

PROFESSIONAL SERVICES TERMS & CONDITIONS

THESE PROFESSIONAL SERVICES TERMS & CONDITIONS ("AGREEMENT") ARE EFFECTIVE AS OF THE EFFECTIVE DATE OF THE APPLICABLE STATEMENT OF WORK ("SOW") REFERENCING THIS AGREEMENT.

ANY AND ALL REFERENCES TO "CUSTOMER" SHALL BE DEEMED TO MEAN THE CUSTOMER SET FORTH IN AN APPLICABLE STATEMENT OF WORK.

1. SERVICES.

1. **Statements of Work.** GridGain Systems, Inc. ("GridGain") shall provide the services described in a SOW ("Professional Services"). Each SOW shall (i) be signed by the parties; (ii) incorporate by reference this Agreement; and (iii) state the pertinent business parameters, including, but not limited to, pricing, payment, expense reimbursement, and a detailed description of the Services to be provided. In case of conflict between the SOW and the terms of this Agreement, the SOW shall be controlling. Professional Services are only for Customer's internal use. Customer may not use the Professional Services to supply any consulting or training services to any third party. Unless otherwise provided in an applicable SOW, all Professional Services shall be accepted upon delivery.
2. **Ownership of Deliverables and Training Materials.** GridGain shall own all intellectual property and proprietary rights in the deliverables provided by GridGain as part of the Professional Services ("Deliverables"). GridGain hereby grants to Customer an irrevocable, perpetual, nonexclusive, worldwide, royalty-free right and license to use any such Deliverables for its internal business purposes. Notwithstanding any contrary provision in this Agreement, Deliverables shall not include GridGain training courses and training materials ("Training Materials"). Training Materials and all worldwide intellectual property rights therein, as the same may be amended and/ or extended, including the copyright, are wholly owned solely by GridGain, who shall retain all right, title and interest in and to all Training Materials. Customer shall be entitled to keep and use all Training Materials provided by GridGain to Customer, but without any other license to exercise any of the intellectual property rights therein, all of which are hereby strictly reserved to GridGain.

2. **FEES AND PAYMENT TERMS.** GridGain shall submit invoices for fees and reimbursable costs and expenses and Customer shall pay each invoice in the manner specified in the applicable SOW. Customer will also pay all related taxes and withholdings, except for those based on GridGain's net income. If Customer is required to withhold taxes, then Customer will forward any withholding receipts to GridGain. All amounts are due in the currency stated on the invoice and in full 30 days after the date of GridGain's invoice, with interest accruing thereafter at the lesser of 1% per month. If Customer fails to pay fees in accordance with this Section, GridGain may suspend fulfilling its obligations under this Agreement until such payment is received by GridGain. GridGain will be reimbursed for expenses incurred that are reasonable and that have been approved in advance by Customer.

3. WARRANTY & DISCLAIMER.

3.1 **Warranty.** GridGain shall perform Services in a professional and workmanlike manner in accordance with generally accepted industry standards. Customer must notify GridGain of any failure to so perform within ten (10) days after the performance of the applicable portion of the Services. GridGain's entire liability, and Customer's sole remedy, for GridGain's failure to so perform shall be for GridGain to, at its option, (i) use reasonable efforts to correct such failure, and/or (ii) terminate the applicable SOW and refund that portion of any fees received that correspond to such failure to perform.

3.2 **DISCLAIMER.** EXCEPT AS EXPRESSLY STATED HEREIN, THE SERVICES, TRAINING MATERIALS, DELIVERABLES, AND ANY OTHER MATERIALS PROVIDED TO CUSTOMER UNDER THIS AGREEMENT ARE PROVIDED "AS IS" AND GRIDGAIN MAKES NO WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY REGARDING OR RELATING TO THE SERVICES, TRAINING MATERIALS, DELIVERABLES AND ANY OTHER MATERIALS PROVIDED TO CUSTOMER UNDER THIS AGREEMENT. GRIDGAIN DOES NOT WARRANT THAT THE DELIVERABLES FURNISHED OR PROVIDED TO CUSTOMER UNDER THIS AGREEMENT WILL BE DESIGNED TO MEET CUSTOMER'S BUSINESS REQUIREMENTS. GRIDGAIN HEREBY DISCLAIMS ALL OTHER WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NONINFRINGEMENT WITH RESPECT TO THE SERVICES, TRAINING MATERIALS, DELIVERABLES, AND ANY OTHER MATERIALS PROVIDED TO CUSTOMER UNDER THIS AGREEMENT.

4. CONFIDENTIAL INFORMATION

4.1 **Protection of Confidential Information.** Each Party (the "Disclosing Party") may during the term of this Agreement disclose to the other Party ("Receiving Party") Confidential Information regarding the other Party's business. The Receiving Party will not use any Confidential Information of the Disclosing Party for any purpose not permitted by this Agreement, and will disclose the Confidential Information of the Disclosing Party only to employees, contractors and professional advisors of the Receiving Party who have a need to know such Confidential Information for purposes of this Agreement and are under a duty of confidentiality no less restrictive than the Receiving Party's duty hereunder. The Receiving Party will protect the Disclosing Party's Confidential Information from unauthorized use, access, or disclosure in the same manner as the Receiving Party protects its own confidential or proprietary information of a similar nature and with no less than reasonable care.

4.2 **Exclusions.** The obligations of confidentiality assumed under this Agreement shall not apply to the extent the Receiving Party can demonstrate, by clear and convincing evidence, that such information: (a) is or has become generally available to the public, without any breach by the Receiving Party of the provisions of this Agreement or any other applicable agreement between the Parties; (b) was rightfully in the possession of the Receiving Party, without confidentiality restrictions, prior to such Party's receipt pursuant to this Agreement; (c) was rightfully acquired by the

Receiving Party from a third party who was entitled to disclose such information, without confidentiality or proprietary restrictions; (d) was independently developed by the Receiving Party without using or referring to the Disclosing Party's Confidential Information; or (e) is subject to a written agreement pursuant to which the Disclosing Party authorized the Receiving Party to disclose the subject information.

4.3 **Legally Required Disclosures.** The obligations of confidentiality assumed under this Agreement shall not apply to the extent that the Receiving Party is required to disclose the Disclosing Party's Confidential Information under any applicable law, regulation or an order from a court, regulatory agency or other governmental authority having competent jurisdiction, provided that the Receiving Party: (a) promptly notifies the Disclosing Party of the order in order to provide the Disclosing Party an opportunity to seek a protective order; (b) provides the Disclosing Party with reasonable cooperation in its efforts to resist the disclosure, upon reasonable request by the Disclosing Party and at the Disclosing Party's expense; and (c) discloses only the portion of the Disclosing Party's Confidential Information that is required to be disclosed under such law, regulation or order.

4.4 **Return of Confidential Information.** Except as otherwise expressly provided in this Agreement, upon the request of the Disclosing Party at any time after the termination of this Agreement, the Receiving Party will return (or purge its systems and files of, and suitably account for) all tangible Confidential Information supplied to, or otherwise obtained by, the Receiving Party in connection with this Agreement. The Receiving Party will certify in writing that it has fully complied with its obligations under this Section within seven (7) days after its receipt of a request by the Disclosing Party for such a certification. For the avoidance of doubt, this Section shall not be construed to limit either Party's right to seek relief from damages that are caused by the other Party's default.

5. TERM AND TERMINATION

5.1 **Term.** This Agreement shall commence on the Effective Date and shall continue in effect until the stated term(s) in the SOW(s) has expired or has otherwise been terminated as provided in this Section 5 or by written agreement of the Parties. Each SOW shall only become effective when duly signed on behalf of the Parties to be bound thereby, and shall continue in effect through the delivery date stated therein; provided that the SOW is not earlier terminated pursuant to Section 5.2.

5.2 **Termination for Cause.** This Agreement, or any SOW, may be terminated by either Party if the other Party is in material breach of any term or condition of this Agreement and such breach is not remedied for a period of thirty (30) calendar days after the Party in breach has been notified of the breach by the other Party. Notice of termination for any SOW shall not be construed to be notice of termination for any other SOW.

5.3 **Orderly Transfer.** In the event that this Agreement is terminated pursuant to 5.2 above, then each Party will provide such information, cooperation and assistance to the other Party, as may be reasonably requested, to assure an orderly return or transfer to each Party or its designee of each Party's proprietary data (and related records and files) and materials, if any, held by the other Party.

6. **LIMITATION OF LIABILITY.** NOTWITHSTANDING ANY OTHER CLAUSE IN THIS AGREEMENT, IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES WHETHER IN AN ACTION BASED ON CONTRACT, TORT OR ANY OTHER LEGAL THEORY, WHETHER OR NOT GRIDGAIN HAS BEEN NOTIFIED OF THE POSSIBILITY THEREOF, AND IN NO EVENT WILL GRIDGAIN'S TOTAL AGGREGATE LIABILITY FOR ANY DAMAGES ARISING FROM OR IN CONNECTION WITH THIS AGREEMENT WHETHER IN ACTIONS BASED ON CONTRACT, TORT OR ANY OTHER LEGAL THEORY, AND WHETHER OR NOT GRIDGAIN HAS BEEN NOTIFIED OF THE POSSIBILITY THEREOF, EXCEED THE AMOUNT PAID UNDER THE APPLICABLE SOW BY CUSTOMER TO GRIDGAIN FOR THE SPECIFIC SERVICE FROM WHICH SUCH CLAIM ARISES. THE FOREGOING LIMITATIONS, EXCLUSIONS AND DISCLAIMERS ARE AN ALLOCATION OF THE RISK BETWEEN THE PARTIES AND WILL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EVEN IF ANY REMEDY FAILS IN ITS ESSENTIAL PURPOSE.

7. **ASSIGNMENT.** Customer may not assign this Agreement or any of its rights or interests hereunder, or delegate any of its obligations hereunder, without the prior written consent of GridGain, which shall not be unreasonably withheld. Any attempted assignment or delegation in contravention of this Section shall be null and void, and of no force or effect. This Agreement shall be binding upon, and shall inure to the benefit of, the legal successors and permitted assigns of the Parties.

8. **NOTICES.** Any notice, demand or other communication (collectively "notice") required or permitted under this Agreement shall be made in writing and shall be deemed to have been duly given (i) when delivered personally to the representative(s) designated to receive notices for the intended recipient, or (ii) when mailed by certified mail (return receipt requested) or sent by overnight courier to the representative(s) designated to receive notices for the intended recipient at the address set forth on the applicable SOW.

9. COMPLIANCE WITH LAW

9.1 **General.** Customer shall be solely responsible for applying for and obtaining any approvals, authorizations, or validations necessary to effectuate the terms of this Agreement under the laws of the appropriate national laws of each of the countries in the licensed territory.

9.2 **Government Regulation.** If Customer exports or imports any Deliverables provided hereunder, Company shall comply with all applicable laws and regulations relating to the export or import of the Deliverables, including obtain any required licenses.

9.3 **Indemnity.** Customer will indemnify GridGain from and against any liabilities, costs, fines, penalties and other expenses, including reasonable attorney fees, incurred by GridGain as a result of Customer's breach of the covenants in this Section 9.

10. **CHOICE OF LAW AND JURISDICTION.** This Agreement will be governed by and construed under the laws of the State of California excluding choice of law principles, and in no event will this Agreement be governed by the United Nations Convention on Contracts for the International Sale of Goods or the Uniform Computer Information Transactions Act. In the event either party brings any action at law or in equity against the other party relating to this Agreement, the venue for such action shall be with a state court in San Mateo County or a federal court in the Northern District of California. To that end, each Party irrevocably consents to the exclusive jurisdiction of, and venue in, such court(s), and waives any, (a) objection it may have to any proceedings brought in any such court, (b) claim that the proceedings have been brought in an inconvenient forum, and (c) right to object (with respect to such proceedings) that such court does not have jurisdiction over such Party. Without limiting the generality of the foregoing, Customer

specifically and irrevocably consents to personal and subject matter jurisdiction for such claims or disputes in the state court in San Mateo County or a federal court in the Northern District of California and to the service of process in connection with any such claim or dispute by the mailing thereof by registered or certified mail, postage prepaid to Customer, at the address for notice set forth in, or designated pursuant to, this Agreement.

11. REMEDIES The Parties acknowledge that the failure to perform their respective duties under Section 4 may cause the other Party to suffer irreparable injury for which such injured Party will not have an adequate remedy available at law. Accordingly, the injured Party may seek to obtain injunctive or other equitable relief to prevent or curtail any such breach, threatened or actual, without posting a bond or security and without prejudice to such other rights as may be available under this Agreement or under applicable law.

12. WAIVER. No course of dealing, failure by either Party to require the strict performance of any obligation assumed by the other hereunder, or faulted by either Party to exercise any right or remedy to which it is entitled, shall constitute a waiver or cause a diminution of the obligations or rights provided under this Agreement.

13. FORCE MAJEURE. A Party will be excused from a delay in performing, or a failure to perform, its obligations under this Agreement to the extent such delay or failure is caused by the occurrence of any major contingency beyond the reasonable control, and without any fault, of such Party, other than the failure to meet financial obligations. In such event, the performance times shall be extended for a period of time equivalent to the time lost because of the excusable delay. In order to avail itself of the relief provided in this Section for an excusable delay, the Party must act with due diligence to remedy the cause of, or to mitigate or overcome, such delay or failure.

14. CONSTRUCTION

14.1 Inconsistencies. In the event of any inconsistency between the provisions of this Agreement and any SOW, the provisions of the SOW shall govern for purposes of such SOW.

14.2 Modification. The terms, conditions, covenants and other provisions of this Agreement may hereafter be modified, amended, supplemented or otherwise changed only by a written instrument (excluding e-mail or similar electronic transmissions), such as an SOW, that specifically purports to do so and is physically executed by a duly authorized representative of each Party. Purchase orders will be for the sole purpose of defining quantities, prices and describing the Services to be provided under this Agreement and to this extent only are incorporated as a part of this Agreement and all other terms in purchase orders are rejected.

14.3 Severability. If a court of competent jurisdiction declares any provision of this Agreement to be invalid, unlawful or unenforceable as drafted, the Parties intend that such provision be amended and construed in a manner designed to effectuate the purposes of the provision to the fullest extent permitted by law. A SOW may be executed in counterparts, each of which shall be deemed to be an original.

14.4 Survival. The following provisions shall survive and continue to bind the Parties after termination of this Agreement: Sections 1, 2, 3, 4, 5.3, 6, 7, 9, 10, 11, 14.4, and 16.

15. COMPLETE UNDERSTANDING. This Agreement (together with the schedules, exhibits, and other appendices attached hereto or specifically incorporated herein by reference) constitutes the complete understanding of the Parties, and supersedes all prior or contemporaneous agreements, discussions, negotiations, promises, proposals, representations, and understandings (whether written or oral) between the Parties, about the subject matter hereof.

16. DEFINITIONS

“**Agreement**” means the terms of this Agreement; all SOWs, as well as any other written modifications signed by authorized representatives of both Parties that incorporate the Agreement by reference.

“**Confidential Information**” means and refers to the Deliverables, Documentation and all other materials or information furnished by the Disclosing Party to the Receiving Party that is expressly identified or marked by the Disclosing Party as “confidential” at the time of delivery or which by its nature is normally and reasonably considered confidential, such as information related to past, present or future research, development or business affairs, any proprietary products, materials or methodologies, or any other information which provides the Disclosing Party with a competitive advantage.

“**Consulting Services**” means the consulting services provided by GridGain as set forth in an applicable SOW.

“**Effective Date**” means the date specified on the SOW.

“**Intellectual Property Rights**” means all trade secrets, patents and patent applications, trademarks (whether registered or unregistered and including any goodwill acquired in such trade marks), service marks, trade names, business names, internet domain names, e-mail address names, copyrights (including rights in computer software), moral rights, database rights, design rights, rights in know-how, rights in confidential information, rights in inventions (whether patentable or not) and all other intellectual property and proprietary rights (whether registered or unregistered, and any application for the foregoing), and all other equivalent or similar rights which may subsist anywhere in the world.

“**SOW**” means a transactional document executed by the Parties incorporating this Agreement which identifies the Professional Services to be provided by GridGain.

“**Professional Services**” means the Training Services and Consulting Services as set forth in an applicable SOW.

“**Services**” means the Professional Services, and any other specified services, set forth in an applicable SOW.

“**Term**” means the term of the Professional Services until the Delivery Date specified in the field of the SOW(s).

“Training Services” are website or on-site training in the use of the software provided by GridGain and as set forth in an applicable SOW.