

# Global-Active Device Cloud Quorum License Terms

These License Terms (the "**Terms**") between You and Hitachi Vantara LLC ("**Hitachi**"), located at 2535 Augustine Drive, Santa Clara CA 95054, apply to the Global-Active Device Cloud Quorum ("**Cloud Quorum**") provided to You by Hitachi.

You must read these Terms under which Hitachi will license the Cloud Quorum to You. Capitalized terms will have the meanings indicated in Section 17 below. Hitachi is willing to license the Cloud Quorum to You only upon the condition that You accept all the provisions included in these Terms. Please read the Terms carefully, as downloading the Cloud Quorum will indicate Your assent to them. If You do not agree to these Terms, then Hitachi is unwilling to license the Cloud Quorum to You, in which event You should return the Cloud Quorum to the place from which it was acquired and Your money will be refunded, as applicable.

## **CLOUD QUORUM LICENSE TERMS**

**1. License Grant** Except as otherwise expressly provided, Hitachi grants You a personal, non-transferable, non-sublicensable, non-exclusive license to use the Cloud Quorum solely for Your internal business needs to enable the interoperation of the software associated with the Cloud Quorum and Hitachi Products subject to the restrictions specified on any Equipment used in connection with the Cloud Quorum.

You obtain no title or ownership in the Cloud Quorum. The Cloud Quorum may be used only as provided herein, and the related documentation may be used only in printed or electronic form. The Cloud Quorum is being provided to You "AS IS" without any representation, warranty, or indemnity of any kind.

**2. Third Party Software.** You will have no recourse against Hitachi for Third-Party Software. You will be responsible to do whatever is necessary or required by the third-party licensor for the licenses and related terms to take effect (e.g. online registration). Unless stated otherwise in these Terms or in the third-party license or provided under a maintenance contract, Hitachi will not provide support for Third-Party Software and will not provide You with any IP indemnity for the Third-Party Software. Some Software licensed to You includes Open-Source Software, and You can access a complete list of these licenses for the Open-Source Software provided with Hitachi's or Hitachi Ltd.'s proprietary Software from the Open-Source License Website. The Open-Source License Website does not include Third Party Related OSS. You must refer to the applicable Third-Party EULA for those terms. It is Your responsibility to review and adhere to all licenses for Open-Source Software. By accepting these Terms, You are also accepting the terms and conditions of the licenses applicable to any Third-Party Software (including any Open-Source Software) included with the Cloud Quorum. If the Cloud Quorum licensed by Hitachi includes certain software licensed under the GNU General Public License or other similar Open-Source Software with a license that requires the licensor to make the source code publicly available ("**GPL Software**") and the applicable source code was not included in the Cloud Quorum, then You may obtain a copy of the applicable source code for the GPL Software by either (a) requesting the open source code be mailed to You by Hitachi or (b) downloading the open source code by following the links on the Open Source License Website.

**3. Use Restrictions.** Except to the extent these restrictions are prohibited by applicable law or prohibited by the terms of any open source license, You must not, and must not allow any other person to: (a) use the Cloud Quorum to conduct comparative or competitive analyses, including benchmarking; (b) sublicense, rent, or lease, the Cloud Quorum; (c) copy the Cloud Quorum other than as expressly allowed; (d) remove or otherwise tamper with any proprietary notices contained on or in the Cloud Quorum; (e) create a competing offering; (f) in the case of an executable Cloud Quorum, reverse engineer, decompile, reverse compile, reduce in human readable form or otherwise access the source code of the Cloud Quorum; (g) in the case of an executable Cloud Quorum, enhance, supplement, create Derivative Works from the Cloud Quorum or; (h) use or permit the Cloud Quorum to be used to perform services for third parties, whether on a service bureau or time sharing basis or otherwise, without our express written authorization.

**4. Copies.** You must reproduce on all copies made, all proprietary and copyright notices contained on or in the Cloud Quorum. You must not use or otherwise allow the use of any Hitachi trademark, brand name or logo unless expressly permitted by these Terms or otherwise agreed to in writing by Hitachi. You must not reference Hitachi in any publicity without Hitachi's prior written consent. Hitachi is a registered trademark of Hitachi, Ltd. in the United States and other countries. All other trademarks, service marks, and company names are properties of their respective owners. © Hitachi Vantara LLC 2021 All Rights Reserved.

**5. Enablement Utility Transfers.** Except to the extent otherwise provided in any applicable open-source license, You must not transfer the Cloud Quorum to any other person or entity, without Hitachi's prior written consent. You may, however, transfer the Cloud Quorum to a third party ("**transferee**") solely with the related Hitachi Equipment, but You must ensure that the transferee agrees to these Terms and other relevant license terms. The Cloud Quorum is provided to the transferee on an "AS IS" basis. When the transfer is complete, You must remove and destroy all copies of the Cloud Quorum in Your possession or under Your control. You must also permanently remove the Cloud Quorum from any media upon which it is stored prior to disposing of the media.

**6. Verification Rights** Hitachi or its independent auditor may, upon reasonable notice to You, examine and audit Your records and systems to ensure compliance with applicable software licenses. The audit will be

performed during normal business hours in a manner which does not unduly interfere with Your business operations.

## **7. Limited Warranty**

**EXCEPT AS SPECIFIED IN THESE TERMS, ALL EXPRESS OR IMPLIED CONDITIONS, REPRESENTATIONS AND WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OR CONDITION OF MERCHANTABILITY, SATISFACTORY QUALITY, OR FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT ARE EXCLUDED TO THE MAXIMUM EXTENT PERMITTED BY LAW. HITACHI DOES NOT WARRANT THAT THE CLOUD QUORUM OR THIRD-PARTY SOFTWARE WILL OPERATE SECURELY, UNINTERRUPTED, OR ERROR FREE.**

**8. Ownership and Licenses.** Except for Open-Source Software, Hitachi and its licensors own all copyright, trademarks, designs, patents, circuit layout rights, know-how, trade secrets, trade, business or company names, domain names and related registration rights and all other intellectual property rights in the Cloud Quorum. Hitachi IP is protected by U.S. and other copyright laws and the laws protecting trade secret, other intellectual property rights and confidential information. You only get license rights in the Cloud Quorum, expressly stated in these Terms. Except as otherwise expressly provided by any open-source license, You must not do anything to jeopardize Hitachi's or our licensors' rights in the Hitachi IP including to (i) copy, modify, merge, or transmit Hitachi IP; (ii) register or attempt to register any confusingly similar intellectual property rights to the Hitachi IP or to otherwise comprise or include any variation of the Hitachi IP, or to use or allow the use of any Hitachi IP for that purpose; (iii) delete or tamper with any proprietary notices on or in the Hitachi IP, (iv) take or use any action that diminishes the value of any trademarks included in the Hitachi IP, or (v) use the Cloud Quorum in violation of applicable law. These restrictions are in addition to those stated in Article 3.

**9. Liability Limitations.** WE EACH ACKNOWLEDGE THE FULL EXTENT OF OUR OWN LIABILITY TO THE OTHER ARISING FROM DEATH OR PERSONAL INJURY RESULTING FROM OUR NEGLIGENT ACTS OR OMISSIONS; THE NON-EXCLUDABLE STATUTORY RIGHTS OF CONSUMERS (FOR EXAMPLE, UNDER LAWS PROVIDING FOR STRICT PRODUCT LIABILITY), THE BREACH OF ANY OBLIGATION OF CONFIDENCE, AND YOUR BREACH OF THESE TERMS. EXCEPT FOR: (A) THE IMMEDIATELY PRECEDING SENTENCE, (B) REQUIREMENTS UNDER APPLICABLE LAW, OR (C) AS OTHERWISE AGREED IN WRITING, IN NO EVENT WILL HITACHI BE LIABLE TO YOU FOR ANY DAMAGES, INCLUDING ANY GENERAL, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF THE USE OR INABILITY TO USE THE CLOUD QUORUM (INCLUDING BUT NOT LIMITED TO LOSS OF DATA OR DATA BEING RENDERED INACCURATE OR LOSSES SUSTAINED BY YOU OR THIRD PARTIES OR A FAILURE OF THE CLOUD QUORUM TO OPERATE WITH ANY OTHER SOFTWARE), EVEN IF SUCH HOLDER OR OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**10. Confidential Information.** Each of us must keep each other's Confidential Information confidential, using the same degree of care used to protect our own Confidential Information. We won't disclose Your Confidential Information to anyone else, unless You allow us to, and You must do the same with our Confidential Information. We can, however, disclose it to our employees and contractors who need to know the information in order to perform obligations under these Terms.

**11. Export Compliance.** You acknowledge that in various countries, laws and regulations regulate the export of computer products and technology which may prohibit use, sale or re-export of such products or technology if You know or have reason to know that such products and technology are for use in connection with the design, development, production, stock piling or use of nuclear, chemical or biological weapons or missiles and in some countries (e.g. China) for certain conventional military end-uses. If You sell or transfer to another person or entity title in or right to use the Cloud Quorum, You will ensure that all applicable export restrictions of the nature described in this section are observed.

**12. Termination of License.** Your license in the Cloud Quorum will terminate: (i) when Hitachi provides You thirty (30) days' notice that Your license to the Cloud Quorum has been terminated; or (ii) if You are in breach of any of these Terms or any license for Third-Party Software.

**13. Dispute Resolution.** Both of us will use reasonable efforts to get an appropriate person from our respective management teams to meet and attempt to resolve any dispute regarding these Terms in good faith. If they are unable to resolve the dispute within 30 days, either of us may resort to alternate dispute resolution such as arbitration or otherwise seek recourse from the courts. Either party may seek injunctive or other urgent equitable relief at any time.

**14. Governing Law.** These Terms will be governed by New York law, with venue and exclusive jurisdiction in the appropriate courts in Manhattan, New York. To the extent allowed, the United Nations Convention on Contracts for the International sale of goods and its implementing legislation will not apply to these Terms.

**15. Support.** Hitachi will provide You support for the Cloud Quorum in accordance with Your support plan for Hitachi Global Active Device.

**16. Miscellaneous.** Neither of us will be responsible for any failure to meet any of our obligations (except payment obligations, as applicable) due to matters beyond our reasonable control provided reasonable efforts have been made to perform them. You must not assign, or otherwise transfer any of Your rights under these Terms without Hitachi's prior written agreement. Notices made under these Terms must be in writing to a senior executive. Notices will be deemed given: where they are hand delivered, when a duly authorized employee or representative of the recipient

CONFIDENTIAL rev. November2021

gives written acknowledgement of receipt; for email communication, at the time the communication enters the information system of the recipient; and for posting, three days after dispatch. Rights and obligations under these Terms, which by their nature should survive the termination or expiry, will remain in effect after termination. If either of us fails to promptly exercise any contractual right, this does not of itself mean that the right has been waived. For a waiver of a right to be valid, it must be written, and it will not give rise to an ongoing waiver or any expectation that the right will not be enforced, unless it is expressly stated to do so. These Terms may not be modified except in writing signed by an authorized representative of each party. These Terms are the entire agreement relating to its subject matter. All oral or written communications, understandings, proposals, representations, and warranties are by agreement, excluded and are of no force or effect (to the extent permitted at law). The rights granted in these Terms extend only to the Cloud Quorum and not to any AWS products. AWS is the licensor of any AWS products. Your use of any AWS products with the Cloud Quorum will be governed by AWS license terms. You are responsible for the use of any third-party services, including any fees incurred. By providing Feedback, You grant to Hitachi under all applicable intellectual property rights owned or controlled by You a non-exclusive, non-transferable, worldwide, perpetual, irrevocable, royalty-free license to use, disclose, copy, publish, license, modify, sublicense or otherwise distribute and exploit Feedback You provide for the purpose of developing and promoting any product, software, service or technology. You warrant to the best of Your knowledge that you have the right to provide the Feedback, and if an individual is providing Feedback on Your behalf, You warrant that the individual has the right to provide Feedback on Your behalf. You acknowledge that Hitachi is not required to incorporate Your Feedback into any version of the Cloud Quorum or any product, but that we may elect to do so.

## **17. Definitions.**

**Confidential Information:** information that, at the time of disclosure, is clearly marked as confidential or in the circumstances would be considered to be confidential.

**Derivative Work:** means (a) for copyrightable or copyrighted material, a work which is based upon one or more pre-existing works, such as a revision, modification, translation, abridgment, condensation, expansion, collection, compilation, or any other form in which such pre-existing works may be recast, transformed, or adapted; (b) for patentable or patented materials, any adaptation, addition, improvement, or combination based upon a pre-existing work; and (c) for material subject to trade secret protection, any new material, information, or data relating to and derived from such existing trade secret material, including new material, information, or data relating to and derived from such existing trade secret material, including new material which may be protectable by copyright, patent, or other proprietary rights.

**Equipment:** hardware and spare parts manufactured by Hitachi or Hitachi Ltd., or Hitachi has authorized You to use with the Cloud Quorum.

**Feedback:** all input, suggestions and other evaluative information that You derive from the Cloud Quorum.

**Global-Active Device Cloud Quorum (Cloud Quorum):** virtual machine image containing an operating system and quorum setup software.

**Hitachi IP:** the IP Rights in all items and materials that Hitachi provides to You or otherwise creates, including without limitation, the Cloud Quorum, documentation, and work product and all related changes, improvements, additions, enhancements, versions, updates, upgrades, and Derivative Works.

**IP Rights:** all current and future worldwide statutory or other proprietary rights, whether registered or unregistered, including but not limited to, moral rights, copyright, trademarks, rights in designs, patents, rights in computer software data base rights, circuit layout rights, rights in know-how, mask work, utility models, rights to sue for passing off, trade secrets, inventions, trade, business, domain or company names and any application for the foregoing, including registration rights.

**Open-Source License Website:** <https://www.hitachivantara.com/en-us/company/legal.html>.

**Open-Source Software:** Third Party Software, which may be available without charge for use, modification or distribution and generally licensed under the GNU GPL, Lesser General Public License, Apache or other open-source software license.

**Product(s):** any Equipment and/or Software listed in Hitachi's standard product price lists published from time to time.

**Software:** the object/source code format of (i) programming firmware embedded in Equipment to enable it to perform basic functions, (ii) software programs supplied by Hitachi, and (iii) any updates, related documentation and specifications. Software may include Third-Party Software and/or Open-Source Software.

**Third-Party Related OSS:** any Open-Source Software licensed to, provided with or otherwise contained in, the Third-Party Software.

**Third-Party Software:** any software (including operating systems) available from any party other than Hitachi for direct or indirect distribution to end users. For clarification purposes, if any Third-Party Software not sublicensed through these terms contains Open-Source Software, you must refer back to that applicable license for those terms.

**You or Your:** end user of the Cloud Quorum.