



Bramble Hub
Connecting SMEs and the Public Sector

Crown
Commercial
Service
Supplier

G-Cloud 15 Lot 2b

Bramble Hub

ecoDriver Energy Management System

Terms and Conditions

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SaaS Agreement for ecoDriver®

Terms and Conditions (“Agreement”)

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1 DEFINITIONS

1.1 The following words and expressions shall have the following meanings in this agreement:

“Charges”

all of the charges as set out in the Pricing Schedule which relate to the annual managed service fee;

“Initial Term”

36 months from the Service Start Date or such other term as may be stated in the Pricing Schedule;

“Extended Term”

36 months from the end of the Initial Term or a previous Extended Term or such other term as may be agreed between the parties.

“Confidential Information”

means the information in any form or medium that one party (“**Owner**”) discloses to the other party (“**Recipient**”) and considers proprietary, including information consisting of or relating to the technology, know-how, business operations, plans, customers or strategies of either party and including the terms and existence of this Agreement, and such other information which others ought reasonably to treat as confidential, in each case whether or not marked, designated or otherwise identified as confidential.. Confidential Information does not include information:

- (a) the Recipient creates (whether alone or jointly with any person)

independently of the Owner's Confidential Information;

- (b) that is public knowledge (otherwise than as a result of a breach of confidentiality by the Recipient or any person to whom it has disclosed the information); or
- (c) obtained without restriction as to further disclosure from a source other than the Owner through no breach of confidentiality by that source;

“Content”

the audio and visual information, documents, software, products and services contained or made available to you in the course of using the Service;

“Current Product Data Sheet”

the most recent document describing the goods and services to be provided by ECODRIVER;

“Customer”

an organisation whose employees (including consultants, advisors, contractors, subcontractors or agents) have an ecoDriver® Managed Service User Account. A Customer may be the party that contracts directly with ECODRIVER for the ecoDriver® Managed Service or they may be a third party who is provided access to the ecoDriver® Managed Service by the contracting party;

“Customer Data”

all data provided to ECODRIVER or inputted into the ecoDriver® platform by or on behalf of the Customer or Users for use in the Services.

“Customer Personal Data”

any personal data which is included in the Customer Data, which ECODRIVER processes in connection with this agreement, in the capacity of a processor

on behalf of the Customer (as these terms are defined in the Data Protection Legislation).

“Data Protection Legislation”

means the UK Data Protection Act 2018, the UK GDPR and related subordinate legislation, as may be amended, updated or re-enacted from time to time.

“Device”

an item of equipment or a third-party data source designed and configured to access an Individual Service. For example, an item of meter data capture equipment and an associated database.

“ecoDriver® Managed Service”

provision of the ecoDriver® software, via a cloud platform, for use by multiple Customers and Users;

“Ecodriver Personal Data”

any personal data of the Customer and Users, which ECODRIVER processes in connection with this Agreement, in the capacity of a controller (as that term is defined in the Data Protection Legislation).

“Individual Service”

each individual service making up the Service; for example, the service for a single customer site. For clarity, there may be more than one Individual Service making up the Service;

“Insolvency Event”

means:

- (a) any step is taken to enter into any scheme of arrangement between the Customer and the Customer’s creditors;
- (b) any step is taken by a mortgagee to enter into possession or dispose of the whole or any part of the Customer’s assets or business;
- (c) any step is taken to appoint a receiver, a receiver and manager, a

trustee in bankruptcy, a liquidator, a liquidator, an administrator or other like person to the Customer or to the whole or any part of your assets or business;

- (d) the Customer suspends payment of their debts generally; or
- (e) the Customer is or becomes unable to pay their debts when they are due or the Customer is or is presumed to be insolvent for the purposes of any provision of the Insolvency Act 1986;

“Installation Warranty”

refers to the support and maintenance of any hardware and/or 3rd party services that have been procured by ECODRIVER (or by one of ECODRIVER’s sub-contractors) for the purpose of implementing ecoDriver® at the Customer’s site as defined in the appendix. This Installation Warranty will be provided for a period of 30 days from the Service Start Date. The Installation Warranty does not apply to existing equipment / services that may be incorporated into the Services or any equipment / services not provided by ECODRIVER;

Intervening Event

means any event outside a person’s reasonable control, and includes but is not limited to failure or fluctuation in any electrical power supply, failure of air conditioning or humidity control, electromagnetic interference, fire, storm, flood, earthquake, other acts of God, accident, war, pandemic, strikes, lock outs, delay in manufacture, labour dispute (other than a dispute solely between that person and its own staff or staff under its control), materials or

labour shortage, the change or introduction of any law or regulation, delay in manufacture, production or supply by third parties of equipment or services, or an act or omission of any third party (including government, highway authorities or any telecommunications carrier, operator or administration or other competent authority), or any failure of any equipment owned or operated by any third party (including any Regulator, any Supplier or any of their Personnel);

“Personnel”

in relation to a person or party means that person/party’s employees, agents, contractors or other representatives and, in the case of ECODRIVER, includes their employees, agents, contractors;

“Pricing Schedule”

the agreed rate plan, pricing and charges list for the Service (comprising one or more Individual Services) as referenced in the quote;

“Regulator”

any government or statutory body or authority;

“Service”

the ecoDriver® Managed Service to be provided to the Customer by ECODRIVER as set out in clause 2 and this Agreement and as more fully described in the Service Description and ancillary services which ECODRIVER supplies to the Customer in connection with that service;

“Service Description”

See Hosting Services Description in Appendix

“Service Start Date”

the date as detailed in the commercial agreement on which ECODRIVER starts supplying the Service or an Individual

Service to the Customer, or is deemed to do so;

“Supplier”

any supplier of goods or services (including interconnection services) which are used directly or indirectly by ECODRIVER to supply the Service;

“User”

an individual person, being an employee, contractor or agent of the Customer who is authorised by the Customer to use the Services via the User Account;

“User Account”

a unique combination of a username and password, associated with a User, that provides access to the ecoDriver® Managed Service.

“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, ransomware and other similar things or devices.

- 2.1 EcoDriver Ltd (“ECODRIVER”) “” will supply the ecoDriver® Managed Service to the Customer on the terms and conditions of the agreement for the Service for the Initial Term and such Extended Term/s as may be agreed.
- 2.2 The Installation Warranty for ecoDriver® under this Agreement expires after 30 days from the Service Start Date. In the event that the Customer requires on-going hardware support and/or maintenance the Customer may procure this via a separate ecoDriver hardware maintenance agreement.

3 SERVICE

- 3.1 Where the Customer reasonably believes that the Service is unavailable:
 - (a) the Customer shall promptly contact ECODRIVER via the ECODRIVER support contact details as provided by ECODRIVER to the customer and provide sufficient details of the alleged non-availability of the Service to enable ECODRIVER to investigate;
 - (b) ECODRIVER shall investigate the fault, which may include discussions with any relevant Supplier and logging the fault with that Supplier; and
 - (c) the Customer must provide any further information that becomes known to them that may assist ECODRIVER or the Supplier in investigating the fault.
- 3.2 For the avoidance of doubt, a fault may include an alleged non-availability of the Service resulting from an Intervening Event, in which circumstances an Intervening Event shall be subject to all the provisions for a fault as set out in clause 3.1.
- 3.3 Without prejudice to any rights available under this Agreement, the Customer agrees and acknowledges that the above rights detailed in clause 3.1 are in addition to such other rights and remedies to which the Customer may be entitled in the circumstances.
- 3.4 ECODRIVER undertakes that the Service will be provided substantially in accordance with the Service Description for the Service and with reasonable skill and care.
- 3.5 The undertaking at clause 3.4 shall not apply to the extent of any non-conformance which is caused by a change to the Services to ensure compliance with legislation or any use of the Services contrary to ECODRIVER’s instructions, or modification or alteration of the Services by any party other than ECODRIVER or ECODRIVER’s duly authorised contractors or agents. If the Services do not conform to this undertaking, ECODRIVER warrants that, at its expense, it will 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 3.4.

- 3.6 Notwithstanding the terms of clause 3.4, ECODRIVER does not warrant that the Customer's use of the Services will be uninterrupted or error-free; or that the Services, Documentation and/or the information obtained by the Customer or Users through the Services will meet the Customer's requirements.
- 3.7 The Customer acknowledges that the Service may be subject to limitations, delays, and other problems inherent in the use of the Internet and electronic communications. ECODRIVER is not responsible for any delays, delivery failures, or other damage resulting from the transfer of data over communications networks and facilities, including the internet.
- 3.8 If ECODRIVER determines that the fault is associated with any third party equipment installed on-site, with the Customer's own network or with a third party's data capture, formatting and transmission system, whilst ECODRIVER may investigate and recommend a solution, they are not obliged to do so under this Agreement, even if the said third party hardware or service was installed or activated as part of the original implementation under the auspices of ECODRIVER.
- 3.9 If there is a change to the Customer's utility supplier and a subsequent change to the meter data supplier that will require reconfiguration of the import process this will be subject to a re-connection fee of £150 per meter at the discretion of ECODRIVER.

4 THE CUSTOMER'S USE OF THE SERVICE

- 4.1 ECODRIVER will supply the Service from the Service Start Date.
- 4.2 The Customer must reasonably co-operate with ECODRIVER to allow ECODRIVER to establish and supply the Service to the Customer safely and efficiently.
- 4.3 In using the Service, the Customer must comply with all applicable laws, all mandatory or legislated directions by a Regulator and all reasonable directions by ECODRIVER.
- 4.4 The Customer must not, and shall ensure Users shall not, use, or attempt to use, the Service in a way that:
- (a) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive or facilitates illegal activity ;
 - (b) intentionally exposes ECODRIVER to liability; or
 - (c) is otherwise illegal or causes damage to any property or injures or kills any person
- and ECODRIVER reserves the right, without liability or prejudice to its other rights to the Customer or Users, to disable the Customer's or Users' access to any material or any part of the Services where ECODRIVER reasonably believes that a Customer or User breaches or has breached the provisions of this clause.

- 4.5 Subject to clause 15, ECODRIVER excludes liability to the extent arising from any unlawful activity or any unlawful event that the Services are used for by the Customer or any of the Customer's Personnel.
- 4.6 The Customer is responsible for all activity occurring under its User Accounts and shall ensure that Users use the Services and the Documentation in accordance with the terms of the Agreement and shall be responsible for any User's breach of the Agreement. The Customer shall abide by all applicable local, state, national and foreign laws, treaties and regulations in connection with the Customer's use of the Service, including those related to data privacy, international communications and the transmission of technical or personal data. The Customer shall:
- (a) notify ECODRIVER promptly of any unauthorised use of any password or account or any other known or suspected breach of security;
 - (b) report to ECODRIVER promptly and use reasonable efforts to stop immediately any copying or distribution of Content that is known or suspected by the Customer or its Users; and
 - (c) not impersonate another ecoDriver® User or provide false identity information to gain access to or use the Service.
- 4.7 The Customer shall ensure that the Users are aware of and accept the following terms and conditions prior to use of the relevant services:
- (a) the in-app terms of use for the Ecodriver Services as notified and amended by ECODRIVER on its platform from time to time; and
 - (b) the terms and conditions for the use of the artificial intelligence tool "Eddie" as notified and amended by ECODRIVER from time to time.
- 4.8
- 4.9
- 4.10 The Customer acknowledges that ECODRIVER or a Supplier may if directed by an appropriate authority, be required to intercept communications, over the Service and may also monitor the Customer's usage of the Service and communications sent over it.
- 4.11 ECODRIVER may ask the Customer to stop doing something which ECODRIVER reasonably believes is contrary to clause 4. The Customer must immediately comply with any such request. If the Customer does not, then ECODRIVER may take any steps reasonably necessary to ensure compliance with clause 4 or the request. ECODRIVER shall be entitled to suspend the Services until it is satisfied that the Customer complies with this clause 4.
- 4.12 To enable each party to perform its obligations under this Agreement the Customer and ECODRIVER each shall:
- (a) provide the other with any information reasonably required by ECODRIVER to perform its obligations under this Agreement;

- (b) obtain all necessary permissions and consents which may be required before the commencement of the Services; and
 - (c) comply with such other requirements as may be set out in the Current Product Data Sheet or otherwise agreed in writing between the parties.
- 4.13 The Customer shall indemnify ECODRIVER against all claims, costs and expenses, which ECODRIVER may incur arising from the Customer's breach of any of its material obligations under this Agreement.

5 LICENCE GRANT AND RESTRICTIONS

- 5.1 ECODRIVER hereby grants the Customer a non-exclusive, right to use the Service for its internal business operations, subject to the terms and conditions of this Agreement. All rights not expressly granted to the Customer are reserved by ECODRIVER. The Customer shall not and shall not attempt to, and shall ensure that Users shall not:
- (a) Modify, copy, duplicate, republish, download, display, transmit, distribute or make derivative works based upon (as applicable) all or any portion of the Service or the Content (as applicable) in any form or media or by any means;
 - (b) create Internet "links" to the Service or "frame" or "mirror" any Content on any other server or wireless or Internet-based device;
 - (c) attempt to bypass or disable any security feature or mechanism within the Services; or
 - (d) reverse engineer, reverse compile, disassemble or access all or any part of the Service in order for the Customer or any third party to:
 - (i) build a competitive product or service;
 - (ii) build a product or service using similar ideas, features, functions or graphics of the Service; or
 - (iii) copy any ideas, features, functions or graphics of the Service.
- 5.2 The Customer must take reasonable steps to ensure that the Service is only used for its intended purpose and prevent the following from occurring:
- (a) sending or storage of material containing software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs;
 - (b) interference with or disruption to the integrity or performance of the Service or the data contained therein; or
 - (c) attempts to gain unauthorized access to the Service or its related systems or networks.

6 MAINTENANCE

- 6.1 Maintenance may be conducted on the Service or by a Supplier. ECODRIVER will use best efforts to ensure that scheduled maintenance is conducted outside

normal business hours but may not always be able to do so. As and when ECODRIVER is made aware of any maintenance to be carried out to the Service or by a Supplier it will inform the Customer. Ecodriver may suspend the Services for the purpose of carrying out maintenance in accordance with clause 9.2.

7 INVOICES AND PAYMENT

- 7.1 ECODRIVER will invoice the Customer for the Charges from the Service Start Date, for 12 months in advance and thereafter at every anniversary of the Service Start Date for the period of the Initial Term and such Extended Terms as may be agreed. The Customer must pay the invoice within 30 days of the date of the invoice.
- 7.2 If ECODRIVER has not received payment within 30 days after the due date, and without prejudice to any other rights and remedies of ECODRIVER:
- (a) ECODRIVER may, without liability to the Customer or User, suspend or disable the Customer's or Users' passwords, accounts and access (where applicable) to all or part of the Services and ECODRIVER 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 such due amounts at an annual rate equal to 4% over the then current base lending rate of the Bank of England at the date the relevant invoice was issued, commencing on the due date and continuing until fully paid, whether before or after judgment.
- 7.3 All amounts and fees stated or referred to in the Agreement shall be payable in the currency set out in the Pricing Schedule, are non-cancellable and non-refundable, and are exclusive of value added tax, which shall be added to ECODRIVER's invoice(s) at the appropriate rate.

8 THE CUSTOMER'S RIGHT TO TERMINATE

- 8.1 The Customer may terminate this Agreement without liability:
- (a) by giving 90 days' notice to ECODRIVER before the end of the Initial Term or such Extended Terms as may be agreed, in which case the Agreement shall terminate upon the expiry of the Initial Term or applicable Extended Term; and
 - (b) immediately at any time by giving ECODRIVER notice if:
 - (i) ECODRIVER breaches a material term of the Agreement and that breach is not capable of remedy; or
 - (ii) ECODRIVER breaches a material term of the Agreement and that breach is capable of remedy but ECODRIVER does not remedy that breach within 30 days after the Customer gives ECODRIVER notice requiring them to do so; or
 - (iii) An administrator receiver or administrator is appointed over any of the undertakings, property or assets of ECODRIVER; or
 - (iv) ECODRIVER goes into liquidation, except for the purpose of amalgamation or reconstruction and in such manner that the company resulting therefrom effectively agrees to be bound by or assumes the obligations imposed on ECODRIVER under the Agreement.

- 8.2 The Customer may terminate one or more Individual Services before the end of the Initial or Extended Term by giving 90 days' notice to ECODRIVER. The termination fee will be equivalent to the Charges the Customer would have had to pay for the remainder of the relevant Initial or Extended Term, had the Customer not terminated the relevant Individual Services.

9 ECODRIVER'S RIGHT TO SUSPEND OR TERMINATE

- 9.1 ECODRIVER may, without liability, terminate the Agreement or one or more Individual Services at any time by giving 60 days' written notice to the Customer.
- 9.2 Without prejudice to any other rights or remedies to which ECODRIVER may be entitled, ECODRIVER may terminate the Agreement with immediate effect without liability to the Customer if:
- (a) the Customer commits a material breach of any of the terms of the Agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of the Customer being notified in writing of the breach; or
 - (b) An administrator receiver or administrator is appointed over any of the undertakings, property or assets of ECODRIVER; or
 - (c) the Customer is insolvent within the meaning of section 123 of the Insolvency Act 1986; or
 - (d) the Customer ceases, or threatens to cease, to trade.
- 9.3 ECODRIVER may, without liability, upon 14 days' written notice to Customer (or, in the event of required emergency repair, maintenance or service or where the Customer is in material breach, immediately) suspend or downgrade the Service or one or more Individual Services at any time if:
- (a) doing so is necessary to allow a Supplier to repair, maintain or service any part of a Supplier Network used to supply the Service or the Individual Service; or
 - (b) the Customer is in material breach of its obligations under this Agreement, including clause 4 (Use of the Service) or otherwise misuses either the Service or an Individual Service; or
 - (c) ECODRIVER reasonably suspects fraud by the Customer or any other person in connection with the Service or an Individual Service; or
 - (d) ECODRIVER is required to do so to comply with any applicable laws, an order, instruction or request of a Regulator, an emergency services organisation or any other competent authority; or
 - (e) ECODRIVER is prevented from supplying the Services or an Individual Service due to a direction from any competent authority; or
 - (f) the Customer suffers an Insolvency Event.

10 CONSEQUENCES OF TERMINATION

On termination of the Agreement for any reason:

- 10.1 all rights to use the Services granted under the Agreement shall immediately terminate;
- 10.2 each party shall return and make no further use of any equipment, property, Content and other items (and all copies of them) belonging to the other party; and
- 10.3 the accrued rights of the parties as at termination, or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination, shall not be affected or prejudiced.

11 ALTERATIONS TO THE CURRENT PRODUCT DATA SHEET

- 11.1 The parties may at any time mutually agree upon and execute changes to the Current Product Data Sheet(s). Any alterations in the Services to be provided under this Agreement shall be set out in the revised Current Product Data Sheet, which shall reflect the changed Services and price and any other terms agreed between the parties.
- 11.2 The Customer may at any time request alterations to the Current Product Data Sheet by notice in writing to ECODRIVER. On receipt of the request for alterations ECODRIVER shall advise the Customer by notice in writing of the effect of such alterations, if any, on the price and any other terms already agreed between the parties. ECODRIVER is not bound to accept any such requests and may accept or refuse such requests entirely at ECODRIVER's discretion.
- 11.3 Where ECODRIVER gives written notice to the Customer agreeing to perform any alterations on terms different to those already agreed between the parties, the Customer shall advise ECODRIVER by notice in writing whether or not it wishes the alterations to proceed.
- 11.4 Where ECODRIVER gives written notice to the Customer agreeing to perform alterations on terms different to those already agreed between the parties, and the Customer confirms in writing that it wishes the alterations to proceed on those terms, the Current Product Data Sheet shall be amended to reflect such alterations and thereafter ECODRIVER shall perform this Agreement upon the basis of such amended terms.

12 INTELLECTUAL PROPERTY

- 12.1 ECODRIVER alone owns all rights, title and interest, including all related intellectual property rights, in and to the ecoDriver® technology, the Content and the Service.
- 12.2 ECODRIVER permits the Customer to use this material, or other material licensed by ECODRIVER, as part of the Service. This permission is subject to any reasonable conditions which ECODRIVER may upon prior written notice propose from time to time and will cease when the Service is terminated.
- 12.3 This Agreement is not a sale and does not convey to the Customer any rights of ownership in or related to the Service, the ecoDriver® technology or the intellectual property. The ecoDriver® name, the ecoDriver® logo and the product

names associated with the Service are trademarks of ECODRIVER, and no right or license is granted to use them.

13 CONFIDENTIALITY

- 13.1 ECODRIVER and the Customer each agree to keep confidential the other party's Confidential Information.
- 13.2 ECODRIVER and the Customer will not use or disclose the other's Confidential Information for any purpose, other than to the extent necessary to perform its obligations or exercise its rights under the Agreement.
- 13.3 The Recipient shall restrict disclosure of such Confidential Information to such of its employees, agents or subcontractors ("Representatives") as need to know it for the purpose of discharging the Recipient's obligations under the Agreement, and shall ensure that such Representatives are subject to obligations of confidentiality corresponding to those which bind the Recipient. This clause 13 shall survive termination of the Agreement. The Recipient shall be liable for the actions or omissions of the Representatives in relation to the Confidential Information as if they were the actions or omissions of the Recipient.
- 13.4 This clause 13 shall not apply to any information that is required by law or regulation to be disclosed to any person who is authorised by law or regulation to receive the same (after consultation, if practicable, with the Owner) to limit disclosure to such authorised person to the extent necessary).

14 Marketing

- 14.1 **Public Relations (PR) Requests:** Upon successful implementation of ecoDriver®, the Customer agrees to collaborate in good faith with ECODRIVER regarding any PR requests related to ecoDriver®. This collaboration includes mutually agreeing on the content and timing of such PR requests.
- 14.2 **Reference:** The Customer agrees to act as a reference for ecoDriver upon a written request from ECODRIVER. The Customer shall be provided with reasonable notice to prepare the reference. The timing of any such reference shall be mutually agreed upon in writing.
- 14.3 **Website Logo:** The Customer grants ECODRIVER a non-exclusive, royalty-free licence to use the Customer's logo on the ecoDriver® website for the purpose of promoting the successful implementation of ecoDriver® by the Customer.
- 14.4 **Case Study:** The Customer agrees to collaborate with ECODRIVER on the development of a case study showcasing the benefits of ecoDriver® implementation. This collaboration shall take place within six months of the Start Date as defined in this Agreement.

15 LIMITATION OF LIABILITY

- 15.1 This clause 15 sets out the entire financial liability of ECODRIVER (including any liability for the acts or omissions of its employees, agents, consultants and subcontractors) to the Customer or User in respect of:
- (a) any breach of the Agreement however arising;
 - (b) any use made by the Customer or Users of the Services; and
 - (c) any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Agreement.
- 15.2 Except as expressly and specifically provided in the Agreement:
- (a) the Customer assumes sole responsibility for its and its Users' use of the Services and acknowledges that use of the Services does not guarantee the Customer any improvement in its business efficiencies;
 - (b) Ecodriver shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to Ecodriver by the Customer or Users in connection with the Services or any actions taken by Ecodriver at the Customer's or Users' direction;
 - (c) 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
 - (d) the Services and Documentation are provided to the Customer and Users on an "as is" basis.
- 15.3 Nothing in these Terms and Conditions seeks to exclude ECODRIVER's liability for death or personal injury caused by negligence or for fraud or fraudulent misrepresentation. ECODRIVER excludes all other liability to the extent permitted at law.
- 15.4 Subject to clause 15.3, in no event shall ECODRIVER be liable for any loss of business, loss of profit, loss or corruption of data or for any indirect or consequential loss and ECODRIVER's total aggregate liability arising under the Agreement or otherwise relating to the Services shall be limited to the total Charges paid during the 12-month period preceding the date on which the claim arose.
- 15.5 The parties acknowledge and agree that any dates quoted for delivery of the Services are approximate only, and that the time of delivery is not of the essence. ECODRIVER shall not be liable for any delay in delivery of the Services that is caused by an event, circumstance or cause outside the control of ECODRIVER or the Customer's failure to comply with its obligations under the Agreement.

16 Data Protection

- 16.1 As between the parties the Customer shall own the Customer Data and Ecodriver Personal Data.
- 16.2 Ecodriver shall follow its back-up procedures for Customer Data as set out in its back-up policy (available at such website address as may be notified to the Customer from time to time), as such document may be amended by

ECODRIVER in its sole discretion. In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy against ECODRIVER shall be for ECODRIVER to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by ECODRIVER in accordance with the procedures described in its back-up policy. ECODRIVER 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 ECODRIVER to perform services related to Customer Data maintenance and back-up, and for breaches of clause 16.8 or 16.9, for which it shall remain fully liable).

- 16.3 Both parties will comply with all applicable requirements of Data Protection Legislation.
- 16.4 ECODRIVER will process ECODRIVER Personal Data in accordance with the then-current version of the privacy policy of ECODRIVER provided to the Customer on commencement of the Agreement (Privacy Policy). In the event of any inconsistency or conflict between the terms of the Privacy Policy and this Agreement, the Privacy Policy will take precedence.
- 16.5 In respect of any Customer Personal Data, which ECODRIVER requires to process in relation to the Services being provided to the Customer, the parties acknowledge that ECODRIVER shall be deemed the processor and the Customer the controller (as those terms are defined in the Data Protection Legislation).
- 16.6 The Customer will ensure that it is entitled to transfer the Customer Personal Data to ECODRIVER so that ECODRIVER may lawfully use, process and transfer the Customer Personal Data for the duration and purposes of this Agreement.
- 16.7 The scope, nature and purpose of the processing by ECODRIVER and the duration of the processing shall be limited to processing required to provide the Services during the term of this Agreement. The type of Customer Personal Data will be such identity data of those individuals as ECODRIVER is exposed to in relation to the Services. The category of data subjects will be the employees, contractors and customers of the Customer.
- 16.8 ECODRIVER shall in relation to Customer Personal Data:
 - (a) process that Customer Personal Data only on the documented instructions of the Customer, and only to the extent necessary to perform its obligations under this Agreement and shall not process any Customer Personal Data for any other purpose;
 - (b) inform the Customer if, in the opinion of ECODRIVER, the instructions of the Customer infringe Data Protection Legislation (and ECODRIVER shall be entitled to suspend the Services until an instruction is clarified);
 - (c) implement appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Customer Personal Data and against accidental loss or destruction of, or damage to, Customer Personal Data as required under Data Protection Legislation;

- (d) ensure that any personnel engaged and authorised by ECODRIVER to process Customer Personal Data have committed themselves to confidentiality or are under an appropriate statutory or common law obligation of confidentiality;
 - (e) assist the Customer insofar as this is possible (taking into account the nature of the processing and the information available to ECODRIVER), and at the Customer's cost and written request, in responding to any request from a data subject and in ensuring the Customer's compliance with its obligations under Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
 - (f) notify the Customer without undue delay on becoming aware of a personal data breach involving the Customer Personal Data;
 - (g) at the written direction of the Customer, delete or return Customer Personal Data and copies thereof to the Customer on termination of the Agreement unless Ecodriver is required by applicable law to continue to process that Customer Personal Data (and for the purposes of this clause 16.8.g Customer Personal Data shall be considered deleted where it is put beyond further use by ECODRIVER), providing that ECODRIVER shall be entitled to delete Customer Data where there is no written direction provided within 14 days of termination; and
 - (h) maintain records to demonstrate its compliance with this clause 16.8.
- 16.9 By entering into the Agreement the Customer provides its prior general authorisation for ECODRIVER to appoint sub-processors in relation to monitoring website traffic, hosting, design and development services, User management and customer support services, storage and database services, security services, and analytical services, subject to the following conditions:
- (a) ECODRIVER shall ensure that the terms on which it appoints such processors comply with Data Protection Legislation, and are consistent with the obligations imposed on ECODRIVER in this clause 16;
 - (b) ECODRIVER shall remain responsible for the acts and omission of any such processor as if they were the acts and omissions of ECODRIVER; and
 - (c) where ECODRIVER transfers Customer Personal Data outside of the UK as required for the Services, it shall ensure that all such transfers are effected in accordance with Data Protection Legislation.
- 16.10 ECODRIVER shall be entitled to use the Customer Data for the purposes of its own analysis and research and development but only where the resulting data sets, insights or other analytical products created do not contain any personal data or any other identifiable Customer Data.

17 General

- 17.1 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).

- 17.2 If ECODRIVER choose to waive any particular right it has under the Agreement on any particular occasion, this does not prevent it from exercising that right on another occasion.
- 17.3 If any part of the Agreement is held by a court of law (or similar forum) to be invalid or unenforceable, this shall not affect the validity or enforceability of the rest of the Agreement.
- 17.4 Ecodriver 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.
- 17.5 The Customer is not entitled to transfer or assign its rights and obligations under the Agreement to anyone else without Ecodriver's prior written permission. ECODRIVER may transfer its rights and obligations under the Agreement to a third party by giving written notice of such transfer to the Customer.
- 17.6 Nothing in the Agreement is intended to, or shall operate to, create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).
- 17.7 All notices required or permitted under the Agreement will be in writing and given by email to the addresses set out in the Pricing Schedule or such other email address as parties may advise the other party from time to time. Any such notice shall be deemed to have been duly received when confirmation of completion of its transmission has been recorded by the sender's email system.
- 17.8 The agreement, including the Pricing Schedule referencing this Agreement, constitutes the complete and exclusive understanding and agreement between Customer and ECODRIVER regarding its subject matter and supersedes all prior or other agreements or understandings, written or oral, relating to its subject matter (including any proposal ECODRIVER may have issued to the Customer). Each party acknowledges that, in entering into the Agreement it does not rely on any statement, representation, assurance or warranty (whether it was made negligently or innocently) of any person (whether a party to the Agreement or not) other than as expressly set out in the Agreement.

18 Jurisdiction and Governing Law

This Agreement shall be governed by the laws of England and Wales. If either party requires to raise court proceedings in relation to any such dispute, then the courts of England and Wales shall have non-exclusive jurisdiction under the Agreement in relation to those proceedings.

APPENDIX – INSTALLATION WARRANTY

Following the Service Start Date, for a period of 30 days, ECODRIVER will provide installation warranty in the following circumstances:

1. Faulty hardware/services (subject to manufacturer's warranty)
2. Network connectivity issues which are within the control of ECODRIVER
3. Incorrect configuration of hardware or services resulting in inaccurate data
4. Loose or faulty wiring
5. Poor sensor placement
6. Connectivity setup errors
7. Sensor/Device damage due to improper installation

In any event resulting in a valid warranty requirement, the liability of ECODRIVER will be limited to rectification of the problem. No liability is accepted for any consequential costs whatsoever.

Where there is a hardware fault beyond the 30-day installation warranty period but within the manufacturer's warranty, ECODRIVER will support the Customer in returning and replacing the hardware, however this does not include site attendance, de-installation, return, delivery, re-installation, travel or other costs beyond the scope of manufacturer's warranty. ECODRIVER will quote for any additional works if required by the customer on a case-by-case basis.

The installation warranty provided by ECODRIVER does not cover damage, malfunction, or failure of the hardware resulting from actions or negligence by the customer or any third party. This includes, but is not limited to:

1. **Physical damage:** Any damage caused by mishandling, dropping, improper storage, or external impact after installation.
2. **Unauthorised modifications:** Alterations, repairs, relocations or adjustments made to the hardware or installation without prior written consent from ECODRIVER.
3. **Improper use or operation:** Failure to follow the manufacturer's operating guidelines and reasonable instructions provided by ECODRIVER, including incorrect usage, overloading, or exposing devices to unsuitable environmental conditions (e.g., excessive moisture, extreme temperatures, or corrosive substances).
4. **Tampering with Hardware:** Any interference (such as opening sealed components, cutting cables, or altering configurations) with energy meters, cellular

gateways, IoT sensors or any other hardware supplied by ECODRIVER or relied upon for delivery of the Service.

5. **Third-Party Interference:** Damage, interference or tampering caused by third-party contractors, technicians, or other personnel not authorised by ECODRIVER.

6. **External Factors:** Damage resulting from power surges, lightning strikes, floods, fires, or other natural or man-made disasters.

ECODRIVER reserves the right to assess and determine the cause of damage to the hardware or installation prior to approving any warranty claim.