKPLACE:** Contractor shall abide by the Eligible User's drug-free workplace policies while on the Eligible User's or the State of Utah's premises.
9. **CODE OF CONDUCT:** If Contractor is working at facilities controlled or owned by the State of Utah, Contractor shall follow and enforce the agency applicable code of conduct. Contractor will ensure that each employee receives a copy of the policies and applicable codes of conduct. (DTS Policy 2000-0001 Code of Conduct, DTS Policy 1000-0003 Acceptable Use of Information Technology Resources)
10. **INDEMNITY AND LIABILITY.** See Sections 34 and 35 of the Master Agreement
11. **HARDWARE WARRANTY:** See Section 21 of the Master Agreement and Hitachi's Warranty Maintenance and Support Terms, as attached herein as Exhibit A.
12. **SOFTWARE WARRANTY:** See Section 21 of the Master Agreement and Hitachi's Software License Terms, attached herein as Exhibit A.
13. **WARRANTY REMEDIES:** See Section 21 of the Master Agreement and Hitachi's Warranty Maintenance and Support Terms, attached herein as Exhibit A..
14. **UPDATES AND UPGRADES:** Intentionally Deleted.
15. **BUG FIXING AND REMOTE DIAGNOSTICS:** Intentionally Deleted.
16. **TECHNICAL SUPPORT AND MAINTENANCE:** Intentionally Deleted.
17. **PHYSICAL DELIVERY:** See Section 18 in the Master Agreement.
18. **ELECTRONIC DELIVERY:** Contractor may electronically deliver any Good to the Eligible User or provide any Good for download from the Internet, where available, if pre-approved in writing by the Eligible User. Contractor shall ensure the confidentiality of electronic deliveries in transit. Contractor warrants that, at the time of delivery all electronic deliveries will be free of known, within reasonable industry standards, malware, bugs, Trojan horses, etc.
19. **ACCEPTANCE PERIOD:** See Section 19 in the Master Agreement.
20. **SECURE PROTECTION AND HANDLING OF STATE DATA:** If Contractor is given access to State Data, the protection of State Data shall be an integral part of the business activities of Contractor, and Contractor shall take reasonable measures to confirm that there is no inappropriate or unauthorized use of State Data. To the extent Contractor is given State Data, Contractor shall safeguard the confidentiality, integrity, and availability of the State Data and comply with the conditions outlined below. The Eligible User reserves the right to verify Contractor's adherence to the following conditions:
 - a. **Network Security:** Contractor shall maintain network security that, at a minimum, includes: network firewall provisioning, intrusion detection, and regular third-party penetration testing. Contractor shall maintain network security and ensure that Contractor network security policies conform to one of the following:

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- 1) Those standards the State of Utah applies to its own network, found outlined in *DTS Policy 5000-0002 Enterprise Information Security Policy*;
 - 2) Current standards set forth and maintained by the National Institute of Standards and Technology, includes those at: <http://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.800-53r4.pdf>; or
 - 3) Any generally recognized comparable standard that Contractor then applies to its own network and pre-approved by the Eligible User in writing.
- b. **State Data Security:** Contractor shall protect and maintain the security of State Data with protection that is at least as good as or better than that maintained by the State of Utah which will be provided by an Eligible User upon Contractor's request (*DTS Policy 5000-0002*). These security measures included but are not limited to maintaining secure environments that are patched and up to date with all appropriate security updates as designated (ex. Microsoft Notification). The Eligible User reserves the right to determine if Contractor's level of protection meets the Eligible User's security requirements.
 - c. **State Data Transmission:** Contractor shall ensure all transmission or exchange of system application data with the Eligible User and State of Utah and/or any other parties expressly designated by the State of Utah, shall take place via secure means (ex. HTTPS or FTPS).
 - d. **State Data Storage:** All State Data will be stored and maintained in data centers in the United States. No State Data will be processed on or transferred to any portable or laptop computing device or portable storage medium, except for devices that are used and kept only at Contractor's United States data centers, unless such medium is part of the Contractor's designated backup and recovery process.
 - e. **Access:** Contractor shall permit its employees and Subcontractors to remotely access non-State Data only as required to provide technical support.
 - f. **State Data Encryption:** Contractor shall store all data provided to Contractor, including State, as well as any backups made of that data, in encrypted form using no less than 128 bit key and include all data as part of a designated backup and recovery process.
 - g. **Password Protection:** Any portable or laptop computer that has access to the Eligible User's or State of Utah networks, or stores any Eligible User data shall be equipped with strong and secure password protection.
 - h. **Confidential Information Certification:** Contractor shall sign a Confidential Information Certification form prior to being given access to confidential computerized records.
 - i. **State Data Re-Use:** All data exchanged shall be used expressly and solely for the purpose enumerated in this Contract. No State Data of any kind may be transmitted, exchanged, or provided to other contractors or third parties except on a case-by-case basis as specifically agreed to in writing by the Eligible User.
 - j. **State Data Destruction:** Upon expiration or termination of this Contract, Contractor shall erase, destroy, and render unreadable all State Data from all non-state computer systems and backups, and certify in writing that these actions have been completed within thirty (30) days of the expiration or termination of this Contract or within seven (7) days of the request of the Eligible User, whichever shall come first, unless the Eligible User provides Contractor with a written directive. The Eligible User's written directive may require that certain data be preserved in accordance with applicable law.
 - k. Intentionally Deleted.
 - l. **User Support:** Contractor may provide technical user support on a 24/7 basis using a Follow the Sun model, unless otherwise prohibited by this contract.
- 21. SECURITY INCIDENT OR DATA BREACH NOTIFICATION:** Contractor shall immediately inform the Eligible User of any Security Incident or Data Breach. It is within the Eligible User's discretion to determine whether any attempted unauthorized access is a Security Incident or a Data Breach.
- a. **Incident Response:** Contractor may need to communicate with outside parties regarding a Security Incident, which may include contacting law enforcement and seeking external expertise as mutually agreed upon, defined by law or contained in this Contract. Discussing Security Incidents with the Eligible User should be

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- handled on an urgent as-needed basis, as part of Contractor's communication and mitigation processes, defined by law or contained in this Contract.
- b. **Security Incident Reporting Requirements:** Contractor shall promptly report a Security Incident to the Eligible User.
 - c. **Breach Reporting Requirements:** As required by Utah Code 13-44-202 or any other law, Contractor shall immediately notify the Eligible User of a Data Breach that affects the security of State Data.
- 22. DATA BREACH RESPONSIBILITIES:** Contractor shall comply with all applicable laws that require the notification of individuals in the event of a reasonably certain Data Breach or other events requiring notification (*DTS Policy 5000-0002 Enterprise Information Security Policy*). In the event of a Data Breach or other event requiring notification under applicable law (Utah Code § 13-44-101 thru 301 et al), Contractor shall: (a) cooperate with the Eligible User by sharing information relevant to the Data Breach; (b) promptly implement necessary remedial measures, if necessary; and (c) document responsive actions taken related to the Data Breach, including any post-incident review of events and actions taken to make changes in business practices in relation to the Data Breach. If the Data Breach requires public notification, all communication shall be coordinated with the Eligible User. Contractor is responsible for all notification and remedial costs and damages subject to the limitations of liability set forth in Section 35 of the Master Agreement.
- 23. STATE INFORMATION TECHNOLOGY POLICIES:** If Contractor is providing an Executive Branch Agency of the State of Utah with Goods or Custom Deliverables and subject to section 22 of this Contract, Contractor shall comply with policies and procedures that meet or exceed those DTS follows for internally developed goods and deliverables to minimize security risk, ensure applicable Utah and Federal laws are followed, address issues with accessibility and mobile device access, and prevent outages and data breaches within the State of Utah's environment. Contractor shall comply with the following DTS Policies if applicable and provided to Contractor in advance.
- a. **DTS Policy 4000-0001, Enterprise Application and Database Deployment Policy:** A Contractor developing software for the State to develop and establish proper controls that will ensure a clear separation of duties between developing and deploying applications and databases to minimize security risk; to meet due diligence requirements pursuant to applicable Utah and federal regulations; to enforce contractual obligations; and to protect the State's electronic information and information technology assets.
 - b. **DTS policy 4000-0002, Enterprise Password Standards Policy:** A Contractor developing software for the State must ensure it complies with the password requirements of the Enterprise Password Standards Policy.
 - c. **DTS Policy 4000-0003, Software Development Life Cycle Policy:** A Contractor developing software for the State shall work with DTS in implementing a Software Development Lifecycle (SDLC) that addresses key issues of security, accessibility, mobile device access, and standards compliance.
 - d. **DTS Policy 4000-0004, Change Management Policy:** Goods or Custom Deliverables furnished or Services performed by Contractor which have the potential to cause any form of outage or to modify DTS's or the State of Utah's infrastructure must be reviewed by the DTS Change Management Committee. Any outages or Data Breaches which are a result of Contractor's failure to comply with DTS instructions and policies will result in Contractor's liability for all damages resulting from or associated with the outage or Data Breach.
- 24. CONFIDENTIALITY:** See Section 40 in the Master Agreement.
- 25. Reserved**
- 26. OWNERSHIP IN INTELLECTUAL PROPERTY:** See Section 36 of the Master Agreement
- 27. OWNERSHIP IN CUSTOM DELIVERABLES:** Intentionally Deleted.
- 28. LICENSE FOR GOODS:** Intentionally Deleted
- 29. OWNERSHIP, PROTECTION, AND USE OF RECORDS:** Intentionally Deleted.
- 30. OWNERSHIP, PROTECTION, AND USE OF DATA:** Intentionally Deleted.

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31. OWNERSHIP, PROTECTION, AND USE OF CONFIDENTIAL FEDERAL, UTAH, OR LOCAL GOVERNMENT INTERNAL BUSINESS PROCESSES AND PROCEDURES: Intentionally Deleted

32. OWNERSHIP, PROTECTION, AND RETURN OF DOCUMENTS AND DATA UPON CONTRACT TERMINATION OR COMPLETION: Intentionally Deleted.

33. ORDERING AND INVOICING: For State of Utah Executive Branch Agencies, a purchase order must be sent to the Contractor by DTS prior to any work being initiated, product shipped, or invoices cut under this contract. All orders will be shipped promptly in accordance with the delivery schedule. Contractor will promptly submit invoices (within 30 days after shipment or delivery of goods or services, with the exclusion of end of fiscal year invoicing for Executive Branch Agencies) to the appropriate Eligible User. The contract number shall be listed on all invoices, freight tickets, and correspondence relating to an order under this Contract. The prices paid by the Eligible User shall not exceed prices listed in this Contract. The Eligible User shall adjust or return any invoice reflecting incorrect pricing. For Executive Branch Agencies, Contractor must send all invoices no later than July 10, or the last working day prior, to the State for all work completed or items received during the State's fiscal year of July 1-June 30.

34. PAYMENT AND NOTICE:

- a. Payments will be made within thirty (30) days from the date a correct invoice is received. For Executive Branch Agencies, a correct invoice will contain the contract and purchase order numbers as indicated in Section 33. After sixty (60) days from the date a correct invoice is received by the appropriate State official, the Contractor may assess interest on overdue, undisputed account charges up to the interest rate paid by the IRS on refund claims, plus two percent, computed in accordance with Section 15-6-3, Utah Prompt Payment Act of Utah Code, as amended.
- b. The contract costs may be changed only by written amendment. All payments to Contractor will be remitted by mail, by electronic funds transfer, or by the Eligible User's purchasing card (major credit card). The Division will not pay electronic payment fees of any kind.
- c. Any written protest of the final contract payment must be filed with the Eligible User within ten (10) working days of receipt of final payment. If no protest is received, the Eligible User, the Division, and the State of Utah are released from all claims and all liability to Contractor for fees and costs pursuant to this Contract.
- d. Overpayment: If during or subsequent to the Contract an audit determines that payments were incorrectly reported or paid by the Eligible User to Contractor, then Contractor shall, upon written request, immediately refund to the Eligible User any such overpayments.

35. CONTRACTOR'S INSURANCE RESPONSIBILITY: The Contractor shall maintain the following insurance coverage:

- a. Workers' compensation insurance during the term of this Contract for all its employees and any Subcontractor employees related to this Contract. Workers' compensation insurance shall cover full liability under the workers' compensation laws of the jurisdiction in which the work is performed at the statutory limits required by said jurisdiction.
- b. Commercial general liability [CGL] insurance from an insurance company. The limits of the CGL insurance policy will be no less than one million dollars (\$1,000,000.00) per person per occurrence and three million dollars (\$3,000,000.00) aggregate.
- c. Commercial automobile liability [CAL] insurance from an insurance company. The CAL insurance policy must cover bodily injury and property damage liability and be applicable to all vehicles used in your performance of Services under this Agreement whether owned, non-owned, leased, or hired. The minimum liability limit must be \$1 million per occurrence, combined single limit. The CAL insurance policy is required if Contractor will use a vehicle in the performance of this Contract.
- d. Other insurance policies specified in the Solicitation.

Certificate of Insurance, showing up-to-date coverage, shall be on file with the State before the Contract may commence. Failure to provide proof of insurance as required will be deemed a material breach of this Contract.

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Contractor's failure to maintain this insurance requirement for the Contract Period will be grounds for immediate termination.

36. ADDITIONAL INSURANCE REQUIREMENTS:

- a. Professional liability insurance in the amount as described in the Solicitation for this Contract, if applicable.
- b. Any other insurance policies described or referenced in the Solicitation for this Contract.
- c. Any type of insurance or any increase of limits of liability not described in this Contract which the Contractor requires for its own protection or on account of any federal, Utah, or local statute, rule, or regulation shall be its own responsibility, and shall be provided at Contractor's own expense.
- d. The carrying of insurance required by this Contract shall not be interpreted as relieving the Contractor of any other responsibility or liability under this Contract or any applicable law, statute, rule, regulation, or order. Contractor must provide proof of the above listed policies within thirty (30) days of being awarded this Contract.

37. ASSIGNMENT/SUBCONTRACT: Contractor will not assign, sell, or transfer, responsibilities under this Contract, in whole or in part, without the prior written approval of the Division. Contractor may subcontract responsibilities under this Contract, in whole or in part, upon written notice to the Division. Notwithstanding responsibilities being subcontracted, Contractor will remain primarily responsible and liable for the duties and obligations outlined in this Contract.

38. TERMINATION: Unless otherwise stated in this contract, this Contract may be terminated for cause by either party upon written notice being given by the other party. The party in violation will be given thirty (30) calendar days, or as otherwise agreed upon in writing, after notification to correct and cease the violations, after which this Contract may be terminated for cause immediately and subject to the remedies below. This Contract may also be terminated without cause (for convenience) by the Division, upon sixty (60) calendar days written termination notice being given to the Contractor. The Division and the Contractor may agree to terminate this Contract, in whole or in part, at any time by mutual written agreement.

Contractor shall be compensated for the Services properly performed and goods properly provided pursuant to this Contract up to the effective date of termination as stated in the notice. Contractor agrees that in the event of termination for cause or without cause, Contractor's sole remedy and monetary recovery from the Division, the Eligible User, or the State of Utah is limited to payment for all work properly performed as authorized under this Contract up to the date of termination, and any reasonable monies that may be owed as a result of Contractor having to terminate other contracts necessarily and appropriately entered into by Contractor pursuant to this Contract.

39. TERMINATION UPON DEFAULT: Intentionally Deleted. .

40. SUSPENSION OF WORK: Intentionally Deleted..

41. DEFAULT AND REMEDIES: See Section 44 in the Master Agreement..

42. FORCE MAJEURE: Neither party to this Contract will be held responsible for delay or default caused by fire, riot, acts of God, or war which is beyond that party's reasonable control. The Division may terminate this Contract after determining such delay will reasonably prevent successful performance of this Contract.

43. CONFLICT OF TERMS: See Section 19 in the Master Agreement. .

44. SURVIVORSHIP: The contractual provisions that will remain in effect after expiration or termination of this Contract are: (a) Contract Jurisdiction, Choice of Law, and Venue; (b) Secure Protection and Handling of State Data; (c) Data Breach Responsibilities; (d) Intentionally Deleted; (e) Ownership, Protection, and Use of Records; and (f) Ownership, Protection, and Use of Confidential Federal, Utah, or Local Government Internal Business Processes; (g) Ownership, Protection, and Return of Documents and Data Upon Contract Termination or Completion; (h) Confidentiality; (i) Conflict of Terms; and (j) any other terms that by their nature would survive the expiration, completion, or termination of this contract.

45. RELEVANT STATE AND FEDERAL LAWS

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**COMPUTER EQUIPMENT,
 PERIPHERALS & RELATED SERVICES**

Led by the State of Minnesota
 State of Utah Contract #: PA4285

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- a. **Conflict of Interest with State Employees:** Contractor shall comply and cooperate in good faith with all conflict of interest and ethic laws, including Section 63G-6a-2404, Utah Procurement Code, as amended.
- b. **Procurement Ethics:** Contractor understands that a person who is interested in any way in the sale of any supplies, services, products, construction, or insurance to the State of Utah is violating the law if the person gives or offers to give any compensation, gratuity, contribution, loan, or reward, or any promise thereof to any person acting as a procurement officer on behalf of the State of Utah, or who in any official capacity participates in the procurement of such supplies, services, products, construction, or insurance, whether it is given for their own use or for the use or benefit of any other person or organization (63G-6a-2304.5, Utah Procurement Code, as amended).
- c. **Contact Information:** Per Utah Code §§63G-6a-110 and 35A-2-203, the State shall make Contractor's contact information available to the State of Utah Department of Workforce Services. The State of Utah Department of Workforce Services may contact Contractor during the duration of this Contract to inquire and post information regarding Contractor's job vacancies on its website.
- d. **Employment Practices:** Contractor shall abide by the following employment laws: (i) Title VI and VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e) which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of services, on the basis of race, religion, color, or national origin; (ii) Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; (iii) 45 CFR 90 which prohibits discrimination on the basis of age; (iv) Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990 which prohibits discrimination on the basis of disabilities; and (v) Utah's Executive Order 2019-1, dated February 5, 2019, which prohibits unlawful harassment in the work place. Contractor shall abide by any other laws, regulations, or orders that prohibit the discrimination of any kind of any of Contractor's employees.
- e. **Compliance with Accessibility Standards:** See Section 13 in the Master Agreement. .
- 46. RIGHT TO MONITOR PERFORMANCE AND AUDIT**
- a. **Audit:** See Section 33 in the Master Agreement. .
- 47. TIME IS OF THE ESSENCE:** Intentionally deleted.
- 48. STANDARD OF CARE:** For Services of Contractor which require licenses and certifications, such Services shall be performed in accordance with the standard of care exercised by licensed members of their respective professions having substantial experience providing similar services which similarities include the type, magnitude, and complexity of the Services that are the subject of this Contract.
- 49. LARGE VOLUME DISCOUNT PRICING:** Eligible Users may seek to obtain additional volume discount pricing for large orders provided Contractor is willing to offer additional discounts for large volume orders. No amendment to this Contract is necessary for Contractor to offer discount pricing to an Eligible User for large volume purchases.
- 50. ELIGIBLE USER PARTICIPATION:** Participation under this Contract by Eligible Users is voluntarily determined by each Eligible User. Contractor agrees to supply each Eligible User with Goods based upon the same terms, conditions and prices of this Contract.
- 51. INDIVIDUAL CUSTOMERS:** Each Eligible User that purchases Goods from this Contract will be treated as if they were individual customers. Each Eligible User will be responsible to follow the terms and conditions of this Contract. Contractor agrees that each Eligible User will be responsible for their own charges, fees, and liabilities. Contractor shall apply the charges to each Eligible User individually. The Division is not responsible for any unpaid invoice.
- 52. QUANTITY ESTIMATES:** The Division does not guarantee any purchase amount under this Contract. Estimated quantities are for Solicitation purposes only and are not to be construed as a guarantee.
- 53. ORDERING:** Orders will be placed by the using Eligible User directly with Contractor. All orders will be shipped promptly in accordance with the terms of this Contract.

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**COMPUTER EQUIPMENT,
PERIPHERALS & RELATED SERVICES**

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54. REPORTS AND FEES:

- a. **Administrative Fee:** Contractor agrees to provide a quarterly administrative fee to the State in the form of a check, EFT or online payment through the Division’s Automated Vendor Usage Management System. Checks will be payable to the “State of Utah Division of Purchasing” and will be sent to State of Utah, Division of Purchasing, Attn: Cooperative Contracts, PO Box 141061, Salt Lake City, UT 84114-1061. The Administrative Fee will be the amount listed in the Solicitation and will apply to all purchases (net of any returns, credits, or adjustments) made under this Contract.
- b. **Quarterly Reports:** Contractor agrees to provide a quarterly utilization report, reflecting net sales to the State during the associated fee period. The report will show the dollar volume of purchases by each Eligible User. The quarterly report will be provided in secure electronic format through the Division’s Automated Vendor Usage Management System found at: <https://statecontracts.utah.gov/Vendor>.
- c. **Report Schedule:** Quarterly utilization reports shall be made in accordance with the following schedule:

<u>Period End</u>	<u>Reports Due</u>
March 31	April 30
June 30	July 31
September 30	October 31
December 31	January 31
- d. **Fee Payment:** After the Division receives the quarterly utilization report it will send Contractor an invoice for the total quarterly administrative fee owed to the Division. Contractor shall pay the quarterly administrative fee within thirty (30) days from receipt of invoice.

55. Timely Reports and Fees: If the quarterly administrative fee is not paid by thirty (30) days of receipt of invoice or quarterly utilization reports are not received by the report due date, then Contractor will be in material breach of this Contract.

56. ANTI-BOYCOTT ACTIONS: In accordance with Utah Code 63G-27 et seq., Contractor certifies that it is not currently engaged in any “economic boycott” nor a “boycott of the State of Israel” as those terms are defined in Section 102. Contractor further certifies that it has read and understands 63G-27 et. seq., that it will not engage in any such boycott action during the term of this Contract, and that if it does, it shall promptly notify the State in writing.

(Revision Date: 7/20/2023)

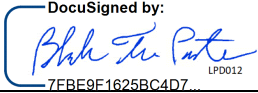

NASPO ValuePoint
PARTICIPATING ADDENDUM



**COMPUTER EQUIPMENT,
 PERIPHERALS & RELATED SERVICES**

Led by the State of Minnesota
 State of Utah Contract #: PA4285

IN WITNESS WHEREOF, the parties have executed this Addendum as of the date of execution by both parties below.

Participating Entity: State of Utah	Contractor: Hitachi Vantara LLC
Signature:  <small>DocuSigned by: 7FBE9F1625BC4D7...</small>	Signature:  <small>DocuSigned by: 1BBD821572C940C...</small>
Name: Blake Porter	Name: Somnath Kumar
Title: Assistant Director	Title: Revenue Performance Analyst
Date: 6/21/2024	Date: 6/21/2024

For questions on executing a participating addendum, please contact:

NASPO ValuePoint

Cooperative Development Coordinator:	Beth Randa
Telephone:	651-201-3122
Email:	Elizabeth.Randa@state.mn.us

**Please email fully executed PDF copy of this document
 to
PA@naspovaluepoint.org
 to support documentation of participation and posting
 in appropriate data bases.**



EXHIBIT A TO PARTICIPATING ENTITY CONTRACT # PA4285

HITACHI VANTARA WARRANTY MAINTENANCE AND SUPPORT TERMS

These Warranty and Maintenance and Support Terms along with the terms attached to or incorporated by reference (together, the “**WMS Terms**”) apply to and form part of Your supply agreement with Hitachi or a Hitachi authorized distributor or reseller partner (“**Hitachi Partner**”) for the purchase of Hitachi products and services (“**Agreement**”). References to “**Hitachi**” mean Hitachi Vantara LLC or its Affiliate, which may be Hitachi, Ltd., or any business entity controlled by or under the common control of Hitachi Vantara or Hitachi, Ltd.

These WMS Terms cover the supply of the maintenance, support and installation services as described in these WMS Terms (“**Services**”) to Hitachi products purchased under the Agreement (“**Products**”). If You purchase Products through a Hitachi Partner and Hitachi performs the Services for those Products, Section 18 of the WMS Terms (Additional Terms and Conditions) will apply.

1. Product Warranty.

(a) Hitachi warrants to You that during the applicable warranty period set out in the Service Descriptions (“**Warranty Period**”), the Products will function in accordance with the user or technical manuals, training materials, specifications, or similar documentation relevant to the Products (“**Documentation**”). For equipment, the Warranty Period will start on the first day of the calendar month immediately after the date the equipment has left Hitachi’s distribution center or other delivery location. For software delivered electronically, the Warranty Period will start on the date that You are issued with the initial license key to download the software.

(b) If a Product does not substantially conform to the Documentation (“**Defect**” or “**Defective**”) then during the Warranty Period, you may make a warranty claim and subject to Section 6 of these WMS Terms, Hitachi will provide the Services that Hitachi considers in its sole discretion necessary to correct the Defect. To make a valid warranty claim, You must submit it in writing, including a full description of the Defect, to Your local Hitachi support contact center during the Warranty Period and within seven (7) days of discovering the Defect.

(c) If Hitachi considers in its sole discretion that the Services will not remedy the Defect, Hitachi will provide You with a refund for the Defective item upon Your prompt return of the item to Hitachi. These remedies comprise Hitachi’s sole and exclusive liability to You and Your sole and exclusive remedy for a breach of the warranty in Section 1(a). This warranty does not apply to any third-party products subject to warranties under a separate third-party end user agreement nor to any Products that are outside the Warranty Period.

Hitachi may authorize third parties to provide Services to You (“**Authorized Providers**” or “**ASP**”). The Hitachi Partner that You order Products from is not authorized to provide Services unless they are also an ASP. ASPs may provide Services on behalf of Hitachi as its subcontractor or provide Services under a separate contract that You enter into directly with the ASP. Hitachi will not be responsible for the Services provided to You by an ASP under a separate contract with You, and You must look to that separate contract for your rights and remedies.

2. Service Descriptions and Plans. Provided that You are eligible for Services, have purchased a support plan and have paid Hitachi all applicable fees in full and subject to Section 3, Hitachi will provide the Services for the relevant Products as specified in Your Order to Hitachi or a Hitachi Partner in accordance with these WMS Terms. Service descriptions and further details for Your Service coverage are contained at <https://www.hitachivantara.com/en-us/pdf/specifications/hitachi-support-service-descriptions-and-deliverables.pdf> (“**Service Descriptions**”). The Service Descriptions form part of and are incorporated by reference into these WMS Terms. Hitachi may update the Service Descriptions from time to time and the updates will form part of, and will be incorporated into these WMS Terms, from the date of publication. Services may not be available in certain locations and may vary between locations, Product type or family, as specified in the Service Descriptions. Additional information regarding the Premium, Standard and Weekday Basic support offerings are available at <https://www.hitachivantara.com/en-us/services/customer-support.html>.

3. Service Partners. Hitachi may authorize third parties to provide Services to You (“**Authorized Providers**” or “**ASP**”). The Hitachi Partner that You order Products from is not authorized to provide Services unless they are also an ASP. ASPs may provide Services on behalf of Hitachi as its subcontractor or provide Services under a separate contract that You enter into directly with the ASP. Hitachi will not be responsible for the Services provided to You by an ASP under a separate contract with You, and You must look to that separate contract for your rights and remedies.

4. Equipment Maintenance Services. Subject to Section 6 of these WMS Terms, Hitachi equipment maintenance comprises the following:



- (a) supervision and installation of relevant engineering changes impacting the reliability of the equipment;
- (b) preventive maintenance, including necessary lubrication, adjustment or replacement of unserviceable parts; and
- (c) unscheduled maintenance, including repair, adjustment or replacement of unserviceable parts, as determined necessary by Hitachi and described in the hours of coverage under the applicable Plan.

5. Support Services for Software.

- (a) Subject to Section 6 of these WMS Terms, Hitachi's software support comprises the support required for the ordinary use of the software in accordance with its Documentation, as provided through:
- (i) remote telephone support or support via the online portal ("**Hitachi Support Portal**") to: (1) identify and assist in resolving the Defect; (2) advise on installation of Updates; (3) and respond to minor software information queries.
 - (ii) on-site intervention and the provision of Patches and Fixes, Service Packs, respectively at Hitachi's sole discretion; and
 - (iii) the provision of access to Updates as and when Hitachi makes them generally available. Additional fees for Updates and/or Upgrades may apply. Access to Updates will be without additional charge where Hitachi provides the Updates on that basis to its general customer base.

"Patches and Fixes" mean changes made to the software by Hitachi that establish or restore substantial conformity with the Documentation. **Patches** refers to minor enhancements to the software that typically provide interoperability updates and **Fixes** refers to error corrections to the software. Errors must be reproducible.

"Service Packs" mean an accumulation of Patches and Fixes into a generally available package applicable to the latest generally available version of the software, v1.r1.r2. released at the same time as a new maintenance level and targeted at Hitachi's existing software install base.

"Updates" means subsequent releases and error corrections and/or minor functional enhancements for Software previously licensed by Hitachi.

"Upgrades" means releases that contain new additional features which significantly increase the basic functionality of the Product and for which Hitachi elects to charge separately to its customers generally.

(b) Hitachi only supports the operating software (including any license key enabled features/functionality embedded in the operating software) if Hitachi is also maintaining the equipment on which it is installed. Hitachi's obligation to provide software support is contingent upon the software being: (i) subject to a current and valid license; (ii) covered under a current and fully paid-up agreement for support services; and (iii) operated in a Hitachi-supported configuration, which may be detailed in the Documentation. If Your software license is terminated for any reason, Hitachi's obligations to provide support for the relevant software will cease.

6. Service Exclusions.

(a) Without limiting the operation of any other part of the WMS Terms, Hitachi is not obligated to provide any Services to You, or otherwise remedy any Defects in Products, and Hitachi is not responsible for any lost or damaged data due to:

- (i) accident, natural disaster, Your neglect of Products, or other use of Products outside of normal and ordinary use;
- (ii) Your failure to maintain an environmentally controlled data center with a suitable operating environment for the Products on terms that Hitachi specifies or otherwise agrees to, including failure of electrical power, air conditioning and humidity control, environmental contaminants, noise levels above 85dB(A) or unreasonable or excessive vibrations;
- (iii) Your failure to provide any of the required items under Sections 8(b) or 16 of these WMS Terms;
- (iv) Your failure to install or enable Hitachi to install any items that are necessary for the provision of the Services or to provide Hitachi with necessary service clearances;
- (v) any interference, alterations, additions, modifications or substitutions to any Product or to Your systems or operating environment connected to the Product that are made by You or on Your behalf, unless authorized by Hitachi;
- (vi) Your failure to make Updates required or recommended by Hitachi or to install the most recent mandatory Updates or Patches and Fixes for the software or any modification, enhancement or customization of software made by You or on Your behalf and not authorized by Hitachi;
- (vii) any other act or omission of any person other than Hitachi or Hitachi's sub-contractor, which person includes an ASP or third party cloud service provider.



(b) Without limiting the operation of sub-section (a), the following services are also expressly excluded from the Scope of Services, and Hitachi will not be responsible for:

- (i) the maintenance or support of Products, including software versions, which have reached “End of Life” status, other than as expressly stated in these WMS Terms or in Hitachi’s End of Life policy;
- (ii) the maintenance or support of Products that you are given for testing, proof of concept or evaluation purposes unless Hitachi explicitly agrees to provide all or some Services for such Products, at Hitachi’s sole discretion;
- (iii) the maintenance or support of any third-party Products that are subject to a separate third-party support agreement; and
- (iv) the diagnosis and/or rectification of Defects that are not associated with the Products.

(c) If You request Hitachi to provide additional services not covered under these WMS Terms or any other services which Hitachi reasonable determines to be subject to the Service exclusions or otherwise “out of scope”, Hitachi may, at its sole discretion, agree to provide such services to You at Hitachi's then current rates or on a quoted, fixed fee basis.

7. Field Replacement Units. Equipment may include components which are used or remanufactured, and regardless of this, the warranty in Section 1 of these WMS Terms will apply. Where Hitachi ships a sub-assembly of equipment components sealed at the factory and subject to replacement as a discrete unit at Your site (“**Field Replacement Unit**” or **FRU**) to replace a Product component that is removed during the supply of Services, the removed component will be the property of Hitachi, while the FRU will belong to You. For any removed components which: (i) You fail to return to Hitachi within fifteen (15) calendar days of the date of their removal; or (ii) are not covered by a then-current valid retention option, Hitachi may charge You a fee for those components at Hitachi’s then-current spares price list. If You allow any person other than Hitachi or Hitachi’s sub-contractor to break the factory seal on a FRU, this will void Your entitlement to the Product warranty or to otherwise receive Services entirely.

8. Remote Monitoring Services.

(a) The Services include remote diagnostic and monitoring services on eligible equipment, using Hitachi’s proprietary remote monitoring tools and related Documentation, including but not limited to Hitachi Remote Ops, Hitachi Ops Center Clear Sight, and Hitachi SVOS cloud connector, as applicable (“**Remote Monitoring Services**”). All right, title and interest in the Remote Monitoring Services, and in all material that is used to provide those services, remain with Hitachi or its licensors and You do not get any licensed rights.

(b) Hitachi will not charge You for the supply of the Remote Monitoring Services, but You must provide and maintain, at Your cost, all telecommunications lines, monitor, PC, modem and access required for Hitachi to implement and provide the Remote Monitoring Services. In some instances, You will be required to opt-in to receive certain features of the Remote Monitoring Services. By opting-in, You agree to any updates to the Remote Monitoring Services. Remote diagnostic or monitoring services other than the Remote Monitoring Services may be provided for certain eligible equipment, which does not prompt any Service activity or call logging with Hitachi. For more details, please refer to the Service Descriptions.

(c) Hitachi will maintain the confidence of all passwords that You provide to Hitachi for the access and use of the Remote Monitoring Services. Hitachi may collect, use, and transfer telemetry data created by and derived from Remote Monitoring Services to its Affiliates for purposes of product and/or services monitoring, delivery, improvement, testing, and development.

(d) If You refuse to allow Hitachi to provide, fail to sign up for, or otherwise disable or interfere with the Remote Monitoring Services in any way, You acknowledge that Hitachi will be prevented from providing the remote diagnostic and monitoring services that are essential to the supply of Services and critical notifications, as applicable, including security breach notifications. In such circumstances, Hitachi will not be liable for any failure to meet service level response time commitments or other performance warranties, nor for any delays in providing the Services in accordance with these WMS Terms. Hitachi may use reasonable efforts to assist You with the rectification of any Defects that You notify Hitachi, but any efforts which are based on, or otherwise rely on assessments or information that You, or anyone on Your behalf has provided to Hitachi, will be at Your risk. Hitachi may charge You an additional fee to provide the Services in such circumstances.

(e) If the Agreement or Your separate services contract with an ASP or the supply of any Services is terminated or expires, You will allow Hitachi to disable the Remote Monitoring Services and de-install and remove all material on Your premises used by Hitachi to provide the terminated services. Hitachi may terminate access to the Remote Monitoring Services for systems that are not under valid support coverage.

9. Installation Services.



(a) Subject to Section 9(b), Hitachi will provide installation Services for the Products as set out in the relevant Order. Installation Services include only those Services identified in the Service Descriptions. Installation Services do not include any Service expressly identified as an exclusion in the relevant Order or the Service Descriptions, in addition to the exclusions in Section 6.

(b) Hitachi may provide on-site installation Services with respect to software, where Hitachi advises that the software must be installed by Hitachi, for an additional fee. Installation does not result in production ready implementation of the software; production ready software implementation is a professional service.

10. Termination and Renewal of Services.

(a) Without limiting any of Hitachi's other rights under the Agreement or applicable law, Hitachi reserves the right to terminate all or any of the Services at any time by written notice if You breach these WMS Terms or You otherwise infringe Hitachi's intellectual property rights. Any notice to terminate one or more discrete Service items will identify the specific item(s) to be terminated. If, in Hitachi's reasonable opinion, the termination of one or more discrete Service items adversely affects Hitachi's ability to provide other Services to You, then Hitachi may, in its sole discretion, terminate those other Services.

(b) Subject to Hitachi's rights of termination and suspension under the Agreement and applicable law, Hitachi will provide You with Services on the Products during the initial term and any applicable renewal terms as specified in the Hitachi or Hitachi Partner Quote accepted by You or as otherwise agreed and stated in the applicable Order ("**Service Period**"), provided You have paid Hitachi or the Hitachi Partner (as applicable) the fees for such services in full. The initial term for the Services will be non-cancellable and the applicable fees for that term will be non-refundable, unless the Quote as accepted by You or the Order (as applicable) states otherwise.

(c) If You do not renew the Services or if the Services are terminated, any subsequent reinstatement of Services may be subject to a reinstatement fee, based on Hitachi's current rates for reinstatement at the time, in addition to the then-current monthly fee for such Services.

(d) If any Services are not renewed or are terminated, Your rights, licenses and privileges under these WMS Terms cease and You must comply with Hitachi's directions to either remove and destroy all Hitachi proprietary and confidential information in Your possession or control, or to return such material and items to Hitachi at Your cost, subject to Section 16(e), and in any case, You will not use any such items in Your possession or control. Furthermore, You will not be relieved from Your payment obligations and any money due to Hitachi will become immediately payable.

11. Void Arrangements and Re-certification.

(a) You are not entitled to do any of the following without Hitachi's prior written consent: (i) move or relocate any part of the equipment (including moving any disks from one item of equipment to another); or (ii) allow any third party other than Hitachi authorised service personnel or representatives or a Hitachi ASP to perform any maintenance /support or repair any Product.

(b) You must not install software on any equipment, or a public cloud located in any countries that are prohibited by applicable export laws, restrictions and regulations of the U.S. Department of Commerce, the U.S. Department of Treasury and any other U.S. or foreign agency or authority.

(c) If any Services have been voided under Sections 11(a) or (b) or terminated under Section 10 or have expired and You wish to reinstate the Services for all or part of the affected Product, You must have the relevant Product re-certified by Hitachi or a Hitachi ASP, in order to continue receiving the Services. Hitachi will charge You its then current rates for re-certification and further repair necessary to restore the affected Product to good operating condition (normal wear and tear excepted).

12. Current and Superseded Software Support.

(a) Provided that You have valid support coverage and have paid Hitachi all applicable Fees in full, Hitachi will provide support as defined below, based on either the time since a Version was initially released ("**Time-based**") or the version ("**Version-based**").

(i) End of Normal Support for time-based obsolescence products listed on the Hitachi Vantara Time-based support lifecycle matrix located at https://knowledge.hitachivantara.com/Support/Information/More_Info/Time_Based_Support_Lifecycle_Matrix.

(1) Hitachi will provide Normal Support for a period no longer than eighteen (18) months from the date of release. If a release of software is older than eighteen (18) months, Hitachi will provide Limited Support (as defined below) for a twelve (12) month period following the end of Normal Support period.

(2) Hitachi does not provide support past thirty (30) months for software on the Hitachi Vantara Time-based support lifecycle matrix.



(ii) End of Normal Support for version-based obsolescence products listed on the Hitachi Vantara Version-based support lifecycle matrix located at:

<https://knowledge.hitachivantara.com/Support-Information/More-Info/Version-Based-Support-Lifecycle-Matrix>.

- (1) Hitachi will provide Normal Support (as defined below) for the current major version and one prior version of the software. If a release of software is older than one prior version from the current version, Hitachi will provide Limited Support (as defined below) for a twelve (12) month period following the general availability of the current version. Hitachi does not provide support for software releases that are older than two prior versions of the current version.
- (2) For certain Version-based software Hitachi will provide support as described at <https://support.pentaho.com/hc/en-us/articles/205789159-Pentaho-Product-End-of-Life>.

“Normal Support” means the development and provision of Service Packs, Updates and Patches and Fixes necessary to maintain the software in substantial conformance with the Documentation.

“Limited Support” means the provision of existing Service Packs, and existing Patches and Fixes necessary to maintain the software in substantial conformance with the Documentation. Hitachi does not provide support for software releases that are older than two prior versions of the current version.

(b) Hitachi may refuse to supply You with Patches and Fixes for software if You could have solved the problem or Defect by upgrading to the latest Update of the current version.

13. End of Life Products. Please refer to Hitachi’s End of Life Policy located at <https://www.hitachivantara.com/en-us/pdf/datasheet/support-services-end-of-life-policy.pdf>. Please also refer to Your local Hitachi support contact center for any additional policies, which may apply to EOSL Products in Your country or region.

14. Maintenance Material. Hitachi may store diagnostic and/or tracking tools, including without limitation, Remote Monitoring Services software, firmware and related documentation, personal computers or notebooks, maintenance and other documentation (**“Maintenance Material”**) within the Products or elsewhere on Your premises as Hitachi considers necessary or convenient. Only Hitachi or Hitachi ASP personnel will be authorized to use the Maintenance Material. Maintenance Material will always remain Hitachi’s sole and exclusive property and to the full extent applicable, will be covered as Hitachi intellectual property and You do not get any licensed rights. Without limiting Your obligations under the Agreement, You must not use, access, modify, copy or relocate the Maintenance Material or allow any other person to do so and must return or allow Hitachi to de-install it upon Hitachi’s demand or upon the termination of the Services.

15. Transferability of Services. You must not assign or transfer any warranty, maintenance and/or support arrangement with Hitachi to any third party without Hitachi’s prior written consent. Unless Hitachi provides such consent, Hitachi will have no obligation to perform any Services to any third party.

16. Customer Responsibilities.

(a) To assist Hitachi to provide You with Services, You must provide Hitachi, Authorized Partners, and their respective personnel with prompt access to Your premises (as applicable) and make all necessary arrangements that are reasonably necessary to perform the Services, in Hitachi’s sole determination. If You cannot provide required access, Hitachi may be unable to provide you with the applicable services.

(b) You are responsible for the wireless, microwave, cable, or other physical data networks. You are responsible for managing and resolving issues related to the integrity of the network including physical implementation, signal quality, availability, identity and access, and related capabilities.

(c) Without limiting Sections 16(a) or 16(b) above or the terms of any applicable statement of work, if Hitachi requests, You will 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.

(d) For the commercial enterprise edition of the Data Integration (Pentaho™), You are entitled to the number of individuals designated by You to be Hitachi’s sole contacts for communicating with in connection with the Maintenance and Support Services, as You may update from time to time (**“Named Support Contacts”**) depending on the level of Maintenance and Support Services purchased from Hitachi. You may change such contacts by providing no less than two (2) weeks’ prior written notice to Hitachi and may increase Your number of Named Support Contacts by paying Hitachi an additional fee. Only a Named Support Contact is entitled to access the Hitachi Support Portal. Each Named Support Contact must have full administrative access to all files, file systems and databases required for the operation of the Data Integration Product. Named Support Contacts may not forward requests from other parties and must be



able to act as the primary contact for any Maintenance and Support Services issues. Each Named Support Contact may access Hitachi's online "Knowledge Base" through the Hitachi Support Portal. Named Support Contacts must be trained via training courses provided by Hitachi to You for the Big Data Products online or in person for a public group of attendees or on a custom basis.

(e) You retain responsibility for Your data and technical, logical and physical access controls to Your data. You must ensure that, prior to removal by or return to Hitachi for any reason, including any removed Product component(s) under Section 7, all data is removed from any Product or Hitachi property. Hitachi takes no responsibility for data remaining on any Product or Hitachi property that is removed by or returned to Hitachi. You agree to defend, indemnify and hold Hitachi harmless from and against all losses, damages, liabilities, judgments, settlements, costs and other expenses (including reasonable legal fees) that Hitachi incurs because of Your failure to comply with this sub-section (e).

17. Services for Additional Fees. If You request Hitachi to provide additional services not covered under these WMS Terms or any other services which Hitachi reasonable determines to be "out of scope", Hitachi may, at its sole discretion, agree to provide such services to You at Hitachi's then current rates or on a quoted, fixed fee basis.

18. Additional Terms and Conditions.

The following additional terms and conditions apply if, and only if, You do not have an Agreement in place with Hitachi or have purchased products and services from an authorized Hitachi Partner and Hitachi is providing you with the Services under these WMS Terms.

- (a) **Fees and Payment.** You will pay the fees and charges for the Services set out in Hitachi's invoice within thirty (30) days from the invoice date. Hitachi may charge You interest or suspend delivery of Services if payments from You are overdue. You must also pay for any taxes arising from the transaction under these WMS Terms, irrespective of whether these taxes are included in Hitachi's invoices.
- (b) **Limitation of Liability.** Except for liability arising from: death, bodily injury or damage to tangible property arising from Hitachi's negligent acts or omissions, and for willful misconduct, in all cases and to the extent not prohibited by applicable law: (a) Hitachi's maximum aggregate liability for all claims relating to these WMS Terms, whether contractual, non-contractual or pre-contractual, will be limited to fifty thousand US dollars (U.S. \$50,000) or the monetary equivalent in the currency of the Local Service Jurisdiction (as defined below), calculated on the date of the claim; (b) Hitachi will not be liable for any indirect, punitive, special, incidental or consequential damages in connection with or arising out of these WMS Terms (including, without limitation, loss of business, revenue, profits, goodwill, use, data, electronically transmitted orders or other economic advantage), however they arise, whether contractual, non-contractual or pre-contractual, and even if Hitachi has previously been advised of the possibility of such damages. These limitations and exclusions apply, even if an exclusive remedy provided for in these WMS Terms fails of its essential purpose.
- (c) **Data Privacy.** If the parties exchange any information that relates to an identified or identifiable individual that is considered "Personal Data" as part of the Services, 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 Products and Services under an Order. 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 this Agreement.
- (d) **Governing Law.** Unless it is agreed in writing between the parties that the laws of another jurisdiction will apply, the laws of the Local Service Jurisdiction will apply to these WMS Terms and the venue for any litigation will be the one designated through the application of the Local Service Jurisdiction (as defined below). 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 these WMS Terms. "Local Service Jurisdiction" means the jurisdiction of the state, province or country in which the Hitachi entity that sold You the Product is located.
- (e) **Termination.** A Party may terminate any Maintenance and Support Services hereunder if the other Party: (i) commits a material breach of these WMS Terms and does not remedy that breach within thirty (30) days of written notice to do so; or (ii) becomes or threatens to become insolvent.
- (f) **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.



- (g) **Contributory Liability.** Hitachi will not be liable to You for the failure or non-performance of any obligation required of Hitachi hereunder, 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. You agree to take all steps and measures available to You to mitigate and minimize the losses, costs and damages arising from any failure or non-performance of Hitachi, irrespective of the nature and extent of Your contribution.
- (h) **Conflict of Terms.** If there is a conflict between the terms of the contract that You have with Partner and these WMS Terms, then to the full extent that those terms impact on these WMS Terms, these WMS Terms will prevail with respect to that conflict.

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