

# GRIDIMP CUSTOMER AGREEMENT

PLEASE READ THESE TERMS CAREFULLY. BY ACCEPTING THESE TERMS, YOU CREATE A CONTRACT BETWEEN (1) GRIDIMP LIMITED (REGISTERED NO. 07832551) ("GRIDIMP") AND (2) THE BUSINESS OR ENTITY WHOSE DETAILS ARE ENTERED INTO THE "GRIDIMP SIGN UP FORM" (THE "CUSTOMER").

THE PERSON COMPLETING THE "GRIDIMP SIGN UP FORM" ON BEHALF OF THE CUSTOMER WARRANTS THAT THEY HAVE THE REQUISITE AUTHORITY TO ACT ON THE CUSTOMER'S BEHALF AND BIND THE CUSTOMER TO THIS AGREEMENT.

## Background:

- (A) Gridimp is the provider of energy management and control services, which facilitate the reduction, increase or shifting of the Customer's energy demands to take advantage of energy price optimisation opportunities and/or allow Customer to use its demand side response capacity to take advantage of incentive schemes for demand side response flexibility or trade in the energy flexibility markets.
- (B) Gridimp provides its services through a variety of software and hardware solutions aimed at optimising the Customer's energy usage costs and ability to interact with the flexibility markets, including through the aggregation of Customer's usage data with other Gridimp customers.
- (C) The Customer wishes to use one or more of Gridimp's software and/or hardware services on the terms of this Agreement.

## 1. Definitions and interpretation

- 1.1. The rules of interpretation in this clause apply in these Terms. Capitalised terms used in these Terms have the meanings given to them in this clause.

"**Agreement**" means these Terms and the Gridimp Sign Up Form.

"**Authorised Users**" means the System Owner together any other persons who the Customer wishes to use the Services and the Documentation on its behalf, as further described in clause 2.2.

"**Business Day**" means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

"**Capacity Connection**" means the maximum capacity connection for the Customer Premises, as specified in the Gridimp Sign Up Form, or as otherwise communicated to Gridimp by Customer.

"**Commencement Date**" means the date specified as such in a Purchase Order.

"**Confidential Information**" means information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 13.7 or clause 13.8.

"**Consumer Prices Index**" means the UK Consumer Prices Index published by the Office for National Statistics.

"**Controller, processor, data subject, personal data, personal data breach, processing and appropriate technical and organisational measures**" have the meanings given to them in the Data Protection Legislation.

"**Customer Data**" means the data inputted by the Customer, Authorised Users, or Gridimp on the Customer's behalf for the purpose of using the Services or facilitating the Customer's use of the Services.

"**Customer DSR Income**" is defined in clause 11.1

"**Customer Premises**" means those premises specified as "Sites" in the Gridimp Sign Up Form, together with any other premises at which any Services are to be provided and/or Hardware is installed.

**"Data Protection Legislation"** means the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications).

**"Documentation"** means the document or documents made available to the Customer by Gridimp, online via Gridimp.com, or such other web address or means of communication notified by Gridimp to the Customer from time to time, which sets out a description of the Services and the user instructions for the Services.

**"DSR Capacity"** means the demand side response capacity (otherwise known as "flexible capacity"), available at the Customer Premises from time to time, for either demand increase or reduction, or generation increase or reduction, or charging and discharging of storage, which may result in energy export, available to be despatched via the Gridimp Solution.

**"DSR Payment"** means, in each month during the term of the Agreement, the relevant portion of any payment received by Gridimp from any third party for despatches made using the DSR Capacity in that month as a result of performing the DSR Services (which may be net of any applicable fees payable to that party or other third parties). Where DSR Services are being provided for multiple Gridimp customers, DSR Capacity may be aggregated amongst those customers for the purposes of optimising the value that can be obtained in exchange for that DSR Capacity. In such circumstances, the Customer's **"relevant portion"** of any payment for these purposes will be decided at Gridimp's discretion based on the contribution that the Customer's DSR Capacity made to the overall payment received.

**"DSR Services"** means the use of the Gridimp Solution to provide energy management and control services for the reduction or shifting of the Customer's energy demands to take advantage of the demand side response schemes and energy market trading.

**"Effective Date"** means the earliest of: (i) the date the Gridimp Sign Up Form is completed and submitted by the Customer; (ii) the date any Services are first provided to the Customer, and (iii) the date any Hardware is installed on the Customer Premises.

**"Good Industry Practice"** means the degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a competent operator engaged in the operation, installation or removal of the Hardware.

**"Gridimp Auto"** means the version of the Software which runs in conjunction with the Gridimp impHub to provide automated DSR Services and Load Shifting.

**"Gridimp Free"** means the version of the Software made available to the Customer without payment of a Subscription Charge.

**"Gridimp impHub"** means hardware installed at the Customer's premises for provision of demand side analytics and energy management as part of the Services.

**"Gridimp Sign Up Form"** means the online form completed by the Customer providing the details necessary for Gridimp to provide the Customer with the Gridimp Solution and which includes acceptance of these Terms.

**"Gridimp Solution"** means the Software (whether Gridimp Free or Gridimp Auto) and the Gridimp impHub (if deployed).

**"Hardware"** means either the Gridimp impHub or an equivalent installation of software and/or hardware of Customer Premises performing substantially the same functions as the Gridimp impHub.

**"Initial Term"** means a period starting on the Effective Date and ending on the second anniversary of the Effective Date.

**"Installation Pack"** means the set of documents provided by Gridimp with the Hardware, containing instructions for proper installation and use of the Hardware.

**“Load Shifting”** means the use of the Gridimp Solution to provide energy management and control services for the reduction, increase or shifting of the Customer's energy demands to take advantage of energy price optimisation opportunities.

**“Purchase Order”** means a final quotation provided by Gridimp to the Customer, which is accepted by the customer, setting out the pricing and other terms for the provision of Gridimp Auto and Hardware installation.

**"Renewal Period"** the period described in clause 16.1.

**"Services"** means, as relevant:

- (a) Load Shifting; and/or
- (b) the DSR Services.

**"Software"** the online software applications and software located in hardware devices including the Gridimp cloud and the Customer interface, provided by Gridimp as part of the Services as either Gridimp Free or Gridimp Auto.

**“Subscription Fee”** means the fee specified in a Purchase Order and payable for the use of the full version of the Software and/or the lease of the Hardware, as applicable.

**"Subscription Term"** means a period starting on the date of the relevant Purchase Order and ending on the second anniversary of that date, or such minimum subscription period as specified in a Purchase Order.

**“System Owner”** means the person named on the Gridimp Sign Up Form as the “person completing the form”, or such other person as nominated by the Customer and agreed to by Gridimp agree from time to time.

**"UK Data Protection Legislation"** all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

**"Virus"** any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

- 1.2. Clause, schedule and paragraph headings shall not affect the interpretation of the Agreement.
- 1.3. A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assigns.
- 1.4. A reference to a company shall include any company, corporation or other body corporate, wherever and how ever incorporated or established.
- 1.5. Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6. Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7. A reference to a statute or statutory provision is a reference to it as it is in force as at the date of the Agreement.

- 1.8. A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of the Agreement under that statute or statutory provision.
- 1.9. A reference to writing or written includes faxes but not e-mail.
- 1.10. References to clauses and schedules are to the clauses and schedules of the Agreement; references to paragraphs are to paragraphs of the relevant schedule to the Agreement.

## 2. **Use of the Software**

- 2.1. Subject to the restrictions set out in this clause 2 and the other terms and conditions of the Agreement, Gridimp hereby grants to the Customer a non-exclusive, non-transferable right, without the right to grant sublicences, to permit the Authorised Users to use the Software and the Documentation during the term of this Agreement, solely for the Customer's internal business operations.
- 2.2. The System Owner will be the only Authorised User with permissions to edit and input Customer entries into the Software. The System Owner may add Authorised Users, who will have read-only access, using the Software.
- 2.3. The rights provided under this clause 2 are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer.

## 3. **Gridimp Free**

- 3.1. Unless otherwise requested by the Customer and provided for in a Purchase Order, Customer will have access to Gridimp Free, for which there will be no subscription charge.

## 4. **DSR Services**

- 4.1. Subject to clause 4.4, throughout the duration of this Agreement, Gridimp shall use reasonable endeavours to provide the DSR Services on the Customer's behalf via the Gridimp Solution.
- 4.2. The nature of the DSR Services provided and the manner in which they are facilitated will depend on the Customer's individual circumstances and whether or not the Customer is using Gridimp Free or Gridimp Auto.
- 4.3. In certain circumstances, including where the Customer is using Gridimp Free, and/or no Hardware has been installed on the Customer Premises, the success of the DSR Services may depend on the Customer manually responding to requests to reduce or increase energy consumption, discharge or charge storage capacity or increase or decrease generation activity. Gridimp takes no responsibility for the Customer's failure to respond appropriately to such requests.
- 4.4. **THE CUSTOMER HEREBY GRANTS TO GRIDIMP THE EXCLUSIVE RIGHT TO ALL DSR CAPACITY ORIGINATING AT THE CUSTOMER PREMISES THROUGHOUT THE DURATION OF THIS AGREEMENT, WITH THE RIGHT FOR GRIDIMP TO CONTRACT SUCH DSR CAPACITY TO THIRD PARTIES. THE CUSTOMER HEREBY APPOINTS GRIDIMP AS ITS AGENT TO DEAL WITH THE DSR CAPACITY IN ITS ABSOLUTE DISCRETION, INCLUDING BY MEANS OF WHOLLY AUTOMATED ACTIVITY (INCLUDING DEMAND SIDE RESPONSE AND ENERGY TRADING ACTIVITY) VIA THE GRIDIMP SOLUTION.**
- 4.5. **THE CUSTOMER SHALL NOT ENTER INTO ANY OTHER CONTRACTS WITH THIRD PARTIES IN RESPECT OF THE DSR CAPACITY FOR ANY CUSTOMER PREMISES DURING THE DURATION OF THIS AGREEMENT.**
- 4.6. The Customer agrees that, when contracting with third parties and providing DSR Services, Gridimp may aggregate the Customer's DSR Capacity with one or more other customers for whom DSR Services are provided.
- 4.7. The parties acknowledge and agree that the DSR Capacity available and the receipt of DSR Payments and corresponding Customer DSR Income (if any) are dependent on energy generation and demand, the Capacity Market, Balancing Mechanism, Energy Market and Flexibility Markets which will fluctuate from time to time and are beyond either Party's control and accordingly nothing in this Agreement shall constitute:

- (a) a guarantee from the Customer to provide a minimum level of DSR Capacity; or
  - (b) a guarantee from Gridimp as to any level of DSR Payment or Customer DSR Income.
- 4.8. Each month during the term of this Agreement, Gridimp shall pay the Customer DSR Income (if any) in accordance with clause 11.
- 4.9. Provided the Customer has complied with its obligations under this Agreement, and in particular clauses 4.4, 4.5, 5.3, 5.4 and 5.5 the Customer shall not be liable for any penalty or other loss or expense incurred by Gridimp under any third party contract for the onward sale of the DSR Capacity. If the Customer breaches its obligations, Gridimp may hold the Customer liable for any penalty or other loss or expense directly incurred by Gridimp as a result.
- 5. Gridimp Auto and Installation of Hardware**
- 5.1. If requested by the Customer and confirmed in a Purchase Order, the Customer will be given access to Gridimp Auto and a lease of the requisite Hardware, to facilitate the provision of enhanced and/or automated provision of DSR Services (on the basis described in clause 4 above) and Load Shifting.
- 5.2. The Purchase Order shall specify the Subscription Fee payable by the Customer for the use of Gridimp Auto and the lease of the Hardware to the Customer for the Subscription Term, and any additional other terms agreed between the Customer and Gridimp. The Purchase Order shall amend and form part of this Agreement.
- 5.3. Gridimp shall provide the Hardware to the Customer together with the Installation Pack, which includes installation training materials. Customer shall (or shall procure that a suitably qualified and experienced contractor shall) install and commission the Hardware at its own cost and in accordance with the instructions contained in the Installation Pack and training materials, Good Industry Practice, and applicable laws.
- 5.4. **IT IS IMPERATIVE THAT INSTALLATION IS CARRIED OUT BY AN APPROPRIATELY QUALIFIED INDIVIDUAL WHO HAS READ THE INSTALLATION PACK, COMPLETED ANY TRAINING AND HAS FULL KNOWLEDGE OF THE CUSTOMER'S BUSINESS OPERATIONS AND THE CUSTOMER PREMISES. GRIDIMP TAKES NO RESPONSIBILITY FOR CUSTOMER'S FAILURE TO PROPERLY INSTALL, TEST OR USE THE HARDWARE IN ACCORDANCE WITH THE INSTRUCTIONS IN THE INSTALLATION PACK. WITHOUT PREJUDICE TO THE GENERALITY OF THE FOREGOING, THE CUSTOMER WILL ENSURE THAT ALL DEVICES AND EQUIPMENT PLACED UNDER THE CONTROL OF IMPHUB ARE APPROPRIATE FOR THIS PURPOSE AND THE AUTOMATED CONTROL OF THAT EQUIPMENT WILL NOT RESULT IN LOSS OF BUSINESS-CRITICAL FUNCTIONS AND/OR BREACH OF ANY LAW OR REGULATION.**
- 5.5. The Customer shall ensure the Hardware is kept in reasonable condition and shall not interfere with the Hardware or disconnect the Hardware from the power supply or from any equipment without Gridimp's prior written consent.
- 5.6. The Customer shall notify Gridimp immediately of any fault with the Hardware.
- 5.7. Gridimp shall use commercially reasonable endeavours to make the Services provided under a Purchase Order available 24 hours a day, seven days a week, except for:
- (a) planned maintenance carried out during the maintenance window of 7.00 pm to 7.00 am UK time; and
  - (b) unscheduled maintenance, performed only when necessary and Gridimp has used reasonable endeavours to give the Customer notice in advance.
- 5.8. The Customer shall ensure that a network connection over ethernet with internet access is provided and maintained and not disconnect the Hardware without Gridimp's prior written consent.
- 5.9. Gridimp may from time to time require the Customer to upgrade or replace the Hardware, and the Customer shall (or shall procure that a suitably qualified and experienced contractor shall) remove redundant Hardware and re-install and commission the replacement Hardware at its own cost and in accordance with the Installation Pack, Good Industry Practice and applicable laws.

## 6. **Permitted Use**

6.1. The Customer shall not access, store, distribute or transmit any Viruses, or any material during the course of its use of the Services that:

- (a) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
- (b) facilitates illegal activity;
- (c) depicts sexually explicit images;
- (d) promotes unlawful violence;
- (e) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
- (f) is otherwise illegal or causes damage or injury to any person or property;

and Gridimp reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's access to any material that breaches the provisions of this clause.

6.2. The Customer shall not:

- (a) except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under the Agreement:
  - (i) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Documentation (as applicable) in any form or media or by any means; or
  - (ii) attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or
- (b) access all or any part of the Services and Documentation in order to build a product or service which competes with the Services and/or the Documentation; or
- (c) use the Services and/or Documentation to provide services to third parties; or
- (d) subject to clause 23.1, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Documentation available to any third party except the Authorised Users, or
- (e) attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided under this clause 2.

6.3. The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify Gridimp.

## 7. **Customer data**

7.1. The Customer shall own all right, title and interest in and to all of the Customer Data that is not personal data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of all such Customer Data.

7.2. Gridimp shall follow its archiving procedures for Customer Data as set out in its Privacy and Security Policy available at [gridimp.com](http://gridimp.com) or such other website address as may be notified to the Customer from time to time, as such document may be amended by Gridimp in its sole discretion from time to time. In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy against Gridimp shall be for Gridimp to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by Gridimp in accordance with the archiving procedure described in its Privacy and Security Policy. Gridimp shall not

be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (except those third parties sub-contracted by Gridimp to perform services related to Customer Data maintenance and back-up for which it shall remain fully liable under clause 7.9).

- 7.3. Gridimp shall, in providing the Services, comply with its Privacy and Security Policy relating to the privacy and security of the Customer Data available at gridimp.com or such other website address as may be notified to the Customer from time to time, as such document may be amended from time to time by Gridimp in its sole discretion.
- 7.4. Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 7 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 7.5. The parties acknowledge that:
  - (a) if Gridimp processes any personal data on the Customer's behalf when performing its obligations under the Agreement, the Customer is the controller and Gridimp is the processor for the purposes of the Data Protection Legislation;
  - (b) the scope, nature and purpose of processing by Gridimp, the duration of the processing and the types of personal data and categories of data subject is contained in Gridimp's Privacy and Security Policy, which can be viewed at gridimp.com and
  - (c) the personal data may be transferred or stored outside the EEA or the country where the Customer and the Authorised Users are located in order to carry out the Services and Gridimp's other obligations under the Agreement.
- 7.6. Without prejudice to the generality of clause 7.4, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to Gridimp for the duration and purposes of the Agreement so that Gridimp may lawfully use, process and transfer the personal data in accordance with the Agreement on the Customer's behalf.
- 7.7. Without prejudice to the generality of clause 7.4, Gridimp shall, in relation to any personal data processed in connection with the performance by Gridimp of its obligations under the Agreement:
  - (a) process that personal data only on the documented written instructions of the Customer unless Gridimp is required by the laws of any member of the European Union or by the laws of the European Union applicable to Gridimp and/or Domestic UK Law (where **Domestic UK Law** means the UK Data Protection Legislation and any other law that applies in the UK) to process personal data (**Applicable Laws**). Where Gridimp is relying on Applicable Laws as the basis for processing personal data, Gridimp shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit Gridimp from so notifying the Customer;
  - (b) not transfer any personal data outside of the European Economic Area and the United Kingdom unless the following conditions are fulfilled:
    - (i) the Customer or Gridimp has provided appropriate safeguards in relation to the transfer;
    - (ii) the data subject has enforceable rights and effective legal remedies;
    - (iii) Gridimp complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and
    - (iv) Gridimp complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the personal data;
  - (c) assist the Customer, at the Customer's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with

respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

- (d) notify the Customer without undue delay on becoming aware of a personal data breach;
  - (e) at the written direction of the Customer, delete or return personal data and copies thereof to the Customer on termination of the agreement unless required by Applicable Law to store the personal data (and for these purposes the term "delete" shall mean to put such data beyond use); and
  - (f) maintain complete and accurate records and information to demonstrate its compliance with this clause 7 and immediately inform the Company if, in the opinion of Gridimp, an instruction infringes the Data Protection Legislation.
- 7.8. Each party shall ensure that it has in place appropriate technical and organisational measures, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting personal data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to personal data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it).
- 7.9. The Customer consents to Gridimp appointing a third-party processor of personal data under the Agreement. Gridimp confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement substantially on that third party's standard terms of business and in either case which Gridimp confirms reflect and will continue to reflect the requirements of the Data Protection Legislation. As between the Customer and Gridimp, Gridimp shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 7.9.
- 7.10. Gridimp may, at any time on not less than 30 days' notice, revise this clause 7 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to the Agreement).

## **8. Third party providers**

The Customer acknowledges that the Services may enable or assist it to access the website content of, correspond with, and purchase products and services from, third parties via third-party websites and that it does so solely at its own risk. Gridimp makes no representation, warranty or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party website, or any transactions completed, and any contract entered into by the Customer, with any such third party. Any contract entered into and any transaction completed via any third-party website is between the Customer and the relevant third party, and not Gridimp. Gridimp recommends that the Customer refers to the third party's website terms and conditions and privacy policy prior to using the relevant third-party website. Gridimp does not endorse or approve any third-party website nor the content of any of the third-party website made available via the Services.

## **9. Gridimp's obligations**

- 9.1. Gridimp undertakes that the Services will be performed substantially in accordance with the Documentation and with reasonable skill and care.
- 9.2. The undertaking at clause 9.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to Gridimp's instructions, or modification or alteration of the Services by any party other than Gridimp or Gridimp's duly authorised contractors or agents. If the Services do not conform with the foregoing undertaking, Gridimp will, at its expense, use all reasonable commercial



endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 9.1. Notwithstanding the foregoing, Gridimp:

- (a) does not warrant that the Customer's use of the Services will be uninterrupted or error-free; or that the Services, Hardware, Documentation and/or the information obtained by the Customer through the Services will meet the Customer's requirements; and
- (b) is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services, Hardware and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

9.3. The Agreement shall not prevent Gridimp from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under the Agreement.

9.4. Gridimp warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under the Agreement.

## 10. **Customer's obligations**

The Customer shall:

- (a) provide Gridimp with:
  - (i) all necessary co-operation in relation to the Agreement; and
  - (ii) all necessary access to such information as may be required by Gridimp;in order to provide the Services, including but not limited to Customer Data, security access information and configuration services;
- (b) provide Gridimp with all necessary access to the Customer Premises where any Hardware has been installed, so that Gridimp can assess the Customer's compliance with the Agreement;
- (c) provide Gridimp with no less than 3 months' prior written notice of the sale of, or expiry of lease on, the Customer's premises;
- (d) without affecting its other obligations under the Agreement, comply with all applicable laws and regulations with respect to its activities under the Agreement, including ensuring that the Customer's use of the Services does not interfere with the Customer's own legal and regulatory obligations, and informing Gridimp of any restrictions to which it is subject which may be relevant to the use of the Services. **IN PARTICULAR, CUSTOMER WARRANTS THAT USE OF THE GRIDIMP SOLUTION SHALL NOT CONTRAVENE ANY LAWS OR REGULATIONS TO WHICH THE CUSTOMER IS SUBJECT, INCLUDING REGULATIONS AS TO ENERGY USAGE, USE OF CERTAIN FUEL TYPES AND OTHER ENVIRONMENTAL CONCERNS;**
- (e) carry out all other Customer responsibilities set out in the Agreement in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, Gridimp may adjust any agreed timetable or delivery schedule as reasonably necessary;
- (f) ensure that the Authorised Users use the Services and the Documentation in accordance with the terms and conditions of the Agreement and shall be responsible for any Authorised User's breach of the Agreement;
- (g) obtain and shall maintain all necessary licences, consents, and permissions necessary for Gridimp, its contractors and agents to perform their obligations under the Agreement, including without limitation the Services;

- (h) ensure that its network and systems comply with the relevant specifications provided by Gridimp from time to time; and
- (i) be, to the extent permitted by law and except as otherwise expressly provided in the Agreement, solely responsible for procuring, maintaining and securing its network connections and telecommunications links from its systems to Gridimp's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.

## 11. Charges and payment

### *DSR Services*

- 11.1. Every DSR Payment received by Gridimp during the term of this Agreement shall be divided as follows:
- (a) At any time when the Customer:
    - (i) is not paying Subscription Fees, Gridimp shall be entitled to retain 30% of that DSR Payment as consideration for DSR Services;
    - (ii) is paying Subscription Fees, Gridimp shall be entitled to retain 20% of that DSR Payment as consideration for DSR Services; and
  - (b) in each case, the remainder of the DSR Payment (the "**Customer DSR Income**") shall be paid to the Customer's nominated bank account within 30 days of the end of each calendar month during the term of the Agreement.

### *Subscription Fees*

- 11.2. The Customer shall pay any Subscription Fees due to Gridimp in accordance with the terms of the relevant Purchase Order.
- 11.3. The Customer shall, as soon as possible on or following the Effective Date, provide to Gridimp valid, up-to-date and complete credit card details or approved purchase order information acceptable to Gridimp and any other relevant valid, up-to-date and complete contact, billing and payment details and, if the Customer provides:
- (a) its credit card details to Gridimp, the Customer hereby authorises Gridimp to bill such credit card, as due in accordance with the terms of the relevant Purchase Order:
    - (i) Commissioning Fees payable in respect of the initial supply and enrolment of the Hardware; and
    - (ii) monthly for the Subscription Fees.
  - (b) its approved purchase order information to Gridimp, Gridimp shall, as due in accordance with the terms of the relevant Purchase Order, invoice the Customer:
    - (i) Commissioning Fees payable in respect of the initial supply and enrolment of the Hardware; and
    - (ii) monthly for the Subscription Fees.
- 11.4. If Gridimp has not received payment of any fees within 30 days after the due date, and without prejudice to any other rights and remedies of Gridimp:
- (a) Gridimp may, without liability to the Customer, disable the Customer's password, account and access to all or part of the Services and Gridimp shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and
  - (b) interest shall accrue on a daily basis on such due amounts at an annual rate equal to 3% over the then current base lending rate of Gridimp's bankers in the UK from time to time,

commencing on the due date and continuing until fully paid, whether before or after judgment.

- 11.5. All amounts and fees stated or referred to in the Agreement:
- (a) shall be payable in pounds sterling;
  - (b) are, subject to clause 15.3(b), non-cancellable and non-refundable;
  - (c) are exclusive of value added tax, which shall be added to Gridimp's invoice(s) at the appropriate rate.
- 11.6. Gridimp shall review its Subscription Fees annually, and shall be entitled to increase the Subscription Fees payable by the Customer once every calendar year during the Agreement, such increase to be no more than the percentage increase in the Consumer Prices Index for the 12-month period immediately preceding the change.

*Right of Offset*

- 11.7. Gridimp shall, at its discretion, be entitled to offset any amounts due under clause 11.4 against any amounts payable by Gridimp to customer under this Agreement, including under clause 11.1

**12. Proprietary rights**

- 12.1. The Customer acknowledges and agrees that Gridimp and/or its licensors own all intellectual property rights in the Services, the Hardware and the Documentation. Except as expressly stated herein, the Agreement does not grant the Customer any rights to, under or in, any patents, copyright, database right, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Services, the Hardware or the Documentation.
- 12.2. Gridimp confirms that it has all the rights in relation to the Services, the Hardware and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of the Agreement.
- 12.3. The Customer acknowledges and agrees that the Hardware is leased to it by Gridimp and that Gridimp shall retain ownership of the Hardware at all times.

**13. Confidentiality**

- 13.1. Each party may be given access to Confidential Information from the other party in order to perform its obligations under the Agreement. A party's Confidential Information shall not be deemed to include information that:
- (a) is or becomes publicly known other than through any act or omission of the receiving party;
  - (b) was in the other party's lawful possession before the disclosure;
  - (c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or
  - (d) is independently developed by the receiving party, which independent development can be shown by written evidence.
- 13.2. Subject to clause 13.4 and clause 13.5, each party shall hold the other's Confidential Information in confidence and not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of the Agreement.
- 13.3. Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of the Agreement.
- 13.4. A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not

prohibited and is given in accordance with this clause 13.4, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.

- 13.5. Notwithstanding anything else in this Agreement, the Customer agrees that Gridimp shall be permitted to utilize the Customer's data and provide it to third parties for any purpose, including for compensation, provided such data is provided to third parties on an anonymised and/or aggregated basis.
- 13.6. Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.
- 13.7. The Customer acknowledges that details of the Services, and the results of any performance tests of the Services, constitute Gridimp's Confidential Information.
- 13.8. Gridimp acknowledges that the Customer Data is the Confidential Information of the Customer.
- 13.9. No party shall make, or permit any person to make, any public announcement concerning the Agreement without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.
- 13.10. The above provisions of this clause 13 shall survive termination of the Agreement, however arising.

#### **14. Indemnity**

- 14.1. The Customer shall defend, indemnify and hold harmless Gridimp against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Customer's use of the Services and/or Documentation, including any breach of clause 10, provided that:
  - (a) the Customer is given prompt notice of any such claim;
  - (b) Gridimp provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and
  - (c) the Customer is given sole authority to defend or settle the claim.
- 14.2. Gridimp shall defend the Customer, its officers, directors and employees against any claim that the Customer's use of the Services or Documentation in accordance with the Agreement infringes any United Kingdom patent effective as of the Effective Date, copyright, trade mark, database right or right of confidentiality, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that:
  - (a) Gridimp is given prompt notice of any such claim;
  - (b) the Customer provides reasonable co-operation to Gridimp in the defence and settlement of such claim, at Gridimp's expense; and
  - (c) Gridimp is given sole authority to defend or settle the claim.
- 14.3. In the defence or settlement of any claim, Gridimp may procure the right for the Customer to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate the Agreement on 2 Business Days' notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.
- 14.4. In no event shall Gridimp, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on:
  - (a) a modification of the Services or Documentation by anyone other than Gridimp; or
  - (b) the Customer's use of the Services or Documentation in a manner contrary to the instructions given to the Customer by Gridimp; or

- (c) the Customer's use of the Services or Documentation after notice of the alleged or actual infringement from Gridimp or any appropriate authority.
- 14.5. The foregoing and 15.3(b) state the Customer's sole and exclusive rights and remedies, and Gridimp's (including Gridimp's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.
- 15. **Limitation of liability**
- 15.1. Except as expressly and specifically provided in the Agreement:
  - (a) the Customer assumes sole responsibility for results obtained from the use of the Services and the Documentation by the Customer, and for conclusions drawn from such use. Gridimp shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to Gridimp by the Customer in connection with the Services, or any actions taken by Gridimp at the Customer's direction;
  - (b) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from the Agreement; and
  - (c) the Services, the Hardware and the Documentation are provided to the Customer on an "as is" basis.
- 15.2. Nothing in the Agreement excludes the liability of Gridimp:
  - (a) for death or personal injury caused by Gridimp's negligence; or
  - (b) for fraud or fraudulent misrepresentation.
- 15.3. Subject to clause 15.1 and clause 15.2:
  - (a) Gridimp shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under the Agreement; and
  - (b) Gridimp's total aggregate liability in contract (including in respect of the indemnity at clause 14.2), tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Agreement shall be limited to the total Subscription Fees paid by the Customer during the 12 months immediately preceding the date on which the claim arose.
- 16. **Term and termination**
- 16.1. Except as otherwise provided for in this clause 16, the Agreement shall, commence on the Effective Date and shall continue for the Initial Term. Following expiry of the Initial Term, the term of Agreement shall automatically be extended for successive periods of 12 months (each a "**Renewal Period**") unless otherwise terminated in accordance with this clause 16.
- 16.2. Notwithstanding clause 16.1, where a Purchase Order has been made for Gridimp Auto, the Agreement shall continue until the expiry of the Subscription Term. Following expiry of the Subscription Term, the term of Agreement shall automatically be extended for successive periods of 12 months (each a "**Renewal Period**") unless otherwise terminated in accordance with this clause 16.
- 16.3. The Agreement will terminate if either party notifies the other party of termination, in writing, giving at least 60 days' notice, in which case the Agreement shall terminate
  - (a) if notice is given during a Renewal Period, the expiry of the notice period; or
  - (b) if notice is given during the Initial Term or a Subscription Term, the later of:
    - (i) the expiry of the Initial Term or Subscription Term, as applicable; and

(ii) the expiry of the notice period.

16.4. Without affecting any other right or remedy available to it, either party may terminate the Agreement with immediate effect by giving written notice to the other party if:

- (a) the other party fails to pay any amount due under the Agreement on the due date for payment and remains in default not less than 30 days after being notified in writing to make such payment;
- (b) the other party commits a material breach of any other term of the Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
- (c) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the Insolvency Act 1986;
- (d) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (e) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (f) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party;
- (g) the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;
- (h) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- (i) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
- (j) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 16.4(c) to clause 16.4(i) (inclusive);
- (k) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

16.5. On termination of the Agreement for any reason:

- (a) all licences granted under the Agreement shall immediately terminate and the Customer shall immediately cease all use of the Services, the Hardware and/or the Documentation;
- (b) each party shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other party;

- (c) the Customer or its nominated contractor shall remove the Hardware from the Customer's systems and arrange for the return of that Hardware to Gridimp, at all times in accordance with Good Industry Practice and applicable law
- (d) Gridimp may destroy or otherwise dispose of any of the Customer Data in its possession in accordance with clause 7.7(c),
- (e) any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination shall not be affected or prejudiced.

**17. Force majeure**

Gridimp shall have no liability to the Customer under the Agreement if it is prevented from or delayed in performing its obligations under the Agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of Gridimp or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors, provided that the Customer is notified of such an event and its expected duration.

**18. Variation**

No variation of the Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives), or in the case of a Purchase Order, confirmed by email from an appropriately authorised representative of the Customer.

**19. Waiver**

No failure or delay by a party to exercise any right or remedy provided under the Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

**20. Rights and remedies**

Except as expressly provided in the Agreement, the rights and remedies provided under the Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

**21. Severance**

- 21.1. If any provision or part-provision of the Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Agreement.
- 21.2. If any provision or part-provision of the Agreement is deemed deleted under clause 21.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

**22. Entire agreement**

- 22.1. The Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 22.2. Each party acknowledges that in entering into the Agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Agreement.
- 22.3. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Agreement.

22.4. Nothing in this clause shall limit or exclude any liability for fraud.

23. **Assignment**

23.1. The Customer shall not, without the prior written consent of Gridimp, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Agreement.

23.2. Gridimp may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Agreement.

24. **No partnership or agency**

Nothing in the Agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

25. **Third party rights**

The Agreement does not confer any rights on any person or party (other than the parties to the Agreement and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

26. **Notices**

26.1. Any notice required to be given under the Agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in the Agreement, or such other address as may have been notified by that party for such purposes, or sent by fax to the other party's fax number as set out in the Agreement.

26.2. A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by fax shall be deemed to have been received at the time of transmission (as shown by the timed printout obtained by the sender).

27. **Governing law**

The Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

28. **Jurisdiction**

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Agreement or its subject matter or formation (including non-contractual disputes or claims).